

European Media Policy



A Newsletter from NORDICOM

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Telecom/Internet

EP Votes for Net Neutrality: Victory for the Open Internet?

In early April the European Parliament voted on the latest legislative draft for the EU "Connected Continent" telecoms package. MEPs want a rigorous definition of net neutrality and clear rules to prevent internet access providers from promoting some services at the expense of other.

MEPs underline that internet access should be provided in accordance with the principle of "net neutrality", which means that all internet traffic is treated equally, without discrimination, restriction or interference, independently of its sender, recipient, type, content, device, service or application.

Internet access providers would still be able to offer specialized services of higher quality, such as video on demand and cloud applications, so long as these services are not supplied to "the detriment of the availability or quality of internet access services" offered to other companies or service suppliers.

Internet access providers could be entitled to block or slow down the internet, but only to enforce a court order, preserve network security or prevent temporary network congestion. If such "traffic management measures" are used, they must be "transparent, non-discriminatory and proportionate" and "not be maintained longer than necessary".

The EU Parliament's vote was hailed as an important victory for the open internet by activist organisations and the party groups proposing the net neutrality amendments, the Social Democrats, Greens, United Left and Liberals. Others were less enthusiastic.

"If the restrictive changes to the Open Internet provisions are confirmed in the final text...the European digital economy will suffer and EU businesses will be put in a difficult competitive situation with respect to other regions of the world", warned Luigi Gambardella, Chairman of ETNO, which represents Europe's telecom network operators.

The text adopted by the European Parliament must now be negotiated with the EU Council, which probably will listen to big telecoms companies much more than MEPs did. What's more, the crucial negotiations on the final text will be carried out after the EU elections by a Parliament maybe quite different from this one. So by the time it becomes law the net neutrality clauses adopted now in April could be considerably watered down.

Therefore those concerned about net neutrality have been called upon to remain mobilised for the rest of the legislative procedure.

Blocking of Internet Content Still a Common Practice

24% of European internet users say they are prevented by their providers from watching videos, listening to music or using other applications of their choice, according to a Eurobarometer survey of 28,000 citizens across the EU.

The survey found, for example, that 41% experience problems watching a video on a mobile device and 37% on the fixed Internet connection at home (due to speed limitations or blocking

of content). Of those who know their speed, 26% say that they do not get a speed which matches the terms of their contract. [Read more](#)

The findings of the study reinforce evidence [reported](#) by the Body of European Regulators for Electronic Communications (BEREC) in 2012.

Internet Governance: EU Commission Wants “Genuine” Multi-Stakeholder Model

In the wake of large-scale Internet surveillance and reduced trust in the internet, the European Commission proposed in February a reform to the way the Internet is managed and run.

In recent years the EU and other countries around the world have increasingly challenged the United States' control of Internet governance through the non-profit corporation ICANN which works under an agreement with the US Administration. But the EU Commission also rejects a UN or governmental takeover of the Internet governance, as requested by Russia and China.

The Internet should be governed by “a genuine multistakeholder model”, says the Commission proposing a clear timeline for the globalisation of ICANN and a strengthening of the global Internet Governance Forum (IGF).

Basic tenets of Internet governance should be to defend and promote fundamental rights and democratic values, and multi-stakeholder governance structures based on clear rules that respect those rights and values. Furthermore, the Internet should be a single, un-fragmented network, subject to the same laws and norms that apply in other areas of our day-to-day lives, says the Commission in its [Communication](#).

The Communication is meant to inspire a common European approach in global negotiations on Internet governance. In the coming months there will be many opportunities to discuss these issues, for example at the [Netmundial](#) meeting in Sao Paulo, Brazil (23-24 April 2014), the [European Dialogue on Internet Governance](#) in Berlin (12-13 June) and the [Internet Governance Forum](#) in Istanbul, Turkey (2-5 September 2014).

US Set to Relinquish Control over the Internet

In March the Obama administration announced plans to relinquish US government control over the administration of the Internet, a move warmly welcomed by the European Commission and many others.

"This is an historical step in making Internet governance truly global, and marks major progress towards the development of a multi-stakeholder model as advocated in the Commission's recent Communication" said the EU Commissioner for the Digital Agenda Neelie Kroes.

The change would end the long-running contract between the US Commerce Department and the Internet Corporation for Assigned Names and Numbers (ICANN). The contract is set to expire in September 2015 but could be extended if the transition plan is not completed by then.

ICANN immediately took action. "We are inviting governments, the private sector, civil society, and other Internet organizations from the whole world to join us in developing this transition process," [said Fadi Chehadé, ICANN's President and CEO](#). The dialogue about the transition plan began at ICANN's 49th Public Meeting, in Singapore on 23-27 March.

Not everyone seems happy about the Internet governance change announced by the US administration. "Our announcement has led to some misunderstanding about our plan...I have

emphasized that we will not accept a proposal that replaces NTIA's role with a government-led or an inter-governmental solution, said ", said Assistant Secretary for Communications and Information Lawrence E. Strickling.

EP: Cloud Computing Not Without Risks

The EU Commission is keen on the development of cloud computing and the union's heads of government, too, have said that this "strategic technology" should be promoted. The European Parliament, although in principle rather positive, is more cautious.

In [a resolution](#) on this issue the the Parliament acknowledges that cloud technology can become a powerful instrument for growth and employment. But it regrets that the Commission's communication on unleashing the potential of cloud computing in Europe fails to mention the risks and challenges attached to it.

MEPs call on the EU Commission and the Member States to raise consumer awareness of all risks related to the use of cloud services. The Commission should also explore appropriate measures to develop a minimum acceptable level of consumer rights in relation to cloud services, covering issues such as privacy, data storage in third countries and liability for data losses.

MEPs suggest that the Commission create guidelines to ensure full compliance with EU's fundamental rights and data protection obligations, and conditions under which cloud data may or may not be accessed for law enforcement purposes.

The Commission should also establish a clear legal framework in the field of copyright content in the cloud, especially with regard to licensing regulations and investigate how the cloud storage of copyrighted works affects the royalties systems, says the European Parliament.

Battle for Use of Frequencies Heating Up

By 2020, there will be more than 30 times as much mobile data traffic in Europe as there was in 2010, according to European Commission forecasts. In view of this surge in demand, and since the radio spectrum through which all this traffic goes is a limited resource, the fight between different stakeholders for the use of certain spectrum bands seems to be heating up.

In Sweden mobile broadband recently won a victory. In early March the Swedish government decided to reallocate the 700 MHz spectrum band – used until now for digital television - to mobile broadband and mobile telephony from 2017.

The European Broadcasting Union (EBU), which represents public service media, expressed "serious concern" at the Swedish government's decision. "Such a fast switchover will jeopardize the integrity of television services in Sweden", said the EBU.

Developments in Sweden may influence the European Commission's work on these issues. In January the Commission appointed a new advisory group on future use of UHF spectrum for TV and wireless broadband. The group is lead by no other than Pascal Lamy, former chief of the World Trade Organisation and a former European Commissioner, which shows the importance of the issue.

The High-Level Group has six months to make proposals to the Commission on how to use the UHF spectrum band (470-790 MHz) most effectively in coming decades. The final report should be delivered by July 2014.

The Group has specifically been asked to look at how Europe will access and use audiovisual content and data in the medium to long term and come up with options responding to challenges such as: How to secure the public interest and consumer benefits while facilitating market transformation? [Read more](#)

Privacy/Data Protection

Data Retention Directive Declared Invalid

On 8 April the EU Court of Justice declared the much-criticized Data Retention Directive to be invalid. "It entails a wide-ranging and particularly serious interference with the fundamental rights to respect for private life and to the protection of personal data, without that interference being limited to what is strictly necessary", explains the Court in its landmark ruling hailed by many as a major victory for civil rights in Europe.

The [Data Retention Directive](#), adopted in 2006, requires telecommunications operators to retain data for identifying users and details of phone calls made and emails sent - excluding the content of those communications - for a period between six months and two years and to make them available, on request, to law enforcement authorities for the purposes of investigating, detecting and prosecuting serious crime and terrorism.

The Court observes that the data to be retained, taken as a whole, may provide very precise information on the private lives of the persons whose data are retained, such as the habits of everyday life, permanent or temporary places of residence, daily or other movements, activities carried out, social relationships and the social environments frequented.

The Court takes the view that the directive "interferes in a particularly serious manner with the fundamental rights to respect for private life and to the protection of personal data". Furthermore, the fact that data are retained and subsequently used without the subscriber or registered user being informed is likely to generate in the persons concerned "a feeling that their private lives are the subject of constant surveillance". [Read more](#)

EU Parliament: Stop Mass Surveillance Now!

The European Parliament should withhold its consent to the EU-US trade deal if blanket mass surveillance by the US National Security Agency (NSA) does not stop, warned MEPs in March in [a resolution wrapping up their six-month inquiry into the surveillance activities unveiled last year](#), adding that data protection should be ruled out of the trade talks. They also condemn EU countries involved in the surveillance— among them Sweden - and demand measures.

The EU Parliament calls for the immediate suspension of the Safe Harbour privacy principles (voluntary data protection standards for non-EU companies transferring EU citizens' personal data to the US), urging the US to propose new personal data transfer rules that meet EU data protection requirements.

The Terrorist Finance Tracking Programme (TFTP) deal should also be suspended until allegations that US authorities have access to EU citizens' bank data outside the agreement are clarified.

EU member states are criticized too. MEPs call on the UK, France, Germany, Sweden, the Netherlands and Poland to clarify the allegations of mass surveillance and their compatibility with EU laws. Those and other countries participating in the "9-eyes" and "14-eyes" arrangements are urged to review their national laws to ensure that their intelligence services are subject to parliamentary and judicial oversight and that they comply with fundamental rights obligations.

The adopted resolution is non-binding, but the vote establishes a high level oversight group to ensure the implementation of the report's recommendations by 2015,

Data Protection Reform: Parliament Tries to Hasten Progress

Having hoped to finish the reform of EU data protection rules before the European elections in May – and the changes in the union's institutions they may entail - the EU Commission and Parliament are frustrated that the Council is dragging its feet on this, in their view, very important and urgent matter.

In order to consolidate the work done so far before the elections, the European Parliament voted on its [first reading of the draft legislation](#) on 12 March. MEPs want strong personal data protection and have in some instances even tightened the [rules proposed by the European Commission](#).

To better protect EU citizens against surveillance activities, MEPs amended the rules to require any company to seek the prior authorisation of a national data protection authority in the EU before disclosing any EU citizen's personal data to a third country. The firm would also have to inform the person concerned of the request.

The new rules include a right to have personal data erased, new limits to "profiling" and a requirement to use clear and plain language to explain privacy policies. Any internet service provider wishing to process personal data would first have to obtain the freely given, well-informed and explicit consent of the person concerned.

Companies that break the data protection rules should face fines of up to €100 million, or up to 5% of their annual worldwide turnover, whichever is greater, say MEPs. The Commission had proposed penalties of up to €1 million or 2% of worldwide annual turnover.

In the EU Council views on the data protection reform differ among the member states and work has progressed slowly. During a Council meeting on 4 March ministers broadly supported the principle that non-European companies when offering goods and services to European consumers will have to apply the EU data protection law. The next Council meeting on this issue will take place in June.

It is not unlikely that the recent harsh ruling by the EU Court against the EU data retention directive (see above) will influence discussions in the Council and maybe help Parliament in the forthcoming negotiations with the Council on the data protection reform.

The ruling may also affect lobbying efforts by those critical of the adopted text, such as Internet companies wanting to avoid "burdensome" rules and journalists' and media associations which have demanded an explicit exemption for journalists and publishers to process data. Their concerns were reflected in amendments adopted in two Parliament committees but in the final text the exemption for journalists was removed. [Read more](#)

Media – general

Consumers Join Battle against Google

As the European Commission's investigation on anti-competitive behaviour by Google enters its final phase, pressure mounts not to let the search giant off the hook. The company is under scrutiny over a range of other issues too.

The EU Commission's investigation started in 2010 after several competitors filed complaints accusing Google of highlighting its own services without offering the same visibility to others. In February this year the Commissioner in charge of competition policy, Joaquín Almunia, [signalled his willingness to settle on the basis of Google's suggested remedies](#).

This triggered a barrage of criticism from Google's competitors and in March the European Parliament held a hearing on the matter. Here Almunia defended his decision to solve the Google case with a settlement rather than a punishment, saying it will be quicker and more effective.

Not long thereafter the European Consumer Organisation (BEUC) applied to be a formal complain-ant. BEUC's move may open a new front in the case, presenting it not only as an issue of competition, but also as a broader consumer issue, writes the news service EurActiv.

BEUC believes consumer concerns have not been suitably addressed by the Commission. "Adequate answers have not been found to the problem of Google stacking its search results as suits itself. Users are given the impression their searches are neutrally decided and this problem is exacerbated in price comparison searches", [said](#) Monique Goyens, Director General of the European Consumer Organisation.

Almunia is expected to announce his final decision on the Google case between July and September.

There are other issues too concerning Google, pointed out Commissioner Almunia during a visit to Paris in February, citing net neutrality, copyright, data protection or the business relations with newspaper publishers. Another battlefield against Google is the corporate taxation of digital companies, which often take advantage of EU disparities by declaring their profits in countries where taxation is lower.

Such tax competition is of particular worry to France, which has campaigned for the implementation of a "Google tax", so far unsuccessfully. The European Commission has set up [a working group](#) on taxation of internet companies and should submit its conclusions during the first half of 2014.

EP:

Promoting Pluralism Still Relevant in New Media World

In March the European Parliament adopted a resolution on [Preparing for a fully converged audiovisual world](#).

Here the MEPs stress that protecting media freedom, promoting media pluralism and cultural diversity and the protection of minors remain relevant values in an era of convergence. They call on the Commission, to continue its efforts to safeguard press freedom in the context of a possible revision of the Audiovisual Media Services Directive (2010/13/EU).

In view of media convergence the Parliament calls on the EU Commission to determine how

the refinancing, funding and production of quality European audiovisual content can be secured in a future-proof and balanced manner.

Maybe with Google in mind, the MEPs also stress that regulation is required where content gateways control access to media and impact directly or indirectly on the shaping of opinion. They call on the Commission and the Member States, therefore, to monitor developments in this regard and to make full use of the possibilities offered by European competition and anti-trust law and, if necessary, introduce measures to safeguard diversity.

Furthermore youth protection, consumer protection and data protection are “absolute objectives of regulation” and must apply uniformly to media and communications providers throughout the EU, says the European Parliament.

Anti-trust Case Against US Film Studios

In January the European Commission opened formal antitrust proceedings to examine certain provisions in licensing agreements between several major US film studios (Twentieth Century Fox, Warner Bros., Sony Pictures, NBCUniversal, Paramount Pictures) and the largest European pay-TV broadcasters such as BSkyB of the UK, Canal Plus of France, Sky Italia of Italy, Sky Deutschland of Germany and DTS of Spain.

The Commission will in particular investigate whether these provisions prevent broadcasters from providing their services across borders, for example by refusing potential subscribers from other Member States or blocking cross-border access to their services. [Read more](#)

Much Concern about Journalists' Safety

In March the international and European federations of journalists (IFJ/EFJ) called for a thorough investigation into the brutal murder in Afghanistan of Swedish journalist Nils Horner. In recent months the associations have also repeatedly urged European leaders and the Council of Europe to take action against the “appalling number ” of cases of violence and harassment of journalists in Ukraine. This is something that goes on in many other parts of the world too.

In June 2013 the European Parliament [called on the EU to take the lead](#) in ensuring the protection of journalists worldwide. The issue has also been much discussed in the UN. In December last year the United Nations General Assembly adopted [a resolution on the Safety of Journalists and the Issue of Impunity](#), which “condemns unequivocally all attacks and violence against journalists and media workers, such as torture, extrajudicial killings, enforced disappearances and arbitrary detention, as well as intimidation and harassment in both conflict and non-conflict situations”.

The resolution calls upon States to promote a safe and enabling environment for journalists to perform their work independently and without undue interference, including legislative measures, and dedicating the resources necessary to investigate and prosecute attacks against journalist.

The resolution also calls on the UN Secretary General to report at its next session in 2014 on the progress being made in regard to implementing the [UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#).

EU Commission Keen to Promote App Sector

The EU's app sector has gone from zero to becoming a digital superhero in less than five years, according to [a study](#) carried out for the European Commission. EU games app developers lead the field: 28 EU leading companies created 40% of the top 100 grossing apps in the EU and US. Three of the top-five companies are Nordic games developers (1st [King.com](#), 2nd, [Supercell](#), 5th [Rovio](#))

By 2018 the app sector could employ 4.8 million people and contribute €63 billion to the EU economy, says the study. But, although the future is bright, developers have raised certain concerns which could put the app boom at risk.

There is a need for developer education and business skills; there are technical bottlenecks and fragmentation. A majority of developers complained of their de facto total dependence on platforms developed by American giants, with subsequent revenue impact.

The EU Commission is keen to promote the development of the European app sector. For example by supporting grassroots initiatives such as [EU Code week](#), organised by Digital Agenda Commissioner Neelie Kroes' [young advisors](#). This year's Code Week will take place on 11-17 October 2014.

The EU also supports activities such as the [European Crowdfunding Network](#) and the [Web Investors Forum](#) and the [Public Private Partnership on the Future Internet](#). The latter can help with funding and mentoring web entrepreneurs that use the technologies developed in previous projects. Funding is also available through EU's support programme for research and innovation, Horizon 2020.

European AV Regulators' Group Established

Europe's broadcast and audiovisual landscape is changing: content is increasingly distributed and viewed across borders and created, distributed and viewed online. This creates special regulatory challenges and makes it crucial to guarantee closer and more regular cooperation between the independent regulatory bodies of Member States and between them and the Commission, says the EU Commission,

Therefore it recently established a group of EU regulatory authorities in the field of audiovisual media services. The Group brings together heads or high level representatives of national independent regulatory bodies in the field of audiovisual services, to advise the Commission in implementing the EU's [Audiovisual Media Services Directive](#) in a converged media age. [Read more](#)

Copyright

ISPs to Help Police the Internet?

An internet service provider may be ordered to block its customers' access to a copyright-infringing website, said the European Court of Justice at the end of March in an historic ruling aimed at limiting online piracy.

Such an injunction and its enforcement must, however, ensure a fair balance between the fundamental rights concerned, added the Court.

The ruling sets a precedent defining the role of access providers, such as telecoms or cable companies, in dealing with online piracy. Earlier decisions by the Court had opposed a policing role for internet access providers. The ruling clarifies that service providers still have a role to play in the fight against piracy.

“An ISP which allows its customers to access protected subject-matter, made available to the public on the internet by a third party, is an intermediary whose services are used to infringe a copyright,” explains the Court. [Read more](#)

Better Access to Online Music

In February the European Parliament and the Council passed a new [directive](#) on “collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market.”

The new rules are intended to stimulate the creation of EU-wide online music services and ensure that creators' rights are better protected and their royalties are paid more quickly. The directive includes clear deadlines for distribution of fees. Applauded by many MEPs was also that collective management organisations have to open up for alternative licences, such as Creative Commons.

Another result of the directive is the push for multi-territorial licences. Instead of having to ask all collective rights agencies, of which there are about 250 in Europe, there will be a handful where a pan-European licence can be issued.

In the European Parliament there was broad agreement on the directive. However, many MEPs were highly critical about the slow pace of copyright reform in general. After pondering on the issue for several years the EU Commission launched a new consultation on copyright changes last December (now closed).

The consultation shall feed into a white paper to be tabled by the Commission in June, said Michel Barnier, Commissioner for the Internal Market. The next step, he said, would be a review of the 2001 Copyright Directive.

EU Court of Justice Allows Free Use of Hyperlinks

The European Court of Justice has ruled in favour of the free use of hyperlinks to online articles but the issue of remuneration remains open, reports the news service EurActiv .

In a judgement issued on 13 February, news aggregators won an important battle when the European Court of Justice ruled that the use of hyperlinks should remain free. [In the judgement](#) on the Svensson case - involving journalists from the Swedish newspaper Göteborgs-Posten - the Court says that a website can use hyperlinks to direct users to copyrighted works freely without having to pay royalties.

For the European Court every act of communication on a work to the public must be authorised by the owner of the copyright, but in the Svensson case, the Court considers that the redistribution of free content through clickable links does not give access to a “new public”.

French MEP Françoise Castex however said that the judgment refers only to free content and totally free access. “In fact the scope of this decision is limited. It is still not legal to link to a work that the author did not want to diffuse freely in the internet or no longer wants to give free access to it,” she explained.

EP: Private Copying Levies Worth Preserving

The European Parliament has adopted a report on private copying levies, a controversial issue much discussed in the EU in recent years. The report ties into the expected review of the EU

copyright directive (2001/29/EC). Organisations representing performers and authors, for example journalists and directors, seem pleased with Parliament's position.

All European consumers should have the right to make private copies of legally acquired content, says the Parliament in the [resolution](#) and calls on the Commission to propose a review of the copyright directive, including a provision on the "full harmonisation of exceptions and limitations, inter alia with regard to private copying."

The EU Parliament believes the private copying system is worth preserving and considers there is no alternative to this "balanced system" in the short term. However, in the long term it needs to be assessed in the light of digital and market developments and consumer behaviour, "if possible, exploring potential alternatives."

MEPs say that the private copying levy should apply to "all material and media used for private recording and storage capacity" and calls on Member States to earmark at least 25% of revenue from the levies to promote the creative and performance arts and their production.

European Media Policy

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The Newsletter provides an up-date on policy developments at the European level. We concentrate on news from the European Union – current issues and trends in media policy, new proposals for legislation, debates in the European Parliament, recently taken or impending policy decisions and reactions among those concerned, new support programmes, EU studies in the field etc. There will also be some coverage of policy developments in the Council of Europe and at the international level. The newsletter is published three times a year.