

## **ETNO Reflection Document in reply to the European Commission consultation on “Creative Conditional Access”**

### **Executive summary**

ETNO shares the overall aim of boosting the market of digital content and therefore welcomes the opportunity to comment on the Conditional Access Consultation.

In ETNO's view, cross-border pay-TV markets are, and will remain, fragmented mainly because of the linguistic factor and therefore there is no significant commercial interest in developing these broadcasting markets. ETNO is not aware of studies showing any significance of the phenomenon of “grey market” and the phenomenon therefore does not justify regulatory intervention.

The risk of overlapping regulation between different areas, such as between Conditional Access and Digital Right Management systems, should be carefully avoided.

### **The “grey market” in cross-border services**

ETNO is not aware of studies showing any significance of a “grey market” and the phenomenon therefore does not justify regulatory intervention.

ETNO believes that the demands of immigrants settled in Europe as well as from travellers to watch e.g. local football games will soon be catered for through increased availability of TV-programs to computers and mobile phones. Programs based on e.g. language, without limitation to territory, may become increasingly available via the web and through mobile phone services, to the degree such licenses are offered by rightsholders.

Updated Conditional Access and DRM systems will not solve all the problems of copyright infringements, even if used as tools to counter-act such activities. The problem of copyright infringements is probably as much related to different business models as to technical issues and regulatory measures. Before any regulatory measure is adopted, one should analyse its potential impact on services that are only provided nationally due to technical limitations.

## Digital Right Management systems

ETNO believes that, in order for content protection technologies to play their roles as key enablers in a legitimate digital content distribution model, they must remain respectful of;

- the consumer's preferences (consumption modes, privacy etc),
- the content owners' rights and business (through robust and adaptable solutions),
- the service providers' demand for flexible implementations and rich commercialization modes (on-demand purchase or subscription to a catalogue).

ETNO shares with the Commission the view that the definition of "*conditional access*" in the 98/84/EC Directive is confusing and may be interpreted as including certain DRM systems - while DRM systems anti-circumvention laws are already covered by the Copyright Directives 2001/29/EC and 2004/48/EC. General TV-regulation is found in the Audiovisual Media Services Directive (2007/65/EC). In our view, overlapping regulation is confusing and should be carefully avoided. ETNO is in favour of straightforward non-overlapping regulation. Interventions in this highly technical domain must be coordinated [by the relevant Commission directorate]. Companies investing in the sector need clarity where the regulatory framework is concerned.