

Brussels, 2 March 2011

Joint ICT Industry Declaration on the Consumer Rights Directive

The European ICT Industry would like to commend the European Parliament's efforts to consolidate and heighten the level of consumer protection across the EU. Ahead of the March plenary vote on the proposal for a Consumer Rights Directive, DIGITALEUROPE, the Business Software Alliance (BSA), the European Digital Media Association (EDiMA), and the American Chamber of Commerce to the European Union urge Members of the European Parliament to consider carefully several remaining key issues still under discussion.

1. **Industry endorses the decision taken by the Council to limit the Directive to those aspects where full harmonisation is possible.** Such a targeted approach would currently provide the most effective means of reducing regulatory divergences and creating a more harmonised regulatory environment marked by legal certainty. Even with a reduced scope (limited to distance and off-premises contracts), this Directive will bring down important barriers to trade across borders and will further develop the single market to the benefit of European citizens.

Therefore, we urge the European Parliament to:

- *Focus efforts on full harmonization and refrain from adopting any minimum harmonisation provisions, and accordingly reject articles 3.5, 4.1, 4.1a, 5.3, 12.4 and 13.1a as currently worded in the IMCO report.*
- *Table and support amendments to carve out chapters IV and V which contradict the initial purpose of reducing legal fragmentation in the internal market.*

2. As providers of digital content/services, **we strongly support the JURI position that a physical support (CD/DVD) is a good but not the software/technology that it contains, which is delivered as a service under a license to use.** Amendments aimed at including "digital products" within the definition of goods are therefore misleading and incompatible with European law. The JURI position also corresponds to that of the Council which takes the appropriate perspective that digital services, including content such as music downloads, should not be considered as tangible products or "goods" and should therefore remain excluded from such chapters and provisions. We strongly believe that further discussion will be needed and triggered by the respective work currently undertaken in the Commission.

We therefore urge the European Parliament to table and support:

- *The JURI Committee compromise amendment 52 which recognises that digital content requires different treatment.*

3. **Adding technical measures and interoperability language into the pre-contractual information requirements is premature.** As highlighted above, we believe that the work undertaken by the Commission will trigger discussions on how to best inform consumers without the significant risks of damaging the overall consumer experience with overwhelming data and added steps for the consumer that could ultimately be counter-productive. The speed of innovation, consumer expectations for convenience and simplicity, and the increasing prevalence and variety of connected devices, make such requirements overly-prescriptive and far from future-proof. It would be unreasonable to expect traders to keep abreast of all such developments and to modify their pre-contractual information accordingly to indicate levels of interoperability across an ever-expanding variety of products and services. Moreover, and particularly for the sale of digital music/video services, consumers generally have the ability to preview content prior to purchase and can often enjoy such services without limitation on the number of copies or devices on which it can be consumed.

We therefore urge the European Parliament to:

- *Reject Articles 5.1ib, 5.1ic, 9.1ff, 9.1fg, and 11.1a (b) as currently worded in the IMCO report.*

In conclusion, the signatories of this letter urge decision makers in the European Parliament to take due note of the above in their deliberation and remain at your disposal should you have any further questions.

American Chamber of Commerce to the European Union (AmCham EU)

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled \$1.8 trillion (€1.24 trillion) in 2008 and currently supports 4.8 million direct jobs in Europe. www.amcham.eu

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The Business Software Alliance is the world's foremost advocate for the software industry, working in 80 countries to expand software markets and create conditions for innovation and growth. Governments and industry partners look to BSA for thoughtful approaches to key policy and legal issues, recognizing that software plays a critical role in driving economic and social progress in all nations. BSA's member companies invest billions of dollars a year in local economies, good jobs, and next-generation solutions that will help people around the world be more productive, connected, and secure. www.bsa.org

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DIGITALEUROPE is the voice of the European digital economy including information and communication technologies and consumer electronics. DIGITALEUROPE is dedicated to improving the business environment for the European digital technology industry and to promoting our sector's contribution to economic growth and social progress in the European Union. We ensure industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 57 global corporations and 37 national trade associations from across Europe. In total, 10,000 companies employing two million citizens and generating €1 trillion in revenues.

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EDiMA, the European Digital Media Association, is an alliance of new media and Internet companies. EDiMA's members provide new media and Internet platforms offering users a wide range of online services, including the provision of audiovisual content, media, E-commerce, communications and information/search services. EDiMA represents the interests of the new media and Internet sector in Europe in policymaking, standards development and industry cooperative activities. www.europeandigitalmedia.org

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