**Joint Industry Answers to the Orientation Debate on Articles 11 and 13 of the Proposal for a Directive of the EU Parliament and of the Council on copyright in the Digital Single Market**

[Interinstitutional File 2016/0280 (COD)]

**A. On Article 13:**

**In answer to Question 1, the notion of communication to the public should not be expanded or "clarified" under article 13.** Making online intermediaries directly liable for copyright infringements is unworkable, creates considerable legal uncertainty and is a significant departure from the Commission's initial text. Despite its considerable implications, such a proposal is not backed by any legal, economic or social impact analysis.

**In answer to Question 2, online intermediaries should not be removed from the scope of the e-Commerce Directive** when users upload content protected by copyright. Instead it should be clear, as in the Commission's initial text, that Article 13 applies, if at all, to information society services "unless they are eligible for the liability exemption provided in Article 14 of [the e-Commerce Directive]". Indeed, without such a clarification, these services would be unable to enjoy the benefits of the balanced limited liability provisions as defined by the e-Commerce Directive.

**A constructive debate on Article 13** should take place on the premise that neither the e-Commerce Directive nor the notion of communication to the public should be "opened" and amended at this stage.

Instead, as suggested by Question 5, recalling (and not clarifying or changing) the applicable existing principles in a recital would be a more reasonable approach. Furthermore, it is paramount that the proposal is limited in scope and expressly excludes, in all the operative clauses, key activities such as cloud services, ISPs, email and instant messaging, open source software repositories, scientific and research repositories, blogs and online encyclopedia.

**B. On Article 11:**

The harmful impacts of a neighbouring right for publishers on media pluralism, competition, consumer choice and innovation have been clearly established, including by a study commissioned by the European Parliament and by the European Commission's own research. A presumption (Option B) is a preferable alternative and a better starting point for discussions.

Further, contrary to some views, Option A is far broader and more damaging than the Commission's initial text, in that it targets extracts of texts (so-called "snippets") and encompasses not only literary works but also pictures and videos. Option A creates a very far-reaching neighbouring right for publishers that goes beyond the Commission's proposal **and cannot reasonably form the basis for further discussion or compromise solutions**.

We also caution against entirely cosmetic improvements such as reducing the term of protection, as suggested under Question 3. On the internet, it would be practically impossible to ascertain who owns a neighbouring

right, where (would blog posts on EU politics qualify?) and when such a right would start. Reducing the term of protection does nothing to mitigate these issues.

**In answer to Question 1, extracts of a press publication should not be granted protection under copyright law**. Granting copyright protection to news snippets would go against long established prohibitions against copyright protection for facts. Such a protection would undermine the free flow of information online, create additional layers of rights to navigate for researchers and educational institutions and cripple European research by strongly hindering the development of Text and Data Mining.

**In answer to Question 2,** carving out individual users acting for non-commercial purposes would be unworkable and ineffective. A journalist tweeting a link might be acting for commercial purposes, or not, depending on the topic. Moreover, individual users should be able to share links and extracts irrespective of whether they do it on a commercial platform such as a blog or a social network.