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2009

Committee on Culture and Education

2007/0248(COD)

9.6.2008

OPINION

of the Committee on Culture and Education

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation
(COM(2007)0698 – C6-0420/2007 – 2007/0248(COD))

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AMENDMENTS

The Committee on Culture and Education calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 14

Text proposed by the Commission

(14) A competitive market should ensure that end-users are able to access and distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them in Directive 2002/19/EC to ensure that users' access to particular types of content or applications is not unreasonably restricted.

Amendment

(14) A competitive market should ensure that end-users are able to access and distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them in Directive 2002/19/EC to ensure that users' access to particular types of **lawful** content or applications is not unreasonably restricted.

Justification

As a matter of consistency with the first part of the recital, this addition seems necessary especially in consideration of the subject matter (competition in the market place) which can only address competition among legitimate services, content and applications.

Amendment 2

**Proposal for a directive – amending act
Recital 24**

Text proposed by the Commission

(24) ***A television broadcast is a linear audiovisual media service as defined in the Audiovisual Media Services Directive of the European Parliament and of the Council of [...] 2007, which is provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule; a media service provider may provide a number of audio or audio visual programme schedules (channels).*** Legal “must-carry” obligations may be applied, ***but only*** to specified ***broadcast channels*** supplied by a specified media service provider. Member States should provide a clear justification for the “must carry” obligations ***in their national law*** so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. ***Given the rapid change in technology and market conditions such a full review would need to be carried out at least every three years and would require a public consultation of all stakeholders.*** One or more ***broadcast channels*** may be complemented by services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

Amendment

(24) Legal “must-carry” obligations may be applied to specified ***radio and audiovisual media services and complementary services*** supplied by a specified media service provider. ***Audiovisual media services are defined in Article 1(a) of Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Audiovisual Media Services Directive)***¹. Member States should provide a clear justification for the “must carry” obligations so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. One or more ***audiovisual media services*** may be complemented by services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

¹ *OJL 332, 18.12.2007, p. 27.*

Justification

To make Article 31 future-proof, in view of new platforms and services, and to allow Member States to ensure access by viewers and listeners to linear and non-linear services alike where appropriate, the potential scope of this provision needs to be extended to audiovisual media services, in line with the new Audiovisual Media Services Directive. This must also be reflected in Recital 24.

Amendment 3

Proposal for a directive – amending act Recital 28

Text proposed by the Commission

(28) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus make a powerful contribution to the internal market if their use is acceptable to citizens. To achieve that, it is necessary to ensure that **the** fundamental rights of individuals, **in particular the right to privacy and data protection**, are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.

Amendment

(28) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus make a powerful contribution to the internal market if their use is acceptable to citizens. To achieve that, it is necessary to ensure that **all** fundamental rights of individuals **under the Charter of Fundamental Rights of the European Union** are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.

Justification

It is important to mention the EU Charter of Fundamental Rights in this content.

Amendment 4

Proposal for a directive – amending act Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) When implementing measures adopted to transpose Directive 2002/58/EC, the authorities and courts of the Member States should not only interpret their national law in a manner consistent with this Directive, but also ensure that they do not rely on an interpretation of this Directive which would conflict with fundamental rights or with other general principles of Community law, such as the principle of proportionality.

Justification

This amendment incorporates the wording of the recent ECJ ruling in the “Promusicae-Telefónica” case (29 January 2008). This Court decision reaffirms that when implementing this Directive, Member States must make sure that they follow an interpretation which doesn’t conflict with fundamental rights and other general principles of Community law.

Amendment 5

Proposal for a directive – amending act Recital 31

Text proposed by the Commission

Amendment

(31) Provision should be made for implementing measures to establish a common set of requirements to achieve an adequate level of privacy protection and security of personal data transmitted or processed in connection with the use of electronic communications networks in the internal market.

(31) Provision should be made for implementing measures to establish a common set of requirements to achieve an adequate level of privacy protection and security of personal data transmitted or processed in connection with the ***lawful*** use of electronic communications networks in the internal market.

Justification

The scope of the provision should be limited to lawful uses and therefore not covering unlawful uses of electronic communications.

Amendment 6

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 1

Text proposed by the Commission

1. This Article shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EC and 97/7/EC, and national rules in conformity with Community law.

Amendment

1. This Article shall apply without prejudice to Community rules on consumer protection **and other rules on transparency in the provision of media services**, in particular Directives **89/552/EEC**, 93/13/EC and 97/7/EC, and national rules in conformity with Community law.

Amendment 7

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – point h

Text proposed by the Commission

(h) the action that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities.

Amendment

(h) the action that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities, **or in relation to the use of the service to commit unlawful acts**.

Justification

The article 20.2 intends to set a high standard of information to be provided to the subscriber. In a future environment of enhanced cooperation of undertakings providing connection and/or services for the reduction or prevention of unlawful activities, it is paramount that subscribers be clearly informed of the measures that the former may take in case they engage in these types of activities. Knowing the kind of measures that can be adopted by the undertaking may make the subscriber think twice before engaging in unlawful activities.

Amendment 8

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of a contract and regularly thereafter of any limitations imposed by the provider on their ability to access or distribute **lawful** content or run any **lawful applications and services** of their choice.

Amendment

5. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of a contract and regularly thereafter of any limitations imposed by the provider on their ability to access or distribute content or run any *application or service* of their choice.

Justification

Consumers must be informed of any limitations applied regarding the access to or distribution of all content or services, whether lawful or not.

Amendment 9

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Member States shall ensure that subscribers are clearly notified in the event of repeated breaches of copyright and related rights so that they are able to cease their unlawful activities.

Justification

The internet should be freed from unlawful behaviour. Thus, subscribers and operators should collaborate in the fight against piracy and unlawful online activity.

Amendment 10

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) end-users are able to access and use services, including information society services, provided within the Community; and

(a) end-users are able to access and use **lawful** services, including information society services, provided within the Community; and

Justification

The scope of the provision should be limited to lawful services.

Amendment 11

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of **fraud** or misuse.

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of **unlawful and harmful activity** or misuse.

Justification

While end-users should have all the right to access and use lawful services provided within the Community, there is no reason why this right should be extended to the access and use of unlawful ones. Also, the ability of national regulatory authorities to block access to services should be justified not only by reasons of misuse, but any unlawful activity, including fraud. This will increase the ability of regulatory authorities to act against all types of current or future unlawful activities.

Amendment 12

Proposal for a directive – amending act

Article 1 – point 19

Directive 2002/22/EC

Article 31 – paragraph 1

Text proposed by the Commission

1. Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and **television broadcast channels** and **accessibility** services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **television broadcasts** to the public where a significant number of end-users of such networks use them as their principal means to receive radio **and television broadcasts**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly and specifically defined by each Member State **in its national law** and shall be proportionate and transparent.

Amendment

1. Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and **audiovisual media services** and **complementary** services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **audiovisual media services** to the public where a significant number of end-users of such networks use them as their principal means to receive radio **or audiovisual media services**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly and specifically defined by each Member State and shall be proportionate and transparent.

Justification

To make Article 31 future-proof, in view of new platforms and services, and to allow Member States to ensure access by viewers and listeners to linear and non-linear services alike where appropriate, the potential scope of this provision needs to be extended to audiovisual media services, in line with the new Audiovisual Media Services Directive. This must also be reflected in Recital 24.

Amendment 13

Proposal for a directive – amending act

Article 1 – point 19

Directive 2002/22/EC

Article 31 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Member States shall review “must carry” obligations **at least every three years**.

Amendment

Member States shall review “must-carry” obligations **on a regular basis**.

Justification

In view of the different legal instruments chosen by Member States, a rigid requirement that

“must carry” rules must be reviewed “at least every three years” would not be appropriate.

Amendment 14

Proposal for a directive – amending act

Article 2 – point 3 a (new)

Directive 2002/58/EC

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

(3a) Article 5(1) shall be replaced by the following:

“1. Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit the listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned, except when legally authorised to do so in accordance with Article 15(1) and the Charter of Fundamental Rights of the European Union. This paragraph shall not prevent technical storage which is necessary for the conveyance of a communication without prejudice to the principle of confidentiality.”

Justification

The Directive must also be read in light of the Charter of Fundamental Rights of the European Union. This Charter is a point of reference for Courts and authorities. The Treaty of Lisbon refers to the Charter as a real catalogue of rights which the EU and its Member States must respect.

Amendment 15

Proposal for a directive – amending act

Article 2 – point 6 a (new)

Directive 2002/58/EC

Article 15 – paragraph 1

Text proposed by the Commission

Amendment

(6a) Article 15(1) shall be replaced by the following:

"1. Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1), (2), (3) and (4), and Article 9 of this Directive when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system or the protection of the rights and freedoms of others, as referred to in Article 13(1) of Directive 95/46/EC. To this end, the Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph. All the measures referred to in this paragraph shall be in accordance with the general principles of Community law, including those referred to in Articles 6(1) and (2) of the Treaty on European Union."

Justification

The e-privacy Directive completes the 1995 Framework privacy Directive and that Article 15 should also be read in light of Article 13 of the Framework Privacy Directive. The purpose of this amendment is to increase legal certainty as confirmed by the recent ECJ case law (C-275/06).

PROCEDURE

Title	Electronic communications networks and services, protection of privacy and consumer protection
References	COM(2007)0698 – C6-0420/2007 – 2007/0248(COD)
Committee responsible	IMCO
Opinion by Date announced in plenary	CULT 10.12.2007
Drafts(wo)man Date appointed	Manolis Mavrommatis 17.1.2008
Discussed in committee	6.5.2008
Date adopted	2.6.2008
Result of final vote	+ : 12 - : 4 0 : 1
Members present for the final vote	Katerina Batzeli, Ivo Belet, Věra Flasarová, Milan Gaľa, Claire Gibault, Lissy Gröner, Mikel Irujo Amezaga, Manolis Mavrommatis, Ljudmila Novak, Doris Pack, Christa Prets, Karin Resetarits, Pál Schmitt, Thomas Wise
Substitute(s) present for the final vote	Victor Boștinaru, Elisabeth Morin, Ewa Tomaszewska