

European Media Policy



A Newsletter from NORDICOM

No.2, 2013 (November)

Media Freedom

Harsh Criticism of UK Intimidating The Guardian	p.2
EP Calls for Protection of Media Freedom and Pluralism	p.2
EP: Ensure Protection of Journalists!	p.3
UN Human Rights Council Calls for Journalists' Safety	p.3
CoE Ministers Call for More Efforts to Protect Media Freedom	p.3

Media – general

EU Commission Adopts New Film Support Rules	p.4
EU-US Trade Deal: Audiovisual Services Excluded?	p.4
MEPs Propose Changes to Audiovisual Directive	p.5
Content in Museums etc. Soon Open to Re-Use	p.5
Meager Results of EU Dialogue on Copyright Issues	p.5

Privacy and Data Protection

European Parliament Outraged by Mass Surveillance	p.6
CoE: Surveillance Threat to Protection of Media Sources	p.7
Tracking: Government and Corporate Interests Converge	p.7
EU Data Reform Stalling?	p.7
How to Ensure Data Protection at International level?	p.8
Data Protection Challenges in “apps”	p.9

Digital Agenda

EU Summit Push for Big Data, Cloud, Digital Skills	p.9
EU Commission: Develop European Cloud Services!	p.9
Kroes: Big Data Huge Opportunity for Europe	p.10
New Telecoms Package on Net Neutrality, Spectrum Issues	p.11

Internet Governance

EU Commission Plans Global Internet Policy Observatory	p.11
CoE: Include Fundamental Rights in Internet Governance!	p.12

Media Freedom

Harsh Criticism of UK Intimidating The Guardian

In recent months there have been a growing number of attacks on media freedom. One evoking particularly strong reactions was/were the revelations in August that the British authorities had forced *The Guardian* staff to destroy two hard drives with material about mass surveillance leaked by former National Security Agency (NSA) contractor Edward Snowden, and detained without charge the partner of the journalist responsible for breaking the NSA story for nine hours under British anti-terrorism legislation.

Among the many outraged by these events was the Council of Europe's Secretary General Thorbjorn Jagland. "These measures, if confirmed, may have a potentially chilling effect on journalists' freedom of expression as guaranteed by Article 10 of the European Convention of Human Rights", he wrote in a letter to the UK Home Secretary.

Frank La Rue, the UN Special Rapporteur on freedom of opinion and expression was also highly critical. "The protection of national security secrets must never be used as an excuse to intimidate the press into silence and backing off from its crucial work in the clarification of human rights violations," he stressed and underlined the importance of ensuring full protection to journalists while performing their investigative work.

"Under no circumstances, journalists, members of the media, or civil society organizations who have access to classified information on an alleged violation of human rights should be subjected to intimidation and subsequent punishment," said La Rue.

In September The Guardian's editor-in-chief Alan Rusbridger was invited to speak at the first of a series of hearings in the European Parliament on the alleged spying by the US and EU countries. During the debate MEPs emphasised the importance of investigative journalism and the need to protect whistleblowers.

EP Calls for Protection of Media Freedom and Pluralism

In recent years the European Parliament has repeatedly called attention to threats to media freedom and pluralism and urged the Commission to do something about it. In May the Parliament once more adopted a report on this issue.

Here MEPs call on the Commission to propose concrete measures to safeguard media pluralism, including a legislative framework for media ownership rules introducing minimum standards for Member States. The scope of the Audiovisual Media Services Directive should be extended to include rules on the transparency of media ownership, media concentration and conflicts of interest, says the European Parliament.

Furthermore, media freedom and pluralism should be monitored in all member states and the findings published in annual reports followed up by proposals for action. The monitoring should be done by the European Commission, the Fundamental Rights Agency and/or the European University Institute Centre for Media Pluralism and Media Freedom, say the MEPs.

The Parliament also wants journalists' working conditions to be improved and that the EU and its member states support investigative journalism. [Read more](#)

EP: Ensure Protection of Journalists!

Just a few weeks later, in June, the European Parliament adopted a resolution on press and media freedom in the world, calling on the EU to take the lead in ensuring the protection of journalists worldwide.

MEPs stress that the press and media must be able to operate independently and "free of pressure through political and financial means". They are alarmed at the general downward trend of the press and media freedom both within and outside Europe.

Parliament points out that journalists are frequently abused, injured and murdered, often with impunity, and urges the EU to take a tougher stand against countries that allow such acts to go unpunished, calling on all states to guarantee the safety of journalists.

MEPs urge the EU to lead the way in ensuring that the media remain independent, pluralistic and diverse. They note that some media in the EU have come under scrutiny themselves for unethical and allegedly illegal behaviour and point out that the EU can only lead by example if it addresses these issues within its own borders.

UN Human Rights Council Concerned about Journalists' Safety

The United Nations Human Rights Council, too, is concerned about journalists' safety. In September the Council debated a new report on this subject prepared by the Office of the United Nations High Commissioner for Human Rights.

The report argues that political commitment, backed by clear and effective legislative and practical safeguards to prevent attacks and threats to journalists, are the key elements of an effective approach to their protection.

The report contains a wide range of proposals which member states could implement to achieve a secure environment for safe journalism. It suggests, for example, that violence against journalists be considered an aggravating circumstance leading to harsher sentences against journalists' attackers. Another suggestion is the creation of special units within the national legal systems to investigate attacks on journalists.

In a strongly worded statement on behalf of over 70 countries, Austria warned that concrete steps are needed to translate the strong support for the report into reality. [Read the report.](#)

Council of Europe: Ministers Call for More Efforts to Protect Media Freedom

Media freedom was one of the main subjects discussed in Belgrade in November at the Council of Europe's ministerial conference on freedom of expression and democracy in the digital age.

Ministers responsible for media and information society from the 47 member states of the Council noted that freedom of expression and media freedom are threatened today in various parts of Europe, and called on states for a political commitment and greater efforts to protect them.

The ministers strongly condemned physical attacks, intimidation and misuse of power of the State, including unlawful monitoring of communications and other forms of harassment of journalists and other media actors. Failure by authorities to investigate effectively and pro-

secute the perpetrators fuels a climate of impunity that favours further attacks, they said.

Among other actions, the ministers propose to prepare guidelines for the protection of journalists and others actors that carry out public watchdog functions.

Read the Resolutions on Internet Freedom, on Preserving the essential role of media in the digital age and on Safety of journalists adopted by the ministers. More info about the conference

Media – general

State Aid: Commission Adopts New Film Support Rules

The European Commission has recently adopted revised criteria for assessing, under EU state aid rules, Member States' support schemes for films and other audiovisual works.

The new rules extend the scope of the 2001 Cinema Communication - which applied only to state aid for film production - to include all phases of an audiovisual work from concept to delivery to audiences. The intensity of the aid that can be granted to a film continues to be limited in principle to 50% of the production budget.

Distribution and promotion costs may be supported with the same aid intensity. However, co-productions funded by more than one Member State may now receive aid of up to 60% of the production budget. By contrast there are no limits on aid for scriptwriting or film project development, or for difficult audio-visual works (as defined by each Member State in accordance with the subsidiarity principle).

Under the new rules, Member States are still allowed to impose territorial spending conditions on beneficiaries of audiovisual aid measures, which should please those who have clamoured for this.

Furthermore, the new Cinema Communication emphasises the importance of film heritage objectives linked to the collection, preservation and accessibility of European films. Member States should encourage and support producers to deposit a copy of aided works for preservation and specified non-commercial use. Read more [here](#) and [here](#).

Transatlantic Trade Deal: Cultural and Audiovisual Services Excluded?

Last spring, before the launch of the negotiations on the important EU-US trade deal called the Transatlantic Trade and Investment Partnership (TTIP), there was a heated debate in Brussels about which areas the European Commission's negotiating mandate should cover. Much of the discussion focused on cultural and audiovisual services.

Organisations representing the industry vociferously demanded that such services be excluded from the trade talks. They found support in the European Parliament, which adopted a resolution on the trade deal requesting that cultural and audiovisual services be excluded, also those provided online.

France, too, insisted on a "cultural exception" and in the end the Council agreed that audio-

visual services would not be covered in the mandate, but that the Commission would have the opportunity to make recommendations on additional negotiating mandates.

Many seemed pleased about this decision, but some organisations called for continued mobilization. Perhaps rightly so. This is how the Commission explains its negotiating mandate:

“There is no carve-out on audiovisual services. The European Commission has recently invited stakeholders to comment on the future of digital media... As the EU legislation in this area still has to be developed, it has been agreed that audiovisual services are presently not part of the mandate, but that the Commission has the possibility to come back to the Council with additional negotiating directives at a later stage.”

MEPs Propose Changes to Audiovisual Directive

The EU directive on audiovisual media services will probably soon be amended. In the Green Paper "Preparing for a Fully Converged Audiovisual World" published in April the European Commission said that several of the rules in this directive may be outdated. The European Parliament seems to agree.

In July the MEPs adopted a report on Connected TV, in which they describe which new rules or amendments to present regulations - in particular the audiovisual media services directive - they think are necessary in light of technological developments and media convergence.

The MEPs want to retain a graduated regulatory framework for media services, but the graduation should "not be based on a distinction between non-linear and linear services, but rather on the potential impact of a given media service and the editorial responsibility for the service in question."

Furthermore they seem to think that today's obligatory assessment of new, digital services launched by public service broadcasters could be abolished.

The ban on the violation of human dignity and incitement to hatred, protection against discrimination, and the principle of barrier-free access should apply in the same way to all forms of media content, says the European Parliament. [Read more](#)

Content in Museums, Libraries and Archives Soon Open to Re-Use

In June the European Parliament approved the Open Data directive, which is an update of the EU directive on re-use of public sector information. Once fully implemented - at the latest in July 2015 - the new directive will make all generally accessible public sector information available for re-use. Creative citizens and businesses will be able to get and re-use public sector data at zero or very low cost in most cases.

They will also have access to content in national museums, libraries and archives which now fall under the scope of the directive. [Read more](#)

Meager Results of EU Dialogue on Copyright Issues

In February 2013 the EU Commission launched a stakeholder dialogue called Licenses for Europe "to seek to deliver rapid progress in bringing content online through practical industry-led solutions" to copyright issues. On 13 November the dialogue – which has been harshly

criticised by the European consumer organisation BEUC and many other stakeholder groups – came to an end.

EU Commissioner for the Digital Agenda Neelie Kroes seems rather disappointed with its results. "I had high expectations when we launched this dialogue...I had things in mind like agreements, memoranda of understanding and similar, supported by a broad coalition representing different interests. This has not been met", she said but pointed to some progress in the audiovisual group.

The news service EurActiv reports that audiovisual industry participants pledged in a joint statement to continue working to gradually offer cross-border portability of audiovisual services. Record companies and authors' collecting societies agreed to provide multi-territory "one-click micro-licences" for small scale use of music online. And film producers, authors and film heritage institutions agreed on principles to ensure that many old films currently unavailable online are saved for the future and made available to wider audiences.

The organisation European Digital Rights (EDRI) is not impressed by the results of the Dialogue. "It is evident that there is very little consensus among stakeholders about the appropriate approach to making EU copyright law and practice fit for the digital age...it is long past time that the European Commission initiated a full review of the existing copyright framework to identify areas where legislative changes are needed", commented EDRI pointing in particular to the need to review the list of possible exceptions.

Commissioner Kroes does not seem averse to this idea. Mentioning that the proposed initiative by publishers was not supported by the users, she said: " Now we need to seriously consider possible legislative exceptions."

Privacy and Data Protection

European Parliament Outraged by Mass Surveillance

The revelations in June of the US National Security Agency's surveillance of millions of people with the help of Apple, Facebook, Google and other internet giants caused much outrage in the European Parliament. MEPs expressed anger and disappointment with the United States, especially when President Obama said that only non-Americans were targeted. That it later emerged that European countries, too, pursue such activities did not make things better.

The Parliament's Civil Liberties Committee was instructed to conduct an in-depth inquiry into the matter. The Committee will gather information on the surveillance activities of US authorities and EU countries and assess their impact on EU citizen's fundamental rights. As part of the inquiry the Committee is holding a series of hearings during the autumn. By the end of 2013 it will present its conclusions.

Furthermore, in late October the European Parliament adopted a resolution saying that the EU should suspend its Terrorist Finance Tracking Program (TFTP) agreement with the US in response to the US National Security Agency's alleged tapping of EU citizens' bank data held by the Belgian company SWIFT.

Council of Europe: Surveillance a Threat to Protection of Journalists' Sources

Soon after the revelations of the NSA's surveillance activities the Committee of Ministers of the Council of Europe adopted a declaration on the risks of digital tracking and other surveillance technologies .

"These capabilities and practices can have a chilling effect on citizen participation in social, cultural and political life and, in the longer term, could have damaging effects on democracy. They can also undermine the confidentiality rights associated to certain professions, such as the protection of journalists' sources, and even threaten the safety of the persons concerned", says the declaration.

The Ministers recall that tracking and surveillance measures by law enforcement authorities should comply with the Council of Europe's human rights standards set out in the European Convention on Human Rights. Such measures should also strictly respect the limits, requirements and safeguards set out in the Data Protection Convention 108.

In November this issue was again discussed at a Council of Europe conference in Belgrade of Ministers responsible for Media and Information Society. At the conference the ministers called for effective guarantees against abuse of the growing technological capabilities for electronic mass surveillance. This abuse "may undermine or even destroy democracy", they said. More info on the conference

Digital Tracking: Convergence Between Government and Corporate Objectives

The issue of surveillance cast a long shadow over the discussions at the Internet Governance Forum meeting in Bali on 22-25 October, which drew more than 1,500 representatives of governments, civil society, the technical community and the private sector from 111 countries,

A number of the IGF's 135 workshops and focus discussions made reference to "restoring trust" in the Internet and the potential dangers of retrenchment from an open Internet by nations concerned about the security and privacy of their digital communications.

The converging interest in digital tracking by commercial and government entities was one of the issues discussed. "Corporate firms' online tracking of users also has a chilling effect on freedom of expression of Internet users. These corporate firms include telecom operators and online service providers. Collection and tracking of Internet users is used to profile citizens, and we have seen with the NSA scandal that there is an obvious convergence between objectives of governments for surveillance, be it for intelligence or law enforcement purposes, and the tracking of the corporate firms for commercial users", says the Chair's summary of the meeting.

EU Data Protection Reform Stalling?

The overhaul of current EU data protection rules got a new boost after the revelations of mass surveillance during the summer and autumn of 2013. But all EU institutions involved in the process are not equally enthusiastic about concluding this legislative reform.

The Commission is very eager to have the legislative package adopted before the EU elections in May 2014. So is the European Data Protection Supervisor (EDPS) as well as the European Parliament, which presented its negotiating position on the data protection reform in October.

Responding to the mass surveillance cases, MEPs inserted stronger safeguards for data transfers to non-EU countries. They also inserted bigger fines than proposed by the Commission for firms that break the rules; fines of up to €100 million or up to 5% of annual worldwide turnover, whichever is greater. (The Commission proposed penalties of up to €1 million or 2% of worldwide annual turnover). Read more

The vote in the Civil Liberties Committee set out Parliament's mandate to start negotiations with national governments in the Council. Inter-institutional talks will start as soon as the Council agrees on its own negotiating position for both data protection proposals (directive and regulation). This may however take a while.

There are differing views within the Council on the data protection reform. France seems eager to finalize the reform, but some EU member states – in particular United Kingdom and Sweden – seem to be in no hurry and are negative to uniform rules in the form of a regulation, which does not allow for national variations.

Their hesitation probably also has to do with not wanting to antagonize the United States in view of the negotiations between the US and the EU on the important Transatlantic Trade and Investment Partnership trade deal (TTIP).

The EU Trade Commissioner Karel de Gucht has said that data protection is outside the scope of the trade deal, but the US seems to want to keep the debate open. Various clauses within the proposed EU data protection regulation would impact on US companies such as Google and Amazon, and more significantly, the burgeoning cloud computing sector.

Viviane Reding, the EU Commissioner in charge of the data protection reform, recently issued a stark warning that data protection should be kept off the agenda of the TTIP negotiations "Data protection is a fundamental right. It is different in nature to the tariff of a good or to the schedule of a service. That's why a discussion on standards of data protection should be kept separate from the give and take of a trade negotiation," she explained.

On 5-6 December EU Ministers of Justice will continue their discussions on the data protection reform.

How to Ensure Data Protection at International Level?

Ensuring data protection at the European level is not enough. Given the global nature of communications some kind of international regulation is needed. This subject is discussed increasingly often in different fora.

The United States speaks warmly of the OECD's recently revised Guidelines on Privacy and the Transborder Protection of Personal Data, in which the interoperability of different privacy regimes figures prominently. This is " a valuable consensus on privacy issues across all 34 OECD member states," stressed US Ambassador Daniel A. Sepulveda at the European Data Protection and Privacy Conference in Brussels in September.

Data protection commissioners from around the world who met a week later in Warsaw suggested another solution. In their resolution on the protection of privacy in international law they call upon governments to advocate the adoption of an additional protocol to Article 17 of the International Covenant on Civil and Political Rights (ICCPR) in order to create "globally applicable standards for data protection and the protection of privacy in accordance with the rule of law. "

The ICCPR – adopted by the General Assembly of the United Nations and ratified by 167 states - already provides a legal framework for privacy protection, note the commissioners.

The United States Federal Trade Commission abstained from voting on this resolution.

These issues will no doubt be discussed again at the international conference Reforming Data Protection: The Global Perspective, which will be held in Brussels on 22-24 January 2014.

Data Protection Challenges in “apps”

During their 35th International Conference held in September, data protection and privacy commissioners discussed the challenges posed by the increased use of mobile apps, as well as possible ways to address these.

It is essential that users are and will remain in charge of their own data. They should be able to decide what information to share with whom and for what purposes, say the commissioners in their declaration.

To this end, clear and intelligible information should be available -- including within an app -- about data collections taking place before the actual collection starts. Users should be given the option to allow access to specific information like location data or address book entries on a case-by-case basis. Most importantly, apps should be developed on the basis of surprise minimisation: no hidden features, nor unverifiable background data collection, stress the commissioners.

Digital Agenda

EU Summit Calls for Promotion of Big Data, Cloud and Digital Skills

“A strong digital economy is vital for growth and European competitiveness in a globalised world. To this end, all efforts must be made for Europe's industry to regain momentum in digital products and services,” concluded EU heads of government at their summit meeting on 24-25 October.

New investments should be promoted to accelerate the roll-out of high-speed infrastructure and several “strategic technologies” such as Big Data and Cloud should be promoted, said the European Council, which also brought up a skills problem.

There is a growing difficulty in filling digital jobs. In 2011, the European Union was faced with 300 000 unfilled vacancies in the ICT sector; if this trend is not checked, there could be as many as 900 000 unfilled vacancies by 2015. “This skills mismatch is detrimental to our economic and social policy objectives”, stressed the EU heads of government and suggested some remedies.

To use part of the European Structural and Investment Funds (2014-2020) for ICT education and training was one of these. Another was to better integrate digital skills in education, from the earliest stages of school to higher education, vocational education and training and lifelong learning.

EU Commission Eager to Develop European Cloud Services

Already in September 2012, the Commission adopted a strategy for “Unleashing the potential

of cloud computing in Europe". The strategy is designed to increase the use of cloud computing across the economy.

After the revelations of US mass surveillance under the PRISM programme many became wary of using cloud services, especially those based in the US. The Commission quickly realized that this not only could help hasten its proposed data protection reform but also give a boost to the development of European cloud services.

"High standards of data protection will also give Europe's cloud providers a competitive advantage. Trust is bankable", said Commissioner Viviane Reding pointing to a survey carried out after the PRISM revelations which showed that 56% of respondents were hesitant to work with any US-based cloud service providers.

In October the European Parliament's Industry Committee adopted its report on the EU strategy for cloud computing. There should be more information on possible risks when storing, processing and using data on remotely located computers, underlined the Committee.

Legal experts have warned about the multitude of legal issues and challenges raised by the use of cloud computing, such as difficulties in determining applicable law, liability issues, data protection safeguards and the enforcement of copyright and other intellectual property rights.

In its Opinion, the Legal Committee urges the Commission to establish a clear legal framework for copyright content in the cloud, especially with regard to licensing regulations. It also underlines that cloud computing services must be developed in a manner that ensures a high level of personal data protection in line with the fundamental rights and basic freedoms of the Union.

Speaking at the Cloud for Europe conference in Berlin in November, Digital Agenda Commissioner Neelie Kroes was most enthusiastic: "Europe has a great opportunity now: to become the home, the world's leader, in trustworthy cloud computing," she said.

As for privacy, trust could be rebuilt by basic transparency for cloud users and including clear undertakings about how data will be used, said the Commissioner. She also mentioned that the Commission is working with the industry on a code of conduct for data protection in the cloud for endorsement by Data Protection Agencies.

Kroes: Big Data Huge Opportunity for Europe

Since the beginning of the year Digital Agenda Commissioner Neelie Kroes has also shown a growing interest in big data.

In a recent speech she stresses that we in Europe "should not turn our backs on this huge opportunity", pointing out that this is a sector with 40% annual growth, where job opportunities have grown 12 fold over 20 years, one which offers businesses in many sectors a productivity boost over 5%.

Many express concerns about privacy issues in connection with big data. Kroes understands this but points out that much big data does not concern individuals. Anyway technology and the right legal framework can help. "We need firm and modern data protection rules", says the Commissioner hinting at the data protection reform which the EU Commission and the European Parliament are eager to finalize.

New Telecoms Package: Net Neutrality and Spectrum Issues Likely to Cause Debate

The European Commission has proposed a new, ambitious plan for the telecommunications sector. The legislative package called Connected Continent covers a variety of issues, among them net neutrality, a subject close to the heart of the European Parliament as well as many civil society groups.

“Blocking and throttling of internet content would be banned, giving users access to the full and open internet regardless of the cost or speed of their internet subscription. Companies still able to provide “specialized services” with assured quality...so long as this did not interfere with the internet speeds promised to other customers. Consumers would have the right to check if they are receiving the internet speeds they pay for, and to walk away from their contract if those commitments are not met”, explains the Commission in its press release.

This sounds pretty good but many were disappointed, for example Monique Goyens, Director General for the authoritative European consumer organisation BEUC. “There are too many loopholes to the general protection which will allow operators to continue to discriminate among data traffic or unduly push their own services, “ was her comment.

Coordinated spectrum assignment is another controversial issue discussed in Connected Continent. The EU Commission proposes stronger coordination of timing, duration and other conditions of assignment of spectrum. [Read more](#)

Internet Governance

EU Commission Plans to Establish a Global Internet Policy Observatory

The Commission plans to establish a Global Internet Policy Observatory (GIPO), an online platform to improve knowledge of and the participation of all stakeholders across the world in debates and decisions on Internet policies.

GIPO will be developed by the Commission and a core alliance of countries and NGOs involved in Internet governance. The Observatory will act as a clearinghouse for monitoring Internet policy, regulatory and technological developments across the world. [Read more](#)

In July the EU Commission hosted a conference to inform and discuss the state of play and next steps of the GIPO initiative. The Commission presented the main rationale, the core principles and the technical architecture it is planning to use for the development of the Observatory.

Its main functions would be: to automatically monitor Internet-related policy developments, making full use of “big data” technologies; identify links between different fora, topics and discussions threads; and provide easy-to-use access to data via dashboards and other modern visualisation techniques. [Read more](#)

Council of Europe: Internet Governance Should Include Attention to Fundamental Rights

At the Council of Europe's ministerial conference in November the ministers reaffirmed their commitment to multi-stakeholder dialogue on Internet governance. This should include attention to the shared commitment of State and non-State actors to fundamental rights on the Internet, they underlined in a resolution on Internet freedom.

"Any measure, including blocking and filtering, that might interfere with people's freedom to access and communication via the Internet must be taken in compliance with international human rights law," said the ministers.

They urged the Council of Europe to continue developing, within the framework of its Internet Governance Strategy, adequate safeguards to protect fundamental rights on the Internet, "especially when action is taken that might interfere with access and free flow of information and expression online. "

European Media Policy

Editor: Anna Celsing, anna.celsing@skynet.be

Publisher:

Ulla Carlsson
NORDICOM
Göteborg university
Box 713
SE-405 30 Göteborg
Sweden

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 international organisations. The newsletter will be published twice per year.

