

Brussels, 21 September 2020

To:

Executive Vice-President Margrethe Vestager,

Commissioner Thierry Breton,

Commissioner Mariya Gabriel

Commissioner Didier Reynders

DG CONNECT, DG GROW, DG EAC

“Know your business customer” (KYBC) obligations: a real and tangible solution to reduce illegal content with minimal burdens on intermediaries and legitimate businesses

In a responsible and mature economy, businesses should not be able to operate and have access to the modern necessary infrastructure Europe has to offer without accurately identifying themselves. This applies equally to the offline and to the online world, which is why in 2000 legislation introduced an obligation on businesses to identify themselves on their websites (see Article 5 of the e-Commerce Directive (ECD)). Unfortunately (and unsurprisingly) businesses that have the intention of making a profit out of illegal content do not comply with this obligation and do not suffer consequences.

We therefore very much welcome the European Commission’s interest in solving the problem, but we are concerned that the DSA Inception Impact Assessment only mentions KYBC in the context of online marketplaces. Such a limited approach would be a missed opportunity to address the broad range of illegal content online.

The DSA represents a real opportunity to rectify the situation that allows bad actors to ignore Article 5 of the ECD with impunity. A business cannot go online without a domain name, without being hosted, or without advertisement or payment services. These intermediary services, having a direct relationship with the business, are therefore best placed to make sure that only businesses that are willing to comply with the law have access to their services. This does not mean monitoring their business customers’ behaviour, but merely asking them to identify themselves and applying simple due diligence checks on the basis of publicly available data. Should the information provided prove to be manifestly wrong, or the intermediary be notified that the business customer isn’t who it claims to be, the intermediary should stop providing services until the business customer remedies the situation.

For decades, fraudulent businesses have been exploiting the lack of enforcement of the information requirements under Article 5 of the ECD, which has been to the detriment of a safe and trustworthy online environment and has facilitated the use of infrastructure by completely anonymous commercial entities that intentionally make available or distribute illegal content. These include operators of scam websites and operators of online services distributing illegal gambling, substandard or falsified medicines, sexual abuse material, counterfeits, malware and more.

Now is the time to act.

We thank you for your attention and would welcome the opportunity to discuss this issue with you further.

Kind regards,

Signatories:

Aktionskreis gegen Produkt- und Markenpiraterie e. V. (APM)

Alliance for Intellectual Property

Alliance for Safe Online Pharmacy (ASOP EU)

Association de Producteurs de Cinéma et de Télévision (Eurocinema)

Associazione Nazionale Industrie Cinematografiche Audiovisive Multimediali (ANICA)

Audiovisual Producers Finland (APFI)

BREIN

British Association for Screen Entertainment (BASE)

British Phonographic Industry (BPI)

Coalition for Online Accountability (COA)

Copyright Information and Anti-Piracy Centre (TTVK)

Digital Entertainment Group (DEGI)

European and International Booksellers Federation (EIBF)

European Brands Association (AIM)

European Federation of Pharmaceutical Industries and Associations (EFPIA)

European Network of Independent Film Publishers and Distributors (Europa Distribution)

European Publishers Council (EPC)

European VOD Coalition

FDV -Danish Video Association (FDV)

Fédération Internationale des Associations de Producteurs de Films (FIAPF)

Federación de Distribuidores Cinematograficos (FEDICINE)

Federation of European Film Directors (FERA)

Federation of European Publishers (FEP-FEE)

Federation of Screenwriters in Europe (FSE)

Federation of the European Sporting Goods Industry (FESI)

Federazione per la Tutela dei Contenuti Audiovisivi e Multimediali (FAPAV)

Filmdistributeurs Nederland (FDN)

HEINEKEN

Independent Film and Television Alliance (IFTA)

Independent Music Companies Association (IMPALA)

INDICAM

Interactive Software Federation of Europe (ISFE)

International Association of Scientific, Technical and Medical Publishers (STM)

International Confederation of Music Publishers (ICMP)

International Federation of Actors (FIA)

International Federation of Film Distributors' Associations (FIAD)

International Federation of the Phonographic Industry (IFPI)

International Union of Cinemas (UNIC)

International Video Federation (IVF)

Kuvasto ry (Finnish visual artists' copyright society)

Motion Picture Association (MPA)

NIKE

PHILIPS

Produzenten Allianz (Germany)

Rattighetsalliansen (Sweden)

RELX (UK)

RettighedsAlliancen

Spitzenorganisation der Filmwirtschaft e.V. (SPIO)

Sports Rights Owners Coalition (SROC)

Suomen Musiikintekijät ry (Finnish Music Creators' Association – FMC)

Suomen Musiikkikustantajat ry (Finnish Music Publishers Association)

Syndicat de l'Édition Vidéo Numérique (SEVN)

UNI Global Union – media, entertainment & arts (UNI MEI)

Union des Fabricants (UNIFAB)

Univideo

Verein für Anti-Piraterie der Film- und Videobranche (VAP)

World Federation of Advertisers (WFA)



Coalition for Online Accountability
www.onlineaccountability.net



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