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The European eCommerce  
& Omni-Channel Trade  
Association



Brussels, September 25th 2017,

**Re: Critical Issues to be Addressed During the Trilogue on the European Commission's Proposal for an Audio Visual Media Services Directive.**

Dear Commissioner Gabriel,  
Honorable Members of the European Parliament,  
Dear Representatives of the Member States to the European Union,

We represent online services, manufacturers and video-on-demand providers committed to the growth of a vibrant European audiovisual sector.

The ongoing review of the Audiovisual Media Services Directive ("AVMS") raises a series of complex and highly topical issues which urgently need to be addressed during the trilogue process, to make it even remotely possible for this Directive to allow for growth of the audiovisual industry in Europe and to achieve the European Commission's goal of creating a fully-functioning Digital Single Market.

**1) Avoid any erosion of the cornerstone Country of Origin principle**

The Country of Origin ("CoO") principle is a fundamental cornerstone of EU audiovisual legislation and has proven to be a key factor in establishing a thriving European audiovisual single market.

The current Directive allows for derogations from the CoO principle, but only in exceptional circumstances and following strict procedures. However, changes proposed by the European Council now extend the scope of these derogations and seem to introduce a move towards a Country of Destination ("CoD") approach. The introduction by the European Commission of a national levy for on-demand media services ("VOD") - which is based on the CoD principle - further erodes the CoO and will be challenging to implement, disproportionately burdensome for on-demand operators who provide services in numerous EU markets, and will create a

significant entry barrier to the EU internal market. Equally, the strict quota requirements of European works will lead to less consumer choice - especially in the smaller EU markets as operators could be forced to cut their catalogue to meet these new requirements.

Furthermore, the European Parliament preserved the country of origin principle for linear services (i.e. broadcasted channels) but eliminated it for emerging on-demand services with respect to national levies. Such discrimination creates an unjustified non-level playing field between linear and on-demand services, creating a risk that the EU will lag behind the global marketplace in enabling a nascent VOD industry and offering innovative services to millions of consumers.

These proposed changes not only contradict the intention of the existing AVMS Directive, but also fundamentally put the achievement of a Digital Single Market at risk, thus stifling innovation and consumer choice in the audiovisual sector.

**We strongly call on the co-legislators to ensure that the integrity of the CoO principle is maintained during this review process, including for VOD services and with regard to the new obligations on video sharing platforms.**

## **2) Additional Clarity on Intermediaries' Liability regarding Ads is Necessary**

Current provisions on advertising directly undermine the limited liability regime for online intermediaries as specified by the e-Commerce Directive. This is due to the fact that it requires intermediaries to comply with provisions regulating the content of ads they “market, sell or arrange”, irrespective of the fact that most intermediaries do not determine the content of these ads.

**The undersigned urge the co-legislators to bring these provisions in line with the current European legislation and case law on intermediaries' liability.**

## **3) Certainty and Legal Clarity are Key for the Growth of the EU Audiovisual Sector**

The AVMS Directive proposal will have a profound impact on the EU audiovisual sector for many years to come. As both Parliament and Council chose to support only a minimum harmonisation of national legislations, legal clarity and clear safeguards in the final compromise are crucial to avoid any unnecessary fragmentation due to Member States adopting stricter rules than the ones adopted at the European level.

This list of issues is by no means exhaustive. There are a number of elements in the European Parliament's report and the European Council's general approach that makes both proposals unworkable. We hope the trilogue negotiations will address these issues in order to adopt a Directive that appropriately enables technological innovation and a thriving European audiovisual sector.

Yours sincerely,

**CCIA** - The Computer and Communications Industry Association

**DIGITALEUROPE** - Digital Technology Industry in Europe

**EDiMA** - European Digital Media Association

**EMOTA** - The European eCommerce & Omni-Channel Trade Association

**EuroISPA** - European Internet Services Providers Association

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#### **ABOUT THE SIGNATORIES:**

**CCIA:** 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.

**DIGITALEUROPE** represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

**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.

**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

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