

DEVELOPMENT OF DIALOGUE FORUM



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Summary: Development of Dialogue Forum

In 2013, the Ministry of Culture established the Dialogue Forum; a collaboration between rights holders and internet actors aimed at preventing funds and traffic from reaching illegal internet services using a "follow-the-money" approach. The objective was and remains to contribute to greater legality and security on the internet.

With the aim of identifying opportunities to enhance the potential and effectiveness of the Dialogue Forum collaboration, the Ministry of Culture, in partnership with the Rights Alliance, launched the *Development of Dialogue Forum* project. The project aims to increase the value of the cooperation list, which prevents ads from appearing on copyright-infringing services, and to expand efforts to include new participants, activities and criteria for inclusion of sites on the cooperation list.

Glossary:

Dialogue Forum: A collaboration between various stakeholders such as media houses, advertising companies and other internet service providers, with the aim of contributing to creating more legality and safety on the internet by cutting off cash flows and traffic to internet services that violate rights.

Blocklist: A list of websites that have been deemed illegal by the courts. Members of the Telecommunications Industry Association implement this list in their systems, ensuring that Danish internet users do not have access to the illegal websites. In addition to court decisions, the collaboration is based on a Code of Conduct between the Rights Alliance and the Telecommunications Industry Association, which entails all internet providers blocking based on a court decision against one internet provider. The court decisions concern both the original website addresses and the so-called "mirror sites" that may arise subsequently. The Rights Alliance updates the blocklist once a month and sends it to the Telecommunications Industry Association.

Cooperation List: Today, the cooperation list is a list of the same websites as the blocklist. The Rights Alliance sends the cooperation list to the Ministry of Culture, which sends the list to the advertising companies that currently use the cooperation list. In the future, it is recommended that the cooperation list be expanded to include more copyright-infringing websites than court-convicted websites, as well as problematic websites. It is also recommended that more stakeholders be involved in the collaboration to use the cooperation list.

Code of Conduct: The code of conduct is an operational anchoring of the Dialogue Forum, where specific actors who have the ability to cut off money and traffic, such as advertising to copyright-infringing websites, can join. Participants in the code of conduct commit to using the cooperation list to cut off traffic and money to illegal internet services to the best of their ability.

The following summarises the sections of the report sequentially, presenting the project's results and recommendations overall.

Section 1 describes the purpose of the *Development of Dialogue Forum* project, which is:

- 1) To increase the use and thus the effectiveness of the cooperation list currently available to advertisers, with the aim of cutting off money and traffic to illegal sources through ad placement.
- 2) To expand the effort to include new participants and new activities that stop and limit money and traffic to copyright-infringing services.

Simultaneously, the organisation of the Dialogue Forum must be adjusted to reflect the changed framework and the new areas where Dialogue Forum cooperation is relevant.

Section 2 describes the background of the Dialogue Forum, its current status and why there is a need to develop it further. The primary challenges of the Dialogue Forum in its current form are described in more detail, with the current cooperation list's effectiveness being assessed as limited, and its potential deemed untapped.

Section 3 describes the methodological basis of the project, primarily based on thorough investigations of similar initiatives in several relevant countries, as well as dialogue with relevant stakeholders. The full analysis is detailed in Appendix 2 of the report.

Section 4 outlines recommendations for developing the cooperation list.

Initially, deficiencies in the current blocklist are described, along with the need to include problematic services without requiring a court order. It is recommended to use functional criteria. Different possible sources for identifying both copyright-infringing services and problematic services, as well as different models for list administration, are explored.

Recommendations are given for a self-regulating approach and introducing the concept of "problematic sites" as a general criterion for including websites on the cooperation list. The Danish Data Protection Agency's decision on the cooperation list and upcoming legislative changes are mentioned.

Furthermore, it is recommended that the cooperation list be administered by the Rights Alliance in the future, with the aim of ensuring simple and functional management of the cooperation list. The section concludes with a legal analysis of competition issues, list collection and distribution.

Section 5 discusses the possibilities of expanding the Dialogue Forum with new potential areas and participants. The report recommends investigating several listed areas, including payment services, recommendation services, etc. It is recommended to continue working on uncovering the extent to which and how relevant new participants can use the cooperation list.

Based on the above, the Rights Alliance, together with the Dialogue Forum steering group, should continuously explore which actors are relevant and how they should be prioritised based on factors such as willingness to cooperate and expected impact of their involvement.

Section 6 introduces organisational measures for the Dialogue Forum. The proposal involves a revised code of conduct as a basis, where the Dialogue Forum commits to the goal of promoting legality and security on the internet. A redefinition of the code of conduct steering group is outlined as a transition to a steering group for the entire Dialogue Forum collaboration.

The structure of the steering group, election procedures and frequency of meetings are specified. Handling of the cooperation list, including creation, updating and distribution, is proposed to be managed by the Rights Alliance. The cooperation list remains non-public but will be available upon request and distributed monthly to code of conduct participants. Future automated transfers are being considered.

Section 7 summarises the recommendations of the report for the development of the Dialogue Forum, and **Section 8** outlines the implementation plan for the report's recommendations.

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1. Introduction:

Purpose of the *Development of Dialogue Forum* project

Dialogue Forum engages key stakeholders in creating legality and security on the internet through an active effort to prevent money and traffic from reaching illegal internet services¹.

Today, Dialogue Forum is a collaboration aimed at stopping advertising on illegal internet services. The organisation of this collaboration and the tools to operationalise it have been continuously adjusted since the establishment of Dialogue Forum in 2013. The starting point was the Share With Care collaboration between rights holders and the Telecommunications Industry Association, which, in collaboration with the Ministry of Culture, established a system for effective blocking of illegal internet services in 2012. The Share With Care collaboration serves as a model for other countries, demonstrating the significant potential of collaborating to regulate the internet.

Based on political decisions, the Ministry of Culture initiated both Share With Care and Dialogue Forum and continues to be crucial for maintaining and developing these collaborations. The practical management of these collaborations lies with the actors themselves.

Dialogue Forum has the potential to be the focal point for a strengthened collaboration between rights holders and other internet actors. It also has the potential to implement this collaboration in several specific initiatives, using a "follow the money" approach, such as preventing financial transactions from taking place on illegal services or preventing illegal services from advertising on legitimate platforms.

Such initiatives aim to prevent money and traffic from supporting copyright-infringing activities while also limiting the risk of Danish citizens being defrauded by internet criminals through activities on copyright-infringing services.

Therefore, the purpose of the *Development of Dialogue Forum* project is to harness the potential of the Dialogue Forum collaboration to:

- Increase the use and effectiveness of the cooperation list currently available to advertisers, with the aim of cutting off money and traffic to illegal services through ad placement.
- Expand the effort to include new participants and new activities that stop and limit money and traffic to copyright-infringing services.

Simultaneously, the organisation of Dialogue Forum will be adapted to reflect changed regulatory frameworks and new areas where Dialogue Forum collaboration is relevant.

¹ Today, the collaboration requires that the services have been convicted by a court. This report recommends expanding the criteria for inclusion on the cooperation list in line with international organisations such as WIPO. cf. Appendix 2.

Glossary:

Dialogue Forum: A collaboration between various stakeholders such as media houses, advertising companies and other internet service providers, with the aim of contributing to creating more legality and safety on the internet by cutting off cash flows and traffic to internet services that violate rights.

Blocklist: A list of websites that have been deemed illegal by the courts. Members of the Telecommunications Industry Association implement this list in their systems, ensuring that Danish internet users do not have access to the illegal websites. In addition to court decisions, the collaboration is based on a Code of Conduct between the Rights Alliance and the Telecommunications Industry Association, which entails all internet providers blocking based on a court decision against one internet provider. The court decisions concern both the original website addresses and the so-called "mirror sites" that may arise subsequently. The Rights Alliance updates the blocklist once a month and sends it to the telecommunications industry.

Cooperation List: Today, the cooperation list is a list of the same websites as the blocklist. The Rights Alliance sends the cooperation list to the Ministry of Culture, which sends the list to the advertising companies that currently use the cooperation list. In the future, it is recommended that the cooperation list be expanded to include more copyright-infringing websites than court-convicted websites, as well as problematic websites. It is also recommended that more stakeholders be involved in the collaboration to use the cooperation list.

Code of Conduct: The code of conduct is an operational anchoring of the Dialogue Forum, where specific actors who have the ability to cut off money and traffic, such as advertising to copyright-infringing websites, can join. Participants in the code of conduct commit to using the cooperation list to cut off traffic and money to illegal internet services to the best of their ability.

2. Why is There a Need for the Development of the Dialogue Forum?

2.1 Background

The Dialogue Forum was established by the Ministry of Culture based on the ministry's Copyright Act from June 2012, as a framework for agreements on combating copyright infringement activities. One specific activity that was initiated is the work to curb inadvertent advertising on illegal websites. The initiative was launched to cut off a significant source of income for various illegal services while preventing companies' brands from being associated with illegal websites.

This work was formalised in a so-called Ad Code of Conduct. The Ad Code of Conduct was a collaborative agreement between the Rights Alliance and advertising agencies/media to generally combat illegal copyright-infringing services and specifically to prevent advertising on illegal sites using a blocklist. However, the practical application of the blocklist faced difficulties due to the interpretation of the then-existing GDPR (further elaborated in section 4.5.2).

The specific tool to prevent advertising was and still is the blocklist, which includes website addresses where internet providers, under court order, must block their customers' access to services found illegal by a court. The blocking occurs in the internet providers' DNS systems. A DNS system translates a given website address (e.g., thepiratebay.org) into a machine-readable format (e.g., 192.0.2.44).

Court rulings have been and continue to be a requirement set by internet providers as a condition for blocking internet access to a given service². Therefore, court rulings are currently the criterion for an internet service, along with its associated website addresses, to be included in the blocklist and thus also in the cooperation list.

This criterion will be evaluated in the following section 4.2.

In the Dialogue Forum, as part of the Ad Code of Conduct collaboration, efforts were made to also include payment intermediaries with the aim of cutting off financial transactions directly to illegal services. This has not been fully realised for several reasons, including the fact that payments were not actually made to the illegal sites on the blocklist in practice. However, it can be noted that there has been a development in illegal activities since then, such as the relevance of blocking financial transactions to illegal IPTV payment services³.

Generally, there was a desire to update the Ad Code of Conduct and to expand the circle of participants in the Dialogue Forum after the initial experiences with the Ad Code of Conduct had been gathered. Therefore, the Ad Code of Conduct was developed and generalised into the current Code of Conduct, which was approved at the Dialogue Forum meeting on 4 December 2019.

2.2 Dialogue Forum Today

The Dialogue Forum today is solely focused on cutting off inadvertent placement of advertisements on websites used for illegal activities through automatic ad systems. These sites are included in the cooperation list, which is updated monthly and sent to advertisers via email in Excel format.

It is not clear to what extent advertisers use the list, but the current version of the cooperation list is assessed to have a limited effect in any case. At the same time, the cooperation list is considered to have untapped potential to create a much broader effect by cutting off money and traffic to "problematic services" rather than being limited to "court-convicted services". See more below and in section 4.2.

Therefore, the Ministry of Culture has taken the initiative to invest in mapping out exactly what specific development opportunities exist for the Dialogue Forum and the cooperation list.

2.3 Development Opportunities

As a central tool, there is a need to develop the cooperation list, which, as mentioned, consists of addresses of illegal internet services through which advertisers can block ad placements in their automated advertising systems.

² In the field of rights, there are currently dynamic blockings of illegal sites. This means that the courts assess whether a given internet service is illegal and order the blocking of all websites that now and in the future provide access to that particular internet service (so-called mirror sites). However, there are exceptions to the requirement for court assessment in other areas, including blocking internet services with pornographic content involving minors, internet services promoting terrorism and direct orders from the EU Commission to block services containing Russian propaganda.

³ Cf., e.g., the newsletter from 21 September 2023 from the Swedish Rättighetsalliansen: 'den illegala IPTV-tjänsten Dreamhost. Tjänsten utmärkte sig genom att vara väldigt högt rankad på Google sök. Av polisutredningen, som inleddes efter en anmälan från Rättighetsalliansen, framgår att mannen har hanterat betalningar från kunder och att han har fått in pengar på sina egna konton. Han har även bland annat registrerat tjänstens domännamn, arbetat med sökmotoroptimering, modererat tjänstens chattar samt svarat på frågor från kunder. Vid rättegången medgav mannen att han hanterat chattar, hjälpt kunder och hanterat sökmotoroptimeringen etc, men menade att han för den skull inte ansvarade för tjänsten. I polisens förundersökning framkom även att det fanns kopplingar till andra illegala IPTV tjänster såsom IPTVking. IPTVking var en av de tjänster som polisen runt om i Europa gjorde tillslag mot under samordning av Europol år 2020.'

This list is currently based on the blocking collaboration between the Rights Alliance and the Telecommunications Industry Association, and therefore includes a requirement for court rulings.

In the report, we investigate whether this criterion is still relevant and necessary for collaboration in the Dialogue Forum.

At the same time, we propose how the organisation of the Dialogue Forum can be adapted to reflect the updated cooperation list and which new areas can be included in the use of the cooperation list.

In summary, the *Development of Dialogue Forum* project contains recommendations for:

1. Opportunities for the development of the cooperation list.

This includes:

- a. Criteria for inclusion of services on the current cooperation list.
- b. Opportunities for the use of multiple lists.
- c. Possible development of collaboration, including stopping illegal ads placed on legitimate sites.

2. New areas of work and new participants in the Dialogue Forum.

3. Organisation of the Dialogue Forum going forward.

If the recommendations of the report are approved and to be implemented, it would be appropriate to agree on new procedures for updating the cooperation list and distributing it to users.

4. Analysis of possible legal barriers.

In this track, we identify and assess possible legal challenges related to:

- a. Criteria for inclusion of copyright-infringing services on the cooperation list.
- b. Sharing the cooperation list with users, understood as advertisers, providers of online services and other actors.
- c. Whether the cooperation list should be publicly accessible.

3. Methodology

In the following section, the development opportunities, as mentioned above, are described based on empirical data, analyses, and our assessments. Recommendations for further development are then provided.

Information has been gathered from a range of relevant countries and particularly from organisations where a similar "follow the money" approach is used in various forms, allowing for the blocking of advertising.

The collection of information is based on desk research, physical and online interviews, as well as dialogue with relevant authorities and organisations. In addition, in-depth meetings have been held with stakeholders in Sweden and with WIPO.

The result of this collection, which forms the basis for the recommendations of the report, can be found in Appendix 2.

4. Development of the Cooperation List

4.1 Introduction

According to the code of conduct, the cooperation list currently only includes the sites that internet providers are required to block via a court order, which means that the list may not include the most problematic sites for advertisers. Therefore, blockings based on the blacklist may not necessarily prevent money flows to a range of copyright-infringing and problematic services benefiting from inadvertent advertising.

Based on the earlier descriptions of criteria for and management of lists intended for advertisers, it is relevant to examine how the development of criteria for inclusion on the cooperation list in the future can make the list more relevant and effective for both advertisers and media outlets. This may not necessarily be the case in the current blacklist, which relies on court rulings⁴.

Only if the relevant internet services appear on the cooperation list will money flows to these sites be cut off. This is crucial, as legitimate media and social platforms often cannot effectively detect and block marketing of such services. This applies, e.g., to ads for scam sites where users are lured to click on an ad on legitimate online platforms, only to end up on an illegal website. The same applies to offerings of illegal, unlicensed games in the Danish market.

Blocking such sites would benefit from a blocking process without the requirement for legal proceedings. It would also be advantageous for the blocking to be implemented as soon as a problematic site is identified, as these sites are often extremely short-lived⁵.

As mentioned, the requirement for judicial processing is non-negotiable for internet providers. It initially stems from concerns about restricting freedom of expression, censorship charges and the ongoing introduction and updating of blockings incurring costs without an immediate return. Subsequently, consideration for compliance with requirements for net neutrality has also arisen. Therefore, it is not realistic to expect Danish internet providers to voluntarily block problematic sites.

Other actors, such as advertisers, recommendation services, media and payment services, have shown an immediate interest in and a desire to contribute to blockings through their systems. This desire is grounded in commercial considerations, including their interest in maintaining and strengthening the value of company profiles and brands.

If the cooperation list is updated with new inclusion criteria without requiring a court ruling, the current blacklist under the cooperation between the Rights Alliance and the Telecommunications Industry Association will remain unchanged. It will be continuously updated in accordance with the agreement between the Rights Alliance and the Telecommunications Industry Association on the process thereof.⁶

⁴ Indicated by random checks among advertisers and users of the current list.

⁵ So-called scam sites move around different website URLs, which is why a quick process regarding blocking is especially relevant to stem the traffic to these sites.

⁶ See the Code of Conduct between the Telecommunications Industry Association and the Rights Alliance here: https://rettighedsalliancen.dk/wp-content/uploads/2022/CoC_DA_excl-Anneks-5-september-2022.pdf.pagespeed.ce

Recommendations: Self-Regulation

We recommend that the framework for a simple and targeted use of the cooperation list should be a self-regulatory model. In this model, the rights holders in the Rights Alliance collaborate with advertisers, media and any new users of the cooperation list to update the cooperation list with websites containing copyright-infringing and problematic activities. See recommendations in sections 4.2 and 4.3 on criteria and sources. E.g., users can use the cooperation list to refrain from both buying ad space on and selling ad space to services on the list, thereby cutting off resources in the form of funding and traffic. The GARM collaboration (Appendix 2, 1.10) is an example of such a voluntary and self-regulatory effort.

As new areas and actors are included, the Dialogue Forum should be able to use multiple cooperation lists if relevant, e.g., divided by industries, technical needs or other requirements. The relevance of multiple lists should be investigated by interviewing existing and potential new users of the list. This self-regulatory regime presupposes acceptance by the relevant users of the cooperation list.

It would be advantageous but not a requirement if the Dialogue Forum could adopt a tool like the Trusted Flagggers under the DSA Regulation in the future. This would give the organisation, which identifies and documents problematic sites on behalf of rights holders, a credible status designated by the relevant appointing authority.

4.2. Criteria for inclusion on the Cooperation List

From the users' perspective of the cooperation list, there is a desire to streamline cooperation in cutting off ads and thus funds to services with illegal activities. One way to do this is to expand the criteria for inclusion of sites on the list, i.e., by not requiring prior judicial review but instead basing inclusion on other predetermined criteria. Such broader access to include sites on the cooperation list will also contribute to meeting the desire to combat traffic and funds to illegal activities more effectively, which is the purpose of the cooperation in the Dialogue Forum.

To make the cooperation list as relevant as possible, initially for advertisers and media, it is recommended to use functional criteria that correspond to the criteria used by the EU's Memorandum of Understanding (MoU) and WIPO⁷.

WIPO collects lists of problematic sites from authorized national organizations or authorities and makes them available to advertisers.

Regarding the EU's MoU, criteria are set where inclusion on the list is based on "reasonably available evidence" and is "reasonably suspected" to contain copyright-infringing material, i.e.:

'[T]he advertisers have reasonably available evidence that these websites and applications are infringing copyright or disseminating counterfeit goods, on a commercial scale' (EU MoU).'

There are no requirements for either authority or judicial processing from EU/DG Growth, EU DG Trade, EU IP Office or from the UN/WIPO, nor from rights holders or advertisers using the lists. Similarly to these actors, we propose to develop the criteria for inclusion on the cooperation list so that there is no longer a requirement for judicial decisions, but rather sites are included on the cooperation list if they are "problematic," based on the following criteria that occur on the sites:

⁷ Appendix 2, sections 1.7 and 1.8.

1. **Violations of intellectual property rights or personality rights**
2. **Encouragement of systematic violations of the same**
3. **Any form of participation in violations of intellectual or personality rights, or**
4. **Fraud involving products, services or individuals with immediately lawful appearance, with the purpose of scamming internet users into providing credit card information, attracting traffic or similar (scam sites).**

As also stated in the criteria themselves, sites included on the list will be "problematic" within the areas of violations of intellectual property rights and personality rights.

The cooperation in its current form is limited to violations of copyright and personal rights belonging to cultural or sports personalities. However, the criteria consider a broader legal scope, which allows for expanding the scope at a later time if it becomes relevant.

Recommendations: Criteria

We recommend using the term "problematic sites", inspired by the usage by WIPO and the EU, as the overarching criterion for adding websites to the cooperation list. In practice, this would involve website URLs that are evidently infringing on rights, based on evidence provided by rights holders, or those using fraudulent advertisements to obtain credit card information or other personal data from internet users who click on the ads.

The specific criteria for inclusion on such a cooperation list are that the website:

1. Violates intellectual property rights or personality rights.
2. Encourages systematic violations of the same.
3. Engages in any form of participation in violations of intellectual or personality rights, or
4. Engages in fraud with products, services or individuals with an immediately lawful appearance, with the purpose of scamming internet users into providing credit card information, attracting traffic or similar (scam sites).

As evident from the criteria themselves, sites included on the list will be "problematic" within the realms of violations of intellectual property and personality rights.

The collaboration, in its current form, is limited to addressing copyright infringements and personal rights related to cultural or sports personalities. However, the criteria account for a broader legal scope, allowing for the expansion of the scope later if deemed necessary.

4.3 Sources

Problematic and copyright-infringing websites are collected from various sources to optimise the process of adding sites to the cooperation list. Sources for identifying problematic and copyright-infringing services for the cooperation list include:

1. Observations from market actors involved in advertising placement, such as risk assessments of specific services conducted by relevant stakeholders like media agencies, media outlets and rights holders.
2. Gathering URLs from other relevant sources, such as the Motion Pictures Association (MPA), International Federation of the Phonographic Industry (IFPI) and other relevant user and rights organisations.
3. Contributions from other organisations like WIPO, as well as foreign authorities like the English police unit Police Intellectual Property Crime Unit (PIPCU), which also administers a list of copyright-infringing and problematic URLs.
4. Assessment and collection of problematic sites from organisations classified as Trusted Flaggers.⁸

Illegal gambling sites are highlighted as a problem by Swedish advertisers, prompting consideration of whether the Danish Gambling Authority's blocklist should be included in a future cooperation list, even though it does not involve copyright infringement.

4.4 Administration of Lists

An investigation into how blocklists are administered in other countries shows that telecommunication authorities or cultural authorities manage these lists.⁹

However, the administration of blocklists in different countries is less relevant for the cooperation list, as it is not aimed at internet service providers but rather advertisers, payment intermediaries, etc.

In the UK and Sweden, there are lists dedicated to advertisers. In the UK, this dedicated list is administered by the special police unit PIPCU, while in Sweden, self-regulation is used, where a rights organisation collaborates with an advertiser organisation, with support from, but without direct involvement from, an authority.¹⁰¹¹

It is assessed that the Swedish model, where handling is managed by a rights organisation, would be the simplest and most effective solution in the Danish context. The Swedish approach, where collaboration with advertisers occurs at the organisational level, is immediately easier to manage and also ensures broad support. Additionally, direct participation from and contact with companies using the list, as in the current Danish model, is advantageous for:

- Reporting copyright-infringing or problematic services.
- Follow-up on list implementation.
- Effectiveness measurement.

In conclusion, a self-regulatory model where the Rights Alliance administers the cooperation list in collaboration with users of the list, combined with monitoring from authorities, will be the most effective model, enabling rapid adaptation to developments in the illegal market. Such a self-regulatory model would also provide access for the Ministry of Culture to

⁸ The use of Trusted Flagger/reliable reporter according to the DSA Regulation will be activated on 17 February 2024.

⁹ Refer to Appendix 2 for the full investigation.

¹⁰ Refer to Section 1.4 in Appendix 2.

¹¹ PRV Patent and Registration Office prv.se

delegate to the Rights Alliance the uploading of the cooperation list to the WIPO Alert database.

Recommendations: Management of cooperation list

We recommend that the Rights Alliance be responsible for managing the cooperation list, which includes:

1. Updating the cooperation list based on the designated sources (Section 4.3).
2. Distributing the list to relevant recipients.
3. Updating the criteria (Section 4.2).

This will ensure a simple and functional management of the cooperation list, monitored by the steering group and accompanied by engagement from the authorities through the Ministry of Culture's participation in the steering group. It is recommended that the Ministry of Culture authorise the Rights Alliance to share the list with WIPO.

4.5 Legal analysis of criteria and use of the list

Gathering information about problematic websites, for use in the cooperation list and Dialogue Forum, may entail considering legal aspects related to the following two areas:

1. Criteria used for inclusion on the list.
2. Collection and distribution of the list.

4.5.1 Criteria

The current status regarding the cooperation list, which corresponds to the blocklist, is that the criterion for inclusion on the cooperation list is based on a court ruling, as required by internet providers in Denmark.

However, internet providers' requirement for court rulings regarding blocking is not a requirement that originally stems from direct legislation or court rulings. It is only with the introduction of net neutrality regulation in 2015 that a legal basis such as a court ruling might be considered a prerequisite for blocking.¹²

Nevertheless, internet providers have demanded court-sanctioned blockings from the outset. This is due, in part, to internet providers avoiding liability and, more generally, being cautious due to freedom of speech concerns.

However, internet providers' requirements for legal decisions regarding blocking are not relevant in the context of Dialogue Forum, where it is the users of the cooperation list, currently advertisers, who themselves wish to block flows of money and traffic to copyright-infringing and problematic services.¹³

The functional approach used by WIPO and the EU to identify problematic sites also does not require legal assessments by authorities or courts.¹⁴

In the context of Dialogue Forum, there doesn't seem to be a legal need for government involvement regarding the assessment of whether a service is problematic.

A theoretical legal challenge could be competition concerns, specifically whether the cooperation list constitutes a coordinated boycott of certain services. However, the cooperation list is a voluntary tool that a given company can choose to use based on its own

¹² Refer to Appendix 2, note 39

¹³ However, such services may eventually, in a separate process, also become subject to a court order for blocking.

¹⁴ Appendix 2, sections 1.7 and 1.8.

considerations of efficient resource use and a desire to avoid advertising on problematic services. This doesn't seem to restrict competition or affect prices.

Furthermore, the cooperation list will be available upon request, allowing a service to challenge the use of the cooperation list if it believes it's subject to an illegitimate advertising boycott due to the list. To date, there have been no services or companies that have challenged inclusion on the list. Competition issues have not been raised elsewhere, either in countries or organisations.

4.5.2 Collection and distribution of the list

Historically, handling the cooperation list in Dialogue Forum has posed legal challenges. This was because the focal point of both the current code of conduct and the previous Ad Code of Conduct is the blacklist, which, according to a 2018 assessment by the Danish Data Protection Authority, contains sensitive personal information concerning criminal convictions or offenses.

The use of the blacklist in the Dialogue Forum's code of conduct was routinely reported to the Danish Data Protection agency in May 2016. On 24 May 2018, the unexpected decision came that the Rights Alliance could not obtain permission to establish and distribute the blacklist to advertising companies, citing sections of the then-current Danish Data Protection Act Part 8, section, 4 and 5, and Part 8, section, 6, cf. 7. The Danish Data Protection agency found that the URLs on the list represented personal data related to criminal offenses, based on a reference to the EU Court of Justice's "Breyer decision," and that the list thus contained personal data about criminal offenses that, based on a specific balancing of relevant considerations, could not be registered and disclosed within the framework of the Danish Data Protection Act.¹⁵

The collaboration with members of the Telecommunications Industry Association to block illegal services based on a court ruling against one telecommunications company is enshrined in the Code of Conduct between the Rights Alliance and the Telecommunications Industry Association. Since this agreement is part of the basis for the courts' decisions on blocking illegal services, the Danish Data Protection agency's decision was considered to only apply to collaboration with advertising companies and not with the telecommunications companies. The Danish Data Protection agency's decision immediately hindered the use of the blacklist to collaborate on stopping advertising on illegal sites, after which responsibility for and distribution of the list were transferred to the Ministry of Culture. The list was also renamed the cooperation list. The cooperation list was presented at a Dialogue Forum meeting in December 2019 and has subsequently been distributed continuously by the Ministry of Culture, with the Rights Alliance practically managing the update of the cooperation list for the Ministry of Culture based on the blacklist.

However, it is expected that a forthcoming addition to the Copyright Act will allow the Rights Alliance to collect and distribute the cooperation list.¹⁶

It is important to note here that a future cooperation list, based on the registration of infringing or problematic internet services, does not register services based on whether they have been found illegal by a court. Therefore, the cooperation list does not indicate whether addresses on the list represent criminal offenses.

It should also be noted that legal questions regarding the sharing of blacklists do not appear to have been raised in other countries.

¹⁵ C-582/14

¹⁶ *Refer to Section 26(2) of the Data Protection Act:

Prior to initiating processing conducted by a private data controller, the permission of the Danish Data Protection agency must be obtained when:

- 1) the processing of the information is intended to warn others against business relationships with or employment of a data subject,
- 2) the processing is intended for commercial disclosure of information for the assessment of financial solvency and creditworthiness, or
- 3) the processing solely aims to maintain legal information systems.

Subsection 2. The Minister of Justice may establish rules regarding exceptions to the provisions in subsection 1.

5. Work Areas for Dialogue Forum

5.1. Introduction

Dialogue Forum's overarching goal is to cut off traffic and payments to problematic, copyright-infringing services and activities on the internet. Dialogue Forum provides a framework for collaboration among relevant stakeholders in various fields to achieve this goal.

The current focus is to prevent advertising on and thus financing of illegal internet sites that contain copyright-infringing content themselves or that encourage or otherwise support rights infringements. This is done specifically by using the cooperation list in advertisers' automated systems that place ads on websites.

5.2. Possibility to expand the circle of list users

When Dialogue Forum needs to involve new actors and new areas where traffic and money to copyright-infringing and problematic activities need to be blocked, there may be a need to use one or more new cooperation lists targeted at these actors and areas.

Assuming that cooperation lists in the future are not bound by the requirement of authority/court decisions and are managed by the Rights Alliance, this opens a range of possibilities. Thus, the Rights Alliance, in collaboration with various stakeholders, can act as a focal point by providing one or more targeted cooperation lists.

The premise is, i.a., that participants are encouraged to use the list voluntarily and actively to the greatest extent possible.¹⁷

In practice, this involves mapping out the extent to which:

- a. Participation in Dialogue Forum can be based on participants' own monitoring systems and procedures for removing problematic content, supplemented by the cooperation list focusing on copyright-infringing activities.
- b. It is technically feasible to use the cooperation list in a given area, i.e., whether a list can be practically applied in users' systems.
- c. There is support from key stakeholders in a given area.

5.3. Possible new areas and stakeholders in Dialogue Forum

We see significant potential in involving more users in cutting off money and traffic to copyright-infringing and problematic services. The following areas and stakeholders should be prioritised based on relevance and the likelihood that the stakeholders mentioned will want to participate.

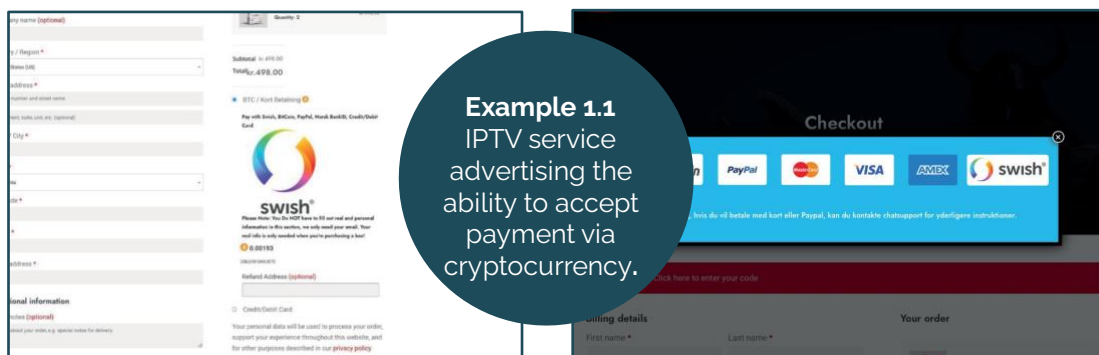
Payment transfers constitute a particularly relevant area to activate, and it is worth noting that WIPO actively works in this area through WIPO Alert by engaging in dialogue with VISA, PayPal and MasterCard. These payment providers are already to some extent involved in Dialogue Forum today. Additionally, authorities dealing with money laundering, such as the Special Crime Unit at the Prosecution Service, may also be relevant to involve.

The following constitutes a proposed prioritised sequence for what needs to be analysed in the implementation phase:

¹⁷ Cf. 8. Implementation point 4-5.

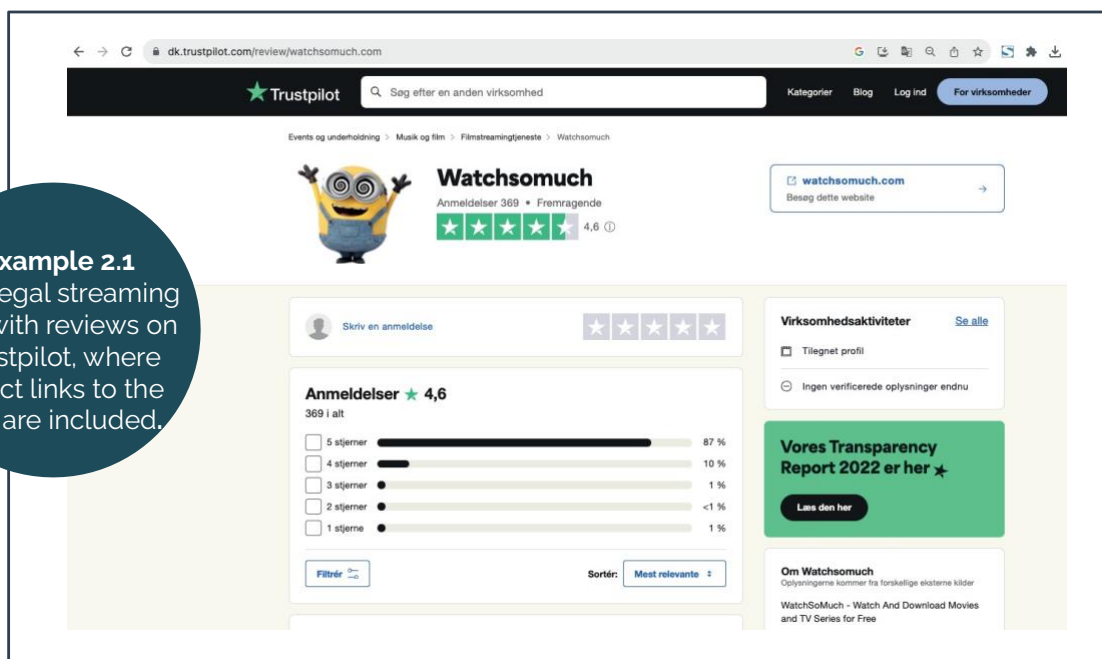
1. Payment Services

Blocking payments to illegal and problematic services. An important area is illegal IPTV, which is based on ongoing payments, with cryptocurrency being the most commonly used form of payment.¹⁸



Stakeholders:

Banks and payment intermediaries, such as card issuers and especially PayPal, are relevant as they can block transactions from end-users to copyright-infringing and problematic services by using the cooperation list. The larger, established payment intermediaries are already aware of the issue, and some card issuers are already involved in the Dialogue Forum.



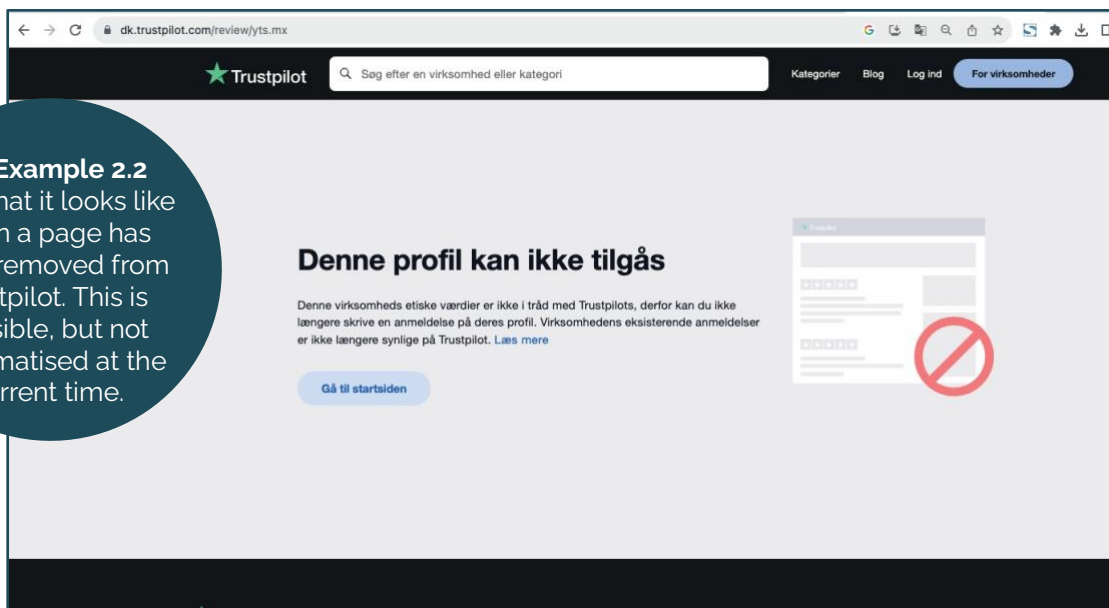
It is also relevant to involve payment intermediaries and cryptocurrency providers, such as Swedish Trijo and others.¹⁹ Additionally, problematic IPTV apps may also be relevant to block in a similar manner.

¹⁸ Cf., e.g., the newsletter 21 September 2023 from the Swedish Rättighetsalliansen: 'den illegala IPTV-tjänsten Dreamhost. Tjänsten utmärkte sig genom att vara väldigt högt rankad på Google sök. Av polisutredningen, som inleddes efter en anmälan från Rättighetsalliansen, framgår att mannen har hanterat betalningar från kunder och att han har fått in pengar på sina egna konton. Han har även bland annat registrerat tjänstens domän-namn, arbetat med sökmotorop- timering, modererat tjänstens chattar samt svarat på frågor från kunder. Vid rättegången medgav mannen att han hanterat chattar, hjälpt kunder och hanterat sökmotoroptimeringen etc, men menade att han för den skull inte ansvarade för tjänsten. I polisens förundersökning framkom även att det fanns kopplingar till andra illegala IPTV tjänster såsom IPTVking. IPTVking var en av de tjän-ster som polisen runt om i Europa gjorde tillslag mot under samord- ning av Europol år 2020'

¹⁹ Trijo.co is mentioned by Nordic Content Protection (<https://www.ncprotection.com/>), which monitors the IPTV market, as a source for crypto payments for illegal IPTV services.

2. Recommendation services

Blocking of sites with infringing and problematic content on recommendation services.



Example 2.2

What it looks like when a page has been removed from Trustpilot. This is possible, but not systematised at the current time.

Stakeholders:

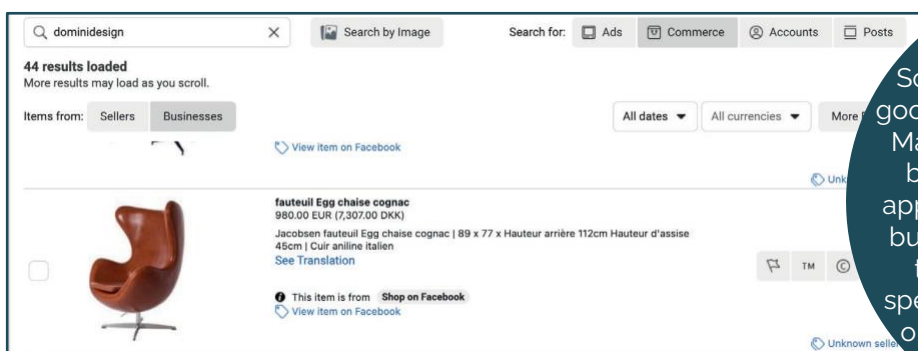
Recommendation services, especially Trustpilot, are relevant in cases where it is important to avoid endorsing fraudulent sites, e.g.. Recommendation services have their own procedures for verifying references, but these can probably be supplemented with problematic services on the cooperation list, such as IPTV services and illegal distribution of literature.

3. Advertising/marketing

Just as it is relevant to cut off funding from copyright-infringing and problematic sites, it is also relevant to block advertisements and marketing of copyright-infringing and problematic content. These are ads that appear on media and online platforms and can range from illegal gambling services to scam sites.²⁰

Here we have identified two methods:

- 1) Purchasing ad space for scam products, replica goods, illegal online casinos, etc., where the cooperation list assists in blocking the problematic ad buyer.



Example 3.1

Screenshot of illegal replica goods being sold via Facebook Marketplace. Here, a specific blocked page is searched, appearing as "unknown seller," but since the item appears in the search results for the specific blocked page, it must originate from there in their metadata.

²⁰ Here, as a possible source of problematic scam services, a commercial company such as Scamadviser <https://www.scamadviser.com/about-scamadviser> can be drawn

- 2) Marketing of copyright-infringing and problematic services, such as IPTV, through open user groups, where links to the service or website offering the sale of, e.g., counterfeit products, are blocked.



Example 1.2:
Screenshot of
illegal IPTV
marketing.

The definition of problematic advertisements needs to be further elaborated, including the types of problematic marketing that may be included. In the examples encountered by the Rights Alliance, misuse of well-known actors and brands as bait for traffic and scams is evident. It should be investigated how the use of the cooperation list can specifically contribute to identifying and halting problematic advertisements that direct Danish end-users to regular scam sites or attempt to deceive consumers into paying or providing credit information, etc.

In the exploration of relevant intervention possibilities, involvement in the GARM collaboration would be appropriate, as outlined in section 8 on implementation.

Stakeholders:

Media and online platforms exposed to problematic marketing, such as IPTV, cryptocurrency scam sites, advertisements for illegal online casinos or counterfeit products. This marketing is harmful to lawful media, end-users and providers of lawful products or services, from TV to online casinos.

In addition to media and platforms, a regulatory authority such as the Danish Gambling Authority and collaboration with eMærket should also be involved.

4. Hosting Services

Hosting services²¹ can provide server space for websites with problematic content. Here, the hosting service can block access to the sites and communicate about infringing/problematic content on websites to their customers.

Stakeholders:

Providers of hosting services such as One.com and CloudFlare.

5. Cloud Services

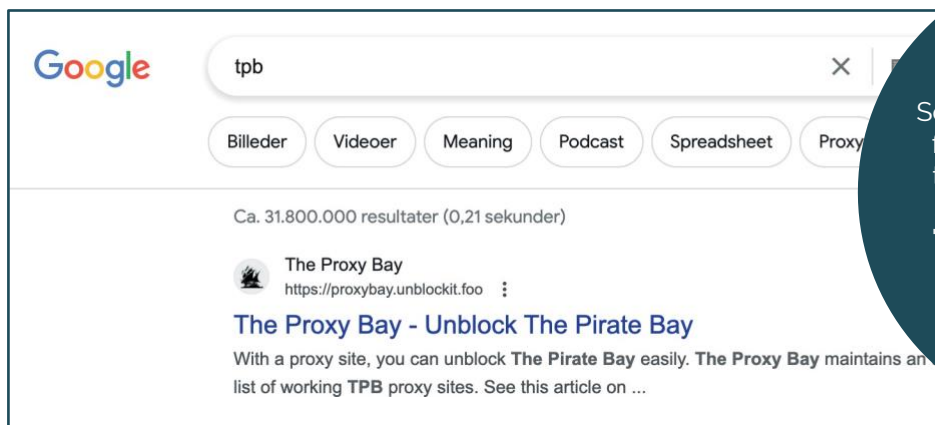
Providers of cloud services can provide access to problematic sites via links. Here, the cloud service can block access to the sites and communicate about infringing/problematic content to their customers.

Stakeholders:

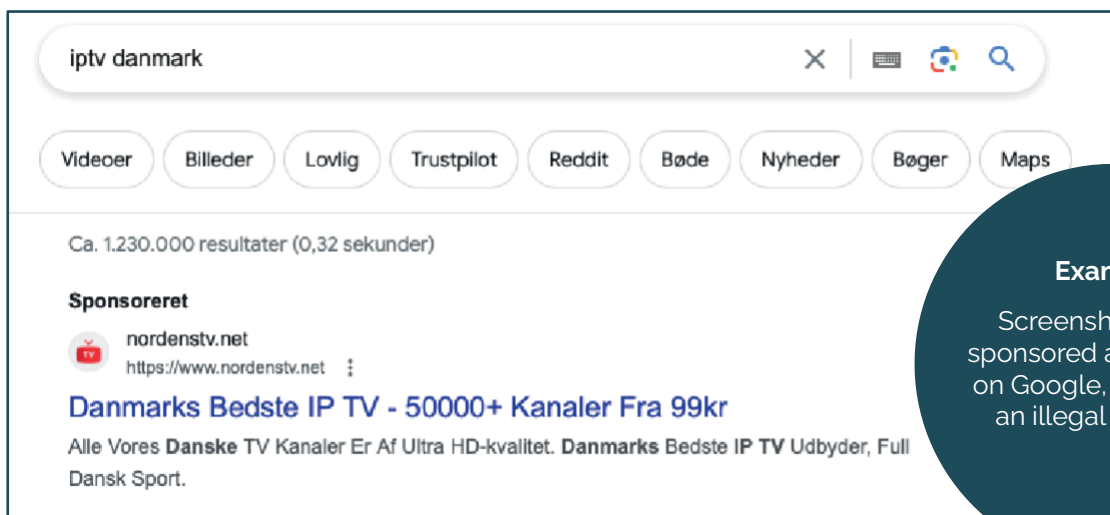
Providers of cloud services such as Dropbox, Mega²², Yandex Disc²³ and others.

6. Search Engines

The cooperation list can support search engines in preventing search results from leading to problematic sites.



Example 6.1
Screenshot of a Google search for "tpb." In addition to linking to an illegal site, Google also suggests adding "Proxy" and "unblocked" to the search for better results.



Example 6.2
Screenshot of the first sponsored ad that appears on Google, which leads to an illegal IPTV service.

²¹ Services that are not covered by the definition of "provider of online content sharing services" in DIRECTIVE (EU) 2019/790 Article 2, Section 6

²² <https://mega.io/>

²³ <https://360.yandex.com/disk/>

Stakeholders:

Platforms, rights holders, Google, Yahoo, Edge.

Finally, it should be noted that illegally obtained content used for training artificial intelligence is also an area where the cooperation list can be relevant. E.g., the list can be used to ensure that the content on the sites listed on the cooperation list is not used to train artificial intelligence. Like the other areas, this requires participation from developers of artificial intelligence who wish to engage in such collaboration.

Recommendations: New areas and participants

Based on the examples provided above, an investigation into the listed areas should be conducted. The investigation should involve dialogue with stakeholders about how they can participate in the Dialogue Forum, to what extent they can utilise the cooperation list, and whether there is a need for additional targeted cooperation lists.

The relevance of these areas and the level of interest should be examined by the Rights Alliance together with relevant stakeholders in the first quarter of 2024.

Building on the analyses above, the Rights Alliance, along with the steering group, should continuously explore which actors are relevant and how to prioritise them based on factors such as willingness to collaborate and expected impact.

6. Organisation of the Dialogue Forum

6.1 Status

The code of conduct for the Dialogue Forum was last revised and approved on 4 December 2019. An organisational structure for the Dialogue Forum and the code of conduct was established, where the participants in the Dialogue Forum formed a code of conduct steering group responsible for ensuring progress and evaluating efforts.

The code of conduct steering group currently meets at least once a year and may consist of up to eight individuals representing all stakeholder groups utilising the cooperation list. These members may choose to establish an executive committee of up to three individuals to advise on specific initiatives and procedures for utilising the cooperation list and other tools relevant to specific areas as new actors join. However, there is currently no need to establish a separate executive committee.

6.2 Development of the Dialogue Forum and the code of conduct steering group

The development of the cooperation list and adjustments to the regulatory framework for managing the cooperation list necessitate adapting the structure of work within the Dialogue Forum.²⁴

At the same time, there is a need to clarify the relationship between the broader group of participants in the Dialogue Forum, who support efforts to ensure a safe and legal internet, and the participants in the code of conduct collaboration who can and will actively use the cooperation list.

²⁴ Expected from July 2024 at the latest.

Therefore, it is proposed that a revised code of conduct become the basis for the Dialogue Forum. This code of conduct should stipulate that:

- a. Participants in the Dialogue Forum endorse the goal of promoting a legal and safe internet. Participants in the Dialogue Forum may, when they deem it relevant, register as users of the cooperation list(s). Thus, they commit to using the latest version of the list.
- b. The Dialogue Forum convenes for a plenary meeting (at least) once a year for all those who endorse the goals outlined in the code of conduct.
- c. The current code of conduct steering group is redefined to be a steering group for the entire Dialogue Forum collaboration and continues unchanged until the first plenary meeting.
- d. Members of the steering group are elected at the annual plenary meeting of the Dialogue Forum. Steering group members are up for election every two years with the possibility of re-election.
- e. The steering group consists of up to eight members, with the Ministry of Culture and the Rights Alliance being ex officio members, while for the remaining members, representation from all stakeholder groups is sought.
- f. Meetings of the steering group are held quarterly or as needed.
- g. Participants in the Dialogue Forum may also propose to the steering group to convene additional meetings in the Dialogue Forum.
- h. The Rights Alliance serves as the secretariat for the steering group and convenes meetings and prepares decision summaries.

6.3 Management of the List

Given that the regulatory framework is changing so that the cooperation list can be managed by the Rights Alliance, it is proposed that:

1. The Rights Alliance establishes and maintains one or more cooperation lists based on criteria as described in this report, i.e., lists of problematic services.²⁵
2. Inclusion on such a cooperation list is based on criteria and sources described in sections 4.2 and 4.3.
3. The development of criteria and procedures for obtaining infringing and problematic services is continuously updated in the steering group, following proposals from the Rights Alliance or other members.
4. The cooperation list is primarily intended for members of the Dialogue Forum and is therefore not public but available upon request.²⁶
5. The cooperation list is distributed monthly, following updates by the Rights Alliance, to Dialogue Forum participants who wish to receive and use the list.
6. The cooperation list should eventually be transferred continuously and automatically to users of the list.

²⁵ Recording on such list(s) that correspond to descriptions in 4.2 summarised in the term "problematic pages" is based on sources described in section 4.3.

²⁶ The Rights Alliance also offers a URL checker on the Share With Care website, where it can be seen whether a given website is included in the blacklist as illegal.

7. Recommendations

7.1 Recommendations: Self-regulation

We recommend that the framework for a simple and targeted use of the cooperation list should be a self-regulatory model. In this model, rights holders in the Rights Alliance collaborate with advertisers, media and any new users of the cooperation list to update the cooperation list with websites that contain infringing and problematic activities. See recommendations in sections 4.2 and 4.3 on criteria and sources. Users, e.g., can utilise the cooperation list to refrain from both buying advertising space on and selling advertising space to services on the list, thereby cutting off resources in the form of funding and traffic. The GARM collaboration (Appendix 2, 1.10) is an example of such a voluntary and self-regulatory effort.

As new areas and actors are included, the Dialogue Forum should be able to use multiple cooperation lists if relevant, divided by industries, technical needs or other requirements. The relevance of multiple lists should be examined by interviewing existing and potential new users of the list. This self-regulatory regime presupposes acceptance by the relevant users of the cooperation list.

It would be advantageous but not a requirement if the Dialogue Forum can in the future utilise a tool such as the Trusted Flaggers under the DSA Regulation. Thus, the organisation that identifies and documents problematic sites on behalf of rights holders is granted a credible status as designated by the relevant appointing authority.

7.2 Recommendations: Criteria

We recommend using the concept of "problematic sites," inspired by the usage at WIPO and the EU, as the overarching criterion for including websites on the cooperation list. In practice, this will involve URLs that are evidently infringing, based on documentation from rights holders, or which, through scam advertisements, seek to obtain credit card information or other details from internet users who click on the ads.

The specific criteria for inclusion on such a cooperation list are therefore that the website:

- Infringes on intellectual property rights or personality rights.
- Encourages systematic infringements of the same.
- Engages in other forms of complicity in infringements of intellectual property or personality rights, or
- Engages in scams with apparently legal products, services, or individuals with the purpose of deceiving internet users into providing credit card information, attracting traffic or similar activities (fraudulent sites).

As indicated by the criteria themselves, the sites included on the list will be "problematic" within the areas of infringement of intellectual property and personality rights.

The collaboration, in its current form, is limited to concerns regarding copyright infringement as well as personal rights belonging to cultural or sports personalities. However, the criteria consider a broader legal scope, allowing for the expansion of the scope at a later date if deemed necessary.

7.3 Recommendations: Management of cooperation list

We recommend that the Rights Alliance is responsible for managing the cooperation list, understood as:

1. Updating the cooperation list based on the designated sources (section 4.3)
2. Distributing it to relevant recipients
3. Updating criteria (section 4.2)

This will ensure a simple and functional management of the cooperation list, monitored by the steering group and accompanied by engagement from the authorities through the participation of the Ministry of Culture in the steering group. It is recommended that the Ministry of Culture authorise the Rights Alliance to share the list with WIPO.

7.4 Recommendations: New areas and participants

Based on the examples provided above, there should be a study conducted on the listed areas. The study should involve dialogue with stakeholders on how they can participate in the Dialogue Forum, to what extent they can utilise the cooperation list, and whether there is a need for more targeted cooperation lists.

The relevance of areas and interest should be investigated in the first quarter of 2024 by the Rights Alliance along with relevant stakeholders.

Based on the analyses above, the Rights Alliance along with the steering group should continually explore which actors are relevant and how to prioritise them based on factors such as willingness to collaborate and expected impact.

8. Implementation

The implementation of the recommendations outlined in the report will proceed in the following steps:

1. Steering Group Meeting on 11 January 2024, with the presentation of the report and adoption of the report's recommendations regarding:
 - a) Self-regulation
 - b) New criteria
 - c) Potential new areas for the Dialogue Forum
 - d) Revised organization for the Dialogue Forum
 - e) Handling of the cooperation list
 - f) Revision of the code of conduct
2. The current steering group will establish a new structure until a plenary meeting is convened in the Dialogue Forum with elections for the steering group (see point 7 below).
3. After the steering group's adoption of the recommendations, the Rights Alliance will develop a revised code of conduct, which will be approved by the steering group.
4. A new cooperation list will be prepared by the Rights Alliance based on the report's recommendations on criteria and sources, to be presented to the steering group in the first quarter of 2024. The new cooperation list will initially target advertisers and media with a focus on avoiding advertising on copyright-infringing and problematic sites.
5. In the first quarter of 2024, the Rights Alliance, with the participation of relevant stakeholders, will conduct a campaign aimed at engaging new participants and including new areas based on the gross list in section 5.
6. In February 2024, the Rights Alliance will apply for Trusted Flagger status from the designation authority when the law on enforcement of the DSA Regulation comes into force on February 17, 2024.
7. Once new potential participants and areas have been identified, a plenary meeting will be convened in the second quarter of 2024 with the participation of both current participants and new stakeholders. The recommendations, revised code of conduct, as well as new areas and participants, will be presented at the plenary meeting. During this meeting, the steering group for the Dialogue Forum will be elected.

Appendix

Appendix 1: Code of Conduct

05.12.19

Code of Conduct for combating IP crime
and illegal content on the internet

Background

Companies are continuously challenged by criminals who exploit products and traffic on the internet to commit illegal activities. The problem is increasing, and products protected by intellectual property rights are particularly vulnerable as they are easy to copy and distribute via the internet. The initiators of this Code of Conduct aim to limit this to the greatest extent possible.

This Code of Conduct stems from a joint declaration made in 2015 among the participants of the Ministry of Culture's Dialogue Forum.²⁷

Purpose

The purpose of the Code of Conduct is to communicate a joint statement on combating illegal activities on the internet and to describe relevant measures that stop the flow of money and traffic to illegal services. Participants who adhere to the Code of Conduct endorse the content of the declaration and implement the described measures to the extent practically possible. Foremost, adherence involves a decision to actively use the cooperation list.

Adherence to the Code of Conduct is open to all relevant providers of services on the internet, such as advertising companies, payment services, social platforms, search engines and providers of non-public networks (e.g., schools and companies).

The Code of Conduct should be seen as a supplement to existing legislation and operates in conjunction with other voluntary agreements, such as the Code of Conduct with providers of internet services²⁸, which contribute to achieving similar purposes.

²⁷ Dialogue Forum was one of several initiatives stemming from the so-called Copyright Package, which was launched in 2012. <https://kum.dk/nyheder-og-presse/presse-meddelelser/nyheder/bred-opbakningtil-faelles-kamp-for-et-lovligt-og-trygt-internet-paa-ophavsretsomaadet/1/1/>.

²⁸ <http://www.teleindu.dk/brancheholdninger/blokeringer-pa-nettet/>

Declaration

The participants declare that they:

- Publicly distance themselves when relevant from the use of their products and services to support criminal purposes, including infringement of intellectual property rights such as copyrighted material.
- Have implemented specific procedures to counteract the involvement of the company's or institution's products and/or services in the financing or dissemination of criminal activity.
- Have informed their employees that they should be aware of and counteract any misuse of the company's products and services for illegal purposes.
- Commit to using the cooperation list of internet sites offering illegal services.
- Counteract the participation of the participant's company in financing or promoting services offering illegal content, including infringements of copyrighted content and products.
- Insofar as possible, refrain from providing services or products to these services.

The goal is to contribute to keeping the internet a safe marketplace for legitimate stakeholders within the industries that adhere to this code. Participants will also contribute to increasing security for consumers.

Therefore, participants in the Code of Conduct will implement and use the cooperation list developed in accordance with the guidelines below.²⁹

²⁹ The term "collaboration list" is chosen to reflect that the list is established and utilised through collaboration between all parties, both public and private

The Cooperation list

The focal point of the Code of Conduct is the active use of the cooperation list:

a) Criteria for Inclusion on the Cooperation list

The cooperation list includes the following websites (URLs):

Websites providing access to internet services declared illegal by Danish authorities (e.g., the courts).

Listing these websites serves the purpose of cutting off financial flows to illegal services by making advertisers, payment intermediaries and other relevant actors aware of illegal activities.

b) Accessibility of the cooperation list

As a basic rule, the cooperation list is confidential in its entirety for everyone except the companies collaborating on the list. This is to avoid unnecessarily exposing sites with illegal content. However, individuals, companies and organizations have the opportunity to inquire at any time whether a specific site is on the list.

A Code of Conduct steering group is established among the participants in the Code of Conduct, which has the overall responsibility for evaluating the effort and ensuring progress. The steering group should represent all groups of stakeholders, with a maximum of 8 persons.

The Code of Conduct steering group may appoint an executive committee of up to 3 persons. If necessary, the executive committee can advise on specific measures and procedures for the use of the cooperation list and other tools that can be targeted to a specific area as new actors join.

The Code of Conduct steering group meets once a year.

Appendix 2: Collected Knowledge from other Countries/Organisations

The project has examined a selection of EU countries plus the United Kingdom, which are considered relevant based on:

- Participation in WIPO Alert (see section 1.8) and obtaining guidance from WIPO's work in this area.
- The EU Commission's DG Growth MoU (see section 1.7), i.e., the countries that have joined the MoU.
- The EUIPO report on blocking advertising on illegal sites (see section 4.9).

In addition to Denmark, the following 6 EU countries plus the United Kingdom have been identified as mentioning the possibility but not the obligation to use a blocklist to block advertising on illegal sites³⁰: Lithuania, Italy, Greece, France, Sweden, Portugal, and the United Kingdom, which is further described in section 4.

As evident from the descriptions below, these countries generally use the same blocklist directed at ISPs. For these countries, advertisers can use the list, but it does not mean they do. Only 2 countries work with a separate list: the United Kingdom and Sweden.

The following organisations support the "follow the money" approach:

- The EU through an MoU (Memorandum of Understanding)
- WIPO in the Alert project
- EUIPO reports

In the approaches of these organisations, the criteria for when services are considered problematic³¹ are relatively similar, as detailed in various sections including 1.12.

An important track is the analysis of potential legal barriers. In this track, we uncover and assess possible legal challenges concerning:

- a) Criteria for inclusion of problematic services on the cooperation list.
- b) Sharing the cooperation list with users, understood as advertisers, online service providers and other actors.
- c) Whether the cooperation list should be publicly accessible.

³⁰ Apart from Sweden and the United Kingdom, the use of ISP blocklists implies that the sites are considered illegal.

³¹ The term "problematic sites/services" is inspired by WIPO, which uses the term "sites of concern". In this report, it is used instead of "illegal", as several sources do not require a court decision to include services on a given list, see Section 4.8.

1) Experiences from Other Countries and Organisations

1.1) Sweden

Regarding ISP blocking of access to copyright-infringing services in Sweden, it generally requires a court decision that imposes DNS blocking on ISPs³². This process has historically been cumbersome due to ISPs' skepticism/resistance to blocking.

However, since 2015, Rättighetsalliansen and Sweden's Advertisers (SvA) have cooperated to prevent placing ads on illegal sites using the "varningslistan" (warning list). This collaboration was expanded in 2022 to include Swedish Agency for the Media and IAB Sweden³³. The warning list is accompanied by general recommendations on how to avoid problematic services³⁴.

Key elements and experiences from this effort, relevant for the development of the cooperation list³⁵, include:

- The effort is based on an informal agreement between the advertiser organisation and Rättighetsalliansen and not with individual companies. SvA distributes the "varningslistan" to its members.
- The varningslistan is prepared and updated by RA Rättighetsalliansen, based on Rättighetsalliansen's assessment of which services are relevant. Neither Rättighetsalliansen nor SvA see the need for ongoing updates with mirror sites in relation to ad placement. However, it is planned to update the list more frequently than has been the case until now. The specific warning list currently includes 10 services/addresses selected by Rättighetsalliansen.
- The criteria for inclusion on the list are obviously copyright-infringing activities, e.g., 'piratebay.xx', and the names on the list are assessed by Rättighetsalliansen.
- While the list is believed to have had a significant effect, particularly initially, no formal assessment of its effectiveness has been conducted.
- SvA does not report problematic sites to Rättighetsalliansen, but both organisations mention that illegal gambling sites (e.g., online casinos) are a challenge, also regarding problematic advertising.
- The authorities, such as PRV, support the collaboration but are not involved in selecting services, establishing the list, or sharing it³⁶.
- No questions or issues regarding the establishment and sharing of the list, whether related to data protection or potential competition issues, have been raised.
- The list is managed, maintained, and distributed by Rättighetsalliansen and is public.

³² <https://www.sverigesannonsorer.se/varningslistan-for-illegala-sajter/>

³³ The Swedish branch of IAB (Interactive Advertising Bureau), which is a global organization for online marketing.

³⁴ <https://www.sverigesannonsorer.se/kunskap/mallar-mallar-avtal-rekommendationer/rekommendationer-kring-ofrivillig-annonsering-pa-illegala-sajter/>

³⁵ Meetings with Rättighetsalliansen and Sveriges Annonsörer on 6 September 2023.

³⁶ PRV Patent- och registreringsverket

1.2) Italy

The focal point of the Italian ISP blocking system is, since July 2023, the *Direzione Servizi Digitali*, which, as part of the telecommunications authority AGCOM (*L'Autorità per le Garanzie nelle Comunicazioni*), handles copyright infringements and the implementation of EU regulations:

- Copyright holders can report copyright infringements, including those related to live sports, and based on an assessment of the documentation of the extent of copyrighted works on the given service, this can lead to orders to ISPs to block the service³⁷.
- AGCOM must, if possible, contact the relevant service, meaning both the uploader of content and the administrator of a given copyrighted address. These parties then have 5 days to either remove the content (if the server is located in Italy) or contest the report. If this does not happen and AGCOM continues to find that there is infringing content, AGCOM issues a dynamic DNS blocking order to ISPs. AGCOM also plans to impose the use of IP blocking in the future.
- Thus, it is a one-stop-shopping governmental blocking, which has resulted in over 1,000 blocks of ISP access, where the authority AGCOM manages the blocking process, including checking for possible objections from blocked sites and issuing blocking orders.
- The blocklist for ISPs is not public but is sent to ISPs in the form of blocking orders.
- There have been no questions raised about data exchange or sharing of the list.
- Blocking orders are directed at ISPs, so there is no separate list addressing, e.g., advertisers.
- Advertisers can choose to use AGCOM's list of blocked sites, but there is no agreement with advertisers or knowledge of whether advertisers use the list.

1.3) Portugal

Blocking of copyright-infringing websites in Portugal is based on MoU from 2015 between public authorities and organisations representing rights holders, telecom operators and advertisers:

³⁷ There are several unspecified threshold values for when blocking can be imposed to avoid burdening ISPs (similar threshold values are also found in Portugal).

- IGAC³⁸ is responsible, as a public authority³⁹, for obtaining and verifying complaints from rights holders and then notifying ISPs to perform DNS blocking. Thus, there is no judicial decision involved⁴⁰.
- IGAC, within the framework of the MoU, handles the blocking process, including assessing complaints and notifying ISPs, without a formal legal injunction to ISPs.
- The list is not public.
- There have been no questions raised about data exchange or sharing of the list.
- Although the Portuguese MoU explicitly includes advertisers, they have access to receive notifications from ISPs through IGAC. However, this is not practiced in reality.

1.4) United Kingdom

The specific UK blocking procedure regarding advertising, known as *Operation Creative*, was established in 2013 and is centrally managed by the police through PIPCU (Police Intellectual Property Crime Unit), located under the City of London Police:

- An important tool, like in other countries, is a blocklist, but in the UK, a separate list targeting advertisers is used. This list contains copyright-infringing services identified by rights holders and verified by PIPCU, but unlike blocking orders directed to ISPs, this does not require a judicial decision.
- PIPCU administers and distributes the list, which is disseminated via an online portal with around 750 subscribers, in the form of advertisers. There is no obligation to use the list.
- The list is not public.
- There have been no questions raised about data sharing or competition concerns.
- In the UK, as one of the few examples, significant results have been achieved through impact assessments⁴¹. From January to December 2022, the number of UK advertisements on websites included in the blocklist decreased by 58%. It is estimated that these sites lost £6 million in revenue during this period⁴².

³⁸ Inspeção-Geral das Atividades Culturais [General Inspectorate of Cultural Activities]

³⁹ Almost equivalent to the Ministry of Culture

⁴⁰ The rights holders must document that reports meet the requirements that they have rights to a given material, that on a given reported service there are at least 500 occurrences of illegal material in the reports respectively, and that the infringing material constitutes 2/3 of all occurrences on the service, and no more than two report submissions per month on at least 50 works. These limitations in the MoU are an example of ISPs' generally critical stance regarding the scope of blocking obligations.

⁴¹ The measurements are conducted by White Bullet, which specializes in brand protection and effectiveness measurements. <https://www.white-bullet.com/>

⁴² <https://www.cityoflondon.police.uk/news/city-of-london/news/2023/january/operation-creative-blocks-6-million-of-uk-advertising-revenue-from-funding-illegal-websites/>

1.5) Lithuania and Greece

Greece operates an ISP blocking system where rights holders can report copyright-infringing websites to EDPPI, a public authority responsible for enforcement in collaboration with the semi-public rights organization OP⁴³⁴⁴:

- Criteria for reporting and enforcement require rights holders to provide evidence of copyright infringement, accepted by EDPPI and unaddressed by the reported service. EDPPI typically has 40 days to make a decision, after which the Greek telecommunications authority issues blocking orders to ISPs. EDPPI administers the blocking orders, which may involve taking down domain names if feasible. Typically, orders are directed at ISPs for DNS blocking of IP addresses or URLs. In spring 2023, the list of blocked sites included 595 domain names.
- The list is public⁴⁵.
- There have been no questions raised about data exchange or sharing of the list.
- The blocklist could potentially be used by advertisers, but this is not happening in practice.

Lithuania has an ISP blocking system where rights holders can report copyright-infringing websites/services to the telecommunications authority RTCL⁴⁶:

- When a complainant unsuccessfully contacts both the provider of the infringing service and the hosting provider, with a 5-day response deadline.
- RTCL evaluates the complainant's documentation within 14 days and then issues blocking orders through a local administrative court, which must confirm RTCL's decision within 3 days, after which ISPs must block within 5 days.
- The ISP blocklist is public and includes approximately 53 services with around 100 mirror sites⁴⁷.
- RTCL is responsible for administering the list.
- There have been no questions raised about data exchange or sharing of the list.
- Blocking orders apply only to ISPs, but the same IWL (Internet Watch List) can be used by advertisers.
- The actual extent and effect of usage by advertisers are unknown, but RTCL assumes that IWL is used to some extent by advertisers. This is because very few Lithuanian ads appear on the copyright-infringing sites based on samples.

⁴³ Committee for the Notification of Copyright and Related Rights Infringement on the Internet

⁴⁴ Hellenic Copyright Organisation (Organismos Pnevmatikis Idioktisias OPI). Semi-public because OPI is established by law but operates as a private organisation.

⁴⁵ <https://www.opi.gr/en/committee/decisions-committee> - blocking decisions in Greek

⁴⁶ Radio and Television Commission of Lithuania

⁴⁷ <https://www.rtk.lt/lt/atviri-duomenys/interneto-svetaines-kuriose-pazeidziamos-autoriu-teises> The Authority for the regulation of audiovisual and digital communication

1.6) France

The French internet and telecommunications authority ARCOM⁴⁸ prepares a general list of copyright-infringing sites (blacklist) for intermediaries⁴⁹ based on input from rights holders and its own monitoring. Intermediaries, based on voluntary agreements⁵⁰, can take action on transactions with the infringing sites:

- This blacklist can be used by rights holders to obtain a court decision requiring ISPs to block URLs on the list with dynamic DNS blocking.
- ARCOM does not have a dedicated list for advertisers.
- However, ARCOM has the ability to create a separate list for advertisers and require them to refrain from advertising, but this power has not been exercised.
- The French rights organisation ALPA⁵¹ entered into a charter with advertisers in 2014, monitored by the Ministry of Culture. This charter did not result in a list, but as early as 2013, ALPA launched a campaign targeting advertisers found on copyright-infringing sites. Organisations pointed out that these advertisers could be held accountable in court if they continued to advertise on illegal sites.
- The campaign has led relevant advertisers and companies to ensure in their own systems that they do not appear on problematic services. ALPA's assessment is that the problem of advertising on copyright-infringing services has been significantly reduced, and the possibility of a special list, which ARCOM has the ability to create, is not relevant.

1.7) EU (DG Growth) MoU

"Follow the money" is a strategy that the European Commission prioritises highly in the fight against problematic internet services.

Therefore, in 2017, the Commission (DG Growth) presented a Memorandum of Understanding (MoU) to avoid advertising on problematic sites. The MoU was signed in June 2018 by 29 stakeholders in the media and advertising sector, including companies and industry associations from France, Belgium, Spain and Italy, i.a. This MoU is a statement of intent that the signatories will collaborate and strive to avoid placing advertisements on problematic sites.

⁴⁸ The Authority for the regulation of audiovisual and digital communication

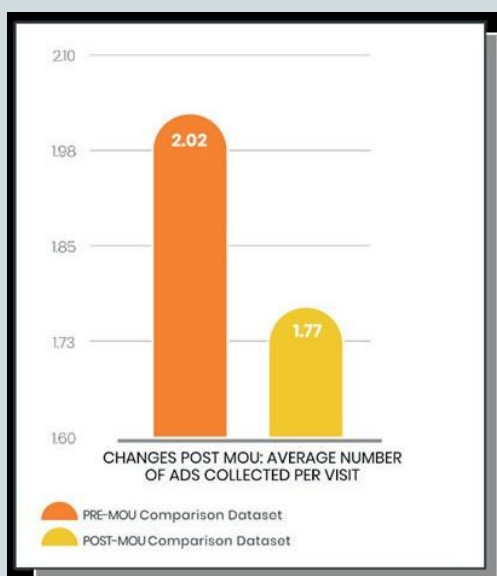
⁴⁹ Intermediaries are defined as: advertising or online payment intermediaries or technical hosts.

⁵⁰ <https://www.google.com/url?sa=t&rc=1&q=&esrc=s&source=web&cd=&ved=zahUKewiO7NqklMqAAxX1RPEDHb7QCclQFnoECBAQAQ&url=https://www.arcom.fr/sites/default/files/2023-06/2Fenglish%2520version-presentation%2520ki%2520arcom.pdf&usq-AOvVaw0BYo-5JoANRAOYstaPKiu1Q&opi=89978449>

⁵¹ Association de Lutte contre la Piraterie Audiovisuelle

The Commission has presented an evaluation of the MoU⁵² covering the period from 25 June 2018 to 25 June 2019. The evaluation is based on a report from White Bullet⁵³, which monitors advertising on illegal services, presenting a range of interesting data about the extent and development of advertising on illegal sites.

The overall assessment of the MoU is that, measured on a subset of illegal sites, there are indications of a 12% decrease in the amount of advertising on these sites. Additionally, there is a decrease in brands advertising on services with illegal gambling, as illustrated by the number of advertisements per visit to problematic services before the MoU⁵⁴. Of course, this cannot be attributed solely to the MoU.



The participants in the MoU also assess that the MoU plays an important role in exchanging best practices.

The effect of the MoU is due to the individual initiatives of the MoU signatories and the voluntary application of the principles of the MoU, rather than a common IWL (Infringing Website List).

Thus, the MoU appears to be a useful self-regulatory tool for the signatories, as it supports companies' individual efforts to prevent advertising on problematic sites.

EU's MoU also supports the "follow the money" strategy and maintains political attention regarding creating a common framework for rights holders and authorities in the effort to remove the business basis for problematic services. This framework is specifically implemented among advertisers and media, including using the criteria outlined in the MoU.

The EU's MoU sets forth the following criteria for problematic websites and mobile applications that signatories should avoid placing advertising on:

⁵² Report on the functioning of the memorandum of understanding on online advertising and intellectual property rights <https://op.europa.eu/en/publication-detail/-/publication/4d55743d-dd41-11ea-adf7-01aa75ed71a1/language-en>

⁵³ Study on the impact of the Memorandum of Understanding on online advertising and intellectual property rights on the online advertising market <https://op.europa.eu/en/publication-detail/-/publication/4d55743d-dd41-11ea-adf7-01aa75ed71a1/language-en>

⁵⁴ p. 29, i Study on the impact of the Memorandum of Understanding on online advertising and intellectual property rights on the online advertising market jf. note 31

1. The purpose of the MoU is to minimise the placement of advertising on websites and mobile applications:
 - which have no substantial legitimate uses,
 - where information is available that such websites or mobile applications have been found by judicial, administrative or other enforcement authorities to infringe copyright or to disseminate counterfeit goods, on a commercial scale, and
 - where technically possible, thus minimising the revenue that such websites or mobile applications gain from online advertising. The information on decisions issued by relevant authorities includes, but is not limited to, information provided by rightsholders.
2. The signatories should, based on their own individual policies and assessment criteria, limit the placement of advertising on other websites and/or mobile applications, which have no substantial legitimate uses, and for which the advertisers have reasonably available evidence that these websites and applications are infringing copyright or disseminating counterfeit goods, on a commercial scale.
3. The MoU is without prejudice to other initiatives aiming at minimising the placement of advertising on websites infringing IPR. (our highlights)

Especially point 2 in the MoU criteria should be noted here, as "no substantial legitimate uses" combined with "reasonably available evidence" form the basis for advertisers to refrain from interacting with copyright-infringing services. However, there is no mention of the need for court or authority assessment.

Thus, the MoU establishes a functional criterion, oriented towards the outcome, namely to avoid supporting and wasting resources by interacting with problematic services. The MoU emphasises that it is up to the participants' policies in the area where they do not wish to place advertisements.

1.8) WIPO Alert

WIPO (The World Intellectual Property Organization) is the UN institution working on IPR protection⁵⁵. WIPO established the BRIP project (Building Respect for Intellectual Property Database) in 2019, subsequently renamed WIPO Alert, where authorised contributors, including authorities or equivalents⁵⁶ in individual WIPO member countries, can upload national IWLs to prevent advertising on problematic sites. The uploaded and potentially aggregated lists in the WIPO Alert database are made available to authorised users, namely advertisers and media agencies.

WIPO has not formally defined and adopted criteria for inclusion in an IWL. Instead, it is the national criteria of the contributors that apply to the individual lists uploaded to the WIPO Alert database.

⁵⁵ WIPO has been a UN agency since 1974, based on a convention between 190 countries and rooted in the Berne Convention on Copyright. This means that the legal basis is that WIPO member countries participate in the WIPO General Assembly and decision-making process, but WIPO does not issue binding guidelines.

⁵⁶ E.g., in Japan, this task is placed under the jurisdiction of rights organisations.

The need to be able to include various national lists in the WIPO Alert database has prompted WIPO to formulate, present and gain acceptance within the membership to use the operational criterion "sites of concern"⁵⁷, which WIPO defines as:

'[A]n online location which is reasonably suspected by an Authorized Contributor of deliberately infringing or facilitating the infringement of copyright and related rights, whether in its country of establishment or elsewhere.'

The specific national implementations of IWL can thus be included in the WIPO Alert database:

'While all Member State agencies which maintain lists of infringing websites have a process for deciding whether a website should be included in the list, the criteria applied may differ. However, in practice, the sites targeted by national databases are invariably flagrant facilitators of copyright infringement. The criterion of 'sites of concern' accommodates any marginal differences between national approaches, while emphasising the purely ministerial function of WIPO in the dissemination of the data.⁵⁸ (our highlights)

WIPO thus uses "reasonably suspected", corresponding to the EU's MoU "reasonably available evidence", as a sufficient criterion and does not mention the requirement for court or authority treatment as a prerequisite for potentially problematic services to be included in the WIPO Alert database.

1.9) EUIPO and the Commission/DG Trade Watch List

In a report from 2021⁵⁹ on the scope of advertising on problematic services, EUIPO⁶⁰ operates with two subcategories of criteria for registering services:

- a) Illegal Websites: including those on IWLs, those identified through publicly available information as having court-ordered adjudications against them within the EU, and those listed on the Counterfeit and Piracy Watch List published by the European Commission in December 2020.
- b) High-Risk Websites: including those not found to be illegal by national judicial, administrative, or other enforcement authorities in the EU, but still verified as infringing and popular among EU consumers, including by White Bullet's IPIP™ or by rightsholders' (emphasis added).

EUIPO uses in its report, similar to the EU MoU, a functional criterion (High-Risk), oriented towards the outcome, where the internet addresses may be designated by rightsholders ("verified... by rightsholders")⁶¹.

⁵⁷ https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=439052

⁵⁸ https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=439052

⁵⁹ EUIPO: Online advertising on IPR-Infringing Websites and Apps 2021 p. 21 https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_Online_advertising_IPR_Infringing_Websites_and_Apps_2021/2022_Online_advertising_IPR_Infringing_Websites_and_Apps_2021_FullR_en.pdf

⁶⁰ European Union Intellectual Property Office is the agency of the European Union (EU) responsible for managing the EU trademark and the registered Community design, European and international cooperation in the field of intellectual property (IP), as well as the European Observatory on Infringements of Intellectual Property Rights, trademark and the registered Community design

⁶¹ Moreover, EUIPO classifies as 'illegal sites' Internet services/addresses that have not been through authorities, as EUIPO uses "illegal websites" for sites found illegal by the court ('court-ordered adjudications against them within the EU'), but also for sites appearing on the Commission's (DG Trade) Counterfeit and Piracy Watch List.

Commission's DG Trade also works with a Counterfeit and Piracy Watch List, which also registers physical marketplaces, especially in Asia. Inclusion on this Watch List is based on a public consultation among stakeholders, primarily rights holders. The services identified as infringing have the opportunity to object, but it is up to the Commission to assess whether they should continue to appear on the Watch List without the requirement of authority or court assessment.

1.10) GARM

GARM (Global Alliance for Responsible Media)⁶² engages in efforts to prevent advertising on problematic sites, which is highly relevant to this report.

GARM is a global initiative that brings together brands, companies, media agencies, and media platforms through industry associations (such as the Danish Advertisers' Association⁶³) in a coordinated effort to reduce advertising on problematic sites/services. This also reduces the flow of money to these services, and involved parties avoid being associated with problematic content.

GARM works with content in 12 categories for internet services/sites that participating companies do not want to be associated with, primarily in the form of advertisements on social media.

These categories include:

1. Pornography and explicit sexual content
2. Weapons and ammunition
3. Crime and harmful impact on individuals and society, human rights violations
4. Death, violence, or military conflict
5. Online piracy
6. Hate crime or aggressive behaviour.
7. Indecencies and events, including language, terminology, and explicit bloody, graphic, or disgusting content intended to shock and disgust
8. Illegal drugs/tobacco/e-cigarettes/vaping/alcohol
9. Spam or harmful content
10. Terrorism
11. Debated sensitive societal issues
12. Misinformation

GARM's very broad categories also encompass copyright-infringing content (point 5). The relevance of GARM in relation to the question of criteria and cooperation lists, however, lies primarily in being a voluntary self-regulatory collaboration driven by advertisers. Here, individual GARM participants work to avoid advertising, etc., based on the content of a given internet service across the 12 categories. There is no established "GARM list" of problematic services, but based on the listed content categories, GARM participants can identify where they find it relevant to refrain from advertising, receiving specific inputs through collaboration with NGOs and social media's Trusted Flaggers⁶⁴.

⁶² <https://www.daom.dk/garm-global-alliance-for-responsible-media-2/>

⁶³ <https://www.danskannoncøforening.dk/>

⁶⁴ The role of Trusted Flagger was formally codified with the DSA Regulation in 2021, which comes into force in early 2024, but dates back to initiatives such as Commission Recommendation (EU) 2018/334 on measures to effectively tackle illegal content online (525-27) and the Commission's initiative CODE OF CONDUCT ON COUNTERING ILLEGAL HATE SPEECH ONLINE on June 30, 2016. https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en

1.11) TAG

TAG⁶⁵ (Trustworthy Accountability Group) is an industry collaboration between marketing companies, platforms and rights holders aimed at ensuring legal digital marketing. Established by the American Association of Advertising Agencies, TAG counts major American technology and advertising companies among its members. Similar to GARM, TAG is a voluntary collaboration to adhere to a set of principles, embodied in the Guidelines for preventing placement of advertisements, especially on pirate sites, as part of TAG's Project Brand Integrity⁶⁶.

TAG Guidelines are based on the certification of members as advertisers, who must use certified filters to attain CAF (Certified Against Fraud) status. TAG works with certification procedures that include the use of filters to screen out problematic services and traffic. These procedures are based on traffic pattern analysis, but not on lists.

The relevance of TAG in relation to the question of criteria and cooperation lists lies primarily in being a voluntary self-regulatory collaboration driven by participants.

1.12) Summary of criteria and practices from other countries/organisations

Except for Sweden and the UK, the examined countries only use one blocklist with authority orders to ISPs to block copyright-infringing services/sites. An ISP blocklist is characterised by ISPs always requiring an authority/court order, also for net neutrality reasons⁶⁷. It is reported that ISP blocklists are either not used in practice or only to a very limited extent to prevent advertising on problematic sites.

Blocklists		
Government approved ISP blocklist	Separate list for advertisement blocking with problematic services, developed by rights organisations, without government involvement	Separate list for advertisement blocking with problematic services, developed by rights holders in collaboration with government (police)
Lithuania, Italy, Greece, Portugal, Denmark	Sweden	United Kingdom

UK and Sweden stand out by using a list dedicated to advertisers. In the United Kingdom, the criterion for inclusion of services on the list consists of reports from rights holders, and the list is administered by the police authority PIPCU. In Sweden, it is also the rights holders' organisation that collects URLs for the compilation of the list, which is likewise administered by the rights organisation.

Organisations such as EUIPO, WIPO and the EU Commission's DG Growth do not have their own lists, but they all work with the same terminology as criteria for when a URL can be included in a list of problematic services where advertising should be avoided.

⁶⁵ TAG is the leading global initiative fighting criminal activity and increasing trust in the digital advertising industry. TAG advances its mission of eliminating fraudulent traffic, facilitating the sharing of threat intelligence, and promoting brand safety by connecting industry leaders, analyzing threats, and sharing best practices worldwide. The 700+ member TAG community include the world's largest and most influential brands, agencies, publishers, and ad tech providers. <https://www.tagtoday.net/>

⁶⁶ E.g., META, Spotify, Dentsu and Sky

⁶⁷ Regulation (EU) 2015/2120 regarding access to the open internet. Blocking access is only allowed if mandated by authorities according to Article 3.3.a.

In the context of this report, what's important is that the EU, WIPO, etc., use functional criteria to identify and list problematic services, recommending the cutting off of financial flows to these services in the form of ad placement. Criteria include terms like "sites of concern" and "high-risk websites", where inclusion on the list is justified based on "reasonably available evidence" and "reasonably suspected".

There is no criterion stipulating involvement of authorities or courts from either the EU/DG Growth, DG Trade, EUIPO or from the UN/WIPO, nor from rights holders or users of the lists, namely advertisers.

When looking at other comparable countries and relevant organisations, there are therefore the following two main conclusions:

A) Criteria:

A review of countries shows that there is generally the possibility for advertisers to use ISP blocklists, based on criteria such as ISP requirements for government approval, provided that copyright infringements are demonstrated. However, it turns out that, ISP blocklists are only used to a very limited extent by advertisers. Only Sweden and the UK have dedicated lists for advertisers.

Especially the Swedish example is relevant, as the list is based on an agreement between advertisers and rights holders, and the rights holders select the apparently problematic sites. This matches the international organisations' (WIPO and EU) use of functional criteria, as well as GARM's parameters for where advertisers want their ads placed.

This argues for the future organisation of a cooperation list based on the use of functional criteria as specified in the first part of section 4.2 above.

B) Practice:

Only the countries of Sweden and the UK actually have an active and dedicated system to prevent advertising on problematic sites. In other countries, ISP blocking is just a possibility, as ISP criteria are used and there doesn't seem to be actual use of lists. It is worth noting that in no case there seem to be legal concerns regarding the sharing, establishment or competitive aspects of lists.

Sweden is therefore an obvious reference point, as rights holders compile a dedicated list in collaboration with users, which users use to stop advertising. The UK is also a relevant example in terms of use of effectiveness measurement.

In a Danish context, this argues for further development of the current Dialogue Forum's collaboration into actual self-regulation, where the rights holder organisation, i.e., the Rights Alliance, in collaboration with relevant stakeholders, compiles, updates and distributes the cooperation list.



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