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To Whom It May Concern:

I write as the Director of Intermediary Liability at Stanford Law School's Center for Internet and Society. My work there focuses closely on the "Right to Be Forgotten" or "Right to Be De-Listed" under EU data protection law, and under the GDPR in particular. I previously served as Associate General Counsel for Google. In that capacity I testified as a representative to the Leveson Inquiry and later traveled with company's Advisory Council on the Right to Be Forgotten.

My comments pertain to Internet users' expression and information rights, and how they may be affected by certain provisions of the GDPR. The problems I identify do not arise from the substantive concerns about the existence of a "Right to Be Forgotten," but rather from procedural problems with private platforms' de-listing or erasure of online information.

To date, following *Google Spain*, this issue has mostly arisen in the context of search engines like Google. During the lifespan of the GDPR, however, the same questions will inevitably arise for platforms like Facebook or Twitter: Must they erase one person's posts or tweets in response to another person's objection or erasure request under the GDPR? Does the GDPR provide adequate safeguards against abusive or over-reaching removal demands, in order to protect affected information and expression rights? Questions about procedural protections for online expression and information arise with respect to search engine de-listing requests as well.

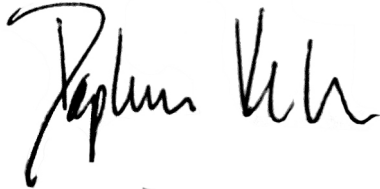
My article addressing these issues is forthcoming in the Berkeley Law and Technology Journal. The current draft is attached to this email. The article closely examines GDPR language governing "notice and takedown" of online information and expression. It is specifically designed to be useful to lawmakers and regulators considering these issues, and is organized to allow sophisticated readers to skip directly to specified topics.

Many of the issues raised pertain to Articles 17, 18, 21, and 85. Other important provisions affecting ordinary Internet users' information and expression rights appear in other parts of the law, however. Below the signature line of this letter, I briefly list concerns about specific Articles listed as Themes for this Call for Views. I will submit the same information through the Call for Views web form for ease of processing. In addition to the Articles identified in the Call for Views

(6, 17, 18, 23, 83, and 85), several others are relevant. Some of these are listed as subject to Member State restriction in Article 23 – these are Articles 12, 14, 15, 18, and 21.

The UK holds an important place in the history of European and American lawmaking as a protector of expression and information rights. Its legislation balancing those rights with privacy and data protection may be a model for other legal systems around the world. I appreciate the opportunity to comment in this Call for Views.

Regards,

A handwritten signature in black ink, appearing to read "Daphne Keller". The signature is written in a cursive, flowing style with a large initial 'D'.

Daphne Keller

Comments Submitted via Web Form

THEME 6, Art 6

My comments have been delivered by email. They address the protection of Internet users' expression and information rights in "Right to Be Forgotten" cases.

Important issues that may be governed by Article 6 include the legitimate grounds that online platforms may have for processing individuals' online expression.

THEME 2 Art 83

My comments have been delivered by email. They address the protection of Internet users' expression and information rights in "Right to Be Forgotten" cases.

Laws prohibiting or capping fines under Article 83 in certain cases could be an important means to protect these rights, by reducing controllers' incentives to honor improper and over-reaching erasure requests.

THEME 11 Art. 85

My comments have been delivered by email. They address the protection of Internet users' expression and information rights in "Right to Be Forgotten" cases.

National laws under Article 85 can protect expression and information rights not only by identifying categories of publicly shared online information that controllers should not erase, but also by identifying procedures that can limit Internet platforms' incentives to honor improper and over-reaching erasure requests.

THEME 9 Art 17

My comments have been delivered by email. They address the protection of Internet users' expression and information rights in "Right to Be Forgotten" cases.

Important issues that may be governed by Article 17 include the potential future "Right to Be Forgotten" obligations of Internet platforms like Facebook or Twitter; the scope of free expression exceptions; and procedural protections for online speakers wrongly targeted by "Right to Be Forgotten" requests.

THEME 12 Art 18

My comments have been delivered by email. They address the protection of Internet users' expression and information rights in "Right to Be Forgotten" cases.

As applied to those cases, the Article 18 Restriction obligations could displace longstanding defamation law and the legal balance hammered out in the UK's 2013 Defamation Act. They could also more broadly harm the rights of online speakers wrongly targeted by "Right to Be Forgotten" requests. Legislation clarifying Article 18.2's exception for "the protection of the rights of another natural or legal person" could alleviate this problem.

THEME 13 Art 23

My comments have been delivered by email. They address the protection of Internet users' expression and information rights in "Right to Be Forgotten" cases.

Member states have authority under Article 23 to restrict aspects of the GDPR where necessary and proportionate to protect the "rights and freedoms of others." As laid out in my written comments, the expression and information rights of Internet users would be better protected through procedural barriers to prevent fraudulent or mistaken "Right to Be Forgotten" claims from succeeding. GDPR provisions that are relevant to these procedures and covered by Member State authority under Article 23 include Articles 12 (regarding "manifestly unfounded" erasure or restriction requests), 14 and 15 (regarding disclosure of online speakers' personal information), 18 (restriction), and 21 (objection).