



Joint Statement on the EU- South Korea FTA

We, the signatories of this letter, represent fixed and mobile telecoms operators, European ISPs and cable companies. The signatories believe that in a period of economic crisis, the European Internet industry is considerably contributing to fostering European businesses to more efficiently compete at international level. In this context, the Free Trade Agreements (FTAs) negotiated by the European Commission aim to support the development of the European industry to the benefit of the entire economy, the consumers and European core values such as access to information, freedom of expression and privacy protection.

The signatories are concerned about recent developments in the negotiations of the EU-South Korea FTA which raises serious concerns with regard to the liability regime of online service providers. The proposed agreement, while replicating the provisions of the E-Commerce Directive on intermediary liability, in Article 10.62 holds that: *“Each Party shall provide for the measures set out in Article 10.63 through 10.66 [Articles 12-15 of the E-Commerce Directive] for intermediary service providers where they are in no way involved with the information transmitted”*. By stating that the provider should be in no way involved with the information transmitted, the Commission is deliberately modifying the EU *acquis* in a more restrictive way. Indeed, the E-Commerce Directive explains in Recital 43 that the requirement of “no involvement” *“does not cover manipulations of a technical nature which take place in the course of the transmission as they do not alter the integrity of the information contained in the transmission”*. By omitting to mention Recital 43 in Article 10.62, the Commission fails to make that distinction and mistakenly reduces the scope of the limited liability regime of the E-Commerce Directive.

The signatories have also concerns with regard to Article 10.57 which aims to criminalise the *“aiding and abetting of the offences” “at least in cases of wilful trademark counterfeiting and copyright and related rights piracy on a commercial scale”*. Firstly, due to its vagueness, it criminalises all kinds of ISPs without distinguishing between them (according to the E-Commerce Directive hosting providers, if informed, have access to the illegal content hosted in their servers, while access or caching providers just transmit the information without having any knowledge of the content they carry). Additionally, the wording of Article 10.54 *“at least in cases of wilful [...]”* could be interpreted to also cover “unwilful” behaviours which could lead to the conviction of an ISP for crimes that it did not commit or was even aware of. Secondly, it would be unsuitable for the Parliament to support such an approach in the absence of an EU legal basis, due to the fact that the “Directive on criminal measures aimed at ensuring the enforcement of IPR” (so called IPRED 2) is blocked in the Council of the EU.

The signatories strongly believe that this FTA creates legal uncertainty and weakens the position of the European Internet industry within the EU and internationally. According to Article 216 (2) of the Treaty on the Functioning of the European Union, an FTA has primacy over secondary EU law. Should the European Parliament approve the FTA, the result would be to change the EU *acquis* and severely undermine the careful balance in the E-Commerce Directive on the intermediary liability regime.

The signatories believe that an attempt by the European Commission to unilaterally modify the *acquis* would undermine the normal legislative procedure and bypass democratically elected MEPs, who should be involved if EU legislation is to change. Therefore, we call on the European Parliament to preserve the intermediary liability regime as foreseen in the E-Commerce Directive.

The European trade associations contributing to this joint statement are:



Cable Europe (www.cable-europe.eu), the European Cable Communications Association, is based in Brussels and groups all the leading European cable TV operators and their national trade associations throughout Europe. The aim of Cable Europe is to promote and defend the industry's policies and business interests at European and international level. The European cable TV industry provides digital TV, broadband Internet and telephony services to more than 73 million customers. Contact: Caroline Van Weede, Managing Director (+3225211763/caroline.vanweede@cable-europe.eu).



ETNO (the European Telecommunications Network Operators' Association - www.etno.eu) is the voice of the European telecommunications network operators with over a decade of experience in shaping EU telecoms policy. The association represents 41 companies located in 35 European countries. They account for an aggregate annual turnover of more than 250 billion Euros and employ over one million people across Europe. Contact: Fiona Taylor, Senior Adviser, Public Affairs (+ 3222193242/ taylor@etno.be).



EuroISPA is the world's largest association of Internet Services Providers (ISPs) representing the interests of more than 1700 ISPs across the EU and the EFTA countries. EuroISPA is a major voice of the Internet industry on information society subjects such as cybercrime, data protection, e-commerce regulation, EU telecommunications law and safe use of the Internet (www.euroispa.org). Contact: Andrea D'Incecco, Head of Policy (+32 2 503.22.65/ andrea@euroispa.org).



GSMA represents the interests of the worldwide mobile communications industry. Spanning 219 countries, the GSMA unites nearly 800 of the world's mobile operators, as well as more than 200 companies in the broader mobile ecosystem, including handset makers, software companies, equipment providers, Internet companies, and media and entertainment organisations. The GSMA is focused on innovating, incubating and creating new opportunities for its membership, all with the end goal of driving the growth of the mobile communications industry. In the European Union the GSMA represents over 100 operators providing more than 600 million subscriber connections across the region.

For more information on GSMA, please visit: Mobile World Live, the new online portal for the mobile communications industry, at www.mobileworldlive.com, GSMA corporate website at www.gsmworld.com, GSMA Europe www.gsmeurope.org. Contact: Martin Whitehead, Director, GSMA Europe (+32 2 792 05 50/ MWhitehead@gsm.org).