

# European Media Policy



A Newsletter from NORDICOM

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## Digital Single Market

### EU Commission Presents Digital Strategy

On 6 May the European Commission announced its long-awaited [strategy for a Digital Single Market \(DSM\)](#). The plan, a priority for the EU executive over the next few years, is intended to ensure that Europe does not fall behind internationally in the internet age.

The aim of the Digital Single Market is "to tear down regulatory walls and finally move from 28 national markets to a single one. A fully functional Digital Single Market could contribute €415 billion per year to our economy and create hundreds of thousands of new jobs", says the Commission.

The strategy encompasses 16 central measures to be implemented by the end of 2016. Among other things, the Commission will propose to end "unjustified geo-blocking" and a "modern, more European" copyright law "to reduce the differences between national copyright regimes and allow for wider online access to works across the EU, including through further harmonisation measures."

The EU Commission will also present an ambitious overhaul of EU telecoms rules, review the audiovisual media framework "to make it fit for the 21<sup>st</sup> century" and comprehensively analyse the role of online platforms (search engines, social media, app stores, etc.) in the market.

More on these plans in separate news items below.

#### DSM:

### Some Positive Reactions But All May Not Be Pleased

Immediate reactions to the EU Commission's Digital Single Market strategy were relatively positive. But some controversy can be expected.

The EU's Culture Ministers held a debate on the strategy at their meeting on 18-19 May. Ministers supported the cross-border portability of content, the fight against illegal content and the need to find the right balance on copyright. They also stressed that the territoriality principle is important for content creation and that geo-blocking might sometimes be justified, in particular as far as small markets are concerned.

The European Film Agencies Directors' Association (EFADs) [welcomed](#) the DSM strategy, noting that messages from the audiovisual and cinema sector seem to have been heard. "On the whole, the Commission takes a more moderate and balanced approach on copyright reform", recognising the need to ensure that the financing of films, authors' rights and cultural diversity are not undermined."

EFADs also welcomed the emphasis on enforcement issues and the announcement of an assessment of the role and responsibilities of online platforms. However, they remain concerned about the potential implications of the Commission's plans. Any prevention of geo-blocking would undermine territorial licensing and have significant negative impacts on the film industry, the association underlines.

The GESAC, which gathers 34 author's societies from across Europe, welcomed the intention of the Commission to clarify the conditions for the use of copyright protected works by online intermediaries. IMPALA, the independent music companies' association, made similar comments, also welcoming the Commission's bid to tackle the wider issue of the role of online platforms and intermediaries.

The latter may, however, not be very happy about these plans.

### EU Commission Crusade Against Tech Giants

As part of its Digital Single Market strategy the EU Commission has announced that it will "comprehensively analyse the role of online platforms (search engines, social media, app stores, etc.) in the market".

The analysis will cover issues such as the non-transparency of search results and of pricing policies, how they use the information they acquire, relationships between platforms and suppliers and the promotion of their own services to the disadvantage of competitors – to the extent that these are not already covered by competition law. The aim is “to evaluate if further action is needed”.

Already before this announcement the European Commission had its eye on Google and other tech giants. Politicians and businesses across Europe have been calling for the market power of dominant US tech firms to be curbed to help Europe's fledgling web industry compete and in recent months the EU Commission has launched a veritable crusade against some of the Internet giants, leading to accusations of protectionism from U.S. President Barack Obama.

In 2010 the Commission began investigating Google over complaints made by 18 European and US companies regarding comparison shopping. They accused Google, which controls about 90% of the internet search market in Europe, of abusing its dominant position by promoting its own services and depriving them of business opportunities - an issue that was also raised by the US Federal Trade Commission (FTC).

Several fruitless attempts were made to settle the case and in April this year the EU Commission had had enough and sent Google a Statement of Objections, effectively a charge sheet (to which it can respond).

Here the Commission alleges that the company has abused its dominant position by systematically favouring its own comparison shopping product in its general search results pages. Its preliminary view is that such conduct infringes EU antitrust rules.

At the same time the Commission formally opened a separate antitrust investigation into Google's conduct as regards the mobile operating system Android. The investigation will focus on whether Google has entered into anti-competitive agreements or abused a possible dominant position in the field of operating systems, applications and services for smart mobile devices. [Read more](#).

The Commission is keeping an eye on Amazon, too. In June it opened [a formal antitrust investigation](#) into certain business practices by Amazon in the distribution of electronic books (“e-books”). In particular it will investigate certain clauses included in Amazon's contracts with publishers, which may make it more difficult for other e-book distributors to compete with Amazon by developing new and innovative products and services.

The EU Commission is already investigating Amazon's tax strategies in a separate case. Amazon – as well as Netflix – will also be among web companies under scrutiny in a wider probe into the e-commerce sector.

## **US Government Not Amused**

Not surprisingly, the US government is hardly thrilled by the EU Commission's campaign against American tech champions. At the end of July US Secretary of Commerce Penny Pritzker traveled to Brussels to meet with EU government and business leaders and discuss matters related to the digital economy.

[In a column](#) written for the news service Euractiv Ms Pritzker just after these meetings she sums up her thoughts. Commenting on the European Commission's Digital Single Market (DSM) strategy she underlines: “While a Digital Single Market will make it easier to do business within Europe, American government and industry leaders believe a successful DSM strategy must also improve the conditions for US firms engaged in transatlantic trade and investment.”

And she warns: “The American government and industry are watching the development of specific policies under the DSM – in areas such as Internet platforms, copyrights, and privacy – to ensure that their effects will encourage stronger commercial ties between the US and Europe...”

## Google Launches Charm Offensive in Europe

Google takes a slightly softer approach to its 'assailants' in the EU. From parties at Brussels hot spots to face time with politicians the company spent 3.5 million euros on lobbying at the European Union last year, a 480 percent increase over 2011, making it one of the EU's biggest corporate spenders on lobbying, according to the news service Politico.

Google is also courting European newspaper publishers with whom the company has had conflicts regarding its news search feature Google News. (Publishers have demanded payment for the snippets of text used and lobbied for legislation.)

In April Google announced the launch of a [Digital News Initiative](#) (DNI) in partnership with eight leading European newspapers which will advise on the spending of a 150 million euro fund to help news organisations "demonstrate new thinking" in digital journalism.

The DNI is focusing on three key areas: exploring product developments to increase revenue, traffic and audience engagement; supporting and stimulating innovation in digital news journalism; and training and research. In the latter area Google will invest in new training and development resources for journalists and newsrooms across Europe, and fund research into the changing media landscape.

Among the eight founding partners of the DNI are The Financial Times, The Guardian, El Pais, La Stampa and Die Zeit. Since its launch, over 1000 organisations from across Europe have expressed interest in one or several of its programmes, says Google.

## Copyright

### Copyright Reform: Commission's Aim to Widen Access to Culture Online

The European Commission has announced that it will present legislative proposals to modernize EU copyright rules before the end of 2015. The present rules date back to 2001, ancient history in the digital age.

In the [Digital Single Market](#) strategy the Commission explains that it wants to reduce the differences between national copyright regimes and allow for wider online access to works across the EU, including by means of further harmonisation measures. "The aim is to improve people's access to cultural content online – thereby nurturing cultural diversity – while opening new opportunities for creators and the content industry."

In particular, the Commission wants to ensure that users who buy films, music or articles at home can also enjoy them while travelling across Europe. "If you have legally paid for an online service while at home, you should be able to access it in another EU country."

It also aims to harmonise exceptions for important activities such as research, education, text and data mining, to look into interactions between the creative sector and digital platforms and clarify the rules on use of copyright-protected content by online intermediaries.

Furthermore, the EU Commission plans to modernize the enforcement of intellectual property rights, focusing in particular on commercial-scale infringements.

The film industry has been concerned that the European Commission would change the principle of the territoriality of rights, but the Commission declares that it won't.

"The Commission does not want to change this principle and understands it is important for the creative sector, especially for the film industry. Each film has its distribution strategy, its release windows system. The Commission aims to facilitate the licensing of rights and ensure a better access in the digital world. This means, for example, that if a film is available on a video-on demand service in an EU country, Europeans outside the country can also pay to see it. This is not about opening access to all content for free," explains the European Commission in a [fact sheet](#).

## Sky UK and US Film Studios Charged with Anti-Trust Violations

In a recent controversial anti-trust case the EU Commission however seems to question the territoriality principle.

At the end of July the Commission sent a [Statement of Objections](#) – a list of formal charges - to Sky UK and six major US film studios: Disney, NBCUniversal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros.

"European consumers want to watch the pay-TV channels of their choice regardless of where they live or travel in the EU. Our investigation shows that they cannot do this today, also because licensing agreements between the major film studios and Sky UK do not allow consumers in other EU countries to access Sky's UK and Irish pay-TV services, via satellite or online. We believe that this may be in breach of EU competition rules," explained Margrethe Vestager, the EU Commissioner in charge of competition policy.

The Commission has previously expressed concerns regarding licensing agreements between the film studios and other major European broadcasters (Canal Plus of France, Sky Italia of Italy, Sky Deutschland of Germany and DTS of Spain) and continues to examine cross-border access to pay-TV services in these Member States.

The EU commission also mentions that the [Satellite and Cable Directive \(93/83/EEC\)](#) will be reviewed and a public consultation will be launched after the summer. In particular, it will assess if the scope of the directive needs to be widened to cover broadcasters' online transmissions.

In an analysis of the pay-TV/film studios case the news service [Politico writes](#) that a negative decision "could prove highly disruptive for Europe's pay-TV sector", a market worth some €50 billion annually. And the implications of the case could be much more wide-reaching.

"The impact of the Commission's analysis is destructive of consumer value and we will oppose the proposed action vigorously," Disney said in a statement in response to the charges.

## EP Adopts Watered-Down Report on Copyright

In January a draft report laying out an ambitious reform agenda for the overhaul of EU copyright was presented by German Pirate Party MEP Julia Reda in the European Parliament's Legal Affairs committee. On 9 July the report – which caused much debate and controversy – was adopted in Plenary. But only after substantial changes.

Already in June the Legal Affairs (JURI) committee adopted a significantly more conservative position on the future reform than the one proposed by Julia Reda. Several proposals from the draft report were toned down in the final version after pressure from rights holders in certain countries with strong copyright protection laws, such as France.

Among the proposals rejected by MEPs was the complete harmonisation of exceptions and limits to copyright across the EU 28. Member states will thus preserve the right to legislate to protect their own cultural and economic interests.

The committee also threw out Julia Reda's proposal to cut the duration of copyright protection from the current 70 years after the author's death down to 50.

Many had feared that an overhaul of geo-blocking rules would undermine the territoriality of copyright within the European Union. But this thorny issue was also softened in the final text. MEPs chose to maintain the territoriality principle.

The draft adopted in the Legal Affairs committee included an amendment requiring prior authorisation for taking photographs of works located in public spaces for commercial purposes. This would overturn the so called "freedom of panoramas" as it exists in numerous EU member states.

This amendment worried many in the media sector, including the International and European Federations of Journalists, which warned that it could "hamper the right of press photographers to take photographs in public spaces".

The "panorama" amendment was however rejected in the Plenary vote on 9 July, as was another controversial amendment for an ancillary copyright for press publishers similar to the so-called "Google-tax law" in Germany.

According to this law press publishers have a right to ask for compensation for longer snippets from their news content when published, for example, on the Google news website. A similar law was passed in Spain, but this merely resulted in Google News stopping its operations there altogether.

(The EU Commission may however reintroduce such a provision in its forthcoming copyright proposal. Digital Commissioner Gunther Oettinger has on several occasions signaled that he is in favour of ancillary copyright law like the one in Spain.)

Among the recommendations adopted by the EU Parliament in July:

The EU Commission should look at the possibility of providing an exception for libraries to lend works in digital format and for scientists to mine text and data, introduce measures to ensure fair and appropriate remuneration for all categories of right-holders, including with regard to digital distribution of their works, and improve the contractual position of authors and performers in relation to other right-holders and intermediaries.

Parliament also wants the Commission to study the potential impact of a single European copyright title that would cover the whole of the territory of the EU and calls on the Commission to "develop a set of clear and comprehensive consumers' rights".

Read the [adopted text](#), which is intended to feed into the upcoming copyright proposals by the European Commission. It is, however, only an own-initiative, non-legislative report.

## **Media – general**

### **Parliament:**

#### **EU-US Trade Deal Must Not Endanger EU Media Policy**

In recent months there have been many protests in Europe against the Transatlantic Trade and Investment Partnership (TTIP), the trade deal between the EU and the US under negotiation. MEPs, too, seems rather wary of the deal.

In July the European Parliament presented its views on TTIP to the European Commission, which is negotiating for the EU. An EU-US trade deal must open up US market access for EU firms but not undermine EU standards regarding protection of EU consumer data, health and safety, said the MEPs. A number of media-related issues were also mentioned in the [recommendations](#).

The negotiators should ensure "that the parties, reserve their right to adopt or maintain any measure (in particularly those of a regulatory and/or financial nature) with respect to the protection or promotion of cultural and linguistic diversity...as well as media freedom and media pluralism, irrespective of the technology or distribution platform used and keeping in mind that the mandate given to the European Commission by the Member States explicitly excludes the audiovisual services", says the Parliament.

Also important is "to specify that nothing in the agreement shall affect the ability of the EU or EU Member States to subsidise and provide financial support to cultural industries and cultural, educational, audiovisual and press services", as well as "to confirm that fixed book price systems and price fixing for newspapers and magazines will not be challenged by the obligations under the TTIP agreement."

The Parliament however did not heed the advice of its Legal Committee to exclude copyright from the TTIP negotiations. In the final text it merely recommends that the negotiators "ensure that TTIP includes an ambitious, balanced and modern chapter on and precisely defined areas of intellectual property rights... without impeding the EU's need to reform its copyright system and while ensuring a fair balance of IPRs and the public interest".

They should also ensure that the IPR chapter "does not include provisions on the liability of internet intermediaries or on criminal sanctions as a tool for enforcement".

The Parliament's resolution is only a political indication for the Commission. The assembly is not involved in the negotiations, but the deal needs the backing of both the European Parliament and the EU Council to enter into force.

### **Trade Secrets Directive:**

#### **Still a Threat to Journalists and Whistleblowers?**

In recent months a proposed EU trade secrets directive has come under strong criticism from media and civil society organisations. Their main worry is that the Commission's draft does not provide a clear exemption for journalists and whistleblowers who publish or reveal information in the public interest.

MEPs in the European Parliament's Legal Affairs Committee, which has been discussing the issue, seem aware of their concerns. Under the draft rules, as amended by this Committee in June, victims of trade secret theft or misuse will not have the right to redress if a trade secret was acquired, used or disclosed for purposes such as:

- ⤴ to make legitimate use, in accordance with the EU Charter of Fundamental Rights, of the right to freedom of expression and information, including media freedom
- ⤴ to reveal misconduct, wrongdoing, fraud or illegal activity, provided that the respondent acted in the public interest (such as public safety, consumer protection, public health or environmental protection);

MEPs also inserted a specific provision stressing that the legislation should not affect the freedom and pluralism of the media. [Read more](#)

The European Federation of Journalists (EFJ) and other media organisations however remain worried. "The voted text still includes ambiguous wordings, which require journalists, while already bound by professional ethics, to make "legitimate use" of the information they have acquired. This could lead to prior self-censorship if journalists are uncertain whether their capacity to investigate can be questioned on the basis of this Directive.

This, combined with a very broad definition of "trade secrets", creates legal uncertainty for investigative reporting which will have a chilling effect on the media. European organisations representing the media sector insist that such questions can only be evaluated by a judge following a disclosure.

It is also important to ensure that Member States can expand the scope of the media freedom exception in accordance with their national and constitutional rules. In this respect, the text voted by the Parliament sorely lacks clarity", write the media organisations in a [joint press release](#).

The directive text will now be discussed in trilogue negotiations between the European Parliament, the Council and the Commission before the first reading in Parliament, probably in November.

## **Audiovisual**

### **AV Directive:**

#### **What Changes Are Needed?**

Although only five years old, the EU's Audiovisual Media Services Directive (AVMSD) already seems outdated and in need of a makeover.

As part of the new Digital Single Market strategy, the EU Commission has begun an assessment of the directive and plans to bring forward a regulatory proposal in 2016. The review will focus on issues such as the roles and responsibilities of all market players,

measures for the promotion of European works, advertising and the protection of minors.

"We will look closely at whether the current system is working well and, if not, propose solutions for the future. We will focus on simplification of the rules, particularly in the field of advertising and on protection of minors, the promotion of European works and freedom of information", explained Günther H. Oettinger, EU Commissioner for Digital Economy & Society at a meeting in June.

As part of the assessment of the directive the Commission recently launched a [public consultation](#) to seek the views of all interested parties, including viewers. Among the questions asked:

- ⤴ what roles and responsibilities should market players (like TV broadcasters, on-demand service providers, internet services, telecom operators, etc.) have?
- ⤴ how can we best protect viewers (particularly children), promote European works and access to information, regulate advertising in the audiovisual online world?

The current directive does not apply to content delivered over the Internet from countries outside the European Union targeting EU Internet users. The public consultation seeks feedback on whether this system works and whether and how operators with no establishment in the EU could be covered by the rules.

### **EU Council:**

## **AV Directive Must Not be Misused to Disseminate Propaganda**

The EU's Culture Ministers expressed some thoughts regarding the upcoming review of the Audiovisual Media Services directive (AVMSD) [at their Council meeting in May](#). A few of their observations:

The freedoms guaranteed by the AVMS directive must not be misused to disseminate hate speech, propaganda or disinformation.

The country of origin principle is still a cornerstone of European audiovisual policy "but some exceptions could be foreseen, for instance when fundamental values, freedoms and democracy are seriously threatened".

The procedure to be followed by member states when they are the target of unacceptable content coming from another member state should be streamlined and accelerated, "in particular in certain cases of services of non-EU origin licensed in one member state yet targeting the audience of another member state. Effective cooperation among audiovisual regulatory authorities is crucial in this respect."

(The latter has probably something to do with Latvian complaints that many Russian channels broadcasting to Latvia are registered in the UK and in Sweden).

## **European Film Doing Well**

The market share for European films reached a record high in 2014 and the animation industry is an increasingly important part of the creative sector in Europe, show two recent studies.

The market share for European films leapt from 26.2% to 33.4%. This is the highest level recorded since 1996, says [a report](#) published in May by the European Audiovisual Observatory.

EU production levels have been steadily increasing over the past decades. This trend continued in 2014, as the estimated number of European feature film productions increased from 1 587 to 1 603 films, which represents yet another record high. About 32% of European feature films were produced as co-productions while 68% were national productions.

Digitisation seems to have proceeded rapidly. A total of 1 858 additional EU screens converted to digital projection systems in 2014, bringing the total to 27 899 digital screens. This means that by the end of 2014 about 92% of the EU's total screen base had been digitised.

The European animation industry appears to be very promising. In June the first major study



mapping this industry – carried out by the European Audiovisual Observatory on behalf of the European Commission's Creative Europe/ MEDIA programme – was presented.

The [study](#) shows that this part of the EU creative sector is the branch of the audiovisual sector with the greatest potential in terms of audience reached and largely contributes to cultural diversity in Europe and to the circulation and promotion of European culture worldwide. Among the findings:

In Europe, from 2010 to 2014, 14.7% of all cinema admissions in Europe in 2014 went to animation films and 20% of all tickets purchased for animated films in 2014 were for films produced in Europe.

On average, 50 animation films were produced in Europe every year between 2010 and 2014; France, Spain and the UK were the main producers of animation, accounting for 40% of the overall production in Europe.

By autumn 2015, the Observatory will produce a more comprehensive study on this subject with additional information on public funding, training activities, the value of the industry, etc.

#### **MEPs:**

### **More Support for Distribution of European Films!**

In Europe, 70% of public funding for films goes to production, but only 1% to distribution and promotion. In order to improve the circulation of European films on both European and international markets, public funding for production and distribution needs to be better balanced by increasing support for development, promotion and international distribution, says the European Parliament in a resolution adopted at the end of April.

MEPs note "the growing success of high-quality European TV series and the strategic importance of further encouraging the production, distribution and promotion of such series on the European and global markets". (Could they be thinking of the highly popular Scandinavian crime series...?)

Member states should do more to support film festivals and travelling cinemas, and European or national aid for small independent cinemas to enable them to acquire the audiovisual equipment necessary for digital films is also encouraged. The EU media and Creative Europe programmes should be better used, notably to finance SMEs in this industry and to fund the subtitling and dubbing of films.

The European Commission seems to be particularly interested in the latter subject. In July it launched a €1 million hunt to find out how crowdsourcing or other innovative solutions can reduce the costs of obtaining subtitles and increase the exposure of European films in video on demand (VOD) services available in the EU. Applications are open until 25 September for projects to run in 2016. [Read more](#)

## **Internet**

### **Agreement on Net Neutrality Rules**

On 30 June at 2:20 in the morning, after 12 consecutive hours of negotiations, MEPs and EU ministers finally struck an informal deal on roaming fees and access to the Internet. A week later [the final text](#) was given the nod by the Council. The formal vote in the European Parliament is expected in September or October this year.

By the look of it, the EU institutions have tried to balance the interests of industry and consumers. The open internet rules – which will be applicable from 30 April 2016 – imply that operators will have to treat all traffic equally when providing internet access services. The text also enshrines the principle of users' right to access and distribute content of their choice on the internet.

Operators may use reasonable traffic management measures to keep the internet running, but such measures must be based on objective technical requirements, not on commercial considerations. Blocking or throttling will be allowed only in a limited number of circumstances, for instance to counter a cyber-attack or deal with exceptional or temporary traffic congestion.

An operator would nonetheless be able to offer so-called specialized services with improved internet quality needed for services such as IPTV, high-definition videoconferencing, telesurgery and connected cars. But only on condition that this does not have an impact on general quality of internet access services. [Read more](#)

Being part of a regulation the open Internet rules will be the same in all EU Member States, but it is national regulatory authorities that will monitor and enforce the rules. These regulators are also empowered to set minimum quality of service requirements on Internet access providers and other measures to ensure that all end-users enjoy an open Internet access service of good quality.

## **Net Neutrality Rules: Mixed Reviews from Digital Rights Activists**

Digital rights activists, who have been very critical of previous versions of the EU net neutrality rules, seem relatively pleased with the final text. They say Parliament's negotiators ensured that most of their earlier worries were addressed, [reports the news service Politico](#).

"If you read the text, the general principles of net neutrality are respected," said Estelle Massé, a policy analyst at [Access](#), a pro net-neutrality group. "There is no possibility of a slow and fast lane."

Indeed, the new EU rules seem tougher in some respects than those introduced in the U.S. by the Federal Communications Commission earlier this year.

For example, the final EU text provides tight guidelines for special services, such as telesurgery, that may require higher-quality or faster Internet access. Some experts have interpreted the equivalent part of the U.S. laws as being too vaguely worded, says Politico.

Both Massé and Joe McNamee, the executive director of European Digital Rights (EDRi), however criticized the fact that the regulation does not address the issue of zero-rating, where an operator offers free data for a specific service, for example its own video-on-demand streaming service, but not for its rivals'.

Several MEPs, too, are disappointed that they lost the fight for a zero-rating ban.

"We will still have to vote on the text and this can be amended. So the last word has not been said," said liberal MEP Marietje Schaake from the Netherlands where zero-rating is currently banned.

Access and EDRi also expressed concern over the potential for patchy enforcement, with the strength of the net neutrality rules riding on the willingness of national regulators to apply them. This seems to be one area where net neutrality advocates and telecoms agree.

## **Internet Governance: Calls For Input From Citizens**

Should the Internet be regulated in any way? If so, who should decide the rules? And how could they be enforced? are questions many people – including policymakers – are asking themselves these days.

In April the EU and the US held their 13<sup>th</sup> bilateral Information Society Dialogue. Here participants stressed the importance of an inclusive, open, and multi-stakeholder approach to Internet Governance. They affirmed their support for the [Internet Governance Forum \(IGF\)](#) as a valuable global, multi-stakeholder platform for discourse on key themes and developments on Internet issues, and called for extending the mandate for the IGF going forward.

"The multi-stakeholder model of Internet Governance is essential to preserving the free and

open Internet, and further developing the global economy”, says the [statement](#) highlighting issues discussed and agreed at the meeting.

But what is the opinion of ordinary citizens who use the Internet for just about every task and information need these days? What are their thoughts about internet governance?

In recent months there have been many calls to find out more about this and for formulating a global, digital Magna Carta. ([Magna Carta](#) was granted by King John of England (exactly) 800 years ago and established that the king was subject to the law rather than being above it.)

The idea began to spread in March 2014 when Tim Berners-Lee, who led the team that developed the World Wide Web at Cern in Geneva, [held a TED talk](#) on this subject.

In his talk he warns us that there’s a battle ahead. Eroding net neutrality, filter bubbles and centralizing corporate control all threaten the web’s wide-open spaces. It’s up to users to fight for the right to access and openness. The question is: What kind of Internet do we want? “Let’s crowdsource a Magna Carta for the web”, he says.

Those interested in keeping tabs on what policymakers are thinking and doing with regard to internet governance – and want to influence policy – can use a tool recently developed by the European Commission.

[giponet.org](#) “is designed to help you better understand global developments on internet policy and governance. Everyone interested in Internet Governance can submit ideas, either to [giponet.org](#), or during one of webinars and [workshops](#) which are planned. This way you can help shape it to fit your needs and interests”, explains the Commission.

## **Privacy/Data Protection**

### **European Citizens Worry About Their Online Data**

The protection of personal data remains an important concern for citizens, according to [a new Eurobarometer](#) on data protection published by the European Commission in June.

The central finding of the survey shows that trust in digital environments remains low. Two-thirds of the respondents (67%) say that they are worried about having no control over the information they provide online, while only 15% feel they have complete control.

At the same time, six out of ten respondents say that they do not trust online businesses (63%), or phone companies and internet service providers (62%).

Respondents also have serious questions about the consequences of their data being collected, processed and used. Seven out of ten people are concerned about their information being used for a different purpose from the one it was collected for.

Citizens overwhelmingly believe that the protection of personal data should not be confined by borders. Nine out of ten Europeans (89%) believe that they should have the same level of protection over their personal information, regardless of the country in which the authority or private company processing their data is based.

The Eurobarometer survey was conducted in March 2015 with almost 28,000 face-to-face interviews across the European Union. [Read more](#)

### **Growing Resentment in U.S. Against Abuse of Personal Data**

Many say that Americans are much less worried about privacy issues than Europeans are. But now concern about such issues seems to be growing in the United States too. Not only as a result of revelations about government surveillance tactics, but also as a reaction against the privacy cost of “free” online services.

“Ad-financed Internet platforms aren’t free, and the price they extract in terms of privacy and control is getting only costlier”, wrote Zeynep Tufekci in [an opinion piece in the New York Times](#) in June.

Facebook makes about 20 cents per user per month in profit. "I would, as I bet many others would, happily pay more than 20 cents per month for a Facebook or a Google that did not track me, upgraded its encryption and treated me as a customer whose preferences and privacy matter", she remarked.

Two days later the online publisher Tech Crunch [wrote](#) about a new research report from the University of Pennsylvania on U.S. consumers' attitude to the collection of personal data. The report contests the commercial claims that web users are happy to trade privacy in exchange for 'benefits' like discounts. On the contrary, asserts the report, a large majority of web users are not at all happy, but rather feel powerless to stop their data being harvested and used by marketers.

"By misrepresenting the American people and championing the tradeoff argument, marketers give policymakers false justifications for allowing the collection and use of all kinds of consumer data often in ways that the public find objectionable," the authors write in their report, entitled [The Tradeoff Fallacy: How marketers are misrepresenting American consumers and opening them up to exploitation](#).

Then, in July, the American Consumer Watchdog sent the US Federal Trade Commission (FTC) [a formal complaint](#) saying that Google's failure to offer the 'right to be forgotten' in the United States, as it does in Europe, is "unfair and deceptive" and urged the FTC to act.

## **EU Data Protection Reform: Council Finally Agrees on Text**

After having dragged their feet on the much-needed reform of EU data protection rules for many months, EU member states in June finally agreed on [a Council "general approach"](#) to the Commission's proposal for a general data protection regulation. Soon thereafter triologue negotiations with the European Parliament and the Commission were launched to finalize the reform.

The modernization of EU data protection rules – dating from the digital stone age (1995) – is a top priority of the European Commission and a main pillar in its Digital Single Market strategy. The European Parliament voted on its position over a year ago.

The Council's General Approach includes agreement that the regulation will establish a single set of rules on data protection, valid across the EU. When citizens no longer want their data to be processed and there are no legitimate grounds for retaining it, those responsible for the processing of data must delete it, unless they can show that it is still needed or relevant.

Companies based outside of Europe will have to apply the same rules when offering services in the EU and more powers will be given to independent national data protection authorities to effectively enforce the rules and fine companies that violate them. This can lead to penalties of up to €1 million or up to 2% of the global annual turnover of a company.

Furthermore, the rules will establish a 'one-stop shop' for businesses and citizens: companies will only have to deal with one single supervisory authority, not 28, and individuals will only have to deal with their home national data protection authority, even if their personal data is processed outside their home country. (For more details see the Commission's [fact sheet](#)).

This may sound pretty good, but many seem critical. Even among the member states themselves a number of officials voiced concerns over the draft legislation and said they hope triologue talks will help beef up articles on data processing, data transfers outside the EU, the one-stop-shop measure for addressing data complaints and other fraught points, reports the news service Euractiv.

Polish, Bulgarian, Danish and other ministers criticised article 6.4 of the [draft regulation](#), which allows companies to process data for reasons other than the ones users originally agreed to, provided companies have a "legitimate interest".

Austria and Slovenia gave the draft law a thumbs down. "In Austria, we're very much wedded to the idea that our high level of data protection must not be watered down," said Austrian Minister of Justice Wolfgang Brandstetter.

## Much Criticism of Council Approach

The EU Council's General Approach to the data protection reform described above has met with much criticism outside the Council too. For example from MEP Viviane Reding, who in 2012 was the EU Commissioner responsible for the data protection proposal.

"... it would be possible for a company to process data as long as it has a legitimate and overriding interest in this processing, even though the reasons are unrelated and incompatible with original purpose...", [wrote Viviane Reding](#) in a column.

"Most worryingly", she continues, "the Council seeks to broaden the possibilities to take measures based on profiling...The related provisions could bring the new data protection standards below the level of the 1995 rules. This is a no-go area as it bypasses the clear red line I set in 2012."

The Council has also undermined the principle "one continent, one law". "Too often, the ministers chose the easy way out of their impasses by allowing member states flexibility. In 35 articles, these flexibility clauses weaken the consistency of the regulation. At the end, one wonders if it is still a regulation", writes Ms Reding.

The European Digital Rights organisation (EDRI) voiced similar criticism and pointed out that rules on data breaches, privacy by design and, especially profiling, are far too weak and unclear. "Citizens and consumers will lose effective control of their personal data as a result of this legislation; and continuing illegal activity by businesses will remain unpunished."

The EU Parliament's rapporteur on the data protection package, German MEP Jan Philip Albrecht (Greens), was more diplomatic and called the Council agreement "encouraging" for the negotiations set to start. "There are clearly differences, notably as regards the rights afforded to consumers and duties to be fulfilled by businesses...However... it should be possible to reach a compromise acceptable to both sides ."

Tripartite talks will continue until October, when the three EU lawmaking bodies expect to agree on a general text. By the end of 2015 the new data protection rules should, hopefully, be wrapped up.

The data protection reform will, however, not help to curb the trend towards increased surveillance in Europe. Intelligence agencies' data collection is completely exempt from all European rules, points out MEP Jan Philip Albrecht and calls the EU Commission and the EU member states governments to pass "at least minimum standards for the work and control of intelligence agencies."

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