Brussels, 26 April 2018

Dear Deputy Permanent Representatives,

**RE: Copyright – COREPER I – April 27 – DELETE OR REDRAFT ARTICLE 13(4)**

The Association of Commercial Television in Europe writes to you in view of the COREPER I meeting on Friday 27 April. On this occasion the Council will be asked to adopt a mandate for negotiations with the European Parliament on the draft Copyright Directive.

**The current drafting needs to improve to deliver on the objectives of the Proposal. Consequently, we call on you to reconsider the draft text, to ensure it complies with international law and safeguards the fundamental right to intellectual property.**

A major source of concern we have is that Article 13(4) and corresponding recitals. This Article creates two new and wide exemptions from copyright liability for online content sharing service providers, absolving them on the basis of their “best efforts” only and/or rightsholders' failure to send notices. This goes beyond the e-Commerce Directive and is inconsistent with the very spirit of this Proposal. Moreover, this wording creates a regulatory paradox: while passive ISPs will continue to be subject to a general duty of care (Recital 40 ECD), active content sharing service providers will enjoy tailor-made exemptions.

The Value Gap provisions (Article 13 and the corresponding Recitals) were meant to provide more legal certainty and improve the position of rightholders to protect, negotiate and be remunerated for the exploitation of their content by online services which give public access to user uploaded content.

Despite the Presidency’s efforts, the current text of Art. 13(4) and corresponding recitals undermine the legislation’s stated aim of providing “…*measures aiming at improving the position of rightholders to negotiate and be remunerated for the exploitation of their content by online services giving access to user-uploaded content*” and create barriers to the proper negotiation of licensing agreements and enforcement of their exclusive rights.

**We trust a solution can be found for these issues in a way which would not negatively impact international and EU copyright law. We urge you to further work on the text to ensure legal certainty is reached and remain of course at your disposal for any further input.**

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**ABOUT THE ASSOCIATION OF COMMERCIAL TELEVISION IN EUROPE (ACT)**

The ACT represents the interests of leading commercial broadcasters in Europe. The ACT member companies finance, produce, promote and distribute content and services benefiting millions of Europeans across all platforms.  At ACT we believe that the healthy and sustainable commercial broadcasting sector has an important role to play in Europe’s economy, society and cultures.

 **For further enquiries please consult our website** [**www.acte.be**](http://www.acte.be) **and/or contact Agnieszka Horak, Director of Legal and Public Affairs, ACT –** [**ah@acte.be**](mailto:ah@acte.be)**.**