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Public consultation on the evaluation and modernisation of the legal framework for the enforcement of intellectual property rights: Consumers, Citizens and Civil Society

Fields marked with * are mandatory.

Objectives and General Information

The views expressed in this public consultation document may not be interpreted as stating an official position of the European Commission.

You are invited to read the privacy statement for information on how your personal data and contribution will be dealt with.

Please complete this section of the public consultation before moving to other sections.

Respondents with disabilities can request the questionnaire in .docx format and send their replies in email to the following address: GROW-IPRCONSULTATION@ec.europa.eu.

If you are an association representing several other organisations and intend to gather the views of your members by circulating the questionnaire to them, please send us a request in email and we will send you the questionnaire in .docx format. However, we ask you to introduce the aggregated answers into EU Survey. In such cases we will not consider answers submitted in other channels than EU Survey.

If you want to submit position papers or other information in addition to the information you share with the Commission in EU Survey, please send them to GROW-IPRCONSULTATION@ec.europa.eu and make reference to the "Case Id" displayed after you have concluded the online questionnaire. This helps the Commission to properly identify your contribution.

Given the volume of this consultation, you may wish to download a PDF version before responding to the survey online.

*** Please enter your name/organisation and contact details (address, e-mail, website, phone)**

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*** Is your organisation registered in the Transparency Register of the European Commission and the European Parliament?**

In the interests of transparency, organisations (including, for example, NGOs, trade associations and commercial enterprises) are invited to provide the public with relevant information about themselves by registering in the Interest Representative Register and subscribing to its Code of Conduct.

If you are a registered organisation, please indicate your Register ID number. Your contribution will then be considered as representing the views of your organisation.

If your organisation is not registered, you have the opportunity to register now. Then return to this page to submit your contribution as a registered organisation.

Submissions from organisations that choose not to register will be treated as 'individual contributions' unless they are recognized as representative stakeholders via relevant Treaty Provisions.

- Yes
- No
- Non-applicable

*** Register ID number**

223107019550-70

*** In the interests of transparency, your contribution will be published on the Commission's website. How do you want it to appear?**

Under the name supplied? (I consent to the publication of all the information in my contribution, and I declare that none of it is subject to copyright restrictions that would prevent publication.)

- Anonymously? (I consent to the publication of all the information in my contribution except my name/the name of my organisation, and I declare that none of it is subject to copyright restrictions that would prevent publication).
- No publication - your answer will not be published and in principle will not be considered.

"Please note that your answers may be subject to a request for public access to documents under Regulation (EC) No 1049/2001."

A. Identification

*** Who are you?**

- Individual Legal counsellor representing consumer
- National consumer protection organisation European consumer protection organisation
- National civil rights organisation European civil rights organisation
- Other

* Please specify:

500 character(s) maximum

* How old are you?

- Under 18 18-34 35-44 45-55 55+

* What is your gender?

- Female Male

* Please indicate your country of residence or establishment:

- Austria Italy
- Belgium Latvia
- Bulgaria Lithuania
- Cyprus Luxembourg
- Croatia Malta
- Czech Republic Netherlands
- Denmark Poland
- Estonia Portugal
- Finland Romania
- France Slovakia
- Germany Slovenia
- Greece Spain
- Hungary Sweden
- Ireland United Kingdom
- Other

* Please specify:

500 character(s) maximum

B. Exposure to IP infringing goods and services

*** Do you believe that products (goods and services) are promoted and presented in such a manner that you can easily identify that they are legitimate products respecting IPR?**

- Yes
- No
- No opinion

*** Please explain:**

1,500 character(s) maximum

C. Functioning of key provisions of Directive 2004/48/EC on the enforcement of intellectual property rights

Directive 2004/48/EC on the enforcement of intellectual property rights introduced different instruments for IP right holders to protect their intellectual property. This section aims to provide the Commission with citizen's and stakeholder' views, opinions and information about the functioning of the overall enforcement framework and of key provisions of IPRED. The different instruments consulted on will be briefly explained before each sub-section.

C.1. Overall functioning of the enforcement framework

*** Do you think that the existing rules have helped effectively in protecting IP and preventing IP infringements?**

- Yes
- No
- No opinion

Please explain:

1,500 character(s) maximum

We are mainly concerned with copyright in the digital environment. In this area there is a need for more evidence of the long term effects of enforcement on infringement. It seems that the availability of legitimate sources such as streaming services may have had a larger impact in reducing infringement. Specifically enforcement against end users and individual consumers has failed and future reforms of the rules should clearly steer away from criminalising ordinary citizens.

We would like to see a simplification of the enforcement regime with a single rule with clear and strong considerations on rights such as freedom of expres

sion and privacy.

*** Do you consider that the measures and remedies provided for in the Directive are applied in a homogeneous manner across the EU Member States?**

- Yes
 No
 No opinion

*** Please explain:**

1,500 character(s) maximum

Harmonisation of copyright enforcement cannot go further than copyright itself. Demands for extraterritorial applicability of inductive relief and other such proposals being circulated by certain groups put the cart before the horses. Given the current diversity of copyright regimes, specially on exceptions, we believe that enforcement requires contextualisation. Otherwise it is likely that we would see jurisdiction hopping in search for injunctions.

C.2. Measures, procedures and remedies provided for by IPRED

Responses to this section should be based on your overall experience with the measures, procedures and remedies provided for by IPRED as implemented and applied in your jurisdiction. If appropriate please specify in your response, to the extent possible, particular national issues or practices. If your response concerns a jurisdiction other than your jurisdiction of residence or establishment or covers more than one jurisdiction please also add the jurisdiction concerned.

C.2.1. Identification of an alleged infringer

This measure should assist rightholders in identifying an alleged infringer of their IPR. Subject to certain requirements the rightholder can ask the competent judicial authorities to order any person to disclose information on the origin of the goods or services that are thought to infringe intellectual property rights and on the networks for their distribution or provision.

*** Have you been concerned with a procedure for an alleged IPR infringement?**

- Yes
 No

*** For alleged infringement(s):**

Online

-
- Offline

*** The alleged infringement concerned what kind of IPR?**

- | | |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Copyright | <input type="checkbox"/> Rights related to copyright |
| <input type="checkbox"/> Community trademark rights | <input type="checkbox"/> Community design rights |
| <input type="checkbox"/> National trademark rights | <input type="checkbox"/> National design rights |
| <input type="checkbox"/> Patent rights (including rights derived from supplementary protection certificates) | <input type="checkbox"/> Geographical indications |
| <input type="checkbox"/> Rights of the creator of the topographies of a semiconductor product | <input type="checkbox"/> Plant variety rights |
| <input type="checkbox"/> Sui generis right of a database maker | <input type="checkbox"/> Trade names (in so far as these are protected as exclusive property rights in the national law concerned) |
| <input type="checkbox"/> Utility model rights | <input type="checkbox"/> Other |
| <input type="checkbox"/> Don't know | |

*** Please specify:**

500 character(s) maximum

*** The alleged infringement concerned what kind of product?**

- | | |
|-------------------------------------------------------------|-----------------------------------------|
| <input type="checkbox"/> Automotive parts | <input type="checkbox"/> Books |
| <input type="checkbox"/> Clothing, footwear and accessories | <input type="checkbox"/> Computers |
| <input type="checkbox"/> Cosmetics and personal care | <input type="checkbox"/> E-books |
| <input type="checkbox"/> Film and video | <input type="checkbox"/> Games and toys |
| <input type="checkbox"/> Luggage and handbags | <input type="checkbox"/> Luxury goods |
| <input type="checkbox"/> Medicines Tobacco | <input type="checkbox"/> Music |
| <input type="checkbox"/> Others | <input type="checkbox"/> Sports goods |
| <input type="checkbox"/> Watches and jewellery | |

*** Please specify:**

500 character(s) maximum

*** Have you been contacted by a rightholder or a third party acting on her/his behalf?**

- Rightholder
- Third party
- Don't know

*** Have you been contacted by a party from your country of residence or another country?**

- Country of residence
- Another EU member state
- 3rd country
- Don't know

*** To your knowledge from where did the person receive your contact information?**

- Own resources
- Intermediary service provider
- Don't know

*** To your knowledge which intermediary did provide the information?**

For the purpose of this consultation:

- "Advertising service provider"

Advertising agencies, advertising broker

- "Contract manufacturing service provider"

Contract manufacturing is an outsourcing of certain production activities previously performed by the manufacturer to a third-party.

This may concern certain components for the product or the assembly of the whole product.

- "Business-to-business data storage provider"

Data storage space and related management services for commercial user.

- "Business-to-consumer data storage provider"

File-storing or file-sharing services for personal media files and data

- "Content hosting platform"

Platforms providing to the user access to audio and video files, images or text documents.

- "Press and media company"

Newspaper, broadcaster

- | | |
|---------------------------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Advertising service provider | <input type="checkbox"/> Mobile apps marketplace |
| <input type="checkbox"/> Contract manufacturing service provider | <input type="checkbox"/> Press and media company |
| <input type="checkbox"/> Business-to-business data storage provider | <input type="checkbox"/> Online marketplace |
| <input type="checkbox"/> Business-to-consumer data storage provider | <input type="checkbox"/> Payment service provider |
| <input type="checkbox"/> Content hosting platform | <input type="checkbox"/> Retailer |
| <input type="checkbox"/> Domain name registrar | <input type="checkbox"/> Search engine |
| <input type="checkbox"/> Domain name registry | <input type="checkbox"/> Social media platform |
| <input type="checkbox"/> DNS hosting service provider | <input type="checkbox"/> Transport and logistics company |
| <input type="checkbox"/> Internet Access Provider | <input type="checkbox"/> Wholesaler |
| <input type="checkbox"/> Don't know | <input type="checkbox"/> Other |

* Please specify:

500 character(s) maximum

* What kind of request did you receive?

- Cease and desist letter (letter requesting to stop an alleged IPR infringement)
- Request for damages
- Court order to stop an actual infringement
- Court order to stop an actual and any future infringement
- Other

* Please specify:

500 character(s) maximum

* Are you aware of any out of court procedure for cease and desist notices for alleged IPR infringements in your country of residence?

- Yes
- No

Please provide detail:

1,500 character(s) maximum

The UK has seen extensive pre-action notices in intellectual property disputes. This system has been notably abused to send threatening letters, infamously in the case of ACSLAW (Media CAT Ltd v Adams & Ors [2011] EWPC 6). The firm was suspended for "speculative invoicing": the sending of letters before action to thousands of internet subscribers whose internet connection is alleged to have been used for small-scale copyright infringement and whose names and addresses have been obtained from ISPs. The letters demanded excessive sums without trying to establish if the recipient is the person who caused the alleged losses. ACSLAW was pocketing over 50% of the monies involved. British courts have since produced guidance on how to conduct these letters (Golden Eye (International) Ltd and others v Telefonica UK Ltd [2012] EWHC 723), which should not demand fixed sums or make any threats beyond taking people to court. This was the result of the participation of consumer groups in the procedures, which should be made easier in any future reform of enforcement.

The UK Digital Economy Act which came into force in 2010 provides for mass letters to be sent to individual infringers, as part of a "graduated response" approach, but disputes over costs have delayed its implementation. Research on this area seems to show that even if initially they manage to change user b

ehaviour, over time such schemes may not be effective (DOI: 10.1016/j.jebo.2014.04.026)

*** Did you ever appeal a judicial decision ordering information to be provided or the notice/cease and desist submitted on the basis of the information provided?**

- Yes
- No
- Did not receive such an order

Why did you not appeal?

1,500 character(s) maximum

What was your reason for appeal?

	Very relevant	Relevant	Less relevant	Not relevant
No infringement of IPR	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Unjustified/disproportionate request	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Breach of protection of confidentiality of information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Breach of protection of rights to respect for private life and protection of personal data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information provided in the request for information inaccurate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*** Please specify:**

500 character(s) maximum

*** Was your appeal (usually) successful?**

- Yes
- No

Please provide detail:

1,500 character(s) maximum

*** Do you have the feeling that your rights including the right to respect for private life and protection of personal data are well respected in Court proceedings for the identification of alleged infringers of IPR?**

- Yes
- No
- No opinion

Please explain:

1,500 character(s) maximum

Mass identification of alleged infringers based on third party in the UK has led to severe privacy abuses. The firm ACS Law exposed online the personal information of thousands of alleged copyright infringers who had engaged in peer to peer file sharing. The firm was set to pay £200,000 but in the end was fined only £1,000 because it had ceased trading.

In the case of people accused of copyright infringements relating to pornographic materials there could be further issues around sexual life, a sensitive type of data receiving special protections, as "Misuse of sensitive data, such as health data or sexual orientation (e.g. if publicly revealed), may be irreversible and have long-term consequences for the individual as well as his social environment". (http://ec.europa.eu/justice/data-protection/article-29/documentation/other-document/files/2011/2011_04_20_letter_artwp_mme_le_bail_directive_9546ec_annex1_en.pdf) .

Indeed the threat of publicity appears to have played a large role in the business model of speculative invoicing.

*** From your experience, do you believe that the proportionality test, balancing the protection of IPR and the protection of procedural and fundamental rights, was appropriately applied in your case?**

- Yes
- No
- No opinion

*** Please explain:**

1,500 character(s) maximum

*** In view of your experience with the implementation and application of the procedure for the identification of alleged infringers of IPR do you see a need to adjust the provisions for the application of that procedure?**

- Yes
 No
 No opinion

Please explain:

1,500 character(s) maximum

In line with other human rights organisations we support the view that it is essential that the privacy rights of alleged copyrights infringers' are taken into account when assessing the proportionality of an identification order (called Norwich Pharmacal Orders in the UK legal system).

We also support calls on the Commission to include an anonymous right of defence for alleged infringers in identification procedures under article 8 IPRED

For example, in Google v. Brein before the Amsterdam Court of Appeal (ECLI:NL:RBDHA:2015:11408), where the intermediary was granted a fixed period to allow the user to anonymously provide reasoned objections to the disclosure of their personal information. Unfortunately, this course of action is not explicitly allowed by the Enforcement Directive, nor is it reflected in most Member State Implementations.

Comments on the rules for the identification of an alleged infringer:

3,000 character(s) maximum

C.2.2. Legal proceedings for infringing IPR

The Directive set up measures and procedures to ensure the civil enforcement of intellectual property rights. This sub-section should help to get a better understanding of the nature of civil proceedings consumers and citizens are involved in in the area of IPR enforcement. It will furthermore look at the provisions on damages and reimbursement of legal costs. On application of the injured party, the competent judicial authorities may order an infringer to pay the right holder damages to compensate for the actual loss incurred. Furthermore, as a general rule court costs, lawyer's fees and any other expenses incurred by the successful party will normally be borne by the other party.

*** Have you ever been involved in legal proceedings before courts in your Member State for an alleged infringement of IPR?**

- Yes
- No

*** Were you involved as an applicant (person who is applying to the court for legal action) or defendant (person who is being sued)?**

- Applicant
- Defendant
- Both

*** What was the subject-matter of the case?**

- Request for information/cease and desist letter
- Request for provisional and precautionary measures
- Request for an injunction
- Claim for damages
- Request for review of an injunction issued against an internet intermediary to block content uploaded by you on the grounds that the content is IPR infringing
- Reimbursement of legal costs
- Other

*** Please specify:**

500 character(s) maximum

*** The legal action concerned an alleged infringement of an IPR:**

- Online
- Offline

*** The legal proceedings concerned the infringement of what kind of IPR?**

- | | |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Copyright | <input type="checkbox"/> Rights related to copyright |
| <input type="checkbox"/> Community trademark rights | <input type="checkbox"/> Community design rights |
| <input type="checkbox"/> National trademark rights | <input type="checkbox"/> National design rights |
| <input type="checkbox"/> Patent rights (including rights derived from supplementary protection certificates) | <input type="checkbox"/> Geographical indications |
| <input type="checkbox"/> Rights of the creator of the topographies of a semiconductor product | <input type="checkbox"/> Plant variety rights |
| <input type="checkbox"/> Sui generis right of a database maker | <input type="checkbox"/> Trade names (in so far as these are protected as exclusive property rights in the national law concerned) |
| <input type="checkbox"/> Utility model rights | <input type="checkbox"/> Other |

Don't know

* Please specify:

500 character(s) maximum

* The legal proceedings concerned the infringement of what kind of product?

- | | |
|-------------------------------------------------------------|-----------------------------------------|
| <input type="checkbox"/> Automotive parts | <input type="checkbox"/> Books |
| <input type="checkbox"/> Clothing, footwear and accessories | <input type="checkbox"/> Computers |
| <input type="checkbox"/> Cosmetics and personal care | <input type="checkbox"/> E-books |
| <input type="checkbox"/> Film and video | <input type="checkbox"/> Games and toys |
| <input type="checkbox"/> Luggage and handbags | <input type="checkbox"/> Luxury goods |
| <input type="checkbox"/> Medicines Tobacco | <input type="checkbox"/> Music |
| <input type="checkbox"/> Others | <input type="checkbox"/> Sports goods |
| <input type="checkbox"/> Watches and jewellery | |

* Please specify:

500 character(s) maximum

* The other party in the legal action was resident or established in your country of residence or in another country?

- Country of residence
- Another EU member state
- 3rd country
- Don't know

* Did you appeal a judicial decision?

- Yes
- No

* What was the reason for your appeal?

- Disproportionate claim for damages
- Disproportionate reimbursement of legal costs
- Insufficient evidence
- No commercial-scale infringement
- No infringement of IPR
- Other

* Please specify:

500 character(s) maximum

* Was your appeal successful?

- Yes
 No

Please explain:

1,500 character(s) maximum

* In view of your experience with the implementation and application of the rules for setting damages do you think that the existing rules have helped effectively in protecting IP and preventing IP infringements?

- Yes
 No
 No opinion

Please explain:

1,500 character(s) maximum

* In view of your experience with the implementation and application of the rules for setting damages do you see a need to adjust the provisions for the application of that measure?

- Yes
 No
 No opinion

Please explain:

1,500 character(s) maximum

The guiding principle of proportionality should guide any reforms: damage awards should not exceed demonstrable economic harm. The difficulty in making evidence based assessments of the actual values involved in online infringement tends to generate estimates of very high economic harms, easily in the millions.

If we look at estimates for commercial copyright and trade mark infringement or counterfeiting in physical goods we find proportional estimates: R v Brayford (2011). Imported 25 tons of low-grade washing powder and nearly 3,000 counterfeit Persil boxes. Estimated that profit would have been about £

20,000. 2 years' imprisonment upheld on appeal.

R v Hatton (2008). Production of 20,000 counterfeit DVDs, defendant admitted selling for £2 to £5 each to resellers. 18 months' imprisonment upheld on appeal.

R v Kirkwood (2006). About 2,500 DVDs with films, games and music seized. Some of the films were unrated pornography. Estimated equivalent retail value of material was £17,000. 30 months' imprisonment reduced to 21 months on appeal.

In contrast, online estimates appear disproportionate. For example in the case of Anton Vickerman, who run the website SurfTheChannel. The prosecution claimed losses of between £52 and £198 million. The judge refused to settle on a specific figure but admitted "millions" and passed a 4 years sentence.

*** In view of your experience with the implementation and application of the rules for the reimbursement of legal costs do you think that the existing rules have helped effectively in protecting IP and preventing IP infringements?**

- Yes
 No
 No opinion

Please explain:

1,500 character(s) maximum

*** In view of your experience with the implementation and application of the rules for the reimbursement of legal costs do you see a need to adjust the provisions for the application of that measure?**

- Yes
 No
 No opinion

Please explain:

1,500 character(s) maximum

Other comments on legal proceedings for infringing IPR:

3,000 character(s) maximum

C.2.3. Procedural safeguards

The measures, procedures and remedies provided for by the Directive shall be fair and equitable and be applied in such a manner as to provide for safeguards against their abuse.

*** Do you have the feeling that procedural and fundamental rights, such as the right of defence, the right to respect for private life or the right to protection of personal data, are (usually) well respected in the application of the measures, procedures and remedies provided for by the current Directive?**

- Yes
 No
 No opinion

*** Please explain:**

1,500 character(s) maximum

Comments on procedural safeguards:

3,000 character(s) maximum

C.2.4. Other issues

*** Are there any other provisions of the Directive which, in your view, would need to be improved?**

- Yes
 No
 No opinion

*** Please explain:**

1,500 character(s) maximum

*** Do you think that the existing rules have helped effectively in protecting IP and preventing IP infringements?**

- Yes
 No
 No opinion

Please explain:

1,500 character(s) maximum

*** Do you consider that the Directive has been implemented by all Member States in a way that a high, equivalent and homogeneous level of IPR protection has been achieved in the Internal Market?**

- Yes
 No
 No opinion

Please explain:

1,500 character(s) maximum

D. Issues outside the scope of the current legal framework

This section will address a number of issues which are currently not dealt with by the directive but might be taken up in any future initiative in order to modernise the enforcement of IPR.

D.1. Intermediaries

This sub-section aims to generate views on the role, responsibility and scope of engagement of intermediaries in IP enforcement. The questions should provide the Commission services with stakeholder experience with the implementation and application of voluntary cooperation initiatives involving intermediaries in the prevention of IP infringements.

*** Do you have experience with the involvement of intermediaries in the prevention of IPR infringements?**

- Yes
 No

*** This experience concerned which intermediary?**

- | | |
|---------------------------------------------------------------------|---------------------------------------------------|
| <input type="checkbox"/> Advertising service provider | <input type="checkbox"/> Mobile apps marketplace |
| <input type="checkbox"/> Contract manufacturing service provider | <input type="checkbox"/> Press and media company |
| <input type="checkbox"/> Business-to-business data storage provider | <input type="checkbox"/> Online marketplace |
| <input type="checkbox"/> Business-to-consumer data storage provider | <input type="checkbox"/> Payment service provider |
| <input type="checkbox"/> Content hosting platform | <input type="checkbox"/> Retailer |
| <input type="checkbox"/> Domain name registrar | <input type="checkbox"/> Search engine |
| <input type="checkbox"/> Domain name registry | <input type="checkbox"/> Social media platform |

- | | |
|-------------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> DNS hosting service provider | <input type="checkbox"/> Transport and logistics company |
| <input type="checkbox"/> Internet Access Provider | <input type="checkbox"/> Wholesaler |
| <input type="checkbox"/> Don't know | <input type="checkbox"/> Other |

* Please specify:

500 character(s) maximum

* Which IPR were covered by these voluntary cooperation schemes?

- | | |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Copyright | <input type="checkbox"/> Rights related to copyright |
| <input type="checkbox"/> Community trademark rights | <input type="checkbox"/> Community design rights |
| <input type="checkbox"/> National trademark rights | <input type="checkbox"/> National design rights |
| <input type="checkbox"/> Patent rights (including rights derived from supplementary protection certificates) | <input type="checkbox"/> Geographical indications |
| <input type="checkbox"/> Rights of the creator of the topographies of a semiconductor product | <input type="checkbox"/> Plant variety rights |
| <input type="checkbox"/> Sui generis right of a database maker | <input type="checkbox"/> Trade names (in so far as these are protected as exclusive property rights in the national law concerned) |
| <input type="checkbox"/> Utility model rights | <input type="checkbox"/> Other |
| <input type="checkbox"/> Don't know | |

* Please specify:

500 character(s) maximum

* Do you believe that intermediary service providers should play an important role in enforcing IPR?

- Yes
 No
 No opinion

Please explain:

1,500 character(s) maximum

The Manila Principles on Intermediary Liability (<https://www.manilaprinciples.org>) should guide any reforms. Online intermediaries have some roles to play, but we are extremely concerned by the trend to focus on intermediaries, which appear to be seen as the weakest link due to failures to fully satisfy demand from end users for accessible quality media and the availability of such materials outside official channels.

Limited intermediary liability is a central plank on the development of the current information society and a reversal here would have wider implications for the economy and fundamental human rights.

We find particularly worrying the so-called "follow the money" approach, where indirect ancillary services, such as domain registrars, advertisers or payment providers are brought into the enforcement framework.

In the UK, ads to allegedly infringing sites are restricted by the GPPs (good practice principles) for the trading of digital display advertising drafted by the Joint Industry Committee for Web Standards, an organisation created by the UK media industry. The GPP do not mention specific websites, but use the "likely" Infringing Website List (IWL). This is produced by the City of London Police unit responsible for IP protection (PIPCU, funded by the UK IP Office), who stresses that they do not interfere with ads. This way industry and the police pass each other the responsibility with the resulting lack of overall accountability and due process.

*** In your opinion which intermediaries are best placed to prevent infringements of IPR?**

- | | |
|---------------------------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Advertising service provider | <input type="checkbox"/> Mobile apps marketplace |
| <input type="checkbox"/> Contract manufacturing service provider | <input type="checkbox"/> Press and media company |
| <input type="checkbox"/> Business-to-business data storage provider | <input type="checkbox"/> Online marketplace |
| <input type="checkbox"/> Business-to-consumer data storage provider | <input type="checkbox"/> Payment service provider |
| <input type="checkbox"/> Content hosting platform | <input type="checkbox"/> Retailer |
| <input type="checkbox"/> Domain name registrar | <input type="checkbox"/> Search engine |
| <input type="checkbox"/> Domain name registry | <input type="checkbox"/> Social media platform |
| <input type="checkbox"/> DNS hosting service provider | <input type="checkbox"/> Transport and logistics company |
| <input type="checkbox"/> Internet Access Provider | <input type="checkbox"/> Wholesaler |
| <input type="checkbox"/> Don't know | <input type="checkbox"/> Other |

*** Please specify:**

500 character(s) maximum

In your opinion, what are the essential elements for a successful voluntary cooperation between rightholders and intermediaries?

1,500 character(s) maximum

*** On the basis of your experience what are the main challenges in establishing a successful cooperation between rightholders and intermediaries?**

- Economic interests (e.g. additional costs)
- Specific regulatory requirements

-
- Technology
- Other
- No opinion

* Please specify:

500 character(s) maximum

* Did you experience any limitation in terms of access to services or products previously provided by intermediary service providers due to their involvement in the prevention of IPR infringements?

- Yes
- No
- No opinion

Please explain:

1,500 character(s) maximum

* In your opinion does the enhanced involvement of intermediary service providers in enforcing IPR has or might have a negative impact on fundamental rights?

- Yes
- No

* How could fundamental rights be negatively affected?

- Limitation of freedom of expression
- Limitation of freedom to conduct business
- Limitation of the right to due process
- Limitation to the dissemination of legal content
- Other

* Please specify:

500 character(s) maximum

* In view of your experience which model would you consider most efficient for the involvement of intermediaries in the prevention of IPR infringements?

- Voluntary cooperation between rightholders and intermediaries (partners adopt amongst

themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements))

- Co-regulation (basic principles laid down in a legislative act and entrusting the attainment of the objectives defined to the partners)
- Statutory cooperation
- Other model
- No opinion

* Please specify:

1,000 character(s) maximum

D.2. Specialised courts

This sub-section seeks to explore if, following the example of the Community trade mark courts, the designation of specialised national courts for matters of infringement and validity of IPR could help to strengthen the protection of IPR and the efficacy of IPR enforcement.

*** Do you have experience with courts, courts' chamber or judges specialised in IP matters in your country of residence?**

- Yes
- No

Please provide detail:

1,500 character(s) maximum

We have experience in specialist judges. Open Rights Group's (ORG) intervention had a significant impact on a landmark case about internet trade mark infringement that was handed down today by the High Court in London. The court held that it had jurisdiction to order injunctions directly against intermediary Internet Service Providers (ISPs) so that websites selling counterfeit goods can be blocked to subscribers, Mr Justice Arnold however adopted the key ORG submission that such orders should always contain safeguards against abuse. He also adopted ORG's proposal for such safeguards. In particular the judge:

- accepted ORG's submission that the orders should be required to have safeguards against abuse, and that this was a requirement which had been missed by the other parties;
- adopted ORG's concrete proposals about the information to be included on landing pages and "sunset clauses" as safeguards against abuse

IP expertise in the court is extremely valuable but not a complete substitute for allowing public interest participation from groups such as the Open Rights Group. Courts should also have a clear mandate to look at human rights, and

unfortunately in many cases IP is still seen as a purely economic matter among private parties without wider societal impacts on freedom of expression and access to knowledge. Specialised courts could exacerbate this problem if not clearly guided.

*** Does legal action at a court specialised in IPR matters provide an added value compared to legal actions at other courts?**

- Yes
 No
 No opinion

Please explain:

1,500 character(s) maximum

*** What is the added value?**

- Shorter lengths of proceedings
 Lower costs
 Court proceedings more fit-for-purpose
 Better quality of the court decision
 Other

*** Please specify:**

500 character(s) maximum

D.3 Other issues

*** Do you identify any other issue outside the scope of the current legal framework that should be considered in view of the intention to modernise the enforcement of IPR?**

- Yes
 No
 No opinion

Please explain:

1,500 character(s) maximum

E. Other comments

*** Do you have any other comments?**

- Yes
 No

*** Please explain:**

3,000 character(s) maximum

Useful links

Enforcement of intellectual property rights (http://ec.europa.eu/growth/industry/intellectual-property/enforcement/index_en.htm)

The Single Market Strategy (http://europa.eu/rapid/press-release_MEMO-15-5910_en.htm)

The Digital Single Market Strategy (http://europa.eu/rapid/press-release_MEMO-15-4920_en.htm)

Background Documents

[DE] Datenschutzerklärung (</eusurvey/files/25c5d987-2467-47e8-910c-a4733cd7488b>)

[DE] Hintergrund (</eusurvey/files/81667da2-51bf-4f65-b9e8-a978a9498268>)

[EN] Background information (</eusurvey/files/2ed412ac-400d-4796-94c9-37d58e724cd4>)

[EN] Privacy statement (</eusurvey/files/995adeb9-0ad8-4ed4-b036-d07e70b73b30>)

[ES] Antecedentes (</eusurvey/files/5128cccf-9568-4cde-90cd-0b87b1462cee>)

[ES] Declaración de confidencialidad (</eusurvey/files/1b6fc94d-687b-4787-acb0-e59eee9b193d>)

[FR] Contexte (</eusurvey/files/9949a17c-9deb-4eeb-8d42-d7405a10b80c>)

[FR] Déclaration relative à la protection de la vie privée (</eusurvey/files/52d0153e-0bb3-4809-9074-d3c945daa693>)

[IT] Contesto (</eusurvey/files/0397c708-3a93-450b-99f8-d238986f3227>)

[IT] Informativa sulla privacy (</eusurvey/files/574a2286-b14a-471a-a803-f94ff5173ba8>)

[PL] Kontekst (</eusurvey/files/685910a4-4a2e-481e-8bdd-35739080d305>)

[PL] Oświadczenie o ochronie prywatności (</eusurvey/files/72d8d32c-a541-4395-923a-5d3b6688d2e3>)

Contact

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