

AmCham EU welcomes the European Commission's balanced approach on Tackling Illegal Content Online

Following the publication of its Communication on 'Measures to tackle illegal content online' on 28 September 2017, the European Commission published on 1 March 2018 a Recommendation on 'Measures to effectively tackle illegal content online'. The Recommendation addressed to Member States and online service providers (OSPs) provides guidance on how to identify and remove illegal content online.

As the European Commission will now start the process of assessing the implementation of the Recommendation through an impact assessment and a public consultation, leading to potential legislative actions to be proposed by December 2018, the purpose of this policy statement is to back the European Commission in its efforts to tackle illicit content online with a particular focus on intellectual property rights (IPRs).

The American Chamber of Commerce to the EU (AmCham EU) supports the Commission's objectives to address legitimate concerns around illegal content online and shares the Commission's view that illegal content online has the potential to seriously compromise economic growth and jobs, and damage consumer protection and safety overall.

The text issues a broad definition of 'illegal content' covering information directed at consumers residing in the Union, which is not in compliance with EU law or the law of the Member State concerned by the service provision - hence covering IPR infringements such as counterfeiting and piracy.

While we support the European Commission's horizontal assessment, it is very important for policy-makers to recognise that not all types of illegal content can be treated the same. Therefore, its approach should be flexible enough to allow for appropriate responses for example in light of the OSPs' ability to assess the illegality of the content.

AmCham EU welcomes the fact that the Recommendation advises Notice & Action (N&A) mechanisms to be made easy to access and to use for all users of the hosting service provider while keeping the need for them to be sufficiently substantiated to avoid abuse.

Likewise, AmCham EU welcomes the fact that the Recommendation encourages hosting service providers to take preventive and proactive measures for the detection of illegal content and the clarification that such proactive measures will not entail the loss of the liability exemption, as stated in Recitals 25 and 26. For certain forms of illegal content, as IPR-infringing listings, these types of measures should also be used when the illegal character of the content has been established, in order to prevent repeated infringements.

The Recommendation is also positive in that it incentivises strengthened cooperation and exchange of best practices between online platforms and Member States, while encouraging the development of other solutions that would help expedite take-down procedures.

AmCham EU believes that illegal content in all its forms constitutes an obstacle to the creation of a safe and sustainable European Digital Single Market. We encourage the European Commission to pursue an evidence-based, balanced and horizontal approach to tackle illegal content online and continue to monitor progress, while assessing the need for legislative measures to be adopted if necessary.