European Commission

Myth-Busting

The Court of Justice of the EU and the "Right to be Forgotten"

On 13 May 2014, the Court of Justice of the European Union acknowledged that under existing European data protection legislation[1], EU citizens[2] have the right to request internet search engines such as Google, to remove search results directly related to them[3].

This landmark ruling has sparked a lively and timely debate on the rights and wrongs of the so-called right to be forgotten. It is important to make sure the discussion is based on facts. A sober reading of the judgment shows that the concerns that have emerged in this debate are exaggerated or simply unfounded.

- **Myth 1: "The judgment does nothing for citizens"**
- **Myth 2: "The judgment entails the deletion of content"**
- **Myth 3: "The judgment contradicts freedom of expression"**
- **Myth 4: "The judgment allows for censorship"**
- **Myth 5: "The judgment will change the way the internet works"**
- **Myth 6: "The judgment renders the data protection reform redundant"**

1 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).
2 For the purposes of this document, references to EU citizens include also non-EU data subjects who fall within the scope of European Union's data protection law.
3 Case C-131/12 of 13 May 2014 Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González.

Myth 1: "The judgment does nothing for citizens"

In fact

Some events in a person's life do not necessarily belong on the cover of his or her autobiography. The right to be forgotten is about making sure that the people themselves – not algorithms – decide what information is available about them online when their name is entered in a search engine.

It is about making sure that citizens are in control of their personal data. A citizen should be able to have his or her personal data removed from a search engine, if certain conditions are met. In practice this means that a search engine will have to, subject to those conditions being satisfied, remove a search result linking to a specific webpage when it receives a request from the person in question. For example:

John Smith will be allowed to request an internet search engine to remove all or some search results linking to webpages containing his data when the search query 'John Smith' is entered.

UK NGOs speak out in favour of the right to be forgotten

Victims of domestic abuse are often named in articles about their partner's crimes. A victim may not want details of an unhappy relationship to still be associated with him or her, to ensure the past becomes the past. Polly Neate, chief executive of UK's charity Women's Aid, believes that the right to be forgotten is a good thing: *"We welcome changes which would give survivors of domestic violence more control over their personal details online"*

Source: http://www.bbc.com/news/magazine-27396981

Myth 2: "The judgment entails the deletion of content"

In fact

The Court's judgment only concerns the right to be forgotten regarding search engine results involving a person's name. This means that the content remains unaffected by the request lodged with the search engine, in its original location on the internet.

It also means that the content can still be found through the same search engine based on a different query.

John Smith's request to remove a search result linking to an old story about him in a student magazine is accepted. The story will remain in the magazine's online archive and can still be found, for instance by querying the name of other people mentioned or the college he went to.

The Robert Peston case

Following the judgment, BBC journalist Robert Peston was worried about the removal of his 2007 blog post on mismanagement at the US bank Merrill Lynch from Google search results. *"So why has Google killed this example of my journalism?"* he asked his readers. Soon afterwards, he realised that his post could still be found under all relevant search criteria. The request for removal had come from one of his blog commentators and would only be hidden from the search results related to the name of the commentator.

The journalist then wrote: *"...what Google has done is not quite the assault on public-interest journalism that it might have seemed. Unless, that is, you believe that when someone makes a public comment on a media website, that is something that is voluntarily done and should not be stricken from the record - except when what is at stake is a matter of life and death."*

Source: http://www.bbc.com/news/business-28130581

Myth 3: "The judgment contradicts freedom of expression"

In fact

The Court ruled that the right to personal data protection, of which the right to be forgotten is a part, is not absolute. It will always need to be balanced against other fundamental rights, such as the freedom of expression and of the media – which are not absolute rights either.

That's why the judgment limits the right to be forgotten and recognises that there may be a public interest in all links to content remaining online.

According to the Court, the right to be forgotten applies where the information is inaccurate, inadequate, irrelevant or excessive for the purposes of data processing. This means that the company running the search engine must assess requests on a case by case basis. This assessment must balance the interest of the person making the request and the public interest to have access to the data by retaining it in the list of results.

The ruling does not give the all-clear for people or organisations to have search results removed from the web simply because they find them inconvenient.

John Smith's request may be turned down where the search engine concludes that for particular reasons, such as the public role played by John Smith, the interest of the public to have access to the information in question justifies maintaining the internet search results.

A case-by-case assessment

"Google can often say no. For a start, Google is under no obligation to delist results if they're deemed to be in the public interest – so the politician is likely to be onto a losing battle."

Source: http://www.forbes.com/sites/emmawoollacott/2014/06/06/five-reasons-not-to-invoke-your-right-to-be-forgotten

Myth 4: "The judgment allows for censorship"

In fact

The right to be forgotten does not allow governments to decide what can and cannot be online or what should or should not be read.

It is a right that citizens will invoke to defend their interests as they see fit. Independent authorities will oversee the assessment carried out by the search engine operators.

First, the search engine operators will act under the supervision of national data protection authorities. In Europe, these are legally required to be independent. Second, national courts will have the final say on whether a fair balance between the right to personal data protection and the freedom of expression was struck.

Balancing tests are not unusual in fundamental rights protection cases. For example, a landlord's right to property could be balanced with the right to a home of a long-term tenant. An employer's freedom to conduct business might be balanced with his workers' right to strike.

Over time, the decisions of the national authorities and courts will create an increasingly predictable framework within which search engine operators will handle right to be forgotten requests.

If John Smith's request is turned down by the search engine operator, he can still complain to a national data protection authority and/or to a national court.

EU-level guidelines on how it should work in practice

The Article 29 Working Party, which is composed of the independent European Data Protection Authorities, recently met with the three main search engine operators in the Single Market. The Working Party gathered information about the practical implementation of the right to be forgotten so far and will soon provide a comprehensive set of guidelines. These guidelines for European data protection authorities should frame the action of search en¬gines and ensure a consistent and uniform implementation of the ruling.

Source: http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29_press_material/20140725_wp29_press_release_right_to_be_forgotten.pdf

Myth 5: "The judgment will change the way the internet works"

In fact

The internet will remain an important source of information as content will remain in the same location and be accessible through search engines.

The way search engines function will also remain the same, since they already filter out some links from search results.

Takedown mechanisms already exist

Before the judgment, Google already had a system in place to handle deletion requests, such as national identification numbers (like U.S. Social Security numbers), bank account numbers, credit card numbers and images of signatures.

Sources: https://support.google.com/websearch/answer/2744324

A driver for digital growth

This judgment will actually strengthen the internet. With the ability to control their personal data online, people will feel reassured when using digital services.

Trust in digital services is currently low. Citizens assume that companies use their personal data in ways they cannot control or influence. People feel forced to part with their privacy.

It is important to put individuals back in control by updating their data protection rights. The right to be forgotten is an important element. It will help close the growing rift between citizens and companies with which they share their personal data, willingly or otherwise. Citizens' trust in digital services would support sustainable growth in the digital economy.

78% 

78% of respondents to a 2014 survey feel that service providers hold too much information about consumer behaviour and preferences. Loudhouse survey, 2014

63% 

More than six out of ten Europeans (63%) say that disclosing personal information is a big issue for them. – Eurobarometer, 2011

73% 

A large majority of Europeans (73%) would like to give their specific approval before the collection and processing of their personal information. – Eurobarometer, 2011

22% 

Only 22% of European Citizens have full trust in Internet companies such as search engines, social networking sites and e-mail services. – Eurobarometer, 2011

Sources: Special Eurobarometer n. 359 - Attitudes on Data Protection and Electronic Identity in the European Union: http://ec.europa.eu/public_opinion/archives/eb_special_359_340_en.htm#359
Loudhouse survey for Orange: www.orange.com/digitaltrust.

Myth 6:

"The judgment renders the data protection reform redundant"

In fact

A reform of the Union's data protection rules is currently underway. The reform includes an explicit right to be forgotten. It is a fundamental modernisation of the rules establishing a number of new rights for citizens, for instance the right to freely trans¬fer your personal data from one service provider to another, and the right to be informed when the security of your data is breached. The new rules create a single market for data in the European Union and streamline cooperation between the Member States' regulators.

Modern rules reconciling data protection and freedom of expression

Article 80 of the proposed General Data Protection Regulation obliges Member States to pass national legislation to reconcile data protection with the right to freedom of expression, including the processing of data for journalistic purposes. The clause would improve current legislation by making clear that the right to personal data protection must be balanced on equal terms with the freedom of expression.

Source: http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf