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Submitted to: digitalcooperation@EuroDIG.org

September 30, 2019

EuroDIG Support Association
c/o Sandra Hoferichter
Secretary General
Holbeinstrasse 6
D-04229 Leipzig

Re: EuroDIG's platform to collate views on the Report of the UN Secretary General's High-Level Panel on Digital Cooperation

Dear Ms. Hoferichter:

The International Trademark Association (INTA) is pleased to provide its views on the Report of the UN Secretary General's High-Level Panel on Digital Cooperation published this past June. We participated in the 2019 EURODIG program at The Hague and welcome to continue our participation in support of EURODIG's efforts to educate the public about the report's recommendations.

As the world's leading organization focused on matters of trademark law, INTA supports efforts to expand the opportunities of the Internet and to provide greater access in new or remote regions and to ensure that the rights of end users are respected and all human rights are protected in cyberspace as well as in the brick and mortar world.

As a proponent for consumer protection and internet safety, INTA supports emphasis on issues of trust and security and appreciates the efforts by the 2015 United Nations Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security and other bodies to bring international norms and legal rights into cyberspace.

Trust and security are paramount within the expansion and flourishing of internet norms. Accordingly, intellectual property and rights protections mechanisms should be maintained and improved to combat the growing incidence of consumer harms through abuse such as identity theft, spoofing, phishing, cybersquatting, counterfeiting and other criminal activities on the Internet that harm brands and consumers alike. As further described below, such harms lead to economic and physical injury and organized criminal activities such as human trafficking and terrorism.

INTA's previous participation

In January 2019, INTA submitted comments as part of the consultation for the report. A copy of INTA's comments is annexed to this letter for reference.

The key messages of INTA's earlier comments included:

- Safety, trust, and fair competition are crucial considerations in the development of digital policy and should not be sacrificed in favour of economic growth and innovation. If the right policies and systems of redress are in place, all of these aims can be mutually reinforcing.
- The digital economy offers many opportunities, but also poses risks. These include the potential for fraud, including by sale of counterfeit or pirated goods. In addition to depriving the consumer of his or her intended purchase, such products can be unsafe (such as counterfeit pharmaceuticals, cosmetic products, or toys not manufactured in accordance with safety requirements or that contain harmful materials), are often not manufactured in accordance with environmental or fair labour standards and may be a tool for organized crime. This risk of harm is greater now than ever before because economic actors no longer have to transact face-to-face.
- Trademarks play a crucial role in combating online fraud. For consumers, they act as a guarantee of the origin of goods or services. For businesses, they can be enforced to help prevent unfair competition, and to protect consumers.
- There is much more to do in this respect. Consumers, particularly vulnerable ones, require more far-reaching education regarding online fraud, including mechanisms large ecommerce platforms provide to combat infringement and protect buyers. But platforms and brand owners need a functioning means of identifying dishonest sellers to protect consumers. This requires increased transparency regarding who owns and operates websites, subject to a fair balance with privacy concerns. Access to redress for small businesses and individuals (perhaps via cooperatives or trade associations) needs to be improved.

Comments on the Final Report

In general, INTA endorses the contents and recommendations of the report. However, aside from mentioning the World Intellectual Property Organization ("WIPO"), the report does not discuss intellectual property concerns at all, including the role of trademarks, in the digital ecosystem, even though the issues of trust and security feature prominently. INTA suggests that a discussion of the importance of intellectual property would naturally fit in connection with Section 5's "Recommendations." Ensuring adequate protection of intellectual property rights is a fundamental element of making it easy to create, run, and grow small business, the first of four factors identified to promote inclusivity and minimize risks. Streamlined processes of enforcement, with low barriers to entry are critical to assist marginalised populations' participation in the digital economy, consistent with the third factor mentioned. And the need for some transparency in economic transactions to facilitate enforcement and protect consumers should be accounted for in connection with the privacy concerns of the fourth factor.

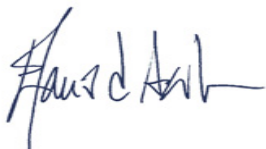
INTA supports the development of a Global Commitment on Digital Trust and Security. The process of discussing and setting norms would be helpful, and the final written Commitment can provide a clear “north star” for all stakeholders. However, it is vital that the Commitment recognize and account for the importance of trademarks in establishing trust online.

INTA wholly supports the multi-stakeholder model proposed. The reality of the digital world is that many issues now cross national boundaries, different sectors, and various competencies. A piecemeal approach of national legislation will not be sufficient, and even if it were, it would likely be implemented too slowly and unevenly. Therefore, a multi-stakeholder “soft governance” approach is a crucial part of the puzzle. Multi-stakeholder models have in the past produced concrete results in this arena. For example, the report rightly cites WIPO’s Domain Name Resolution policies as a success story of cooperation.

This is not to say that national governments are absolved of responsibility for legislating at a national level. Indeed, trademark rights are territorial in scope, and what is enforceable in one country may not be in another. Soft governance should not operate without regard to these limits. Further, soft governance is insufficient to remedy all abuses of the digital ecosystem. For example, the sale of counterfeit goods online will always have a physical source somewhere in the world. It is crucial that this physical source can be identified and addressed. Otherwise, brand owners and regulators will always be addressing the symptoms of a problem rather than the root cause, and ultimately incapable of best protecting consumers. Therefore, individual nations must also have adequate enforcement mechanisms in place.

INTA thanks EuroDIG and the UNHLP for its consideration of our comments. If you require further information relating to this submission, please contact Lori Schulman, Senior Director, Internet Policy at lschulman@inta.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Etienne Sanz de Acedo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Etienne Sanz de Acedo
Chief Executive Officer

About INTA and the Internet Committee

INTA is a 140-year-old global not for profit association with more than 7,200-member organizations from over 191 countries. One of INTA's goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last decade, INTA has also been the leading voice of trademark owners within the Internet Community, serving as a founding member of the Intellectual Property Constituency of the Internet Corporation for Assigned Names and Numbers (ICANN). INTA's Internet Committee is a group of over 200 trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.