

## Response to public consultation

Recipient: The European Commission  
Sender: Dansk Erhverv / The Danish Chamber of Commerce

### **Public consultation concerning the European Commission recommendation on illegal content online and increased responsibility for online platforms**

The Danish Chamber of Commerce (the Danish Chamber of Commerce) has received the public consultation concerning the European Commission Recommendation on measures to effectively tackle illegal content online, (C(2018) 1177 final).

The Danish Chamber of Commerce welcomes the initiative regarding a more comprehensive and transparent approach regarding the responsibility of online platforms for addressing illegal content on their platforms through the “notice and take down” procedure. Online service providers can do more to tackle illegal content of various kinds, ranging from the most nefarious cases of terrorism propaganda and child abuse to hate speech and protection of intellectual property and copyrights. While swift responses to illegal content is necessary, and more can be done to tackle illegal content effectively, it is also vital to ensure proportionality between the nature of the offense and the set of expectations that online service providers must live up to.

#### *General remarks*

Firstly, it is central to The Danish Chamber of Commerce that the liability of the platforms, as well as the other companies involved, is proportional and does not inflict any administrative restraints that are disproportionate.

The recommendations establish a responsibility for online platforms to publish regular transparency reports, and specific time frames for removing illegal content online. Depending on the circumstances, these litigations may be excessively costly particularly for small and medium sized platforms, and may therefore impact negatively on the expansion of the digital economy in Europe. Secondly, it is essential that the Commission recognizes the importance of establishing a binding and effective process that can establish an effective regime to ensure a satisfactory level of protection for intellectual property rights. One widespread problem is that Danish and European companies routinely spend many resources on identifying counterfeited goods and requesting that they be delisted from online platforms, only to learn that the same or a identical products are listed again on the same or another online platform very soon after.

The Danish Chamber of Commerce therefore strongly backs the Commission’s call for greater use and development of automatic algorithms that can detect illegal content. It is also important to note that counterfeited products are often produced without compliance with product security regulations. The importance of an effective “notice and take down” system is therefore not only a question

of securing commercial rights, but equally a question of consumer protection. Moreover, using digital content that infringes upon intellectual property rights is often associated with a higher risk of being affected by consumer-targeted crimes such as malware or the abuse of credit card information.

*Specific remarks*

While we agree that illegal content should be removed as speedily as possible, we also stress that not all platforms have the size and manpower to ensure a practically immediate response to any issue that may come up through all hours of the day, during weekends and holidays etc. Moreover, some issues may be contentious and require consideration, e.g. where to draw the line between satire, hate speech and copyright infringement. Some type of content is also inherently more wicked and damaging than other. We therefore welcome the recommendation text that specifies that “referrals [related to terrorist content] should be assessed and, where appropriate, acted upon within one hour, as a general rule”. While online service providers must of course respond with duly haste, a fixed one-hour rule would be an unreasonable burden especially for small and mid-sized online service providers.

We welcome the fact that the recommendation addresses the prospect of referrals or counter-notices being made in bad faith. Online service providers may find themselves wasting considerable resources handling referrals and counter-notices and going through lengthy online material that has been flagged in bad faith. Unfortunately, it is not specified in the recommendation what “effective and appropriate measures” may entail. We therefore encourage the Commission to elaborate on the types of referrals and counter-notices in bad faith that are foreseen, and what countermeasures might be appropriate, as the current text is too vague and leaves too much open for interpretation.

The Commission stresses that it has “set out its view” that online providers that take voluntary proactive measures to tackle illegal content online will not automatically lose the “safe harbour” liability exemption of the E-commerce Directive 2000/31/EC. The Danish Chamber of Commerce agrees that it is desirable that online service providers, on a voluntary basis, out of their own accord and within a reasonable , take such proactive measures against various types of illegal content, and that the prospect of losing the liability exemption is a considerable disincentive to take such measures. However, we are not convinced that simply laying out a view will affect jurisprudence on the matter.

The Danish Chamber of Commerce will of course be happy to elaborate on the points made or enter into further discussion regarding the initiative.

Kind regards,  
Malthe Munkøe  
Head of Research and Analysis