

ISOC European Regional Bureau Newsletter

22-28 March 2014

<http://www.Internetsociety.org/what-we-do/where-we-work/europe>

Copyright infringement

EU: ISP may be ordered to block access to a copyright-infringing website

- In its ruling from 27 March, the **Court of Justice of the European Union** decided that an **ISP may be ordered to block its customers' access to a website that infringes copyright**. But, while imposing this injunction, the enforcement authorities must ensure a fair balance between the fundamental rights concerned, meaning that **the order must not unduly restrict the users' ability to access lawful content, and must prevent unauthorised access to the protected subject-matter**.
- At the instigation of two copyright holders entities that argued that their films can be viewed and downloaded, Austrian **ISP UPC Telekabel was ordered by Austrian courts to block access** to the website kino.to. UPC argued that it has no business relations with the operators of kino.to and that it was never established that its customers acted unlawfully. UPC maintained that it cannot be considered to be an intermediary as set out by the EU copyright Directive that gives the rightholders the possibility to apply for an injunction against intermediaries whose services are used by a third party to infringe their rights.
- The EU Court argued that **UPC is to be considered as an intermediary** as the **Copyright Directive does not require a specific relationship between the person infringing copyright and the intermediary**. It also argued that it is not necessary to prove that the ISP's customers are accessing the protected material.
- With regards to a national court prerogatives prohibiting an ISP from allowing its customers access to a website with protected material displayed without rightholder's consent, the Court noted that in case copyrights enter into conflict with the fundamental freedoms, i.e. ISPs' freedom of conduct business and users' freedom of information, the national courts need to **strike a fair balance between those rights**.

Data protection

EU/US: Data protection remains an important part of the transatlantic dialogue

- On the occasion of the **EU-US Summit** that took place in Brussels on 26 March, the leaders of the EU and the US President Barack Obama underlined the **importance of data protection in the transatlantic dialogue**.
- In order to ensure data protection and enable trade through increased transparency, effective enforcement and legal certainty when data is transferred for commercial purposes, the EU-US summit confirmed that the **provisions of the Safe Harbour agreement will be strengthened by summer 2014**.
- The leaders stated they were committed to expedite negotiations of a **comprehensive data protection umbrella agreement** for data exchanges in the field of police and judicial cooperation.
- The EU and the US will increase effectiveness of the **Mutual Legal Assistance Agreement** which is considered as a key channel of cooperation in the digital era.

Net neutrality

EU: Net neutrality rules and digital economy

- In the draft report on the proposed **Connected Continent** adopted by the European Parliament's Internal Market Committee last week, companies would be allowed to **offer specialised services** only if they do **not interfere with Internet access conditions** of other users. Traffic management would be authorised in exceptional cases, mostly where specifically ordered by a court.
- Diane Mullenex at Pinsent Masons underlined that the **net neutrality rules would result in businesses and ISPs changing their business models**, if, from a regulatory perspective, the provision of specialised services was to be isolated from a basic network service. Mullenex argued that a shift towards **regulatory imposed net neutrality** is to change the role of ISPs that would face increased liabilities in terms of access and traffic management.
- The **GSMA**, a global organisation representing some 800 mobile operators, said that the rules on neutrality proposed by the **EU would hinder innovation** and limit the development of new services thus affecting economic productivity.

Open Internet

Turkey: A day after suspending a ban on Twitter, YouTube blocked

- On 26 March, a court in Turkey ruled that the **government could not ban Twitter** and ordered the country's telecommunications authority **TIB to restore access to the service**. The ban was imposed on the grounds that Twitter refused to remove content that violated personal privacy.
- A separate decision is awaited from the **Constitutional court** on a complaint filed by two academic experts on cyberlaw who argued that the **blocking of Twitter infringed on a constitutional right to information**.
- A day after the Ankara court lifted the ban on Twitter, Turkey **has blocked access to YouTube**. In both cases, Prime Minister **Erdogan argued that the websites are spreading misinformation**.
- Also several credible reports confirmed that Google's Domain Name System (DNS) service has been intercepted by most Turkish ISPs.

Internet governance

EU/US: Further globalisation of Internet institutions confirmed

- At this week's summit, the **EU and the US underlined their commitment to an open, free, secure, and reliable Internet** that functions on the basis of an inclusive and transparent multi-stakeholder model of governance.
- The **transition of key Internet domain name functions to the global multi-stakeholder community** has been welcomed as the parties confirmed their will to improve the current model of Internet governance so as to involve all stakeholders.

Cybersecurity

EU: Group of Member States call for looser rules on cooperation

- In the negotiations on the **proposed Network and Information Security Directive**, a group of eight EU Member States (Belgium, Finland, France, Germany, Ireland, the Netherlands, Sweden and the UK) is said to be pressing for **looser rules on how they should cooperate with other EU states** on sharing information about hacking attacks and other cyber incidents. A divide has emerged between countries with strong cyber-security measures and those with less-stringent approaches, internal sources reported.
- The countries also **opposed the proposed early warning provision** fearing this might lead to sharing of commercially and nationally sensitive information.
- The group argued that should the countries seek to reach agreement on how to respond to incidents, responsiveness to incident would be delayed, preventing national authorities from taking immediate action.

General

EU: Legal boundaries of ICT to be redrawn

- At a recent event in Brussels, **Roberto Viola**, Deputy Director General at the European Commission's DG Connect confirmed that the **Commission is preparing an overhaul of relations between traditional telecoms operators and the Internet players**. Viola stated that the next Commission will need to address the question of convergence between telecommunications and audiovisual services. The overhaul is awaited by the network operators who have been underlining the regulatory burden they need to comply with while OTTs, the content providers, "are not subject to the same regulation".
- Marc Lebourges at Orange pointed out that many rules only apply to electronic communications. The providers have urged for the same rules to apply to the same services.

EU: Fragmentation of the EU broadband market

- According to four **research studies** published by the European Commission, Internet users in Europe face what the EU Digital Affairs Commissioner Kroes calls a "geographic lottery" regarding the price, speed, and range of choice of broadband. The data suggests that there is no coherence in broadband markets across the EU.
- One of the studies suggested that on average **ISPs deliver only 75% of the Internet speed** the customers paid for. According to the Commission, the gap is now as wide as it was in 2012.
- Consumers are confused by the varying information provided by operators, which limits their ability to make an informed choice. According to the study, 66% of people do not know what Internet speed they have signed up for.
- **ISPs reportedly questioned the methodology of the research**, arguing that in the countries with statistically acceptable sample sizes, the services provided were improving significantly. The **European Telecommunications Network Organisation (ETNO)** underlined its continuous efforts into improving transparency and meaningfulness of the information delivered.
- On 3 April, the European **Parliament will vote on the Commission's proposal for a Connected Continent**.