

The "follow the money" approach in intellectual property rights enforcement

Background

'Follow the money' is an initiative of the European Commission which started in 2011. It brings different parties together to establish a multi-stakeholder dialogue aimed at disrupting the revenue flow for commercial-scale intellectual property (IP)-infringing activities through voluntary agreements. The Memorandum of Understanding (MoU) on the sale of counterfeit goods via the Internet, brokered by the Commission in 2011, was the first voluntary co-operation agreement between stakeholders at the European level aimed at better enforcement of intellectual property rights (IPR).

The 2014 IPR Enforcement Action Plan announced the Commission's facilitation of new voluntary initiatives on advertising and payment services. In December 2015, the Commission began work on the second voluntary MoU on the 'follow the money' approach with the advertising community and rights holders. The MoU aims to cut income of commercial-scale IP infringing sites generated through online advertising.

The MoU will be signed by companies and associations and will have clear metrics (key performance indicators) to measure the success of commitments. It will be up to the agencies and other intermediaries to prove that the misplacement of ads on IP- infringing websites is minimised.

The Commission started drafting the Memorandum in January 2017. It was expected to be signed in summer 2017, however the Commission decided to postpone the signature due to internal personnel changes. The process has been revived in autumn 2017.

Baseline principles

The Memorandum will draw from the baseline principles agreed through a lengthy process in which EACA participated.

The agreement will be open for signature by all the parties involved in placing, buying, selling or facilitating advertising, as well as all parties with an interest in fighting against IP infringements, such as but not limited to, advertisers, agencies, trading desks, advertising platforms, advertising networks, advertising exchanges, sales houses, publishers and IP right owners and their representatives or associations.

Under the agreement, the signatories directly involved in buying, selling or brokering the sale of advertising space will undertake to include certain safeguards in their contractual agreements, such as but not limited to, the use of Content Verification (CV) tools, Ad Delivery and Ad Reporting systems, schedules, online rights monitoring and brand protection services. The aim is to ensure that the advertisements placed is not associated with commercial-scale IP-infringing content.

EACA position

EACA members do not support IP infringements and work with responsible players in the advertising chain. With regards to the Memorandum of Understanding, we believe that any EU approach also should take well-established national initiatives into consideration and encourage them to converge. It should also allow companies to go beyond the stipulations of the Memorandum if they desire so, given that brand safety goes beyond the piracy issue, which the Memorandum aims to tackle.