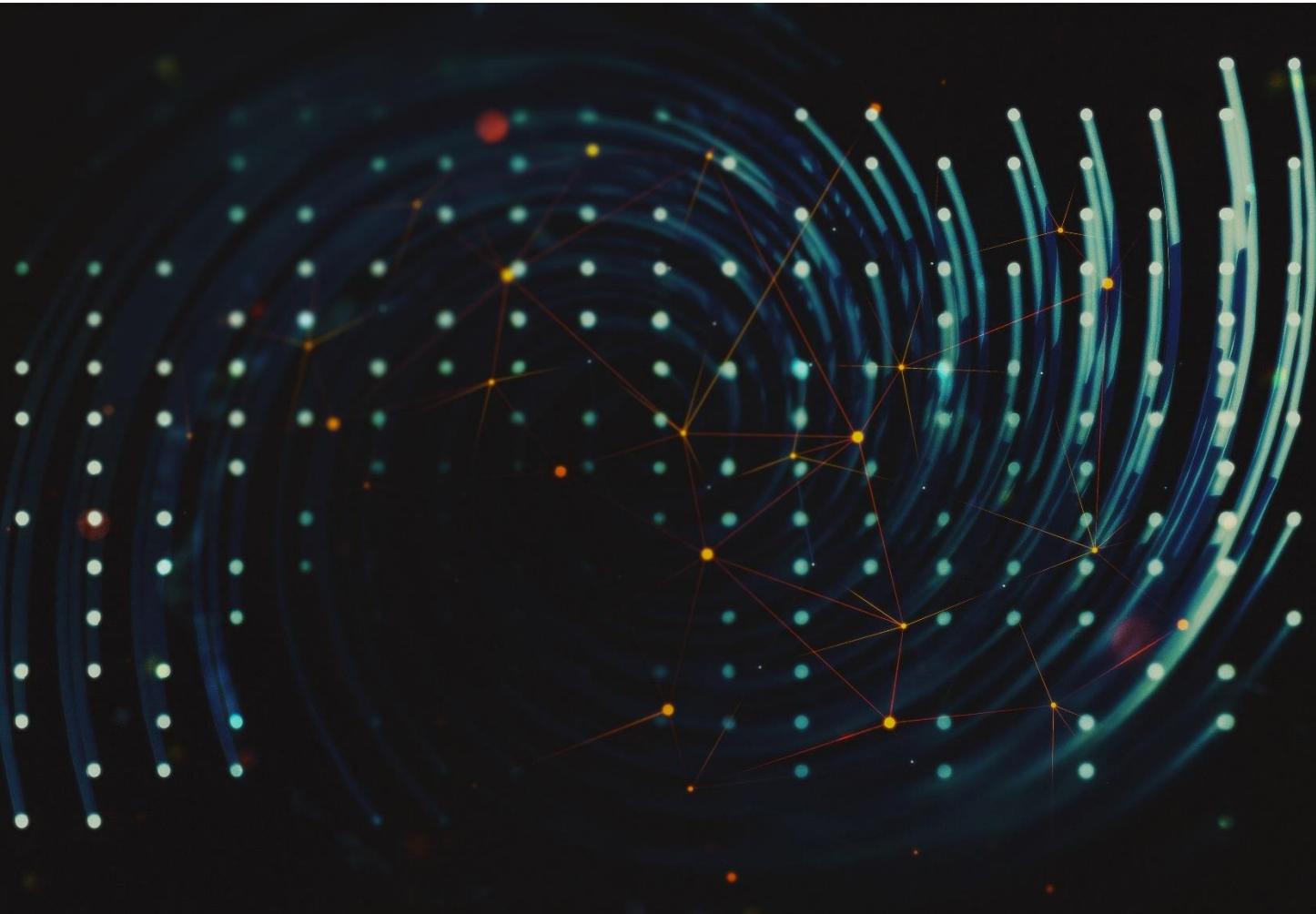




Priority Flagging Partnerships in Practice

A EuroISPA survey into best practices from the Internet industry

January 2019



Introduction

EurolSPA is the world's largest association of Internet Service Providers (ISPs), representing the interests of more than 2500 ISPs across the EU. Our membership comprises a wide range of ISPs, including Internet access providers, Internet exchanges, domain name registries, hosting providers, illegal content hotlines, information society services.

Following the European Commission's Recommendation on tackling illegal content online and public-private partnerships' efforts to address the issue, such as the EU Internet Forum, the role of "trusted flaggers", or "flagging partnerships", has become increasingly higher on the agenda in EU policy debates.

As there appear to be different interpretations concerning the concept of such partnerships, EurolSPA has opted to use the term "priority flaggers" as a neutral term for a partnership between an ISP and a third party, whereby notices received from dedicated third parties are being dealt with in a specific manner.

Such partnerships allow service providers to collaborate with a variety of stakeholders who hold particular expertise on specific types of illegal content online. Flaggers primarily identify and report respective content to ISPs which violates their terms of service. In some instances, flaggers can also report content that infringes local laws, where common practice shows several providers using separate forms for such reports. The reports by these flaggers are usually treated as a matter of priority, and have shown positive results in faster and more accurate removals.

In this context, EurolSPA gathered best practices from companies resorting to flagging partnerships to improve their management of illegal content online through a written survey. A broad range of ISPs, including online marketplaces, social networks, search engines and providers of content delivery networks provided input, which is aggregated and summarised below.

This document aims to inform policy-makers on the variety of flagging partnership practices, with a view to constructively contributing to future policy initiatives addressing illegal content online.

Best practices

Who are priority flaggers?

In their efforts to tackle illegal content online, ISPs collaborate with a broad range of stakeholders. These primarily include NGOs and Internet hotlines, but also academia, government agencies, rightsholders, other ISPs as well as individual users. The choice of stakeholder depends on the company's business model, its culture, and its expectations of the respective priority flagger.

Eligibility and selection

The vast majority of respondents select their potential partners through well-established procedures. Whereas some use specific criteria or follow guidelines, others select their partners in a more flexible manner, predominantly relying on existing trust and mutual understanding between the parties.

In particular, all respondents select their partners based on their expertise in a certain topic. Such expertise can be assessed against the rate of accuracy in relation to the volume with which the potential partner has hitherto flagged content on the platform in question, in addition to other factors, for example papers and publications proving the priority flagger's knowledge in the field. Another important criterion is the neutrality of the potential partner, in order to avoid any potential influence over the ISP's illegal content online management processes, acting with vested interests to drive its own agenda. Furthermore, several companies take into consideration whether the stakeholder brings a background and/or expertise that is as of yet not included in their flagging partnership programme, with a view to increasing diversity. In this context, some ISPs also take the geographical location of the stakeholder into account, in particular if the flagger assesses violations against local laws.

Fulfilling these criteria, however, never does not entail that the applicant is automatically entitled to be a priority flagger position. Rather, this remains exclusively at the sole discretion of the ISP and each application for a priority flagger partnership is considered on a case-by-case basis.

Moreover, some respondents indicated that potential partners must attend a specific training session before gaining priority flagger status. Such sessions should educate the candidate priority flagger on the provider's terms of service and its concrete enforcement procedure.

Abuse

Given their voluntary nature, flagging partnerships can be terminated at any moment by the ISP, especially if the flagger abuses its position. Several companies indicated their policy in regularly assessing the quality of flaggers' reports. Eventually, flaggers who submit inaccurate reports – willingly or unwillingly – lose the trust of the companies, and risking the revocation of special status.

Risks for abuse exist in particular where, for example, market actors may try to use the mechanism to suppress a rival's products or content order to gain a competitive advantage, which in particular can be the case with regards to alleged IP infringements.

For instance, flagging can be abused to mute opposing political views. Malicious flaggers can attempt to exploit reporting mechanisms to take down rival content and push their own political agenda. Moreover, abuses can potentially have negative effects on marketplace dynamics– for example, a seller might attempt to flag items being sold by a competitor as illegal, in order to delist it, become better ranked in searches, and, ultimately, sell more products.

These hypothetical examples show that the possibility to terminate such partnerships is paramount for ISPs and ensures that the flagging partnership programmes are efficient and implemented correctly.

Privileges of priority flaggers

A number of respondents pointed out that in some cases there were misperceptions or false expectations by potential flagging partners that their notices would lead to immediate, automated action without the inference of human moderation by the side of the ISP.

The main privilege of a priority flagger status granted by companies is prioritisation of their reports. Evidence shows that their reports are indeed statistically more accurate than those of other stakeholders, given their expertise in a given field. It is important to note that ISPs generally do not automatically remove or block content following a report by their priority flaggers. Human supervision is deemed essential by all the companies who responded to our survey. This is to ensure a constant and high degree of accuracy of the reports, as well as to maintain full control over the policy- and decision-making process. In order to allow human supervision, it is thus essential that reports include clear reasoning and context for the flagged content, and in case it concerns a violation of local law, also a reference and explanation of the legal basis in question.

Moreover, some companies operate a special communication channel with priority flaggers, in which they provide for example a single point of contact in their policy team to the stakeholder and include them in their policy development process.

Types of content reported

Depending on the ISP, an emphasis is placed on different types of content. Across the industry, priority flaggers address a wide variety of illegal content, including IPR infringement, CSAM, hate speech, terrorist content online, or security threats. Certain issues however are considered not to be suitable for the priority flagger concept such as product safety or technical compliance issues due to previous abuse.

Advantages

All the respondents consider that flagging partnerships are beneficial to them, as they help them to better tackle illegal content online and generate efficiency gains in their internal processes.

Conclusions

The main takeaway from this survey is that there are as many flagging partnerships as there are companies due to the different characteristics of services and issues to be reported. Policy-makers should take this into account and leave a high degree of freedom to companies to decide how to best shape their flagging partnerships, according to their business models. As the name indicates, priority flagger partnerships are based on mutual *trust*; therefore, no legislation should make priority partnerships' reports binding. More generally, to ensure flexibility, concrete procedure related to flagging partnerships, notably concerning the selection of priority flaggers and the actions taken after the flagging of content, should remain voluntary and not be defined by EU law.

In this way, thanks to flexible, industry-led flagging partnerships, companies will continue to be able to efficiently deal with illegal content online and equally protect their user's and business interests.

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