

Update

The Communications Bill

The consultation period of the Parliamentary Joint Committee on the draft Communications Bill closed in late August. The Bill will allow the government to compel ISPs to provide information to the police and intelligence services. Concerns have been raised at the following aspects of the proposals:

- a. the unprecedented volume and range of data to be collected;
- b. the new collection and processing of "third party" communications data by network operators;
- c. "filtering arrangements" described by some as a giant "profiling" tool creating detailed profiles on *all* users of electronic communications systems;
- d. the lack of restrictions as to the use of this data.

Even moderate critics express concerns that this is a bare authorization, conferring an unfettered discretion on the Executive to determine the appropriate level and circumstances for intrusion into personal privacy. Crucially, the Bill lacks any credible oversight mechanism (also deficient under the existing arrangements as under the Regulation of Investigatory Powers Act (RIPA), the Interception Commissioner limits his reach to widespread misuses of powers).

<http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-communications-bill/>

Worryingly, a parallel European Telecommunications Standards Institute (ETSI) standard framework is under negotiation—this sets technical standards relating to the real time interception of the content of communications. A 2012 draft report from ETSI on Lawful Interception (LI) and Cloud/Virtual Services explains that "the cloud service provider must implement a Cloud Lawful Interception Function (CLIF)." This may include APIs, routine disclosure of encryption keys and deep packet inspection.

Some commentators have noted that once this infrastructure is in place, it will enable interception. See above as to the lack of any scrutiny or oversight.

Cloud

A Registry has been established to help users assess the security of cloud service providers. The Security, Trust & Assurance Registry (STAR), is a non-profit to which cloud providers submit information on their compliance with best practices. The big issue is Data Protection and the UK Act restricts transfer out of the EEA of personal data (which should be assumed to include IP addresses, emails and all client/customer data) so if servers are outside of the UK--either find a wholly EU provider or take legal advice. The ICO will release guidance for UK organizations using the cloud in the autumn. Interestingly, enquires on what would satisfy our own regulator, the SRA, revealed that it wants law firms using the cloud to ensure the SRA can directly access records stored in the cloud. We will be staying firmly grounded for the time being.

<https://cloudsecurityalliance.org/star/>.

Trade Marks

The appeal in the highly controversial case between Louboutin and YSL was upheld in relevant part by the Second Circuit Appeals Court, holding the District Court erred in finding a single color could never serve as a trade mark in the fashion industry. A single color can be a valid trade mark where the color has attained a secondary meaning and therefore identifies and distinguishes a particular brand and indicates trade origin or source. The Appeals Court ruled that Louboutin's red sole had acquired a secondary meaning but pursuant to section 1119 of the Lanham Act the Court instructed the USPTO to limit Louboutin's red sole mark to uses where the red sole contrasts with the remainder of the shoe. This was win-win as YSL's shoe is monochrome and therefore non-infringing. See the [31-page decision](#)

Nominet

Those who follow matters relevant to Nominet may be interested to read the following:

See <http://www.telegraph.co.uk/technology/news/9478319/Nominet-rocked-by-disability-discrimination-ruling.html>.

Patents

Tax relief

HMRC has published a Guidance Note on the UK 'Patent Box' scheme. The scheme enables companies to elect a lower rate of corporation tax (10%) to profits earned after 1 April 2013 from UK and EU patented inventions. Companies wishing to benefit from the Patent Box must make an election within two years after the end of the accounting period in which the relevant profits and income arose.

http://www.hm-treasury.gov.uk/patent_box.htm

<http://www.hmrc.gov.uk/budget-updates/march2012/patent-box-tech-note.pdf>

Prior art

Google has created a new 'Prior Art Finder' to enable inventors to determine if their innovation is actually novel by reviewing online material including documents at the US Patent and the European Patent Office.

<http://googlepublicpolicy.blogspot.co.uk/2012/08/improving-google-patents-with-european.html>

Right to communicate anonymously

The European Court of Human Rights (ECHR) is to hear a German case challenging a ban on the sale of anonymous prepaid mobile phone cards --at the heart of which is freedom of expression and privacy. <http://www.statewatch.org/news/2012/aug/07echr-mobiles.htm>

Censorship

Reporters Sans Frontières (RSF) will start accepting the publication of censored documents in October 2012 on a platform named “We Fight Censorship”, distributing censored documents received from journalists, bloggers or political dissidents in order to offer a “digital shelter” for those who, by revealing such documents, might be persecuted, condemned, imprisoned or even assassinated.

Net Neutrality

The European Commission (EC) announced in July that it would begin a period of public consultation on the subject of internet neutrality.

See on-line public consultation on "specific aspects of transparency, traffic management and switching in an Open Internet" Deadline for reply: 15 October 2012

http://ec.europa.eu/information_society/digital-agenda/actions/oit-consultation/index_en.htm .

Those who follow these issues tell us that in the EU many think transparency is an acceptable trade-off off for neutrality.

10 UK ISPs have signed up to the Open Internet Code of Practice by which signatories must identify offers that restrict access to the full web, although some "traffic management" and court ordered blocking of services are legitimate restrictions provided they are not used "in a manner that targets and degrades the content or application(s) of specific providers." The signatories must also use "clear and transparent traffic management policies".. Virgin Media, Vodafone and Everything Everywhere have elected not to sign. See

http://www.broadbanduk.org/component/option,com_docman/task,doc_view/gid,1340/Itemid,63/

Google punishes for Takedowns

Google announced it will alter algorithms and lower the search rankings of websites that receive a high number of valid DMCA or Ecommerce Directive or similar takedown requests. This move follows pressure from the entertainment industry. Google will count all notices and defended itself from criticism by pointing out that there are remedies for put-back and other sanctions where removal is wrongful.

<http://insidesearch.blogspot.co.uk/2012/08/an-update-to-our-search-algorithms.html>

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