



## **Joint Declaration on Intellectual Property Rights in the digital market from leading European ICT & Communications organisations**

### *The role of the ICT industry in achieving the Digital Agenda targets*

Our pan-European organisations, Cable Europe, ECTA, ETNO, EuroISPA and GSMA Europe represent the European electronic communications industry that is comprised of both national and pan-European fixed and mobile telecoms operators, Internet Services Providers (ISPs) and cable companies. The European electronic communications industry plays a crucial part in connecting European citizens and businesses to information, news, entertainment, social media, cultural content and other public interest content.

Notwithstanding the economic crisis, our industry continues to invest and enables European businesses to grow and compete at a national and international level. Over the last 15 years, our industry has delivered half of European productivity growth. We are committed to the continued delivery of sustainable economic and social benefits from a digital single market based on fast and ultra-fast networks and services, which buttress the overall aims of the Digital Agenda for Europe. If Europe is to achieve the EU2020 goals, it is essential that we all contribute to the completion of the digital single market.

### *Shaping a clear and future-proof IPR Strategy for the digital market*

Our industry is committed to connecting EU citizens and business to the Internet and providing them with ever innovative, legal offers. To meet the evolving demands of our consumers often entails radical changes in the way we do business. In order to avoid chilling innovation and to achieve a true and competitive digital single market, there is an urgent need for traditional business models to be adapted to the online environment. A holistic and ambitious IPR Strategy for the digital market is key to facilitating this transition.

We, therefore, call for the EU Commission, in its upcoming IPR strategy, to provide for the clear and future-proof rules that will be essential if Europe is to fully realise the potential benefits that e-commerce and ICT can deliver.

This is the right occasion for the EU to take steps to remove barriers around the development of the digital single market and allow industry to develop and offer a variety of legitimate and innovative digital content business models, facilitated by both online and Digital TV platforms. This requires, as a precondition, that content is made legally available at reasonable conditions, in terms of timing and price. Accordingly, while recognizing the importance of copyright protection for remunerating content creation, old mechanisms of copyright licensing based on burdensome fragmented licensing systems must be overhauled and greater transparency, competition and accountability of collecting societies must be promoted.

Additionally, if new business models are to be found that can sustain modern habits of consuming content online, we also expect that new, secure and convenient ways of making payments online are found and fostered.

*No need for a revision of the IPR Enforcement Directive*

We regret that the European Commission seems pre-disposed to revise the IPR Enforcement Directive 2004/48 (IPRED) at this premature stage, when we have a limited experience with its provisions due to its late transposition and there is insufficient evidence that a revision is necessary. We indeed consider that the Directive as it stands offers a well-balanced and functioning framework for the enforcement of Intellectual Property Rights, providing law enforcement authorities with the required legal powers to address problems of online IPR infringement. Nonetheless, late and inadequate transposition of the Directive in some Member States causes legal uncertainties for both internet intermediaries and rightsholders. We would therefore strongly encourage the Commission to first focus on the required and harmonised transposition of the Directive by Member States.

In addition, we are deeply concerned that any changes to the IPRED introduce substantial modification of the liability regime provided for in the Electronic Commerce Directive 2000/31. Fundamental principles enshrined in this Directive have allowed the electronic communications industry to provide innovative services in an affordable and competitive manner. This crucial *acquis communautaire* is the cornerstone of the ICT industry in the EU and the basis for the industry to continue its forward trajectory. These principles should therefore be preserved and respected in any other legislation. Any interference with this delicate balance will bring with it an increase of burdens for legitimate commerce, creating a negative impact on innovation, distorting competition and undermining consumers' fundamental rights to privacy and the free flow of information.

We also deeply disagree with the Commission's proposal to impose, through injunctions, increasingly invasive technical measures to control users' communications online in order to prevent an IPR infringing act from taking place through an ISP's service. This effectively amounts to a general obligation to monitor online communications, contrary to the fundamental provision of the e-commerce directive. Moreover, implementing such measures can be complex and potentially very costly, yet their effectiveness in combating online IPR infringement is doubtful because they are likely to be circumvented or quickly become obsolete in this fast-moving digital world. Beyond its illegality, on a balance, the technical complexity and cost, together with the potential harm to consumers and businesses, seem disproportionate to the likely success of any measures.

*Search for alternative, not repressive solutions to address digital piracy*

We are very concerned by the approach taken by the Commission in recent initiatives (e.g. the dialogue on illegal up/downloading, the Observatory on Counterfeiting and Piracy, the public hearing on the Scarlet/Sabam case before the European Court of Justice, the ACTA negotiations) where the vested rights of the content industry were repeatedly defended to the detriment of consumers' needs and rights and the development of the Internet. Since it cannot seriously be argued that copyright prevails over fundamental freedoms, alternative, not repressive solutions to address online IPR infringement must balance all fundamental rights at stake.

The electronic communications industry calls on the European Commission to address the causes of the problems instead of the symptoms. We firmly believe that a sustainable solution to IPR infringement lies in the development of innovative content services, at affordable prices and based on new business models, that meet consumers' expectations and needs. Additionally, for Europe's citizens to fully appreciate the value of IPR, improved public awareness of the value and use of IPR as an economic and cultural asset will be required. Alongside the existing IPR enforcement framework, this is also the most effective way to limit infringement.

Therefore, we call on the European Commission to support the adaptation of the creative industries to the online environment by moving its regulatory focus away from intensifying the enforcement measures, restrictions and sanctions already in place, towards new measures that promote the establishment of innovative services that will effectively allow the value of copyright to be realised and constitute new sources of revenues for creators.

We urge the Commission to make the right choices for the EU's digital future, by permitting and encouraging competitive new businesses and industries to develop and flourish online and steering clear of inefficient regulation designed to protect outdated business models, which threatens the ultra-high speed networks and services that will underpin future developments.

Yours sincerely,



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**Cable Europe** ([www.cable-europe.eu](http://www.cable-europe.eu)), the European Cable Communications Association, is based in Brussels and groups all the leading European cable TV operators and their national trade associations throughout Europe. The aim of Cable Europe is to promote and defend the industry's policies and business interests at European and international level. The European cable TV industry provides digital TV, broadband Internet and telephony services to more than 73 million customers. Contact: Caroline Van Weede, Managing Director (+3225211763/ [caroline.vanweede@cable-europe.eu](mailto:caroline.vanweede@cable-europe.eu))



**ECTA** (the European Competitive Telecommunications Association - [www.ectaportal.com](http://www.ectaportal.com)) is the pan-European pro-competitive trade association that represents more than 100 of the leading challenger telecoms operators across Europe. For over a decade, ECTA has been supporting the regulatory and commercial interests of telecoms operators, ISPs & equipment manufacturers in pursuit of a fair regulatory environment that allows all electronic communications providers to compete on level terms. Our members have been the leading innovators in Internet services, broadband, business communications, entertainment and mobile. Contact: Vicky Hanley-Emilsson (+32 2 227 11 79/ [vhanley-emilsson@ectaportal.com](mailto:vhanley-emilsson@ectaportal.com)).



**ETNO** (the European Telecommunications Network Operators' Association - [www.etno.eu](http://www.etno.eu)) is the voice of the European telecommunications network operators with over a decade of experience in shaping EU telecoms policy. The association represents 41 companies located in 35 European countries. They account for an aggregate annual turnover of more than 250 billion Euros and employ over one million people across Europe. Contact: Caroline Greer, Regulatory Affairs Manager (+322 2271083/ [greer@etno.be](mailto:greer@etno.be)).



**EuroISPA** is the world's largest association of Internet Services Providers (ISPs) representing the interests of more than 1800 ISPs across the EU and the EFTA countries. EuroISPA is a major voice of the Internet industry on information society subjects such as cybercrime, data protection, e-commerce regulation, EU telecommunications law and safe use of the Internet ([www.euroispa.org](http://www.euroispa.org)). Contact: Andrea D'Incecco, Head of Policy, [andrea@euroispa.org](mailto:andrea@euroispa.org)



**GSMA** represents the interests of the worldwide mobile communications industry. Spanning 219 countries, the GSMA unites nearly 800 of the world's mobile operators, as well as more than 200 companies in the broader mobile ecosystem, including handset makers, software companies, equipment providers, Internet companies, and media and entertainment organisations. The GSMA is focused on innovating, incubating and creating new opportunities for its membership, all with the end goal of driving the growth of the mobile communications industry. In the European Union the GSMA represents over 100 operators providing more than 600 million subscriber connections across the region. For more information on GSMA, please visit: Mobile World Live, the new online portal for the mobile communications industry, at [www.mobileworldlive.com](http://www.mobileworldlive.com), GSMA corporate website at [www.gsmworld.com](http://www.gsmworld.com), GSMA Europe [www.gsmeurope.org](http://www.gsmeurope.org). Contact: Martin Whitehead, Director, GSMA Europe (+32 2 792 05 50/ [MWhitehead@gsm.org](mailto:MWhitehead@gsm.org))