

ISOC EUROPEAN REGIONAL BUREAU-EU issues overview

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Open Internet

French Government looks at data mining tax

- Following the recent [controversy](#) in France regarding **tax avoidance** by large web companies, the French Ministry for Industrial Recovery published 18 January a report entitled '[Mission d'expertise sur la fiscalité de l'économie numérique](#)' which looks at the issue of **tax payment in the digital economy**.
- The issue at stake with regards to digital companies is that their activity often lacks 'points of stability' which would allow the **establishment of a permanent tax base**.
- The report, written by two senior civil servants (Messieurs Collin and Colin), proposes a **two-level approach**:
 1. First, at **international level**, it calls the redefinition of the OECD tax concept of '[permanent establishment](#)' i.e. that in the absence of headquarters in a state, the state in question does not have the right to impose taxes. The report underlines the problematic application of this principle to the digital economy.
 2. Secondly, the report addresses **data mining**. It highlights that the data usage, which is considered the core of the digital economy, escapes any taxation. Collected data (datasets on consumer behaviour), submitted data (data entered knowingly) and inferred data (data produced by processing) allow Internet companies to earn high profits via what the report calls '**free work**' of users **providing their data**. It says that the dissociation between the location of the value (data) and tax collection must cease, and proposes to count this 'free labour' of users as a strategic source of revenue for digital companies.
- However, as yet, there is still no legislative proposal. **The European Commission's Directorate-General for Taxation** has implied that it will look at a draft law for its compatibility with EU principles.
- Digital economy taxation will be addressed by the G20 finance ministerial meeting on 14-16 February. Similarly, both G8 and OECD are currently looking into this question.

Paris Court orders Twitter to disclose users' credentials

- In a ruling from 24 January, the County Court of Paris ordered **Twitter to disclose the credentials** of the authors of racist and anti-Semitic tweets.
- The case was brought to the court by several associations which claimed that the incriminating Twitter postings made under pseudonyms broke the French law against racism.
- Twitter has not yet stated if it will comply with the decision, but it has already removed several of the postings. Under Twitter's own rules, a user's identity would only be divulged in response to a valid US order.
- The court ruling required Twitter to provide 'data in its possession that could permit the identification of anyone who has contributed to the creation of **manifestly illegal tweets**', and should 'set up, within the framework of its French platform, an easily accessible and visible system enabling anyone to bring to its attention illegal content, especially that which falls within the scope of the apology of crimes against humanity and incitement to racial hatred'.

Data protection

State requests to access users' data increasing

- During a meeting of data protection experts in Brussels on 23 January, concerns were raised about the growing **number of demands to obtain citizens' data** that states are submitting to Internet companies.
- Google's 2012 [Transparency Report](#) confirmed that between July and December 2012, 7,254 state requests were made to Google regarding browsing history, email communications, documents and IP of 9,240 users in the EU, an average of 1,200 per month.
- According to [Privacy International \(PI\)](#), Google refused to comply with over 50% of demands from Italy, France, Spain and Germany due to their disproportionate scope, unlawfulness or incorrect submission.

European Data Protection Supervisor unveils 2013-2014 strategy

- On 22 January, Peter Hustinx, the European Data Protection Supervisor (EDPS) **presented** a two-year [strategy](#) entitled 'Towards excellence in data protection', which aims at promoting data protection culture in Europe.
- The newly presented strategy is based on a Strategic Review launched in July 2011. The EDPS highlighted that **stakeholders' contributions** enabled him "to develop its guiding principles and to set a detailed action plan for achieving its strategic objectives". He wants data protection to be part of every **EU policy-making process and legislative act**.
- The strategy also underlines that the EDPS will **react proactively** to emphasise the accountability of policy makers and data controllers and will support the capacity building of Data Protection Officers. Hustinx believes that this objective will be particularly challenging at a time of budget restraint.
- With regards to the EU intra-institutional cooperation, Hustinx stated that the Council of the EU needs to take EDPS more seriously and to "treat us as a grown-up institution and a trusted partner".

Cybersecurity

Draft proposal would place reporting requirements on 'enablers of Internet services'

- The draft proposal for a Directive on the security of networks and information systems which is to be part of the future EU's cybersecurity strategy (to be published on 7 February), is to place **additional reporting obligations on private sector** companies running critical infrastructures.
- According to Annex IV of the draft, 'enablers of Internet services' would be covered by the Directive. Companies would be **required to report serious cyber incidents** to the newly established national cybersecurity authorities. Should they not comply with the security requirements, they might be subject to sanctions to be set by the national authorities.
- The new **rules would also apply to online services** such as social networks, search engines and online shopping providers.

Net neutrality

Orange claims Google pays for data transfers on its network

- In an interview on French BFM Business TV, Stephane Richard, CEO of Orange, claimed **Google has agreed to pay Orange for data transfers** on its networks. With over 230 million customers worldwide, Orange is especially important in Africa which is said to have given Orange the necessary leverage in the talks with Google.

- The fast-growing African market, where more and more low-cost smartphones are being sold, is particularly important for Google as the majority of phones run on Android.
- Given those particular conditions, **Google appeared to have given in** in order to secure its Android market share, according to [Forbes](#).
- Considering that data traffic related to Google's services represent over 50% of Orange's network traffic, Richard underlined the importance of interdependencies between Internet companies and network operators, thus criticising its French competitor Free that recently resolved to block Internet ads.