

European Media Policy



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Privacy and Data Protection

Much Debate after EU Ruling on Right to Be Forgotten

To balance the right to privacy and the right to information, both enshrined in EU law, seems to be a tricky issue. [A landmark ruling](#) in May by the European Court of Justice (ECJ) - which required Google to consider individuals' requests to remove links that they say infringe on their privacy - has caused much debate and pitted advocates for freedom of expression against online privacy groups.

Aware that the removal of links from search results "could have effects upon the legitimate interest of internet users potentially interested in having access to that information", the Court stressed that "a fair balance should be sought in particular between that interest and the data subject's fundamental rights, in particular the right to privacy and the right to protection of personal data."

The Court said this balance may depend on the nature of the information in question and its sensitivity for the data subject's private life and on the interest of the public in having that information which may vary "according to the role played by the data subject in public life. "

To judge the nature of the information may, however, not be an easy task for a search engine, nor should it perhaps be given such a role. So, what has been Google's response so far? A quite shrewd one, it seems, and a lesson in PR.

First Google put up an online form allowing European citizens to request that links to information about them be removed from search results. By the end of June it had been swamped by about 70 000 such requests.

When the BBC and other news organisations were notified – by Google – that some of their online articles would no longer show up on European versions of the search service there was a media frenzy about censorship and freedom of the press. A useful publicity campaign for Google by showing the Pandora's box of issues the Court ruling could lead to; which in turn could help Google in its lobbying efforts to water down the ongoing reform of EU privacy legislation (more on this below).

Then, in July, Google announced that it would send a group of executives and legal experts on a grand tour of Europe to explain its stance on privacy. And, by the way, the company had just decided that its venture capital unit was to start a 100 million dollar fund to invest in European start-ups and help the region's entrepreneurs build technology companies.

EU's data protection authorities, however, seem determined not to let Google take the lead. At the end of July their working group – the so-called Article 29 Working Party – arranged a meeting with representatives of Google, Microsoft, and Yahoo! to ask them about their practical implementation of the Court ruling.

The aim was also to provide input to guidelines the Working Party is preparing to help data protection authorities build a coordinated response to complaints of data subjects if search engines do not erase their content as requested.

Read the EU Commission's [factsheet about the Google ruling](#), including an analysis of the relationship between the right to be forgotten and freedom of expression and of the media.

Google Ruling Affects Reform of EU Data Protection Rules

By seemingly providing lobbyists and member states critical of the proposed data protection rules with new ammunition, the ruling of the European Court will probably further delay the reform.

The Google ruling was based on the 1995 EU data protection directive currently in force. The proposed data protection regulation implies a strengthening of the right to be forgotten as compared to the current directive. What's more, in its [first reading of the draft legislation](#) in March the European Parliament further tightened the proposed rules, now referring to a "right to erasure".

(Those wanting to know more about the rules of today and tomorrow or the difference between the Commission's proposals the Parliament's view can find ample information in a [fact-sheet](#) provided by the EU Commission's Justice Directorate.)

The Commission says it will continue pushing for a speedy adoption of the data protection reform, "including the reinforced and modernised Right to be Forgotten". The ball is now in the EU Council's court.

Already before the Google ruling views on the reform differed among the Member States. In July the Italian Justice Minister Andrea Orlando, representing the current EU Presidency, said to the European Parliament that it would try to achieve a common approach in the Council during its Presidency (i.e. before the end of the year), assuring the MEPs that the Presidency would take account of the "right to be forgotten", in the light of the recent ruling of the European Court of Justice.

Only a week later the United Kingdom's House of Lords issued a highly critical [report on the EU data protection law](#) urging the UK Government to ensure that the proposed Regulation no longer includes any provision on the lines of the Commission's 'right to be forgotten' or the European Parliament's 'right to erasure'.

Should the UK government follow the report's recommendations, it may well delay the passing of the whole legislative package. The EU Commission seems to worry about it. In a recent speech the Justice Commissioner Martine Reicherts explains "[Why we must see through a distorted debate and adopt strong new rules soon](#)".

Consumers Complain about Facebook's Data Harvesting Policy

Consumers seem to be getting fed up with Facebook's harvesting of their personal data.

At the end of July consumer organisations on both sides of the Atlantic [wrote to EU and US data protection regulators](#) urging them to take action and halt a recently announced change in Facebook's data harvesting policy.

Facebook announced in June that it plans to increase the amount of data that it collects from users. The company is planning to collect more information about the web browsing activities of Internet users for the purposes of targeted advertising.

Facebook already installs cookies and pixel tags on users' computers to track browsing activity on Facebook.com and Facebook apps. The proposed change would mean that those cookies and pixel tags will also track users' browsing activity on any website that includes a few lines of Facebook code.

The Trans Atlantic Consumer Dialogue (TACD) – an organisation of leading American and European consumer organisations - called on regulators to require Facebook to suspend this change in policy and determine whether it complies with current U.S. and EU law. Then, in early August, an Austrian law student, Max Schrems, called for Facebook users to join a class-action lawsuit against the company's alleged violations of its users' privacy. Schrems is seeking injunctions under EU data protection law in a Vienna court and has a separate case pending against Facebook at the European Court of Justice.

The law student is claiming damages of €500 per user for alleged data violations. They include aiding the US National Security Agency to mine the personal data of users of Facebook and other web services.

Within just a few days, more than 25 000 people signed up at www.fbclaim.com in order to participate in the class action suit.

Audiovisual

EU-US Trade Deal: Worries about the Audiovisual Sector

Opposition to the Transatlantic Trade and Investment Partnership Agreement (TTIP) currently being negotiated between the EU and the United States has grown in recent months. Anti-TTIP campaigners claim the deal will lead to a lowering of environmental, food safety and social standards. There has also been criticism of the lack of transparency and an investor-state dispute settlement (ISDS) clause, which would allow EU and US based corporations to directly sue governments at international tribunals.

Worries regarding the audiovisual sector have been expressed too. The issue was discussed in the EU Council when the Culture Ministers met in May. Audiovisual services were explicitly excluded from the negotiating mandate given to the Commission by member states last June, but some countries seem anxious that this could change.

At the meeting European Commissioner De Gucht – who is in charge of the TTIP negotiations - firmly stated that he will keep strictly to the mandate he was given and therefore there are no negotiations on the audiovisual sector. However, he acknowledged that the US has shown interest in a number of areas of EU audiovisual policy.

This made a number of member states reiterate their "total opposition" to the inclusion of the audiovisual sector into the TTIP negotiations, recalling that this was crucial for cultural diversity and in particular for the European film industry and creative sector.

In the European Parliament, too, there is resistance to the trade deal, not least among newly elected populist groups both on the right and the left. Marine Le Pen, the leader of the French far-right National Front has argued vehemently against the TTIP. Now a member of the Parliament's Committee on International Trade (INTA) she will be directly involved in the issue.

The Parliament seems adamant that it will keep a high profile on this issue. "In the end Parliament decides on the agreements. Consequently, I can only recommend the Commission to take this into consideration. With the rejection of ACTA we have proved that the Parliament is critical in the assessment of international agreements and that we are able to form our own opinion", said Bernd Lange - a member of the Socialists and Democrats group and the chair of the international trade committee – in an interview with the Euractiv news service.

If Russia's trade sanctions against European countries are maintained, opposition to the trade deal with the United States may, however, wane.

New EU Film Strategy Launched

European films represent nearly two thirds of releases in the EU but account for only one third of ticket sales. While the number of films produced in Europe increased from around 1100 in 2008 to 1300 in 2012, most European films are shown only in the country where they were made and are rarely distributed across borders.

To address these challenges the European Commission recently launched a [new EU strategy on European film in the digital era](#), in which it highlights the need to make the most of new methods of distribution to enhance cultural diversity and competitiveness.

Public funding should focus more on expanding the audience for European films and increasing support for development, promotion and international distribution, says the Commission. More flexibility and experimentation regarding how and when films are screened is also recommended, given the increasing popularity of video-on-demand and downloading.

The Commission wants to open a dialogue with all stakeholders to encourage an exchange of ideas on how national, regional and EU audiovisual policies can better complement each other and respond to challenges such as digitisation and the difficulties many film companies face in trying to obtain funding.

This process, called the European Film Forum, will bring together experts from the European Commission, Member States, national and regional film funds and other industry representatives, and will receive support for seminars, data collection and transnational exchange through the EU Creative Europe programme.

European Children's Films Sell Better Than Those for Adults

A European children's film sells five times more cinema tickets on average in Europe than non-children fiction fare, shows a new report on *The theatrical circulation of European children's films* recently published by the European Audiovisual Observatory.

Another key finding of the study is that European children's films circulate better than their grown-up counterparts. Almost 71% of all European children's films produced in the sample period achieved distribution in at least one non-national market. This compares with an "export rate" of only 49% for European non-children's films.

Furthermore, on average, children's films were released in 3.4 non-national markets, compared to 2.2 for other European fiction films. [Read more](#)

Media - general

Reduced Tax Rates for Press To Be Abolished?

Under the current VAT system electronically supplied services - such as e-books and on-line newspapers - are taxed at the standard rate, whereas their physical versions, i.e. paper books and newspapers, are often taxed at a reduced rate.

Press organisations have long called for the same rate to be applied to both types of services. Now it looks as if such a simplification may be considered, although not to the lower level, as the publishers wish, but to the higher, standard level.

This issue is discussed in [the final report of the High-level Expert Group on Taxation of the Digital Economy](#) presented to the EU Commission at the end of May. Here the Group agrees with the Commission that similar goods and services should be subject to the same VAT rate. But in its opinion "similar products should be taxed at the standard rate, as already provided in EU VAT law, rather than a reduced rate."

European press publishers were not very happy with the report. Their organisations immediately issued a [press statement](#) expressing their "deep disappointment", pointing out that "abolishing the existing lower rates for the printed press would have dramatic consequences for publishing houses across Europe, leading to close downs and less pluralism."

Another important conclusion of the Tax Group is that there should not be a special tax regime for digital companies. They should be treated in the same way as other companies, it says in the report.

This deals a blow to France and Spain which have called for an EU-wide "Google Tax," targeted at the digital sector to prevent multinational online companies like Google or Facebook taking advantage of loopholes to pay less tax.

As of January 2015, the destination principle – that is taxation at the place of consumption – will come into force for digital goods and services, including music and film downloads, provided within the EU. In the Tax Group's opinion this is a good principle which should eventually apply to all goods and services in the EU, as well as globally.

However, any change to European taxation rules requires the unanimous support of all member states to become law, which will be difficult to achieve. As will the creation of a global accord, which the experts also called for, notes the news service Euractiv.

Importance of Media Literacy Stressed at International Level

The importance of media literacy in the digital era has recently been emphasized at two international gatherings.

At the end of May the first European Media and Information Literacy (MIL) Forum took place in Paris. 350 participants from many different countries took part in the event, which was arranged by UNESCO and the European Commission together with other partners.

In the [Declaration](#) adopted by the participants, decision and policy makers are urged to recognize that MIL competencies and technological competencies are complementary. One cannot supplant the other, it says.

Navigating both the opportunities and risks of the digital age requires MIL competencies. The Declaration calls on journalists and media, librarians, audiovisual authorities, educators, audiovisual authorities, and the private sector to work together to promote such skills.

In June the issue was discussed again at the World Summit on the Information Society meeting in Geneva (WSIS+10). "Everyone should have an opportunity to acquire the necessary skills and knowledge to benefit fully from the information society. Therefore, capacity building, digital literacy and competences are essential for all", stresses one of the meeting's [Outcome Documents](#).

EU Commission Encourages Re-Use of Public Sector Data

Open data can be used as the basis for innovative services and products, such as mobile apps, reminded the European Commission when recently publishing guidelines to help Member States benefit from the revised Directive on the re-use of public sector information (PSI Directive). The guidelines cover issues such as licensing and costs.

Public bodies can allow the re-use of documents without conditions or licences, say the guidelines. Here the Commission mentions that several "Creative Commons" licences can facilitate the re-use of public sector data without the need to develop custom-made licences.

There is also an overview on how public sector bodies, including libraries, museums and archives, should calculate the amount they should charge re-users for data. Where digital documents are downloaded electronically a no-cost policy is recommended.

Read the [guidelines](#) and [more info](#)

Freedom of Expression

EU Condemns New Threats to Media Freedom in Hungary

The European Commission has once more spoken out against threats to media freedom in Hungary, but still seems reluctant to propose concrete EU measures.

In July the EU Commissioner for the Digital Agenda, Neelie Kroes, sharply criticized a new law in Hungary imposing 40 percent tax on advertising revenue.

"Ostensibly an 'advertising tax' to raise revenue, in fact it disproportionately affects one single media company, RTL", wrote the Commissioner in her blog. (The RTL Group is mainly owned by the German media conglomerate Bertelsmann.) "The conclusion is obvious. RTL is one of the few channels in Hungary not simply promoting a pro-Fidesz line; it is hard to see that the goal is anything other than to drive them out of Hungary."

"A free and plural media is the foundation of a free society, and a safeguard of democratic tradition. The new "advertising tax" in Hungary shows it is still very much under threat", said Commissioner Kroes referring to other controversial laws introduced in the country in recent years.

Hungary is not the only EU member state where such concerns and debates exist; there have been similar issues raised in Bulgaria, Italy, the UK and other countries, pointed out the Commissioner. "Europe needs to get its own house in order to ensure a free and plural media", she said and reminded of the [report of the High Level Group on Media freedom and Pluralism](#) which gives suggestions for how that can be achieved.

In the report the Group underlines that "the EU should be considered competent to act to protect media freedom and pluralism at State level in order to guarantee the substance of the rights granted by the Treaties to EU citizens." No concrete EU measures to rectify the situation in Hungary were however mentioned by Commissioner Kroes in her statement.

EU Guidelines on Freedom of Expression On- and Offline

In May the Council of Ministers adopted EU Human Rights Guidelines on Freedom of Expression Online and Offline. At first glance they look rather impressive, but journalist organisations are critical and the rules are mainly intended for guidance in EU external affairs.

"All human rights which exist offline must also be protected online, in particular the right to freedom of opinion and expression," underlines the Council in the Guidelines.

States must ensure that their legal systems provide "adequate and effective guarantees of freedom of opinion and expression to all and can be properly enforced". The EU itself will pay special attention to issues such as:

- Combating violence, persecution, harassment and intimidation of individuals, including journalists and other media actors and combating impunity for such crimes
- Promoting laws and practices that protect freedom of opinion and expression
- Promoting media freedom and pluralism and fostering an understanding among public authorities of the dangers of unwarranted interference with impartial/critical reporting.

The guidelines are, however, mainly intended for external use. They were adopted by the EU Foreign Affairs ministers in order to "provide political and operational guidance to officials and staff of the EU Institutions and EU Member States for their work in third countries and in multi-lateral fora".

The International Federation of Journalists (IFJ) and the European Federation of Journalists (EFJ) have criticized the guidelines for other reasons. "It is shocking that the European Union should adopt a set of guidelines on freedom of expression that fall so far short of internationally recognised standards," said Jim Boumelha, IFJ President.

"Failure to recognise neither the right to access information, nor the role of journalists unions in protecting the standards and conditions of the profession are fundamental weaknesses that threaten to set back the progress that has been made in advancing the rights of journalists and the public."

The journalist federations also condemn the Council for adopting the Guidelines despite their and other leading media and freedom of expression groups calling for a delay and a formal public consultation prior to adoption.

Council: Fundamental Rights Must Be Respected Within the EU Too

One would think that what applies to EU's foreign policy with regard to fundamental rights such as freedom of expression should apply to policy within the Union too. This, however, does not always seem to be the case.

In the EU Council there is apparently some awareness of such inconsistencies. [In Conclusions on the application of the EU Charter of Fundamental Rights](#), adopted in June, the EU Justice and Home Affairs ministers recall that in accordance with the Treaties the Union has "a duty to ensure consistency between the different areas of its external action and between these and its other policies".

Such consistency is important not least "in terms of enhancing the Union's credibility in its external relations and leading by example in the area of human rights."

The Council reiterates its commitment to check fundamental rights' compatibility throughout its own internal decision-making procedures, especially in relation to legislative procedures. It also recalls that all Union institutions (i.e. the Commission too) are under a duty to scrutinize their action with regard to the provisions of the Charter and says it "would welcome a renewed determination of Union institutions to ensure consistent application of the Charter in legislative activity".

UN: Freedom of Expression on the Internet Must Be Protected

The United Nations, too, is concerned about various threats to fundamental rights. At its session in June the UN Human Rights Council [adopted a resolution on the promotion, protection and enjoyment of human rights on the Internet](#).

Here the Council affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice.

The Council calls upon all States to promote and facilitate access to the Internet, as well as international cooperation aimed at the development of media and information and communication facilities and technologies in all countries. They should also promote digital literacy.

Furthermore, all States should adopt national Internet-related public policies that "affirm the global, open and interoperable nature of the Internet, and have the objective of universal access and enjoyment of human rights at its core."

CoE Launches Guide on Human Rights for Internet Users

The Council of Europe has launched a guide for Internet users to help them better understand their human rights online and what they can do when these rights are challenged. The creation of the Guide was triggered by the need to empower users to exercise their human rights online.

On freedom of expression, the [Guide](#) – adopted by the Council of Ministers in April – says among other things:

"Public authorities have a duty to respect and protect your freedom of expression and your freedom of information. Any restrictions to this freedom must not be arbitrary, must pursue a legitimate aim in accordance with the European Convention on Human Rights such as, among others, the protection of national security or public order, public health or morals, and must comply with human rights law. Moreover, they must be made known to you, coupled with information on ways to seek guidance and redress, and not be broader or maintained for longer than is strictly necessary to achieve a legitimate aim."

The Guide also describes Internet users' rights regarding access to the Internet and privacy and data protection.

Copyright

New EU Strategy to Enforce Intellectual Property Rights

With the controversial ACTA agreement still fresh in mind, many are probably wary of any new political initiatives regarding the enforcement of intellectual property rights (IPRs). So, as

could be expected, there have been negative reactions to the new strategy on IPR enforcement recently presented by the EU Commission.

In July the Commission adopted two communications – an [Action Plan to address infringements of intellectual property rights in the EU](#) and a [Strategy for the protection and enforcement of intellectual property rights \(IPR\) in third countries](#).

The Action Plan will focus on commercial-scale infringements. "Rather than penalising the individual for infringing intellectual property rights, often unknowingly, the actions set out here pave the way towards a 'follow the money' approach, with the aim of depriving commercial-scale infringers of their revenue flows," explained Michel Barnier, the EU Commissioner responsible for IPR issues.

The Plan will involve close cooperation amongst enforcement authorities, and between those authorities and business stakeholders. "Fostering this multi-stakeholder approach it is the only way to ensure proper protection of intellectual property," says the Commission.

As for international level enforcement, the Commission proposes, i.a., continuing multilateral efforts to improve the international IPR framework and "ensuring that IPR chapters in bilateral trade agreements offer adequate and efficient protection for right-holders".

The latter immediately brings to mind the contentious Transatlantic Trade and Investment Partnership Agreement (TTIP) currently being negotiated between the EU and the United States. "Such statements give good reason to fear that, once again, as with the ACTA agreement,..., "intellectual property" questions will be treated in an opaque way during free trade agreements, leaving elected representatives with hardly any leeway," [commented](#) the net activist group La Quadrature du Net.

EU Court of Justice: No Private Copying Levy for Illegal Downloading

On 10 April, the Court of Justice of the European Union (CJEU) delivered its opinion on a Dutch case stating that the private copying exception cannot cover reproductions made from unlawful sources, and that accordingly, the levy cannot be calculated on the basis of such unlawful reproductions.

The Court holds that national legislation which makes no distinction between private copies made from lawful sources and those made from counterfeited or pirated sources cannot be tolerated, as it is not capable of ensuring a proper application of the private copying exception.

The fact that no applicable technological measure exists to combat the making of unlawful private copies is not capable of calling that finding into question. [Read more](#)

Internet Governance

Internet Governance "a New Global Battleground"

How and by whom the Internet should be governed has become an increasingly central issue. In April Brazilian President Dilma Rousseff convened a global conference, NETmundial, in Sao Paulo to discuss the subject.

"Internet governance should be built on democratic, multi-stakeholder processes, ensuring the meaningful and accountable participation of all stakeholders, including governments, the pri-

vate sector, civil society, the technical community, the academic community and users," was one of the [Internet governance principles](#) adopted by the conference.

Protecting human rights and shared values is also important. "Rights that people have offline must also be protected online, in accordance with international human rights legal obligations", says the Statement, mentioning i.a. freedom of expression, freedom of information and access to information, as well as the right to privacy.

EU Commissioner for the Digital Agenda Neelie Kroes welcomed the outcome of the NETmundial conference, in particular the roadmap of concrete actions that need further development through 2014-2015.

The conference recommended, for example, strengthening the Internet Governance Forum (IGF) by extending the IGF mandate beyond five-year terms and ensuring guaranteed stable and predictable funding for the IGF, "including through a broadened donor base" .

Some, however, seem sceptical of the international approach and to want more of a say themselves in internet governance. In July the news service Euractiv reported that the French Senate had issued [a document](#) outlining a strategy for greater European internet governance spearheaded by a Franco-German alliance. Only then can the EU compete with US's online hegemony, was the idea.

"Internet governance has become a geopolitical issue. It is a new global battleground," declared Senator Catherine Morin-Desailly.

The Senate's report contains proposals aimed at "establishing a national and European strategy to secure our place on the digital world stage," explained Ms Morin-Desailly. The Senate wants to improve internet governance through "an international treaty open to all states and an online ratification process for internet users."

IGF 2014 Meeting in Istanbul

On 2-5 September the international Internet Governance Forum (IGF) will be meeting in Istanbul, Turkey. The proposed overarching theme this year is: Connecting Continents for Enhanced Multi-stakeholder Internet Governance.

A few of the many issues to be discussed:

- Internet Governance: Challenges, Issues and Roles
- Human Rights for the Internet: From Principles to Action
- Accountability in Multi-Stakeholder Governance Regime, ICANN
- The Press Freedom Dimensions of Internet Governance
- Protecting Child Safety and Child Rights

[More info](#)

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.