

The Swedish IT and Telecom Industries would like to add the following comments regarding point no. 10 and 11.

10) Do you consider the Memorandum of Understanding, recently adopted in France, as an example to followed?

No. European Union Citizens of today, and even more of tomorrow, are dependent of internet based communication. Already today many EU-Citizens are to a large extent dependent on the internet in their daily life; for contacting their governmental and municipal agencies, paying their bills, shopping and communicating with their employers, associates, business partners, family and friends. To inhibit this civil right would be woefully wrong and would seriously delay and obstruct Europe's further development towards an interactive modern society.

The above reasoning shows the obvious need of careful reconciliation between the need of protecting some rights and the potential inhibitions of other rights. There must, of course, always be proportionality when balancing the need for expanding the protection of some rights when there are any risks of affecting other rights. Depriving European Union Citizens of their right to communicate though the internet with increased protection of intellectual property rights as the only reason is not proportional. The surveillance effort needed to enable such a discontinuation of an internet subscription as referred to would be extensive and also mean a great intrusion of all European Union internet subscribers' privacy. The sheer knowledge of this surveillance could also have an inhibiting effect on EU-Citizens will to use the internet as a means of communication. This in itself implies even greater disproportionally.

The rule-of-law-principle raises another question regarding disconnection of internet subscribers' connection due to unlawful sharing of intellectual property. Internet is more and more accessed through wireless networks and it's not certain that the subscriber of a certain internet connection is the perpetrator of a piracy crime being committed using that connection. Has the EU-Commission reflected on the obvious problems related to the existence of internet cafés, wireless hotspots in cities, airports, and universities and such? How shall the consumer be able to guarantee that no one else uses his or hers connection, or that people connecting to the internet through his or her connection is not engaging in a piracy crime? Even if the owner of a certain wireless network encrypts it, it can easily be hacked by any one who has basic skills in computer hacking. When a connection, as described above, is monitored and "flagged" for having spread intellectual property, how will the legal status of the subscriber of that connection look like? How will that person be able to prove that someone else has used his or her connection? The risk of innocent European Citizens being caught in the middle and not being able to prove their innocence is substantial.

Another argument against this type of Memorandum of Understanding is that private interests (internet service providers [ISP]) is being granted the "privilege" of doing tasks previously reserved for law enforcement bodies (police- and district attorneys) only. It can not be guaranteed that these private agencies or companies have the competence to determine what is to be seen as an intrusion in intellectual property rights or not. To assure that competence, mind that many IPS's are small companies, would bring large costs for the ISP's as well as mark a change of trend in law enforcement. To outsource law enforcement to private interests is clearly inappropriate in a democratic society based on the principle of rule of law.

11) Do you consider that applying filtering measures would be an effective way to prevent online copyright infringements?

No. To filter in advance the contents of the internet is to limit the European Union Citizens lawful right to freedom of information. This mean that some entity, public or private, will be handed the responsibility of deciding which information is to be seen as fit or unfit for the EU-Citizens to take part of. Such a restriction of information freedom and freedom of speech does not belong in a democratic society. The possible benefits of the proposal are not proportional to the inhibition of the EU-Citizens' right to freedom of information. It creates a great risk of inhibiting Europe's further development as a modern, interactive and free society.

Best regards,

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