



Mr Jean-Claude Juncker
President
European Commission
Rue de la Loi 200
1049 Bruxelles

Brussels, March 2nd 2017

Re : DSM; Fighting Counterfeiting while enabling innovation and respecting the role of online intermediaries

Dear President Juncker,

We are writing to you on behalf of Europe's innovative online intermediaries and technology sector to ask for your support in our joint endeavour to achieve a successful and future-proof Digital Single Market, including a regulatory environment in the EU that favours innovation. Specifically, we call for a reinforcement of the key principles of the e-Commerce Directive of 2001 as well as a broadening and strengthening of voluntary private-sector cooperation in the fight against illegal activity online.

Several interest groups and Member States have asked the Commission to introduce legislation aimed at increasing the protection and enforcement of intellectual and industrial property rights. One of the main preferred avenues to achieve this appears to be increasing the legal obligations and liabilities of intermediaries on- and offline.

We believe this approach is unwarranted and poses a significant threat to the success of the Digital Single Market ('DSM'). Unwarranted, because leading online intermediaries have been particularly collaborative in fighting IPR infringement, including, to the extent technically feasible and proportionate, by means of proactive or reactive tools. These tools have been put in place voluntarily. Therefore, rather than introducing new and more legislation, priority should be given to enhancing and increasing the number of cooperative initiatives such as the MoU on the fight against counterfeiting online concluded in 2011 and updated in June 2016 under the auspices of Commissioner Bienkowska.

The approach referred to above is also a threat to the DSM as it undermines the fundamental legislative framework of the online economy - the e-Commerce Directive. This carefully balanced and future-proof Directive provides the critical legal certainty necessary for online intermediaries to launch and grow their innovative contribution to the EU economy, both directly and by supporting the European SME ecosystem.

For example, the current draft Copyright Directive de facto neutralises the hosting provider liability exemption, whilst creating a general monitoring and filtering obligation for online intermediaries, thus blatantly eroding key legal safeguards of the



e-Commerce Directive. In addition, recent calls for changes in the IPR Enforcement Directive ('IPRED') are pointing in the same direction. We strongly caution against using the review of the IPRED to undermine the current liability regime as this would have an adverse impact on innovation, creativity and the economic contribution of online intermediaries. Any reform of EU legislation, including but not limited to the IPRED, should be in full respect of the core principles of the e-Commerce Directive.

The signatories of this letter reiterate their strong commitment to contribute to cooperative initiatives led by the European Commission aimed at further improving trust, safety and enforcement of rights online. This approach does not require changes of well-functioning legislation, is future-proof and reinforces an innovation-friendly environment in the EU. It will allow both incumbents and newcomers to build and provide services that will enhance and promote a thriving Digital Single Market. Increased liability, the absence of safeguards for hosting providers, and general monitoring and filtering obligations would achieve the opposite as they will choke and discourage innovation, putting the added economic value of the online sector at risk.

We look forward to continuing our proactive cooperation with the Commission and private sector stakeholders, and once again thank you for your support for an innovation-friendly regulatory environment in the EU.

We would also like to request a meeting with you to be able to discuss progress on this matter.

Yours sincerely,

Siada El Ramly
Director General
EDiMA*

James Waterworth
Vice President
CCIA

Marlene Ten Ham
Secretary General
Ecommerce Europe

Maurits Bruggink
Secretary General
EMOTA



cc :

Vice-President Timmermans

Vice-President Ansip

Vice-President Katainen

Commissioner Bieńkowska

Commissioner Moscovici

Commissioner Jourová

Commissioner Moedas

ABOUT THE SIGNATORIES :

- The Computer & Communications Industry Association 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. Our members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion. For more, please go to: www.ccianet.org
- Ecommerce Europe is the voice of the e-commerce sector in Europe. Through its 19 national associations, Ecommerce Europe represents over 25,000 online shops across Europe. Its mission: boost the e-commerce industry by helping decision makers shape policies fit for future sustainable growth
- EDiMA is the European trade association representing online platforms and other innovative businesses. It is an alliance of new media and Internet companies whose members include Airbnb, Amazon EU, Apple, eBay, Expedia, Facebook, Google, King, LinkedIn, Microsoft, Mozilla, PayPal, TripAdvisor, Twitter, Yahoo! Europe, Yelp. EDiMA's members provide Internet and new media platforms offering European consumers a wide range of online services, including e-content, media, e-commerce, communications and information/search services. * Please note that this letter represents the views of the vast majority of the EDiMA membership.
- EMOTA, the European eCommerce and Omni Channel Trade Association, is the European level umbrella federation representing online and distance sellers across Europe. The main mission of EMOTA is to promote eCommerce and Distance Selling and help policy makers remove any barriers to cross-border selling