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## The Proposal for combating child sexual abuse material not passed into action due to security concerns

### Introduction

On 11 May 2022, the European Commission (EC) issued a Proposal to establish guidelines on the internet to decrease the number of child sexual abuse cases. The Proposal [1] seeks to impose obligations on services such as communication, software application stores, internet access services and many more. All of these services are concerned with identifying, reporting, deleting, and banning existing and new online child sexual abuse material (CSAM).

Given the severity of the violation of basic rights, the European Commission decided to consult the European Data Protection Board (EDPB) and European Data Protection Supervisor (EDPS). Both entities agreed that the Proposal failed on a variety of legal and ethical points.

Child sexual assault is an abominable crime that requires an immediate and strong response from all communities. However, the Proposal as it stands has significant flaws that outweigh its positives, such as sacrificing the fundamental right to respect data protection and privacy and needs to be further reworked.

### Security Concerns

The breach of data protection by default is one of the most serious issues raised by the Proposal. Every service provider is required to observe tight restrictions protecting personal data under Article 2 of the Data Protection Act 2018 [2]. This includes data that must be utilised equitably and transparently for specific and defined goals and can not be stored longer than required.

The Proposal's Article 10(3) stipulates that the technologies must not be able to extract any additional information from the relevant communications beyond the information strictly essential to detect. Although this is definitely a step in the right direction, it is not sufficiently stringent because the algorithm may be able to derive additional information even if it is not retrieved.

Another concern with the Proposal is a breach of communication confidentiality. According to Article 7 of the European Union's Charter of Fundamental Rights (the Charter) [3], communication secrecy is an essential component of the fundamental right to respect private life. This is further supported by Article 8 of the European Convention on Human Rights [4], which addresses a person's physical and psychological integrity. Despite the fact that Articles 7 and 8 of the Charter are not absolute rights, the EDPB and EDPS decided on a joint endeavour to combat CSAM and its spread.

According to Article 7 of the Proposal, the Coordinating Authority will have the authority to obtain a detection order from the internet service provider to detect CSAM and take appropriate action. The EDPB and EDPS disagreed and decided that there must be evidence of a significant risk of the service

used for purposeful CSAM usage or distribution, or every case to be considered individually and will only be submitted if the reasons for issuing the detection order outweigh the negatives.

The EDPB and EDPS strongly emphasise that when allowing for particularly substantial interferences with fundamental rights, legislators must offer legal clarity on when and when such interferences are permitted. Whilst agreeing that the law should not be too prescriptive and should allow for some flexibility in its practical implementation, the EDPB and EDPS believe that the Proposal allows too much space for possible abuse of power due to the absence of defined substantive principles.

## Freedom of Expression

Furthermore, the Proposal does not uphold the standard of freedom of expression. Freedom of expression is the right to express and receive opinions, ideas and information [5]. The internet is still a relatively young medium for communication, and only a few laws have been passed on a national or worldwide scale.

Therefore, setting norms for the preservation of free expression online is a fundamental responsibility of both national and international judges. The Court has set a number of norms. Freedom of expression protects your right to hold your own opinions and to express them freely without government interference. This includes the right to express your views aloud or through the internet and social media.

Although you have the right to free speech, you also have a duty to act responsibly and respect the rights of others. If public authorities can demonstrate that their activity is legal, necessary, and appropriate in order to stop a crime, they may be able to restrict this privilege [6]. This is the main reason why wiretapping every profile online would not be allowed - it is simply not legal.

## Morality

Contrariwise, the Proposal is built on a legitimate basis and is trying to protect the safety of children in the online sector. A 2019 Swedish study [7] targeted Swedish high-school students ranging in the age group from 17 to 19 years old and showed some worrisome results. The study was conducted on approximately 5000 students. Almost 10% of the 330 teenagers who engaged in sexual conduct online felt they had been persuaded, pressured, or forced on at least one occasion. This is a concerning high figure, and it is clear where the Proposal is coming from.

There are several agencies available to help victims of child sexual abuse, including the NHS [8], the NSPCC [9], and many more. Internet usage has increased dramatically in recent years, owing mostly to COVID-19 and people spending more time indoors. As a result, the number of child sexual abuse cases has skyrocketed.

In total, IWF analysts [10] reviewed 361,000 complaints of suspected illicit content, including public tips. This is more than they dealt with in the first 15 years of the charity's existence when they evaluated 335,558 reports between 1996 and 2011.

This is one of the main reasons why, now more than ever, it is so important to battle sexual predators online should be society's high-priority focus. This includes child sexual abuse material production, distribution and other forms of this immoral activity.

## General Data Protection Rules (GDPR)

Moreover, the Proposal established a lawful basis for processing child sexual abuse material within the meaning of the general data protection rules (GDPR). GDPR is a legal framework that specifies requirements for collecting and processing personal data from people both inside and outside the European Union. It was originally approved in 2016 and became fully operational in 2018 [11].

Some of the core GDPR requirements require website visitors to be notified of the data gathered, visitors to explicitly agree to data collection, and sites that experience data breaches must notify visitors in a timely manner.

Children have the same rights to their personal data as adults. These rights include the ability to view their personal data, seek correction, object to processing, and have their personal data destroyed.

Article 6(1)(C) of the GDPR [12] provides for the processing of personal data that is necessary for compliance with a legal obligation. Since every user has to agree with GDPR in order to use the given service, this means that the service provider is legally bound to report any instance of child sexual abuse.

## Conclusion

The Proposal paved the way for the problem of child sexual abuse material to be discussed in detail. The Proposal stands on a legitimate background, with a lawful basis for processing child sexual abuse material within the meaning of the general data protection rules. It also rests on strong moral foundations, which are required to combat the ever-increasing incidents of child sexual abuse.

However, the Proposal alienates too many security factors, such as data protection, privacy and freedom of speech. The proposal currently breaches communication confidentiality, which is the fundamental right to respect private life according to the European Union's Charter of Fundamental Rights. Another concern with the current state of the Proposal lies with the technology that is behind the detection of child sexual abuse material in communications. At the moment, it is not sufficiently stringent and leaves space for the detection algorithm to derive additional information that it should not legally obtain.

Even though the EDPB and EDPS agreed on the law on child sexual abuse material not being too prescriptive and allowing the authorities to have some flexibility in its practical implementations, they believe that the Proposal as it stands can not be passed into action as it allows a possibility to abuse the power.

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