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CORRIGENDUM:

This document corrects document SWD(2020) 167 final of 12.08.2020

Modifications on pages 1 to 5 and pages 11 to 14.

The text shall read as follows:

COMMISSION STAFF WORKING DOCUMENT

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

REPORT ON THE FUNCTIONING OF THE MEMORANDUM OF UNDERSTANDING ON ONLINE ADVERTISING AND INTELLECTUAL PROPERTY RIGHTS

TABLE OF CONTENTS

1. INTRODUCTION 2

2. THE FUNCTIONING OF THE MOU 5

2.1 Overall assessment of the signatories of the functioning of the MoU 5

2.2 Exchange of good practices and sharing of expertise between the signatories 5

2.2.1 Exchange of good practices 5

2.2.2 Sharing of expertise 7

2.3 Communication and awareness raising 7

2.4 The impact of the MoU on the online advertising market 8

2.4.1 Ads on the full set of IPR-infringing websites monitored in 2019 8

2.4.2 Ads on a subset of IPR-infringing websites monitored before and after the signature of the MoU 10

2.5 Follow-up actions suggested by the signatories 11

2.5.1 Scope 11

2.5.2 Technology and tools 11

2.5.3 Monitoring 11

2.5.4 'Follow the money' approach to IPR enforcement 12

2.5.5 Exchange of good practices and sharing of expertise 12

2.5.6 National, EU and international cooperation 12

2.5.7 Communication and awareness raising 13

2.6 Views of signatories on the extension of the MoU to new signatories 13

3. CONCLUSIONS AND NEXT STEPS 14

Appendix 1: The digital advertising supply chain 15

Appendix 2: Signatories to the MoU on online advertising and IPR 16

1. INTRODUCTION

The infringement of intellectual property rights (IPR) continues to be a serious economic and societal problem. In 2016, trade in counterfeit and pirated goods amounted to up to 3.3% of world trade (compared with 2.5% in 2013), and to up to 6.8% of EU imports (compared with 5% in 2013)[1].

The supply and consumption of copyright-infringing digital content, across media such as television, films, music, games and books on the internet, is a lucrative market. For example, it is estimated that EUR 113 million was lost in digital formats due to music piracy, equivalent to 8.8% of all music sales in digital formats, in the EU in 2014[2].

IPR infringement reduces economic growth, damages competitiveness and hinders job creation. It also harms consumers (safety and security issues), companies (lost revenue, damage to brand equity, higher enforcement costs and diminished incentive to innovate) and governments (losses of tax revenue and social security contributions)[3].

The business models adopted by IP infringers make significant use of the internet to promote the distribution and consumption of counterfeit goods and copyright-protected content. Some websites and mobile applications that provide access to IPR-infringing content, goods or services on a commercial scale also use the sale of advertising space as one of their revenue sources by misusing online advertising business models[4].

Digital advertising plays a key role in helping fund and power digital content, services and applications, while driving economic growth and creating jobs in the EU[5]. It also contributes to digital innovation and empowers businesses, including SMEs[6].

However, digital advertising is complex. It is driven by real-time bidding, ad impressions, performance-based display, ad allocation and a whole host of other factors. Most of digital advertising revenues are generated through programmatic advertising. The digital advertising market involves a plethora of ad placement platforms and intermediaries representing, among other things, the demand side (advertisers and advertising agencies) or/and the supply side (publishers and media owners)[7].

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1 Organisation for Economic Co-operation and Development (OECD) and European Union Intellectual Property Office (EUIPO), *Trends in Trade in Counterfeit and Pirated Goods*, Illicit Trade, 2019. These amounts do not include domestically produced and consumed counterfeit and pirated products, and pirated digital products distributed online.

2 EUIPO, *The economic cost of IPR infringement in the recorded music industry*, 2016.

3 EUIPO, *2020 Status report on IPR infringement*, 2020.

4 EUIPO, *2020 Status report on IPR infringement*, 2020, Office for Harmonization in the Internal Market (OHIM), *Digital Advertising on Suspected Infringing Websites*, 2016, and EUIPO, *Research on online business models infringing IPR - Phase 1: Establishing an overview of online business models infringing IPR*, 2016, page 9: 'The revenue sources of the IPR-infringing business models are to a large extent the same as for non-infringing business models and consist of direct revenue sources such as sales revenue, subscription fees and donations, or indirect revenue sources such as pay-per click or advertisement fees.'.

5 IHS Markit on behalf of IAB Europe and the European Interactive Digital Advertising Alliance (EDAA), *The economic contribution of online advertising in Europe*, 2017. According to this, digital advertising represents 37% of all advertising revenue. In 2015, the direct contribution of digital advertising to gross value added (GVA) in the EU amounted to EUR 25 billion, and 1 million jobs in the EU were directly dependent on digital advertising. In 2016, 81.5% of traditional newspaper and magazine publishers' digital revenues in the EU came from advertising.

6 Around 25% of EU businesses used internet advertising in 2018 according to the Eurostat publication: *Internet advertising of businesses - statistics on usage of ads*, 2018.

7 Annex 1 presents a graph of the digital advertising supply chain. See also Chicago Booth and Stigler Center for the Study of the Economy and the State, *Stigler Committee on Digital Platforms, Final Report*, 2019, p. 61, and *Unlocking digital competition - Report of the Digital Competition Expert Panel*, 2019, p. 116.

In this environment, the misplacement of advertisement on websites and mobile applications providing access to IPR-infringing content, goods or services is a serious issue. The presence of mainstream advertising for major brands, as well as the availability of well-known payment services, on IPR-infringing websites and mobile applications:

- gives undue credibility to such websites and apps; this confuses consumers, who may mistakenly believe that such websites or apps provide access to legal content, goods or services, and erodes their confidence;
- damages the reputation of legitimate brands, which are often unaware of where their ads end up;
- damages the reputation, and undermines the value of, the advertising industry.

Against this background, legitimate advertisers and ad intermediaries use brand safety and proactive detection methods to tackle the misplacement of advertisement on IPR-infringing websites and mobile applications. This aims to make online advertising safer and more transparent, and help it thrive.

As part of measures to fight IPR infringements, stakeholder dialogues promote collaborative approaches to, and voluntary practical solutions for, better enforcing IPR in an ever-changing technological and commercial environment, by applying 'follow the money' mechanisms.

The 'follow the money' approach to IPR enforcement consists of designing policy measures that identify and disrupt the money trail for commercial scale IPR-infringing activities, diminishing their profit-making potential.

In light of the experience gained from the functioning of the Memorandum of Understanding (MoU) on the sale of counterfeit goods on the internet[8], voluntary industry-led initiatives taken by rights owners and intermediaries play an important role in the protection of IPR, complementing the legal framework, in particular the 2004 Directive on the enforcement of IPR[9].

This is why, in the latest action plan on IPR enforcement[10], the Commission services invited companies and associations from the advertising industry and other interested stakeholders, including IP rights owners and technology providers, to sign the MoU on online advertising and IPR[11] on 25 June 2018.

The signatories[12] to this MoU have committed themselves to minimising the placement of advertising on IPR-infringing websites and mobile applications. Those are defined for this MoU as websites and mobile applications that infringe copyright or disseminate counterfeit goods[13] on a commercial scale. This initiative will help deprive these websites and apps of the revenue flows that make their activities profitable.

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8 https://ec.europa.eu/growth/industry/intellectual-property/enforcement/memorandum-understanding-sale-counterfeit-goods-internet_en

9 Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 195, 2.6.2004, p. 16–25.

10 COM(2017) 707.

11 https://ec.europa.eu/growth/industry/intellectual-property/enforcement/memorandum-of-understanding-online-advertising-ipr_en

12 See Annex 2 for the current list of signatories.

13 For this MoU, counterfeit goods are defined as goods that are the subject of an act infringing a trademark in the country they are found in. They bear, without authorisation, a sign which is identical to the trademark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trademark. The same goes for any packaging, label, sticker, brochure, operating instructions, warranty document, or other similar item. It also applies, even if the packaging, label, sticker, brochure, operating instructions, warranty document, or similar item, is presented separately, and the subject of an act infringing a trademark. The trademark includes a sign, name or term identical to a validly registered

The MoU contains individual commitments for advertisers[14], advertising intermediaries[15] and associations. Signatories have also agreed to measure the effectiveness of the MoU by reporting on the concrete means they have individually put in place, and by monitoring the impact of the MoU on the online advertising market.

The Commission is not a signatory, but it plays a facilitating role, e.g. by organising the meetings and ensuring that all signatories act constructively and in good faith.

The MoU envisages an 'assessment period' of 1 year. During this year, the signatories were to meet quarterly to analyse its progress, implementation and functioning (paragraph 19 of the MoU).

This document provides an overview of the evaluation of the functioning and effectiveness of the MoU between 25 June 2018 and 24 June 2019, as envisaged in paragraph 20 of the MoU[16].

At the meeting on 23 September 2019, and on the basis of the draft report the Commission services had shared with them in advance, the signatories present unanimously decided to continue the MoU.

This report is based on:

- the feedback provided by signatories during the plenary meetings held on 20 September 2018, 10 December 2018, 25 March 2019, 24 June 2019 and 23 September 2019;
- the results of a survey launched in July-August 2019 regarding signatories' experiences with the application of the MoU and its functioning;
- the results from a study on the impact of the MoU on the online advertising market[17], and other data provided by signatories according to paragraph 18 of the MoU.

This document aims to present a factual overview of experiences of the MoU, based on the information provided by signatories to it. It does not reflect any legal or policy views or intentions of the Commission in relation to the issues under consideration, including any possible further developments related to the MoU.

trademark, or which cannot be distinguished in its essential aspects from such a trademark, and which can be used for the same type of goods as those for which the trademark has been registered.

[14] Advertisers are defined as being directly responsible for the placement of advertising (paragraph 4 of the MoU).

[15] Advertising intermediaries are defined as being directly involved in buying, selling or brokering the sale or purchase of advertising space (paragraph 7 of the MoU).

[16] The signatories will meet at the end of the assessment period to evaluate the effectiveness of the MoU under four headings: strengthening IPR protection, reducing the harm caused by IPR infringement, upholding fundamental rights and ensuring fair competition (paragraph 20 of the MoU).

[17] European Commission, *Study on the impact of the MoU on online advertising and intellectual property rights on the online advertising market*, 2020

2. THE FUNCTIONING OF THE MOU

2.1 Overall assessment by signatories of the functioning of the MoU

Signatories have assessed the overall effectiveness of the MoU in a positive light.

Most of them consider that the MoU is working well in reducing the placement of advertising on, and therefore the financing of, IPR-infringing websites and mobile applications. In particular, signatories believe that the MoU has contributed to strengthening the resolve of European brands to avoid advertising on such websites and apps.

They believe that the MoU makes it possible to network, find out about good practices, and better assess the risks, improve their bargaining position with other stakeholders, and discuss the need for new studies on online advertising and IPR, as well as the use of technologies and tools available on the market.

Signatories would recommend signing the MoU to other parties. They also consider that the current text of the MoU is fit for purpose. They do not see a justification for amending it at this stage.

2.2 Exchange of good practices and sharing of expertise between the signatories

2.2.1 Exchange of good practices

During the general meetings, most of the signatories presented the actions they took and good practices they put in place before and after signing the MoU to minimise the placement of advertising on IPR-infringing websites. They also shared ideas on what collaboration under the MoU should focus on to minimise the placement of advertising on IPR-infringing websites. The non-exhaustive list of practices below illustrates these efforts.

- **Advertisers' good practices**

According to the signatory association representing advertisers, many advertisers have strengthened cooperation with actors involved in digital advertising to ensure advertising placement next to appropriate editorial content, in a viewable and fraud-free environment, and therefore protect their brand reputation. The main guiding principles in this regard are zero tolerance of ad fraud, strict brand safety protection, transparency throughout the supply chain, third party verification and measurement as a basic requirement, as well as improving standards of data transparency.

Some advertisers also individually use exclusion lists ('blacklists'), where legally permitted, and 'whitelists', to avoid IPR-infringing websites and mobile applications.

- **Advertising intermediaries' good practices**

As part of their brand safety strategies addressing all areas of risk in the digital inventory supply chain, signatory advertising intermediaries indicated that they implement a range of tools to avoid placing advertising next to unlawful, illicit and/or unsuitable content, such as IPR-infringing content, and/or on IPR-infringing websites, or to remove it when detected. These tools are outlined below.

1) In terms of contractual protection, legal assurances are negotiated with technology and publisher partners, with specific provisions depending on the market in question, to minimise the risk of advertising being placed in non-brand safe contextual environments and/or its being subject to fraudulent traffic, and setting out a take-down policy.
2) Advertising intermediaries use independent technology and solutions to detect misplaced advertising and prevent it pre-bid or post-bid[18] by:
   - implementing controls to stop buying impressions running on IPR-infringing websites and mobile applications;
   - implementing real-time blocking to stop the display of an ad about to be shown, and avoid the impression's being counted or billed;
   - drawing up exclusion lists ('blacklists'), where legally permitted, with IP-holding client and legal enforcement input (where available);
   - telling bespoke client and campaign 'whitelists' to limit or block ads where they appear at the point of delivery (subject to client approval);
   - ensuring that pre-bid and post-bid settings are fully aligned.
3) Advertising intermediaries implement an operational process to monitor or vet media owner inventories to ensure they meet the brand safety standards and legal requirements of the advertising intermediary in question by:
   - using exclusion lists ('blacklists'), where legally permitted, and general and bespoke client 'whitelists';
   - implementing independent verification tag and track campaigns to ensure clients' requirements are met;
   - implementing a notice and take-down procedure;
   - providing a refund for the misplacement of advertising;
   - ensuring monitoring (campaign monitoring and post-campaign reports) and remediation to:
     - identify cases of advertising on IPR-infringing websites and mobile applications,
     - stop payment,
     - prevent it from happening in the future.
4) Advertising intermediaries participate in certification programmes and get accreditations from industry bodies to validate the due diligence buying units undertake.
5) Advertising intermediaries hire new specialist staff and educate existing agency staff about brand safety and available risk mitigation techniques.
6) Advertising intermediaries provide transparency and give input into discussions about IPR infringement.

- **Associations' good practices**

Signatory associations representing advertisers, advertising intermediaries, online gaming and betting operators, and sports bodies and competition organisers, have raised awareness of the MoU and encouraged their members to join it or adhere to its principles, as appropriate.

They have also discussed with their members the process of the MoU workflow on a regular basis, and reported the outcomes of the general meetings to them.

[18] Pre-bid is before or during the time when the bid request is sent to the bidders. Post-bid is after bid responses have been received.

The associations have reported that their members – be they signatories to the MoU or not – have certain tools or processes in place that contribute to achieving the objectives of the MoU. These include:

1) becoming certified, on the basis of self-regulatory standards;
2) exploring new tools and stepping up investment in existing tools (e.g. on content verification, advertising delivery and reporting inventory quality);
3) expanding collaboration with third party verification companies;
4) adjusting contractual agreements with advertisers to reflect ongoing efforts to minimise IPR infringement;
5) developing and publishing a brand safety policy;
6) employing specialists to improve brand safety;
7) launching IPR infringement and brand safety training in relation to planning and buying;
8) seeking greater assurances from publishers and third party ad technicians regarding efforts to minimise IPR infringement;
9) acting individually on exclusion lists ('blacklists'), where legally permitted.

2.2.2 Sharing of expertise

Signatories have also discussed new trends, such as the 'cloaking effect'[19] and the shift of certain IPR-infringing websites from EU countries to non-EU countries, in particular in the gambling sector.

The majority of signatories appreciated the sharing of analyses of the online advertising market and details of schemes implemented outside the EU. For example, a representative of the World Intellectual Property Organization (WIPO) presented the WIPO Alert Database Project[20] during the meeting held on 25 March 2019.

2.3 Communication and awareness raising

All signatories have promoted the fact that they signed the MoU. They have done so in two ways: through their own internal means of communication – websites and social media, newsletters and email alerts, meetings (e.g. workshop, meetings in person, Council/Board meetings, annual meetings), working groups, briefing materials – or using outside communication channels, such as industry meetings, social media and press statements.

The Commission services have presented the work under the MoU in relevant meetings with Member States authorities and private stakeholders[21].

Awareness of the MoU has also been raised at international events, such as meetings of the WIPO Advisory Committee on Enforcement (ACE)[22], and at the International Forum on IP Enforcement 2019[23], as well as in discussions with the EU's main trading partners[24].

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[19] The 'cloaking effect' is defined as tactics used by infringers that maintain a clean website offering legitimate content, with the website becoming a source of infringing content for a limited amount of time each week (e.g. to transmit sports events).

[20] WIPO Alert is a secure online platform designed to aggregate lists of websites suspected of infringing copyright ('sites of concern'), that are being managed by several national administrations around the world. By checking with the WIPO Alert platform, advertisers and advertising intermediaries can ensure that advertising does not accidentally appear on copyright-infringing websites (see WIPO/ACE/14/9).

[21] See for example meetings of the Group of experts on the enforcement of intellectual property rights, Working Groups meetings, Expert Groups meetings, plenary meetings, public and private sector representative meetings of the European Observatory on infringements of IPR.

2.4 The impact of the MoU on the online advertising market

The Commission commissioned a study[25] to quantify the evolution of online advertising on IPR-infringing websites over time. Although it is difficult to isolate the exact impact of the MoU on the amount, type and value of advertising on IPR-infringing websites in the EU, the study provides an indication of the extent and nature of the problem in different EU countries. It compares the EU to the US over the same time period, providing a benchmark, and compares a subset of identical websites before and after the signature of the MoU.

The study web-crawled 7,627 websites from 19 EU countries[26] and the US during the first 6 months of 2019. The websites in question included those found to infringe copyright or disseminate counterfeit goods by judicial, administrative and other enforcement authorities in the EU (referred to as 'illegal websites'), and websites that White Bullet's methodology identified as infringing IP without any substantial legitimate use (referred to as 'high-risk websites'). The breakdown of these websites was 60/40.

Out of a total number of more than 2.5 million ads collected, over 1.8 million ads were collected on high risk websites (71%) and over 725,000 ads were collected on illegal websites (29%).

No differentiation was made between (i) brands belonging to MoU signatories and brands belonging to non-MoU signatories, and (ii) brands with brand safety standards or for which there were self-regulatory initiatives, and other brands.

This data was complemented with data previously compiled in 2018 at a similar period in order to compare the situation pre and post MoU. To ensure empirically sound comparability, only a subset of websites (530) common to 8 EU countries was compared[27].

2.4.1 Ads on the full set of IPR-infringing websites monitored in 2019

The main findings of the study for January – June 2019 are as follows.

- **Analysis of ad types**

Across the websites crawled, branded advertising[28] made up 47% of all ads collected. Ads with adult content and those involving fraud and malware made up 20% of all ads.

The proportion of branded advertising ads was higher on illegal websites (60%) than on high-risk ones (41%), although only 29% of total ads were identified on illegal websites.

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22 See for example the Thirteenth Session (September 2018) and the Fourteenth Session (September 2019) of the WIPO ACE.

23 See the summary of the International Forum on IP Enforcement 2019.

24 https://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/

25 European Commission, *Study on the impact of the MoU on online advertising and intellectual property rights on the online advertising market*, 2020

26 Belgium, the Czech Republic, Denmark, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Sweden, Spain and the UK.

27 The report provides a snapshot comparison between data collected between 6 March and 5 June 2019 and the same period in 2018. These datasets reflected the same countries, i.e. Denmark, France, Germany, Italy, the Netherlands, Spain, Sweden and the UK, and 530 websites, common to all, with advertising.

28 Branded advertising is defined in the study as ads that can be attributed to a brand, including both major brands and other brands. Major Brands are defined in the study as brands that are on selected top advertiser lists or are otherwise premium reputable established brands with a strong search engine presence in EU Member States. Other Brands are defined in the study as brands that are not major, but are also not fraudulent, adult, or malicious.

Branded advertising represented at least 50% or more of all ads collected in 6 EU countries, with Estonia (55%), Romania (53%) and Slovakia (52%) recording the highest levels, each significantly above the EU median[29] (48%) and the US (46%).

Major brands – a subset of branded advertising – represented 4% of total ads collected on illegal and high-risk websites. At level country, Spain (7%), Estonia and Lithuania (6% each) had the highest levels of major brands, while Ireland recorded the lowest level (2%). The EU median (4%) was slightly higher than the proportion of major brands in the US (3%).

- **Analysis of branded advertising sector**

Most of the major brand ads corresponded to shopping (33%) and gambling (30%), while 11% promoted technology and computing.

52% of the branded ads featured gambling, and 20% advertised arts and entertainment services/products (including gaming). Betting was the main gambling sub-sector in all the selected EU countries and the US.

- **Analysis of brands**

Across the websites crawled, 3,847 unique brands were identified, including 546 unique major brands. However, only 338 brands (9% of all brands identified) and 28 major brands (5% of all major brands identified) appeared in all the selected EU countries.

The identified brands corresponded mainly to the following subsectors: technology and computing – software (235), arts and entertainment – gaming (198), and gambling – online casino games (179).

Of all brands identified, 38% were considered EU brands. 65% of all major brands identified were considered EU major brands. Of the brands with no established business operations in at least one EU country, 48% were headquartered in the US, followed by Indonesia (9%) and Russia (5%). Belgium had the lowest percentage of EU brands across the websites monitored (30%), and the highest percentage of US brands (21%).

The EU daily median was higher than the US daily median for all brands (161 vs 147), but the same as the US in terms of major brands (12). At country level, Malta had the highest daily median of brands (191). The UK also had a high daily median of brands (175), as well as the highest daily median of major brands (19).

- **Analysis of ad intermediaries**

A total of 4,752 unique ad intermediaries were identified across all websites crawled. More ad intermediaries were identified on high-risk websites (40% of the monitored websites) than on illegal websites (60% of the monitored websites): 4,158 vs 2,732. This difference may indicate that initiatives like the use of infringing website lists (i.e. exclusion lists) may help reduce the number of identified ad intermediaries engaging with IP-infringing websites.

Many EU countries recorded higher daily medians of ad intermediaries than the US. In the EU, those with the highest daily median of ad intermediaries were Malta (253), the UK (248), Denmark (244) and Sweden (241).

Across all websites monitored, EU ad intermediaries accounted for 53% of all identifiable intermediaries[30]. France (19%) and Belgium (18%) had the highest level of EU ad intermediaries identified, with the EU median less than 16%.

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[29] The median is the number in a range of scores that falls exactly in the middle so that 50% of the scores are above and 50% are below (see Eurostat 'Statistics explained').

[30] Identifiable ad intermediaries are defined in the study as intermediaries that could be attributed to an identifiable company, excluding unidentifiable ad servers.

2.4.2 Ads on a subset of IPR-infringing websites monitored before and after the signature of the MoU

Caution should be exercised in comparing the periods before and after the signature of the MoU. Only a year's experience, and seasonal effects as well as other (technological) circumstances that change over time, make conclusions on the quantitative effect of the MoU less reliable. Within these parameters, the following conclusions can be drawn.

There has been a 12% decrease in the average number of ads collected per visit[31] to IPR-infringing websites following the introduction of the MoU, down from 2.02 in the pre-MoU comparison dataset to 1.77 in the post-MoU comparison dataset.

Although fewer ads were found per visit, the percentage of branded advertising post-MoU has increased from 38% to 52%. The largest increases came from the UK, the Netherlands, Germany and Italy.

Five sectors (gambling, arts and entertainment, technology and computing, business and shopping) accounted for 95% of the branded advertising collected in the post-MoU dataset. These were also the top five sectors in the pre-MoU period, with the exception of business being replaced by personal finance.

Focusing on major brands, the proportion of major brand ads promoting gambling decreased from 62% in the pre-MoU dataset to 50% in the post-MoU dataset, while the proportion of major brand ads featuring shopping increased from 18% to 27%.

The proportion of ads collected from major brands attributable to EU brands decreased from 93% to 75%.

The proportion of ad path detections[32] attributed to EU ad intermediaries decreased from 28% to 22%. However, the majority of identifiable ad intermediaries engaging with the IP-infringing websites in the EU are not based in the EU.

[31] Visits refer to visits made by White Bullet's ad monitoring system to the websites monitored.

[32] Ad path detections are defined in the study as identifying signals of an ad intermediary found in the ad supply chain of a specific ad. Multiple ad path detections may be identified per ad, including repeat signals for individual ad intermediaries.

2.5 Follow-up actions suggested by the signatories

The signatories have suggested a range of new actions and activities to be assessed and developed in the next stage of cooperation under the MoU. They stressed that all these actions need to account for the changing IPR infringement landscape, and the complex structure and dynamic nature of the advertising market in general.

2.5.1 Scope

Suggestions by some signatories included further exploring:

- the nature of the advertising channel commonly used by the sector in question (i.e. open ads exchanges);
- the role of the most important stakeholders at each stage of the advertising supply chain;
- processes and tools making online advertising more transparent throughout the entire supply chain.

Some signatories have also underlined the need to focus on specific problem areas and markets where the misplacement of advertising is particularly problematic and/or where further progress is needed (e.g. gambling).

Some signatories have also pointed out the importance of branching discussions out from the website environment to other applicable environments, such as mobile applications. Certain signatories are also in favour of extending the MoU to applications other than those used on mobile devices, such as Connected TV (CTV) and Over-The-Top (OTT) applications, as well as any applications monetising audiences through advertising (paragraph 20 of the MoU). However, signatories realise that there are technical limitations in this regard.

2.5.2 Technology and tools

According to some signatories, it would be useful to deepen the understanding of how existing and future technology and technical solutions could help avoid the placing of advertisements on IPR-infringing websites and mobile applications.

The signatories indicated that special attention should be paid to programmatic advertising and real-time monitoring of its placement (in addition to retrospective monitoring) to help take action (i) at the pre-bid stage to block IPR-infringing advertising at its source, and (ii) at the post-bid stage to highlight fraudulent advertising impressions after their being placed, and exclude them from final billing.

Some signatories have also stressed the need for assessing how advertising intermediaries identify/detect IP-infringing websites and mobile applications to filter them out.

Some signatories would also like to know more about available industry-wide brand safety tools.

2.5.3 Monitoring

Signatories agreed on the importance of continuing the monitoring process to assess the impact of the MoU on the online advertising market. Building on the experience gained from the first study, the second study will provide an estimation of the ad revenues collected by IPR-infringing website owners, in addition to quantifying the evolution of online advertising on IPR-infringing websites over time.

Some signatories would like to focus on continued, detailed monitoring of the types of ads on IPR-infringing websites.

Several signatories have suggested further exploring ways of monitoring the overall impact of signatories' efforts to minimise the placement of advertising on IPR-infringing websites. This could include self-reporting by signatories (e.g. on the implementation of contractual clauses), the production of more specific aggregated qualitative data, and the achievement of tangible and measurable objectives as part of the MoU process.

2.5.4 'Follow the money' approach to IPR enforcement

Some signatories have expressed the need to collect data and evidence that stand up to scrutiny, in order to estimate:

- the value of IPR-infringing website (and application) owners' online advertising revenues (to be covered by the second study, as explained above);
- the impact of the MoU on the cashflow of IPR-infringing websites and mobile applications.

The above gives them an insight into IPR infringement as a criminal activity, but some signatories would also like to explore new actions to tackle actors who lack diligence in running advertising campaigns, and rogue traders, both of which reject voluntary industry-led initiatives such as the MoU. These actions could be developed and implemented in cooperation with national authorities.

2.5.5 Exchange of good practices and sharing of expertise

Some signatories stressed the need to provide a broad overview of current actions to minimise advertising on IPR-infringing websites and mobile applications. This could be done, for example, by compiling a list of (i) relevant national, EU and international instruments, (ii) specific ways of deterring fraudulent online advertising, and (iii) reported good practices, and by continuing to share relevant research and studies. Relevant instruments encompass industry-wide self-regulation, codes of conduct, guidelines, alliances, awareness-raising activities.

Signatories indicated that they will also aim to increase the implementation of reported good practices and further assess success factors, and look into how to duplicate and expand them in and, if possible, outside the EU.

Some signatories have suggested inviting experts from national authorities, in particular those facilitating the creation of lists of IPR-infringing websites, and international organisations (e.g. OECD and WIPO), technical and research experts, open exchange platforms, start-ups and technology companies.

Some signatories have also suggested that setting up smaller discussion groups in the MoU meetings, and creating an information hub where signatories could access information shared during meetings, could further facilitate exchanges between themselves.

2.5.6 National, EU and international cooperation

Signatories have indicated new possible ways of strengthening national, EU and international cooperation, by for example learning from similar initiatives in and outside the EU, and collaborating with public authorities where possible. Therefore, spreading the word more widely about the MoU in EU and non-EU countries would encourage such cooperation.

2.5.7 Communication and awareness raising

Signatories have underlined the importance of:

- strengthening the public perception of the insidious nature of IPR-infringing websites and mobile applications;
- raising awareness among advertisers/rights owners, brand-appointed advertising agencies and advertising intermediaries of inadvertent ad misplacement and of what measures to take to target only legitimate websites in ad campaigns;
- reaching out to potential candidate signatories.

Specific messages could be delivered to educate various audiences, such as the general public, advertisers and advertising intermediaries, in particular specific staff (e.g. planning and buying teams), in specific sectors in and outside the EU.

To do this, some signatories have suggested:

- cooperating in the creation of communication materials (e.g. factsheets, Q&A, videos[33]) to explain the MoU;
- producing and sharing press content;
- organising market-oriented briefing events, such as webinars and conferences;
- taking greater advantage of events organised by the advertising industry, such as national/ regional advertising week festivals (e.g. AdWeek Europe).

2.6 Views of signatories on the extension of the MoU to new signatories

The signatories have stressed that opening up the MoU to new signatories involved in the entire advertising ecosystem would help spread good practices, facilitate adherence to the MoU and, overall, improve its effectiveness.

Signatories would welcome in particular the participation of companies and trade associations involved in the digital advertising supply chain – on the demand side and the supply side – at national, EU and international level, in particular:

- advertising intermediaries, as they play a role at each stage of the process of placing an ad on a website, in particular Demand Side Platforms (DSPs) and Supply Side Platforms (SSPs), as well as major mobile and in-app European Ad Exchanges;
- trading desks, advertising platforms, advertising networks, advertising exchanges for publishers, sales houses;
- direct buyers: advertisers/rights owners (trademark and copyright owners– including SMEs) and brand-appointed advertising agencies;
- publishers;
- individual gambling operators.

Participation of other categories of intermediaries would also help achieve the objectives of the MoU, such as social media firms, payment industry and e-commerce platforms, as well as technology companies specialised e.g. in programmatic online advertising, and technology providers offering brand safety solutions and monitoring services.

The majority of signatories plan to invite companies and associations among the categories listed above to join the MoU.

[33] A video could be made on the model of the video on the signature of the MoU published in July 2018.

3. CONCLUSIONS AND NEXT STEPS

On the basis of their experience and evaluations, the signatories have agreed that the MoU promotes good practice and is operating satisfactorily due to the commitment of the participants to make it work.

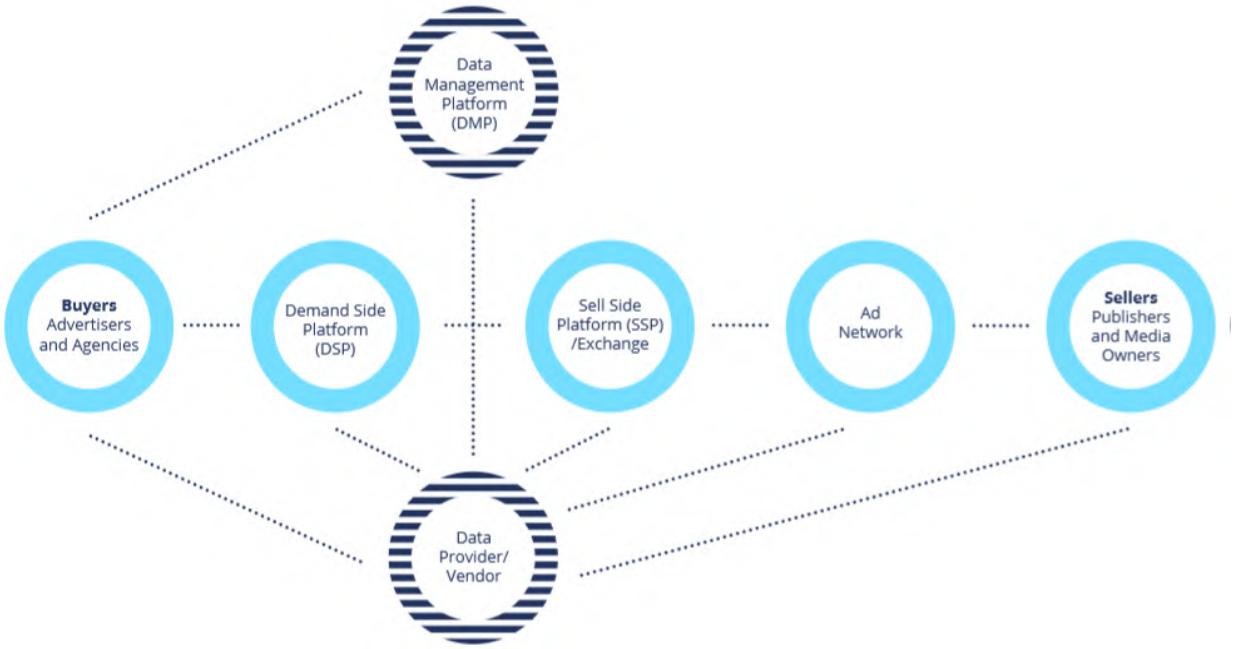
The factual albeit still limited overview of experiences based on the MoU so far shows a 12% decrease in the average number of ads collected per visit to IPR-infringing websites following the introduction of the MoU, and a decrease in advertising by major brands in the gambling sector, down from 62% to 50%. In addition, downward trends in the proportion of ads collected from major brands attributable to EU brands (93% to 75%) and in the proportion of ad path detections attributed to EU ad intermediaries (28% to 22%) have been identified in the post-MoU period.

To date, signatories consider that there is no apparent need to amend the text of the MoU. 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. The signatories have agreed to meet twice a year under the auspices of the Commission, to discuss, implement and monitor the suggested follow-up actions.

In particular, sharing expertise, strengthening cooperation with public authorities, and raising awareness, at national, EU and international level would be crucial to spread good practice and facilitate adherence to the MoU. To achieve this aim, signatories encourage 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. Discussions will be guided by the evolution of online advertising on IPR-infringing websites over time, and the estimated ad revenues of IPR-infringing website owners.

Appendix 1

The digital advertising supply chain



Source: IAB Europe, Transparency Guide for the digital advertising supply chain.

Appendix 2

Signatories to the MoU on online advertising and IPR

1) Adform
2) Amobee
3) Associação Portuguesa de Anunciantes (APAN)
4) Associazione Italiana Commercio Estero (Aice)
5) Comscore
6) Hrvatsko udruženje društava za tržišno komuniciranje – Croatian Association of Communications Agencies (HURA)
7) DoubleVerify
8) European Association of Communications Agencies (EACA)
9) European Gaming and Betting Association (EGBA)
10) Google
11) GroupM
12) Havas Media Group (joined September 2019)
13) Integral Ad Science (IAS)
14) Internet Advertising Bureau Europe (IAB Europe)
15) Internet Advertising Bureau Italy
16) Związek Pracodawców Branży Internetowej (IAB Poland)
17) Internet Advertising Bureau Slovakia
18) Internet Advertising Bureau UK (IAB UK)
19) Incorporated Society of British Advertisers Ltd (ISBA)
20) OpenX
21) Publicis Groupe
22) Sovrn
23) SpotX
24) Sports Rights Owners Coalition (SROC)
25) Trustworthy Accountability Group (TAG)
26) Uniunea Agentiilor de Publicitate din Romania (UAPR, Romanian Association of Communications Agencies)
27) Utenti Pubblicità Associati (UPA)
28) White Bullet
29) World Federation of Advertisers (WFA)