

**DSA AND THE POTENTIAL REFORM OF THE
EU PLATFORM LIABILITY REGIME**

SACG Seminar – 12 August, 2020

AGENDA & PURPOSE

1

Purpose

- Consolidate SACG's position in view of the DSA reform;
 - > Provide input to the Swedish Government and the EU Commission
 - > Advocate for legal change in order to support the fight against counterfeits and protect EU consumers online

2

Background

- Online counterfeiting as a growing concern during the 2000s
- Current platform/interim liability regime under the e-com directive
- Key policy options presented by the EU Commission

3

Brussels – State of Play

- Right holders' vs platforms' positions
- Current state of the political discussions
- Strategic relevance of the Nordic countries and SACG

4

Key discussion points

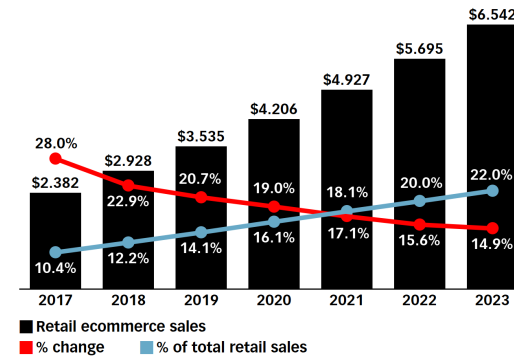
- Design of a new platform liability regime
- Additional legal content that shall be advocated for
- Introduction of an EU platform supervising authority

REVISION OF E-COM DIRECTIVE

- Current EU platform liability regime has been in place for two decades.
- It was created in an age before Facebook, google shopping, smart mobile apps etc. and at a time where today major marketplaces still where start-ups.
- Since its creation e-com has boomed on global level, so has also the online counterfeit industry.
- Current liability exceptions does not provide incitements for platforms to work proactively against counterfeiting and other illegal activities.
- New proposed legislation, DSA, to be presented late 2020.

Global e-com will continue to increase

Retail Ecommerce Sales Worldwide, 2017-2023
trillions, % change and % of total retail sales



High counterfeit ratio on major platforms

Apple lawsuit says 90 percent of 'official' chargers sold on Amazon are fake

By James Vincent | @jvincent | Oct 20, 2016, 3:59am EDT

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MOST READ



A study from OECD 2019 concluded **total value of fake goods infringing Swedish IP to SEK 28,3 billions** during the year 2016 only

DSA – POLICY OPTIONS FOR PLATFORM LIABILITY

The EU Commission has presented 3 main options for the new legislation in its public consultation.

Scenario 1

- **A limited legal instrument that would regulate online platforms' procedural obligations.**
- This would build on the scope of the e-Commerce Directive, focusing on services established in the EU.
- It would lay out the responsibilities of online platforms with regard to sales of illegal products and services and dissemination of illegal content and other illegal activities of their users.
- They would include proportionate obligations such as effective notice-and-action mechanisms to report illegal content or goods, as well as effective redress obligations such as counter notice procedures and transparency obligations.
- *This option would neither clarify nor update the liability rules of the e-Commerce Directive for platforms or other online intermediaries.*

Scenario 2

- **A more comprehensive legal intervention, updating and modernising the rules of the e-Commerce Directive.**
- Obligations could include:
 - harmonised obligations to maintain 'notice-and-action' systems
 - 'know your customer' schemes for commercial users of marketplaces
 - risk assessments could be required from online platforms
 - transparency and reporting obligations related to these processes
 - The instrument would also establish sanctions for systematic failure to comply with harmonised responsibilities.

Scenario 3

- **An effective system of regulatory oversight, enforcement and cooperation across Member States, supported at EU level.**
- This option, in complement to the previous options, would aim to reinforce the updated set of rules (as per 1 or 2).
- They should provide for an effective EU-wide governance of digital services through a sufficient level of harmonisation of rules and procedures.
- Public authorities' capabilities for supervising digital services would be strengthened including through appropriate powers for effective and dissuasive sanctions for systemic failure of services established in their jurisdiction to comply with the relevant obligations, potentially supported at EU level..