

# The battle for online privacy

## ● *EU Court of Justice ruled right to be forgotten is not absolute*

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**O**ld newspaper articles or content that you wish could be forgotten sometimes reappears on search engine results when an individual's name is entered.

This can have negative consequences for people looking for jobs (or dates!) when there are articles from years ago that tarnish a search of their name. This is an issue that has been dealt with in the courts in Europe but remains an issue in SA.

In 2010, a Spanish citizen lodged a complaint against a Spanish newspaper and Google Spain with the national Data Protection Agency. His complaint related to the display of an auction notice of his repos-

sessed home when he entered his name on Google.

He said the search results infringed his privacy rights because the proceedings concerning him had been fully resolved for many years. He requested that the search engine be required to remove the link to the auction notice so that it no longer appeared in the search results. The Spanish court referred the case to the EU Court of Justice for determination.

The judgment is detailed and complex, however, one of the most relevant (and controversial) findings is that individuals have the right, under certain conditions, to ask search engines to remove links with personal information about them when a search of their name is conducted.

"The right to be forgotten" was the term coined in this judgment. The court highlighted that the right to be



forgotten is not absolute and would be applied on a case-by-case basis. A consideration of the competing rights such as the freedom of expression and the expectation of privacy would need to be balanced.

It applies in narrow

**INDIVIDUALS HAVE THE RIGHT, UNDER CERTAIN CONDITIONS, TO ASK SEARCH ENGINES TO REMOVE LINKS**

circumstances where the information is inaccurate, inadequate, irrelevant or excessive in relation to the reason it is being processed or displayed. It would also not apply in instances where the complainant's right to privacy was limited due to their

position in society or where the public had an interest in accessing that information, for example, where the individual was a politician trying to limit access to articles about his past.

This right to be forgotten has been extended somewhat and incorporated into the new General Data Protection Regulation of the EU as "the right of erasure". This will become enforceable in the EU in May.

Unfortunately, SA's data protection legislation is not yet fully enacted, which means that there is no legislative remedy like this.

When the Protection of Personal Information Act 4 of 2013 is finally enforced this right to be forgotten may be applicable in certain limited circumstances where an individual wants to compel a search engine to remove adverse links.

While this remedy may not wipe the slate clean for everybody, it may assist individuals that have managed to change their lives and wish to protect their privacy.