



Triologue on 31 May 2011 on Article 21 of the Draft Directive on combating [ ]<sup>1</sup> abuse, [ ] exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA,

Statement 27 May 2011

Ahead of the Triologue on 31 May 2011,

#### Article 21

1. We would like to express our **concerns** that the proposed compromise text of **Article 21** would:

- **Violate children's rights** to protection from violence, sexual exploitation and right to privacy in contravention of Member States' clear responsibility under international, EU and national law.
- **Jeopardize, and in some cases render illegal, existing and well functioning systems in several Member States** to address these crimes, including the EU's own INHOPE network, negating an important component of the **Safer Internet Programme**.
- **Contradict the system for dealing with illegal content already in place under existing EU law** – the E-Commerce Directive already sets in place an EU system permitting voluntary removal by an ISP of illegal material. The proposed amendments would put in place a far more burdensome system for blocking child abuse images than is in place for blocking other commercial illegal material – including pirated videos.
- **Create legal uncertainty and delay** by imposing a requirement to prove an impossibility. Member States would have to prove that it is impossible to remove a website before they could take action to block. This will add serious delays in protecting children.
- By requiring prior authorization by an independent body, this would **rule out important channels of police cooperation** and by definition would leave only judicial cooperation channels for exchanging needed prior authorisations. We are very concerned that this introduces far too complicated and lengthy procedures for cooperation to qualify as effective protection for children.
- **Overburden judicial systems** that would have to provide prior authorisation before taking action to block. This will divert already scarce resources at time of budget cuts away from the important tasks of prevention, protection and prosecution. **The E-Commerce Directive has**

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<sup>1</sup>We have removed a specific term from the title of the draft Directive to avoid being blocked by the European Parliament spam filter.

**already shown that involvement of the judicial authorities is not required under EU law for blocking and removing illegal content – including under the Charter of Fundamental Rights.**

- Last but not least, we are concerned that the **focus of the Directive is shifted away from protecting children – its stated key purpose**. The Charter of Fundamental Rights Article 24(2) states that *“In all actions relating to children, whether **taken by public authorities or private institutions, the child's best interests must be a primary consideration.**”* (emphasis added). The Directive will be an important test of the EU’s commitment to making that promise to children a reality.
2. Taking into account recent research<sup>2</sup> which recommended an international ‘notice and takedown’ system should be implemented to combat the global problem of online child sexual abuse, Article 21 should **focus** on:
- Requiring Member States to take necessary measures within the appropriate legal, regulatory or self-regulatory frameworks, to ensure the removal of webpages containing or disseminating [child abuse images][child pornography].<sup>3</sup> This should permit Member States flexibility in responding to these requirements, including through systems that permit ISPs to block and remove on the basis of notification from private parties, along the lines of the E-Commerce Directive
  - Requiring cooperation with third countries in securing the prompt removal of such content on servers in their territory
  - Pending any removal, requiring, without delay, taking necessary complementary measures to ensure that access to webpages containing or disseminating [child abuse images][child pornography] is blocked towards the Internet users in their territory.
  - Subjecting blocking to adequate safeguards namely, taking into account technical characteristics, limiting blocking to what is necessary and proportionate, that users are informed of the reason for the blocking and that information is available on the possibility of challenging the blocking.
  - Shifting the focus of reporting under the Directive to reporting on the effectiveness of the overall Directive rather than limiting reporting to just one dimension.

### **Grooming (art 6)**

We believe that the process of arranging an inappropriate meeting with a child with the intention of carrying out illegal sexual activity (‘grooming’) should be a criminal offence across all Member States and this should be extended to **‘offline grooming’** as the key issue is the effect on the child rather than the means by which it is carried out. It is imperative that this article covers all children, **including also children over age of consent** to ensure consistency with the definition of the crimes.

### **Disqualifications (Art 10)**

We support the inclusion of **volunteer activities** with children within the scope of the disqualification provisions introduced by the LIBE committee. However, in order to ensure that children are fully protected, the provision should be strengthened to include **mandatory screening checks** for employers and also for organisations which do not necessarily have an employment relationship with their volunteers or other persons they engages in carrying out their activities, as set out in the proposed amendments under Article 10(3a).

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<sup>2</sup> [http://www.iwf.org.uk/assets/media/resources/IWF%20Research%20Report\\_%20Development%20of%20an%20international%20internet%20notice%20and%20takedown%20system.pdf](http://www.iwf.org.uk/assets/media/resources/IWF%20Research%20Report_%20Development%20of%20an%20international%20internet%20notice%20and%20takedown%20system.pdf)

<sup>3</sup> Depending on the terminology used in the remainder of the Directive.