

February 2007

## ETNO Reflection Document on review of the E-Commerce Directive

### Executive Summary

ETNO Members believe that the Directive has been a success. On the one hand, it provides a degree of legal certainty that is sufficient to encourage new investment, avoid distortions of competition and prevent barriers to the Single Market. On the other hand, its provisions are sufficiently flexible to accommodate the rapid evolution of technologies and markets. Consequently, there is no need for revision of the Directive. Indeed, in view of the scope for unintended consequences inherent in any revision attempt, such a step should be actively avoided.

Having closely followed the elaboration of the current E-Commerce Directive, ETNO is mindful that its authors had to find a difficult balance:

- On the one hand, it was necessary to define the Directive's provisions with a degree of precision that would not allow too much latitude for interpretation by national authorities.
- On the other hand, it was necessary to avoid making the wording of the Directive so specific that it would soon be overtaken by technology and market developments.

The common opinion of ETNO Members – which is supported by the extensive practical experience of all the companies in question – is that the Directive has been entirely successful in achieving such a balance.

This success is particularly evident in that part of the Directive which most directly concerns ETNO Members – namely, the provisions on the liability of intermediaries:

- Notwithstanding the introduction of a myriad of new technologies and services since the Directive's adoption, Articles 12 to 15 continue to provide a level of legal certainty which is sufficient to avoid obstacles to investment.

- The Directive also continues to combine the possibility for quick and effective action against illegal activity with preservation of the public internet and telephone networks as “common carrier” platforms which (a) cannot select their users and (b) provide the possibility for any-to-any communication. (These features are, of course, central to the social and economic importance of the electronic networks in question.)
- The parameters established by the Directive for decisions by national governments and courts have proved sufficient to avoid significant distortions of competition within the Single Market, and to prevent the emergence of barriers to cross-border provision of services. (Alignment of the EU legislation with the approach of major non-EU economies has been similarly helpful at global level.)

Taking these considerations into account, and noting the continued rapid growth in EU e-commerce markets<sup>1</sup>, the unanimous view of ETNO Members is that there is no need for revision of the Directive. Indeed, in view of the Directive’s success to date and the scope for unintended consequences inherent in any revision attempt, such a step should be actively avoided.

At the same time, ETNO would underline its concern at potential erosion of the Directive’s “country of origin” principle by overlapping instruments such the draft “Rome 1” and “Rome 2” Regulations and the proposal for a new Audiovisual Media Services Directive. In the Association’s view, this principle has played a key role in the Directive’s success and should not be compromised.

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<sup>1</sup> See, for example, the consultants’ report on digital content markets for DG INFSO which –without any modification of the E-Commerce Directive - predicts 400% growth over the next five years:  
[http://europa.eu.int/information\\_society/europe/i2010/docs/studies/interactive\\_content\\_ec2006\\_final\\_report.pdf](http://europa.eu.int/information_society/europe/i2010/docs/studies/interactive_content_ec2006_final_report.pdf)