First of all, I would like to thank Mr Lambrinidis and Mrs Matsouka...

About « La Quadrature du Net »

La Quadrature du Net (or « Squaring the Net » in English) was initiated by French citizens. We wanted to inform the general public about some law projects in France and in the European Union, which we consider as potentially harmful for civil liberties and fundamental rights.

Between March and May, the main project we informed about was the « Olivennes project » (also known as « Hadopi » project). It aims at introducing in the French law the graduated response – or « three strikes and you're out ». From our point of view, the major characteristic of this system is its disproportion.

This project aims at enabling private companies to monitor the Internet at a large scale, in order to detect copyright infringiments, and transmit the computer listing thus obtained to an *ad hoc* administrative authority in charge of validating an automatic sanction process : warnings, internet connection suspension and then pure and simple disconnection with one-year blacklisting. Internet Service Providers (or ISP's) would be forced to collaborate with the administrative authority (which is not a regular judge), not only to identify users on the basis of a computer listing, but also to enforce the sanctions.

We got early support from various national associations and international federations. Of course, we were joined by French associations that defend internet users' rights and net neutrality, but also associations from all over Europe (Spain, Germany, the United Kingdom, Denmark...), the FFII, the Electronic Frontier Foundation and the Open Society Institute. All understood right away that France was used as a laboratory, where the graduated response should be experimented before its extension to other countries.

But since activists are not alone in organising at the European and international levels, and the graduated response does not fit with European legislation, it was seen coming out into the Telecoms Package.

Telecoms Package chronology

As an evidence, we have caught a letter from SACD general director (SACD is the French Motion Picture Association representative), asking CULT MEP's to support some amendments introducing the graduated response in the Telecoms Package. This was quite strange, since the European Parliament had adopted only a few weeks earlier the Bono resolution, which rejected the graduated response.

Well, in spite of this resolution, the CULT committee adopted several amendments relating to the graduated response, and some amendments that threaten Net Neutrality. They inspired several compromise amendments to the IMCO and ITRE rapporteurs. In the mean time, the LIBE committee adopted several proposals threatening privacy.

Therefore, just before the IMCO and ITRE debates, « la Quadrature » published an analysis of these amendments. This analysis provoked a controversy, but helped in delaying the vote on the Telecoms Package, which, given the stakes, everyone looks forward.

By the way, let's talk about these stakes.

Case substance

Copyright is off-board

I am not going to develop the criticism we have already made about the amendments relating to the graduated response and the IP address issue. Concerning this subject, I invite you to refer to the comment the European Data Protection Supervisor published last week. La Quadrature on the wole agrees with this comment, except that we consider the rejection of these amendments as the only option.

First of all, the copyright issue should not be studied in the Telecoms Package debate. Mrs Trautmann said it well last tuesday : *« A final problem appeared late in the processus, that is the protection of intellectual property rights. I regret that this debate came to the floor at this stage in the drafting of this package, I don't think it is the place for that to go deeper in the mechanisms allowing a strict enforcement of intellectual property rights. »* She's right. IP issues are to be studied in the Creative Content Online consultation.

The Telecoms Package is a complex, transversal case. It has to deal with numerous and various issues as strengthening and improving consumer protection and user rights in the electronic communication sector, or phone number portability, management of spectrum and other competition issues. In the contrary, it must not deal with copyright issues and even less weakening the protection of individuals' privacy and personal data.

Second, as far as IP addresses are concerned, and as the EDPS explains in its comment, it is already possible to treat traffic data in a security purpose, as long as this treatment does not harm users' privacy. It is the case for all security treatments that this amendment's promoters put forward. So, either these people don't read the law properly ; or they pursue another goal than the legal certainty of security treatments.

As it was said in La Quadrature's analysis, and as the EDPS recommends as its preferred option, we urge MEP's to reject all the amendments the EDPS points out in its comment.

Net Neutrality

Beside these amendments, we also worry about some proposals relating to Net Neutrality. Those who want to analyse these amendments can refer to our website, laquadrature.net.

Net Neutrality is a fundamental issue : without net neutrality, the Internet could not have developed and become the network we know today. It is essential for competition, and we do not think that the Telecoms Package should allow ISP's to restrict the users' freedom of choice, in order to « enable » their priviliged partners' – or their own – new services.

Skype is a good example. This *Voice over IP* software disturbs the telecom market : it competes with the services provided by ISP's, and is made by an editor independent from any major company in the IT sector. How likely is the use of Skype to be authorised if ISP's have the ability to restrict the users' choice ?

Moreover, we don't think ISP's should be able to prevent their subscribers from using an application, accessing a content or distribute it, under the pretext they judge it « unlawful », « dangerous » or « harmful ». But how can « unlawfulness », « dangerousness » or « harmfulness » be determined on an automatic basis ? And since when is an ISP a judge ?

For example, Peer-to-Peer technology is often considered by the cultural industries and their advocates as dedicated to commit copyright infringiments, that-is-to-say they consider it « unlawful » regarding copyright law, and « harmful » to their own interests. If this amendment was adopted, peer-to-peer technology could be banned because some people use it to download copyrighted music and movies. The thing is, Peer-to-Peer is originally dedicated to research and collaborative work ; many researchers use it, it is an essential tool for many free software developers. Private companies also use it to distribute the updates of their software worlwide.

Whatever one may think of dowloading copyrighted work, it is no reason for banning a technology. This warning is no paranoïa : in the copyright legal lab called France, a law that introduces the criminalisation of Peer-to-Peer technology was adopted two years ago ; and music producers used it to sue a Free Software editor based in the United States of America. Europe must not follow this path.

The aim of these proposals seems to be the protection of dominant positions in the IT and entertainment sectors, which is obviously contrary to an open and competitive market. The ability to choose what software people may use or what content they should access or

distribute, shall belong to nobody but the judge.

In general, we think that only a judge can determine if a content or an application is « unlawful », « dangerous » or « harmful ». Under certain circumstances, and for specific and serious issues such as child pornography or terrorism, member states can take exceptional measures to better face the problem. But they shall not transfer any responsibility of restricting civil liberties to private companies, on a dubious legal basis.

We are also anxious about amendment 148 from Mr Harbour's report, that deals with filtering software for children and refers to « unlawful or dangerous content ». As I said before, these characteristics cannot be determined on an automatic basis and it must be clear that the security of a subscriber cannot rely upon such a software.

Lastly, the security breach notification amendment raises a few questions. As Mrs Reding said on september 2nd :

« The default position should be that subscribers know of a breach of security concerning their personal data so that they can take precautions, and it cannot be left to the service provider to determine whether such a breach is likely to cause a subscriber harm – it is the subscriber and his own data which have to be protected. How, for example, can a provider know how sensitive that information is in an individual case? I would, therefore, urge Parliament to reconsider its position on this issue. » We totally agree with Mrs Reding on this point.

Conclusion

As a conclusion, I urge MEP's to follow the EDPS when it calls for the rejection of the amendments it studied. Beyond the specific issue of personal data protection, the stake is the preservation of the citizens' freedom of information and communication, and competition for the IT market.

MEP's should also suppress any reference to « unlawfulness », « dangerousness » or « harmfulness », when dealing with restriction technical operators can take, wether by themselves or under the supervision of a national regulatory authority. An they must re-affirm that only a judge may determine these characteristics.

I also urge citizens to contact their MEP's and ask them to take care of their freedom.