

# ISOC European Regional Bureau Newsletter

3 September – 9 September 2016

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## Internet Access

### EU: Roaming Fair Use Policy - Commission publishes draft implementing regulation

- The European Commission released its **draft implementing regulation** on the application of the fair use policy and methodology for assessing the sustainability of the abolition of retail roaming surcharges. It also included the application to be submitted by roaming providers for its assessment.
- The European Commission's initiative to eliminate roaming charges across the EU sets time limits: consumers will be allowed a **roaming period of 30 days at a time** before having to return to their "home network provider". In total, consumers will be entitled to **"at least" 90 days per year**.
- Johannes Kleis, spokesperson for European Consumer Organisation (BEUC), opined the European Commission had set the bar too low. The EU telecoms regulator, BEREC, will provide its formal opinion during the first half of October. The European Commission is expected to adopt the detailed rules on roaming and on the application of the fair use policy by 15 December 2016.
- In a **statement** released on 7 September, Vice-President Andrus Ansip and Commissioner Günther Oettinger clarified that the 90 days minimum was designed to safeguard against abuse - whereby consumers could opt for different territorial operators – and to prevent a reduction in network quality and investments in new bandwidth capacity. They argued that domestic mobile prices risk increasing as operators try to compensate for losses.

### EU: Leaked Copyright proposals receive negative stakeholder response

- Digital Europe, The Software Alliance and Allied for Startups sent a **letter** on 6 September to Digital Commissioner Günther Oettinger expressing their concern over the text and data mining proposals that appeared in the draft version of the European Commission's new copyright legislation.
- The letter stated that restricting exceptions on text and data mining to "public interest research institutions" risked limiting research and analysis opportunities across other sectors.
- Commissioner Oettinger supported plans to grant publishers stronger rights during a speech at the **DLD Europe Conference** on 5 September.
- In the course of his speech, Commissioner Oettinger confirmed the **European Commission's Copyright proposals will be published on 15 September**, rather than the previously announced 21 September. He also added that **on that same date the European Commission will formally adopt the telecom proposals**.

### EU: Telecoms Review

- On the telecom review, different sources willing to remain anonymous have explained that the European Commission will encourage investment and partnerships with utility providers to piggyback on pre-existing infrastructure. The executive will push big companies to open up their physical Internet infrastructure to encourage competitors to set up fast fiber optic cables, in an effort to provide the EU with the Internet speed and quality necessary for initiatives such as self-driving cars. Rivals will also have easier access to undeveloped areas, such as rural parts of Eastern Europe.

#### EU: European Court of Justice rules over publication of hyperlinks on websites

- The European Court of Justice (ECJ) ruled on 8 September that the publication of a hyperlink on a website, involving works under copyright protection and published without the author's consent on another website, does not constitute a "communication to the public".
- The ECJ ruling stated two criteria must be met for this not to be the case: firstly, that there is **financial remuneration** involved; secondly, that the person responsible for publishing the hyperlink **has prior knowledge** that those works were illegally published. In the event that the action was for profit, there would be a presumption of knowledge of illegality.
- The case in question, **Case C-160/15 GS Media BV v Sanoma Media Netherlands BV, Playboy Enterprises International Inc., Britt Geertruida Dekker**, involved two Dutch media groups over photos published online. In this particular case, the link was used to make a profit which means there was a copyright infringement. However, the mere act of hyperlinking copyrighted content is not in itself illegal.
- On the one hand, representatives of big tech companies consider "the court's attempt to punish bad actors has made copyright law more complicated for everyone", as claimed by Jakob Kucharczyk, Director of the Computer & Communications Industry Association for Europe. He considers hyperlinks should not have anything to do with copyright law. On the other hand, artists and creators believe the ruling will set a positive precedent.

#### UK: Three's ad blocking plan - a threat to net neutrality

- The British telecommunications and Internet service provider Three has proposed to offer its 8.8 million customers with the ability to **activate ad-blockers that would target up to 95 per cent of banners and pop-up ads**.
- Three explained that their objective is not to impose a complete ban on mobile advertising, but to provide customers with more control, choice and greater transparency over the content they receive. Customers will be able to choose the adverts they receive by selecting their preferred companies and brands.
- The Body of European Regulators for Electronic Communications (BEREC) said advertisements should not be blocked by networks and published its guidelines on 30 August clarifying how rules issued earlier in the year should be applied. The final word however still lies with the UK regulator Ofcom.

## Trust

#### UK: New report calls into question the Investigatory Powers Bill

- The British digital privacy organization, Privacy International issued a report, which criticizes **the Investigatory Powers bill**. The papers highlighted flaws, such as the insufficient clarity around the UK's surveillance laws. It argued there is still a lack of transparency around the extent of the surveillance powers, bulk powers and the Bill's safeguards and oversight regime.
- In light of ongoing uncertainties, Privacy International requested the House of Lords to introduce a number of amendments in order to remove the bulk powers contained in the Bill.

#### EU: Telefonica's new plan on personal data

- On 5 September, the Chairman of Telefonica, José María Álvarez-Pallete, announced plans to launch a **new platform** in 2017 that would **enable customers to receive financial compensation for use of their personal data**.
- Telefonica's initiative would empower consumers by informing them of the personal data held by companies such as Facebook and Google.
- In December 2015, the European Commission published a new Directive on contracts for the supply of digital content which touches upon the exchange of personal data. Since June, the Directive is under discussion within the Council

#### EU: Negative opinion on the EU-Canada transfer of Passenger Name Record

- In its Opinion of 8 September, Advocate General Mengozzi considered a number of provisions of the draft agreement between the EU and Canada were **incompatible with EU fundamental rights**. He argued **the text could not enter into force in its current form**.
- In 2010, the EU and Canada initiated negotiations on the transfer and processing of passenger name record data (PNR Agreement). The agreement aims to allow the transfer of PNR data to the Canadian authorities for its use, retention and, where deemed necessary, subsequent transfer for the purpose of fighting terrorism and serious transnational crimes.
- The agreement was signed in 2014 and, after request for approval from the Council, the European Parliament decided to take the case before the European Court of Justice. The aim was to ensure that the agreement was fully compatible with EU law, guaranteeing the respect for private and family life and the protection of personal data.
- The Opinion considered certain provisions of the agreement were contrary to the EU Charter of Fundamental Rights such as allowing, beyond what is strictly necessary, the extension of the possibilities for processing PNR data, independently of the public security objective pursued. The same was applicable for the processing, use and retention by Canada of PNR data containing sensitive information.

## Others

#### EU: Ireland will appeal Apple tax bill

- The **Irish government confirmed it will appeal the European Commission ruling**, in which Apple is to pay a €13 billion fine, plus interests.
- Following a debate in the Irish parliament on 7 September, Ireland's two main parties, the governing Fine Gael and the opposition Fianna Fáil, voted in favour of appealing against the European Commission ruling.
- Ireland's appeal will be grounded on the belief that Apple's tax arrangements with the national fiscal authorities do not amount to illegal state aid. The case will take several years to be concluded, according to legal and tax experts in Dublin. The decision could generate public unrest given the size of the penalty. However, at this stage evidence suggests voters agree with the government's intention to defend the tax regime and appeal the Apple ruling.