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Online Platforms

'Light' Targeted Approach to Online Platforms

Many are concerned about the growing power of online platforms like Google and Facebook, not least in the media sector where complaints are often heard about the platforms' increasing control over advertising and content distribution.

However, after much pondering the EU Commission has decided not to propose a broad general law on online platforms but to fix specific problems with existing rules, some legal updates and self-regulation.

This emerges from the [Communication on Online Platforms](#) presented on 25 May. Among those defined as online platforms are various Google and Facebook services, YouTube, as well as platforms like eBay and Uber.

The Communication outlines "a targeted, principles-based approach, to fix problems flagged by respondents to the Commission's public consultation during its year-long assessment of platforms," [explains the Commission](#).

Some issues will be dealt with in the reviews of EU telecoms legislation and the e-Privacy Directive expected by the end of the 2016. In the latter the Commission may consider extending to platforms data protection obligations currently applicable only to telecoms companies.

Another example is the copyright reform package soon to be presented, which will aim to achieve, among other things, "a fairer allocation of value generated by the online distribution of copyright-protected content by online platforms providing access to such content."

As outlined in the recent proposal to update the Audiovisual Media Services Directive the Commission also proposes to extend some of the audiovisual rules to platforms like Netflix and YouTube (more on this below).

As for unfair business practices, the Commission refers to the application of competition policy (see, for example, antitrust charges against Google below).

Many issues can be solved by the platforms themselves through self-regulation and voluntary measures, stresses the Commission. Not least with regard to tackling illegal online content and hate speech (see separate item below).

The EU Commission's 'light touch' approach to online platforms seems to be economically motivated. It says the aim of its Communication is "to make sure that platforms can be created, scale up and grow in the European Union."

"The platform economy presents major innovation opportunities for European industry, SMEs and startups ... To reach this goal we need a functioning Digital Single Market where online platforms (both startups and established market operators) are not hampered by heavy regulation," says the Commission.

New Anti-Trust Charges Against Google

The EU's competition watchdog – the Commission – has been keeping an eye on Google for several years. In recent months it has launched several new antitrust charges against the company.

In April the Commission [accused Google](#) of having abused its dominant position by imposing restrictions on Android device manufacturers and mobile network operators, for example by making manufacturers pre-install its search engine as default in phones.

“(W)e believe that Google’s behaviour denies consumers a wider choice of mobile apps and services and stands in the way of innovation by other players, in breach of EU antitrust rules. These rules apply to all companies active in Europe,” stressed Commissioner Margrethe Vestager in charge of competition policy.

A year ago, the EU Commission accused the company of distorting Internet search results to favour its own comparison shopping. Recently the Commission presented more evidence reinforcing its preliminary conclusion on this case, together with a new so-called Statement of Objections regarding advertising practices involving Google’s AdSense platform.

The competition watchdog’s preliminary view is that these practices have enabled Google to protect its dominant position in online search advertising. This affects, among others, newspapers. [Read more](#)

Internet Companies to Police Hate Speech

Since last year several EU governments have tried to get social platforms to crack down on the deluge of hate speech online in the wake of the migrant crisis and terror attacks in Europe. The EU Commission, too, has been concerned.

In May Facebook, Google’s YouTube, Twitter and Microsoft said they would remove posts containing hate speech within 24 hours as part of an agreement with the EU Commission on a code of conduct to counter extremism on the internet.

Under the agreement, the four companies will review notifications they receive flagging hate speech and remove it quickly. They also say they’ll work with the Commission to promote “counter-narratives”. [Read more](#)

While the accord is voluntary, the EU Commission said in its recent [Communication on online](#) platforms that it will watch how the code of conduct works out “with a view to determining the possible need for additional measures”.

Civil society groups are critical of the agreement, saying it will let private companies decide what is hate speech. “The whole problem is the lack of judicial oversight in this process,” said Maryant Fernández, an advocacy manager at European Digital Rights.

Others have also pointed out how hate speech rules frequently morph into a tool for government censorship.

Net Neutrality

All Eyes on Guidelines for EU Net Neutrality Rules

Net neutrality advocates in Europe have reason to be rather pleased about recent developments. But the fight is not over quite yet.

In November 2015 the EU adopted a Regulation on net neutrality, which will not come into effect until the body of European telecoms regulators, BEREC, has issued guidelines to ensure a common interpretation of the rules.

Such guidelines are especially important since the regulation contains some ambiguities, not least regarding the practice of zero-rating which has caused much controversy.

In Sweden, for example, 27 broadcasters, publishers and media associations issued a [joint statement](#) in May harshly criticizing a zero-rating deal between the state-owned, market-leading telco Telia and Facebook. Under this agreement Facebook's services would be distributed free to Telia customers, in contrast to the content from other media companies.

"If this type of business model is permitted, Sweden's publicists will be forced to make separate deals with the telecom operators to get the access they need to the Internet or to enter similar deals with digital giants like Facebook", they wrote.

In June BEREC published its long-awaited [draft guidelines](#). NGOs hailed them as an improvement on the law approved last summer, but called for a complete ban on zero-rating and tougher restrictions on when internet providers can slow down internet connections.

ETNO, the association representing Europe's leading telecom operators – of which Swedish Telia is a member – did not seem very happy with the guidelines, [saying](#) among other things: "(W)e believe that the final text of the Guidelines should not limit or restrict our ability to differentiate consumer offers and provide zero-rated services."

BEREC launched a public consultation on its draft guidelines during the summer (closed 18 July). Whether the input will lead to any major changes in the draft remains to be seen. BEREC is expected to adopt the final guidelines at its plenary meeting on 25 August. Check for results [here](#).

US Court Upheld Disputed Net Neutrality Rules

In the United States, too, net neutrality proponents have had reason to be pleased lately. In June a U.S. appeals court upheld the Obama administration's landmark rules barring internet service providers from obstructing or slowing down consumer access to web content, dealing a blow to big cable and mobile phone companies, [reported Reuters](#).

The ruling was an important victory for President Barack Obama, a strong advocate of net neutrality rules. Democratic presidential candidate Hillary Clinton also lauded the ruling.

However the internet service providers that sued to block the regulations have said they will appeal the ruling. In particular they seem concerned that, in siding with the Federal Communications Commission (FCC), the court treated the internet like a public utility which they think will open the door to further government regulation of the internet.

What the Republican presidential candidate Donald Trump makes of all this remains to be seen. He once tweeted that net neutrality is "top down power grab of the Internet." But, who knows, maybe he will change his mind (as he tends to do).

Audiovisual

Updated AV Directive: Some Rules to Cover Netflix and YouTube too?

On 25 May the EU Commission proposed an update of the Audiovisual Media Services Directive (AVMSD) which aims "to achieve a better balance of the rules which today apply to traditional broadcasters, video-on-demand providers and video-sharing platforms". Some of the proposed changes have unleashed intense lobbying in Brussels.

The new rules will oblige on-demand providers like Netflix to ensure at least a 20 per cent share of European content in their catalogues. And Member States will be able to ask on-demand services available in their country to contribute financially to Europeans works.

Among the main changes proposed is also an extension of the scope of the AV directive to video-sharing platforms like YouTube, which will be obliged to protect minors from harmful content and prevent incitement to hatred.

Broadcasters, on the other hand, will enjoy relaxed rules, especially with regard to advertising. The revised directive, for example, gives broadcasters more flexibility as to when ads can be shown. Both broadcasters and on-demand providers will also have more flexibility in using product placement and sponsorship.

Another change is a stronger role for audiovisual regulators. The Directive will ensure that regulatory authorities are truly independent from governments and industry, and the European Regulators Group for Audiovisual Media Services (ERGA), will play a bigger role. [More info and links](#)

Mixed Reactions to Updated Audiovisual Rules

Predictably, reactions to the Commission's proposed update of the Audiovisual Media Services Directive (AVMSD) have been mixed. European film agency directors and broadcasters seem quite pleased, while Netflix has said it is against quotas for European works or making contributions to film subsidies.

The latter is an important victory for France, which has the highest quotas in

Europe for European productions, 60 per cent, and sees the Commission proposal as only “a first step”.

The Members States’ ministers of culture had a first discussion of the proposal at their EU Council meeting at the end of May. They were positive to its main features and welcomed the continuity of the principle of the country of origin and the increased support to European audiovisual production and distribution.

But a number of countries expressed concerns regarding, for example, the liberalisation of advertising and the effectiveness of the 20 per cent quotas for European content on on-demand services.

In the EU Parliament the two German MEPs handling the controversial bill, Petra Kammerevert (S&D) and Sabine Verheyen (EPP), were swamped by lobbyists requesting meetings. Both have expressed doubts about the Commission’s proposed ‘Netflix quota’ for European content.

Freedom of Speech/Media Pluralism

Turkey:

Calls for EU To Stop Clamp-Down on Journalists

Since the coup aimed at toppling President Erdogan in July failed, journalists’ associations have repeatedly protested about the increasing threats to press freedom in Turkey.

“The European Union must take a stand and hold President Erdogan accountable for breaching the human rights convention and muzzling the press,” [said](#) the President of the International Federation of Journalists, Philippe Leruth.

The following day EU Commission spokeswoman Maja Kocijancic said to reporters that the situation is “worrying” and that, as a candidate nation for EU membership, Turkey “needs to aspire to the highest possible democratic standard and practices, including on the freedom of the media”, [reports](#) the Associated Press (AP).

Whether words will be followed by deeds is however doubtful, given Turkey’s agreement with the EU to stem the flow of migrants into the bloc in exchange for money, visa-free travel for Turks and other benefits.

Turkey’s continued demands have caused indignation in the European Parliament. “We will not be blackmailed into accepting visa liberalisation by an increasingly autocratic regime in Ankara...The EU must continue to push Turkey to respect fundamental human rights and the rule of law... The Council must now prepare for the situation that Turkey pulls it support for the refugee deal and be ready with a credible alternative plan,” [said Knut Fleckenstein](#), Vice-President of the Group of Socialists and Democrats (S&D).

World Press Freedom Day: Focus on Safety of Journalists

On 3 May UNESCO celebrated the World Press Freedom Day in Helsinki. Much of the gathering focused on the safety of journalists.

Irina Bokova, the Director-General of UNESCO, [denounced as intolerable](#) the fact that 825 journalists have lost their lives doing their job over the past decade and voiced indignation that less than six percent of these killings have been resolved.

In conjunction with the meeting a two-day research conference – organized by the UNESCO Chair at University of Gothenburg, Ulla Carlsson, together with other partners – was held on the safety of journalists.

Here more than 50 academics from six continents discussed various topics, for example the different types of threats journalists are facing in many countries, and the consequences of such threats.

The conference called for more research as well as research co-operation. To advance such co-operation the Centre for Freedom of the Media (CFOM) – a research centre at the University of Sheffield – announced the launch of a research network on the safety of journalists with the support of UNESCO.

The network will be based on [CFOM's website](#) and soon scholars will be invited to sign up for academic networking and collaboration in this area. [Read more](#)

More Protection of Whistleblowers?

Whistleblowers help safeguard the public interest and are important sources for journalists. In recent months there have been many calls for measures to protect them.

In May the directive setting out rules for the protection of trade secrets and confidential information of EU companies was finally adopted. The new measures “fully ensure that investigative journalism can be exercised without any new limitations,” [explains the EU Council](#). But whistle-blowers will only enjoy “adequate protection.”

A month later a Luxembourg court convicted “Luxleaks” whistle-blowers Antoine Deltour and Raphaël Halet for having revealed favourable tax deals granted to multinationals by the Luxembourg authorities.

Journalists’ associations were appalled, pointing out that the court’s decision gives the wrong signal to potential whistleblowers and puts at great risk the relation between journalist and their sources. “It is now urgent to work on a directive to protect whistleblowers”, said Mogens Blicher Bjerregard, the President of the European Federation of Journalists (EFJ)

In July the issue was debated in the European Parliament. Here most MEPs [argued](#) that further EU legislation is needed to protect whistle-blowers. This should also include EU-wide rules to align and strengthen national laws, they added.

During the debate the Commission said that it cannot move forward without a firm legal basis but that it is “currently assessing if more action on EU level could be introduced”. The EU Council seemed positive to the idea.

EU Colloquium on Media Pluralism and Democracy

On 17-18 November the second Annual Colloquium on Fundamental Rights will be held in Brussels. The theme of this year's meeting is "Media pluralism and democracy".

At the meeting representatives of EU institutions and Member States, NGOs, journalists, media and others will reflect on topics such as:

- how to protect and promote media freedom and independence from state intervention and from undue political or commercial pressures;
- how to empower journalists and protect them from threats of physical violence or hate speech;
- the role of the media in promoting fundamental rights;

The event will be web-streamed to enable all interested persons to follow the discussions live. Participation via Twitter will also be possible. [Read more](#)

Copyright

Copyright Reform: Creators Demand Fair Share of Platform Profits

Soon, probably on 21 September, the EU Commission will propose a copyright reform package. So lately there has been much lobbying in Brussels by groups representing the film, music and other cultural sectors.

European authors' societies [told](#) the Commission that dominant players on the market, like YouTube, "don't or only barely provide remuneration for our work" and said that platforms should no longer be able to escape liability for their copyright-related activities.

This has to do with provisions in the EU e-Commerce Directive which allow platforms and intermediaries such as YouTube to claim that they are passive and neutral hosting services entitled to benefit from exemptions to copyright law.

Similar calls were recently made by the EU Parliament's Intergroup Cultural & Creative Industries. "(The) upcoming copyright reform should make clear that liability exemptions can only apply to genuinely neutral and passive online service providers, and not to services that play an active role in distributing, promoting and monetising content at the expense of creators," wrote the MEPs in an open letter to the EU Commission.

At the moment changes in the e-Commerce directive do not seem very likely. But the upcoming copyright reform may bring some positive developments anyway.

[Speaking in June about the reform](#) EU Commissioner Ansip said: "(We) need to look closer at the conditions for remunerating creators and getting a fair share of the value generated. Our copyright rules have to take new market developments into account so that the creative sector benefits fairly from new online uses of content."

EU Subscribers Soon Able To Access Netflix When Travelling Within Union?

In December 2015 the European Commission proposed a [Regulation](#) to allow residents of the EU to access legal digital content when they're traveling outside the country they live in. Now in May the EU Council [agreed on main principles](#) and once the MEPs have decided on their position negotiations will follow.

Current obstacles to cross-border portability of online content stem from the fact that the rights for the transmission of content protected by copyright and/or related rights – such as audiovisual works – are often licensed on a territorial basis.

The Council – which represents the EU member states – considers that the regulation should apply to online content services which are provided in return for payment of money. Free to air services, such as public broadcasters, would be able to benefit from the regulation provided that they verify the country of residence of their subscribers.

A bone of contention in the Council discussions was the definition of how long people could remain in another country and still legally access media they've paid for. In the end there was a compromise saying that consumers can stay in another country for a "limited period of time", but the number of days was not specified.

The EU Parliament may, however, elaborate on this matter. Much is up to the Legal Affairs Committee (JURI), which is responsible for writing the Parliament's position. A vote in the committee is expected in October.

Since the bill is a proposal for a Regulation, once adopted by the EU Council and Parliament it will be directly applicable in all EU Member States. The Commission expects the new rules to be a reality in 2017.

EU Accepts Paramount's Concessions on Cross-Border Film Licensing

Recently EU antitrust regulators accepted Paramount Pictures' concessions to end anti-competitive film-licensing deals with British pay-TV group Sky UK. The U.S. studio's offer came after the EU Commission a year ago accused it of preventing viewers outside Britain and Ireland from accessing films and other content broadcast by Sky UK, [reports Reuters](#).

Paramount Pictures will now allow viewers outside Britain and Ireland to access films and other content broadcast by Sky UK. It will also allow non-UK broadcasters to sell their Paramount films to UK and Irish viewers in response to unsolicited requests.

The Commission however said that the case against five other Hollywood studios would continue. (Disney, NBCUniversal, Sony, Twentieth Century Fox and Warner Bros as well as Sky UK face the same charges.) [Read more](#)

Media – General

EU to Guarantee Loans for Creative Sectors

In June the European Commission and the European Investment Fund (EIF) launched a €121 million guarantee initiative to support small and medium-sized companies (SMEs) in the cultural and creative sectors via financial institutions. The scheme is expected to create more than €600 million worth of bank loans over the next six years.

Commercial and promotional banks as well as other financial intermediaries benefiting from the guarantee scheme will support more than ten thousand SMEs in a wide range of sectors, for example film, television, animation, video games and multimedia, festivals, music, publishing and radio, says the Commission.

This new financial instrument, set-up under Creative Europe – the main EU programme dedicated to the cultural and creative sectors – will be managed by the EIF on behalf of the European Commission. [Read more](#)

EU Council:

Media Literacy and Digital Skills A Must!

EU policymakers have stressed the importance of media literacy for many years. Now the increasing number of terrorist attacks in Europe seem to have given the subject more urgency.

In May the EU Council [urged](#) the member states to develop media literacy and critical thinking through education and training. The ministers highlighted potential dangers like online grooming and the “unparalleled possibilities” for extremist groups of all kinds to spread hatred and violence.

“(Education) and training can and should contribute to preventing radicalization,” underlined the ministers.

It is important, they said, to strengthen young people’s ability to think critically and to exercise judgement so that they are able to distinguish fact from opinion, to recognise propaganda and to resist all forms of indoctrination and hate speech.

To finance these efforts the Council encouraged the member states to use EU funds, such as Erasmus+, the Connecting Europe Facility, the European Structural and Investment Funds, Horizon 2020, Creative Europe and Europe for Citizens.

Digital competence is a crucial component of media literacy too, said the ministers. A lack of digital skills can leave a person at a disadvantage, not just on the labour market but also in society at large.

Privacy/ Data Protection

Europeans Worry About Their Personal Data

A [Special Eurobarometer 447](#) survey on attitudes to online platforms, carried out in the 28 EU member states, shows that Europeans are generally positive about

search engines and have a clear expectation that search results are presented in an order that best corresponds to their interests.

At the same time, most of them are uncomfortable with the fact that online platforms (including search engines) use their online behaviour and personal data to tailor content and advertisements.

“These concerns are perhaps driving the majority view that more regulation from public authorities is needed to limit the extent to which personal data can be used to tailor search results”, conclude the researchers.

A recent consultation on the upcoming review of EU’s e-Privacy Directive also shows that people want the directive to cover online services too. “83% of the responding citizens and civil society believe that there is a clear added value in having special rules for the electronic communications sector to ensure the confidentiality of electronic communication”, [reports the Commission](#).

Proposals for the review of the ePrivacy Directive are expected by the end of 2016.

New EU-US Data Transfer Deal Pushed Through Despite Criticism

After the adoption in April of the new [EU data protection regulation](#) (GDPR) many Europeans probably feel they can worry less now about the use of their personal data. But a new deal on data transfers between the EU and the United States may well make concerns re-emerge.

In October 2015 the EU’s Court of Justice struck down the Safe Harbour agreement between the EU and the US, which had allowed companies to easily transfer personal data from Europe to the United States. Europeans’ data is not given enough protection once it is transferred to the US, said the Court

This July [a new deal, called the Privacy Shield](#), was pushed through by the Commission in spite of much criticism.

During the spring the Commission invited the Art. 29 Working Party – representing the EU countries’ data protection authorities – the European Data Protection Supervisor (EDPS) as well as the Parliament to give their opinion on the draft text.

They all expressed concerns and legal objections to the deal and asked for clarifications and improvements, many of which do not seem to have been taken on board by the Commission.

However, the only entity with power to topple the agreement was the so-called Article 31 Committee, representing the EU member states. Even here there was resistance. Diplomats pressed the Commission to make some changes, but some remained unhappy with the deal. Four out of the 28 EU diplomats abstained from the final vote when it was approved.

In early August the EU Commission published a guide for citizens (available [here](#)) explaining, *i.a.*, what remedies are available for individuals if they consider their data has been misused and their data protection rights have not been respected.

Privacy Shield Probably Shortlived

Reactions to the Privacy Shield agreement have not been overly enthusiastic. "The Privacy Shield fails to provide an adequate level of protection for EU citizens when their personal data is sent over the Atlantic...The Commission should have listened more to data protection bodies and privacy advocates rather than giving in to political and commercial pressure from the tech industry and the US government," [commented](#) Monique Goyens, Director General of the European Consumer Organisation (BEUC).

"Sadly, for both privacy and for business, this agreement helps nobody at all. We now have to wait until the Court again rules that the deal is illegal and then, maybe, the EU and US can negotiate a credible arrangement that actually respects the law, engenders trust and protects our fundamental rights", [said](#) Joe McNamee, Executive Director of European Digital Rights.

In a recent [article](#) MEP Jan-Philipp Albrecht, who worked as lead negotiator on the EU data protection reform, and the Austrian lawyer Max Schrems, whose complaint against Facebook sank the Safe Harbour agreement, point out that the new deal does not even provide the legal certainty for the industry that is so desperately needed.

"The European Commission should hold off on activating Privacy Shield until more work is done on the US side. Given the countless insufficiencies, it is otherwise highly likely that the new Privacy Shield will share the history of the previous Safe Harbor and be invalidated by the European Court of Justice," they conclude.

The group of EU data protection authorities does not seem very happy with the new agreement either. They still, for example, want evidence from the U.S. government that its commitment not to conduct mass and indiscriminate surveillance would be met, but [said](#) they would not launch any challenges to the new Privacy Shield until it has gone through its first annual review.

EU Rules for Surveillance Next Big Step?

When the [new EU data protection regulation \(GDPR\)](#) was finally approved in April the MEP responsible for steering it through the European Parliament, Jan Philipp Albrecht, called national intelligence agencies "sleeping lions" and argued for an EU standard on their activities.

"I think the next big step is that we need to get it right with regard to the core of privacy and civil liberties in the digital society, which means we need to evaluate surveillance measures and adjust them to what we see as a liberal democracy," [Albrecht said](#).

A few weeks later the issue was brought up at the UNESCO World Press Freedom Day 2016 conference in Helsinki. Among the themes discussed was "surveillance overreach", enabled by secret and/or ambiguous laws.

This is a threat to legitimate uses of press freedom online; it works against openness and transparency, and may also often exceed international standards of necessity and proportionality, participants said.

Recently journalists' and human rights organisations drew attention to the global mass surveillance by the the German federal intelligence agency BND [saying](#) it was a violation of human rights and that they regard the surveillance of foreign journalists in particular as a serious encroachment on press freedom worldwide.

Big Data

European Cloud Project Launched

Big data is the "oil" of the new economy and we urgently need to prepare to use it or the EU will miss the boat, is a mantra heard all the more often in Brussels. In April – as part of a major effort to digitise the European industry - the EU Commission launched [the European Cloud Initiative](#).

The Initiative will make it easier for researchers, businesses and public services to fully exploit the benefits of big data by making it possible to move, share and re-use data seamlessly across global markets and borders, and among institutions and research disciplines.

The Commission plans to first create a European Open Science Cloud, which will offer European researchers and science and technology professionals a virtual environment to store, share and re-use their data across disciplines and borders.

Over time the user base will be enlarged to the public sector and to industry, says the Commission.

Laws to Protect Privacy not Enough?

Attitudes to big data are changing rapidly in the EU. Not long ago politicians in many European countries regarded the big data revolution with suspicion as an imported American phenomenon that would encroach on people's privacy. Now they have come to regard it not only as a driver of economic growth, but as a useful tool for other purposes too.

Interest in big data analytics picked up significantly after the terrorist attacks in Paris last year, reports the news service Euractiv. Since then the EU Commission has launched a number of counter-terrorism measures in which big data can be useful.

European politicians have also learnt that big data can be a practical tool in election campaigns to segment their electorate according to income, ethnic origin, age group or any other socio-demographic factor that can play a role in an election.

Earlier concerns about the effect of big data on privacy seem to have virtually evaporated since the recent adoption of the EU's new General Data Protection Regulation (GDPR). The European Data Protection Supervisor (EDPS), however, does not seem fully reassured.

[Speaking at Harvard University in April](#) he called the new EU data protection rules "an historic development", but said that "in today's digital environment, adherence to the law is not enough... We have to consider the ethical dimension of data processing", stressed the EDPS who has recently established an Ethics

Advisory Group to discuss such issues.

The group – which includes, among others, philosophers and social and computer scientists – will look at the long-term implications of artificial intelligence, wearable technology, autonomous vehicles and other technologies which rely on personal data.

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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 will be published three times a year.