

CSISAC ISSUES STATEMENT ON OECD COMMUNIQUÉ ON PRINCIPLES FOR INTERNET POLICY-MAKING

Paris – 29 June 2011. The Civil Society Information Society Advisory Council (CSISAC) to the Organization for Economic Co-operation and Development (OECD) affirms its commitment today to the multi-stakeholder policy making processes that developed the Communiqué on Principles For Internet Policy-Making. We commend the OECD for its leadership and extend our appreciation to representatives from governments and the technical and business communities who were willing to reopen the draft Communiqué for further negotiation on 28 June.

CSISAC remains committed to ongoing collaboration with the OECD Secretariat, OECD member states and observers in all processes that follow from the Communiqué and the High Level Meeting. We recognise the value of a set of agreed principles to promote consistent Internet policy-making across OECD member economies. CSISAC supports many of the principles included in the Communiqué, and it is therefore with regret that we declined to endorse the full and final version of the Communiqué released on 29 June 2011.

CSISAC's concerns are with the detailed framing of the itemized principles. In some instances, the elaboration of these concepts appears to undermine the very principles they are intended to engrain. We remain convinced that consensus could have been reached on a document focused more on Internet policy-making principles and less on finer details related to contentious areas of substantive law.

As developed in the Communiqué, several of these principles are not compatible with CSISAC core values including respect for fundamental human rights and freedoms and, the rule of law, promotion of access to knowledge, promotion of open standards, Net Neutrality and balanced intellectual property policies and regimes.

(See: <http://csisac.org/seoul.php>)

A more complete account of CSISAC's concerns with the Communiqué is at: http://csisac.org/CSISAC_Statement_on_OECD_Communique_06292011_FINAL_COMMENTS.pdf

CSISAC's concerns include:

1. The Communiqué's over-emphasis on protection and enforcement of intellectual property rights at the expense of fundamental freedoms. Moreover, the Communiqué fails to acknowledge the balance inherent in well-calibrated intellectual property regimes and other factors that have allowed the Internet to flourish and innovation to take place. We note that the words "intellectual property" appear seven times, "enforcement" four times, and "liability" twice. But "fair use/dealing", "public domain", "limitations and exceptions" are absent. By comparison, the 2008 OECD Seoul Declaration on the Future of the Internet Economy lists intellectual property rights as merely one of its eight public policy objectives relating to online innovation and creativity.
2. At a time when the responsibilities of Internet intermediaries are being extensively discussed in national, regional and international fora and before the European Court of Justice, particular language in the Communiqué might

be seen to reinterpret a core principle that has underpinned Internet growth and innovation to date – the limited liability of Internet intermediaries that are mere conduits facilitating the interactions of others.

3. Various qualifications within the Communiqué limiting access guarantees to 'lawful' content raise concerns for freedom of expression. This language poses questions about whether Internet intermediaries will be required to make determinations of legality when they are not competent or appropriate parties to do so. In regard to intellectual property, this would be inconsistent with current legal norms in many OECD countries and could undermine the Communiqué's commitment to due process, transparency and fundamental rights.
4. The Communiqué does not adequately address foundational principles that are integral to the openness of the Internet such as network neutrality and open standards.
5. The impact that some of the Communiqué's measures could have in countries where there are weak democratic institutions and inadequate protection of fundamental human rights and consumer interests.

About CSISAC:

CSISAC is a coalition of more than 80 civil society groups from across the globe that provide input into the development of OECD policies relating to the Internet. Since 2009, CSISAC has formally represented the civil society perspective at certain OECD meetings and defended the rights of Internet users worldwide.

More Information at: <http://csisac.org/about.php>

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