

**INTERNET  
& JURISDICTION**

A GLOBAL MULTI-STAKEHOLDER  
DIALOGUE PROCESS

**2013**

# IN RETROSPECT

INTERNET & JURISDICTION  
PROJECT CASE COLLECTION

VOLUME 2

INTERNET &  
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**OBSERVATORY**

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# 2013 IN RETROSPECT

The Internet & Jurisdiction Project is an evidence-based global multi-stakeholder dialogue process. To inform its participants about emerging trends and high-level patterns, the Internet & Jurisdiction Project detected, curated and categorized over 460 cases around the world in a dedicated database between January and December 2013. They show the tension between the cross-border nature of the Internet with its transnational online spaces and the patchwork of geographically defined national jurisdictions.

The Internet & Jurisdiction Observatory supports the Internet & Jurisdiction Project team in keeping track of the latest trends around the globe. This interdisciplinary network of selected international experts crowd-ranks every month all collected cases in the Internet & Jurisdiction database via a progressive filtering process. The 20 most important cases are showcased in the monthly Internet & Jurisdiction Project newsletter Retrospect with concise summaries and links to relevant background information.

The case collection "2013 in Retrospect" is a compilation of 240 selected cases. It provides a review of crucial dynamics to stimulate discussions and trigger research.

## CROWD-CURATION



### SPOTLIGHT

I & J DATABASE WITH CATEGORIZED CASES



## CROWD-RANKING



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REGULAR REPORTS ON LATEST TRENDS AND INSIGHTS

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## ABOUT

The Internet & Jurisdiction Project facilitates a global multi-stakeholder dialogue process to address the tension between the cross-border nature of the Internet and geographically defined national jurisdictions. It provides a neutral platform for international organizations, states, business and civil society to discuss the elaboration of a transnational due process framework to handle the digital coexistence of diverse national laws in shared cross-border online spaces. Since its launch in January 2012, the Internet & Jurisdiction Project has involved more than 80 entities in its dialogue process.

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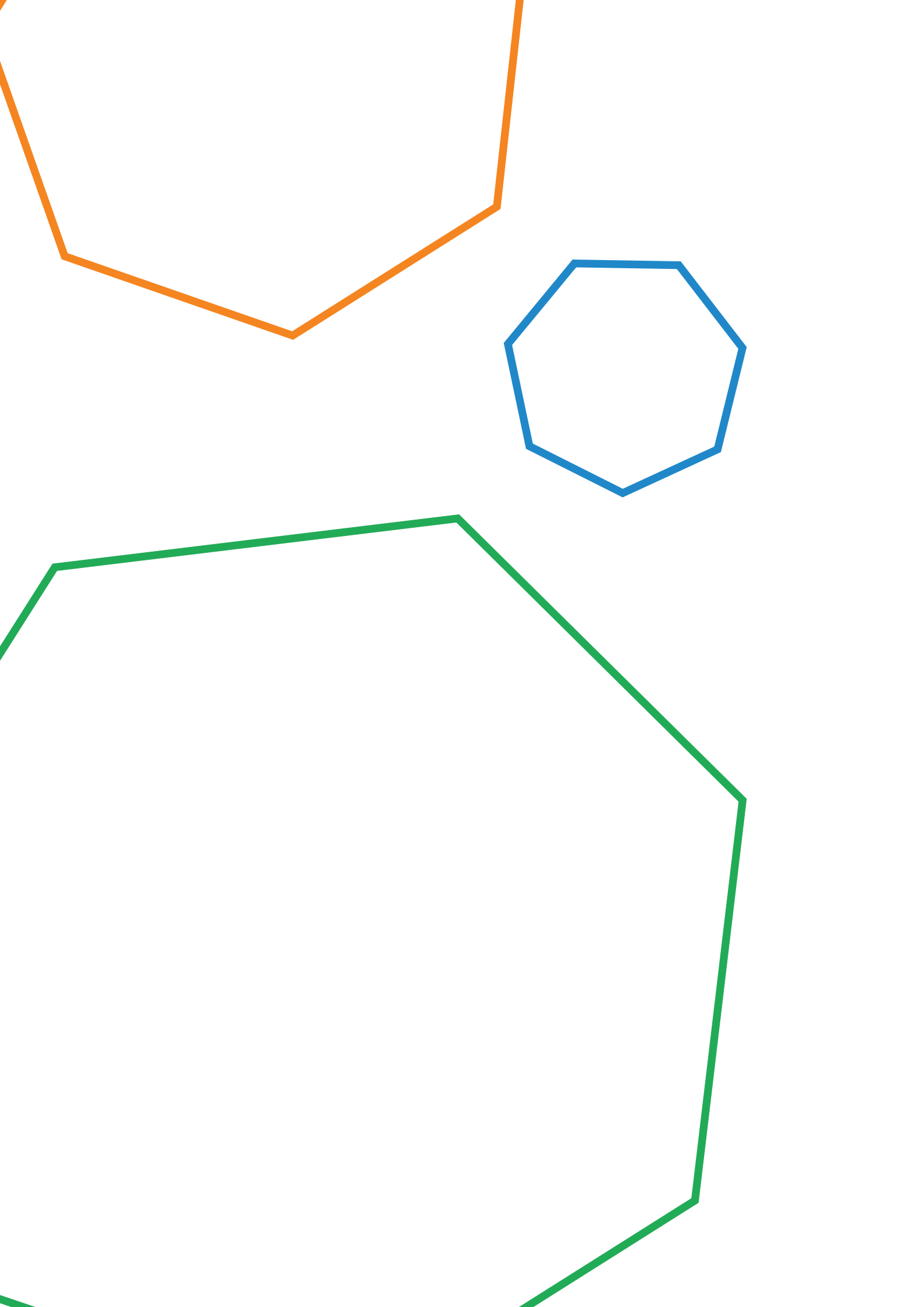
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# JANUARY

## 1. EUROPEAN PARLIAMENT COMMITTEE ENDORSES EU DATA PROTECTION REFORM, DEMANDS STRICT PROVISIONS

One year after the European Commission published its proposed comprehensive data protection reform<sup>1</sup>, the rapporteur of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs issued on January 10, 2013 a first draft report.<sup>2</sup> The document expresses the Committee's support for the envisaged data governance framework and suggests a variety of amendments that might impact the way online platforms operate in the 27 EU jurisdictions. It will be the basis for further discussions in the European Parliament before a final vote in April 2013. Among others, the report suggests extending the territorial scope to non-EU based entities to encompass "all collection and processing of personal data about Union residents" (Amendment 13). Moreover, it emphasizes the need for "explicit consent" for data processing (Amendment 17), stresses the "right to erasure and to be forgotten" (Amendment 34), and demands stricter procedures for requests by foreign courts and authorities regarding personal data located in the EU jurisdiction (Amendment 259).

### **Read further:**

Reuters: EU lawmakers seek to limit use of data by internet firms<sup>3</sup>

Hunton Privacy Blog: EU Parliament Committee Rapporteur issues Draft Report on Proposed Amendments to the EU Commission's Draft General Data Protection Regulation<sup>4</sup>

New York Times: Data Protection laws, an ocean apart<sup>5</sup>

## 2. TWITTER ORDERED TO REVEAL IDENTITY OF AUTHORS OF RACIST TWEETS IN FRENCH JURISDICTION

On January 24, 2013 the Grand Instance Court of Paris ordered Twitter<sup>6</sup> to help identifying the authors of racist tweets with the hashtag #unbonjuif that were a top trending topic in France in October 2012. The court concluded<sup>7</sup> that the racist tweets violate hate speech provisions in the French jurisdiction. Although Twitter removed some<sup>8</sup> concerned tweets, it rests unclear if the platform with headquarters in San Francisco will comply with the French order. The company has no offices in France and its rules stipulate that user identities can only be revealed with a valid US court order. French prosecutors have the possibility of launching procedures in the US jurisdiction. The French court moreover ordered Twitter to "set up, within the framework of its French platform, an easily accessible and visible system enabling anyone to bring to its attention illegal content, especially that which falls within the scope of the apology of crimes against humanity and incitement to racial hatred." Twitter can be fined<sup>9</sup> 1.000 euros daily for non-compliance with the order.

### **Read further:**

ITWorld: Twitter ordered to identify racist tweeters in France<sup>10</sup>

France24: France orders Twitter to identify racist users<sup>11</sup>

NPR: French Twitter lawsuit pits free speech against hate speech<sup>12</sup>



### 3. ACCESS AND SERVER LOCATION AS BASIS TO EXPAND JURISDICTION IN US AND CANADA

Two recent rulings in December 2012 in the US and Canadian jurisdiction revealed the tendency of extraterritorial extensions of sovereignty in Internet cases. A Canadian court decided in a dispute involving a Toronto resident and a US-based online platform that used his Canadian trade-mark that the mere accessibility of the website on computer screens on Canadian territory is sufficient to assert Canadian jurisdiction, regardless of the location of the operator or the location of the servers. Likewise, a US appeals court asserted jurisdiction over a Canadian resident. Accessing her business account from Canada, the defendant sent data from her former Connecticut-based employer via a computer server located on US territory to her private Canadian email account. The US court argued that the fact that the used computer server was on US soil constitutes a sufficient connection to assert US jurisdiction over a foreign resident.

#### Read further:

The Star: Courts adopt aggressive approach in cross-border Internet jurisdiction cases<sup>13</sup>  
Canadian Federal Court: Homeaway, Inc. v. Martin Hrdlicka<sup>14</sup>  
United States Court of Appeals for the Second Circuit: MacDermid, Inc. v. Deiter<sup>15</sup>

### 4. DATA SEIZURE IN THE CLOUD: CANADIAN COURT REJECTS US DEMAND FOR MEGAUPLOAD SERVERS

A Canadian court refused<sup>16</sup> on January 9, 2013, to comply with an MLAT procedure for a search warrant that was initiated by US authorities. The latter demanded for their ongoing investigation mirror-imaged copies of 32 Megaupload servers located at a data center on Canadian territory, which were seized on January 19, 2012. Megaupload protested that the demand was too broad since the servers also contain legal content that is not relevant to the ongoing investigation. The Ontario court ordered Megaupload and the US to agree on the amount of information US authorities should get access to. In case of disagreement, the judge announced to determine himself what data will be revealed.

#### Read further:

Arstechnica: US rebuffed in effort to get copies of Canadian Megaupload servers<sup>17</sup>  
TorrentFreak: Canadian court refuses to ship Megaupload servers<sup>18</sup>  
CircleID: Ontario court rejects U.S. Government demand for full access to Megaupload servers seized in Canada<sup>19</sup>

### 5. FACEBOOK, GOOGLE, MICROSOFT AND YAHOO DEMAND WARRANTS FOR LEA ACCESS TO PRIVATE COMMUNICATION

Four US-based companies – Facebook, Google, Microsoft and Yahoo – have decided<sup>20</sup> to demand warrants issued by US courts for law enforcement authorities to seize communication data of their users. Currently, under the 1986 Electronic Communications Privacy Act, police forces only need subpoenas without the approval of a judge to access opened or over 180 days old digital communication data in form of emails or other cloud-stored formats. The four platforms base their initiative on the 2010 United States v. Warshak<sup>21</sup> case that involved ISPs and the Fourth Amendment.

#### Read further:

The Hill: Facebook, email providers say they require warrants for private data seizures<sup>22</sup>  
ReadWriteCloud: Social networks use civil disobedience to protect user data<sup>23</sup>  
Wired: Yahoo, like Google, demands warrants for user email<sup>24</sup>

### 6. REVENGE PORN WEBSITE LAWSUIT TARGETS WEB HOST GODADDY IN US JURISDICTION

A lawsuit<sup>25</sup> was filed in a Texan court against the revenge porn website texxxan.com for infringing Texan privacy laws. The site features nude pictures without the consent of victims. The 16 plaintiffs are not only suing<sup>26</sup> the owner of the website, claiming he is not protected by the Section 230<sup>27</sup> liability exemptions. They also target the US-based hosting company GoDaddy under the “doctrine of civil conspiracy” since the web host generated profits from “joining with the website”.

### 7. DUTCH AND CANADIAN PRIVACY AUTHORITIES JOINTLY INVESTIGATE CALIFORNIAN WHATSAPP SERVICE

The Dutch Data Protection authority and the Canadian Privacy Commissioner collaborated to investigate the California-based WhatsApp messaging app. Its violations of “certain internationally accepted privacy principles” infringed the law of the Dutch and Canadian jurisdictions. The joint investigation is a “global first” according<sup>28</sup> to the two authorities. It resulted in two separate reports under the respective national laws, which will be enforced within the limits of the two jurisdictions. WhatsApp Inc. has no international establishments<sup>29</sup>.

## 8. FRANCE CONSIDERS NEW TAXES AND NETWORK CHARGES FOR PLATFORMS IN ITS JURISDICTION

On January 18, 2013, the French government published a 198 pages report<sup>30</sup> on Internet taxation that targets cross-border platforms which generate profits in the French jurisdiction but avoid French taxes. Ideas explored in the report include a French tax on the collection of data.<sup>31</sup> Moreover, after the French ISP Free shortly blocked online advertisements by default, France examines how online platforms could better contribute to French infrastructure costs.<sup>32</sup>

## 9. SWEDISH AUTHORITY WANTS TO MAKE GRAVE ONLINE DEFAMATION A CRIME

Following deliberations in the Swedish Parliament on constitutional updates, the Swedish Data Inspection Board demands<sup>33</sup> to declare grave cases of online defamation a crime, punishable by law, in the Swedish jurisdiction. The initiative aims at creating a new balance between freedom of expression and privacy.

## 10. FIRST SIX STRIKES ISP RESPONSE POLICY REVEALED IN US JURISDICTION

The website Torrentfreak revealed<sup>34</sup> the first ISP response measures prior to the official launch of the voluntary “six strikes” anti-piracy scheme<sup>35</sup> in the US jurisdiction. The system foresees a series of alerts to ISP customers who infringe copyrights and can also make use of repressive actions. Verizon’s policy includes the showing of an educational video and the reduction of the Internet connection to 256kbs for two to three days.

## 11. US AND RUSSIA SIGN INTELLECTUAL PROPERTY RIGHTS ACTION PLAN

The US and Russia have signed an action plan<sup>36</sup> to cooperate in the fight against piracy and online infringements. Among others, the agreement foresees collaborations<sup>37</sup> in the area of content takedowns, seizures and law making, including Russia’s draft law on ISP liability for copyright infringements by users.

## 12. CHINESE MESSAGING APP WECHAT APPLIED LOCAL CONTENT FILTERS TO GLOBAL USERS

Filters for sensitive content in the Chinese jurisdiction were switched on for all global users<sup>38</sup> of the popular chat app WeChat, operated by the Chinese company Tracent. The app provider monitored the communications of its users and blocked the sending of certain “restricted words” while displaying a warning message<sup>39</sup>. According to Tracent, the territorial extension of Chinese filters was a glitch<sup>40</sup>.

## 13. ANTI-PIRACY GROUP TRIES TO CUT OFF MEGA’S REVENUE STREAMS VIA VARIOUS JURISDICTIONS

An anti-piracy group called StopFileLockers announced the plan to cut off the finances<sup>41</sup> of Kim Dotcom’s new platform Mega. The hosting service does not process payments on its own but relies on a structure of resellers like EuroDNS or Asia Registry to distribute its premium offer. StopFileLockers intends to terminate the PayPal account of these companies.

## 14. US JUDGE RULES THAT NEWS AGENCIES CANNOT FREELY REUSE PICTURES UPLOADED BY TWITTER USERS

A court in the US jurisdiction decided<sup>42</sup> that Twitter’s Terms of Service do not grant news agencies the right to publish photos that were uploaded on Twitter without the prior copyright permission by the owner of a picture. The case involved Twitter pictures of the Haiti earthquake that were sold by AFP via Getty Images to the Washington Post.

## 15. GERMAN TOP COURT RULES INTERNET IS AN ESSENTIAL PART OF LIFE

On January 24, 2012 the German Supreme Court ruled<sup>43</sup> that Internet is an essential part of life<sup>44</sup> in the German jurisdiction and users can therefore demand compensation from their ISPs if they cannot get online. Similar judgements have been pronounced 2009 in France<sup>45</sup> and 2010 in Finland<sup>46</sup>.

## 16. EU COOKIE LAW STARTS TO BE ENFORCED IN IRISH JURISDICTION

The office of the Irish Data Protection Commissioner sent letters<sup>47</sup> to 80 websites within its jurisdiction to inquire about the way their operators implemented the EU cookie law that was enacted on July 1, 2011. The letters are a “first step”<sup>48</sup> of enforcing the law.

## 17. RISING REQUESTS: GOOGLE AND TWITTER PUBLISH NEW TRANSPARENCY REPORTS

The January 2013 transparency reports by Google<sup>49</sup> and Twitter<sup>50</sup> show an increase of user data requests by various jurisdictions. Demands for private identifiers and user data to Google rose by 17 percent over the last six months to 21.389 requests. During the same period, Twitter received 1009 requests, which represents a 20 percent rise. US authorities have issued the largest number of requests to both platforms.

## 18. WTO ALLOWS ANTIGUA AND BARBUDA TO PURSUE WITH DOWNLOAD PORTAL FOR “PIRATED” US MATERIAL

On January 28, 2013 the World Trade Organization confirmed<sup>51</sup> a 2007 preliminary authorization and allowed Antigua and Barbuda to launch a download platform in its jurisdiction without compensating US-based copyright holders. The copyright suspension is a legal sanction after a trade dispute involving online gambling<sup>52</sup> between the two jurisdictions.

## 19. HATE SPEECH OR HUMOR: FACEBOOK REVERSES DETERMINATION ON GRAPHIC VIOLENCE

A female Facebook user in Iceland’s jurisdiction flagged an offensive photoshopped picture of herself that contained

hate speech against women. The social network determined initially<sup>53</sup> that the picture did not violate the site’s Terms of Service<sup>54</sup> and constituted humor. Facebook later reversed its stance<sup>55</sup> and apologized to the Facebook user.

## 20. ISPS ORDERED TO REVEAL IDENTITIES OF FILE SHARES IN SWEDISH CIVIL COPYRIGHT CASES

Two cases before the Swedish Supreme Court gave green light to reveal the identities<sup>56</sup> of alleged pirates through their ISPs under the Swedish legislation that was enacted based on the EU 2009 Intellectual Property Rights Enforcement Directive.<sup>57</sup>

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[www.internetjurisdiction.net/observatory/retrospect/2013-january-references](http://www.internetjurisdiction.net/observatory/retrospect/2013-january-references)

## 1. EUROPEAN COURT OF HUMAN RIGHTS RULES ON BALANCE BETWEEN COPYRIGHT AND FREE SPEECH

The European Court of Human Rights (ECHR) ruled<sup>1</sup> for the first time on the interrelation between copyright and the right of freedom of expression as stipulated by Article 10<sup>2</sup> of the Convention for the Protection of Human Rights and Fundamental Freedoms. A French court held three photographers liable for copyright infringements, who published unauthorized fashion photos on a website. The photographers brought the case before the ECHR claiming that their Article 10 rights were violated by the French judgment. The ECHR clarified that since the photos were published with a commercial purpose, Article 10 was not violated. However, the ECHR argued that copyright enforcement must be generally balanced with freedom of expression.

### Read further:

ECHR Blog: Copyright vs Freedom of Expression Judgment<sup>3</sup>

Guardian: When does Freedom of Expression trump copyright?<sup>4</sup>

TechDirt: ECHR: No, copyright does not automatically trump Freedom of Expression<sup>5</sup>

## 2. EGYPTIAN JUDGE ORDERS YOUTUBE BLOCK OVER 'ANTI-ISLAM' VIDEO, REGULATOR APPEALS

Despite Google's temporary block<sup>6</sup> of the "Innocence of Muslims" YouTube video within Egypt's jurisdiction in September 2012, a Cairo court ordered the ministries of communications and investment on February 9, 2013 to block YouTube for 30 days for carrying the offensive content. The National Telecommunication Regulatory Authority appealed the decision. It argues that it is

technically not feasible to block YouTube in the Egyptian jurisdiction without interfering with the access to Google Search. The regulator said<sup>7</sup> in a statement that the "government cannot carry out the contents of the verdict within Egypt's borders" since only the United States were able to shut down YouTube. Under similar circumstances, the access to the video hosting platform remains blocked in Pakistan<sup>8</sup>.

### Read further:

New York Times: Egypt orders block on YouTube access<sup>9</sup>  
BBC: Egypt Ministry appeals against order to block YouTube<sup>10</sup>

ZDNet: Egyptian court orders YouTube block over 'anti-Islam film'<sup>11</sup>

## 3. GOOGLE NOT OBLIGED TO FILTER DEFAMATORY USER UPLOADS IN ITALIAN JURISDICTION

On December 21, 2012, a Milan court overturned a 2010 ruling that sentenced three Google executives to prison. The case involved a YouTube video of a bullied boy<sup>12</sup> that was posted on the platform in 2006. The details of the appeals court's decision have been made public on February 27, 2013. According to the ruling, "the possibility must be ruled out that a service provider, which offers active hosting can carry out effective, pre-emptive checks of the entire content uploaded by its user". Moreover, the court stated that any obligations for Internet companies to prevent the upload of defamatory content would "alter" the functionality of platforms.

### Read further:

Reuters: Google not expected to check every upload says Italian court<sup>13</sup>

Appeals Court of Milan: Written Opinion<sup>14</sup>

WebProNews: Court: Google can't be forced to filter every uploaded video<sup>15</sup>

## 4. FACING LEGAL PRESSURE, THE PIRATE BAY MOVES SERVES FROM SWEDISH JURISDICTION

Due to impeding legal action by the copyright group “Rights Alliance” in the Swedish jurisdiction, the torrent link library The Pirate Bay stopped hosting the platform via the Swedish Pirate Party. Instead, the operators moved the site<sup>16</sup> to servers of the Pirate Party in the Spanish and Norwegian jurisdictions. However, due to immediate legal pressure, the platform rapidly stopped hosting its data in Norway. What followed was a well-planned hoax: The torrent library announced<sup>17</sup> it moved its servers as a consequence to the “virtual asylum” of North Korea and artificially routed the traffic<sup>18</sup> to its servers through the country.

### Read further:

TorrentFreak: Pirate Party threatened with lawsuit for hosting The Pirate Bay<sup>19</sup>

TorrentFreak: The Pirate Bay departs Sweden and sets sail for Norway and Spain<sup>20</sup>

ArsTechnica: Fake headline of the day: The Pirate Bay “moves” to North Korea<sup>21</sup>

## 5. UK COURT SAYS GOOGLE CAN BE LIABLE FOR SLOW REMOVAL OF DEFAMATORY CONTENT

A landmark case in the UK jurisdiction specified that Google could be liable for defamatory posts on its blogging platform if it fails to remove them after notification. A British citizen sued<sup>22</sup> Google Inc., headquartered in the US, and Google UK over comments on a Blogger.com site called “London Muslim” that Google removed only five weeks after receiving a notification by the plaintiff in July 2011. The plaintiff appealed a prior ruling<sup>23</sup>, which argued that Google could not be regarded as the publisher of a defamatory post. On February 14, 2013 the Court of Appeal agreed<sup>24</sup> with the first judge that Google Inc. is not the primary publisher of such content. However, the judges argued that Google has an active role to play as soon as it is notified about a defamatory post to initiate timely takedown measures. Nevertheless, the appeals court agreed with the initial judgment that Google’s liability for the period between notification and removal should be regarded as “so trivial as not to justify the maintenance of the proceedings”.

### Read further:

SLC: Tamiz v Google: Court of Appeal judgment on defamation claim<sup>25</sup>

Guardian: Google must act quickly on libelous Blogger posts, says appeal court<sup>26</sup>

GigaOM: Happy Valentine’s, Google – see you in court<sup>27</sup>

## 6. ICELAND CONSIDERS PLANS TO BLOCK ONLINE PORNOGRAPHY

Iceland’s Interior minister Ogmund Jonasson is drafting a new legislation that would ban online pornography in the Icelandic jurisdiction. Printing and distributing pornography is already forbidden<sup>28</sup> “offline”. Iceland would be the first Western country with a comprehensive pornography ban. Measures to implement such provisions could include IP address and credit card payment blocks<sup>29</sup>.

## 7. CHINA ISSUES ITS FIRST PERSONAL DATA GOVERNANCE GUIDELINES

On February 1, 2013 the “Guidelines for Personal Information Protection Within Public and Commercial Services Information Systems” published by the Ministry of Industry and Information Technology took effect<sup>30</sup>. The non-binding framework sets for the first time comprehensive data protection standards in the Chinese jurisdiction. Among others, the guidelines prohibit<sup>31</sup> extraterritorial transfers of any personal data “without the individual’s express consent, government permission or other explicit legal or regulatory permission”.

## 8. FACEBOOK CAN MAINTAIN ITS REAL NAME POLICY IN GERMAN JURISDICTION, COURT SAYS

The social network Facebook won a case against the data protection authority of the Land Schleswig-Holstein (ULD) in Germany. In December 2012, the ULD ordered<sup>32</sup> the platform to allow pseudonyms in accordance with German and EU law. On February 14, 2013 an administrative court ruled<sup>33</sup> that since Facebook is headquartered in the Irish jurisdiction, it is governed by Irish instead of German data protection laws. The ULD plans to appeal the decision before the Schleswig-Holstein Higher Administrative Court.

## 9. BRAZIL CRIMINALIZES PHISHING IN ITS JURISDICTION

In April 2013, Brazil’s first cyber law that targets online fraud will take effect. The law that was approved<sup>34</sup> by the Câmara de deputado on November 7, 2012 will criminalize phishing<sup>35</sup> of credit cards and other financial information. It is designed to protect the growing e-commerce and banking sector in the Brazilian jurisdiction.

## 10. FACEBOOK DELETES EU USERS' FACIAL RECOGNITION DATA

On February 7, 2013 both the Hamburg Commissioner for Data Protection and Freedom of Information in Germany and the Office of the Irish Data Protection Commissioner (DPC) confirmed the deletion<sup>36</sup> of all stored facial recognition data of EU users by Facebook. On October 15, 2012, the social network already disabled<sup>37</sup> its facial recognition feature for Europeans after the DPC published<sup>38</sup> a re-audit and Hamburg's data protection commissioner investigated<sup>39</sup> the feature.

## 11. EU CYBER SECURITY STRATEGY WOULD MAKE BREACH NOTIFICATIONS MANDATORY

The European Commission presented on February 7, 2013 the draft Directive on Network and Information Security<sup>40</sup>. According to the proposed law, online platforms such as social networks and cloud providers would need to report security breaches<sup>41</sup> to public authorities. Until now, only telecommunication companies are required to do so in the EU jurisdiction. The draft Directive still needs to be approved by the European Parliament.

## 12. YOUTUBE CHALLENGES RUSSIAN 'HARMFUL CONTENT' LAW IN COURT

On February 15, 2013, Google's video platform YouTube filed a lawsuit<sup>42</sup> in a Moscow court against the Russian consumer rights watchdog Rospotrebnadzor that implements the 2012 law to restrict harmful online content in the Russian jurisdiction. YouTube challenges the order to remove a video that provides instructions to fake a suicide attempt, which appears to be "clearly intended to entertain viewers". Platforms can be put on a blacklist and blocked nationally in case of non-compliance<sup>43</sup> with Rospotrebnadzor's decisions.

## 13. CISPA REINTRODUCED IN US ONE DAY AFTER EXECUTIVE ORDER ON CYBERSECURITY

On February 12, 2013, US President Obama issued a Cybersecurity Executive Order<sup>44</sup> that provides a framework for public-private intelligence sharing on cyberthreats. One day later, the Cyber Intelligence Sharing and Protection Act (CISPA) has been re-introduced<sup>45</sup>. The bill passed the House of Representatives in 2012 and stalled in the Senate as civil liberties groups voiced privacy concerns<sup>46</sup> and the White House threatened to veto<sup>47</sup> the law.

## 14. POLICE PARTIALLY BLOCKS TUMBLR IN ITALIAN JURISDICTION BY ACCIDENT

Tumblr was partially inaccessible<sup>48</sup> in Italy for two days. The anti-pedophilia agency CNCPO ordered the blocking of the domain 25.media.tumblr.com that contained child pornography. The domain referred however to an Amazon cloud server that hosted other Tumblr pictures, which were thus also blocked for Italian users. The domain was removed from the Italian ISP blacklist on February 14, 2013.

## 15. EU PRIVACY WATCHDOGS PLAN TO TAKE ACTIONS AGAINST GOOGLE

The EU Article 29 Working Party decided<sup>49</sup> to continue their investigation in Google's privacy policy. The Data Protection Authorities announced<sup>50</sup> the intention to enforce EU law by mid-2013. Coordinated measures could include warnings, injunctions, orders and financial sanctions. The investigations are led by the French CNIL.

## 16. GOOGLE NOT LIABLE FOR ADVERTISEMENT MESSAGES IN AUSTRALIAN JURISDICTION

The Australia's High Court decided<sup>51</sup> that Google is not responsible for the sponsored messages displayed on its platform. The court stressed that "ordinary and reasonable users of the Google search engine would have understood that the representations conveyed by the sponsored links were those of the advertisers, and would not have concluded that Google adopted or endorsed the representations".

## 17. WEBSITES SHOULD NOTIFY USERS ABOUT COOKIES IN MEXICAN JURISDICTION

The new Privacy Notice Guidelines<sup>52</sup>, published by the Ministry of Economy, will take effect in April 2013. They specify<sup>53</sup> that data controllers must notify users about cookies or web beacons on their websites and provide information on how to disable this form of data collection.

## 18. DUTCH COPYRIGHT GROUP SUES THE PIRATE BAY PROXY OPERATOR

BREIN, a Dutch copyright group, has sued<sup>54</sup> the operator of the Pirate Bay proxy kuiken.co for facilitating copyright infringement. Dutch residents can still access the torrent library with cybertravel tools like proxies, despite a nation-wide ISP blockade of the website.

## 19. INDIAN COURT ORDERS BLOCK OF 78 DEFAMATORY WEB PAGES

The Indian Institute of Planning and Management won a case before a district court that resulted in the block<sup>55</sup> of 78 URLs that contained defamatory content. Blocked addresses included articles from the Wall Street Journal and the Times of India and the governmental web page of the Indian University Grant Commission. The government appealed<sup>56</sup> the decision and a district judge ordered the unblocking<sup>57</sup> of 70 URLs four weeks later. The case triggered a public debate on the use of ISP blocks.

## 20. FRENCH HADOPI REGIME MIGHT TARGET STREAMING

The French Hadopi agency that implements the three-strikes copyright regime in the French jurisdiction announced plans<sup>58</sup> to target online streaming. So far, the agency monitored only peer-to-peer file sharing. Possible measures to stop illegal streaming could include domain name seizures, as well as DNS or IP blocking and financial penalties executed by payment intermediaries.

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# MARCH

## 1. CHINA AND BAIDU WIN DISMISSAL OF A FIRST AMENDMENT LAWSUIT IN US JURISDICTION

On March 25, 2013 China and Baidu, the operator of China's largest search engine, won the dismissal<sup>1</sup> of a lawsuit under US law before the District Court in Manhattan. The case goes back to 2011, when eight US citizens claimed that Baidu "in conjunction with and as an agent and enforcer of the People's Republic of China" purposefully excluded certain pro-democratic content. The New York City residents filed a lawsuit against China and Baidu for violations of free speech provisions under state and federal law. China declined to effect service in line with the provisions of the Hague Convention<sup>2</sup> on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Article 13: A state may refuse to comply with a request if it "deems that compliance would infringe its sovereignty or security". The US court stated that the plaintiffs were thus not properly served and dismissed the case.

### Read further:

Court Opinion and Order: Zhang et al. v. Baidu.com Inc. and People's Republic of China<sup>3</sup>

Reuters: Baidu, China win dismissal of U.S. censorship lawsuit<sup>4</sup>

The Register: US democracy activists lose case against Baidu and China<sup>5</sup>

## 2. THE PIRATE BAY FOUNDERS' APPEAL REJECTED BY THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights (ECHR) unanimously rejected<sup>6</sup> the appeal of the Pirate Bay founders Peter Sunde and Fredrik Neij who hoped to overturn the conviction in the Swedish jurisdiction that found the men guilty of assisting copyright infringement. The defendants claimed that the Swedish decision violated their freedom of expression rights under Article 10<sup>7</sup> of the European Convention on Human Rights since they were only facilitators of data exchanges on the Internet. They appealed the judgment before the ECHR in June 2012. The ECHR came to the conclusion that there were "weighty reasons for the restriction of the applicants' freedom of expression" under Article 10 due to their conduct. Accordingly, the ECHR ruled that the Swedish judgment was sufficiently balanced. The ECHR pronounced itself for the first time on the interrelation of freedom of expression and copyright in January 2013 (Ashby Donald et al. v. France<sup>8</sup>).

### Read further:

European Court of Human Rights: Fredrik NEIJ and Peter SUNDE KOLMISOPPI v. Sweden<sup>9</sup>

ArsTechnica: European Court of Human Rights unanimously rejects Pirate Bay appeal<sup>10</sup>

Kluwer Copyright Blog: ECHR: Copyright vs. Freedom of Expression II (The Pirate Bay)<sup>11</sup>

### 3. NEW DRAFT LAW AGAINST ONLINE PIRACY IN SPANISH JURISDICTION

Targeting websites that host or link to copyright infringing content, the Spanish Council of Ministers approved the reform draft of the Intellectual Property Law, which is known as “Lasalle law”, on March 22, 2013. The draft is open for public input<sup>12</sup> and expected to be voted on in parliament before the end of 2013<sup>13</sup>. The reform comes one year after Spain adopted the “Sinde law”<sup>14</sup>, which allows authorities to block infringing websites through ISPs. Under the proposed copyright law, website operators who repeatedly fail to delete infringing content upon requests could be fined with up to 300.000 euros. Moreover, intermediaries such as advertising companies and payment services could be forced to withdraw their services to illicit websites, which would also allow to increase the pressure on websites whose operators are located in foreign jurisdictions. The Spanish Culture Minister clarified<sup>15</sup> that the high penalties are supposed to prevent recurring infringements and that search engines, which comply with requests, will be exempted from the new law.

#### Read further:

TorrentFreak: Spain to crackdown on pirate sites and outlaw file-sharing<sup>16</sup>

EDRi: Spain: New draft law to increase copyright infringement penalties<sup>17</sup>

Reuters: Spain cracking down on copyright infringement, online piracy<sup>18</sup>

### 4. FRENCH ASSOCIATION TAKES LEGAL ACTION AGAINST TWITTER FOR NON-COMPLIANCE WITH LOCAL COURT REQUEST

On March 21, 2013, the Union of French Jewish students filed a lawsuit under criminal law<sup>19</sup> against Twitter in the French jurisdiction, which claims 38.5 million euros in damages. The US-based company failed to comply with the January 2013 order of a Parisian court to hand over the identification data of authors who tweeted racist posts<sup>20</sup> in October 2012 within two weeks. Therefore, the association, which won the civil lawsuit against Twitter on January 24, 2013, filed the new criminal lawsuit, together with the anti-racism NGO J'accuse – International Action for Justice, against Twitter and its CEO Dick Costolo. The damages would be donated to the Shoah Memorial in Paris. Twitter in return filed an appeal<sup>21</sup> against the initial January 2013 judgment. The Irish headquarters of the micro-blogging service has a legal presence<sup>22</sup> for tax purposes in the French jurisdiction since December 2012.

#### Read further:

France24: French Jewish students take legal action against Twitter<sup>23</sup>

CNET: Twitter hit with \$50M suit over anti-Semitic tweeter data<sup>24</sup>

Huffington Post: Twitter Faces \$50 Million Lawsuit In France Over Anti-Semitic Tweet Data<sup>25</sup>

### 5. GOOGLE DOWNRANKS THE PIRATE BAY ON ITS .CO.UK DOMAIN

Google decided to downrank<sup>26</sup> the search result for “pirate bay” in the UK jurisdiction. The search engine thereby uses the Domain Name System and not geo-IP filtering. Only searches on the localized google.co.uk domain are affected by the move. The torrent library can still be found with the search term “pirate bay” on Google sites with other Top Level Domains and even the British version continues to show the controversial file-sharing website as a result for related search terms. In September 2012, Google removed The Pirate Bay from its Instant Search<sup>27</sup> suggestions. The Pirate Bay is currently blocked<sup>28</sup> by leading ISPs in the British jurisdiction and therefore only accessible via proxies and VPNs for British residents.

#### Read further:

Search Engine Land: Google demotes The Pirate Bay UK search ranking<sup>29</sup>

TorrentFreak: Google downranks The Pirate Bay in UK search results<sup>30</sup>

Telegraph: Record labels criticise Google anti-piracy effort<sup>31</sup>

### 6. NINE EUROPEAN COUNTRIES CALL UPON EU TO SOFTEN THE DATA PROTECTION REFORM

The pressure<sup>32</sup> on the EU to ease certain provisions of the draft reform that will update the 1995 Data Protection Directive increases. Next to concerned business actors and the US, nine European jurisdictions including the UK, Germany, Sweden and Belgium have voiced their concerns<sup>33</sup> on issues such as the ‘right to be forgotten’ in a memo drafted by the Irish EU presidency.

### 7. YOUTUBE BLOCK IN EGYPTIAN JURISDICTION STOPPED BY COURT

The Administrative Court of Egypt accepted the appeal<sup>34</sup> by the National Telecommunications Regulatory Authority (NTRA) and overruled the decision of a Cairo court<sup>35</sup> from February 9, 2013 to block YouTube for one month for carrying the anti-Islam video “Innocence of Muslims”. NTRA argued<sup>36</sup> in its appeal that the block would affect Google Search and that only the US was able to shut down YouTube.

### 8. BRITISH DEFAMATION REFORM AMENDMENT COULD IMPOSE HIGH FINES ON BLOGGERS

A new amendment, dubbed “Leveson deal”, to a draft press law in the UK jurisdiction could impose high defamation fines<sup>37</sup> on bloggers and other website operators who generate revenues with news items. They would be obliged to sign up to a new press regulator to be excluded from exemplary fines.

## 9. DETAILS OF ITALIAN YOUTUBE JUDGMENT: PRE-EMPTIVE FILTERING NOT NECESSARY

Sixty days after a Milan court decided in Google's favor and acquitted the three executives from all liability charges concerning the 2006 YouTube video of a bullied autistic boy, the details of the verdict have been published. The court stressed<sup>38</sup> that an "obligation for the Internet company to prevent the defamatory event would impose on the same company a pre-emptive filter on all the data uploaded on the network, which would alter its own functionality."

## 10. BORDEAUX COURT HOLDS LINKING WEBSITE OPERATOR LIABLE FOR COPYRIGHT INFRINGEMENTS

The French Court of Appeals of Bordeaux judged<sup>39</sup> that the operator of a website with a library of links to copyright infringing movies committed criminal copyright infringement. The website did not host any infringing content itself.

## 11. DATA REQUESTS: MICROSOFT PUBLISHES GLOBAL STATISTICS, GOOGLE DISCLOSES NEW DETAILS

On March 21, 2013 Microsoft presented<sup>40</sup> its first Transparency Report with statistics on the 70.665 requests<sup>41</sup> it received from law enforcement authorities in jurisdictions around the world throughout 2012. Google enlarged its Transparency Report by disclosing<sup>42</sup> information on national security letter requests from the FBI.

## 12. FRENCH ANTI-PIRACY AGENCY HADOPI MIGHT TARGET STREAMING AND DIRECT DOWNLOAD SITES

The French agency behind the "three strikes" regime for P2P filesharing explores in a new report<sup>43</sup> the possibility to enlarge its efforts and target streaming sites and direct download platforms. The paper outlines<sup>44</sup> the possible obligation for proactive platform filtering, as well as the introduction of new financial penalties through payment intermediaries and mechanisms for DNS and IP blocking in case of non-compliance.

## 13. TWITTER COMPLIES WITH REQUESTS TO BLOCK POSTS IN RUSSIAN JURISDICTION

Twitter suspended<sup>45</sup> one account and restricted the access to five posts in the Russian jurisdiction, according to the Russian Federal Service for Supervision in Telecommunications, Information Technology and Mass Communications. The micro-blogging service complied with requests under the child protection law<sup>46</sup> that took effect in November 2012.

## 14. NEWS AGGREGATORS DO NOT NEED TO PAY PUBLISHERS IN GERMAN JURISDICTION FOR SNIPPETS

The German parliament voted<sup>47</sup> on March 1, 2013 that news aggregators like Google News can continue to show snippets of news articles without paying the online publishers they link to. Meanwhile, Portuguese media companies<sup>48</sup> demand financial compensation for snippets from Google.

## 15. US LAWMAKERS INTRODUCE NEW BILL THAT REQUIRES WARRANTS FOR DATA ACCESS

On March 6, 2013 US lawmakers introduced the Online Communications and Geolocation Protection Act.<sup>49</sup> The bill would create<sup>50</sup> new requirements for law enforcement agencies to access electronic communications and geolocation data with court-issued warrants. The draft law seeks to reform the Electronic Communications Privacy Act, which took effect in 1986.

## 16. EU AND APEC DEBATE INTEROPERABILITY OF STANDARDS FOR CROSS-BORDER DATA TRANSFERS

Looking at how companies should comply with data protection standards in different jurisdictions, the Article 29 Working Party and the Asia-Pacific Economic Cooperation (APEC) met in Indonesia to discuss<sup>51</sup> the interoperability between the APEC Cross-Border Privacy Rules and EU Binding Corporate Rules. The US Department of Commerce is equally participating<sup>52</sup> in the talks to identify tools that guarantee interoperability in cross-border data transfers.

## 17. STATE ASKS KERALA HIGH COURT FOR ORDER TO BLOCK PORN SITES IN INDIAN JURISDICTION

Arguing that there is a correlation between the recent sexual violence against women in India and online pornography, the Indian state of Kerala's government submitted<sup>53</sup> a petition to the High Court of Kerala that seeks a judgment, which would oblige the federal government's agency Indian Computer Emergency Response Team to block websites that contain sexually explicit content.

## 18. FIRST FACEBOOK ONLINE DEFAMATION CASE IN TRINIDAD AND TOBAGO

More and more jurisdictions are confronted with legal challenges on the Internet. In Trinidad and Tobago, a

court might rule on the first online defamation case<sup>54</sup> in the history of the country that involves posts on a Facebook page.

## 19. BRAZIL'S FIRST CYBERCRIME LAW TAKES EFFECT

The first cybercrime law takes effect in the Brazilian jurisdiction. The "Dieckmann law"<sup>55</sup>, named after a celebrity cybercrime victim, aims at combating online frauds like phishing. Brazilian cybercriminals have been involved in attacks beyond the Brazilian jurisdiction, including Argentina, Chile, Mexico and Uruguay in the past.

## 20. RUSSIAN DUMA DISCUSSES NEW FRAMEWORK FOR LAW "ON THE INTERNET"

The State Duma's Committee on Information Policy, Information Technology and Communications presented a draft concept that is intended to trigger a discussion on the need to modernize Russian legislation for the Internet Age. The draft explores<sup>56</sup> the appropriateness of a single legal framework "on the Internet" and debates the extent of Russian territorial jurisdiction in cyberspace.

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[www.internetjurisdiction.net/observatory/retrospect/2013-march-references](http://www.internetjurisdiction.net/observatory/retrospect/2013-march-references)

## 1. US CYBERSECURITY BILL CISPA FACES RESISTANCE IN SENATE AFTER PASSING THE HOUSE

Despite a veto threat<sup>1</sup> by the US White House and strong concerns<sup>2</sup> of civil liberties groups due to the lack of privacy safeguards, the US Cyber Intelligence Sharing and Protection Act (CISPA) was approved<sup>3</sup> by the House of Representatives on April 18, 2013. The bill intends to augment the security of US networks and computer systems by facilitating the information sharing on cyber-threats between Internet companies and local authorities. Criticism arises from provisions that would grant a large number of US agencies access to personal data without proper judicial oversight and authorize companies to share information directly and without legal liabilities with US authorities. As a next step, CISPA needs to pass the Senate, before arriving at the White House. Reminiscent of 2012 when an earlier version<sup>4</sup> of CISPA stalled in the Senate, it seems likely that the Senate will not vote on CISPA. Instead, new bills are being drafted in the Senate, including a bipartisan information-sharing bill<sup>5</sup> by the Senate Intelligence Committee.

### Read further:

Economist: From SOPA to CISPA<sup>6</sup>

ZDNet: CISPA “dead” in Senate, privacy concerns cited<sup>7</sup>

US House of Representatives: H.R. 3523 Cyber Intelligence Sharing and Protection Act<sup>8</sup>

## 2. SIX EU COUNTRIES LAUNCH COORDINATED PRIVACY INVESTIGATIONS INTO GOOGLE

Data Protection Authorities in the United Kingdom, Germany, Italy, the Netherlands and Spain have announced on April 2, 2013 to open official investigations in Google's privacy policy. The five agencies join<sup>9</sup> the French CNIL, which led between March and October 2012, in the name of the EU Article 29 Working Group, the inspection of

Google's Terms of Service update that created a new, unified privacy policy across over 60 services on March 1, 2012. In October 2012, CNIL came to the conclusion<sup>10</sup> that Google's privacy policy does not provide users of its services with sufficient information on the processing of their personal data, including the “scope of the collection and the potential uses”. The French watchdog issued subsequently several recommendations, which Google failed to implement<sup>11</sup> within a four-months deadline until February 2013. The coordinated inquiries in Google's privacy policy according to the law of the six European jurisdictions could now result in enforcement measures and financial sanctions.<sup>12</sup>

### Read further:

GigaOM: Google faces wrath of European regulators over unified privacy policy<sup>13</sup>

Guardian: Google facing legal threat from six European countries over privacy<sup>14</sup>

New York Times: Google faces more inquiries in Europe over privacy policy<sup>15</sup>

## 3. EU PRIVACY REFORM: US STRESSES NEED OF INTEROPERABILITY FOR CROSS-BORDER DATA TRANSFERS

As negotiations around the planned update of the EU data protection legislation get more intense<sup>16</sup> in Brussels, the US continues<sup>17</sup> to stress the need of cross-border data interoperability. Under the current proposal<sup>18</sup>, US-based companies operating in the European jurisdiction could be fined with up to two percent of their global turnover for breaches of EU privacy laws. In what appears to be the first public US comment to the proposed EU privacy law reform according to the news site EurActiv, a senior US Federal Trade Commission (FTC) official recalled that privacy provisions in the US and EU jurisdiction already share several key characteristics. With her visit to Brussels, FTC representative Julie Brill “wanted to make sure

that the language will allow us to continue to co-operate robustly through the ‘safe harbour’”. In a joint statement, European Commission Vice-President Viviane Reding and US Secretary of Commerce John Bryson acknowledged<sup>19</sup> in March 2013 the “defining moment for global personal data protection and privacy policy” and interoperability as both the EU and US update their frameworks.

#### Read further:

Wall Street Journal: US to EU: US data law is Brill<sup>20</sup>

EurActive: US makes first public comment over draft EU data privacy law<sup>21</sup>

DataGuidance: Brill says greater cross-border flexibility needed to achieve EU-US interoperability<sup>22</sup>

## 4. ISP BLOCKS AND DOMAIN SEIZURES: ITALY CRACKS DOWN ON 27 FILE-SHARING SITES

The Public Prosecutor of Rome ordered ISPs to block<sup>23</sup> the domains of 27 file-sharing websites in the Italian jurisdiction. Moreover, the prosecutor announced the possibility to initiate international legal procedures to demand the proper seizure of the domains. The targeted file-sharing sites are registered at the top-level domains .com, .org, .net, .ch, .tv, .it .in and .co. Investigations by the Italian Cybercrime Police led to the crackdown that followed a copyright infringement complaint<sup>24</sup> issued by the Italian distributor of the French animated movie “A Monster of Paris”. The website Rapidgator, as well as some Italian ISPs have filed appeals<sup>25</sup> against the order by the Court of Rome.

#### Read further:

TorrentFreak: Massive BitTorrent and Cyberlocker domain crackdown underway<sup>26</sup>

ArsTechnica: Italy blocks 27 sites suspected of aiding file-sharing<sup>27</sup>

EDRI: A Monster from Rome – huge crackdown action on “file-sharing”<sup>28</sup>

## 5. SAUDI ARABIA SEEKS TO MONITOR COMMUNICATIONS ON SKYPE AND TWITTER

Saudi Arabia’s telecommunications regulator, the Communications and Information Technology Commission, explores how to enforce local jurisdiction over online activities of Saudi citizens using communication and micro-blogging services established in third countries. The regulator asked<sup>29</sup> the operators of encrypted chat and messaging platforms including Skype, WhatsApp or Viber<sup>30</sup> to provide the government with means to monitor communication in its jurisdiction. The Commission said it would consider procedures<sup>31</sup> to block these services in the Saudi Kingdom if it was impossible to monitor them. Moreover, Saudi authorities announced plans<sup>32</sup> to track identities on Twitter by obliging Saudi users to register their IDs to access the platform.

#### Read further:

TechCrunch: Saudi Arabian government mulls ban of WhatsApp, Skype and Viber over regulatory requirements<sup>33</sup>

Reuters: Saudi Arabia may try to end anonymity for Twitter users<sup>34</sup>

CNN: Saudi prince: Blocking social media platforms is a ‘losing war’<sup>35</sup>

## 6. INTERPOL TARGETS PAYMENT INTERMEDIARIES IN FIGHT AGAINST FILE-SHARING

Due to an investigation by Interpol in cooperation with Visa and Mastercard, the payment intermediary iKoruna, based in the Czech jurisdiction, was compelled to stop offering its service to file-sharing sites. Remaining transactions have been retained, which could indicate that Interpol conducts a criminal investigation<sup>36</sup> against one of the payment processor’s clients.

## 7. CALIFORNIAN DRAFT LAW REQUIRES PLATFORMS TO DISCLOSE COLLECTED USER DATA

The draft law “Right to Know Act 2013”<sup>37</sup> proposed by a California Assembly Member was re-read and amended for the second time in the US State. The bill would require companies in its jurisdiction, including many globally operating online platforms, to disclose<sup>38</sup> stored personal data upon request of users within 30 days.

## 8. APPEALED AGAIN: 2006 GOOGLE VIDEO LAWSUIT CONTINUES TO HIGHEST ITALIAN COURT

In 2010, the Court of Milan pronounced suspended prison sentences for three senior Google officials. They were held liable for a clip showing a bullied disabled boy, which circulated in 2006 on Google Video. The appeals court of Milan overturned<sup>39</sup> the initial ruling and acquitted the executives of all charges in December 2012. The prosecutor now appealed<sup>40</sup> this decision. The case will be heard by the Italian Court of Cassation.

## 9. ICANN’S GOVERNMENTAL ADVISORY COMMITTEE FLAGS A DOZEN NEW STRINGS

On April 11, 2013, at the ICANN meeting in Beijing, the Governmental Advisory Committee (GAC) issued a Communique that advises the ICANN Board not to proceed with the evaluation of several new top-level domains including .patagonia, .persiangulf and .wine. Moreover, the GAC suggested a number of safeguards<sup>41</sup> for the creation of new strings that can be commented until May 14, 2013.



## 10. URUGUAY ACCEDES TO COUNCIL OF EUROPE'S PERSONAL DATA PROCESSING CONVENTION 108

Uruguay has become the 45th country and first non-European signatory to accede<sup>42</sup> to the Council of Europe's Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data. The data protection framework that also regulates cross-border data transfers will become effective on August 1, 2013.

## 11. CC-TLDS: THE PIRATE BAY MOVES FROM SWEDEN OVER GREENLAND TO ICELAND'S JURISDICTION

The torrent link library The Pirate Bay continues to evade national enforcement actions by switching its country code top-level domain (cc-TLD) to new jurisdictions. Preempting<sup>43</sup> an imminent seizure of their .se (Sweden) domain, the platform moved to Greenland's .gl on April 8, 2013. However, the operator of .gl quickly announced<sup>44</sup> to suspend the domain for illegal activities. The Pirate Bay is now registered under Iceland's .is.<sup>45</sup>

## 12. JAPANESE LAW ENFORCEMENT URGES ISPS TO BLOCK ONLINE ANONYMIZER

In order to limit cybercrime in its jurisdiction, Japan's National Police Agency has asked national ISPs to voluntarily block<sup>46</sup> communications that use The Onion Router (Tor), an anonymity software that relies on distributed, encrypted routing and masks the location of Internet users.

## 13. CANADIAN COURT REJECTS CALIFORNIAN JURISDICTION CLAUSE IN EBAY'S TERMS OF SERVICE

A Quebec court declared eBay's Terms of Service clause that specifies California as the only jurisdiction to solve disputes with the US-based platform to be "excessive and unreasonable"<sup>47</sup>. The Canadian court therefore asserts adjudicatory jurisdiction over the e-commerce company and allows two Canadian plaintiffs to pursue legal actions against eBay.

## 14. BRAZILIAN LEGISLATURE ASKS GOOGLE FOR NEW PROCEDURE TO TAKE DOWN DEFAMATORY CONTENT

The Attorney General of the Brazilian Chamber of Deputies has contacted Google Brazil to propose a plan<sup>48</sup> that would allow streamlining the process of request for the

takedown of content that is defamatory for members of the Chamber. Hereby, to avoid lengthy court procedures, the Attorney General suggested putting in place a procedure for direct requests that do not run through courts.

## 15. FRENCH INTELLIGENCE AGENCY FORCED WIKIPEDIA VOLUNTEER TO DELETE AN ARTICLE

The French Intelligence Agency Direction Centrale du Renseignement Intérieur has allegedly compelled<sup>49</sup> a volunteer editor of Wikipedia France to take down an article about a French military base, after the Wikimedia Foundation refused to comply with an initial takedown request. The article has been reposted by other Wikipedia users to become the most-viewed page on wikipedia.fr.

## 16. GERMAN COURT CONFIRMS: FACEBOOK CAN MAINTAIN ITS REAL-NAME POLICY

Confirming two lower judgements, the Administrative Court of Appeals of the German State of Schleswig-Holstein ruled on April 23, 2013 that Facebook can forbid pseudonyms on its platform in the German jurisdiction. The Office of the Data Protection Commissioner (ULD) of Schleswig-Holstein previously ordered Facebook to abolish its strict real-name policy. The court reaffirmed<sup>50</sup> that such an order would need to be made under Irish law due to the location of Facebook's international headquarters in Dublin.

## 17. EGYPT LAUNCHES ONLINE PORNOGRAPHY BLOCK IN ITS JURISDICTION

Enforcing a 2009 order by Cairo's administrative court, Egypt started<sup>51</sup> to progressively employ its blocking program that was set up in January 2013 to restrict the access to Internet pornography for Egyptian residents.

## 18. GERMANY FINES GOOGLE OVER STREET VIEW DATA COLLECTION

The Data Protection Authority of the German state Hamburg ordered<sup>52</sup> Google to pay a 145.000 Euro fine on April 22, 2013 for the systematic collection of personal user data during the image capturing for its Street-View service. The amount represents 0.0002 percent of Google's 2012 net profit.

## 19. DIGITAL RESELLING OF MUSIC INFRINGES COPYRIGHT IN US JURISDICTION

A New York Judge ruled<sup>53</sup> on April 2, 2013 in a case involving the digital music reselling platform ReDigi that second-hand sales would constitute unauthorized copies of music that infringe copyrights.

## 20. NATIONAL SECURITY: INDIAN AUTHORITIES INVESTIGATE GOOGLE MAPATHON

A Google “mapathon” in India, for which users were asked to complement information on the Google Earth platform, might have violated<sup>54</sup> Indian national security laws regarding mapping. Investigations were launched after India’s official mapping agency Survey of India issued a complaint.<sup>55</sup>

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## 1. GERMAN COURT PRESCRIBES NOTICE AND TAKEDOWN REGIME FOR DEFAMATORY GOOGLE AUTOCOMPLETE TERMS

Germany's Federal Court of Justice overturned on May 14, 2013 the decisions of two lower courts and decided<sup>1</sup> that Google.de must block defamatory autocomplete search suggestions<sup>2</sup> in the German jurisdiction upon notification. Autocomplete suggestions are generated by algorithms and based upon frequent search terms typed by users. The case involved a German company that complained over the suggested search terms "Scientology" and "fraud", which were connected to its name. The top court came to the conclusion that this constitutes a form of defamation since the suggestions imply a "factual link" between the plaintiff and the terms, which have "negative connotations". Another high-profile case involving the former German First Lady Bettina Wulff<sup>3</sup> and Google's autocomplete function is still pending in Germany.

### Read further:

Deutsche Welle: German federal court raps Google on the knuckles over autocomplete function<sup>4</sup>

Search Engine Land: German court says Google must block libelous words added via autocomplete function<sup>5</sup>

BBC: Germany tells Google to tidy-up auto-complete<sup>6</sup>

## 2. US REGISTRAR SEIZES OVER 700 DOMAIN NAMES OF SYRIAN ENTITIES

The US-based registrar Network Solution has seized<sup>7</sup> 708 domains that were registered in .com .org and .net top-level domains and used by Syrians. The majority of the seized domains were pointing at IP addresses assigned to the Syria's domain registration authority and Internet regulator Syrian Computer Society. Network Solutions

apparently complied with existing US trade sanctions against Syria. According to WHOIS records, most seized domains were marked by the registrar with the notion "OFAC Holding", a reference to the US Department of the Treasury's Office of Foreign Assets Control<sup>8</sup> which enforces the sanctions. US-based companies which do not comply with enacted sanctions can face civil enforcement actions and financial sanctions.

### Read further:

Krebs on Security: Trade sanctions cited in hundreds of Syrian domain seizures<sup>9</sup>

ArsTechnica: Network Solutions seizes over 700 domains registered to Syrians<sup>10</sup>

Web Host Industry Review: Network Solutions seizes 700 domains belonging to Syrian Entities<sup>11</sup>

## 3. GERMAN COURT ASKS EUROPEAN COURT OF JUSTICE ABOUT LEGALITY OF EMBEDDING YOUTUBE VIDEOS

On May 16, 2013 Germany's Federal Court of Justice asked<sup>12</sup> the European Court of Justice to decide upon the question whether a website operator potentially infringes copyrights<sup>13</sup> by embedding protected third-party YouTube videos on a website. A water filter manufacturer brought the case before German courts after competitors embedded its promotional video in their website. The video was uploaded on YouTube by another person without any authorization. The court came to the conclusion that the so-called framing of the YouTube video does not infringe copyright law in the German jurisdiction, but could violate European laws. The lawsuit did only focus on the embedding of YouTube videos. The plaintiff filed a separate lawsuit against YouTube. The decision of the European Court of Justice on framing and resulting copyright infringement liabilities could trigger changes in the laws of all EU member states.

**Read further:**

PCWorld: German case on embedding YouTube videos referred to EU court<sup>14</sup>

Deutsche Welle: Who owns a YouTube clip?<sup>15</sup>

DLA Piper: German Federal Court of Justice submits decision on the legality of framing to the ECJ<sup>16</sup>

## 4. DEALING WITH VIRAL DEFAMATION ON FACEBOOK, YOUTUBE: IRISH COURT EXPLORES TAKEDOWNS

On May 16, 2013 the Irish High Court gave an interlocutory judgment<sup>17</sup> in a case that involves the questions of how to deal with the viral spread of defamatory content on social network platforms and remediation. The defendants include Facebook Ireland, Google Ireland and US, YouTube and Yahoo UK. False accusations of an Irish student not paying a taxi fare circulated widely on the Internet after a taxi driver posted a video of a fleeing costumer on YouTube. The video became viral and the student who was wrongly identified<sup>18</sup> as the culprit filed a lawsuit to demand the permanent removal of the video. The High Court ruled that experts for the plaintiff should meet with experts of the concerned Internet companies to discuss the feasibility and technical steps for takedowns to implement a mandatory injunction<sup>19</sup> until the full trial.

**Read further:**

The Journal: Court says YouTube video of taxi evasion may be taken down from the Internet<sup>20</sup>

Daily Mail: MoS proves that innocent young man was falsely branded a thief on the world's biggest websites<sup>21</sup>

IT Law in Ireland: Defamatory material on Facebook and YouTube: McKeogh v. Doe and others<sup>22</sup>

## 5. SWEDISH AUTHORITIES WANT TO SEIZE THE PIRATE BAY'S .SE AND .IS DOMAINS

On May 1, 2013 the torrent link library The Pirate Bay moved<sup>23</sup> its site to Sint Maarten's .sx domain in anticipation of a potential seizure of its .se and .is domains. One day before, on April 30, 2013, a Swedish prosecutor filed a motion at the District Court of Stockholm to demand the seizure of thepiratebay.se, piratebay.se and thepiratebay.is. The Icelandic domain registry ISNIC however clarified<sup>24</sup> that it would not implement a seizure order coming from the Swedish jurisdiction. Sweden's domain registry IIS protested<sup>25</sup> against the intention to seize a domain and argued it would be disproportionate. Moreover, according to IIS, this would be the first time that a state sues a registry "for abetting criminal activity or breaching copyright law": The Swedish prosecutor included IIS in the list of defendants in the case against The Pirate Bay for assisting in criminal copyright infringement. The domain administrator must respond to the request until early June 2013.

**Read further:**

TorrentFreak: Pirate Bay domain registrar assists copyright infringement, prosecutor claims<sup>26</sup>

Network World: Swedish domain admin comes out against Piratebay.se seizure<sup>27</sup>

The Register: P2P badboy The Pirate Bay sets sail for the Caribbean<sup>28</sup>

## 6. BRAZILIAN COURT DECIDES GOOGLE SHOULD TAKE DOWN CONTENT UPON NOTIFICATION, WITHOUT COURT ORDER

On May 20, 2013, the ruling of a Brazilian Higher Court from April 2013 became public. A content owner wanted Google to remove an unauthorized copy of his material from a blog hosted by the company. The court decided<sup>29</sup> that content providers in the Brazilian jurisdiction must take down infringing content immediately after receiving a notice from the author of the content, even without a court order. Any non-compliance with such requests could render the providers liable for damages. The reasoning of the judgement was applied<sup>30</sup> in a similar case involving offensive content takedowns, in which a Brazilian court ordered Google to pay 30.000 Real for not having removed six pages after receiving a notification.

## 7. AUSTRALIAN FINANCIAL REGULATOR ACCIDENTALLY BLOCKS 1200 WEBSITES WHILE TARGETING TWO

The Australian Securities and Investment Commission tried to block<sup>31</sup> two fraudulent websites registered in .com. However, one of the websites was sharing its IP address with 1200 other websites that were unintentionally blocked. This is the first time that a governmental agency apart of the Australian Federal Police uses the Section 313 of the Telecommunications Act to order ISPs to block websites.

## 8. PLAN IN TAIWAN TO BLOCK OVERSEAS WEBSITES THAT INFRINGE COPYRIGHTS ABANDONED

On May 21, 2013 the Taiwanese Intellectual Property office announced<sup>32</sup> a plan to amend the Copyright Act to order local ISPs to limit the access to copyright infringing websites outside its jurisdictional reach through IP and DNS blocks. Free speech protests, however, led the agency to quickly back off<sup>33</sup> from the intended plan.

## 9. SYRIA SHUTS OFF INTERNET IN ITS JURISDICTION FOR 20 HOURS

On May 7, 2013 Syrian authorities disconnected the country from the Internet for 20 hours. Syria used the core routing protocol Border Gateway Protocol<sup>34</sup> to shut off the Internet and guarantee that both incoming and outgoing traffic came to a stop<sup>35</sup>.

## 10. RUSSIA RATIFIES COUNCIL OF EUROPE'S DATA PROTECTION CONVENTION 108

On May 15, 2013 Russia ratified<sup>36</sup> the "Convention for the protection of individuals with regard to Automatic Processing of Personal Data" of the Council of Europe, which sets legally binding standards for data protection and privacy. It will enter into force<sup>37</sup> in the Russian jurisdiction on September 1, 2013.

## 11. INDIAN MAY ASK SKYPE TO SET UP LOCAL SERVERS AND ISPS TO SEGREGATE IP ADDRESSES BY REGION

The Indian Ministry of Home Affairs considers<sup>38</sup> to demand VoIP providers such as Skype to set up servers in the Indian jurisdiction to allow law enforcement authorities and security agencies to access communications. Moreover, plans were pronounced to ask ISPs and mobile phone companies to "segregate Internet Protocol (IP) addresses on a state basis" to allow websites such as social networks to be blocked in selected Indian regions.

## 12. US BLOGGER MIGHT FACE 1 MILLION DOLLAR REPUTATION LAWSUIT BY INDIAN PUBLISHER

Following critical comments by a US blogger, an Indian publishing company announced<sup>39</sup> the intention to sue the operator of the site for violations of Section 66A of the Indian Information Technology Act, which forbids to publish "any information that is grossly offensive or has menacing character" or to publish false information via a computer. The publisher claims 1 million US dollar in damages. It rests unclear if the lawsuit will be filed in the Indian or US jurisdiction.

## 13. NORWEGIAN COPYRIGHT ACT AMENDMENT TO BLOCK PIRACY SITES LIKELY TO BE ADOPTED

A majority in the Norwegian parliament voted<sup>40</sup> in favor of amendments to the Copyright Act, which would establish the legal basis in the Norwegian jurisdiction to compel ISPs to block piracy websites on its territory. The law would also remove personal data protections in cases of copyright infringements to identify end-users. The amendment was presented by the Ministry of Culture in January 2013.

## 14. ANTIGUA MIGHT COOPERATE WITH THE PIRATE BAY TO LAUNCH WTO AUTHORIZED PIRACY PORTAL

In January 2013, the World Trade Organization (WTO) authorized Antigua to suspend US copyrights in its jurisdiction in response to trade sanctions. The government of Antigua is currently exploring potential partnerships<sup>41</sup> for a planned "piracy" platform and will soon accept official bids for cooperation. The website TorrentFreak reports that the state is considering to team up with The Pirate Bay, which responded positively to the idea.

## 15. INDIAN SUPREME COURT EXAMINES VALIDITY OF CONTENT SCREENING LAW FOR WEBSITE OPERATORS

The Indian Supreme Court is going to examine<sup>42</sup> the validity of the Information Technology Rules of 2011, which obliges operators of websites in the Indian jurisdictions to screen content on their platforms for illegal content in order to remove it.

## 16. SINGAPORE INTRODUCES LICENSING REGIME FOR ONLINE NEWS OUTLETS IN ITS JURISDICTION

Singapore's Media Development Authority announced<sup>43</sup> on May 28, 2013 a new rule that obliges news outlets that meet certain criteria to apply for a license that requires them to take down "prohibited content" as specified in the national Internet Code of Practice<sup>44</sup> within 24 hours. It rests unclear how this rule applies to foreign news websites or platforms with servers in other jurisdictions.

## 17. US JUDGE DENIES WORLDWIDE COPYRIGHT CLASS ACTION AGAINST YOUTUBE

A US district judge in Manhattan denied<sup>45</sup> certifying a class action of copyright holders from around the world against YouTube that would have required a "mammoth proceeding". The class action lawsuit was filed in 2007 against infringing videos and music on the platform. Initiators included the English Premier League and the French Tennis Federation.

## 18. CYBERBULLYING MIGHT BECOME A CRIMINAL OFFENSE IN CANADIAN JURISDICTION

On May 11, 2013, the Canadian Prime Minister announced<sup>46</sup> that the government explores to criminalize cyberbullying, cyberintimidation, and cyberassault. The plan to review the Criminal Code was triggered by two teenage victims of cyberbullying who committed suicide in Canada.

## 19. US REVENGE PORN LAWSUIT TARGETS HOSTING WEBSITES AND SERVER OPERATORS

In a case involving a revenge porn video uploaded to different pornography websites, a woman in the US state Florida has filed<sup>47</sup> a lawsuit not only against her ex-boyfriend, but also against the websites to which the video was uploaded, as well as their hosting companies. A similar<sup>48</sup> revenge porn lawsuit filed in January 2013 equally targeted the involved web hosting company.

## 20. RUSSIAN SOCIAL NETWORK VKONTAKTE BLACKLISTED BY ERROR

Due to a human error<sup>49</sup> in dealing with the Russian blacklist<sup>50</sup> database, the social network VKontakte was blocked in some parts of the Russian jurisdiction, including St Petersburg, on May 24, 2013. The responsible regulator Roskomnadzor quickly restored the access to the social network that counts 210 million users.

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## 1. US INTELLIGENCE SERVICE COLLECTS DATA OF FOREIGN CITIZENS VIA OPERATORS LOCATED IN ITS JURISDICTION

Documents leaked<sup>1</sup> by the former intelligence contractor Edward Snowden revealed on June 6, 2013 the existence of the large-scale Internet surveillance scheme “Prism” operated by the US National Security Agency (NSA). According to available information, Prism was created in the US jurisdiction under the Foreign Intelligence Surveillance Act<sup>2</sup> and collects information about non-US citizens who use US-based cross-border online platforms, which were obliged to participate in a request and transfer scheme<sup>3</sup> to exchange user data stored on the platforms’ servers with the NSA. The surveillance program is overseen by the secret Foreign Intelligence Surveillance Court. Google, Microsoft, Yahoo, Facebook, AOL, Apple and Paltalk are legally required to cooperate. Some companies published aggregated statistics<sup>4</sup> on national security requests, including Prism. The Spiegel reports that the NSA monitors 500 million data connections<sup>5</sup> in the German jurisdiction alone. Similar surveillance programs in other jurisdiction were also uncovered. The UK’s Tempora<sup>6</sup> program monitors cross-border traffic that passes through transatlantic undersea cables located on its territory.

### Read further:

New York Times: US confirms that it gathers online data overseas<sup>7</sup>

Associated Press: Secret to PRISM program: even bigger data seizure<sup>8</sup>

Guardian: Boundless Informant: the NSA’s secret tool to track global surveillance data<sup>9</sup>

## 2. TURKEY ASKS TWITTER TO REVEAL USER DATA AND ESTABLISH A LOCAL REPRESENTATION

On June 26, 2013 the Turkish government asked Twitter to establish a local representation in its jurisdiction. The Minister for Transport and Communications Binali Yildirim said<sup>10</sup> “if you operate in Turkey you must comply with Turkish law” and asked social media platforms, including

Twitter to provide a local “interlocutor” or open an office to receive local requests for takedowns and access to user data. Twitter refused to comply<sup>11</sup> with Turkish requests to reveal the identity of users who tweeted posts that were deemed to insult the government, the prime minister of the personal rights of other Turkish citizens. Anti-government protests<sup>12</sup> in Istanbul that started on May 28, 2013 were making use of Twitter and other social media platforms to coordinate efforts.

### Read further:

Reuters: Turkey seeks to tighten grip on Twitter after protests<sup>13</sup>

BBC: Twitter seeks to tighten control over Twitter<sup>14</sup>

Hürriyet: Twitter under microscope amid ‘Gezi Park probe’

## 3. FRANCE TO DELETE INTERNET CUT-OFF SANCTION FROM ANTI-PIRACY LAW AFTER FIRST APPLICATION

France’s ministers for the digital economy<sup>15</sup> and culture<sup>16</sup> announced the intention of the government to remove the Internet cut-off sanction from a 2009 anti-piracy law that created a three-strikes system in the French jurisdiction. The agency Hadopi was created to scan French Internet traffic for illegal peer-to-peer file-sharers and enforces the law through two warnings, by mail and letter, and ultimately a temporary Internet cut-off. Despite millions of warnings issued by Hadopi, no Internet access sanctions were issued until June 2013: a court ordered the 15 days disconnection<sup>17</sup> of an Internet user who continued to share one or two infringing files after ignoring the first two “strikes”. The Internet user must also pay a 600 euros fine. Hadopi is likely to be replaced by an automated fine system, as suggested by the Lescure reform report.<sup>18</sup>

### Read further:

ArsTechnica: France removes Internet cut-off threat from its anti-piracy law<sup>19</sup>

TorrentFreak: France disconnects first file-sharer from the Internet<sup>20</sup>

New York Times: French appear to soften law on media piracy<sup>21</sup>

## 4. FRANCE AND SPAIN OPEN COORDINATED EU EFFORTS TO ENFORCE PRIVACY LAWS ON GOOGLE

On June 20, 2013, the French data protection authority (DPA) CNIL and its Spanish counterpart AEPD launched initiatives to enforce national privacy laws. Their actions follow investigations led by CNIL in the name of the EU Article 29 Working Party, an alliance of European DPAs, on the introduction of Google's unified Terms of Service in March 2012. The French CNIL set up a task force of DPAs which are willing to enforce national laws after the company failed to implement recommendations issued by the Article 29 Working Party in October 2012. Members also include the UK, Germany, Italy and the Netherlands. The CNIL announced that all DPAs will have taken coercive actions against Google by July 2013. In the French jurisdiction<sup>22</sup>, Google was ordered to change its privacy policy within three months or face a fine of up to 150.000 euros. In Spain, Google could be fined between 40.000 to 300.000 euros if the company fails to solve five identified infractions.

### Read further:

Reuters: France, Spain take action against Google on privacy<sup>23</sup>

BBC: France and Spain launch probe into Google's privacy law<sup>24</sup>

Bloomberg Law: Google gets 3 months to fix privacy or face French fines<sup>25</sup>

## 5. TWITTER LOOSES APPEAL IN FRENCH JURISDICTION, HAS TO REVEAL USERS BEHIND RACIST POSTS

On June 12, 2013 Twitter lost the appeal<sup>26</sup> against a January 2013 order issued by a Parisian court that obliged the US based micro-blogging platform to reveal the identity of the authors of anti-Semitic tweets in the French jurisdiction. Moreover, the court ordered Twitter to implement a mechanism for French users to easily report hate speech to the platform. Tweets with the hashtag "UnBonJuif" (a good Jew) became a top-3 trending topic in the French jurisdiction in October 2012. The five French organizations that filed the lawsuit wanted to avoid the lengthy procedure<sup>27</sup> of the Mutual Legal Assistance Treaty (MLAT) with the US and demanded Twitter to directly reveal the identity of the users in question. Twitter's Terms of Service specify that it only reacts to US court orders. Another French 50 million dollars lawsuit<sup>28</sup> for non-compliance with the January 2013 court order in March 2013 was still pending in June 2013.

### Read further:

CNet: Twitter must reveal names behind anti-Semitic tweets, rules French court<sup>29</sup>

ZDNet: Twitter's appeal against racist tweets case written off<sup>30</sup>

Web Pro News: Twitter loses French appeal, told to give up anti-Semitic users<sup>31</sup>

## 6. STREET VIEW: UK ORDERS GOOGLE TO DELETE PAYLOAD DATA OF UK RESIDENTS, RE-OPENS INVESTIGATION

On June 11, 2013 the British Information Commissioner's Office (ICO) ordered<sup>32</sup> Google Inc., incorporated in the US, to delete all remaining payload Street View data that Google collected from public WiFi networks in the UK jurisdiction between May 2007 and May 2010 and did not delete following a 2010 ICO decision. The enforcement notice<sup>33</sup> issued by the ICO gives Google a 35 days compliance deadline before it faces criminal proceedings. Moreover, the ICO re-opened<sup>34</sup> the formal investigation into the Street View incident following a report by the US Federal Communications Commission and asked Google to "list precisely what type of personal data and sensitive personal data was captured".

## 7. AUSTRIAN STUDENTS FILE COMPLAINTS AGAINST PLATFORMS INVOLVED IN PRISM FOR EU PRIVACY VIOLATIONS

On June 26, 2013 members of the student group "eu-rope-v-facebook.org" have filed formal complaints<sup>35</sup> against EU-based subsidiaries of major Internet companies involved<sup>36</sup> in the US Prism surveillance scheme for potential violations of EU privacy laws. The students argue<sup>37</sup> that by "exporting" European data to US based headquarters for processing, the NSA's access to European user data might violate European "adequate level of protection" rules. Complaints were filed in Germany against Yahoo<sup>38</sup>, in Luxembourg against Skype<sup>39</sup> and Microsoft<sup>40</sup>, as well as in Ireland against Facebook<sup>41</sup> and Apple<sup>42</sup>.

## 8. BRITISH ISPS TO FILTER PORNOGRAPHY BY DEFAULT

By the end of 2013, Internet users in the British jurisdiction will have to temporarily opt-in if they want to access pornography on the Internet, according<sup>43</sup> to the government's special advisor on preventing the sexualization and commercialization of childhood. UK based ISPs will roll out parental filtering technologies by default<sup>44</sup> to all costumers.

## 9. PAKISTAN THREATENS GOOGLE WITH BAN OVER YOUTUBE VIDEO, IMPLEMENTS NEW FILTER TECHNOLOGY

In an ongoing conflict over the “Innocence of Muslims” YouTube video, Pakistan’s IT minister said<sup>45</sup> that Google could be blocked as a consequence of the refusal to takedown the video in the Pakistani jurisdiction. Google’s video platform is already blocked by local ISPs since September 17, 2012. Pakistan recently installed<sup>46</sup> the filtering technology Netsweeper, which allows more granular filtering.

## 10. NEW RUSSIAN DRAFT COPYRIGHT BILL PASSES STATE DUMA

On June 14, 2013 the Russian State Duma voted<sup>47</sup> in favor of a new copyright law that would require website operators or hosting companies to remove infringing content or links to the same within 72 hours<sup>48</sup> after a lawsuit by a rightsholder is filed. In case of non-compliance, the entire website would be blocked in the Russian jurisdiction until a court decision is taken.

## 11. DRAFT NOTICE AND TAKEDOWN DIRECTIVE IN EU JURISDICTION

According to the blog IPtegrity, the European Commission is preparing<sup>49</sup> a new directive that would regulate notice and takedown actions in the EU jurisdiction. The directive targets hosting companies, search engines and social media platforms alike and could “standardise the process for take-down requests”. Moreover, it could potentially introduce other measures such as the blocking of content and payment facilities.

## 12. GOOGLE PLANS TO FIGHT CHILD ABUSE IMAGES THROUGH GLOBAL DATABASE

On June 15, 2013 Google announced<sup>50</sup> plans to build a global database of child abuse images to prevent<sup>51</sup> the reappearance of known pictures through the hashing technology. The database is designed to “enable companies, law enforcement and charities to better collaborate on detecting and removing these images, and to take action against the criminals”. UK Prime Minister Cameron called upon<sup>52</sup> search engines, including Google, on June 9, 2013 to use their “technical abilities to do more to root out these disgusting images”.

## 13. FACEBOOK ACCIDENTALLY DELETES POLITICAL SATIRE POST IN BRAZILIAN JURISDICTION

Facebook deleted temporarily<sup>53</sup> a Brazilian satire page’s post. The account impersonated Brazil’s president Dilma Rousseff. The post was deleted automatically by Facebook on the basis of user notifications and was only restored after Facebook manually checked the content. On June 27, 2013 Facebook explained that it only<sup>54</sup> removes political and defamatory speech after human verifications.

## 14. CYBERLOCKER WINS APPEAL AGAINST DISPROPORTIONATE ITALIAN WEBSITE BLOCKING

In April 2013, an Italian court ordered the seizure of 27 websites<sup>55</sup> for offering copyright infringing downloads of the movie “A monster in Paris”. Italian ISPs consequently blocked the websites. The cyberlocker Rapidgator successfully appealed<sup>56</sup> the decision. The Court of Appeal argued<sup>57</sup> that the seizure was disproportionate as the entire platform was blocked for one infringing movie.

## 15. WIRETAPPING AND TAXATION: FRANCE WANTS SKYPE TO DECLARE ITSELF AS E-COMMUNICATIONS OPERATOR

The French regulator ARCEP has informed<sup>58</sup> the public prosecutor of Paris on June 15, 2013 about the refusal of Microsoft’s Voice-over-IP communication tool Skype to register as an “electronic communications operator” in the French jurisdiction. The status would allow French authorities to lawfully intercept communications on Skype and would result in the taxation<sup>59</sup> of its French revenues.

## 16. TAIWANESE GOVERNMENT BACKS OFF COPYRIGHT AMENDMENTS AFTER PUBLIC PROTESTS

Plans to amend<sup>60</sup> the exiting copyright legislation in the Taiwanese jurisdiction came to a halt on June 3, 2013 as the proposal triggered resistance and was compared to the 2012 US draft bill SOPA. The amendment proposed by the Taiwan Intellectual Property Office was designed<sup>61</sup> to authorize local ISPs to block websites operated from third countries that contain copyright infringing content.

## 17. JAPANESE CHAT APP LIANWO FILTERS POLITICALLY SENSITIVE WORDS IN CHINESE JURISDICTION

The Japanese developer NHN, who created the popular chat app Line, launched a local version in the Chinese jurisdiction in December 2012 under that name Lianwo. The Chinese version contains filters<sup>62</sup> to block words that are considered to be politically sensitive. A user of the app discovered Lianwo's blacklist<sup>63</sup> by hacking the software and accessing the company's servers.

## 18. MEXICAN STATE ADOPTS BROAD ANTI-CYBERBULLYING LEGISLATION

The state Nuevo Leon in Mexico amended<sup>64</sup> an exiting defamation bill to tackle cyberbullying. Under the new law, any user who causes "harm, dishonor, discredit to a person, or exposes him or her to contempt" by posting content on social networks can face prison sentences of up to three years. Civil liberties groups criticize the broad scope of the new defamation law.

## 19. CHINESE CHAT APP WECHAT FACES BAN IN INDIAN JURISDICTION

Indian officials raised security concerns<sup>65</sup> related to the Chinese app WeChat, operated by Tencent. WeChat stressed that it complies with relevant laws and regulations in the Indian jurisdiction. It rests unclear if the app will be blocked in India.

## 20. INDIAN COURT ASKS FACEBOOK AND GOOGLE HOW THEY GUARANTEE THE SAFETY OF YOUNG INDIAN USERS

The Delhi High Court has asked<sup>66</sup> Facebook Inc. and Google Inc. to submit "suggestions regarding the online media sites used by the minors in India and how their rights were protected". The decision was triggered by a submission by Facebook, which indicated that the platform operates under the US Children's Online Privacy Protection Act.

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## 1. GOOGLE SEARCH DOES NOT HAVE TO IMPLEMENT A RIGHT TO BE FORGOTTEN, SAYS TOP EU COURT'S ADVOCATE GENERAL

In a non-binding opinion to the European Court of Justice (ECJ), Advocate General Niilo Jääskinen proposed<sup>1</sup> not to acknowledge a “right to be forgotten” based on current EU legislation. The case, which is expected to be ruled until the end of 2013, involves Google Spain, Google Inc. and the Spanish Data Protection Authority AEPD. A Spanish citizen filed a complaint in 2009 to have a link to a news article about his former social security debts removed from Google Search. In 2010, AEPD supported the request and ordered Google Spain to delete the link. Google appealed the decision arguing, among others, that Google Spain is not responsible for the content, as it does not process personal data for Google Search. The case was sent to the ECJ. The Advocate General argues<sup>2</sup> that Google is subject to national data protection laws if it opens a local office and directs its activities to a given jurisdiction, however “[r]equesting search engine service providers to suppress legitimate and legal information that has entered the public domain would entail an interference with the freedom of expression”. The case is seen as potential test<sup>3</sup> for the inclusion of a right to be forgotten in the EU data protection reform, which is currently discussed in the EU Parliament.

### Read further:

European Court of Justice: Advocate General's Opinion in Case C-131/12, Google Spain S.L. and Google Inc. v Agencia Española de Protección de Datos<sup>4</sup>

Hunton Privacy and Information Security Law Blog: EU Court of Justice Advocate-General issues opinion in Google Search case<sup>5</sup>

Guardian: Google does not have to delete sensitive information, says European court<sup>6</sup>

## 2. BRAZIL EXPLORES INCLUSION OF “DATA SOVEREIGNTY” IN MARCO CIVIL, CALLS FOR NEW MULTILATERAL INTERNET GOVERNANCE AGENCY

Following the revelations<sup>7</sup> of the extraterritorial reach of the US National Security Agency's (NSA) surveillance programs on Brazilian citizens, voices for national data sovereignty become louder. Brazil's President Dilma Rousseff announced<sup>8</sup> the intention to ensure the storage of the personal data of Brazilians within its territorial jurisdiction to “improve and ensure privacy”. A new data sovereignty article is discussed that could be included in the draft of the comprehensive Internet bill Marco Civil, which is currently before the Brazilian Congress. Moreover, the Brazilian Communications Minister Paulo Bernardo proposed<sup>9</sup> the creation of a multilateral agency for the governance of the Internet, and the Foreign Minister Antonio Patriota expressed<sup>10</sup> “deep concern” over the access to data of Brazilian citizens and announced to pursue United Nations actions to “preserve[...] the sovereignty of all countries” and to “impede abuses and protect the privacy” of online communications.

### Read further:

Aljazeera: Brazil eyes Internet bill amid spying leaks<sup>11</sup>

Convergencia Digital: Marco Civil will include data sovereignty<sup>12</sup> (translation)

Guardian: The NSA's mass and indiscriminate spying on Brazilians<sup>13</sup>

### 3. EUROPE STRESSES NEED FOR STRICTER PRIVACY RULES, LAUNCHES OFFICIAL NSA SURVEILLANCE INVESTIGATIONS

The European Commission, the EU Parliament and individual member states react to the NSA surveillance programs with demands for strong privacy safeguards to protect the personal data of EU citizens in their jurisdictions. EU Justice Commissioner Viviane Reding highlights<sup>14</sup> the loss of trust in transnational data flows and importance of clear rules and a “transatlantic framework for data protection for law enforcement purposes”. Likewise, the European Commissioner for the Digital Agenda Neelie Kroes stressed<sup>15</sup> the impact on distributed cloud computing. The European Parliament voted<sup>16</sup> for a formal “in-depth inquiry” into US surveillance programs by the Civil Liberties Committee to assess its impact on “EU citizens’ right to privacy and data protection, freedom of expression, the presumption of innocence and the right to an effective remedy”. The planned EU data protection reform gains further momentum as German Chancellor Angela Merkel stresses<sup>17</sup> the need for a “common European agreement” because of the multiple jurisdictions involved in online activities. Moreover, Merkel called<sup>18</sup> for new international data privacy rules.

#### Read further:

The Huffington Post: Merkel urges stronger Europe, global data rules<sup>19</sup>

GigaOM: European PRISM anger gains momentum with fresh cloud warnings and data threats<sup>20</sup>

ZDNet: PRISM: EU renews efforts to get US to recognize citizens’ right to privacy<sup>21</sup>

### 4. RUSSIAN SENATE STRIVES TO FOSTER NATIONAL SOVEREIGNTY OVER ONLINE SERVICES, ADVOCATES CREATION OF UN PRIVACY AGENCY

Concerned about “user data leaks” by US-based cross-border online platforms, the Russian senator Ruslan Gattarov, Chair of the Federation Council’s Commission on the Information Society Development, requested the Prosecutor General’s Office and the Federal Service for Supervision of Communications, Information Technology and Communications Roskomnadzor to launch investigations into the compliance of Google’s Terms of Services with personal data protection provisions of the Russian jurisdiction on July 18, 2013. Examinations<sup>22</sup> for tax evasions are also opened and Facebook, as well as Twitter could face similar probes. On July 24, 2013 Google announced its willingness to cooperate with the investigations. Moreover, a deputy speaker of the ruling party United Russia proposed to create a new national “digital sovereignty”<sup>23</sup> data storage law for operators of email services and social

networks, while the Russian Senate suggests the creation of an UN agency to monitor personal data collections and usages, similar to the International Atomic Energy Agency.

#### Read further:

New York Times: NSA leaks revive push in Russia to control Internet<sup>24</sup>

RT: Russian senator officially demands ‘measures’ against ‘flagrant’, ‘privacy-breaching’ Google<sup>25</sup>

RIA Novosti: Google to talk to Russian senators over data leak probe<sup>26</sup>

### 5. CYBERTRAVEL: MASTERCARD, VISA AND PAYPAL BAN VPN OPERATORS IN SWEDISH JURISDICTION

For reasons of facilitated copyright infringement through illegal file-sharing, financial intermediaries increasingly ban operators of Virtual Private Networks (VPN), which allow to anonymize online traffic and evade local Internet restrictions through “cybertravel”. The Swedish payment provider Payson stopped<sup>27</sup> to accept Mastercard and Visa transactions for five anonymization services, including VPNs. Among the concerned customers is iPredator, a VPN that was created by The Pirate Bay co-founder Peter Sunde. The VPN is also concerned by a similar payment block administered by PayPal. The online payment service, which already banned<sup>28</sup> major copyright infringing cyberlockers, decided<sup>29</sup> to stop payments and freeze existing assets of the VPN operator.

#### Read further:

TorrentFreak: Mastercard and Visa start banning VPN providers<sup>230</sup>

Register: Mastercard and Visa block payments to Swedish VPN firms<sup>31</sup>

TorrentFreak: PayPal cuts off “Pirate Bay” VPN iPredator, freezes assets<sup>32</sup>

### 6. US SURVEILLANCE: NEW REVELATIONS AND LAWSUITS IN MULTIPLE JURISDICTIONS

A new NSA surveillance program has been revealed: XKeyscore<sup>33</sup> is a tool that allows wide-reaching access to real-time online communications such as emails or Facebook chats of non-US citizens or US citizens communicating with foreigners, as well as to searchable metadata without prior authorization by the Foreign Intelligence Surveillance Act (FISA) court. Several lawsuits in the US, Germany, Luxembourg, Ireland, France<sup>34</sup> or the UK<sup>35</sup> (including the GCHQ program Tempora) challenge public and private actors involved in the NSA surveillance scheme for issues ranging from violations of the right of association to the infringement of privacy laws in multiple jurisdictions.

## 7. EUROPEAN COURT OF JUSTICE TO DECIDE IF VIEWING CONTENT IN BROWSERS CAN BREACH COPYRIGHTS

The UK Supreme Court has asked<sup>36</sup> the European Court of Justice if Internet users can violate copyrights by viewing infringing content in a web browser, according to the EU Directive<sup>37</sup> on the harmonisation of certain aspects of copyright and related rights in the information society of 2001. The case, which involves a license to view a media monitoring service in a browser, was referred to the highest European court due to its “transnational dimension”.

## 8. ICANN'S 2013 REGISTRAR ACCREDITATION AGREEMENT VIOLATES EU LAW, SAY DATA PROTECTION AUTHORITIES

The Article 29 Working Party, which consists of data protection authorities from 27 EU member states, criticized<sup>38</sup> ICANN's 2013 Registrar Accreditation Agreement, which stipulates that registrars need to store Whois data about registrants for two years following the expiration of a domain. In a letter<sup>39</sup> sent to ICANN the data protection authorities stressed that “the proposed data retention requirement violates data protection law in Europe” and that such rules should be established by law instead of through a private contract.

## 9. TWITTER COMPLIES WITH COURT ORDER TO HAND OVER USER DATA IN FRENCH JURISDICTION

As a consequence of a lost appeal in the French jurisdiction, Twitter Inc. decided to comply<sup>40</sup> with the order of a Parisian court and revealed the identity of authors of racist tweets with the hashtag #unbonjuif. Twitter initially refused to comply as its Terms of Service stipulate that it only reacts to US court orders. The Parisian court also ordered the company to provide a hate speech notification tool in the French jurisdiction. Twitter is opening an office<sup>41</sup> in France.

## 10. FRENCH INTELLIGENCE SERVICE OPERATES MASS-SURVEILLANCE PROGRAM

The French intelligence agency DGSE monitors<sup>42</sup> online communications on services such as Facebook or Yahoo, as well as emails in the French jurisdiction. Surveillance data is stored<sup>43</sup> for years in what seems to be the largest European intelligence data center after the British one. Both inner French communications, as well as data flows between France and the rest of the world are intercepted, with a special focus on metadata.

## 11. US GOVERNMENT ORDERS COMPANIES TO REVEAL USER PASSWORDS, SAY ANONYMOUS SOURCES

According to a report<sup>44</sup> by CNET News, US government authorities have asked US-based Internet companies through legal requests to divulge password of users, as well as entire encryption codes, called salt. The article is based on anonymous quotes of industry sources.

## 12. MAJOR INTERNET COMPANIES IMPLEMENT NOTICE AND TAKEDOWN SCHEME FOR ADS ON PIRACY WEBSITES

Adtegrity, AOL, Condé Nast, Google, Microsoft, SpotX-change, Yahoo and 24/7 Media created<sup>45</sup> self-regulatory best practice guidelines to stop supporting websites that host copyright infringing contents through advertisement revenues. Rightsholders can remove advertisement on infringing websites by filing complaints, similar to the DMCA notice and takedown regime.

## 13. FINNISH LEGISLATION TO VOTE ON A CROWD-SOURCED COPYRIGHT BILL

Taking advantage of a change in the Finnish constitution, which now allows citizens to propose bills that are voted on by the legislature if they get 50.000 supporters within six months, a draft law titled “The Common Sense in Copyright Act” will be put for a vote<sup>46</sup> in the Finnish Parliament. The bill seeks, among others, to decriminalize filesharing and to reduce penalties.

## 14. RUSSIAN PROPOSAL TO BLOCK WEBSITES IF HARMFUL CONTENT IS NOT REMOVED WITHIN 24 HOURS

The Chairperson of the Committee for Family, Women and Children in the Russian State Duma, Yelena Mizulina, proposed<sup>47</sup> the obligation to remove harmful content from the Internet upon notice within 24 hours. In the case of non-compliance, the website hosting the content could be blacklisted and blocked. This would amend the September 2012 law “On the protection of children from information harmful to their health and development”.

## 15. GERMAN INTELLIGENCE SERVICE BND MONITORS FRANKFURT INTERNET EXCHANGE POINT

The German intelligence service BND is monitoring<sup>48</sup> partially the traffic that runs through the world's largest Internet Exchange Point DE-CIX, located in Frankfurt. Peak traffic rates can reach 2.5 terabits per second. The traffic of over 500 peering partners from 55+ countries could, in theory, also be observed.<sup>49</sup>



## 16. YAHOO ALLOWED TO RELEASE SECRET 2008 NSA DATA REQUESTS

On July 16, 2013 the US Foreign Intelligence Court (FISC) granted<sup>50</sup> a motion filed by Yahoo on June 14, 2013 to declassify a 2008 NSA order for user data requests in order to prove its resistance to collaborate in the Prism spying program. The court order allows<sup>51</sup> the US government to remove information that is deemed to be relevant to national security before the declassified documents are made public.

## 17. CANADIAN BLACKBERRY COMPANY RIM GRANTS INDIA LAWFUL ACCESS TO USER DATA

According to leaked documents<sup>52</sup> of the Indian Department of Telecommunications “the lawful interception system for BlackBerry Services is ready for use” in the Indian jurisdiction. It remains unclear when the system will be activated. It will allow real time access to emails and can intercept mobile web browsing. The cooperation excludes access to BlackBerry’s corporate email service.

## 18. CANADA EXPLORES CRIMINAL CODE CHANGES TO COPE WITH CYBERBULLYING

A report<sup>53</sup> by the Canadian Coordinating Committee of Senior Officials Cybercrime Working Group suggests<sup>54</sup> to introduce a new criminal offense to deal with the non-

consensual distribution of intimate images, a step deemed crucial to handle some “criminal” forms of cyberbullying. The report however ruled out the need for a specific law on cyberbullying.

## 19. UK REMOVED OVER 5.700 PIECES OF EXTREMIST CONTENT FROM THE INTERNET SINCE 2010

The Counter Terrorism Internet Referral Unit of the UK removed<sup>55</sup> over 5.700 “individual pieces of online terrorist content” since February 2010. Moreover almost 1.000 illegal links to extremist content have been removed from public computers in libraries and universities.

## 20. FACEBOOK REFUSES TO COMPLY WITH USER DATA REQUEST BY UNITED NATIONS EXPERTS

Experts who monitor the implementation of a UN arms embargo against Somalia have notified<sup>56</sup> the UN Security Council that Facebook refused to cooperate in an investigation in pirated ships. The investigators claim that the organization of hijackings and hostage taking were taking place on Facebook and asked for user data. Other private companies appear to cooperate with the UN experts.

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[www.internetjurisdiction.net/observatory/retrospect/2013-july-references](http://www.internetjurisdiction.net/observatory/retrospect/2013-july-references)

# AUGUST

## 1. FRENCH PROSECUTOR OPENS PRELIMINARY PROBE INTO US PRISM SCHEME

Following a complaint<sup>1</sup> submitted by the French NGOs International Federation for Human Rights and French Human Rights League in July 2013, the Parisian prosecutor's office ordered<sup>2</sup> French law enforcement to investigate if the US National Security Agency's (NSA) Prism surveillance scheme violated laws in the French jurisdiction by intercepting communications on its territory. In detail, the probe focuses on "fraudulent access and maintenance of and automated data processing system," the "illicit collection of data of a personal nature," "attacks on privacy," and "violations of the secrecy of correspondence". Since the complaint is filed "against X" it targets both the role of the US companies Google, Microsoft, Apple, Yahoo, Paltalk, YouTube, AOL and Skype, as well as the one of the US intelligence agencies NSA and FBI. The preliminary investigation could be transformed<sup>3</sup> into a formal one, if sufficient evidence can be gathered.

### Read further:

Reuters: French prosecutor investigates U.S. Prism spying scheme<sup>4</sup>

The Local: France 'opens probe' into US spy program Prism<sup>5</sup>

ZDNet: France investigates role of Internet companies in Prism<sup>6</sup>

## 2. XKEYSCORE, US EMAILS AND TRAFFIC INTERCEPTION: NEW REVELATIONS ABOUT THE NSA'S INTERNET SURVEILLANCE

The existence of the big data and data analytics NSA software XKeyscore<sup>7</sup> was revealed that allows agents to access, without prior court authorization, in real time vast amounts of information on online interactions of targets. In an official release, the NSA claims<sup>8</sup> that it only "touches" 1.6 percent of the 1.826 petabytes of data that circulate daily on the global Internet. The Washington Post reports<sup>9</sup> that the NSA can intercept 75 percent of all US traffic.

This includes both domestic and cross-border traffic routed through networks on US soil. The surveillance system is carried out in conjunction with US telecommunication companies. Sources told the Washington Post that the program potentially intercepts communications between US citizens as well. An officially released US Foreign Intelligence Court ruling, published on August 21, 2013, reveals that in 2011 the NSA collected also domestic emails.

### Read further:

Washington Post: New details show broader NSA surveillance reach<sup>10</sup>

Guardian: NSA illegally collected thousands of emails before Fisa court halted program<sup>11</sup>

PCMag: The tech behind the NSA's XKeyscore<sup>12</sup>

## 3. GERMAN SUPREME COURT: FILEHOSTER RAPIDSHARE NEEDS TO MONITOR INCOMING LINKS

On August 16, 2013, the German Supreme Court confirmed<sup>13</sup> a previous March 2012 ruling by the Higher Regional Court of Hamburg, which obliges the Swiss file hosting service RapidShare to monitor external websites for incoming links to potential copyright infringing materials uploaded by its users. It was reconfirmed that RapidShare does not have the obligation to preemptively monitor user uploads. However, the court affirmed that RapidShare needs to make infringing files that were detected via third party sites inaccessible. In case the measures are not efficient enough to curb piracy on its service, the court furthermore noted that Rapidshare could limit anonymous uploads.

### Read further:

TorrentFreak: Supreme Court orders RapidShare to police the Internet<sup>14</sup>

Music Week: GEMA hails "landmark" court ruling against RapidShare in Germany<sup>15</sup>

TechWeek Europe: RapidShare is legal, but must check incoming links<sup>16</sup>

## 4. TWITTER TO BE SUED OVER ANTI-GAY HASHTAG IN FRENCH JURISDICTION

On August 10-11, 2013, the anti-gay hashtags #LesGaysDoiventDispaîtreCar (“gays must die because”) and #BrulonsLesGaysSurDu (“let’s burn gays on”) were a trending topic<sup>17</sup> on Twitter in the French jurisdiction. The French branch of the gay rights advocacy group IDAHO filed a lawsuit against Twitter arguing<sup>18</sup> that “these illicit tweets on Twitter’s site characterize the offense of public incitement to discrimination, to hatred or national, racial or religious violence”. Furthermore, the group claims that Twitter failed to react appropriately to alters and allowed the development of a “homophobic atmosphere” on its platform. The French ministers for women’s rights and digital economy condemned<sup>19</sup> the incitement to discrimination, which is against French law.

### Read further:

France 24: Complaint filed over anti-gay posts on French Twitter<sup>20</sup>

RudeBaguette: Twitter in hot water again in France – this time, for Homophobic Hashtags<sup>21</sup>

IB Times: Twitter removes ‘let’s burn gays’ hashtag following complaint<sup>22</sup>

## 5. FACEBOOK RELEASES FIRST TRANSPARENCY REPORT

On August 27, 2013, Facebook released<sup>23</sup> for the first time a transparency report titled “Global Requests Report”<sup>24</sup>. Between the first six months of 2013, the social network received around 26.000 requests on 38.000 users (or accounts) from 74 countries. The requests issued in the US jurisdiction cover over 50 percent of all concerned users or accounts. It rests unclear<sup>25</sup> to what extent the number of US requests includes demands under section 702 of the FISA Amendments Act for data of non-US citizens, as well as the percentage of requests going back to demands by third countries through Mutual Legal Assistance Treaties. The US issued<sup>26</sup> 11.000-12.000 requests (79% compliance), followed by 3.254 requests from India (50% compliance), 1.975 requests from the UK (68% compliance) and 1.886 requests from Germany (37% compliance).

### Read further:

GigaOM: Facebook publishes first Transparency Report: exceeds Google with 11,000 US government requests<sup>27</sup>

Washington Post: Facebook report: 74 countries sought data on 38,000 users<sup>28</sup>

The Guardian: Facebook reveals governments asked for data on 38,000 users in 2013<sup>29</sup>

## 6. BROWSER TRACKING: GOOGLE ARGUES BRITISH PRIVACY CASE SHOULD BE FILED IN CALIFORNIAN JURISDICTION

A group of over 100 British users of Apple’s browser Safari filed a lawsuit<sup>30</sup> against Google’s search engine to claim damages for privacy violations under British law. The consumers argue that Google bypassed privacy settings of Safari and installed tracking cookies without their consent. In September 2012, the illicit tracking resulted in a 22.5 million US dollar penalty payment to settle charges<sup>31</sup> by the US Federal Trade Commission. According to reports, Google argues in a submission to the UK High Court that it has no jurisdiction<sup>32</sup> over the case, since Google’s search services for British consumers are provided by Google Inc. incorporated in California.

## 7. TWITTER INTRODUCES REPORT ABUSE BUTTON, PUBLISHES NEW TRANSPARENCY REPORT

Following headline news about the viral spread of hate speech on its microblogging platform, as seen in the French<sup>33</sup> and British<sup>34</sup> jurisdictions, Twitter has introduced a report button to flag abusive content.<sup>35</sup> The new feature was rolled out throughout August 2013 and is supplemented by an enlargement of Twitter’s review team. According to a new transparency report<sup>36</sup> covering the first six months of 2013, Twitter received 1.157 requests from 71 governments.

## 8. DELHI HIGH COURT: FACEBOOK INC AND GOOGLE INC ARE BOUND BY RULES OF INDIAN JURISDICTION

On August 24, 2013, the Delhi High Court asked Facebook Inc and Google Inc, both incorporated in the US jurisdiction, to indicate their grievance officers to respond to Indian requests. The court gave the two platforms, as well as other intermediaries a two weeks deadline to comply with this requirement stipulated by the Indian Information Technology Rules: “Just because you are a foreign company, you cannot flout the law. Like us, you are bound by the rule of law of this country”, the court said<sup>37</sup>.

## 9. DISCLOSURE OF FISA COURT REQUESTS: MICROSOFT AND GOOGLE PLAN TO SUE THE US GOVERNMENT

Microsoft and Google announced<sup>38</sup> plans on August 30, 2013 to collaboratively file a lawsuit<sup>39</sup> against the US government to disclose requests for user data they received from the Foreign Intelligence Surveillance Court. The two companies try<sup>40</sup> since June 2013 to publish “aggregate information” related to the quantity of received FISA

requests with the authorization of the Department of Justice. The US Director of National Intelligence published on August, 29 2013 a Tumblr post<sup>41</sup> to announce the annual publication of official transparency reports.<sup>42</sup>

## 10. NATIONAL EMAIL SERVICES: GERMAN ISPS INTRODUCE DOMESTIC SERVERS AND ROUTING

In response to the wide reaching surveillance capacities of the US NSA's Prism program, the German ISPs Deutsche Telekom and United Internet launched<sup>43</sup> a "E-Mail made in Germany" service. It will automatically encrypt emails via SSL, channel the traffic between the email services of the two ISPs through domestic cables and store data on German territory. German Justice minister Leutheusser-Schnarrenberger said<sup>44</sup> Germans are increasingly switching to national services after the NSA revelations.

## 11. VIETNAM ORDERS FOREIGN WEBSITES TO HAVE LOCAL SERVERS, MIGHT BAN FREE COMMUNICATION SERVICES

A new decree<sup>45</sup> in the Vietnamese jurisdiction will require foreign websites to establish local servers. Moreover, the law stipulates that blogs or social networking sites should only be used to "to provide and exchange personal information" and forbids the publication of online content that harms national security or opposes the government. The government also announced<sup>46</sup> the introduction of new policies to deal with free Internet based communication platforms, which curb revenues of traditional ISPs. This might result in a potential ban of chat apps like Viber or WhatsApp in its jurisdiction.

## 12. VIRAL SPREAD: INDIAN COURT RECONFIRMS 36 HOURS TAKEDOWN REQUIREMENT

On August 26, 2013 the Indian Supreme Court ruled<sup>47</sup> that the requirement to take down objectionable content in the Indian jurisdiction within 36 hours after reception of complaints does not violate free expression rights. The website mouthshut.com that hosts user-generated content tried to challenge this obligation of the Information Technology Rules for intermediaries.

## 13. US COURT RULES THAT THE CIRCUMVENTION OF IP BLOCKS ON PUBLIC SITES VIOLATES US LAW

A US judge ruled<sup>48</sup> on August 15, 2013 that the changing of IP addresses or use of proxy servers to access publicly accessible websites violates<sup>49</sup> the US Computer Fraud and Abuse Act (CFAA) and constitutes an access without authorization. The company 3tabs has been bypassing IP blocks of Craigslist to hide its identity and scrap data from the platform. The case is similar<sup>50</sup> to the one of Aaron Swartz.

## 14. PAYMENT INTERMEDIARY PAYSAFECARD BANS VPN PROVIDERS

The payment intermediary Paysafecard, which is based on prepaid coupons, announced that it stopped to work with VPN providers. According to the specialized news outlet Torrentfreak<sup>51</sup>, it is the "first payment method to confirm a VPN ban".

## 15. DELHI HIGH COURT ASKS GOOGLE, FACEBOOK ABOUT PROCEDURES TO HANDLE REQUESTS AND CHILD PROTECTION

On August 2, 2013, the Delhi High Court questioned the<sup>52</sup> platforms Google and Facebook how they deal with complaints requests. The court reacts to a public interest litigation that seeks to examine the mechanisms of the two platforms to protect children from online abuses. Under Indian law, children below 18 are not allowed to enter into a contract to open accounts on social networks.

## 16. US SPONSORED STORIES FACEBOOK SETTLEMENT TRIGGERS TERMS OF SERVICE CHANGES FOR GLOBAL USERS

Following a class action<sup>53</sup> that was filed in the US jurisdiction in April 2011 on privacy violations through Facebook's Sponsored Stories advertisement program, the US District Court for the Northern District of California approved<sup>54</sup> a settlement on August 26, 2013. Facebook will pay 15 US dollar to each of the 150 million members of the class action and is required to change its global Terms of Service provisions to educate consumers better. Proposals for changes to its Statement of Rights and Responsibilities and Data Use Policies were published<sup>55</sup> on August 29, 2013.

## 17. CITING SAFE HARBOR REGIME, IRISH DPA DECIDES NOT TO INVESTIGATE APPLE, FACEBOOK OVER PRISM

The Irish Office of the Data Protection Commissioner announced<sup>56</sup> that it will not open a probe the headquarters of Apple and Facebook, located in its jurisdiction, over the sharing of personal data of EU citizens with the US NSA as part of the Prism surveillance scheme. The Austrian student group europe-v-facebook filed two complaints for violation of EU and Irish data protection law in Ireland on June 23, 2013. The Irish DPA argued<sup>57</sup> that since the two companies are part of the US-EU Safe Harbor regime "and as this provides for US law enforcement access, there is nothing to investigate".

## 18. INDIA TO FOSTER DATA SOVEREIGNTY AFTER PRISM REVELATIONS

The Indian Communications and Telecommunications Minister Kapil Sibal qualified<sup>58</sup> the violation of Indian privacy laws by the US NSA Prism scheme as “unacceptable” and announced that the “[g]overnment is promoting Indian players in the IT field to develop and offer internet services by having their servers located in India, in order to protect the interests and secrecy of communication of India citizens”.

## 19. PAKISTAN MIGHT UNBLOCK YOUTUBE IN ITS JURISDICTION, TESTS URL BLOCKING MECHANISM

The Pakistani Minister for Information Technology Anusha Rehman Khan announced<sup>59</sup> plans to re-open YouTube in Pakistan’s jurisdiction, after the platform was blocked

in September 2012 due to the “Innocence of Muslims” video. As a prerequisite, the government implements a new URL filter mechanism administered by Pakistan Telecommunications Authority to selectively block<sup>60</sup> URLs to avoid the blocking of entire platforms due to granular content.

## 20. PROCEEDINGS AGAINST 13 US-BASED WEBSITES FOR PUBLIC ORDER DISTORTIONS IN INDIAN JURISDICTION ON HOLD

On August 12, 2013 a Delhi court stayed<sup>61</sup> the proceedings against 13 websites including Facebook, Orkut, YouTube, Google, Microsoft and Yahoo for public order distortions, since US authorities did not “execute” an Indian assistance demand to serve the summons in the US jurisdiction. The court will nevertheless proceed with the pre-charge evidence recording on September 28, 2013.

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# SEPTEMBER

## 1. RIGHT TO BE FORGOTTEN FOR MINORS SIGNED IN CALIFORNIAN JURISDICTION

On September 23, 2013 the Governor of the US State of California approved a new bill<sup>1</sup> which would give minors under the age of 18 the right to have personally posted content deleted<sup>2</sup> from platforms and services they are using. The bill, known as “online eraser law”, is part of the comprehensive Privacy Rights for California Minors in the Digital Age<sup>3</sup> which sets new standards for teenagers’ privacy and complements the existing Children’s Online Privacy Protection Rule which only applies to children under the age of 13. The new law will become effective on January 1, 2015 and apply to operators of Internet websites, online services, online applications or mobile applications located on Californian territory, if they are directed to minors. It rests unclear how this criteria will be determined and to what extent major cross-border online platforms incorporated in California will be obliged to comply with the new law.

### **Read further:**

Washington Post: Author of California online eraser law: It’s not always easy to find the delete button<sup>4</sup>  
ArsTechnica: Soon, California kids will have the right to delete things they said online<sup>5</sup>  
Wired: California paves way on privacy in digital age<sup>6</sup>

## 2. CROSS-BORDER TRAFFIC: NSA CAN INTERCEPT ENCRYPTED INFORMATION FLOWS

New revelations of the Edward Snowden leaks published on September 5, 2013 showed that the US intelligence service NSA has the capacities<sup>7</sup> to either circumvent or crack global encryption standards. To do so, a variety of different means are deployed. The NSA gained backdoor access to Internet companies and their master encryption keys, introduced backdoors and so-called “trapdoors” into encryption software and developed computer programs to crack conventional encryption standards. The NSA’s British counterpart GCHQ worked actively on the decryption of secured traffic of Hotmail, Facebook, Google and Yahoo. These capacities allow the US and UK to intercept encrypted information flows, including cross-border traffic from foreign jurisdictions.

### **Read further:**

New York Times: NSA able to foil basic safeguards of privacy on web<sup>8</sup>  
Guardian: Revealed: how US and UK spy agencies defeat internet privacy and security<sup>9</sup>  
MIT Technology Review: NSA leak leaves crypto-math intact but highlights known workarounds<sup>10</sup>



### 3. BRAZIL PLANS LOCAL DATA STORAGE LAW FOR CROSS-BORDER ONLINE PLATFORMS

Brazil's President Dilma Rouseff asked the Congress member Alessandro Molon, author of the Marco Civil bill that is pending in the Brazilian legislature, to include a new paragraph that would oblige<sup>11</sup> cross-border online platforms like Google, Facebook or Microsoft to store data of Brazilians on Brazilian territory. The new data sovereignty initiative is a direct reaction to revelations that the US NSA spied on the Brazilian head of state and would complement<sup>12</sup> other announced measures like the construction of new submarine cables to route traffic around US territory or the creation of new Internet Exchange Points in Brazil. If the provisions were included in the Marco Civil and enacted by the Congress, the new law would guarantee that the data of Brazilians is exclusively governed by laws of the Brazilian jurisdiction. President Rouseff requested on September 11, 2013 that the bill is passed within 45 days by the Brazilian Congress.

#### Read further:

Reuters: Brazil's Rouseff targets internet companies after NSA spying<sup>13</sup>

Guardian: Brazil's controversial plan to extricate the internet from US control<sup>14</sup>

The Verge: Cutting the cord: Brazil's bold plan to combat the NSA<sup>15</sup>

### 4. MAX MOSLEY FILES LAWSUITS AGAINST GOOGLE IN GERMANY AND FRANCE TO BLOCK DEFAMATORY PICTURES

In 2008, the ex-Formula One President Max Mosley participated in an S&M orgy. As the British newspaper News of the World published the story, pictures and videos went viral on the Internet. On September 4, 2013, Max Mosley filed a lawsuit<sup>16</sup> in the French jurisdiction to request Google to remove from its search engine all references to the reputation damaging pictures and videos. A similar lawsuit was also filed in a Hamburg court in the German jurisdiction. The plaintiff wants Google to deploy an automated filter to prevent the appearance of the footage in question. The French court is expected to pronounce a decision on October 21, 2013. According to his lawyers, the two lawsuits are test cases and similar suits could be filed in other jurisdiction, including in California, where Google Inc is incorporated.

#### Read further:

The Drum: Max Mosley takes European privacy battle against Google to courts in Paris and Germany<sup>17</sup>

Bloomberg: Google says Mosley suit over sex-part search defies free speech<sup>18</sup>

CNET: Google slapped with lawsuit over man's salacious images<sup>19</sup>

### 5. FACEBOOK "LIKES" DECLARED PROTECTED FREE SPEECH IN US JURISDICTION

On September 19, 2013, the 4th US Circuit Court of Appeals in Virginia ruled<sup>20</sup> that "likes" on the social network Facebook are protected by the free speech provisions of the US Constitution's First Amendment. The judge argued that "liking" something is the "Internet equivalent of displaying a political sign in one's front yard, which the Supreme Court has held is substantive speech". A previous ruling by a lower court in April 2012 came to the conclusion that Facebook likes do not merit constitutional protections. The case involved a former sheriff, who was fired after he liked the Facebook page of a candidate for the post of the city sheriff – who was a direct competitor of his own superior.

#### Read further:

CNN: U.S. court says 'liking' something on Facebook is free speech<sup>21</sup>

Reuters: Facebook 'like' deserves free speech protection: U.S. court<sup>22</sup>

Washington Post: Facebook 'liking' is protected free speech, federal court says<sup>23</sup>

### 6. YAHOO PUBLISHES FIRST TRANSPARENCY REPORT ON USER DATA REQUESTS

On September 6, 2013, Yahoo published<sup>24</sup> its first transparency report<sup>25</sup> on requests for user data it received from the 17 jurisdictions in which the company has a legal incorporation. The report does not include requests for Tumblr data. During the first half of 2013, Yahoo received 29,470 requests for the data of 62,775 accounts from these 17 countries.

### 7. GMAIL KEYWORD SCANNING MIGHT VIOLATE US WIRETAPPING LAWS

A US District Judge decided<sup>26</sup> on September 26, 2013 that the automatic keyword scanning of emails handled by Google's Gmail service might violate wiretapping provisions under US and Californian law. The US court denied<sup>27</sup> Google's motion to dismiss a federal class-action against the machine scanning to deliver targeted advertising, which is part of Gmail's business model. Gmail has 450 million users around the world.

## 8. BLACKLIST: NEW NON-COMPLIANCE FINES FOR INTERMEDIARIES AND USERS IN RUSSIAN JURISDICTION

A committee of the Russian Duma approved<sup>28</sup> on September 3, 2013 a new bill against online piracy that introduces pecuniary measures against intermediaries like ISPs or search engines, hosting companies and Internet users if they fail to comply with orders to block designated websites. Fines of up to one million rubles (ca. 30.000 US dollar) can be issued.

## 9. PRIVACY GROUPS ASK US FTC TO PREVENT FACEBOOK'S SPONSORED STORIES TERMS OF SERVICE CHANGES

Six NGOs have sent a letter<sup>29</sup> to the US Federal Trade Commission (FTC) on September 4, 2013 to ask<sup>30</sup> for actions to prevent Facebook's planned update of its Statement of Rights and Responsibilities, as well as its Data Use Policy. The update would allow Facebook to show users' images and content for advertisement purposes, for example in Sponsored Stories, without their explicit consent, they claim.

## 10. REVISED OECD PRIVACY GUIDELINES FOR CROSS-BORDER DATA FLOWS PUBLISHED

The Organization of Economic Cooperation and Development (OECD) published on September 9, 2013 an updated version of the Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data<sup>31</sup>. This is the first update of the 1980 framework, which was the first internationally agreed upon<sup>32</sup> set of privacy principles. The OECD stresses the need for more interoperability<sup>33</sup> between the patchwork of national privacy regimes.

## 11. RESOLUTION ON US AND BRITISH INTERNET SURVEILLANCE PUBLISHED BY DPAS IN GERMAN JURISDICTION

A joint resolution by DPAs of all 16 German states and the Federal Commissioner for Data Protection and Freedom of Information addresses the impact and extraterritorial extension of sovereignty by the US surveillance schemes PRISM and XKeyscore, as well as the British Tempora program. In detail, they ask<sup>34</sup> to what extent German authorities collaborated or made use of intelligence data and demand an array of actions to ensure the privacy of German citizens.

## 12. FACEBOOK BRIEFLY ON BLOCKING BLACKLIST IN RUSSIAN JURISDICTION

On September 19, 2013, the Russian Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications put Facebook's website on the national ISP blacklist.<sup>35</sup> The site had 72 hours to remove illegal content that was flagged by ten complaints. The platform complied<sup>36</sup> with the request on the same day.

## 13. GOOGLE'S LACK OF ANTI-PIRACY MEASURES CONDEMNED IN BRITISH JURISDICTION

A report<sup>37</sup> on the UK's creative industry was published on September 26, 2013 by the British House of Commons Culture, Media and Sport Committee. The document "strongly condemns"<sup>38</sup> Google's failure to remove links to copyright infringing websites from its search engine. It notes<sup>39</sup> Google's engagement to block child abuse images and demands a similar cooperation to curb online piracy.

## 14. NSA REQUESTS: FACEBOOK, GOOGLE, MICROSOFT AND YAHOO FILE MOTIONS IN FISA COURT

Facebook, Google, Microsoft and Yahoo have filed on September 9, 2013 new or amended motions<sup>40</sup> in the secret Foreign Intelligence Surveillance (FISA) court. They seek for the permission<sup>41</sup> to publish aggregated data on the number of FISA requests that the four US-based platforms received from the FISA court. On September 13, 2013, the FISA court announced the disclosure<sup>42</sup> of some secret legal opinions.

## 15. ONLY FRENCH HADOPI INTERNET CUT-OFF ORDER WILL NOT BE EXECUTED

On July 3, 2013 a court in Montreuil ordered the first full sanction by the Hadopi three strikes anti-piracy system in place in the French jurisdiction: A 46 year old man was supposed to be cut off the Internet for 15 days. A few weeks later, the French Minister for Culture published a decree to abolish the cut-off sanction. It now became clear that the first and only final sanction ordered in July 2013 will never be executed.<sup>43</sup>

## 16. FRANCE PROPOSES EU-WIDE PERSONAL DATA EXPORT TAX

France proposed<sup>44</sup> to the EU to prepare a report on the feasibility of introducing an export tax for personal data that leaves European borders. The tax for Internet companies would “ensure that profits they generate in the European market are subject to taxation and the revenues shared among the member states”.

## 17. GERMANY SUBMITS INTERNET PRIVACY INITIATIVE TO UN HUMAN RIGHTS COUNCIL

At the 24th session of the UN Human Rights Council, Germany stressed<sup>45</sup>, on behalf of Austria Hungary, Lichtenstein, Norway and Switzerland, the need for the Council to address privacy on the Internet. Brazil equally emphasized the need for the Council to act after the Snowden revelations of NSA online surveillance. Germany submitted a corresponding initiative<sup>46</sup> to the Council.

## 18. UK PLANS TO LEVERAGE PAYMENT INTERMEDIARIES TO STOP CHILDREN’S ACCESS TO PORN

In order to prevent children from viewing pornography on the Internet in the British jurisdiction, the UK government

explores the possibility to leverage payment intermediaries subject to UK law. Websites could be deprived from money if they fail to stop children’s access<sup>47</sup> to pornography: “Government sources have made it clear that ministers would be prepared to consider legislation, if necessary.”

## 19. NEW ANTI-PIRACY LAW IN SPANISH JURISDICTION TARGETS LINKING SITES

On September 20, 2013, Spain approved<sup>48</sup> an amendment to the penal code that foresees prison sentences of up to six years for operators of websites that provide links to copyright protect material on third-party sites and make direct or indirect profit from this activity.

## 20. FACEBOOK AND TWITTER UNBLOCKED FOR ONE DAY IN IRANIAN JURISDICTION

On September 17, 2013, Iranian authorities blocked<sup>49</sup> access to the platforms Facebook and Twitter, after they were briefly accessible on the day before. It rests unclear whether the ISP block suspension was a deliberate action or a technical glitch.

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# OCTOBER

## 1. DATA SOVEREIGNTY: MARCO CIVIL TO INTRODUCE LOCAL DATA STORAGE PROVISION IN BRAZILIAN JURISDICTION

A new provision introduced into the draft of the Marco Civil bill after the revelations of USA NSA surveillance in the Brazilian jurisdiction might stipulate data sovereignty requirements for cross-border online platforms used by Brazilian citizens. In detail, the draft law of the comprehensive bill of Internet rights proposes<sup>1</sup> that “the government can oblige Internet service companies [...] to install and use centers for the storage, management and dissemination of data within the national territory.” The determination of applicability of the data localization will be made by the Brazilian government for each company individually, “taking into consideration their size, their revenues in Brazil and the breadth of services they offer the Brazilian public”. Those local server storage requirements aim at increasing the protection against foreign online espionage and fostering online privacy. It would also allow courts and law enforcement authorities to circumvent lengthy Mutual Legal Assistance Treaty (MLAT) procedures with third countries, in which many servers of major platforms used in Brazil are physically located today, to access user data of Brazilian citizens. The Brazilian Chamber of Deputies is expected to vote on the adoption of the new law in November 2013, after President Rousseff requested to handle the matter with constitutional urgency.<sup>2</sup>

### **Read further:**

Reuters: Brazil to insist on local Internet data storage after U.S. spying<sup>3</sup>

The Guardian: Brazil to legislate on online civil rights following Snowden revelations<sup>4</sup>

Bloomberg: NSA spying allegations put Google on hot seat in Brazil<sup>5</sup>

## 2. EUROPEAN COURT OF HUMAN RIGHTS HOLDS WEBSITE ACCOUNTABLE FOR DEFAMATORY, ANONYMOUS COMMENTS

On October 10, 2013, the European Court of Human Rights (ECHR) ruled<sup>6</sup> on the balance between freedom of expression, as stipulated in Article 10 of the European Convention on Human Rights<sup>7</sup>, and intermediary liability for hateful or defamatory comments. In January 2006, the Estonian news portal defli.ee published a story about a ferry company, which was in itself not defamatory, but attracted 185 comments, of which 20 were insulting or threatening. The portal immediately responded to the takedown requests by the company in question, but refused to pay damages in accordance with the EU E-Commerce Directive<sup>8</sup> and its provisions for intermediary liability exemptions if a notice and takedown system is in place. Ultimately, the Supreme Court of Estonia held Defi liable for anonymous defamatory comments on its site and the news portal appealed to the ECHR. The judges found that it is both “practical and reasonable for the site owner to be held responsible” for the comments and did not detect a violation of Article 10. The ECHR judgement is not yet final and can be appealed to the Grand chamber of the ECHR within three months.

### **Read further:**

European Court of Human Rights: Case of Delfi v. Estonia<sup>9</sup>  
Kari's journal Blog: Delfi vs Estonia ECHR judgment<sup>10</sup>  
Stanford CIS: The European Court of Human Rights holds delfi.ee liable for anonymous defamation<sup>11</sup>

### 3. GERMANY AND BRAZIL TO PROSE UN RESOLUTION ON ONLINE PRIVACY

German Chancellor Angela Merkel and Brazilian President Dilma Rousseff have launched a coordinated initiative to advocate the creation of a UN Resolution on the right of privacy on the Internet. The move is a response to the extraterritorial extension of sovereignty on the Internet through the US NSA surveillance scheme. It comes after it was revealed that the telephones of both heads of state were tapped<sup>12</sup> by US authorities. Brazil's president previously qualified the reach of US online surveillance in third countries a "breach of international law" in a UN speech<sup>13</sup> in September 2013. On October 26, 2013, German and Brazilian diplomats met to discuss a draft resolution, which could extend the 1976 UN International Covenant on Civil and Political Rights' Article 17<sup>14</sup> on privacy to online interactions. Representatives from France, Sweden, Norway and Austria were equally participating<sup>15</sup> in the meeting. President Rousseff has also proposed to directly connect Brazil and Europe with fiber optic cables<sup>16</sup> to route traffic around US territory.

#### Read further:

Reuters: Germany, Brazil to propose anti-spying resolution at U.N.<sup>17</sup>

Washington Post: Brazil seeks UN resolution to guarantee Internet privacy amid anger over US surveillance<sup>18</sup>

Atlantic Wire: Germany and Brazil will take NSA spying frustrations to the UN<sup>19</sup>

### 4. LONDON POLICE REQUESTS DOMAIN REGISTRARS OUTSIDE ITS JURISDICTION TO TAKE DOWN INFRINGING WEBSITES

A newly created Intellectual Property Crime Unit of the City of London Police (PIPCU) issued several requests<sup>20</sup> to foreign domain registrars to globally suspend websites, which allegedly "directly or indirectly" infringe copyright laws in the British jurisdiction. The requests were not based on any court orders, but issued in the context of ongoing investigations for copyright violations. The London police forces demanded registrars to point all global visitors of the suspended domains to a website of the PIPCU which announces that the website "is under criminal investigation by the UK". In detail, the suspension requests were framed as "alerts" to notify foreign registrars about the existence of infringing domains and recalling their duty to react according to their Terms of Service. Moreover, PIPCU evoked the possibility to refer the matter to ICANN, highlighting a potential breach of the ICANN Registration Accreditation Agreement (RAA), which states that "accreditation as a Registrar can be terminated if the Registrar is found to have 'permitted illegal activity in the registration or use of domain names'". The Canadian registrar EasyDNS<sup>21</sup> published the request and publicly demanded due process for domain suspension requests.

#### Read further:

TorrentFreak: UK Police orders registrars to suspend domains of major torrent sites<sup>22</sup>

The Register: Canadian operator EasyDNS stands firm against London cops<sup>23</sup>

EasyDNS: Whatever happened to "Due Process"?<sup>24</sup>

### 5. US AND BRITISH INTELLIGENCE SERVICES INTERCEPT GLOBAL TRAFFIC BETWEEN GOOGLE, YAHOO DATA CENTERS

A new joint US-British large-scale surveillance program was revealed through the Snowden leaks. The MUSCULAR program<sup>25</sup> refers to the capability of the NSA and the GCHQ to directly intercept unencrypted traffic between the globally distributed data centers of Google and Yahoo. The access points, according to the leaked documents, are telecommunication operators that provide direct access to either the physical fiber optic cables that connect the data centers, or to switches and routers. This allows the intelligence services to collect huge amounts of personal data from citizens of other jurisdictions from internal company traffic. The MUSCULAR program has the capacity<sup>26</sup> to filter relevant data and make it accessible for investigations. It complements the already revealed program PRISM, which only allows targeted access to specific user data with a FISA court warrant, as well as the large-scale direct collection of raw traffic at Internet Exchange Points. For resilience purposes, most cloud-based services try to geographically distribute and copy data of their clients, which results in high cross-border traffic volumes between data centers.

#### Read further:

Washington Post: How the NSA's MUSCULAR program collects too much data from Yahoo and Google<sup>27</sup>

ArsTechnica: How the NSA's MUSCULAR tapped Google's and Yahoo's private networks<sup>28</sup>

Wired: NSA is intercepting traffic from Yahoo, Google data centers<sup>29</sup>

### 6. LUXEMBOURG'S DATA PROTECTION AUTHORITY INVESTIGATES SKYPE'S LINKS WITH NSA

The National Commission for Data Protection of the Grand Duchy of Luxembourg has opened a formal investigation into Skype's links with the US NSA surveillance scheme, which might potentially violate national privacy and surveillance laws. The global headquarters of the Microsoft subsidiary are located in Luxembourg's jurisdiction. The probe was probably triggered<sup>30</sup> by a formal complaint by the Austria-based student group europe-v-facebook. It rests unclear if Luxembourg has a secret legal assistance or data transfer agreement with the US.

## 7. JUDGE THREATENS TO BLOCK FACEBOOK OVER DEFAMATORY POSTS IN BRAZILIAN JURISDICTION

In a case against Facebook Brazil that involved the takedown of defamatory posts, the Civil Court of Sao Paulo granted on October 2, 2013 an injunction to block Facebook<sup>31</sup> in Brazil if the company did not remove the content in question within 48 hours. Facebook Brazil complied with the court order, after having argued that only Facebook Inc and Facebook Ireland Ltd were responsible for the content. The judge stated that “Facebook is not a sovereign country superior to Brazil” and stressed the fact that the company is subject to Brazilian law.

## 8. COPYRIGHT: ITALY SUBMITS DRAFT REGULATION TO EU FOR DOMAIN SEIZURES AND BLOCKS

The Italian Electronic Communications Authority AGCOM has submitted a draft anti-piracy regulation<sup>32</sup> to the European Commission, which includes provisions to seize or block sites that carry copyright infringing content within 72 hours without a court order<sup>33</sup>. On 17 October 2013, an Italian court ordered<sup>34</sup> ISPs to block major torrent sites in the Italian jurisdiction.

## 9. INDIA TO BAN GOVERNMENT USE OF EMAIL PLATFORMS LOCATED OUTSIDE ITS JURISDICTION

The Indian Department of Electronics and Information Technology is changing the email policy of the government of India after the revelations of NSA surveillance of US-based online services. It is expected that services platforms like Google or Yahoo will be banned by December 2013 for official use. Government emails will need to be routed through the official website NIC’s email service<sup>35</sup>.

## 10. BRAZIL ISSUES MLAT REQUEST TO US TO INTERROGATE CEOS OF GLOBAL PLATFORMS

After having questioned local representatives of US based cross-border online platforms, the Brazilian Federal Police is extending<sup>36</sup> its investigation in the aftermath of the Snowden revelations. The police issued a Mutual Legal Assistance Treaty (MLAT) request to the US for an authorization to question the CEOs of Google, Microsoft, Apple Yahoo and Facebook in the US jurisdiction.

## 11. VKONTAKTE NOT LIABLE FOR COPYRIGHT INFRINGING USER UPLOADS IN RUSSIAN JURISDICTION

The Arbitration Court of St. Petersburg and Leningrad region ruled that VKontakte is not liable<sup>37</sup> for copyright infringing music uploaded by its users, but obliged to take down content after receiving a notice. The judge came to

the conclusion that the Russian social network can not monitor all user uploads for pirated content. The initial lawsuit was filed in June 2013 by a record label seeking damages for over 60 infringing tracks hosted on VKontakte.

## 12. INDIAN COURT ASKS CENTER FOR NOTIFICATION ON E-SIGNATURE REQUIREMENT TO SEND COMPLAINTS TO FACEBOOK

A Public Interest Litigation against Facebook in the Indian jurisdiction was filed with the Delhi High Court in April 2013. It accuses the platform of having a cumbersome procedure for individuals to send complaints to the social network: They need to be transmitted by conventional mail to Facebook Ireland, or via email with a mandatory electronic signature, which is not commonly used in India. Therefore, the Indian court has demanded the central government’s counsel to issue a notification<sup>38</sup> on the signature requirement.

## 13. RUSSIAN MINISTRY WANTS TO BLOCK 160 PIRACY WEBSITES VIA THEIR IP ADDRESSES

The deputy head of the Russian Ministry of Communications announced<sup>39</sup> plans to introduce a distinction between online platforms that comply with the notice and takedown regime, as stipulated by Russian law, and other websites with the purpose of hosting pirated content. The latter category, consisting of roughly 160 identified websites, might soon become blocked by Russian ISPs at the IP address level.

## 14. CANADIAN VPNS REQUIRED TO KEEP LOGS AND FORWARD COPYRIGHT NOTICES TO USERS

VPN providers incorporated in the Canadian jurisdiction will be required<sup>40</sup> by a new Copyright Act amendment<sup>41</sup> to keep logs of their users for six months. Moreover, the law requires them to forward notices for copyright infringements to the respective users. Although certain modalities are still to be set<sup>42</sup> by the government, the notice-and-notice system will become effective in the near future.

## 15. PRIVACY LAWSUIT AGAINST THE UK FILED AT THE EUROPEAN COURT OF HUMAN RIGHTS

The NGOs Big Brother Watch, Open Rights Group, English PEN and the former Chaos Computer Club spokesperson Constanze Kurz filed a lawsuit<sup>43</sup> against the UK at the European Court of Human Rights on October 3, 2013. They claim that the British government has violated<sup>44</sup> privacy provisions of Article 8<sup>45</sup> of the Convention for the Protection of Human Rights and Fundamental Freedoms with the online surveillance scheme operated by the GCHQ, which was revealed by Edward Snowden.

## 16. SINGAPORE CONSULTS ON MODALITIES FOR EXECUTING WEBSITE BLOCKS IN ITS JURISDICTION

The Senior Minister of State for Law of Singapore announced<sup>46</sup> on October 21, 2013 plans to review the implementation of the national Copyright Act. In detail, the government will discuss<sup>47</sup> “appropriate regulatory measures” to curb online piracy and consult with stakeholders from business and civil society on the “appropriate approach to site blocking” in Singapore’s jurisdiction.

## 17. POSTING REVENGE PORN DECLARED A CRIME IN CALIFORNIA’S JURISDICTION

On October 2, 2013 the governor of California signed a bill<sup>48</sup> that makes the posting of so-called “revenge porn” on the Internet a criminal offense<sup>49</sup> in the jurisdiction, in which several globally operating online platforms are incorporated. The bill introduces jail sentences of up to six months and a 1000 US dollar fine.

## 18. BRAZIL IS BUILDING A NATIONAL EMAIL SYSTEM

Brazilian President Dilma Rouseff announced<sup>50</sup> on Twitter the creation of an encrypted email service in the Brazil-

ian jurisdiction, which would protect in particular official messages from potential foreign espionage. The Brazilian federal data processing service Serpro is designated to operate the national email system.

## 19. GERMAN INTELLIGENCE SERVICE TAPS FIBER OPTIC CABLES AND INTERNET EXCHANGE POINT

The German Federal Intelligence Service BND has a secret agreement<sup>51</sup> with over 25 ISPs in the German jurisdiction to monitor directly traffic that is routed through fiber optic cables. Moreover, the BND can tap into the traffic of the Frankfurt Internet Exchange Point DE-CIX. It rests unclear how the BND distinguishes between national communications and international traffic. The BND can only spy on German citizens under certain circumstances.

## 20. SEYCHELLES-BASED VPN OPERATOR TO MONITOR USERS FOR ONLINE HARASSMENT

The VPN operator Proxy.sh, incorporated in the Republic of Seychelles, began to engage into platform policing activities<sup>52</sup>. Without a court order, the VPN reacted to a complaint by a victim of online harassment and installed, despite its no-logging policy, a network monitoring tool to identify the VPN user in question.

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# NOVEMBER

## 1. FRENCH COURT ORDERS GOOGLE INC AND GOOGLE FRANCE TO FILTER MAX MOSLEY ORGY PHOTOS

On November 6, 2013 the French civil court Tribunal de Grande Instance ordered<sup>1</sup> both Google Inc and Google France to filter nine defamatory images of the former Formula One president Max Mosley from its search results. The pictures in question show Max Mosley participating in a 2008 “Nazi orgy” and were published by the British tabloid News of the World before spreading on the Internet. In detail, the Parisian court ruled<sup>2</sup> that the images intruded the privacy of the plaintiff and came to the conclusion that Google must “remove and cease, for a period of five years beginning two months after this decision” the appearance of the images on its Google Images search engine results. The French injunction obliges Google thus to install a dedicated filtering system. Google announced to appeal the French decision. A similar lawsuit<sup>3</sup> was filed in Hamburg, Germany and the decision is expected in early 2014.

### Read further:

Digital Media Law Project: French court: claim of First Amendment rights in search results inconsistent with “neutral and passive role” as host<sup>4</sup>

Search Engine Land: French court orders Google to remove Max Mosley’s Images from search engine results<sup>5</sup>

Reuters: Google ordered to remove Max Mosley sex party images<sup>6</sup>

## 2. GOOGLE’S TERMS OF SERVICE IN BREACH OF PRIVACY LAWS IN DUTCH JURISDICTION

On November 28, 2013, the Dutch Data Protection Authority (DPA) published<sup>7</sup> the findings of its seven-month investigations into the combining of personal data by different online services of Google such as Gmail, YouTube or Google Search. The DPA came to the conclusion<sup>8</sup> that Google’s Terms of Service update of March 2012, which enabled the personal data combination, breaches Dutch privacy laws. Google “does not adequately inform users about the combining of their personal data from all these different services” and “does not offer users any (prior) options to consent to or reject” that their data is processed in a combined way, which is “forbidden by law”<sup>9</sup>, according to the Chairman of the Dutch DPA. In the Netherlands, companies are only allowed to gather information about individuals for a particular purpose or business goal<sup>10</sup>. Google responded<sup>11</sup> that it operates in compliance with European law. The DPA announced no immediate sanctions<sup>12</sup> against Google.

### Read further:

Bloomberg BNA: Dutch DPA concludes that Google is in breach of Data Protection Act<sup>13</sup>

PC World: Google’s privacy policy violates Dutch data protection law, Dutch DPA says<sup>14</sup>

Guardian: Google privacy changes break Dutch data protection law, says regulator<sup>15</sup>

### 3. EU COMMISSION DEMANDS MEASURES TO RESTORE “TRUST” IN EU-US CROSS-BORDER DATA TRANSFERS

On November 27, 2013, the European Commission published<sup>16</sup> a comprehensive set of actions to address the lost trust in privacy protections in EU-US cross-border data transfers after the Snowden revelations on the extraterritorial extension of NSA surveillance that leveraged the physical presence of platforms and operators in the US jurisdiction. The recommendations focused, among others, on the improvement<sup>17</sup> of the EU-US Safe Harbor agreement. US-based cross-border online platforms could be obliged to include provisions in their Terms of Service to specify to what extent US law “allows public authorities to collect and process data transferred”. Moreover, the Commission highlights the need to strengthen procedures for redress for EU citizens if their privacy rights are infringed in the US jurisdiction. This includes the strengthening of alternative dispute mechanisms under the Safe Harbor agreement, as well as the creation of “judicial redress mechanisms” for EU citizens “not resident in the US”. The communication also stresses the importance for law enforcement agencies (LEA) to acquire user data in foreign jurisdiction through the existing EU-US Mutual Legal Assistance and sectoral arrangements. A new umbrella agreement for LEA data sharing is currently negotiated between the US and the EU and could become operational in 2014.

#### Read further:

Gigaom: Europe’s response to U.S. surveillance is hopeful rather than harsh<sup>18</sup>

Guardian: NSA surveillance: Europe threatens to freeze US data-sharing arrangements<sup>19</sup>

ZDNet: Realizing it’s the underdog post-PRISM, EU lays out new BFF pact with the U.S.<sup>20</sup>

### 4. GERMAN COURT RULES GOOGLE’S PRIVACY POLICY VIOLATES NATIONAL DATA PROTECTION LAW

On November 19, 2013, the Berlin Regional Court ruled that Google Inc. does not comply with data protection laws in the German jurisdiction. In detail, 25 clauses – 13 clauses in its Privacy Policy and 12 ones in its Terms of Service – were found to be unlawful or restrictions of consumer rights. The complaint was filed by the German Federation of Consumer Organizations in 2012 after German Google users flagged the vaguely formulated data use policies as new Terms of Service unified the privacy policies across Google services. Google announced to appeal the ruling. A decision by the court of appeals is expected for the end of 2014. If the ruling was final, Google could be forced to change its Terms of Service to operate in the German jurisdiction and be fined up to 250.000 Euro per infringing clause.

#### Read further:

IDG: Berlin court rules Google privacy policy violates data protection law<sup>21</sup>

Bloomberg BNA: Berlin court rules Google privacy policy too vague; Internet giant set to appeal<sup>22</sup>

Gigaom: German court chides Google over its vague privacy policy and terms<sup>23</sup>

### 5. MICROSOFT, GOOGLE INTRODUCE ALGORITHMS TO BLOCK SEARCHES FOR CHILD ABUSE IMAGES

The two search engines operated by Google and Microsoft announced<sup>24</sup> on November 17, 2013 new measures to combat the spread of child abuse images. The companies teamed up to develop algorithms that block<sup>25</sup> the appearance of search results for 100.000 search terms related to child abuse images. Google announced that the new filter will be introduced first in the British jurisdiction before being extended to 158 jurisdictions and their corresponding local languages by mid-2014. Moreover, the two companies agreed to cooperate with the UK based Internet Watch Foundation and the US-based National Center for Missing and Exploited Children to provide technological expertise and to offer their capacities to identify child abuse images. The search engine filters were introduced after UK Prime Minister Cameron demanded that the companies take measures earlier in 2013.

#### Read further:

Reuters: Google, Microsoft tighten online searches to combat child porn<sup>26</sup>

Daily Mail: Google chief Eric Schmidt explains block on child porn<sup>27</sup>

CNET: Google, Microsoft ramp up fight against online child pornography<sup>28</sup>

### 6. MICROSOFT AND SKYPE MAY CONTINUE TO SEND DATA OF EU CITIZENS TO THE US, SAYS LUXEMBOURG’S DPA

Following the revelations of the extraterritorial extension about the US surveillance on European users of US-based online platforms, the Austrian privacy campaign Europe-v-Facebook asked<sup>29</sup> Luxembourg’s data protection authority CNPD in July 2013 to investigate into Microsoft and Skype, both incorporated in its jurisdiction. The CNPD published its response on November 18, 2013: It did not find breaches<sup>30</sup> of national or EU privacy laws by the transfer of personal data of EU citizens to the US and the alleged sharing of user data with the NSA under the PRISM scheme.

## 7. UN DRAFT RESOLUTION ON PRIVACY IN THE DIGITAL AGE TO BE VOTED ON IN UN GENERAL ASSEMBLY

The UN draft resolution “The right to privacy in the digital age”<sup>31</sup>, jointly sponsored by Brazil and Germany in response to the global reach of NSA surveillance, has been approved<sup>32</sup> on November 26, 2013 by the UN General Assembly’s Social, Humanitarian and Cultural Committee. The 193 members of the General Assembly are expected to vote<sup>33</sup> on the non-binding resolution in December 2013.

## 8. CANADIAN AND INDIAN REGISTRARS CLASH OVER EXECUTION OF TAKEDOWN REQUEST BY LONDON POLICE

The Canadian registrar easyDNS has filed<sup>34</sup> a Request for Enforcement with the registry VeriSign under ICANN’s Transfers Dispute Resolution Policy<sup>35</sup> to transfer-out three domain names to it, which the India-based registrar Public Domain Registry (PDR) blocked after having received a suspension request by the City of London Police. Contrary to PDR, easyDNS publicly denied to comply with similar British police requests, which were not backed by any court order. PDR refused however to transfer the locked domains to easyDNS. As a consequence, easyDNS asked PDR to abide to its obligations under the Registrar Accreditation Agreement<sup>36</sup> to transfer the three domains. In the end, VeriSign’s verdict was “a decision of No Decision”.<sup>37</sup>

## 9. FIRST VPN PROVIDER PUBLISHES TRANSPARENCY STATISTICS

Proxy.sh, a VPN provider based in Seychelles’ jurisdiction, is the first<sup>38</sup> operator of its kind to publish transparency statistics<sup>39</sup> about all data and takedown requests it receives. In addition, it also reveals its compliance decisions. Instead of publishing regular aggregated reports, the VPN makes individual requests available on its website within 12 hours after reception.

## 10. FRENCH COURT ORDERS SEARCH ENGINES AND ISPS TO BLOCK STREAMING SITES

The Tribunal de Grande Instance of Paris ordered<sup>40</sup> on November 28, 2013 the blocking of 16 websites that linked to online streams of copyright protected material. In detail, six French ISPs, including Orange and SFR, as well as the search engines operated by Google (Inc and France), Microsoft (Inc and France), Yahoo (Inc and France) and Orange are now obliged to block and de-index the websites within 15 days and for a period of 12 months.<sup>41</sup>

## 11. INDIAN SUPREME COURT ASKS DEPARTMENT OF TELECOMMUNICATIONS HOW TO BLOCK PORN SITES

On November 18, 2013, the Indian Supreme Court issued an notice<sup>42</sup> to the Department of Telecommunication on how to block websites with pornographic content that are accessible in India, but operated from foreign jurisdictions. Existing procedures to block content within the Ministry of Information and Broadcasting in India are only designed for radio and television, and not for websites.

## 12. APPLE ISSUES FIRST TRANSPARENCY REPORT

On November 5, 2013, Apple published<sup>43</sup> its first “Report on Government Information Requests” in the wake of the Snowden revelations about NSA access to personal data of users of US-based companies. The report covers the first half of 2013. The company received<sup>44</sup> around 1800 requests from law enforcement agencies for account information from 31 jurisdictions (notably the US, UK, Spain, Germany and Australia).

## 13. TELCO COMPLIANCE WITH BRITISH TEMPORA SPYING: PRIVACY INTERNATIONAL FILES COMPLAINTS WITH OECD

The UK-based NGO Privacy International has filed<sup>45</sup> on November 5, 2013 formal complaints<sup>46</sup> with the OECD against major telecommunication companies for their compliance in the surveillance scheme operated by the British intelligence service GCHQ. The complaints state that BT, Verizon Enterprise, Vodafone Cable, Viatel, Level 3, and Interoute violated several OECD guidelines for human right standards of cooperate actions by letting GCHQ access their fiber optic cables under the Tempora program<sup>47</sup>.

## 14. NSA LINKS: CIVIL SOCIETY COALITION SUES DUTCH STATE FOR WHITEWASHING SURVEILLANCE DATA

A coalition of the Dutch Association of Defense Councils, the Dutch Association of Journalists and individuals from the Dutch civil society and technical community initiated on November 6, 2013 legal proceedings<sup>48</sup> against the Dutch state following the Snowden revelations about the surveillance activities of the US. In detail, the coalition accuses the Netherlands of “whitewashing”<sup>49</sup> surveillance data by circumventing national privacy laws through the use of data that was acquired by the NSA.

## 15. UK HIGH COURT ORDERS NEW PIRATE WEBSITE BLOCKS

A new order<sup>50</sup> by the UK High Court extends the numbers of piracy websites blocked in the UK jurisdiction to 33, in addition to blocked proxies or alternative domains. Six ISPs were ordered to make the sites YIFY-Torrents, PrimeWire, Vodly, WatchFreeMovies and Project Free TV inaccessible on UK territory.

## 16. ENCRYPTION: TWITTER BEGINS TO USE PERFECT FORWARD SECURITY TO PREVENT ACCESS TO TRAFFIC DATA

In response to the revelations of the NSA's capacities to monitor traffic data, Twitter announced<sup>51</sup> on November 22, 2013 that it began using a new encryption standard. The technology Perfect Forward Security<sup>52</sup>, adopted also by Google, Mozilla and Facebook, encrypts each web sessions with a distinct key, which renders bulk encryption of (cross-border) traffic data harder.

## 17. UK GOVERNMENT TO ORDER BLOCKING OF "EXTREMIST" WEBSITES IN ITS JURISDICTION

The UK government announced<sup>53</sup> on November 27, 2013 plans to order ISPs to block websites containing "extremist" content, similar to already existing child abuse images blocks in the UK jurisdiction. A government funded-body will probably determine what constitutes "extremist" content and issue blocking orders to national ISPs.

## 18. SHARED ENDORSEMENTS: GOOGLE FACES PRIVACY COMPLAINTS IN 14 EU COUNTRIES

On November 26, 2013, a lawyer filed complaints<sup>54</sup> demanding Google to change its Terms of Service with data protection authorities in 14 EU jurisdictions: Austria, Belgium, the Czech Republic, Denmark, France, Germany, Italy, Lithuania, the Netherlands, Norway, Poland, Slovenia, Spain and Sweden. A recent Terms of Service update by Google introduced "shared endorsements"<sup>55</sup>, which allegedly violate national privacy laws by showing user pictures and comments in advertisements if users follow a company's site on Google+.

## 19. BILL IN ISRAELI JURISDICTION COULD LEGALIZE DOWNLOADS OF COPYRIGHT PROTECTED MATERIAL

Members of the Israeli parliament are about to present<sup>56</sup> a bill, which would legalize<sup>57</sup> the downloads of copyright-protected content for personal use. The Israeli collecting society ACUM seems to support the bill, which foresees a levies-based system to re-compensate financial losses.

## 20. BELGIUM COURT ORDERS ISPS TO SEARCH FOR AND BLOCK PIRATE BAY PROXIES

The Belgium Supreme Court decided that ISPs must proactively search for, report and block proxy websites that provide Belgium Internet<sup>58</sup> users with an access to The Pirate Bay, a torrent site that is blocked in the Belgium jurisdiction. The Supreme Court came to the conclusion that this measure is not disproportionate.

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# DECEMBER

## 1. UN GENERAL ASSEMBLY ADOPTS PRIVACY IN DIGITAL AGE RESOLUTION

On December 18, 2013 the UN General Assembly adopted unanimously the resolution<sup>1</sup> “Right to privacy in the digital age”. For the first time, the General Assembly established that human rights should be applicable both offline and online. The resolution has been introduced by Germany and Brazil after the revelations of the extra-territorial extension of US surveillance in cyberspace. The resolution calls upon the 193 UN member states to “respect and protect the right to privacy, including in the context of digital communication” and “to review their procedures, practices and legislation on the surveillance of communications, their interception and collection of personal data, including mass surveillance.” The General Assembly resolution is not legally binding.

### Read further:

Associated Press: UN votes to protect privacy in digital age<sup>2</sup>  
New York Times: A blow against Big Brother<sup>3</sup>  
Hindu: The right to privacy in the digital age<sup>4</sup>

## 2. THE PIRATE BAY MOVES FROM ASCENSION ISLAND OVER GUYANA TO SWEDEN

The torrent library The Pirate Bay switched its country-code top-level domains (cc-TLD) six times in 2013 to escape seizures in various jurisdictions. After its .SX address was seized<sup>5</sup> on December 10, 2013 in Sint Maarten, a land of the Kingdom of the Netherlands, the website moved on to Ascension's Islands .AC – a cc-TLD subject to UK jurisdiction. To preempt another suspension, the

website then registered<sup>6</sup> under Peru's .PE domain. There, it was suspended again after five days on December 18, 2013. The torrent library moved to .GY in Guyana, where it was suspended for violations of the registries acceptable use policies. On December 19, 2013 the website moved back<sup>7</sup> to its initial Swedish .se domain. It rests unclear<sup>8</sup> in which jurisdiction the servers of the website are located.

### Read further:

Register: The Pirate Bay changes domain again ... twice<sup>9</sup>  
Torrentfreak: Pirate Bay moves to Guyana after domain suspension, 70 domains to go<sup>10</sup>  
Ars Technica: After sailing the domain name seas, Pirate Bay returns to Sweden<sup>11</sup>

## 3. NEW VERSION OF THE MARCO CIVIL SUBMITTED TO BRAZILIAN CONGRESS

On December 11, 2013, Alessandro Molon, the author of the Marco Civil submitted a new version<sup>12</sup> of the draft bill to the House of Representatives. Following the NSA Internet surveillance revelations, Brazilian President Dilma Rousseff ordered in September 2013 that the bill shall be voted with constitutional urgency. Although it was expected that the bill is passed on to the Senate in October 2013, no compromise was reached in the House of Representatives and the urgency deadline stipulated by Brazilian law expired. As a consequence, the Marco Civil blocks<sup>13</sup> other legislative proposals in the lower house until it is voted. The Brazilian minister for institutional relations Ideli Salvatti announced<sup>14</sup> that the Marco Civil will be the first bill to be voted on in 2014.

**Read further:**

Marco Civil: Substitutive Bill Proposal to Bill No. 2,126, from 2011 (English translation)<sup>15</sup>

Global Voices: New Version of Brazil's Marco Civil Submitted to the House of Representatives<sup>16</sup>

TeleGeography: Minister affirms: civil internet bill is 'first in line' for 2014 vote<sup>17</sup>

## 4. ITALY APPROVES NEW SYSTEM TO BLOCK AND SEIZE PIRATE WEBSITES

A new regulation<sup>18</sup> confers the power to seize and block websites containing copyright infringing material without a court order upon the Italian telecommunications regulator Autorità per le Garanzie nelle Comunicazioni (AGCOM). From March 31, 2014 onwards, the authority will be able to send takedown requests to websites and order<sup>19</sup> domain seizures for websites hosted or registered in Italy, as well as ISPs blockades of foreign websites which do not comply with requests to within 72 hours. The new procedure is intended to speed up considerably the process to react to copyright infringements on the Internet and reduce the time from the reception of a complaint to the implementation of an action to less than 35 days. The system also introduces a fast-track procedure of 12 days in case of "serious violations". The new AGCOM measures were enacted by an administrative process without a hearing in the Italian parliament.

**Read further:**

TorrentFreak: Measures to black out pirate sites unanimously approved<sup>20</sup>

ZDNet: Italy's site-blocking law comes into effect: A threat to Pirate Bay or a curse on online freedom?<sup>21</sup>

EDRI: Italian telecom authority gets the power to block websites<sup>22</sup>

## 5. PANAMA-BASED CYBERLOCKER HOTFILE SHUTS DOWN AFTER US COPYRIGHT SETTLEMENT

On December 3, 2013, shortly before the official trial was set to start, the U.S. District Court for the Southern District of Florida agreed with a settlement between the US-based file hosting service Hotfile and the industry group Motion Picture Association of America (MPAA). The MPAA initially demanded<sup>23</sup> 517,200,000 US dollar for copyright damages caused by 3,448 infringing video files that were hosted by Hotfile. The settlement<sup>24</sup> required Hotfile to pay 80 million US dollar and install a filtering system to prevent the upload of copyright protected material in order to continue to operate. On December 4, 2013 Hotfile however shut down permanently. It is believed that the service hosted a large number of legal files, which are now inaccessible<sup>25</sup> for both international and US users. It remains unclear if they will lose their data. The cyberlocker incorporated in Panama's jurisdiction was considered to be one of the largest file-sharing sites on the Internet.

**Read further:**

ArsTechnica: Hotfile settles MPAA copyright case, agrees to \$80 million in damages<sup>26</sup>

TorrentFreak: Hotfile shuts down and takes user files with it<sup>27</sup>

NetworkWorld: Hotfile ordered to pay damages, install copyright filtering, says MPAA<sup>28</sup>

## 6. EU ADVOCATE GENERAL ARGUES DATA RETENTION DIRECTIVE BREACHES FUNDAMENTAL RIGHTS

On December 12, 2013 an Advocate General of the European Court of Justice (ECJ) argued in a non-binding opinion<sup>29</sup> that the 2006 EU data retention directive breaches the EU Charter of Fundamental Rights<sup>30</sup>. The directive prescribes the storage of location and communication data for six months to two years without stipulating appropriate limitations<sup>31</sup> for data access and processing by the Member States, according to the opinion. The case in question was sent to the ECJ from the Irish jurisdiction.

## 7. US AND INDIAN LAW ENFORCEMENT SEEK TO ENHANCE COOPERATION ON DIGITAL ISSUES

On December 3-4, 2013 law enforcement representatives of India and the US met<sup>32</sup> in New Delhi to explore enhanced cooperation. The talks were part of the Indo-US homeland security dialogue. Among others, the conference focused on challenges related to the viral spread of rumors and misinformation on the Internet, as well as on the improvement of the process of legal assistance by the US to send requests and receive access to user data. The US signaled support, but noted<sup>33</sup> that national privacy laws govern Internet services based in the US.

## 8. BRITISH ISP BLOCKS IMAGE SHARING WEBSITE IMGUR BY ERROR

The popular image sharing platform Imgur became inaccessible<sup>34</sup> for several hours in the British jurisdiction for subscribers of Sky Broadband. The ISP intended to block the file-sharing website YIFY-Torrents, which is blacklisted by all six major ISPs in the UK. However, an automated system<sup>35</sup> blocked the IP address of an Australian Content Delivery Network used by both sites, which in return blocked Imgur, too.

## 9. SPAIN ISSUES MAXIMUM FINE FOR GOOGLE'S PRIVACY VIOLATIONS

The Spanish data protection authority APED fined<sup>36</sup> Google for violating<sup>37</sup> national privacy laws through the combination of personal data across almost 100 services and for providing insufficient information on the processing of this data. Google is ordered to pay the maximum possible fine of 900,000 euro.



## 10. UK PLANS TO OFFER SOCIAL MEDIA GUIDELINES TO AVOID LEGAL INCIDENTS ON TWITTER, FACEBOOK

On December 4, 2013 the chief legal adviser of the British government announced<sup>38</sup> plans to publish guidelines for users of social media in the British jurisdiction. The measure is intended to avoid users breaking British laws online and comes after high profile cases proliferated in the UK and posed “certain challenges to the criminal justice system”.

## 11. IRISH ISPS READY TO BLOCK TORRENT SITES WITHOUT COURT ORDER

On December 3, 2013, the Irish High Court ruled<sup>39</sup> that UPC, Vodafone, Digiweb, Hutchison 3G and Telefonica Ireland are required to block the file-sharing site Kickass Torrents. Prior to the court ruling, the ISPs Eircom, Meteor, Magnet, Sky and Imagine Telecommunications – not listed as defendants – signaled that they would voluntarily<sup>40</sup> block the website, too, if the court obliges the five other ISPs to do so.

## 12. ITALIAN SUPREME COURT ACQUITS GOOGLE EXECUTIVES OF LIABILITY CHARGES

The Supreme Court of Italy ruled<sup>41</sup> on December 17, 2013 that three Google executives are not liable for a video uploaded by a user in 2006, which showed the bullying of a disabled young man. A prosecutor appealed the decision of a lower court of appeals in Milan in December 2012, which overturned<sup>42</sup> the 2010 conviction of the Google executives for privacy violations.

## 13. INDIAN DOMAINS AND TRAFFIC SHOULD BE STORED ON INDIAN TERRITORY, SAYS SECURITY COMMITTEE

According to a note<sup>43</sup> prepared after a meeting of the Indian Sub-Committee on International Cooperation on Cyber Security under the National Security Council Secretariat, India should “insist that data of all domain names originating from India...should be stored in India. Similarly, all traffic originating/landing in India should be stored in India”.

## 14. COPYRIGHT: GERMAN PORN STREAMERS RECEIVE LEGAL LETTERS AFTER COURT ERROR

At least 10.000 Germans received<sup>44</sup> legal letters with a fine of 250 euro from a Bavarian law firm for having streamed a copyright infringing pornographic video on the website Redtube. It is believed that the Regional

Court of Cologne wrongly<sup>45</sup> ordered the ISP Deutsche Telekom to reveal the identity behind 1.000 tracked IP addresses, as it misunderstood the difference between streaming and file-sharing. Moreover, it is unclear how the plaintiff was technically able to collect the IP addresses of streamers.

## 15. MAJOR INTERNET COMPANIES FILE BRIEFS IN KENTUCKY CASE ON LIABILITY FOR THIRD PARTY CONTENT

A judge in the US state Kentucky allowed a gossip website to be sued for defamatory user generated content. As a reaction, major US-based platforms including Google, Facebook, Twitter and Amazon filed<sup>46</sup> briefs with the 6th US Circuit Court of Appeals in Cincinnati as the case could “significantly chill online speech”. The case is based on the intermediary liability exemptions under the 1996 US Communications Decency Act

## 16. DEFAULT PORNOGRAPHY FILTERS BLOCK SEX EDUCATION SITES IN UK

The UK’s four main ISPs have activated pornography filters by default to protect children. However, they face challenges of over-blocking<sup>47</sup>. The filtering technologies not only fail to block certain hardcore pornography websites, but also render several sexual education and health websites inaccessible.

## 17. GOOGLE IRELAND SUED FOR DISPLAYING A DEFAMATORY IMAGE ON A KNOWLEDGE GRAPH PROFILE

The Irish senator Thomas Byrne filed a defamation lawsuit<sup>48</sup> at the Irish High Court against Google Ireland for displaying the image of a convicted solicitor with the same name next to his Google Knowledge Graph profile. The court granted the senator an interim injunction that obliged Google not to display the picture in question.

## 18. SAUDI ARABIA PLANS TO REQUIRE PERMITS FOR USERS TO POST VIDEOS ON THE INTERNET

The Commission for Audiovisual Media of Saudi Arabia announced<sup>49</sup> plans to create a new agency to monitor video hosting platforms in order to ensure that only content in accordance with Saudi “culture, values and tradition” would be allowed to be uploaded. This could require Saudi Internet users to request a permit to upload videos on platforms such as YouTube.

## 19. LONDON POLICE ANNOUNCES SUSPENSION OF 40 DOMAINS OF UK AND FOREIGN PIRATE SITES

As an outcome of the Operation Creative, an alliance between the City of London Police and the music and movie industries to combat online copyright infringements, the domains of 40 “national and international websites” were suspended<sup>50</sup> by their registrars. Moreover, the police informed 60 advertisement intermediaries about a list of 61 targeted websites which are considered to infringe copyrights.

## 20. IRAN BLOCKS INSTAGRAM FOR 12 HOURS

The photo website Instagram was blocked<sup>51</sup> in the Iranian jurisdiction for 12 hours on December 30, 2013. It is the first time that the service was blocked in Iran. It rests unclear to what extent the block was a technical glitch or a test.

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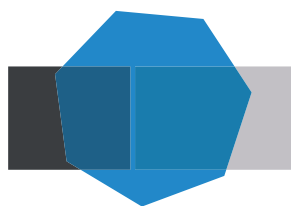
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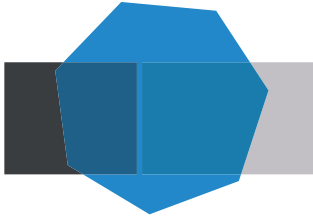






# INTERNET & JURISDICTION

A GLOBAL MULTI-STAKEHOLDER  
DIALOGUE PROCESS



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The Internet & Jurisdiction Project facilitates a global multi-stakeholder dialogue process to address the tension between the cross-border nature of the Internet and geographically defined national jurisdictions. It provides a neutral platform for international organizations, states, business and civil society to discuss the elaboration of a transnational due process framework to handle the digital coexistence of diverse national laws in shared cross-border online spaces.

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