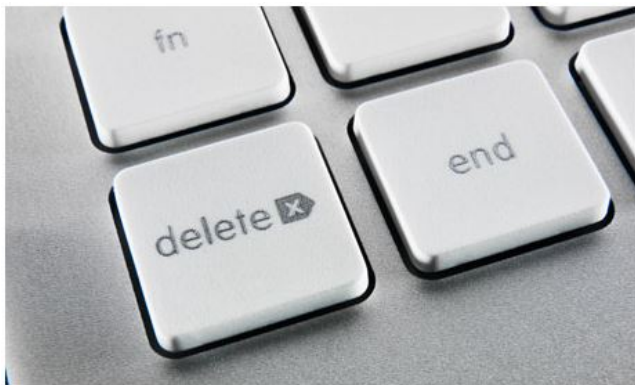


**INFORMATION  
INTEGRITY  
SOLUTIONS**



**Australian  
Internet  
Governance  
Forum**

# Does the Internet need a Delete button?



**Annelies Moens  
Head of Sales and Operations  
Information Integrity Solutions  
Australian Internet Governance Forum  
Melbourne, 17 October 2013**

# Overview

- Community attitudes to privacy in Australia
- Context for accelerating global privacy regulation
- Australian and international examples of a 'right to be forgotten'
- Issues with the status quo
- Issues with the implementation of a 'right to be forgotten'

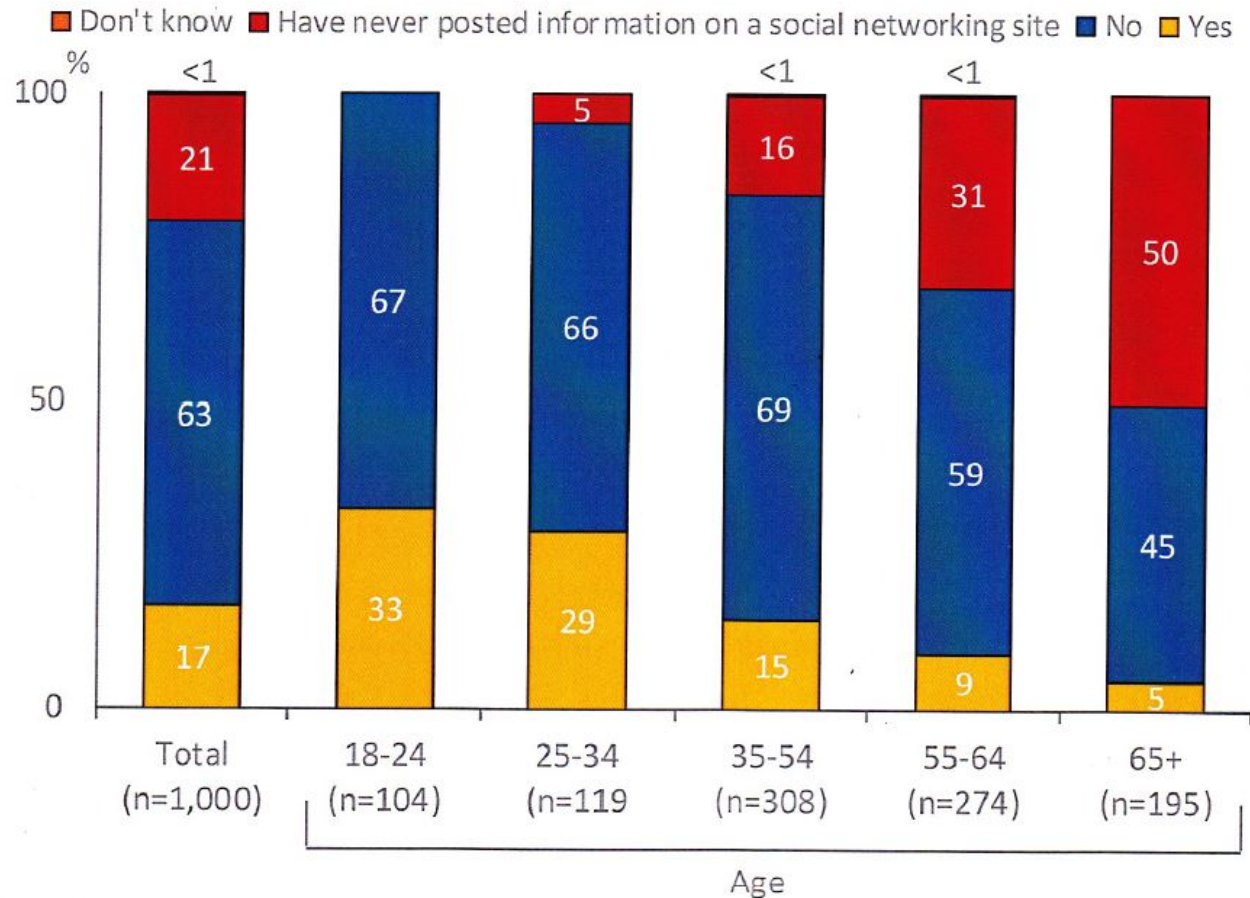
# Community attitudes

- OAIC survey results (1,000 interviews) released 9 October 2013
- Previous surveys conducted in 2001, 2004 and 2007
- 2013 results indicate that:
  - Biggest privacy risks facing people is using online services and social media – 48% (60% of 18-24 year olds concerned)
  - 17% regret something they have posted on a social networking site, rising to 33% amongst 18-24 year olds

# Community attitudes

Chart: Source – OAIC – Community Attitudes to Privacy, 9 Oct 2013, p.42

**Chart:**  
Proportion  
regretting social  
networking posts



*Building trust and innovative privacy solutions*

# Context for accelerating global privacy regulation

Adobe warns 2.9 million customers of data breach

Software company says it may have collected names and encrypted data

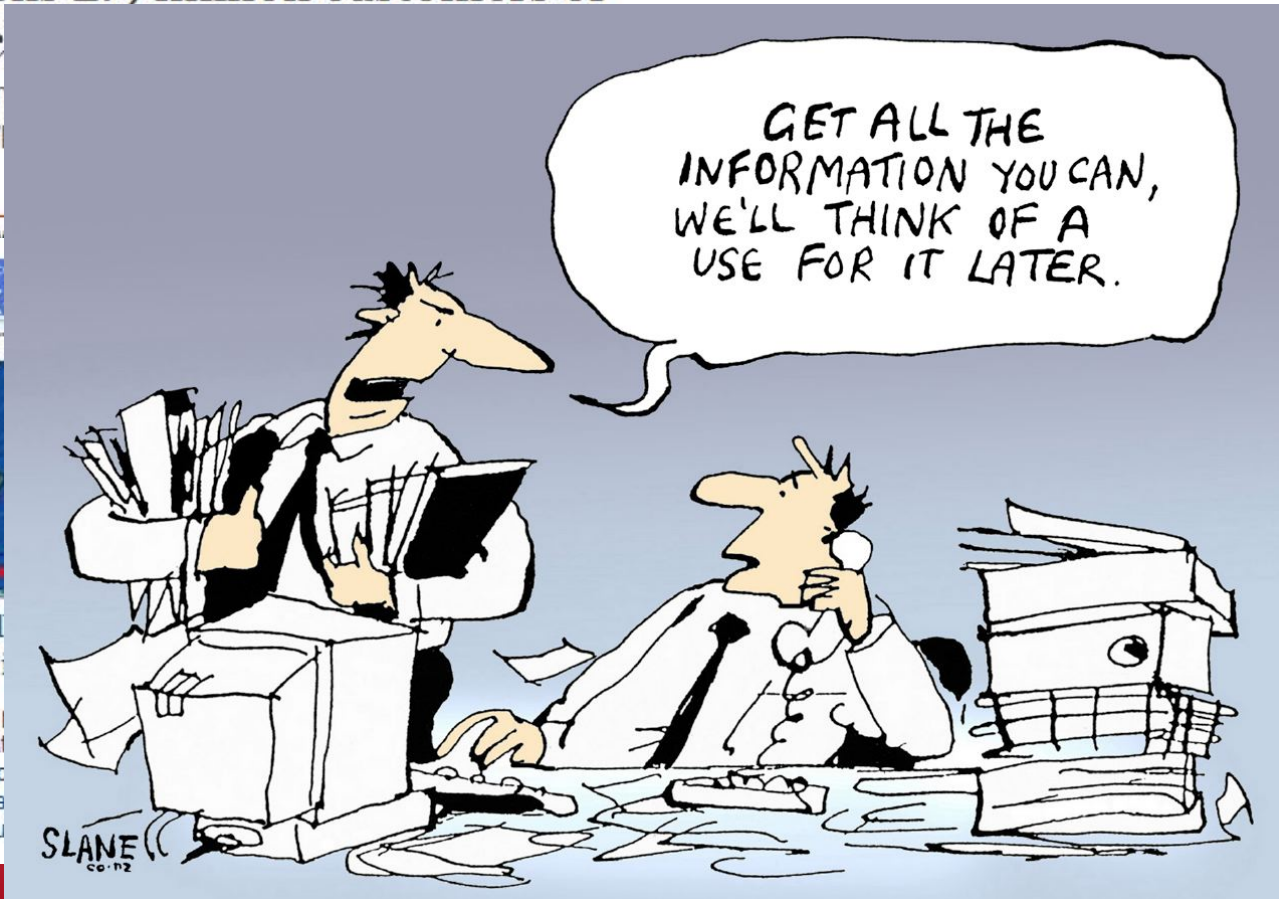
Adam Gabbatt in New York



NSA program collects information on what user does on the internet

Revealed: XKeyscore program collects collection of online data

- NSA XKeyscore program
- Boundless Information
- How the NSA can use data



Records of millions of

order requiring Verizon to scale of domestic administration what it can show data – full court ruling

*Building trust and innovative privacy solutions*

# International examples

## France

**Code of Good Practice on the Right to Be Forgotten on Social Networks and Search Engines – 2010**  
14 signatories including Microsoft France

## EU DP Regulation

**Draft EU Data Protection Regulation**  
Proposes 'right to be forgotten' in Article 17

## Argentina

**Frequent litigation by celebrities**  
~200 cases pending – right to be  
Discussed in Virginia da Cunha v Yahoo and Google

## California

**Privacy rights for California minors in the digital world**  
Law in force January 2015.

## Spain

**Spanish data protection regulator advising Google to remove links**  
Case before the European Court of Justice

## No right- kept forever

**National sex offender public website**  
on public record forever in some US states

# Australian examples

## Current Privacy Act

**National Privacy Principle 4.2 –**  
Data Security – destroy or de-identify  
No similar requirement for government

## Spent convictions

**Crimes Act & state/territory schemes**  
After a waiting period, unlawful to disclose  
the conviction without individual's consent

## Amended Privacy Act

**Australian Privacy Principle 11.2 –**  
Security of Personal information – destroy  
or de-identify  
Applies to both public and private sector

## Suppression orders

**Court Suppression & non-publication  
orders**

State/territory courts can issue orders.  
SCAG seeking to harmonise.

## Credit reporting

**Amended Privacy Act: s20W**  
Limited retention periods for credit  
information (2-7 years)

## No right- kept forever

**Bankruptcy**  
on public record forever, even if  
discharged or annulled

# Retaining the status quo

Not implementing an enhanced right of destruction right for individuals into Australian law – may lead to:

- Stifling of free speech online (chilling effect of perfect memory)
- Inhibiting ability to learn and develop society
- Disproportionate impact of past actions on future actions
- No protection against an uncertain future



# Challenges of implementing a 'right to be forgotten'



Source of Image: European Network and Information Security Agency

*Building trust and innovative privacy solutions*

# Challenges of implementing a 'right to be forgotten'

- Who do you enforce the right of action against?
- Cross-jurisdictional enforcement issues
- Censorship risk?
- Aligning incentives to implement right
- Technological issues:
  - Tracking duplication of data, hosted on multiple servers
  - Effecting the erasure
  - Standing – ensuring the right person asks for removal

# Further information

- Greenleaf, Graham, 'Sheherezade and the 101 Data Privacy Laws: Origins, Significance and Global Trajectories' *Journal of Law, Information & Science*, September 2013  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2280877](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2280877)
- Moens, Annelies, 'The latest David and Goliath story – Does the 'right to be forgotten' defy the tsunami of online information collection and distribution?', *International Association of Privacy Professionals, Australia New Zealand*, Bulletin 44, June 2013  
[http://www.pams.com.au/demo/StaticContent/Images/IAPP/iappANZ\\_Bulletin\\_130701.htm](http://www.pams.com.au/demo/StaticContent/Images/IAPP/iappANZ_Bulletin_130701.htm)
- European Network and Information Security Agency, 'The right to be forgotten, between expectations and practice', November 2012  
<http://www.enisa.europa.eu/activities/identity-and-trust/library/deliverables/the-right-to-be-forgotten>
- Fleischer, Peter, 'Foggy thinking about the right to oblivion', March 2011  
<http://peterfleischer.blogspot.com.au/2011/03/foggy-thinking-about-right-to-oblivion.html>
- Secretariat d'état a la prospective et au developpement de l'économie numerique, 'Charte du droit a l'oublie dans les sites collaboratifs et les moteurs de recherche' October 2010  
[http://www.huntonfiles.com/files/webupload/PrivacyLaw\\_Charte\\_du\\_Droit.pdf](http://www.huntonfiles.com/files/webupload/PrivacyLaw_Charte_du_Droit.pdf)
- Mayer-Schonberger, Viktor, *Delete*, Princeton University Press, 2009

***Building trust and innovative privacy solutions***

---

# Q?—during panel discussion

**INFORMATION  
INTEGRITY  
SOLUTIONS**

## **Annelies Moens**

Head of Sales and Operations  
BSc, LLB (Hons), MBA

53 Balfour Street  
Chippendale NSW 2008

**Ph: +61 2 8303 2417**  
**Au. M: +61 413 969 753**  
**Int. M: +372 5437 1881**  
**Fax: +61 2 9319 5754**

[amoens@iispartners.com](mailto:amoens@iispartners.com)  
[www.iispartners.com](http://www.iispartners.com)