Report and Study on the Memorandum of Understanding on online advertising and intellectual property rights

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On 14 August 2020, the European Commission published a Report and Study on the functioning of the Memorandum of Understanding on online advertising and intellectual property rights (MoU). The MoU is a voluntary agreement facilitated by the European Commission designed to limit advertising on websites and mobile applications that infringe copyright or disseminate counterfeit goods, signed by 28 advertisers, advertising intermediaries and associations in 2018 (see IRIS 2018-2/7). The MoU contains commitments, for example, that signatories undertake reasonable measures to minimise the placement of their advertising on certain websites or mobile apps. These are websites and apps that, due to the information which is available on them, have been found by judicial, administrative or other enforcement authorities to infringe copyright or to disseminate counterfeit goods on a commercial scale. Signatories also commit to taking reasonable steps to ensure that when they become aware that their advertising appears on such websites or apps, the advertising will be removed.

The Report on the functioning of the MoU, and the Study on the impact of the MoU, contain a number of notable findings and conclusions. First, the Report notes that the signatories have assessed the overall effectiveness of the MoU in a positive light, and that most of them consider the MoU to be effective in reducing the placement of advertising on, and the financing of, intellectual property rights (IPR)-infringing websites and apps. Secondly, the Report finds that the MoU makes it possible for signatories to share good practices; to better assess the risks; to improve their bargaining position with other stakeholders; and to discuss the need for new studies on online advertising and IPR, as well as the use of technologies and tools available on the market. Thirdly, according to the monitoring Study on the impact of the MoU on the online advertising market, following the introduction of the MoU, the share of advertisements of European business on IPR-infringing websites has dropped by 12%. The most popular type of infringing content found on the monitored websites was TV/Film (72%), followed by music (28%) and sports (20%).

Furthermore, in terms of the future, signatories consider that there is no apparent need to amend the text of the MoU, as its provisions have been drafted in such a way as to incorporate new initiatives and take into account new trends within the framework of the MoU. Finally, the MoU process has its limits, such as the

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involvement of a limited group of stakeholders. Therefore, the Report concludes that signatories should encourage the further participation of companies and trade associations involved in the digital advertising supply chain, as well as other categories of intermediaries, such as social media firms, payment industry and e-commerce platforms, and technology companies, in the MoU.

European Commission, Study on the impact of the Memorandum of Understanding on online advertising and intellectual property rights on the online advertising market

https://ec.europa.eu/growth/industry/policy/intellectual-property/enforcement/memorandum-of-understanding-online-advertising-ipr_en#monitoring%20study

European Commission, Report on the functioning of the Memorandum of Understanding on online advertising and intellectual property rights

https://ec.europa.eu/docsroom/documents/42702/attachments/1/translations/en/renditions/native

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