

Internet Intermediaries & Intellectual Property Position Paper – Gwen Hinze

CSISAC supports the OECD's consideration of legal regimes and policy frameworks that facilitate investment in the development of Internet technologies, while safeguarding the fundamental rights of citizens. Imposing liability on Internet intermediaries for the content of communications on their platforms and networks encourages intermediaries to take disproportionate measures to reduce their liability exposure. Clear limitation on liability regimes are essential for both Internet innovation and protection of citizens' rights and civil liberties.

CSISAC opposes recent proposals that would require Internet Service Providers to filter citizens' communications for potential copyright-infringing content, divulge customers' personal data to rightsholders, and automatically terminate customers' Internet access on a mere allegation of copyright infringement on several grounds. These policies harm citizens' communication, privacy and due process rights. They require private sector Internet intermediaries to assume roles that traditionally have been reserved for government law enforcement agencies and judicial bodies, and open the door to arbitrary and capricious treatment of all Internet users. For these reasons, the European Parliament and several OECD member states have rejected these policies.

Legal approaches to the roles and responsibilities of Internet Intermediaries should not focus exclusively on protection of intellectual property rights at the expense of other important public policy objectives of the Seoul Declaration, including protecting freedom of expression, ensuring protection of personal information in the online environment, expanding global Internet access and use, and promoting Internet innovation. Regulatory frameworks should be based in widely shared legal perspectives, rather than on novel tactics that are still being tested and are highly controversial.

Existing limitation of liability regimes such as the U.S. Digital Millennium Copyright Act's copyright safe harbor regime, and the notice forwarding regime in use in Canada, play a vital role in protecting rightsholders' intellectual property rights while also protecting citizens' rights. The most appropriate role for intermediaries to play in protecting commercial rights is passing on notices of infringement allegations and facilitating identification of defendants in response to court orders after the commencement of civil lawsuits

The OECD could provide valuable guidance to national policy makers by analyzing the cost and effectiveness of the existing notice forwarding regimes in operation in OECD countries, and the level of use and deliberate abuse of notice and takedown regimes for purposes of repressing critical or competitive expression that has nothing to do with intellectual property protection.