MEDIA LAW INTERNATIONAL ®

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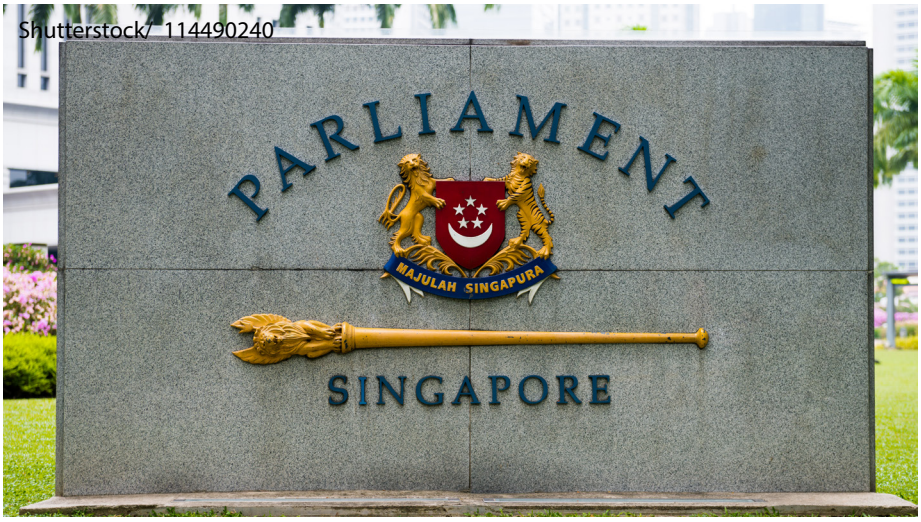
Singapore's sweeping fake news law comes into force



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Parliament passes controversial laws intended to stop the circulation of false news, which could erode trust

Singapore's new law on fake news has come into force, making it illegal to spread "false statements of fact" deemed prejudicial to national security or to the "friendly relations of Singapore with other countries."

The law took effect on 02 October and allows government ministers to decide whether or not fake news should be taken down or made subject to a correction.

Ministers will also have the power to order technology companies, such as Google and Facebook, to block accounts or sites spreading false information.

The Home Affairs and Law Minister, K Shanmugam, explained that ministers will not be able to make arbitrary rulings but will have to explain why content is false if ordering a takedown or correction.

Nicholas Bequelin, Amnesty International's Regional Director for East and Southeast Asia, commented in a statement: 'This law would give Singapore overwhelming leverage over the likes of Facebook and Twitter to remove whatever the government determines is 'misleading'. He added: 'This is an alarming scenario. While tech firms must take ➔

Facebook subject to tougher rules after court ruling

The European Court of Justice has ruled that Facebook and other internet companies can be forced to remove online content posted anywhere in the world to protect European Union users form hateful material.

The ECJ's judgment on 03 October, which cannot be appealed, was condemned by free speech organisations.

The decision could force platforms to monitor all content and interpret whether or not it is equivalent to content found to be illegal by one country or region, rather than wait for requests to remove material.

A statement on behalf of the ECJ affirmed that EU member states can now instruct internet companies to block access to "information [deemed unlawful] worldwide within the framework of the relevant international law, and it is up to member states to take that law into account."

The ruling follows a complaint by Austrian politician Eva Glawischnig-Piesczek to Facebook's European headquarters in Ireland, requesting the removal of offensive comments that were posted by a user.

Facebook responded to the ECJ's decision in a statement, commenting: "This judgment raises critical questions around freedom of expression and the role that internet companies should play in monitoring, interpreting and removing speech that might be illegal in any particular country."

The social media platform added: "It undermines the long-standing principle that one country does not have the right to impose its laws on speech on another country." ■

What's inside

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Portuguese publishing group, Cofina, buys Media Capital from Spanish Prisa

Portugal's publishing group Cofina has reached an agreement with Spain's Prisa to acquire Media Capital in a EUR255 million deal that will make Cofina the country's largest media group.

The transaction was announced by Prisa on 21 September and is subject to approval from Portugal's media regulatory authority. If approved, the deal will make Cofina the owner of TV channel TVI, several radio stations and magazines.

Cofina already owns publications including tabloid Correio da Manha and business newspaper Jornal de Negocios.

Cofina told news agency Lusa: "This acquisition fits with the company's vision for the media and appears to be the one that is best able to ensure its growth and sustainability, and is in line with the global trend towards consolidation of the media sector in the last years."

In a statement published online, Prisa commented that the deal confirms its strategy, which is focussed on profitable growth in education and news, as well as on accelerating the group's deleveraging plan.

Prisa also commented that its sale of 94.69% of Media Capital will represent a loss of EUR76 million in the company's consolidated accounts. ■

Vox Media buys New York bi-weekly magazine

Vox Media has agreed to buy biweekly New York Magazine in an all-share deal announced on 24 September.

New York Magazine has been operational for 51 years and is owned by New York Media. Its previous owners include Rupert Murdoch and the late banker Bruce Wasserstein.

The agreement represents continued consolidation in the media industry, but such that is driven by ambition, according to Pamela Wasserstein, the chief executive of New York Media.

Ms Wasserstein said "It's a brilliant, in our view, opportunity, so that's why we leaned into it. It's not out of need. It's out of ambition."

Under terms of the deal, Ms Wasserstein will take on the new role of President of Vox Media and will become a member of the Vox Media board of directors.

Jim Bankoff, Chairman and CEO Vox Media said: "I have long admired what Pam and the New York Media team have built, especially their ability to shape conversations with some of the most relevant and ambitious work in digital, print, and events."

Mr Bankoff added: "This combination puts Vox Media in an unparalleled position to lead the media industry forward by focusing on the highest-quality offerings."

New York Magazine was established by investment banker Mr Wasserstein, who passed away in 2009. The publishing company has since been owned by the Wasserstein Family Trust and managed by the founder's daughter, Ms Wasserstein. ■

Singapore's fake news law comes into force

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← all steps to make digital spaces safe for everyone, this does not provide governments an excuse to interfere with freedom of expression - or rule over the news feed.'

Critics have argued that the new law amounted to a "chilling" attempt to stifle free speech and could be used for political gain. The ruling People's Action Party commented that the city-state is vulnerable to fake news given its mixed ethnic and religious population as well as its position as a global financial hub.

The law includes provisions that allow for the prosecution of individuals, who could be fined up to SGD50,000 (around USD36,000) and includes a prison term of up to five years.

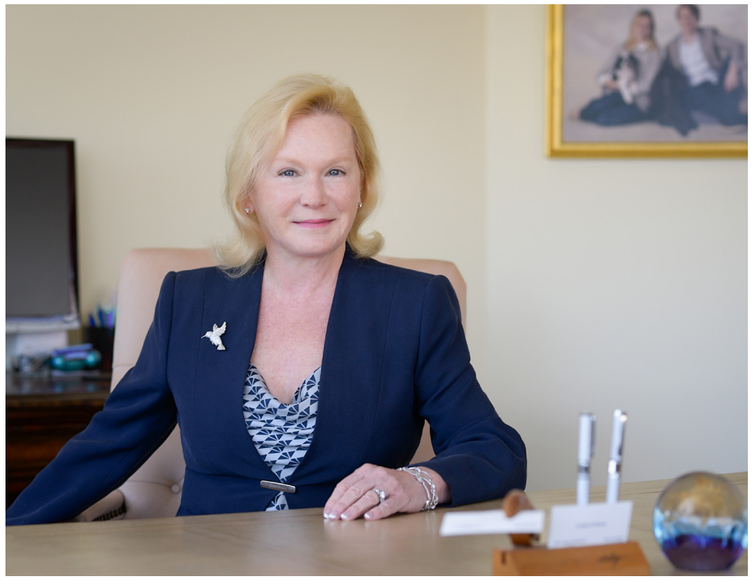
Fines could reach SGD100,000 (around USD73,000), and prison terms up to 10 years, if content is found to be fake news and is posted using "an inauthentic online account or controlled by a bot'.

The government has pledged a 'fast and relatively inexpensive' court appeals process for those wishing to challenge a ruling.

Mr Shanmugam explained at an event held by that the government is trying to substantially reduce the cost of appeals. He commented at a conference: "We want to make the process such that you fill in a form that sets out your position." ■

US Court of Appeal rejects latest FCC media ownership rules

Chérie R. Kiser



Lawyer Chérie R. Kiser outlines continued regulatory uncertainty after court ruling

In Prometheus Radio Project v. FCC (September 2019) (Prometheus IV), the US Court of Appeals for the Third Circuit, in a 2-1 ruling, has once again rejected the latest Federal Communications Commission media ownership rules.

As explained in 2018 Media Law International, 'Are the FCC Media Ownership Rules Still Relevant in the Digital Age?', the media ownership rules limit who may own a broadcast media outlet and how many outlets may be owned by the same entity in any given market. The regulations were designed to promote localism, diversity and competition in the use of broadcast spectrum.

In August 2016, then-Commissioner Pai of FCC wrote a dissent to the FCC's 2014 Quadrennial Regulatory Review, ruling issued in 2016 (2016 Second Report and Order), opening with: 'The more things change the more they stay the same.' Little did he realise that his thesis would later apply to his own 2017 Order on Reconsideration of the 2016 Second Report and Order, which was issued under his leadership as Chairman of the FCC. That Order eliminated or dramatically trimmed many of the media ownership rules.

Several parties appealed, resulting in the Third Circuit, which has been reviewing FCC media ownership rules for 15 years, again vacating and remanding the rules this past September.

The court found that the FCC failed to "adequately consider the effect its sweeping rule changes will have on ownership of broadcast media by women and racial minorities." The FCC has responded it will seek further review and has expressed optimism it will prevail in light of Judge Scirica's "well-reasoned" dissent.

Despite the Chairman's efforts to change the rules, they may stay the same after all. Prometheus IV was not all bad for the FCC. The court approved the FCC's retention of the top-four prohibition now subject to the discretionary waiver provision; approved the "comparable markets" definition for the incubator programme to promote diversity; and acknowledged that a new deregulatory framework for media ownership could pass muster (even if the rule changes would adversely affect ownership diversity) if the FCC evaluation sufficiently explains why the trade-off is justified for other policy reasons.

What does this mean besides more litigation? The court's ruling is not effective until it issues the mandate. So, for now, it is business as usual at the FCC - but not without controversy. The day after Prometheus IV, the FCC Media Bureau ruled on a pending application to assign licenses from Red River Broadcast Co. to Gray Television, which granted Gray TV approval to own two of the top-four rated stations in the same Designated Market Area. The media ownership rules generally prohibit such top-four combinations, but the 2017 Order on Reconsideration ruled they could be reviewed on a case-by-case basis.

The Media Bureau's decision relied, in part, on the discretionary waiver rule contained in the vacated (but for now still effective) Order on Reconsideration. On 22 October 2019, Democratic Congressional Members wrote to Chairman Pai, asserting 'the FCC undermines the rule of law' by approving the Gray TV application and pressing the FCC to answer questions concerning future review of transactions in light of Prometheus IV.

While the media ownership rules remain mired in litigation, the FCC also has under review its 2018 Quadrennial Regulatory Review Notice of Proposed Rulemaking, which highlights how government regulators continue to struggle to keep pace with rapidly-changing communications technology and an exploding market place of consumer choices. Perhaps the only certainty at this point is that regulatory uncertainty will continue to apply to FCC media ownership rules.

* The views expressed are those of the author and not necessarily the firm or its clients. * ■

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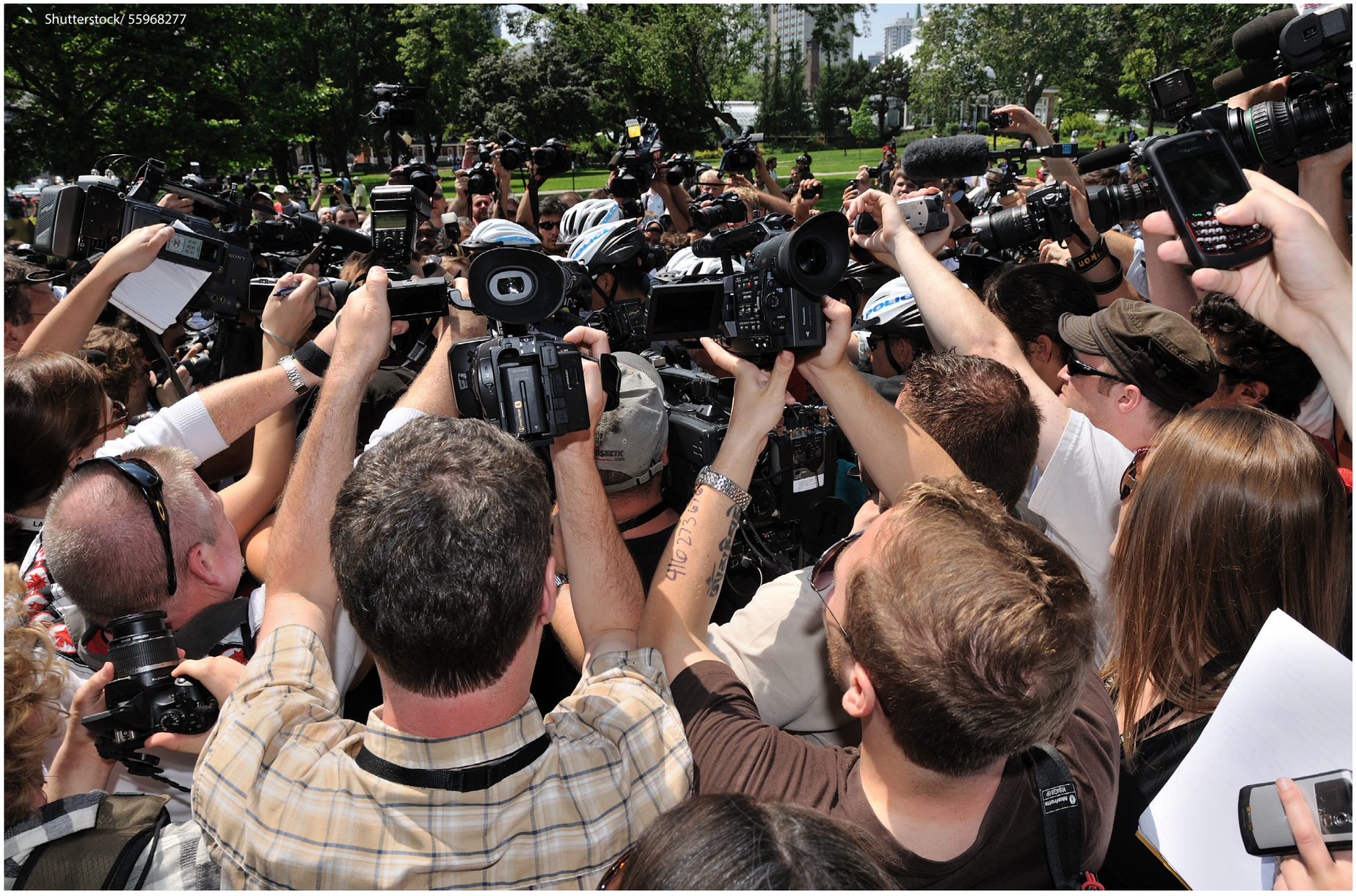
Media and Right to be Forgotten in Canada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Karl Delwaide, Partner at Fasken, evaluates the right to be forgotten in Canada and the 'far-reaching consequences' for the media sector

The internet has drastically facilitated access to individuals' personal information. Canada is no stranger to that reality.

What does the expression "right to be forgotten" mean?

The concept stems from the 2014 Google Spain v. Agencia Espanola de Proteccion de Datos , Mario Costeja Gonzalez case in which the Court of Justice of the European Union ruled that links to search results that were "inadequate, irrelevant or no longer relevant" be removed, especially those used to search past, outdated events on individuals.

This issue has far-reaching consequences for the media. What about documentaries and the importance of having access to historical information about individuals? What about docudramas that are so popular in the United States, where movies and television programmes are based on real-life events and aim to shed light on individuals' personal lives? What about journalists who seek to verify personal information about public figures?

Canada is a federation. With respect to privacy, the federal parliament and the legislatures of three Canadian provinces (Québec, Alberta and British Columbia) have adopted comprehensive legislation related to the protection of personal information for the private sector, although such legislation usually contains exceptions pertaining to the collection, use and disclosure of personal information for journalistic, artistic, historical or literary purposes.

In Québec, the Act Respecting the Protection of Personal Information in the Private Sector addresses the collection, use, communication and storage of personal information.

In 2016, the tribunal that regulates the application of this Act ruled in C.M. v. BCF avocats d'affaires (2016) QCCA I 114 that [translation] "an individual's right to have inaccurate, incomplete or ambiguous information in a file concerning him or her corrected is not in the nature of the 'right to be forgotten' which seeks to remove information from the public space."

The tribunal then added that it was not even [translation] "certain that this right, which is recognized in Europe is applicable in Québec."

In British Columbia, based on its own Personal Information Protection Act (PIPA), the Office of the Information and Privacy Commissioner has taken the position, in March 2018, in a guidance document entitled "Competitive Advantage: Compliance with PIPA and the GDPR" that the "right to be forgotten," included in the European General Data Protection Regulation (GDPR), is not part of BC's PIPA.

Although Alberta's Office of the Privacy Commissioner has not yet taken a public stance on the issue, knowledgeable observers of the privacy scene in that province believe that the situation is not different from that in BC.

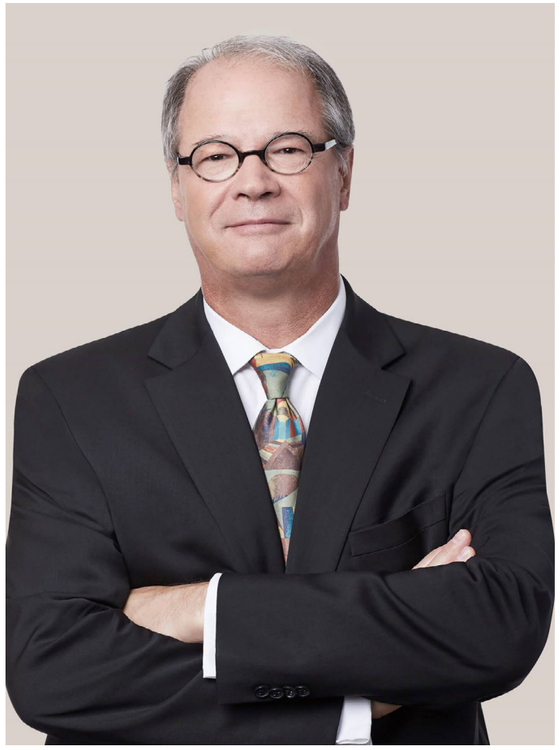
Very recently, the Office of the Privacy Commissioner of Canada (OPC), which is the regulator under the Personal Information Protection and Electronic Documents Act (PIPEDA), the statute that covers the collection, use and communication of personal information collected by organisations conducting commercial activities in Canada, has filed a reference before the Federal Court of Canada.

This was intneded "to seek clarity on whether or not Google's search engine is subject to federal privacy laws when it indexes web pages and presents search results and respond to queries of a person's name" (Announcement by the OPC, October 10, 2018).

Here is how the OPC formalises the rationale of its reference to the Federal Court: The OPC has asked the court to consider the issue in the context of a complaint involving an individual who alleges Google is contravening the [PIPEDA] by permanently displaying links to online news articles about him when his name is searched.

The complainant alleges that the articles are outdated, inaccurate and disclose sensitive information about his sexual orientation and a serious

Media and Right to be Forgotten in Canada



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medical condition. By permanently linking the articles to his name, he argues that Google has caused him direct harm. Google asserts that PIPEDA does not apply in this context and that, if it does apply and requires the article to be de-indexed, it would be unconstitutional.

In a "Draft OPC Position on Online Reputation" issued in 2018, the OPC takes the position that "the indexing of web pages and display of search results by search engines is captured by PIPEDA".

Therefore, PIPEDA's principles, such as accuracy and appropriate purposes, may lead to some type of right to de-index personal information that may be inaccurate or outdated, and for which there exists no "public interest" to justify that the information remain available.

No wonder that a media coalition sought to intervene before the Federal Court, in order to bring their perspective to bear on the OPC's reference.

The Prothonotary of the Federal Court ruling on the media coalition's motion to intervene noted that: "the underlying complaint raises important and ground-breaking issues relating to online reputation, including whether a "right to be forgotten" should be recognised in Canada, and if so, how such a right can be balanced with the Charter protected rights to freedom of expression and freedom of the press."

However, the Prothonotary ruled that the request was based on speculative leaps ahead in the process, as the OPC had yet to investigate and come to a conclusion. In addition, whatever the conclusion might be, it would be non-binding and need to be litigated de novo before a binding decision might be rendered.

The media coalition filed for revision of the decision rendered by the Prothonotary. On 22 July 2019, the Association Chief Justice of the Federal Court of Canada dismissed the media coalition's application in revision, ruling it premature.

The media want a "trip down memory lane" to be acceptable. In Canada, they worry that the right to be forgotten may prevent journalists from exploring the past to inform or entertain people.

The media's concerns are important and the right to be forgotten may truly have an impact on the way they practice journalism.

In December 2012, an article entitled [translation] The Right to be Forgotten: Data Protection, Memory and Privacy in the Digital Age in Global Voices provided an example. According to the article, the disappearance of electronic information would be inappropriate in matters of public interest such as a case in which "a civil servant requests that a video showing him/her accepting a bribe be deleted or a video showing a doctor trying to erase a file may reveal unacceptable professional conduct."

These are not the only situations where some type of "public interest" may justify looking at an individual's past. What does it mean in practice? Who will decide when it is appropriate to do so, and based on what standards? Interesting questions indeed, to be followed…