

Internet Content Self- Regulation: Taking Liberties?

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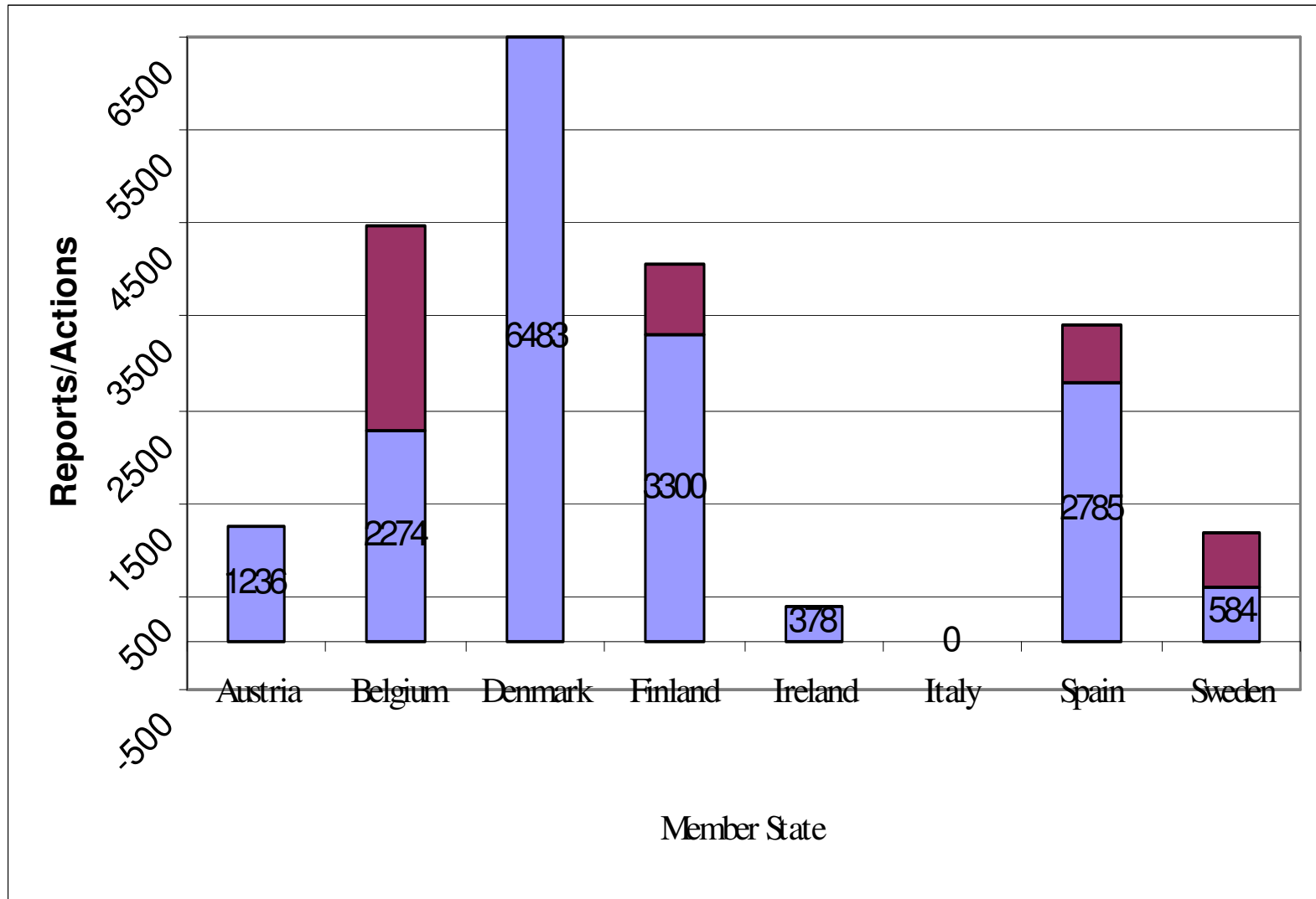
Summary of PCMLP Report

- European Policy on Self Regulation
- Research on Self-Regulatory Developments
- Key Failings/Challenges for Self-Regulation
- Proposals to the EC

Self-regulation in EC/ National Policy

- [1] Council Recommendation 98/560/EC on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity OJ L 270, 7.10.1998.
- [1] See further Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications OJ L 201, 31.7.2002; Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market OJ L 178, 17.7.2000; Decision No 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a Multiannual Community Action Plan on promoting safer use of the Internet and new online technologies by combating illegal and harmful content primarily in the area of the protection of children and minors OJ L 33, 6.2.1999, p.1 as amended by Decision No 1151/2003/EC of the European Parliament and of the Council of 16 June 2003 OJ L 162, 1.7.2003.
- [1] See pp15-17 of SEC (2004) 148 Commission Staff Working Paper – ex ante evaluation Safer Internet plus at http://europa.eu.int/information_society/programmes/iap/docs/pdf/si_plus/exante.pdf
- [1] 'EU Communications Ministers today agreed to step up efforts to make the Internet safer for children' at http://www.eu2004.ie/templates/news.asp?sNavlocator=66&language_id=1&list_id=597
- [1] Price, M., Verhulst, S. (2004) Self-Regulation and the Internet, Netherlands: Kluwer. See also PCMLP (undated, 1999) Parental Control of Television Broadcasting, A Report for the European Commission DG Culture, PCMLP, Oxford.
- [1] See special issues of IRIS in 2002-3, notably IRIS Special (2003) Co-Regulation of the Media in Europe, Strasbourg, Council of Europe at http://www.obs.coe.int/oea_publ/iris_special/2003.html.en See also IRIS plus 2002-6. See further <http://www.ivir.nl/publications/medialaw.html>
- [1] President Clinton's 1995 Copyright Taskforce supported such liability: Working Group On Intellectual Property Rights, Information Infrastructure Task Force, Intellectual Property And The National Information Infrastructure 1-6, 114-24 (1995).
- [1] Some legal commentators forcefully argued that strict liability should apply. See Trotter Hardy, The Proper Legal Regime for "Cyberspace", 55 U. PITT. L. REV. 993, 1042-46 (1994) (advocating strict ISP liability); Kelly Tickle, Comment, The Vicarious Liability of Electronic Bulletin Board Operators for the Copyright Infringement Occurring on Their Bulletin Boards, 80 IOWA L. REV. 391, 416 (1995) (favoring limited ISP liability).
- [1] See, for example, Niva Elkin-Koren, Copyright Law and Social Dialogue on the Information Superhighway: The Case Against Copyright Liability of Bulletin Board Operators, 13 CARDOZO ARTS & ENT. L.J. 345, 399-410 (1995), who argues opposing liability.
- [1] Communications Decency Act Section 30, 47 U.S.C. § 230(c)(1) (Supp. II 1996). This language might shield ISPs from liability for subscriber copyright infringement as well. However, Section 230(e)(2) specifically states, "Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property."
- [1] Holznapel, B. (2000) Responsibility for Harmful and Illegal Content as Well as Free Speech on the Internet in the United States of America and Germany, in C.Engel and H. Keller (eds) Governance of Global Networks in Light of Differing Local Values, Nomos, Baden Baden.
- [1] Frydman, B. and Rorive, I. (2002) Regulating Internet Content Through Intermediaries in Europe and the USA, Zeitschrift fur Rechtssoziologie Bd.23/H1, July 2002, Lucius et Lucius.
- [1] European Commission (2004) Second Evaluation Report, ibid.

Internet Hotlines Activity Reports 2002-3 (not linea caliente)

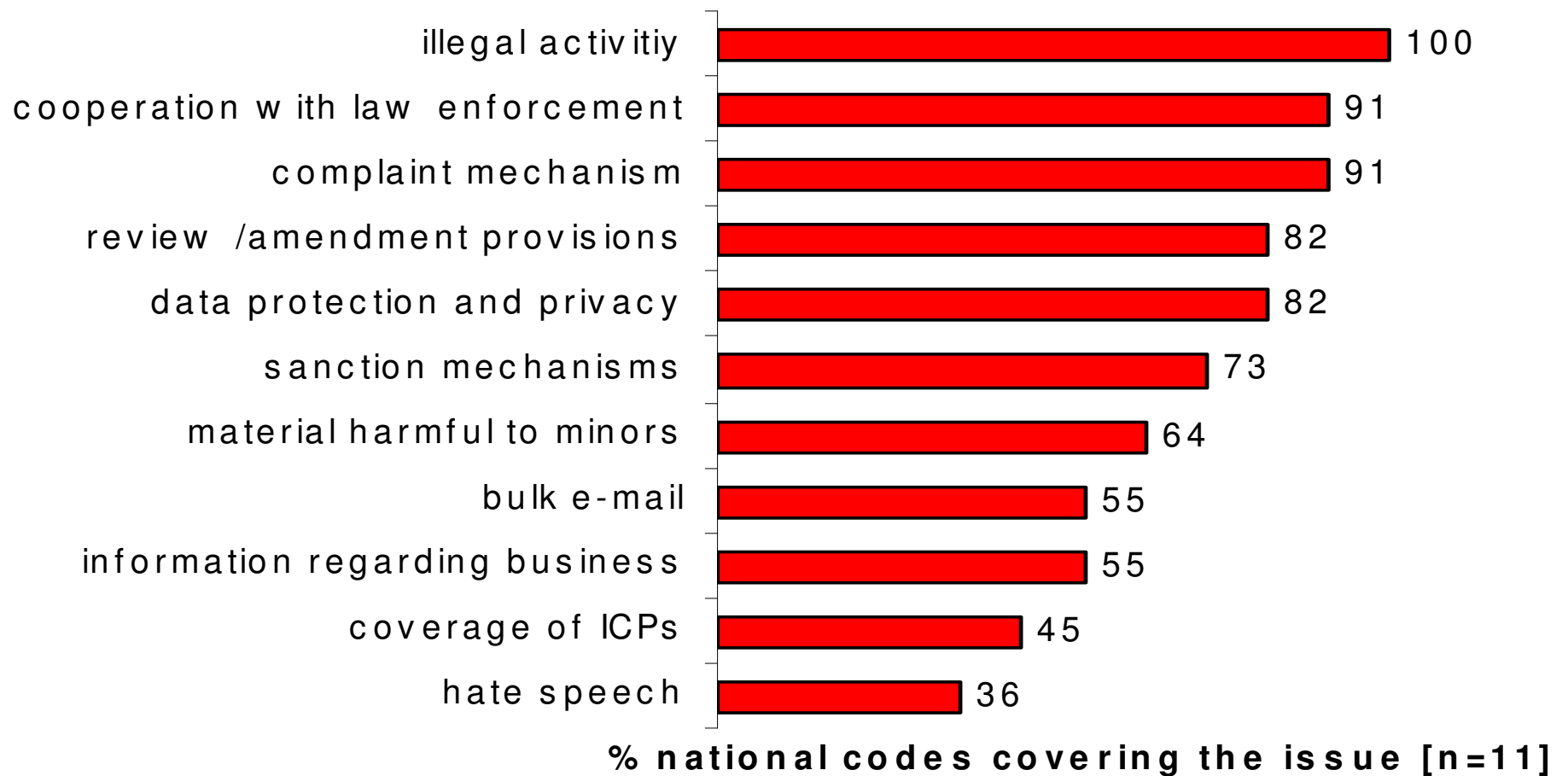


Content Concerns in EU Codes of Conduct: ISPs, Games, Films

	Film							Video Games							ISPs						
	Vv iol en ce	Nu dit y	Se x	La ng ua ge	Co ntr oll ed su bst an ce	Ha te	Ot her	Vi ole nc e	Ba d lan gu ag e	Fe ar	Se x	Dr ug s	Di scr im ina tio n	IC P co ver ag e	Bu sin ess inf or ma tio n	Ill eg al act ivi ty	M ate ria l har m ful to mi nors	Ha te sp ee ch	Bu lk em ail	Da ta pro tec tio n an d pri va cy	
Austria	✓	✓	✓				✗							✓	✗	✓	no rs	✗	✗	✓	
Belgium	✓	✓	✓				✗							✗	✓	✓	✗	✗	✗	✓	
Denmark	✓	✓	✓			✗	✗														
Finland	✓					✓	✓														
France	✓	✓	✓	✓	✓	✓	✓							✗	✗	✓	✓	✗	✓	✓	
Greece	✓	✓	✓			✗	✗														
Ireland	✓	✓	✓	✓	✓	✗	✓							✓	✓	✓	✓	✓	✓	✓	
Italy	✓	✓	✓	✓	✓	✗	✗							✓	✓	✓	✓	✗	✗	✓	
Luxembourg	✓	✓	✓			✗	✗														
Netherlands	✓	✓	✓	✓	✓	✗	✓							✗	✓	✓	✗	✗	✓	✓	
Norway	✓	✓	✓			✗	✗							✓	✗	✓	✗	✗	✗	✓	
Portugal	✓	✓	✓			✗	✗														
Spain	✓	✓	✓	✓	✓	✗	✓														
Sweden	✓	✗	✓	✗	✗	✗	✓														
UK	✓	✓	✓	✓	✓	✗	✓							✗	✓	✓	✗	✓	✓	✓	
Germany	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✗	✓	✓	✓	✗	✗	

www.selfregulation.info
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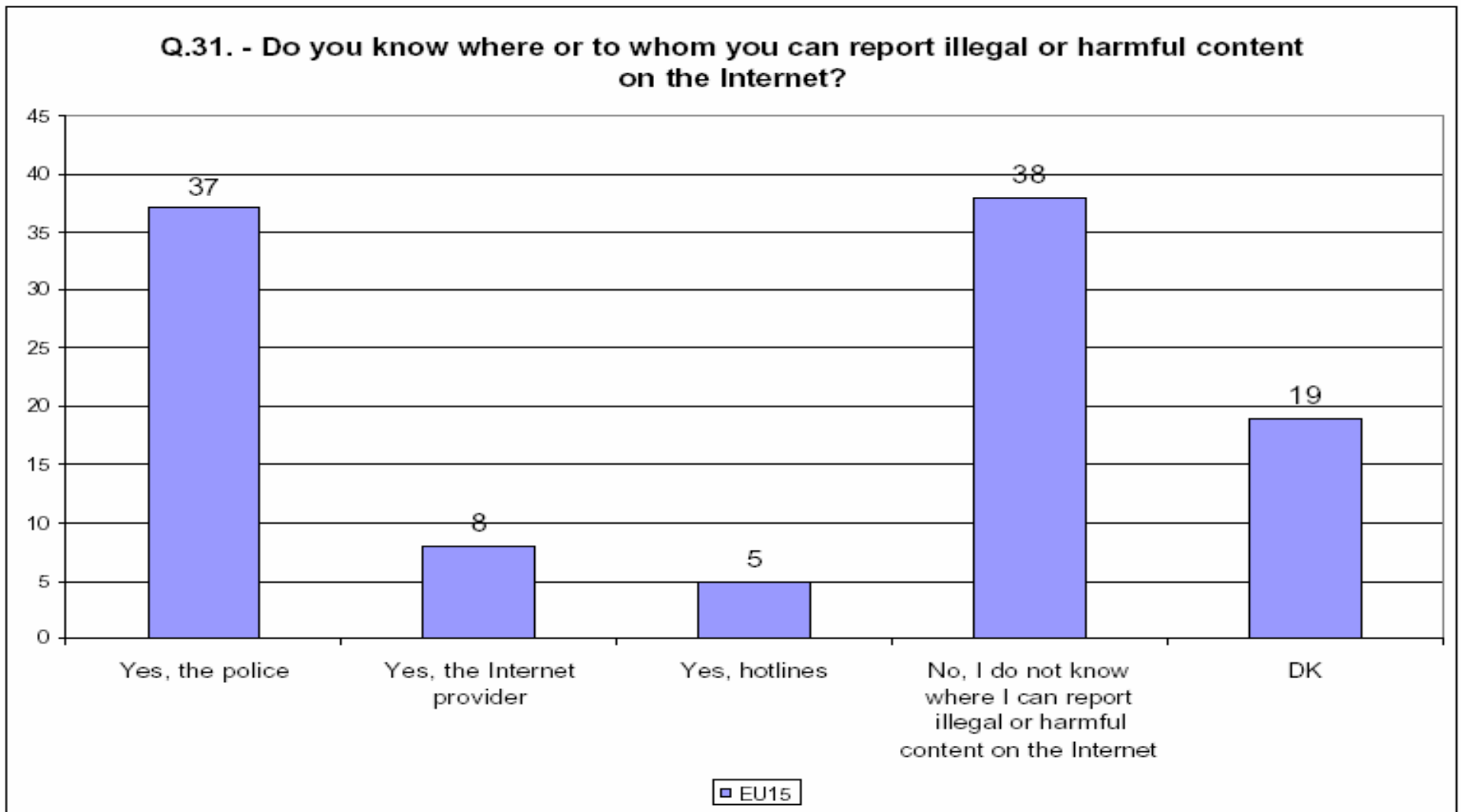
Main Issues Covered by ISP Codes of Conduct



Some Key Challenges

- Lack of resources, sustainability
- Lack of awareness
- Lack of due process, appeal

Eurobarometer 2003 from Sample of 17,000 Citizens



Notice and Take Liberty

- “Shoot first, don’t even bother to ask questions later” Steve Bellovin INET 2004
- PCMLP Research: Chris Marsden and Christian Ahlert.
 - JS Mill Heritage Foundation Copyright
- Should ‘put back’ be part of the E-commerce directive?
- What standards of transparency and accountability can we expect of ISPs?

Freeing the Internet Commons

- PCMLP are the UK hosts for Creative Commons. We are committed to developing the information commons.
- <http://pcmlp.socleg.ox.ac.uk>

Audit of Self-Regulatory Schemes by Regulators

Interests and Motivations. Market structure assessment

Fundamental rights impact assessment

Operational Criteria Scheme Details

Approval (with Kitemark)

(Throughout) pragmatic, contextual strategic