

ISOC European Regional Bureau Newsletter

3 -9 May 2014

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

Net neutrality

EU: Italian Presidency will push Member States to agree on Connected Continent

- The incoming **Italian Presidency** of the Council of the EU (1 July-31 December 2014) will **support the overhaul of the EU telecoms rules** that was backed by the European Parliament in April.
- Italy's Deputy Permanent Representative to the EU, Marco Peronaci, stated that the country understands the concerns raised by the industry but will **push the Member States to approve the proposed Connected Continent package**, with possible modifications. Peronaci did not give a timeframe for the negotiations process.
- Previously, several Member States (including Germany and the UK) raised concerns with regards to the text, leading analysts to speculate that the Parliament-backed proposal would not be accepted in the Council.
- Italy's position may change as two months after the government of Matteo Renzi took power, the governmental telecom portfolio has not been given to anyone yet. The telecom competence falls in the Ministry of Economic Development.
- Arguably, **net neutrality remains the most controversial part of the proposal**. Speaking at a recent event in Brussels, **ETNO's Chairman Luigi Gambardella** stated that while the openness of the Internet needs to be ensured, it needs to be done in a way that would not **hamper innovation** and **efforts to improve the quality of network**.

Data protection

Slovakia: Constitutional Court suspends data retention legislation

- As a result of a pending case, the **Constitutional Court of Slovakia** has **suspended** the country's implementation of the **EU Directive on data retention**. On 8 April, a judgment of the **Court of Justice of the EU declared the EU Data Retention Directive invalid**, as the law interferes seriously with the fundamental rights to respect of private life and to the protection of personal data.
- While formally still valid, the Slovak implementation of the Directive has no legal effect until the Court decides on the ongoing case brought to it by the European Information Society Institute (EISI).

Data protection/General

EU/UK: Data protection rules must not hamper innovation and competition

- According to a recently published **study** on the *Online economy value chain* made for Ofcom, (the UK's telecom and media regulator), **stricter privacy rules may entrench the dominance of digital firms that currently dominate the market** and prevent start-ups from entering the market and inventing new business models.
- The report argued that if the current wide availability of customer data will be reduced, there will be new

barriers for entering the market as online companies with large market share already retain big amounts of data.

- The warning came as the EU Member States discuss the proposed overhaul of the EU data protection framework. The study said that **balance must be struck between a liberal regime** that could struggle to offer appropriate level of data protection, **and stringent rules** that could compromise innovation and bring about competition issues.

Copyright infringement

Comparative study of national approaches to Internet intermediary liability

- A comparative **study** on **national approaches to Internet intermediary liability** (*Comparative Analysis On National Approaches to the Liability of Internet Intermediaries for Infringement of Copyright and Related Rights*) was presented at the recent meeting of the **WIPO Standing Committee on Copyright and Related Rights** (SCCR). In the survey, the term 'Internet intermediary' has been broadly defined, encompassing ISPs, electronic platforms, social networks, link-listing websites, and search engines.
- The study conducted in 30 different jurisdictions (including for example France, Spain and Belgium) pointed to the **increasing influence and role of Internet intermediaries in relation to online infringement** of copyright and related rights.
- According to the study, from a common law perspective, the **indirect liability of Internet intermediaries** is founded on the concept of '**authorizing infringement**', meaning the knowledge the intermediary has of the infringing activity and its right and ability to control the person committing the infringement.
- The majority of the jurisdictions studied are said to favour the **subjective theory of liability** that attributes liability to an **intermediary who induces or contributes to the infringement of copyright** committed by another person. This is based on a finding of indiscriminate liability between the user, as the principal offender, and the intermediary, as the accessory.
- The study identified **two general models of liability exemptions** that are both premised on the idea that there is no general obligation for the intermediary to monitor or investigate transmission or hosting of illegal content.

General

EU: Digital champions call for the next Commission President to be digital

- The so-called **Digital Champions**, ambassadors for the EU Digital Agenda that were appointed by their Member States to help every European become digital, sent a **letter** to the lead **candidates for the Presidency of the European Commission** calling on them to **present a digital strategy** tailored for the 21st century.
- In order for the EU to deliver growth and create jobs, there needs to be a **significant leap in EU's digital advancement**. The Champions recalled that the digital sector is expected to grow seven times faster than the overall GDP of the EU.
- By promoting digital skills, the EU would be able to address (at least partially) the problem of unemployment, as by 2020, despite high levels of unemployment across the EU, there will be one million unfilled vacancies in the ICT sector. Therefore, the next Commission President has been encouraged to continue and build on the **Grand Coalition for Digital Jobs**.
- In order for the economy to take full potential of the digital technologies, there is an urgent need for **updating the infrastructure**. According to estimates, meeting the 2020 broadband targets would require investment of up to €200 billion. The new Commission needs to work with the Member States to present a realistic timetable.
- To support economic recovery, the letter underlined the importance of start-ups and called on the next Commission President to ensure **conditions for entrepreneurship**. The President should support the

so-called **Startup Manifesto** and incorporate its recommendations into political programmes, said the letter.

- In reaction to manifestos of the lead candidates for the Commission Presidency, EU Digital Agenda Commissioner **Kroes welcomed that digital sector is set out as a priority**. The **completion of a single telecom** market is underlined as one of the prerequisites for EU's success in the digital sector, together with **secure networks** and **rules for data and cloud computing**. The 'Digital President' would need to embrace change and demonstrate will to do things differently, Kroes said.

EU: Council adopts measures to cut broadband costs

- The Council of the EU adopted a Directive that aims to make the **roll-out of high-speed electronic communications networks cheaper**. Among other, the Directive promotes joint use of infrastructure, such as electricity, gas and sewage pipes.
- **EU Member States** are required to **comply with the new Directive by 1 January 2016**, applying the measures as of 1 July 2016. The United Kingdom abstained.
- The Commission estimated that digging up roads to lay down fibre-optic cables accounts for up to 80% of broadband deployment costs. **Cost reduction is expected to encourage investment** and lower the market entry threshold.

EU: Industry criticises complexity of EU regulatory procedures

- The representatives of the European telecom industry criticised the **length and complexity of EU regulatory procedures**. The main issue at stake was identified as the so-called **Article 7 procedure** that requires **national and EU regulators to consult each other on any rules they intend to adopt**. The procedure involves national regulators' consultations with Berec and the European Commission. The procedure also **empowers the Commission to open investigations into national regulations** that infringe EU laws.
- Speaking at a conference in Brussels, Deutsche Telekom's Head of European Affairs Doll stated that the **system is too complex and needs radical simplification**. ETNO's Gambardella stated that the decision-making process does not **provide certainty**. The regulators disputed those opinions, stating that the system is working well, as confirmed by the successful market liberalisation.

EU: Commissions launches consultation on Europe 2020

- The European Commission has launched a **public consultation** on the **Europe 2020 strategy**, seeking views on its further development. One of the strategy's flagship initiatives is the so-called Digital Agenda for Europe.
- The **consultation** runs until **31 October 2014**.