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CMBA Position on the Forthcoming Commission proposal on Data retention

CMBA, the Creative and Media Business Alliance, comprises industry bodies such as the International Federation of the Phonographic Industry, the Association of Commercial Television in Europe, the Motion Picture Association, associations from the book, newspaper and magazine publishing sectors (ENPA, EPC, FAEP, FEP), media companies, and European advertising and publishing groups.

We understand that the Commission is working on a proposal for a Directive on data retention. This directive is of major importance for our sectors in the fight against piracy and we are keen to make sure the proposals are effective.

The importance of the Internet as a communications medium is ever increasing, but with it also comes an increase in illegal activities online. This is particularly true for online piracy, which greatly affects our sectors.

The EU has put in place instruments aimed at improving the protection of intellectual property rights, such as the recently adopted Enforcement Directive. This Directive expressly recognises the need to ensure that information concerning the origin of infringing activity, distribution channels and the identity of suspected infringers can be obtained from service providers (Article 8). For this obligation to be meaningful, it is of course essential that ISPs retain the relevant data. The draft proposal on data retention therefore provides a missing link in this field, in harmonising the conditions setting out a minimum amount of time that ISPs must retain key data and the circumstances under which they must disclose it.

Retain 'connection data'. Our sectors do not need a great amount of data. **The most crucial data is the connection data, i.e. information to identify the user of an internet-protocol (IP) address at a given time.** In criminal or civil proceedings against infringers of intellectual property, the enforcement authorities or affected rights owners usually only have the IP address of an infringer, so it is indispensable that the relevant data is kept and can be retrieved in order to determine the actual infringer.

Indeed, connection data is the fundamental piece of evidence that police and private-party claimants need in *any* kind of legal proceeding against an on-line law breaker—who is only visible as an IP address to anyone but the ISP. The data that enables the ISP to trace a publicly visible IP address back to a particular user account is not bulky. It typically consists of a range of



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automated database logs and customer account records that most ISPs maintain anyway as a matter of good business practice.

Retain such data for a sufficient period. The period for retention of this type of connection data must be sufficiently long to enable law enforcement officials and intellectual property rights owners to find evidence and prosecute law breakers. While it takes some time to conduct investigations into possible online infringements, a further set of delays can occur in the judicial procedures that need to be followed to oblige the service provider to identify the IP address owner.

Once an investigation is complete and the IP address(es) of an infringer are known, service providers' ability to identify the actual user becomes critical to the success of the subsequent prosecution. It is therefore vital that the Commission's proposals provide that member states implement procedures that offer rights-owners a flexible and reliable means of ensuring that this critical evidence is stored for as long as an appeal is possible.

Reaffirm that criminal and civil litigants can get disclosure. The proposal should also re-affirm that criminal enforcement authorities, civil litigants and similar parties—including right holders—can get access to connection and traffic data by court order in accordance with the *acquis communautaire*. The harmonisation must include reaffirmation of the legitimate interest of intellectual property right holders to have access to information to secure evidence and take legal action against infringing activity and infringers.