

ISOC European Regional Bureau Newsletter

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Internet Access

EU: The new EU copyright rules

- The Commission presented on 14 September the second part of its copyright reform package, following the publication of the first part last December. The package includes:
 - **Communication** on promoting a fair, efficient and competitive European copyright-based economy in the Digital Single Market (DSM)
 - **Broadcasting Regulation**
 - **Copyright Directive**
 - Cross-border exchange of accessible formats for visually impaired, blind or print disabled **Regulation** (Marrakesh treaty)
 - Uses of copyright protected works and rights for blind or visually impaired people **Directive** (Marrakesh treaty)
- The **copyright directive**. The directive is structured in three parts:
 - ✓ Part one: **Adapting exceptions** (text and data mining, teaching and preservation of cultural heritage)
 - ✓ Part two: **Improving access to content and licensing practices**
 - ❖ Primarily targeted at cultural heritage institutions for the use of out-of commerce works and cross-border uses of works.
 - ❖ Member States are required to put in place a regular stakeholder dialogue for the entire copyright industry.
 - ❖ Member States will be required to put in place a negotiation mechanism for issues regarding access and availability of audio-visual works on VoD platforms
 - ✓ Part three: **Improving the functioning of the market place**
 - ❖ Neighbouring rights: news publishers will be given reproduction rights, right of communication and the “right of making available” set out in the InfoSoc Directive (Art. 2 and 3.2). The right will expire 20 years after publication.
 - ❖ Value gap: Info Socs need to provide rightholders with the means to track their works, including an effective content identification technology.
 - ❖ Fair remuneration obligations, including transparency obligations, contract adjustment and dispute resolution mechanisms.

Member States will have 12 months to transpose the directive, once agreed.

- The **broadcaster regulation**. Main points:
 - ✓ Extending Country of Origin principle to ancillary online services of broadcasting organisations
 - ✓ Extend principles of Satcab directive to closed retransmissions, e.g. IPTV.
- The biggest criticisms have come from MEPs, associations, lobby groups and companies such as Google which described it as a “backward step”. Copyright for Creativity, EDiMA and DigitalEurope have also expressed their opposition. Julia Reda MEP said the Commission is “completely out of touch” with

how the Internet functions nowadays.

EU: Telecoms Framework Review

- On 14 September, the Commission published its proposal to review Telecom rules in the EU. The package includes:
 - **Directive** establishing the European Electronic Communications Code, which revises the telecoms regulatory framework
 - **Communication** on connectivity for a Competitive Digital Single Market – Towards European Gigabit Society
 - **Communication** on 5G for Europe: an Action Plan
 - **Proposal** for a Regulation establishing the Body of European Regulators for Electronic Communications
 - **Proposal** for a Regulation on promotion of Internet connectivity in local communities
- The Directive establishing the European Electronic Communications Code, proposes:
 - ❖ **Increased competition and predictability for investments:** those who invest in networks (particularly in hard-to-reach areas) and allow access for rivals (particularly smaller players) will be encouraged to do so via financial incentives, regulatory certainty, and long term contracts.
 - ❖ **Spectrum:** a more coordinated approach to spectrum allocation and management to ensure full cross-EU wireless coverage.
 - ❖ **End-user protection:** revised rules will simplify the consumer experience of switching suppliers when signed up to bundles; also guarantees affordable Internet access to vulnerable members of society.
 - ❖ **A safer online environment for users and fairer rules for all players:** new online players offering equivalent services to consumers as their traditional counterparts to comply with security requirements – i.e. ensuring networks and servers are secure; access to emergency service numbers.
- All of this comes within the context of strengthening the powers of the Body of European Regulators for Electronic Communications, BEREC.
- There have not been major criticisms, aside from those coming from certain tech firms. The Computer & Communications Industry Association (CCIA) did warn of the risk of fragmenting the market with 28 different sets of rules and the consumer organization BEUC said it was disappointed with the Commission.

EU: Withdrawal of restrictions on mobile roaming charges

- The widespread public outcry from both consumers and telecoms companies after the draft implementation regulation published last Monday caused **the Commission to withdraw the proposal**. A new version is expected to be released “soon”.
- The draft regulation introduced new fair use rules and proposed to **limit free roaming to 30 days at a time and set a maximum of approximately 90 days per year**. Telecoms experts, such as ETNO or GSAM, felt the 90-days threshold was too high and the rules were too complex.
- The Commission spokesman Alexander Winterstein explained how the Commission had been asked by the European Parliament and the Council to define measures to prevent roaming services being used for other reasons than periodic traveling. The announcement predated the release of the European Commission’s telecoms review.

EU: The sharing economy regulation in need of further clarity

- The high-level Council working group formed by attachés from member states agreed on Monday there is a **need for further discussions** around how the sharing economy should be regulated in the EU. National representatives oppose further regulation but **want a more in depth understanding of consumer protections and liability around Internet platforms**.

- The Commission published guidelines in June on the sharing economy, aiming to provide EU countries with further guidance on the application of EU law in such a fast-growing sector. The text will be further discussed at the Competitiveness Council meeting to be held on 29 September. Commissioner for Transport, Violeta Bulc, is also expected to release her own sharing economy report around late September.

EU: Preliminary findings of investigation into e-commerce sector

- The results of the preliminary findings of the sector inquiry into e-commerce provide an overview of the competition market trends and highlight potential competition concerns. Results show two in five retailers suffered from some form of **recommended or restricted prices from manufacturers**, and one in five are contractually **restricted from selling on online marketplaces**. In addition, ten per cent are unable to sell to customers in other countries.
- **High costs and unclear tax rules** stop online retailers from selling to neighboring countries, while copyright limitations can reduce the sale of digital content.
- DG Competition is requesting feedback from stakeholders based on the findings presented in the preliminary report. Stakeholders may submit their comments before the 18 November 2016. The Commission is expecting to publish the Final Report in the first quarter of 2017.

EU: Eurobarometer surveys on Internet use

- The Commission published two **Eurobarometer surveys** on 14 September. The first intends to analyze how Internet users access (whether in digital format) music, films/TV series, images and news. The second shows the trends of Internet usage on people between 15 to 45 years old, to access music, films/TV series, images and news.

EU: European Court of Justice rules on copyright infringement by Wi-Fi network users

- Operators of a shop offering **free and public access to a Wi-Fi network were not liable for potential copyright infringements committed by third parties** using the network. The ruling of 16 September by the European Court of Justice also clarified that the operator could however be required to protect its network by means of a password as a measure to prevent such infringements.

EU: Comparative study on network neutrality rules in Europe and in the US

- Bruegel has published a paper on the **similarities and differences between the European and American net neutrality rules**. The main difference, the paper concludes is that the European version is more innovation-friendly.

Russia: National antitrust regulator refuses Google's request for extension in Android case

- The Russian antitrust regulator has **refused to give Google more time to change its distribution of the Android operating system** in the Russian market, having lost a court challenge last month. On 17 August Google was given little more than one week to comply with a ruling from the Moscow Appellate Court condemning it for breach of national competition rules. Regulators will now start an administrative investigation into the company for failing to execute the ruling.
- Google has already said they will appeal to the Russian Court of Cassation.

Trust

EU: Schrems class action referred to the European Court of Justice

- A **high-profile class action** involving Austrian law student Max Schrems over **Facebook's** privacy rules **has reached Luxembourg**. The European Court of Justice will rule on whether Max Schrems can bring a class action suit on behalf of European or even worldwide users of the social platform. The potential class action status would involve 25,000 complaints against Facebook related to privacy rights.

- Schrems was also the author of the complaint involving Facebook that is said to have set in motion the downfall of the Safe Harbour data sharing agreement.

EU: Central banks join efforts to combat cybersecurity

- The world's biggest central banks have launched a **task force to consider setting broad rules to protect the network of cross-border banking from cyber-attacks**. The initiative could set new cyber security standards around global inter-bank transfers.

UK: Report reveals personal data security breached nearly 9,000 times in one year

- A report published by the National Audit Office (NAO) revealed the 17 largest government departments tracked 8,995 data breaches in 2014-15. Only 14 of these breaches were reported to the Information Commissioner's Office.
- The **HM Revenue & Customs** was the worst offender with 6,041 breaches with just three reported. Under the Data Protection Act, departments can decide which personal data breaches to report. The report also found 73 teams and 1,600 staff holding data security responsibilities had been operating without cohesion. The NAO said it was unable to quantify the seriousness of the breaches that were not disclosed.

UK: A more active defence of cyberspace

- In his first public speech as Head of the UK's new **National Cyber Security Centre (NCSC)**, Ciaran Martin, said the centre due to launch next month **will assume the role of protecting government and critical infrastructure**. It plans to develop automated defences to offer protection from high-volume but sophisticated cyber-attacks.
- In addition, the **intelligence agency GCHQ plans to launch a national firewall to block malicious websites and emails**. GCHQ will work with Internet service providers such as BT, Talk Talk and Virgin Media to filter websites set up by scammers that download malware onto victims' computers. It will set up a national domain name system that can be used to block suspicious sites. An additional tool has been created to intercept malicious emails that appear as sent from government addresses but in fact belong to cyber criminals.

Others

EU: 2016 State of the Union speech

- European Commission President Jean-Claude Juncker delivered his second annual **State of the Union speech** in the European Parliament on 14 September. After presenting the Commission's priorities for the coming year, President Juncker emphasized areas for greater cooperation between the European institutions and Member States.
- President Juncker presented a series of new initiatives:
 - ❖ Capital Market Union Roadmap
 - ❖ Investment Plan for Africa and the Neighbourhood
 - ❖ European Solidarity Corps
 - ❖ European Travel Information System: Automated system to determine who will be allowed to travel to Europe
 - ❖ European Defence Fund to stimulate innovation in the defence sector
- The speech addressed unemployment levels, Brexit, European debt, the need to secure high levels of personal data protection, and the growing role of digital technologies and digital communications.
- President Juncker announced the proposals on copyright and telecoms. He also explained the EU will create a **legal framework to promote the expansion of high-speed Internet**. More specifically, he talked about equipping "every European village and every city with free wireless Internet access" within the next decade. He did not however provide further details on how the EU would achieve this goal.

- MEPs were divided in their impressions of the speech and some noted the President's failure to deliver on last year's promises.

EU: Commissioner Vestager explains the Apple ruling

- Commissioner Vestager explained at the European Parliament on Wednesday that her decision on the case followed an in-depth investigation **after two tax rulings issued by Ireland in Apple's favour**. Vestager considered Apple had been granted a **selective advantage for over twenty years**. She also pointed out that the illegal state aid decision does not question Ireland's tax regime, or its corporate rate tax