



**Computer & Communications
Industry Association**
Tech Advocacy Since 1972

Brussels, 22 February 2018,

Re: European Commission's Recommendation on measures to effectively tackle illegal content online

Dear Vice-President Ansip,
Dear Commissioners Gabriel, King, Jourova, and Bienkowska,

The fight against infringing content online, including terrorism content, is taken very seriously by hosting services. By constantly improving their notice and takedown mechanisms, developing self-regulatory approaches to fight against such content or by participating in many initiatives such as the EU Internet Forum, the Memorandum of Understanding on the sale of counterfeit goods and the Code of Conduct of Hate Speech, hosting services have demonstrated their commitment to this fight and to improve the online experience of their users.

Notice and action processes have formed a crucial part of hosting services' approaches to tackle illegal content. Please allow me to share the suggested principles below, which we believe would facilitate the removal of infringing content across the EU while spurring growth in Europe's digital sector. I encourage you to consider these principles as part of your work on a Recommendation on tackling illegal content.

Tech industry recommendations for tackling illegal content online:

Notifications: CCIA has long advocated for the introduction of well-thought out and harmonised notice and action guidelines. However, such guidelines would need to set out clear steps and responsibilities for hosting services, complainants and counter-claimants while safeguarding their rights and those of users. Counter notification procedures, in particular, need to ensure that hosting services do not lose the benefit of the limited liability protection regime when responding in good faith to a counter-claim.

Turnaround time: In view of the wide range of hosting services, all time limits for takedowns of infringing content must be realistic, reasonable, flexible and workable, to take due account of all actual constraints linked to the removal. The introduction of very tight time limits for takedowns would indeed strongly incentivise hosting services to take down all reported content, thereby chilling European fundamental rights, such as freedom of expression online and the freedom to conduct a business.

Proactive automated measures: Encouraging the broad adoption of proactive automated measures to remove infringing or ‘controversial’ content across the whole of the Internet would lead to widespread censorship by strongly incentivising hosting services to suppress potentially legal content and public interest speech. Such a measure would contravene Article 15 of the e-Commerce directive and would again contradict European values and long-term commitment to fundamental rights, including freedom of expression online, right to privacy and due process rights.

Re-appearance of infringing content: Recommending that hosting services prevent the subsequent re-upload of an infringing content substantially similar to one previously taken down implies that such services have to comply with a general obligation to monitor, thereby infringing Article 15 of the e-Commerce directive. Moreover, such an obligation would force hosting services to make challenging context-dependent assessments as to whether one piece of content is sufficiently similar to an already notified piece of content to justify taking it down. Such an assessment, especially if coupled with tight timeframes for takedowns, will certainly lead to a great many number of “false positives”.

Trusted flaggers: Cooperation with trusted flaggers has proved to be efficient in certain situations and cooperation between hosting services and civil society is worth exploring. However, it is crucial to note that such cooperation would not function for all stakeholders, as size and resources differ greatly between hosting services, nor for all kinds of content. Certain types of content, e.g. copyright-protected content, do not lend themselves to trusted flagger models, which are best applied with respect to child sexual abuse material and terrorist content. Cooperation with trusted flaggers should stay strictly voluntary.

A Recommendation introducing measures such as tight turnaround time for takedowns, broad proactive automated measures and stay down obligations across the Internet would undermine EU’s fundamental rights, create fragmentation across the Digital Single Market due to various national implementations and important barriers to entry for European startups and SMEs seeking to success in the EU Digital Single Market. Rather, measures to tackle infringing content online should mirror the principle-based approach of the e-Commerce Directive.

Thank you for your time and attention.

Christian Borggreen
Vice-President & Head of Office,
CCIA Europe