Dear Member of the Cultural Committee,

I represent EFF-Europe, an NGO focused on issues related to technology and consumers' rights. EFF-Europe is very concerned with the recent opinion of the ITRE committee on the Guy Bono report on the Cultural industries in Europe, which calls upon "internet service providers [ISPs] to apply filtering measures to prevent copyright infringement". EFF's experience has been that filtering is an overbroad, ineffective measure that will do little to practically address the concerns of major rightsholders while imposing serious costs on the individual rights of European citizens in their roles as consumers, artists and educators.

Furthermore, filtering as a means to combat digital piracy is an unnecessary solution. It was not mentioned in the Rapporteur's original draft. Rather, the Rapporteur simply urged the Commission to rethink the critical issue of intellectual property; he did not promote a particular solution.

Below, please find some of our objections to requiring ISPs to use filtering. I would be happy to discuss them in more detail with your office and provide additional information to substantiate the claim that filtering is the wrong policy choice.

1. Filtering Would Curtail Existing Consumer and Artistic Rights

The majority of copyrighted material online is not produced by major rightsholders but by Internet users themselves. Users, both as consumers and as creators, have their own rights under copyright law to re-use and distribute content. These rights would be affected by filtering and blocking technology installed for detecting and removing major rightsholder content.

Many European countries, for example, have limitations on copyright for the purposes of private copying, or for the use of the disabled. Other exceptions permit the use of content for criticism, political use, or parody. No technological system could determine whether these legitimate exceptions were in play during the transmission of content. Instead, all use not explicitly permitted by rightsholders would be banned from the Net, severely restricting the exercise of these rights by Europeans acting as artists, consumers, and citizens. This will have particularly strong ramifications in the growing online field of "user generated content" (UGC), which frequently relies on balanced and flexible copyright enforcement to create legitimate new cultural works.

2. Filtering Would Place Burdens on Education and Research

Filtering assumes that all unauthorised distribution of rightsholder content is infringing. Under European copyright, this is not the case. There are numerous limitations and exceptions to copyright, in particular those connected with education and research uses of content. By pre-emptively interfering with all distribution, ISP filters would prevent educational institutions from using the Internet in the pursuit of their many legitimate uses of copyrighted material.

3. Filtering Would Do Nothing to Prevent Copyright Infringement

Currently, most Internet communications are sent in a form that is easily examined by intermediaries such as ISPs. The exceptions to this are communications where there is a high risk of unwanted third parties seeking access to the confidential content, such as credit-card transactions or when accessing private web services. In these cases, communications are strongly encrypted so that third-party surveillance is not possible.

Introducing filtering technology at ISP facilities would simply cause infringing Net users to encrypt their communications in the same way, eliminating any chance that these filters could successfully target these transfers. Such encrypted content cannot be examined or blocked by third parties such as ISPs; if it could, the financial institutions would be equally at risk.

4. Filtering Would Limit European Innovation

IFPI has proposed that some filtering take place at the "protocol level", which is to say some Internet services should be entirely blocked because they can be used for infringing distribution. While Internet protocols - including email and the Web - may be used for infringement, the protocols that IFPI

particularly targets are "peer to peer" services, on the assumption that these services contain the majority of infringing practices. All peer-to-peer services also provide unique, non-infringing uses. Peer-to-peer services like Skype and BitTorrent allow European consumers to take advantage of cheap and innovative ways of using the Net. Blocking or banning such services would distort the market and reduce the effectiveness of European Net use.

5. Filtering Would Weaken European Privacy Norms

In order to introduce the filtering systems requested by groups like IFPI, ISPs would have to install technology that would inspect the contents of every data packet passing through their networks - including private communications between individuals.

Such blanket permission for third-parties to pry into communication data would set a disturbing precedent for privacy in the European Union. By creating not only the assumption that communication providers should analyse and block specific communications, but also encouraging building into every Internet peering center devices that would facilitate such surveillance, the safeguards provided by the European Convention on Human Rights and the European Data Protection Directive would be seriously undermined.

6. Filtering Would Impose a High Cost on Consumers

Packet-filtering and analysis is a process that requires a large amount of processing power and network reconfiguration. The cost of creating this monitoring network presumably would be borne by ISPs themselves, rather than the rightsholders that are lobbying for this equipement. The high financial cost of ineffectively policing the infringement of a limited amount of content would inevitably be passed to the individual European consumer.

What is truly needed in the European cultural and economic space is for "all those active in the sector to join forces and seek [intellectual property] solutions equitable to all", as the Rapporteur's original text proposes. ISP filtering is an ill-considered and damaging quick fix. With liberal licensing opportunities such as those used by Creative Commons works and open source software, and the democratisation of cultural and educational resources online, the Internet needs more flexible IP regulation, not the robotic enforcement of blanket distribution restrictions.

We urge you to reject ISP filtering. It is the wrong policy choice.

Thank you so much for you consideration of our concerns. Please feel free to contact me at xxx if you have any questions or would like any additional information.

Sincerely,

Erik Josefsson
European Affairs Coordinator
EFF-Europe