

# HOW MODERN-DAY “MEMORY HOLES” UNDERMINE THE DUE DILIGENCE PROCESS

Several years ago, a colleague and I conducted a background investigation of an English lord who was being considered for a senior position at an American company. His c.v. included directorships at several British companies but we soon discovered that he had “forgotten” a few companies, including one where he had served as non-executive chairman. Research on that company quickly revealed that it had gone bankrupt shortly after his tenure as chairman ended. Not surprisingly, he did not get the job

The public records that revealed the gaps in the English lord’s c.v. came from [Companies House](#), the registry for companies formed in the United Kingdom. Companies House documents are an essential tool in [due diligence investigations](#) of companies and background checks on individuals – which are really just a subcategory of due diligence.

Companies House’s current policy is to retain records for 20 years, but that may change. The registry is now considering a proposal to remove from the database the records of all companies that have been dissolved for more than six years.

This proposal has provoked widespread criticism from, among others, journalists, politicians, and activists. Roy Greenslade, a blogger for the *Guardian*, [described](#) the Companies House database as “indispensable for journalists, police officers, lawyers, researchers and bank compliance officials.” One of the strongest objections came from *Private Eye*, a British magazine that combines satire with investigative journalism. The magazine noted that it relied on Companies House records in its reporting on [BHS](#), a U.K. retail chain that recently collapsed in a major scandal. “Using such records last year,” the magazine noted, “we revealed that BHS buyer Dominic Chappell had a history of business failures – companies dissolved between 1994 and 2005 that would not have been available in 2015 under the proposed new deletion regime.”

When I learned about the proposal to delete old Companies House records, I immediately thought of *Nineteen Eighty-*

*Four*, George Orwell's novel about a dystopian society ruled by the dictator Big Brother. One of the key techniques for manipulating the population is to rewrite history by feeding certain inconvenient documents and media reports into the "memory hole" – a chute that leads to a giant incinerator.

The Companies House proposal is one of many modern-day examples of the "memory hole." Another is the so-called "[right to be forgotten](#)" which has caused Google and other search engines to delete thousands of links to media reports. This practice stems from a [2014 decision by the Court of Justice of the European Union](#) in a case brought by a Spaniard named Mario Costeja González. Mr. Costeja was upset that Google searches of his name turned up a 1998 auction notice stating that his home had been repossessed. According to an [EU Fact Sheet](#) summarizing the case, he argued that the auction notice "infringed his privacy rights because the proceedings concerning him had been fully resolved for a number of years and hence the reference to these matters was entirely irrelevant."

In 2014, the Court ruled in Costeja's favor and began to require Google and other search engines to consider requests to remove certain links. This explains why a disclaimer often appears at the bottom of results pages warning that some results may have been removed. It's important to bear in mind that this so-called right is not absolute. In the words of the EU Fact Sheet, the court stated that "**the right to be forgotten is not absolute** but will always need to be balanced against other fundamental rights, such as the freedom of expression and of the media (para 85 of the ruling). A **case-by-case assessment** is needed considering the type of information in question, its sensitivity for the individual's private life and the interest of the public in having access to that information. The role of the person requesting the deletion plays in public life might also be relevant."

It is also worth noting that while links are removed the underlying information usually remains. Google's (or Bing's) link to a newspaper article might vanish but the article itself will probably still be available in the newspaper's archives, in press databases, and – for the hopelessly analog – in hard-copy versions of the newspaper.

Why should we care about the modern-day memory holes? In cases like Mr. Costeja's, it may not matter very much. In other cases, the disappearance of information from the public domain can have serious consequences by omitting vital information from due diligence and KYC reports, creating a highly distorted picture of the subjects of the reports. Of course, on the positive side people like the English lord will undoubtedly be pleased.