

# CMBA

CreativeMediaBusinessAlliance

## CMBA priorities for the European Digital Agenda (March 2010)

The Creative and Media Business Alliance (CMBA) is an informal grouping gathering some of Europe's top media and creative business and industry associations. It was launched in November 2004 to give the sector a strong and united voice at the level of the European Union. The sectors represented by the CMBA are more than a mere driver for technology development or an "added value" to the European Digital Agenda for smart growth and innovation. They lie at the heart of the digital society.

Creative industries are founded on freedom of expression, which must be respected in any democratic society. Fostering a responsible Internet respectful of the rule of law is a core value, and an essential pre-condition for the sustainable development of the online world.

ICT technologies can and should be used in a way that encourages communication, growth and societal progress and these outcomes need to be actively promoted. Turning a blind eye to the use of the Internet to violate other peoples' rights should thus under no circumstances be condoned, be it consumer protection, intellectual property or privacy rights. Our digital society must abide by the key principle that the rule of law should be respected, both in the offline world and in the online environment.

The CMBA notes that preparatory works carried out in the "post-i2010" context have given only slight reference to the importance of content as a driver of a competitive digital society. We therefore consider that policies which support content should be at the centre of the future European Digital Agenda. In concrete terms, we firmly believe that in order to develop a dynamic digital society, the European Digital Agenda must include the following priorities:

### 1. General societal objectives

-Take into account the general interest priorities of cultural diversity and media pluralism when defining policies affecting cultural industries and the online distribution of creative content.

-Promote digital skills and media literacy amongst European citizens.

-Allow the creative sectors to reap the full online potential of their products and services to boost recovery in Europe by generating both economic and cultural growth.

Specific actions requested:

- Any impact assessment of possible legislative proposals – notably in the fields of media and electronic communications – should take thorough account of cultural imperatives (such as the need to promote creativity and diversity), in line with Article 167 of the new Treaty on the Functioning of the European Union.
- The EU approach to the allocation of the so-called “digital dividend” needs to take due account of the subsidiarity principle in cultural matters, identify best practices in national strategies but refrain from actions that could compromise the development of enhanced broadcasting services.
- Digital skills and media literacy should be included as priorities in the European Employment Strategy.
- Studies and research should regularly be commissioned to assess policy initiatives in the framework of the digital society.
- The freedom to provide services within the digital online market should be encouraged by safeguarding the commercial ability of creative industries to license their content as they see fit in response to market signals, be it on a national, multi-territorial or pan-European basis. The development of industry-led initiatives aimed at designing automated rights management systems, such as ACAP ([www.the-acap.org](http://www.the-acap.org)) in the field of e-publishing, should benefit from the full political support of the European Commission.
- No new obstacles should be imposed on the commercial freedom of market players to engage in arm's length contractual negotiations for the licensing of both offline and online content. In order to foster investment in and the continued growth of a vibrant market for creative media products and services, digital freedom should be preserved and could under no circumstances be sacrificed in favour of slippery notions of “digital collectivism”.
- The extension of mandatory collective management would adversely affect the value of copyrighted works, deter future investments in the production of high-value premium content and act as a disincentive to making that content available through a variety of business models.

## 2. Ensure maximum consumer benefit

-Encourage interoperability as the ability of different players in the media value chain to co-exist and of different technological systems and devices to interact.

-Foster the development of consumer-friendly and secure micropayment systems.

Specific actions requested:

- The European Commission should encourage industry-led solutions developed to promote interoperability between different content, platform or digital rights management tools – e.g. within the European Digital Video Broadcasting project (DVB) and CORAL – and also help pursuing new initiatives, such as in the field of e-publishing workflows.
- The EU's Framework Programme for R&D should be tapped into to encourage the development and improvement of current payment systems through innovations facilitating micro-payments.
- Active support should be given to private/public partnerships aimed at fighting back instances of cyber-criminality, such as identity theft and credit card frauds in order to build and maintain consumer trust in the e-commerce environment.

### **3. Guarantee legal certainty**

-Promote the trustworthiness of the Internet by ensuring that the rule of law is respected for the benefit of social interaction, consumer confidence and legitimate e-commerce.

-Foster a sustainable online environment for creativity, innovation and diversity where legal online services of content delivery keep flourishing.

-Ensure that the creative content industry can continue to fulfil its role of bringing professionally produced content of the highest quality to the citizens of Europe by developing and nurturing an environment conducive to both increased investment and consumer uptake of legitimate services.

-Improve the viability of legitimate online content offers by fighting organised online infringements and raising public awareness regarding the dire consequences of digital piracy on creativity and diversity in the creative media sectors.

Specific actions requested:

- In any assessment of copyright-related issues, the European Commission should remind stakeholders that rights guaranteed under national constitutions cannot – and should not – be expropriated and that the EU should hence refrain from seeking to mandate any specific licensing scheme in the creative media sector.
- The European Commission should analyse more thoroughly the specificities of each individual sector making up the creative media industry, in order to allow for the pursuance of differentiated approaches in its policy-development process.
- International agreements (Bern and Rome Conventions, TRIPs, WIPO Treaties) to which the EU is bound should be fully respected.

- The EU should strive to maintain in place the necessary conditions for effective respect for copyright by guaranteeing the availability of effective means of redress to rights-holders in case of online copyright infringements, in line with Article 17 of the Charter of Fundamental Rights, which stresses explicitly that “intellectual property shall be protected”.
- The European Commission should make use of EU programmes such as the Safer Internet programme to facilitate and encourage cooperation between law enforcement agencies in Europe and internationally in identifying and addressing the challenges posed by illegal material and unlawful behaviour on the Internet.

#### **4. Facilitate stakeholder cooperation**

-Facilitate cooperation between Internet players to define and implement solutions to the obstacles and tensions currently threatening the sustainable development of a responsible Internet, such as widespread abuse of privacy (ID theft, stealing of financial details, etc.), rampant violations of property rights, increasing security threats, disrespect of consumer protection rules, etc.

-Ensure regulatory consistency and a level-playing field among online stakeholders.

Specific actions requested:

- The European Commission should provide guidance to online stakeholders on the conditions associated to the liability privileges granted to intermediary service providers by the E-Commerce Directive (Articles 12-15) to guide the implementation and interpretation of these provisions in the Web 2.0 era.
- The EU should continue to encourage the drawing up and enforcement of inter-industry codes of conduct (in line with Article 16 of the E-Commerce Directive) to foster cooperation between online stakeholders to contribute to the development of a dynamic, responsible and sustainable digital online market.
- Considering a perceived uncertainty regarding the interaction between certain EU instruments, the European Commission should take appropriate steps – in the context of the planned E-Privacy Directive review – to provide guidance in order to enable evidence-gathering regarding illegal online activities to be carried out, in full respect of privacy rights.
- The EU should use the review of the EU Enforcement Directive to pursue improved cooperation between relevant parties and ensure that effective enforcement tools are put in place.
- The European Commission should encourage the drawing up of an inventory of existing studies containing statistics/data on digital piracy and commission further studies by the Observatory of Counterfeiting and Piracy

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