



2023 AIPPI World Congress – Istanbul  
Adopted Resolution  
25 October 2023

## **Resolution**

### **2023 – Study Question – General**

#### **Responsibility of online marketplaces for online infringement of industrial property rights**

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#### **Background:**

- 1) This Resolution concerns the civil responsibility (liability) of online marketplaces for online infringement of industrial property rights, and, in particular, trade marks, patents and industrial designs. The infringement of copyrights is outside the scope of this Resolution.
- 2) For the purposes of this Resolution, the term “online marketplace” (OM) includes all types of online platforms which offer for sale third parties’ goods and services, by connecting or facilitating the connection between third-party sellers and buyers, or facilitating the execution of the contract, even if the OM also offers products and services for sale in its own name. This Resolution does not address offers for sale of products and services by OMs in their own name.

- 3) This Resolution does not concern criminal liability, the liability of marketplaces before consumers in general, or international private law issues.
- 4) 38 Reports were received from AIPPI's National and Regional Groups and Independent Members providing detailed information and analysis regarding national and regional laws relating to this Resolution. These Reports were reviewed by the Reporter General Team of AIPPI and distilled into a Summary Report (which can be found at [www.aippi.org](http://www.aippi.org)).
- 5) There is a general consensus on the need for a Special Digital Law regime aiming to ensure a balance between the interests of OMs, which role is essential for the development of e-commerce, and of the IPRs holders, who must be able to benefit effective protection.
- 6) At the AIPPI World Congress in Istanbul in 2023, the subject matter of this Resolution was further discussed within a dedicated Study Committee, and again in a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

**AIPPI resolves that:**

- 1) Countries should adopt a Special Digital Law regime offering online marketplaces (OMs) safe harbours from responsibility (liability) from the General IP Law and the General Law regimes, taking into account the factors listed in item 2 and provided that the conditions listed in item-3 are met.

**General factors to be taken into account for the Special Digital Law regime to be applicable to OMs**

- 2) For the Special Digital Law regime to be applicable, the OM should keep a neutral or passive role regarding the offers for sale displayed in its platform. To assess the neutral or passive role, the following non-exhaustive factors should be taken into account and should be examined on a case-by-case basis:

- The OM provides to third-party sellers only services of hosting their offers for sale.
- The OM does not implement control over activities of third-party sellers.
- The OM does not:
  - offer services of promotion of the offers for sale.
  - offer services of optimization of the presentation of the offers for sale.
  - offer services of storage and/or shipping of the products.
- The user is not given the impression that the OM is providing or selling, in its own name or on its own account, the infringing products or services. Such impression could be caused, for instance, if the OM does not sufficiently differentiate its own offers for sale from those of third-party sellers where it also offers products for sale in its own name.

**Requirements for OMs to benefit from the safe harbour from responsibility (liability) provided by the Special Digital Law regime**

- 3) In order for an OM to benefit from the safe harbours from responsibility (liability), the following cumulative conditions should be complied with:
- OM does not have knowledge of the infringing character of the product offered for sale on its marketplace.
  - Upon obtaining knowledge of the infringing character of the product, OM acts expeditiously to remove the access to the infringing product offers.
  - OM provides the following:
    - Online notice and take-down and stay-down procedure. Such notice provided by the IPR holder should be a qualified notice, and the alleged infringer should have the possibility to file a qualified counternotice.

- Exclusion of third-party sellers in case of repeated offers for sale of infringing products.
- OM monitors to a minimum standard the offers provided by third parties, and this standard should vary according to the technology reasonably available to the OM under consideration.
- OM collects the name, address and contact information of third-party sellers and verifies that this information is accurate and up to date. The OM provides the third-party sellers' information to the IPR holder diligently.

### **Remedies**

- 4) If the Special Digital Law regime applies on the basis of the assessment described in item 2 and the OM does not comply with all the cumulative conditions set under item 3, it should be subject to the General IP Law and to the General Law regime, including the remedies for infringement offered under those regimes.
- 5) Regardless of the liability of the OM under the General IP Law and/or the General Law regimes and/or whether it is able to benefit from the safe harbours under the Special Digital Law regime, the OM may be required by the Court or competent authorities to take measures (e.g. injunction to cease, to inform purchasers of counterfeit products) to put an end to an infringement caused by a third party on its platform.