



Brussels, 7 June 2010

## Joint industry statement on ACTA

We, the signatories of this letter, represent fixed and mobile telecoms operators, European ISPs and cable companies. The signatories believe that intellectual property rights (IPRs) play an important role in our modern economy. IPR infringement does not benefit anyone and it creates a serious burden for all actors in the value chain. In this regard, we are actively cooperating with rightsholders and consumer organisations in the fight against illicit file-sharing within the existing legal framework and fully respecting data protection obligations.

The signatories call on the European Commission and Member States to ensure that ACTA does not hamper the development of the European Information Society. In line with the launch of the Digital Agenda it is essential to ensure a balanced approach to such a complex issue. As recognised in the document, offering a wide choice of online services is the best way to promote a legitimate use of online services in order to respond to consumer demand for value for money, secure and user-friendly services.

The signatories consider that the development of new online content services should not be undermined by the introduction of enforcement measures that would jeopardise existing legal defences available to operators which enable them to operate commercially viable and effective services for consumers, or European core values such as freedom of expression, access to information or protection of users' privacy.

The signatories were pleased to see that following widespread concerns over the lack of transparency of the ACTA negotiation process, the documents have now been released. They hope this will continue to be the case until the conclusion of the negotiations.

The signatories welcome some of the provisions of the draft ACTA proposal. First the provision establishing that any legislative, regulatory or judicial practical interpretations of a final ACTA text shall promptly be published or otherwise made publicly available, in a national language, in such a manner as to enable governments and interested parties to be able to comment and raise any issue they may have with given provisions. Second, the commitment to make evidence-based decisions, in line with the European Commission commitment for better regulation, and the call from the European Parliament for a proper impact assessment on any ACTA provisions.

However, the format of the published documents, with the range of optional wordings, still makes it difficult to reach a complete understanding at this stage. In this context, we invite the Commission and other negotiating parties to release any future negotiating documents, and clarify their objectives with ACTA in particular with Internet related provisions.

In addition, we still have major concerns with regards to the substance including:

1. The scope of draft criminal sanctions includes in the notion of '*Commercial Scale*' wilful copying which is '*significant*' and not motivated by financial gain. According to the acquis, criminal sanctions are limited to infringement activities of a commercial nature.

2. The draft liability provisions under the technical measures chapter are in contradiction with the 'mere conduit' principle established by the EU e-Commerce Directive by subordinating the safe-harbour exception to other policy goals. This core principle for the functioning of the Information Society should be preserved in the context of ACTA.
3. The signatories do not support any attempt to introduce a system where private entities such as ISP's are to scrutinize and police the content of communication between citizens. Such provisions would put confidentiality of communications at risk and would undermine the level of legal security needed for ISP to exercise their activities
4. Along the same lines, the signatories oppose any attempt to introduce a system where ISPs are deemed liable for contents of communication. Such provisions would lead to the situation where ISPs, in order to avoid liability claims, would intervene even in cases where law enforcement would have not intervened.
5. The proposed obligation on online providers to reveal the identity of their subscribers directly to right holders violates the existing EU Data Protection obligations. The right to privacy is a fundamental right. Any restriction must be subject to due consideration of the general principles of Community law, such as the principle of proportionality, and to adequate procedural safeguards.
6. The draft ACTA provisions aim for a minimum set of obligations. "A Party may implement in its domestic law more extensive protection and enforcement of intellectual property rights". Hence, a final ACTA-agreement will not lead to fewer demands for additional measures on national levels, but rather would act as a base for further obligations on ISPs.

The Commission should ensure that ACTA fosters the development of the internet society in all ACTA negotiating countries, as a way to support European creation, innovation and competitiveness. The signatories will continue to closely scrutinise the negotiation process, and will recommend the deletion of any measures that may negatively impact on the development of the Information Society, or hinder European competitiveness and core values.

The European trade associations contributing to this joint statement are:

 <p>Cable Europe</p>	<p><b>Cable Europe</b> (<a href="http://www.cable-europe.eu">www.cable-europe.eu</a>), 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/ <a href="mailto:caroline.vanweede@cable-europe.eu">caroline.vanweede@cable-europe.eu</a>).</p>
 <p>etno European Telecommunications Network Operators' Association</p>	<p><b>ETNO</b> (the European Telecommunications Network Operators' Association - <a href="http://www.etno.eu">www.etno.eu</a>) 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: Fiona Taylor, Senior Adviser, Public Affairs (+ 3222193242/ <a href="mailto:taylor@etno.be">taylor@etno.be</a>).</p>
 <p>EuroISPA</p>	<p><b>EuroISPA</b> is the world's largest association of Internet Services Providers (ISPs) representing the interests of more than 1700 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 (<a href="http://www.euroispa.org">www.euroispa.org</a>). Contact: Andrea D'Incecco, Head of Policy (+32 2 503.22.65/ <a href="mailto:andrea@euroispa.org">andrea@euroispa.org</a>).</p>
 <p>GSMA™</p>	<p>The 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 <a href="http://www.mobileworldlive.com">www.mobileworldlive.com</a>, GSMA corporate website at <a href="http://www.gsmworld.com">www.gsmworld.com</a>, GSMA Europe <a href="http://www.gsmeurope.org">www.gsmeurope.org</a>. Contact: Martin Whitehead, Director, GSMA Europe (+32 2 792 05 50/ <a href="mailto:MWhitehead@gsm.org">MWhitehead@gsm.org</a>).</p>