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ANNEX 1

## ANNEX

### **COMMISSION DECLARATION ON THE FACILITATION AND MONITORING OF MEMORANDA OF UNDERSTANDING SEEKING TO DISSUADE COMMERCIAL SCALE INTELLECTUAL PROPERTY INFRINGING ACTIVITIES IN THE INTERNAL MARKET.**

*to the*

**Communication to the Commission**

**for commissioner Bieńkowska to make a Commission Declaration on the facilitation and  
monitoring of memoranda of understanding seeking to dissuade commercial scale  
intellectual property infringing activities in the internal market**

Intellectual Property Rights (IPR) seek to ensure that creative and inventive efforts are rewarded and that investments in new and more efficient products and processes are encouraged. They can also serve as an indication of quality, important for consumers' confidence in products. Under the Digital Single Market<sup>1</sup> and the Single Market Strategy<sup>2</sup> the Commission has committed to modernise the European IP framework as part of the work towards a deeper and fairer Internal market so as to boost jobs, growth and investment.

In its recent Communication on Online Platforms and the Digital Single Market Opportunities and Challenges for Europe,<sup>3</sup> the Commission recalled, in the context of the evaluation and modernisation of the enforcement of intellectual property rights, that it will assess the role intermediaries can play in the protection of IPR.

As regards IP enforcement, the Commission's objective is to fight against commercial scale IPR infringements that harm the EU economy with two parallel work streams, which are run concurrently. The first consists in establishing EU level dialogues between rights-holders and different types of intermediaries involved in the sourcing, promotion and distribution of IPR dependent products and content. These dialogues seek to achieve Memoranda of Understanding (MoUs) based on transparent principles that the parties can respectively commit to in order to reduce the level of commercial scale IPR infringing behaviour affecting the relevant IPR dependent product and content markets. The second seeks to modernise the existing civil redress framework (through the announced evaluation and review of the IPR enforcement directive) in the EU such that all rights-holders of whatever size can seek effective redress against such IPR infringements. This second workstream could also result, if required, in measures backing the MOU initiative.

This focus on fighting against commercial scale IP infringing activity was announced by the Commission in 2014<sup>4</sup> and has subsequently gained the full support of both the European Parliament<sup>5</sup> and the Member States<sup>6</sup>. This approach has also been reaffirmed by the Commission Communication towards a modern, more European copyright framework<sup>7</sup>.

As regards the facilitation and promotion of the resulting MoUs in the field of IP enforcement, as well as the assessment of their effectiveness, the Commission, on the basis of the EU Agenda on better regulation for better results adopted on 19 May 2015<sup>8</sup> and taking into account past experience in this field, seeks to achieve that:

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<sup>1</sup> "A Digital Single Market for Europe" – COM 2015 (192) final

<sup>2</sup> "Upgrading the single market: more opportunities for people and business" – COM (2015) 550 final

<sup>3</sup> "Online Platforms and the Digital Single Market Opportunities and Challenges for Europe" – COM (2016) 288 final

<sup>4</sup> "Towards a renewed consensus on the enforcement of IPR: An EU Action Plan" - COM(2014)392 final

<sup>5</sup> EP adopted text (9 June 2015),

<http://www.europarl.europa.eu/oeil/popups/summary.do?id=1392620&t=e&l=en>

<sup>6</sup> Council conclusions on IPR Enforcement (14 October 2014),

<http://data.consilium.europa.eu/doc/document/ST-14279-2014-INIT/en/pdf>

<sup>7</sup> "Towards a modern, more European copyright framework" – COM (2015) 626 final

<sup>8</sup> "Better regulation for better results - An EU agenda" - COM(2015) 215 final

- (i) The Better Regulation Guidelines<sup>9</sup> are applied, in particular the principles referred to in the field of self- and co-regulation<sup>10</sup> in facilitating and promoting the establishment of such MoUs.
- (ii) The objectives, principles and obligations enshrined in such MoUs are agreed in a transparent manner with the full participation of consumer associations and civil society representatives.
- (iii) The agreed MoUs are published on the Commission's web-site and are open to periodic reassessment according to their measured impacts and the views of interested parties.
- (iv) The MoUs include measurable Key Performance Indicators that objectively measure the results of the implementation of the agreements, and thus allow the parties to justify their investment in these processes and enable the Commission to report on their general impact on commercial scale IP infringing activities on a periodic basis. The required collection and aggregation of commercially sensitive data is carried out by the EUIPO that already offers confidentiality agreements in its day to day trademark and design registration activities. No strategic company data will be exchanged between the parties.
- (v) The MoUs should be signed and applied by individual rights-holders and intermediaries that are the only parties able to implement such principles in practice. Trade associations are encouraged to sign the MoUs so that they can encourage their members to become signatories. Likewise, civil society associations are encouraged to sign the MoUs and make their members aware of them. They can assist in monitoring their impacts across their respective communities.

The Commission intends to facilitate the dialogues for the development of an initial set of MoUs in five areas it considers intermediary service providers and rights-holders could usefully cooperate to detect and dissuade commercial scale IP infringing activities. More specifically the aim is to develop and support the launch of MoUs between rights-holders and:

- (i) Their suppliers (supply chain auditing MoU);
- (ii) Internet sales platforms, where the only existing EU-wide MoU in this field has been re-modelled (with agreed key performance indicators) and shall be re-launched and open for signature as of today;
- (iii) On-line advertisers and advertising service intermediaries;
- (iv) Payment service providers;
- (v) Transport service providers.

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<sup>9</sup> Commission staff working document: " Better Regulation Guidelines" - SWD(2015) 111 final

<sup>10</sup> See the principles for better self- and co-regulation at <https://ec.europa.eu/digital-single-market/news/principles-better-self-and-co-regulation-and-establishment-community-practice>