

**ECIS joins the debate on "Post-i2010: priorities for new strategy for European information society (2010-2015)"**

ECIS response to Commission's questionnaire on post-i2010 public consultation

*Brussels, 9 October 2009*

**General:**

**0.1: Are you applying:**

- ... as an individual citizen
- on behalf of an organisation

**0.1.1: Please provide the name of your Organisation and, if applicable, your Interest Representative Register ID number:**

European Committee for Interoperable Systems ("ECIS")

**0.1.2: Please indicate which type of stakeholder you are:**

- ... public authority/government
- ... large private company
- ... small or medium-size enterprise
- industry association
- ... NGO
- ... academia
- ... other -- please specify

**0.2: Please provide your Name and Surname:**

Simon Awde, Chairman

**0.3: Please provide your e-mail address:**

[info@ecis.eu](mailto:info@ecis.eu)

**0.4: Your country of residence:**

United Kingdom

**1) ICT for a growth and jobs agenda**

**Overall priorities**

**1.1 Should ICT be a key area in the next European strategy for growth and employment?**

- Yes
- No
- Other -- please specify

ECIS strongly believes that the Commission's i2010 initiative presented at the 2005 Spring European Council has had a major impact on the development of the ICT sector across Europe. We commend the Commission for making some progress towards the three objectives adopted as part of its i2010 strategy – (1) making Europe a Single European Information Space offering affordable and secure high bandwidth communications, rich and diverse content and digital services; (2) stimulating ICT research and innovation in Europe; and (3) ensuring that all citizens benefit from ICT.<sup>1</sup>

ECIS has been an advocate for utilising ICT as a vehicle to underpin economic growth in Europe since its inauguration twenty years ago. In 2005, the Commission noted that "[a] quarter of EU GDP growth and 40% of productivity growth are due to ICT."<sup>2</sup> If anything, these figures have increased since then and we are all witnesses to the increasingly important role of ICT in our daily activities.

ECIS firmly believes that the European ICT market has the potential for further success. Internet as the platform for innovation and new services is intrinsic to this success. Internet has become the primary platform for delivering and accessing new, innovative content and services, because it is open. It is therefore critical to preserve the openness of the Internet and remain vigilant against business models which seek to hinder interoperability, reduce consumer choice or otherwise restrict access to Internet content and services. Because of the Commission's efforts, Europe has made steps forward in developing broadband infrastructure and opening up competition in electronic communications services over the last five years. The outcome of these efforts has improved European citizens' access to the Internet. However, nowadays, given the importance of the Internet in our daily activities, it is also critical to ensure European citizens' access to innovative services available on the Internet. In this context, ECIS concedes that more needs to be done to guarantee a stronger, more competitive and more open digital economy. Hence, ICT is essential to the next European strategy for growth and employment, especially in the current economic and financial crisis.

**1.2 What could be the overall visionary focus for the post-i2010 strategy?**

- A vision with a strong focus on desired end results such as economic growth, productivity gains from ICT usage, impact on economy through innovation, etc.

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<sup>1</sup> Communication from the Commission on "Europe's Digital Competitiveness report: Main achievements of the i2010 strategy 2005-2009," Brussels, 4 August 2009, pages 5-7.

<sup>2</sup> Communication from the Commission on "i2010 – A European Information Society for growth and employment," Brussels, 1 June 2005, COM (2005) 229 final, page 3.

... Or rather a vision where the desired end results are broken down into more concrete and measurable targets such as targets on broadband coverage, investments in infrastructure etc.

... Or rather a vision where focus is on continuously creating a coherent and holistic approach to European ICT policies (regulation, research, etc.)

... Or rather a vision inspired by a stronger focus on user rights or user empowerment on the Internet

... Other -- please specify

The success of the i2010 initiative is due to the creation of three long-term objectives, which served as the basis for concrete policy measures. Establishing new objectives and outlining the means by which, in principle, these objectives could be achieved has the potential to further benefit European consumers and innovators. Most importantly, a clearly defined policy providing the general objectives of an "*information society*" strategy would formulate an underlying reference for Member States to develop their national ICT strategies in accordance with their specific needs.

ECIS suggests the following objectives for the Commission's post-i2010 strategy:

- (1) empower European citizens through ICT education;
- (2) promote openness in the ICT market;
- (3) guarantee merit-based competition in the ICT market, based on the use of open standards and open source software;
- (4) ensure real consumer choice among a variety of innovative, interoperable ICT products and services.

**1.3 What do you consider to be the 3 most important ICT policy priorities for the next 5 to 10 years?**

- ... ICT for growth and jobs
- ... sustainable low-carbon economy
- ... ICT research and innovation
- X** high-speed and open Internet for all
- ... online single market
- ... users' creativity
- X** the international dimension
- X** public services
- ... quality of life of EU citizens
- ... other -- please specify

Because the Internet is open, it has become the lifeblood of industry, government and society around the world, and the primary platform for information technology product and service innovation. Today's open Internet is based on open standards, notably TCP/IP, HTTP and HTML. These standards give any and all users both Internet access and the ability to create innovative content and offer innovative services that can interoperate perfectly with others across the Internet.

ECIS seeks to protect open standards, interoperability and the Internet from coming under threat from closed standards built on proprietary technologies, protocols, formats and programming technologies in the service of commercial lock-in strategies. ECIS considers that an appropriate combination of policies in the standards, intellectual property, procurement and competition law areas is necessary in this regard.

Further, ECIS continues to support the Commission's commitment to increase interoperability among public administrations,<sup>3</sup> and we have strongly supported initiatives such as the revision of the European Interoperability Framework.<sup>4</sup> We believe that such initiatives, if adopted and implemented by all Member States in a mandatory way, would make a significant contribution to encouraging openness and genuine interoperability across borders and software applications used in providing eGovernment services.

Finally, ECIS understands that the development of an ICT strategy is an issue with an international dimension. The very essence of digital economy is intrinsic to facilitating connecting people, markets, and economies across the world, and limiting barriers such as delivery and communications costs, which previously existed. The modern economy is not about delivering atoms, but bits, across the world, and this principle should be considered fundamental when developing an ICT strategy for Europe. A laudable result of the i2010 initiative is that "*Europe has become the world leader in broadband Internet.*"<sup>5</sup> As the Commission concludes, we are now at a critical stage where Europe is at risk of losing its competitive advantage when it comes to new, innovative developments. ECIS believes that Europe has the potential to become a leader in the Web 3.0 market if we (industry and regulators) act now to ensure that the underlying principles guaranteeing ICT development are preserved, including the principles of interoperability, open standards and open source software.

### **1.5 Which instruments do you consider most useful for building up a knowledge base on ICT policies and their effectiveness?**

- ... Benchmarking
- X** Exchange of best practices
- X** Stakeholders groups
- ... Consultations

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<sup>3</sup> See supra note 1, page 11.

<sup>4</sup> ECIS, Comments on the draft for the European Interoperability Framework ("EIF") 2.0, September 2008, available at <http://www.ecis.eu/documents/081024ECIScommentsonEIFv2.pdf>.

<sup>5</sup> Supra note 1, page 4.

- Others -- please specify: promoting international cooperation

ECIS has always been an advocate of cooperation among stakeholders at a global level. International cooperation and exchange of best practices allow interested parties to exchange their views and experiences in developing and evaluating ICT policy. This in turn gives regulators such as the European Commission and other EU institutions better command of the issues at stake and a means to gain knowledge and insight into the successes in ICT strategies in other jurisdictions.

### **3) Improving Europe's performance in ICT research and innovation**

#### **A. Channel more resources into ICT research and innovation**

##### **3.1 Among the following sources of this increased funding, which are the 3 you consider more important?**

- ... Increased European research budget for ICT
- ... Increased European innovation funding
- ... Diverting other community funds, such as cohesion funds into R&D
- More strategic and extended use of pre-commercial procurement
- ... Increased national budgets
- Incentives to increase private research expenditure (such as new public-private partnerships or tax breaks for R&D)
- ... Others -- please specify

##### **3.2 What would be the most important measures to reduce the fragmentation of ICT research and innovation efforts in Europe?**

- Political commitment to a fully integrated European innovation ecosystem
- Policy coordination to share visions, strategies and policies
- ... Setting EU-wide ICT priorities for key technology sectors
- ... Working on achieving a better policy mix: such as coordination of resources and instruments (e.g., grants, loans, risk capital) at different stages of the innovation process
- Early engagement of wider innovation stakeholders (e.g., users, financiers, marketing and legal departments)
- ... Others -- please specify

ECIS acknowledges the EU's commitment to support research and innovation in ICT in line with other leading jurisdictions by engaging in projects such as the Artemis and Eniac Joint

Technology initiatives, the EU technology platform projects such as NESSI,<sup>6</sup> and the EU's public-private partnership to promote an open, interoperable Internet.<sup>7</sup>

However, studies have shown that these pioneering efforts have not effectively reduced fragmentation of ICT research and innovation.<sup>8</sup> The Commission itself has identified the limited communication between Member States on issues related to innovation, R&D, and education policies as the reason for such fragmentation.<sup>9</sup> As a result, Member States and other stakeholders involved in this process are duplicating their efforts, without yielding results nor effectively addressing the challenges common to all Member States across the Community.

In order to resolve the fragmentation issues, it is crucial that all stakeholders coordinate in order to develop refined and well-tuned policies that addresses such issues at the Community level, rather than in a fragmented manner at the national level. In addition, ECIS considers that the Commission and other European institutions should continue to devote their forces to ensure that there is a single market for ICT R&D and innovation across the European Union.

### **3.3 What measures would be most important for promoting more innovation?**

- X** Stimulating market forces through open competition
- ... Public private partnerships such as joint technology initiatives
- ... Reinforcing lead market initiatives (e.g., set-up of user-supplier platforms)
- X** Public procurement of research and innovation
- ... Targeted innovation infrastructures (e.g., specialised training, business expertise support, risk capital)
- X** Others -- please specify: ensuring the openness and interoperability of the new, innovative ICT developments

The Commission, in its March Communication,<sup>10</sup> noted the low growth rate of European SMEs and innovation in general, and indicated the sub-optimal conditions for market access as a reason for the low growth rate of European SMEs. As a strong proponent of interoperability and openness, ECIS believes that regulatory support of open standards and open source software, as well as interoperability of new ICT products with legacy products would be an effective means of stimulating innovation and the growth of European SMEs.

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<sup>6</sup> <http://www.nessi-europe.com/Nessi/>.

<sup>7</sup> See supra note 1, page 7.

<sup>8</sup> See Communication from the Commission on "A Strategy for ICT R&D and Innovation in Europe: Raising the Game," Brussels, 13 March 2009, page 5.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid*, page 4.

**C. Trigger the take-off of new markets for innovative ICT products**

**3.10 Among the factors below, which 3 (maximum) are most needed before such take-off can take place?**

... Achieving the single market for ICT innovations to be able to capitalise on the size of our economy

**X** Pro-innovation public policy backed by real spending commitments (inter alia projects that cut across the innovation chain and use of pre-commercial public procurement)

**X** A pro-innovation legal and regulatory framework (IPR, streamline adoption of EU standards, pro-innovation state aid rules, consumer policy)

... EU actions that combine innovation and policy decisions so as to establish the key framework conditions for innovation (e.g., EU eID standards or electronic health records)

**X** Pilot actions to test a number of priority projects at a scaleable level and to support interoperability

... Steps to encourage more effective commercialisation of research results

... Others -- please specify

It is of paramount importance that the revision of any policy and legislative framework should be set right and consider the changing innovation environment. For example, in the context of public procurement, it is necessary to ensure that the responsible authorities comply with the Community principles of equal treatment and non-discrimination, and that they provide a pro-competitive environment open to all software vendors who develop solutions that meet the administration needs.

Since its inauguration, ECIS has been a supporter of legislative and policy changes that would meet the needs of an open, competitive ICT market, as, for example, in the case of the discussions on the adoption of Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (the "Software Copyright Directive") and the adoption of an interoperability provision. ECIS has continually advocated for the need for legislators and policy makers to provide the right equilibrium between the protection of intellectual property rights and in general of innovation in the ICT sector, and encouraging the development of interoperable products. This need is more apparent now that technology has become an essential part of our daily activities – in our interaction with our colleagues, with public services, with our acquaintances.

An outdated public policy and legal and regulatory framework cannot address the complex issues arising out of the development of an information society strategy. Technology changes on a daily basis and legislators and policy makers must take such rapid growth into consideration. Various services across the Commission have identified the need to revise the

legal and policy framework in various related fields such as ICT standardisation, intellectual property rights and public procurement.<sup>11</sup> These developments have taken place in light of the changing needs in the ICT sector.

In this context, ECIS submits that an effective standardisation system as a key means to interoperability, should not be hindered by uncertainties regarding the influence that owners of intellectual property rights have over the process and the eventual implementation of the standard in question. In the software sector, any intellectual property rights related to the standard should be made available royalty free or at minimal cost, with other restrictions (such as, for example, field of use and defensive suspension) offered on reasonable and non-discriminatory terms. In the telecommunications sector, on the other hand, the FRAND model should prevail, be it royalty-bearing or royalty-free.

In addition, in the software sector, *ex-ante* disclosure of licensing terms and condition and *ex-ante* FRAND commitments should be adopted as part of the intellectual property policies of standards organisations to avoid patent hold-ups after the adoption of a standard. Such initiatives are highly beneficial for both producers of standards-compliant products and the ultimate consumers of those products.<sup>12</sup> In complex technology areas, like telecommunications, where there may be hundreds or even thousands of patents and tens of patent owners, the greater concern is that cumulative royalty burden remains at a reasonable level in the sense that the standardised technology is commercially viable; with individual royalty rates being proportionate to the respective contribution each patent owner brings. Standards organisations should be provided the legal certainty required to remove any doubt about the legitimacy of such policies under the appropriate conditions.

Furthermore, ECIS would strongly support the introduction of a voluntary Licence of Right regime with respect to a Community patent system that is currently under discussion as part of the revision of the intellectual property regime aimed at furthering ICT innovation -- this already exists in some Member States. ECIS favours a voluntary Licence of Right system that would ensure wider access to technology essential to achieving software interoperability and that would sufficiently protect access to open standards.

A Licence of Right to use a patented invention guarantees that any interested party will have legitimate access to the patent to develop interoperable software without fear of patent holders trying to assert their exclusive patent rights to block the development of new products. As a result, the Licence of Right ensures that patent protection will not be used strategically to prevent legitimate follow-on innovation in the software industry.

The Licence of Right regime could help address the problems faced by "innocent infringers" (an "innocent infringer" being an individual or business that did not know or could not reasonably

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<sup>11</sup> See, for example, White Paper on "*Modernising ICT Standardisation in the EU – The Way Forward*" published by the Commission, COM(2009) 324 final, Brussels, 3 July 2009, and Commission's Communication on "An Industrial Property Rights Strategy for Europe," COM(2008) 465/3, Brussels, 16 July 2009.

<sup>12</sup> Commissioner Kroes has expressed her support to the *ex-ante* disclosure of the existence of essential patents, and the *ex-ante* disclosure of maximum royalty rates as a means to improve the effectiveness of the standard setting process, highlighting that increased effectiveness of the standard setting process can "*lead to more competitive solutions and reduce the risk of later antitrust problems.*" (see Neelie Kroes, Being Open about Standards, OpenForum Europe – Breakfast seminar, Brussels, 10 June 2008, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/137>)



be expected to have known of the patent), given that they would no longer be vulnerable to injunctions, which is particularly important in the case of individuals or businesses for which the use of patented inventions is essential in order to achieve software interoperability. In addition, Licences of Right will be a useful tool to SMEs, as under a Licence of Right there is certainty that licences will be available and "innocent infringers" will have less fear when marketing their products.

A potential Licence of Right regime should, however, provide businesses with adequate financial incentive to opt for the voluntary Licences of Right regime. Thus, for example, a patent holder filing a written statement with the EPO that Licences of Right are available should receive a significant reduction of the renewal fees for the patent that fall due after the receipt of the statement.

In addition, an effective post-i2010 strategy that will address research and innovation issues, must also consider issues related to open source software that is becoming a key feature of the European software market. A study conducted in 2006 by a consortium of research institutions led by UNU-MERIT provided that "*the notional value of Europe's investment in FLOSS [(Free, Libre, and Open Source)] software today is Euro 22 billion (36 billion in the US) representing 20.5% of total software investment (20% in the US) and that the FLOSS-related share of the economy could reach 4% of European GDP by 2010.*"<sup>13</sup> In light of the increasing importance of open source software for the European ICT market, it is crucial to ensure that open source/free software developers and distributors enjoy adequate protection that allows them to implement standardised technologies protected by patents in a way compatible with open source/free software licences. The implementation of standardised technologies should be drafted in such a way as to ensure compatibility with open source/free software licences and to prevent the abusive exercise of patent rights against open source software developers.

Also, the Commission must remain vigilant about the use of unsubstantiated threats of intellectual property rights infringements against those who attempt to develop interoperable software products. Such threats include Microsoft's public statement that it believes Linux and other open source software infringe 235 Microsoft patents, but has never identified any of these patents.<sup>14</sup>

Patent holders who make vague claims that open source software may infringe their patent rights should be obliged to identify the supposedly infringed patents or cease to make unsubstantiated allegations. This would prevent patents from being invoked to spread fear, uncertainty and doubt ("FUD") against open source software products in the minds of both developers and users. The behaviour of creating FUD against open source software solutions should not be tolerated, as it amounts to an anti-competitive strategy aimed at distorting conditions in the marketplace to the detriment of open source software products.

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<sup>13</sup> Study on the Economic Impact of Open Source Software on Innovation and the Competitiveness of the Information & Communications Technologies Sector of the EU, UNU-MERIT, the Netherlands, 2006, available at <http://www.flossimpact.eu/>.

<sup>14</sup> See Roger Parloff, Microsoft Takes on the Free World, Fortune Magazine, 14 May 2007, available at: [http://money.cnn.com/magazines/fortune/fortune\\_archive/2007/05/28/100033867/](http://money.cnn.com/magazines/fortune/fortune_archive/2007/05/28/100033867/).

**4) Creating a 100% connected society and economy through a high-speed and open internet for all**

**B. The future of the sustained internet services growth -- internet to drive innovation**

**4.7 Should the principle of openness be the key policy for the EU in the field of Internet?**

- Yes
- ...  No
- ...  Other -- Please specify

In light of our answer to question 1.3 above, and as noted by Commissioner Reding in her speech about the Internet of the future,<sup>15</sup> the Internet constitutes the underpinnings of the digital economy and its very substance comprises its role as "*an interactive political forum, a vibrant social network and a vast source of knowledge.*"<sup>16</sup> On the basis of the above, it goes without saying that our answer to the question would be that it is fundamental that the Internet remains *open*.

**4.8 Which areas should policy makers emphasise most to promote growth of internet services?**

- Net neutrality
- ...  End-to-end connectivity (access any point from any point)
- Interoperability/portability of services
- Open standards
- ...  Others -- please specify

As noted above (see question 1.3), one of the prominent results of the i2010 strategy is that more and more Europeans are online, and most of them have high-speed Internet access. In addition, as the Commission underscores, high rates of broadband connectivity have translated into higher usage of advanced services.<sup>17</sup>

The Internet as it stands today owes its development and growth to open standards notably TCP/IP, HTTP and HTML (see question 1.3 above). In addition, it is commonly accepted that software will play a key role in the future Internet.<sup>18</sup> Rich content and digital services will more and more rely on software. For example, JavaFX<sup>19</sup> is a software platform for creating and

<sup>15</sup> See Commission Viviane Reding, Internet of the future: Europe must be a key player, Brussels, 2 February 2009, available at [http://ec.europa.eu/commission\\_barroso/reding/docs/speeches/2009/brussels-20090202.pdf](http://ec.europa.eu/commission_barroso/reding/docs/speeches/2009/brussels-20090202.pdf).

<sup>16</sup> Supra note 1, page 10.

<sup>17</sup> Supra note 1, page 4.

<sup>18</sup> See Report of an industry expert group on a European software strategy, Playing to Win in the New Software Market, Version 3.5, June 2009, page 48.

<sup>19</sup> <http://javafx.com/>

delivering rich Internet applications that can run across a wide variety of connected devices. JavaFX helps build, for example, applications for microblogging tools, like Twitter, or web feeds, that are widely used among Internet users. In order to ensure that the Internet services provided are interoperable, and that users are able to enjoy a vast variety of really innovative products, support for open standards plays an instrumental role. Therefore, both principles – interoperability and support for open standards – should be preserved as guarantors to a fair, non-discriminatory, transparent and competitive playing field that ensures consumer choice.

In addition, as explained above in our answer to question 3.10, the legal and regulatory framework should be revised in a way to ensure that, in the software sector, any intellectual property rights related to the standard should be made available royalty free or at minimal cost, with other restrictions offered on reasonable and non-discriminatory terms. Additionally, *ex-ante* disclosure of licensing terms and condition and *ex-ante* FRAND commitments should be adopted as part of the intellectual property policies of standards organisations to avoid patent hold-ups after the adoption of a standard. On the other hand, in telecommunications, ECIS proposes a model that would be based on the principle that cumulative royalty burden remains at a reasonable level in the sense that the standardised technology is commercially viable. In light of this principle, individual royalty rates should be proportionate to the respective contribution each patent owner brings.

**4.10 To promote their take-up and active usage of Internet-based services, which is the most important group of stakeholders?**

- ...  SMEs
- X**  Consumers
- ...  Large enterprises
- ...  Public services
- ...  Other – please specify

Web 2.0's success resides in the empowerment of the user as an active player in the digital society by means of new participative platforms and services. The new digital tools provided to consumers bring the latter to the forefront, and turn consumers into heralds of the role of Web 2.0 as a means to encourage users' creativity. Therefore, the more consumers using Internet-based services, then more innovative applications are developed and Internet-based services become more popular.

**C. Promoting an Internet for users**

**4.11 As regards a potential adaptation of user rights as a means of safeguarding the end-user, should the EU provide the citizens with rights regarding:**

- ...  Net neutrality
- X**  Interoperability of services
- ...  Managing online privacy
- ...  Managing online identity

- ... A right to be "left alone" from the information society
- ... Universal access to the internet
- ... Others – please specify

In the digital economy, and as part of the process of building a single market, the consumers' role is becoming increasingly important. Consumer bodies agree that it is intrinsic to the development of a single market to enable citizens' seamless access to services no matter where they live or work.<sup>20</sup> Consumer organisations also see "*interoperability as an important means to achieve consumer welfare in the sector of Information and Communication Technologies.*"<sup>21</sup> Software interoperability is a crucial means to ensure citizens' seamless access to services, especially in the Internet era. As consumers underscore,<sup>22</sup> they benefit from software interoperability in many ways – by enjoying access to more and better software products and services; by decreased costs and increased choice through competition; by avoiding vendor lock-in; by a decreased number of instances of misleading commercial practices. It is therefore important European citizens to be granted with a right to access interoperable services and products.

This right should be reinforced by harmonised consumer protection legislation, which would ensure that citizens truly benefit from interoperable products and services. One of the objectives outlined in the Ministerial Declaration of 11 June 2006 in Riga is to "*foster the application of common requirements and standards, European or global, for accessible and usable ICT hardware, software and services, to be supported by appropriate user involvement, and means of demonstrating conformance, like, for example, labelling.*"<sup>23</sup> This kind of certification of software interoperability and compliance with common requirements and standards, if properly implemented, is an initiative ECIS would support as a means to better protect consumers' right to interoperability of services and products, and ensure that they are not misled by false statements and other commercial practices.<sup>24</sup>

<sup>20</sup> See Ministry of Enterprise, Energy and Communications, Government Offices of Sweden, A Green Knowledge Society: An ICT policy agenda to 2015 for Europe's future knowledge society, Final Report, September 2009, available at [http://ec.europa.eu/information\\_society/eeurope/i2010/greenknowledgesociety.pdf](http://ec.europa.eu/information_society/eeurope/i2010/greenknowledgesociety.pdf).

<sup>21</sup> Transatlantic Consumer Dialogue ("TACD"), Resolution on Software Interoperability and Open Standards, July 2008, page 1, available at: [http://tacd.org/index2.php?option=com\\_docman&task=doc\\_view&gid=35&Itemid=](http://tacd.org/index2.php?option=com_docman&task=doc_view&gid=35&Itemid=); see also ANEC, TACD, How Standards can Help IPRs to Evolve for the Benefit of Consumers, Presentation by Chiara Giovannini and Anne-Catherine Lorrain, IPR in ICT Standardisation Workshop, Brussels, 19 November 2008, available at: [http://ec.europa.eu/enterprise/newsroom/cf/document.cfm?action=display&doc\\_id=3644&userservice\\_id=1&request.id=0](http://ec.europa.eu/enterprise/newsroom/cf/document.cfm?action=display&doc_id=3644&userservice_id=1&request.id=0).

<sup>22</sup> See supra note 21, page 4.

<sup>23</sup> Ministerial Declaration on the occasion of the Ministerial Conference "*ICT for an inclusive society*" of the Austrian Presidency of the European Council and of the European Commission, 11 June 2006, Riga, Latvia, page 3, available at: [http://ec.europa.eu/information\\_society/events/ict\\_riga\\_2006/doc/declaration\\_riga.pdf](http://ec.europa.eu/information_society/events/ict_riga_2006/doc/declaration_riga.pdf).

<sup>24</sup> Such misleading practices would include commercial practices containing false information deceiving or likely to deceive the average consumer in relation to elements such as the main characteristics of the products or the nature, attributes and rights of the trader or his agent such as his affiliation or connection and ownership of industrial, commercial or intellectual property rights (see Article 6, Directive 2005/29/EC

**5) Consolidating the online Single Market**

**A. Creating a level playing field in the European online market**

**5.1 Do you think further harmonisation of national regulations would be a way towards an easier access of consumers and businesses to a barrier-free European digital single market?**

- ... No
- ... Yes, in the field of consumer protection
- ... Yes, in the field of payment transaction costs
- ... Yes, in the field of VAT
- ... Yes, in the field of waste of electrical and electronic equipment
- X** Other – please specify: Yes, in the field of the content licensing regime.

ECIS is supportive of an effective pan-European licensing for digital content as a means to make the European Union the leading knowledge economy and online business community. Recently, in July 2008, the European Commission concluded that agreements limiting the ability of 24 European collecting societies to offer their services to authors and commercial users outside their domestic territory was anti-competitive and thus prohibited by law.<sup>25</sup> The so-called CISAC decision was a step forward. However, further progress is required in the direction of establishing a digital single market.

Freedom of movement is a fundamental principle of EU law. On the grounds of this freedom, European citizens expect to be able to access content from their country in their own language when living or travelling abroad. It is therefore unacceptable to restrict European consumers from being able to have a choice of services and access to as much legal content as possible throughout Europe. This basic principle – ensuring European consumers' choice by facilitating access to legal content – is key to the completion of a Digital Single Market and therefore it should be respected when developing strategies to fight illegal content or the use of grey market services. In light of this principle, a harmonised pan-European licensing scheme would effectively enable easier access to a barrier-free digital single market.

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of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directive 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ("Unfair Commercial Practices Directive"). They would also include practices in which material information that an average consumer needs in order to make an informed transactional decision is omitted (see Article 7, Unfair Commercial Practices Directive).

<sup>25</sup> See Commission's press release, Commission prohibits practices which prevent European collecting societies offering choice to music authors and users, 16 July 2008, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1165>.

**6) Promoting access to creativity at all levels**

**A. Affirming users' rights in the participative web**

**6.2 How can creativity be stimulated by building EU-wide easily accessible mechanism to allow users to clear rights and be free to work on existing content for non-commercial purposes?**

- X** Ease the complexity of copyright management
- ... Establish a rights clearance database to facilitate creation and distribution of content online
- ... Make copyright law more flexible as regards non-commercial users
- ... Promote alternative open licensing schemes
- X** Others – please give examples: explore the benefits of a “fair use” system in Europe

ECIS believes that the current system of private copy levies reflects an outdated remuneration model adopted in the analogue era to compensate uses covered by the private copy exception. This model lacks transparency and does not meet the needs of the e-consumers who do not know they are paying a private copy levy on digital equipment and what the amount of this levy is. Furthermore, this model also lacks transparency with respect to the remuneration of the rights holders themselves who do not see their just rewards. In addition, consumers tend to pay multiple times levies for the use of the same content, with the purchase of different electronic devices.

For the reason expressed above, the complex system that bears the aforementioned disadvantages should be replaced with a harmonised, simple copyright management scheme that would benefit all stakeholders – consumers and rights holders – and would facilitate the offering of legitimate content to European consumers.

Together with easing the complex copyright management scheme, it is crucial to adopt a common approach to private copy exceptions across Member States – which currently is very fragmented. It would also be useful to consider and study the comparative benefits of a “fair use” approach in Europe, similar to the one implemented in the US. The problem of illegal copying in Europe is very much due to the lack of a common understanding on what is allowed under the private copying exception, which is interpreted and applied different in each country. In addition, the list of private copying exceptions as provided by the European law is narrowly defined, which has as a result a number of non-commercial purposes, falling into the general scope of potentially permissible private uses to be left without legal protection and therefore being claimed to be illegitimate. To this end, it would be truly beneficial to consider the US fair use analysis and approach and evaluate the advantages and disadvantages of adopting a similar approach in Europe.

**B. Ensuring sustainable copyright**

**6.4 How could the EU assist the creative industries in shifting towards more sustainable business models?**

In ECIS' opinion, the key principle in order to facilitate creative industries shifting towards more sustainable business models is to carefully balance the rival interests of all stakeholders. In the

digital economy, it is important to guarantee easy consumer access to a rich source of legal content across the Digital Single market, while preserving the interests of rights holders and being intolerant of unauthorised copying. With this principle in mind, the EU should work on developing an environment that would support an open, competitive market for the distribution of legitimate digital content through attractive and innovative services for the benefit of consumers. This could be done by looking into ways to reform the relevant legislative framework and by promoting education and awareness programmes<sup>26</sup> for consumers with respect to the development of legitimate content distribution services.

**C. Making digital content overcome borders across the EU**

**6.5 What would facilitate the emergence of business models not based on territorial copyrights?**

The adoption of a pan-Europe licensing model and the completion of a Digital Single Market (see question 5.1 above).

**7) Strengthening EU's role in the international ICT arena**

**A. Openness as a global issue**

**7.1 Which are the most important issues for future European policy on the global scene?**

- ... Internet free of traffic restrictions
- ... Internet free of censorship
- ... Security and protection of critical infrastructure
- X** Standards
- ... Fight against inappropriate content and malpractice (SPAM, virus, etc.)
- ... International protection of children
- ... Global technical challenges (multilingual issues, address space etc.)
- ... Others -- please specify

As indicated above (see question 1.5), ECIS acknowledges the international dimension of the ICT sector, and believes that issues such as openness in the ICT market should be considered from a global perspective. ECIS sees a lot of potential in "openness," as in open standards, and believes that open standards should be viewed as an issue that requires international cooperation. ECIS strongly supports the promotion of better cooperation among global industry fora and consortia, such as W3C, IETF and OASIS, and the European Standardisation Organisations ("ESOs"). To this end, it is imperative that global industry fora and consortia be treated equivalent to standards developed by ESOs. These global industry fora and consortia have proven to be successful in introducing widely available and generally accepted standards,

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<sup>26</sup> Similar to, for example, the eYou Guide, launched in May 2009, available at [http://ec.europa.eu/information\\_society/eyouguide/index\\_en.htm](http://ec.europa.eu/information_society/eyouguide/index_en.htm).

such as, for example, the HTML standard, for which national governments have shown a strong preference.

The current standardisation policy framework in Europe recognises only standards that have been developed in formal national, European or international standards organisations. Deliverables from global fora and consortia are not officially recognised. However, such deliverables should also be available for use provided they meet certain openness criteria.

Furthermore, Europe should remain vigilant with regard to unilaterally defined *de facto* standards. A well-established standardisation framework is a key element for innovation and interoperability. Nonetheless, the adoption and implementation of unilaterally defined *de facto* standards relating to dominant proprietary platforms can in some cases trigger restrictions on how other vendors can implement a standardised technology, which in turn impacts consumer choice, market competition, and incentives for innovation. The selective disclosure of the documentation of a standardised technology and the costs of reverse engineering utilised in order to determine undisclosed extensions of a proprietary *de facto* standard are examples of restrictions related to the implementation of closed proprietary platforms. Precious development resources are diverted from innovation efforts. The existence of such closed proprietary platforms maintained by vendors based outside the European Union can be one of the causes for the negative balance of trade in software products and services developed in Europe.

In this context as well, ECIS would like to underscore the importance of a policy reform that would address concerns such as those outlined in our answer to question 3.10. Providing sufficient guarantees for an effective standardisation system as a key means to interoperability involves eliminating any uncertainties regarding the influence that owners of intellectual property rights have over the process and the eventual implementation of the standard in question. This could be implemented, in the software sector, by making any intellectual property rights related to the standard available royalty free or at minimal cost, with other restrictions offered on reasonable and non-discriminatory terms. On the other hand, in the telecommunications sector, any cumulative royalty burden, caused by the vast number of patents on standardised technologies, should remain at a reasonable level making the standardised technology commercially viable. This means that individual royalty rates should be proportionate to the respective contribution each patent owner brings.

The above should be complemented by *ex-ante* disclosure of licensing terms and conditions and *ex-ante* FRAND commitments to avoid patent hold-ups after the adoption of the standard, in the software sector. In telecommunications, patent owners, who make a FRAND commitment, should also make an *ex-ante* commitment to a framework, as outlined above, and in which the maximum aggregate licensing costs are reasonable, and the patent holders' own individual royalty claims will not exceed the proportional contribution they make to the patented technology in the standard.

**7.2 What are the most important areas where Europe's international role should be strengthened?**

- ... Internet governance
- ... International research cooperation
- X** ICT competitiveness



- ... ICT trade agreements
- X** Stronger European representation in international ICT fora
- X** Others – please specify: supporting interoperability

ECIS commends Europe for its pioneering efforts in support of interoperability as a means to promote healthy competition in the ICT market.<sup>27</sup> ECIS has always been a strong believer in the potential of interoperability to promote innovation and competition on the merits. Therefore, at this critical point of developing an ICT strategy for the next five years, we would welcome Europe's continued pioneering and leadership in framing the debate on the importance of interoperability across various industry domains such as, for example, health and transport.

### **C. European voice in international fora**

#### **7.3 How can Europe's voice and presence be best strengthened?**

- ... Establish clearer European representation in international ICT and Internet fora
- X** Strengthen information society representation within the EU delegations across the world
- ... Develop a clear mandate for the European Commission to coordinate the European voice on global issues
- ... Others – please specify

### **D. New models for Internet governance**

#### **7.4 What could be the most important initiative Europe should take to modernise the international governance of the Internet?**

- ... Support existing ICT and Internet governance structures
- ... Support the reform of international governance bodies
- ... Promote multilateralism
- X** Others – please specify: promote participation of various stakeholders in Internet governance bodies

The Internet's unprecedented success is due in large part to the engagement of consumers and businesses across the world in developing an open, participatory web. The Internet unleashes individual creativity, and turns all citizens into active players. Individuals and businesses should be able to communicate their needs to international governance bodies in

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<sup>27</sup> For example, in *Microsoft*, the European Court of First Instance held that refusal to supply interoperability information to competitors hinders competition in the market, and therefore should be prohibited. This decision is of paramount importance in fostering dynamic competition in the software industry (Case T-201/04, *Microsoft v Commission of the European Communities*, 17 September 2007).

Another representative example of Europe's remarkable work in promoting interoperability is Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (the "Software Copyright Directive"). Article 6 provides a limitation to copyright on computer programs for interoperability purposes.

order for Internet governance bodies to ensure that decisions taken strike the right balance between the competing interests of all stakeholders. ECIS has strongly supported activities and projects, such as the Internet Governance Forum ("IGF")<sup>28</sup>, and is willing to contribute its experience in the ICT sector in similar activities. To this end, it would be useful to have Europe supporting the participation of various stakeholders in international Internet governance bodies.

**8) Making modern and efficient public services available and accessible to all**

**A. Avoiding new digital divides**

**8.1 What are the key ways to increase take up of eGovernment services by citizens?**

- ... Increase awareness (marketing)
- ... Strengthen multi-channel delivery
- ... Switch off "traditional" channels
- ... Strengthen security
- X** Strengthen accessibility and usability
- ... Provide incentives
- X** Others -- Please specify: Promote interoperability within applications and services in order to facilitate communication with citizens

As the Commission notes in its Communication,<sup>29</sup> the interoperability of eGovernment services is a major challenge. Efforts must be further pursued to increase interoperability among public administrations and eGovernment services. ECIS believes that ensuring interoperability would be a key means to increasing take up of eGovernment services by citizens, who face difficulties in communicating seamlessly with public administrations by using applications and services that cannot interoperate.

As a means to increase interoperability among public administrations and eGovernment services, initiatives such as the European Interoperability Framework ("EIF"), which intends to address software interoperability, should be strongly supported. ECIS welcomes the European Commission's recent efforts to revise EIF, and believes that the draft EIF v2.0 as published in July 2008 points to the right direction.<sup>30</sup> ECIS is keen to see the European Commission publish its long awaited final EIF v2.0 document to be based on the principles of the draft published in July 2008, considering that it will not only benefit Europe, but will also have spill-over effects in other countries around the world that are looking to Europe for leadership in that area. In short, ECIS acknowledges that such initiatives are intrinsic to the future of European software interoperability across eGovernment services and, for that reason, they should be actively pursued.

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<sup>28</sup> Internet Governance Forum, available at <http://www.intgovforum.org/cms/>.

<sup>29</sup> See supra note 1, page 7.

<sup>30</sup> Supra note 4.

In addition, it is crucial to increase the use of ICT in schools as a means to increase the popularity of eGovernment services. In this context, government should ensure that children are not simply taught ICT skills in a way that locks them into particular services, applications, and vendors; rather, they should be educated about the fundamental principles of ICT development in order to become active participants of Web 2.0. Empowering students with substantive knowledge of ICT will make them active citizens in the information society and enthusiastic users of eGovernment services.

**8.2 Do you think there is a need for a common European understanding on quality delivery of ICT-enabled public services, in view to improve access and participation for everyone?**

- ... User charter
- ... Common guidelines
- X** Common minimum standards
- ... Other – please specify

**E. Impact of ICT on teaching and learning**

**8.12 In your opinion, what are the barriers faced by education systems to complete the transition from pure ICT skills development to the use of ICT across different learning disciplines?**

Currently, the majority of education systems in Europe are focused on developing students' ICT skills on particular proprietary technologies, applications and services, without really aiming to give students a wider understanding of which other open technology options exist and how those technologies work. That is a major problem, as it results to students being locked into proprietary solutions very early in their lives via the education systems. Consequently, "lock-in" of the younger generations (and citizens) to specific vendors and brands does not empower them to develop their own ICT applications to use across different learning disciplines.

**8.13 In your opinion, which actions and instruments would be most useful for achieving this goal?**

- ... Making ICT skills a priority in teacher training (both pre-service and in-service)
- ... Promoting exchange of best practices
- ... Supporting research on the impact of ICT for learning
- ... Setting common EU-wide targets
- X** Adopting soft law (guidelines, recommendations, ...)
- X** Other – please specify: raising awareness in education of any open alternatives in ICT.

It is important that European educational institutions start to recognise that open technologies do offer an alternative to proprietary solutions and that they allow their students to use such alternative solutions to hand in their work. An example is the Open Document Format ("ODF") which is implemented in OpenOffice and Lotus Symphony, which are both available online to download and use free of charge. OpenOffice as an example is a widely used and recognised

alternative to Microsoft's Office productivity application and is widely used in a number of educational institutions outside the European Union in the new emerging countries, as they see and understand the major benefits of not being locked in to proprietary applications and to a specific vendor or brand. However, in Europe, there seems to be an almost systematic resistance to let students use alternative open technology solutions. In order to help change that situation, it may be necessary to develop a pan-EU recommendation regarding the use of ICT in educational institutions from primary schools through to universities in order to raise awareness of the open alternatives, which are often more reliable and secure than the current proprietary solutions the educational institutions use today. There is also another aspect to this issue, and that is affordability. Europe still has a number of disadvantaged and poor regions as well as citizens – and for the educational institutions to mandate the use of expensive proprietary solutions are not a way forward to help bridge the digital divide.

## **9) Using ICT to improve the quality of life of EU citizens**

### **A. Bridging the gaps**

#### **9.1 What are the three most effective ways to meet the Riga targets?**

- Providing more deployment
- Providing more funding for research
- ... Encouraging self regulation
- ... Adopting soft-law
- ... Adopting hard-law making the "Riga targets" compulsory
- Promoting standards
- ... Other – please specify

In particular, ECIS supports initiatives that would foster the application of common requirements and standards that are global, for accessible and usable ICT hardware, software and services, to be supported by appropriate user involvement. As the Riga declaration underscores, innovation, interoperability and open architectures are the key principles to consider and encourage in materialising the initiatives outlined above. In addition, real consumer choice can only be enforced by improving consumer awareness and by developing methods to demonstrate conformance with common requirements and standards, such as the method of labelling prescribed by the Ministerial Declaration.

Further, promoting and ensuring accessibility of all public web sites by 2010, through compliance with the relevant W3C common web accessibility standards and guidelines,<sup>31</sup> accessibility to key eGovernment services, and use of open standards, should be strongly supported in order to increase interoperability among public administrations.

ECIS believes that there remain significant accessibility gaps – particularly in the area of intellectual disabilities – where more research and technology innovation is needed. For example, while we have a fairly good understanding of how to create a relatively efficient and

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<sup>31</sup> See supra note 23, pages 4-5.

productive environment for users with vision impairments (through screen readers interacting with applications through platform accessibility interfaces & services), we do not yet have such an understanding for intellectual disabilities. Further, ECIS believes that cost remains a very significant barrier to e-Inclusion, and encourages funding of open source accessibility solutions (such as is being done in the AEGIS FP7 project<sup>32</sup>), so that the results of government-funded research can be used by all European citizens.

## ***B. Improving digital skills***

### ***9.2 How could formal training and certification schemes (e.g., training on-the-job) take into account new ways of learning and get a greater recognition in the labour market?***

ECIS agrees that formal training and certification schemes have the potential to improve European citizens' digital skills and ultimately drive innovation in Europe. It is important though when implementing such training and certification schemes, such as, for instance, ECDL or ICDL, to ensure that they do not focus solely on vendor-specific certification, but also offer certification for open source software solutions available in the market. ECIS would also propose Europe to consider skills-based certification, like, for example, secure programming and breach preparedness.

In short, to address the education barrier we propose to include open source solutions in school curricula and to promote initiatives such as Computer Driving Licenses based on open source software. The Commission should support the further development and broad roll-out of the European and International Computer Driving Licenses based on open source software. Our intention is to ensure increased levels of digital literacy of end users through open source software certification, and we believe that by starting with ECDL/ICDL we would be able to reach a broad population of end users across Europe (and internationally). This will provide governments, business, consumers, educators and students with an alternative open source IT certification.

## ***D. Enforcing rights of people to go online***

### ***9.5 What is the most important way to guarantee rights of people to go online?***

- ... Granting rights at European level
- ... Encouraging users' and consumers' feedback and action
- ... Through tailored actions for specific users (e.g., the elderly, the migrants, the minors, the children from a poor background and people with disabilities)
- X** Other – please specify: enabling people to go online at the lowest possible cost.

ECIS does not view the problem of online accessibility so much as a rights issue – that people with disabilities are being actively discriminated against. Rather, we see the issue as one of a series of barriers. Some of the barriers are technological (e.g., use of inaccessible technologies for web design, or improper use of techniques and technologies that could be accessible if used properly), some are awareness (e.g., not knowing about solutions), and perhaps the most significant relate to costs – i.e., cost of initial acquisition of access solutions (such as 3.000 EUR for screen reading software for Windows), cost of training needed to be

<sup>32</sup> <http://www.aegis-project.eu/>.

able to use the solutions with facility, and maintenance/upgrade cost, given that software based assistive technologies typically need to be upgraded whenever they encounter updated versions of the operating system or application. Therefore, ECIS suggests that the best way to address the cost barrier will be to invest in open source accessibility solutions that can be used freely by all European citizens.

***F. Promoting a holistic approach***

***9.7 What would be the most important steps to guarantee a better integration of digital inclusion into social inclusion policies and a clearer division of responsibilities?***

- Restructuring and redistributing of competences within public authorities at European level
- ... Restructuring and redistributing of competences within public authorities at national and local levels
- Utilisation of coherent policy tools, to monitor and benchmark national actions at EU level
- ... Promoting exchange of good practices
- Showing the business case for more integrated policies
- ... Other – please specify