



February 11, 2022

Sent via email

Mr. Christophe Kiener
Acting Director, Asia (I), Services and Digital Trade, Investment and Intellectual Property
DG TRADE, European Commission

Mr. Carlo Pettinato
Head of Unit, Investment, and Intellectual property,
DG TRADE, European Commission

Re: CCIA's submission to the European Commission's 2022 Counterfeit and Piracy Watch List

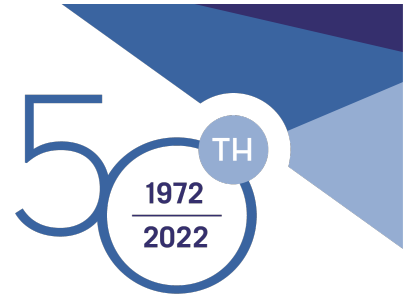
Dear Mr. Kiener,
Dear Mr. Pettinato,

On behalf of the Computer & Communications Industry Association (CCIA Europe), I respectfully submit the comments below in support of DG Trade's work on the Counterfeit and Piracy Watch List. CCIA Europe represents European and international technology products and services providers of all sizes, including computer hardware and software, electronic commerce, social media, telecommunications, and Internet products and services. CCIA members together employ 1.6 million workers.

Thank you for considering our comments. We would be pleased to provide additional information and to meet with your services if useful.

Kind regards,

Christian Borggreen
Vice President & Head of Office
Computer & Communications Industry Association (CCIA Europe)
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CCIA's submission to the European Commission's 2022 Counterfeit and Piracy Watch List

I. Introduction

While over 90% of all goods in the EU are sold offline, the share of e-commerce retail sales has been steadily rising over the past decade and the COVID-19 crisis has accelerated this trend. European citizens increasingly shop online and from other countries. In 2020, 73% of European Internet users shopped at least once online, while 31% of e-shoppers bought or ordered goods from sellers in other EU countries.¹ The most popular type of goods and services purchased online remain clothes (including sports goods), shoes or accessories (63% of e-shoppers).² Small and medium-sized enterprises (SMEs), as well as micro-businesses, are largely benefiting from this growth: 17.5% of European SMEs sell online, amounting to 11.7% of their turnover in 2020.³

According to the Organisation for Economic Co-operation and Development (OECD) and the EU's Intellectual Property Office (EUIPO), the "total trade in counterfeit and pirated goods destined to the EU amounted to as much as USD 134 billion (EUR 119 billion)" in 2019, implying "that as much as 5.8% of EU imports were in counterfeit and pirated products".⁴ Importantly, they note that the COVID-19 crisis has affected trade in fake goods with an impact "smaller than initially expected".⁵ The prevention of infringements of intellectual property rights (IPR) nonetheless, remains crucial. In that regard, CCIA Europe has welcomed⁶ the European Commission's Action Plan on Intellectual Property.⁷ CCIA members value intellectual property protection and have continuously devoted significant resources to develop processes, programs, and tools to address counterfeit and online piracy.

II. Current Practices to Address Counterfeits and Piracy Online

Online marketplaces and other e-commerce services are working continuously to ensure their users' trust and protection in their platforms. The challenge of online sale of counterfeit and pirated goods is a serious issue that CCIA Europe's members have tackled through significant investments.

¹ Eurostat, e-commerce statistics for individuals, consulted on 25 January 2022, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=E-commerce_statistics_for_individuals

² Idem

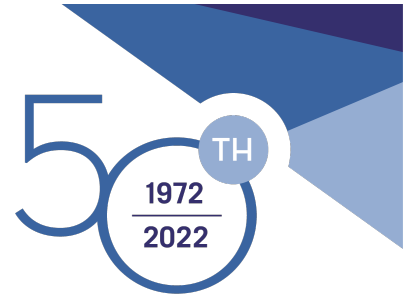
³ European Commission, Digital Economy and Society Index (DESI) 2021, Nov. 12, 2021, available at: <https://digital-strategy.ec.europa.eu/en/policies/desi>

⁴ OECD/EUIPO, Global Trade in Fakes: a Worrying Threat, OECD Publishing, June 22, 2021, available at: <https://www.oecd.org/publications/global-trade-in-fakes-74c81154-en.htm>

⁵ Idem

⁶ CCIA, Feedback on the European Commission's roadmap on the Intellectual Property Action Plan, Aug. 13, 2020, <https://www.cciagnet.org/wp-content/uploads/2020/09/2020-08-13-CCIAs-Feedback-on-the-ECs-IP-Action-Plan-Roadmap.pdf>

⁷ European Commission, Action Plan on Intellectual Property, Nov. 25, 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2187



A. Online marketplaces and other e-commerce services

Online services engage with rightsholders and brand owners extensively and have established programs that encourage information sharing between stakeholders that allow online services to identify and remove counterfeit and pirated goods from their platforms. A collaborative approach that continues to bring together brand owners, online services, and policymakers will make these efforts most effective. The EU [Memorandum of Understanding on the sale of counterfeit goods on the Internet](#), in place since 2011, is a successful example of collaboration that contributes to reducing counterfeits online. The work in the EUIPO, such as the [Expert Group on cooperation with intermediaries](#), or the project [Enhancing IP Protection on e-Commerce marketplaces](#) are other examples of the ongoing efforts of all the stakeholders. During the COVID-19 crisis, several online platforms collaborated with the Commission and national consumer protection authorities to act rapidly to fight scams related to the pandemic.⁸ We request that the 2022's Commission Watch List on Piracy and Counterfeit take stock of existing policies, procedures, or best practices that have been effective in curbing the importation and sale of counterfeit and pirated goods, including those applied by online marketplaces.

Online marketplaces and other e-commerce services have already taken measures, such as:⁹

- **Brand registration programs:** E-commerce-focused firms allow trademark or brand owners to voluntarily enroll in brand registration programs, which allow the service to better utilize automated tools to identify and remove confirmed counterfeit products.¹⁰ Through enrollment, the owners provide relevant information to the service about their products that better enables the service to proactively address counterfeits.
- **Simplified notice and removal procedures:** Online services have worked to make their reporting processes as efficient and easy as possible to facilitate the swift removal of content that violates company policy.¹¹ Many online services have developed online tools providing verified rightsholders priority access to tools for expeditiously flagging and removing potentially infringing products.¹² Other services have adapted their tools and procedures together with national authorities.¹³

⁸ European Commission, Scams related to COVID-19, available at: https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/scams-related-covid-19_en

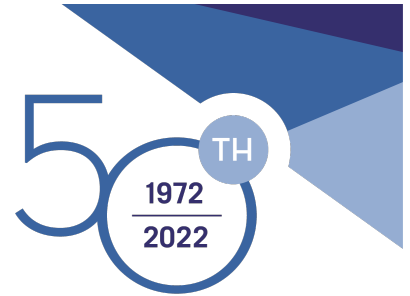
⁹ This is an illustrative list and does not purport to identify all tools and programs utilized by Internet and e-commerce services. Nor does it suggest that all services utilize every practice listed. Business models of all online services vary greatly across platforms.

¹⁰ See Amazon Brand Registry, <https://brandservices.amazon.com/>; eBay Verified Rights Owners Program (VeRO), <https://pages.ebay.com/seller-center/listing-and-marketing/verifiedrights-owner-program.html>

¹¹ See generally Facebook Help Center, What is a Counterfeit?, <https://www.facebook.com/help/962020680598166>; Google Ads, Counterfeit Policy, <https://support.google.com/adspolicy/answer/176017>; Google Shopping, Counterfeit Policy, <https://support.google.com/merchants/answer/6149993>

¹² See, Meta for Business, Introducing Brand Rights Protection: Helping Protect Brands and Consumers from Counterfeits, Oct. 21, 2021, available at: <https://www.facebook.com/business/news/introducing-brand-rights-protection-helping-protect-brands-and-consumers-from-counterfeits>

¹³ See Amazon, How we are protecting Italian artisanal food and wine and ensuring a safe shopping experience, Oct. 29, 2021, available at: <https://blog.aboutamazon.eu/supporting-small-businesses/how-we-are-protecting-italian-artisanal-food-and-wine-and-ensuring-a-safe-shopping-experience>



- **Collaboration with brand owners:** Online services work with brand owners and rightsholders through expanded programs that build upon tools like brand registration. For example, some programs grant more control to trusted and verified brand owners regarding the identification and removal of counterfeit goods.¹⁴ Tools like “product serialization” have also recently been introduced, which allow manufacturers to attribute a unique code to each product which is then verified by the online marketplace intermediary to confirm authenticity.¹⁵
- **Transparency reports and information sharing:** Some services release reports regularly that detail removals on counterfeits, in addition to takedowns related to copyright and trademark claims and takedowns undertaken proactively.¹⁶
- **Trust and certification programs:** Some services utilize certification and other indicator schemes that indicate to a user whether a seller has a history of customer satisfaction and complying with online services’ policies.¹⁷ Consumer reviews are also widely used.
- **Other collaborative proactive measures:** In enforcing their strict prohibitions against counterfeiting, in many cases, platforms will take more extensive action than merely removing content that is specifically reported to them. Many are exploring ways to remove additional suspected counterfeit content on a proactive basis, implement repeat infringer policies and additional measures aimed at tackling recidivism, and develop machine learning tools to identify and remove content.¹⁸
- **User education:** Online services provide information to users regarding counterfeits and intellectual property to help them avoid searching for, posting, or sharing content that violates terms of service.¹⁹ Online services also encourage law enforcement agencies, rights owners, and consumer protection organizations to directly educate users by creating participant profile pages and public service campaigns.
- **Coordination with law enforcement:** Many online services closely coordinate with domestic and international law enforcement agencies to better identify bad actors and to prevent illegal or infringing practices.²⁰

¹⁴ See Amazon, Project Zero, <https://brandservices.amazon.com/projectzero>; Dharmesh M. Mehta, Amazon Project Zero, DAY ONE, Feb. 28, 2019, <https://blog.aboutamazon.com/companynews/amazon-project-zero>; Case study: Project Zero offers an anti-counterfeit solution for Arduino’s many markets, <https://brandservices.amazon.com/projectzero/case-studies/arduino>

¹⁵ Dharmesh M. Mehta, Amazon Project Zero, Day One, Feb. 28, 2019, <https://blog.aboutamazon.com/company-news/amazon-project-zero>. See also Amazon, Transparency, Frequently Asked Questions, <https://brandservices.amazon.com/transparency/faq>

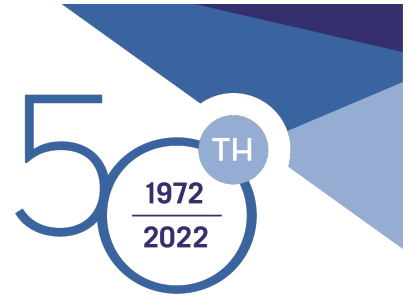
¹⁶ See, e.g., Facebook, Transparency Report: Intellectual Property 2021, available at <https://transparency.fb.com/data/intellectual-property/>; Google, How Google Fights Piracy, 2018, available at: https://storage.googleapis.com/gweb-uniblog-publish-prod/documents/How_Google_Fights_Piracy_2018.pdf; Amazon, Brand Protection Report, May 2021, available at: <https://www.aboutamazon.com/news/company-news/amazon-brand-protection-report>

¹⁷ See eBay Top Rated Program, available at: <https://pages.ebay.com/seller-center/service-and-payments/top-ratedprogram.html#what-is-top-rated-prog>

¹⁸ See Meta, How We’re Proactively Combating Counterfeits and Piracy, May 19, 2021, available at: <https://about.fb.com/news/2021/05/how-were-proactively-combating-counterfeits-and-piracy/>

¹⁹ See Comments to Dep’t of Commerce, In Re Comment Request: Report on the State of Counterfeit and Pirated Goods Trafficking and Recommendations, filed July 29, 2020, available at: <https://www.cciainet.org/wpcontent/uploads/2019/07/DOC-2019-0003-0001-CCIA-Comments-Counterfeiting-Pirated-Goods-TraffickingReport.pdf>

²⁰ In 2020, Amazon launched the Counterfeit Crimes Unit (CCU) to help hold counterfeiters accountable through the courts and law enforcement. See Amazon, A Blueprint for Private and Public Sector Partnership to Stop Counterfeiters, Oct. 18, 2021, available at: <https://www.aboutamazon.com/news/policy-news-views/a-blueprint-for-private-and-public-sector-partnership-to-stop-counterfeiters>



The tools listed above are often accompanied by processes to address abuses, as well as appeals procedures for sellers and users to register complaints and contest removals. Not all tools will be effective or relevant for all online services; there should be flexibility to develop appropriate measures targeted to the issues or problems observed as business models of online services vary greatly across platforms.

B. Internet infrastructure service providers

Internet infrastructure services generally have no control over the content of websites using their services. In the case of a reverse proxy service, for example, the service provider's Internet Protocol addresses may appear in WHOIS and DNS records²¹ for websites using its services and, as such, they can be erroneously characterized by stakeholders as a hosting provider. However, reverse proxy services do not host the websites and therefore cannot remove their content from the Internet. Many of these types of service providers — including Content Distribution Networks (CDNs), security providers, and Virtual Private Networks (VPNs) — follow a similar model of routing Internet queries to locations other than the original host to improve security and privacy.

Internet infrastructure providers do, however, engage in good faith efforts to assist rightsholders with complaints about alleged intellectual property infringements, by facilitating communication between rightsholders and the hosting providers and websites operators who are able to address their complaints.²² Typically, Internet infrastructure providers would put in place an abuse reporting process designed for this purpose. This enables rightsholders to have a way to report alleged infringement to those with the capability to remove the content from the web (i.e. hosting service providers and/or owners of the domain in question). There are often also additional pathways available through Trusted Reporter Programmes.

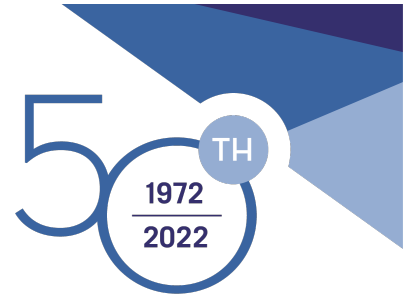
It is also often the case that intellectual property rightsholders use the services of Internet infrastructure providers such as cybersecurity companies to secure their sites from data scraping and cyberattacks. In this way, Internet infrastructure providers can assist intellectual property rightsholders in other risk areas within their core competence.

III. Recommendations

As the European Commission considers possible recommendations for action to further address the sale of counterfeits and pirated goods online, CCIA Europe encourages the Commission to build on existing measures and prioritize enforcement against bad actors that target customers, brands, and services providers alike.

²¹ WHOIS is a widely used Internet record listing that allows the identification of the domain owner. DNS (Domain Name System) translates domain names to IP addresses so browsers can load Internet resources.

²² See Cloudflare, Our approach to abuse, available at: <https://www.cloudflare.com/trust-hub/abuse-approach/> and Assisting copyright holders, available at: <https://www.cloudflare.com/fr-fr/trust-hub/assisting-copyright-holders/>



When considering Internet services and business models that exist in the ecosystem there needs to be a clear understanding of the capabilities and role of each online service and the EU legal framework that exists in terms of addressing illegal content such as counterfeit goods and online piracy. An Internet infrastructure business, for example, has different capabilities and responsibilities than a marketplace or an online platform, as these technical services do not have control over online content or the online sale of goods. The first point of call for tackling illegal content or counterfeit goods should therefore be those services that can take the most proportionate action by removing specific pieces of content from the Internet. There is also a diversity of business models within marketplaces, acting as an intermediary, retailer, a mix of both, or even as an e-commerce infrastructure service. Therefore, there is no one-size-fits-all solution. The European Commission should take into account the processes available and indeed frequently used by rightsholders, which would result in an accurate and balanced report.

CCIA Europe notes that the ongoing and upcoming transformation of the legislative landscape will impact the online economy, the e-commerce sector, and the fight against piracy and counterfeiting. The Digital Services Act²³, currently under negotiations between the Council of the EU and the European Parliament, will set out a new framework to counter illegal goods online, including counterfeited ones. The upcoming EU toolbox against counterfeiting²⁴ aims to clarify the responsibilities of rightsholders, intermediaries, and public authorities, as well as encourage the use of new technologies. In that regard, the ongoing cooperation of stakeholders, notably within the EUIPO, should be considered in the report.

CCIA Europe also urges consideration of the impact that some mandated requirements would have on smaller platforms. Today, around 10,000 online platforms are operating in Europe, “over 90% of which are small and medium-sized enterprises”.²⁵ While leading services have built out substantial programs, mandating that these practices are adopted by all online platforms would have significant consequences for smaller competitors. The EU’s ambition should aim at addressing the root causes and bad actors of counterfeit and pirated goods in addition to identifying large actors and marketplaces. If the measures are concentrated too much on marketplaces, an unintended consequence could be the migration of illegal content and goods to smaller, less regulated platforms and networks.

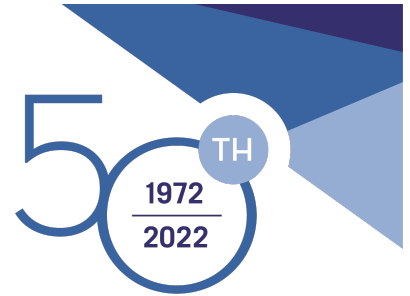
Priority should also be on supporting SMEs to better protect their intellectual property. The European Commission has rightly pointed out in its Action Plan on Intellectual Property that boosting the uptake of intellectual property by SMEs was a priority.²⁶ While less than 9% of small European businesses own intellectual property rights, the firms that do have 68% more revenue per employee than firms that

²³ European Commission, Proposal for a Regulation on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, 15 December 2020, available at: <https://eurlex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFI.N>

²⁴ European Commission, EU toolbox against counterfeiting, available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12915-EU-toolbox-against-counterfeiting_en

²⁵ European Commission, Europe fit for the Digital Age: new online rules for platforms, available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment/europe-fit-digital-age-new-online-rules-platforgraphicalms_en

²⁶ European Commission, Action Plan on Intellectual Property, op. cit.



do not.²⁷ Online marketplaces and other e-commerce services have started to build programs to support SMEs.²⁸ Increasing the knowledge of European SMEs of their intellectual property rights will support the overall fight against counterfeiting.

On small shipments, a comprehensive data tracking system for the postal channel could help identify counterfeits for all packages shipped to Europe. The OECD report on the E-Commerce Challenges in Illicit Trade in Fakes pointed out that “problems are seen as most pronounced in goods moving through postal channels, given the difficulties in screening the huge volume of small parcels and letter packets moving within and across borders and the limited or misleading information that can be provided on the content of parcels and packets”.²⁹ Reviewing the adequacy of information on small shipments and engaging with postal services are identified as important issues to be tackled by governments. For instance, as part of the seizures procedures, authorities could share tracking codes or order numbers as it could help particular parts of the supply chain to connect information that may not be matching other data like names and addresses that are presented on customs papers.

Given that over 90% of all goods in the EU are still sold offline, the fight against counterfeit and piracy should be specific to the channel but take into account the important offline dimension of the supply chain. Bad actors need to be deterred by law enforcement actions. IP crime became one of the ten priorities of the European multidisciplinary platform against criminal threats (EMPACT) for its 2022-2025 policy cycle.³⁰ Counterfeit and piracy online are tackled by the serious and organised crime threat assessment (SOCTA) report, developed by Europol, which comprises a set of recommendations based on an in-depth analysis of the major crime threats facing the EU.³¹

The EUIPO and OECD work on quantification and evidence on counterfeiting and piracy is an important contribution to the wider understanding of the need to prioritize actions in this field. The inherent limitations in the data sets are noted in the reports but are often not clear to this wider audience. We encourage the Commission to make these clear in all of their reports including the Watch List. For example, the OECD and EUIPO estimate that “in 2019, imports of counterfeit and pirated products into the EU amounted to as much as EUR 119 billion (USD 134 billion), which represents up to 5.8 % of EU imports.”³² As described above, we recognize the seriousness of the issue. However, we are concerned

²⁷ EUIPO/EPO, Intellectual property rights and firm performance in Europe: an economic analysis, Feb 2021, available at: <https://www.epo.org/news-events/news/2021/20210208.html>

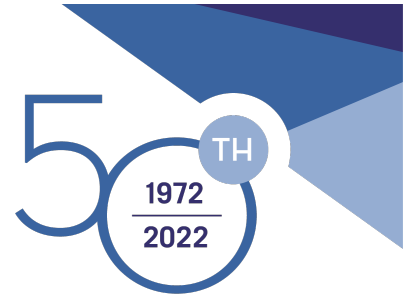
²⁸ See e.g. Amazon, Amazon Launches IP Accelerator in Europe to Help Small Businesses Protect Their Brands and Tackle Counterfeit, Nov. 25, 2020, available at: <https://press.aboutamazon.com/news-releases/news-release-details/amazon-launches-ip-accelerator-europe-help-small-businesses>

²⁹ OECD, E-Commerce Challenges in Illicit Trade in Fakes: Governance Frameworks and Best Practices, Illicit Trade, OECD Publishing, Paris, Dec. 13, 2021, available at: <https://www.oecd.org/gov/e-commerce-challenges-in-illicit-trade-in-fakes-40522de9-en.htm>

³⁰ Council of the European Union, Council conclusions setting the EU's priorities for the fight against serious and organised crime for EMPACT 2022 - 2025, May 12, 2021, available at: <https://data.consilium.europa.eu/doc/document/ST-8665-2021-INIT/en/pdf>

³¹ Europol, European Union Serious and Organised Crime Threat Assessment (SOCTA) 2021, Dec. 7, 2021, available at: <https://www.europol.europa.eu/publication-events/main-reports/european-union-serious-and-organised-crime-threat-assessment-socta-2021#downloads>

³² OECD/EUIPO, Global Trade in Fakes: a Worrying Threat, op. cit., p.9



that the value of IP infringement should not be based on the ‘estimated retail value of the genuine product’, but on the ‘estimated retail value of the fake’. As EUIPO notes, the current system “may lead to inflated estimated values of the goods detained, compared to alternative methods for valuing them. Indeed, in these subcategories (e.g. luxury watches), the retail price of the genuine good is much higher than that of, for instance, the fake product in the secondary markets or than, alternatively, its cost.”³³ Variations in the volumes of luxury items seized will then affect year-on-year percentage changes when based on these values. This is not to minimize the issue. As these issues take more prominence, it becomes more important to highlight the caveats, including that this data covers all IP infringements, not purely “fakes”.

Finally, it is essential that in outlining the state of play on activity to address counterfeit and piracy online, due diligence forms part of the data collection and reporting process, in order to ensure accuracy.

We support the European Commission’s ongoing efforts to tackle counterfeit and piracy online and believe that such work should remain evidence-based and non-political. To provide further technical explanations of the current ecosystem, CCIA Europe and its members stand ready to engage in good faith with the Commission and other stakeholders to ensure that the final report stands up to scrutiny.

³³ EUIPO, EU enforcement of intellectual property rights, Overall results of detentions 2019, June 25, 2021, p.12, available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021 Enforcement IP Detencions/2021 Report on over all EU detentions during 2019 FullR en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021%20Enforcement%20IP%20Detencions/2021%20Report%20on%20over%20all%20EU%20detentions%20during%202019%20FullR%20en.pdf)