



EUROPEAN COMMISSION
DIRECTORATE-GENERAL HOME AFFAIRS

Directorate A : Internal Security
Director

Brussels, **26 NOV. 2012**
HOME/A2/CAI/mk Ares(2012)

Mr Joe McNamee
Executive Director
European Digital Rights
Rue Belliard 20
B-1040 Brussels

Dear Mr McNamee,

I refer to your letter dated 2 November concerning blocking of users' access to web sites containing child sexual abuse images.

The Commission does not share your assessment that voluntary action taken by the Internet industry to prevent the misuse of its services for the dissemination of such images violates the Charter of Fundamental Rights of the European Union.

The Charter is, according to its Article 51, addressed to and binding upon the EU Institutions and Member States when they act within the scope of EU law. It is not, in general, binding upon private individuals or undertakings such as Internet Service Providers. The requirement in Article 52 of the Charter that limitations on the exercise of fundamental rights must be provided for by law therefore does not apply to such voluntary action.

In any event, in so far voluntary action by the Internet industry to prevent the dissemination of child sexual abuse images might, indirectly, affect the right to freedom of expression recognised in Article 11 of the Charter, this would fall within the bounds of legitimate and proportionate restrictions allowed by the Charter. As the European Court of Human Rights has recognised, the freedom of expression on the Internet can be legitimately limited to protect children and States have a relatively wide margin of appreciation in which to do so¹.

It is on this basis that the EU legislature approved Directive 2011/92/EU in 2011.

The Directive explicitly allows Member States to take measures to block access to webpages containing or disseminating child sexual abuse images, subject to detailed legal guarantees (i.e. transparent procedures and adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate,

¹ See, e.g., *K.U. v. Finland*, no. 2872/02, 2 December 2008 and other case-law cited at http://www.echr.coe.int/NR/rdonlyres/A055F9CF-47DA-408A-9D90-BBEF8014BB8A/0/RAPPORT_RECHERCHE_Child_sexual_abuse_EN.pdf.

that users are informed of the reasons for the restriction, and a possibility of judicial redress). The Directive also specifically recognises that it is without prejudice to voluntary action taken by the Internet industry to prevent the misuse of its services, or to support for such action by Member States.

It follows that Member States implementing the directive, either by deciding to authorise blocking, or supporting voluntary action by the Internet industry, subject to the provisions of the directive and with the safeguards contained therein, do not act in breach of the Charter.

It may be added that the Directive requires the Commission, to report, by December 2015, to the European Parliament and the Council on the implementation of the provisions regarding the removal and blocking of webpages containing or disseminating child pornography. On that occasion, the Commission will check compliance by the Member States with the requirements of the Directive, in particular with the safeguards that need to be in place. In the meantime, of course, we work together with Member States to facilitate their implementation of the Directive.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Reinhard Priebe', with a long horizontal flourish extending to the right.

Reinhard PRIEBE