

**Public consultation on measures to further improve the effectiveness of the fight
against illegal content online
UNIC Statement
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UNIC is the European trade grouping representing cinema exhibitors and their national associations across 37 European territories. We work closely with the European institutions and diverse stakeholders to promote the social, cultural and economic value of cinema exhibition in Europe.

We very much welcome the opportunity to submit our position on the European Commission's consultation on measures to further improve the effectiveness of the fight against illegal content online, particularly concerning pirated content.

The copyright-intensive industries contribute €509 billion to Europe's GDP, along with 7 million jobs, making them a key economic contributor. As part of this, cinema operators make significant contributions to a dynamic sector, through entering into exclusive licence agreements with film distributors that involve sharing box office income, as well as investing in state-of-the-art cinemas to attract audiences across the EU.

In light of such contributions, any illegal film-viewing deprives cinema operators, film distributors, producers and creators of important revenues and prevents further investment into the creation and distribution of future works - endangering the diversity and competitiveness of European cinema and putting much-needed jobs for millions of Europeans working in the audiovisual industry at risk. With ever-increasing competition for consumer time and spending and an increasingly volatile, hit-or-miss box office environment, cinema admissions are under significant pressure. Additional lost admissions from film theft represents a fundamental threat to the financial sustainability of cinema operators. From a financial standpoint, a recent study estimated that the elimination of piracy in the U.S. theatrical window would increase box office by 15%. To put this into perspective, taking into consideration that box office returns across UNIC territories in 2017 reached €8.6b, this equates to potential losses of up to €1.3b across said markets.

As such, it is crucial that the proliferation of illegally obtained or shared, copyright-infringing content – particularly online – is met head-on by a robust legislative framework to hold platforms and web giants liable, deter would-be infringers and enforce the true value of copyright in today's digital world. Such an approach must encompass the full spectrum of contributing factors behind illegal film viewing online, including consumer awareness, correct implementation and full application of existing rules, effective civil remedies and criminal sanctions and effective and efficient duty of care from online services.

Piracy has become so common in Europe that it now has the potential to shape consumer behaviour. Consumers may not be aware that the content they are accessing is illegal or either do not accept or understand the value of copyright itself. Therefore, more needs to be done to promote responsible and fair online audiovisual consumption, something that cinema operators and their partners in distribution are constantly striving to communicate.

The issue of responsibility is two-fold; on the part of those directly responsible for illegal recording, sharing and viewing of films and concerning the online services that enable – directly or indirectly - such illegal activities to take place undetected and, often, anonymously. From this perspective, it is paramount that online services take responsibility to keep the proliferation of illegal online content to an absolute minimum.

Online services have the means and responsibility to remove content that has been flagged as illegal in the interest of establishing a safe, fair and legal online environment. They should therefore take more responsibility for protecting the creative content they promote, distribute and profit from – or face consequences for the impacts of their behaviour and be prevented from hiding behind non-liability rules.

Unfortunately, it is not uncommon to hear of a lack of cooperation from online services when it comes to fighting piracy effectively as the disabling of access to and the removal of illegal content by intermediaries can be slow and complicated. Online services may wrongly assume that implementing narrow, proactive procedures – targeted filtering, for example – may deprive them of the benefits of non-liability. As a result, rightholders are often forced to initiate costly and sometimes lengthy legal proceedings to obtain injunctive relief.

When burdensome and costly, Notice and Action procedures are ill-adapted for mass copyright infringement services, particularly when infringing content can be instantly re-uploaded or made available via a variety of other sources almost immediately. To combat this, such procedures should include fair counter-notice mechanisms, a realistic approach to required standards of evidence on the part of rightsholders and should, above all, be quick and lasting in order to limit damages. There is also a particular need for more rapid removal of manifestly illegal content, such as newly-released films, which can easily be identified by their title, rightholder/distributor or the anonymous nature of their upload that often indicates a lack of licensing. Such files should not only be taken down but deleted and prevented from being uploaded again, which is certainly possible through the use of basic content recognition technology.

We therefore encourage the European Commission to take action in order to clarify that that “takedown” includes the concept of permanent removal, i.e. “take down and stay down”.

There are, of course, a multitude of methods to ensure that illegal content is permanently removed, such as keyword content recognition, visual and audiovisual content recognition filters, repeat infringer policies and the verification of contact details of websites by hosting providers. These measures, often implemented at the national level, should be applied on a larger scale.

We also believe that trusted flaggers schemes are not the perfect solution. Even though this is a way for rightholders to take an active part in the removal of their content in partnership with online services, these specific programmes raise a number of challenges. First and foremost, there is a lack of objectivity in the required criteria to qualify as a trusted flagger. Online services using these schemes all have a different set of criteria, which are sometimes difficult to fulfil for rightsholders. As this places more responsibility on rightsholders – such as strong resources, both financial and timewise, in order to track and flag up the content -, there is certainly a need for online services to have more obligations regarding the flagged up content, such as take down and stay down.

We think that standardised flagging processes should be implemented. Flagged up content should be removed swiftly and there should be regular reports – including data - provided by online services on the effective removal of content. Finally, this should not be used as a means of shifting responsibility from online services, Member States and EU institutions to rightholders concerning illegal online content; all players still have a duty to fulfill their obligations and should not rely solely on trusted flaggers to perform the role of law enforcement.

In our view, film theft is the most serious threat to the well-being of the wider cinema sector. Therefore, the recognition by the European Commission that all forms of illegal content need to be tackled sends a positive signal to the entire European creative sector. The European Commission and Member States must continue to work towards making Europe's IPR enforcement framework fit for the digital age by promoting a legal marketplace where the creative and cultural sectors and online platforms can remain the key drivers of innovation and growth.