

Brief EDiMA response to the European Commission
Digital Single Market Strategy

EDiMA* welcomes the launch of the European Commission Digital Single Market Strategy. The strategy focuses on three pillars of activity, namely; better access for consumers and businesses to online goods and services across Europe, creating the right conditions for digital networks and services to flourish and maximising the growth potential of our European Digital Economy. EDiMA has always been a strong advocate for a Digital Single Market in Europe that will benefit European citizens and businesses alike and continues to support the ambitious three pronged approach the Commission has presented.

EDiMA would like to continue to be a constructive participant in the process to achieve a European Digital Single Market and therefore, in response to the European Commission's launch of the Digital Single Market strategy today, EDiMA would like to address some of the key issues outlined in the Communication from our sector's perspective.

Pillar I: Better access for consumers and businesses to digital goods and services across Europe

The Commission will propose:

Rules to make cross-border e-commerce easier. This includes harmonised EU rules on contracts and consumer protection when you buy online: whether it is physical goods or digital content like e-books or apps.

- EDiMA fully supports the notion that consumers are at the heart of this debate and should be and that consumer protection is an essential aspect of ensuring a vibrant e-commerce environment in Europe we would however like to flag the following:
 - We need to ensure that there is a 'digital/mobile mind-set' in consumer policy making. Some provisions that have been interpreted/implemented in a rigid and non-future-proof manner have proven cumbersome.
 - It is essential that we recognise the difference between the online and offline world
 - We need to recognise that the online world greatly empowers the consumer and thus the role of the consumer should also be taken into account.
 - A clear, evidence-based identification of problem areas is needed. There needs to be an understanding of actual harm- need for there to be more clarity as to the concept of harm- EC study needs to focus on evidence-based representative information gathering. Only then can the best possible solutions be identified.
 - Once the evidence has been gathered only then can we seek to address any proven issues online in an efficient and timely manner- e.g. Opting for a principle based approach or alternatives to legislative instruments might bring better solutions and more timely outcomes.
 - A better understanding of the role of intermediaries in the broader framework bearing in mind the e-commerce Directive stipulations is needed.

To **enforce** consumer rules more rapidly and **consistently**, by reviewing the Regulation on Consumer Protection Cooperation.

- Again, EDiMA believes that a good starting point to ensure better enforcement of consumer rules would be for the European Commission to facilitate a dialogue amongst stakeholders e.g. by creating a dialogue between industry and the CPC network.

To end unjustified **geo-blocking** – a discriminatory practice used for commercial reasons, when online sellers either deny consumers access to a website based on their location, or re-route them to a local store with different prices.

- EDiMA believes that in order to allow for continued innovation in the online space and to foster innovation in Europe it is essential that services are made accessible but in a balanced fashion. We would therefore caution against measures that would threaten the fundamental principles that guarantee the freedom to conduct business (Article 16 of the EU Charter of Fundamental Rights). The Digital Single Market should enable flexible and easy access to legal digital content at a fair price for consumers, while boosting diversity, creativity and culture and generating more revenues for creators.

A **modern, more European copyright** law: legislative proposals will follow before the end of 2015 to reduce the differences between national copyright regimes and allow for wider online access to works across the EU, including through further harmonisation measures.

- EDiMA fully supports the Commission's intention to modernise European Copyright law so that it is fit for the digital age.
 - A well-functioning and flexible market-based licensing regime is critical to the promotion of cultural and linguistic diversity in Europe and to the development of a dynamic and successful new media sector.
 - The complexity and lack of transparency in rights ownership has led to significant uncertainty in the securing of rights. Promoting better repertoire transparency – and providing support for corresponding initiatives such as the Global Rights Database (GRD) – should continue to be pursued as a priority.
 - Under no circumstances should linking be subject to the authorisation of a right holder. From a copyright perspective, a link is not a use of a work as there is no public performance or communication and a link merely points to content already made available, as confirmed by the recent ECJ decision.
 - The different options available for striking an appropriate and flexible, future-proof balance require careful consideration. New exceptions may be necessary because new, unforeseen developments appear regularly in the digital world. On the other hand, we do not believe existing exceptions should be removed. Further, it is important to establish, clearly and unambiguously, that Text and Data Mining is not, and should not be, subject to copyright protection. Mining is a non-expressive use that presents no legally cognisable conflict with the statutory rights or interests of the copyright holders.
 - Regarding levies or new forms of compensation or remuneration claims, EDiMA believes these should not be extended to the digital environment and the goal of EU copyright policy should be for levies to be phased out. EDiMA believes the best way to generate more revenues for creators, enhance consumer welfare and encourage growth of a legal market is to encourage innovation and the development of legal offers in Europe. The application of levies significantly hinders developments of such offerings and should therefore be phased out.
 - EDiMA furthermore believes that the most effective way to address copyright infringements is through cooperation between all stakeholders. A multi-stakeholder dialogue with the objective of developing voluntary measures directly targeted at reducing the demand for, and supply of, infringing content currently represents the most effective and proportionate, way to tackle commercial scale infringements.
 - In assessing the role of online intermediaries in IP enforcement, we believe it is essential to strike the right balance between protecting intellectual property and not placing unreasonable burdens or expectations on online intermediaries. The IPR Enforcement Directive and the e-Commerce Directive together achieve this balance, and additional legislation for the enforcement of copyright online is not warranted at this point.
 - EDiMA would also welcome clear guidance from the European Commission to EU Member States to ensure the correct implementation of the existing legal framework.

It is particularly in the application by national courts that we see a need for guidance on the circumstances in which injunctions against Internet intermediaries are appropriate and how the scope of such injunctions must be dealt with.

To reduce the administrative burden businesses face from different **VAT** regimes: so that sellers of physical goods to other countries also benefit from single electronic registration and payment; and with a common VAT threshold to help smaller start-ups selling online.

- EDiMA strongly supports this initiative and hopes that the Commission will assess how reverting back to the Country of Origin Principle might impact the situation regarding the simplification of VAT processes.

Pillar II: Creating the right conditions and a level playing field for digital networks and innovative services to flourish

The Commission will:

Present an ambitious overhaul of EU **telecoms rules**. This includes more effective spectrum coordination, and common EU-wide criteria for spectrum assignment at national level; creating incentives for investment in high-speed broadband; ensuring a level playing field for all market players, traditional and new; and creating an effective institutional framework.

- EDiMA welcomes the Commission's initiatives in ensuring that the needed infrastructure is in place to allow Europe to enjoy the benefits of the digital environment.

Review of the **audiovisual media framework** to make it fit for the 21st century, focusing on the roles of the different market players in the promotion of European works (TV broadcasters, on-demand audiovisual service providers, etc.). It will as well look at how to adapt existing rules (the Audiovisual Media Services Directive) to new business models for content distribution.

- EDiMA welcomes the Commission's intentions in this area but would like to recognise that the AVMS Directive as it currently stands has proven to be a robust legislative framework. Various issues we would like to flag are:
 - Digital is driving sustainable growth in the creative sector: Despite obstacles such as complex and cumbersome licensing requirements, digital media is already driving growth in the creativity sector to a large extent. From 2001 to 2011, all growth in the creative sector has been digital (30bn Euros) (Booz & Co 2013). In the music sector, the value of the digital music market from 2004 to 2010 has increased by more than 1000% (IFPI, 2011) and 2012 marked an estimated 8.5 to 9 percent increase in digital revenues (Strategy Analytics 2012; IFPI, 2013a).
 - Markets are dynamic and evolving: Far from being static, the audiovisual market is constantly evolving and innovating. New and innovative legal streaming services have boomed over the past few years.
 - Digital is driving an explosion in cultural diversity: digital technology reduces production and distribution costs for content, as well as allowing producers of content to reach global audiences almost instantly. This is fuelling the production of more creative content than ever before.
 - Consumers are in the driving seat: Digital services allow consumers to discover and access creative content anytime, anywhere, increasing choice, access and opportunities. Increasingly, consumers engage with cultural content, fuelling the creation of UGC. Europeans are consuming more (and higher-quality) media through an expanding variety of connected devices, including smartphones, tablets, e-readers, and Internet-enabled TVs.

- Levies posed on external VOD providers/services are contradictory to aim of AVMS Directive to simplify cross-border AVMS by introduction of the country of origin principle (as evident in recital 34, art. 2, art. 3, art. 41)
- There is little evidence of market distortion caused by the differentiation between linear and non-linear services. Producers of linear services may also provide non-linear services. They are often in a good position to do so, insofar as their existing structure allows to scale their linear activities into online markets, and as their reputations and brands are considerable, including online. The rationale for distinguishing linear and non-linear experiences remains valid, as users have control in accessing on-demand content.

Comprehensively analyse the role of **online platforms** (search engines, social media, app stores, etc.) in the market. This will cover issues such as the non-transparency of search results and of pricing policies, how they use the information they acquire, relationships between platforms and suppliers and the promotion of their own services to the disadvantage of competitors – to the extent these are not already covered by competition law. It will also look into how to best tackle **illegal content** on the Internet.

- There are a host of “platforms” in the world, both offline and online, that are not restricted to new or innovative services. The concept of a platform has existed since commerce began, with buyers and sellers being brought together by intermediaries in markets of all kinds. Today, online and offline platforms connect consumers with others and with businesses. The ability to transform an offline platform to an online version increases its reach, but remains fundamentally the same. Therefore, approaching the definition of what can be considered a “platform” will need rumination on the implications of the scope and nature of the stakeholders involved.
- EDiMA has been a strong promoter of Commission-lead initiatives to tackle illegal content online, including the Follow the Money Approach, as well as supporting the existing legal framework established by the e-Commerce and Intellectual Property Rights Enforcement Directives.
- However, EDiMA stresses that a balance must be struck when addressing the role of online platforms in handling content on their services, specifically, that they are not subjected to unreasonable and unworkable obligations.
- To ensure that online platforms continue to provide European consumers and businesses with competitive and innovative goods and services it is necessary to define what problems currently exist that are specific to online platforms.
- EDiMA continues to encourage greater input to help guide our understanding as to where there are systemic concerns with online platforms in general, not simply company specific concerns, and is open to engaging with stakeholders to address any outstanding issues.

Reinforce trust and security in digital services, notably concerning the handling of **personal data**. Building on the new EU data protection rules, due to be adopted by the end of 2015, the Commission will review the **e-Privacy Directive**.

- EDiMA shares the view that trust and security in digital services is a key factor to the Digital Single Market. EU data protection rules must find a balance to ensure that they meet the expectations of consumers while being fit for purpose for businesses.
- However, the current approach taken to update the EU data protection framework for the digital age risks undermining the aspirations and vision of the Digital Single Market Strategy. By creating greater legal uncertainty and more red tape across the Member States, as well as potentially establishing incentives for gathering more data than required, this could potentially hinder the development of the Digital Single Market and European businesses and damage privacy and consumer confidence online.

¹ "one Member State should have jurisdiction over an audiovisual media service provider" (34th recital), namely the Member State, in which the provider is established (Art. 2 AVMS Directive). Those Member States, in which the service can merely be accessed, but in which the provider is not established, may not prevent the further distribution of the services (Art. 3). The Member States can principally only impose stricter regulations than envisaged in the Directive upon domestic providers (Art. 4).

Propose a partnership with the industry on **cybersecurity** in the area of technologies and solutions for online network security.

- Digital industries have been dedicated to securing the digital environment for many years with a commitment to ensuring increased cyber resilience and a higher level of cyber security in Europe. EDiMA welcomes greater cooperation with the Commission to continue to build a safe and secure online environment for EU consumers and businesses and will continue to play its part to share best practices, engage in voluntary exchanges of cybersecurity information and continue to implement relevant security measures across digital products and services to protect our customers.
- The Digital Single Market should guarantee that any initiatives do not impose greater barriers and burdens on businesses, particularly smaller online companies and start-ups. EDiMA would like to highlight that only through a harmonised EU approach to cybersecurity can the EU continue to uphold a high-level of protection and security for consumers, businesses and infrastructure.

Pillar III: Maximising the growth potential of the digital economy

The Commission will:

Propose a '**European free flow of data initiative**' to promote the free movement of data in the European Union. Sometimes new services are hampered by restrictions on where data is located or on data access – restrictions which often do not have anything to do with protecting personal data. This new initiative will tackle those restrictions and so encourage innovation. The Commission will also launch a **European Cloud** initiative covering certification of cloud services, the switching of cloud service providers and a "research cloud".

- EDiMA supports free flow of data but emphasises that the Internet is a global environment and therefore all initiatives in this space should refrain from forced data and infrastructure localisation requirements.
- EDiMA would like to indicate that as the online space now provides multiple digital services that allow Internet-using businesses to reach global customers and markets, including through the use of Cloud services, all initiatives pursued by the Commission should continue to commit to fostering Cloud services regardless of their origin due to the global nature of the online space.

Support an inclusive digital society where citizens have the right **skills** to seize the opportunities of the Internet and boost their chances of getting a job. A new **e-government** action plan will also connect business registers across Europe, ensure different national systems can work with each other, and ensure businesses and citizens only have to communicate their data once to public administrations, that means governments no longer making multiple requests for the same information when they can use the information they already have. This "only once" initiative will cut red tape and potentially save around €5 billion per year by 2017. The roll-out of e-procurement and interoperable e-signatures will be accelerated.

- EDiMA supports the initiative of the Commission to support an digital society where citizens have the right skills to seize the opportunities the Internet offers. These skills should not only focus on preparing our generations to come for a harmonised digital future, but to ensure that the Internet is a tool that continues to be exploited to the benefit of all Europeans regardless of age, location or skill set.

* EDiMA is the European trade association representing online platforms. It is an alliance of new media and Internet companies whose members include Allegro Group, Amazon EU, Apple, eBay, Expedia, facebook, Google, King, LinkedIn, Microsoft, Netflix, Nokia, 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.