

**COMMISSION COMMUNICATION ON PLAN TO COMBAT
CYBERCRIME**
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UNICE PRELIMINARY COMMENTS

I. GENERAL COMMENTS

UNICE shares the Commission's view that the success of the information society is important for Europe's growth, competitiveness and employment opportunities, and has far-reaching economic, social and legal implications. Security is one of the key ingredients for boosting European citizen's and consumer's confidence in the on-line world. The information society can clearly benefit from the eradication of threats to business investment and assets.

In this context, UNICE welcomes the European Commission's initiative aiming at the creation of a safer information society by improving the security of information infrastructures and combating computer-related crime.

II. SPECIFIC COMMENTS

UNICE believes that clearer definition of terms is essential in order to focus legislative and non-legislative action. Indeed, "cybercrime", "computer-related crime" and "high-tech crime" are often used interchangeably. The communication, presented as the Commission's plan to combat cybercrime, does not clarify the situation. It covers breach of information infrastructure security and computer-related crime defining the latter as "*any crime that in some way or other involves the use of information technology*". This sweeping scope could prove damaging.

The chosen definition for cybercrime should place the emphasis on crimes against the information infrastructure itself rather than on traditional crimes whose commission is incidentally made easier by the information society infrastructure, such as child pornography, racism and xenophobia. In order for clarity to prevail, these offences should be specifically addressed by other means.

Action should focus on ensuring safe operation of the infrastructure: protecting it against criminal attacks such as hacking, viruses, denial of service etc. These offences, the frequency of which is increasing, are sufficient to undermine the very backbone of the information society: the information and communications infrastructure.

Nevertheless, UNICE notes that in the communication reference is made to intellectual property offences and, in this context, believes that misappropriation of commercial property on a substantial scale in digital networks is a problem that needs to be addressed in further discussions.

UNICE believes that the Commission's plans may be premature and create a good deal of uncertainty for business. It is essential that the Commission does not adopt an approach that may prove unnecessarily prescriptive and burdensome for business with high compliance costs. The Council of Europe's International Convention on Cybercrime is due to open for signature later this year. There would be no point in duplicating legislation. If, as mentioned in the communication, the Commission would "*go further*" than the Council of Europe Convention, this would need to be clarified to avoid uncertainty and unnecessary burdens on industry, especially SMEs. UNICE endorses concerns expressed at the public hearing on 7 March 2001 that a more global rather than regional focus on cybercrime is required.

UNICE urges the Commission to recognise the fact that industry already invests significantly in improving security of information and communication infrastructures with the intent of preventing the above-mentioned offences. It would be counterproductive to over-emphasise the vulnerability of infrastructures, since this could have a negative impact on the trust consumers today have in the information society.

UNICE welcomes the foreseen non-legislative proposal creating an EU-wide forum on cybercrime in which law enforcement agencies, Internet Service Providers, telecommunications operators, civil liberties organisations, consumer representatives and data protection authorities would be represented. However, industry as a key stakeholder urges the Commission to provide clearly for industry representation in the EU-wide forum.

UNICE is prepared to provide more detailed comments as the debate evolves.
