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Net neutrality

EU: Latvian Presidency proposes to make net neutrality a right

- Under a proposal put forward by the Latvian Presidency, the Connected Continent package would enshrine **net neutrality as a right rather than a freedom**. Giving net neutrality a stronger-sounding legal base could enable the Presidency to include fewer technical details in rules.
- With regards to the definition of **specialised services**, the Latvian proposal states that telecom operators should be allowed to deliver other services than Internet access, provided that those have what the proposal calls **no material effect on the quality of Internet connectivity**.
- The Presidency proposed specific **provisions prohibiting the use of traffic-management techniques for anticompetitive purposes**, but kept the option of using traffic management on customer request (e.g. spam filtering or parental control).
- Based on the proposal, **national regulators** would have the right to **order telecom operators to guarantee a minimum level of Internet service quality** or certain technical standards. On request from a regulator, operators would be required to **provide network management information**.
- **Member States remain divided** over certain provisions of the proposed package, including whether **website blocking** to combat copyright infringements or child pornography should be allowed, and the so-called **zero rating**, a practice under which operators offer access to particular web sites without counting it in subscriber's maximum data allocation.
- **EU Digital Economy & Society Commissioner Oettinger** appeared optimistic as the Latvian Presidency seems to be close to achieving consensus on a **principles-based approach on net neutrality**.

EU: Net neutrality coalition urges EU to establish clear net neutrality rules

- Ahead of an informal dinner of EU telecom ministers that took place on 21 January, the **European Broadcasting Union**, together with a group of trade associations and civil society organisation (comprising CDT, BEUC and CCIA) sent a **letter** to EU leaders urging them to **support strong and clear net neutrality rules**.
- The letter underlined that an open, transparent and secure Internet, supported by net neutrality rules, would be a **driver for innovation and economic efficiency**.

Open Internet/Safety

EU: Companies could be obliged to share their encryption keys

- In a **briefing paper** for the informal EU interior ministers meeting that will take place in Riga on 29 January, **Gilles de Kerchove**, the EU counter-terrorism coordinator, stated that the **EU should consider forcing Internet firms** operating in the EU help security services tap into coded emails and calls as part of a new strategy to fight terrorism. This would include **sharing encryption keys**.

- The paper noted that revelations about US spying had prompted encryption offers that can prevent monitoring even in cases where lawfully allowed.
- The Coordinator called for **establishment of a forum** that would gather representatives of EU institutions, Member States and industry to discuss terrorism. A closer **cooperation with major Internet platforms** should be set up, allowing for a **stronger joint response**. De Kerchove gave the example of the **UK Counter-Terrorism Internet Referral Unit**, as a model for public-private cooperation.
- Furthermore, the Coordinator called on the Commission to examine the **legal and technical possibilities to remove illegal content**, setting up a common approach in compliance with fundamental rights.
- The coordinator's proposal appears in line with the **UK Prime Minister David Cameron** who last week called on companies to share encryption keys, a move that was condemned by civil rights advocates.
- **MEP Jan Philipp Albrecht** (Greens, Germany), Parliament's Rapporteur on the proposed Data Protection Regulation, said that the proposed back-door way into encrypted communication is reminiscent of repressive regimes.
- Separately, **German and French interior ministers requested US tech companies to combat terrorism** on the Internet. The two countries said they expect US Internet and social networking companies to pre-emptively remove terror content or face new rules obliging them to do so.

Data protection

EU: Safe Harbour talks will be concluded before the end of May

- **EU Justice Commissioner Věra Jourová** announced that the **talks on Safe Harbour agreement reform would be concluded this spring**, ahead of the EU-US ministerial conference which will take place in Riga on 28-29 May.
- The Commissioner underlined that the **US authorities have shown engagement** on the last outstanding issue – access to data for national security purposes. In November 2013, the Commission issued a list of 13 ways designed to improve the agreement.
- The agreement, which allows US companies to collect and use EU citizens data, as long as the companies certify that they comply with EU privacy laws, came under criticism in the wake of Edward Snowden's revelations.

EU: Data protection angle needs to be included in competition investigations

- Speaking at the **8th CPDP Conference** (Computers, Privacy & Data Protection) that took place in Brussels, **Giovanni Buttarelli**, European Data Protection Supervisor, said that **merger and antitrust investigations** should consider more comprehensive decisions that would encompass a **data protection angle**.
- Buttarelli's call for greater cooperation between antitrust and data protection regulators comes as the Commission drafts policies to abolish barriers preventing consumers from taking advantage of the EU's digital single market. The **pressure to impose further regulation on tech companies** comes also from Member States. Last November, **France and Germany** called on the Commission to launch a public **consultation on online platforms** rules.
- Speaking at the same event, **MEP Morten Messerschmidt** (ECR, Denmark) said that companies could be investigated for possible market abuse should they mislead consumers by altering privacy policies.
- **Sophie Moonen** at the Commission's merger unit said that EU regulators are **developing a conceptual framework** to evaluate whether a company's acquisition of data would give it a competitive advantage over rivals.

EU: Commissioner Oettinger calls for global harmonisation of privacy standards

- Privacy will be guaranteed when **governments form a common and global understanding of privacy issues**, Commissioner Oettinger stated at the World Economy Forum in Davos, Switzerland.
- According to the Commissioner, a **privacy agency set up by the United Nations** could assist in developing **global privacy regulation** to enhance security of data across the world.
- The Commissioner claimed that the EU is making every effort to ensure maximum privacy for its citizens, before leading any global initiative for common privacy and security standards.

Copyright

EU: Commission plans to revive the debate on online intermediaries liability

- **Online service providers** (such as search engines or social media) would be obliged to **remove illegal content** under a standard notice and action procedure, according to draft legislative proposals developed by the European Commission.
- These proposals would aim to limit the unlawful spreading of copyrighted material or other illegal content (for example hate speech or abusive content aimed at children) through online platforms and would be part of a **new EU law on digital rights**.
- Despite having failed to pass such measures in the previous legislative term, the Commission plans to revive the debate over the **liability of online intermediaries**.
- The proposals are expected in **early 2016**.

EU: MEP Reda suggests a single set of copyright rules

- A **single binding set of EU rules on copyright** could solve problems of complexity and fragmentation in the application of copyright in Europe, a draft non-binding report by **MEP Julia Reda** (Greens, Germany) suggested.
- The MEP was assigned by the Parliament's Legal Affairs Committee (JURI) to assess whether the existing **EU Copyright Directive** (2001) is outdated and propose legislative changes which the Commission could take into account while drafting its new proposal.
- According to the Rapporteur, this proposal should include the **harmonisation of copyright exceptions** and limitations at EU level, the legalisation of the **use of hyperlinks** as a means to reference works or content online, and a **stronger protection of authors and performers**, compared to other rights holders.
- The release of MEP Reda's report **could influence the Commission's work on copyright reform**, as Commissioner Oettinger will be meeting with representatives of rights holders in consecutive roundtables in February.
- However, any significant **harmonisation of copyright in the EU could face resistance** by some Member States, including France, Germany and Latvia (currently presiding the Council), which have strong national societies of rights holders.

EU: Courts located where the damage takes place are responsible for copyright infringements

- It is **where the damage occurs that defines which court should decide** about a **copyright infringement** claim, said the European Court of Justice on 22 January.
- In a ruling over a case of an Austrian photographer suing a German energy company for unlicensed online use of copyrighted material, the ECJ clarifies that it is unimportant where the infringement takes place (Germany).
- Instead, **what matters for EU judges is where the damage takes place** (i.e. the target audience of the infringer, in this case Austrians who can access a German website).
- However, the EU Court limited the jurisdiction of competent national courts to damages occurred within their respective Member States, not any other foreign jurisdiction.

EU: A fair solution on copyright completes the EU Digital Single Market, underlines Oettinger

- The European Commission would be open to **a levy on Internet giants for monetising the use of copyrighted material in online services**, according to Commissioner **Oettinger**. He suggested that a fair solution should be found among technology companies, copyright owners and publishers, to address this missing piece of the EU Digital Single Market.
- The **Digital Single Market strategy**, set to be presented in May, will comprise a copyright framework overhaul. It would be one of the Commission's tools to **tackle the lack of competitiveness of the EU's digital economy** vis-à-vis American tech giants that are perceived as having challenged incumbent business models across the EU.

Cybersecurity

EU: Latvian Presidency aims for NIS Directive to be approved by July

- In a meeting with the **Parliament's Industry, Research and Energy Committee**, Latvian Transport Minister Anrijs Matīss stated that the three-party talks (Parliament, Council and Commission) on the **proposed Network and Information Security Directive could be held in March**, with the aim of approving the **Directive by July**.