

**INTERNET
& JURISDICTION**

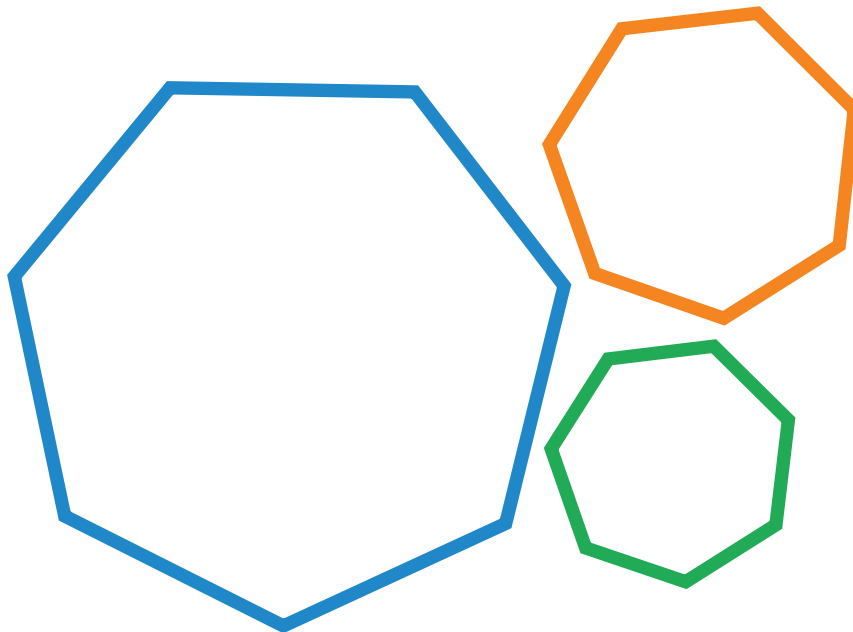
A GLOBAL MULTI-STAKEHOLDER
DIALOGUE PROCESS

2012

IN RETROSPECT

**INTERNET & JURISDICTION
PROJECT CASE COLLECTION**

VOLUME 1



**INTERNET &
JURISDICTION
OBSERVATORY**

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2012 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 420 cases around the world in a dedicated database between February and December 2012. 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 "2012 in Retrospect" is a compilation of 220 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



RETROSPECT

MONTHLY NEWSLETTER WITH TOP 20 CASES



DIALOGUE + ANALYSIS



SYNTHESIS

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.

INTERNET & JURISDICTION

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26 DIFFERENT INSTITUTIONS IN
13 COUNTRIES

ARE PART OF THE INTERNET & JURISDICTION OBSERVATORY.
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FEBRUARY

1. ACTA FACES CONTROVERSY IN EUROPE OVER ANTI-PIRACY PROVISIONS

The yet not ratified Anti-Counterfeiting Trade Agreement¹ (ACTA) between 31 states encountered significant public protest² in Europe. As a reaction, the European Parliament rapporteur³ stepped down from office and several European countries⁴ suspended their ratification process. The European Commission asked the European Court of Justice⁵ to rule on the legality of ACTA in the EU's jurisdiction. Another international trade agreement, the Trans-Pacific Partnership Agreement (TPPA), currently negotiated⁶ between nine countries, will equally include provisions⁷ against online piracy.

Read further:

European Parliament: Public ACTA Discussion⁸

European Commission: 10 Myths about ACTA⁹

Radio Netherlands Worldwide: Loosen up copyright law, says Dutch government¹⁰

2. DEFAMATION TRIAL TO DECIDE WHETHER TWITTER IS A PUBLISHER IN AUSTRALIA'S JURISDICTION

Twitter, incorporated in the US, is sued for the first time under Australian law for defamation¹¹. The plaintiff argues that Twitter is a publisher and therefore liable for retweets of an original tweet. The case recalls the Gutnick v. Dow Jones¹² ruling of 2002, in which US based publisher Dow Jones was held liable for defamation of the Australian businessman Joseph Gutnick under Australian law. Under US jurisdiction, Section 230 of the US Communications Decency Act guarantees online publishers immunity of defamation charges for user-generated content.

Read further:

CNET: Is Twitter liable for defamation¹³

The Conversation: Will Marieke Hardy's Twitter case change Australian law forever?¹⁴

Citizen Media Law Project: Immunity for Online Publishers Under the US Communications Decency Act¹⁵

3. US ADMINISTRATION PUBLISHES PRIVACY BILL OF RIGHTS WHITE PAPER

In an effort to strengthen consumer protection in the Internet economy, the White House published a blueprint for a Privacy Bill of Rights¹⁶ on February 23, 2012. The white paper suggests seven core principles¹⁷ and foresees to draft industry standards in a dialogue with stakeholders, which are likely to effect global privacy standards of US based Internet platforms. These would be enforceable by the Federal Trade Commission. In order to guarantee the "international interoperability" of privacy laws across different jurisdictions, the proposed framework emphasizes mutual recognition, multi-stakeholder dialogue and regulation through codes of conduct, as well as cross-border enforcement cooperation. Parallel to the publication of the blueprint, two coalitions of Internet companies announced the introduction of a "No Track" browser button and standard privacy policies for mobile apps¹⁹.

Read further:

The White House: Obama Administration Unveils Blueprint for a "Privacy Bill of Rights" to Protect Consumers Online²⁰

The Washington Post: "Privacy bill of rights": Advocacy groups, industry weigh in²¹

The Economist: Online Privacy in America – Rights and Wrongs²²

4. US AUTHORITIES SEIZE FOREIGN .COM GAMBLING SITE REGISTERED IN CANADA VIA VERISIGN

After an indictment²³ by prosecutors of the US state Maryland, the Department of Homeland Security shut down the gambling website bodog.com, which was registered with the Canadian registrar DomainClip and operated by non-US citizens. The District Court of Maryland ordered VeriSign²⁴, subject to US jurisdiction, to directly take off the website from the .com root.

Read further:

EasyDNS: Verisign seizes.com domain registered via foreign Registrar on behalf of US Authorities
Michael Geist: All Your Internets Belong to US²⁵
Continued: The Bodog.com Case²⁶
Wired: If it ends in.com, it's seizable²⁷

5. CHINA ADOPTS NEW DATA PROTECTION RULES

The Ministry of Industry and Information Technology published the "Several Provisions on Regulating Market Orders of the Internet Information Services"²⁸ that will become effective on March 15, 2012. The provisions feature stronger data protection standards.

Read further:

Huntington Privacy Blog: Chinese Ministry of Industry and Information Technology Issues New Data Protection Regulations²⁹
Data Guidance: Law regulating IISPs' data practices comes into force in China³⁰

6. INDIA ASKS WEB MAIL PROVIDERS TO ROUTE EMAILS THROUGH INDIAN SERVERS FOR NATIONAL SECURITY REASONS

In order to avoid multi-jurisdictional conflicts and bureaucratic requests for information, the Indian government decided to ask web mail providers, including foreign ones, to route emails through Indian servers³¹. The measures are motivated by the need to have real-time access to email accounts for reasons of counter-terrorism investigations.

7. NEW ANTI-PIRACY LAWS DISCUSSED IN CANADA AND IRELAND

The Canadian copyright reform Bill C-11³² would allow to block both Canadian and foreign websites containing copyright infringing material. New copyright provisions are also discussed in Ireland³³. They could potentially have particular implications for major Internet companies³⁴, such as Facebook, Google and Twitter, as their international headquarters on the island are subject to Irish jurisdiction.

8. INDUSTRY STUDY CLAIMS THAT JURISDICTIONS IN APAC REGION ARE YET NOT READY FOR CLOUD COMPUTING

A study of the Business Software Alliance³⁵ analyzed the legal and regulatory environments in 24 jurisdictions, which account for 80 percent of the global ICT market. The result is summarized in a scorecard that seeks to measure and rank the preparedness for cross-border cloud services. The study concludes that APAC countries are the least cloud-ready³⁶.

9. NEW PHASE OF US "OPERATION IN OUR SITES" DOMAIN SEIZURES

On February 2, 2012 the US Immigration and Custom Enforcement (ICE) seized over 300 domains³⁷ that were registered with registrars based in the US jurisdiction. It was the 10th phase of the "Operation In Our Sites" initiative. For the first time, ICE also took down .tv domains³⁸. Executed three days before the Super Bowl, the Operation Fake Sweep aimed at websites selling counterfeit merchandise and online streaming platforms.

10. GOOGLE'S PRIVACY POLICY UNDER SCRUTINY IN EU AND US JURISDICTIONS

On February 2, 2012, the EU Article 29 Data Protection Working Party started investigating³⁹ Google's cross-platform privacy policy changes under the lead of the French data protection authority CNIL. The preliminary conclusions⁴⁰ suggest that the changes do not comply with the EU Data Protection Directive. In the US, a bipartisan Congress group⁴¹ is equally reviewing the changes in Google's global Terms of Services that are issued for March 1, 2012. On February 8, 2012, the US NGO Electronic Privacy Information Center sued the FTC⁴² before a federal US court in an effort to halt Google's privacy changes. The revelations that Google bypassed privacy browser settings in Safari and Internet Explorer⁴³ are further fueling the debate.

11. EU REVISES DIRECTIVE ON INTELLECTUAL PROPERTY RIGHT ENFORCEMENT

The European Commission published a roadmap⁴⁴ to review the Intellectual Property Right Enforcement Directive (IPRED) that could enter into force by September 2012. The existing Directive is deemed insufficient to address online challenges. A particular focus is put on the identification of infringers.

12. TAIWAN ENFORCES LOCAL CONSUMER PROTECTION LAW ON ANDROID MARKET

Google lost an appeal against a fine of ca. 33.000 USD issued by the Taipei City government. The refund period of 15 minutes, as stipulated by the Android Market's global Terms of Services, does not comply⁴⁵ with the consumer protection law of the Taiwanese jurisdiction, which foresees a seven-days trial period.

13. BRITISH AUTHORITIES SEIZE .COM REGISTERED MUSIC BLOG

The UK's Serious Organized Crime Agency took⁴⁶ down the website RnBXclusive that provided copyright-infringing music downloads. The music blog was registered under the .com domain⁴⁷, managed by the registrar VeriSign that is located in the US jurisdiction.

14. EUROPEAN COURT OF JUSTICE RULED AGAINST MANDATORY CONTENT FILTERING ON SOCIAL NETWORKS

The EU's top court ruled that⁴⁸ preventive monitoring of copyright infringing material on the servers of social networks operators in the European jurisdiction would infringe the EU's personal data management standards⁴⁹, as laid out in the E-Commerce Directive.

15. "GOOGLE TAX" BILL MIGHT BE REINTRODUCED IN FRANCE

The proposition to tax online platforms, which are incorporated in foreign jurisdictions, but generate revenues with French Internet users, might soon be reintroduced in France. A preparatory colloquium on "digital taxation"⁵⁰ was organized at the French Senate on February 14, 2012.

16. PROPOSED BILL IN KENTUCKY WOULD DECLARE THE ACT OF VIEWING PEDOPHILIA ON THE INTERNET ILLEGAL

The House Judiciary Committee of the US state Kentucky passed on February 15, 2012 a bill that seeks to punish people who access pedophilia hosted on domains and servers outside the US jurisdiction⁵¹ without explicitly downloading and storing the material on their computer. The House Bill 126 would therefore declare the act of viewing pedophilia on a computer screen illegal.

17. ISP BLOCKING OF THE PIRATE BAY IN THE UK AND FINLAND

The High Court of England and Wales decided in a preliminary ruling⁵² that The Pirate Bay unlawfully shared copyrighted material. Its final decision expected for June

2012 could lead to the ISP blockade⁵³ of the website in the UK. In Finland, a court ordered the ISP Elisa in October 2012 to block the website. Now, a Finnish citizen challenged the block of The Pirate Bay⁵⁴ before court, arguing it would prevent legal filesharing as a collateral damage.

18. FIRST CC-TLD MIGRATION CASE ON TWITTER

Brazil seems to be the first country⁵⁵ filing an injunction against Twitter based on its new cc-TLD migration scheme. In order to comply with the Brazilian jurisdiction, Twitter is asked to filter warning alters of police road-blocks, radar traps and drunk-driving checkpoints.

19. AUSTRALIAN COURT GIVES GREEN LIGHT FOR RECORDING TV IN THE CLOUD

The Australian Federal Court ruled on February 1, 2012 that cloud service provider Optus' App "TV Now", which allows users to record TV programs in the cloud⁵⁶ and view them later on their mobile devices, is not infringing copyright legislation.

20. SPANISH BUSINESS SUES GOOGLE OVER REPUTATION DAMAGING SEARCH RESULTS

A Spanish camping ground filed a civil lawsuit under the Spanish "right to be forgotten" against Google Spain⁵⁷ for moral damages and an injunction to stop showing certain search results. A Google search for the business shows pictures of a horrible accident that occurred on its camping ground in 1978. The plaintiff lost the case in the Spanish jurisdiction⁵⁸, since Google Search belongs to Google Inc., incorporated on US territory, and not to its Spanish subsidiary.

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MARCH

1. ISPS AND CONTENT HOSTS COULD SERVE AS LIAISON IN ONLINE DEFAMATION CASES IN THE BRITISH JURISDICTION

Responding to the propositions for the reform of the Defamation Act¹ that was put forth by a joint parliamentary committee, the UK Ministry of Justice retained the suggestion to create an intermediary dispute resolution mechanism at the level of ISPs and content hosts to resolve libel cases before they go to court. Intermediaries could serve as liaison between conflicting parties to exchange points of views to find a solution. As a next step, the UK Government will consult on a potential framework² for the updated Defamation Act. The proposed mechanism could reduce the number of libel complaints before British courts and reduce the direct liability pressure on intermediaries for user-generated content.

Read further:

Out-Law: ISPs could act as 'liaison' in online defamation disputes, Government announces³
UK Ministry of Justice: Governance Response to the Draft Defamation Bill⁴
Tom McNelly, UK Minister of Justice: Reform of the Law of Defamation⁵

2. JAPANESE COURT ORDERS GOOGLE TO CHANGE ITS AUTOCOMPLETE FEATURE IN JAPANESE JURISDICTION

On March 19, 2012 the Tokyo District court has ordered Google Inc.⁶, incorporated in the US, to change its autocomplete feature so that it does not show defamatory results or results that breach the privacy of Japanese citizens. Google.Inc responded⁷ to the order that its US headquarters are not subject to the Japanese jurisdiction and that, according to its in-house privacy policy, the case in question would not warrant⁸ deleting automatically

suggested autocomplete terms. Google is currently reviewing the order and did not yet comply⁹. The search engine currently filters automatic suggestions related to pornography, violence, swear-words and potential copyright infringements, but not yet results related to personal defamation¹⁰.

Read further:

The Japan Times: Google ordered to delete terms from autocomplete¹¹
Mashable: Google: Japanese court didn't ban all search suggestions¹²
Information Week: Google ordered to delete defamatory autocompletions¹³

3. MADRID APPEALS TO EUROPEAN COURT OF JUSTICE TO CLARIFY WHETHER GOOGLE MUST COMPLY WITH SPANISH RIGHT TO BE FORGOTTEN

The Audiencia Nacional, Spain's national court, asked the European Court of Justice to clarify if Google has to comply with requests from Spanish citizens¹⁴ to have links to personal data removed from its search engine's index and its news aggregation side. The case dates back to early 2011 when Spanish data protection authorities demanded Google to remove ca. 100 references from its platforms. This is the first time, a court in the EU jurisdiction raised this issue before the highest court in Luxembourg. The Spanish judges moreover asked Europe's top court whether Spanish citizens need to file their complaints against Google within the jurisdiction they are subject to, or in the US jurisdiction where Google is incorporated. The case is considered to be influential for the current "right to be forgotten" reform of the European Commission¹⁵.

Read further:

PC World: Spain seeks jurisdiction guidance from EU for Google privacy complaints¹⁶

ISP Liability: Spain asks the ECJ whether Google must delete links to personal data¹⁷

Audiencia Nacional: Court order referring the case to the ECJ (In Spanish)¹⁸

4. US FEDERAL TRADE COMMISSION CALLS FOR LAW TO PROTECT CONSUMER PRIVACY ONLINE IN THE AMERICAN JURISDICTION

In a report¹⁹ published on March 26, 2012 the Federal Trade Commission (FTC) calls upon the US Congress to put forth a “baseline privacy legislation”²⁰ that would protect the personal data of consumers. The report proposes a law²¹ that would give consumers the right to access and dispute both personal and financial data that is collected and sold by data brokers without their permission. Moreover, the report emphasized the need for a do-not-track button. Supplementing the White House’s white paper on a Privacy Bill of Rights that was published in February 2012, the FTC report further increases the likelihood of prescriptive basic rules for privacy and personal data protection in the US jurisdiction²², despite current efforts to negotiate industry codes of conducts under the lead of the FTC and the Department of Commerce. The FTC report is likely to influence the direction of data protection outside the US jurisdiction, too.²³

Read further:

Federal Trade Commission: Protecting consumer privacy in an era of rapid change: Recommendations for businesses and policymakers²⁴

Center for Democracy & Technology: FTC once again says privacy self-regulation isn’t enough²⁵

The Atlantic: The philosopher whose fingerprints are all over the FTC’s new approach to privacy²⁶

5. GERMAN REGIONAL COURT RULES FACEBOOK’S FRIEND FINDER VIOLATES GERMAN LAW, REQUIRES CHANGE OF TERMS OF SERVICES

The Regional Court of Berlin ruled on March 6, 2012 that Facebook’s Friend Finder and its its Terms of Services violate German privacy and data protection law and ordered Facebook to change its Terms of Services to comply with the rules of the German jurisdiction²⁷. The case against Facebook’s international headquarter, incorporated in Ireland, was brought before the German court by the German Federal Consumer Association²⁸ (Verbraucherzentrale Bundesverband) in 2010. Even though Facebook adjusted the workings of Friend Finder in anticipation of the ruling, the judge deemed the changes insufficient. The court stated that Facebook needs to inform users living in the German jurisdiction that by using Friend Finder, they im-

port their entire address book into Facebook. Moreover, concerning the ownership of uploaded data on Facebook, the court stressed that Facebook could only use the data of German users with their consent. Facebook could be fined up to 250.000 Euro for non-compliance. The judgment is yet not legally valid.

Read further:

Regional Court Berlin: Ruling of German Consumer Association v. Facebook Ireland Ltd. (In German)²⁹

ZDNet: Facebook loses Friend Finder ruling in Germany³⁰

Gigaom: Facebook hasn’t fixed Friend Finder, says German group³¹

6. BRAZILIAN DRAFT COPYRIGHT BILL WOULD ALLOW TAKING DOWN INFRINGING WEBSITES DIRECTED TOWARDS BRAZIL

A bill proposed by Walter Feldman in the National Congress of Brazil would allow to block websites with copyright infringing content if the website is “directed to Brazil” and if its “operator or owner is committing or aiding copyright violations under local legislation”³². NIC.br, the national authority that manages the registration of domain names that end with.br and the allocation of IP addresses, should have the power to decide if a site infringes copyright, according to the draft. ISP blockades, de-indexing from search engines, or forced payment and advertisement blockades are suggested as remedies to fight infringements.

7. IRISH SUPREME COURT: NO JURISDICTION IN INTERNET DEFAMATION CASES INVOLVING UK ONLINE PUBLICATION

The Irish Supreme Court ruled³³ on March 15, 2012 that an Irish court cannot judge a libel case against an online or print publication incorporated in the UK. The plaintiff had argued³⁴ that the defamatory photo of him in question, which was published in 2003 both online and in the print edition of the British Daily Mirror, was viewable Ireland and therefore subject to Irish Jurisdiction.

8. DUAL STANDARDS FOR NEW DATA PROTECTION REGULATION IN THE PHILIPPINE JURISDICTION

On March 20, 2012 the Senate of the Philippines approved the Data Privacy Act³⁵ that will impose a privacy regime modeled on the EU Data Protection Directive. The law will protect the processing of personal data of Philippine residents, but not apply to the domestic processing of personal data collected in foreign jurisdictions in order to protect the Philippine outsourcing industry.

9. US ISPS ARE GOING TO LAUNCH ANTI-PIRACY GRADUATE RESPONSE SCHEME IN JULY 2012

Comcast, Cablevision, Verizon, Time Warner Cable and other US ISPs have agreed to launch a graduated response system to fight online copyright infringement³⁶ on July 1, 2012. The initiative was the results of talks with copyright holders and the White House. Possible penalties would be throttling the user's bandwidth or suspending the user's Internet access until he agrees to stop online piracy.

10. AUSTRALIA THINKING ABOUT THE CHOICE OF LAW CONUNDRUM FOR DIGITAL TRANS-BORDER INTERACTIONS

On March 22, 2012 the Australian Government released a discussion paper³⁷ on the scope of the planned reform of Australian contract law. The paper acknowledges that in many trans-border internet transactions, it is unclear which jurisdiction applies and calls for contributions until July 22, 2012.

11. SINGAPORE PLANS TO INTRODUCE FIRST OVERARCHING DATA PROTECTION REGIME

Singapore's government is proposing the Personal Data Protection Bill that would create the first data protection regime in its jurisdiction.³⁸ The draft bill provides rules for electronic and non-electronic data collection, processing and storage. Companies in foreign jurisdictions that are collecting or processing personal data with a "Singapore link", would need to comply with the law of Singapore's jurisdiction. A "link" exists if data is being either located on Singapore's territory or belongs to a resident of Singapore.

12. SWISS CYBERLOCKER RAPIDSHARE DECLARED LEGAL IN GERMAN JURISDICTION IF IT MONITORS EXTERNAL LINKS TO STORED PIRATED CONTENT

The German regional court of Hamburg ruled that RapidShare, a file sharing service company incorporated in Switzerland, is operating legally in the German jurisdiction³⁹. RapidShare does not need to proactively filter its user uploads to prevent copyright infringements, but is required to monitor external websites for incoming links to infringing content on its servers and delete the pirated files in question.

13. BRAZILIAN COURT ORDERS GOOGLE TO EXCLUDE SITES THAT RETRANSMIT LIVE TV

Globo TV, Brazil's largest broadcast company, got an injunction from the Civil Court of Sao Paulo ordering Google search to exclude links to websites that retransmit its live TV signal unauthorized via the Internet.⁴⁰ Taking actions against the infringing websites themselves has been very difficult for the lawyers of the broadcaster, since they are incorporated in foreign jurisdictions and change their host provider regularly.

14. EUROPEAN PARLIAMENT DRAFT LAW PLANS TO CRIMINALIZE HACKING IN EU JURISDICTION

A draft bill in the European Parliament⁴¹ presented on March 27, 2012 would make cyberattacks a criminal offense within the European jurisdiction. The law that would harmonize measurements in different EU jurisdictions is directed against attacks on websites, networks or databases, and the interference with or interception of data⁴². It proposes sentences of at least two years in prison.

15. Groupon ORDERED TO COMPLY WITH CONSUMER PROTECTION STANDARDS IN BRITISH JURISDICTION

The British subsidiary of Groupon has been ordered by the Office of Fair Trading⁴³, the British consumer protection watchdog, on March 16, 2012 to comply with consumer regulations of the British jurisdiction. The company has three months to implement changes in its practices and Terms of Service⁴⁴ before it faces legal actions.

16. BELORUSSIAN ONLINE FRAUDSTER SENTENCED IN US JURISDICTION TO PRISON

A Belorussian citizen was caught in the Czech Republic on request of US authorities and subsequently extradited to the US to be sentenced to 33 months of prison⁴⁵ by the US District Court of Southern New York. The cybercriminal in Lithuania launched the Russian-language callservice .biz, using a US-based TLD, in 2007 to sell English- and German-speaking "stand-ins" to criminals who intend to circumvent bank security screening measures, including those of US banks, to verify the identify of the account holder.

17. INDIAN COURT ORDERS 387 INDIAN ISPS TO BLOCK 104 PIRACY WEBSITES

A court in Calcutta has ordered all 387 Indian ISPs to block 104 websites against which the Indian Music Industry has filed a lawsuit for copyright infringements.⁴⁶ All 104 sites⁴⁷ contained at least some infringing content. The court allows the ISPs to choose between DNS blocking, IP address blocking or URL blocking with deep packet inspection to implement the order.

18. UK PARLIAMENTARY REPORT CALLS FOR LAW TO ENFORCE BRITISH PRIVACY INJUNCTIONS ON THE INTERNET

A joint parliamentary committee of the British Parliament is demanding the government to introduce a law that would allow to force search engines like Google, social networks and other websites to remove certain content⁴⁸ if a court ruled that the results are breaching the privacy of a British resident. The commission cited the cases⁴⁹ of Max Mosley, who had to spend over 500.000 GBP to remove a defamatory video in 23 different jurisdictions, and Ryan Giggs, whose details of a super injunction were re-tweeted 75.000 times.

19. NEW GTLDS: HOW AND UNDER WHAT JURISDICTION WILL .PHARMACY BE REGULATED?

The US based trade group National Association of Boards of Pharmacy⁵⁰ (NABP) has filed an application for .pharmacy with ICANN⁵¹ to create a secure space to purchase drugs online. The NABP, which accuses a small number of domain name registrars in foreign jurisdictions of not doing enough to prevent the sale of counterfeit pharmaceutical products online, will control itself that operators of .pharmacy domains are legitimate and licensed. The NABP's Verified Internet Pharmacy Practice Sites scheme, currently used on websites, only accredits pharmacies located in the US and its territories, as well as eight Canadian provinces, Australia and New Zealand.⁵²

20. THE PIRATE BAY ANNOUNCES PLANS FOR SERVERS ON LOW-ORBIT DRONES AND SUBMARINES TO ESCAPE TERRITORIAL JURISDICTIONS

Facing various legal challenges for copyright infringements in different jurisdictions, The Pirate Bay is thinking about how to escape the reach of territorial jurisdictions. The link hosting site announced on its blog the ideas to install its servers on low-orbit drones⁵³ (not feasible according to the Guardian⁵⁴) or on submarines⁵⁵.

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1. YOUTUBE ORDERED TO STOP COPYRIGHT INFRINGEMENTS COMMITTED BY USERS IN GERMAN JURISDICTION

On April 20, 2012, the State Court of Hamburg ordered¹ Google's video platform YouTube to take down seven videos² that infringe German copyrights. Google is expected to appeal the ruling that constitutes a victory for Germany's royalty collector GEMA, which seeks to negotiate a new contract with YouTube since 2009. The State Court ruled that YouTube is not generally liable for user-generated content on its platform. Currently, copyright holders can "flag" a video to notify YouTube about a copyright infringement and ask to delete the content in question. The judge ruled that YouTube is however obliged to develop a system in the German jurisdiction to filter³ newly uploaded versions of videos that have already been flagged.

Read further:

GigaOM: Inside YouTube's complex, crazy German court defeat⁴

New York Times: Google Ordered to Stop Copyright Violations on YouTube⁵

Spiegel: "We don't want to sue, we want a contract" Interview with GEMA Head⁶

2. CYBERSECURITY BILL CISPA WOULD ALLOW US COMPANIES TO SHARE USER COMMUNICATIONS WITH AUTHORITIES

The controversial Cyber Intelligence Sharing and Protection Act (CISPA) was passed in the US Congress⁷ on April 26, 2012, despite a formal veto threat⁸ by the White House on grounds of its effects on privacy and civil liberties. The bill that is supported by several major US companies⁹ would allow businesses incorporated in the US jurisdiction to voluntarily monitor and share personal communication data of its users related to potential

cyberthreats with US authorities "notwithstanding any other provision of law". It has been pointed out that CISPA would allow US based Internet platforms and services to intercept and report communications of foreign users¹⁰ as well.

Read further:

US Library of Congress: H.R. 3523 Cyber Intelligence Sharing and Protection Act¹¹

Electronic Frontier Foundation: The Impending Cybersecurity Power Grab – It's not just for the United States¹²

TechnoLama: CISPA is a threat to the world¹³

3. GERMAN FACEBOOK USERS FORCE A REWRITE OF THE PLATFORM'S PROPOSED NEW TERMS OF USE

German Facebook users forced Facebook¹⁴ to propose a new version of its new "Statement of Rights and Responsibilities" (SRR) by leaving comments on the page "Facebook Site Governance"¹⁵. According to Article 14(3) of the SRR, any change proposition that encounters over 7000 substantive comments will be reworked to provide an alternative text for users to vote on. Whereas the English version¹⁶ of the new SRR had less than 300 comments, the German version¹⁷ attracted over 13.000 critical remarks. This is already the second time¹⁸ that users in the German jurisdiction provoke a rewrite of the platform's SRR.

Read further:

ZDNet: Facebook tweaks terms of use based on feedback, asks for more¹⁹

Data Protection Authority of Schleswig Holstein: Consumer and data protection authorities in Schleswig-Holstein recommend objecting new Facebook terms (in German)²⁰

German Data Protection Authorities: Data protection requirements for Facebook and other social networks according to German Data Protection Authorities (in German)²¹

4. COUNCIL OF EUROPE ADOPTS HUMAN RIGHTS FRAMEWORK FOR SEARCH ENGINES AND SOCIAL NETWORKS

The Committee of Ministers of the Council of Europe, a regional organization representing 47 states, adopted two recommendations on April 4, 2012 to uphold fundamental human rights²², such as freedom of expression, freedom of association and access to information, on search engines and social networking services. The recommendations call upon the member states to develop and promote coherent strategies in their jurisdictions for online services, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms²³ and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.²⁴

Read further:

European Digital Rights: New CoE recommendations for human rights in Internet services²⁵

Council of Europe: Recommendation CM/Rec(2012)3 of the Committee of Ministers to member States on the protection of human rights with regard to search engines²⁶

Council of Europe: Recommendation CM/Rec(2012)4 of the Committee of Ministers to member States on the protection of human rights with regard to social networking services²⁷

5. UK GOVERNMENT PLANS LEGISLATION TO MONITOR ONLINE COMMUNICATION DATA IN BRITISH JURISDICTION

The UK government plans to introduce²⁸ a new legislation that would allow police and intelligence services to have real-time access to a database of online activities in the British jurisdiction. ISPs will be obliged to gather this data. Moreover, it is likely that “Internet firms”, including social networks and search engines²⁹, which are often incorporated in foreign jurisdictions, could be also required to cooperate with British authorities and provide relevant user data. The proposed law will be officially announced by the Queen’s speech³⁰ on May 9, 2012. Experts judge that the new legislation might be challenged by existing privacy and data protection laws of the European Union³¹.

Read further:

The Guardian: Tim Berners-Lee urges government to stop the snooping bill³²

The Register: UK net super-snooping clashes with Euro privacy law³³

The Age: Critics blast UK plans for more snooping, secrecy³⁴

6. ELECTION REPORTING RULES WERE NOT RESPECTED ONLINE IN FRENCH JURISDICTION

French election rules forbid the publishing of voting data before 8 pm³⁵ on the day of the vote. Relevant information was however available on April 22, 2012 on foreign websites and online platforms such as Twitter before the deadline. Despite a public debate about the inefficiency of the regulation, the French state prosecutor plans to file lawsuits against individuals and media outlets³⁶.

7. WHITE HOUSE ASKS CONGRESS FOR NEW LEGISLATION TO TARGET OFFSHORE PIRACY WEBSITES

After the heated debate about the Stop Online Piracy Act (SOPA) and the Protect IP Act (PIPA), the White House’s Intellectual Property Enforcement Coordinator called upon the US Congress³⁷ to develop new “legislative and non-legislative tools” to address copyright infringement on foreign websites.

8. GOOGLE LIABLE FOR MISLEADING SEARCH ADS IN AUSTRALIAN JURISDICTION

A federal Australian court ruled that Google infringed Australian trading laws and acted in “misleading and deceptive” behavior by displaying paid-for advertisement search results³⁸ along with normal results. The court overruled a previous decision in Google’s favor that stated the search engine was only communicating representations made by the advertisers.

9. UNCITRAL EXPLORES DEVELOPMENT OF GLOBAL ONLINE DISPUTE RESOLUTION SYSTEM FOR E-COMMERCE

Faced with a patchwork of different jurisdiction that makes it difficult to deal consistently with smaller cross-border transactions, the United Nations Commission on International Trade Law (UNCITRAL) is exploring the creation of an online dispute resolution system³⁹ to provide a global platform for e-commerce disputes.

10. RUSSIA INVESTIGATES TO WHAT EXTENT ISPS ARE RESPONSIBLE FOR COPYRIGHT INFRINGEMENTS OF ITS CUSTOMERS

According to the cyber-crime department of the Russian Interior Ministry, authorities are in the process of investigating to what extent ISPs are responsible for online copyright infringements of Internet users⁴⁰ in the Russian jurisdiction. The report of the audit and corresponding prosecutions against Russian ISPs are awaited for May 2012.

11. EUROPEAN COURT OF JUSTICE SAYS THAT ISPS CAN LAWFULLY IDENTIFY PIRATING CUSTOMERS

Appealed by a Swedish court, the European Court of Justice decided in an interpretation that there are no legal barriers for ISPs to share the personal data of customers⁴¹ who infringe copyrights online with the respective rights holders, if the latter want to prosecute the users in question before a court.

12. FOREIGN NATIONALS COMMITTING HUMAN RIGHTS ABUSES WITH INTERNET TECHNOLOGY CAN BE SANCTIONED UNDER US JURISDICTION

US President Obama issued an executive order on April 23, 2012 that allows US officials to impose sanctions on foreign nationals and companies that facilitated or committed human rights abuses⁴² with new technologies such as Internet monitoring.

13. SAFE HARBOR REGIME: US APPEALS COURT PRONOUNCED AN OPINION IN VIACOM VS. YOUTUBE TRIAL

In an influential case⁴³ that questions the limits of the safe harbor principle, thus a platform's liability for user-generated content that infringes copyrights, the Second Circuit Court judged that a 2010 decision in YouTube's favor by a lower court was a mistake and sent the case back for a second ruling⁴⁴. Among the plaintiffs are also companies incorporated outside of the US jurisdiction, such as the English and Scottish Premier League and the French Tennis Federation.

14. MEGAUPLOAD'S HOSTING COMPANY CARPATHIA MIGHT BE PARTLY LIABLE FOR COPYRIGHT INFRINGEMENTS

It is still unclear if Megaupload users in the US and other jurisdictions⁴⁵ will be able to re-access lawfully stored content on the servers of US company Carpathia that was seized by the US in January 2012 in the course of a criminal copyright trial. The attorney representing the US government evoked that Carpathia might be partly responsible for Megaupload's copyright infringements⁴⁶ as its data host and could face a civil lawsuit.

15. EUROPEAN DATA PROTECTORS DEMAND PSEUDONYMISATION PROCESSING IN EU JURISDICTION

The EU Article 29 Working Party, which consists of representatives from national Data Protection Authorities in the EU, recommends the introduction of the concept of "pseudonymisation" of personal data⁴⁷, "where feasible and proportionate according to the purpose of processing", in the General Data Protection Regulation proposed by the European Commission. The principle could be introduced as a general rule for data processing in the European jurisdiction and in the context of "data protection by design and default".

16. FIVE OF SIX REMAINING DEFENDANTS IN INDIAN OFFENSIVE CONTENT TRIAL ARE NOT INCORPORATED IN INDIAN JURISDICTION

The number of defendants in the trial against online platforms that host offending content before a Delhi court decreased from 22 to six, after Google India was cleared of charges⁴⁸ as it does not actively operate social networking sites. Of the remaining six entities, only Facebook India is incorporated in the Indian jurisdiction. The other five accused online platforms are Facebook US, Google Inc., Orkut, YouTube and Blogspot.

17. FACEBOOK'S INTERNATIONAL HEADQUARTERS MISSES DEADLINE TO IMPLEMENT PRIVACY CHANGES AFTER AUDIT IN IRISH JURISDICTION

Facebook missed the deadline on March 31, 2012 to implement the 22 changes to its privacy policy⁴⁹ as stipulated by an audit of the Irish Data Protection Authority. Facebook's international branch is incorporated in Dublin, Ireland and therefore subject to the Irish jurisdiction. There are however no penalties or consequences connected to the breach of the deadline.

18. BRITISH ISPS ORDERED TO BLOCK SWEDISH WEBSITE THE PIRATE BAY

The British High Court has ordered five ISPs to block the website The Pirate Bay⁵⁰ that is registered under the Swedish Top-Level Domain .se. The Pirate Bay does not host copyright-infringing files itself but links to "torrents" that can be shared via peer-to-peer clients. Similar orders were previously issued in Finland, the Netherlands⁵¹ and Belgium⁵².

19. FOREIGN NATIONALS COULD BE SUED IN CANADA FOR ONLINE DEFAMATION IF CONTENT IS ACCESSIBLE IN CANADIAN JURISDICTION

According to new guidelines set forth by the Canadian Supreme Court, Canadian nationals should in theory be able to file a lawsuit against foreign nationals in the Canadian jurisdiction for online defamation, if the information published on the Internet can be accessed and downloaded in a Canadian province⁵³.

20. US STATE ARIZONA WAS SHORT OF DECLARING TROLLING ON THE INTERNET A CRIME IN ITS JURISDICTION

The legislative houses of the US State Arizona passed an updated version of a telephone anti-stalking bill that would have declared the act of annoying and offending persons on the Internet a crime in Arizona's jurisdiction⁵⁴. Though the wording "annoy or offend" has been deleted in a recent amendment⁵⁵ to the bill, it exemplifies proportionality and extraterritoriality problems of updating existing communication laws to online communication in a jurisdiction.

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1. PATCHWORK OF PRIVACY LAWS ON 'COOKIES' IN EU JURISDICTION CREATES LEGAL CONFUSION

The UK implemented on May 25, 2012 article 5(3) of the EU e-privacy directive¹ that gives consumers the “right to refuse” cookies. Aimed at preventing the unwanted tracking of users’ online behavior, the law has now been transposed in 19 of the 27 EU member states’ laws. However, the definition of user consent to cookies and corresponding obligations for websites differ among these 19 jurisdictions. Whereas, for example, Latvia demands a strict opt-in procedure, Finland only requires websites to offer an “opt-out” option and accepts a user’s browser setting as satisfactory indicator of consent. The fragmented implementation of the EU directive causes legal uncertainty² for website operators incorporated in the EU and those targeting EU citizens, who are both obliged to respect a heterogeneous patchwork of national jurisdictions.

Read further:

Wired: A simple guide to cookies and how to comply with EU cookie law³

GigaOM: How Europe is dealing with the cookies crisis⁴
Field Fisher Waterhouse: Cookie ‘consent’ rule: Overview of EU implementation⁵

2. FACEBOOK’S PRIVACY CHANGES GO TO A GLOBAL USER VOTE

Facebook, which is subject to the material jurisdictions of the US and Ireland for its international business⁶, has put its proposed changes in its Statement of Rights and Responsibilities and its Data Use Policy to a global vote⁷ among its 900+ million users in multiple jurisdictions worldwide. The two documents implement changes demanded by the Irish Data Protection Authority after an

audit⁸ in 2011. The vote comes in response to thousands of critical comments⁹ to prior versions of the amended Terms of Service, posted in majority by German speaking users. This is the second time since 2009¹⁰ that the global platform is experimenting with the democratic constitution of its Terms of Service. At least 270 million users need to participate in the vote between the old and new versions proposed by Facebook for it to have a binding character.

Read further:

ArsTechnica: Facebook Nation: privacy changes go to a 270 million user vote¹¹

Reuters: Older and bigger, Facebook rethinks a youthful flirtation with user democracy¹²

ZDNet: Facebook rules: Everyone can vote on new privacy policy¹³

3. MEGAUPLOAD BEYOND THE REACH OF US JURISDICTION FOR CRIMINAL PROCEEDINGS, DEFENSE CLAIMS

Megaupload’s lawyers claim¹⁴ that the company incorporated in Hong-Kong and directed by a German national residing in New Zealand is beyond the jurisdiction of a federal court in the US State Virginia where the file-locker is prosecuted for criminal proceedings. The argument is based on flaws in applying US criminal law¹⁵ for copyright. Normally, a foreign company must receive a summons via its US representation. Since Megaupload has no office on US soil, it never lawfully received a summons, the defense argued. Megaupload’s .com domain, registered with a US-based DNS operator, its data hosted by US-based Carpathia Hosting and other company assets were seized in the course of the assertion of US adjudicatory jurisdiction over the platform¹⁶ in January 2012.

Read further:

US District Court Eastern District of Virginia [Proposed] Motion of specially-appearing defendant Megaupload Limited to dismiss indictment for lack of personal jurisdiction & memorandum of law in support thereof¹⁷
ArsTechnica: Megaupload claims it is beyond the reach of US criminal law¹⁸
Computerworld: Megaupload asks US court to dismiss indictment, cites jurisdiction¹⁹

4. COPYRIGHT CASES IN US AND FINISH JURISDICTIONS: IP-ADDRESS CANNOT IDENTIFY PERSONS AND THEIR LOCATION

A judge in US state California dismissed 15 mass-lawsuits²⁰ for absent personal jurisdiction. The anonymous defendants were accused of sharing copyright protected adult movies on BitTorrent. The court, however, was not convinced that geo-IP tools could reliably identify the users as being based on Californian territory and refused to send identification subpoenas to Californian ISPs. In a similar case, a New York judge refused IP-addresses²¹ to identify individuals due to their unreliability, citing the possibility that many Internet users could go online via one single router. This reasoning was also applied in Finland²², where a court ruled that owners of open WiFi networks are not liable for illegal file-sharing.

Read further:

TorrentFreak: IP-address can't even identify a State, BitTorrent judge rules²³
US District Court Central District of California: Order dismissing case for lack of personal jurisdiction²⁴
IT World: Courts quash copyright trolls; recognize IP address is not a person²⁵

5. YOUTUBE NOT LIABLE FOR USER-GENERATED CONTENT IN FRENCH JURISDICTION

A French court ruled²⁶ that YouTube is not responsible for copyrighted videos of French TV station TF1 that were uploaded by users on the platform. The court moreover precised that Google "has no obligation to police the content before it is put online as long as it informs users that posting television shows, music videos, concerts or advertisements without prior consent of the owner is not allowed". The French decision therefore contradicts the recent (and appealed) German ruling²⁷ concerning YouTube and the royalty collector GEMA, in which the court obliged YouTube to develop filtering technologies to prevent the renewed upload of already flagged, copyright-protected content. Completing the European patchwork, YouTube lost a copyright infringement suit in Italy²⁸ in 2009, whereas a Spanish court²⁹ decided in its favor in 2010. In the US jurisdiction, the revived YouTube

v. Viacom case³⁰ is expected to produce a landmark decision on the liability principle for user-generated content hosting platforms.

Read further:

New York Times: French court sides with Google in YouTube case³¹
ArsTechnica: French court gives YouTube a victory in copyright infringement case³²
New York Times: Google ordered to stop copyright violations on YouTube³³

6. NEW ISP BLOCKS IN EUROPEAN AND INDIAN JURISDICTIONS MIGHT NOT EFFICIENTLY CURTAIL ILLEGAL FILE-SHARING

New court orders obliging ISPs to block torrent libraries like Pirate Bay have been issued in Greece³⁴, Italy³⁵ and India³⁶. Meanwhile, The Pirate Bay has begun adding new IP-addresses³⁷ that allow Internet users from jurisdictions that implemented filters to access the site again. Dutch ISPs refused³⁸ to block these new IP-addresses without a new court order, whereas the Dutch Pirate Party³⁹ was ordered to stop publicizing circumvention strategies to reach The Pirate Bay.

7. LIABILITY OF ISPS FOR HOSTED CONTENT: DIFFERING APPROACHES IN BRAZIL, AUSTRALIA AND RUSSIA

The Brazilian Supreme Court⁴⁰ ruled that ISPs are not responsible for the content they host in a case involving defamatory content on Google's social network Orkut. A similar decision was pronounced in a copyright case in Australia⁴¹ in April 2012. The role of ISPs in preventing online piracy and the general question of ISP liability is growing. For example, the Russian Supreme Court⁴² decided in 2011 that ISPs knowing about the existence of illegal files on their servers are financially liable for caused damages.

8. TWITTER BLOCKED IN PAKISTANI JURISDICTION AFTER NON-COMPLIANCE WITH LOCAL AUTHORITIES

The Pakistani Telecommunications Authority (PTA) blocked Twitter⁴³ for one evening after the platform refused to remove offensive posts deemed to hurt Muslim feelings. According to AFP, the surprisingly quick removal of the ban was triggered by a wave of public anger against the blockade. Facebook was equally approached by the PTA to take down religiously offensive content and complied.

9. NEW ZEALAND ISP OFFERS ACCESS TO GEO-IP BLOCKED CONTENT IN US JURISDICTIONS

New Zealand's ISP FYX is offering its customers access to content that is blocked through geo-IP filtering⁴⁴ in the US, including commercial download provider Netflix. The circumvention of geo-IP filters seem to be legal under New Zealand law and is considered to be more consumer friendly for New Zealand customers.

10. FACEBOOK BLOCKS ACCOUNTS AND IMAGES OF TOPLESS FEMINIST RIGHTS PROTESTORS IN BRAZIL

Photos and accounts of women who participated topless in the demonstration "March of Bitches" for female rights in Brazil were deleted by Facebook⁴⁵ since they did not comply with the platform's Community Standards⁴⁶ as stipulated in its Terms of Service. The case recalls the US controversy over breastfeeding mothers⁴⁷.

11. GOOGLE MUST CHANGE SEARCH PRACTICE IN EU JURISDICTION TO AVOID ANTITRUST FINE

EU Competition Commissioner Joaquim Almunia announced that Google might be punished for abusing its search market position⁴⁸ in the EU. He offered Google to prevent an antitrust investigation by offering remedies within a "matter of weeks". Google is accused of harming European competition and offering "preferential treatment" to links of its own vertical search services in comparison to links of rivals. The company already faces antitrust investigations in South Korea and Argentina⁴⁹.

12. TWITTER RESISTS DEMANDS FROM US JURISDICTION TO DISCLOSE OCCUPY TWEETS

Twitter contested⁵⁰ a US court demand to disclose the tweet history of an user involved in the Occupy movement. The US company argued that its Terms of Service clearly state that users, not the company, own the tweets.

13. MICROSOFT TAKES BING STREETSIDE OFFLINE IN GERMAN JURISDICTION AFTER RECEIVING COMPLAINTS

Microsoft decided to take down the its Streetside service⁵¹ in Germany, after Germans complained about the way the company proceeds with the blurring of images for privacy reasons upon user requests. The precautions steps recall the controversies that Google Street View⁵² faced in Germany in 2009.

14. NEW PRIVACY INVESTIGATIONS IN GOOGLE STREET VIEW LOOMING IN UK AND AUSTRALIAN JURISDICTION

Based on the US Federal Communications Commission's report⁵³ on the gathering of sensitive private data (so-called "payload data") during the scanning of streets, privacy regulators in the UK⁵⁴ and Australia⁵⁵ are considering to open new investigations in Google Street View.

15. DEBATE ABOUT TAXATION OF 'OFFSHORE' ONLINE COMPANIES TRIGGERED IN AUSTRALIAN JURISDICTION

Australian Shadow Communications Minister Turnbull triggered a policy debate⁵⁶ about the incapability of Australian tax law to cope with the realities of the digital environment⁵⁷: "An advertisement on a Google search page may be hosted by a server located overseas, and the advertisement may be sold by a company located in Ireland – but nonetheless from the Australian user's point of view it is as "present" on his device as an advertisement on The Australian or the Sydney Morning Herald website." A similar discussion takes place in France⁵⁸.

16. NEW GOOGLE TRANSPARENCY REPORT SHOWS EXTENT OF GLOBAL PIRACY TAKE-DOWN REQUESTS

Amending its Transparency Report that until now only provided data on governmental content take-down requests⁵⁹, Google released statistics about requests for URL removals⁶⁰ in its search results related to allegedly copyrighted or pirated content. In 2012, the platform handles about 1.200 percent more take-down requests than in 2009.

17. AUSTRALIAN ORGANIZATIONS USING OFF-SHORE CLOUD SERVICES ARE LIABLE FOR POSSIBLE PRIVACY BREACHES

Explaining the legal status of cloud computing in the Australian jurisdiction, an Australian privacy commissioner warned that Australian organizations using offshore cloud services will be directly liable if these services compromise the privacy of Australian citizens: "While we're not saying 'don't use the cloud', if you do and you use someone who's not within our jurisdiction, we'll enforce the law against someone — and generally we'll enforce it against you."⁶¹

18. GOOGLE FACES \$10 MILLION FINE IN US JURISDICTION FOR BYPASSING SAFARI PRIVACY SETTINGS

Google may face a \$10 million fine⁶² from the US Federal Trade Commission for having bypassed the cookies setting of Apple's Safari browser. In the EU, the French Data Protection Authority CNIL is leading a parallel investigation⁶³.

19. FBI PUSHES PLAN TO FORCE SURVEILLANCE BACKDOORS ON INTERNET PLATFORMS INCORPORATED IN US JURISDICTION

Fearing to lose the capability to monitor online communication on social networks, e-mails provides and Voice over IP services, the FBI is pushing to amend the US Communications Assistance for Law Enforcement Act⁶⁴ to

embed FBI backdoors in US-based online platforms, of which many are used by citizens of foreign jurisdictions around the world.

20. SINGAPORE TRIES TO ESTABLISH CODE OF CONDUCT FOR INTERNET ACTIVITIES IN ITS JURISDICTION

Singapore's government is encouraging Singapore's Internet community to come up with a code of conduct⁶⁵ to self-regulate online activities in Singapore's jurisdiction. This "civility code" would cover issues like anonymity, public order and terrorism. The initiative is criticized by activists for curbing freedom of expression.

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1. SEIZURE OF MEGAUPLOAD DATA BY US AUTHORITIES UNDER SCRUTINY IN US AND NEW ZEALAND JURISDICTIONS

In January 2012, US authorities shut down Megaupload, incorporated in Hong-Kong's jurisdiction, seizing 25 petabytes¹ of almost 66 million users stored at the US-based hosting company Carpathia. Moreover, the FBI seized additional 150 terabytes² of data during the raid of Megaupload founder Kim Dotcom's house, located in New Zealand. The rightfulness of these seizures under US jurisdiction is still in question. In the US, Kyle Godwin and the Electronic Frontier Foundation filed a motion³ demanding the return of the legal data stored by Megaupload users. The US government refused to establish a return mechanism arguing the seized data on Carpathia's servers constitutes only a copy of property and not property⁴. Meanwhile in the New Zealand jurisdiction, the search warrants used for the raid of Dotcom's mansion near Auckland were ruled to be too vague and therefore illegal⁵. The court in Auckland ordered the US to "immediately commence preparation"⁶ to supply the Megaupload defendants with a copy of the data seized unlawfully by the FBI.

Read further:

TorrentFreak: US Government: Megaupload users should sue Megaupload⁷

PC World: Judge considers hearing on improper Megaupload seizure⁸

Washington Post: Megaupload warrants ruled illegal by New Zealand court⁹

2. CHINESE PROPOSAL FOR IETF STANDARD WOULD PARTITION THE INTERNET INTO AUTONOMOUS SEGMENTS VIA THE DNS

Two engineers from China Telecom and China Mobile together with a Chinese academic proposed a new Standard at the Internet Engineering Task Force (IETF)¹⁰, the global body that develops the technical norms of the Internet. The submitted draft "DNS Extensions for Autonomous Internet (AIP)"¹¹ suggests the creation of alternative root servers under the control of national jurisdictions. The proposal would allow countries to have their "own independent domain name hierarchy and root servers", "even in unilateral action". This could, de facto, break up the centralized DNS into autonomous segments¹² and therefore establish a new additional layer of Internet control via the Internet's name space that would correspond to the physical boundaries of national territories. An additional TLD would be added to DNS requests that are targeted towards an alternate root in another autonomous networks (See draft¹³ sections "2.2. AIP DNS Hierarchy" and "3.2 Domain Name Resolution between AIP Networks"). Countries could control which domain names of foreign networks would resolve in their national networks. Chances that this proposal might actually be taken up by an IETF Working Group¹⁴ and thus becomes implemented are deemed to be low.

Read further:

CircleID: A closer look at the AIP Internet Draft Proposal¹⁵
Computerworld: Chinese operators hope to standardize a segmented Internet¹⁶

CircleID: Proposed new IETF standard would create a nationally partitioned "Internet"¹⁷

3. ENFORCING PLATFORMS' TERMS OF SERVICE: SEX OFFENDERS MUST IDENTIFY THEMSELVES ON SOCIAL NETWORKS IN LOUISIANA

Existing law in the US State Louisiana that obliges convicted sex offenders to divulge their criminal status to their neighbors has been extended to cyberspace. A new bill¹⁸ that comes into force on August 1, 2012 is going to oblige persons with a criminal record to disclose their status on social networking platforms such as Facebook. Even though Facebook's global Terms of Service "Statement of Rights and Responsibilities"¹⁹ (§4.6) forbid convicted sex offenders to use the service, State Representative Jeff Thompson, who initiated the new law, argues it would not be desirable to "leave it to Facebook police to go out and check on these individuals"²⁰. The new law offers state prosecutors a tool to enforce Facebook's Terms of Service in Louisiana's jurisdiction.

Read further:

CNN: New Louisiana law: Sex offenders must list status on Facebook, other social media²¹

The Atlantic: Scarlet-Letter Status: Should sex offenders admit crimes on Facebook²²

CNET: Louisiana law says sex offenders must state status on Facebook²³

4. EU LEGAL ADVISOR: ONLINE PUBLISHING OCCURS BOTH IN THE LOCATIONS WHERE DATA IS STORED AND READ

Advocate General Yves Bot provided an assessment of the jurisdictional question concerning the publishing of information on the Internet to the European Court of Justice²⁴ (ECJ), the highest court of the EU, which was appealed by the UK High Court²⁵. The British company Football Dataco, which runs a live-database of statistics of Scottish and English football matches, accused the German-Swiss company Sportradar of copying and reselling its live statistics. Sportradar claimed no primary infringements of Football Dataco's copyrights and database rights took place in the British jurisdiction through the publishing of data stored on servers located in Austria. Bot said, "in the context of the internet, the categories of 'emission' and 'reception' become highly relative as criteria for determining the 'location' of the points between which there is an act of communication". He concluded that data is published online not only where it is stored, but also where it is read. Therefore, a "re-utilization" of the data owned by Football Dataco took place in the UK. The opinion is not binding, but likely to be adopted by the ECJ.

Read further:

OutLaw: Internet publishing occurs where it is served from as well as where it is read, EU legal advisor says²⁶
IPKitten: Dataco v Sportradar: liability for sending and receiving sui generis databases²⁷

SCL: Football Dataco/Sportradar case: Attorney General's Opinion²⁸

5. HTTP ERROR CODE 451 PROPOSED TO SIGNAL BLOCKING OF ILLEGAL CONTENT IN A GIVEN JURISDICTION

Google engineer Tim Bray, a co-developer of the XML code, has proposed a new HTTP Error Code 451²⁹ to the IETF to inform Internet users that web content is unavailable to them for legal reasons in their respective jurisdiction. Currently, web users are redirected to the Error 403³⁰ page "Forbidden" that was initially designed to inform the user of a purely technical error ("The server understood the request, but is refusing to fulfill it"). The proposed Code 451 should "include an explanation, in the response body, of the details of the legal restriction; which legal authority is imposing it, and what class of resources it applies to" and could look like this example: "This request may not be serviced in the Roman Province of Judea due to Lex3515, the Legem Ne Subversionem Act of AUC755, which disallows access to resources hosted on servers deemed to be operated by the Judean Liberation Front". The proposition is likely to be discussed within the IETF in late July 2012.

Read further:

The Guardian: Call for Ray Bradbury to be honored with Internet error message³¹

IT World: Error code would warn of web censorship³²

BoingBoing: Error Code 451: an HTTP code for censorship³³

6. MARGINAL TURNOUT OF 900 MILLION USERS VOTE ON FACEBOOK'S TERMS OF SERVICE

Only 350,000 (less than 0.04%) of Facebook's global users from various national jurisdictions participated in the vote³⁴ between Facebook's existing Terms of Service and a new, updated version that also included changes demanded by the Irish Data Protection Authority³⁵ after an audit at Facebook's global headquarters in Dublin. Since the participation threshold of 30%³⁶ was not met, the vote that favored the existing policies (86.9%) was not binding for Facebook.

7. GOOGLE ORDERED TO MODIFY STREET VIEW IN SWISS JURISDICTION

The Swiss Federal Supreme Court decided that Google does not need to guarantee 100% accuracy³⁷ of the blurring of faces and license plates, as the Swiss privacy watchdog demanded in 2010. Overturning a lower court ruling, 99% accuracy has been judged sufficient³⁸ to protect the privacy of Swiss citizens. However, the court ordered³⁹ Google to modify the conditions under which it captures the street images, including lowering the height of the cameras on cars.

8. SUB TOP-LEVEL DOMAIN BLOCKED FOR THE FIRST TIME IN CHINESE JURISDICTION

Between June 15 and June 16, China blocked all websites with the Japanese sub-top-level domain⁴⁰ co.jp for over 30 hours. Yet the reasons of this block are unknown and it is speculated that a technical error might be the cause. China has never blocked an entire TLD.⁴¹

9. LAWSUIT IN CALIFORNIAN JURISDICTION FORCED FACEBOOK TO LET GLOBAL USERS OPT-OUT OF “SPONSORED STORIES”

Facebook agreed to settle a lawsuit⁴² filed by Facebook users in California, where the company is incorporated,⁴³ which accused the platform of violating California law by showing advertisements that suggest friends “liked” a certain brand or product (so-called “Sponsored Stories”). The platform is going to change its global operations and offer all users the possibility to control which information is processed⁴⁴ to generate these ads for a minimum of two years.

10. EUROPEAN COMMISSION: CLOUD REGULATION STANDARDS SHOULD APPLY REGARDLESS OF PHYSICAL DATA LOCATION

The Deputy Director-General of the European Commission's Information Society and Media Directorate Megan Richards said “the cloud does not stop at national borders⁴⁵” and regulatory standards should be upheld regardless of the physical location of the stored data: “Theoretically, it shouldn't matter where data is held as long as our rules apply⁴⁶”. The proposed new EU Data Protection Directive⁴⁷ includes provisions to extend European rules to global data processing and storage.

11. TAIWANESE ACCOUNTS SUSPENDED TEMPORARILY FROM FACEBOOK WITHOUT VIOLATING ITS TERMS OF SERVICE

A number of accounts of Taiwanese politicians and activists have been deactivated temporarily by Facebook⁴⁸. In an open letter to Facebook founder Mark Zuckerberg, the Taipei City Counselor demanded that Facebook should justify punishments such as account deactivation based on its Terms of Service. The incident triggers questions regarding the internal governance procedures on Facebook's platform.

12. ETHIOPIAN LAW CRIMINALIZES VOICE-OVER-IP SERVICES LIKE SKYPE

A new law in Ethiopia criminalizes Voice-over-IP services⁴⁹ (VoIP) within the Ethiopian jurisdiction. Corresponding national monitoring and filtering mechanisms have been installed to implement the rule that foresees sentences of up to 15 years of prison.

13. GOVERNMENTS WOULD BE LIABLE FOR E-ID FAULTS UNDER PROPOSED REGULATION IN EU JURISDICTION

Under the proposed new Regulation on electronic identification and trust services for electronic transactions in the internal market⁵⁰ that would establish a mutually recognized system of e-IDs and digital signatures in the EU, European governments would be directly liable for any attribution fault or misuse⁵¹ of electronic identities.

14. MICROSOFT'S DMCA TAKEDOWN REQUEST SHUT DOWN GOOGLE LINK TO GERMAN IT NEWS STORY

As a consequence of the increasing volume⁵² of DMCA takedown requests that platforms like Google receive, deletion procedures have become automated. This led, for example, to the deletion of a Google Search link to a Windows 8 news article⁵³ of a German IT journal, due to a DMCA notice by Microsoft on June 6, 2012.

15. WEBSITE OPERATORS COULD BE FORCED TO REVEAL ANONYMOUS COMMENTATORS' IDENTITY IN UK JURISDICTION

A new law proposed in the British jurisdiction could oblige website owners to reveal the identity of anonymous commentators⁵⁴ if complainants requested the

information in a defamation lawsuit. U.K. Justice Secretary Ken Clarke argued this law would defend website operators, since they are “in principle liable as publishers for everything that appears on their sites, even though the content is often determined by users”.

16. ILLEGAL FILE-SHARING BECOMES A CRIME WITH PRISON SENTENCE IN JAPANESE JURISDICTION

A new Japanese copyright law, which comes into force in October 2012, criminalizes the up- or downloading of copyright-protected data with jail sentences⁵⁵ of up to two years. Japanese music rights groups developed moreover the technology to directly block the uploading of protected material on the Internet and demand the integration of these filters on ISPs in the Japanese jurisdiction.

17. GOOGLE BLOCKS ITS ANALYTICS TOOL IN CUBA TO COMPLY WITH EXPORT SANCTIONS IN US JURISDICTION

In order to comply with the export sanctions applicable to companies incorporated in the US jurisdiction, Google has blocked its Analytics tool for Cuban Internet users,⁵⁶ which are redirected to a US Treasury Department website. Likewise, Google blocks certain tools in Burma, Iran, Syria, Sudan and North Korea.

18. VIRTUAL PRIVATE NETWORKS AND CYBERTRAVEL: NEW BLOCKS IN IRANIAN JURISDICTION

The Iranian cyber-police cracked down on Virtual Private Networks (VPN)⁵⁷ that allow to access foreign websites blocked in the Iranian jurisdiction through an encrypted tunnel. Currently, ca. 20-30% of Iranians are using VPNs.

19. EU INITIATES GLOBAL ALLIANCE AGAINST CHILD SEXUAL ABUSE ONLINE TO ENHANCE COOPERATION BETWEEN JURISDICTIONS

On June 8, 2012, the EU’s Council of Ministers launched the creation of a “Global Alliance against child sexual abuse online”⁵⁸. The initiative seeks to enhance cross-border cooperation to identify and prosecute offenders and block websites “where appropriate”. The US joined the alliance⁵⁹ on June 21, 2012.

20. US LAWMAKERS BEGUN CROWD-SOURCING A DIGITAL BILL OF RIGHTS FOR THE US JURISDICTION

A bipartisan initiative⁶⁰ by Senator Ron Wyden (D-OR) and Representative Darrell Issa (R-CA) seeks to crowd-source a digital bill of rights for the US jurisdiction. On June 30, 2012, the first article on the dedicated website⁶¹ stresses the notion of digital citizenship and stipulated that “digital citizens have a right to a free, uncensored internet”.

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www.internetjurisdiction.net/observatory/retrospect/2012-june-references

JULY

1. UN HUMAN RIGHTS COUNCIL AND CIVIL SOCIETY CALL FOR INTERNET FREEDOM

On July 5, 2012, the UN Human Rights Council adopted a landmark resolution on “The promotion, protection and enjoyment of human rights on the Internet”¹. The Council’s 47 member states affirmed that “the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice”. Moreover, the “global and open nature of the Internet” was recognized as “driving force towards development”. The document is the first UN resolution on digital human rights and was supported by 85 state co-sponsors. Meanwhile, a movement rooted in the anti-SOPA/PIPA protests in the US published a “Declaration of Internet Freedom”², which stresses five basic principles: Expression, Access, Openness, Innovation and Privacy. It is endorsed by a number of companies, NGOs and individuals.

Read further:

European Journal of International Law Blog: UN Human Rights Council Confirms that Human Rights Apply to the Internet³

New York Times: UN affirms Internet Freedom as basic right⁴

ArsTechnica: Anti-SOPA veterans issue declaration of Internet freedom⁵

2. CALIFORNIAN JUDGES DISAGREE ON PERSONAL JURISDICTION OVER FOREIGN CITIZENS WHO USE US-BASED ONLINE PLATFORMS

Two Californian judges disagreed about whether a US court can assert personal jurisdiction over foreign citizens only because they used US-based online platforms. The Korean plaintiff DFSB Kollektive, a music-copyrights holder with no operations in the US, sued two defendants based in Australia, who uploaded protected content on linking sites for a global audience and used US-based online services, in the Northern District of California. In 2011, a judge asserted personal jurisdiction⁶ over a man in Australia and awarded statutory damages and an injunction to DFSB, arguing that since the defendant used “California companies Facebook, Twitter, and YouTube to promote the websites he operates” and a California-based privacy service, “it appears that Defendant’s activities are expressly aimed at California”. In a different ruling, another judge now disagreed⁷ that “using the Internet accounts of companies based in California is sufficient to support a finding that a defendant expressly aimed his conduct at California”, since this reasoning “would subject millions of persons around the globe to personal jurisdiction in California”.

Read further:

Eric Goldman Blog: Can Korean copyright owners sue Australian defendants in California? Judges disagree – DFSB Kollektive v. Bourne⁸

Forbes: Having a Facebook or Twitter account shouldn't mean mandatory California Vacations if you get sued⁹
TechDirt: Copyright Tourism: Korean Companies sue guy from Australia for copyright infringement... in California¹⁰

3. US DEPARTMENT OF COMMERCE AWARDS NEW THREE YEARS IANA CONTRACT TO ICANN

The Internet Corporation for Assigned Names and Numbers (ICANN), a private non-profit organization incorporated in California, will continue to coordinate the domain name space and IP addresses of the Internet. On July 2, 2012, the US Department of Commerce's National Telecommunications and Information Administration (NTIA) accepted ICANN's bid¹¹ to manage the Internet's critical Internet Assigned Numbers Authority (IANA) functions, after the agency refused¹² an earlier application in March 2012 that did not meet "the requirements requested by the global community". The new contract under US jurisdiction starts on October 1, 2012 and will run for an initial period of three years until September 2015. It can be renewed twice to run for a total duration of seven years and is the longest IANA contract ICANN ever received.

Read further:

The Register: ICANN's overlordship of the Internet confirmed again by US gov¹³

PC World: ICANN keeps control over IANA Internet root¹⁴
ZDNet: ICANN resumes responsibility for Internet numbering functions¹⁵

4. INTERNET CONTENT FILTERING IN INDIAN JURISDICTION AFFECTS OMANI CITIZENS

Omani Internet users who are customers of the ISP Omantel are subject to the ISP content filters implemented in the Indian jurisdiction. This case of so-called "upstream filtering" was discovered by researchers of the Canadian Citizen Lab¹⁶. Due to peering-agreements between an Indian and an Omani ISP, Indian content restrictions travel downstream in the transit traffic via fiber-optic cables that connect the two countries physically. As a consequence, affected citizens in Oman are unable to access a number of entertainment sites, political blogs and file-sharing sites that might be perfectly legal in the jurisdiction of the Omani Sultanate. In theory, Omani Internet users could even be restricted to access content published in Oman itself. Similar cases have been reported in Kyrgyzstan¹⁷, where citizens were subject to filters in the Kazakh jurisdiction and Uzbekistan¹⁸, where Internet users were subject to Chinese content filters.

Read further:

CitizenLab: Routing gone wild: documenting upstream filtering in Oman via India¹⁹

ArsTechnica: Internet content blocking travels downstream, affects unwary users²⁰

Harvard Herdict Blog: Omani users subject to India's content filtering due to "upstream filtering"²¹

5. ACTA REJECTED BY EUROPEAN PARLIAMENT, PROVISIONS RETURNED IN NEW EU-CANADA TRADE TREATY CETA

On July 4, 2012, the European Parliament rejected the multinational Anti-Counterfeiting Trade Agreement²² (ACTA) in the European jurisdiction with 478 of 682 votes against the treaty. ACTA's provisions to guarantee intellectual copyrights in cyberspace were criticized for violating fundamental human rights. The vote came before the European Court of Justice²³, which was asked by the European Commission to rule on the legality of ACTA, could express its opinion. Other signatories of the treaty are prone to continue its implementation, including the US and Japan. A leaked February version of the EU-Canadian Comprehensive Economic and Trade Agreement (CETA)²⁴, which is currently negotiated, revealed however that this new bilateral treaty contains certain provisions that are very similar to ACTA in its IP chapter. The European Commission announced on July 11, 2012²⁵ that two contested paragraphs concerning the "co-operative efforts within the business community" and the disclosure of pirating ISP customers were meanwhile deleted.

Read further:

The Guardian: ACTA down, nut not out, as Europe votes against controversial treaty²⁶

Michael Geist Blog: ACTA lives: How the EU & Canada are using CETA as backdoor mechanisms to revive ACTA²⁷

TechDirt: CETA is now slightly less like ACTA (But still similar, and still secret)²⁸

6. EUROPEAN COMMISSION IS FINALIZING ITS CLOUD STRATEGY: JURISDICTIONAL QUESTIONS STILL UNRESOLVED

The European Commission is finalizing its cloud-computing framework that seeks to promote the adoption of cloud services in Europe and develops principles on data security, copyright and standardization. Yet, the Commission did not resolve the question of determining the applicable jurisdiction²⁹ for non-European users of European cloud services or for non-European cloud operators offering its services to European customers. According to the draft, the final strategy will "provide guidance on the application of European data protection law and practice as regards definitions, jurisdiction and applicable law".

7. APPLICABLE JURISDICTION OF EUROPEAN PRIVACY AUDIT OF GOOGLE'S UPDATED GLOBAL TERMS OF SERVICE QUESTIONED

The European data protection authorities are currently verifying³⁰ the legality of the updated global privacy policies of Google, which is incorporated in the US, under the lead of the French agency CNIL. Google now asked the CNIL to identify the “law you are applying to this review, and the nature of the legal basis for any recommendations or conclusions”³¹. The final report is expected for September 2012. Moreover, Twitter Inc. “is part of the list” of online platforms whose privacy policies are under review by the CNIL.

8. WEBSITES ACCESSIBLE ON US TERRITORY MUST POTENTIALLY COMPLY WITH AMERICANS WITH DISABILITIES ACT

A US judge ruled in a case involving close captioning on Netflix videos that websites are a place of public accommodation and therefore must comply with the Americans with Disabilities Act (ADA)³². This decision, if upheld in other courts, could potentially mean that foreign websites viewed in the US jurisdiction would need to comply with the corresponding ADA provisions³³.

9. COUNCIL OF EUROPE'S MINISTERS CALL FOR INTERNATIONAL JURISDICTIONAL STANDARDS TO PREVENT LIBEL TOURISM

The Council of Europe's Committee of Ministers has called for jurisdictional standards in a Declaration on July 4, 2012 to prevent forum shopping in defamation cases. It stressed that the legal uncertainty due to different standards for the assertion of jurisdictions is “especially true for web-based publications” and refers to the principles outlined in the 2011 Joint Declaration on Freedom of Expression on the Internet³⁴ (UN, OSCE, OAS, ACHPR), which stipulates that jurisdiction in Internet content cases “should be restricted to States to which those cases have a real and substantial connection”.

10. PRESIDENT OF PANAMA PLANS TO PROPOSE GLOBAL REGULATION OF IP NUMBERS TO UNITED NATIONS

During a speech at the ITU Connect Americas Summit³⁵ 2012 in Panama City, Panama's President R. Martinelli announced he would propose to the United Nations to regulate global IP numbers³⁶ in order to guarantee that publications on the Internet can be traced back to the publisher. Moreover, he stressed the need to establish a right to be forgotten in form of an expiration date for posts on the Internet.

11. TWITTER'S FIRST TRANSPARENCY REPORT SHEDS LIGHTS ON REQUESTS FROM NATIONAL JURISDICTIONS

US-based global micro-blogging service Twitter released its first transparency report³⁷ on July 2, 2012. The report sheds light on requests³⁸ for user information, content withholding and DMCA takedown requests for copyright infringements. During the first half of 2012, the US issued 679 requests out of 849 demands from 24 jurisdictions.

12. COOPERATION WITH LAW ENFORCEMENT: FACEBOOK MONITORS CHATS AND POSTS FOR CRIMINAL ACTIVITIES

Facebook uses an internal software to scan chats and posts³⁹ of its global users in order to detect criminal activities. Suspicious behavior is flagged and under certain circumstance reported to the police. Reuters reported about a cooperation with US authorities. Facebook's information on Law Enforcement and Third-Party Matters and Information for Law Enforcement Authorities⁴⁰ does not further specify the modalities and applicable jurisdiction of the platform monitoring, but its Data Use Policy states that user data can be processed to keep “Facebook products, services and integrations safe and secure”⁴¹.

13. “NOTICE AND TAKEDOWN” OR “NOTICE AND STAYDOWN”? GERMAN AND FRENCH COURTS DISAGREE ON ISP RESPONSIBILITY

Two recent decisions in Germany and French took different stances with regard to the responsibility of ISPs and file-hosting services⁴² in dealing with pirated content. In a case involving game producer Atari and the Swiss file-locker Rapidshare, the German Federal Court of Justice ruled⁴³ that though Rapidshare is not directly liable for copyright infringements by its users and does not generally have to monitor user uploads, it must take “technically and economically reasonable precautions (without compromising its business model)” to guarantee that flagged content stays down. In contrast, the French Supreme Court ruled that “take-down, stay-down” decisions by lower courts violate EU and French law.⁴⁴

14. BRAZIL MIGHT ADOPT ‘RIGHT TO BE FORGOTTEN’ IN ITS JURISDICTION

A ‘right to be forgotten’ could be adopted in Brazil's Marco Civil da Internet⁴⁵, a comprehensive bill to establish a regulatory framework for the use of the Internet, which is currently discussed in Parliament. A. Molon, a key author of the Marco Civil, recently amended⁴⁶ the proposed legislation after public consultations and added the right of users to have their personal data deleted upon their request.

15. HUNGARY CALLS UPON US AUTHORITIES TO SHUT-DOWN AN ANTI-SEMITIC WEBSITE OUTSIDE ITS JURISDICTION

Hungary's Prime Minister called upon US authorities to shut down the right-wing extremist website kuruc.info, which is the "Hungarian centre of anti-Semitism". Since the site's Top-Level Domain .info is operated by Afilias, which is headquartered in Ireland, and its servers are based in the US, Hungary cannot assert executive jurisdiction⁴⁷ to shut-down the website.

16. WORDPRESS-BASED PIRATE BAY PROXY SHUT DOWN IN DUTCH JURISDICTION

The Court of The Hague obliged Dutch hosting company Greenhost to shut down a WordPress-based proxy site it ran. The proxy allowed users to cybertravel⁴⁸ and access the torrent link library The Pirate Bay, despite currently established ISP blocks in the Dutch jurisdiction⁴⁹.

17. ONLINE VIDEO PLATFORMS NEED TO FILTER VIDEOS EX-ANTE IN CHINESE JURISDICTION

Under a new rule issued by the State Administration of Radio, Film and Television and the State Internet Information Office, Internet video platforms operating in China are obliged to pre-screen videos uploaded by their users⁵⁰. The rules do not further specify standards or applicable penalties.

18. IRISH DATA PROTECTION AUTHORITY REVIEWS IF FACEBOOK ADOPTED RECOMMENDATIONS

The Irish Office of the Data Protection Commissioner conducted an on-site audit in Facebook's global Dublin headquarters⁵¹ to control the implementation of "a wide range of best-practice improvements". According to Businessweek, this second privacy audit by Irish authorities has been triggered by pressure from the French regulator CNIL⁵², which currently reviews Google's and Twitters policies. The Irish report is expected for September 2012.

19. PROPOSED US BILL COUPLES US-RUSSIAN TRADE RELATIONS WITH FREE ACCESS TO US DIGITAL GOODS AND SERVICES

In response to a new law in the Russian jurisdiction⁵³ that allows to blacklist and shut down illegal websites, US Senator R. Wayden amended a proposed bill on permanent normal trade relations with Russia. The new draft stipulates annual audits to control if Russia restricts the access⁵⁴ to US digital goods and services, including online platforms such as YouTube.

20. TERMS OF USE OF LONDON OLYMPICS WEBSITE FORBID DEFAMATORY LINKS TO IT

The Terms of Use⁵⁵ of the website of the London Olympics, london2012.com, stipulate that persons creating links to the site "agree that no such link shall portray us or any other official London 2012 organisations (or our or their activities, products or services) in a false, misleading, derogatory or otherwise objectionable manner". Visitors of the website are furthermore automatically "legally bound"⁵⁶ to its Terms of Use, which are established under the jurisdiction of England and Wales.

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AUGUST

1. INDIA CRACKS DOWN ON ONLINE CONTENT THAT STIRS VIOLENCE IN ITS JURISDICTION, NEEDS US ASSISTANCE TO TRACE ORIGINS

Indian authorities have blocked 245 webpages and asked US based online platforms to take down “inflammatory content”¹. Doctored images and videos that circulated mainly on YouTube, Facebook and Twitter² created panic among migrants from the northeastern Assam state in other Indian regions, who feared retaliations for clashes between tribes in Assam. Google and Facebook³, which have offices in India, quickly begun cooperating with the local authorities to delete the sites in question. Microblogging service Twitter, which has no offices or servers in the Indian jurisdiction⁴, later agreed to delete six accounts that pretended to be the Prime Minister’s Office. According to information provided by the online platforms in question, the inflammatory posts were coming from Pakistani Internet users. Unable to identify the perpetrators themselves, India officially asked US authorities⁵ for assistance to track down their identity. The Indian government demands a permanent solution to manage the relations with online platforms incorporated in third countries and proposed a United Nations Committee for Internet-Related Policies that would provide arbitration and dispute resolution⁶ between platforms and states in similar cases.

Read further:

Times of India: India to seek US help to track down origins of offensive web pages⁷

New York Times: After violence in India, a Crackdown online⁸

Mail Online India: Google tweets get in touch with Uncle Sam: Social networking sites don’t give government details on North East hate sites⁹

2. SOUTH KOREAN COURT DECLARES REAL-NAME ONLINE LAW UNCONSTITUTIONAL

The South Korean Constitutional Court ruled on August 23, 2012 that the real name obligations under the 2007 Information Communications Law were unconstitutional¹⁰ since they violate the freedom of speech. The law required websites with over 100.000 daily visitors to verify their identity by entering their resident ID number. The rule, which also applied to certain popular newspaper sites, was intended to limit the spread of false rumors and defamatory content online. According to the Court, there was however no significant drop in illegal online posts since the law has been enacted. Moreover, it was noted that the law was detrimental to local online platforms, since many South Koreans chose to rather use online platforms based in third countries. US-based online platform Google, for example, refused in 2011 to implement the law¹¹ on its services, except for Google Plus, and advised Korean YouTube users to upload videos via the YouTube portal of another country.

Read further:

BBC: South Korea’s real-name net law is rejected by court¹²

Wall Street Journal: South Korea Court Knocks Down Online Real-Name Rule¹³

New York Times: South Korean Court Rejects Online Name Verification Law¹⁴

3. NEW GENERIC TLDS: SAUDI ARABIA OBJECTS TO 163 STRINGS INCLUDING .GAY, .SEX AND .ISLAM

The Kingdom of Saudi Arabia has filed 163 official objections at ICANN¹⁵ to the proposed new generic Top Level Domains (gTLDs). ICANN received 1930 applications for new strings that can be commented until September 26, 2012. Among the strings that the Saudi Arabian Communication and Information Technology Commission (CITC)

under the user name “Abdulmjid” objects are .gay¹⁶, .sex, .porn, .islam or .bible. The CITC argues, for example, that .wine would promote “substances detrimental to public order and morals and prohibited in a number of religions and cultures.” or that .catholic should not be attributed to the Catholic Church. Other governments are equally objecting certain new strings¹⁷: Argentina filed a complaint with regard to .patagonia, claiming it should relate to the region and not the company. Australia is opposing .navy and .oldnavy due to a national law that prohibits anyone who is not a navy member to use the word without prior permission. ICANN has set up a dispute resolution process¹⁸ that will consider the formal objections after the comments period closes.

Read further:

ICANN: Overview of gTLD application comments¹⁹

Wired: Saudi Arabia contests 160 TLDs, including .catholic, .islam and .baby²⁰

Reuters: Religious groups vie for new Web domain names²¹

4. FACEBOOK RELUCTANT TO TAKE DOWN RACIST PAGE THAT LIKELY BREACHED AUSTRALIAN LAW

US-based social network Facebook was reluctant to take down a Facebook page that was probably operated by an Australian user and contained racist content about Aboriginals.²² Only after the Australian Communications and Media Authority and the Australian Human Rights Commission began investigations on grounds of a potential breach of Australia’s Racial Discrimination Act and public protest increased, the owner of the site “Aboriginal Memes” took down the contested images²³. The Facebook page itself was deleted on August 8, but reappeared on August 31 under the same name, attracting over 10.000 likes. Facebook initially argued that the page did not violate its internal platform rules on hate speech, as laid down in the Terms of Service “Statement of Rights and Responsibilities”²⁴. Prior to this controversy, the Australian Advertising Standards Bureau ruled that companies are responsible for the public comments users left on their Facebook page²⁵. This raised questions about the culpability of non-Australian companies under Australian law for user-generated content that can be accessed on the Australian territory.

Read further:

SBS World News: Racism laws fail in the world wild web²⁶

Stuff: Racist Facebook page labelled ‘humour’²⁷

Sydney Morning Herald: Contents removed from racist Facebook page²⁸

5. IRISH AUDIT NOT ENOUGH – GERMANY REOPENS INVESTIGATIONS IN FACEBOOK’S FACIAL RECOGNITION TECHNOLOGY

The German Data Protection Commissioner of the state Hamburg, Johannes Caspers, relaunched the German investigation in Facebook’s facial recognition technology²⁹ after prior investigations were suspended in June 2012. Ongoing audits in the Irish jurisdiction, where Facebook’s international headquarters are located, resulted in an agreement that the biometric tagging feature remains temporarily disabled for European users who joined the network after July 1, 2012. Although the biometric database appears to be legal in the Irish jurisdiction³⁰, Germany claims it is illegal under German and EU law. Moreover, Caspers demands the deletion of biometric data collected in Germany. The investigation was reopened after the dialogue with Facebook officials did not result in changes of the platform’s Terms of Service and opt-out policy.

Read further:

CNET: Why you should be worried about facial-recognition technology³¹

Forbes: Germany Is Freaking Out About Facebook’s Facial Recognition Feature (Again)³²

ZDnet: Facebook must destroy facial recognition data – or get users’ approval, Germany decides³³

6. US AUTHORITIES GIVE BACK SEIZED DOMAINS OF SPANISH ROJADIRECTA SITE

As part of the US Immigration and Customs Enforcement’s “Operations in Our Sites” crackdown on US-registered domains, the .org and .com domains of the Spanish sports-TV link library Rojadirecta, which were bought via a US-based registrar, were seized in 2011. It was not clear if the page was illegal under Spanish copyright law. On August 2012 the case was dismissed in the US jurisdiction and the domains handed back³⁴, after the Spanish operators appealed the seizure in a US court. It is unknown if the US will be held accountable for the seizure on improper criminal copyright infringement charges.

7. WIKIPEDIA DOES NOT OPERATE SERVERS IN UK JURISDICTION DUE TO STRICT LIBEL LAWS

Wikipedia does not operate any servers on British territory³⁵. Its founder Jim Wales stated at a conference in London that it would have been impossible to found Wikipedia in the UK. Having servers located in the British jurisdiction would be an unpredictable risk that could cause “friction” for a global platform like Wikipedia due to the strict libel laws and high financial penalties.

8. PAKISTAN ORDERS ISPS TO BLOCK NUMEROUS SCANDALOUS WEBSITES IN ITS JURISDICTION

The Pakistani Telecommunications Authority has obliged all Pakistani ISPs³⁶ to block 15 websites that were deemed to be “scandalous”. Among these websites was one page that hosted the recordings of a “sensual” conversation between two sitting parliamentarians. Activists detect a change in Pakistan’s censorship regime³⁷ from pornography and blasphemy towards blocking for political purposes.

9. UKRAINIAN AUTHORITIES SEIZE SERVERS OF LARGE BITTORRENT SITE OPERATED FROM MEXICO

The Ukrainian Ministry of Internal Affairs has raided the servers of the popular Bittorrent site Demonoid³⁸ that was operated from Mexico and stored its data at the Ukrainian ISP Colocall. The news site TorrentFreak states that Demonoid did probably not contravene Ukrainian law³⁹ and claims that the seizure was provoked by pressure from the US. In the past, Demonoid changed its TLD⁴⁰ from US-based .com to Montenegro’s .me and later to the Philippine .ph to escape the US jurisdiction.

10. GERMAN ISPS MUST DISCLOSE IDENTITY OF ILLEGAL FILESHARERS TO RIGHTS OWNERS, FEDERAL COURT RULES

Germany’s Federal Court of Justice ruled that ISPs are obliged to reveal the identity of illegal filesharers⁴¹ upon request by the respective copyright holders. Prior to this ruling, ISPs had to reveal the identity of pirates only if copyright-protected material was shared for profit or at a commercial extent.

11. NEW YORK JUDGE RULES THAT FACEBOOK FRIENDS CAN SHARE OTHERS’ PROFILES WITH LAW ENFORCEMENT

A US District Judge ruled on August 10, 2012 in a New York City racketeering trial that Facebook friends can legally share their friends’ profiles with law enforcement agencies: The defendant’s “legitimate expectation of privacy ended when he disseminated posts to his “friends” because those “friends” were free to use the information however they wanted-including sharing it with the Government”⁴², the judge concluded. The ruling sets new standards for defining privacy and civil liberties with regards to the usage of social media platforms in the US jurisdiction.

12. GOOGLE CHANGES ITS SEARCH ALGORITHM TO PUNISH COPYRIGHT INFRINGING WEBSITES

Google Search’s newly updated algorithm is processing the number of valid copyright removal notices the platform receives from various national jurisdictions to calculate the ranking position⁴³ of a given website. Takedown requests for other Google services including YouTube and Blogger are not included⁴⁴ in the new ranking methodology.

13. ORDER TO BLOCK FACEBOOK IN BRAZILIAN JURISDICTION FOR NON-COMPLIANCE WITH NATIONAL ELECTION LAW DROPPED AFTER 24H

A judge of an electoral court in Florianopolis ruled on August 10, 2012 that Facebook should be blocked in Brazil⁴⁵. The US-based online platform allegedly refused to take down a page that contained offensive content against a local politician who is running for reelection. The defamatory information was negative and anonymous, which is illegal under Brazilian electoral law⁴⁶. 24 hours after the initial ruling, another judge reversed the order to block Facebook.

14. NEW ZEALAND LAW COMMISSION DEMANDS CRIMINALIZING CYBERBULLYING

The Law Commission of New Zealand has called for the criminalization of cyberbullying in its jurisdiction, similar to measures undertaken in the USA, UK and Australia. The Commission suggests the establishment of a Communications Tribunal that would not only have the power to name-and-shame offenders, but also to force ISPs and websites to takedown content⁴⁷ that causes serious distress and mental harm. Moreover, ISPs would be obliged to reveal the identity of offenders. The proposed legislation is targeting persons aged over 14 years.

15. GERMAN CABINET IN FAVOR OF DRAFT LAW THAT CHARGES FEES TO NEWS AGGREGATORS IN GERMAN JURISDICTION

The German government approved a new copyright bill that would require Google News and other news aggregators to pay a fee for reproducing snippets of news articles on their portals.⁴⁸ The draft law aims at better protecting publishing houses by redistributing revenues from the aggregators to newspapers. Simple links aggregations as on Twitter or RSS feeds and the quoting of published articles should remain legal and free of charge in the German jurisdiction.

16. FTC SETTLES WITH FACEBOOK IN US JURISDICTION ON PRIVACY STANDARDS FOR GLOBAL USERS

The US Federal Trade Commission (FTC) has approved a final settlement⁴⁹ with Facebook over its privacy policies⁵⁰ that will have an impact on Facebook's global users beyond the US jurisdiction. The settlement states that Facebook needs to obtain the "affirmative express consent" from its users before sharing their personal data with third parties, including Facebook apps, if the information sharing "materially exceeds the restrictions imposed by a user's privacy setting(s)". It rests unclear what is meant by "materially exceeds".⁵¹

17. MALAYSIAN WEBSITES AND BAR PROTEST AGAINST EVIDENCE ACT AMENDMENTS ON LIABILITY FOR ONLINE PUBLICATIONS

A number of Malaysian websites⁵² and the Malaysian Bar⁵³ have protested against the new Section 114A amendment to the Evidence Act. The law is designed to facilitate the identification of anonymous publishers and states that "A person whose name, photograph or pseudonym appears on any publication depicting himself as the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or re-publish the publication is presumed to have published or re-published the contents of the publication unless the contrary is proved."

18. JAPAN PUBLISHES PRIVACY POLICY GUIDELINES FOR MOBILE APPS

The Japanese Ministry of Internal Affairs and Communications has published a report titled "Innovation in the New

Era by the Appropriate Treatment of Users' Information and Improvement of IT literacy" that defines standards for the governance of personal data on mobile apps. In the absence of specific laws in the Japanese jurisdiction, the guidelines recommend what information and elements the Terms of Service of mobile apps providers should include⁵⁴.

19. JORDAN'S COMMUNICATIONS MINISTRY URGES ISPS TO BLOCK PORNOGRAPHIC WEBSITES

In response to a Facebook campaign with over 10,500 supporters against online pornography, the Ministry of Information and Communications Technology urged Jordanian ISPs to block porn sites⁵⁵. A new draft legislation would provide the Jordanian government with far-reaching powers to censor and block⁵⁶ online content. Activists organized an Internet blackout day to protest against the new policies.

20. GOOGLE INC SUED FOR DEFAMATORY SEARCH RESULTS IN HONG-KONG

A Hong-Kong based entrepreneur is suing Google Inc for defamation in its English and Chinese search results⁵⁷. Although search engines are usually not liable for algorithmically generated search results, inaction upon legal requests to delete results may result in a secondary liability. Google.com.uk has already removed three search items. The new search result indicates the number of deleted items. It informs the user that Google responded to a legal request and refers to Chillingeffects.org for more information.

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SEPTEMBER

1. YOUTUBE COMPLIES WITH ELECTORAL COURT ORDER IN BRAZIL

Google Brazil removed two YouTube videos¹ that infringed the 1965 Electoral Code, after its final appeal was denied. An electoral judge in Mato Grosso do Sul state ruled² that two user-uploaded YouTube videos contravened the strict pre-electoral Brazilian law since they offended the “dignity or decorum” of a candidate running for local elections. Google’s country director was shortly detained after the company refused to comply³ with the initial court order arguing⁴ that the video did not violate the YouTube Community Guidelines⁵ and that the platform should not be liable for user-generated content. YouTube was recently involved in two similar pre-electoral cases. A judge in Parana state ordered that Google Brazil should pay \$500,000 per day until it removed a video. Another ruling in Paraiba state that ordered the arrest of another Google executive for not removing a video was overturned by a higher court 24 hours later.

Read further:

Reuters: Google exec in Brazil faces arrest over elections law⁶

CircleID: Understanding the Brazilian court decision to arrest Google’s representative⁷

Times of India: Google blocks YouTube’s political video in Brazil⁸

2. FILE-SHARING FOR PERSONAL USE DECLARED LEGAL IN PORTUGUESE JURISDICTION

In January 2011, the Portuguese entertainment industry group APACOR filed a complaint⁹ with the Portuguese Department of Investigation and Penal Action against 2000 unknown users of peer-to-peer networks based on their IP-address for pirating movies. A Portuguese prosecutor decided that the non-commercial sharing of copyright-protected files for personal use does not infringe Portuguese law¹⁰ and argued¹¹ that the protection of copyright needs to be balanced with the “right to education, culture and freedom of action in cyberspace”. Moreover, the prosecutor came to the conclusion that IP-addresses are not sufficient evidence to identify a person. Judges in Florida and California¹² pronounced recently similar rulings on the use of IP-addresses. APACOR intends to overturn the prosecutor’s decision by launching new legal actions.

Read further:

TorrentFreak: File-sharing for personal use declared legal in Portugal¹³

ZDNet: P2P files-sharing for private use is legal in Portugal, court rules¹⁴

ArsTechnica: Personal file-sharing is legal in Portugal, prosecutor says¹⁵

3. ANTI-ISLAM YOUTUBE VIDEO BLOCKED AND TAKEN DOWN IN MULTIPLE JURISDICTIONS

The anti-Islam video “Innocence of Muslims” that was produced by a US citizen and uploaded on YouTube stirred up protests and riots in multiple countries around the world. Google initially decided to take down the video in Egypt and Libya¹⁶ to prevent further escalations. However, the company refused to comply with a demand by the White House¹⁷ to shut down the video globally, because it does not infringe YouTube’s Terms of Service and community guidelines for hate speech. As a reaction, Afghanistan¹⁸, Pakistan and Bangladesh¹⁹ blocked the entire platform in their jurisdictions. Google complied with local demands by courts and governments after a “through review”²⁰ and blocked the access to the video in various jurisdictions including Malaysia²¹, Singapore²², Jordan²³, Russia²⁴, India²⁵ and Brazil²⁶. A Californian judge²⁷ affirmed that the video can remain online in the US jurisdiction.

Read further:

New York Times: Google has no plans to rethink video status²⁸

Economist: Internet freedom: free to choose²⁹

Foreign Policy: The innocence of YouTube³⁰

4. LINKING CAN CONSTITUTE A FORM OF COPYRIGHT INFRINGEMENT, DUTCH COURT RULES

The Court of Amsterdam decided³¹ that hyperlinks to copyright-protected content constitutes under certain circumstance a violation of the copyright law in the Dutch jurisdiction. In October 2011, the Dutch website GeenStijl³² published a link to a zip file on its website that contained Playboy pictures of a Dutch model. The file was hosted on the Australian platform FileFactory.com and uploaded by an unknown user. The leaked pictures were planned to appear in the Dutch December 2011 Playboy issue. When FileFactory removed the file, GeenStijl provided links to further copies³³. The judge decided that the hyperlinks constituted a “publication” as they fulfilled the following criteria: intervention (without the publication of the link, the URL would have remained unknown), audience (GeenStijl created an audience for the protected images) and profit (the website generated revenues with the attracted traffic).

Read further:

Future of Copyright: Dutch Court: hyperlinks on website can constitute copyright infringement³⁴

PC World: Linking to infringing material can violate copyright, says Dutch court³⁵

TechDirt: Dutch Court Says Linking Can Be A Form of Copyright Infringement³⁶

5. SIX STRIKES SYSTEM TO BE IMPLEMENTED BY ISPS IN US JURISDICTION IN 2012

The alliance of five major US ISPs (AT&T, Cablevision, Comcast, Time Warner Cable and Verizon) and the rightsholders groups Motion Picture Association of America (MPAA) and Recording Industry Association of America (RIAA) has announced that the Copyright Alert System will be launched in 2012³⁷. Also known as “six strikes” system, it will be administered by the Center for Copyright Information. The participating ISPs cover collectively three-fourths of all US Internet users. The service providers will implement monitoring measures to allow third-party companies to detect copyright infringements of their clients. Users will be warned to trigger behavioral changes. Once they reach the fifth and sixth warning rounds, ISPs are going to resort to so-called “Mitigation Measures” that are developed at the discretion of the different ISPs. These can include reduced bandwidth or automatic start-pages with educational information. Moreover, rightsholders could file lawsuits against the users. It is possible that ISPs might even choose to ultimately disconnect³⁸ their clients, similar to the HADOPI³⁹ three strikes system implemented by law in the French jurisdiction.

Read further:

Center for Copyright Information: Memorandum of Understanding⁴⁰

Center for Copyright Information: Copyright Alert System⁴¹

ArsTechnica: “Six strikes” Internet warning system will come to US this year⁴²

6. ARGENTINIAN COURT ORDERS GOOGLE TO REMOVE DEFAMATORY SEARCH RESULTS

The Argentinian Court of First Instance ordered Google Inc.⁴³ to remove the search results that connected a model with sexual images “permanently”, stressing that this kind of filtering is technically feasible. The court argued that Google Inc. made unauthorized commercial use of the model’s erotic images and violated her personal rights. The US-based company was obliged to pay a compensation of 35.000 USD in the Argentinian jurisdiction.

7. PHILIPPINE’S CYBERCRIME PREVENTION ACT HAS BROAD DEFINITION OF JURISDICTION

The new Philippine Cybercrime Prevention Act of 2012 assumes jurisdiction⁴⁴ “over any violation of the provisions of this Act including any violation committed by a Filipino national regardless of the place of commission... if any of the elements was committed within the Philippines or committed with the use of any computer system wholly or partly situated in the country, or when

by such commission any damage is caused to a natural or juridical person who, at the time the offense was committed, was in the Philippines.” The law includes a variety of provisions regarding cybercrime and libel, and outlaws “cybersex”.

8. IRISH DPA ORDERS FACEBOOK TO SUSPEND FACIAL RECOGNITION FEATURE IN EU JURISDICTION

Facebook’s international headquarters, located in Dublin, has agreed with the request by the Office of the Irish Data Protection Commissioner⁴⁵ (ODPC) to delete all image “templates” of EU citizens, which are stored by the company to enable the facial recognition feature that suggests tags in images. The ODPC’s request went beyond the requirements stipulated in its initial recommendations in response to demands from other European DPAs that lack jurisdiction over Facebook’s headquarters.

9. RUSSIAN PARLIAMENTARIANS WANT TO BAN ONLINE ANONYMIZERS

A group of members of the Duma are planning to propose amendments⁴⁶ to the Federal Law “On Information, Information Technology and Information Security” and the law “On the protection of children from information harmful to their health and development”. They intend to outlaw online tools like VPNs⁴⁷ and proxies⁴⁸ that mask online activities and allow the circumvention of national Internet blocks through cybertravel.

10. UK HEALTH DEPARTMENT SAYS IPSS SHOULD BLOCK SUICIDE WEBSITES

The UK Department of Health suggests⁴⁹ in a new suicide prevention strategy to either oblige ISPs to offer Internet users the active choice to disable “harmful suicide-related content” or to introduce mandatory default blocks in the UK jurisdiction.

11. EU PUBLIC CONSULTATION REVIEWS INTERMEDIARY LIABILITY AND NOTICE-AND-ACTION NOTION IN E-COMMERCE DIRECTIVE

The European Commission conducted a public consultation⁵⁰ called “A clean and open Internet: Public consultation on procedures for notifying and acting on illegal content hosted by online intermediaries”. The consultation process reviews the intermediary liability provisions under the E-Commerce Directive that regulates cross-border online activities in the EU jurisdiction. It focuses specifically on the notion of notice-and-action.

12. EUROPEAN COURT OF JUSTICE TO RULE ON LEGALITY OF DOWNLOADING COPYRIGHT-PROTECTED MATERIAL FOR PERSONAL USE

The Dutch Supreme Court asked the European Court of Justice⁵¹ to decide if the download of copyright-protected material, including the download from illegal sources, is legal for personal use. Whereas the Dutch jurisprudence considers that these downloads might be legal, the European Copyright Directive could stipulate that making personal copies from illegal sources is illegal.

13. IRAN BLOCKED GOOGLE MAIL AND SEARCH IN ITS JURISDICTION

Iran blocked for one week⁵² the access to the Google services Gmail and Google Search. Iran’s telecommunication ministry argued the block of the two Google services was “involuntary” and due to a lack of technical sophistication in implementing the block of YouTube, which is active since 2009.

14. WIKIPEDIA THREATENS TO ENCRYPT TRAFFIC TO UK-BASED USERS IF LONDON PASSES “SNOOPER’S CHARTER”

Wikipedia founder Jimmy Wales announced⁵³ in front of UK parliamentarians that the platform would probably encrypt all traffic to UK-based users if the draft Communications Data Bill were to become implemented in the British jurisdiction and ISPs be forced to monitor their users’ online activities. The encryption would ensure “that the local ISP would only be able to see that you are speaking to Wikipedia, not what you are reading”, Wales said⁵⁴.

15. KYRGYZSTAN WILL MONITOR .KG REGISTERED SITES FOR HATE SPEECH AND DISCUSS FURTHER CHILD PROTECTION MEASURES

Kyrgyzstan is about to introduce new measures to control online activities in its jurisdictions. The State Committee for National Security announced⁵⁵ to implement a system by April 2013 that scans .kg registered websites for hate speech. Moreover, a bill to protect children⁵⁶ from harmful information on the Internet is currently discussed, which is modeled upon a law adopted in Russia⁵⁷ in July 2012.

16. US STATE NEW YORK DECLARES “VIEWING” PEDOPHILIA ON THE INTERNET ILLEGAL

A new bill was passed⁵⁸ in the US state New York, which outlaws the knowingly access of online child pornography “with intend to view”. The law was introduced after a New York state court came to the conclusion that “viewing”

child pornography online was not illegal under the existing 1996 law against the possession of pedophilia, since files were not directly downloaded on a computer, but only stored temporally.

17. INDIAN GOVERNMENT INITIATES TALKS WITH ALL STAKEHOLDERS ON CENSORSHIP AFTER ASSAM RIOTS

As a consequence of the wake of sites that Indian authorities blocked⁵⁹ in their jurisdiction after the outbreak of the Assam riots, the Indian Department of Telecommunications and the Department of Electronics and Information Technology organized a multi-stakeholder consultation⁶⁰ on legitimate censorship. The participating entities include companies like Facebook and Google, ISPs, lawyers, civil society and the technical community.

18. TERMS OF SERVICE OF AN ONLINE STORE ONLY ENFORCEABLE WITH PROOF OF NOTICE IN US JURISDICTION?

A US judge decided⁶¹ that Barnes & Nobles online store's Terms of Service, which featured an "arbitration only" clause, are not enforceable without evidence that the customer took "notice of the terms". The plaintiff argued

he did not "affirmatively assent" to the Terms when he bought the contested item in the store and succeeded in bringing Barnes & Nobles before a court.

19. GOOGLE REMOVES TORRENT LIBRARY THE PIRATE BAY FROM AUTOCOMPLETE AND INSTANT SEARCH RESULTS

In its efforts to decrease online copyright infringement, Google Search added the Swedish torrent links library The Pirate Bay to its blacklist⁶² of blocked Autocomplete and Instant search results. The blacklist measures result in a noticeable traffic drop for concerned sites.

20. URUGUAY RECEIVES ADEQUATE DATA PROTECTION LABEL FROM EUROPEAN COMMISSION

Uruguay succeeded in being recognized by the European Commission as having adequate data protection standards⁶³ in its jurisdiction that correspond to the EU Data Protection Directive. The decision opens the doors for European IT investment in the country. Other approved jurisdictions are Argentina, Andorra, Canada, Switzerland, Faeroe Islands, Guernsey, Israel, Isle of Man, Jersey and the US Safe Harbor regime.

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OCTOBER

1. AFTER US MEGAUPLOAD SEIZURE, PLATFORMS OPT FOR DISTRIBUTED SERVER ARCHITECTURES

A US judge gave green light for a hearing concerning the seizure of 1103 Megaupload servers located on US territory that also contain legal content. Megaupload's defense claims the seizure of the cloud-based file locker, incorporated in Hong-Kong, was a violation of due process¹ rights and potentially overbroad². Since the location of the servers of cross-border online platforms such as cloud-services can potentially determine the applicable jurisdiction, Megaupload founder Schmitz announced to launch a new service with automatic data encryption and a distributed server architecture³ across multiple territories to prevent one jurisdiction from unilaterally shutting down the platform. Likewise, The Pirate Bay announced after a police raid⁴ at its Swedish hosting company to opt for a server structure based on virtual machines in the cloud⁵. The location of the cloud providers will be hidden since The Pirate Bay continues to operate the load balancer⁶, located in a third country, and transit-routers.

Read further:

TorrentFreak: Megaupload seized data case will get a hearing, court rules⁷

Wired: Megaupload is dead. Long live Mega!⁸

ArsTechnica: The Pirate Bay ditches its servers, sets sail for the cloud⁹

2. EU PRIVACY WATCHDOGS ASK GOOGLE TO MODIFY POLICIES TO COMPLY WITH EUROPEAN LAW

The French data protection authority CNIL, mandated by the Article 29 Working Party that unites European privacy watchdogs, published the findings¹⁰ of its investigation of Google's privacy policy that was updated globally on March 1, 2012 to create a unified standard across all Google services. Data protection authorities in Croatia, Lichtenstein, Canada and some Asian countries equally participated in the coordinated European investigation. For the first time, the Article 29 Working Group sent a joint letter¹¹ to a company. They asked Google for modifications of its privacy policy within the next four months and outlined a number of recommendations¹². Google's policy to gather and combine user data¹³ from different Google services without the explicit consent of the users without a "valid legal basis" was highlighted among the list of flaws according to EU data protection standards.

Read further:

CNIL: Google's new privacy policy: incomplete information and uncontrolled combination of data across services¹⁴

Guardian: Google privacy policy slammed by EU data protection chiefs¹⁵

New York Times: Europe Presses Google to Change Privacy Policy¹⁶

3. TWITTER USES GEO-IP FILTERING FOR THE FIRST TIME TO BLOCK NAZI ACCOUNT IN GERMANY

On October 18, 2012 Twitter deployed for the first time its geo-IP filtering technology. The micro-blogging platform announced in January 2012 that the country-based filtering technology was ready¹⁷ to be implemented. Complying with a request from the Hanover police, Twitter blocked the account of a neo-Nazi¹⁸ group for users with German IP addresses. According to Twitter's policy, German users can still change their country setting to "worldwide"¹⁹ to circumvent the automatic IP filter. Prior to the selective location filtering, Twitter already took down content to comply with requests from local jurisdictions. Earlier this year, Brazil filed an injunction²⁰ to remove tweets that warned drivers of police controls. In France, the student union UEJF files a lawsuit²¹ against the US-based company to force the platform to remove racist tweets with the hashtag #unbonjuif, which was among the top trending topics of October in France.

Read further:

Spiegel: Twitter blocks Neo-nazi account in Germany²²
New York Times: Twitter blocks German's access to neo-Nazi group²³
ArsTechnica: Twitter blocks neo-Nazi account in Germany—but not in rest of world²⁴

4. DEFAMATION AND TAKEDOWN REQUESTS: FACEBOOK HELD LIABLE IN BRAZIL, GOOGLE IN AUSTRALIA

Facebook Brazil was held liable for the "moral damage" caused by a fake profile of a Brazilian woman. The Brazilian court ruled that the Facebook Brazil failed to promptly remove the account, which contained images and personal data of the plaintiff, upon request. The court rejected Facebook Brazil's argument that as the local subsidiary of the US-based company it was not administering the platform and therefore the takedown request should have been sent to Facebook.com. The judge stressed²⁵ that if a local subsidiary receives benefits from its Brazilian market presence, it should face the consequences of its conduct. In the Australian jurisdiction, Google was held liable by the Victoria Supreme Court²⁶ for defamatory pictures that showed up next to the plaintiff's company name in the search results despite his takedown request. In a similar case in the Spanish jurisdiction²⁷, Google Spain was not held liable for defamation since the search engine is operated by Google's headquarters in the US jurisdiction.

Read further:

Times of India: Facebook fined \$1500 for "moral damage"²⁸
Search Engine Land: Google loses Australian defamation case, awaiting decision on damages²⁹
BBC: Google loses Australia "gangland" defamation lawsuit³⁰

5. BEIJING-BASED SEARCH ENGINE BAIDU ASKS TO DISMISS FILTERING LAWSUIT IN US JURISDICTION

In May 2011 eight residents of New York City filed a lawsuit³¹ in the US District Court of Manhattan against .com registered Baidu.Inc and the Chinese government. According to the complaint, the plaintiffs allege³² "a private company is acting as the arm and agent of a foreign state to suppress political speech, and permeate U.S. borders to violate the First Amendment" under federal US law and New York state law. They claimed a \$17.44 million default judgment³³ in April 2012. The Chinese Ministry of Justice stressed that the "execution of the request would infringe the sovereignty or security of the People's Republic of China". In October 2012, Baidu's defense argued for the dismissal of the case since the Chinese government was not properly served according to international law: the Hague Convention does not authorize the delivery of judicial documents with FedEx³⁴.

Read further:

Reuters: Uphill fight for Baidu, China censorship lawsuit³⁵
IP Osgoode: The Great Firewall of China in American court³⁶
Guardian: New Yorkers sue China over internet censorship³⁷

6. US-BASED RATING SITE TRIPADVISOR COULD BE LIABLE FOR REPUTATION DAMAGES IN SCOTTISH JURISDICTION

The review portal TripAdvisor, incorporated in Massachusetts under US jurisdiction, could be held liable in the British jurisdiction for negative recommendations that a Scottish bed and breakfast received. The owner demands that allegedly false criticism be deleted from the platform. On October 10, 2012, TripAdvisor dropped the argument that it could not be brought before a Scottish small claims court and conceded that it is subject to the local Scottish jurisdiction³⁸.

7. DEFINITION OF "PERSONAL DATA" SHOULD INCLUDE IP ADDRESSES AND COOKIE IDENTIFIERS, SAYS EU PRIVACY BODY

In its opinion³⁹ concerning the planned EU General Data Protection Regulation, the Article 29 Working Group demands to amend the definition of "personal data"⁴⁰. In a proposed modification of a recital, the privacy body suggests to also consider "Internet Protocol addresses" and "cookie identifiers" that can lead to the identification of Internet users as personal data.

8. CANADIAN AND GERMAN DATA PROTECTION AUTHORITIES LAUNCH COOPERATION BETWEEN JURISDICTIONS

In order to ensure a better protection of personal data in cross-border online activities, Canadian and German data protection commissioners signed an agreement⁴¹ on October 15, 2012 that establishes a formal collaboration between the two countries. The agencies agreed to collaborate on specific cases and share information on events and complaints. They plan to extend their collaborative model to other countries.

9. AUDIO AND VIDEO FILES STORED ON FOREIGN SERVERS BLOCKED IN IRANIAN JURISDICTION

Iran began blocking certain audio and video files (MP3, MP4, SWF, FLV)⁴² that are stored on servers in foreign jurisdictions. According to reports collected by the BBC, sites that contain embedded audio or video files are either displayed without multimedia content, or blocked entirely. Audio and video files stored on servers based on Iranian territory can be accessed without restrictions by Iranian residents.

10. GOOGLE INC. COULD FACE POTENTIAL PRIVACY CLASS ACTION IN CANADIAN PROVINCE BRITISH COLUMBIA

A lawsuit, filed on October 4, 2012 in the British Columbia Supreme Court, claims that the Gmail service of the US-based company Google violates, among others, the Privacy Act⁴³ through the “interception, copying, scanning, retention and use of private email communications”. The plaintiff proposes a class action and seeks damages based on Google’s revenues generated with the alleged actions, as well as an injunction to stop Gmail from using these technologies without the consent of both email senders and receivers.

11. US DEPARTMENT OF JUSTICE EDUCATES FOREIGN JUDGES AND INVESTIGATORS ON COPYRIGHT THEFT

Announcing a new \$2,4 billion US Justice Department budget to fight Intellectual Property theft, US Attorney General Eric Holder said the US has “trained, educated, and met with thousands of foreign judges, prosecutors, investigators, and policymakers” in over 100 different jurisdictions. Furthermore, Holder stressed that since copyright crime is “global in nature”, increasing international engagement became a priority⁴⁴.

12. CYBERTRAVEL VIA WEB PROXIES BLOCKED IN UZBEKISTAN’S JURISDICTION

The Uzbek ISP Uztelecom, which has the monopoly on connections to international networks, began blocking the access⁴⁵ to proxy servers that allow Uzbek Internet users to circumvent national content filters. The web proxies block has been installed in late September and initially only includes servers that contain the word “proxy” in their domain. Uzbek authorities are planning to extend the block to all available proxies.

13. EU COMMISSION WORKS ON MODEL TERMS FOR CLOUD-COMPUTING SERVICES

As part of the EU cloud computing strategy, the Commission plans to develop “model terms for cloud computing⁴⁶ service level agreements for contracts between cloud providers and professional cloud users” by the end of 2013. Moreover, Brussels suggested that national data protection authorities develop Binding Corporate Rules for cloud operators and announced to work on an EU-wide voluntary certification scheme that will be implemented by 2014.

14. SAUDI ARABIA CALLS FOR INTERNATIONAL COOPERATION TO FILTER THE INTERNET FOR PUBLIC ORDER

In the aftermath of the “Innocence of Muslims” video, Saudi Arabia highlighted in a submission to the UN World Telecommunications Policy Forum⁴⁷ the “need for international collaboration to address ‘freedom of expression’ which clearly disregards public order”

15. BRUSSELS EXPLORES THE USE OF DNS BLOCKS IN EUROPEAN JURISDICTION TO FIGHT ILLEGAL ONLINE GAMBLING

The European Commission outlined its Action Plan on online gambling⁴⁸ and announced to “enhance exchange of information and best practice on enforcement measures and explore the benefits and possible limits of responsive enforcement measures, such as payment blocking and disabling access to websites at EU level”.

16. PAKISTAN BLOCKS 20.000 WEBSITES WITH OBJECTIONABLE CONTENT

The Pakistan Telecommunications Authority has blocked over 20.000 objectionable websites and blogs⁴⁹. Among these are sites that host content related to the “Innocence of Muslims” movie. YouTube remains entirely blocked in the country, which interferes also with the access of other Google services from the Pakistani jurisdiction.

17. US MUSIC ASSOCIATION TARGETS FOREIGN DOWNLOAD PORTALS VIA WHOIS IN US COURT

The US Recording Industry Association of America (RIAA) obtained subpoenas in the US District Court of Columbia⁵⁰ that order the WHOIS⁵¹ privacy services WhoisGuard, Protected Domain Services and GKG.net to reveal the IP and email addresses and other identity information of the operators of three music download portals. The websites in question are registered under .net, .com and .me domains and target Dutch and Spanish language audiences.

18. TURKISH DRAFT BILL REQUIRES ID AND PASSWORD TO ACCESS THE INTERNET

A Commission headed by the General Directorate of Security upon instructions of the Turkish Prime Minister proposed a “Draft Law on the Regulation of Informatics Network Services and Informatics Crime”⁵² that would require Turkish Internet users to enter their ID and a password to access the Internet “so that all the operations of Internet users can be recorded”.

19. US AUTHORITIES SEIZE 686 WEBSITES FOR ALLEGED SALE OF FAKE DRUGS

As part of the Operation in Our Sites initiative, US Homeland Security and the US Department of Justice seized 686 websites⁵³ that were registered with a US-based domain and accused of selling counterfeit and illegal drugs. The operation involved 100 jurisdictions and was coordinated by Interpol.

20. AUTOMATION ERRORS: MICROSOFT DMCA NOTICES ASKED GOOGLE TO BLOCK BBC AND WIKIPEDIA

In order to prevent the unauthorized distribution of Windows 8 Beta, Microsoft used an automatic system to identify infringing websites and submit DMCA take-down notices to Google Search⁵⁴. The filter did however not distinguish piracy sites from news outlets and asked Google to censor websites like BBC, Wikipedia or the Washington Post in various jurisdictions. Only websites that appear to be whitelisted by Google were exempted from the automatic execution of DMCA requests.

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NOVEMBER

1. DUTCH GOVERNMENT WANTS TO ALLOW POLICE TO HACK COMPUTERS LOCATED IN FOREIGN JURISDICTIONS

The Dutch Minister of Security and Justice announced in a letter¹ to the parliament the plan to draft a bill that would enlarge the investigative jurisdiction of the Dutch law enforcement beyond the physical borders of the Netherlands for serious cybercrime cases such as online pedophilia. According to the Dutch government, existing national law has shortcomings² to tackle cybercrime if data is stored on foreign servers and cybercriminals are using anonymity networks such as The Onion Router³ (TOR). If the location of a server or computer related to an ongoing investigation can be identified, police forces would still need to ask the respective countries for help via mutual legal assistance treaties (MLATs). However, if the location would be masked through anonymizers, the projected draft bill would allow police forces to hack into foreign computers and servers with corresponding court orders. Dutch law enforcement could gather evidence through the installation of monitoring software and render data stored in foreign jurisdictions inaccessible, or even delete it.

Read further:

Computerworld: Dutch government seeks to let law enforcement hack foreign computers⁴
Slate: The Netherlands wants the power to “render inaccessible” data on foreign servers⁵
Radio Netherlands Worldwide: Dutch officials: waging cyber war or fighting crime?⁶

2. PAKISTANI YOUTUBE BLOCK REMAINS INTACT DUE TO ABSENCE OF MLAT WITH US JURISDICTION

On September 17, 2012, the inter-ministerial committee that includes the Inter-Services Intelligence, the ministry of religious affairs and the IT ministry ordered the block of YouTube in the Pakistani jurisdiction⁷ to render the anti-Islam video “Innocence of Muslims” inaccessible. An official of the Pakistani IT ministry explained the ongoing block of the entire platform on grounds of one objectionable video with the absence of a mutual legal assistance treaty (MLAT)⁸ between the Pakistani and US jurisdiction. Since Google judges that the video does not infringe its Terms of Service or Community Guidelines on hate speech, takedown requests under local law to YouTube, which is incorporated in California, can only be enforced through this mechanism. Therefore, Pakistani officials intend to prolong the platform block for an unspecified amount of time. MLAT procedures are potentially lengthy and the negotiation of the details of bilateral treaties on assistance in public and criminal law matters can take years.

Read further:

The Express Tribune: Anti-Islam video: Government unlikely to lift YouTube ban⁹
Washington Post: YouTube blocked in Pakistan¹⁰
Vsocio: YouTube ban will continue due to lack of MLAT between Pakistan and the US¹¹

3. LOCALIZED CLOUD: GOOGLE OFFERS CLOUD SQL ON SERVERS IN EU OR US JURISDICTION

Google announced¹² that its revamped Cloud SQL offer allows the choice for localized cloud architectures. Customers can now opt for data centers located either in the European or US jurisdiction. Beyond increasing the speed of the cloud service for European customers through the use of EU data centers, the geographic limitation to the storage and processing of data is also a response to strict European data protection laws¹³. If European companies rely on cloud-based services outside the European Economic Area to store and process personal data, they need to make sure that the servers involved are located in jurisdictions that provide adequate data protections. The burden to “verify whether the cloud provider can guarantee the lawfulness of any cross-border international data transfers”, as the EU Article 29 Working Group demands¹⁴, can hamper considerably the adoption of cloud services based on globally distributed server architectures.

Read further:

OutLaw: Google’s cloud database management service offers EU-only data storage and processing¹⁵

Computing: Google allows customers to store data in Europe¹⁶

GigaOM: Cloud players try to make sense of European data laws¹⁷

4. NEW MEGAUPLOAD REGISTERED UNDER NEW ZEALAND CC-TLD, AFTER GABON REJECTED ME.GA

Kim Schmitz envisages to relaunch Megaupload after the platform has been sized in January 2012 in the US jurisdiction where the .com TLD of the platform was registered and its data hosted. To escape the reach of the US jurisdiction, Schmitz tried to register the new service Mega under the Gabon cc-TLD .ga. However, Gabon’s Communication Minister rejected me.ga¹⁸ since “Gabon cannot serve as a platform for committing acts aimed at violating copyrights, nor be used by unscrupulous people”. Mega will now be registered under New Zealand’s cc-TLD .co.nz¹⁹ and therefore be subject to New Zealand’s jurisdiction. Moreover, the platform will probably use servers located in the German jurisdiction²⁰ to store uploaded and encrypted²¹ content, since a court in Frankfurt am Main declined legal assistance²² to the US for the investigation of Megaupload infringements.

Read further:

ArsTechnica: Kim Dotcom has new “Mega” domain, says this one won’t be shut down²³

ZDNet: Dotcom picks up New Zealand domain for storage site relaunch²⁴

The Register: Kim Dotcom’s new Mega site barred by Gabon²⁵

5. ICANN’S GOVERNMENT ADVISORY COMMITTEE MEMBERS ISSUE EARLY WARNINGS ON NEW GTLDS

Members of the Government Advisory Committee (GAC) of ICANN have submitted 242 Early Warnings²⁶ concerning 145 of the 1.930 applications²⁷ for new generic Top Level Domains (gTLDs). The Australian Department of Broadband, Communications and the Digital Economy issued 130 warnings alone. India reacted to .islam and Argentina to .patagonia. Other commented extensions include .health, .sucks or .army. Some warnings also specified preferred jurisdictions for certain gTLDs. These submissions by GAC members from about 50 countries are not binding for ICANN, but an information for the applicants. More formal “GAC Advice” may be issued at a later stage. ICANN’s Board will then have to take these into consideration, but can, under certain conditions, overrule them.

Read further:

ICANN: GAC Early Warnings²⁸

Guardian: Global government panel files web domain objections²⁹

Intellectual Property Watch: Governments’ early warning notes issues on new Internet domains³⁰

6. FACEBOOK PROPOSES TO ITS USERS TO REPLACE TERMS OF SERVICE VOTES IN UPCOMING POLICY CHANGES

Facebook envisages to modify its Terms of Service documents Statement of Rights and Responsibilities³¹ and Data Use Policy³². As part of the policy changes, the platform suggests to replace its current site governance structure³³ with a new system based on direct feedback, instead of votes. Under the current system, users can vote on policy changes if over 7.000 comments are registered on proposals. 89.000 posts³⁴ from various jurisdictions were registered after a seven days comment period. Moreover, Ireland³⁵ demanded urgent clarifications on the proposed policy changes.

7. NEW GOOGLE TRANSPARENCY REPORT SHOWS INCREASING REQUESTS FROM MULTIPLE JURISDICTIONS

During the first half of 2012, Google received 20.938 requests for user data³⁶, especially from the US, India Brazil, France, Germany and the UK. Content removal requests by governments have increased by 70 percent between 2011 and 2012 to 1.791. A number of jurisdictions including Azerbaijan, Hungary and South Africa sent takedown requests for the first time. Weekly requests for copyright take-downs³⁷ increased by 1.600 percent between January and November 2012.

8. RUSSIAN SUPREME COURT RULES THAT ISPS ARE LIABLE FOR PROVIDING ACCESS TO ILLEGAL CONTENT

ISPs could lose their license in the Russian jurisdiction if they provide access to content that is illegal under federal law, the Russian Supreme Court ruled³⁸. The decision implies that in order to minimize legal risks, ISPs need to adopt proactive measures to ensure that illegal content is blocked, even before this content is added to the official blacklist³⁹ that was launched in November 2012.

9. US SANCTIONS IRAN FOR INTERNET CENSORSHIP IN ITS JURISDICTION

The US State Department imposed sanctions⁴⁰ on five public and private entities, as well as four individuals for restricting the Internet access in the Iranian jurisdiction in order to prevent the creation of an “electronic curtain”⁴¹. Targets are, among others, the Ministry of Culture and Islamic Guidance and the Center to Investigate Organized Crime, as well as companies that monitor traffic and block access to Facebook and YouTube in Iran.

10. PLANS FOR MANDATORY ISP FILTERING SCHEME IN AUSTRALIAN JURISDICTION ABANDONED

The Australian government will no longer pursue the plan⁴² to introduce a mandatory filtering scheme in its jurisdiction for websites that were rated “refused classification” by the Australian Classifications Board. Instead, the government will oblige ISPs to block websites that are part of Interpol’s “Worst of” list⁴³ of crimes against children.

11. 132 DOMAIN NAMES OF COUNTERFEIT SITES SEIZED IN US AND EU JURISDICTION

Under the title “Project Transatlantic”⁴⁴, the US Immigration and Customs Enforcement, Europol and law enforcement agencies from Belgium, Denmark, France, Romania and the UK seized 132 domains⁴⁵. The operation was part of the Cyber Monday crackdown of the US law enforcement initiative “Operation in Our Sites”: over 1.630 domains under TLD registries located in the US (including .com, .tv and .net) were seized since June 2010. The cooperating European authorities took down 31 domain names registered under .eu, .be, .dk, .fr, .ro and .uk.

12. SKYPE DISCLOSES PERSONAL INFORMATION OF DUTCH TEENAGER TO PRIVATE COMPANY

A private Dutch security company, hired by PayPal to investigate into cyberattacks related to the refusal of Wikileaks donations, identified the Skype account of an implicated Dutch citizen. Skype disclosed the personal information⁴⁶ of the 16 year old teenager without a court order, although its policy is “not to provide customer data unless we are served with valid request from legal authorities, or when legally required to do so, or in the event of a threat to physical safety”.

13. ISRAELI DEFENSE FORCE’S SOCIAL MEDIA WARFARE MIGHT VIOLATE PLATFORMS’ TERMS OF SERVICE

The Israeli army’s social media campaign that accompanied the interventions against Hamas might have violated the Terms of Service of the used cross-border platforms⁴⁷. The Israeli Defense Force actively engaged on Twitter, Facebook and Flickr by posting updates and pictures of attacks. It remains questionable if social warfare infringes the platform policies on hate speech and incitement of violence.⁴⁸

14. ENFORCEMENT OF TERMS OF SERVICE: FACEBOOK MISTAKENLY REMOVES PICTURE OF UNVEILED WOMAN

In reaction to reports on controversial content, Facebook’s review team mistakenly deleted the picture⁴⁹ of an unveiled Syrian woman protesting for female rights in the group “The Uprising of Women in the Arab World”. Moreover, Facebook suspended related accounts. Afterwards, the company stressed that the picture did not violate its Terms of Service and pointed to multiple errors that occurred within its content moderation procedures.

15. LAW ENFORCEMENT CAN ACCESS 180-DAY-OLD EMAILS WITHOUT COURT ORDER IN US JURISDICTION

According to the 1986 Electronic Privacy Communications Act, US law enforcement agents can issue subpoenas to service providers⁵⁰ to hand over emails and other electronic communications if they are older than six months. Therefore, the author of the 26-year-old bill proposes amendments⁵¹ to ensure due process and require warrants to access emails or Facebook messages.⁵²

16. TWITTER “WITHHOLDS” DMCA FLAGGED TWEETS, INSTEAD OF REMOVING THEM

In order to increase the transparency of take-down requests⁵³ and subsequent content removals, Twitter updated⁵⁴ its policy. From now on, a placeholder tweet informs readers that the original post has been removed due to “a report from the copyright holder”. Twitter withholds the tweet “until such time as we get (if we ever do) a valid counter-response from the user”.

17. IN GERMAN JURISDICTION, USERS WHO ARE EXIT NODES ARE LIABLE FOR ENCRYPTED TRAFFIC IN DARKNETS

A court in Hamburg ruled that a user of the file-sharing darknet RetroShare, a private and encrypted network, is liable for copyright infringement since he acted as an exit node⁵⁵. The court argued that therefore, he passed on an encrypted and copyright protected song shared in the network.

18. ENGLISH HIGH COURT CLAIMS JURISDICTION OVER INFRINGEMENTS DUE TO SERVER LOCATION IN MANCHESTER

In a case involving former employees of a British company who illegally used the contacts database of their old employer, the High Court of England and Wales assumed adjudicatory jurisdiction over the breach of database rights, confidence and copyrights, since the servers

involved are located in Manchester⁵⁶. The defendants accessed the servers from Singapore where they worked for a Dutch consultancy. They therefore claim that the case should be heard in the Netherlands, not the UK.

19. DEFAMATION AND VIRAL TWEETS: FORMER UK POLITICIAN DEMANDS APOLOGIES AND COMPENSATION

The former Tory treasurer Lord McAlpine filed a formal complaint against up to 10.000 Twitter users⁵⁷ who tweeted false rumors about him being a pedophile. The plaintiff’s lawyers claim that the 1.000 defamatory tweets and their 9.000 retweets are criminal offenses and demands that Twitter users with less than 500 followers formally apologize and donate⁵⁸ a “sensible and modest amount” to charity. Other users are “a separate matter”⁵⁹. It remains unclear if Twitter users outside the UK jurisdiction will also be pursued. Requests for personal identification data⁶⁰ have to be issued to California-based Twitter via the UK-US mutual legal assistance treaty.

20. APPLE REFUSES TO MARKET DANISH HIPPIE BESTSELLER AS E-BOOK DUE TO NUDE PICTURES

Apple rejected the e-books and iPad apps⁶¹ of a bestselling Danish author. The book on hippie culture features nude pictures, which have been censored with red apples by the publisher after Apple’s first refusal on grounds of its Terms of Service. However, Apple removed the adapted e-books and apps after four days again from iTunes without further explanation and due process.

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DECEMBER

1. WCIT DIVIDED OVER ITU'S AUTHORITY ON TELECOMMUNICATIONS AND THE INTERNET

Representatives of 193 jurisdictions, who gathered in Dubai for the World Conference on International Telecommunication (WCIT) to negotiate a new International Telecommunications Regulations (ITR) treaty under the auspice of the ITU, could not agree on a common text. Diverging conceptions of the role of the ITU and national sovereignty in the regulation of the Internet led to new ITR provisions¹ that were not signed by a number of countries including²: US, UK, Canada, Japan, Australia, Germany, France, Kenya, Sweden, the Netherlands, Qatar, Poland and the Philippines. Among the hotly debated topics were three issues that caused particular tension: The definition of “operating agencies”³, the notion of “the sender pays”⁴ and a proposal on the sovereign right to regulate “the national Internet segment”⁵. The negotiations stalled further as the chair asked for the “sense of the room” on a resolution about non-discriminatory access to networks, which many countries perceived afterwards as a disguised vote. Prior to the WCIT meeting, both the European Parliament⁶ and the US Congress⁷ issued resolutions that called for the ITU's non-interference in Internet governance.

Read further:

The Register: UN telecoms talks founder as US, UK, Canada and Aussies quit⁸

CNET: U.N. summit's meltdown ignites new Internet Cold War⁹

IP Watch: WCIT split after split “vote” on Internet Governance¹⁰

2. GOOGLE SITES BLOCK IN TURKISH JURISDICTION VIOLATED FREEDOM OF EXPRESSION, EUROPEAN COURT OF HUMAN RIGHTS RULED

On December 18, 2012, the European Court of Human Rights pronounced its judgment¹¹ in the case Ahmet Yildirim v. Turkey. The court decided that Turkey's decision to block Google Sites in its jurisdiction was violating the freedom of expression provisions of the European Convention on Human Rights' Article 10¹². On June 23, 2009, the Denizli court ordered to block the entire service Google Sites to enforce local laws over one blog, which insulted Mustafa Kemal Atatürk – a criminal offense in Turkey. As a consequence of this measure, Ahmet Yildirim's legal Google Sites blog was rendered inaccessible, too. The European Court of Human Rights issued a 8.500 Euros fine for Turkey and stressed the need for a “strict legal framework regulating the scope of the ban and affording the guarantee of judicial review to prevent possible abuses”.

Read further:

Hürriyet: Euro court fines Turkey for Internet restriction¹³

EFF: European Human Rights Court finds Turkey in violation of Freedom of Expression¹⁴

TechDirt: European Court of Human Rights Reinforces right to access online content¹⁵

3. FACEBOOK'S PRIVACY POLICY: AUSTRIAN STUDENT GROUP PREPARES TO CHALLENGE IRISH DPA IN COURT

The Austrian privacy association “europe v. facebook” announced on December 4, 2012 its intention to challenge the Office of the Irish Data Protection Commissioner (DPCI) over Facebook’s privacy policy in court. The student group led by Max Schrems has not been satisfied by the audit¹⁶ the Irish regulator conducted of Facebook’s Dublin based global headquarters. They plan to appeal the DPCI’s decisions, claiming the privacy watchdog “has not always delivered solid and fact based results”¹⁷ and did not yet resolve the list of 22 complaints¹⁸ issued by Schrems. According to the association, such a process could reach the European Court of Justice and lead to a landmark decision on privacy regulation. A crowd-funding website¹⁹ was created to collect the necessary resources for the student group.

Read further:

New York Times: Law students in Austria challenge Facebook privacy policy²⁰

Reuters: Student group to go to court over Facebook privacy policy.²¹

Wired: How much data did Facebook have on one man?²²

4. UK PIRATE PARTY SHUTS DOWN CIRCUMVENTION PROXY IN BRITISH JURISDICTION AFTER LEGAL THREATS

The British Pirate Party decided on December 19, 2012 to shut down a proxy on its website²³ that offered Internet users within the British jurisdiction the possibility to circumvent the country-wide ISP domain block of the torrent search engine “The Pirate Bay”. After ignoring a first demand by the British Phonographic Industry (BPI) in November 2012 to close the web proxy, it was taken offline after the BPI threatened to file legal actions against the party leaders. However, shortly after the British web proxy disappeared, new ones were created by the Pirate Parties of Argentina and Luxemburg²⁴, which equally allow British residents to access the blocked website.

Read further:

Arstechnica: BPI requests UK Pirate Party shut down Pirate Bay proxy²⁵

BBC: Pirate Party threatened with legal action over Pirate Bay proxy²⁶

TorrentFreak: Music industry threatens to bankrupt Pirate Party members²⁷

5. CHINA TARGETS VPNS TO PREVENT CYBERTRAVEL OUT OF ITS JURISDICTION

China upgraded its national blocking system. It now can discover and prevent connections via virtual private networks (VPNs)²⁸, which allow users to bypass national content blocks. Chinese ISPs are cutting off detected unauthorized VPN connections, which are illegal in the China²⁹. Companies that want to operate a VPN service for Chinese users are obliged to register with the Chinese Ministry of Industry and Information Technology. Popular VPN services incorporated in foreign jurisdictions did not do this in the past. The new policy not only impacts upon the ability of users to cybertravel to foreign, blocked websites, but also affects businesses that work via VPNs.

Read further:

Guardian: China tightens ‘Great Firewall’ Internet control with new technology³⁰

TechCrunch: China is cracking down on VPNs³¹

Bloomberg: How China is sealing holes in its Internet firewall³²

6. EU'S PRIVACY REGULATORS ENVISAGE ENFORCING LOCAL LAWS BASED ON DATA CENTER LOCATIONS

The European Article 29 Working Party apparently considers the possibility to enforce national privacy laws via the location of data centers in a given jurisdiction³³. This move could be part of the ongoing investigation in Google’s privacy policy that was updated in March 2012. Ireland, Belgium, as well as Finland could be possible jurisdictions for new examinations, since the company operates servers on their territory.

7. WITH LOW TURNOUT, FACEBOOK USERS ABOLISH THEIR RIGHT TO VOTE ON TERMS OF SERVICE CHANGES

On December 10, Facebook closed the vote on a proposed change to its privacy policies. Over 580.000 users opposed the new policies and 80.000 users were in favor of them. The update included the replacement of the platform’s vote on policy changes³⁴ with a new feedback mechanism. With 0.07 percent, the turnout remained largely below the required threshold of 30 percent of all global Facebook users and was therefore not binding.

8. SCHLESWIG-HOLSTEIN'S DPA CONCERNED ABOUT POTENTIAL EU PRIVACY LAWS BREACH OF GOOGLE MAPS FOR IOS

The Independent Center for Privacy Protection of the German state Schleswig-Holstein says a new Google Maps application for Apple's iOS may violate European data protection laws³⁵. The DPA criticizes that Google sets on the option of sharing anonymized location data with the company by default, which contravenes EU laws. Moreover, the watchdog claims that Google cannot guarantee complete anonymity to its users.

9. FACEBOOK AIDES US LAW ENFORCEMENT TO BUST CYBERCRIME RINGS IN SEVEN JURISDICTIONS

The security team of Facebook supported an ongoing investigation³⁶ by the FBI in cooperation with other national law enforcement agencies to bust cybercrime rings in Bosnia and Herzegovina, Croatia, Macedonia, New Zealand, Peru, the U.K. and the U.S. The criminals used the malware "Yahos" to infect 11 million computers. Facebook helped "to identify the root cause, the perpetrators, and those affected by the malware" that also targeted accounts on its platform.

10. US LAW FOR WARRANTLESS ELECTRONIC SURVEILLANCE OF COMMUNICATIONS WITH FOREIGNERS RE-APPROVED

The US Senate voted for the five-years extension³⁷ of the FISA Amendments Act,³⁸ which allows US authorities to intercept electronically and without a warrant all communications via email or phone from US soil with non-US residents, as long as the privacy of US citizens involved in the monitoring is protected.

11. IRISH HIGH COURT TO DECIDE ABOUT ISP BLOCKS OF THE PIRATE BAY

Major record labels are pressuring ISPs in the Irish jurisdiction to block The Pirate Bay to combat online piracy. New proceedings³⁹ before the Irish High Court are seeking an injunction to force four local ISPs to block the website. The ISP UPC refuses to comply with the demands without a court order.

12. FACEBOOK ORDERED BY GERMAN PRIVACY WATCHDOG TO ALLOW PSEUDONYMS

On December 18, 2012, Facebook has been ordered by the Independent Center for Privacy Protection of the German state Schleswig-Holstein to allow pseudonyms for its online service⁴⁰, as required by law in the German juris-

diction. According to the DPA it is "unacceptable that a US portal like Facebook violates German data protection law". Facebook could be fined €20.000 in case of non-compliance within two weeks.

13. ITALIAN ISPS ORDERED TO BLOCK TWO TORRENT WEBSITES

The Vallo della Lucania Court has ordered Italian ISPs⁴¹ to block both the domain names and IP-addresses of the two popular torrent websites torrentreactor.net and torrents.net. Three other torrent libraries are already blocked in the Italian jurisdiction.

14. EUROPEAN REGISTRY OF INTERNET DOMAIN NAMES PUTS TORRENT WEBSITES ON HOLD

After the November 2012 piracy crackdown⁴² on the DNS by US and Europe, EURid, the manager of the .eu TLD, has put several torrent websites "on hold"⁴³. Although the domains remain online, they "may not be traded or transferred pending the outcome of legal activity".

15. AUTOMATION ERRORS: MOVIE COMPANIES ISSUE DMCA NOTICES ON OWN ONLINE CONTENT

Several movie studios, which employ automatic filters to issue DMCA takedown notices, have requested Google to de-index⁴⁴ not only legal copies of their films, but also their official Facebook pages and news pieces on their activities. It rests unclear if the notices are fraudulent.

16. WEB DESIGNER CONVICTED FOR BUILDING TORRENT WEBSITE FOR CLIENTS IN SWEDISH JURISDICTION

A Swedish web designer, who was hired to create a torrent website that shared e-textbooks for students, was sentenced by the Court of Appeal⁴⁵ to 75 hours of unpaid work and 42.000 kronor in damages for assisting in copyright infringement. In April 2012, a District Court argued for his innocence since he did not actively operate the website.

17. CROWDSOURCED MAGNA CARTA FOR INTERNET FREEDOM PROPOSED IN PHILIPPINE JURISDICTION

A senator has proposed⁴⁶ a "Magna Carta for Philippine Internet Freedom". The bill that could become the first crowdsourced law⁴⁷ in the Philippines is a response to the controversial Cybercrime Prevention Act, which was stopped by the Supreme Court. It foresees, among others, mandatory court orders to take down websites and treats online defamation as a civil liability.

18. TAJIKISTAN BLOCKS FACEBOOK IN ITS JURISDICTION

Authorities in Tajikistan have decided to block Facebook⁴⁸ in their jurisdiction to prevent the spread of “mud and slander”. Tajikistan already blocked the social network in March 2012 for 10 days.

19. HUNTER MOORE LAUNCHES NEW HIGHLY CONTROVERSIAL WEBSITE UNDER US LAW

Hunter Moore, the creator of isanyoneup.com has launched a new website⁴⁹ under huntermoore.tv that is designed to post nude pictures, often without the consent of potential victims. The globally available website is registered in the US jurisdiction under Tuvalu’s cc-TLD,

which is operated by US-based company Verisign. Moore therefore intends to benefit from local legal protections: Section 230 of the US Communications Decency Act exempts website owners from liability for content that is posted by third parties.

20. GERMAN CONSUMER GROUP SUES FACEBOOK IRELAND OVER APP CENTER IN BERLIN COURT

The Federation of German Consumer Organizations is taking legal action against Facebook Ireland⁵⁰, the Dublin based entity that is responsible for all users outside the US and Canada, before a regional court in Berlin. They claim that Facebook continues sharing personal data with the operators of third-party applications without the explicit consent of Facebook users.

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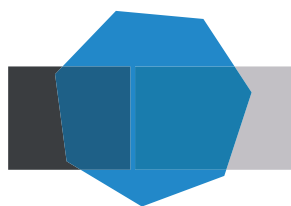
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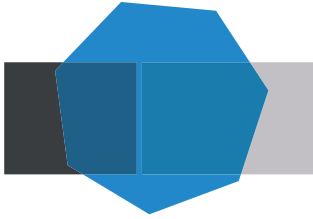
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The Internet & Jurisdiction Project facilitates a global multi-stakeholder dialogue process to address the tension between the cross-border nature of the Internet and geographically defined national jurisdictions. It provides a neutral platform for 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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The members of the Internet & Jurisdiction Observatory network provide expert input into the global multi-stakeholder dialogue process and help the Internet & Jurisdiction Project to detect trends related to the tension between the cross-border nature of the Internet and national jurisdictions around the world. Based on a progressive crowd-based filtering process, they identify the most relevant cases. This ranking is the backbone of the Internet & Jurisdiction Retrospect, our monthly newsletter that informs the different stakeholders who participate in the ongoing dialogue process about emerging trends.

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