

EC recommendation to tackle illegal content online a welcome step in the right direction

“This is a symbolic gesture which paves the way for meaningful action on illegal content online. Protecting viewers effectively requires take down and stay down measures. More transparency, responsibility and receptiveness is required from platforms to tackle the issues at hand. Right now platforms are reaping huge rewards from their unregulated businesses and asking society to pay the cost. Europe deserves better.”

Grégoire Polad, ACT, Director General

BRUSSELS, 1 MARCH 2018. The Association of Commercial Television in Europe (ACT) welcomes the publication of the European Commission’s Recommendation on measures to effectively tackle illegal content online.

The recognition by the Commission that not only content inciting terrorism needs to be tackled, but also all sorts of illegal content, sends a positive signal to the entire European creative sector. Reinforcing responsibility towards citizens and guaranteeing a fair business environment is the precondition for a thriving European digital economy.

The Recommendation rightly proposes legislative action in future if platforms do not take down illegal content quickly and effectively on a voluntary basis. It is therefore in their interests to make significant improvements to their processes within the next six months.

It is also important to recall the Commission’s September 2017 Communication on [Tackling Illegal Content Online](#), which also highlighted all types of illegal content including violations of copyright protected works. To some extent this went further than the new Recommendation. As Agnieszka Horak, ACT Director of Legal and Public Affairs, points out:

“More balance needs to be ensured between the parties concerned. The burden to provide data for right holders should be reasonable and proportionate. Notice mechanisms should deliver faster take down of illegal content rather than frustrate it. Automated detection technologies should be mandatory across all illegal content. Establishing who is a trusted flagger should be based on objective criteria rather than left to the sole judgement of online intermediaries - which are not mere hosting service providers as incorrectly inferred in the EC’s Recommendation.

Commercial broadcasters are confident that this is the beginning of a new, more muscular approach by European legislators to tackling illegal content online in all its forms. We intend to work closely with them to ensure that creators can continue to invest with confidence in high quality European AV content.

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NOTES TO EDITORS

1. Illegal online versions of TV programmes and films reduce investment in new content by broadcasters because they reduce channels' legal audiences. This reduces in turn the advertising and subscription revenue which finances the wide variety of high quality content commissioned by Europe's commercial broadcasters for audiences to enjoy.
2. The European Commission's Recommendation on measures to effectively tackle illegal content online (COM(2018) 1177 final) has been published today. It sets out recommendations for Member States, hosting service providers, law enforcement authorities and other stakeholders, including on the use of technology to identify illegal content and the operation of so-called "Notice-and-Take-Down" procedures, by which illegal content is reported to platforms and they then remove it.
3. The European Commission's proposal for a Directive on copyright in the Single Market is still under discussion in the European Parliament and the Council. Article 13 seeks to address the investment gap under which rights holders lose revenue when content is uploaded to online platforms without rights being cleared. It would require that *"Information society service providers that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers."*
4. The "safe harbour" provisions of the eCommerce Directive prevent "intermediary service providers" from being held liable to third parties for the content which they host, provided certain conditions are met. For hosting providers, those conditions include that the hosting is of a mere technical, automatic and passive nature, and that there is expeditious blocking or removal of content once the provider becomes aware that it is illegal. The proposed reforms to the Copyright Directive are entirely consistent with the eCommerce Directive; there would be no change for intermediary service providers (access, caching and hosting providers).
5. There is a broad consensus in peer-reviewed academic studies covering a range of different types of content that piracy harms legal sales. See Danaher, B., Smith, M., and Telung, R. (2015) *Copyright Enforcement in the Digital Age: Empirical Economic Evidence and Conclusions*, prepared for the World Intellectual Property Organization (WIPO) Advisory Committee on Enforcement.

ABOUT THE ASSOCIATION OF COMMERCIAL TELEVISION IN EUROPE (ACT)

The ACT represents the interests of leading commercial broadcasters in Europe. The ACT member companies finance, produce, promote and distribute content and services benefiting millions of Europeans across all platforms. At ACT we believe that the healthy and sustainable commercial broadcasting sector has an important role to play in Europe's economy, society and cultures.

For further enquiries please consult our website www.acte.be or contact Agnieszka Horak, ACT Director of Legal and Public Affairs – ah@acte.be

