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Audiovisual Sector Contribution to European Commission Call for evidence on combatting online piracy of live content

The undersigned entities and organisations represent key stakeholders in the film and audiovisual production, exhibition and distribution value chain. We take note of the European Commission’s intention to adopt a Recommendation on piracy of live content and welcome this opportunity to submit reflections relevant to this initiative as well as to the broader EU work on enforcement of IPRs.

Copyright provides the foundation for the creative and financial sustainability of the film and audiovisual (“AV”) sector in Europe¹. Ensuring strong protection of copyright is fundamental to creativity, investment, production and dissemination of films and AV content across Europe and beyond. It allows creators and their business partners to finance the development, production, marketing and distribution of films and AV works and to generate

¹ According to a [study](#) by EY, the film/AV sector in Europe contributed €46.9 billion to the EU economy and provided more than 2 million direct and indirect jobs in 2018.

revenues/ensure recoupment of investments, including as a basis for creating and investing in new films and AV projects.

The persistence and wide acceptance of online piracy undermines this foundation, posing a serious threat to Europe's film and AV ecosystem. It causes serious harm to the film and AV sector in Europe² and as well as to European consumers³. We therefore urge the European Union and its Member States to ensure measures are in place to effectively tackle piracy of copyright protected content online. With this objective in mind, we would like to make the following recommendations for the key elements and principles of such measures:

I. Those stakeholders who are best placed to address illegal content should act immediately and prevent reappearance of infringing content

To combat piracy in an efficient manner, it is vital to ensure that those stakeholders, who are best placed to address illegal content, act expeditiously to remove and disable access to notified infringing content and take proactive measures to prevent the reappearance of such illegal content (stay down).

Such economic operators, which do not themselves engage in infringing activities, are in many cases best placed to bring infringing activities to an end. Their involvement is therefore required to ensure that rightholders are able to protect their content swiftly and effectively.

In the case of live content, the economic value is almost entirely exhausted at the end of the live broadcast. Other content is time-sensitive, for example because of the stage of release through different distribution channels to final audiences. As a consequence, for these types of content, a significant degree of value is eroded in a very short time frame. The unauthorised dissemination of such content during that particular time frame therefore causes additional and significant damage to a wide range of rightholders and ultimately to consumers as well as society as whole.

II. Notices from trusted flaggers should be handled immediately

In order for all stakeholders to be able to act in a swift and efficient manner, tools and procedures must be in place which can be deployed to prevent the availability of content during the critically short time frame, for example, while the event is ongoing and/or where authorised release is imminent. Therefore, it is important that notices submitted from trusted flaggers, including rightsholders, be treated immediately by all intermediaries.

² For example, the [EUIPO](#) estimates that on average, illegal access to or transmission of protected content represented 82% of total piracy (films, AV content, sports, and other protected content) in the EU in 2020. According to the [Illicit IPTV in Europe – economic report](#), conducted by Bournemouth University for AAPA, infringing services made €3.21 bn in 2021 alone through illicit IPTV piracy services in Europe. The Synamedia study [Pricing piracy: the value of action](#) estimates that sport piracy globally is costing \$28bn to the sport industry every year.

³ Consumers are often the victims of malware leading to identity theft and fraud while using audiovisual piracy sites, apps, Illegal Streaming Devices and Set-Top Boxes. There is on average a 57% chance of an audiovisual piracy app being installed with embedded malware, according to [Audiovisual piracy Cyber risk for European consumers – The rise of malware](#), (2022).

III. Effective and flexible injunctions should be available

No-fault Injunctions against intermediaries - often granted based on robust national and EU case-law - have proved to be an effective and proportionate means to address the unauthorised dissemination online of copyright content. Such injunctions serve not only to bring specific infringements to an end, but also to prevent future infringements.

Member States should therefore ensure that rightsholders are in a position to apply, without burdensome procedural hurdles, for effective injunctions to address the unauthorised dissemination of live and time-sensitive content. These should include dynamic injunctions and live injunctions, against a broad range of intermediaries and service providers.

It is crucial that the use of injunctions allow for flexibility so that they remain effective, suitable to fight the infringing activity in each case at hand, and able to prevent ongoing and imminent infringements. To tackle ever evolving tactics developed by infringing services, new types of infringing activity and any future technological change, the specific characteristics of each case should be taken into account, and competent judicial or administrative authorities should be encouraged to conduct a case-by-case, yet fast and effective, assessment when granting such measures.

IV. Intermediaries should ensure transparency and verification regarding the identity of their business customers (broad Know Your Business Customer provisions)

Lastly, in order to stop and deter the dissemination of infringing content, including live content, the services of intermediaries that are increasingly being used by third parties for infringing activities should ensure transparency and verification regarding the identity of their business customers.

The frequent failure to adequately enforce Article 5 of Directive 2000/31/EC, along with the targeted scope of Article 30 of Regulation (EU) 2022/2065 (Digital Services Act), means that verified and accurate information regarding the identity of commercial actors that use European infrastructure services and target EU citizens is not always available. In addition, Member States should ensure that there are effective enforcement measures and sanctions available for infringements of Article 5 of Directive 2000/31/EC.

To contribute towards a safer, more predictable and trusted online environment for the benefit of EU consumers and businesses alike, the providers of intermediary services should be obliged to collect and verify information regarding the identity of their business customers and to take action when identification provided proves to be incomplete, inaccurate or fraudulent.

Signatories

ACT - Association of Commercial Television and VoD Services in Europe

ANICA - Associazione Nazionale Industrie Cinematografiche Audiovisive e Digitali

CEPI - European Audiovisual Production Association

Eurocinema - Association de producteurs de cinéma et de télévision

Fedicine - Federación de Distribuidores Cinematográficos

FIAD - International Federation of Film Distributors' and Publishers' Associations

FIAPF - International Federation of Film Producers Associations

IFTA – Independent Film & Television Alliance

IVF – International Video Federation

Mediapro

MPA – Motion Picture Association

SPIO – Spitzenorganisation der Filmwirtschaft e.V.

SROC - Sports Rights Owners Coalition

UNIC - International Union of Cinemas

VAUNET – Verband Privater Medien e.V.

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