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Data protection

EU: Safe Harbour threatened by the PRISM scandal, former CNIL secretary says

- According to **Yann Padova**, former secretary general of the **French Data Protection Authority** (CNIL), the **European Court of Justice** (ECJ) might be tempted to invalidate the **Safe Harbour** agreement because of the PRISM scandal.
- The question of a possible annulation of the Safe Harbour is said to be linked to a **preliminary question** which the High Court of Ireland referred to the **ECJ** earlier this year. The referral is based on a complaint by Max Schrems challenging the Irish Data Protection Commissioner's refusal to investigate his complaint against the Irish subsidiary of Facebook. Given the revelations of the NSA's monitoring activities under the PRISM program, Schrems claimed that there is no adequate protection for a data subject against state surveillance, with regards to data that is transferred from Europe to the United States.
- According to Padova, the Court could rule that national data protection authorities could conduct their own investigation, a move that might translate in greater legal uncertainty, as differing opinion across the Member States could arise. Other possibility would be for the Court to rule that national DPAs are bound by the **decision of the Commission**, meaning that they would only be entitled to investigate specific companies' breaches, not violations committed by third state authorities. Padova also argued that the Court could **rephrase the question** and assess the **lawfulness of the agreement**. The ECJ has already taken such an initiative in the past.
- The Safe Harbour framework is a widely used legal instrument, with nearly 3,300 US companies registered.

EU: Safe Harbour revisions is a priority for the Commission

- In a **letter** to the European Parliament and the Italian Presidency, Commission President **Jean-Claude Juncker underlined EU's priority initiatives** for 2015 and beyond. Among those, a **connected single market**, built on an **ambitious reform of the telecoms market**, and the **conclusion of a comprehensive EU-US data protection agreement** as well as a **review of the Safe Harbour agreement**. The construction of a digital single market will be accompanied by a **proposal on copyright reform**.
- Following the EU-US Justice and Home Affairs ministerial meeting, Dimitris Avramopoulos, EU Commissioner for Migration, Home Affairs and Citizenship, underlined that the **shortcomings of the Safe Harbour agreement need to be addressed urgently**.

France: Paris court orders parent company to remove links across global network

- A Paris Court (*Tribunal de Grande Instance*) has **ordered** Google's French subsidiary to pay daily fines unless it removes links to a defamatory article across the parent's company entire global network. The judgment breaks new ground in the **application of the right to be forgotten** established by the

European Court of Justice.

- The decision represents an attempt by a European court to enforce its order of justice on the global Internet. But, several analysts argued that French and EU courts have no **legal authority** to regulate the content of search results outside of their jurisdiction.

Open Internet

Russia: New Internet laws deemed normal and logical

- Speaking at the opening of **Russian Interactive Week 2014**, **Alexander Zharov**, Head of *Roskomnadzor*, the Russian agency which supervises communications, stated that Russian **legislation introducing prevention and prohibitions** to the functioning of the Internet is **normal and logical**.
- Zharov added that in order to grow, the Russian Internet space needs a new strategy based on bills and stimulating measures.
- **Leonid Levin**, Head of the State Duma Committee on Information Policy and Technologies, stated that the Internet space, both Russian and global, will be regulated as it has been free of restrictions for a long time.
- These statements come weeks before **Facebook and Twitter send delegations** to Moscow, to hold discussions with *Roskomnadzor* (early December). Although the agenda is yet unknown, the discussions might evolve around new **laws requiring all data of Russian citizens to be stored within Russia** and **Internet companies to be officially registered** as organisers of information distribution.

Copyright

Sweden: A legal challenge to hold ISPs responsible for streaming services alleged to infringe on copyright

- Swedish TV and film industry has filed a **claim** in a Stockholm District Court seeking an order for local ISP Bredbandsbolaget (a subsidiary of Norway's Telenor) to block the Pirate Bay and streaming sites Swefilmer and Dreamfilm. The complainants claim that the ISP has been complicit in the infringement of copyrighted material, allowing subscribers to access piracy sites.
- The Pirate Bay is blocked in several EU Member States but not in Sweden. With half a million clients, Bredbandsbolaget is not Sweden's biggest ISP but should the claim succeed, other ISPs would be compelled to follow suit.
- The 2005 legislation allows ISPs to help rights owners by preventing Swedish Internet users from reaching pirated content, but does not compel them to do so.

EU: Copyright framework overhaul under scrutiny in the European Parliament

- MEPs from across the Parliament's political spectrum formed a **working group on intellectual property rights and copyright reform** that should enable the Chamber to explore solutions to some of the pressing problems, among which the inability of citizens in one Member State to access online content in another.
- The group is chaired by **MEP Jean-Marie Cavada** (ALDE, France) who is Member of the Parliament's legal affairs Committee.
- The group's formation comes as Member States tighten up their own rules on copyright, which may result in a further balkanization of the already fragmented EU market for online films, music and television.
- While the Commission is yet to come with its proposal for the EU framework overhaul, the group will start its work by analysing the implementation of the 2001 Directive.
- Separately, MEP Julia Reda (Greens [Pirate Party], Germany) has been appointed to put together a report on the subject.

- The aim of the group and the report is to **assess whether EU copyright law** should take a **different legal form**. The lawmakers consider if the rules should be laid down in a Regulation, rather than a Directive that gives Member States leeway to adjust the rules. While the exclusive right to draft EU legislation lies with the Commission, Parliament's power to amend a proposed bill would send a strong political signal.
- President of the European Commission **Jean-Claude Juncker** stated that the EU needs to **break down national silos in copyright legislation** in order for a digital single market to be built. Commission Vice-President for the Digital Single Market **Andrus Ansip** has pledged to put forward a **reform proposal within the next six months**.

General

EU: Germany leads race to head pan-EU telecom regulatory group in 2016

- **Jochen Homann**, the head of Germany's Federal Network Agency, is understood to be the frontrunner for the **post of chairman of Berec**, the Body of European Regulators of Electronic Communications.
- The decision on the appointment is expected to be taken at **Berec's plenary on 4 December**. Currently, Berec is chaired by Göran Marby, head of the Swedish Post and Telecom Authority. In 2015, the organization will be led by Portugal's Fátima Barros.

Belgium/EU: Telecom operators clash with Belgium over broadband as universal service

- In 2012, the Belgian government expanded its list of **universal services** to include **Internet services**, prompting a court challenge from Base and Mobistar. The country's Constitutional Court referred the matter to the ECJ.
- At a hearing that took place this week, the representatives of the **telecom operators** argued that the EU **Directive on the matter does not cover Internet services**, while Belgium and the European Commission stated that Member States have a right to include Internet services in the provisions guaranteeing affordable access to basic communication services.
- A **non-binding opinion** about the case (C-1/14) is to be published by Pedro Cruz Villalón, Advocate General of the court, on **29 January 2015**.