

# TACD

TRANS ATLANTIC CONSUMER DIALOGUE      DIALOGUE TRANSATLANTIQUE  
DES CONSOMMATEURS

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## **Resolution on the Role of Internet Service Providers (ISPs) in Mediating Online Content and Communications**

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Consumers should have the freedom to exchange information online without improper surveillance or intervention by communication companies. TACD is concerned that the legal strategies advocated by some rightsholder groups present considerable risks and harms to consumers. These strategies include monitoring the use and limiting the dissemination of copyrighted works, as well as profiling the activities of customers. Whether undertaken by rightsholders themselves, or through legal obligations or private agreements with Internet Service Providers (ISPs), these intrusions risk the erosion of legal rights and due process under the law, loss of privacy, chilling of free speech, and economically disproportionate penalties for activities determined to involve infringement.

TACD resolves that EU and US governments should:

1. Require a thorough and critical review of the risks to consumers and an assessment of the unintended consequences of any proposals regarding the monitoring of consumers' communications and use of online content.
2. Consider whether such proposals would erode consumer and civil rights, such as the rights of privacy, due process, defense and access to information and knowledge. A full range of consumer protection safeguards should be provided for these rights.
3. Ensure that any monitoring of the Internet and use of collected electronic data is done under judicial control and in compliance with all laws on the protection of personal data, and with the understanding that an IP address is personally identifiable information subject to legal protection
4. Ensure that any monitoring of consumer activity is undertaken in accordance with the principle of proportionality.
5. For any online enforcement efforts, assess the sanction and the crime targeted pursuant to the principles of effectiveness and of dissuasiveness. Under these principles, the termination of Internet access is an extreme solution, legally and economically disproportionate as a response to alleged infringement.
6. Ensure that any proposals to monitor online content are accompanied by a review of alternative solutions that focus on systems of remuneration for creative communities,

thus fostering the development of innovative business models and, more broadly, the development of the digital economy.

7. Analyze all the legal consequences of any monitoring or ISP liability approach in order to avoid conflicts with existing laws as well as potential conflicts of norms or other legal uncertainties that could be caused by the proposed system.