

ISOC European Regional Bureau Newsletter

22 – 28 August 2015

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Data protection

EU: Coalition warns against provisions forcing companies not to comply with third country orders

- The **Industry Coalition for Data Protection (ICDP)** sent a letter to EU Justice Commissioner Věra Jourová, MEP Jan Philipp Albrecht (Rapporteur on the Data Protection Regulation) and the Luxembourg Presidency, raising concerns about a provision of draft regulation (**Article 43a**) which deals with the issue of **data disclosure requests from third countries**.
- As proposed by the Parliament, Article 43a states that lawful data disclosure requests from third country courts, tribunals or regulatory authorities would not be **recognised or enforceable in the EU**, unless they are based on a mutual legal assistance treaty (MLAT) or international agreement. Also, when such requests are based on an MLAT or international agreements, data may only be disclosed following the prior authorisation from the competent Data Protection Authority.
- The ICDP's letter warned that the adoption of a unilateral approach would **create deliberate conflicts of law**, undermining diplomatic relations and the credibility of the EU data protection overhaul. The controversy over the draft provision originated from the fact that companies operating simultaneously across different jurisdictions must comply with the laws of each one, even though they may often clash.
- Instead, the coalition suggested for the matter to be addressed in the **Data Protection Directive** which accompanies the Regulation and deals with law enforcement issues.

EU: New EU-wide rules on data retention are a distant prospect

- Member States are seeking to **strike a balance** between domestic imperatives to retain data for law enforcement and anti-terrorist purposes and compliance with fundamental rights, following last year's annulment of the **EU Data Retention Directive**.
- Despite the fact that some countries have called for a **better harmonisation of national data retention rules**, it seems that there is **no momentum to draft new EU rules**. According to the **Luxembourg Minister of Justice Félix Braz**, at this stage, Member States primarily see the **need for a common analysis of the EU ruling**. The Commission had previously stated that it has no plans to propose a new law.
- Operators active in multiple EU states have pointed to the evolving complexity of national rules but refrained from stating which direction Europe should take on the subject of data retention, internal sources confirmed.
- The **Court of Justice of the European Union** is examining a **legal challenge by Swedish operator Tele2**. Following the EU judgment invalidating the EU Directive, Tele2 stopped retaining subscriber data for law-enforcement and national-security purposes, refusing to comply with an order by the Swedish telecom regulator to resume the collection and storage of data.

Germany/EU: EU data protection rules need improvement in core areas, German specialists say

- In a **statement** published on 26 August, the **conference of German data protection officers** called upon the European institutions negotiating the EU data protection reform to **improve essential points of the proposal**.
- The statement highlighted the necessity to explicitly include in the Regulation the principle of **limiting data processing to the minimum necessary**.
- The conference also stated that **purpose limitation** should not be softened and stressed that **profile creation needs to be subject to tighter rules** by setting limits on the amalgamation and utilisation of personal data.
- Furthermore, the conference advocated in favour of **making data-protection officers mandatory** at companies and authorities across Europe.
- Stating that there is a need for **better protection of EU citizens against third-country institutions**, the conference called for **data transfer** to authorities and courts in third countries to be subject to a **stronger control**.

Open Internet

Russia: Authorities briefly ban Wikipedia

- Authorities in Russia briefly **imposed a ban** on a page on the **Russian version of Wikipedia** relating to charas, a type of hashish, because the page was said to be **violating local narcotics law**. Considering that Wikipedia uses secure **https**, several **IPS had to ban access to the entire website**.
- While the ban was lifted before it could have a wide impact on Russian Internet users, it raised **concerns about the increasing crackdown on Internet freedoms in Russia**.
- Russia's online watchdog **Roskomnadzor** said the decision to rescind the ban came because the forbidden information had been redacted, although Wikipedia stated that the page in question remained the same.
- **Andrei Soldatov**, a journalist and author of Red Web, speculated that the move against Wikipedia might herald a new strategy of **gaining greater control over the Internet by targeting the https protocol**. By threatening a site with bans over single pages, the site in question could be forced off https to ensure that the whole site is not affected when only one page is targeted by a ban. According to Soldatov, Russian administration adopts a **two-fold approach to "bypass" https**: obtaining access to data before encryption, which is reflected into the law on **data storage** that will come into effect on 1 September, and **pressuring services to give up on https altogether**, the example of which was provided this week by the Wikipedia ban.

Germany: Facebook to meet with Justice Minister following criticism over hate speech tolerance

- Reacting to the criticism voiced by the German Minister of Justice **Heiko Maas** with regards to **Facebook's alleged tolerance of hate speech**, the company said it is interested in an exchange with Maas.
- In a letter to Facebook, Maas voiced concerns that while certain content which violates the platform's community guidelines is removed immediately (e.g. photos depicting nudity), racist or xenophobic posts are dealt with less rapidly.

Copyright

EU: Copyright overhaul to include enforcement reform

- In his **answer to MEP Viorica Dăncilă's question** (Romania, S&D) on the respect of intellectual property rights, EU Commissioner for the Digital Economy and Society Commissioner **Günther Oettinger** stated that the **European Commission plans to evaluate the functioning of the 2004**

Intellectual Property Enforcement Directive (IPRED). The Directive's aim was to give right holders more robust protection under civil law.

- The review would specifically assess the need to adapt the Directive's provisions to better meet the **challenges and opportunities posed by the digital economy** and in particular the development of cross-border e-commerce.
- Overall, for the time being there has not been much information about the upcoming EU copyright overhaul except for a reform aiming to **simplify cross-border consumption of content** (e.g. movies, music and books) whilst **ensuring that the creative industries get the support needed** in the transition from traditional technologies to new digital-media platforms. As for how copyright is being protected, the Commission repeatedly mentioned the **liability of intermediaries** such as platforms and ISPs. This approach is linked to the review of the e-commerce Regulation from 2000.
- The **copyright reform proposal** is expected to be presented by the Commission in **December**.

EU: Commission inquires whether TV copyright rules could extend to the web

- On 24 August, the European Commission launched a **public consultation** on the review of the **1993 EU Satellite and Cable Directive**.
- The aim is to assess the current rules and to gather views on a **possible extension of similar rules to web delivery of copyrighted content**.
- The rules aim to make it easier to broadcast across Member States borders, while safeguarding the rights of content owners. The re-transmissions using broadband TV or web-streaming use different rules and new forms of content distribution (e.g. on-demand platforms) fall out of the Directive's scope.
- The consultation ends on 16 November.