ASOCIACIÓN DE INTERNAUTAS

To the attention of Hans-Gert Pöttering
President of the European Parliament

Madrid, 13th. of August 2008

His Honour,

In my capacity as the President of the Asociación de Internautas in Spain I took the liberty, in the exercise of the petition right, to address to you in order to make some complaints and suggestions on behalf of the above mentioned association, that will undoubtedly turn the European Parliament into a clearer and closer forum for the european citizens.

The Asociación de Internautas is a veteran association that, although initially planned for the defense of the Internet users and consumers, has been evolving towards the activism in favour of the civil rights in the scope of the new technologies, in particular the technologies of information and communication (TIC), which is the current battlefield. In our background there are important achievements like the flat rate, the campaign against the digital tax –in which we got more than two million signatures from main political groups, labour unions, as well as professional and civic organizations- Although the film and sound recording lobbies, as well as the copyright holders' one, have put enough pressure on the Spanish Government to get a decree to develop the "Compensation Canon", we do not surrender since, we insist, social support is strong and there exists the compromise to remove it from the main political group presently in the opposition.

Nowadays we are immersed in an international campaign that, under the motto "For the civil liberties, against surveillance and against the digital tax", is organising a protest on an european scale because of the reduction of the liberties and the society of surveillance that is coming into fashion after September,11th which, in the case of Europe, reached its maximum degree with the Directive 2006/24/CE and the laws adopted in the National Parliaments to transpose it. In the particular case of Spain, we have appealed the law that incorporates it before the Constitutional Court and , together with similar NOGs across Europe, we will not stop until we get sitting that Directive before the European Court of Human Rights.

Having said that in order for you to understand our views, I will now set out the motives for our complaints, which could be no other than the doubts about the content and scope of the amendments to the so-called "Telecom package", which could be soon adopted by the EP, since we understand that the process is not being carried out with the desirable clarity and transparency, clarity and transparency which the state-of-the-art technology perfectly allows.

In a joint meeting of the Committee on Internal Market and Consumer Protection (IMCO) and the Committee on Industry, Research and Energy (ITRE) on July, the 7th , it was adopted in first reading by the Commission the Telecom package, which in principle seemed to have no other goal that the establishment of rules for the telecommunication operators and the ISPs across the european common market. However, and according to informations spreaded over the Net, the above mentioned package affects five Directives and contains more than 800 amendments, although specially worrying are the so-called H1, H2, H3 , receiving their names after the first letter of its author, the British MEP Malcolm Harbour (EPP-ED). These amendments would be addressed to develop and complete the content of another two amendments,recently adopted in another Committee –the LIBE one- proposed by the also conservative British MEP Syed Kamall , the so-called by the same reasons as K1 and K2, which were aimed to avoid or detect IP infringements.

These technical measures allow the installation and forced execution of spyware, capable of monitoring and filtering users electronic communications and, as we will see, it is complemented by the H1 amendment (related to trusted computing) and the H2 and H3, which impose ISPs the obligation to cooperate with the private police of the content providers and the copyright holders.

The K2 amendment allows the automatic processing of traffic data without the consent of the user, if this processing is done to guarantee "the security of public electronic communication service, a service of the information society and electronic communication equipment". This, in practice, will involve a complete unprotection of personal data and a direct strike against privacy, since it allows the undertakings the remote control of the users' electronic communications without their consent.

The H1 amendment, closely related to the K1 and K2, opens the door to the "trusted computing" , which means the end of the open architecture of the Internet. Besides, it means that your computer, under certain circumstances, could deny the execution of software not certified by the software company or will transmit to them information, without the user knowledge, and will also receive orders via automatic updates that, in case that they are not done, will prevent the computer to keep working. Thus, the question is : "who really controls the computer?"

"Trusted Computing", also known as "Treacherous Computing", opens big possibilities to copyright holders and recording labels, like downloading music that will only available for playing during a specified time frame, or a specified number of times, or information that can be read but neither written nor copied, or videos and music that can only be played in a specified computer. The Trusted Computing model is the perfect ally of the "DRM", allowing the remote control over the contents, far exceeding the copyright attributions, since it will become irrelevant that the works pass to the public domain while Trusted Computing and DRM command the restrictions.

Under this scenery, sharing will become impracticable and it could be said that what the law says means nothing at all. The really important fact, what will determine what can be done with a computer and what not, will be the rules contained in the secret code of the computer, hence unknown to the user; rules that will be updated at the sole discretion of the content providers. Richard Stallman, father of the free software movement, express this same thing with the following words: "Software is increasingly used to obey the rules. Rules that can be law, or not. Rules that can be fair, or not. If the software is not free, there will not be space for the user to influence these rules".

The other two amendments, H2 and H3, reassert this interpretation, which allow the NRAs to impose the ISPs the obligation to cooperate with the private police of the content producers and the copyright holders to monitor the users, specifically when they access sites classified as "unlawful" (e.g: when downloading software is used) This cooperation includes the sending of threatening messages, without any judicial supervision, to citizens that hence are risked to suffer administrative penalties if they deny to obey the rules.

The projected normative creates in the european legislation the unprecedented mechanism of the French "graduated response", where the judges and the Justice Courts are emptied of competence in favor of private actors and "technical measures" of surveillance and filtering (spyware, trusted computing, DRM…) thus removing the citizens' guarantees.

Nowadays nobody question the need to establish the balance between the individual copyright and the colective right to culture, and we remind that the Directive 2000/31/CE –will it be one of the modified directives?- advises to "negotiate codes of conduct"; in this line, the recent Resolution of the EP of 2008/04/10 (2007/2153 INI), in its point numbered 17, invites to the shared search of balanced solutions for all the interested parties and, in this regard, points out that the criminality of non-profit consumers is not a good idea to fight against computer piracy. Hence, the

process that is being followed with the above mentioned amendments is even more incomprehensible.

This normative not only moves away from the european judicial tradition but it is also incompatible with the open architecture of the Internet –which has been allowing the use of free software until now- and with the Net Neutrality Principle since it allows ISPs to priorize and rank some contents (e.g: currently slowing P2P contents to make it more difficult, later hindering VoIP software) Besides, it affects already consolidated fundamental rights and, in case it is adopted, will curb the development of the information society, since a hierarchized and monitored network, as the one designed with the sole purpose of favoring an already outdated bussiness model –unable to adapt to the freedoms that new information and comunication technologies create- , lacks attractive and thus feasibility.

But this is not only a problem of a wicked use of technology to keep some privileges; it also affects to fundamental rights and freedoms of the citizens. Specially privacy, comunication secrecy, freedom of speech, the principle of equality and even the efective judicial tutelage. If this project becomes a reality, an indescribable withdrawal of the Rule of Law will take place, and we wil slide towards a new form of absolutism, the orwellian one.

Perhaps the alarm running like wildfire across the Net has no base and the announced movilizations are not justified enough, but the problem lies in the fact that the EP web site does not supply contrast information. Only in some articles of the press office, which refer to an idyllic situation to favor citizens, some disturbing references to all that has been said here are found. This inability to access the proposal, to know which are the directives affected by the amendments, to know the official texts of the amendments, to know the results of the voting sessions, to know the planned schedule, etc, creates more alarm and disconcert since, from the perspective of the state-of-the-art technologies and the economic power of the EP, this lack of information is inconceivable.

This secrecy, joined to the fact that the Malcolm Harbour amendments are complementary to the Syed Kamall amendments, previously adopted in the LIBE Committee, the short period of time between the Committees voting session (IMCO-ITRE) of the amendments, on July the 7th and the plenary voting session, initially scheduled for early September, with the summer pause in between and tackling sensitive questions that, in case they had been debated in the Member States Parliament would have trigger a strong popular response, make people suspect about such urgency and lack of information and arouses the phantom of the lobbies, who had influenced in the EP to get the Kamall and Harbour amendments off the ground, without trascendence to the public opinion, hence evading the debate at a

Member State level, or at least minimized by the need of transposing an European Directive, exactly as it happened with the Directive 2006/24/CE regarding the preservation of the electronic communication data, which has gone practically unnoticed in spite of implying a severe damage to the right of the personal intimacy.

In view of this situation and to avoid generating more concerns, we request from H.E. to attend our complaints and to process the precised instructions for all the information about the Telecom package is incorporated to the EP web site, in order to be accesible to every citizen, to make the schedule public, to get the minutes of the meetings published as well as the exact results of the voting sessions, since this is the only way that we citizens have to demand the Law enforcement and the respect for our rights.

Yours faithfully,

Signed: Víctor Domingo Prieto.

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