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Workshop on Notice and Action in Practice

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Report

The workshop discussed practical aspects of the Notice and Action mechanisms employed by the stakeholders: online platforms/intermediaries as notice recipients, rights-holders as notice providers. User and consumer rights, as well as the perspective of public authorities, were also discussed.

The first panel focused on notices concerning IP-related infringements, while the second discussed notices concerning defamatory content, hate speech and terrorist-related content.

The first panel started with a presentation by a company specialising in monitoring IP infringements online and enforcing them on behalf of rights-holders.

The presentation provided a short overview of practices in the area of monitoring and notifications. Trends in handling IP infringements through N&A mechanisms were described:

- Platforms provide interfaces (convenient for small, but sometimes difficult for big brands).
- Closed profiles of sellers of counterfeit goods are more difficult to handle for notifiers.
- Automated monitoring is allowed by some platforms but not all.
- Many platforms have three-strike policies: profiles are blocked after three notices, but it is sometimes very easy to reopen the account.

Trends in copyright-related notifications were presented by representatives of the creative sectors. N&A is helpful for certain types, but not for all (rare infringements/ neutral sites). Rights-holders believe that platforms should have systems to detect content that

has been already notified. Speed of takedown varies from platform to platform. Trusted notifiers' programmes are helpful and should have priority. Due process needs to be balanced, so as not to undermine the efficiency of the process. The problem of repeat infringers exists: 95% of notices report the same content to the same sites.

Online platforms described their N&A policy. One platform said that it takes on average six hours to take down content, but that outliers exist when human intervention is needed. They argued that intermediaries do not have access to private contractual arrangements; the intermediary doesn't know who the rights-holder has authorised to make content available. Another platform informed the workshop that they have teams working on takedown 24/7. The average time for takedown is 4-12 hours. For videos – a few minutes.

A platform described their N&A system, which has a special account for rights-holders to report infringements. The account gives very detailed explanation of various IP's that may be infringed. There is a drop-down menu which allows the rights-holder to send a message to a seller. Another platform underlined the need to respect agreements with users: T&Cs are legally binding for platforms and users, therefore notices need to be specific and address concrete cases.

A representative of the retail community argued that retailers need to have the opportunity to be involved in the N&A process. Often rights-holders communicate only with platforms, who don't inform retailers but simply block accounts.

Several stakeholders argued that a distinction needs to be made between types of platforms and the services they offer. Stakeholders agreed that dialogue is key and cooperation between both sides should be promoted. Sharing best practices developed by big platforms to take down infringing content, as well as mechanisms for sharing costs, should be considered. The MoU on counterfeiting was discussed and considered useful. Rights-holders felt that there should be more participants on the side of platforms to make the dialogue more efficient.

A representative of a civil rights association argued that it is important to make distinctions between types of content. There are lots of takedowns where there is a discussion about whether the content is legitimate or not; we should also take into account small intermediaries (who have to take down one file or the whole website). The results of a survey of small intermediaries was presented: 8/10 ISP's didn't have a procedure in place, two removed content without evaluating the claim, four decided that the court order was necessary to remove content.

An organisation representing consumers agreed that it is important to make a distinction between types of content, e.g.: sales of counterfeit goods are high and still on the rise (there is a campaign on how to identify them); most products are bought overseas. This is different to copyright infringements (WIPO data).

The second panel discussed non-IP-related notices such as those concerning hate speech, and defamatory or terrorist content.

The panel started with a presentation by an online news portal from a Member State in which the High Court held the service provider liable for defamatory comments posted on the news portal's online forum. The case was a prominent example of the application of the liability exemption in the eCommerce Directive by the Court. The presentation was followed by a discussion on the potential consequences for intermediaries and users.

A representative of the police presented their work in the area of notification of illegal/harmful content to ISP's: legal considerations (legal base for monitoring, implications on freedom of speech) and practical aspects (manual reviews of content). Cooperation in the framework of Europol was discussed.

Differences between public notices and private notices were discussed. One stakeholder argued that public authorities should play a more prominent role in identifying illegal content.

It has been agreed that discussions with stakeholders will continue in the coming months in the context of the ongoing work announced in the Midterm Review of the DSM.