

Ref: Public consultation on Counterfeit and Piracy Watch-List

Introduction

- The Transnational Alliance to Combat Illicit Trade (www.TRACIT.org) is an independent, private sector initiative to drive change and mitigate the economic and social damages of illicit trade by strengthening government enforcement mechanisms and mobilizing businesses across industry sectors most impacted by illicit trade.
- Our views necessarily reflect the interconnected nature of illicit trade, and our recommendations seek solutions to common bottlenecks, trends and vulnerabilities that strengthen the fight against illicit trade across sectors.
- It is well-documented that Intellectual Property Rights (IPR) infringements, particularly trademark counterfeiting and copyright piracy, seriously harm European businesses.¹ The identification of marketplaces that facilitate counterfeiting and piracy can therefore elevate the urgency for: (i) markets and platforms to take steps to guard against exploitation and misuse of their infrastructures; and, (ii) governments to impose corrective measures.
- Consequently, TRACIT welcomes the *Counterfeit and Piracy Watch-List* and we conclude that it will be a valuable complement to the EU's portfolio of current measures to protect European markets from IPR infringements, including counterfeiting and piracy; we also expect that the *Counterfeit and Piracy Watch-List* can provide significant leverage to addressing other forms of illicit trade that are vulnerable to similar exploitation and misuse of online (and offline) platforms and marketplaces.

Illicit trade, digital illicit trade and the EU approach to Trade for All

- Illicit trade is growing rapidly and includes an expanding list of products and sectors. With respect to this consultation, the spectrum of illicit trade also comprises illicit digital trade, including cybercrimes (like hacking, denial of service attacks, spam, copyright piracy and child pornography) and money-laundering in the financial system. Copyright piracy (including piracy of copyrighted works and live events through storage, download and streaming) is a significant form of cybercrime—as delineated in the Budapest Convention on Cybercrime²—warranting legislative and

¹ Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, <http://www.oecd.org/gov/risk/trade-in-counterfeit-and-pirated-goods-9789264252653-en.htm>.

² Budapest Convention on Cybercrime.

http://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/7_conv_budapest_/7_conv_budapest_en.pdf

other measures as may be necessary to establish cybercrimes as criminal offences to more effectively deter the illegal activity.

- The illicit digital trade of copyrighted works also constitutes a sizable portion of economic value lost through illicit trade in the EU;³ and associated reports demonstrate equally concerning links between counterfeiting and piracy in general to money laundering, human rights violations, organized crime and terrorism.⁴
- The European Commission report: *Trade for All – Towards a more responsible trade and investment policy*⁵ provides further rationale for deploying the *Counterfeit and Piracy Watch-List* where it specifically: (i) summaries the vulnerability of EU jobs to poor protection and enforcement of IPRs and calls for EU trade policy to protect the entire spectrum of IPRs; and, (ii) addresses responsible management of global supply chains as an essential element of EU trade policy.
- Online and physical marketplaces are increasingly vital links in global supply chains, especially given the rapid growth in online shopping, expanding forms of digital marketplaces and innovative uses of cloud storage and social media networks. These facilities, both physical and digital, are also vulnerable to exploitation and misuse by illicit traders or otherwise illegitimate operators.
- The *Counterfeit and Piracy Watch-List* would—as called for in the Trade for All report—drive “additional incentives for supply-chain due diligence” that could increase transparency in supply chains, both physical and digital, improve consumer information, deliver positive consequences for enforcing rule of law and enhance corporate responsibility and compliance in supply chains.
- Moreover, the *Counterfeit and Piracy Watch-List*—with a special focus on online marketplaces—will be a valuable tool to help secure these critical links in the global supply chain, especially if service operators and owners as well as the responsible local authorities and governments are thereby encouraged to take the necessary actions and measures to reduce vulnerabilities and protect the supply chain from infiltration of counterfeit goods and copyright piracy. These actions could include: establishing and enforcing clear contract terms; improving registration of suppliers; developing industry standards and codes of practice; identifying and guarding against high-risk behavior patterns; and adopting preventive tools appropriate to their physical or digital context and other relevant circumstances.
- Notably, the EU Commission’s efforts to reassert and improve the rule of law online are visible in the Commission’s *Communication on Tackling Illegal Content Online*, which updates its expectations for online platforms to intensify the implementation of

³Building a Digital Economy: The Importance of Saving Jobs in the EU’s Creative Industries,

<https://euiipo.europa.eu/ohimportal/documents/11370/71142/Building+a+Digital+Economy,+the+importance+of+saving+jobs+in+the+EU+creative+industries>.

⁴ Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, <http://www.oecd.org/gov/risk/trade-in-counterfeit-and-pirated-goods-9789264252653-en.htm>.

⁵ Trade for All – Towards a more responsible trade and investment policy, http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf, p24, p

good practices for preventing, detecting, removing and disabling access to illegal content to ensure the effective removal of illegal content, increased transparency and the protection of fundamental rights online.⁶ Other initiatives in this area are also under consideration.

- Finally, the EU has already taken steps in specific sectors that are also vulnerable to illicit trade (e.g., conflict minerals and illegal logging) and that present similar social and economic costs and which compromise EU core principles, like human rights and sustainable development around the world or high-quality safety and environmental regulation.

Recommendations

In the spirit of the EU's Communication on Tackling Illegal Content Online, the "Trade for All" objectives, the Budapest Convention on Cybercrime and ongoing Commission efforts to mitigate illicit trade in all its forms, especially trademark counterfeiting and copyright piracy, we:

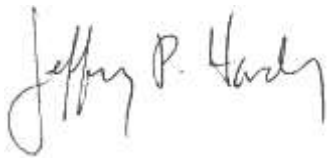
- welcome announcement of the *Counterfeit and Piracy Watch-List*;
- recommend that the Commission's efforts to create the *Counterfeit and Piracy Watch-List* to identify and describe the most problematic marketplaces should reference the misuse of these same marketplaces to distribute an array of illicitly traded items or content occurring on the same platforms alongside IPR infringements, including piracy and counterfeiting;
- recommend that primary and ancillary information on other forms of illicit trade—identified or gathered in the process of creating the *Counterfeit and Piracy Watch-List*—should be:
 - conveyed to relevant governance bodies/directorates in the European Commission and/or EU member states working against illicit trade of ivory, precious metals, rare woods, pharmaceuticals, alcohol, tobacco or any other forms of illicit trade;
 - shared with stakeholders working to fight illicit trade in all its forms; and
 - published and made available to the public.
- recommend that sensitive or otherwise unpublished information identified or gathered in the process of creating the *Counterfeit and Piracy Watch-List* should be conveyed to relevant governance bodies/directorates in the European Commission and/or EU member states and/or other appropriate stakeholders and law enforcement authorities working against illicit trade.

⁶Communication on Tackling Illegal Content Online - Towards an enhanced responsibility of online platforms, <https://ec.europa.eu/digital-single-market/en/news/communication-tackling-illegal-content-online-towards-enhanced-responsibility-online-platforms>

Conclusions

It is essential that the Commission take steps—such as through the *Counterfeit and Piracy Watch-List*—to protect not only its citizens at the digital border, but also to protect the legitimate online economy, including copyright and trademark holders and their legitimate business partners from illegal and otherwise socially and economically harmful activity online and offline.

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