



Speech to the Civil Liberties Committee of the European Parliament

Introduction

European Digital Rights is an association of 27 digital civil rights associations from 17 European countries. I have worked with EDRi for one year, having previously worked in the Internet industry in a variety of roles almost continuously since 1995.

I would like to thank you for giving me the honour of addressing this Committee on such an important issue.

Summary

I would like to address the question of Internet blocking, as this point is central to EDRi's area of expertise. I will address four key points:

1. the fact that blocking leaves these crime scenes online and has no proven benefit;
2. that blocking entails real risks for both child protection and for society at large;
3. that the Commission made this proposal without a proper analysis and, finally,
4. that the Commission's promise that blocking will be restricted to child abuse websites is already being broken.

1. The fact that blocking leaves websites online and has no proven benefit

There are basically two types of blocking. The most common involves the consumers' traffic to certain websites being hijacked and redirected by their internet service provider. This approach is so technically flawed that privacy enhancing technologies promoted by the European Commission can circumvent it, without the user even being aware.

Other, more invasive, blocking technologies also exist, such as "deep packet inspection". This technology involves looking inside all citizens' private communications to identify suspect material. Despite its invasiveness, even that technology's scope is limited by encryption.

Bizarrely, there is still no evidence as to which type of blocking either the Commission expects. Furthermore, the Commission has no way of knowing or exercising control over the technologies that the Member States would use to implement the Directive, in any event.

Blocking simply does not work because:

- When blocking is implemented, the website remains online.
- People using many of the valuable and legitimate privacy enhancing technologies supported by the European Commission circumvent blocking without even trying.

- Blocking does not even try to address the majority of child abuse, which is hosted on peer to peer networks.
- And, of course, everyone in countries outside the jurisdiction of the country imposing the so-called “block” is unaffected.

It is clear that the possible gains from this approach are extremely limited.

Blocking obviously does nothing to stop deliberate access. It cannot do anything to address accidental access because the problem is so small. Fewer than one person out of every three thousand active Internet users report illegal material in any given year.

Blocking may possibly slightly disrupt commercial sites. But it may also help them by providing an early warning that the site has been identified by law enforcement authorities.

Blocking leaves websites online and has no proven benefit.

2. Blocking entails real risks for both child protection and for society at large

There are different types of risk involved in blocking for society, for child protection and for the EU's international credibility.

We can already see the waste of resources. We already have people preparing a “worst of the worst list” rather than fighting the crime itself. Almost all such sites are on the territories our major trading partners. Compare the extent and energy of the EU's efforts on negotiating trade agreements with our international efforts to prevent child abuse online.

We face a major risk that blocking this will prolong the inaction of Member States. The Commission says that this Directive was necessary because Member States could not be trusted to implement the Council of Europe Convention quickly enough or comprehensively enough. The worst thing to do, therefore, is to propose a measure which allows the Member States to hide their inaction. This is exactly what was done.

If blocking makes it appear that something is being done to fight child abuse online, we all know that pressure will be reduced to take more effective measures. Resources will be deployed elsewhere to any number of other problems that are also urgent.

The proposal brings with it the entirely inevitable spread of blocking to other areas, as we are seeing in some member states. Blocking is already being used to try to protect national gambling monopolies and media multinationals in several countries.

There is also a cost to society in technology creep, as more and more invasive technologies are demanded by big business to control citizens' access to the Internet.

Blocking will damage the EU's credibility as we campaign for freedom of information internationally. How can we do this after building a comprehensive blocking infrastructure used in a vain attempt to protect gambling monopolies and music multinationals and to hide our inability to protect the weakest members of our society?

There is a cost in prioritising investment in an approach for which there is so little evidence that the Commission chose not to assess its impact in countries where it had been implemented.

The risks of blocking are too high – we simply must not implement an unproven technology which will be used by Member States to prolong their long years of inaction. Comprehensive, effective international actions – and not symbolic measures – are needed now to fight online child abuse. This proposal entails real risks for both child protection and for society at large.

3. The Commission made this proposal without a proper analysis

The European Commission introduced impact assessments “to improve the quality and coherence of the policy development process” and to “contribute to an effective and efficient regulatory environment”. This policy area needs quality, coherence, efficiency and effectiveness.

How effective and efficient does the European Commission want to be in this case when it proposed blocking:

- without attempting to assess the impact in countries where the policy is already in place;
- without assessing the possible impact of international activities such as the dialogue with the USA on this issue and their likely impact on the proportionality of this measure;
- without assessing why some sites remain online (lack of communication, lack of police resources, conflicting laws, etc)
- without assessing the rapidly diminishing relevance of blocking due to the ever-larger proportion of child abuse material being put outside the reach of blocking on hacked sites, being hosted abusively on innocent photosharing websites and the increasing problem of sites that move too quickly to be put on a blocking list;
- without being clear on the purpose of the blocking measure – whether it was for accidental access, for deliberate access or for some other unspecified purpose;
- without addressing the limitations of the technology, which an OSCE report said were so profound as to potentially render the approach illegal under the European Convention on Human Rights;
- without assessing the danger that sites will be blocked instead of investigated, as appears to be the case based on the feedback from the owners of innocent blocked websites.
- without even bothering to mention this issue in the subsidiarity statement.

These major oversights have very important consequences:

The dangers of major unintended consequences are real. For example, like some of the voices in this debate, the intellectual property lobby in Denmark demanded that the one particular website accused of copyright infringements be blocked. They said it was important to be seen to do *something*. Without any regard for effectiveness, proportionality and unintended consequences, the blocking order was made. Traffic from Denmark to that website immediately rose by 12%. The inevitable leaking and hacking of child abuse blocking lists risks driving traffic to abuse sites in the same way.

In the commercial world, experimentation with unproven policy options that undermine fundamental rights is unwelcome and damaging. In the world of child protection, such experimentation is simply reckless and dangerous. Worse still, once implemented, it will be almost impossible to repeal.

Having given the inaction of Member States as a reason to propose this Directive, the Commission did not assess if blocking would reinforce this inaction. Having seen blocking in place in several countries, the Commission failed to assess if it had any practical value. Having seen blocking spread to gambling monopolies and media multinationals, the Commission promised that what is happening will not happen. This is not good enough.

4. The Commission's promise that blocking will be restricted to child abuse websites is already being broken

It would be nice to believe the Commission when it says that this is about child abuse images and nothing else.

However, it is offering funding for at least two different projects which block other content – regardless of how the Parliament votes. The last Council presidency presented a paper supporting the spread blocking to gambling websites. Member States such as Bulgaria, Denmark, France, Italy and Lithuania all have, or are planning to, extend blocking to try to protect large commercial interests.

It is painfully clear, therefore, that this promise from the Commission is not being kept, by the Commission itself, by the Council or by the Member States.

In conclusion...

I implore this Committee to reflect very carefully on all of these points and to propose a text which respects subsidiarity, which respects the rule of law and which does not allow Member States to abdicate responsibility by outsourcing the problem to private companies.

We have one request for the Parliament – that the Directive require Member States to act against the actual crimes. They can no longer be allowed to hide their inaction behind empty promises. Blocking must be removed from this proposal.

I urge you to adopt a text which places clear and enforceable obligations on member states to finally do what they promised to do in the Child Rights Convention, the Optional Protocol, the Council of Europe Convention, the Stockholm Declaration, the Yokohama commitment.

Empty promises are no longer enough.