



ELECTRONIC FRONTIER FOUNDATION [eff.org](http://eff.org)

# Realizing the Internet's Potential for Meeting The Essential Needs of Citizens and Innovators

The importance of copyright exceptions, and the  
policy implications of increasing ISP and Internet  
intermediary copyright liability.

OECD Future of the Internet Economy

Civil Society Forum

Seoul, June 16, 2008

Gwen Hinze

[gwen@eff.org](mailto:gwen@eff.org)



# Fuelling Creativity & Innovation

- Exceptions and limitations to copyright law are essential for the future of the Internet Economy.
  - Creation of new works;
  - Education, libraries & archives, the visually impaired;
  - Creation of innovative ICTs that offer new opportunities for distance education, capacity building and development and other socially beneficial activities.
- Analyze impact of overbroad TPM regimes on:
  - Access to the Public Domain; and
  - Exceptions and limitations that fuel citizen creativity and technology innovation.
- Tailored limitations on liability for ICT developers and network intermediaries.



# Understanding the Importance of Exceptions and Limitations

- Proposal for WIPO discussion on mandatory minimum exceptions and limitations for education, libraries and archives, the disabled.
  - the visually impaired, libraries (Nov. 2008)
  - Commissioning survey of national educational exceptions.
- What else?
  - Analysis of economic and social value generated by copyright exceptions and limitations, and benefits of trans-border exceptions.



# Threats to realizing the Internet's potential to meet the essential needs of citizens and innovators

- Mandating Internet Service Providers and Internet Intermediaries to filter for potential copyright infringing material.
- “Graduated response” (“Three Strikes”) proposals requiring ISPs to disconnect customers’ Internet access on repeat allegation of copyright infringement, potentially without judicial oversight, and maintain “Blacklists” of users who cannot be offered Internet service.



# Mandating ISPs to filter for potential copyright infringing material

- Proposals
  - Bono report on Cultural Industries in Europe (2007);
  - IFPI lobbyist memorandum to European Parliament (2007);
  - France - Olivennes proposal. New authority can order filtering.
  - EU Telecoms reform package (2008);
  - Anti-counterfeiting Trade Agreement (2008)?
- Likely ineffective because can be defeated by encryption.
- Raises serious concerns for citizens' privacy - requires deep packet inspection of *all* Internet users' communications.
- Restricts free flow of information on the Internet.
- Potentially increases liability of ISPs and intermediaries, impeding innovation.



## “Graduated response” (“Three Strikes”) Disconnection Proposals

- Require ISPs to disconnect customers’ Internet access on repeat allegation of copyright infringement.
- Proposals:
  - France (2007 Olivennes proposal)
    - disconnection for up to 1 year.
    - ISPs cannot provide connection to Blacklisted Internet users
  - Under discussion: UK, Australia, Canada.
  - Japan - adopted by 4 large ISPs.
  - Swedish Parliament rejected recommended adoption.
  - European Community rejection (Bono Report April 2008 amendment)
  - Anti-counterfeiting Trade Agreement. (Leaked Discussion Paper)



# “Graduated response” (“Three Strikes”) Disconnection Proposals

- Policy Considerations:
  - Due process concerns for citizens.
  - Inconsistent from larger policy perspective. Imposing legal obligation on ISPs to deny Internet access runs counter to policies intended to speed up broadband deployment and increased citizen access.
  - Likely to impede free flow of information on Internet.
  - Disproportionate response to cut citizens off from Information Society (full participation in civic and cultural life, participative web, e-government services) to meet the needs of one group of private stakeholders.



# Real Impacts, Real Concerns

- These copyright-driven initiatives are already impeding investment in ICT research and development, and reshaping the technology innovation environment in OECD countries.
- In the longer term, they are likely to stifle Internet innovation and reduce the availability of ICTs that may fuel creativity, build communities, empower civic engagement, facilitate distance education, and foster economic and social development across the world.



# What should OECD / countries do?

- OECD should:
  - Undertake an empirical study of the value of copyright exceptions and limitations in meeting essential needs of citizens (for education, libraries and archives, use by the visually impaired), and in facilitating innovation;
  - Analyze the impact of overbroad TPM regimes, and current proposals focused on making ISPs and Internet intermediaries responsible for policing content on the Internet; and
  - Identify what types of copyright polices would best foster technological innovation, democratic engagement, and economic and social development through the Internet.
- OECD member countries should:
  - Adopt appropriate exceptions and limitations;
  - Avoid adopting draconian measures denying citizens' access to Information Society; and
  - Protect their citizens' privacy rights by refusing to mandate that ISPs filter Internet communications.