

# Public consultation on the evaluation and modernisation of the legal framework for the enforcement of intellectual property rights: Rightholders

Fields marked with \* are mandatory.

## Objectives and General information

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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<sup>[1]</sup> 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.

[1] Add link.

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

**\* 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**

432274514894-31

**\* 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

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**\* You are a rightholder or a rightholders' association?**

- Rightholder  
 Rightholders' association

**\* You are what type of rightholders' association?**

- Umbrella/cross-sector association
- Sector association
- SME
- National
- European
- International

**\* Please indicate your country of residence, establishment or profession:**

- |   |                                   |                                      |
|---|-----------------------------------|--------------------------------------|
| <input type="radio"/> Austria                   | <input type="radio"/> Belgium     | <input type="radio"/> Bulgaria       |
| <input type="radio"/> Cyprus                    | <input type="radio"/> Croatia     | <input type="radio"/> Czech Republic |
| <input type="radio"/> Denmark                   | <input type="radio"/> Estonia     | <input type="radio"/> Finland        |
| <input type="radio"/> France                    | <input type="radio"/> Germany     | <input type="radio"/> Greece         |
| <input type="radio"/> Hungary                   | <input type="radio"/> Ireland     | <input type="radio"/> Italy          |
| <input type="radio"/> Latvia                    | <input type="radio"/> Lithuania   | <input type="radio"/> Luxembourg     |
| <input type="radio"/> Malta                     | <input type="radio"/> Netherlands | <input type="radio"/> Poland         |
| <input type="radio"/> Portugal                  | <input type="radio"/> Romania     | <input type="radio"/> Slovakia       |
| <input type="radio"/> Slovenia                  | <input type="radio"/> Spain       | <input type="radio"/> Sweden         |
| <input checked="" type="radio"/> United Kingdom | <input type="radio"/> Other       |                                      |

**\* What is the core sector of your activity(ies)?**

- |  |  |
|--|--|
| <input type="radio"/> A Agriculture, forestry and fishing                                    | <input type="radio"/> B Mining and quarrying   |
| <input type="radio"/> C Manufacturing  | <input type="radio"/> D Electricity, gas, steam and air conditioning supply  |
| <input type="radio"/> E Water supply; sewerage, waste management and remediation activities  | <input type="radio"/> F Construction   |
| <input type="radio"/> G Wholesale and retail trade; repair of motor vehicles and motorcycles | <input type="radio"/> H Transportation and storage   |
| <input type="radio"/> I Accommodation and food service activities                            | <input type="radio"/> J Information and communication  |
| <input type="radio"/> K Financial and insurance activities                                   | <input type="radio"/> L Real estate activities   |
| <input type="radio"/> M Professional, scientific and technical activities                    | <input type="radio"/> N Administrative and support service activities  |
| <input type="radio"/> O Public administration and defence; compulsory social security        | <input type="radio"/> P Education  |
| <input type="radio"/> Q Human health and social work activities                              | <input checked="" type="radio"/> R Arts, entertainment and recreation  |
| <input type="radio"/> S Other service activities   | <input type="radio"/> T Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use |
| <input type="radio"/> U Activities of extraterritorial organisations and bodies              | <input type="radio"/> Other  |

If possible please specify with four-digit **NA CE** classification:

### In which Member State(s) do you trade?

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Austria                   | <input type="checkbox"/> Belgium              | <input type="checkbox"/> Bulgaria       |
| <input type="checkbox"/> Cyprus                    | <input type="checkbox"/> Croatia              | <input type="checkbox"/> Czech Republic |
| <input type="checkbox"/> Denmark                   | <input type="checkbox"/> Estonia              | <input type="checkbox"/> Finland        |
| <input type="checkbox"/> France                    | <input type="checkbox"/> Germany              | <input type="checkbox"/> Greece         |
| <input type="checkbox"/> Hungary                   | <input type="checkbox"/> Ireland              | <input type="checkbox"/> Italy          |
| <input type="checkbox"/> Latvia                    | <input type="checkbox"/> Lithuania            | <input type="checkbox"/> Luxembourg     |
| <input type="checkbox"/> Malta                     | <input type="checkbox"/> Netherlands          | <input type="checkbox"/> Poland         |
| <input type="checkbox"/> Portugal                  | <input type="checkbox"/> Romania              | <input type="checkbox"/> Slovakia       |
| <input type="checkbox"/> Slovenia                  | <input type="checkbox"/> Spain                | <input type="checkbox"/> Sweden         |
| <input checked="" type="checkbox"/> United Kingdom | <input type="checkbox"/> All EU member states |   |

### \* What type of IPR do you hold/represent?

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Copyright  | <input type="checkbox"/> Community trademark rights  |
| <input type="checkbox"/> Community design rights   | <input type="checkbox"/> Rights related to copyright   |
| <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  |  |

## B. Exposure to and impact of infringements

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### Do you experience occurrence of IPR infringements when offering your services or trading your goods?

- Yes  
 No

Please provide detail:

*1500 character(s) maximum*

UK Music as trade association does not hold any rights in creative works and thus has no direct experience on the occurrence of IPR infringement. Our members individually are right holders or represent right holders and we base our comments on their experience.

The shape of IPR infringement has been shifting from analogue piracy of CDs/

DVDs containing music without license to online infringement such as direct peer to peer filesharing and the use of online platforms to access infringing material; this is often sourced from other users on the basis of technology such as Bittorrent protocol.

In addition to infringement of the reproduction and communication to the public right, UK Music members PRS for Music and PPL are often confronted with the infringement of the public performance right e.g. when a publicly accessible venue does not obtain the required licence. Whilst this public performance right is outside the scope of the Information Society Directive it is covered by the Enforcement Directive and constitutes an important area of enforcement activity.

### How do infringements impact on your business?

- Loss of turnover
- Monitoring costs (e.g. technical measures for prevention and detection)
- Litigation costs
- Free promotion of the brand/product
- Reputational damage
- Non-legal enforcement costs (e.g. notice and action procedures)
- Other

### What is the overall financial impact of IPR infringements on your turnover?

- Positive
- Negative

Please provide an estimation in percentage of overall turnover.

 %

### From your experience, how did the occurrence of IPR infringements develop over the last 10 years?

- Decreased
- Increased
- Unchanged
- Don't know

Please provide detail:

*1500 character(s) maximum*

The UK IPO commissioned Kantar research to analyse the extent of online copyright infringement. The latest report indicated 1 in 5 people access content illegally and 26% of users have accessed music illegally between March and May 2015. In recent years an increase in infringement may have slowed yet "the magnitude of file-sharing piracy in Western Europe is still staggering. In 2014, 20% of all European internet traffic was file-sharing, and on an

annualized basis, and a staggering 22 billion CDs worth of content was distributed without compensation in Western Europe. Indeed, file-sharing piracy in Western Europe was still 48% greater than in North America in 2014, even after 4 years of decline.’ (Digital Music News, 16th July 2015). Online infringement remains an enormous problem. A slowdown of infringement is mainly due to initiatives undertaken by the music and wider creative industry. More legitimate offers are available to obtain music according to consumer demand. The music industry has also invested considerable resources in enforcement. In the past year the BPI has sent almost 70 million notices to Google to remove links to infringing URLs. The changing nature of infringement and the occurrence of new manifestations such as stream ripping and ad-blocking software and apps enabling the distribution of infringing material yet available for general app stores, presenting a perception of legitimacy, further create challenges.

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

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This section aims to provide the Commission with stakeholder' views, opinions and information about the functioning of the overall enforcement framework and of key provisions of IPRED.

### C.1. Overall functioning of the enforcement framework

**Have you filed legal action against infringers of your IPR?**

- Yes  
 No

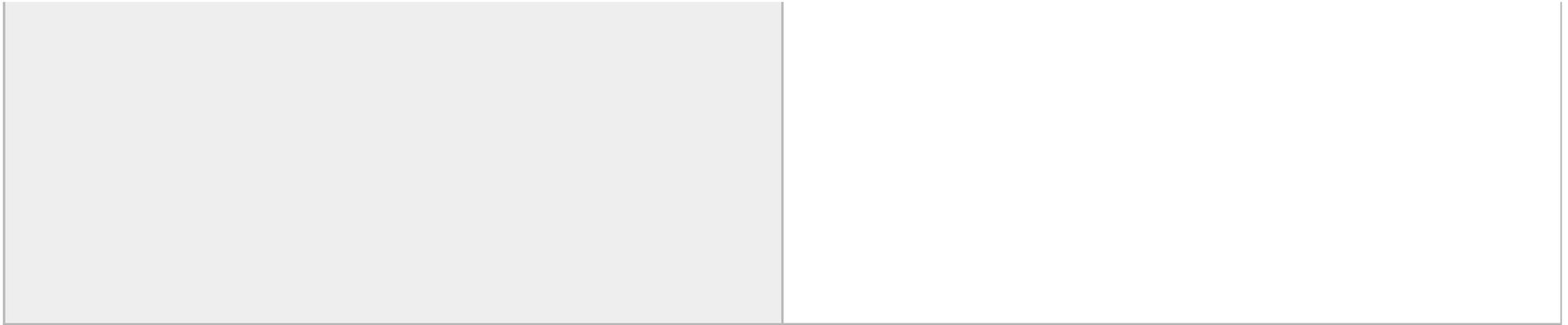
**In which Member State(s) did you litigate most?**

*at most 3 choice(s)*

- |  |                                      |   |
|--|--------------------------------------|---|
| <input type="checkbox"/> Austria                   | <input type="checkbox"/> Belgium     | <input type="checkbox"/> Bulgaria       |
| <input type="checkbox"/> Cyprus                    | <input type="checkbox"/> Croatia     | <input type="checkbox"/> Czech Republic |
| <input type="checkbox"/> Denmark                   | <input type="checkbox"/> Estonia     | <input type="checkbox"/> Finland        |
| <input type="checkbox"/> France                    | <input type="checkbox"/> Germany     | <input type="checkbox"/> Greece         |
| <input type="checkbox"/> Hungary                   | <input type="checkbox"/> Ireland     | <input type="checkbox"/> Italy          |
| <input type="checkbox"/> Latvia                    | <input type="checkbox"/> Lithuania   | <input type="checkbox"/> Luxembourg     |
| <input type="checkbox"/> Malta                     | <input type="checkbox"/> Netherlands | <input type="checkbox"/> Poland         |
| <input type="checkbox"/> Portugal                  | <input type="checkbox"/> Romania     | <input type="checkbox"/> Slovakia       |
| <input type="checkbox"/> Slovenia                  | <input type="checkbox"/> Spain       | <input type="checkbox"/> Sweden         |
| <input checked="" type="checkbox"/> United Kingdom |                                      |   |

**For these jurisdictions please provide your overall experience and satisfaction with the legal framework for civil enforcement of IPR (please indicate Member State concerned first)?**

	Overall experience and satisfaction
Member State 1	Whilst UK Music has not engaged in legal action on IPR infringement; our individual members have. We refer to their respective submissions for details.
Member State 2	
Member State 3	



**Do you think that the existing rules – as provided by the Directive and implemented at national level – have helped effectively in protecting IP and preventing IPR infringements?**

- Yes
- No
- Partly
- No opinion

Please explain:

*1500 character(s) maximum*

New technologies have been applied to identify and pursue infringers. In addition to the removal requests from right holders, the use of website blocking orders under Section 97a CDPA (c.f. Articles 8 (3) Info Soc Directive and 11 Enforcement Directive) has proven a valuable tool in the arsenal of right holders. However, all these activities are very expensive.

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

- Yes
- No
- No opinion

Please explain:

*1500 character(s) maximum*

One of the key problems of the practical enforcement through injunctive measures results from the lack a homogeneous implementation of Art 8(3) Info Soc Directive and 11 Enforcement Directive. It is extremely difficult for a UK right holder to bring such actions in other European Union member states. To our knowledge this has not happened. Different rules are discouraging UK right holders to pursue their rights in other European member states. The practical situation that injunctive relief is limited to one member state restricts its effectiveness as a remedy, despite working well at a national level. Whilst we recognise that it will be a complex undertaking to achieve pan European blocking orders within the European Acquis we suggest that further research into the application of website blocking orders would be beneficial. In particular how this remedy could be rendered more cost effective. The way the UK has implemented Art 8 (3) is exemplary. A clear framework throughout the European Union would be a good start to reduce costs.

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

Responses to this section should be based on the overall experience with the measures, procedures and remedies provided for by IPRED as implemented and applied at national level. If appropriate please specify in your response, to the extent possible, particular national issues or practices and the jurisdiction concerned.

### C.2.1 Evidence (Articles 6 and 7)

**Would you consider that the measures provided by IPRED are effective means for presenting, obtaining and preserving evidence?**

- Yes
- No
- No opinion

**Did you face problems using evidence when making use of your right of information/taking legal action/applying for an injunction in a cross-border situation (judicial authority in your country of establishment and (alleged) infringer/intermediary incorporated or resident in another Member State and/or judicial authority of another EU Member State)?**

- Yes
- No

**In view of your experience with the application of the rules for having access to and preserving evidence do you see a need to adjust the application of that measure, in particular with regard to preserving evidence in the digital environment?**

- Yes
- No
- No opinion

### C.2.2. Right of information (Article 8)

**Have you made use of your right of information by applying for an order by a judicial authority?**

- Yes, against an infringer
- Yes, against an intermediary
- No

**In view of your experience with the application of the right of information do you see a need to adjust the provisions for the application of that measure?**

- Yes
- No
- No opinion

**Do you consider that the right balance is struck between the right to property and the right to judicial review on the one hand and the right to respect for private life and/or the right to protection of personal data on the other?**

- Yes
-

- No
- No opinion

### C.2.3. Procedures and courts, damages and legal costs (Articles 3, 13 and 14)

#### Have you filed legal action against infringers of your IPR?

*at most 2 choice(s)*

- Yes
- No

#### Did you claim reimbursement of legal costs incurred in proceedings related to IPR infringements?

- Yes
- No

#### Did you apply for damages as a compensation for the prejudice suffered as a result of IPR infringement?

- Yes
- No

### C.2.4. Provisional and precautionary measures and injunctions (Articles 9 and 11)

#### Have you applied for provisional and precautionary measures in case of an infringement of your IPR?

- Yes, against an infringer
- Yes, against an intermediary
- No

#### No use of provisional and precautionary measures

#### What are the reasons for not applying for provisional and precautionary measures?

- No need for a provisional injunction
- Costs of procedure
- Excessive security requested
- Length of procedure
- Court in another Member State
- Applicable law of another Member State
- Intermediary in question not covered
- Low probability of compliance with injunction
- Other

#### Have you applied for an injunction in case of an infringement of your IPR?

- Yes, against an infringer
- Yes, against an intermediary
- No

**In view of your experience with the application of the rules for provisional and precautionary measures and injunctions do you see a need to adjust the application of these measures?**

- Yes
- No
- No opinion

**Should the Directive explicitly establish that all types of intermediaries can be enjoined?**

- Yes
- No
- No opinion

Please explain:

*1500 character(s) maximum*

This change would take into account that most intermediaries provide hybrid services. A narrow definition of intermediaries is not technology neutral nor does it reflect the market reality of intermediaries' services which often are used by a third party to infringe an intellectual property right.

**Should the Directive explicitly establish that no specific liability or responsibility (violation of any duty of care) of the intermediary is required to issue an injunction?**

- Yes
- No
- No opinion

Please explain:

*1500 character(s) maximum*

At the moment the injunctions albeit limited in scope are the main effective means to restrict the access to infringing material given the over application of the limitation to liability in the e-Commerce Directive. Further restricting such remedy is not justified in particular given that the intermediary will not be subject to financial remedies.

**Should the Directive explicitly establish that national courts must be allowed to order intermediaries to take measures aimed not only at bringing to an end infringements already committed against IPR using their services, but also at preventing further infringements?**

- Yes
- No
- No opinion

Please explain:

*1500 character(s) maximum*

In order to be effective any such injunction needs to cover further third party infringements. If the duties of intermediaries are restricted to

infringements already committed the remedies are rendered less effective given the immediate re-upload of the infringing material which is to be expected.

**In that respect should the Directive establish criteria on how preventing further infringements is to be undertaken (in the on-line context without establishing a general monitoring obligation under the E-Commerce Directive)?**

- Yes
- No
- No opinion

Please explain:

*1500 character(s) maximum*

In our view such criteria have to be considered complimentary to the e-Commerce Directive; the application of criteria how preventing further infringements is to be undertaken under the Enforcement Directive do not constitute a monitoring obligation given that the intermediary has already been informed by the judiciary authority about the infringing material. This already works well in the UK given the breadth of the orders.

**Do you see a need for criteria defining the proportionality of an injunction?**

- Yes
- No
- No opinion

**Do you see a need for a definition of the term "intermediary" in the Directive?**

- Yes
- No
- No opinion

**Do you see a need for a clarification on how to balance the effective implementation of a measure and the right to freedom of information of users in case of a provisional measure or injunction prohibiting an internet service provider from allowing its customers access to allegedly IPR infringing material without specifying the measures which that service provider must take?**

- Yes
- No
- No opinion

**Do you see a need for other amendments to the provisions on provisional and precautionary measures and on injunctions?**

- Yes
- No
- No opinion

## C.2.5. Publication of judicial decisions

**Have you requested in legal proceedings instituted for infringement of an IPR the decision to be published in full or in part?**

- Yes  
 No

Please explain your motivation:

*1500 character(s) maximum*

**Do you see a need for / added value in a more systematic dissemination of the information concerning the decision in legal proceedings instituted for infringement of an IPR?**

- Yes  
 No  
 No opinion

Please explain:

*1500 character(s) maximum*

Distributing information is useful as a source of information for right holders considering enforcement action. There is also a warning effect for potential infringers.

## C.2.6. Other issues

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

- Yes  
 No  
 No opinion

Please specify the relevant provisions and explain.

*1500 character(s) maximum*

We welcome Article 4 Enforcement Directive which describes the range of persons and bodies who are entitled to apply for the application of measures, procedures and remedies as a consequence of infringement. It would be beneficial if trade bodies could bring such cases by way of representative actions (as well as collective management organisations). In particular individual performers, composers, or songwriters are often reluctant to “put their head over the parapet” when enforcing their rights because this might be detrimental to their public perception. We ask the Commission to consider expanding the persons or bodies referred to in Article 4 Enforcement Directive.

In the UK damages are limited to the “lost licence fee”; the changes

introduced in 2006 for flagrant infringement (implementing Article 13 of the Enforcement Directive) were not sufficient to establish a deterrent for intentional infringement in practice. We would ask the Commission to look into possible changes within the European framework. Damages for flagrant infringement are only rarely awarded. Damages should have more of a deterrent character. The US approach for additional statutory damages works and we urge the Commission to consider this. Additionally, under UK procedural rules even a successful claimant only gets a limited amount back from his costs; this makes enforcement in practice even more expensive.

## D. Issues outside the scope of the current legal framework

### D.1. Role of intermediaries in IPR enforcement and the prevention of IPR infringements

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

- Yes
- No
- No opinion

**Which intermediaries are best placed to prevent infringements of IPR?**

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

**Do you cooperate with intermediaries in the protection and enforcement of your IPR?**

- Yes
- No

**Which intermediaries do you cooperate with?**

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

- Transport and logistics company       Wholesaler  
 Other

**How do you cooperate with these intermediaries?**

- Bilaterally  
 Within a multilateral cooperation agreement  
 Other

Please specify:

*500 character(s) maximum*

Some of UK Music members communicate with internet services as part of their commercial relationship.

**Do you consider your cooperation with intermediaries successful?**

- Yes  
 No  
 No opinion

**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 involved)  
 Technology  
 Specific regulatory requirements  
 Other

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

- Yes  
 No  
 No opinion

**D.2. Specialised courts**

**Have you filed legal actions with a court, a court's chamber or a judge specialised in IP matters?**

- Yes  
 No

**Does the 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 specify the added value:**

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

**Please specify:**

*500 character(s) maximum*

In general the availability of specialist courts in the UK has been a positive experience (Intellectual Property Enterprise Court); similarly the introduction of a small claims track procedure reduces the costs. This is particularly important for small companies and individual composers/performers (the most part of the music industry are SMEs or individual right holders).

### D.3. Other issues outside the scope of the current legal framework

**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 specify:**

*3000 character(s) maximum*

First and foremost a strong underlying copyright framework is key before the question of enforcement arises; any changes to the Copyright Framework which restricts the rights of right holders need to be carefully considered and measured against the internationally binding conditions of the Three Step test.

Secondly, the issue of limitations of liability in the e-Commerce Directive are of concern. As we elaborated in our contribution to the consultation on online platforms "safe harbour" defences have been used by some content services to avoid paying fair, or in some cases any, royalties for the use of content that drives their businesses.

"Some content services provide access to copyright material, including commercially produced sound recordings and musical works, without the consent of the rightsholders. The activities of the user may be limited to merely uploading the copyright material without any creative contribution. Claiming they are a 'mere host' allows these services to contest they are not liable for copyright infringement and by association not obliged to seek consent from, or remunerate, rightsholders for the use of their works. The inability

of rightsholders to enforce their rights on these services has created a situation where services can simply choose which works to pay royalties against.”

The parameters of who can legitimately benefit from “safe harbours” defence under the e-Commerce Directive needs to be established.

Furthermore, the liability of information society service providers justifiably benefitting from Article 14 e-Commerce Directive needs to extend to copyright works which have been notified and taken down but subsequently re-uploaded. The likely immediate re-upload of a copyright work after a takedown notice, but with a new URL, renders the notice and takedown process unproductive (despite the industrial level of notices sent by rightsholders).

It needs to be clarified that the notification of a work triggers actual knowledge regarding the work itself and not only the specific copy of the work uploaded via a specific URL. This reflects the wording of Article 14. We endorse the principle of ‘follow the money’, but it needs to be supported with a clear legal framework to compel advertisers and ISPs to support it.

## E. Other comments

### Do you have any other comments?

- Yes  
 No

Please specify:

*3000 character(s) maximum*

1. Concerning the overall financial impact of IPR infringements, the impact on the business of our members outlined is negative. In addition to the loss of income and the direct costs of enforcing our rights, the threat of piracy has been referred to in negotiations on licensing to reduce the price for the license.

Our members spend considerable resources to discover IPR infringements and subsequently enforce their rights. We refer to their respective submission on the actual costs of enforcement.

#### 2. Police Intellectual Property Crime Unit

In the UK at a more practical level, the Intellectual Property Office supports the Police Intellectual Property Crime Unit (PIPCU) within the City of London Police; given the success of their operation we suggest looking into introducing similar schemes with receptive and proactive agencies throughout Europe.

The Police Intellectual Property Crime Unit (PIPCU) is a specialist national

police unit dedicated to protecting the UK industries that produce legitimate, high quality, physical goods and online and digital content from intellectual property crime.

The unit is dedicated to tackling serious and organised intellectual property crime (counterfeit and piracy) affecting physical and digital goods (with the exception of pharmaceutical goods) with a focus on offences committed using an online platform.

In two years PIPCU has made 52 arrests and seized over £3 million worth of fake goods. Between July 2014 and June 2015 PIPCU has diverted over 11 million views from pirate TV/film/music websites to an official police warning page.

Since Operation Creative, which is led by PIPCU to disrupt revenue on pirate sites primarily gained via advertising, there has been a 72.7% decrease in advertising on infringing websites by the UK's biggest spending companies.

In October 2014 it was announced the unit would receive £3 million from the Government to fund its work until 2017

<https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/Pages/default.aspx>

### 3. Education

Industry has undertaken some educational activities which together with the anti-piracy activities have had an impact on the level of piracy. We ask the Commission to support such activities

### 4. Timing

Changes to exceptions should come into force at same time as changes to enforcement.

## Useful links

Enforcement of intellectual property rights

([http://ec.europa.eu/growth/industry/intellectual-property/enforcement/index\\_en.htm](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](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](http://europa.eu/rapid/press-release_MEMO-15-4920_en.htm) )

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## Background Documents

[DE] Datenschutzerklärung (/eusurvey/files/c0cad348-a3f7-4a4a-b786-298bf6800d7e)

[DE] Hintergrund (/eusurvey/files/16f05f81-262b-41ed-8e9a-bc45134d58f1)

[EN] Background information (/eusurvey/files/2cf20216-9fed-49fb-94a9-9adde6ae4fe5)

[EN] Privacy statement (/eusurvey/files/154750d0-6ce2-4884-afa5-4ecb65373ab3)

[ES] Antecedentes (/eusurvey/files/52299ec1-7d19-4980-a20d-065782b74c21)

[ES] Declaración de confidencialidad (/eusurvey/files/12984633-bbad-415d-b38f-5df82493d099)

[FR] Contexte (/eusurvey/files/7e7a0e47-d9be-490d-8b1b-525669e7a5e8)

[FR] Déclaration relative à la protection de la vie privée (/eusurvey/files/1be50e4b-4cb8-458b-b95e-2d7f1cf2d419)

[IT] Contesto (/eusurvey/files/d559d41e-c037-4811-9abb-9aa8f3c666f6)

[IT] Informativa sulla privacy (/eusurvey/files/e49823dc-1131-41e1-9eec-a2ef1a0945bc)

[PL] Kontekst (/eusurvey/files/12646955-2b9b-46ed-93aa-cf24e179d552)

[PL] Oświadczenie o ochronie prywatności (/eusurvey/files/e6b2bff6-5c2a-430f-8c33-12d61290f76b)

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## Contact

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