



European  
Commission

**Online IP Protection (E-Commerce)**

**网络知识产权保护（电子商务）**

**Expert Roundtable / Mofcom – EU Delegation**

**专家圆桌会/中国商务部-欧盟代表团**

**The EU's approach to voluntary agreements with  
intermediaries**

**与中间人达成自愿合作协议的欧盟方式**

**21 April 2017, Beijing**

**北京，2017年4月21日**

**Jorg Weberndorfer - European Commission, DG Trade**

**Jorg Weberndorfer - 欧盟委员会，贸易总司**



# **Memorandum of Understanding on the sale of Counterfeit Goods over the Internet (MoU 2011)**

## **关于通过互联网销售假冒商品的谅解备忘录 (2011谅解备忘录)**

- **Model of Voluntary Agreement between IPR holders and Internet Platform Providers (IPPs)**  
知识产权人与互联网平台提供商（IPP）之间的自愿合作协议范例
- **Proposed by the European Commission**  
由欧盟委员会提议
- **Based on on-going dialogue between stakeholders facilitated by the European Commission**  
基于欧盟委员会促进的利益相关方间的持续性对话
- **Text on Internet (transparency)**  
文本网上可查（透明）



## MoU 2011 - General Principles 2011谅解备忘录——一般原则

- Commitment of signatories to apply established principles  
签约方承诺适用确立的原则
- No creation of legally binding obligations  
不创设具有法律约束力的义务
- Primary responsibility remains for IPR protection and enforcement with IPR holders and for enabling safe online environment for consumers with Internet Platforms  
首要责任仍是与知识产权人携手推进知识产权保护及执法，并为互联网平台顾客提供安全的网络环境
- Termination of participation possible by mere notification to other signatories and European Commission  
仅经通知其他签约方及欧盟委员会即可终止参与



## MoU 2011 - Notice and Take-Down Procedure (NTD) 2011谅解备忘录——通知下架程序（NTD）

- IPPs offer non-burdensome, efficient and effective NTD, ensuring that valid notifications lead to swift removal or disabling of notified offer, and provide feedback on result  
互联网平台提供商提供简易、高效及有效的通知下架程序，确保只要通知有效，即可迅速移除或禁用所通知的待售商品，并提供结果反馈
- IPR owners refrain from unjustified or abusive use of notification possibility  
知识产权所有人不得无合理理由使用或滥用通知机制
- IPPs commit to assess the validity of notifications, and may ask for additional information in cases of doubt  
互联网平台提供商承诺评估相关通知的有效性，并在存疑时要求提供额外信息



## MoU 2011 - Pro-Active and Preventive Measures (PP) 2011谅解备忘录——主动及防御措施（PP）

- IPR holders commit to take commercially reasonable and available steps to effectively fight counterfeiting at its source, to actively monitor offers on websites, and to provide information, giving priority to substantial and pervasive problems  
知识产权人承诺采取商业合理可行的措施，在其源头对假冒行为实施高效打击，积极监控网站上的待售商品，并提供信息，优先考虑大量及具有普遍性的问题
- IPPs commit to take information into account and to take commercially and technically reasonable steps to identify and prevent counterfeit offers  
互联网平台提供商对信息加以考虑，并采取商业上及技术合理的措施识别及防范假冒的待售商品



## MoU 2011 - Cooperation, including Information Sharing 2011谅解备忘录——合作，包括信息共享

- IPPs commit to adopt, publish and enforce IPR policies, which should be clearly indicated on their websites  
互联网平台提供商承诺通过、公布及实施知识产权政策，并在其网站上清楚标示
- IPPs commit to disclose, upon request, relevant information including the identity and contact details of alleged infringers (insofar as permitted by applicable data protection laws)  
互联网平台提供商承诺，经请求后，（在适用数据保护法允许范围内）披露指称侵权人的身份及联系详情等相关信息



## MoU 2011 - Repeat Infringers 2011谅解备忘录——反复侵权人

- Commitment of IPR holders and IPPs to cooperate in the detection of repeat infringers  
知识产权人及互联网平台提供商承诺在侦查反复侵权人问题上进行合作
- IPPs commit to implement deterrent repeat infringer policy, including the temporary or permanent suspension of sellers, and to use best efforts to prevent re-registration of them  
互联网平台提供商承诺实施遏制反复侵权人政策，包括临时或永久的卖家停售，并尽最大努力防止其再次注册



## MoU 2011 – Cooperation with law enforcement authorities 2011谅解备忘录——与执法机构合作

- Commitment of signatories to cooperate and assist law enforcement authorities, where appropriate and in accordance with applicable law, in the investigation of the sale of counterfeit goods  
签约方承诺，在合适之时，根据适用法律，在执法机构调查销售假冒商品时予以合作及协助





## **Revision of MoU in June 2016**

### **Introduction of Performance Indicators**

### **2016年6月修订谅解备忘录**

### **引入绩效指标**

Identical MoU, but containing Annex with KPIs, relating to  
相同的谅解备忘录，但包括加入了以下关键绩效指标（KPI）的附录：

1. Percentage of detected counterfeits per product category in the first 100 listings  
在前100个上架物品中每个产品类别所检测到的假冒商品的比例
2. Number of listings removed as result of a) PP and b) NTD  
由于a) 主动及防御措施和b) 通知下架程序而移除的上架物品数量
3. Number of permanent and temporary sellers restrictions  
永久及临时卖家限制数量



## Introduction of Performance Indicators

### Results

### 引入绩效指标 结果

- Those KPIs are measured every 6 months  
每六个月对该等KPI进行衡量
- Data is verified by parties before being sent to EUIPO for aggregation  
在将数据发送给欧盟知识产权局进行汇总前，各方应核实数据
- The results of first measurement at end of 2016 remain confidential  
2016年底首次衡量的结果仍为保密信息
- Results will be published after next measurement (July 2017)  
结果将在下次衡量（2017年7月）后将公布



## Planned New Types of MoUs - Follow-the-Money Approach 规划中的新型谅解备忘录—— 追查资金法

- **Background: Intention of depriving commercial infringers of revenue flows**  
背景：目的是打断商业侵权人的收入流
- a) 3 new model MoUs between IPR holders and  
3个新的谅解备忘录范例，签约人为知识产权人及
  1. Advertisers 广告商
  2. Payment service providers 支付服务提供商
  3. Transport service providers 运输服务提供商
- b) Initiative on supply chains  
对供应链的倡议
- **Public consultations carried out**  
咨询公众意见



## Planned New Types of MoUs - Advertisers

### 规划中的新型谅解备忘录—— 广告商

- Most advanced MoU  
最先进的谅解备忘录
- Advertisers agree on guiding principles  
广告商同意指导原则
- Target date for publication: summer 2017  
预期公布日：2017年夏



## Planned New Types of MoUs - Payment Service Providers 规划中的新型谅解备忘录—— 支付服务提供商

- This is the second MoU in the planning  
这是规划中的第二部谅解备忘录
- Credit card and paypal providers are willing to share data  
信用卡和贝宝提供商有意共享数据
- However, limitations due to strong regulation in banking sector, particularly as regards data protection  
但是，由于银行业的强有力的（特别是数据保护相关）监控而存在诸多限制
- Meaningful MoU sought, which respects those principles  
谅解备忘录尊重该等原则，这是一次有益尝试
- This MoU is expected for 2018  
本谅解备忘录预计在2018年推出



## **Planned New Types of MoUs - Transport Service Providers**

### **规划中的新型谅解备忘录—— 运输服务提供商**

- This is the third MoU in the planning  
这是规划中的第三部谅解备忘录
- Fact finding exercises and meeting with experts  
进行了实况调查，并与专家会面
- Willingness to cooperate improved in recent years  
近年来进行合作的意愿有所提升
- BASCAP succeeded in brokering MoU for shipping sector  
国际商会“阻止制假和盗版商业行动”（BASCAP）成功将谅解备忘录推介给航运业
- EU approach is wider, including general courier services  
欧盟方法涵盖面更广，包括一般快递服务
- This MoU is expected later in 2018  
本谅解备忘录预计在2018年后期推出



## **Planned Initiative - Supply Chain** 规划中的倡议—— 供应链

- **Most complex initiative**  
最复杂的倡议
- **Limited number of responses to public consultation**  
公众咨询意见仅收获数量有限的回应
- **No agreement in sight**  
目前看不到达成一致的迹象
- **Strongest achievement would be guidance on due diligence**  
最大成就应该是对尽职调查的指导



**Thank you!**  
**谢谢大家!**

**Jorg Weberndorfer@ec.europa.eu**