



25th Chaos Communication Congress

*Nothing to hide*

Berlin, 2008-12-30

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La Quadrature du Net  
Campaigning on Telecoms Package

*Pan-european activism for patching a "pirated" law*

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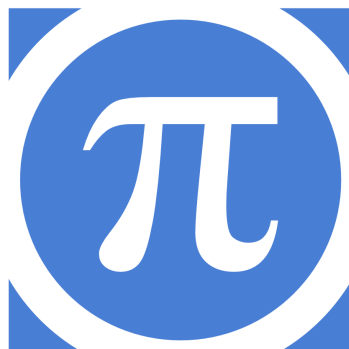
by

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*Whatever you do will be insignificant, but it is very important that you do it.*

*Mohandas Karamchand Gandhi*



La quadrature du Net

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# Chapter 1

## Who are we ?

### 1.1 Who are La Quadrature du La Quadrature du Net

*La Quadrature du Net* is citizen group informing about legislative projects menacing civil liberties as well as economic and social development in the digital age.

*La Quadrature du Net* informs citizens, public authorities, organizations, corporations.

It works with everyone to elaborate balanced alternative solutions.

*La Quadrature du Net* is supported by French, european and international NGOs including the Electronic Frontier Foundation, the Open Society Institute and Privacy International.

### 1.2 What do we want ?

We call for a one year moratorium on all projects aimed at establishing new rules about digital technologies and electronic communications, when individual freedoms or human rights are concerned.

We call for the creation of a parliamentary delegation to civil liberties and digital technologies, responsible at first of making an assessment of existing legal texts in this area, which includes making implementation reports when intended in the law, as well as necessary impact studies.

Once this balance is achieved, we ask that a decentralized digital assembly be organized across the country like what was done for the proposed digital identity card.

Finally, we ask for the French Presidency of the European Union shall to be the opportunity for France to organize reflection to account the european law and to open the debate on its desirable development in all Member States.

### 1.3 Why this name?

We believe that the promoters of the projects we are opposing are trying to solve a problem similar to squaring the circle. They did not understand that we changed era, that some approaches are outdated, that we must collectively rethink our approach to the control of information.

We believe that it is impossible to effectively control the flow of information in the digital age by the law and the technology without harming public freedoms, and damaging economic and social development. This is what we call squaring the net (in french : *La Quadrature du Net*).

We agree with the idea expressed by Jacques Attali related to the draft of the Olivennes law, when he presented the Committee's report about economic growth to the parliament: "*we cannot develop economical growth by installing surveillance and tracing.*"

For the record, according to the online encyclopedia Wikipedia, squaring the circle is a classic problem of mathematics appearing in geometry. It is one of three major problems of the ancient world, with the trisection of the angle and the duplication of the cube.

In the oldest mathematical text found, Rhind papyrus ( $\approx$  1650 B.C.), The scribe Queen Ahmose already proposed approximate solution of the problem. However, we had to wait until 1882 for the German mathematician Ferdinand von Lindemann to show the transcendence of  $\pi$ , proving the impossibility of solving the problem of squaring the circle: it is impossible to construct, using only a ruler and compass, a square whose surface is exactly equal to the surface of a disk.

The question now is how many centuries it will be necessary for the law makers to return to reason? Are we in the field of law and ICT closer to BC -1650 or 1882?

## Chapter 2

# *La Quadrature du Net* through its publication

### 2.1 Squaring the net

24 March, 2008

The French parliament will soon debate a draft law “*about the High Authority for the dissemination of works and protection of the rights on the internet*”. The project incorporates the recommendations made by the then CEO of FNAC (biggest CD and DVD retail stores in France), Denis Olivennes. One of the key measures is to sanction a violation of copyright by cutting access to the Internet.

This sanction would be imposed by a so-called “independent” administrative authority. Reported by private actors monitoring the Internet, the alleged offenders would then be remotely recognized by administrative officers who have access to personal connection data. All this without supervision of a judicial authority. So far, only law enforcement agencies fighting terrorism have that exceptional power, on a temporary basis, until the end of 2008.

This staggering bill, prepared under unbelievable conditions - Was a mission on GMOs ever given to Monsanto? - is indicative of a dangerous headlon flight for democracy, society and economy.

In France, many laws and regulations about digital technologies have been adopted in recent years, without prior consultation or assessment of the existing texts, under pressure from lobbies. The Olivennes draft law is being drafted while the implementation report of the very controversial 2006 law on copyright, planned for February 2008, has not even begun.

The previously adopted texts are out of step with the reality of usage and techniques. Just voted, they are obsolete, unenforceable, ineffective. Lawyers don't even understand them. It's squaring the Net: the devil does not want to return into the box! And what if the devil was the box itself?

Asking the question is by itself heretical. Just appointed, Denis Olivennes announced

that it was out of question to legalize sharing of music and films for a fee distributed among artists. Such a blanket license was provisionally voted in late 2005 by MPs from all sides, before the government, pressed by the publishers, brought the Parliamentary majority back in line to withdraw it.

The project Olivennes therefore drives the government into a dogmatic, almost obscurantist and authoritarian drift. It takes inspiration from obsolete oracles, considering the progress as a threat rather than an opportunity. The proposed step is however an unprecedented step backwards.

The Swedish ministers of culture and justice, who recently rejected a similar proposal, made no mistake, stating that “*Many have noted that shutting down an Internet subscription is a wide-reaching measure that could have serious repercussions in a society where access to the Internet is an imperative welfare-issue.*” Especially in the case of “*triple play*” offers, where the telephone and television could be cut too. The electronic social death of entire families on behalf of copyright? Beaumarchais, Victor Hugo, Jean Zay must be turning in their graves.

And what is there to say about the extension of emergency measures intended for combating terrorism, so that private companies can hunt the Internet users and circumvent the judicial authority? Who can believe that an Internet user punished in this way will turn to spending money in FNAC stores? Especially when one considers that disconnected users will still have to pay for their connection!

As for the cost to the taxpayer and the economy, it remains unknown today. No economic impact analysis has been carried out. To monitor, threaten and repress millions of people via a parallel justice has a price, however. To disconnect homes and businesses, as well. Public finances and all subscribers will have to bear the cost of this surveillance.

There are, however, other solutions: to legally secure democratic and creative uses of the Internet, enabling web entrepreneurs to innovate safely, to review the existing mechanisms for wealth distribution and finally admit that the punitive approach and dialogue reduced to (only between?) a few lobbies lead to market authoritarianism.

It is impossible to effectively control the flow of information in the digital age by the law and technology without causing serious harm to civil liberties and hindering economic and social development.

It took 3000 years to demonstrate that it was impossible to fit circles into squares, with a ruler and a compass, without loss, because of the transcendence of Pi. As squaring the circle in its time, squaring the net will be only overtaken by changing tools and perspectives. Will it take 3000 years for our elites to understand it?

## 2.2 The debate is open.

27 March, 2008

While the Olivennes bill<sup>1</sup> aimed at building the “graduated response” must be voted before the summer in France, a group of citizens launched “*La Quadrature du Net*” to alert on this and other equally disturbing governmental projects, and to make alternative proposals.

Since the beginning of the year, the french government has announced various projects relating to Internet :

- Olivennes bill aimed at building “graduated response”<sup>2</sup> allowing an administrative authority to cut down internet access that has been repeatedly used for downloading music or video without authorization;
- The proposed extension of the powers of the CSA (french media authority) to Internet.
- Draft proposal for an administrative marking of websites.
- Blurry plan to combat cybercrime.
- Draft decree extending the retention of connection data.

The government has indicated that it wanted several of them, including the Olivennes bill, to be adopted before the French presidency of the European Union (July 1st), and that these measures are widespread at the european level in the wake.

*“Widespread monitoring of Internet, including by private actors, mandatory over-referencing of ‘accredited sites’ by the search engines, administrative supervision of content hosters and publishers, content filtering and internet access disconnection without trial ... These projects draw a declining democracy, a political control of the internet, a Big Brother society. By no means a model for Europe.”* Said Christophe Espern, founder of the initiative.

Emergency measures planned to fight terrorism could be extended over time and to other areas, in an effort to preserve outdated models, without a real democratic, open and transverse debate. Such a debate is essential regarding the ethical, social and economic issues caused by the “*digital revolution*”.

Citizens who believe that there are other answers to this challenge therefore decided to launch an initiative to inform the public and the government, and open the debate. They chose the name *La Quadrature du Net* because they believe that, for years, the lawmaker is trying to solve a problem similar to squaring the circle.

The site <http://laquadrature.net> relays information on the projects and future actions of the initiative. Synthetic information kits are online, they will be updated throughout time.

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<sup>1</sup>The Olivennes bill is named after Denis Olivennes, CEO of FNAC (one of the biggest CD, DVD and online music retailer in France), commissioned by Nicolas Sarkozy to find solutions to fight unauthorized downloading.

<sup>2</sup>EFF about the “three strikes” : <http://www.eff.org/deeplinks/2008/03/three-strikes-three-countries>



Other analysis, op-eds and proposals will follow. Users can stay informed by subscribing to the mailing list and participating more directly to the initiative<sup>3</sup>.

## 2.3 European Parliament rejects graduated response

10 April, 2008

The European Parliament adopted a resolution this morning which commits the member states - therefore France - *“to avoid adopting measures conflicting with civil liberties and human rights and with the principles of proportionality, effectiveness and dissuasiveness, such as the interruption of Internet access.”* This vote proves that the system of graduated response that Nicolas Sarkozy wants France to adopt quickly and to extend to Europe during the French Presidency of the EU, is seen as contrary to human rights by a majority of MEPs.

This vote is a strong signal in the direction of France. It comes in support of the position of the Swedish government which had already rejected the graduated response. The rapporteur Guy Bono brought this resolution, which is supported by members from all political sides, stated yesterday in plenary:

*“On this subject, I am firmly opposed to the position of some Member States, whose repressive measures are dictated by industries that have been unable to change their business model to face necessities imposed by the information society. The cut of Internet access is a disproportionate measure regarding the objectives. It is a sanction with powerful effects, which could have profound repercussions in a society where access to the Internet is an imperative right for social inclusion.”*

*La Quadrature du Net*, that wrote a 3 page letter monday to MEPs, welcomes this vote. We thank all the elected officials who voted for the amendments that led to this result. We also thank all the associations for the defense of liberties we worked with to raise awareness among MEPs on the topic, through e-mail and telephone. We invite the French Prime Minister, Francois Fillon, to take this vote into account, and therefore not to submit the Olivennes Bill (french graduated response) to the French Parliament.

As explained in the report by the professor of criminal law Jean Cedras that the minister Renaud Donnedieu De Vabres had sought to bury in his time, *“the idea of an automatic graduated response, as tempting as it seemed [to the French government and the right-holders], should be abandoned.”*

## 2.4 Will France Introduce the Digital Guillotine in Europe?

23 April, 2008

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<sup>3</sup>[http://www.laquadrature.net/wiki/How\\_to\\_Help](http://www.laquadrature.net/wiki/How_to_Help)

Ever since DADVSI, the French implementation of the European Copyright Directive, Internet users in France have faced increasingly disproportionate threats of punishment for claims of copyright infringement. The latest scheme promoted by the content industry against unauthorized sharing of music and films on Internet is called “*flexible response*” or “*three strikes, you’re dead*”.

The principle is simple: repeated infringements result in getting cut off from the Internet. A claimed copyright infringer is identified by automated Internet traffic filtering and by a rightholders’ denunciation. After a complaint to the ISP, a letter is sent warning the alleged infringer that he might be being cut off from the Internet. In the early versions of this scheme the punishing fines were to be sent out automatically, but the fines were later replaced by the proposal to cut off Internet access instead.

The proposal further includes the creation of an administrative authority responsible for enforcement, making sure the disconnected Internet users are not able to use the Internet again for a set period of time. The scheme is unclear as to the possibility to appeal a mistaken claim or to whether a punished Internet user can also be sued in a civil law suit. State authorised software for securing Internet connections has been proposed as one solution to uphold legal protection of innocent citizens.

Promoted by the French President Sarkozy, flexible response has become known as the suggested main measure in the Olivennes report, which until recently was generally thought to provide the basis for both French and European legislation to come. But not so any more; a majority vote in the European Parliament on the 10 April 2008 suggests otherwise.

In contrast to the French solution, the Swedish government has rejected such a regime as disproportionate. The Swedish Ministers of Justice and Culture concluded in March 2008 that ostracism from the Internet as punishment in a society whose daily activities are increasingly intertwined with the digitally networked environment is not proportional to the infringement of copyright, especially without intention for commercial gain. Its only justification, that of deterrence, has been shown repeatedly to be ineffective. The Swedish Government has also pointed out that large owners of media content should “*not use the copyright laws to defend old business models*” but should do more to provide attractive alternatives to unlicensed file-sharing services.

In an effort to bring the Swedish Government’s policy decision to the European discussion, and to oppose Sarkozy’s plans, MEP Christofer Fjellner (EPP) initiated a cross partisan platform together with former French Prime Minister MEP Michel Rocard (PSE) and MEP Guy Bono (PSE), Rapporteur for the European Parliament’s Report on Creative Industries. Together they signed, with more than 90 MEPs supporting them, an amendment to the report which effectively rejects flexible response:

*“Calls on the Commission and the Member States to recognise that the Internet is a vast platform for cultural expression, access to knowledge, and democratic participation in European creativity, bringing generations together through the information society; calls on the Commission and the Member States, therefore, to avoid adopting measures conflicting with civil liberties and human rights and with the principles of proportionality, effectiveness and*

*dissuasiveness, such as the interruption of Internet access.”*

Following the tabling, the internal debate over the amendment intensified and was complicated when the liberal group (ALDE) unexpectedly asked to split the amendment into two parts and vote on them separately, presumably to save flexible response. The first part related the Internet and the importance of rights and proportionality had overwhelming support, while the second part explicitly mentioning “*interruption of Internet access*” was harder to support for many French MEPs who would not go against the explicit will of their own government. However, with a close vote on the second part, the amendment ended up being passed in its entirety.

In the aftermath of the European Parliament’s decision, the French Minister of Culture, Ms. Christine Albanel, has clearly announced her intention to move on with the Olivennes proposal. She is currently planning to put it to vote in the French Parliament before the summer. Accordingly, to this date, there are no indications that Sarkozy’s decision to use the French Presidency to propagate this scheme at the European level has been revised.

In Brussels it is also unclear whether the initiative by MEPs Fjellner, Rocard and Bono will have an impact. Neither of them is listed as a speaker or moderator at the next High Level Conference on Counterfeiting and Piracy on the 13 May 2008, while MEPs who voted in favour of flexible response are. It is a matter of public interest to ensure that there is a balanced debate and that seats are reserved for politicians representing the European Parliament’s position on what otherwise risk to be a very controversial conference.

In media and the political blogosphere the impact of the vote is increasing. Of particular interest is the correlation between the Member States with a well developed Internet infrastructure and the way their MEPs voted: the digitally advanced Nordic countries have all clearly rejected the French digital guillotine.

Amendment 1 by Christofer Fjellner and amendment 2 by Michel Rocard and Guy Bono and others. Report Cultural industries in Europe. Rapporteur Guy Bono (2.04.2008) : [http://www.europarl.europa.eu/sce/data/amend\\_motions\\_texts/doc/P6\\_AMA\(2008\)0063\(001-001\)\\_EN.doc](http://www.europarl.europa.eu/sce/data/amend_motions_texts/doc/P6_AMA(2008)0063(001-001)_EN.doc)

## 2.5 Privacy : Film industry pirates European law

14 May, 2008

*La Quadrature du Net* is worried about amendments endangering privacy tabled by the rapporteurs of the Culture Committee of the European Parliament. They fit into the consideration of two proposals framework directives known as “*Telecoms Package*”<sup>4</sup>

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<sup>4</sup>- The Telecoms Package : [http://www.laquadrature.net/wiki/Telecoms\\_Package](http://www.laquadrature.net/wiki/Telecoms_Package)

- Guardans amendements : [http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/pa/718/718636/718636en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/pa/718/718636/718636en.pdf)

- Mavrommatis amendements : [http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/pa/718/718261/718261en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/pa/718/718261/718261en.pdf)

These amendments are aimed at injecting in the Privacy and electronic communications (E-Privacy) directive a device known as the flexible response or three strikes. It is allowing producers to engage in police duties, and access providers to punish the public without going through the judicial authority.

As evidenced by a note of the french film lobby circulating in the European Parliament, several of these amendments are measures drafted directly by the film industry that seeks to break a recent ruling by the European Court of Justice. They significantly reduce the level of protection of privacy and personal data in Europe.

*La Quadrature du Net* is concerned about other amendments intended to legalize cultural industries' spyware, to institutionalize their influence, or to enable them to determine what wireless technologies will be used by the public. The last amendment studied denies the existence of a public's right to redistribute the public domain or free licensed works.

*“These amendments confirm once again that the ‘flexible response’ goes against the fundamental rights and the principle of proportionality. How MEPs could have tabled such dangerous legislative riders? The reform package Telecoms aims to strengthen the protection of users, not weaken it! The film industry wants to pirate European law!”* Says Christophe Espern, spokesman for *La Quadrature du Net*.

*La Quadrature du Net* therefore invites MEPs to confirm their 10 April vote condemning the graduated response, by rejecting these amendments.

Analysis by *La Quadrature du Net*: <http://www.laquadrature.net/files/note-CULT-quadrature-130.pdf>

## 2.6 MEPs want to torpedo the Free Internet on July 7th

1 July, 2008

European Internet users could be blocked from lawful activities by mandatory spyware, in the interests of their security. The right to use free software for internet access would therefore not be assured anymore. The neutrality of the Internet is also directly attacked, as is the principle that technical intermediaries have no obligation to prior surveillance of contents. Other amendments will de facto enable administrative authorities to obligate ISPs to work with content producers and rights-holders' private police, including the sending of intimidating messages, with no judicial or regulatory oversight.

These measure goes further than the French “*graduated response*” project, which has been subject to widespread opposition, including by the European Parliament on April 10th. That is undoubtedly why those amendments have turned up on early july, and why those drafting them use subtle rhetoric and crossed-references to make the overall text harder to understand (more than 800 amendements on 5 directives were tabled).

*“The politicians who engage in these summer manoeuvres dishonour Europe and their mandate. They rely on the fact that nobody watches them a week before Parliamentary holiday, to divert the Telecoms package from its primary objectives of consumer protection. They pave the way for the monitoring and filtering of the Internet by private companies, exceptional courts and orwellian technical measures. It is inconceivable for freedom but also for European economic development. We call on all MEPs to oppose what they have already rejected.”* said Christophe Espern, co-founder of *La Quadrature du Net*.

These torpedo amendments are currently subject of a series of secret, back-room negotiations between a handful of MEPs who do not always understand all the implications of these issues. Accomplices of lobbyists who hold the pen are in every political party. Instructions for the plenary vote will be established this week for a vote in IMCO and ITRE committee on Monday, July 7th.

At this stage, citizens must act urgently and en masse, to make their MEPs understand, a year before the elections, the possible consequences of their actions.

One week before a key vote in the reform of European law on electronic communications (*“Telecoms Package”*), *La Quadrature du Net* denounces a series of amendments aimed at closing the open architecture of the Internet for more control and surveillance of users.

More infos on how to act and get mobilized : [http://www.laquadrature.net/wiki/Mobilisation\\_Paquet-Telecom](http://www.laquadrature.net/wiki/Mobilisation_Paquet-Telecom)

## **2.7 The Telecoms Package: out of the shadows, into the light**

On Monday, July 7th, the IMCO and ITRE committees of the European Parliament passed the review of European telecommunications law known as *“Telecoms Package”*. All of the amendments damaging to the Internet, that were condemned by *la Quadrature du Net* and numerous organizations, have been voted through.

*La Quadrature du Net* continues to maintain that these amendments aim to close the open architecture of the Internet, with the result that there will be increased surveillance of users. They open the way to the regulation of users via the Internet Service Providers (ISPs) under the control of national regulators, instead of a judiciary authority. They directly attack net neutrality by allowing these operators to constrain legal activities of users (such as the use of free software), in order to promote their own services or those of companies dominant in the market for content or software.

However, *La Quadrature du Net* is delighted to see the strong citizen mobilization which emerged in parallel with this committee vote. Thousands of European citizens have written to MEPs. The European press has actively covered the vote. Numerous MEPs became aware of the stakes and the threats to infringe on basic rights, the open architecture of the Internet, Free Software, competitiveness and European informational sovereignty.

During the session, many MEPs have underlined the importance of citizen mobilization and how it helped to highlight many problematic elements of the Package, such as privacy. Others have complained about getting the messages, undoubtedly upset to see that their proposals did not meet the public expectations.

Some of the European Parliament rapporteurs on the Telecoms Package have also re-read their proposals and admitted that, when viewed in the overall context, they were problematic and should be reworked before the final plenary vote .

We are pleased with the impact our campaign has made, but also disappointed that IMCO committee MEPs have adopted amendments they know to be damaging or that they could not study at length.

How else can one explain that shadow rapporteurs tried to orally amend, as an emergency measure, compromise amendments they had accepted shortly before? And how a member of the Parliamentary Committee could take note of compromise amendments that were unknown before he entered the session?

But we are pleased to see that today that several MEPs, including rapporteurs of the IMCO Committee, request a postponement of the Telecoms Package vote in the plenary, in order to have more time to examine it. They particularly wish to delete certain amendments adopted in LIBE Committee that *La Quadrature du Net* has denounced as particularly threatening to privacy. Others want to reintroduce judicial authority into the measures, which is essential, as the effective protection of the net neutrality.

*“The dialogue between users and MEPs is really gratifying, as awareness on these issues that takes place in many parliamentary groups. It is, of course difficult for an elected official to acknowledge that the amendments he has tabled, intertwined with those of colleagues from other groups are catastrophic. But I can not believe that once informed, the European Parliament does not correct itself.”* said Christophe Espern, co-founder of *La Quadrature du Net*.

*La Quadrature du Net* therefore calls upon the citizens to continue to contact MEPs to invite them to ask their parliamentary group presidents to postpone the vote in plenary, normally scheduled on September 2, to October. MEPs must have the time to study this complex and transversal dossier, and so must citizens.

Five directives are modified by three framework directives and more than a thousand amendments have been tabled so far. Many weeks, excluding Parliamentary holidays, are needed to identify all the problems and prepare amendments that effectively protect the rights of citizens and the open architecture of the Internet.

*La Quadrature du Net* will soon publish a detailed analysis of the finally adopted amendments.

## 2.8 Telecoms Package : vote postponed

Planned for September, 2nd, the vote of the Telecoms Package was postponed by the Conference of Presidents (which is made up of the chairs of the political groups and the President of the European Parliament). The debate will take place in Strasbourg, September, 2nd but the vote would be planned during the session which will start September, 22nd. For several MEPs, this is an unusual situation. More infos soon.

## 2.9 Telecoms Package : the spectre of the graduated response hangs over Europe

3 September, 2008

MEPs, representatives of the European Commission and Council have discussed yesterday<sup>5</sup> in plenary session, in Brussels, the reform of European law on electronic communications (Telecoms Package).

Among the fifty Members of European Parliament (MEPs) who spoke, only a minority defended the provisions relating to copyright and content that were introduced by some parliamentary committees last July. Several MEPs conversely requested that these provisions be removed as hazardous to human rights.

The very same morning, the European Data Protection Supervisor<sup>6</sup> (EDPS) published a critical comment<sup>7</sup> on several of these amendments (amendments 9, 30, 76, 81, 112, 130 and 134 brought in IMCO by British Conservative MEP Malcolm Harbour).

The EDPS, as an independent EU authority in charge of personal data protection, considers that these amendments are an open invitation to a “*mass surveillance of Internet users*” and to “*lay the foundations*” of the graduated response. The EDPS confirms by the way the analysis that *La Quadrature du Net*<sup>8</sup> had published in July, like many other notes that were sent to MEPs1.

*La Quadrature du Net* therefore strongly denounces the remarks made by the appalling representatives of the French presidency, Luc Chatel and Eric Besson, who explained that the graduated response respects the rights of citizens. How can they keep holding this speech in view of the EDPS advice?

*“The EDPS report is a real blow to promoters of the graduated response; it is incredible that some MEPs and the French presidency still act as though nothing happened. In any case, Parliament has the opportunity to show that the citizen-protective Europe is not a fiction.”*

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<sup>5</sup>[http://www.europarl.europa.eu/sce/server/internet/cre/sce\\_cre\\_02.jsp](http://www.europarl.europa.eu/sce/server/internet/cre/sce_cre_02.jsp)

<sup>6</sup><http://www.edps.europa.eu/EDPSWEB/edps/lang/fr/pid/1>

<sup>7</sup>[http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Comments/2008/08-09-02\\_Comments\\_ePrivacy\\_EN.pdf](http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Comments/2008/08-09-02_Comments_ePrivacy_EN.pdf)

<sup>8</sup><http://www.laquadrature.net/wiki/AnalyseCompromisVersionDiteFinale>

said Christophe Espern, co-founder of *La Quadrature du Net*.

Jrmie Zimmermann, also co-founder, adds: “*MEPs must recognize that the purpose of the Telecoms Package is to protect consumers, rather than giving away their privacy. Citizens should call their representatives in the European parliament and explain them.*”

*La Quadrature du Net* therefore invites European citizens to contact their MEPs so that they vote, during the Telecoms Package vote on September 23rd, for the removal of the amendments the EDPS criticized. MEPs must protect privacy, whatever the French presidency and the lobbies it serves require.

## 2.10 Telecoms Package: Protect the free and just society!

Brussels, Sept. 19th

The crucial first reading vote on the “*Telecoms Package*” will take place in the European Parliament, in Brussels, on Wednesday, Sept. 24th. Even if some noticeable progress was made, some dispositions of these internet regulation directives still pose an important threat to civil liberties and fundamental rights<sup>9</sup>. *La Quadrature du Net* calls for its supporters to mobilize on the amendment 138 tabled on the Trautmann report<sup>10</sup> to guarantee that “*graduated response*” could not emerge in Europe.

“*We want Europe to protect citizens, as stated in the primary objectives of the Telecoms Package. Conversely, these directives must not on the opposite erode individual rights and liberties.*” declares Jrmie Zimmermann, co-founder of *La Quadrature du Net*.

Unfortunately, even if some amendments were positively reworked and neutralized according to the recommendations of the European Personal Data Supervisor (EDPS), rapporteurs of the texts most of the time didn’t follow the primary recommendations. Instead of deleting the concerned problematic parts of the text, they chose to try to rewrite them. The result is a vague and broad text<sup>11</sup>, introducing new concepts in the European law (such as the notion of “*lawful content*”).

The main risk is that this fuzzy wording be used by some Member States to authorize administrative authorities to restrict freedom of expression and information of internet users suspected of unlawful file sharing, without any prior judicial ruling.

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<sup>9</sup>[http://www.laquadrature.net/wiki/Telecoms\\_Package\\_Plenary\\_Amendments](http://www.laquadrature.net/wiki/Telecoms_Package_Plenary_Amendments)

<sup>10</sup>[http://www.europarl.europa.eu/sce/data/amend\\_motions\\_texts/doc/P6\\_AMA%282008%290321%28138-139%29\\_EN.doc](http://www.europarl.europa.eu/sce/data/amend_motions_texts/doc/P6_AMA%282008%290321%28138-139%29_EN.doc)

<sup>11</sup>For an example, look at amendment 191 ([http://www.laquadrature.net/wiki/Telecoms\\_Package\\_Plenary\\_Amendments#Amendment\\_191\\_--\\_replace\\_Amendment\\_9](http://www.laquadrature.net/wiki/Telecoms_Package_Plenary_Amendments#Amendment_191_--_replace_Amendment_9)) introducing recital 12(c) about “*cooperation*” between administrative authorities, internet service providers, and cultural industries’ representatives. Nowhere is clearly closed the door to target messages based on surveillance of individual behaviour of internet users. This is a major part of the “*graduated response*” scheme that isn’t precisely framed here.



This is not a fantasied, illusory risk. For instance, the French parliament shall consider as soon as november a draft law transferring repressive power to an administrative authority acting upon request from the cultural industries' representatives.

It is essential to us that the European Parliament eliminate that risk that could potentially jeopardize the proportionality principle as well as the separation of the powers, but also weaken the acceptability of necessary criminal enforcement measures. Measures that national public authorities can implement to fight terrorism or child pornography shall not be extended to issues related to non-profit music or movie sharing over the internet between individuals.

La Quadrature calls all its supports, consumers, citizens to urgently help raise attention among Members of European Parliament (MEPs)<sup>12</sup> on those issues, and ask them to vote for the Bono/Cohn-Bendit/Roithova amendment (138) in order to guarantee that civil liberties will remain protected by Justice.

## **2.11 Telecoms Package : European democracy's victory already threatened**

26 September, 2008

*La Quadrature du Net* welcomes the adoption, in the first reading, of several amendments correcting major problems in the Telecoms Package, as well as the rejection of the most dangerous amendments.

Members of the European Parliament have shown today their commitment to privacy, the protection of personal data, and principles of proportionality and separation of powers.

La Quadrature thanks all MEPs who have worked in this direction, and all citizens who mobilized en masse to alert their delegates on these issues. We'd like to thank particularly the MEPs who have been able to reconsider their positions as they became aware of the risks to the rights and freedoms of their fellow-citizens.

However, La Quadrature calls for watchfulness.

Some vague formulations remain in the Telecoms Package. They do not prevent transposition into national laws affecting network neutrality. For example, the concept of "*lawful content*" is unknown in European law; its definition is left to the Member States. It must be completely removed, in order to complete the cleaning already made on this Package.

In addition, European Commissioner Viviane Reding has already announced she would require, on behalf of the European Commission, the withdrawal of Amendment 138 voted this morning.

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<sup>12</sup>[http://www.laquadrature.net/wiki/Political\\_Memory](http://www.laquadrature.net/wiki/Political_Memory)

Amendment 138 yet reaffirms a fundamental principle which should bring together all Europeans attached to the pillars of Europe, since it states that no restriction on the rights and freedoms of end users can be taken without prior decision of the judicial authority - safe when public safety is concerned (prevention of harm to persons).

La Quadrature therefore denounces a completely unsuitable request from Mrs. Reding, under the basic democratic principle recalled in the amendment (i.e. the separation of powers), but also under the parliamentary plebiscite it collected (574 MEPs for, 73 against).

This is indeed a self-evident democratic issue that a technocrat cannot deny, whatever her will to serve the liberticide plans of the French government and the entertainment lobbies. It is indeed obvious that she is trying to save the French “*Graduated Response*” project (also called “*three strikes and you’re out*”), at which amendment 138 directly aims.

This is not the first time, however, that MEPs have stressed the illegality of the so-called three-strikes approach under community law. Last April they have already passed a resolution on cultural industries, which condemns the French project because of its disproportion.

This position was also expressed by the European Data Protection Supervisor early September. The French government should therefore be the one to reconsider its position, instead of asking the Parliament to give up on its duty to protect the fundamental rights of European citizens.

La Quadrature now asks all EU citizens to write to the president of the European Commission and to their government, and to make sure that the amendment 138 will be preserved by the Council. They also point out for lobbies and the French Minister for Culture that it is ridiculous to pretend MEPs did not target the graduated response.

For months, France has interfered with the Telecoms Package by trying to introduce copyright-related amendments in it. Fortunately, European citizens massively wrote or called their MEPs to ask them to preserve their fundamental rights against this offensive. As a consequence, MEPs are totally aware of the stakes.

For instance, La Quadrature sent this note to all MEPs the day before the vote, to explain exactly why they consider the amendment 138 essential :

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Dear MEP,

On September 24th the European Parliament will be examining the first reading of the bill proposing the reform of the law on electronic communications, known as the Telecoms package.

At the beginning of this summer this bill aroused a great deal of controversy. Several amendments which were adopted during commissions were denounced by some NGOs, as they would lower the level of data protection in Europe, and also enable Member States to

substitute an administrative authority for a judicial one in order to fight illegal file sharing.

At the beginning of September the European Data Protection Supervisor (EDPS), which is an independent european authority, published its opinion, which confirmed the analysis of the NGOs. The EDPS was particularly concerned with some amendments which pave the way for the graduated response (or 3 strikes and you're out). This mechanism extends to disputes related to file sharing measures intended fight against terrorism or child pornography.

The EDPS recommended that such dispositions be deleted. The rapporteurs did not follow this primary advices of the EDPS, preferring to try to re-write those amendments criticised, so as to limit their effect. There was some progress, but it must be said that the re-writing of the amendments gave rise to a rather vague, loose text, which introduced concepts that were unknown to European law, and which were taken directly from the proposals of the French cinema lobby (like the "*cooperation*" between ISPs and producers).

The primary risk is that this rather vague text might be used by certain Member States to give permission to administrative authorities to restrict, without any prior judicial decision, the freedom of expression and information of internet users accused of unauthorized copying.

This risk is real. In July the French government proposed a bill transferring repressive power to an administrative authority which would act at the request of producers of content. It may be voted in November. The United Kingdom also wishes to take the same steps.

In our opinion, the European Parliament must eliminate this risk, which could question both the principle of proportionality and the separation of power, but which could also weaken the acceptability of those measures which are necessary to fight crime.

It must not be possible to extend the measures that national public authorities can implement to fight terrorism or child pornography to disputes concerning non-profit sharing of music and film on the Internet between individuals. Internet users exchanging works without permission should not be treated in the same way as criminals.

This is why we ask you to vote for Amendment 138 to the Trautmann report, tabled by a wide spectrum of MEPs (Guy Bono, Daniel Cohn-Bendit, Zuzana Roithova, Michel Rocard, Marielle de Sarnez, Christofer Fjellner, Rebecca Harms, Marco Cappato, Jean-Luc Benahmias and others).

Amendment 138 states that the national regulation authorities will ensure that no restriction concerning freedom of expression and information of a citizen is taken without a prior decision of the judicial authority, except in cases of 'force majeure', threats to security or national criminal law.

Amendment 138 is a guarantee that a bill like the french one about graduated response will not be adopted in Europe. This amendment is in the line with the Bono resolution adopted in April by the European Parliament.

We also ask you to vote against Amendment 34 to the Harbour report which would allow

Member States to take measures which harm privacy. This amendment puts national security, crime and file sharing on the same level !

There are other zones which are not at all clear. As well as voting for Amendment 138 and against Amendment 34, we also invite you to clarify the rest of the text. Please find attached all our recommendations concerning the vote on the Telecoms Package.

We hope that you will feel concerned by our request and thank you for your time and attention.

Yours faithfully,

## 2.12 Graduated Response : The Lesson

*La Quadrature du Net* welcomes the adoption, in the first reading, of several amendments correcting major problems in the Telecoms Package, as well as the rejection of the most dangerous amendments.

Members of the European Parliament have shown today their commitment to privacy, the protection of personal data, and principles of proportionality and separation of powers.

La Quadrature thanks all MEPs who have worked in this direction, and all citizens who mobilized en masse to alert their delegates on these issues. We'd like to thank particularly the MEPs who have been able to reconsider their positions as they became aware of the risks to the rights and freedoms of their fellow-citizens.

However, La Quadrature calls for watchfulness.

Some vague formulations remain in the Telecoms Package. They do not prevent transposition into national laws affecting network neutrality. For example, the concept of "*lawful content*" is unknown in European law; its definition is left to the Member States. It must be completely removed, in order to complete the cleaning already made on this Package.

In addition, European Commissioner Viviane Reding has already announced she would require, on behalf of the European Commission, the withdrawal of Amendment 138 voted this morning.

Amendment 138 yet reaffirms a fundamental principle which should bring together all Europeans attached to the pillars of Europe, since it states that no restriction on the rights and freedoms of end users can be taken without prior decision of the judicial authority - safe when public safety is concerned (prevention of harm to persons).

La Quadrature therefore denounces a completely unsuitable request from Mrs. Reding, under the basic democratic principle recalled in the amendment (i.e. the separation of powers), but also under the parliamentary plebiscite it collected (574 MEPs for, 73 against).

This is indeed a self-evident democratic issue that a technocrat cannot deny, whatever her will to serve the liberticide plans of the French government and the entertainment lobbies. It is indeed obvious that she is trying to save the French “*Graduated Response*” project (also called “*three strikes and you’re out*”), at which amendment 138 directly aims.

This is not the first time, however, that MEPs have stressed the illegality of the so-called three-strikes approach under community law. Last April they have already passed a resolution on cultural industries, which condemns the French project because of its disproportion.

This position was also expressed by the European Data Protection Supervisor early September. The French government should therefore be the one to reconsider its position, instead of asking the Parliament to give up on its duty to protect the fundamental rights of European citizens.

La Quadrature now asks all EU citizens to write to the president of the European Commission and to their government, and to make sure that the amendment 138 will be preserved by the Council. They also point out for lobbies and the French Minister for Culture that it is ridiculous to pretend MEPs did not target the graduated response.

For months, France has interfered with the Telecoms Package by trying to introduce copyright-related amendments in it. Fortunately, European citizens massively wrote or called their MEPs to ask them to preserve their fundamental rights against this offensive. As a consequence, MEPs are totally aware of the stakes.

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Dear MEP,

On September 24th the European Parliament will be examining the first reading of the bill proposing the reform of the law on electronic communications, known as the Telecoms package.

At the beginning of this summer this bill aroused a great deal of controversy. Several amendments which were adopted during commissions were denounced by some NGOs, as they would lower the level of data protection in Europe, and also enable Member States to substitute an administrative authority for a judicial one in order to fight illegal file sharing.

At the beginning of September the European Data Protection Supervisor (EDPS), which is an independent european authority, published its opinion, which confirmed the analysis of the NGOs. The EDPS was particularly concerned with some amendments which pave the way for the graduated response (or 3 strikes and you’re out). This mechanism extends to disputes related to file sharing measures intended fight against terrorism or child pornography.

The EDPS recommended that such dispositions be deleted. The rapporteurs did not follow this primary advice of the EDPS, preferring to try to re-write those amendments criticised, so as to limit their effect. There was some progress, but it must be said that the re-writing of the amendments gave rise to a rather vague, loose text, which introduced concepts that were unknown to European law, and which were taken directly from the proposals of the French cinema lobby (like the “*cooperation*” between ISPs and producers).

The primary risk is that this rather vague text might be used by certain Member States to give permission to administrative authorities to restrict, without any prior judicial decision, the freedom of expression and information of internet users accused of unauthorized copying.

This risk is real. In July the French government proposed a bill transferring repressive power to an administrative authority which would act at the request of producers of content. It may be voted in November. The United Kingdom also wishes to take the same steps.

In our opinion, the European Parliament must eliminate this risk, which could question both the principle of proportionality and the separation of power, but which could also weaken the acceptability of those measures which are necessary to fight crime.

It must not be possible to extend the measures that national public authorities can implement to fight terrorism or child pornography to disputes concerning non-profit sharing of music and film on the Internet between individuals. Internet users exchanging works without permission should not be treated in the same way as criminals.

This is why we ask you to vote for Amendment 138 to the Trautmann report, tabled by a wide spectrum of MEPs (Guy Bono, Daniel Cohn-Bendit, Zuzana Roithova, Michel Rocard, Marielle de Sarnez, Christofer Fjellner, Rebecca Harms, Marco Cappato, Jean-Luc Benahmias and others).

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Amendment 138 is a guarantee that a bill like the French one about graduated response will not be adopted in Europe. This amendment is in the line with the Bono resolution adopted in April by the European Parliament.

We also ask you to vote against Amendment 34 to the Harbour report which would allow Member States to take measures which harm privacy. This amendment puts national security, crime and file sharing on the same level !

There are other zones which are not at all clear. As well as voting for Amendment 138 and against Amendment 34, we also invite you to clarify the rest of the text. Please find attached all our recommendations concerning the vote on the Telecoms Package.

We hope that you will feel concerned by our request and thank you for your time and

attention.

Yours faithfully,

## 2.13 Graduated Response : The Lesson

7 October, 2008

The European Commission opposed on Monday a flat refusal to French president Nicolas Sarkozy's request for deleting amendment 138 of the Telecoms Package. It is yet another slap in the face for the proponents of the graduated response.

Amendment 138, adopted on Sept. 24th by a wide majority of the European Parliament, directly opposes the French draft law setting up graduated response, as Nicolas Sarkozy explained himself to the Commission.

European Commission spokesman Martin Selmayr said: The European Commission respects this democratic decision of the European Parliament. In our opinion this amendment is an important re-affirmation of the basic principles of the rule of law in the EU, in particular the fundamental rights of its citizens.<sup>13</sup>

*La Quadrature du Net* welcomes this decision and this confirmation of its own analysis: French draft law is contrary to Community Law, especially because it sets up an administrative authority (HADOPI) entitled to cut internet access off in the name of Copyright. Yet, except when threats to public security are at stake, such a restriction can only be taken by the judicial authority, as reminded by amendment 138.

Thus, French government must go back to the drawing board, especially because, along with being harmful to fundamental rights, its draft law won't add an extra eurocent to artist's revenues.

## 2.14 “*Graduated response*” - Will France disconnect Europe?

1 November, 2008

On Wednesday 29 and Thursday 30 October, the French Creation and Internet law implementing the graduated response or three strikes approach against filesharers was passed by the French Senate. Under the watchful eye of the lobbyists who campaigned for it and are the sole beneficiaries of this law (including Vivendi, and representatives of the French cinema and music industries<sup>14</sup>), this expensive project launched personally by President Sarkozy in November 2007, was adopted without any opposition. It was rushed through in a very short time which allowed little opportunity for debate, considering that the liberty of citizens in the

<sup>13</sup><http://www.euronews.net/fr/article/06/10/2008/sarkozy-urges-rejection-of-internet-amendment>

<sup>14</sup>SACD, SACEM, SNEP, etc.

digital environment is at stake. The French Senate thus positions itself in total contradiction with European Parliament.

## Graduated response : French democracy serving obsolete industrial interests

The law enables the introduction of three-strikes measures<sup>15</sup> against file-sharers and Internet users. The French Senate went along with Nicolas Sarkozy's line, and thus clearly against the European Parliament a group of elderly statesmen and women, clinging like crusty old fossils to an economic model from our industrial past.

The Senators were legislating on an area which they knew nothing about<sup>16</sup>. They had to decode, word by word, the arguments laid out for them by the industries who would benefit, and by the Culture Minister, Christine Albanel.

Inconsistencies, lies, confusion and insults which the creative industries habitually use to blame their clients served as justification for a hurried vote, which ignored the wider public debate which is taking place in France and in Europe. summarized Jeremie Zimmermann, co-founder of *La Quadrature du Net*.

The vote was carried unanimously in record time, with no problems, surprises or any significant opposition and only around 20 Senators present. However, the law may not get such an easy ride when it goes to the National Assembly, which is the next stage of its emergency process through the French legislature.

The more we learn about the practical implementation of graduated response, the more it becomes obvious that it inherently cannot function without a large-scale surveillance system on the Internet. The technical processes that the Senators were asked to believe in as workable solutions, are in fact, easily circumvented. They will inevitably mean large-scale sanctions against internet users who have done nothing wrong and do not infringe copyright (false positives) and will not bother much those users who do download copyright-protected material (false negatives). The right to defence for people who are accused under the terms of the law does not exist, because neither their innocence nor their guilt can be conclusively proved<sup>17</sup>. The law is therefore already anti-constitutional.

A blind denial of European Parliament's concerns

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<sup>15</sup>In a nutshell, under such types of schemes (graduated response or 3 strikes approach), copyright holders would identify alleged copyright infringement by engaging in systematic monitoring of Internet users activities. After identifying Internet users alleged to be engaged in copyright violation by collecting their IP addresses, copyright holders would send the IP addresses of those alleged to be engaged in copyright violation to the Internet Service Provider who would warn the subscriber to whom the IP address belongs about his potential engagement in copyright infringement. Being warned by the ISP three times would result in the ISPs termination of the subscribers Internet connection., European Data Protection Supervisor (EDPS) comments, 2 September 2008 : [http://www.laquadrature.net/wiki/EDPS\\_Comments\\_Telecoms\\_Package\\_IMCO](http://www.laquadrature.net/wiki/EDPS_Comments_Telecoms_Package_IMCO)

<sup>16</sup>The sole exception was Bruno Retailleau, representing the Economic Affairs committee, who made a few valiant efforts to intervene, and proposed a fiscal penalty or fine as an alternative to termination of Internet access.

<sup>17</sup>The procedures leading to internet access cut are based on IP addresses listings...



The rushed vote of the Senate therefore totally negates the Bono/Cohn-Bendit/Roithova amendment voted in the European Parliament by 88% of its members, on September 24th. Amendment 138 to the Telecoms Package explicitly states that only the judicial authority can impose restrictions on citizens' fundamental rights and freedoms. The French “*graduated response*” totally opposes to this fundamental principle, allowing for an administrative body to arbitrarily deprive citizens from their lives and activities in the digital environment.

Such a blatant lack of respect to the European lawmaking process is badly justified by the minister Albanel with a misleading reasoning, questioning whether access to Internet is a fundamental right. This is totally irrelevant. The fundamental principle at stakes is that every citizen has the right to be judged in a fair trial. explained Gerald Sdrati-Dinet, analyst for *La Quadrature du Net*.

Moreover, the minister Albanel seemed confident about a removal by the Council of Europe of amendment 138<sup>18</sup>. France has already proven that it was using its presidency to pressure the Commission and the Council in that direction.

This law is a scandal, and only serves those industries who refused to move with the times. The Senate is helping the French government to stamp on European democracy, and deny the fundamental rights of citizens. These maneuvers represent the worst side of politics and are a terrible way to write the law. This is how Member States are deepening the democratic deficit in European Union. We must bring it to a stop, for France and for the rest of Europe said La Quadrature's representatives.

## 2.15 Commission accepts amendment 138 against graduated response

7 November, 2008

The European Commission accepts amendment 138 (Bono/Cohn-Bendit/Roithova) against the french “*graduated response*”, one week after the French law is unanimously voted in first reading by the French Senate.

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1661&format=HTML&aged=0&language=EN&guiLanguage=en>

in its plenary vote on 24 September provides that “*no restriction may be imposed on the fundamental rights and freedoms of end-users, without a prior ruling by the judicial authorities, notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, save when public security is threat-*

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<sup>18</sup>Albanel declared that, since European Commission has qualified this amendment as a recall to some fundamental legal principles, this amendment has no legal scope. [...] But meanwhile, it has created an interference effect, a potential manipulation effect, and indeed that is why we hope that this amendment will be withdrawn and we have good reasons to believe that it will be, and, for the sake of clarity, this seems important to me.

*ened where the ruling may be subsequent.”*

As already stated on 6 October, the Commission can accept this amendment, which was voted by a nine-tenths majority in the European Parliament plenary (MEMO/08/681).

The Commission considers this amendment to be an important restatement of key legal principles of the Community legal order, especially of citizens' fundamental rights. It leaves Member States sufficient scope for reaching a fair balance between different fundamental rights, in particular the right to respect for private life, the right to protection of property, the right to an effective remedy and the right to freedom of expression and information.en

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## **2.16 *La Quadrature du Net: “Mr Minister, ...”***

20 November, 2008

Translation of the letter sent by La Quadrature to the French minister in charge of the Telecoms Package, Luc Chatel.

Mr Minister,

On November 27th, the Council of the European Union will examine the project reforming electronic communications, also known as Telecoms Package, as amended by the European Parliament in its first reading last September 24th.

Protection of fundamental rights of European citizens using internet has become one of the major issues at stake of this law proposal.

After lengthy debates in the referred committees, and after the intervention of the EDPS, the independant European authority in charge of the protection of personal data, the European Parliament adopted a series of amendments to the Commission proposal. The MEPs wanted to guarantee that the current level of protection of the european citizens will be at least maintained by the Member States in the future.

But the main safeguard introduced by the Parliament amendment 138 adopted by 88% of the MEPs might be removed by the Council on November 27th, following a request from the French government. The French economic newspaper La Tribune has announced that French government has already managed to convince every other Member State to refrain from voting or to vote in favor of the removal of this amendment.

Nevertheless, as the European Commission underlined in an official memo, this amendment is an important restatement of key legal principles of the Community legal order, especially of citizens' fundamental rights. It leaves Member States sufficient scope for reaching a fair balance between different fundamental rights, in particular the right to respect for private life, the right to protection of property, the right to an effective remedy and the right to

freedom of expression and information.

In its memo, the Commission stated that it would not ask for its removal, contrary to Nicolas Sarkozy's request to the President of the Commission.

The only reason for France to request the removal of this amendment is that it is opposed head on to the French law proposal Creation and Internet that aims at creating a special court for the Internet users whose account has been used to make unauthorised copies of music and movies<sup>1</sup>. It is also for France about legalising a posteriori an administrative decision authorising private companies to carry out some police missions on Internet, thus opposing the European policy on personal data.

Therefore, we ask you to oppose the removal of amendment 138 in order to respect, as the European Commission has done, the democratic vote of the European Parliament who has insisted on underlining that fundamental democratic principles, such as the principle of separation of powers or the principle of proportionality, also apply on Internet, at a time where the Member State assuming the presidency of the European Union seems to have forgotten it.

Failing which, everyone might assess your commitment in the construction of an Europe that protects the fundamental rights of its citizens and the reality of European Democracy.

Hoping that you will be able to act upon this issue, citizenly yours,

## 2.17 Citizen safeguards striked out in EU Council

26 November, 2008

**The EU Council reached a political agreement on the telecommunication reform (Telecoms Package) on Thursday, Nov. 27th. On one hand, crucial modifications to the text finally doom Nicolas Sarkozy's project to impose graduated response to the whole Europe. On the other hand, important safeguards to citizen's fundamental rights and freedoms were deleted. The agreed text lowers the protection of privacy in the EU, in the name of security.**

During last weeks, citizens from many European countries<sup>19</sup> raised awareness of their ministers representatives in Council on the Telecoms Package, by meeting them, sending letters, alerting the press, etc. This intense activity undoubtedly helped modifying critical parts of the text agreed by the ministers of the twenty-seven Member States.

The dispositions imposing the graduated response scheme in the European Union (or three strikes and you're out) were neutralized in the Council's version. This is a striking blow at

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<sup>19</sup>Letters were sent and published from Czech Republic, France, Germany, Netherlands, Poland, Portugal, Spain, United Kingdom, etc.

the entertainment industries who spent much effort<sup>20</sup> in promoting it.

But the agreed text contains major problems:

- An unacceptable revision has been made to Art.6, par.6 of ePrivacy directive<sup>21</sup>, allowing private operators to collect and process traffic data and exonerate from current privacy rules. This exoneration is so broad that it allows any web company to process any citizen's<sup>22</sup> data for broad, undefined purposes and for a potentially infinite duration. This is a frightening decline, openly ignoring the European Data Protection Supervisor (EDPS)'s recommendations<sup>23</sup> that were followed by the European Parliament.
- The Bono/Cohn-Bendit/Roithova amendment 138 (Art.8, par.4 (ga) of the Framework directive), restating an essential principle of protection of fundamental rights and freedom in European law, has been removed. Deletion of amendment 138, on the vague pretext that the wording was too broad, is in opposition with the democratic expression of 88% of the Members of European Parliament (MEPs) and the European Commission. It clearly shows from the Council a disturbing lack of political courage in protecting citizens' fundamental rights and Freedom.
- The dispositions related to cooperation in the promotion of lawful content (Art.33 par.2a of Universal Service directive), still included in the text, must be deleted as well as the related recitals. These texts were pushed by the French cinema lobby to introduce the graduated response. Their vague wording could still be used by national governments to violate fundamental rights of their citizens until a European court remind them the law. This is exactly what France aims to do in few weeks with its graduated response law.

It is not tolerable that the Council deleted crucial implementations of fundamental principles. The Council lets Nicolas Sarkozy free to violate French citizen's rights with his national project of graduated response. The Commissioner, Viviane Reding, has been quite alone not to share this Pilate's position. The Commission even recalled today<sup>24</sup> that this project is a freedom-killer. explained Grald Sdrati-Dinet, analyst for *La Quadrature du Net*.

The Council's agreement failed to protect fundamental rights by deleting two important safeguards. Let's hope the European Parliament will fight against industry lobbies during the second reading and finally clean up the whole package. No compromise must be made in preserving the right to a due process and privacy in the digital environment. concluded

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<sup>20</sup>Privacy: Film industry pirates European law : <http://www.laquadrature.net/en/privacy-film-industry-pirates-european-law>

<sup>21</sup>Formerly amendment 181 adopted by European Parliament.

<sup>22</sup>Whether they are clients from this operator or not

<sup>23</sup>Because [the provision] is broadly constructed, for example, [...] it does not limit the type of entities (data controllers) it is meant to apply, the EDPS is concerned that it could be interpreted too broadly. In particular, the EDPS is concerned that it could be used to legitimise the collection of traffic data for purposes that are not purely security related. He is also concerned that it could open the door for anyone, not only providers of security services and products, to process traffic data alleging to do it for security purposes. : [http://www.laquadrature.net/wiki/EDPS\\_Comments\\_Telecoms\\_Package\\_IMCO](http://www.laquadrature.net/wiki/EDPS_Comments_Telecoms_Package_IMCO)

<sup>24</sup>French newspaper La Tribune published today the Commission response to France's obligation of notification for its graduated response law

Jrmie Zimmermann, co-founder and coordinator of La Quadrature.

## 2.18 *La Quadrature du Net* publishes its answers to the Green Paper on Copyright in the Knowledge Economy

26 November, 2008

*La Quadrature du Net* has submitted on 26 November 2008 its comments<sup>25</sup> on the Green Paper on Copyright in the Knowledge Economy published by the European Commission<sup>26</sup>. Our comments and answers<sup>27</sup> to questions contain important constructive recommendations for the future of the European copyright and author rights framework.

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<sup>25</sup><http://www.laquadrature.net/files/LQdNcommentsonCopyrightGreenPaper.pdf>

<sup>26</sup>[http://ec.europa.eu/internal\\_market/copyright/docs/copyright-info/greenpaper\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/copyright-info/greenpaper_en.pdf)

<sup>27</sup><http://www.laquadrature.net/files/LQdNcommentsonCopyrightGreenPaper.pdf>

# Annexes

## Political Memory

Memoire politique c'est trop de la balle ! LOOOL

Gibus prazident ! Gibus prazident !Gibus prazident !

## Political Memory

English · Français

**Reach members of European Parliament and track their votes & opinions!**

Political Memory is a toolbox designed to help you reach members of European Parliament (MEPs), and track their voting records. We hope it will help citizens to get to better know their elected representatives, and to allow them to inform them on the issues covered by La Quadrature du Net.

We strongly encourage you to *improve these informations* in order to store MEPs declarations and opinions about these issues.

All these pages have been produced and maintained using a free software framework, described [here](#).



**Your MEPs by country**

Austria	Belgium	Bulgaria	Cyprus
Czech Republic	Germany	Denmark	Estonia
Spain	Finland	France	United Kingdom
Greece	Hungary	Ireland	Italy
Lithuania	Luxembourg	Latvia	Malta
Netherlands	Poland	Portugal	Romania
Sweden	Slovenia	Slovakia	

**List of recorded votes**

Click each directive, report or resolution for more informations and sorting of the MEPs according to their votes.

- Directives reforming the EU's regulatory framework for electronic communications networks and services (Telecoms package), September 24th 2008
- Rapport Bono on cultural industries in Europe (Bono report), April 10th 2008
- Resolutions on European Patent Litigation Agreement (EPLA), October 12nd 2006
- Directive on patentability of "computer-implemented inventions" (software patents), September 24th 2003

**Search MEPs**

**By political group**

- Group of the European People's Party (Christian Democrats) and European Democrats
- Socialist Group in the European Parliament
- Group of the Alliance of Liberals and Democrats for Europe
- Union for Europe of the Nations Group
- Group of the Greens/European Free Alliance
- Confederal Group of the European United Left - Nordic Green Left
- Independence/Democracy Group
- NI** Non-attached Members.

**Others**

- Search MEPs alphabetically, by name
- Search MEPs by committee
- Search MEPs by their office location within the Parliament
- Members of the Conference of Presidents

Figure 2.1: Front page

## Political Memory: Directives reforming the EU's regulatory framework for electronic

### ■ Detailed scores




































Rank	MEP	Country	Group	Final score	
1	Jean-Marie LE PEN	 France	NI NI	94.1	<a href="#">Show details</a>
2	Marine LE PEN	 France	NI NI	94.1	<a href="#">Show details</a>
3	Marco CAPPATO	 Italy	 ALDE	91.2	<a href="#">Show details</a>
4	Jules MAATEN	 Netherlands	 ALDE	91.2	<a href="#">Show details</a>
5	Lydia SCHENARDI	 France	NI NI	91.2	<a href="#">Show details</a>
6	Margrete AUKEN	 Denmark	 Verts/ALE	90.9	<a href="#">Show details</a>
7	Heide RÜHLE	 Germany	 Verts/ALE	90.6	<a href="#">Show details</a>
8	Marie-Hélène AUBERT	 France	 Verts/ALE	90.0	<a href="#">Show details</a>
9	Jill EVANS	 United Kingdom	 Verts/ALE	90.0	<a href="#">Show details</a>
10	Friedrich-Wilhelm GRAEFE zu BARINGDORF	 Germany	 Verts/ALE	90.0	<a href="#">Show details</a>
11	Satu HASSI	 Finland	 Verts/ALE	90.0	<a href="#">Show details</a>
12	Milan HORÁČEK	 Germany	 Verts/ALE	90.0	<a href="#">Show details</a>
13	Gisela KALLENBACH	 Germany	 Verts/ALE	90.0	<a href="#">Show details</a>
14	Jean LAMBERT	 United Kingdom	 Verts/ALE	90.0	<a href="#">Show details</a>
15	Caroline LUCAS	 United Kingdom	 Verts/ALE	90.0	<a href="#">Show details</a>
16	Gérard ONESTA	 France	 Verts/ALE	90.0	<a href="#">Show details</a>
17	Raül ROMEVA i RUEDA	 Spain	 Verts/ALE	90.0	<a href="#">Show details</a>
18	Bart STAES	 Belgium	 Verts/ALE	90.0	<a href="#">Show details</a>
19	Elly de GROEN-KOUWENHOVEN	 Netherlands	 Verts/ALE	90.0	<a href="#">Show details</a>

Figure 2.2: Vote by score