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New Study Documents Growing Role for Private Companies in Policing Online Communications

Finds that powers traditionally employed by law enforcement agencies and the judiciary are silently being delegated by governments to ISPs and corporations under the guise of industry “self-regulation”

Brussels — Internet service providers around the world are taking on more important roles in their states’ efforts to counter the dissemination of illegal online content and a report released today by European Digital Rights indicates that this trend is likely to become stronger as we move into a new environment of “extra-judicial sanctions” against consumers.

The report details significant efforts to entrust intermediaries with policing powers, surveys the impact of “voluntary ‘self-regulation’” on online content and draws attention to its repercussions for openness of the Internet and for innovation.

The study found that the term “self-regulation” is being inappropriately used to designate what amount to appeals to monitor, judge and sanction allegedly illegal websites and consumer behaviour. Proposed legislation and “non-binding guidelines” are forcing intermediaries into a position in which they can no longer avail themselves of legal protections — where they are obliged, in effect, “to police private online communications, often in blatant disregard of legal safeguards and even to impose sanctions for alleged infringements”.

“This fundamental change in the concept of “self-regulation” represents a danger for the core values of the Internet and the benefits that these values provide to society.”

Should Internet intermediaries become “privatized enforcement systems”? Companies “come under intense pressure in relation to individual incidents that attract the interest of politicians and/or the press”. The measures recently taken by Visa, Mastercard, PayPal and Everydns against Wikileaks are a case in point.

The author catalogues international proposals that aim to persuade industry to engage in a vigilante system of monitoring and sanctioning, and include:

- a series of ongoing ‘public-private dialogues’ organized by the **European Commission** to encourage hosting providers to engage in “extra-judicial rulings of illegality”
- a 2010 **European Commission** funding proposal incentivising companies to engage in “self-regulatory” Internet blocking of allegedly illegal online material

- discussions launched by the **Council of Europe's** Assembly in 2010 whose “intention appears to be to increase the legal obligations of intermediaries” despite the fact that this would be “contrary both to the letter and the spirit of the 2003 Declaration on freedom of communication on the Internet”
- 2010 **OECD** discussions, which aim to increase the responsibility of Internet intermediaries in advancing “public policy objectives”
- the Anti-Counterfeiting Trade Agreement (**ACTA**), whose draft contains provisions that would encourage or coerce ISPs into policing their networks and enforcing extra-judicial sanctions, where they deem it to be appropriate
- EU/India and EU/Korea bilateral free trade agreements, whose provisions would change the **EU acquis** on intermediary liability

The encouragement of extra-legal measures to limit access to information, proactive policing of the Internet and the exclusion of law enforcement authorities in investigating serious crimes are factors that contribute to the weakening of the rule of law and democracy.

While these appear to be regressive steps away from freedom, the NGO's study found, for instance, that “the European Commission appears far from perturbed by the dangers for fundamental rights of this approach and appears keen to export the approach”.

“This process is gradually strangling the openness that is at the core of the Internet. This openness has enhanced democracy, has shaken dictatorships and has boosted economies worldwide. This openness is what we will lose through privatised policing of the Internet by private companies – what will we gain?”

The report, *The slide from “self-regulation” to corporate censorship*, was researched and written by Joe McNamee, Advocacy Coordinator at European Digital Rights. Based in Brussels, EDRi monitors threats to civil rights in the area of information and communication technology and develops awareness-raising projects. Reports have focused on the protection and promotion of freedom of expression, privacy, data protection and access to information.

The full copy of the report is available on the [EDRi website](#)

About European Digital Rights (EDRi)

European Digital Rights is a European not for profit, non-governmental digital rights organisation consisting of 29 member NGOs, based in or having offices in 18 different countries in Europe. EDRi's objectives are to promote, protect and uphold fundamental human rights and freedoms in the digital environment. Journalists can find useful information on the EDRi website, www.edri.org.



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