

OPINION N°6

ETHICAL ISSUES OF RETROACTIVE NAME CHANGE IN DIGITAL SCIENTIFIC DOCUMENTS

**COMITÉ NATIONAL PILOTE
D'ÉTHIQUE DU NUMÉRIQUE**

sous l'égide du

**COMITÉ CONSULTATIF NATIONAL D'ÉTHIQUE
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10.5 Referral from Inria25

1. Introduction

1.1 The referral from Inria

This opinion is in response to a letter from the President of Inria dated 20 April 2022, entitled: "Common position on the processing of requests for modification of personal data appearing in public documents prior to a change of surname, first name or gender". Indeed, Inria is solicited to respond to "*requests for the deletion or retroactive modification of pre-existing documents that indicate an old identity. These requests are most often based on the existence of a prejudice ("suffering", risk related to the exposure of the identity change, etc.). These applications focus in particular on scientific articles that are published and archived on open access platforms or on archived copies of software made available to the public under an open source license chosen to allow and encourage their redistribution and reuse without restriction. Some of these documents are also collaborative works, involving several authors*".

Besides the legal issues raised by this request from scientists (with regard to the General Data Protection Regulation (GDPR), as well as intellectual property and archive law), Inria stresses that "*in our view, it raises important ethical questions. Should we agree to delete or modify all traces of information that has been or still is publicly available at the simple request of those concerned? Should we systematically refuse to accede to these requests on the grounds that they are aimed at altering the accuracy of history, which should be preserved in the general interest? How can we strike the right balance between the interests of individuals and the general interest, taking due account of the risks, real or supposed, for both parties?*"

The referral letter is annexed to this document (see annex 10.5).

1.2 Scope of the opinion

1.2.1 Issues addressed

This opinion is in response to the referral from Inria, which concerns scientific productions that mention people by name (for example, but not exclusively, as authors): articles, conference papers, books, software, oral presentation materials, teaching materials, activity reports, outreach documents. However, the work of CNPEN could be extended in future to the more general question of digital identity or identities: who defines these identities, what does it mean to change one's digital identity, what impact could digital technology have on a person's name or, more generally, on their identity, who has the right to make or not to make the link between different digital identities?

Unless specifically stated otherwise, the term "name change" used in the text refers to a change of first name(s) as well as a change of last name (or surname or family name).

CNPEN addresses the ethical issues raised by the retroactive modification of the name of a person who is the author or co-author of a published digital scientific document (with an explicit mention of the name and e-mail address). The issues extend to cases where this person is mentioned by name in another document, in the bibliography, quotations, figure captions, footnotes, acknowledgements, funding declarations, etc. The referral from Inria also mentions the possibility of considering deleting a scientific document in which the person's name appears. Even if we do not examine it here, the

modification or removal of a photograph of the person from a scientific document (for example on a conference website), or even the modification of their voice or appearance in a video, would also be relevant to a broader discussion of identity change in the digital world. Furthermore, this opinion does not address the issues raised by the pure and simple removal of a person's name from a document (for example, in the acknowledgements).

Retroactive name change in digital scientific documents raises legal issues, in particular under the General Data Protection Regulation (GDPR), intellectual property law and archive law, as mentioned in the referral. Retroactive name change in digital scientific documents also raises issues of archive integrity and research integrity. Requests for a retroactive name change in digital scientific documents are often seen by the individuals concerned as part of their right "*to decide and control the use made of their personal data*"¹. In this way, they express a desire not to be assigned a fixed identity by their parents, society or the State.

In the current state of French law, changes made to civil status records concerning modifications affecting a person's status in the course of their life are only effective for the future, without any retroactive effect. As a result, and by way of example, the former employers of a person who has changed "*surname, first name and sex*" are not obliged to update the personal data appearing on the documents concerning that person². This is because a name change constitutes a modification and not a rectification: a rectification concerns information that was objectively inaccurate or incomplete at the time it was drafted (in which case there may be a *right to rectification*³), whereas a modification takes into account new elements subsequent to the initial document. However, the ethical reflection that specifically concerns the possibility of retroactive name change in digital scientific documents, considers issues that are potentially different from those of the law, but which could have an impact on its evolution.

1.2.2 Point of view adopted

There are many different reasons for asking for a name change: a change of first name could be related to a change of sexual identity, gender, religion, or socio-economic or socio-cultural identification, for example.

These situations are all different, and ethical reflection cannot rank them in order of importance.

Consequently, the committee cannot give an opinion on the retroactivity of name changes in digital scientific documents related to a particular reason. The opinion will therefore be built from a global perspective, considering the question of asking for a retroactive name change in digital scientific documents, *regardless of the reason*.

The case of a scientist asking for a name change for scientific productions in which their former name appears, highlights a tension between two values:

¹ In accordance with Article 1 of the French Law of 6 January 1978 on Data Processing, Data Files and Individual Liberties as amended by the Law for a Digital Republic of 7 October 2016.

² Conseil d'État, 10^e chambre, 14/04/2023, 462479, inédit au recueil Lebon.

³ <https://www.cnil.fr/fr/le-droit-de-rectification-corriger-vos-informations>

- the autonomy in controlling one's identification in digital scientific documents;
- the authenticity⁴ and integrity⁵ of the documents on which scientific practice is based, and the principle of not transforming the content of a scientific document once it has been released.

Ethical reflection explores the possibility of reconciling these two values, by examining the solutions offered by digital technology.

Besides, retroactive name changes in digital scientific documents bring into play:

- the integrity of the knowledge graph, which relies in particular on the citation mechanism;
- and research integrity, which requires in particular that sources be properly cited.

Digital technology currently allows certain retroactive name changes to be made in digital scientific documents, by modifying the original documents. However, there are limits to this technical possibility: today, for example, it is impossible to guarantee that the changes are exhaustive and invisible. It is important to remember that revealing retroactive name changes in digital scientific documents, whether accidentally, deliberately or as a result of technical issues, comes into conflict with the protection of the privacy of the people affected by these changes, and is even likely to compromise their security.

In response to the referral from Inria, CNPEN examined these tensions and paid special attention to the way digital technologies would open up avenues for overcoming opposing values.

2. Name change and retroactive name change in digital scientific documents

2.1 Reasons for a name change

A change or transformation of first name—such as Sandrine becoming Alexandrine or Adrien becoming Adrienne—, or of surname, could be the consequence of a change of religion, gender⁶ or nationality, or even of a desire to escape socio-economic or cultural macro-determinations (for example, the connotative functions of first and last names sometimes associated with a so-called 'working-class' or 'modest' social origin⁷). A change of family name could also be linked to a desire to take a name derived from one's filiation⁸, or to other legitimate reasons (for example, a family name that is difficult to live with, or a prejudicial homonymy)⁹. A person may also wish to take or abandon a customary name¹⁰, such as a marital name following marriage or separation¹¹. Name

⁴ A document that can be proven to be what it is claimed to be, that was actually produced or received by the person claiming to have produced or received it, and that was produced or received at the time described in its contents, see for example (Marie-Anne Chabin, 2010) : http://www.arcateg.fr/wp-content/uploads/2017/03/Nouveau_glossaire_de_l_archivage.pdf

⁵ "The complete and unaltered nature of a document, proving that it has not undergone any additions, deletions or modifications, whether accidental or intentional, since it was validated. », see Marie-Anne Chabin, 2010.

⁶ see annex 10.1.

⁷ Baptiste Coulmont - *Changer de prénom - De l'identité à l'authenticité*. Presses Universitaires de Lyon, 2016. <https://books.openedition.org/pul/22921>.

⁸ <https://www.service-public.fr/particuliers/vosdroits/F36379>

⁹ <https://www.service-public.fr/particuliers/vosdroits/F1656>

¹⁰ <https://www.service-public.fr/particuliers/vosdroits/F35060>

¹¹ See also annex 10.2

changes can also have a political dimension, as seen in Ukraine today, where the principle of reappropriating a national identity has been reinforced by the war between Russia and Ukraine. This motivation has led the Metropolitan Museum of Art in New York to re-identify several Ukrainian painters, who are now presented under their Ukrainian names with their Russian names in brackets¹².

2.2 Reasons for requests for retroactive name changes in digital scientific documents

Asking for a retroactive name change in digital scientific documents following a name change might be motivated by:

- the person concerned wishing to no longer see their former name in these documents ;
- the person concerned wishing to have the same name associated with all their scientific production.

These two reasons may be combined.

Moreover, this request may be accompanied by a demand for discretion: the person may not wish the link between the old and new names to be brought to the attention of readers of scientific documents. This demand for discretion can be related to the person's pain at seeing their old and new names associated, or to the risk of prejudice. For example, while in France a change of forename motivated by a change in gender identity or religious identity would be considered legitimate, it is considered reprehensible in a number of societies or communities, and even punishable by law in certain countries. Making the connection between old and new names visible could be dangerous for the person concerned¹³, and even for those around them, with a temporal and spatial dimension that is difficult to anticipate.

The fact that scientific documents are published in digital form means that certain retroactive changes may be technically possible, and explains why requests for such changes are made.

3. State of the art of practices

3.1 Scientific publishers and COPE

Some research publishing houses have recently taken the initiative to respond positively to requests to retroactive name change for authors of articles published by them¹⁴, putting forward the arguments of inclusion and diversity. To enable such a request to be made, they provide an email address or a specific form.

¹² See, for example, the painter Arkhyp Kuindzhi (Arkhip Ivanovich Kuindzhi), 1841-1910; <http://www.metmuseum.org/art/collection/search/436833>

¹³ Indeed, in the digital domain, anything that concerns the identification and categorisation of individuals must be considered sensitive. This is in particular the case for artificial intelligence systems classified as "high-risk" at European level when they are used for applications involving the identification of individuals.

¹⁴ for example :

<https://www.elsevier.com/about/policies/inclusive-author-name-changes>,
<https://group.springernature.com/in/group/media/press-releases/springer-nature-introduces-trans-inclusive-n-19305714>,
<https://journals.ieeeauthorcenter.ieee.org/become-an-ieee-journal-author/publishing-ethics/guidelines-and-policies/ieee-author-name-change-policy>, <https://www.acm.org/publications/policies/author-name-changes>

These editors rely on principles and best practices set out by COPE (Committee on Publication Ethics)¹⁵, that deal exclusively with first name changes related to gender reassignment. These principles are stated in an article¹⁶ whose authors claim to represent transgender people (see annex 10.1):

- accessibility: there are no administrative constraints for applicants, in particular, no official documents are required;
- completeness: all references to the former name in the archives held and distributed by the publisher are replaced (although it should be noted that it is difficult to guarantee completeness);
- invisibility: a name change should not draw attention to an author's gender identity, and there is no juxtaposition of the old and new names;
- speed and simplicity: the name change should be carried out quickly, without bureaucratic complications;
- monitoring and maintenance: the publisher should monitor any references to an old name that may occur, and correct them.

The changes are made, without any mention of the correction if the person concerned does not wish it, on the publications hosted by the publisher, on any secondary copies hosted by another publisher, and in the metadata of databases such as Scopus, Web of Science or PubMed.

The following points are worth noticing:

- to our best knowledge, these initiatives, which date back to 2021, have been taken without consulting the scientific community;
- they suggest that the digital format of scientific documents makes these changes easy, insignificant, exhaustive and invisible;
- -potential co-authors may or may not be informed of the request;
- the costs of the changes are not charged to the authors but are covered by the publishing house;
- -the process of retroactive change is largely based on the assumption that the changes concern the first name, and that the first initial of the first name is retained; it should be noted, however, that promoting the use of the first initial of the first name alone (or of the initials of the first names alone) entails increased risks of homonymy and does not take into account the impact on sociability, which is appreciated differently from one culture to another;
- -it is also based on the assumption that the number of requests for changes will remain small and that the resources to be allocated to them and their cost will be kept to a reasonable level.

¹⁵ <https://publicationethics.org/>

¹⁶ <https://publicationethics.org/news/vision-more-trans-inclusive-publishing-world>

3.2 Open-access archives and repositories

Open Research Europe, the open access publication platform for research resulting from European projects, also accepts requests to retroactive name changes for authors of articles published on this platform¹⁷. It is specified that the platform cannot control the propagation of these changes or the use that is made of them on other sites.

Systems such as HAL, ArXiv, Git and Software Heritage allow scientific documents to be deposited, in particular successive versions of articles, course materials and software. A document deposited in such a system is made be accessible to a restricted circle of people, or open to all. It may or may not be open to comments (in practice, comments by peers) or modifications (particularly in the case of software). The deposit of a scientific document in an archiving system, which is time-stamped, also makes it possible to mark the anteriority in the sense of intellectual property and to trace contributions (for example, the development history of software).

In principle, such a system preserves the successive versions of a scientific document, so that the record of any changes is visible. Thus, if a name change occurs in a deposited document, this change would be the subject of a new, dated version of the document. It should be noted, however, that ArXiv offers the possibility of retroactive name change¹⁸, based on the principles of COPE, without specifying whether the old version of the document remains accessible. A partnership has been formed with a wide range of scientific organisations, including the US national laboratories, on the transgender-inclusive name-change process for academic work¹⁹.

4. Scientific publishing and integrity

4.1 Knowledge graph

The aim of scientific publishing, whether in the form of publishing houses, private or public bodies for the dissemination of science or open archives, is to guarantee the quality and authenticity of scientific documents and to enshrine them in history. Scientific knowledge is organised in a dynamic, multi-dimensional²⁰ graph based on the citation of different scientific documents, books, articles, communications, software and data.

A retroactive intervention on a name appearing on a published document modifies the knowledge graph. Indeed it modifies the document, which constitutes a node of the graph. Furthermore, if the connection between the old and new names is explicit, the graphs related to both names are linked (creation of edges). If, however, the link between the old and new names is made invisible, and the propagation of the change is not exhaustive, citation connections are broken (i.e., some edges are removed from the graph) between documents.

¹⁷ <https://open-research-europe.ec.europa.eu/about/policies#authorship>

¹⁸ <https://blog.arxiv.org/2021/03/11/update-name-change-policy/>

¹⁹ <https://blog.arxiv.org/2021/07/28/scientific-publishing-organizations-partner-on-transgender-inclusive-name-change-process-for-academic-work/>

²⁰ Knowledge graph, citation graph (*citation network*, for exemple : <https://www.citnetexplorer.nl/>)

4.2 Integrity of a scientific document

Changes to scientific documents that are digitally published are usually visible. These are *errata* (corrections of errors due to the publisher), *corrigenda* (corrections of errors due to the author), *addenda* (additional notes) or successive time-stamped versions of an article or software. The original document and any versions remain accessible in their entirety.

Access to corrections and to different versions of a document enables in particular scientists to follow the progress of a work, to revise their citations if necessary, and to build up their own contributions incrementally.

4.3 Integrity of archives

As stated in the TLFi²¹ and the Académie française dictionary, for example, archives are a collection of documents, such as manuscripts, printed documents, photographs, films, sound recordings, etc., relating to the past of a people, a province, a district, a town, a family, a public or private institution, etc. In particular, the purpose of these archives is to prove rights or bear witness to certain activities. By metonymy, the term "archive" also refers to the place where these documents are kept, in particular when they are digital.

The retroactive name change in a digital scientific document challenges the principle of archival integrity. This principle has been translated into national and international law, in the name of defending human rights and in particular in the face of temptations to rewrite history. The Universal Declaration on Archives²² states in its preamble that "*archives record decisions, actions and memories. Archives are a unique and irreplaceable heritage passed from one generation to another. Archives are managed from creation to preserve their value and meaning*". To this end, the parties agree that "*archives are managed and preserved in ways that ensure their authenticity, reliability, integrity and usability*". As a signing party to this declaration, France adopted a law on public and private archives in 1979²³. The integrity of scientific archives is also a methodological assumption, as in science truth and trustworthiness are based on the intangible recording of the successive stages of reflection. The laboratory notebook²⁴ is a perfect example of this.

4.4 Research integrity

4.4.1 Authors' responsibility

An author of a scientific document assumes responsibility for the content of this document— where applicable jointly with co-authors—, in particular with regard to the methodological approach and research practices implemented. This responsibility should be permanent.

A change in a person's name in scientific documents, whether retroactive or not, should not impede attribution, or release the person concerned from responsibility or complicate an investigation into an alleged breach of research integrity. In particular, if co-authors have signed a scientific document

²¹ Computerised French Language Treasury : <http://stella.atilf.fr>

²² Voted unanimously at the General Assembly of the International Council of Archives (ICA) in Oslo in September 2010 and adopted at the 36th session of the UNESCO General Conference on 10 November 2011. – https://www.ica.org/sites/default/files/20190726_ica_declarationuniverselle_french_0.pdf

²³ Law no. 79-18 of 3 January 1979 on archives - <https://www.legifrance.gouv.fr/loda/id/JORFTEXT0000322519/>

²⁴ <https://www.inpi.fr/proteger-vos-creations/le-cahier-de-laboratoire>

with Morgan Before, they should be informed of the name change from Morgan Before to Morgan After and agree to any related retroactive changes in the document. In this way, the association of the two names would be known to these co-authors.

4.4.2 Bibliographic references

There may be situations where it is difficult, if not impossible, for a scientist to find the bibliographic references of an author who has changed their name (see box below), particularly if the connection between the old and new names is not known. An explicit association of the old and new names or a retroactive name change in scientific documents may provide a solution to this problem.

However, it is difficult to guarantee the exhaustive propagation of an author's name change to all the digital scientific documents in which their name occurs. As a result, documents and quotations (such as "Morgan Before says that. . .") are likely to no longer be referenced correctly.

The case of self-referencing (citing one's own work) presents interesting features in the following two cases:

- Morgan After cites their scientific production prior to their name change as Morgan Before: the stability of the references is preserved, however the reader is not– at least not immediately– aware that it is the same person (and in particular that it is a self-citation);
- Morgan After cites their scientific production prior to their name change as Morgan After: the references are inaccurate, and the reader has to match both names - which will be in fact associated.

Consistency in the attribution of scientific work - Examples

1- Alice is looking for Morgan Before's publications and finds that their scientific production stopped in 1991. Alice is unaware that Morgan Before adopted the name Morgan After in 1991. No connection could be easily made between these two identities, as Morgan After's personal page only mentions her scientific production over the last ten years. In particular, if Alice decides to cite Morgan Before's work, these citations will not be credited to Morgan After.

2- Bob is looking for publications by Jetz Smith. Under certain links concerning Jetz Smith, he finds pdf files signed by Jadis Smith. Similarly, a search using the expression "J. Smith" leads to documents signed either by Jetz or Jadis Smith. As the search themes and affiliations are identical for both authors, Bob concludes that they are the same person. Bob wonders how he should reference J. Smith's articles if the bibliographic style of his future article requires him to mention the names *in extenso*.

3- Charlie is looking for Dominique Before's publications but does not find any results. However, Charlie knows from their thesis director that Dominique Before wrote several articles that would be relevant to write the state of the art. Charlie finally manages to find one of these articles using a keyword search and finds out that Dominique Before was not one of the authors, as the article was signed by Alix After and Kim Dubois. So Charlie makes the connection between the identities of Dominique Before and Alix After.

Note: as the evaluation of scientists is cumulative, any break in the attribution of scientific production may be prejudicial to the career of the people concerned (for example in a competition or recruitment situation). An explicit association of the old and new names or a retroactive name change in digital scientific documents may provide a solution to this problem.

4.4.3 Modification of digital scientific documents for which the person concerned by the name change is not the author

The propagation of a retroactive name change in digital scientific documents of which the person concerned is not the author—assuming that such propagation is technically possible—would lead to changes in the body of these documents, for example bibliographic references or quotations such as "Morgan Before says that (...)". Such changes, including any grammatical adjustments, should only be made with the agreement of the authors of the documents, in accordance with the authors' right to respect for their work.

4.4.4 Identification of collaborative work and research funding

The fact that a person is the author of a scientific document, or that they appear in the acknowledgements in the context of a collaboration, or that they belong to an organisation that funds the research which is the subject of the document, makes it possible to identify that person's links of interest.

Identifying and managing conflicts of interest is a complex matter for scientific research, and peer review is an essential principle of its organisation. For example, a committee's opinion on a grant or promotion is based both on the accessibility of the scientist's work and on the committee's ability to identify the risk of bias on the part of some of its members. In the event of a conflict of interest, the person concerned should declare themselves and accept the decision to be excluded from all or part of the evaluation.

A name change, whether retroactive or not, should not prevent the identification of links of interests and potential conflicts of interest.

5. Deletion of digital scientific documents

Except in very specific cases (plagiarism, for example²⁵), digital scientific documents do not disappear once they have been published.

5.1 Withdrawal of articles

A scientific article may be retracted for two reasons:

- the authors themselves become aware of an error in the method or conclusions set out in the article ;
- breaches of research integrity are reported and proven (for example, fabrication or falsification of data or results).

It is important to note that a retracted article does not disappear: the document is accompanied by a retraction note and a watermark or the word "retracted" before the title, in order to keep a record of

²⁵ Even in this case, a duly protected trace of the problematic document, which constitutes an element of proof, must be archived.

the history of the article and the reasons why it was retracted. In fact it has been noted that retracted articles continue to be cited.

5.2 Software archiving

The description of software code could be removed from an archive if the way in which this description has been added to the archive is not justified by an appropriate licence. However, free software²⁶ or compatible licences²⁷ require all authors, by definition, to make their contribution publicly accessible and therefore archivable.

This availability may not be called into question in the context of such licences because of the principle of code reuse. In the case of corrections made to the code or information associated with the code—such as the authors' names or affiliations—a new version must be deposited in the archive and clearly linked to the version it corrects.

As with scientific articles, and for the same reasons of consistency of the knowledge graph, a file describing software code must not be deleted, in particular when it has been published under an open source licence.

6. Analysis of digital solutions

6.1 Retroactive name change on an archived digital scientific document

Retroactive name change in a digital scientific document is currently being considered, in particular by some scientific publishers (see 3.1), on the basis of an explicit request, by modifying the name in the archived document itself. The way in which the trace of this modification is kept - for example, keeping the original version of the document, with the old name - is made explicit²⁸, or not, in a public way by these publishers.

In this way, the value of the individual's autonomy in controlling their identification in digital scientific documents is taken into account, to the detriment—if the original documents are not saved—of the value of the authenticity and integrity of all the documents affected by the modifications (initial modification and propagation to other documents).

It should be noted that such a modification could be visible, due to the difficulty of propagating it exhaustively in all digital copies of this document, as well as in other documents referring to it (bibliographic references, "Morgan Before says that" type quotes). Furthermore, depending on the linguistic or cultural context, the language or the writing style of the documents, the way in which a person is referred to can involve grammatical agreements, declination of names²⁹ or a title (sir or madam) which may reveal gender. It is therefore highly likely that traces of the changes will remain

²⁶ <https://mit-license.org> ou <https://www.gnu.org/licenses/#GPL>

²⁷ <https://www.gnu.org/licenses/license-list.html>

²⁸ For example: <https://www.acm.org/publications/policies/author-name-changes> "Such updates will be in the form of posting a corrected version of the paper (which shall be served to DL users) and making the originally-published version of record and documentation of the purpose of the correction available only upon request for good cause (e.g., subpoena).", See also: <https://journals.ieeeauthorcenter.ieee.org/become-an-ieee-journal-author/publishing-ethics/guidelines-and-policies/ieee-author-name-change-policy/>

²⁹ For example, in Slavic languages, the surname is granted according to the gender of the person - <https://www.w3.org/International/questions/qa-personal-names.fr>

and that inconsistencies will appear, so that a name change is not totally invisible to an observer, whether human or digital. This is already the case with the ISIDORE search engine, which detects the authors of documents in humanities and social sciences and enriches the author form (first name and last name) using international (Orcid, VIAF, ISNI) and French national (IdHAL, IdRef)³⁰ author identifiers. Some aspects of the private life of the person concerned would therefore be used indirectly.

6.2 Creating a new version of an archived digital scientific document

For a single-author document published in an open archive (such as HAL or ArXiv), the following solution could be considered: deposit a new version of the document bearing the new name and accompanied by the document's revision date, with the original version being saved in the archive. The process is the same if the document has several authors, but the permission of all the co-authors is required to submit the new version which includes the new name. Furthermore, all the documents affected by the propagation of the name change must be submitted in new versions, with the agreement of the authors of these documents and saved in the archives of the original documents.

In this way, the value of the individual's autonomy in controlling their identification in digital scientific documents is taken into account, while preserving the authenticity and integrity of the original documents saved in the archives.

While the tension between both values seems to have been resolved, the creation of new versions of documents entails the same limitations relating to the propagation and visibility of the name change, as previously stated. In particular, in the context of certain states that criminalise gender, sex or religious changes—or, more broadly, any 'promotion' of such actions—one might question the value of a solution which, because of its visibility, can involve significant risks for the individuals concerned. Consequently, limiting access to the original version of the documents, or the possibility of hiding their existence, must be studied. The following questions arise:

- Is there an established link between the old and new names? If so, is it through metadata (hidden or not) associated with each modified document, or an explicit table of correspondence? How long must such a link be saved?
- Which people or entities would be legitimate to establish and hold this link?
- In what situations should this link not be established or at least remain hidden? What happens after the death of the person concerned by the name change?
- If there is no visible link between the old and new names, could a person's old name be found by another person or a digital agent, with the risk of identity theft?

³⁰ <http://documentation.huma-num.fr/isidore/>

- Which people or entities need to know that a retroactive name change has been made in scientific documents? Which people or entities need access to original scientific documents? In what contexts?³¹ Is the identity of these people or entities explicit?

6.3 An alternative to name(s): neutral digital identifiers

6.3.1 Current uses

Over the last few years, the scientific community has made it possible for scientists to adopt digital identifiers so that they can identify themselves, and be identified, in a unique, unambiguous and permanent way. For example:

- Orcid³² (Open Researcher and Contributor ID): the identifier, which does not convey any meaning, is made up of several numbers linked by dashes and terminated by one of the characters 0, 9 or X; the associated profile, controlled by the person, could be private or open to a restricted community or to everyone; the same person can create several Orcids;
- IdRef³³ (French–Identifiants et Référentiels pour l'Enseignement Supérieur et la Recherche): the identifier is a number which does not convey any meaning; however the associated profile can publicly indicate information such as the year of birth (truncated or not), the gender and the different names of the person;
- IdHAL³⁴ (Identifier of author known in the archive HAL): the identifier can convey meaning because it is proposed by default in the form of first name-last name (without diacritical or special characters); once registered, it cannot currently be modified.

In the current state, these identifiers are not intended to hide a person's name in scientific documents. However, it is conceivable that the authors of a scientific document would be identified exclusively by Orcid-type alphanumeric strings not conveying any meaning. A reader wishing to know the name of an author of this document could then consult the database of identifiers and obtain the author's current name (i.e., "the person today so called"). The widespread use of such identifiers in the body of documents (bibliographic references, citations, acknowledgements, etc.) would require the display to be dynamic, which is what is described in the next section (6.3.2).

6.3.2 Dynamic instantiation based on a neutral digital identifier

One option to consider is the widespread use of an Orcid-like neutral digital identifier that would be instantiated³⁵ dynamically with the name the person concerned wants at that time when the document is displayed. A table of correspondence between identifier and name(s) must then be controlled by the person concerned and maintained by an authority whose legitimacy must be recognised, in order to ensure consistency and continuity. This correspondence table must keep a record of the different names associated with the identifier. Moreover it should be accessible to people who can justify a legitimate interest in certain circumstances, e.g., particular research needs where the name with

³¹ Retroactive name changes and access to original documents can be made invisible to ordinary readers of scientific documents, but visible to certain qualified people (for example, in the context of historical research, judicial enquiries or investigations into alleged breaches of research integrity).

³² <https://orcid.org/>

³³ <https://www.idref.fr/>

³⁴ <https://doc.archives-ouvertes.fr/identifiant-auteur-idhal-cv/>

³⁵ i.e. replaced by the name.

which an author writes is important, instructions on presumed breaches of research integrity, identification of links or conflicts of interest.

Such an approach requires an appropriate governance framework and must take the following aspects into account:

- A neutral identifier that can be dynamically instantiated must be used for any mention of a person in digital scientific documents: list of authors, bibliographic references, citations, figure captions, footnotes, acknowledgements, funding declarations, etc.
- The dynamic instantiation of a name can change the way in which a scientific document is understood or perceived, as the name can convey information enabling the author to be situated.
- The possibility for a person to have and manage several neutral identifiers, each of which being able to be instantiated dynamically, needs to be studied, particularly from the point of view of the consistency of the different identifiers and associated names.
- The items that can be instantiated dynamically in a digital scientific document must be strictly identified and limited, in particular to the names and titles of people, email addresses, website addresses, and grammatical agreements if applicable. The rest of the scientific document must not be altered and any changes to the scientific content are to be traceable and visible.

A solution of this kind allows to reconcile the values of the autonomy of the individual in controlling their identification in digital scientific documents, and the authenticity and integrity of the original documents, since, by construction, these are not modified. Moreover, and provided that dynamic instantiation ensures consistency within a document and between documents (bibliographic references, citations and grammatical agreements in particular), a name change will not be identified by the reader. This helps to protect the privacy of the person concerned.

Although this solution seems the most appropriate and must be explored quickly, it is important to note that it is difficult, if not impossible, to apply this solution retroactively to all copies of scientific documents currently available.

7. Conclusions and recommendations

CNPEN has chosen to examine in a broad way the question of retroactive name change in digital scientific documents, whether this change concerns the first name or the family name. It is important to stress that our ethical thought was devoted exclusively to retroactivity and not to the change of the scientist's name.

The committee has revealed the ethical tensions related to this question of retroactivity and explored the way in which digital technologies could provide answers that were not conceivable when scientific documents were disseminated and saved exclusively in paper or microfilm form. It studied current practices and possible solutions to resolve these tensions, which are described in the body of the opinion.

The committee identified a major tension between two values: on the one hand, the autonomy of the person concerned in controlling their identification in digital scientific documents, and on the other hand, the authenticity and integrity of the documents on which scientific practice is based. Added to this tension is the need to protect the privacy of individuals.

The committee examined various technical solutions in the light of their impact on these values: retroactive name change on an archived digital scientific document, creation of a new version of the archived digital scientific document, and use of dynamically instantiated neutral identifiers in digital scientific documents. The latter appears to be the most satisfactory and must be explored: its implementation requires reflection on its ethical and technical implications, and involves the creation of appropriate infrastructures and governance.

To this end, the CNPEN makes the following recommendations:

Recommendation 1 *Ensure that scientists can use neutral digital identifiers that are dynamically instantiated with the desired name whenever digital scientific documents are accessed.*

Recommendation 2 *Study the technical implications of the dynamic instantiation of neutral digital identifiers in digital scientific documents, particularly with regard to the consistency of the instantiation of bibliographic references, citations and grammatical agreements.*

Recommendation 3 *Pay attention to the ethical issues of the governance model to be created for the widespread use of dynamically instantiated neutral digital identifiers in digital scientific documents.*

Before such a solution can be actually implemented, CNPEN considers it necessary to :

Recommendation 4 *Raise awareness among early-career scientists particularly about the issues at stake when choosing the identifier used to sign their work.*

Recommendation 5 *Inform the scientific community, publishers and archive operators of the ethical issues, technical limitations and implications of any solution for retroactive name changes in digital scientific documents.*

Recommendation 6 *Study the technical and ethical issues of limiting access to the original version of a digital scientific document in the event that a new version is specifically published to take into account a name change.*

Recommendation 7 *Always keep the original version of a digital scientific document in the archives.*

8. People auditioned

CNPEN is grateful to the people auditioned for this study.

- Baptiste Coulmont: Professor of Sociology at ENS Paris-Saclay
- Marin Dacos: Advisor on Open Science to the Director General of Research and Innovation, French Ministry of Higher Education, Research and Innovation
- Roberto Di Cosmo: Director of Software Heritage

- Sophie Genvresse: Head of the Rights and Complaints Department 2; Amandine Jambert, legal expert in the Regal Affairs and Local Authorities Department; Élodie Weil, expert engineer in the Technological Expertise Department; CNIL
- Sarah Jenkins: Acting Head of the Research Integrity and Publishing Ethics Centre of Expertise, Elsevier
- Jeanne Vézien: Research Engineer, CNRS

9. Members of the working group

- Gilles Adda
- Raja Chatila
- Gilles Dowek
- Éric Germain (co-rapporteur)
- Christine Froidevaux
- Claude Kirchner
- Jérôme Perrin
- Catherine Tessier (co-rapporteur)

Supporting : Anaëlle Martin and Amélie Turci

10. Annexes

10.1 Sex and gender

N.B.: the following paragraphs are taken from the Haute Autorité de Santé report Sex, Gender and Health³⁶.

The term sex is employed to refer to the biological sex of a person or group. Used alone it covers chromosomal sex, gonadal sex, anatomical sex and physiological sex.

The term gender refers to the social construction of sex: sometimes the gender experience, i.e., the gender people are perceived to be by society; sometimes the gender identity, i.e., the gender people perceive themselves to be.

Trans people are individuals whose biological sex does not match their gender identity.

Intersex people are individuals whose sex characteristics at birth do not correspond to binary norms defining males and females (people with variations in sex characteristics)³⁷.

It should be noted that current legal and administrative standards are largely based on a gender binary.

³⁶ *Sex, Gender and Health*. Prospective Analysis Report, 2020. https://www.has-sante.fr/upload/docs/application/pdf/2021-07/has_prospective_analysis_report_2020_sex_gender_health.pdf

³⁷ CCNE, Opinion n°132 *Questions éthiques soulevées par la situation des personnes ayant des variations du développement sexuel*, 2019. <https://www.ccne-ethique.fr/node/171?taxo=0>

10.2 Family name and customary name in case of marriage under French law

After marriage, each spouse retains their family name. However, each also acquires the right to use the spouse's name during the marriage. This custom was enshrined in article 225-1 of the Civil Code by the Law no. 2013-404 of 17 May 2013: "Each spouse can assume, as a customary name, the name of the other spouse, by substitution or addition to their own name in the order he or she chooses [added by the Law no. 2022-301 of 2 March 2013, within the limit of one surname for each of them].

Thus, each of the spouses acquires the option to use their spouse's name as a customary name during the marriage, and "*each member of the couple is free to refuse that the marriage alter their identity*"³⁸. However, each retains their legal name³⁹, i.e. the family name recorded on the birth certificate and civil status registers, and may continue to use it. The use of this name is even mandatory for public acts, in particular those that require a notarial deed⁴⁰.

The name can again change when the marriage is dissolved. In the event of dissolution by death, the surviving spouse can choose to continue to use the customary name. However, this possibility is not absolute: it seems to disappear in the event of remarriage, and in any case the deceased's family may ask for its cessation if there is misuse⁴¹. In the event of dissolution by divorce, the principle of loss of use of the spouse's name is tempered by several exceptions. Article 264 of the Civil Code provides that « *after divorce, each spouse loses the use of their spouse's name. One of the spouses may nevertheless retain the use of the other's name, either with the spouse's consent, or with the judge's authorization, if they can justify a particular interest for themselves or for the children* ». Case law has notably accepted that a remarried woman may continue to use her former husband's name for professional purposes⁴².

10.3 Procedures for changing first names and surnames

In France, a person can change their first name in the civil register, for a legitimate reason or during a gender reassignment procedure. The change is recorded on the birth certificate, and can be extended to other official documents.

There are several elements of civil status that can be changed⁴³. Here we take the example of an adult, of exclusively French nationality, born in France (details of procedures may change depending on age, nationality and place of birth).

There are two types of surname change. The first consists of replacing the current surname with that of the other parent, adding the other parent's surname, or reversing the order of surnames. The parent can also do this for the minor child, on a customary basis. The procedure has been simplified by Law no. 2022-301 of March 2, 2022 on the choice of a name derived from filiation, which came into force

³⁸ J. Garrigue, *Droit de la famille*, 2^e éd., Dalloz Hypercours, 2018

³⁹ Paris, 9 mars 1979, D. 1979. 471, note Massip. – Paris, 22 sept. 1993, RTD civ. 1994. 73, obs. Hauser.

⁴⁰ V. Cornu, Introduction. Les personnes. Les biens. 12^e éd., Montchrestien, n° 594, 2005

⁴¹ J. Heuser et D. Huet-Weiller, *Traité de droit civil, La famille - Dissolution de la famille*. LGDJ, n°10, 1991

⁴² Reims, 27 févr. 2009, RG n° 07/02447, D. 2010. 728, obs. Lemouland et Vigneau ; RTD civ. 2009. 499, obs. Hauser ; JCP 2009, n° 22, actu. 281, obs. Hilt ; JCP 2009, n° 25, n° 11, note Garé, Lemouland et Vigneau.

⁴³ For a change of forename and surname, see Civil Code art. 60 to 61-4; for a change of sex, see Code of procedure art. 1055-5 to 1055-10 and Civil Code art. 61-5 to 61-8.

on July 1, 2022: all that is required is to fill a form at the town hall (of the place of residence or birth) and confirm the change after a one-month cooling-off period. It is interesting to note that this change is offered once in a lifetime, and is therefore unalterable.

The second category covers other changes (adoption of another name than that of the parents, francisation of the name⁴⁴, etc.) for which the procedure has not been changed by the law of 2 March 2022: it requires approval from the Ministry of Justice and official publication. The applicant must provide a legitimate reason, which is a significant difference compared with the first category.

A change of sex involves a request to have one's '*social sex*'⁴⁵ substituted for one's legal sex on civil status, by providing proof by any means of several facts establishing this. This application must go through the court and may include a change of first name(s). The judge will make his decision after examining the file and possibly holding a hearing.

If it does not accompany the request for a sex change, a change of forename(s) requires evidence of a legitimate interest. The change procedure also covers the addition or deletion of a forename, as well as changing the order of forenames. The applicant submits a form to the town hall (of the place of residence or of birth), to which various documents may be attached, such as medical certificates indicating the difficulties encountered because of the first name. The decision to change the name is recorded in the civil register. A negative decision may be contested by the family court.

If the request for a sex and forename change is accepted, it is recorded in the margin of the birth certificate at the request of the public prosecutor⁴⁶. A change in civil status allows identity documents (identity card, passport) to be amended. As far as first names are concerned, documents such as marriage certificates, civil partnerships and children's birth certificates can be updated, in some cases with the agreement of the people concerned.

For a first name change, the civil registrar in the person's place of residence or place of birth will enter the following statement on the person's birth certificate: The person's first name is Decision of the civil registrar of ... (place) n°.... (reference) of (date). On..... (date on which the mention was made) (1) (capacity and signature of the civil registrar).

The same statement "the person's first name is..." appears on the birth certificates of the spouse, partner or child of the person concerned.

There is a difference with the formula for changing a surname or first name for the purposes of francisation: "Authorised to be named ... (First name(s) NAME)".

For a sex change, the public prosecutor in the place where the decision is taken will add the following statement to the person's birth certificate: The person concerned (1) is designated (1) as being of

⁴⁴ The francisation procedure is also special in that it usually accompanies the procedure for acquiring French nationality.

⁴⁵ <https://www.service-public.fr/particuliers/vosdroits/F34826>

⁴⁶ In France, a 'marginal mention' on a civil status record (a procedure also used to record a marriage on a birth certificate, for example) can be modified but cannot be deleted. The different choice made by some countries, such as Spain, may be problematic, as Paul B. Preciado in 2016: https://www.liberation.fr/debats/2016/09/09/prenoms-paul-beatriz-requete-342016_1491269/.

sex..... (new sex) (2). Judgment (Arrêt) of the judicial tribunal (of the court of appeal) of..... delivered on..... On..... (date of entry) (3) (capacity and signature of the civil registrar).

In addition, in the case of rectifications and cancellations of documents or parts of them, these mentions are made without deleting the document itself. These changes are to be distinguished from rectifications of errors. If the errors are material (e.g. typographical), the changes are achieved by replacement (which implies deletion of the statement). If the errors are substantial (e.g. on gender: variation in genital development observed by a doctor), the methodology appears to be identical.

The gender change may be accompanied by a change in the "NIR" (registration number, INSEE), which also serves as the national insurance number. The first digit of this number indicates the sex of the person concerned, as assigned at birth (1 for men, 2 for women). After a change in the sex designation on the margin of the civil status register, the municipality informs INSEE of this change. INSEE will then change the NIR and inform the CPAM. If the local authority has not done this, the person concerned must apply directly to INSEE to obtain a change to the NIR. The issue of changing the National Health Identity (INS), created to "provide users with a single, permanent identity"⁴⁷, does not yet seem to have been raised, but is likely to be.

All changes to civil status records that affect a person's status during their lifetime are made only for the future, and are not retroactive. For example, a change of name or sex is not a *rectification* but a *modification*. Consequently, a person who obtains a change to their civil status (surname, first name, sex) cannot rely on its retroactive nature: the decision ordering the modification of the mention of sex in civil status, although enforceable against everyone, has effect only for the future. In a decision dated 14 April 2023, the Conseil d'État ruled that the RGPD does not require personal data contained in a former employer's documents to be rectified insofar as these documents were produced prior to the applicant's change of surname, first name and gender. The applicant claimed that the CNIL, which had rejected her complaint against her former employer for refusing to accept her request to rectify certain documents, had breached Article 16 of the GDPR, which states that "The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her". The Conseil d'Etat ruled that the data was not inaccurate, since the change to her civil status was not retroactive⁴⁸.

A retroactive change would call into question all legal acts prior to the name change (e.g. debts, taxes) and would present risks of fraud (e.g. the possibility for the person to evade court decisions). The absence of retroactivity is explained by the very nature of the constitutive judgment: it establishes a new situation that developed after the birth.

10.4 Right to be forgotten, right to erasure, right to dereference, right to rectification

The purpose of the right to digital forgetting is to ensure that individuals can request the removal of personal information that may be harmful to them in their private or professional life. Some may

⁴⁷ 12. <https://esante.gouv.fr/produits-services/referentiel-ins> The National Health Identity (INS), established to reference health data, is mandatory from 1 January 2021 and is made up of the INS number (corresponding to the individual's NIR or NIA, the Numéro Identifiant Attente) and the five INS traits: birth name, first name(s), date of birth, sex and place of birth.

⁴⁸ Conseil d'État, 10^e chambre, 14/04/2023, 462479, inédit au recueil Lebon

consider that the use of this right leads to a rewriting of the past which could infringe other rights and conflict with the processing of data for scientific and historical purposes. In the digital sector, there are several types of rights that are similar to the right to be forgotten.

The right to erasure was enshrined in the Law of 6 January 1978, specified by the Law of 6 August 2004 transposing Directive 95/46, and is now set out in article 119, III of the Law of 1978⁴⁹. As this right remains difficult to apply in the digital space, a less radical option has been sought in the promotion of dereferencing actions.

The right to dereferencing consists of ordering a search engine to no longer show on its website a certain number of results - related to information that nevertheless remains available online on the source website - that appear when a request mentions a person's identity (first and last name). This right was recognised by the Court of Justice of the European Union (CJEU) judgment of 13 May 2014 *Google Spain*⁵⁰, and was endorsed by the General Data Protection Regulation (GDPR)⁵¹ in 2016. However, the *Google Spain* judgment points out that the public interest in finding the information can override the right of the person who is the subject of the data processing carried out by the search engine operator. Dereferencing is not automatic: the decision is based on a balance between, on the one hand, the protection of the applicant's privacy and data, and, on the other hand, the Internet user's right to information.

The G29 (the group of European data protection authorities that now exists under the name EDPB (European Data Protection Board) published guidelines in 2014, which were specified by the CNIL⁵². The latter states that the information remains available on the search engine when the search does not include the person's first and last name.

In Europe, the criteria for dereferencing have been specified by the CJEU rulings of 24 September 2019⁵³, and in France with the thirteen decisions released on 6 December 2019 by the Conseil d'État. These texts state that the public interest must be balanced against the characteristics of the data, the notoriety, function and age of the person concerned, the conditions of access to the information, and the possible repercussions of the referencing for the person concerned (obstacle to a possible social reintegration or job search, risk to safety, etc.). The CJEU also clarified the geographical scope of

⁴⁹ "III - A data subject providing proof of identity may also require the controller of a data processing operation to rectify, complete, update, block or delete, as appropriate, personal data concerning him/her that is inaccurate, incomplete, equivocal, out of date, or the collection, use, communication or storage of which is prohibited.

Where the data subject so requests, the data controller must prove, at no cost to the requesting party, that it has carried out the required operations.

In the event of a dispute, the burden of proof lies with the data controller to whom the right of access is being exercised, unless it is established that the disputed data was communicated by the data subject or with his consent. If data has been transmitted to a third party, the data controller must take all necessary steps to notify the third party of the operations carried out in accordance with the first paragraph of III."

⁵⁰ CJEU 13 May 2014, Case C131/12, *Google Spain SL and Google Inc. v/Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, ECR, §99: "the right to have information [...] relating to one's person no longer [...] linked to one's name by a list of results displayed following a search made using one's name [...]".

⁵¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural people with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

⁵² Cnil, No. 2016-054, 10 March 2016 imposing a financial penalty on Google Inc.

⁵³ CJEU, C-136/17 and C-507/17

dereferencing, which concerns not "*all versions of its search engine, but on the versions of that search engine corresponding to all the Member States*"⁵⁴.

Article 17 of the GDPR also establishes a right for data subjects to have their personal data erased, which is also known as the "right to be forgotten". However, this right is highly conditional: erasure is possible when the data is no longer necessary for the purpose for which it is being processed, the individual withdraws their consent, the individual objects to the processing (and there is no compelling legitimate reason for the processing), the data has been processed unlawfully or must be erased to comply with a legal obligation, or if a child's data has been collected as part of an information society service. Furthermore, erasure is impossible in certain cases where processing is required (Article 17(3)) and in the cases listed in Article 5. In particular, the right to erasure is limited when data are used for archival purposes in the public interest⁵⁵, for scientific or record research, or for statistical purposes.

The concept of unlawful processing was specified in the *Google Spain* decision: such processing "*may result not only from the fact that such data are inaccurate but, in particular, also from the fact that they are inadequate, irrelevant or excessive in relation to the purposes of the processing, that they are not kept up to date, or that they are kept for longer than is necessary unless they are required to be kept for historical, statistical or scientific purposes*" (paragraph 92).

In short, the right to erasure set out in the GDPR is a right to be forgotten that is both limited and regulated. It also implies additional rights such as "*the right not to be constantly reminded of past events, the right not to have the past burden the present and mortgage the future*"⁵⁶.

Moreover, the *right of rectification*⁵⁷ sets out that "the data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her ». In particular, this means that if a person changed his name in 2010, the name that appears on documents prior to this date would be considered accurate.

Lastly, there is a "*right to digital death*", which involves the deletion or dereferencing of personal data after the death of the person concerned. Although the rights of the latter are extinguished on their death, Law no. 2016-1321 of 7 October 2016 provides every person with the right to express their wishes on the retain or deletion of their digital data after their death.

⁵⁴ CJEU, C-507/17

⁵⁵ Recital 158 of the GDPR specifies "*Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest*".

⁵⁶ C.de Terwangne, «Droit à l'oubli, droit à l'effacement ou droit au déréférencement? Quand le législateur et le juge européens dessinent les contours du droit à l'oubli numérique » in A. Grosjean, *Enjeux européens et mondiaux de la protection des données personnelles*, Larcier, 2015, p. 273-274.

⁵⁷ GDPR, Section3, Article 16

10.5 Referral from Inria



 Le Président – Directeur général

Rocquencourt, le 20 avril 2022

PDG/DAJ/2022-

Monsieur Claude Kirchner
Directeur du Comité national pilote d'éthique du
numérique
Membre du Comité Consultatif National
d'Éthique (CCNE)
66 rue de Bellechasse
75007 Paris

Objet : Position commune sur le traitement des demandes de modification des données personnelles figurant dans des documents publics antérieurs à un changement de nom, de prénom et/ou de genre

Monsieur le Directeur,

Les faits de la vie peuvent amener une personne à souhaiter changer de nom ou de prénom pour différentes raisons, et il existe depuis longtemps des procédures bien établies pour formuler cette demande auprès des officiers d'état civil. Cela permet à la personne, si la démarche aboutit, après inscription du changement en marge de l'acte de naissance, d'obtenir la modification de ses titres d'identité, et d'utiliser *ensuite* le nouveau nom ou prénom.

Sauf erreur de ma part, il ne semble pas que ces changements aient ouvert jusqu'ici la voie à une *modification rétroactive* des données et documents établis précédemment à ce changement, qu'il s'agisse de documents produits par des tiers (articles parus dans la presse, mentions dans des livres ou journaux, archives publiques ou privées, jugements, factures, etc.), ou de documents produits par la personne elle-même (œuvres littéraires et artistiques, articles scientifiques, documentation technique etc.).

Il n'en demeure pas moins qu'Inria, institut national de recherche en sciences et technologies du numérique, a été récemment l'objet de demandes de suppression ou de modification *rétroactive* de *documents préexistants* faisant apparaître une ancienne

siège
Domaine de Voluceau
Rocquencourt – BP 105
78153 Le Chesnay Cedex France

www.inria.fr

1/3



identité. La demande se fonde le plus souvent sur l'existence d'un préjudice (souffrance ressentie, risque lié à l'exposition du changement d'identité, ...) mais me semble relever également du souhait de reprendre au compte de la nouvelle identité les productions réalisées sous l'ancienne.

Ces demandes portent notamment sur des articles scientifiques publiés et archivés sur des plateformes en accès ouvert ou sur des copies archivées de logiciels mis à disposition du public sous une licence open source choisie pour permettre et encourager leur rediffusion et leur réutilisation sans restriction. Certains de ces documents sont par ailleurs des œuvres de collaboration, faisant intervenir plusieurs auteurs.

Elles s'appuient sur une lecture particulière du Règlement Général pour la Protection des Données, entré en application en mai 2018, qui encadre les traitements portant sur des données personnelles, et qui préconise de toujours mettre en balance l'intérêt légitime du responsable de traitement et les droits et libertés fondamentaux de la personne concernée.

Or, en l'état de nos réflexions internes, il nous semble que la suppression ou la modification de documents qui ont été préalablement mis largement à disposition du public par leurs auteurs serait non seulement contraire aux dispositions du droit d'auteur, mais porterait aussi un préjudice sérieux à l'édifice de la connaissance. Supprimer ou modifier rétroactivement les versions maintenues dans les archives nous semble ainsi de nature à compromettre la valeur probatoire et l'intégrité des registres historiques, et rend impossible ou très difficile le suivi des chaînes de citations. Dans le cas des archives des logiciels, l'impact est encore plus grave : les outils de contrôle de version utilisés largement depuis plus de 15 ans utilisent des signatures cryptographiques pour garantir l'intégrité de la chaîne des modifications, et une suppression ou modification d'un élément ancien, même minime, provoque l'invalidation de tous les éléments suivants, et casse le lien avec toutes les annotations portées sur l'historique du développement (par exemple par des systèmes de gestion de tickets).

On remarque aussi que la préservation de l'intégrité du registre peut s'avérer indispensable pour dirimer des questions de propriété intellectuelle concernant les documents couverts par le droit d'auteur.

Par ailleurs, la nature particulièrement militante et parfois agressive de ces demandes montre que l'objectif est de réécrire l'histoire pour faire disparaître toute trace existante de l'ancienne identité, et on voit bien que ces démarches vont s'étendre bien au-delà du périmètre de celles que nous avons déjà reçues, pour toucher un vaste spectre de documents comme les rapports d'activités des équipes et de l'Institut, qui sont des archives publiques et retracent l'activité scientifique.



Cette situation nouvelle à laquelle nous sommes confrontés fait intervenir une pluralité de réglementations : le RGPD, mais aussi le droit d'auteur ou encore le droit des archives. Elle pose à nos yeux des questions éthiques importantes. Doit-on accepter de supprimer ou modifier toute trace d'informations qui ont été ou sont encore publiques sur simple demande des intéressés ? Doit-on systématiquement refuser d'accéder à ces demandes en considérant qu'elles visent à altérer l'exactitude de l'histoire, qui doit être préservée dans l'intérêt général ? Comment trouver le juste équilibre entre l'intérêt des individus et l'intérêt général, en prenant bien en compte les risques, réels ou supposés, pour les uns et pour les autres ?

Ces questions étant d'intérêt général, et se posant pour une variété d'autres archives (comme l'archive ouverte HAL, mais aussi toutes les publications scientifiques), nous sollicitons l'éclairage du Comité National Pilote d'Éthique du Numérique afin de pouvoir établir une position commune et réfléchie, en dépassant le traitement au cas par cas, et en évitant de reprendre sans recul les positions qu'on voit émerger aujourd'hui dans le monde anglophone¹.

Mes services se tiennent à votre entière disposition pour apporter toute information qui pourrait être utile au Comité.

Je vous prie d'agréer, Monsieur le Directeur, l'expression de ma haute considération.

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PJ : Exemples de sollicitations reçues et tentatives de solution apportées.

¹ Parmi les éléments mis en avant dans certaines des demandes qui nous sont parvenues, on retrouve le fait que des éditeurs scientifiques privés ont fait l'objet de demandes qu'on peut considérer similaires, et qu'ils ont répondu en adoptant des politiques permettant la mise à jour après publication des articles des auteurs ayant changé de nom. C'est le cas par exemple de l'ACM (<https://www.acm.org/publications/policies/author-name-changes>) et d'un groupe de 17 acteurs dont arXiv, Elsevier ou Scopus qui ont annoncé une politique commune (<https://newscenter.tbi.gov/2021/07/28/transcender-inclusive-name-change-process-for-published-papers/>). S'agissant essentiellement d'acteurs privés opérant dans un contexte à prévalence anglo-saxonne, nous nous interrogeons sur la pertinence de ces positions comme référence à suivre dans les cas qui nous intéressent.