

## CLIENT ALERT

### The European Commission Issues a "Myth-Busting" Factsheet to Address the Concerns That Have Emerged After the EU Court of Justice's Ruling On Search Engines and the "Right to Be Forgotten"

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On May 13, 2014, the EU Court of Justice (CJEU) issued its ruling in the *Google Spain v. AEPD* case<sup>1</sup>. The CJEU ruled that individuals have the right to request internet search engines to remove search results directly related to them. This applies where the information on the referenced web pages appears to be (i) inadequate, (ii) irrelevant or no longer relevant, or (iii) disproportionate in view of the search engine's purposes of processing the individual's data.

The Court considers that, in these circumstances, the individual has a right that the information relating to him personally should no longer be linked to his name by a list of results displayed following a search made on the basis of his name. This overrides not only the economic interest of the search engine's operator but also the interest of the general public in finding that information upon a search relating to the individual's name. However, a case-by-case assessment is needed as the right to be forgotten is not absolute. It will always have to be balanced against other fundamental rights, such as the freedom of expression and of the media.

The Court's ruling has caused a lively debate. As the European Commission wants to make sure that the discussion is based on facts, it has published a so-called "myth-busting factsheet".

Below are the myths identified by the Commission and its response thereto:

#### 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.*

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## 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.*

## 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 recognizes 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 organizations to have search results removed from the web simply because they find them inconvenient.*

## 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 land-lord'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.*

**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.*

**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 modernization of the rules establishing a number of new rights for citizens, for instance the right to freely transfer 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."*

The European Commission's myth-busting factsheet can be found [here](#). More information about the *Google Spain v. AEPD* case is available in the Commission's "Factsheet on the Right to be Forgotten Ruling" [here](#).

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<sup>1</sup> Judgment of the Court (Grand Chamber) of 13 May 2014, *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, Case C-131/12.

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