



Brussels, 19 May 2017

## Joint statement

### Businesses' priorities for the digital content directive proposal

#### I. Full harmonisation, at a reasonable level

We call on national delegations to endorse the original proposal's full harmonisation approach. This is the only coherent way of preventing legal fragmentation and creating a true digital single market. However, harmonisation should not be at any cost. Rules should be balanced and proportionate, allowing the necessary space for innovation in this fast-developing sector.

The future European framework for digital content should serve as an enabler for competitiveness. Digital content, and most specifically apps and games, is one of the few digital fields where Europe has a - slight - lead in the world market, with double-digit growth figures. In the past year, 6 out of 10 top apps were developed by the EU companies. Overly restrictive rules will simply drive this innovation outside the EU.

#### II. Aligning rules for digital content and the sale of goods

The pace of digitalisation and technological development means that digital content and goods will become further intertwined and traditional products will be able to fulfil a multitude of diverse tasks.

An alignment, to the extent possible, between contract rules for 'content' and 'goods' is the most effective way of ensuring that legislation remains future-proof in the case of goods with embedded digital content. This could mean, for example, aligning provisions on a hierarchy of remedies (for non-conformity) or on the guarantee period.

### **III. Removing overlaps and contradictions with the existing European data protection rules, and clarifying data aspects**

The EU has a comprehensive and robust data protection framework that covers all personal data collected by any means and for any purposes. Therefore, we fully support the recent call of the European Data Protection Supervisor (EDPS) to avoid overlap between these proposed rules and the General Data Protection Regulation (GDPR), and avoid confusion for businesses and individuals. Before the GDPR becomes fully effective in 2018, we see no need at EU level for new rules regulating personal data. In addition, given the strongly contested concept of “data as a counter-performance” we call on legislators to remove this concept from the proposal, and limit its scope to paid digital content.

Alternatively, if data is to be covered by this proposal, the rules should be limited to personal data. In line with the EDPS position, we believe that reference to “other data” is confusing, as any data provided by the individual will likely be personal.

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