

18 April, 2001

Mr Henrik Kaspersen
Computer Law Institute
Vrije Universiteit Amsterdam
De Boelelaan 1105
Amsterdam

Cc:

Mr Peter Csonka – Council of Europe
Mr Guy De Vel – Council of Europe
Ms Alexandra Jour-Schröder – Cabinet of EU Commissioner Antonio Vitorino
Mr Ekkehart Kappler – German Federal Criminal Department
Mr Manfred Mörenschlager – German Federal Ministry of Justice
Mr Bruno Nedelec – French Ministry of Foreign Affairs
Mr Antti Pihlajamäki – Chief District Prosecutor, Turku, Finland
Mr Ilkka Räsänen – Cabinet of EU Commissioner Erkki Liikanen
Mr Rudi Troosters – Belgian Ministry of Justice

Dear Mr Kaspersen

We are writing to inform you of serious concerns which many of our member companies have brought to our attention regarding the negotiation of the draft Cyber-crime Convention of the Council of Europe ("CoE"), which is expected to be completed within the next two months. We recognise and support the need to strengthen law enforcement's ability to address the particular challenges posed by cyber-crime. We support the Council of Europe's efforts to improve international cross-border cooperation on investigation and prosecution of criminal acts in cyberspace, and support the development of baseline international criminal liability rules that limit the havens for online criminals, including hackers, pirates and counterfeiters.

However, we are concerned about the potential consequences if the draft Convention is adopted in its current form. We are particularly concerned that it sets out investigation obligations without outlining corresponding limits on the surveillance authority. The negotiators have improved many aspects of the Convention from earlier drafts, but significant problems still remain and must be addressed. The draft Convention:

- uses excessively broad language which encourages CoE member states to criminalize a great deal of innocuous Internet activity;
- encourages the imposition of service provider liability in the absence of specific criminal intent, and imposes, through the threat of corporate liability, untenable obligations on corporations to monitor employee Internet usage;
- risks imposing significant new costs on a wide range of service providers, who will be required to provide private assistance to law enforcement agencies without reasonable

compensation;

- requires Parties to provide for specific investigative powers without offering corresponding protection of individual rights, due process and privacy safeguards;
- would undercut many governments' efforts to promote regulatory neutrality and minimal regulation for the Internet and electronic commerce abroad;
- should include a requirement on each country to offer an oversight mechanism to ensure human rights are being protected within their territory.

In addition, the draft Convention does not permit countries ratifying the Convention to take any reservations on any of these points.

We would very much like to work with you to ensure that all these concerns are addressed before the Convention is finalised. The result would be a much more balanced treaty that truly serves the interests of the global community.

As an absolute minimum, we support the European Commission's proposal to include a "disconnection clause" that would make its own set of rules prevail over those the Convention in case of conflict. While we would prefer a more comprehensive review of the Convention, this would, at least improve the situation within the European Union.

Sincerely,

The World ISPA Forum

Jay Thomson
President
Canadian Association of Internet Providers
Ottawa, Canada
www.caip.ca

Barbara Dooley
President
Commercial Internet exchange Association
Reston, Virginia, USA
www.cix.org

Hans Leeman
President
EuroISPA EEIG
Brussels, Belgium
www.euroispa.org

Hiroyuki Kuwako
Chairman, Business Morals and
Internet Committee
Telecom Services Association
Tokyo Japan
www.telesa.or.jp

European Telecommunications Networks Operators' Association (ETNO)

Mr M Bartholomew
Director ETNO
Boulevard Bischoffsheim 33
B-1000 Brussels, Belgium
www.etno.be

For any inquiries, please contact:

Joe McNamee
EuroISPA Secretariat
39 Rue Montoyer, Bte 3
B – 1000 Brussels
Tel: +32 2 502 22 65
Fax: + 32 2 503 42 95

The World ISPA Forum is a global alliance of Internet Service Provider associations working to promote the Internet service provider industry. Current members include : APIA, CAIP, CIX, ecom-LAC and CABASE, EuroISPA and its national members, South Africa ISP Association, Telesa.