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Civil Society Coalition Declines to Endorse OECD Communiqué on Principles for Internet Policy-Making; Urges OECD to Reject “Voluntary” Steps For Filtering and Blocking of Online Content

Paris – The Civil Society Information Society Advisory Council to the Organization for Economic Co-operation and Development (CSISAC) today declined to endorse an OECD Communiqué on Internet Policy-making principles. CSISAC believes that the Communiqué, which was presented today at the OECD’s High Level Meeting on the Internet Economy in Paris, could undermine online freedom of expression, freedom of information, the right to privacy, and innovation across the world.

The OECD Communiqué covers a broad range of current Internet-related policy issues. CSISAC supports many of the proposed principles, in particular, policies that support the open, interoperable Internet, and multi-stakeholder policy development processes.

CSISAC strongly supports OECD multistakeholder policy development processes and sees much value in working at the OECD. While CSISAC appreciates the efforts made by the OECD Secretariat and various OECD member states to accommodate CSISAC’s concerns with the draft Communiqué, CSISAC was not able to accept the final draft’s over-emphasis on intellectual property enforcement at the expense of fundamental freedoms, and its movement away from the longstanding principle in many OECD countries’ laws of granting “mere conduit” online service providers limitations on liability for the actions of their users.

The final Communiqué advises OECD countries to adopt policy and legal frameworks that make Internet intermediaries responsible for taking lawful steps to deter copyright infringement. This approach could create incentives for Internet intermediaries to delete or block contested content, and lead to network filtering, which would harm online expression. In addition, as has already happened in at least one country, Internet intermediaries could voluntarily adopt “graduated response” policies under which Internet users’ access could be terminated based solely on repeated allegations of infringement. CSISAC believes that these measures contradict international and European human rights law.

CSISAC is also concerned about limits on access guarantees to “lawful” content and references to lawful behaviour throughout the Communiqué. This language ostensibly would require Internet intermediaries or other private parties and interests to make determinations about the legality of content and of user behavior on their platforms and networks. Internet intermediaries are neither competent nor appropriate parties to make such rulings., CSISAC believes Internet intermediaries should not be responsible for identifying infringement and enforcing intellectual property rights, and requiring them to do so compromises transparency, accountability and due process. All restrictions must be based on court orders obtained after due process and judicial review.

CSISAC notes that the direction of some of the text in the Communiqué is inconsistent with the approach taken by other intergovernmental organizations including the United Nations and the Council of Europe, and could result in divergent regulatory approaches across countries, undermining the stated goal of the Communiqué to provide assistance to policymakers in OECD member states. In his 2011 Report to the UN Human Rights Council, the UN Special Rapporteur on Freedom of Opinion and Expression has specifically criticized national laws that impose liability on Internet intermediaries if they do not agree to adopt filtering and blocking measures. Furthermore, the Rapporteur has stated that cutting off users from Internet access, regardless of the justification provided, including alleged violations of intellectual property rights, is disproportionate and thus a violation of the International Covenant on Civil and Political Rights. The Council of Europe has previously published in 2008 Recommendations to member states and Guidelines to Internet intermediaries on measures to promote the respect for freedom of expression and information with regard to Internet filters and in 2007 Recommendations on measures to promote the public service value of the Internet. It is in the process of publishing a Declaration on Internet Governance Principles.

CSISAC supports the strong emphasis on the need for multi-stakeholder process regarding the development of Internet policy. CSISAC recognizes that several international bodies and organizations are currently discussing whether and how to regulate the Internet at the global level. Unlike such intergovernmental meetings such as the recent eG8 and G8 events, in which civil society was not invited to participate, the OECD has demonstrated commitment to developing Internet policies in a genuine multi-stakeholder process.

CSISAC calls on OECD member states to take a stand to combat digital censorship and uphold international human rights standards, including the fundamental rights to freedom of expression, to freedom of information, to privacy and to the protection of personal data, which are the cornerstones of democracy. Any Internet policy guidelines developed by the OECD should be grounded in legal principles that are widely accepted, and be compliant with international human rights standards. It is inappropriate for such guidelines to be derived from ad hoc regulations and policy experiments that have been adopted in a small number of countries, especially since the impact of these regulations is still far from clear. We invite member states of the OECD to protect the open Internet and make a public commitment to opposing Internet filtering and blocking by intermediaries, to affirm existing limitations on intermediaries' liability, and to support due process and judicial review of allegedly illegal content and behavior.

A more detailed explanation of CSISAC members' concerns with the text of the Communiqué is available at:

<https://www.eff.org/issues/international/attachments/csisac-statement-oecd-communicue-internet-policy>

About OECD:

The Organization for Economic Co-operation and Development is an intergovernmental body that produces economic and policy analysis and promotes policies that will improve the economic and social well-being of people around the world. The OECD provides a forum in which its 34 member governments can work



together to share experiences and seek solutions to common problems. Its reports and recommendations are highly influential and have formed the basis for national laws and policies in its member states. More information is available at:
http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1,00.html

About CSISAC:

CSISAC is a coalition of more than 80 civil society groups and several concerned individuals from across the globe that, since 2009, has provided input into the development of OECD policies relating to the Internet, and formally represents the civil society perspective at certain OECD meetings.

More information is available at: <http://csisac.org>

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