

25 August 2023

Via public consultation  
with confirmation email

**Subject:** Right holders must be afforded trusted flagger status in their own right

**The signatories to this letter ask for your attention and support to ensure that in execution of article 22 of the Digital services Act (DSA) Intellectual property right holders can be afforded trusted flaggers status in their own right.**

An alliance of companies that have a strong connection with The Netherlands, representing a wide range of industries, welcome the Dutch draft legislative proposal and the draft Explanatory Memorandum for the DSA Implementation Act.

The signatories are of the opinion that for the reasons set out below, Intellectual property right holders merit to be afforded with the trusted flagger status in their own right.

Regarding '4.3.4.3 Meldingen van illegale inhoud door betrouwbare flaggers' of the Explanatory Memorandum for the DSA Implementation Act, we all understand that article 22 and recital 61 of the DSA are the most relevant provisions.

Regarding article 22 you will recall that in a first DSA concept the article regarding trusted flaggers (former article 19) required trusted flaggers to *represent collective interests*. This requirement was dropped in order to allow individual right holders to become trusted flaggers, enabling right holders to play their role in addressing the sale of illegal content online. In doing so the European legislator has recognised the role of the right holders in protecting European citizens as well as the European branded goods manufacturing industry.

Recital 61 further stipulates that the *trusted flagger status should only be awarded to entities, and not individuals, that have demonstrated, among other things, that they have **particular expertise and competence** in tackling illegal content and that they work in a diligent, accurate and objective manner.*

The expertise and competence requirement is also covered in article 22 (a), which require trusted flaggers to demonstrate a ***particular expertise and competence for the purposes of detecting, identifying and notifying illegal content.***

The signatories understand the mechanisms to tackle illegal expressions of terrorist content, to report child sexual abuse material or to notify illegal racist and xenophobic expressions, which topics largely relate to the freedom of expression.

When assessing the sale of products or the provision of services as illegal content under article 3 of the DSA, the signatories are of the opinion that for the following reasons right holders, even when they submit notice and take downs through a service provider, are the only ones that meet the particular expertise and competence requirement that is set by the European legislator:

1. They are the holder of the IP right (trade marks, designs, patents and copyrights) which they are seeking to protect, in line with (inter alia) Article 17 of the EU Charter of Fundamental Rights.
2. They have the expertise and competence to determine when a third party product is violating its rights, other than in cases of a fake or counterfeited product.
3. They are best placed to answer any question or push back that may be raised by a seller which advertisement is impacted by a notice and take down.
4. They are the only party that knows their products perfectly and can authenticate them, through both covert and overt means.
5. They know which product categories they do not manufacture, and can usually identify counterfeits via images.
6. Many right holders are working with platforms already and thus, they already have demonstrated to meet the requirements set forth in article 22.2 of the DSA.
7. From experience, we know that many of the notice and take downs that are issued by right holders are so accurate that they can be processed automatically without the need to extensive human verification.
8. This expertise is already recognised in law, including in the Customs IPR Regulation 608/2013.

The definition of illegal content set forth in article 3 of the DSA, implies that right holders should also be able to send notifications about goods that do not conform with other EU and national laws, such as consumer and product safety/standardisation rules.

In general, trade or industry associations will never meet the detailed and sophisticated level of expertise and competence, nor do these associations have the capacity or resources that are needed to accurately, promptly and diligently assess the sale of products or the provision of services as illegal content.

The signatories understand the preference to limit the number of trusted flaggers in order to avoid diminishing the added value of the mechanism to assess notices related to issues of freedom of expression. When assessing the sale of products or the provision of services as illegal content, the number of notices to be dealt with as a priority would solely depend on the volume of illegal content that is offered on a given platform. This number does not change depending on the entity that submits the notices.

Only in case a platform is flooded with illegal content, such platform may need to process a large volume of justified notices. This however would serve the interest of European citizens and European manufacturers of branded goods. A platform where only a small volume of illegal content is offered for sale, will also receive a small number of notices. Such platform will be safe for European citizens to buy products and such platform will facilitate a level playing field for European manufacturers of branded goods where they can compete with other manufacturers of products that do respect the Union Law.

Finally, we point out that should the trusted flagger status be abused, it can of course be withdrawn. As right holders are aware of this provision (article 22.7), they have no incentive to abuse this status.

Today already certain platforms apply a 'good faith' status to right holders that submit notices. The signatories are not aware of any rights holder that has lost its 'good faith' status due to the fact that too many notices were submitted that were not diligent, accurate or objective.

While the DSA has a potential to enable a sustainable digital framework, the signatories **ask for your support to ensure that**, in the interest of European consumers and businesses, **right holders can be afforded trusted flagger status in their own right.**

We kindly thank you for considering the foregoing and remain at your availability for any further discussion.

The signatories



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## About the Signatories

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[www.daf.com](http://www.daf.com)

### **HEINEKEN**

Heineken is the world's most international brewer. It is the leading developer and marketer of premium beer and cider brands. Led by the Heineken® brand, the Group has a portfolio of more than 300 international, regional, local and specialty beers and ciders. Heineken is committed to innovation, long-term brand investment, disciplined sales execution and focused cost management. Through "Brewing a Better World", sustainability is embedded in the business. Heineken has a well-balanced geographic footprint with leadership positions in both developed and developing markets. It employs over 85,000 employees and operates breweries, malteries, cider plants and other production facilities in more than 70 countries.

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### **LIPTON TEAS AND INFUSIONS**

Lipton Teas and Infusions is the global leader in the tea category with 17.000 employees, including 13.500 on its owned tea estates in East-Africa and a headquarter in The Netherlands. It owns a portfolio of 36 brands, including world-famous brands as Lipton, Pukka, Tazo, PG Tips, Brooke Bond and T2, and each famous and meaningful to consumers at either a global or local level. Lipton contributes to the wellbeing of 400 million daily consumers through its teas and infusions.

[www.lipton.com](http://www.lipton.com)

## **KONINKLIJKE PHILIPS**

Royal Philips of the Netherlands is a leading health technology company focused on improving people's health and enabling better outcomes across the health continuum from healthy living and prevention, to diagnosis, treatment and home care. Philips leverages advanced technology and deep clinical and consumer insights to deliver integrated solutions. The company is a leader in diagnostic imaging, image-guided therapy, patient monitoring and health informatics, as well as in consumer health.

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## **SIGNIFY**

Signify (Euronext: LIGHT) is the world leader in lighting for professionals and consumers and lighting for the Internet of Things. Our Philips products, Interact connected lighting systems and data-enabled services, deliver business value and transform life in homes, buildings, and public spaces. In 2022, we had sales of EUR 7.5 billion, approximately 35,000 employees and a presence in over 70 countries. We unlock the extraordinary potential of light for brighter lives and a better world. We achieved carbon neutrality in our operations in 2020, have been in the Dow Jones Sustainability World Index since our IPO for six consecutive years, and were named Industry Leader in 2017, 2018, and 2019.

[www.signify.com](http://www.signify.com)

## **UNILEVER**

Every day, 2.5 billion people use Unilever products to look good, feel good and get more out of life. This gives us the opportunity to build a better future. Unilever is the largest company in fast moving consumer goods in the Benelux. In the Netherlands we bring about 40 well-known brands to the market.

These well-known brands represent a diverse blend of products under brands such as Axe, Biotex, Calvé, Cif, Conimex, Dove, Glorix, Hellmann's, Hertog, Knorr, Neutral, OLA, OMO, Prodent, Unox, Zendium and Zwitsal.

[www.unilever.com](http://www.unilever.com)

## **VERSUNI**

Versuni's mission is turning houses into homes. The company believes that home is more than a house. With more than 900 patents on its name, Versuni's portfolio spans kitchen appliances, coffee, climate, garment, and floor care. Products under the Philips brand include the Philips Airfryer, Espresso Machine with LatteGo, PerfectCare Steam Generator, Air Purifier and AquaTrio Cordless Vacuum. Their other brands are: Saeco, Gaggia, Preethi, Philips Walita and L'OR Barista. Versuni is headquartered in Amsterdam, the Netherlands, and has innovation, manufacturing, and commercial centers across the globe, with a footprint in over 100 countries. Its successful product ranges adhere to EcoDesign requirements and reflect the company's commitment to sustainability best practices. Versuni is a former business division of Royal Philips and was formerly known as Philips Domestic Appliances.

[www.versuni.com](http://www.versuni.com)

## **VMI Holland**

VMI Group in Epe, the Netherlands encompasses several specialized business lines for Tire, Rubber, Can and Care products, each of them having earned a solid reputation in their respective markets.

The VMI machines are produced in state-of-the-art manufacturing and services facilities in the Netherlands, Germany, Brazil, Poland and China. Combined with services centers in the USA, Malaysia and Thailand, we are always close at hand for whatever support may be needed. Our 1800 people across the globe continuously strive to bring our industries to the next level by providing state-of-the-art, innovative technology to make our customers more successful.

VMI is a wholly owned subsidiary of technology company TKH Group N.V. (NYSE Euronext Amsterdam).

[www.vmi-group.com](http://www.vmi-group.com)