

## Google and the EU

# On being forgotten

**The right to be forgotten sounds attractive. But it creates more problems than it solves**

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MAX MOSLEY enjoyed sexual practices which many might find odd. But that was his business, so when in 2008 a now-defunct British tabloid wrongly dubbed him a participant in a “sick Nazi orgy”, he sued it for breaching his privacy and won. The allegations, however, remain on the internet. If you type in “Max Mosley”, Google (whose boss Eric Schmidt is a non-executive director of this paper)\*

helpfully tries to complete the search: the first four options are “video”, “case”, “pictures” and “scandal”. He—and many others who feel their lives are tainted by the smears and irrelevancies which search engines link to their names—want redress.



Many European politicians are sympathetic to this. Countries such as France and Britain have long allowed the erasure of criminal records once convictions are spent. The European Parliament has backed a “right to be forgotten”, though to become law it would need the approval of all the European Union’s 28 member states. Mr Mosley has won the first round of a legal battle in Germany to block the images appearing on Google searches there.

Now the European Court of Justice (ECJ), the EU’s highest court, has boosted this cause in a landmark case (see [article](http://www.economist.com/news/business/21602239-european-court-justice-forces-google-remove-links-some-personal-information-cut) (<http://www.economist.com/news/business/21602239-european-court-justice-forces-google-remove-links-some-personal-information-cut>) ). A Spanish lawyer, Mario Costeja González, sued Google because its search results linked his name to a newspaper article from 1998 about a now-resolved lawsuit. The court ruled that Google was a “data controller” under the 19-year-old European law on data protection, which gives individuals strong rights over data that others hold on them. It said Google could be required not to display links to information that is “inadequate, irrelevant...or excessive”, given the purpose for which they are processed, and the time elapsed. Individuals will be able to appeal to their national data watchdogs if they are turned down.

The court’s desire to protect victims of misunderstanding and malice is understandable. But a right to be forgotten would be hard to implement. Even if Google is made to censor its search results in Europe, in America the First Amendment’s free-speech provision usually trumps privacy concerns. With modest

technical know-how, European internet users will be able to make American-style searches. Europe will hardly want to build a Chinese-style firewall to prevent that.

And even if it were practicable to force companies to erase the past, it would do more harm than good. It would hamper everyone interested in finding out inconvenient truths about those who would like their past covered up. The ECJ ruling makes allowance for a public-interest defence, but it will mostly make commercial sense for Google and other search engines to take down material as soon as someone complains, rather than to weigh the merits of each case.

### Watch out for silent encroachments

The right to be forgotten would also undermine the internet's great strength. The internet is, in effect, a library of unimaginable size—full, as all libraries are, of news, gossip, archive material and other stuff which may to varying degrees be irrelevant, wrong or mad. It has made the best and worst of such information more freely available than ever before. Search engines should be like library catalogues—comprehensive and neutral, and without fear or favour of what the contents may reveal, or how they may be used. It should be up to individuals, not governments, to distinguish what is right or wrong, useful or immaterial. People should be wary of ceding the power to make that judgment, even to a court that thinks hard about it and backs the underdog. As James Madison said, “I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.”

\*This leader has been amended to note, as we should have made clear in the print edition, that Google's executive chairman Eric Schmidt is also a non-executive director of this newspaper.

From the print edition: Leaders