

## Counterfeit and Piracy Watch List

# CCIA's submission to the European Commission's 2024 Consultation

August 2024

## Introduction

The increasing trend of European citizens shopping online and from other countries is confirmed every year. In 2023, 70% of European Internet users shopped at least once online, while 13% of e-shoppers bought or ordered goods from sellers outside of the EU. The most popular type of goods and services purchased online is still clothes (including sports goods), shoes or accessories (44% of e-shoppers).<sup>1</sup> Small and medium-sized enterprises (SMEs), as well as micro-businesses, are largely benefiting from this growth: more than 19% of European SMEs sell online, amounting to almost 12% of their turnover in 2023.<sup>2</sup>

According to the latest study available from 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".<sup>3</sup> Importantly, they note that the COVID-19 crisis has affected trade in fake goods with an impact "smaller than initially expected". The prevention of infringements of intellectual property rights (IPR) nonetheless, remains crucial.

In that regard, CCIA Europe supported the European Commission's Action Plan on Intellectual Property and welcomed the subsequent adoption of the Recommendation to combat illegal streaming of live events<sup>4</sup> and the Toolbox to combat counterfeiting and enhance the enforcement of intellectual property rights across Europe<sup>5</sup>. CCIA Europe members value intellectual property protection and have continuously devoted significant resources to developing processes, programs, and tools to address counterfeit and online piracy.

With this submission to the European Commission's public consultation on the Counterfeit and Piracy Watch List, CCIA Europe would like to present the ongoing practices of the industry to fight counterfeiting and piracy online, and propose recommendations moving forward.

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<sup>1</sup> Eurostat, e-commerce statistics for individuals, consulted on 01 July 2024, available [here](#).

<sup>2</sup> European Commission, Digital Economy and Society Index (DESI) 2024, consulted on 01 July 2024, available [here](#).

<sup>3</sup> OECD/EUIPO, Global Trade in Fakes: a Worrying Threat, OECD Publishing, June 22, 2021, available [here](#).

<sup>4</sup> CCIA Europe's feedback – Call for evidence combating online piracy of live content, 15 February 2023, available [here](#).

<sup>5</sup> CCIA Europe, Press release: EU Anti-Counterfeiting Toolbox Recognises Tech Industry's Good Practices, 19 March 2024, available [here](#).

# I. 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. Online marketplaces and other e-commerce services

Online services extensively engage with rights holders and brand owners 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.<sup>6</sup> The work in the EUIPO Observatory, such as the Expert Group on cooperation with intermediaries or the Working Group on IP in the Digital World<sup>7</sup>, as well as the IP Enforcement Portal<sup>8</sup>, are also notable examples of the continued efforts of tech companies to collaborate in fighting online counterfeiting.

This is why we ask that the 2025 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:<sup>9</sup>

- **Brand registration programs:** E-commerce-focused firms allow trademark or brand owners to voluntarily enrol in brand registration programs, which allow the service to better utilise automated tools to identify and remove confirmed counterfeit products.<sup>10</sup> 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

<sup>6</sup> European Commission, Memorandum of understanding on the sale of counterfeit goods on the internet, consulted on 01 July 2024, available [here](#).

<sup>7</sup> EUIPO, Observatory network, consulted on 01 July 2024, available [here](#).

<sup>8</sup> EUIPO, IP Enforcement Portal, consulted on 01 July 2024, available [here](#).

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

<sup>10</sup> See Amazon Brand Registry, available [here](#); eBay Verified Rights Owners Program (VeRO), available [here](#).

removal of content that violates company policy.<sup>11</sup> Companies comply with requisite obligations under current EU law regarding trademarks and content,<sup>12</sup> and many online services exceed these obligations with online tools providing verified rights holders priority access to tools for expeditiously flagging and removing potentially infringing products.<sup>13</sup> Other services have adapted their tools and procedures together with national authorities.<sup>14</sup>

- **Collaboration with brand owners:** Online services work with brand owners and rights holders 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.<sup>15</sup> Tools like “product serialisation” 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.<sup>16</sup> Additionally, some online services engage regularly with rights holders and brands to share insights that can improve enforcement and pilot new technologies.<sup>17</sup>
- **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.<sup>18</sup>
- **Trust and certification programs:** Some services utilise 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.<sup>19</sup> 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.<sup>20</sup> Beyond such proactive measures online, platforms and brand owners are also

<sup>11</sup> Examples include YouTube’s Content ID and Copyright Match Tool, Google’s Trusted Copyright Removal Program, Meta’s Rights Manager and Brand Rights Protection, and Pinterest’s Content Claiming Portal

<sup>12</sup> See generally Facebook Help Center, What is a Counterfeit?, available [here](#); Google Ads, Counterfeit Policy, available [here](#); Google Shopping, Counterfeit Policy, available [here](#).

<sup>13</sup> See, e.g., Meta Brand Rights Protection, available [here](#).

<sup>14</sup> See Amazon, How we are protecting Italian artisanal food and wine and ensuring a safe shopping experience, Oct. 29, 2021, available [here](#).

<sup>15</sup> See Amazon, Project Zero, available [here](#); Dharmesh M. Mehta, Amazon Project Zero, Day One, Feb. 28, 2019, available [here](#); Chaim Gartenberg, Amazon’s Project Zero Will Let Brands Remove Counterfeit Listings of Their Products, The Verge Feb. 28, 2019, available [here](#); Meta, Brand Rights Protection, available [here](#).

<sup>16</sup> Dharmesh M. Mehta, Amazon Project Zero, Day One, Feb. 28, 2019, available [here](#). See also Amazon, Transparency, Frequently Asked Questions, available [here](#).

<sup>17</sup> See Amazon, Brand Protection Report, available [here](#).

<sup>18</sup> See, e.g., Meta, 2022 Transparency Report: Intellectual Property, available [here](#); Google, How Google Fights Piracy (2018), available [here](#).

<sup>19</sup> See eBay Top Rated Program, available [here](#).

<sup>20</sup> See, e.g., Meta, How Meta Helps Protect Against Counterfeits, available [here](#).

joining forces to take action against counterfeiters in the real world, including by filing joint litigations against these bad actors.<sup>21</sup>

- **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.<sup>22</sup> Online services also encourage law enforcement agencies, rights owners, and consumer protection organisations 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.<sup>23</sup>

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.

## 2. 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 records<sup>24</sup> for websites using its services and, as such, they can be erroneously characterised 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 rights holders with complaints about alleged intellectual property infringements, by facilitating communication between rights holders and the hosting providers and website operators who are able to address their complaints.<sup>25</sup> Typically, Internet infrastructure providers would put in place an abuse reporting process designed for this purpose. This enables rights holders 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.

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<sup>21</sup> See, e.g., Meta Newsroom, Facebook and Gucci File Joint Lawsuit Against International Counterfeiter, available [here](#).

<sup>22</sup> See, e.g., Facebook IP Help Center, available [here](#); Meta, UNIFAB, ALPA and Meta Launch a Public Awareness Campaign on the Internet Against Counterfeiting and Piracy, available [here](#).

<sup>23</sup> See Amazon, A Blueprint for Private and Public Sector Partnership to Stop Counterfeiters, Oct. 18, 2021, available [here](#).

<sup>24</sup> 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.

<sup>25</sup> See Cloudflare, Our approach to abuse, available [here](#) and Assisting copyright holders, available [here](#).

It is also often the case that intellectual property rights holders 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 rights holders in other risk areas within their core competence.

## II. Recommendations to enhance the fight against counterfeiting and piracy

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 prioritise enforcement against bad actors that target customers, brands, and service providers alike, based on the existing measures and rules available in EU law. The following recommendations could support the European Commission's assessment of the overall counterfeiting and piracy landscape when preparing the next edition of the Watch List.

### 1. Account for the specific issues of online counterfeiting and piracy

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. This is also a principle that has been confirmed by the Digital Services Act (DSA).<sup>26</sup> 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. This need for a nuanced approach based on business models was well-reflected in the EU Anti-Counterfeiting Toolbox, which detailed recommendations by type of stakeholder. 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 DSA, which has been in full force since February 2024, is setting out a new framework to counter illegal goods online, including counterfeited ones. The implementation of the DSA is still ongoing as the European Commission progressively provides necessary secondary legislation and Member States designate and empower national authorities. The recent EU Anti-Counterfeiting Toolbox builds on the DSA and other legislative frameworks to offer a targeted response to this issue based on the enforcement and coordination of existing tools. In that regard, the ongoing cooperation of stakeholders, notably within the EUIPO and its Observatory, should be considered in the next Watch List.

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<sup>26</sup> Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), available [here](#).

The Commission's Recommendation on combating online piracy of sports and other live events, by identifying the applicable EU law toolbox for dealing with piracy of online content, offers an important opportunity to stress to EU Member States and market players that any tools should be deployed transparently and with appropriate due process and accountability. Effectively dealing with piracy of live events will depend on multiple solutions being deployed simultaneously, while avoiding methods that lead to unintentional harm or unrelated outages for Internet users. CCIA Europe notes in that regard reports<sup>27</sup> describing the negative effects of Italy's so-called "Piracy Shield" which led to the overblocking of a large number of legitimate websites when a shared IP address owned by cybersecurity company Cloudflare was blocked using an automated system that involved no meaningful government or judicial review.

CCIA Europe would also urge consideration of the unintended impacts of some mandated requirements in EU law to fight piracy and counterfeiting on the overall dissemination of this illegal content. Leading services have built out substantial programs, as described above. However, out of the 10,000 online platforms operating in Europe, "over 90% of which are small and medium-sized enterprises"<sup>28</sup>, which are not able to implement stringent obligations or are exempted by law. The EU's ambition should aim to address the root causes and bad actors of counterfeit and pirated goods in addition to seeking the collaboration of large actors and marketplaces. If the measures are concentrated too much on the very large actors, the migration of illegal content and goods to smaller, less regulated platforms and networks could defeat the purpose of IP protection policies.

Given that over 90% of all goods in the EU are still sold offline, the fight against counterfeiting 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.<sup>29</sup> IP crime should remain a priority in the next cycle. 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.<sup>30</sup>

## 2. Consider all stakeholders in the value chain

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, as well as other international organisations.<sup>31</sup> While less than 9% of small European businesses own intellectual property rights, the firms that do have 68% more revenue per employee than

<sup>27</sup> TorrentFreak, Piracy Shield Cloudflare Disaster Blocks Countless Sites, Fires Up Opposition, Feb. 26, 2024, available [here](#).

<sup>28</sup> European Commission, Europe fit for the Digital Age: new online rules for platforms, available [here](#).

<sup>29</sup> 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 [here](#).

<sup>30</sup> Europol, European Union Serious and Organised Crime Threat Assessment (SOCTA) 2021, Dec. 7, 2021, available [here](#).

<sup>31</sup> OECD, Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms Illicit Trade, OECD Publishing, Paris, Jan. 31, 2023, available [here](#).



firms that do not.<sup>32</sup> Online marketplaces and other e-commerce services started building programs to support SMEs.<sup>33</sup> Increasing the knowledge of European SMEs of their intellectual property rights will support the overall fight against counterfeiting, as pointed out by the EUIPO through its initiatives to support SMEs.

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”.<sup>34</sup> 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 seizure 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 match other data like names and addresses that are presented on customs papers.

### 3. Continue gathering accurate data to quantify the issues

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 prioritise actions in this field. An update of the data presented in the “Global Trade in Fakes: a Worrying Threat” report from 2021 would be a useful contribution to the wider discussion on counterfeiting and the preparation of the Watch List.

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. 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.” As described above, we recognize the seriousness of the issue. However, we are concerned 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 or bags), 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.”<sup>35</sup> 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 minimise the issue.

<sup>32</sup> EUIPO/EPO, Intellectual property rights and firm performance in Europe: an economic analysis, Feb. 2021, available [here](#).

<sup>33</sup> See e.g. Amazon Launches IP Accelerator in Europe to Help Small Businesses Protect Their Brands and Tackle Counterfeit, Nov. 25, 2020, available [here](#).

<sup>34</sup> OECD, E-Commerce Challenges in Illicit Trade in Fakes: Governance Frameworks and Best Practices, Illicit Trade, OECD Publishing, Paris, Dec. 13, 2021, available [here](#).

<sup>35</sup> EUIPO, EU enforcement of intellectual property rights, Overall results of detentions 2019, June 25, 2021, p.12, available [here](#).

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 counterfeiting and piracy online, due diligence forms part of the data collection and reporting process, in order to ensure accuracy.

## Conclusion

We support the European Commission’s ongoing efforts to tackle counterfeiting 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 next edition of the Counterfeit and Piracy Watch List stands up to scrutiny.



## About CCIA Europe

The Computer & Communications Industry Association (CCIA) is an international, not-for-profit association representing a broad cross section of computer, communications, and internet industry firms.

As an advocate for a thriving European digital economy, CCIA Europe has been actively contributing to EU policy making since 2009. CCIA's Brussels-based team seeks to improve understanding of our industry and share the tech sector's collective expertise, with a view to fostering balanced and well-informed policy making in Europe.

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