

Brussels, 15 December

European high-end industries warn against the DSA's lack of ambition in addressing online counterfeiting

ECCIA, European Cultural and Creative Industries Alliance, welcomes the DSA's ambition to foster innovation and competitiveness of the European online environment. However, we are concerned that the European Commission's proposal lacks the ambition to meaningfully curb the proliferation of illegal goods online.

While we are pleased by the introduction of the extension of the scope of the DSA to seller established outside the EU, increased seller identification requirements, the harmonisation of notice and action procedures, and increased transparency obligations for online intermediaries, we believe the DSA proposal lacks the following essential elements:

- **The introduction of a so-called "staydown" principle:** right holders' and enforcement authorities' efforts to remove illegal goods are severely undermined by the almost-instantaneous reappearance of removed listings. Without an obligation for online intermediaries to prevent the reappearance of identical and equivalent illegal listings on their platform, any increased notice and takedown efforts will remain virtually useless;
- **An obligation for online intermediaries to proactively detect and remove illegal goods:** the fight against counterfeiting is increasingly becoming one of consumer protection. Therefore, the primary objective should be to prevent illegal and potentially dangerous goods from reaching consumers in the first place. Therefore, the DSA's approach to merely incentivise online intermediaries to act proactively is insufficient, because it will not create any obligation for less virtuous online players to start acting responsibly. As a result, it will increase the commercial disincentive to act, as illegal goods removed from proactive online intermediaries will financially benefit their less virtuous competitors;
- **Clarification of the scope of the liability exemption:** the DSA does not clarify which actors, or more accurately which types of behaviour, fall under the scope of the e-commerce directive's exemption of liability. As a result, we believe that some online intermediaries will continue to claim this exemption, despite their active content moderation practices. Instead, we believe such an exemption should be earned rather than granted. In order to qualify for an exemption of liability, online intermediaries should demonstrate their ability to identify their sellers, as well as their proactive efforts to protect consumers from illegal goods.

Andreas Kaufmann, President of ECCIA, reacted to the publication of the DSA: *“As the European high-end companies continue to invest heavily in the development of their e-commerce activities, the creation of a safe and trusted digital ecosystem is a key prerequisite for them to match the customer experience and selling environment we offer to our customers in the physical world”*. He added: *“Guaranteeing the authenticity of our products online is a key concern. We welcome the Commission’s recognition of the importance of addressing online counterfeiting through the DSA. However, we believe more should be done to meaningfully address the worrying growth of this phenomenon, both in size and in scope”*.

ECCIA and its members look forward to engaging with the European Parliament and Council to further strengthen the DSA’s ambition to protect European consumers from the dangers of counterfeiting and to create a level-playing field for Europe’s innovative and legitimate businesses.

Counterfeiting: key figures

- Counterfeit products represent 6,8% of all imports into the EU, a total value of \$134 billion (Source: OECD);
- Just looking at 9 economic sectors, the EUIPO estimates a loss of 760 000 direct and indirect jobs due to IPR infringement, as well as a loss of € 14.57 billion for EU governments in taxes and social contributions (Source: EUIPO);
- According to a recent EUIPO report, 97% of recorded dangerous counterfeit goods were assessed as posing a serious risk. Toys are the most popular type of product followed by clothing, textiles and fashion items;
- In 2016, nearly a quarter of online consumers unknowingly bought fake goods (Source: Markmonitor)

About ECCIA:

The European Cultural and Creative Industries Alliance (ECCIA) is composed of six European cultural and creative industries organisations - Altagamma (Italy), Circulo Fortuny (Spain), Comité Colbert (France), Gustaf III Komitté (Sweden), Meisterkreis (Germany) and Walpole (UK) - who between them represent over 600 brands and cultural institutions. www.eccia.eu

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