

# THE AUSTRALIAN

---

## Forget fast action on 'right to be forgotten'

ANNE FLAUVIN THE AUSTRALIAN JULY 25, 2014 12:00AM

**BRITAIN may be stuck with a right to be forgotten for now, but it is doing all that it can to have the newly minted right struck from EU law. The so-called "right to be forgotten" was imposed on all EU member states in May.**

The European Court of Justice held that EU citizens had a fundamental right to demand that search engines such as Google remove links to web pages that contain information about them that is "inadequate, irrelevant or no longer relevant", regardless of whether it is true or whether it has caused them any actual prejudice.

The content remains online, but anyone using a European domain search engine will find it difficult to find once the search engine has removed the links.

British Minister of State for Justice Simon Hughes recently was grilled by a House of Lords committee that wanted to know why the government had not paid closer attention to the EU court proceedings on this matter. The Justice Minister responded that the government had been lulled into a false sense of security.

A preliminary opinion by the Advocate General assigned to the case had recommended against the creation of a right to be forgotten enforceable against search engines.

Given the ECJ judges almost always follow the opinion of the Advocate General, the British government decided there was no need to get involved.

But the committee considering the implications of this new right raised concerns about Britons being blocked from access to information available to citizens in non-EU jurisdictions.

One member noted the ECJ had really created a "right to make it difficult to find" content, at least in Europe. Another characterised the new right as "the right to demand that search engines should not always work as effectively as they otherwise might do".

The Justice Minister assured the committee the government was doing all it could at a political level to get rid of the right to be forgotten, but this is likely to be a long, drawn-out process.

While the ECJ decision is non-appealable, it was based on an EU directive soon to be replaced with a new data-protection regulation Britain hopes will not contain a right to be forgotten.

It's unclear how the politics of that will play out at EU level. Hughes said the

government had put the case very strongly that a right to be forgotten was not just problematic in principle, given the impact on freedom of speech, but also unworkable. "Anything that is impractical, impossible, undeliverable is a nonsense and we should not countenance it. We are not going to shift from our position that the right to be forgotten must go," he said.

He noted it was "not a good position" for the EU to "look as though it is countenancing restrictions on the access of its citizens to information", particularly given Britain is a vocal critic of non-Western countries notorious for restricting the information their own citizens could access.

But, even if Britain is successful in getting the right to be forgotten effectively wiped from EU law, it may be many years before this has any practical impact. The new regulation will need to be agreed by 28 member states, and then implemented into domestic law.

In the meantime, the government is trying to hose down expectations the right will operate as a free pass to anyone who wants to wipe the slate clean. Google has been flooded with requests (more than 70,000 in June) from individuals who would like some aspect of their past to be "forgotten".

Hughes said that, in response, an industry of "reputation managers" had sprung up. He has urged Google to work with the government to dampen expectations that simply asking for a link to be removed does not guarantee it will happen: if Google deems the content to be in the public interest, the link will stay.

Watching from the sidelines in Australia, it's worth noting the Australian Law Reform Commission last year tentatively floated the idea Australia should enact a right to be forgotten.

Thankfully, the whole idea appears to have been "forgotten".

*Anne Flahvin is media and communications counsel with Policy Australia and special counsel with Baker & McKenzie.*