

ISOC EUROPEAN REGIONAL BUREAU - EU issues overview
17 - 23 November 2012

Net neutrality/Internet governance

Parliament calls on ITU to ensure net neutrality

- On 22 November, the European Parliament adopted a [Resolution on the WCIT and the revision of the ITRs](#) (see p.113 of Word document).
- This called on the Council and the European Commission to 'ensure that any changes to the International Telecommunication Regulations are compatible with the **EU acquis** [body of law] and further the Union's objective of, and interest in, advancing the Internet as a public place, where human rights and fundamental freedoms, particularly **freedom of expression** and assembly, are respected and the observance of free market principles, **net neutrality** and entrepreneurship are ensured'.
- The Resolution condemned several reform proposals as having a potential negative impact on the Internet, its operations, business model and innovation environment. It also stated that '**the ITU**, or any other single, centralised international institution, is **not the appropriate body to assert regulatory authority over the Internet.**'
- It also stressed that 'the ITRs should state that the ITU recommendations are **non-binding** documents which promote best practices'.
- In reaction to the vote, MEP **Ivailo Kalfin** (Bulgaria, S&D group), Rapporteur on cyber security, expressed particular concerns about ITU Member States that propose that countries should have the **sovereign right to regulate the activities of ISPs** and to manage the Internet within their national territory, saying that if adopted, it would put an end to the freedom of the Internet.

Commission and Council in line with Parliament's stance

- Speaking at the Parliament's debate before its Resolution vote, **Industry Commissioner Antonio Tajani**, who was standing in for **Digital Agenda Commissioner Neelie Kroes**, said that the EU should reject the introduction of proposals that would restrict the growth of data traffic, increase prices or introduce administrative restrictions. This was a reference to the [ETNO proposal](#) on the ITRs, which has been universally criticised.
- Speaking in the debate for the **Cypriot Presidency of the Council**, Loucas Louca, stated that negotiators from EU countries 'need to ensure that any changes to the International Telecommunications Regulations which may come out of [the UN conference] do not conflict with legislation in Europe'.

Google calls for popular support for net neutrality

- On its [take action website](#), Google warned about the threat that proposed Internet governance under the aegis of the UN would represent to **free and open Internet** and called users to support its campaign.
- Google stressed that several countries would take the opportunity of the forthcoming ITU conference to present their plans to restrict Internet freedom which could ultimately lead to installation of censorship and threaten innovation.

Open Internet

EU affirms its commitment to child online safety

- On 20 November, EU Commissioner for Digital Agenda Neelie Kroes and the U.S. Secretary of Homeland Security Janet Napolitano signed a [Joint Declaration](#) that commits the partners to **make the Internet a safer and better place for children**.

- Building up on the already existing EU initiatives ([Digital Agenda: New strategy for safer Internet and better Internet content for children and teenagers](#) and [Digital Agenda: Coalition of top tech & media companies to make Internet better place for our kids](#)), the Joint Declaration confirmed EU's support for international cooperation in building a safer Internet (via Virtual Global Taskforce and Interpol) and the organisation of EU's Safer Internet Day for young people on 5 February 2013.
- It stressed that 'parents and guardians need to trust the content and services their children access and commit to continue working with **industry** and other stakeholders so that parents and children can make informed choices online.'
- On 20 November, the **European Parliament** adopted a [Resolution](#) on protecting children in the digital world. Reiterating the implementation of the necessary steps to promote child online safety, the resolution stressed the 'good work done by civil society organisations and encourages these organisations to cooperate and work together across borders as well as working in partnership with law enforcements bodies, government, **Internet Service Providers** and the public.'

Hungary Criminal Code may oblige ISPs to block websites

- A new Hungarian regulation, due to enter into force on 1 July 2013, has been [denounced](#) by **EDRI** as it would introduce restrictions on freedom of expression and on access to Internet. The changes would allow the government to block and potentially delete online material if hosting providers fail to respond to notice-and-take-down procedures.
- Following court's placement of websites onto a blacklist, **ISPs would be obliged to block the websites in question**, but they would not be held liable for the user's content, the NGO reports.
- EDRI pointed out that blocking practice has been proven ineffective in practice. Moreover, the 'details concerning the implementation of interception measures are vague. It is not clear what the government means by "file deletion", or whether temporary prevention of access to content would require blocking an IP address, domain name or URL'.

Copyright infringement

ACTA-like provisions haunt EU-Canada trade negotiations?

- The [answers](#) given by the French Minister of Foreign Affairs, Laurent Fabius and Minister for European Affairs, Bernard Cazeneuve, to a [letter](#) in which **La Quadrature du Net** denounced the lack of transparency surrounding the negotiations of EU-Canada trade agreement with regards to ACTA-like provisions, do not provide solid evidence that repressive measures for copyright have been removed from the agreement text, according to the NGO.
- "Once again, the European Commission and Member States governments may be trying to impose repressive measures in a trade agreement instead of having a democratic debate on Copyright. We have no reason so far to be reassured by the European Commission and French Ministers' sweet talk," said co-founder and spokesperson Jérémie Zimmermann.
- In his recent [answer](#) to MEP Philippe Boulland (France, EPP group) [question](#), **Trade Commissioner De Gucht** gave assurances that the 'the Commission fully respects the vote of the Parliament regarding ACTA and will not make any attempt to introduce the controverted provisions of that agreement in other negotiations. The final result of the Intellectual Property Rights (IPR) chapter of Canada-EU Trade Agreement (CETA) **should be fully in line with EU legislation**, without exceeding or modifying it, and similar to IPR chapters existing in other free trade agreements, such as the one recently concluded with South Korea.'
- On 22 November, Commissioner Karel De Gucht and Canadian Trade Minister Ed Fast confirmed that substantial progress in the negotiations has been made.

Data protection

ENISA study points to shortcomings of the right to be forgotten

- The **European Network and Information Security Agency (ENISA)** has published a [study](#) on technical aspects of the **right to be forgotten** which is part of the [proposed General Data Protection Regulation](#).
- The study focuses on technical means to enforce or support the right in information system, underlying its **technical limitations** and need for clear definitions and legal clarifications.
- The main difficulty identified by ENISA is that the proposal is too broad in its terms of when it comes to the definition of personal data, who has the right to request the data removal, and what the acceptable ways are of 'forgetting' data.
- As the Internet enables anyone to make copies of public data, the study pointed out the following technical limitations in the enforcement of right to be forgotten:
 - 'allowing a person to identify and locate personal data items stored about them;
 - tracking all copies of an item and all copies of information derived from the data item;
 - determining whether a person has the right to request removal of a data item;
 - effecting the erasure or removal of all exact or derived copies of the item in the case where an authorized person exercises the right.'
- The study stressed that 'removing forgotten information from all aggregated or derived forms may present a significant technical challenge.'

German Data Protection Commissioners support data processing by consent only

- A conference of the German federal and regional (*Länder*) Data Protection Commissioners on 7-8 November adopted a [resolution](#) on the [proposal for a General EU Data Protection Regulation](#).
- The resolution includes the following statements:
 - 'Personal data shall only be processed on the basis of a **legal ground** or the **consent by the data subject**. The Conference rejects calls for exceptions for the business sector in this respect.'
 - The conference 'refuses to exempt seemingly "irrelevant" data from a regulation', as this can have serious consequences for the person concerned, according to German case law.
 - Risk-based differentiations 'should be further developed' in cases where this approach is appropriate.
 - There should be a single law for the public and private sectors.

Irish Data Protection Commissioner concerned about new Facebook privacy policy

- The **Irish Data Protection Commissioner** has written to Facebook to ask for 'urgent' clarifications about the social networking website's new privacy policy, according to a [press report](#). The changes give more information about shared data and what is visible to other Facebook users, which the Deputy Data Protection Commissioner believes may require user consent.
- In September, the Data Protection Commissioner published a mostly positive [review](#) of Facebook Ireland's implementation of [audit recommendations](#) dating from December 2011.
- **EDRI** has [criticised](#) Facebook's new policy: it claims that the company 'opposes the explicit consent by users, the "privacy by default", the "right to be forgotten" as well as the 18 age limit for consent to data processing, being in favour of the age of 13'.

Concept of Legitimate interest lacks clarity

- [EDRi](#) has looked into the concept of **legitimate interest** present in the [proposal for a General EU Data Protection Regulation](#), pointing out to the lack of clarity concerning its usage. 'The main reason that "legitimate interest" is a problem is that there is no guidance as to what type of activity would be considered to be so important that none of the other legal grounds for processing would be feasible for the data controller.' EDRi claimed that the current trend is to implement with even less precision.
- Using the amendments proposed by MEP Sean Kelly (Ireland, EPP group), who is in charge of the Opinion in the European Parliament's Industry Research and Energy Committee of, EDRi concluded that the final text may be even broader, permitting the usage of legitimate interest to third users.
- EDRi gave a warning against the recent ruling of an Irish court which confirmed lawfulness of a so-called three strikes approach in which user data is processed and used further without consent. Should a similar approach be included in the EU regulation, EDRi doubted that any data protection would be guaranteed.

Cloud computing

Cloud Partnership Steering Board holds first meeting

On 19 November, the **Steering Board** of the new **European Cloud Partnership** [met for the first time](#). Its aim is to have public authorities and industry work together to help build the EU Digital Single Market for cloud computing pursuant to [the European Cloud Computing Strategy](#). Toomas Hendrik Ilves, President of Estonia, became the Board's Chairman. It will deliver strategic advice to Digital Agenda Commissioner Neelie Kroes.