



### Industry Coalition Contribution to European Commission Consultation on Copyright

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

We welcome the opportunity to respond to the European Commission's consultation on copyright. Copyright is fundamental for innovation and copyright owners need to be remunerated for their work. We support a progressive regulatory framework for copyright, one that fosters investment and the provision of innovative services and also provides appropriate protection mechanisms. Any modification to the current rules must be properly assessed and justified in order to guarantee the respect of equally relevant fundamental rights, taking into account the need to foster investment and innovations in technologies (proportionality is key).

High prices and the lack of availability of legal online/on-demand content is the key domestic/national market barrier today in Europe. Unjustified territorial copyright restrictions, geo-blocking, price discrimination, hold-back practices and windowing are also significant market barrier issues. Although further efforts will be needed overall, it is our hope that the Directive on Collective Rights Management will help to solve some additional relevant problems such as excessive transaction costs, the lack of clarity relating to rights' ownership and the complexity of rights management.

Below, we set out some specific issues which we believe should be addressed in the context of the EU copyright reform.

1. We recommend that a **review of the release windows system** is carried out at EU level in order to provide a wider distribution of digital works. This would also help reducing digital piracy, which is mainly due to the lack of legal digital offers in the first release window.

2. **Hyper-linking** is a fundamental practice on the Internet, which does not imply any new publishing or a duplication of the work. We see no need for a licence in this situation and believe that it would be an unacceptable result to consider millions of ordinary Internet users to be copyright infringers by merely accessing a web-page containing copyright material. We note that the recent ECJ ruling in the [Svensson](#)<sup>1</sup> case reflects this viewpoint. Similarly, the viewing of a web page in the context of the **web-browsing** creates temporary copies that are covered by the exception within Art. 5(1) of the Copyright Directive and cannot be subject to the authorisation of the right-holder.
3. Regarding **exceptions and limitations**, it is essential to ensure flexibility with exceptions. The Vitorino report clearly indicates that any attempts to broaden the application of the private copy levy system are not only to the detriment of rights-holders and legal offers based on license agreements, but are also legally questionable and should not be supported. In particular, we believe that cloud services should not be subject to this levy - one of the main advantages of cloud services is their global nature and therefore imposing territorial/national levy systems on global services is unfeasible. The negative impact on new business models would be immediate. We also need better harmonization throughout Europe to avoid heavy private copying exception levies in some countries and “grey market” practices.
4. Our coalition believes that that any potential review of the copyright framework should not include **enforcement measures** as the Directive on Intellectual Property Rights Enforcement [IPRED Directive 2001/29/EC] is horizontally applicable to all IPRs and offers checks and balances for enforcement that are not present in the Copyright Directive. It ensures that the protection of IPR is balanced with fundamental freedoms and rights such as the freedom of expression, the right to a presumption of innocence, the right to a fair trial, the right to privacy, the right to the confidentiality of communications, and the right to conduct a business. Therefore, rather than issuing additional statutory measures, the focus of any initiative taken by the Commission should be directed towards correct implementation of Directives 2004/48, 2001/29 and Directive 2000/31, in order to avoid different approaches among countries.
5. **Single license.** An eventual, optional pan-European/multi-territory license could help achieve a European Single Market. Nevertheless, if a multi-national licensing system is created, service providers active on a purely national, regional and/or local level should have the same competitive conditions as international providers.
6. **Term of protection.** There is no need to extend the existing terms of copyright protection. These terms already go well beyond the minimum terms of protection required by the applicable international agreements (50 years after the death of the author - art. 7.1 Berne Convention). From an economic perspective, the time span to let authors and content producers recoup an investment in the creation of works is much shorter. Therefore, any extension of the terms of copyright protection would lead to a significant reduction in the size of the public domain, a considerable source of material freely available for use in innovative projects, both commercial and non-profit making, and thereby contributing to cultural diversity. Such extension would moreover increase the costs for service providers and consumers, as the right holders enjoy an even longer period of monopoly, not even used by most of them.

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<sup>1</sup> Judgment in Case C-466/12, Nils Svensson and Others v Retriever Sverige AB

## **Conclusion**

The Digital Age has introduced new challenges to copyright law enforcement but also new opportunities. Online content is now disseminated in ways which could not have been anticipated when the current legal framework was devised and user expectations have shifted as a result. Notwithstanding the complexity of reform, we believe that it is timely to re-think the current rules. We hope that our contribution has been helpful.

**The contributors to this joint statement are:**



**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: Carlos Sanz Sánchez (Adviser of Regulatory Affairs), email: [carlos.sanz@cable-europe.eu](mailto:carlos.sanz@cable-europe.eu). Tlf: +32 25562101.



The **CCIA** is an international, nonprofit association representing a broad cross section of computer, communications and Internet industry firms. CCIA remains dedicated, as it has for over 40 years, to promoting innovation and preserving full, fair and open competition throughout our industry. We have offices in Brussels, Geneva and Washington DC. Our members employ more than 600,000 workers and generate annual revenues in excess of \$200 billion. For more information, please visit: [www.ccianet.org](http://www.ccianet.org). Contact: Jakob Kucharczyk, Director, CCIA Europe, [jkucharczyk@ccianet.org](mailto:jkucharczyk@ccianet.org) / +32 492 887 943



**ECTA** (European Competitive Telecommunications Association - [www.ectaportal.com](http://www.ectaportal.com)) is the pan-European pro-competitive trade association that represents over 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: Inês Nolasco, Senior Regulatory Affairs Manager, [inolasco@etaportal.com](mailto:inolasco@etaportal.com), +32 2 290 01 03



**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, EU Public and Regulatory Affairs Manager, [greer@etno.be](mailto:greer@etno.be) / + 322 2271083.



**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) , +32 2 503 22 65



The **GSMA** represents the interests of mobile operators worldwide. Spanning more than 220 countries, the GSMA unites nearly 800 of the world's mobile operators with 250 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and Internet companies, as well as organisations in industry sectors such as financial services, healthcare, media, transport and utilities. The GSMA also produces industry-leading events such as Mobile World Congress and Mobile Asia Expo. For more information, please visit the GSMA corporate website at [www.gsma.com](http://www.gsma.com). Follow the GSMA on Twitter: @GSMA. Contact Harald Boerekamp, Operations Director, [hboerekamp@gsma.com](mailto:hboerekamp@gsma.com) / +32 (0) 499051050.