



A Fair Internet for All Strengthening Our Citizens' Rights and Securing a Fair Business Environment in the Internet

European Digital Rights welcomes the EPP Strategy Paper “A Fair Internet for All – Strengthening Our Citizens' Rights and Securing a Fair Business Environment in the Internet”. We believe that the preparation of the document was a valuable initiative, not least because, as the EPP paper points out, the Internet has created a new world of possibilities and is an essential tool for communication, innovation, and economic growth – and fundamental rights such as freedom to communication, of course.

Net neutrality

Net neutrality is crucial for fundamental freedoms, innovation and competition. In a neutral net, end users face no access limitations to applications, content, protocols and services – and innovators have a huge “single market” for their services. Net neutrality is at the core of the economic and societal success of the Internet as we know it today. Therefore, EDRI welcomes the EPP's positions on Net and search neutrality, considering them the guiding principles that must be preserved in order to protect the open Internet. It is the duty of the political institutions of our information society to keep this vital infrastructure accessible, competitive and open. The importance of the Internet has been correctly highlighted by the paper's call on the Commission to put an end to existing discriminatory practices.

It should be noted however, that the EPP's commitment to Net neutrality appears to be in contradiction with the Paper's call for a modification of the ISP liability regime when it comes to the protection of IP rights (3.a, p. 7). It appears politically untenable to create legal incentives for ISPs to invest in monitoring and filtering/blocking technology, in the hope that this will benefit other industries, while demanding that ISPs refrain from using this technology for their own business purposes.

International agreements

A second important issue brought to the fore by the EPP's paper is the extent to which the EU's flexibility is restricted by international trade agreements. The EPP paper argues in favour of a change in the ISP liability regime. However, EPP led support¹ for the ratification of the EU-South Korea Free Trade Agreement which was subsequently adopted by a large majority in the European Parliament. Since the relevant articles of the E-Commerce Directive concerning ISP liability have been copied in their entirety into this international Agreement, the European Parliament has de facto prevented itself from a possible modification of the former – even though the EPP now sees a need to do this. In exactly the same way, the Anti-Counterfeiting Trade Agreement (ACTA) would place severe practical limitations on the EU's range of choices when discussing the upcoming review of the IPR Enforcement Directive.

¹ EU South Korea Free Trade Agreement: EPP Group to lead support for ratification
<http://www.eppgroup.eu/press/showpr.asp?prcontroldoctypeid=1&prcontrolid=10038&prcontentid=17046&prcontentlg=en>

Online Behavioural Advertising

Regarding behavioural advertising online, EDRI welcomes the EPP's position regarding a stricter control of the use for cookies and a ban on data profiling. It is indeed surprising that the world-leading industries specialised in communication and innovation seems not to know how they could communicate with potential customers if they were prevented from using invasive data profiling techniques. Coherence should also be taken into account when it comes to profiling – it is difficult to defend support for the collection of data for profiling purposes for (PNR) profiling and opposition to collection of data for other profiling purposes (advertising).

Ancillary Copyright Provisions

The paper's comments suggests the introduction of ancillary copyright provisions – new copyright rules in an environment which is already so fragmented and so complex as to undermine the very author's rights that the EU is seeking to defend. The suggestion seems to be unnecessary since publishers are already protected by copyright provisions and are given extensive rights by journalists through contracts or general terms and conditions. Furthermore, we fear that new copyright provisions are likely to create exceptions for monopolies, leading to an uncompetitive market and will thus be to the detriment of small publishers. It would also create new administrative burdens (since a new collecting society would be needed) and will ultimately limit the freedom of communication and freedom to do business.

Copyright in the Digital Era

Regarding existing and future copyright regime in the information society, EDRI considers it essential to re-think copyright and find alternatives to the repeatedly failed attempts to introduce repressive measures to enforce an outdated law. Today, we need to find new and flexible solutions for an era which is characterised by constantly changing and developing technologies. In order to take the first steps towards the creation of a single digital market which is more attractive for start ups and innovators in the digital field, we need to start discussing solutions. The European Union needs a simple, clear and harmonised legal framework. The European exception regime for example is a mosaic of legislation creating unnecessary and unpredictable rather than harmonising it. Legal platforms to access, share and stream audiovisual content are essential to achieving the European digital single market, as well as a cross-border licensing system and pan-European offers, it is crucial to improve these aspects that would have positive effects both on creators and consumers/rights users.

We would like to commend the EPP on its work on this paper – it offers important support for key policies in the digital environment and helpfully identifies areas where further work is needed in order to create coherent and effective policy for the good of all European citizens.