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INTA Comments European Commission Consultation: Draft Guidelines on Trusted Flaggers under the Digital Services Act (DSA)

The International Trademark Association (INTA) welcomes the opportunity to provide input on the European Commission's draft **Guidelines on the Trusted Flagger** mechanism under Article 22 of the Digital Services Act (DSA).

INTA supports the Commission's objective of enhancing legal certainty and promoting a harmonized approach across Member States. We welcome the clarification that intellectual property (IP) right holders may be eligible for Trusted Flagger status, as they are often best placed to detect and assess infringements affecting their own products and brands.

INTA considers that the effectiveness of the Trusted Flagger mechanism will depend on ensuring that entities with the most relevant expertise and operational capacity are able to participate directly and efficiently.

In this regard, the following elements would benefit from further clarification:

1. Eligibility of IP Right Holders

INTA welcomes the explicit clarification that private entities, including IP right holders, are eligible to obtain Trusted Flagger status (para. 32(a)).

This clarification is particularly important from a practical perspective. IP right holders are often uniquely placed to identify infringements affecting their own products and brands. Their ability to rely on detailed technical knowledge, market intelligence, and direct experience in enforcement activities significantly enhances the accuracy and reliability of notices submitted to online platforms.

At the same time, in practice, many IP right holders reported to manage their online notice-and-takedown activities through specialized external service providers acting on their behalf. The Guidelines could therefore acknowledge this operational reality and provide a certain degree of flexibility to reflect this operational aspect.

One possible approach would be to clarify that an IP right holder that has been granted Trusted Flagger status may designate qualified service providers to exercise that status on its behalf, subject to appropriate oversight and accountability. Such an approach would preserve the benefits of Trusted Flagger status while reflecting the way online IP enforcement is commonly carried out in practice.

INTA therefore encourages the Commission to maintain the clarification that IP right holders are eligible for Trusted Flagger status in the final Guidelines and, where appropriate, further emphasize both the valuable contribution that qualified right holders make to the effectiveness of the mechanism and the importance of enabling them to rely on trusted service providers acting on their behalf.

2. Equal Treatment of Individual Right Holders and Collective Actors

INTA notes that the draft Guidelines encourage applications from collective entities, such as industry associations, and recognize their potential contribution to the trusted flagger ecosystem (paras. 32 and 59).

INTA acknowledges the important role that such collective actors may play in aggregating expertise and facilitating coordinated enforcement efforts. However, the Guidelines also indicate that Digital Services Coordinators may consider the existence of collective solutions when assessing applications submitted by private entities, in order to preserve the added value of the mechanism (para. 59).

In INTA's view, this approach may give rise, in practice, to an unintended imbalance. While collective entities provide valuable support, they cannot fully replace the product-specific expertise, enforcement experience, and operational capacity of individual right holders. Moreover, requiring or incentivizing right holders to act through collective structures could introduce inefficiencies and reduce the responsiveness of the system.

INTA therefore encourages the Commission to clarify that applications submitted by individual right holders should be assessed on an equal footing with those submitted by collective entities, and that the existence of collective solutions should not constitute a factor weighing against individual applications.

3. Commercial Interests and the Assessment of Objectivity

INTA takes note of the provisions related to the assessment of objectivity and independence, in particular the possibility for Digital Services Coordinators to apply enhanced scrutiny where private or commercial interests may be expected to affect trusted flagger activity (para. 32(b)).

INTA recognizes the importance of ensuring that Trusted Flaggers operate in a diligent, accurate and objective manner, as required by Article 22(2) DSA and further elaborated in the Guidelines (paras. 26 and 40–42).

However, INTA is concerned that the current wording may lead to the perception that the pursuit of legitimate commercial interests is inherently at odds with objectivity. In practice, the protection of IP rights serves not only private commercial interests, but also broader public policy objectives, including consumer protection, product safety, civil and criminal law enforcement, and the integrity of the internal market. In fact, private interests routinely work with law enforcement authorities in areas of counterfeiting, consumer fraud, and online abuse.

INTA therefore encourages the Commission to clarify that the existence of commercial interests should not give rise to any presumption of bias. Instead, the assessment of applicants should be based on objective criteria, such as demonstrated expertise, established methodologies, and the proven quality and reliability of their notices.

4. Recognition of the Value of Specialized Expertise

INTA welcomes the emphasis placed in the Guidelines on the requirement for Trusted Flaggers to demonstrate expertise and competence in detecting, identifying and notifying illegal content (paras. 26 and 34).

This requirement is essential to ensuring that the mechanism functions effectively. In particular, in areas such as counterfeiting and trademark infringement, the accurate assessment of illegality often depends on specialized and product-specific knowledge that is not readily available to third parties automatically.

While the draft Guidelines implicitly recognize the importance of expertise, INTA considers that the text could be strengthened by more explicitly acknowledging the added value of direct knowledge of products, distribution networks and infringement patterns. Such knowledge contributes significantly to the accuracy, consistency and overall quality of notices, thereby supporting more efficient decision-making by online platforms.

INTA therefore encourages the Commission to reflect more explicitly in the final Guidelines the contribution of such specialized expertise to the effectiveness of the Trusted Flagger mechanism.

5. Definition of “Inaccurate Notices”

INTA notes that the Guidelines define “inaccurate notices” as those where the notified content is ultimately not found to be illegal (para. 99(c)).

While safeguarding the integrity of the Trusted Flagger mechanism is essential, this definition raises concerns, particularly in the field of IP enforcement, where assessments of illegality may be complex, context-specific and dependent on information available at the time of notification.

In this context, INTA considers that a notice submitted in good faith and based on reasonable and sufficiently substantiated evidence should not be considered inaccurate solely because a platform reaches a different legal assessment or decides not to act. Differences in interpretation may arise even where notifications are submitted diligently and with due care.

INTA therefore encourages the Commission to clarify that the notion of “inaccurate notice” should be applied in a proportionate and context-specific manner, considering the complexity of the relevant area of expertise. This clarification should not, however, affect the responsibility of Trusted Flaggers to ensure that notices are submitted accurately and within their designated area of expertise, nor the ability of platforms to assess each notice on its merits in a diligent and objective manner.

Furthermore, INTA notes that the Guidelines refer to a “significant number” of problematic notices (paras. 99–100) without further specification. Given the potential consequences of such assessments, additional clarification would be beneficial. In particular, relevant factors may include the overall volume of notices submitted, the complexity of the area of expertise, and the notifier’s historical accuracy.

Such clarification would support consistent application across platforms and Member States, while ensuring that good-faith enforcement efforts are not discouraged.

Providing additional guidance on these elements would support a more consistent and predictable application of the mechanism across platforms and Member States, while ensuring that good-faith enforcement efforts are not discouraged.

6. Operational Effectiveness and Proportionality

INTA welcomes the detailed guidance provided in the draft Guidelines regarding the operational aspects of the mechanism, including onboarding procedures and the processing of notices.

In particular, INTA welcomes the emphasis on avoiding disproportionate burdens for Trusted Flaggers (para. 73), the recommendation to implement standardised onboarding procedures (paras. 70–72), and the requirement for platforms to establish dedicated channels and technical solutions to facilitate the submission and processing of notices (paras. 76 and 78(b)).

These elements are essential to ensuring that the mechanism remains efficient and scalable in practice.

At the same time, INTA notes that participation in the Trusted Flagger system may require significant operational resources, particularly for entities with smaller enforcement teams. INTA therefore encourages the Commission to continue emphasising proportionality in the design and implementation of the mechanism, so that additional procedural or technical requirements do not create unnecessary barriers to participation.

In this line, reporting obligations applicable to Trusted Flaggers must remain proportionate and do not create unnecessary administrative burdens. While transparency requirements play a key role in safeguarding the integrity of the mechanism, their level of detail, frequency and operational implications should be carefully calibrated. Excessively burdensome reporting requirements may discourage qualified entities—particularly those with limited resources—from applying for or maintaining Trusted Flagger status. In this regard, INTA encourages a balanced approach that preserves transparency while ensuring accessibility and practical feasibility for a diverse range of stakeholders.

Consistency between Trusted Flagger Expertise and Content Categorization

INTA notes that the Trusted Flagger framework relies on the notion of “designated area of expertise” (para. 82), while platforms may subsequently classify notified content under different categories for the purposes of assessment and transparency reporting.

In practice, the categorization assigned by a platform—as reflected, for example, in its Statement of Reasons—may be determined only after a full review of the content and may therefore differ from the initial characterisation provided by the Trusted Flagger.

INTA considers that such differences in categorisation should not, in themselves, be interpreted as evidence that a Trusted Flagger has acted outside its designated area of expertise, particularly in complex or borderline cases.

At the same time, this should not prejudice the obligation of Trusted Flaggers to act within their designated area of expertise, nor the responsibility of platforms to assess each notice on its merits.

INTA therefore encourages the Commission to provide further clarification on how such situations should be interpreted in practice, in order to support consistency and legal certainty across the application of the mechanism.

7. Technical Notification Procedures

INTA welcomes the emphasis placed in the draft Guidelines on the development of efficient and structured technical solutions to facilitate cooperation between Trusted Flaggers and online platforms, (Section 9, para. 130).

In order to ensure the scalability, speed and consistency of the Trusted Flagger mechanism, INTA considers that the further development and adoption of standardised technical solutions should continue to be encouraged. In particular, enabling Trusted Flaggers to submit notices through streamlined and interoperable systems can significantly reduce fragmentation arising from multiple, platform-specific interfaces.

At the same time, such technical approaches should remain sufficiently flexible to accommodate different platform architectures and operational models. INTA therefore supports the continued promotion of efficient, standardised and scalable notification systems, encouraging APIs to that end while ensuring that equivalent technical solutions capable of achieving the same objectives may also be considered.

8. Transparency and Feedback Mechanisms

INTA welcomes the provisions aimed at enhancing transparency and cooperation between online platforms and Trusted Flaggers, including the requirement for platforms to provide structured access to information on the processing of notices (para. 88).

Access to such information is essential to enabling Trusted Flaggers to monitor outcomes, improve the quality of future submissions, and ensure consistency in enforcement practices.

The availability of meaningful feedback is a useful element in ensuring the effectiveness of the system and fostering constructive cooperation. INTA encourages the Commission to further clarify the expectations regarding feedback to Trusted Flaggers.

9. Recognition of Counterfeiting and Trademark Infringement

INTA notes that the Guidelines refer to different categories of illegal content, however, it does not explicitly highlight counterfeiting and trademark infringement as specific categories of concern. Given the significant economic and societal impact of such activities, as well as the established role of Trusted Flaggers in addressing them, INTA considers that explicit reference would be appropriate.

INTA therefore encourages the Commission to include more explicit references to these types of illegal commercial content in the final Guidelines.

Cooperation and Consistency of Implementation

INTA notes that the effective implementation of the Trusted Flagger mechanism depends on close cooperation between platforms, Trusted Flaggers and Digital Services Coordinators. In practice, structured and ongoing dialogue can contribute to improving the overall functioning of the system. In particular, it may facilitate the resolution of differences in content assessments, support the progressive improvement of the quality and consistency of notices, and reduce the need for escalation procedures.

Such cooperation may also contribute to a more consistent application of the framework across platforms and Member States, in line with the objectives of the DSA. In this respect, INTA welcomes the stated objective of ensuring a level playing field and consistent implementation of the Trusted Flagger framework across the Union (para. 9).

Ensuring consistent interpretation and application by Digital Services Coordinators remains essential to providing legal certainty to applicants and to ensuring the effectiveness of the mechanism at Union level. INTA therefore supports continued coordination, monitoring and practical exchanges between relevant stakeholders.

INTA encourages the Commission to continue promoting proportionate and practical approaches to cooperation and information-sharing, in order to support both the effective and balanced operation of the mechanism and a coherent application across Member States.

Conclusions

INTA supports the objectives of the draft Guidelines on Trusted Flaggers and encourages targeted refinements to ensure that the framework remains practical, proportionate and effective.

Ensuring the meaningful participation of qualified IP right holders will be key to the success of the mechanism in addressing online counterfeiting and other forms of illegal commercial content.

INTA remains available for further engagement and would welcome the opportunity to provide additional input as this initiative develops.

About INTA

The International Trademark Association (INTA) is a global association of brand owners and professionals dedicated to supporting trademarks and complementary intellectual property (IP) to foster consumer trust, economic growth, and innovation, and committed to building a better society through brands. Our membership comprises more than 6,700 organizations from 185 jurisdictions. We represent nearly 37,000 professionals, including brand owners from major corporations, small- and medium-sized enterprises, law firms, and nonprofits. Our community also includes government agency members, professors, and law students.

In Europe, our membership is comprised of 1,453 organizations representing more than 7,900 professionals. Our membership includes companies from a wide range of sectors such as the automotive, healthcare and pharmaceutical, food and beverage, financial services, cosmetics, energy industries and firms.

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