Cable Europe's Response to the Public Consultation on the Review of the EU Copyright Rules

4 March 2014

I. IDENTITY AND TYPE OF THE RESPONDENT

Identity:

European Cable Communications Association (Cable Europe)

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1040 Brussels

Transparency Register #42178977290-80

Type:

Representative of intermediaries/distributors/other service providers

II. RIGHTS AND THE FUNCTIONING OF THE SINGLE MARKET

A. Why is it not possible to access many online content services from anywhere in Europe?

1. *[In particular if you are an end user/consumer:]* ***Have you faced problems when trying to access online services in an EU Member State other than the one in which you live?***

2. *[In particular if you are a service provider:]* **Have you faced problems when seeking to provide online services across borders in the EU?**

YES.

Market developments, driven by the emergence of new devices and changes in customer habits, have caused subscribers to want to access the content distributed

by their cable operator on multiple devices at any time and regardless of their location. In fact, subscribers want the channels and other content (e.g. VoD services) offered by their cable operator to be "portable" anywhere in the home, in the country, in Europe and beyond.

Cable operators have launched new services to meet such customer demand, e.g. services enabling cable subscribers to watch their content on computers, tablets and/or smart phones.

The members of Cable Europe are however experiencing difficulties to obtain the necessary rights for these services. In particular, they are facing significant difficulties to obtain the "out- of- home" rights needed to enable their subscribers to access their content when outside of their home, be it in their country of origin or abroad. These difficulties range from refusals to grant the necessary rights to abuses of dominant positions of collective management organizations ("**CMOs**") – which unfortunately tend to request unreasonable and unjustified license tariffs – as well as to the burden caused by the fragmentation of rights across national boundaries and unreasonable requests for remuneration for each additional type of device or location. They constitute a significant barrier to innovation in distribution technologies.

Amendments to the current legal framework should address these issues in order to promote an innovative and efficient market for content services within and across national borders, taking into account technology neutrality and portability.

Whilst there is an increasing demand from customers to be able to access content provided by cable operators across borders, collective management organizations (CMOs) almost exclusively represent the interests of rights holders at a national level and cannot or will not offer multi-territorial licenses. For example, members of Cable Europe have been confronted with CMOs who refuse to allow foreign broadcasters to offer their channels 'all rights included' to cable operators, but rather insist on only dealing with the cable operators in their own country. CMOs even obstruct the clearance of online rights *within* member states by using their dominant positions to request unreasonable and unjustified license tariffs.

The clearing of rights is therefore in many cases characterized by a high degree of inefficiency and a lack of transparency, causing cable operators to incur important transaction and opportunity costs. Since copyrights licensed to cable operators are often geographically restricted and clearing the rights for different or all Member States is burdensome, content provided by cable operators to their subscribers will often not be accessible abroad.

3. *[In particular if you are a right holder or a collective management organization:]* ***How often are you asked to grant multi-territorial licences? Please indicate, if possible, the number of requests per year and provide examples indicating the Member State, the sector and the type of content concerned.***

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4. *If you have identified problems in the answers to any of the questions above – what would be the best way to tackle them?*

While questions 1 and 2 focus on problems faced when accessing or providing online services, Cable Europe wishes to stress that EU regulation should not be limited to targeting these services. Offline and digital services are indeed in constant expansion, and the business models of the various operators are converging. Offline and digital service should thus also be included when measures are taken at the EU level.

Cable Europe is of the opinion that **an improved, more effective, more efficient, more competitive and more consistent transparent, technology neutral rights management and clearance system for copyrighted works** across Europe is needed. The proposal for a Directive on Collective Rights Management is a step in the right direction but further improvements are required. It should be possible to clear the rights needed to distribute content on normal, commercially viable conditions and once the rights have been cleared and the subscribers of the distribution platforms are known, these customers should be granted a portability right. Subscribers of a cable operator should indeed be able to benefit from their subscription anywhere and on any screen or device of their choice, regardless of their location.

Cable Europe encourages the adoption of measures at the EU level that tackle these issues. However, we would like to stress that policy makers should not pick winners in a given market. The regulatory framework should therefore have the same operational and cost impact irrespective of the exploitation form (satellite, cable, PTV, internet, mobile). The measures taken at the EU level should also avoid discrimination between cable operators and over the top ("OTT") players (such as Hulu and Netflix).

The new system should moreover enhance transparency and legal certainty regarding the copyright regime that will apply. The market behaviour of CMOs should be regulated ex ante to avoid abuse of their dominant positions (which today is common in several member states), and competition between collective management organizations should be encouraged to increase the efficiency of the system and help to drive a single market forward. It is however key to avoid the accumulation of market power with only two to three large collective management organizations in Europe.

Therefore, Cable Europe welcomes the Commission's initiative for a Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market. However, it is Cable Europe's view that the Commission's proposal has been watered down during the legislative process, while new and more far-reaching measures are imperative to secure well-functioning and commercially viable forms of collective management of copyright both within and across Member States in order to strengthen both innovation and accessibility of legal content.

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An approach Cable Europe would approve of is the creation of a single licence delivered by a one stop shop system, which would be optional for users, e.g. in the event of right-holders – such as broadcasters – not being able or willing to provide "all-rights-included" offers ("**ARI**") (for the relationship between ARI offers and licenses, please see the response to question 10). The single license would be created for clearance of all content exploitation forms (fixed, mobile, online, cable, DTT, etc) both at the horizontal (i.e. multi-territory) and the vertical (i.e. one negotiation partner only) level. To ensure content accessibility in a one stop shop system, it is essential to oblige collecting societies to contract with each other and also to contract with right users who seek clearance.

The single license should firstly allow cable operators to clear – if needed – all rights necessary to provide the content they want to their subscribers. The system should however be flexible. It should allow users to choose their preferred option and provide the possibility to clear only the rights they need, e.g. rights *not* already covered by broadcasters' ARI offers.

Secondly, cable operators active in several territories should be given the option to choose for pan-European/multi-territory licensing. Cable Europe however wants to stress that, 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. It has to be prevented that a two speed market is created, where a company operating on a European single market basis would have a better regulatory/operational environment than a company operating on a national/regional basis.

It will also need to be ensured that the copyright users will be able to obtain **effective judicial/quasi-judicial remedies against excessive remuneration claims** by right-holders – both domestic and foreign. As things stand, the existing national licensing systems already pose significant hurdles in this regard.

5. *[In particular if you are a right holder or a collective management organisation:]* ***Are there reasons why, even in cases where you hold all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on a service provider (in order, for instance, to ensure that access to certain content is not possible in certain European countries)?***

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6. *[In particular if you are e.g. a broadcaster or a service provider:]* **Are there reasons why, even in cases where you have acquired all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on the service recipients (in order for instance, to redirect the consumer to a different website than the one he is trying to access)?**

YES.

Cable Europe considers that service operators should have the possibility to impose territorial restrictions under certain circumstances. This may be necessary if differences between the various markets or national regulations of the Member States justify differences in the terms and conditions of the retail offer. In addition, national or regional players should not be required to clear rights for territories outside of their footprint.

7. Do you think that further measures (legislative or non-legislative, including market-led solutions) are needed at EU level to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders?

YES.

This question is addressed in the response to Question 4.

b. Is there a need for more clarity as regards the scope of what needs to be authorised (or not) in digital transmissions?

1. The act of "making available"

8. Is the scope of the "making available" right in cross-border situations – i.e. when content is disseminated across borders – sufficiently clear?

NO.

The making available right protects a complex act, consisting of different constitutive acts, which may take place in different Member States (e.g. the uploading of an audiovisual work by a person located in Member State A to a server located in Member State B for transmission to an end-user in Member State C). The scope of this making available right remains unclear.

Under the current Information Society Directive, the making available right is protected as a species of the right of communication to the public, not as a *sui generis* right. This general right of communication to the public also covers other types of communication, such as broadcasting, simulcasting or webcasting (recital 23 of the Information Society Directive). This is for example confirmed in the recent judgement of the ECJ in *TVCatchup*[1]. The ECJ decided that the retransmission via the Internet of works included in terrestrial TV broadcasts should be considered a communication to the public in the sense of article 3 of the Information Society Directive.

[1] ECJ 7 March 2013, case C-607/11, ITV Broadcasting e.a. v TVCatchup (TVCatchup).

The making available right is thus distinguished from the broadcasting right. As discussed in the "*Study on the Application of Directive 2001/29/EC on Copyright and Related Rights in the Information Society*" the distinctive factor seems to be the control over the timing of transmission. In case of broadcasts or so-called "push services", the sender controls the transmission of the work (by contrast to the user choosing when and where to access the works at his individual demand). In case of a broadcast, the broadcaster determines the linear programme and the user's access coincides with the transmission of the programme. With a sliding scale of interactivity, the exact delineation and relation between the rights of communication to the public, broadcasting and making available is however not always easy to determine[2].

Cable Europe also deplores the **obsolete regulatory differentiation** between the different distribution technologies and wishes to underscore the importance of a technology neutral approach in copyright legislation applicable in national as well as cross-border situations.

The business models of cable, DTH, DTT and DSL platform operators are converging, with cable, satellite, terrestrial, mobile and OTT players all competing directly for audience and establishing own, consumer-centric businesses based on digital distribution technology. In this converged, increasingly technology-neutral and platform independent market environment it appears questionable whether the differences in regulation (more in particular relating to the scope of authorization and the collective management of rights) between the different distribution technologies are still justified. Although differences in regulation may under certain circumstances be necessary, Cable Europe insists that discrimination between service providers should be avoided (e.g. different legal regimes for cable operators and OTT players, such as Netflix, can amount to discrimination).

An example of obsolete regulatory differentiation relates to the notion of **cable retransmission** as regulated under the SatCab Directive. The underlying idea for this concept was that while satellite TV/direct-to-home, terrestrial TV and mobile TV were deemed direct communication to the public – for which all copyrights are cleared between CMOs/producers and broadcasters – cable TV and IPTV were deemed a secondary communication to the public and hence re-transmission – with clearance through CMOs.

Such intervention of CMOs did to a certain extent make sense in a traditional environment where the initial terrestrial broadcast was followed by a cable retransmission by another entity. Nowadays, however, many broadcasters send their signal – through a private encrypted satellite or optical fibre connection – directly to the head ends of the cable network, inducing only one communication to the public ("*direct injection*").

Hence, in today's world, differences get blurred and the regulatory differentiation between distribution platforms is no longer valid. This is certainly true as there seems to be no uniform understanding of the notion of "cable

[2] *Study on the Application of Directive 2001/29/EC on Copyright and Related Rights in the Information Society*,

retransmission"/direct injection in the case law and copyright legislations of the various Member States:

- Dutch and Norwegian case law considers that no cable retransmission occurs when programme-carrying signals are injected directly into cable networks as there is no retransmission of an initial transmission to the public.

  A recent Belgian decision makes a more confused analysis. As noted in the "*Study on the Application of Directive 2001/29/EC on Copyright and Related Rights in the Information Society*", the decision of 4 February 2013 of the Antwerp Court of Appeal is not straightforward and difficult to understand. The Court of appeal first observed that the cable transmission to the public following a direct injection (of the programmes by the broadcaster into the cable network) should be seen as single act of "broadcasting via the cable network" and hence as one communication to the public. Yet later in the decision, it qualifies the cable operator's intervention as a cable retransmission.

- There are also differences in legislation. In the UK and Austria, the terms "retransmission by cable" receive a technology neutral interpretation, so that the provision includes retransmission through the Internet.

  The cable retransmission right in the German Copyright Act by contrast does not extend to other technologies, such as the Internet. The cable retransmission right was transposed in a technology-specific way. This has consequences on the scope of application of the collective management of the retransmission right.

Cable Europe considers this unclear and inconsistent regulatory differentiation to be a **barrier to innovation as well as to competition on fair terms**. Depending on the applicable regulation and/or the interpretation thereof, mandatory collective management of rights will apply (or not) and additional consents should be obtained, substantially increasing the costs for the cable operators (and the public), even if it is questionable whether an additional consent is required. Due to these legal uncertainties some cable operators are subject to important transaction efforts, legal challenges and opportunity costs. As a result, the clearing of copyrights is in many cases characterized by a high degree of inefficiencies. It should be noted that in addition to clearing the audiovisual rights, other elements incorporated in the audiovisual work, e.g. music, often require a separate rights clearance which adds significant administrative and transaction costs.

Other practical problems experienced by many cable operators as a result of the unclear scope of the "making available" right include:

- Difficulty to access content from other Member States or from third countries;
- In certain jurisdictions, clearance of content produced by broadcasters themselves is more difficult than clearance of content produced independently from broadcasters (e.g. the Hollywood studios);
- Same rights being held by different CMOs (in the case of joint authors who decide each to grant rights to different CMOs);

- Lack of transparency as regards to who owns the rights (different owners or CMOs in the various Member States);
- Double transfer of rights: right-holders transfer their rights to both producers and CMOs;
- Opposition from CMOs to all right included packages offered by broadcasters;
- In the case of retransmission: cable operators do not know which rights and whose rights will be used by broadcasters and consequently they are not in a position to correctly assess which rights they have to clear with the CMOs.

In order to overcome these problems, an **improved, more effective, more efficient, more competitive and more consistent transparent, technology neutral rights management and clearance system** for both musical and audiovisual works across Europe is needed, as discussed under question 4.

With respect to extending the **country of origin principle**, Cable Europe believes that further consultations and impact assessments are necessary as it is not clear what the practical consequences could be of extending the "country of origin" principles. All of these considerations require further investigation.

9. *[In particular if you are a right holder:]* ***Could a clarification of the territorial scope of the "making available" right have an effect on the recognition of your rights (e.g. whether you are considered to be an author or not, whether you are considered to have transferred your rights or not), on your remuneration, or on the enforcement of rights (including the availability of injunctive relief[3])?***

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2. Two rights involved in a single act of exploitation

10. [In particular if you a service provider or a right holder:] ***Does the application of two rights to a single act of economic exploitation in the online environment (e.g. a download) create problems for you?***

YES.

Under the current legal framework, two (or more) rights may be involved in a single act of exploitation (reproduction, communication to the public, making available, cable retransmission etc.) the clearing of these rights complicates the use of works by service providers and thus the availability of legal content. This is certainly true if the separate rights are held by different persons/entities or managed by different CMOs, imposing an additional burden upon the service

[3] Injunctive relief is a temporary or permanent remedy allowing the right holder to stop or prevent an infringement of his/her right.

providers. In this context, an obligation to enter into licensing agreements with each other and with requesting users for collecting societies is indispensable.

More generally, Cable Europe considers this **increasing fragmentation of rights (online and offline)** to be an important problem, to be further aggravated by the intended right-holders' "right to choose" their collecting society in Art. 5 (2) of the CRM draft. Such fragmentation results in greater uncertainty and barriers to innovation. For example in the Netherlands, script writers and performing artists have started to transfer their rights of (primary) communication to the public to collecting societies, while the legal presumption has always been that the producers own those rights.

The existence of two rights for a single act of exploitation **online** is confusing and inefficient. The EU legal framework should be modified in order to consider the act of making available in similar terms as the act of public communication. As a consequence, the uploading of the content shall be the only act of exploitation i.e. making available. The downloading by the end user should not be considered as an act of exploitation, but as a mere technical copy.

The fragmentation of rights results in double or multiple remuneration for the same usage process as consents should be obtained (and paid for) from different right holders and/or CMOs. It also leads to legal uncertainty impeding innovation.

As with respect to cable retransmission rights, Cable Europe recalls that, pursuant to Article 9 of the SatCab Directive, **they** may be exercised, as a matter of principle, only in a collective manner, *i.e.* by a CMO. Article 10 does make an exception for the rights exercised by a broadcaster in respect of its own and acquired programmes.

Cable Europe believes that the system of 'all rights included packages' (ARI) provided by broadcasters who wish to do so to cable operators should have the same weight as – and should not be considered as an exception to – collective management of rights. Against the background of market practices in many member states, ARI should rather be considered as the **principal form** of rights clearance in wireline as well as wireless distribution – both offline and online – while collective management should be seen as an option in case of ARIs not being provided. This would increase the overall efficiency of the rights clearance system. Broadcasters should indeed be able to offer these cleared packages legally, as intended by Article 10 of the SatCab Directive. However, too often these commercial negotiations are not accepted by CMOs who - have the possibility to block such deals[4]. As such, CMOs of a particular Member State sometimes refuse to grant broadcasters of another Member State the necessary consent and insist on clearance by the cable operator in their Member State. Further, CMOs in several member states have shown a tendency to abuse their dominant positions, e.g. by requesting unreasonable and unjustified license tariffs. With an increasing use of ARIs, the scope for abusive behaviour by CMOs would decrease, which in turn would improve the prerequisites for innovation and competition.

[4] CMOs often argue that the exception of article 10 only applies to own programmes of the broadcasters and not to programmes acquired from third party producers even if these producers have transferred their right to the broadcaster to enable to offer ARI packages to intervening platform operators.

It should at the same time be noted that the system of collective management of rights and the ability for users to enter into license agreements with CMOs is highly valuable and in some instances essential to the business of many users.

In order to solve the problems caused by the increasing fragmentation of rights (and repertoire) and by the abuse of dominant positions, Cable Europe thus supports any legislation that increases the possibility (no obligation) to offer ARI packages, facilitates joint licensing and achieves the "bundling of rights". Essential in this regard is more **transparency**, in particular relating to the functioning of CMOs. According to Cable Europe, any new legislation should ensure greater transparency of rights management (which rights are held by each CMO and which rights owners they represent) and of the basis for calculating the fees charged by CMOs. In many instances, CMOs set tariffs unilaterally without giving commercial negotiations a chance and the basis for calculation of the rate level is often totally unclear. This is being addressed in the proposal for a Collective Rights Management Directive but could be improved further.

As discussed under Question 8, the EU should help to install a new, more efficient copyright clearance system which would help all market players to streamline their transaction and management costs. Key to this new system is further transparency and competition between CMOs as well as ax ante rules regulating the actions taken by CMOs, which should increase the efficiency of the system. Again, it should be highlighted that the accumulation of market power with only two to three large CMOs in Europe must be avoided.

Finally, it is important to yet again stress that Cable Europe is not against the collective management of rights, but that it is essential (from the point of view of legal certainty) to ensure that, in situations where rights are managed collectively, the management organizations can represent all the owners of the rights managed collectively (and not only the rights owners who have to be a member of the management organization at a certain time).

3. Linking & Browsing

4. Download to own digital content

13. *[In particular if you are a right holder or a service provider:]* ***What would be the consequences of providing a legal framework enabling the resale of previously purchased digital content? Please specify per market (type of content) concerned.***

Cable Europe has no objections as such against a legal framework enabling the resale of previously purchased digital content.

However, any legislation relating to such resale activities should exclude any liability of the service providers in this respect. Moreover, Cable Europe opposes any general obligation to monitor the activities of the subscribers concerned.

C. Registration of works and other subject matter – is it a good idea?

15. Would the creation of a registration system at EU level help in the identification and licensing of works and other subject matter?

Cable Europe considers that a registration system at EU level could facilitate licensing and enhance transparency. It will be indispensable for licensing in an EU-wide market with a choice for right-holders where to allow the managing of their repertoire or parts of it.

Cable Europe welcomes in this regard any proposal that would increase the efficiency of the rights clearance system. The use of modern technology to identify audiovisual works and their ownership is therefore an avenue to explore.

We therefore support initiatives such as the International Standard Audiovisual Number (ISAN) and Global Repertoire Database (GRD) which are voluntary registration systems for the identification of audiovisual and musical works.

With a unique number permanently assigned to an audiovisual work, ISAN is useful for computerized applications, particularly those involving databases or the exchange of information about audiovisual works. Also GRD, the scope of which is to provide a single, comprehensive and authoritative representation of the global ownership and control of musical works, will enhance efficiency, transparency and certainty in rights clearance relating to musical works.

The registration system should provide identification for the work in question as well as authorship, ownership and co-ownership. This means that the register has to conduct a diligent investigation and the creator /right holder has to provide enough proof that he is the author / owner. If the right holder wishes to transfer some of his rights of the registered work, this should remain the liability of the right holder who has to notify the transfer to the register.

Moreover, in the case of claims related to the author, the registration or non-registration of a work should not affect the existence of the right. The purpose of the registration is primarily to facilitate the licensing as much as possible.

16. What would be the possible advantages of such a system?

Cable Europe considers that establishing a reliable online database to (better) identify ownership or co-ownership of rights in musical compositions, audiovisual works and books would be a very helpful mechanism to help legal certainty of copyright clearance and provide more transparency as to which rights must be cleared and with whom.

Such system would thus improve the functioning of the Single Market and foster innovative services. It would also make it possible to quantify the use made of

works. When unilaterally setting royalty rates, CMOs often rely on assumptions rather than on actual use. This could change following the introduction of such a system.

17. What would be the possible disadvantages of such a system?

As stated above, Cable Europe considers that a registration system at EU level could facilitate licensing and enhance transparency.

However, we believe that one of the key issues will be the legal reliance that can be made on such data. Who will be liable in case the data provided in the database are incorrect? Who will verify the relevant information before it is added to the database? What will be the procedure in case of disputed copyright? It is crucial that the databases do not present misleading information that would ultimately hinder the acquisition of rights. To avoid the latter problem, only copyrights registered by right holders themselves on the database would be eligible for rights clearance.

Moreover, it should be avoided that the full costs and the responsibilities for the correctness of the data relating to the creation of a registration system should be borne by the service providers as this would increase the costs of innovative services for consumers in the EU.

18. What incentives for registration by right holders could be envisaged?

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d. How to improve the use and interoperability of identifiers?

19. What should be the role of the EU in promoting the adoption of identifiers in the content sector, and in promoting the development and interoperability of rights ownership and permissions databases?

The EU could support initiatives like ISAN and GRD by providing the necessary legal framework promoting the development and use of such databases.

As such, the EU could envisage establishing a presumption in favour of the service providers using such databases that they have obtained the necessary consents to use the works concerned. This would certainly be an important incentive for the service providers (and other users of content) to use databases managed in cooperation with the right holders and other stake holders of the relevant industry.

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E. Term of protection – is it appropriate?

20. Are the current terms of copyright protection still appropriate in the digital environment?

YES.

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. Moreover, they are excessive and contrary to the development of the digital environment and the promotion of and access to culture.

Actually, the existing terms of protection should be shortened, at least, to the level required by the international agreements (50 years after the death of the author - art. 7.1 Berne Convention). The main justification for such a long duration, for the Convention parties, was that of taking care of the author and his or her family. More than a century after the entry into force of the Convention (1886), the fact that copyright is normally assigned to, or contractually acquired by, enterprises (i.e. non-natural persons) no longer justifies a term of protection whose main parameter is the life of the author.

From an economic perspective, the time span to let authors and content producers recoup an investment in the creation of works is much shorter. In the US, until the entry into force of 1976 copyright reform, a registration system was in force and the first 28-year term of protection could be renewed in order to gain a second term of the same length. The Center for the Study of the Public Domain at Duke University estimated that 85% of authors of works published in 1955 did not renew their copyright after the expiration of the first 28-year term. Considering the authors' lack of interest in renewing the first copyright term, this means that 85% of copyright works created in 1955 might have come into the public domain in 1983 if the pre-1976 law had still been in force.

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.

III. LIMITATIONS AND EXCEPTIONS IN THE SINGLE MARKET

21. Are there problems arising from the fact that most limitations and exceptions provided in the EU copyright directives are optional for the Member States?

YES.

Cable Europe is generally supportive of the promotion of consistency in the high level principles applying to licensing and the distribution of content across the EU without pursuing an overly rigid pan-EU regime. Well-functioning, national arrangements should indeed not be sacrificed in favour of an arbitrary approach to harmonization. Harmonizing all limitations and exceptions completely without leaving any flexibility is therefore not desirable and does not sufficiently take into account the different legal traditions of the various Member States.

To the extent that a single market policy is advanced, Cable Europe considers it should be on the basis of preserving existing elements of national arrangements that are delivering beneficial outcomes. An overly generic or 'lowest common denominator' approach would undoubtedly lead to unintended consequences.

However, in order to create a well-functioning multi-national licensing system, it should also be avoided that important differences exist between the different Member States, since such differences clearly hinder negotiations between service providers and broadcasters of different Member States. Exceptions that are not mandatory leave some leeway for right holders to contractually prohibit the use, to license the use to the beneficiaries of the exception or to determine the conditions under which the use could take place.

Some limitations and exceptions should therefore be harmonized and/or made mandatory, as discussed in the response to Question 22.

22. Should some/all of the exceptions be made mandatory and, if so, is there a need for a higher level of harmonisation of such exceptions?

YES.

With respect to the private copy and reprography exception (Article 5(2)(b) of the Information Society Directive, we refer to the response to Questions 64 – 67.

Cable Europe considers that the exception relating to ephemeral reproductions by broadcasting organizations provided in Article 5(2)(d) of the Information Society Directive should be harmonized and/or made mandatory. The harmonization of this exception will facilitate negotiations of cable operators with various broadcasters from different Member States, invoking differences in copyright legislation to justify differences in pricing.

23. Should any new limitations and exceptions be added to or removed from the existing catalogue? Please explain by referring to specific cases. [Open question]

YES.

While the provisions of the Directive 2000/31/EC (the E-Commerce Directive) are clear with respect to the fact that mere conduit service providers are not liable for

the information transmitted over their network, in Belgium, CMO Sabam is nevertheless trying to hold these service providers liable on the basis of the allegation that such transmission constitutes a communication to the public by the service provider within the meaning of article 3 of the Information Society Directive.

Cable Europe therefore would welcome a modification of the Information Society Directive so as to confirm that acts of transmission by mere conduit providers who (i) do not initiate the transmission, (ii) do not select the receiver of the transmission; and (iii) do not select or modify the information contained in the transmission, cannot be assimilated to a communication to the public within the meaning of article 3 of the Information Society Directive.

24. Independently from the questions above, is there a need to provide for a greater degree of flexibility in the EU regulatory framework for limitations and exceptions?

YES.

In view of the rapid technological developments (e.g. emergence of new devices and the convergence of the different distribution platforms), Cable Europe considers that more flexibility is needed. Cable Europe supports in this regard a technology, services and rights neutral legal framework, including more "open" exceptions or limitations. Such legal framework would avoid the need for amendments every time new technological developments occur and provide more legal certainty for service providers offering innovative packages to their subscribers.

25. If yes, what would be the best approach to provide for flexibility? (e.g. interpretation by national courts and the ECJ, periodic revisions of the directives, interpretations by the Commission, built-in flexibility, e.g. in the form of a fair-use or fair dealing provision / open norm, etc.)? Please explain indicating what would be the relative advantages and disadvantages of such an approach as well as its possible effects on the functioning of the Internal Market. [Open question]

The current application of the exceptions and the three step test (art. 5.5 Directive 29/2001) within the EU is not objective nor proportionate. The broad concept of the three step test (art. 5.5 Directive 29/2001): *(I) special certain cases, (II) which may not conflict with the normal exploitation of the work and (III) not unreasonably prejudice the legitimate interests of the right holder, taking account of the legitimate interests of third parties*, has led to diverging interpretations among scholars and national courts, thereby creating legal uncertainty and giving rise to an extremely high and unjustified protection for right-holders, who may try to include any exceptions into the scope of the three step test in order to avoid their use. As a result, the system of exceptions and the three step test should be much more flexible and it should also be based on an economic principle. It should also be clarified that the three step test can at most serve as guidance for the

interpretation of an exception in case of doubt, but not lead to the non-application of the exception in cases where the legal conditions for its applications are clearly fulfilled.

Cable Europe supports an (attenuated version of a) fair use provision in a technology, services and rights neutral legal framework. Cable Europe refers in this regard to the Wittem Copyright Code drafted by European copyright academics which provides for a combination of a common law style open-ended system of limitations and a civil law style exhaustive enumeration. This code enumerates several (technology neutral) limitations to copyright and moreover provides for a more general provision, extending the scope of the specifically enumerated limitations by permitting other uses that are similar to any of the uses enumerated, subject to the operation of the three-step test.

This extension to similar uses provides the system with a flexibility which is indispensable in view of the fact that it is impossible to foresee all the situations in which a limitation could be justified. On the other hand, the possibility of flexibility is narrowed down to uses 'similar' to the ones expressly enumerated: *(I) special certain cases, (II) which may not conflict with the normal exploitation of the work and (III) not unreasonably prejudice the legitimate interests of the right holder, taking account of the legitimate interests of third parties* (art 5.5 Directive 29/2001). Thus, limitations should in any case be drafted in technology neutral wording to avoid the need for amendments every time new technological developments occur.

For all these reasons, Cable Europe advocates the creation of a proportionality test or fair use test based upon economic principles and taking into consideration the real harm or damage that is inflicted upon the rights holder.

26. Does the territoriality of limitations and exceptions, in your experience, constitutes a problem?

YES.

As discussed under Question 21, differences between the different Member States hinder negotiations between service providers and broadcasters of different Member States and the establishment of an (optional) pan-European licensing system.

27. In the event that limitations and exceptions established at national level were to have cross-border effect, how should the question of "fair compensation" be addressed, when such compensation is part of the exception? (e.g. who pays whom, where?) [Open question]

Cable Europe supports any legislation that guarantees a fair compensation for right holders. However, such legislation should ensure that double payments for one and the same copyright relevant act are excluded.

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IV. PRIVATE COPYING AND REPROGRAPHY

64. In your view, is there a need to clarify at the EU level the scope and application of the private copying and reprography exceptions in the digital environment?

YES.

As discussed under Question 2, market developments, driven by the emergence of new devices and changes in customer habits, cause subscribers to want their channels and other content offered by their cable operator to be "portable" anywhere in the home, in the country, in Europe and beyond. In addition, customers expect to be able to watch this content at the time that suits them best rather than when they are broadcasted.

In order to satisfy the demand of these customers, cable operators are offering storage services, such as Personal Video Recording. These services are increasingly access-based: the content is no longer stored on the subscribers' devices but on server storage space provided by the cable operator (in the "cloud"), which enhances their efficiency and accessibility. Notwithstanding the fact that such services serve the same goals as traditional PVR devices, it currently remains unclear what conditions need to be complied with for them to fall within the scope of the private copying exceptions as implemented in the various Member States. Some national regulations indeed only exempt reproductions by natural persons for private use *that are made at home.* It is unclear whether or not copies made by a natural person (subscriber of the cable operators) but stored in the "cloud" fall within this scope. The legal uncertainty surrounding these innovative services is hampering their development.

Cable Europe therefore supports initiatives to clarify and harmonize the scope of the private copying exceptions (article 5.2b of Directive EC/29/2001) in the digital environment, which should in any case include copies made by natural persons stored in the "cloud", as it is affirmed within the Castex report [5] approved by the European Parliament on 27 February 2014; Point 29).

65. Should digital copies made by end users for private purposes in the context of a service that has been licensed by right holders, and where the harm to the right holder is minimal, be subject to private copying levies?

[5] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0179+0+DOC+XML+V0//EN&language=EN

NO.

In line with the Recommendations resulting from the Mediation on Private Copying and Reprography Levies by former Commissioner António Vitorino, Cable Europe considers that usage of a work in a digital environment made for private purposes in the context of a service that has been licensed by right holders and do not cause harm should not require additional remuneration in the form of private copying levies. Indeed, the content in question is already subject to copyright remuneration as part of the service delivery.

As argued by former Commissioner António Vitorino, the opposite view would pave the way for double payments, hindering innovative developments to the benefit of all market players, including right holders.

66. How would changes in levies with respect to the application to online services (e.g. services based on cloud computing allowing, for instance, users to have copies on different devices) impact the development and functioning of new business models on the one hand and right holders' revenue on the other? [Open question]

As previously indicated, customers increasingly expect to have access to content on different devices, when and wherever they please. Online services based on cloud solutions are an important part of the new business models that are being developed to meet these expectations. Changes in the regulatory framework that would include additional levies with respect to such online services would make them more expensive for subscribers. Such increase in price would certainly harm the development of new business developments to meet the customers' expectations and hinder innovation.

On the other hand, if no new levies are imposed, the impact on the right holder's revenue would be minimal. Cable Europe emphasizes in this regard that the customers' willingness to pay for additional copies of the same work decreases proportionally with the number of copies. The losses incurred by right holders due to lost licensing opportunities ('economic harm'), *i.e.* the additional payment they would have received for these additional copies if there were no exception, is therefore in any case minimal.

Moreover, additional levies mean that a collecting system with regard to these new levies will have to be developed. The cost and difficulties of establishing such a system should not be underestimated, once again hindering the development of new and innovative business models.

Cable Europe therefore opposes changes in levies with respect to the application to online services. The possible harm to right holders is in any case minimal. Moreover, imposing additional levies on online services does not outweigh the cost of collecting these levies nor the negative impact it will have on innovation.

67. Would you see an added value in making levies visible on the invoices for products subject to levies?

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68. Have you experienced a situation where a cross-border transaction resulted in undue levy payments, or duplicate payments of the same levy, or other obstacles to the free movement of goods or services?

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69. What percentage of products subject to a levy is sold to persons other than natural persons for purposes clearly unrelated to private copying? Do any of those transactions result in undue payments? Please explain in detail the example you provide (type of products, type of transaction, stakeholders, etc.). [Open question]

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70. Where such undue payments arise, what percentage of trade do they affect? To what extent could a priori exemptions and/or ex post reimbursement schemes existing in some Member States help to remedy the situation? [Open question]

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71. If you have identified specific problems with the current functioning of the levy system, how would these problems best be solved? [Open question]

Cable Europe supports a levy system where Members may choose between two different systems:

1) Firstly, a system in which the payment of levies for private copies is included within the *"general budget"* of the State (case of Spain). Through this system, collecting societies may directly receive their correspondent incomes for private copies from the State (taxes paid by all citizens) for an eventual distribution among authors. These amounts of money should

exclude, in any case, digital copies made in the cloud for VOD services, which do not bring harm to the author (see Questions 64, 65).

2) Secondly, in cases in which the payment of levies must be made taking into consideration every single device (CDs, DVD etc.) because of a national obligation as such, Cable Europe recommends keeping the liability with manufactures and/or importers for several reasons:

· maintaining liability with manufacturers in combination with predictable ex ante exemption schemes was identified as one possible option in the Vitorino report [6], while shifting liability to retail was the other option;

· maintaining liability with manufacturers/importers has also been suggested in the Castex report [7] (Point 11), which has recently been approved by the European Parliament on 26 February 2014.

· keeping liability with manufacturers/importers is also supported by collecting societies [8] and at the same time not advocated by any major European ICT companies;

· manufacturers market shares are more concentrated and consistent across member states than relevant retail market shares [9];

· shifting liability based on case law is argued on confusing grounds, responsibility for collecting levies at the point of sale by no means requires shift in liability, any efficiency that can be achieved do not require a shift in liability and hence this latter intervention would be unnecessary and excessive;

· a few, concentrated, global manufacturers are better equipped (due to consistent pan-European market presence, better resourced and operate on higher economies of scale) to come up with an efficient common pan-European technical solution to collect levies effectively than retailers, especially SMB, who are less concentrated and less homogenous across the internal market;

· the case made by those promoting shift to retail is constructed on complex argumentation based on several dependent policy actions being implemented beforehand, e.g. "if and then" assumptions about policy implementations regarding: common definitions, improved governance,

[6] http://ec.europa.eu/internal_market/copyright/docs/levy_reform/130131_levies-vitorino-recommendations_en.pdf

[7] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0179+0+DOC+XML+V0//EN&language=EN

[8] http://www.gesac.org/eng/positions/PrivateCopying/download/PRIVATECOPYINGEN_20130908_Private%20Copying%20remuneration.pdf

[9] Gartner PC market shares Q2 2013 http://www.gartner.com/newsroom/id/2570220, IDC Mobile Phone market shares Q2 2013 http://www.idc.com/getdoc.jsp?containerId=prUK24312613, for retail market shares :"The Competitiveness of EU electrical and electronics goods markets with a focus on pricing and pricing strategies" (DG Enterprise – 2009).

improved tariff negotiation process, greater transparency and overall simplification. Obviously, the necessity of such complex argumentation regarding a seemingly straight forward issue questions fundamentally the merits and sensibility of the position.

In this second possibility, private copies made in the cloud due to the offer of VOD services, should also be excluded from the payment because of the lack of harm (Questions 64, 65).

V. FAIR REMUNERATION OF AUTHORS AND PERFORMERS

72. *[In particular if you are an author/performer:]* ***What is the best mechanism (or combination of mechanisms) to ensure that you receive an adequate remuneration for the exploitation of your works and performances?***

Cable Europe supports a fair remuneration for the exploitation of works and performances. As discussed under Questions 73 and 74, such fair remuneration should however be established in a transparent way and not imply double payments for one single copyright relevant act relating to one single work or performance.

73. Is there need to act at the EU level (for instance to prohibit certain clauses in contracts)?

YES.

This question will be addressed together with Question 74.

74. If you consider that the current rules are not effective, what would you suggest to address the shortcomings you identify?

Firstly, Cable Europe would like to stress that action at the European level with regard to adequate remuneration for exploitation of copyrighted material should also take into account the position of service providers and (ultimately) consumers. When service providers are confronted with requests from CMOs to compensate the use of works and performances, they indeed encounter a number of problems.

An important problem in this regard is the **lack of transparency**. In particular, Cable Europe deplores the lack of transparency relating to the level of

remuneration and the corresponding lack of any effective or sufficiently expedited system of judicial/quasi-judicial remedies. This problem has already been raised in several Member States. The Belgian legislator, for example, proposes to establish an independent regulator to provide advice on the remuneration requested by the CMOs and to act as an arbitrator[10].

Cable Europe therefore strongly believes that greater transparency should be achieved with respect to the basis for calculating the fees charged by CMOs. Currently, these fees are set unilaterally without giving commercial negotiations a chance and the basis for the calculation of the rate is often unclear and does not take into account the effective use. Very often, a unilateral and unsubstantiated rate is set and multiplied by the potential number of users without regard to the effective number of users. There is also a lack of transparency about which right holders are represented by the CMO (due to the fragmentation of the repertoire, as discussed in Question 10) and how the collected sums are redistributed to the right holders.

Consequently, a stricter and more expedited supervision of remuneration levels should be considered. Rights clearance should also be carried out on the basis of commercial negotiations in the first place with an arbitration or tribunal oversight. Moreover, action is needed at the EU level to provide clarification regarding the judicial remedies available to cable operators in response to an abusive exercise of rights. Member States should be required to set up an effective system of judicial or quasi-judicial remedies, such as the Copyright Tribunal in the UK that adjudicates commercial licensing disputes between CMOs and users of copyright material.

Another important issue that should be addressed with regard to fair remuneration is the prevention of **double payments** for a single communication of copyrighted material.

In this respect, it should be avoided that national legislation leads to double remuneration for the same usage processes. In Germany, for example, section 20b paragraph 2 of the German Urhebergesetz (UrhG German Copyright Act) entitles CMOs to receive two payment streams on separate legal grounds: on the basis of a license payment pursuant to section 20b paragraph 1 (possibly via a broadcaster), and additionally on the basis of the legal claim pursuant to section 20b paragraph 2 of the Copyright Act. A similar legislation applies in Spain.

There is moreover a need to clarify, in line with the decision by the European Court of Justice in *Airfield*, that, the intervention of a cable operator as to the signals emitted by the broadcasters when television programs are transmitted via cable, essentially consists in receiving those signals from the broadcasters, possibly decoding, encrypting and sending them to the audience. For example, Free-TV programs, distributed wirelessly in encrypted form only (as is increasingly the case for HDTV programs in Germany, for example), may be decrypted by the cable company if it has the right to carry the program. This single intervention falls

[10] The Belgian government has recently adopted Book XI of the new Code of economic law. Book XI deals with the intellectual property rights and will soon be discussed in Parliament.

within the customary technical activities to prepare the signals for their introduction into the cable communication chain. It is often necessary in order to make the cable communication feasible or to facilitate it. Consequently, this intervention must be classified as a normal technical procedure relating to the program-carrying signals. It should therefore not be subject to a separate authorization, so that only one remuneration is due for the communication of the program via cable.

Double payments of remuneration can also result from a lack of transparency as to whom CMOs represent and the fragmentation of the repertoire. For example in the Netherlands, the legal presumption has always been that producers own the rights of communication to the public, but script writers and performing artists have started to transfer their rights to CMOs. This results in a greater uncertainty and could lead to multiple remunerations for the use of the same copyrighted work.

Some authors/performers do not have an exclusive right but a right to equitable remuneration. Performers, for example, have no exclusive cable retransmission right but a right to equitable remuneration by the producers of audio-visual works. In Belgium, for example, there is a proposal to make this right non-transferable and subject to collective rights management. This implies a risk that cable operators are confronted with a new claim for works for which they already paid the broadcasters

Lastly, consistent with our comments with regard to territoriality (cfr. Questions 1 to 7), a similar issue could arise when communication of a protected work in one Member State triggers the obligation to pay a remuneration in different Member States based on the respective national legislations.

VI. RESPECT FOR RIGHTS

75. Should the civil enforcement system in the EU be rendered more efficient for infringements of copyright committed with a commercial purpose?

NO.

Cable Europe and its members recognise the need for right-holders to have a proper instrument for enforcing their rights and understand the concern of finding an answer to the piracy problem, in particular in a commercial context. However, we are of the opinion that the current civil enforcement system (including national measures implementing Directive 2004/48 and Directive 2001/29) provides for sufficient statutory enforcement measures for right-holders and does not need to be revised. Furthermore we believe that compelling, affordable legal alternatives remain the primary answer to piracy.

Rather than issuing additional statutory enforcement measures , the focus of any initiatives taken by the Commission should be directed towards correct

implementation of Directives 2004/48 and 2001/29 at national level and ensuring that national enforcement remains consistent with the requirements of Directive 2000/31 and with the need to strike a right balance with fundamental rights and freedoms, including the rights to privacy, the freedom of information and the freedom to conduct business (see the response to question 76 and 77).

Cable Europe also opposes the idea of introducing notification mechanisms which would require intermediaries – without prior intervention of a court – to block access to or remove information based upon the mere allegation of by right-holder that this information constitutes copyright infringing material (see the synthesis of responses to the Consultation on "Civil enforcement of intellectual property rights" published in July 2013). Similarly, Cable Europe opposes notification mechanisms that require intermediaries to suspend user accounts without prior intervention of a Court. Such mechanisms would lead to precautionary private censorship and threaten fundamental rights, such as the right to due process, the protection of personal data and the freedom of expression. Any act that has a chilling effect on the freedom of speech can only be taken by a competent judicial authority.

76. In particular, is the current legal framework clear enough to allow for sufficient involvement of intermediaries (such as Internet service providers, advertising brokers, payment service providers, domain name registrars, etc.) in inhibiting online copyright infringements with a commercial purpose? If not, what measures would be useful to foster the cooperation of intermediaries?

YES.

Article 8(3) of Directive 2001/29 and the third sentence of Article 11 of Directive 2004/48 enable right-holders to apply for an injunction against intermediaries whose services are being used by a third party to infringe their rights, including for commercial purposes. Such injunctions are effectively being used in the Member States.

The ECJ has issued a number of judgements providing guidance on the balance to be struck between the different rights and interests affected (see for example Cases C-324/09, *L'Oréal and Others*, C-70/10, *Scarlet Extended*, and C-360/10, *Sabam*). Cable Europe would welcome a Commission initiative to translate this case law into clear guidelines for national authorities and courts so as to facilitate a consistent approach across Member States. Such guidelines should clarify, among others, that:

- injunctions must specify the measures to be taken by intermediaries and must take into account the specific (technological) limitations faced by intermediaries. For instance, internet access providers cannot be held liable when users circumvent their blocking measures (e.g. by using encryption or proxy servers) (Adv. Gen. Villalón, Case C-314/12, *UPC Telekabel*, par. 25, 85-90, 99);
- injunctions that oblige intermediaries to proactively search for new infringements (e.g. copies of an infringing website under other domain

names), or to filter all information transmitted through their network or hosted on their platform in order to prevent any future infringement qualify as general monitoring obligations and should not be imposed (Case C-324/09, *L'Oréal and Others*, par. 139; Case C-70/10, *Scarlet Extended*, par. 36; Case C-360/10, *Sabam*, par. 36-38; Adv. Gen. Villalón, Case C-314/12, *UPC Telekabel*, par. 78);

- injunctions that require intermediaries to install complicated and costly systems at their own expense are not proportionate and do not strike a fair balance between the protection of copyright and the protection of the fundamental rights of individuals who are affected by such measures (Case C-70/10, *Scarlet Extended*, par. 48; Case C-360/10, *Sabam*, par. 46);
- injunctions should not lead to the blocking of legitimate content (Case C-70/10, *Scarlet Extended*, par. 52; Case C-360/10, *Sabam*, par. 50; Adv. Gen. Villalón, Case C-314/12, *UPC Telekabel*, par. 82);
- rightholders may be required to bear some of the costs for the intervention of intermediaries in the fight against piracy (Case C-70/10, *Scarlet Extended*, par. 48; Case C-360/10, *Sabam*, par. 46; Adv. Gen. Villalón, Case C-314/12, *UPC Telekabel*, par. 106);
- rightholders should – to the extent possible – address the infringer before involving the intermediary (Adv. Gen. Villalón, Case C-314/12, *UPC Telekabel*, par. 107).

77. Does the current civil enforcement framework ensure that the right balance is achieved between the right to have one's copyright respected and other rights such as the protection of private life and protection of personal data?

The ECJ has repeatedly insisted on the need to strike a right balance between the right of copyright owners to have their copyright respected and the fundamental rights and freedoms of other affected parties, such as the freedom to conduct a business enjoyed by intermediaries, the freedom of speech and information of consumers, and the right to the protection of one's privacy and personal data (Cases C-275/06, *Promusicae*, par. 65-70, C-324/09, *L'Oréal and Others*, par. 143, C-70/10 *Scarlet Extended* and C-360/10, *Sabam*). The ECJ has also provided guidance as to the delineation of what such balance must look like. Cable Europe therefore believes that it is unnecessary to amend the current civil enforcement framework. It would nonetheless be useful for the Commission to translate this case law into clear guidelines for national authorities and courts so as to facilitate a consistent approach across Member States.

These guidelines could include the following principles:

- Right-holders and enforcers – at national, European and international level – should cooperate and focus their efforts on enforcement action directed at the direct infringers.

- Cable Europe is concerned by tendencies of right-holders to invoke the right of information of Article 8 Directive 2004/48 in relation to intermediaries

outside of judicial proceedings to obtain IP addresses and establish that the infringer has acted on a commercial scale. Cable Europe is certainly not opposed to providing this kind of information when cable operators are in possession of the information being requested. However, in view of the need to strike a fair balance between the respective rights, it must be guaranteed that:

- automatic, general obligations for intermediaries to provide information in any circumstance must not be allowed, let alone without the intervention of a court;
- intermediaries can only be obliged to provide the information they possess and cannot be held liable if (i) a certain user cannot be identified by means of the data at hand, (ii) a person who is identified by the data at hand does not correspond with the actual infringer, and (iii) a user provided incorrect information with respect to its identity and/or the purpose of its use of the services (e.g. a commercial purpose);
- the costs for complying with information requests should not be borne exclusively by the intermediaries but should – at least in part – be relieved by the right-holders.

- Similarly, injunctions to suspend the account of a particular subscriber (e.g. recent case *"Nito 75"*, Audiencia Provincial de Barcelona, Spain), will in most of the cases be unjustified and disproportional for several reasons:

  - Neither the right holder nor the ISP can completely be certain whether the subscriber is identical to the alleged infringer.
  - An internet connection has become an essential source of information. Its suspension might disproportionately limit the freedom of expression, which also includes the right to receive and impart information and ideas without interference by public authority and regardless of frontiers (art. 10 Convention for the Protection of Human Rights and Fundamental Freedoms).

- Courts and authorities should refrain from imposing injunctions to intermediaries if these injunctions will not lead to an effective reduction of infringements of the copyright protected material and/or of the harm or damage inflicted upon the rights holder.

- Finally, rights holders should be required to reimburse all costs caused by the implementation of injunctions (including costs for additional infrastructure and labour costs).

78. Should the EU pursue the establishment of a single EU Copyright Title, as a means of establishing a consistent framework for rights and exceptions to copyright across the EU, as well as a single framework for enforcement?

NO OPINION.

Cable Europe

79.	***Should this be the next step in the development of copyright in the EU? Does the current level of difference among the Member States legislation mean that this is a longer term project? [Open Question]***

80.	***Are there any other important matters related to the EU legal framework for copyright? Please explain and indicate how such matters should be addressed [Open Question]***