

# CLIENT ALERT

## Electronic Communications & IT

September 9, 2008

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### Towards a European Global Online Freedom Act

*On July 18, 2008, a cross-party alliance of MEPs has presented a proposal for legislation on a European Global Online Freedom Act (EU GOFA). The proposed Directive would ensure the global freedom on the internet and is drafted along the lines of the American Global Online Freedom Act (GOFA).*

#### A European GOFA

The proposed European GOFA is a Directive which contains provisions on the promotion of global internet freedom, minimum corporate standards for European companies who provide Internet and Information society services, and provisions on export controls and trade sanctions for internet-restricting countries.

The EU GOFA was initiated by Jules Maaten (ALDE) and is supported by Chistofer Fjellner (EPP), Edward McMillan-Scott (EPP), Paulo Casaca (PSE), Karin Riis Jørgensen (ALDE), Henrik Lax (ALDE), Eva Lichtenberger (Verts) and Frithjof Schmidt (Verts).

According to these MEPs, this European counterpart of the American GOFA has to make sure that Europe stays in the forefront of the global promotion of human rights and democratization and the protection of dissidents. They refer to technology companies who have succumbed to pressure by authoritarian governments to provide them with information about Internet users which led to the arrest and imprisonment of cyber dissidents. As more and more authoritarian States would censor the internet by blocking websites and filtering search results, and intimidate internet users through 'cyber police' and obliged registration, EU action would be needed.

#### Promotion of global internet freedom

Regarding the promotion of global internet freedom, the proposed Directive states that it should be EU policy to promote global free speech on the internet and global free flow of information. The Directive provides for the establishment of an Office of Global Internet Freedom (OGIF) as part of the European External Action Service and the designation of 20 million euros for the

development and distribution of anti-censorship tools and services. Also, the EU Annual Report on Human Rights should contain an assessment of the freedom of electronic information in each foreign country.

### **Minimum corporate standards**

The articles on minimum corporate standards for European Internet companies contain provisions on the protection of EU and Member State-supported online content, provisions regarding Internet censorship and search engine filtering and rules for European business with content-hosting services.

For example, in order to protect the integrity of user identifying information, the proposed Directive provides that European businesses with internet content-hosting services are prohibited to provide personally identifying user information to officials in internet-restricting countries except for legitimate foreign law enforcement purposes.

Moreover, any European business that creates, provides, or hosts any Internet search engine or maintains an Internet content hosting service may not locate, within a designated Internet-restricting country, any computer hardware used to store, serve or maintain data involved in providing such search engine or content hosting service.

Penalties are provided for failure to uphold the above stated minimum standards for corporate behavior.

### **Export controls and trade barriers**

The last articles of the proposed Directive are on export controls and trade barriers.

According to the proposed Directive, regulations should be promulgated to ensure export license requirements before any person subject to the jurisdiction of the EU may export any item to an end user in an Internet-restricting country for the purpose of facilitating Internet censorship.

Furthermore, the European Commission should commence negotiations and gain support for the GOFA legislation in order to obtain the agreement of other countries to enact similar legislation and to pursue the development of international agreements on treating all unnecessary limitations to the provision of Internet and information society services in third countries as barriers to trade.

### **Future for the GOFA?**

As always, the question remains whether a proposal such as the EU GOFA will make it through the entire legislative process. The proposal is far-reaching, but already has an American predecessor and seems to be supported by a relatively diverse alliance of MEPs. We will report on further developments.

**Links:** <http://www.julesmaaten.eu/uploads/EU%20GOFA.htm>

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### **Update on the EU Telecoms Reform Package**

*On July 8, 2008, two EU parliamentary committees approved the EC package of proposals to reform the EU telecoms legislation. The proposals were discussed in plenary session on September 2, 2008. The plenary vote is scheduled on September 23, 2008.*

In November 2007, the European Commission adopted proposals to reform the EU telecoms rules. The suggested reform includes strengthening consumer rights, giving consumers more choice by reinforcing competition between telecoms operators, promoting investment into new communication infrastructures and making communication networks more reliable and more secure, especially in case of viruses and other cyber-attacks.

In order to become law, the Commission proposals have to be approved by the European Parliament and the EU Council of Ministers. During the Telecom Councils of November 2007 and June 2008, the EU Telecoms Ministers already expressed their views on the EC's proposals. As mentioned in our [previous TMT newsletter](#), strong opposition was expressed against the plans to create a European Telecoms Market Authority.

On July 8, 2008, a first step towards the approval by the European Parliament was taken with the vote on the proposals by two parliamentary committees: the Industry, Research and Energy (ITRE) Committee and the Internal Market and Consumer Protection (IMCO) Committee. The committees approved the proposals, but also adopted several controversial amendments regarding online piracy. These amendments have raised fierce reactions from several digital and privacy rights organizations and are a topic of discussion on blogs and forums.

One of the amendments states that a national regulatory authority may issue guidelines and take other measures in order to prevent degradation of services and slowing of traffic over networks, to ensure that the ability of users to access or distribute lawful content or to run lawful applications and services of their choice is not unreasonably restricted. According to the campaigners, this amendment would make it easier to enforce the controversial "three strikes" law, according to which users would receive two warnings if they download copyright material without permission, followed by a complete web ban. In April, the European Parliament already signaled its opposition to these initiatives. Campaigners are worried however that this system, supported by the French Presidency, would still find his way into European legislation "through the backdoor," namely via this amendment.

Although the ITRE and IMCO votes are important steps towards shaping the final legislative texts, the final view of the European Parliament will only be known once the Plenary has voted on these proposals. This vote was initially planned to take place on September 2, 2008, but has now been postponed until September 23, 2008. If the vote gets trough on time, the Council of Telecoms Ministers of November 27, 2008 could, under the French Presidency, pave the way for finalizing the legislative texts. Once adopted at EU level, the revised rules have to be incorporated into national law before taking effect. The European Commission expects the new framework to be in place from 2010 onwards.

**Links:** [http://ec.europa.eu/information\\_society/policy/ecomm/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecomm/index_en.htm)

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