

Advisory Committee on Enforcement

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THE ROLE OF INTERMEDIARIES IN IP ENFORCEMENT

Contributions prepared by the Universal Postal Union and the Computer and Communications Industry Association; and by the Alibaba Group, Amazon, Facebook and Google

1. At the thirteenth session of the ACE, held from September 3 to 5, 2018, the Committee agreed to consider, at its fourteenth session, among other topics, the “exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanism to resolve IP disputes in a balanced, holistic and effective manner”. Within this framework, this document introduces the contributions of two Observers (the Universal Postal Union (UPU) and the Computer and Communications Industry Organization (CCIA)) and four private entities (the Alibaba Group, Amazon, Facebook and Google) on the role of intermediaries in IP enforcement.
2. The contributions in this document illustrate the efforts undertaken by a range of intermediaries in protecting and enforcing IP rights across their respective services and platforms. These include both measures to comply with existing regulation as well as proactive voluntary action that goes beyond legal requirements. The contribution by UPU outlines some of the cooperation initiatives and partnerships that UPU maintains with other organizations to eliminate counterfeit and pirated items and ensure the integrity of the international postal supply chain. In its contribution, CCIA provides an overview of the efforts made by several of the online intermediaries among its members to enforce IP rights. It details notice and action approaches that comply with legislation such as the United States of America Digital Millennium Copyright Act and the European Union’s E-Commerce Directive, as well as various voluntary tools.
3. The contributions by the four private entities present a palette of voluntary measures that intermediaries undertake to protect IP and counter IP infringements. The numerous technological solutions that power Alibaba Group’s proactive removal of suspected

IP infringements are discussed alongside the company's cooperation with law enforcement authorities and right holders through the Alibaba Anti-Counterfeiting Alliance. The contribution by Amazon sheds light on, among other things, the company's Brand Registry, automated machine-learning-based protections and Transparency – an item-level tracing service. Facebook's contribution details the various IP protection measures available across the Facebook and Instagram platforms: from the application of a suite of policies, terms of use and community standards and guidelines, to tools like the Rights Manager, a video-matching tool, and the Commerce & Ads IP Tool. Google's contribution focuses specifically on Google Search, describing improvements in the algorithms powering the service's search results as well as the development of streamlined notice submission procedures for right holders generally and for trusted right holders with a proven track record of accurate notices in particular.

4. Together, the six contributions exemplify the wide range of measures undertaken by online and offline intermediaries to counter the copyright and trademark infringements on their respective platforms and services – from streamlining the submission and handling of infringement notices, to technological tools facilitating the identification and prevention of infringements. These contributions offer multiple examples of how intermediaries work together with right holders and law enforcement authorities and harness the capabilities of new technologies.

5. The contributions are in the following order:

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[Contributions follow]

INTELLECTUAL PROPERTY INFRINGEMENT AND MITIGATION STRATEGIES IN THE INTERNATIONAL POSTAL SUPPLY CHAIN

*Contribution prepared by the International Bureau of the Universal Postal Union (UPU), Berne, Switzerland**

ABSTRACT

Since the inception of the Universal Postal Union (UPU) in 1874, the number of member countries (currently 192) and the overall reach of the international postal network have grown exponentially. This growth also increases the potential for misusing the fundamental UPU concept of a single postal territory as well as exploiting the confidence of the general public in postal services. One threat to the integrity of the international postal supply chain is the injection of counterfeit and pirated items. This contribution describes relevant trends in the international postal system as well as the mechanisms through which the UPU cooperates with other organizations and its own initiatives with the aims of, *inter alia*, eliminating counterfeit and pirated items and ensuring the integrity of the international postal supply chain.

I. INTERNATIONAL POSTAL SECURITY STRATEGY AND ASSOCIATED COOPERATION INITIATIVES

1. Since the inception of the Universal Postal Union (UPU) in 1874, the number of member countries (currently 192) and the overall reach of the international postal network have grown exponentially. A fundamental principle to which UPU member countries commit is the creation of a single postal territory for the reciprocal exchange of postal items¹.
2. For many years, the misuse of the single postal territory through the injection of counterfeit and pirated items into the international postal network has been a consistent matter of concern faced by UPU member countries, their designated operators² and other postal supply chain stakeholders.
3. In accordance with the relevant provisions of its Acts (notably Articles 8, 9 and 19 of the Universal Postal Convention, which concern postal security, violations and prohibited items respectively), the UPU is committed to maintaining the safe and secure transport and transit of international postal items and to eliminating counterfeit and pirated items from the international postal supply chain. This commitment is particularly leveraged through institutional and technical partnerships aimed at increasing the level of awareness and understanding of postal supply chain stakeholders on intellectual property rights (IPRs) infringements.

* The views expressed in this document are those of the authors and not necessarily those of the Secretariat or of the Member States of WIPO.

¹ UPU member countries are obliged to provide for the reciprocal exchange of postal items and to treat such postal items in transit from other countries like their own postal items, without discrimination. See Article 1 *bis*(1)(1.3) of the Constitution of the Universal Postal Union (as last amended by its Tenth Additional Protocol), available at: <http://www.upu.int/en/the-upu/acts-of-the-union-and-other-decisions/acts-of-current-cycle.html>.

² Article 1 *bis*(1)(1.7) of the UPU Constitution (as last amended by its Tenth Additional Protocol) defines a designated operator as "any governmental or non-governmental entity officially designated by the member country to operate postal services and to fulfil the related obligations arising out of the Acts of the Union on its territory".

4. Through its internal bodies formally established under its Postal Operations Council, namely the Customs Group (CG), the Transport Group (TG) and the Postal Security Group (PSG), the UPU put in place activities aiming at educating member countries, designated operators and other postal supply chain stakeholders on IPR-related issues. On a regular basis, amendments are also proposed to the Regulations to the Universal Postal Convention, with a view to further improving the rules of application necessary for the implementation of the Universal Postal Convention (including without limitation more detailed rules concerning the provision of electronic advance data, the treatment of items wrongly admitted and customs-related matters).
5. Moreover, the UPU benefits from a number of long-standing cooperation initiatives such as the one with the World Customs Organization (WCO). Through this institutional relationship (formalized through a specific cooperation agreement and the UPU-WCO Contact Committee), UPU member countries (normally through their designated operators' representatives) and WCO members (through their Customs administrations' representatives) discuss and address issues of common interest, including projects concerning the provision of electronic advance data and initiatives aimed at tackling the threat of counterfeit and pirated items in the international postal supply chain.
6. A strong relationship between the International Civil Aviation Organization (ICAO) is also maintained through a specific cooperation agreement and has been reinforced through the creation of a UPU-ICAO Contact Committee. This committee is devoted to the study of relevant issues associated with the safety and security of the international postal supply chain as it may relate to the civil aviation sector.
7. The UPU also maintains an active formal cooperation with the International Air Transport Association (IATA) through its IATA-UPU Contact Committee, where additional avenues are explored to educate and cooperate with airline partners that constitute an intrinsic element of the international postal supply chain.
8. In addition, a more recent institutional partnership resulted from the signing of a Memorandum of Understanding in 2018 between the UPU and the International Narcotics Control Board (INCB). This cooperation entails a strong commitment from both sides to educate the postal and customs sectors on emerging threats associated with the new psychoactive substance (NPS) arena, while ensuring the legal flow of these substances where needed.
9. Likewise, the UPU is continually exploring options to expand its reach through other partnerships and educational efforts. Some other recent efforts include the signing, by the UPU, of the United for Wildlife International Taskforce on the Transportation of Illegal Wildlife Products Declaration, an initiative launched by The Royal Foundation of The Duke and Duchess of Cambridge with the aim of stemming the flow of illegal wildlife trade.
10. Additional outreach on similar areas takes place with the following organizations: Federation of the Swiss Watch Industry; Transnational Alliance to Combat Illicit Trade (TRACIT); Organization of Economic Co-Operation and Development (OECD); International Chamber of Commerce Business Action to Stop Counterfeiting and Piracy (ICC BASCAP); and the Cross Border Association (CBA). Through these joint initiatives, the UPU explores various avenues of capacity building and information sharing with external stakeholders in various topics associated with postal security, including potential anti-counterfeiting projects.

II. INTERNATIONAL POSTAL SECURITY AND THE FUTURE OF MAIL

11. According to the UPU's Postal Economic Outlook 2019, international letter-post volumes have been declining in every region with the exception of the Asia-Pacific, where an expansion trend may be explained by the rise of small packages (below 2 kilograms) from e-commerce platforms (which are currently categorized within the UPU as part of the letter-post services). While international volumes for designated operators continue to be relatively small compared to domestic traffic, there has been a strong evolution in international parcel post, which grew by 29.7 per cent in 2017. In fact, since 2007, international parcel post volumes have seen double digit growth rates.

International letter post volumes = 3.06 billion items (-5.23 per cent compared to 2018)
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International parcel post volumes = 0.18 billion items (+29.70 per cent compared to 2018)

12. The aforementioned increase is particularly fueled by growing e-commerce sales following a considerable rise in digital connectivity rates across the world. According to the International Telecommunication Union (ITU)³, over half the world's population is online, contributing to the further expansion of

international postal volumes. Accordingly, designated operators as a whole represent the world's largest physical network, spanning 668,445 post offices and 5.26 million employees. However, the extensive reach of this network may also be misused through nefarious means.

13. The UPU is actively working to assist its member countries in complying with current and recently-adopted international postal rules on electronic advance data, which incorporate Pre-loading Advance Cargo Information (PLACI) and Item Attribute (ITMATT) messages. In particular, this shall enable customs authorities to exchange and utilize such electronic advance data with designated operators, local law enforcement and private stakeholders in order to determine what postal items are entering the country with potentially suspect items (from a IPR perspective), thus allowing these items to be segregated and subjected to thorough review by the relevant customs authority. As previously mentioned, this work is being conducted by the UPU in cooperation with other organizations such as the WCO, ICAO and IATA.

14. Moreover, the specific character of the international postal supply chain is impacted by the "low volume, high frequency" distribution method employed by many organized crime groups, as they try to take advantage of the low risk of detection and low financial losses in the event of a seizure. This method is often an ideal tool for money laundering and financing of other criminal activities. The UPU is currently working towards building capacity and developing a deeper level of understanding (particularly through regionally-targeted workshops and training sessions) among the various postal supply chain stakeholders as to the need for accurate exchanges of electronic data along with increased veracity in such captured data.

15. There are also UPU-driven efforts (both internally and in collaboration with other United Nations system entities) currently being undertaken on how an internationally shared and refined analytics framework (involving information exchanges on the main sources of infringement and egregious cases of international flows of counterfeit and pirated articles) may be used by various stakeholders to assist in identifying and stopping threats to the international postal supply chain. Such a framework could then be extrapolated to assist border forces and local law enforcement agencies in assessing appropriate customs duties as well as in seizing counterfeit or prohibited items upon arrival into the destination country. In this vein, the UPU's Customs Declaration System (CDS), which was launched by the organization in 2014, facilitates the exchange of electronic data between postal supply chain stakeholders and customs

³ International Telecommunication Union (2018), *Measuring the Information Society Report 2018*, p. 3, available at: <https://www.itu.int/en/ITU-D/Statistics/Pages/publications/misr2018.aspx>.

authorities to accomplish these goals. Approximately twenty designated operators are already utilizing CDS, while additional operators have begun the relevant testing phase.

III. CONCLUSION

16. The illegal circulation of counterfeit items involves multiple (willing or unwilling) actors, such as the manufacturer of these items, consumers, online sellers, freight forwarders, transport partners (air/sea/rail), customs operators and designated operators. As experience has shown, solutions to prevent or mitigate intellectual property crime-related activities require an open dialogue comprising all relevant stakeholders involved.

17. In that regard, the UPU continues engaging in cross-sectional cooperation and knowledge-sharing efforts with other international organizations (such as WIPO), and looks forward to providing any relevant contributions to this important topic.

[End of contribution]

INTELLECTUAL PROPERTY PROTECTION STRATEGIES OF ONLINE INTERMEDIARIES

*Contribution prepared by Mr. Christian Borggreen, Vice President and Head of Office, Computer and Communications Industry Association (CCIA) Europe, Brussels, Belgium, and Ms. Ali Sternburg, Senior Policy Counsel, CCIA, Washington, D.C., United States of America**

ABSTRACT

Online intermediaries make significant efforts to enforce intellectual property rights (IPRs) and prevent infringement. These efforts fall into two general categories: (a) compliance with regulatory regimes such as notice and action or notice and takedown; and (b) proactive voluntary efforts by industry to prevent uploading or remove allegedly infringing content, which exceed legal requirements.

I. INTRODUCTION

1. A vast array of online services currently provides Internet users with tools and venues to generate and share a prodigious amount of digital communication and content. Ranging in size from small start-ups to prominent household names, online services are highly heterogeneous, but all share the common characteristic of enabling users to make information available to third persons over the Internet.
2. These tools have found unprecedented favor among the public¹. The most recognized brands in this space are routinely ranked at the top of lists of admired companies², owing to the value that consumers attach to many online services³.
3. While these services facilitate a vast amount of socially valuable communication and expression, they can also be used to infringe intellectual property (IP). The Internet sector takes this seriously and makes significant efforts to prevent online IP infringement. These efforts are in large part enabled by the prevailing legal framework worldwide, generally known as notice and action or as notice and takedown in the United States of America.

* The views expressed in this document are those of the authors and not necessarily those of the Secretariat or of the Member States of WIPO.

¹ For example, more than 400 hours of video are uploaded to YouTube every minute (Google (November 2018), *How Google Fights Piracy*, p. 19, available at: https://storage.googleapis.com/gweb-uniblog-publish-prod/documents/How_Google_Fights_Piracy_2018.pdf). It is estimated that every second there are 8,502 tweets sent, 916 Instagram photos uploaded, 1,533 Tumblr posts created and 78,878 YouTube videos viewed (Internet Live Stats, available at: <https://www.internetlivestats.com/one-second/> (last visited on May 23, 2019)).

² See, e.g., Daniel Roth (April 3, 2019), *Top Companies 2019: Where the U.S. Wants to Work Now*, available at: <https://www.linkedin.com/pulse/top-companies-2019-where-us-wants-work-now-daniel-roth/>; Fortune (January 2019), *The World's Most Admired Companies*, available at: <http://fortune.com/worlds-most-admired-companies/>; Axios (March 6, 2019), *The Axios Harris Poll 100 Reputation Rankings*, available at: <https://www.axios.com/axios-harris-poll-corporate-reputations-bcc0c03d-0bb5-4eb1-b591-4622bb4b01ed.html>.

³ Erik Brynjolfsson, Avinash Collis and Felix Eggers (April 9, 2019), *Using Massive Online Choice Experiments to Measure Changes in Well-being*, 116 Proceedings of the National Academy of Sciences of the United States of America 7250-7255, available at: <https://www.pnas.org/content/116/15/7250>.

II. NOTICE AND ACTION / NOTICE AND TAKEDOWN

4. Notice-and-action and notice-and-takedown systems are widely implemented around the world owing to the combined effect of the 1998 United States Digital Millennium Copyright Act (DMCA) and the 2000 European Union (EU) E-Commerce Directive⁴, which laid the foundation for an evolving international consensus.

5. The term “notice and takedown” is most closely identified with the DMCA, which has provided an enduring model for balancing the interests of copyright holders, online intermediaries and Internet users. DMCA-style systems have been widely adopted around the world, as a number of countries have or will soon have notice-and-takedown regimes, owing partly to the incorporation of this framework into free trade agreements with the United States of America⁵.

6. Similarly, the intermediary provisions of the E-Commerce Directive have, until very recently, served as the legal cornerstone in the EU’s digital sector. Articles 12 to 15 of the E-Commerce Directive provide that online services are not to be held liable for substantively unmodified information transmitted from one party to a receiver of that party’s selection⁶. As the EU recently adopted a controversial Copyright Directive, however, its Member States will eventually depart from the prevailing international approach.

7. Notice-and-action / notice-and-takedown frameworks established an efficient means of removing any allegedly infringing content quickly from Internet services, while fostering cooperation among relevant stakeholders. For example, under the DMCA, upon actionable notice by right holders or their authorized representatives, services are under an obligation to facilitate expeditiously the removal of allegedly infringing content. The United States Congress has codified this system in Section 512 of the United States Copyright Act, which imposed burdens on service providers, while providing legal certainty that would encourage “the necessary investment in the expansion” of the Internet⁷.

8. Economic research demonstrates the widespread use of the DMCA, a corresponding impact of safe harbors on investment and innovation and related collaboration between service providers and right holders that otherwise would not be possible⁸.

⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market (‘Directive on Electronic Commerce’), available at: <http://data.europa.eu/eli/dir/2000/31/oj>.

⁵ Since the free trade agreements with Chile and Singapore in 2003, every United States trade agreement has included intermediary protections.

⁶ See Articles 12-15 of the EU E-Commerce Directive.

⁷ Committee on the Judiciary, Senate of the United States of America (May 11, 1998), *Report on the Digital Millennium Copyright Act of 1998*, p. 8, available at: <https://www.congress.gov/105/crpt/srpt190/CRPT-105srpt190.pdf>.

⁸ See, e.g., Booz & Company (2011), *The Impact of U.S. Internet Copyright Regulations on Early-Stage Investment: A Quantitative Study*, available at: <https://www.strategyand.pwc.com/media/uploads/Strategyand-Impact-US-Internet-Copyright-Regulations-Early-Stage-Investment.pdf>; Josh Lerner (2011), *The Impact of Copyright Policy Changes on Venture Capital Investment in Cloud Computing Companies*, available at: http://www.analysisgroup.com/uploadedfiles/content/insights/publishing/lerner_fall2011_copyright_policy_vc_investments.pdf.

III. DMCA PLUS – VOLUNTARY EFFORTS FOSTERED BY NOTICE AND TAKEDOWN

9. Owing to the availability of intermediary protections that provide legal certainty to online services, many such services have invested considerable resources in elaborate systems that provide right holders with content protection tools in addition and cumulative to notice-and-takedown compliance.

10. These systems can include tools such as “‘trusted user’ programs that facilitate bulk notice sending for ‘trusted’ senders and fast-track takedown for these senders”⁹. Other cumulative efforts may include “access to backend systems that go beyond streamlining the notice-handling process by allowing senders to remove content directly. Some sites allow ‘trusted’ senders to remove content directly from their hosting services without formal notices, identification of the infringed work, user notifications, or review”¹⁰.

11. The provision to right holders of additional tools and services for content protection and monetization is sometimes known as DMCA plus¹¹ because they exceed the requirements that businesses must meet to qualify for statutory protection under DMCA Section 512. These systems include YouTube Content ID, the Google Search Trusted Copyright Removal Program¹² and the Facebook Rights Manager¹³. In the context of trademark protection, major e-commerce providers also voluntarily provide legal tools for IP protection by brand owners. These initiatives include the eBay Verified Rights Owner program¹⁴, the Amazon Brand Registry¹⁵ and the Facebook Commerce and Ads IP Tool¹⁶.

12. The deployment of these voluntary, additional layers of protection is cumulative to DMCA compliance. However, these tools are costly and site-specific and often struggle with false positives (i.e., incorrect conclusions that lawfully used content is infringing).

13. The benefits of DMCA plus systems include speed¹⁷, efficiencies of scale¹⁸ and, where automated, lower costs for all parties – at least for services that have the resources to invest in voluntary measures¹⁹. In addition to enforcing IPRs, DMCA plus systems can generate revenue for right holders. For example, the YouTube Content ID system has paid billions to the content industry, including USD 6 billion to the music industry²⁰.

⁹ See Jennifer Urban, Joe Karaganis and Brianna Schofield (March 2017), *Notice and Takedown in Everyday Practice*, University of California Berkeley Public Law Research Paper No. 2755628, available at: <https://ssrn.com/abstract=2755628>. See also, e.g., *How Google Fights Piracy*, *op. cit.*, p. 38 (describing availability of Trusted Copyright Removal Program for “copyright owners with a proven track record of submitting accurate notices and a consistent need to submit thousands of webpages each day”); Facebook (December 2018), *Facebook & IP Protection*, p. 3, available at: <https://fbnewsroomus.files.wordpress.com/2018/12/facebook-ip-protection.pdf> (stating that if “a rights holder chooses to block all videos matching certain criteria, then this action eliminates the need for the rights holder to submit future reports, subject to users’ ability to dispute blocks if they have the necessary rights.”).

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *How Google Fights Piracy*, *op. cit.*, p. 38.

¹³ *Facebook & IP Protection*, *op. cit.*, pp. 1-3.

¹⁴ <https://pages.ebay.com/seller-center/listing-and-marketing/verified-rights-owner-program.html>.

¹⁵ <https://brandservices.amazon.com/>.

¹⁶ *Facebook & IP Protection*, *op. cit.*, pp. 3-4.

¹⁷ *How Google Fights Piracy*, *op. cit.*, p. 30; *Facebook & IP Protection*, *op. cit.*, p. 2.

¹⁸ *How Google Fights Piracy*, *op. cit.*, p. 37; Facebook, *Intellectual Property*,

<https://transparency.facebook.com/intellectual-property>.

¹⁹ *Notice and Takedown in Everyday Practice*, *op. cit.*, p. 121.

²⁰ *How Google Fights Piracy*, *op. cit.*, p. 21.

14. On the other hand, the challenges faced by DMCA plus systems include their costs. As of 2018, YouTube had invested more than USD 100 million building Content ID²¹. Furthermore, content filtering by automation is not always effective or accurate. In particular, off-the-shelf filtering technologies tend to focus on specific classes of works, such as audiovisual works, and cannot necessarily provide meaningful protection for content on sites whose users can create many different types of works. False positives merit particular attention because any unjustified content filtering or takedown may suppress lawful free expression.

15. Similarly, as DMCA plus approaches are rarely transferable from one environment to another, each requires bespoke crafting. An obligation to implement such approaches would run the risk of entrenching larger firms by driving small companies out of the market. As one industry lawyer has observed, a filtering obligation “places a really unfair burden on smaller companies”²².

16. In sum, DMCA plus systems provide value when deployed voluntarily by firms that have the resources to do so competently. Upload filtering and automated content identification is expensive and capable of error, and broad deployment by services that lack the technological capability and resources to manage false positives would involve undesirable externalities. It is therefore likely that small businesses, which have yet to reach the scale of YouTube or Facebook, will continue to handle takedown demands manually, with response times shortening as they become larger.

IV. EXAMPLES: GOOGLE, YOUTUBE AND FACEBOOK

17. According to its Transparency Reports, Google has removed billions of URLs from Google Search as a result of takedown requests²³; it has striven to streamline its copyright removal process for search results since 2010²⁴. Google has also removed millions of URLs from other products such as the Google Play Store, Google Drive, Google Photos and Google Maps²⁵. It is committed to investing resources to address the issues of abusive notices intended to suppress lawful free expression and invalid counter notifications²⁶.

18. As mentioned above, Google’s YouTube has invested more than USD 100 million in building Content ID and in increasing automation and human review²⁷. Owing to Content ID, trusted right holders can claim content directly on the platform. In doing so, right holders can opt to remove the content, but may also “claim” it, in which case advertisements are placed adjacent to said content and right holders receive a share of the revenue stream associated with those advertisements. The inclusion of an advertising option is a win for all parties, since users’ disputed content remains online, while the right holder receives previously unrealized revenue.

²¹ *Ibid.*, p. 27.

²² Remarks made by Sean McGilvray, Director of Legal Affairs, Trust and Safety, Vimeo, at the Conference *Content Moderation and Removal at Scale*, organized by the Digital Agenda Intergroup at the European Parliament and the Catholic University of Leuven on February 5, 2019. Video available at: <https://alde.livestream.com/content-moderation-and-removal-at-scale> (remarks at 3:15:00: “If those restrictions had been in place when some of the bigger platforms that exist today were growing, they wouldn’t be here. It’s just too restrictive. (...) [I]f you had to start from the gate setting up this giant filter that tries to keep everything out it would strangle the baby in the cradle; it just wouldn’t work”).

²³ <https://transparencyreport.google.com/copyright/overview>.

²⁴ *How Google Fights Piracy*, *op. cit.*, p. 8.

²⁵ *Ibid.*, pp. 61-62.

²⁶ *Ibid.*, pp. 45, 31.

²⁷ *Ibid.*, p. 27.

19. More than 98 per cent of copyright issues on YouTube are handled through the Content ID system, rather than through notice and takedown, and 98 per cent of Content ID claims in 2017 were automated and did not require intervention by the copyright owner²⁸. In addition to copyright compliance, YouTube has removed millions of videos that infringed community guidelines²⁹.

20. As noted earlier, Facebook has built tools such as the Rights Manager and the Commerce and Ads IP Tool, and has taken other initiatives to prevent potential infringement. The Rights Manager is used by right holders to identify videos on Facebook and Instagram, including live videos, and automate the action of their choice, whether blocking, claiming earnings, monitoring or reporting for removal, thus limiting the need to submit future reports; the Commerce and Ads IP Tool extends similar functionality to Facebook ads. Collectively, these tools have enabled the removal of millions of pieces of content across Facebook properties based on IP-related claims³⁰.

V. CONCLUSION

21. The diverse Internet environment has led to a variety of tools and platforms that users employ to communicate and express themselves in myriad ways. This diversity engenders highly heterogeneous contexts in which infringement may occur. This requires businesses of varying sizes to develop unique, customized solutions for their respective environments. Whereas large services can invest aggressively in complex, highly automated systems, start-ups and small and medium-sized enterprises tend to rely on manual responses. All responsible services, however, include IP considerations in their content moderation processes and choose strategies appropriate to their particular circumstances.

[End of contribution]

²⁸ *Ibid.*, p. 24.

²⁹ <https://transparencyreport.google.com/youtube-policy/removals>.

³⁰ *Facebook and IP Protection, op. cit.*, pp. 1-3.

ALIBABA GROUP'S ACHIEVEMENTS IN INTELLECTUAL PROPERTY PROTECTION

*Contribution prepared by Ms. Zheng Junfang, Chief Risk Officer, Alibaba Group, Hangzhou, China**

ABSTRACT

From the outset, the stated mission of the Alibaba Group (Alibaba) has been to make it easy to do business anywhere. Alibaba hopes that the ongoing technological revolution will ensure the healthy and orderly development of commercial activities and, in turn, create a globalized world in which everyone has a role to play and a right to share in the outcome. However, technological change brings not only opportunities for knowledge creation and innovation, but also challenges for intellectual property protection (IPP). IPP is a universal concern that requires global collaboration. As a pioneer and promoter of new retail, new finance, new manufacturing, new technologies and new energy, Alibaba stands at the forefront of intellectual property (IP) challenges. Alibaba's experience and solutions provide insight into IP management in the new digital economy era.

I. FOR 18 YEARS, ALIBABA'S PLATFORM HAS SIGNIFICANTLY CONTRIBUTED TO SOCIAL COLLABORATION IN INTELLECTUAL PROPERTY PROTECTION

1. Alibaba Group (Alibaba) has engaged in intellectual property protection (IPP) since its inception, accepting its responsibilities as an e-commerce platform and developing its rules for intellectual property (IP) management on the basis of legal principles relevant to a market economy. To guard its 1.5 billion products available online against IP infringements, Alibaba has set up a professional technical team to identify, flag and remove counterfeits and their sellers on a real-time basis and in accordance with a complete set of rules, including rules governing the determination of counterfeits and penalties. Alibaba's technical team makes determinations on the removal of counterfeits based on information submitted in advance by the respective right holders so as to prevent the unfair removal of goods.
2. Alibaba reports identified counterfeiters to Chinese law enforcement authorities and provides technical support to these authorities in order to assist them in their handling of cases.
3. Some 150,000 brand owners may also access Alibaba's IPP platform at ipp.alibabagroup.com, in order to ensure a fast handling of their complaints on listed products or product descriptions that allegedly infringe their IP rights.
4. Consequently, as discussed above, Alibaba both a) undertakes proactive screening of potentially IP-infringing listings and b) handles right holder requests for the removal of potentially IP-infringing listings.
5. To address the challenges for IPP in an increasingly globalized world, Alibaba has set up an Intellectual Property Research Institute. The role of the IP Research Institute is to bring together legislators, judicial authorities, regulators, legal experts and other IP professionals to

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translate relevant research findings into institutional rules and to promote the improvement of domestic and international law issues.

6. Data resulting from this research initiative shows that, in 2018, 96 per cent of Alibaba's proactive removals of listings suspected of IP infringement occurred as soon as the listings were posted and before a single sale took place. The number of listings removed by Alibaba for IP infringement decreased considerably by 67 per cent compared to 2017. The data also shows that 96 per cent of IP complaints from right holders were handled within 24 hours and that the number of such complaints dropped by 32 per cent compared to 2017. This is due to Alibaba's continuous proactive efforts to identify and remove potentially problematic listings. These include identifying suspicious seller behavior and the use of technical means to conduct in-depth research on suspected fake goods. If a suspicion is confirmed, Alibaba sanctions the seller in accordance with the platform rules and aids law enforcement agencies in countering the sale of counterfeits. Based on counterfeit product complaints by consumers, only 1.11 out of 10,000 orders were suspected of being counterfeit, which corresponds to a decline of 26 per cent compared to 2017¹.



¹ See Alibaba Group (May 2019), *2018 Intellectual Property Rights Protection Annual Report*, available at: https://www.alizila.com/wp-content/uploads/2019/05/Final_Alibaba_2018_IPR_Report.pdf.



II. ALIBABA FIRMLY BELIEVES THAT TECHNOLOGY WILL BRING MORE INTELLECTUAL PROPERTY PROTECTION SOLUTIONS

7. Technology can resolve social issues and has the potential to lay to rest the ubiquitous problem of counterfeiting. Alibaba is able to immediately block any dubious item or store using new technologies, including counterfeit detection models, image recognition algorithms, semantic recognition algorithms, product knowledge bases, real-time interception systems, biometric person authentication, sampling models, government-enterprise collaboration platforms, semantic sentiment analysis, 360-degree merchant monitoring and live broadcasting monitoring. Alibaba's technical solutions in the field of IPP have received increasing global recognition.

8. Furthermore, Alibaba spares no effort in developing new IPP mechanisms with the aim of creating a better IPP environment for small and medium-sized enterprises. In August 2018, Alibaba set in motion the Alibaba Original Design Protection². Based on a five-pronged approach (electronic evidence deposit, product debut, original design filing, complaint handling and IP commercialization), the program aims to protect products embodying original designs that were first launched on Alibaba's e-commerce platforms. Based on image recognition algorithms and cloud computing, the Alibaba Original Design Protection not only efficiently protects designers against unauthorized copying, but also enables them to commercialize their IP through licensing. It also enhances the ability to manage online stores. As of the end of 2018, the program has attracted over 1,300 original designers, including the Palace Museum, the National Museum of China and OWSPACE, storing electronic evidence of more than 2,000 original designs. Beyond designs, the program also monitors original product images. As of the end of 2018, over 190,000 merchants across Alibaba's e-commerce platforms protected original product images and more than 120 million such images were certified. It is hoped that more platforms will employ similar technological solutions.

² See <https://yc.alibaba.com/#/> (in Chinese only).

III. ALIBABA CALLS FOR GLOBAL COLLABORATION IN INTELLECTUAL PROPERTY MANAGEMENT IN THE INTERNET AGE

9. The Internet has enabled an unprecedented level of convenience in an increasingly connected world. It also makes commerce more inclusive. However, the Internet has also endowed cross-border crimes with new characteristics: the division of labor is specified in greater detail, with gang members specialized in every stop of the production chain (manufacturing, promotion, sales, logistics, after-sales, etc.). Gang activities are also more decentralized, making gang members more elusive and therefore more difficult to track down. Greater international cooperation in combating these crimes is therefore necessary.

10. Alibaba is dedicated to combining online anti-counterfeiting technology with offline collaborations. Alibaba teams up with domestic enforcement agencies and brand owners to track down counterfeiters in the premises where they operate. In 2018, Alibaba engaged in offline anti-counterfeiting collaborations with public security organs in 31 autonomous regions, provinces and municipalities, providing 1,634 leads to counterfeiting crimes. This support led to the arrest of 1,953 suspects and to the closure of 1,542 counterfeiting facilities. The goods involved in the cases were worth an estimated RMB 7.9 billion. Moreover, Alibaba is the first entity in China to file a civil lawsuit in the capacity of an e-commerce platform against a counterfeit seller. As of the end of 2018, Alibaba has brought 83 lawsuits in such capacity.

11. Founded in 2017, The Alibaba Anti-Counterfeiting Alliance (AACA) has so far brought together 133 brands from 16 countries and regions. Some 33 per cent of these brands are from Europe, 29 per cent are from the Americas and 24 per cent from China. These brands span 12 industries, including personal care, food and drink, technology, and pharmaceuticals. Alibaba not only helps AACA members eliminate counterfeit goods, but also works with them to study where and how criminal gangs produce and sell such goods. Upon obtaining this information, Alibaba will report to the Chinese law enforcement agencies and cooperate with them to speed up the detection of such cases.

IV. ALIBABA IS COMMITTED TO DEVELOPING AN INTERNATIONAL GOLDEN STANDARD FOR INTELLECTUAL PROPERTY PROTECTION

12. At the 2019 National People's Congress and Chinese People's Political Consultative Conference, China's two annual plenary sessions where national political decisions are made, some members of the Political Consultative Conference suggested that Alibaba explore new technologies worth learning and promoting, such as the Internet of Things and blockchain, to further improve its ability to detect counterfeits. On April 3, 2019, at the Luxury Law Summit, which featured executives from over 300 world-class brands, including Hermès, Chanel, Louis Vuitton and Tiffany, Alibaba's head of Global IP Enforcement was awarded the Innovator in IP Rights and Technology prize by the Luxury Law Alliance. This kind of praise shows that the anti-counterfeiting collaboration model enabled by technology and developed by Alibaba and other Chinese Internet companies has become recognized as another globally-recognized golden standard, following high-speed railways and mobile payment technologies.

13. WIPO's Advisory Committee on Enforcement serves as a leading platform for discussing global collaboration in IP protection. Alibaba recognizes the importance of sustained efforts to develop IPP rules and collaboration and is willing to join and actively participate in this process and contribute to society.

[End of contribution]

AMAZON'S INITIATIVES TO PREVENT COUNTERFEITING

*Contribution prepared by Mr. Christopher Oldknow, Senior Manager, Public Policy – IP, Customer and Brand Safety, Amazon, London, United Kingdom**

ABSTRACT

Amazon strives to be the world's most customer-centered company, providing stores in which people can find and discover the widest possible selection of authentic goods. As it is a customer-focused company, its staff work hard to earn and maintain customer trust, and the company strictly prohibits the sale of counterfeit products. To maintain trust, Amazon invests tremendous resources as it constantly innovates and improves the ways in which it detects and prevents counterfeit products from reaching its customers. In this contribution, the company shares some of its latest innovations and collaborations to highlight its work to protect intellectual property rights and build customer trust in its stores. As a result of the proactive and preventive systems in place, more than 99 per cent of all Amazon page views by customers landed on pages for which no notice of potential infringement had been received.

I. INTRODUCTION

A. COMMITMENT TO CUSTOMER AND BRAND PROTECTION

1. Amazon strives to be the world's most customer-centered company, providing stores in which people can find and discover the widest possible selection of authentic goods. As a customer-focused company, Amazon works hard to earn and maintain customer trust, and strictly prohibits the sale of counterfeit products. To maintain trust, it invests tremendous resources as it constantly innovates and improves the ways in which it detects and prevents counterfeit products from reaching its customers. For the past three years, according to The Axios Harris Poll 100, Amazon has been voted by its customers as the most reputable company¹.

B. LATEST INNOVATIONS

2. Amazon has developed multiple innovations and collaborations that highlight the company's efforts in protecting intellectual property (IP) rights and building customer trust in its stores. As a result of the proactive and preventive systems that it has put in place, more than 99 per cent of all Amazon page views by its customers landed on pages for which no notice of potential infringement had been received.

3. The following sections describe in detail three such innovations: Brand Registry, Transparency and Project Zero. A cornerstone of both Brand Registry and Project Zero are automated protections. Powered by Amazon's machine learning expertise, automated protections continuously scan the stores and proactively remove suspected counterfeits. Brand

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

¹ See <https://theharrispoll.com/axios-harrispoll-100/>.

owners provide Amazon with their logos, trademarks and other key data about their brand, and Amazon scans more than five billion product listing updates every day, looking for suspected counterfeits. The company has tested these automated protections for a number of brands and, on average, its automated protections proactively stop 100 times more suspected counterfeit products from appearing on the platform than are reactively removed on the basis of brand reports.

II. BRAND REGISTRY

4. Brand Registry provides advanced tools to right holders to protect their brands. These tools include powerful text and image-based search capabilities and automated protections that use machine learning to predict and prevent future infringements. Brand owners now have greater influence over their product detail pages and can thus ensure that product information is accurate, and customers can make confident and informed purchasing decisions on Amazon. To date, the company has registered more than 130,000 brands worldwide in Brand Registry.

5. Amazon has also established a global team of investigators that is available 24 hours a day, 7 days a week, to respond to and take action on notices of potential infringement. It treats such notices with urgency.

6. To be eligible for Amazon Brand Registry, brand owners must have an active registered trademark in each country in respect of which they wish to enroll. The trademark must be text-based or image-based with words, letters or numbers. Eligible trademarks can be classified differently, depending on the issuing trademark office.

7. For the purposes of Brand Registry, Amazon accepts trademarks issued by trademark offices in Australia, Brazil, Canada, the European Union, France, Germany, India, Italy, Japan, Mexico, Spain, the United Arab Emirates, the United Kingdom and the United States of America.

8. To improve the effectiveness of its automated protections, Amazon encourages right holders to add all active and registered trademarks for enrolled brand(s) to their Amazon Brand Registry account.

9. After creating an Amazon Brand Registry account and enrolling their first brand, right holders can then enroll another brand at any time by clicking on “Enroll a new brand” on the home page of their account. Right holders can add a new trademark to an already enrolled brand by logging into their account and visiting the Brand Registry Support page. They should simply click on “Add additional trademarks” under the “Update your brand profile” section in the menu on the left hand side of the page and follow the outlined steps.

10. Once a right holder has enrolled a brand in Brand Registry and accepted the terms and conditions, the user can submit a request to add additional representatives of that brand, including agents. All users must have their own Brand Registry login credentials. Right holders can begin the process of adding additional representatives by logging into their account and contacting the Brand Registry Support team.

11. Amazon does not allow product listings that infringe the IP rights of right holders. It encourages right holders who have concerns about the misuse of their IP to notify Amazon by means of the Report a Violation tool in Amazon Brand Registry. Right holders can report non-IP-related violations at any time through the Amazon Brand Registry Support team, by clicking on “Report a violation” to report issues such as “Not as described”.

12. Right holders can report alleged IP infringements even if they do not have an Amazon Brand Registry user account. Amazon provides a publicly available form for reporting alleged IP infringements of copyright, trademarks and patents².

III. TRANSPARENCY

13. In the United States of America, Amazon has also publicly launched Transparency, an item-level tracing service that helps brand owners proactively identify and prevent counterfeits from reaching customers³. Transparency enables brand owners to assign a secure, unique, alphanumeric code to every product unit that a brand manufactures. The information is then used to authenticate the products. Amazon looks for and scans these codes within its fulfillment centers to ensure that only authentic products are shipped to customers. Moreover, customers can use the Amazon shopping application (app) or the Transparency app from their mobile phones to authenticate their products regardless of where they are purchased.

14. Transparency is a transformational service that enables IP right holders to protect their customers and combat counterfeits. More than 2,000 brands (from Fortune 500 companies to new start-ups) have enrolled in Transparency.

IV. PROJECT ZERO

15. In addition to the aforementioned tools, Amazon has also developed Project Zero, a new program that empowers brand owners to help eliminate counterfeit goods. Project Zero combines Amazon's advanced technology, machine learning and innovation with brand owners' sophisticated knowledge of their own IP and the best means of detecting counterfeits of their products through three powerful tools (automated protections, self-service counterfeit removals and product serialization)⁴.

16. Brand owners were previously required to report a counterfeit to Amazon, which then investigated the reports and took action. Under Project Zero, brands can remove a counterfeit listing themselves, quickly and easily, using the new self-service tool, through which brand owners can directly control and remove listings from the store. The information is fed into Amazon's automated protections to prevent counterfeit listings in the future.

17. Amazon provides brand owners with an unprecedented level of responsibility because it believes that the combined strengths of Amazon and brand owners can drive counterfeits to zero. Brand owners must maintain a high level of accuracy in order to maintain their Project Zero privileges. Processes in place to promote accuracy include training as part of Project Zero enrollment and ongoing monitoring to prevent misuse of tools. Amazon has seen some brands use the self-service counterfeit removal tool to remove products that were not counterfeit. In all such cases, Amazon has moved to quickly reinstate those products. In some cases it was a genuine misunderstanding of the tool and in other cases brands were abusing their privileges and have been removed from the Project Zero program. Brands have the ability to present a plan of action to address past errors and request to regain access to Project Zero. Sellers have the ability to appeal removals that they believe are erroneous.

² On amazon.com, for example, this form can be found at: <https://www.amazon.com/report/infringement>.

³ See <https://brandservices.amazon.com/transparency>.

⁴ See <https://brandservices.amazon.com/projectzero>.

18. As part of Project Zero, brand owners may also use product serialization. Owing to product serialization, the authenticity of each of a brand's products that is purchased in Amazon's stores can be scanned individually and confirmed. The product serialization service provides a unique code for every unit that is manufactured, and the brand owners puts these codes on their products as part of their manufacturing process. Whenever a product using the serialization service is ordered in Amazon's stores, the authenticity of the purchase is scanned and verified, and counterfeiting can thus be detected and stopped for every product unit before it reaches a customer.

19. While brand owners are not obliged to serialize their products to enroll in Project Zero, those that serialize their products achieve the best results. Product serialization is thus a powerful tool for detecting and stopping counterfeits from reaching customers. Brand owners are free to determine which products to serialize, enroll in Project Zero, gain access to the automated protections and use the self-service counterfeit removal tool. Those that choose to use the product serialization service incur a cost between USD 0.01 and 0.05 per unit, depending on volume.

20. The aim is to ensure that customers always receive authentic goods when shopping on Amazon. Project Zero builds on Amazon's long-standing work and investments in this area. It allows brands to work with Amazon, leverage combined strengths and move quickly and at scale to drive counterfeits to zero. Positive feedback received to date from brand owners that have been using Project Zero is encouraging.

VII. COLLABORATION

21. Amazon works with governments and law enforcement agencies worldwide to hold criminals accountable and it has worked with brand owners to litigate directly against bad actors.

22. The company collaborates regularly with industry groups, including the Alliance for Creativity and Entertainment, the *Union des Fabricants*, the Motion Picture Association, the Automotive Anti-Counterfeiting Council and the International Anti-Counterfeiting Coalition.

23. Amazon has signed a Memorandum of Understanding with the International Anti-Counterfeiting Coalition, an industry organization that builds bridges between industries to protect IP rights. It continues to work with member brands to assess potential infringement and helps drive enforcement against bad actors. As a result of such collaboration, a program has been launched to identify opportunities for improvement and to educate brand owners about Amazon's notice-and-takedown processes.

24. Amazon takes a global approach in addressing these issues. For instance, in Europe, it has joined a number of global consumer brands in signing the Memorandum of Understanding on the Sale of Counterfeit Goods via the Internet with a view to sharing information that will help protect customers from counterfeit goods. According to the monitoring of the MoU carried out by the European Commission, 95.5 per cent of listings were removed by the collective marketplace signatories owing to proactive measures, with Amazon scoring significantly above the aggregate.

[End of contribution]

PROTECTING INTELLECTUAL PROPERTY ON FACEBOOK AND INSTAGRAM

*Contribution prepared by Mr. Mark Fiore, Director and Associate General Counsel, Intellectual Property, Facebook, Menlo Park, California, and Mr. Probir Mehta, Head, Global Intellectual Property and Trade Policy, Facebook, Washington, D.C., United States of America**

ABSTRACT

People use Facebook's family of applications and services to stay connected with friends and family, to discover what is going on in the world and to share and express what matters to them. Facebook wants people to do so while having confidence that the content they are engaging with does not violate intellectual property (IP) rights. To combat copyright and trademark infringements as well as counterfeit goods, Facebook has put in place numerous measures to assist right holders in protecting their IP. These include a global notice-and-takedown program and a comprehensive repeat infringer policy. Facebook has also built sophisticated tools like Rights Manager and the Commerce & Ads IP Tool, and has undertaken further proactive initiatives. Facebook's tools were developed in close collaboration with right holders, taking into account their changing needs and new market solutions, while also ensuring that users' lawful expression is protected. The company's IP protection measures work hand-in-hand with its partnerships with right holders, as Facebook and Instagram are key avenues for sparking creativity and culture online.

I. REPORTING IP INFRINGEMENT ON FACEBOOK AND INSTAGRAM

1. Facebook's intellectual property (IP) protection measures begin with its Terms of Service¹ and Community Standards², both of which prohibit users from posting content that infringes third parties' IP rights. For example, under the Terms of Service, users agree that they "may not use our Products to do or share anything ... [t]hat infringes or violates someone else's rights". The company's Community Standards, which describe what is and is not allowed on Facebook, expand on these principles. On Instagram, similar provisions are laid out in the Terms of Use³ and Community Guidelines⁴. Facebook also maintains additional policies prohibiting IP-violating content in specific products and services offered, including the company's Advertising Policies⁵ and Commerce Policies⁶. There are also detailed IP Help Centers for both Facebook⁷

* The views expressed in this document are those of the authors and not necessarily those of the Secretariat or of the Member States of WIPO.

¹ For Facebook's Terms of Service, see: <https://www.facebook.com/terms> (last visited June 27, 2019).

² For Facebook's Community Standards, see: <https://www.facebook.com/communitystandards/> (last visited June 27, 2019).

³ For Instagram's Terms of Use, see: <https://help.instagram.com/478745558852511> (last visited June 27, 2019).

⁴ For Instagram's Community Guidelines, see: <https://help.instagram.com/477434105621119> (last visited June 27, 2019).

⁵ For Facebook's Advertising Policies, see: <https://www.facebook.com/policies/ads/> (last visited June 27, 2019).

⁶ For Facebook's Commerce Policies, see: <https://www.facebook.com/policies/commerce> (last visited June 27, 2019).

⁷ For more information on Facebook's IP Help Center, see: https://www.facebook.com/help-intellectual_property (last visited June 27, 2019).

and Instagram⁸, where users and right holders can learn more about Facebook's policies and procedures.

2. To ensure quick and accurate handling of IP reports, Facebook provides dedicated channels for right holders to report content that they believe infringes their rights, including via online reporting forms available for Facebook⁹ and Instagram¹⁰. Facebook has custom forms dedicated to copyright, trademark and counterfeit issues, and right holders can report different types of content they identify on its services. These content types range from individual posts, photos, videos or advertisements to an entire profile, account, page, group or event, if right holders believe the latter to be infringing in their entirety.

3. Each report submitted by a right holder is processed by Facebook's IP Operations team, which is a global team of trained professionals who provide around-the-clock coverage in multiple languages. If the report is complete and valid, the team will promptly remove the reported content – typically within a day or less, and in many cases within a matter of hours or even minutes – also confirming that action with the right holder that reported it. If any information is missing or if the team needs to clarify anything, more information may be requested, and right holders can communicate directly with the team via e-mail in those situations. Facebook believes this manual processing is important in order to ensure that content is removed only in response to complete and valid reports and to help safeguard users' lawful free speech rights.

4. In addition to removing reported content, Facebook disables the accounts of repeat infringers in appropriate circumstances. Its repeat infringer policy applies to IP violations committed via Facebook profiles and Instagram accounts, including cases of copyright infringement, trademark infringement and counterfeiting. The company also takes action against other sources of content that may be engaging in repeat or blatant infringement, such as via Facebook Pages and groups, video-related actions, etc. In addition to outright removals of repeat infringers, actions against repeat or blatant infringement may include other restrictions, including prohibiting the posting of content for a set period of time.

II. GOING BEYOND NOTICE AND TAKE DOWN

5. Facebook continues to invest in developing additional features to help right holders identify and report potentially infringing content, and, in some instances, to eliminate the need for them to report any content at all. Many of these products, such as Rights Manager¹¹ and the Commerce & Ads IP Tool¹², have been developed based on feedback from right holders, and this collaboration has resulted in numerous enhancements to Facebook's policies and procedures over the years. In fact, the company's relationships with right holders are central to its approach to IP infringement, as it prioritizes direct engagements with them and other stakeholders to help shape the enforcement measures that it builds.

⁸ For more information on Instagram's IP Help Center, see: <https://help.instagram.com/535503073130320> (last visited June 27, 2019).

⁹ For more information on Facebook's online reporting forms, see: https://www.facebook.com/help/contact/-634636770043106?helpref=faq_content (last visited June 27, 2019).

¹⁰ For more information on Instagram's online reporting forms, see: <https://help.instagram.com/contact/-372592039493026> (last visited June 27, 2019).

¹¹ For more information on Rights Manager, see: <https://rightsmanager.fb.com/> (last visited June 27, 2019).

¹² For more information on the Commerce & Ads IP Tool, see: <https://www.facebook.com/help/-835772913244854> (last visited June 27, 2019).

6. Rights Manager is a video-matching tool that identifies videos on Facebook and Instagram, including live videos, that match right holders' copyrighted content. Participating right holders can upload reference files into the tool and, when a match is detected, decide what action they want to take on the content. These actions include blocking the video from being viewed by anyone other than the uploader. If a right holder chooses to block all videos matching certain criteria, then this action eliminates the need for the right holder to submit future reports, subject to users' ability to dispute blocks if they have the necessary rights. Additional options include choosing to claim available ad earnings (allowing the video to stay posted and claiming a share of ad revenue), monitoring the video (tracking metrics like views), or reporting the video for removal on grounds of IP infringement. Separately, Facebook also makes use of the third-party service Audible Magic, an automated content recognition service that flags uploaded videos and prevents them from being viewed by others when an audio match is detected based on content provided by right holders, covering copyrighted music, TV, and film content.

7. Another product that Facebook has launched, the Commerce & Ads IP Tool, provides right holders with a streamlined means to identify and enforce their rights against infringing advertisements, Facebook Marketplace posts and group sale posts on Facebook. The tool allows right holders to search across these types of content for instances of their registered word trademark and then surfaces the search results in an easy-to-use dashboard from which right holders can report any content they believe is infringing. Right holders can also save their contact and trademark registration information, making the reporting process quick and efficient. While the tool is largely intended as an anti-counterfeiting mechanism, it also works to address copyright and trademark infringements.

8. Facebook also continues to work closely with right holders to further enhance its enforcement measures, particularly on a proactive basis. While this work – which is based on artificial intelligence, machine learning, and other technologies – continues to rapidly evolve, Facebook has taken a number of important steps and expects more progress on this front going forward.

9. Among its proactive measures, Facebook reviews advertisements and Marketplace posts before they go live, using technologies to incorporate signals such as brand names, logos, keywords, prices, discounts and other suspicious indicators to detect and prevent content that may be offering counterfeit goods. Advertisements and Marketplace posts that are identified by these signals are blocked from Facebook's services altogether. The company also has comparable measures in place for posts and hashtags on Instagram, again with the aim of combatting potential IP violations.

10. With respect to copyright, among other initiatives, Facebook has built proactive measures to take action on Pages and groups that appear to be dedicated to copyright piracy. It also maintains policies that prohibit content offering or promoting set-top devices that are intended for infringement, and it removes content that violates these policies on a proactive basis or content that is the subject of an IP report from a right holder.

11. Finally, Facebook has learned that content that implicates IP violations might also violate other Facebook policies, such as policies against spam, fake profiles, hacked accounts or malicious activity. When these issues arise, work is closely undertaken with the teams specializing in these types of violations to facilitate the removal of the violating content.

III. EDUCATING FACEBOOK AND INSTAGRAM USERS ABOUT INTELLECTUAL PROPERTY

12. Facebook continues to invest in efforts to educate its users about IP and help them avoid committing IP infringements. For example, it has developed a robust system for advising affected users at the time it removes content in response to an IP report. When content is removed, a notification is sent to the reported user providing information about the report and the reporting party. Users are also told how to contact the reporting party if they wish to resolve the matter and, where applicable, are provided with information on how to contest the removal. Users are also informed of Facebook's repeat infringer policy and are told that if they continue to post infringing content, further actions will be taken, including potentially disabling their account in its entirety.

13. In addition, IP Help Centers across Facebook and Instagram provide information concerning copyright, trademarks and other aspects of IP law. Facebook continues to update these resources to make them even more helpful for users, adding material that addresses commonly asked questions on various issues (e.g., "How can I make sure the content I post to Facebook doesn't violate copyright law?")¹³. Finally, Facebook publishes a half-yearly IP transparency report that provides information on its policies and procedures as well as data regarding IP reports submitted by right holders and the content affected by those reports¹⁴.

IV. PARTNERING WITH RIGHT HOLDERS

14. Facebook's IP protection measures work in tandem with its right holder partnerships. The company encourages creativity and culture online, consistent with its view that Facebook and Instagram empower content creators of all types. To facilitate this creativity, Facebook has a dedicated global partnerships team whose mandate is to work with publishers, artists, creators and others to help them maximize the value they get from Facebook and Instagram by reaching new audiences, engaging directly with fans, and promoting their work around the world.

15. Many of those partnerships have resulted in new features. For example, Facebook has worked with news publishers to test new monetization structures and support for their subscription-based models¹⁵. It has also helped public media companies tap into new revenue streams outside their home markets¹⁶ and enabled new "born-digital" media companies to gain visibility and grow¹⁷.

16. Facebook is also focused on supporting emerging creators¹⁸ and has worked closely with them to understand what they need to be successful on Facebook and Instagram. Efforts have included helping creators engage and grow their communities, manage their presence, and build their businesses on these platforms.

¹³ For more information, see: <https://www.facebook.com/help/308895412492789> (last visited June 27, 2019).

¹⁴ For Facebook's Transparency Report, see: <https://transparency.facebook.com/intellectual-property> (last visited June 27, 2019).

¹⁵ For more information, see: <https://facebookjournalismproject.com/article/investing-in-news-subscriptions/> (last visited June 27, 2019).

¹⁶ For more information, see: <https://instantarticles.fb.com/case-studies/france-medias-monde-building-new-audiences-through-instant-articles/> (last visited June 27, 2019).

¹⁷ For more information, see: <https://www.facebook.com/facebookmedia/blog/brut-shares-how-they-went-from-0-to-80-million-monthly-video-views-in-just-six-months> (last visited June 27, 2019).

¹⁸ For more information, see: <https://newsroom.fb.com/news/2018/03/testing-new-tools-and-experiences-for-creators/> (last visited June 27, 2019).

17. Facebook has also signed new partnerships with members of the music industry that will enable new music-related experiences for users, artists and songwriters on Facebook and Instagram¹⁹. Indeed, musicians use Facebook in many ways to expand their reach and connect with fans²⁰. Facebook's work in this area includes a major multi-territorial licensing program that covers many music markets, including Australia, Brazil, France, Germany, India, Thailand, the United Kingdom, and the United States of America – and is growing.

V. LOOKING FORWARD

18. Facebook remains committed to helping right holders protect their IP on its platforms and to partnering with them to maximize the opportunities for sharing their content across Facebook and Instagram. The company's efforts in this space are constantly evolving and are dependent on close collaboration with right holders and all others with an interest in how IP is used and protected online. Facebook looks forward to continuing to engage with everyone in the community to ensure that these efforts are as effective and robust as possible.

[End of contribution]

¹⁹ For more information, see: <https://www.facebook.com/facebookmedia/blog/building-community-together-with-music> (last visited June 27, 2019).

²⁰ For more information, see: <https://www.facebook.com/facebookmedia/blog/tips-for-musicians-and-bands-us> (last visited June 27, 2019).

PROTECTING COPYRIGHT IN GOOGLE SEARCH

*Contribution prepared by Mr. Cédric Manara, Head of Copyright, Google, Paris, France**

ABSTRACT

Google plays a key role in the growth and success of the creative industries by building platforms where people can legitimately purchase, consume and discover entertainment and culture as alternatives to infringing content as well as by continuously developing solutions to fight online piracy. This contribution focuses on Google Search and considers the various tools developed by Google, including streamlined notice submission procedures for right holders, trusted copyright removal partnerships and the use of the number of valid copyright removal notices as a demotion signal. It provides information on the impact that these tools have had on the search traffic to infringing sites and also details some of the company's efforts to prevent abuses of its content removal tools.

I. INTRODUCTION

1. The Internet is a boon to creativity and the creative industries. It has enabled people worldwide to connect, create and distribute new works of art like never before in human history. Google continues to be a key part of that growth and success by enabling legitimate distribution of all kinds of content and by doing more than ever to fight piracy.
2. Providing more and better legitimate alternatives to infringing content is the most effective tool for combating piracy. Developing solutions to fight online piracy is an ongoing challenge for all stakeholders and a challenge that Google takes seriously. Google is investing significant resources in industry-leading tools like Content ID and its demotion signal in Search to report and manage works protected by copyright. It is working with other industry leaders to set the standard for how tech companies fight piracy. This contribution will focus on Google Search.
3. In parallel, Google builds platforms where people can legitimately purchase, consume, and discover entertainment and culture. Along with new Google Search features, platforms like YouTube and Google Play have made it easier for fans to find licensed copies of their favorite music, videos, books and other creative. These platforms have also helped millions of creators worldwide to reach global audiences and generate revenue. Google also pioneers innovative approaches to monetizing online media. Easy access to legitimate music, videos and other media is one of the most effective ways to reduce infringement. The music industry has demonstrated the efficacy of this approach by licensing a variety of music services, including free, advertising-supported streaming services (such as YouTube Music, Spotify Free and Pandora) and on-demand subscription products (such as YouTube Music Premium and Spotify Premium). This ensures that works can reach the largest and most diverse array of fans at every price point.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

4. The effect of these licensing deals on online piracy is clear. For example, Spotify's success in Sweden, Australia and the Netherlands has resulted in a significant drop in piracy rates in these countries, demonstrating that a greater availability of legitimate forms of streaming media causes rates of piracy to plummet¹. A 2018 report from the University of Amsterdam found that, as European spending on legal content grew between 2014 and 2017, the percentage of Europeans committing acts of piracy decreased².

II. FIGHTING PIRACY ON GOOGLE SEARCH

5. Users worldwide perform trillions of searches per year on Google Search. Indeed, Search helps more than a billion people worldwide find licensed videos, music, images and other media. Services like Subscribe with Google help these sites to quickly convert such visits into subscribing customers³.

A. INFRINGING RESULTS DO NOT APPEAR FOR THE VAST MAJORITY OF MEDIA-RELATED QUERIES

6. Hundreds of billions of webpages are organized in the Search index; only an extremely small portion of these have any connection to piracy. Even for queries related to works under copyright, the vast majority of the top search results pages show only legitimate results. This is thanks to both Google's constant improvements to the algorithms that power Google Search and the efforts of right holders to prioritize and target their copyright removal notices.

7. Google believes that providing convenient, compelling and legitimate alternatives is one of the best means of fighting piracy. Accordingly, Google has launched a number of initiatives to present legitimate alternatives to people as part of search results, including providing advertisements in response to queries for movies and music to link people to legitimate means of purchasing content or finding movie show times in local theaters. Google also collaborates with copyright owners and music services to help them understand how to use search engine optimization techniques to get their offerings into search results for "long-tail" queries where they may not be appearing today.

8. Nevertheless, some critics paint a misleading picture by focusing on the results for rare "long-tail" queries, adding terms like "watch" or "free" or "download" are added to a movie title or performer's name. The first problem with this argument is that many legitimate services now allow fans to watch or download movies for offline playback, sometimes for free. These types of

¹ The Copia Institute (October 8, 2015), *The Carrot or the Stick?*, available at: <https://copia.is/library/the-carrot-or-the-stick/> (last visited on June 25, 2019); Mediavision (2011), *Musiksverige – Fildelning & nedladdning*, available at: <https://www.scribd.com/document/66658516/Musiksverige-Svenskarnas-Internet-Van-Or-Q2-20111> (last visited on June 25, 2019); Spotify (July 17, 2013), *New Spotify Study Sees Encouraging Downwards Trend in Music Piracy in the Netherlands*, available at: <https://newsroom.spotify.com/us/2013/07/17/adventures-in-netherlands/> (last visited on June 25, 2019); Billboard (September 10, 2014), *Streaming Services Make Inroads into Piracy Down Under, Spotify's Will Page Tells Bigsound*, available at: <https://www.billboard.com/biz/articles/news/6244180/streaming-services-make-inroads-into-piracy-down-under-spotifys-will-page> (last visited June 25, 2019); TorrentFreak (October 28, 2015), *Spotify Helps to Beat Music Piracy, European Commission Finds*, available at: <https://torrentfreak.com/spotify-helps-to-beat-music-piracy-european-commission-finds-151028/> (last visited June 25, 2019).

² University of Amsterdam Institute for Information Law (July 2018), *Global Online Piracy Study*, available at: <https://www.uva.nl/en/content/news/press-releases/2018/07/number-of-internet-pirates-in-europe-decreases-legal-media-consumption-rising.html?origin=zvuyIF7VQlmbnXJokCBg7g> (last visited June 25, 2019).

³ For more information, see Google (March 20, 2018), *Introducing Subscribe with Google*, available at: <https://blog.google/outreach-initiatives/google-news-initiative/introducing-subscribe-google/> (last visited June 25, 2019).

queries are not in themselves indicative of piracy. Secondly, while the search results for these rare queries could include potentially problematic links, it is important to consider how rare those queries are. For example, “Stranger Things” was searched for 15,474 times more often than “stranger things watch free”⁴. The relative frequency of any search queries can be compared using the Google Trends tool, available at <https://www.google.com/trends/>.

9. Google does not want to include links to infringing material in its search results and makes significant efforts to prevent infringing webpages from appearing. The heart of those efforts is cooperation with creators and right holders to identify and remove results that link to infringing content and to present legitimate alternatives.

B. HANDLING A HIGH VOLUME OF REQUESTS AT SCALE

10. Although the vast majority of media-related queries yield clean results, there are some infrequent queries where the results do include problematic links. For these “long-tail” queries, Google collaborates with copyright owners to address the problem in a number of ways. To help copyright owners submit copyright removal notices, Google has developed a streamlined submission process built around an online web form that copyright owners can use for nearly all of Google’s services⁵.

11. Since 2011, more than 135,000⁶ different submitters have requested that Google remove webpages from search results for copyright violations. Google continues to invest substantial resources and engineering efforts into improving its procedures for receiving and processing copyright removal notices.

12. Google has removed over four billion Uniform Resource Locators (URLs) that infringed copyright from Search. In 2017, alone, the removal of over 880 million webpages from over 586,000 unique domains, or top-level sites, was requested. The number of URLs listed in takedown requests decreased by nine per cent, reversing a long-term trend where the number of URLs requested for removal had increased year over year. Google removed over 95 per cent of these webpages upon review. With respect to the remaining millions of webpages, the requests were rejected or the websites reinstated because Google either needed additional information, was unable to find the page or concluded that the material was not infringing or that the request was abusive.

C. TRUSTED COPYRIGHT REMOVAL PROGRAM PARTNERS

13. In addition to its content removal web form, Google provides a tool for copyright owners with a proven track record of submitting accurate notices and a consistent need to submit thousands of webpages each day. Google created the Trusted Copyright Removal Program for Search to further streamline the submission process, allowing copyright owners or their enforcement agents to submit large volumes of webpages on a continuous basis. As of 2017, there were more than 170 partners, who together submit the vast majority of notices.

⁴ For more examples and sources, see Google (November 2018), *How Google Fights Piracy*, available at: https://storage.googleapis.com/gweb-uniblog-publish-prod/documents/How_Google_Fights_Piracy_2018.pdf.

⁵ For Google’s web form and more information on submitting a removal notice, see: <https://support.google.com/legal> (last visited June 25, 2019).

⁶ Google, *Google Transparency report: Content Removals Due to Copyright*, available at: <https://transparencyreport.google.com/copyright> (last visited June 25, 2019).

D. DEMOTING INFRINGING WEBSITES

14. In addition to removing pages from search results when notified by the copyright owners, Google also factors in the number of valid copyright removal notices it receives for any given site as one signal among the hundreds that it takes into account when ranking search results. Consequently, sites for which Google has received a large number of valid removal notices appear much lower in search results. This demotion signal amplifies the power of takedown notices under the Digital Millennium Copyright Act because each delisted URL can have an effect on the entire domain. It helps people find legitimate, quality sources of content more easily and helps steer them away from infringing content.

15. This process has proven extremely effective. Immediately after Google launched improvements to its demotion signal in 2014, one major torrent site acknowledged that traffic from search engines had dropped by 50 per cent within the first week⁷. In May 2016, Google found that demoted sites lost an average of 89 per cent of their traffic from Google Search. By the end of 2017, Google was demoting an average of 500 websites in search results every week, and those demotions apply worldwide. Google has also made it much harder for infringing sites to evade demotion by redirecting people to a new domain.

16. While Google does demote entire sites in search results, it does not completely remove pages from results unless it receives a specific removal request for the page. Even for the websites for which Google has received the largest numbers of notices, the number of “noticed” pages is often only a tiny fraction of the total number of pages on the site. It would be inappropriate to remove entire sites in these circumstances.

17. The combination of the efficient processing of takedown notices and the demotion signal gives copyright owners a powerful tool against rogue sites. As new rogue sites emerge, copyright owners can target their removal notices at these new sites, providing Google with information it can use to update the ranking signal.

III. GOOGLE SEARCH DETECTS ABUSE AND VALUES TRANSPARENCY

18. Google works hard to detect and prevent abuses of the copyright removal process. As the number of copyright removal requests continues to remain high, it becomes both more difficult and more important to detect abusive and erroneous removal notices.

19. Some of the copyright takedown requests that Google receives are flawed, incomplete, or downright abusive. A major study by the University of California, Berkeley and Columbia University found that 28.4 per cent of copyright takedown requests submitted to Google had characteristics that raised basic questions about their validity⁸. In these circumstances, Google may refuse to remove a URL from its search results or choose to reinstate content that it had previously removed.

20. Google takes its commitment to guarding against abuse seriously. As the volume of removal notices continues to remain high, detecting inaccurate or abusive notices becomes even more challenging. The company is continuing to invest more resources into addressing this issue. When it comes to its Trusted Copyright Removal Program, Google has terminated or

⁷ TorrentFreak (October 23, 2014), *Google's New Search Downranking Hits Torrent Sites Hard*, available at: <https://torrentfreak.com/googles-new-downranking-hits-pirate-sites-hard-141023/> (last visited June 25, 2019).

⁸ Jennifer Urban, Joe Karaganis and Brianna Schofield (March 2017), *Notice and Takedown in Everyday Practice*, University of California Berkeley Public Law Research Paper No. 2755628, available at: <https://ssrn.com/abstract=2755628>.

suspended partners from the Program for repeatedly sending invalid or incomplete notices through its high-volume submission mechanisms. In addition, it has built transparency tools so that the community can identify and appeal invalid takedown requests.

IV. NOT-IN-INDEX UNIFORM RESOURCE LOCATORS

21. While Google Search processes takedown notices for a large number of URLs every year, a large portion of those URLs have never appeared in Google Search results. This is because Google accepts notices for URLs that are not even in its index at the time of submission. Nevertheless, Google will still proactively block the URL from appearing in its search results and demote other pages from the same domain. Some reporting organizations submit a substantial number of “not-in-index” URLs. In one sample, around 82 per cent of the URLs that were delisted were not in Google’s index⁹.

V. CONCLUSION

22. Today, Google’s services are generating more revenue for creators and right holders, connecting more people with the content they love and doing more to fight back against online piracy than ever before. By building industry-leading tools like Content ID and the demotion signal in Search, working with policymakers and setting industry standards to cut off revenue streams to bad actors, Google is tipping the scales against online piracy. Through continued innovation and partnerships, Google is committed to deterring bad actors while empowering the creative communities who make everything we love about the Internet today.

VI. LINKS TO MORE INFORMATION

For more information, you can visit the links below:

- <https://fightingpiracy.withgoogle.com/#>; and
- Google (November 7, 2018), *Protecting What We Love About the Internet: Our Efforts to Stop Online Piracy*, available at: blog.google/outreach-initiatives/public-policy/protecting-what-we-love-about-internet-our-efforts-stop-online-piracy/.

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⁹ See Google (February 21, 2017), *Additional Comments on the United States of America Copyright Office’s Section 512 Study*, available at: <https://www.regulations.gov/document?D=COLC-2015-0013-92487>.