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## POSITION ON DATA RETENTION

22 November, 2005

We understand that the EP Industry Committee will adopt its opinion on 23 November on the proposed Directive on data retention. **This Directive is of major importance for our sector and we would appreciate your support in ensuring that this becomes an effective instrument in the fight against piracy.**

The importance of the Internet as a communications medium is ever increasing and it offers many opportunities. However, 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 Copyright Directive (adopted in 2001) and the Enforcement Directive (adopted in 2004). The latter expressly recognizes 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 legislation to be meaningful, it is essential that service providers retain the relevant data for a reasonable period and that the data can be disclosed for appropriate purposes. The proposed Directive on data retention should serve to facilitate this. **However, the conditions set out in the proposal are too restrictive and would create obstacles to law enforcement in a number of situations. Moreover, many amendments submitted, including to the Industry Committee, seek to further reduce the scope of the Commission proposal.**

### 1. The scope of the proposal should include all criminal offences

**The Directive, as proposed, is limited to "the prevention, investigation, detection and prosecution of serious criminal offences such as terrorism and organized crime" (Article 1.1).**

**The position of the CMBA is that the scope of the proposal should be extended to all criminal offences.** Limiting the proposal to "serious" offences would hamper the effectiveness of the Directive and the enforcement activities for other forms of criminal offences. Once an illegal activity is considered as a crime in a Member State, the enforcement authorities should have adequate means to prosecute it. **We therefore urge the members of the Industry Committee to reject any amendments that limit further the scope of the Directive.**

### 2. Internet data must be retained for a sufficient period of time

**Content industry representatives have always stressed that data retention is of major importance and that data should be kept long enough to fight piracy.** Our sectors rely on a small number of data categories in our enforcement work. **The most crucial is the connection data (i.e. information to identify the user of the internet protocol (IP) address at a given time).** Indeed, connection data is the fundamental piece of evidence that police and private party claimant need in any kind of legal proceedings against online violations of law.



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The Commission draft proposes a mandatory period of retention of six months. The period of retention of this type of connection 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. This six months period of retention is therefore a minimum.

**We therefore urge the Members of the Industry Committee to reject any amendment seeking to reduce the period of retention, in particular amendments 1, 7, 15 and 35.**

**3. The access and use of data for law enforcement purposes must not be limited**

If the proposed directive is limited, in particular in its scope, it must be clear that it does not preclude the possibilities to obtain data for the enforcement of rights under EU or national legislation, in compliance with Data Protection rules. The possibility for law enforcement authorities to use data in other cases, to be determined by national law or other EU instruments, is essential, otherwise there will be no way to prosecute the infringements that are not covered by this proposal. This would differ considerably from the rules currently applied in Member States and would be inconsistent with other EU legislation, for instance the Enforcement Directive.

**We therefore urge the members of the Industry Committee to reject any amendments that would limit the access and use of the data, such as amendments 18, 23 and 24.**

Finally, in addition to the mandatory period of retention, Member States shall also ensure that once a legitimate request has been made, under applicable law, the specified data will be stored and preserved. In other words, the Directive should clarify that in addition to the obligation to retain data, ISPs must also implement "preservation schemes".

We remain at your disposal if you need any further information on this subject.