President Juncker, Vice President Ansip, Commissioner Gabriel,
Austrian Presidency
Signor Buttarelli, European Data Protection Supervisor
Rue de la Loi 200
1049, Bruxelles
Belgium

30th November 2018.

Dear Addressees,

Child protection organizations across Europe and the world express grave concerns

The signatories to this letter are writing to draw your attention to parts of the draft e-Privacy Regulation which, if left unchanged, are likely to have a seriously damaging impact on the safety and well-being of children across the whole of the European Union.

In 2009 Microsoft released PhotoDNA. It is a hashing technology which works at scale to enable internet platforms to locate known child sex abuse material (CSAM) as a prelude to ensuring its rapid deletion and reporting to law enforcement. Other companies, including European SMEs, now produce tools which perform the same or similar functions.

Last month Facebook indicated that in Q3 of 2018 PhotoDNA and comparable European products helped it identify 8.7 million images which breached its child nudity policy. 99% of these images were found using PhotoDNA or other automated programmes, the remaining 1% being found in other ways, typically human review and reports. Similarly, Google indicated a very high proportion of content removed from YouTube was identified thanks to automated processes.

The US based National Center for Missing and Exploited Children (NCMEC) recently said that so far in 2018 they have received reports of 13 million illegal child sex abuse images, suggesting at year end the total would be round 20 million. Although NCMEC does not break down the figures, because they work with reports from US based companies it is likely PhotoDNA played a significant part in locating the vast majority of these. Moreover, as technologies continue to improve it is likely online businesses will not only be able to achieve accurate identification rates even higher than 99% for photos and videos of child sex abuse, they will also be able to uncover substantially larger volumes.

In 2017, NCMEC made 546,000 reports available to law enforcement agencies in the European Union. These are reports involving users who have uploaded CSAM onto U.S. companies' platforms. The corresponding figure for the first eleven month of 2018 is 693,000 reports.

If the Regulation is passed in its present form and companies can no longer take voluntary proactive measures to identify CSAM on their platforms using hashing technologies, those numbers are likely to plummet. Yet the problem will still exist. The difference will be that, under the new regime, images will remain on the platforms undetected until a user views the material and chooses to notify the company or the authorities.

A growing number of companies have been using PhotoDNA and similar tools on a voluntary basis to rid their networks of child sex abuse material. It is way beyond the capacity of law enforcement agencies to address the volumes now circulating. Police in all parts of the world have therefore repeatedly called on the private sector to do more to help. Deploying automated tools is exactly the kind of thing they had in mind. This is entirely consistent with the multistakeholder approach the EU has supported hitherto

The e-Privacy Regulation appears to threaten this wholly beneficial status quo. We are at a loss to understand why the EU feels it is necessary to step in and disrupt established practices which self-evidently work so well.

On 3rd October, in a discussion with a Commission lawyer who had been involved in drafting the e-Privacy Regulation the following questions were put:

Did the drafters intend to outlaw, reduce or limit the scope for companies to continue their pre-existing practice of deploying PhotoDNA or similar tools which are designed to identify child sex abuse material in the form of videos or stills?

and

Irrespective of the intentions of the drafters, is such an interpretation of the current wording possible and reasonable?

The answer to both questions should have been a simple *"no".* It wasn't.

We understand the Regulation allows Member States to derogate from the Regulation. In other words, absent such derogation, the use of PhotoDNA and comparable European products would be unlawful in individual jurisdictions within the EU. Inevitably that will lead to the emergence of a patchwork of laws. As indicated above, this could threaten operations by multinational platforms and limit the ability of industry to continue innovating in this area. We cannot see how this benefits children. It is also at odds with other declarations and actions taken over the years by the European Union to protect children in the online world. The provisions of Recital 26 in no way answer our concerns because a Recital is not the law. Moreover, as drafted the e-Privacy Regulation appears to threaten other technologies being used to eliminate other kinds of harms to children e.g. grooming.

Finally, we would be grateful if you could inform us when, in the processes leading up to the publication of the draft Regulation, and since, policy makers were able to benefit from input from experts with specialist knowledge of online child protection concerns.

Yours sincerely

John Carr
On behalf of the organizations whose logos are shown in the attachment

If you have any queries or questions about this letter please contact me on:
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Child protection organizations expressing concerns about the e-Privacy Regulation

Organizations from EU Member States

Austria

Belgium

Bulgaria

Croatia

*Suradnici
u učenju*
ucitelji.hr

Cyprus

The Czech Republic

Denmark

Estonia

Finland

France

Germany

Holland

Ireland

Greece

Italy

Latvia

Lithuania
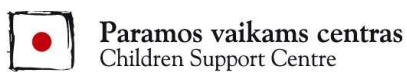
Luxembourg

Poland

Portugal

Romania

Slovakia

digiQ

Slovenia

Spain

Sweden

United Kingdom

International organizations

National organizations from outside the EU

Canada

Colombia

Norway

Taiwan

USA