

ISOC EUROPEAN REGIONAL BUREAU- EU issues overview

22 December 2012– 4 January 2013

Copyright infringement

Sweden forces ISP to disclose subscriber data behind alleged copyright infringement

- In a **contention opposing an Internet service provider** against a group of audiobook publishers, the Swedish High Court concluded that in a case there is evidence to believe that a copyright infringement took place the publishers' civil rights enforcement outweighs the interest of individuals to maintain their integrity.
- The publishers requested details of a subscriber claiming that it made publically available 27 audiobooks in breach of copyright provisions.
- The provider (Ephone) contested this request underlying an alleged conflict between the EU rules obliging providers to store certain data to help with criminal investigations, and the EU rules allowing copyright owners to seek such information for civil enforcement procedures, known as IPRED. Also, the provider argued that subscriber data publication would breach personal data protection rules.
- **The provider has been sentenced to hand over the requested subscriber details** behind the alleged copyright infringement and to provide compensation for the cost publishers incurred in the court process. Should the provider fail to disclose the subscriber information, it would face an additional fine.
- The case was referred to the Court of Justice of the European Union for interpretation.

Commission drops its plan to have ACTA assessed by the ECJ

- According to the group of [Socialists and Democrats](#) (S&D) in the European Parliament, the European Commission **has given up on its plan to have the Anti-Counterfeiting Trade Agreement (ACTA) assessed by the ECJ** to see if it complied with EU legislation.
- On 4 July 2012, the European Parliament's plenary session **largely voted to reject ACTA (476 votes to 39** with 165 abstentions). It was the first time the European Parliament used its new right to reject an international agreement.
- Despite this vote, **Trade Commissioner De Gucht insisted** that 'The European Commission will take on-board the opinion of the ECJ ([requested](#) on 4 April) and the issues raised across the European political spectrum.'
- After the news on Commission's plan retrieval, **David Martin, dossier's Rapporteur**, highlighted the role the Parliament played in ACTA rejection: 'The EU cannot be party to an agreement without European Parliament ratification. MEPs overwhelmingly rejected ACTA in July and I am pleased that the Commission has acknowledged this is the end of the road for ACTA in the EU thanks to the Parliament.'
- Nevertheless, ACTA could still haunt the European political sphere, **as doubts remain about ACTA-like provisions** that would be part of the draft Canada-EU Trade Agreement (CETA). Those allegations were previously denied by the [spokesman for Commissioner De Gucht](#).

Net neutrality

Slovenia adopts EU telecoms framework legislation

- On 31 December 2012, the Slovenian government adopted legislation implementing the 2009 EU telecoms framework that includes a **provision on net neutrality**.
- The net neutrality provision stipulates that the operators are precluded from discriminating Internet traffic on their networks.

Data protection

European Commission supports national DPAs in their stance against Google

- On 16 October 2012, a group of 24 of the EU's national data protection authorities (DPAs) sent a [letter](#) to Google raising concerns about company's new data protection policy. This initiative, instigated in spring 2012 by the Article 29 Working Party (body of EU data protection regulators) was tasked to the French regulator CNIL.
- The letter identified the following areas in which the regulators claim **Google does not meet EU data protection standards**:
 - 'Google provides insufficient information to its users (including passive users), especially on the purposes and the categories of data being processed'
 - 'Combining personal data on such a large scale creates high risks to the privacy of users'
 - 'Google failed to provide retention periods for the personal data it processes'
- An [annex](#) to the letter provided recommendations for Google on how to improve its policies regarding information and combination of data in order to bring them back in line with the European legislation.
- Following this initiative, MEP **Marc Tarabella** (S&D, Belgium) [asked](#) the Commission how it intended to respond to Google's failure to provide complete information on data collecting and processing, as well as on data combination, user's data control and the length of processing.
- Justice Commissioner Reding [answered](#) on behalf of the Commission that the European executive body has been closely following EU's DPAs investigation and praised the role of those bodies as the implementation of the current legislative instrument falls within the competence of the national authorities. Moreover, the Commissioner pointed out that EU's national data protection regulators 'are successfully addressing global privacy challenges and are able to speak with one voice.'

Commission extends list of countries complying with EU data protection standards

- In a [press release](#), the European Commission has recognised the **adequacy of personal data protection in New Zealand**. According to the Commission, the EU-like data protection standards of New Zealand are to 'facilitate the free flow of personal data across borders so that businesses handling data can rely on legal certainty in data protection rules.'
- Thus, New Zealand joins Andorra, Argentina, Australia, Canada, Switzerland, Faeroe Islands, Guernsey, Israel, Isle of Man, Jersey and Uruguay that the Commission already recognised as offering adequate level of protection. Personal data originating in the EU can be transferred to those countries without any further safeguards.
- Equally, certain entities from the United States guarantee, via the so-called [Safe Harbour](#) provision, sufficient safeguards for EU personal data processing.

Tense discussions on EU data protection regulation expected

- According to analysis provided by *MLex*, the upcoming months are likely to be marked by tense negotiations on the EU data protection regulation [proposal](#) as the EU Member States are less eager to quickly reach an agreement, while both Commissioner Reding and the MEPs could push for a rapid adoption given that their mandates will terminate in 2014.
- Data protection dossier is one of **the priorities of the Irish presidency**.
- MEP Jan-Philipp Albrecht (Greens, Germany), Regulation's Rapporteur, is expected to present his report on suggestions for amendments in the weeks to come.