



La Quadrature du Net
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Paris, September 24th, 2008

Dear MEP,

On September 24th the European Parliament will be examining the first reading of the bill proposing the reform of the law on electronic communications, known as the Telecom package.

At the beginning of this summer this bill aroused a great deal of controversy. Several amendments which were adopted during commissions were denounced by some NGOs, as they would lower the level of data protection in Europe, and also enable Member States to substitute an administrative authority for a judicial one in order to fight file sharing.

At the beginning of September the European Data Protection Supervisor (EDPS), which is an independent european authority, published its opinion, which confirmed the analysis of the NGOs. The EDPS was particularly concerned with **some amendments which pave the way for the graduated response** (or 3 strikes and you're out). This mechanism extends to disputes related to file sharing measures intended fight against terrorism or child pornography.

The EDPS recommended that such dispositions be deleted. The rapporteurs did not follow this primary advices of the EDPS, preferring to try to re-write those amendments criticised, so as to limit their effect. There was some progress, but it must be said that the re-writing of the amendments gave rise to a rather vague, loose text, which introduced concepts that were unknown to European law, and which were taken directly from the proposals of the French cinema lobby (like the "cooperation" between ISPs and producers).

The primary risk is that this rather vague text might be used by certain Member States to give permission to administrative authorities to restrict, without any prior judicial decision, the freedom of expression and information of internet users accused of unauthorized copying.

This risk is real. In July the French government proposed a bill transferring repressive power to an administrative authority which would act at the request of producers of content. It may be voted in November. The United Kingdom wishes to take the same steps.

In our opinion, **the European Parliament must eliminate this risk**, which could question both the principle of proportionality and the separation of power, but which could also weaken the acceptability of those measures which are necessary to fight crime.

It must not be possible to extend the measures that national public authorities can implement to fight terrorism or child pornography to disputes concerning non-profit sharing of music and film on the Internet between individuals. Internet users exchanging works without permission should not be treated in the same way as criminals.

This is why we ask you to vote for Amendment 138 to the Trautmann report, tabled by a wide spectrum of MEPs (Guy Bono, Daniel Cohn-Bendit, Zuzana Roithova, Michel Rocard, Marielle de Sarnez, Christofer Fjellner, Rebecca Harms, Marco Cappato, Jean-Luc Benahmias and others).

Amendment 138 states that the national regulation authorities will ensure that no restriction concerning freedom of expression and information of a citizen is taken without a prior decision of the judicial authority, except in cases of 'force majeure', threats to security or national criminal law.

Amendment 138 is a guarantee that a bill like the french one about graduated response will not be adopted in Europe. This amendment is in the line with the Bono resolution adopted in April by the European Parliament.

We also ask you to vote against Amendment 34 to the Harbour report which would allow Member States to take measures which harm privacy. This amendment puts national security, crime and file sharing on the same level !

There are other zones which are not at all clear. As well as voting for Amendment 138 and against Amendment 34, we also invite you to clarify the rest of the text. Please find enclosed our recommendations concerning the vote on the Telecom Package.

We hope that you will feel concerned by our request and thank you for your time and attention.

Yours faithfully,

For la Quadrature du Net, Christophe Espern, co-founder