



## JOINT STATEMENT

### ON TECHNOLOGY NEUTRAL RIGHTS CLEARANCE

### FOR RETRANSMISSIONS OF TV AND RADIO PROGRAMMES

20 June, 2017 - Brussels

The above indicated organisations, Cable Europe, Digital Europe and EuroISPA, call on the European Parliament (EP) to support and aim to achieve an even higher level of technological neutrality in the section dealing with rights clearance for retransmission services as foreseen by the European Commission (EC) in its proposal for a **Regulation on copyright for online transmissions of broadcasts and retransmission of TV** ("SatCab" regime). The proposal aims to ensure the rights clearance for retransmission of TV and radio programmes via broadcasters and collective rights management organisations, which has to be guaranteed regardless of the technology or infrastructure used for the retransmission. The section on retransmission is important for the availability of, and widespread, all-encompassing access to, broadcast content in a number of Member States' markets. This joint statement does not address the extension of the country of origin principle of the EC proposal.

The Draft Regulation of 14 September 2016 limits the ability of collecting societies to grant licences for the retransmission of broadcasting channels to services provided via closed circuit networks (IPTV) only. This limited scope will hinder the development of innovative content services in the European Union that rely on a mix of technologies, including applications ran over the "open" internet, to create a seamless viewing experience for the consumer. There are no justifiable grounds for this unequal treatment compared to the services covered by the Draft Regulation. The business models and level of security are identical: a third party retransmits linear radio or TV programmes integrally, i.e. simultaneously, unaltered and unabridged to the end costumer and thereby builds up a business relationship with him. This requires fair conditions of competition for all market participants irrespective of whether the retransmission takes place via closed or open networks. All providers who show the same characteristics as cable network operators must benefit from the legal certainty that comes with the Cable and Satellite Directive and the simplified rights clearance system. This would ensure that the framework conditions for retransmission of TV and radio programmes in Europe can be sustainably improved in international competition.

The underlying rationale to shape the rights clearance for retransmission in an infrastructure and technology neutral way is as follows:

1. For cable retransmission, the rights clearance via collecting societies has performed for more than 20 years - not with losses, but for the benefit of the right holders and distributors. In this respect, it is consistent to transfer this concept to other forms of retransmission as far as the provider has an end customer relationship. The retransmission is territorially limited by contract and, thereby, the number of users is determinable.
2. The challenges in rights acquisition for retransmission services are the same – no matter whether for retransmission via closed or via open networks - and they correspond with former acquisition problems for retransmissions via traditional cable networks. Retransmission service providers are frequently faced with a very high number of unknown right holders, which makes the acquisition of the relevant rights individually and in time for a simultaneous retransmission unmanageable. As a consequence, today only a few and very limited legal IP-based retransmission services, offered via the open internet, exist.
3. Collective rights management for an infrastructure and technology neutral retransmission enables companies from EU Member States to offer a comprehensive and up-to-date product portfolio.
4. Examples from countries outside the EU confirm that a collective rights management based on an infrastructure and technology neutral rights clearance system leads to a variety of retransmission services that meet customer demand (example: Switzerland).
5. Authors and neighbouring rights owners benefit from effective, well-functioning collective rights management by collecting societies. The simplified rights clearance system increases the potential for a diversified distribution of TV and radio programmes and increases the number of licensees as well as the revenue of authors and neighbouring rights owners.
6. However, broadcasters should freely decide whether they wish to mandate the collective management organisation in order to authorise the retransmission or to negotiate directly with the operators of retransmission services the granting of such authorisation. Broadcasting organisations are not affected by a technology neutral rights clearance system via collecting societies. For the rights owned by or attributed to them, broadcasters still decide about granting them.
7. The principle of territoriality is not affected by an infrastructure and technology neutral rights clearance system for retransmission. Positions on questions regarding territoriality remain unaffected as well. It is merely a procedural simplification of the rights clearance for TV and radio programmes. Also the exclusive marketing by means of territorial orientation of the service (for example, by means of geo-targeting) and by means of granting territorially limited rights remain unaffected. Technological neutrality will not necessarily result in the unlimited (i.e. worldwide) accessibility of TV and radio programmes via retransmission services.
8. Services on the open internet and those provided on closed networks can offer equal levels of security for content because content security methods are applied at content, not at network level. Thereby, the group of end customers could be then technically controlled by retransmission services via open networks (for example by access authorisation systems). This is independent of the technology or infrastructure used to retransmit TV and radio programmes, whether via open networks or closed networks. This also includes technical

means to protect the content from illegal redistribution. On-demand services on the internet show that this is technologically feasible.

9. The consumer expects that he or she can flexibly receive TV and radio programmes (including mere functionalities made possible in this digital environment) no matter where and on which device on the licensed territory.
10. Illegal services, which are often distributed over the open internet, can be countered by facilitating attractive legal offers corresponding to consumer needs. To this end, European legislators have to create the appropriate framework conditions which ensure adequate remuneration of rights holders on the one hand and safeguard the interests of distributors on the other.

The signatories of this statement are:

### **Cable Europe**

Cable Europe is the trade association that connects leading broadband cable TV operators and their national trade associations throughout the European Union. The regulatory and public policy activities of Cable Europe aim to promote and defend the industry's policies and business interests at European and international level. The European cable industry provides high speed broadband internet, TV services, and telephony to more than 63 million homes in the European Union. [www.cable-europe.eu](http://www.cable-europe.eu)

### **DIGITALEUROPE**

DIGITALEUROPE represents the digital technology industry in Europe. Its members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants a European Union that nurtures and supports digital technology industries, and that prospers from the jobs we provide, the innovation and economic benefits we deliver and the societal challenges we address. Its mission is to foster, on behalf of its members, a business, policy and regulatory environment in Europe that best realises the association's vision. DIGITALEUROPE's members include 61 Corporate members and 37 National Trade Associations from across Europe. [www.digitaleurope.org](http://www.digitaleurope.org)

### **EuroISPA**

EuroISPA is a pan European association of European Internet Services Providers Associations (ISPAs). It is the world's largest association of Internet Services Providers (ISPs), representing over 2300 ISPs across the EU and EFTA countries - including ISPs from Austria, Belgium, the Czech Republic, Finland, France, Germany, Ireland, Italy, Norway, Romania and the UK. The association was established in 1997 to represent the European ISP industry on EU policy and legislative issues and to facilitate the exchange of best-practices between national ISP associations. EuroISPA is recognised as the voice of the EU ISP industry and is the largest 'umbrella' association of Internet Services Providers in the world. [www.euroispa.org](http://www.euroispa.org)