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GESAC PRESS RELEASE

GESAC calls for the reinforcement of the liability of Internet service providers

Brussels, 18 November 1999 - The proposal for a directive on certain legal aspects of electronic commerce in the internal market¹ is on the agenda of the next Internal Market Council of 7 December, with a view to obtaining a political agreement.

European authors² are extremely concerned about the content of the text on the Council table because of the chapter on the liability of online service providers known as "intermediaries" (telecommunications operators, network access providers and hosting service providers).

The proposal for a directive contains a **broad principle of exemption from liability** for these operators, which is **unacceptable**. This principle, incomprehensibly, leaves the door wide open for the increasing and alarming phenomenon of the circulation of illegal content on the networks of the information society, including racist, pornographic and pirated content.

A number of Member States, quite logically, want the directive reinforced in this respect.

Therefore it is inconceivable that access providers cannot be held liable when, for instance, illegal content is featured in web pages communicated in the context of their news groups - forums dedicated to child pornography or pirated music, etc. - of which they could have been aware. In practice, however, access providers are already monitoring these "news groups", thus demonstrating that their role regarding the content circulating on the networks is justification for reinforcing their legal liability.

Moreover, the vast majority of sites are located or hosted in third countries. Access providers in Europe are therefore an essential link in the chain to combat the dissemination of illegal content in Europe and to block access to it. To ensure sound management of the Internet, it is necessary to reinforce the conditions regarding the liability of these operators, as called for by a number of countries.

¹ Amended proposal of 3 September 1999 - COM(99)427 final

² GESAC comprises 24 of the biggest authors' societies in the European Union, Norway and Switzerland.

It is also inadmissible that the Community proposal should fall short of the American law³ which, while far from being a panacea, nevertheless offers intellectual property rightholders some additional minimum guarantees.

For instance, it is quite shocking to see that the operators are not required by the Community proposal to keep (in particular for the purposes of legal proceedings) information needed to identify those supplying illegal content to networks. It is the legislator's duty to ensure that rightholders are in a position to exercise their rights effectively, which will be impossible if the operators are exempt from all liability and if, at the same time, the suppliers of illegal content cannot be pinpointed. This is extremely serious in the case of piracy of works protected by copyright and in that of child pornography, incitement to racial hatred, etc. Some Council delegations have in fact voiced this perfectly legitimate concern.

Lastly, it is inconceivable that intermediaries should be able to circumvent or interfere with impunity in technical measures used by rightholders, and recognised by the industry, to identify or protect their works and to manage their intellectual property rights efficiently on networks. Such measures are essential and may be used when devising technical automatic filtering systems for illegal content, compatible with industrial standards and capable of being used by online operators under technical and economic conditions that are quite acceptable to them. It is therefore quite legitimate to wish to make them liable if they do not comply with this, to the detriment of the protection of consumers, minors (filtering techniques for pornographic material, for instance) and authors (filtering of pirate content).

In response to these concerns, the European Parliament had substantially amended the text during its first reading. The "Coalition of Rightholders" - which comprises organisations of rightholders in the music, audiovisual, visual arts, publishing and software sectors - had supported the Parliament's opinion in September. But the Commission did not take account of these amendments in its amended proposal for a directive, and it continues to defend this proposal.

GESAC urges the Member States to reinforce the conditions governing the exemption from liability of online service providers. New transmission technologies are no excuse for leaving citizens at the mercy of unscrupulous individuals or companies disregarding their civic and legal obligations, without giving incentives to operators known as "intermediaries" to cooperate, within their limits, in combating the dissemination of illegal content. It is clear that a balanced system of liability would form part of these incentives.

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