

Removal Requests and the Caselaw Access Project

By Ashley Fan

Not long ago, if someone wanted to access a court decision they were named in, they would need to sift through volumes of court reporters at a law library. Today, they could access that case without even trying to — a Google search of their name would point to their case in Caselaw Access Project's database of court decisions. Depending on perspective, this may be an impressive feat of technology freeing the law — or an unacceptable invasion of privacy.

When courts relied on a [book-only or book-first](#) model of publishing, court decisions that constitute the law were technically accessible, but practically obscure. This "[practical obscurity](#)," where physical and temporal barriers to access preserved the privacy of those named in public records, has virtually disappeared with the advent of CAP and other legal research platforms that make case law available to anyone with an Internet connection. Traditional court records were not designed with this unprecedented level of access in mind, creating tension between the public's right to access and the individual's right to privacy.

The common law right of access to judicial documents predates the Constitution, and court decisions that set precedents for future law are especially important to publish for widespread reading. However, because CAP as a non-governmental organization is not required to publish these court decisions in their entirety, we have both the freedom and the responsibility to take an extra step to ensure our content is not causing unnecessary harm — namely, a robust policy for handling removal requests from individuals named in our database of cases.

Removal requests typically occur when a Google search of someone's name brings up records of their past legal entanglements, potentially harming their reputation and employment prospects. In serious cases, sensitive private information such as the names of minors or identifiable medical information has been wrongly published in these court documents. While considering how to obscure this information, CAP hopes to strike a balance between our purpose of legal research and our responsibility to ensure our content is not causing harm.

When users send in removal requests, they often express that they have not given authorization or permission for CAP to publish their information. There seems to be a common misunderstanding of the fact that their case is now part of the public domain as

a legal document, and may be freely distributed without special permission. People may feel their privacy is violated when information crosses borders of contexts, known as a violation of “[contextual integrity](#).” They do not object to their information existing in law books or on a court website, but do not expect to find it on third-party websites that are easily searchable. There are bound to be privacy objections for databases and archives like CAP, whose very purpose is the transfer and access of information across mediums — CAP was created from the Harvard Law Library’s 40k legal volumes “[by way of a guillotine, a scanner, and a meat packer](#).”

The first step to approaching removal requests is to close this gap between expectation and reality. Individuals have previously attempted to remove online court records by claiming loss of employment prospects,¹ alleging defamation and discrimination,² and even resorting to cyber-blackmail after a legal research platform refused to take down a crime-inclined individual’s unflattering court records.³ These attempts have all failed to overcome the powerful First Amendment presumption of public access to judicial documents, which allows for public inspection of government activity.

And because the public cannot participate in the judicial process if it cannot afford to, access to these records should be available for free or at cost.⁴ Personal information in case law has always been accessible to law firms and others who pay to access commercial databases with paywalls, so removal requests should not become a way to punish free and public resources for being free and public. In a [letter brief](#) against a court sealing order, legal publisher Free Law Project argued that sealing orders and removal requests that target free legal research services are “discriminatory against those with fewer financial resources.”

While CAP helps increase access to the law, we must also consider the privacy consequences of this new breadth of access. Oftentimes the specific identities of those named in cases are not relevant to the scholarly value of the case for legal research purposes, giving CAP room to consider privacy interests with more discretion than courts did when they first published cases. What should this balance of access and privacy ideally look like?

A prominent advocacy for privacy is the “right to be forgotten” or the “right to erasure” recognized in Europe’s General Data Protection Regulation (GDPR). It allows Europeans to request that search engines remove links to personal information no

¹ Allen v. Chanel, Inc., 12 Civ. 6758 (LAP) (S.D.N.Y. Dec. 28, 2020)

² Despot v. Balt. Life Ins. Co., Civil Action No. 15-1672 (W.D. Pa. Jun. 28, 2016)

³ United States v. Jahanrakhshan, Crim. Action No. 3:17-CR-0414-N (N.D. Tex. Jul. 18, 2018)

⁴ Nat’l Veterans Legal Servs. Program v. United States, 968 F.3d 1340 (Fed. Cir. 2020)

longer deemed accurate or relevant — essentially bringing practical obscurity to the web. Several removal requests received by CAP have demanded removal on the basis of GDPR; however, the law does not apply to American domains and would likely infringe upon First Amendment protections. California’s Consumer Privacy Act has also been cited occasionally in CAP removal requests, but protected “personal information” does not include publicly available information from government records.⁵

A more appropriate model may be found in the journalism industry, one also concerned with making and preserving history. The *Boston Globe*’s [Fresh Start](#) initiative is part of a movement across newsrooms in America to reconsider their crime reporting’s lasting impacts. Fresh Start accepts requests to have old stories updated, anonymized, or de-indexed by search engines, to “not stand in the way of a regular person’s ability to craft their future.” The initiative is an effort to move away from some traditional reporting practices, to not simply accept sources like police reports as gospel and to update the public record. Similarly, in CAP’s capacity as an archive, we may consider whether overreliance on official documents like case law may tilt the scales of memory towards the accounts of institutions and away from people’s real-life experiences.

CAP’s removal request process can take a cue from Fresh Start’s committee of journalists, who consider the *Globe*’s requests by following guidelines drawn up in collaboration with criminal justice advocacy organizations and ultimately applying editorial discretion on a case-by-case basis. These guidelines weigh various factors: general leniency for older, non-violent, one-time incidents, versus harder scrutiny for serial offenders or those in positions of public trust and power.

Fresh Start launched less than a year ago, but has already faced a variety of scenarios that CAP may be considering in the near future — for example, a request to change a deadname for someone who has since transitioned. Though a newspaper and a legal research platform have different tools and limitations while handling removal requests, we share the underlying goal of balancing free information and personal impact.

CAP’s own removal request policy has been informally developed over recent years, shaped by each case we’ve encountered. As usership of CAP grows, so does the urgency for a removal request policy created with intention. Reflecting how CAP’s source material differs from peer court document publishers — CAP only includes official, book-published court decisions — our policy tends to be more manual and reserved than others’. Here is what currently works for us:

⁵ [California Consumer Privacy Act FAQs](#)

- CAP will not remove or alter cases unless the court itself has withdrawn the case. CAP will comply with court orders to seal or redact published cases.
- To promote free access, CAP typically will not use robots.txt or other methods to de-index a case and completely prevent it from appearing in search engines.
- For most removal requests, CAP will elide first names from the case text. Elisions are a useful tool and a great compromise for suppressing certain words from search engines while keeping the rest of the case accessible and searchable. Names appearing in the short name of a case cannot be elided or redacted, as this would hide the case from those who need it for legal research.
- When warranted by compelling privacy interests, CAP will redact the following unique personal identifiers (consistent with information that must be redacted in federal court filings): social security numbers; taxpayer ID numbers; alien registration numbers; birth dates; addresses; names of minors; sensitive medical information, etc.

Other legal research platforms each have their own policies, guided by their respective philosophies on the spectrum of access versus privacy. There is no one-size-fits all policy — [automated search engine suppression based on keywords](#) may suit the Free Law Project's CourtListener archive, for example, but may be overly limiting for CAP's content. When comparing the policies of various different platforms, such as [Casetext](#) and [Unicourt](#), some common components appeared, suggesting several questions to consider when creating a policy from scratch:

- Is automated search engine suppression appropriate and viable? Automation is a type of proactive response, as opposed to the reactive measures that make up CAP's current removal request protocol.
- Can removal requests be submitted through an embedded form on the website or only through a written request by email? Users may find it easier to fill out a form than to write an email, creating different levels of built-in friction.
- Must requestors provide proof of their identity and relation to the case? Some requests may not come from the person named in a case, but from someone acting on their behalf or from someone else with the same name.
- Should legal research platforms charge money to resolve removal requests? Most if not all free legal services like CAP do not charge for removal requests, and would likely frown upon doing so.

Whatever the policy, it's important to keep in mind that privacy interests cannot be evaluated solely based on the presence or absence of certain sensitive information. Other important factors to consider include:

- What can be inferred from other available information. For example, redacting a minor's name may not be sufficient if the minor's identity is revealed by association with their parents' names.
- The legal and scholarly importance of a case. It's worth considering how often a case is viewed and how many other cases cite to the case in question. If none do, maybe we can be more generous in eliding or redacting. If many do, we should be especially careful not to hide relevant information.
- The societal value of keeping information public. In some cases, the identity of someone named in a case is actually relevant for research purposes, such as in attorney discipline orders or cases involving public figures. Cases naming the government, businesses, and lawyers or law firms may be especially deserving of public scrutiny.
- The value of information that has been removed. Even after information is deemed a privacy violation that needs to be removed from the public site, archives and databases should keep a changelog or “dark archive” of the original content for transparency and research purposes.

Of course, this is not a comprehensive list and the “ideal” balance between access and privacy will always be a moving target. These policies may change as new technology becomes available, or as courts form new case law regarding access to case law.

The latter may be the ultimate solution for privacy issues in court records, since court filings are the source of the problem. The lag in court technology and the lack of uniformity in court reporting procedures make it difficult for publishers like CAP to review and update court records after publication. Ideally, CAP would go through all 40 million pages of court decisions and proactively update those that have been expunged, sealed, or redacted by the court, but the current piecemeal e-filing system makes this extremely time and cost prohibitive. Reform of expungement procedures and filing redaction guidelines would eliminate some privacy issues before they occur, even if it is difficult to overcome inertia at the institutional level.

More scrutiny at the privacy implications of public case law certainly does not mean it's better to go back to the era of practical obscurity. Instead, courts and attorneys should follow new norms for writing and publishing cases that reflect modern technology. The federal courts' guidelines for electronic publishing was [most recently updated in 2008](#), before the creation of sites like CAP with the unprecedented ability to disseminate court decisions. The Director of the Library Innovation Lab, Adam Ziegler, put forward a [set of guidelines](#) for courts to focus on digital-first publishing efforts, ensuring free public

access to their official decisions. These guidelines, paired with tech-enabled improvements in courts and filers' [redaction strategies](#) as proposed by the National Center for State Courts, can make more cases available to the public without further harming individuals in the process.

Thoughtful policies and legal tech hold the power to encourage civil participation, enhance legal research, and even give someone the chance for a fresh start. Careful and transparent consideration of CAP's own approach to privacy paired with advocacy for better court processes can help us responsibly democratize access to the law.

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