

### **Key considerations for achieving a workable European Digital Single Market**

EDiMA believes that the Digital Single Market is the bedrock of Europe's success in the global arena today and in the future. It will allow European consumer access to a truly single market online and at the same time allow for European industry to access a market that is scalable and promotes growth and innovation. However it is essential that the plans for the Digital Single Market strike a fine balance in its objective to taking into account the interests of all the stakeholders: the European consumer, creator, industry and intermediaries. As such it is essential that the policy debate remains future proof to allow for innovation in Europe to prosper. EDiMA would therefore like to highlight some key considerations to take into account at this the developmental stage of the European Digital Single Market:

- Any new law or regulation that impacts digital services should require an assessment with regard to its impact on the Internal Market, innovation and SMEs.
- Existing directives, such as through delegated and implementing acts, must not propose "offline" solutions which are not viable in an online environment.
- Before changing or creating new rules, the Commission should systematically examine the correct implementation by the Member States and the enforcement of existing legislation.
- The European Commission should support and defend a country of origin principle to regulating any aspect of consumer protection and seek further harmonisation where needed.
- The European Commission should promote codes of practice that are flexible to changes in consumer behaviour that should serve as meaningful guidelines instead of inflexible regulations.
- The European Union should stay committed to a global Internet and the free flow of data, and refrain from forced data and infrastructure localisation requirements.
- The European Commission should review all existing consumer regulations with a view to their compatibility with the Digital Single Market and look to create a single set of rules able to transcend borders.
- Policy for a Digital Single Market should be focused on delivering benefits to consumers and users, not on safeguarding company interests or as a tool of industrial policy.
- The EU institutions should require all consumer legislation at the Member State level to be notified to the Commission for its compatibility with the Digital Single Market.
- All technological innovation in a Digital Single Market must be treated equally regardless of its origin.
- Rules should be future proof and flexible, not targeted at today's reality so that it can allow for developments to occur in the future.
- Policy must ensure that new rules introduced by member states do not fragment the Digital Single Market.

- The European Commission should maintain a balanced and future-proof liability regime that allows for online intermediaries to flourish and prosper in Europe; and that they are not subjected to unreasonable and unworkable obligations with respect to the e-Commerce Directive legal framework.
- A consistent approach and implementation of IPR policy across the European Union should be ensured.
- The European Commission should advocate for and support more collaborative initiatives between all actors across the value chain in the IPR context including consumers, civil society, rights owners, national enforcement authorities, Internet services providers, etc..
- The European Commission should accurately interpret existing EU case law with regard to the limitations placed on filtering, monitoring obligations as well as notice and take down actions and take it into account for future rulings and reflection.
- To introduce clear guidance to EU Member States to ensure that the IPR scope is adapted to the technical and commercial realities in which intermediaries operate.
- In its review of the copyright package the European Commission should take the following into account:
  - Recognise the contribution of technology to creativity in Europe
  - Properly enforce single market rules in relation to copyright by recognising that national disparities create obstacles to cross-border services and harm the single market. These obstacles must be phased out. For example:
    - Private copying levies, the creation or implementation of new rights and remuneration claims at national level, are clear, immediate barriers to an integrated Digital Single Market.
    - No Copyright on linking and browsing
    - Text and data mining is not, and should not be, subject to copyright protection. Facts and ideas cannot be protected by copyright, whether for commercial or non-commercial purposes. Mining is a non-expressive use that presents no legally cognisable conflict with the statutory rights or interests of the copyright holders. The Commission should ensure that any possible new limitations for research do not affect the principle that facts, ideas, expression, or news of the day are not protected by copyright and do not require a license.
  - Create and improve licensing across borders via an innovation-friendly, well-functioning and flexible licensing regime
  - Promote a modern, balanced and flexible framework of exceptions and limitations