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Data protection

EU: Celebration of the European Data Protection Day

- On **28 January**, 47 countries of the Council of Europe, together with European institutions, agencies and bodies, celebrated the eighth annual **European Data Protection Day**.
- On this occasion, the European Commission published an **overview** of the main changes and benefits the proposed Data Protection Regulation, once implemented, would bring to the European Union.
- In a speech at the Centre for European Policy Studies (CEPS), **EU Justice Commissioner Reding** called for a "**Data Protection Compact for Europe**", reiterating that EU Member States have agreed for the Regulation to be in place by latest 2015. The proposed Data Protection Compact contains **eight principles** that according to Commissioner Reding would restore trust in transatlantic relations and in the way companies, as well as governments, handle citizens' data:
 - Finish overhaul of the EU data protection framework
 - Apply same rules to private and public sector
 - Public debates for laws affecting civil liberties online
 - Limitation of data collection
 - Need to keep legislation in line with technological developments
 - Sparing use of national security
 - Strong oversight powers for judicial authorities
 - Given the open nature of the Internet, Data Protection rules should apply irrespective of the nationality of the person concerned (this point was addressed to the USA).
- With regards to the **Safe Harbour agreement**, Commissioner Reding underlined that in order to **rebuild trust in the EU-US data flows**, the Safe Harbour needs to be safer, based on 13 recommendations the Commission recently gave. Should the concerns of the EU not be answered, the agreement will be **suspended**, stated Reding. The Transatlantic law enforcement cooperation should also be governed by strict data protection rules.
- Commenting on the recently imposed **French fine on Google**, Reding underlined that if the EU Data Protection Regulation was already in force, the European DPAs would have the possibility to fine the company up to €731 million (2% of the company's annual turnover), and thus be taken seriously. She recalled that the French fine, although the highest possible, was just €150,000 i.e. a mere 0.0003% of Google's global turnover.

Net neutrality

EU: Draft LIBE amendments restrict ISPs' possibility for providing specialised services

- In its **draft amendments** to the proposed overhaul of the **EU telecoms market**, the European Parliament's **Civil Liberties Committee (LIBE)** restricted ISPs' ability to provide the so-called **specialised services**.
- Under the Commission's proposal, consumers, ISPs or content providers would be able to form agreements allowing specific content to be delivered with an enhanced quality of service. In doing so, ISPs would need to ensure that those specialised services do not impair in a recurring or continuous manner the general quality of Internet access services.
- According to one of the proposed amendments, the provision of specialised service would have to be **provided within closed electronic communications networks**; the **service would be subject to defined quality or dedicated capacity**. Such a service would **not be functionally identical to services available over public Internet access**, reads the amendments submitted by **MEP Marietje Schaake** (ALDE, the Netherlands), among others.

Copyright infringement

France: Study confirms inefficiency of three-strike anti-piracy law

- Research conducted by universities of Delaware and Rennes, looking into the impact of the **French anti-piracy law** (the so-called Hadopi law) has found that the **approach does not curb piracy**.
- French anti-piracy law is based on a three strikes principle that stipulates that users found infringing copyright three times would be cut off from Internet access. According to research, under a graduated response system, a higher chance of detection does not affect whether or not a person infringes copyright. The delay and uncertainty of penalties could create an incentive to increase illegal content acquisition, underlined the study.

Spain: ISP ordered to disconnect copyright infringer

- In the **first ruling of its kind in Spain**, the Barcelona Court of Appeals has ordered the **Spanish ISP R Cable y Telecomunicaciones Galicia** to **suspend the Internet connection of a user who has engaged in copyright infringing file sharing**.
- The case was brought to court by the Association of Spanish music producers (Promusicae), alongside with the main music labels operating in Spain. With the help of an anti-piracy firm, Promusicae identified a user who, using **P2P network Direct Connect**, made thousands of copyrighted music files available. Provided that the user was only identified by his nickname and IP address, and given that **ISPs in Spain are not obliged to reveal the identity of users** for civil lawsuit purposes, the plaintiffs brought the case exclusively against the ISP. The Spanish Copyright Act allows right holders to seek injunction against intermediaries whose services are used by a third party for copyright infringement.
- According to a **Spanish law professor**, the ruling raises several questions, in particular considering that the user was not a party in the proceedings, and that an IP address does not necessarily identify a single individual. Finally, the effect of the injunction is deemed dubious as the infringer can shift to a different Internet provider and carry on with the incriminated activities.

Netherlands: Court lifts ban on Pirate Bay

- The Court of Justice in The Hague **has ruled** that two Dutch ISPs (XS4ALL and Ziggo) are no longer required to block users' access to torrent website **Pirate Bay**.
- The ban, dating back to January 2012, followed a lawsuit by the Dutch anti-piracy organisation BREIN. The original ruling authorised BREIN to update the list of IP addresses, domains and sub domains that the two companies had to block.
- In its ruling lifting the ban, the Court stated that the **block has proven to be extremely ineffective** and will no longer be enforced. Lawyers representing one of the ISPs welcomed the decision referring to a similar judgment in Germany that underlined that the **ISPs' infrastructure is not designed to block IP addresses**. XS4ALL highlighted the importance of the judgment as **ISPs are to remain neutral in their role** of service providers.
- A similar ban remains in force for KPN, UPC, T-Mobile and Tele2 who are still required to block access to the Pirate Bay, as the ban was brought in as a result of a separate case.