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## EU-Survey

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

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Media Governance and Industries Research Lab  
University of Vienna  
2016

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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.

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## 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 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)**

Media Governance and Industries Research Lab, University of Vienna; Prof. Katharine Sarikakis, katharine.sarikakis@univie.ac.at; Dr. iur. Krisztina Rozgonyi; krisztina.rozgonyi@univie.ac.at; http://mediagovernance.univie.ac.at; +436781215882

**\* 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**

Media3314401793

**\* 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*

The Media Governance and Industries Research Team, established by Professor Sarikakis in 2011, brings together international scholars from different cognate disciplines, whose intellectual and sociocultural interests gravitate towards the systematic study of the policies and politics of media, culture and communication.

### \* 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:**

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

**\* Please specify:**

*500 character(s) maximum*

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## B. Exposure to IP infringing goods and services

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**\* 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*

In our view goods and services should be considered "innocent until proven guilty" and not only in cases where specific sites/sources label them as non-infringing. We argue, that "the notion of authorship is not one-dimensional, but rather consists of attributes that develop across three processes: community building, the creative and the industrial/production process". (Sarikakis, Krug, & Rodriguez-Amat, 2015: 1)

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

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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 subsection.

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### 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 believe that the proportionality and the justification of the existing rules in relation to freedom of expression and to privacy plays an even greater role than their efficacy in enforcing copyright. Antipiracy campaigns accompanying an emerging copyright regime are typically „...built on discourses that aim to ‘problematize’ the issues of ‘legality’ of content downloading practices, ‘protection’ for content creators and the alleged damage caused to creators’ livelihood by piracy” (Saridakis, Krug, & Rodriguez-Amat, 2015:1). Meanwhile, the threats of ‘privatising’ the enforcement of IPR norms to intermediaries (European Digital Rights, 2014) imposing great concerns about any changes or amendments to the IPRED Directive.

**\* 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

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## 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.

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### 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 |

- Internet Access Provider       Wholesaler  
 Don't know       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*

We are aware of cases in social media whereby non-transparent notices led to the removal of lawful content.

\* **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*

The case of „ACS:Law“ is one of the most well-known and documented cases whereby personal data of alleged IPR infringers were not protected in Court proceedings.

**\* 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*

We believe disclosure of personal data should be avoided in all procedures.

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

*3,000 character(s) maximum*

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### 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?**

- Copyright
- Community trademark rights
- National trademark rights
- Patent rights (including rights derived from supplementary protection certificates)
- Rights of the creator of the topographies of a semiconductor
- Rights related to copyright
- Community design rights
- National design rights
- Geographical indications
- Plant variety rights

product

- Sui generis right of a database maker
- Utility model rights
- Don't know
- Trade names (in so far as these are protected as exclusive property rights in the national law concerned)
- Other

\* Please specify:

500 character(s) maximum

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

- Automotive parts
- Clothing, footwear and accessories
- Cosmetics and personal care
- Film and video
- Luggage and handbags
- Medicines Tobacco
- Others
- Watches and jewellery
- Books
- Computers
- E-books
- Games and toys
- Luxury goods
- Music
- Sports goods

\* 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*

The number and the volume of IP infringements has not been reduced as a result of setting damages and it is still contested, whether download represents a lost sale or actually stimulates sales.

**\* 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*

See above.

**\* 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*

We believe that taking into account the civil nature of the majority of IP infringers it should not be possible to award full legal costs, but rather compensation of court costs.

**\* 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*

See above.

**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*

We believe that the Directive is insufficient in protecting fundamental rights allowing for implementation by MSs lacking procedural safeguards. The current rules of the IPRED Directive are insufficient in providing the necessary level of transparency and accountability over enforcement measures taken by intermediaries, allowing MS to implement those rules on the role of intermediaries contradicting democratic safeguards of due process.

### Comments on procedural safeguards:

*3,000 character(s) maximum*

We agree with the recommendations of the OSCE Media Freedom Representative, that it should be avoided to impose regulations to intermediaries implicating automatization of their decisions with clear human rights implications. Furthermore, transparency and accountability of actions taken by intermediaries should be enhanced, and that „decisions addressed to intermediaries establishing restrictions or ordering the takedown of Internet content should be adopted according to law, by judicial or other independent adjudicatory authorities, following due process and with full respect to the principles of necessity and proportionality“ (OSCE RFoM Communiqué No.1/20163rd Communiqué on Open Journalism).

## 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

New provisions are needed to safeguard fundamental rights of EU citizens.

**\* 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

The inherent cross-border nature of the internet and therefor digital IP can't be overcome by enforcing more and more restrictive enforcement rules.

**\* 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

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

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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.

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## 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 checked="" 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 checked="" type="checkbox"/> Copyright  | <input checked="" 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 threats of 'privatising' the enforcement of IPR norms to intermediaries leading to "lawless restrictions of these rights (the right to privacy and freedom of Communication) by private companies in the online space" (European Digital Rights, 2014: 3) are not counter-balanced by any copyright enforcement policy aims. The negative, chilling effect of imposing obligations to private companies without sufficient democratic safeguards are not to be supported.

**\* 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*

The mutual recognition of fundamental rights and full transparency towards citizens/users.

\* 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*

Non-availability of lawful content e.g. on Youtube. While the Internet has contributed to a never seen before enhancement of freedom of information and of the expression enabling individuals to seek, receive and impart information and ideas, intermediaries have gained central role and increased importance in the enjoyment of those rights by the citizens. Global and European policies in the beginning have focused on providing safe harbors for these actors, today we are witnessing the rise of a new era with imposing obligations and measures to intermediaries to control and even block access to the internet as ,outsourced' by MSs without sufficient democratic controls. These practices are negatively affecting the enjoyment of those fundamental rights that would be otherwise granted to the citizens.

\* 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*

**\* 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*

The ultimate aim of IPR protection in enhancing creativity and protecting the author.

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## E. Other comments

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

- Yes  
 No

**\* Please explain:**

*3,000 character(s) maximum*

We believe that the proportionality and the justification of the existing rules in relation to freedom of expression and to privacy plays an even greater role than their efficacy in enforcing copyright. Antipiracy campaigns accompanying an emerging copyright regime are typically „...built on discourses that aim to ‘problematize’ the issues of ‘legality’ of content downloading practices, ‘protection’ for content creators and the alleged damage caused to creators’ livelihood by piracy” (Sarikakis, Krug, & Rodriguez-Amat, 2015:1).The area of IPR and specifically copyright enforcement is already in the focus of scholarly research as a result of global concerns about and efforts to regulate users’ behaviour related to the distribution or use of copyrighted. Moreover, the shift of national policy

-making processes to complex, global and regional decision-making raises severe issues about the democratic accountability of the actors involved in such procedures giving rise to the emergence of a new IP regime globally (Sarikakis & Rodriguez-Amat, 2014). The trends in which States are increasingly censoring information online, while undermining or even ignoring international human rights norms and standards on the right to freedom, are significantly based on intellectual property rights legislative and regulatory frameworks, were analysed early on warning about the potential consequences (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 2011). The threats of specifically 'privatising' the enforcement of IPR norms to intermediaries leading to "lawless restrictions of these rights (the right to privacy and freedom of Communication) by private companies in the online space" (European Digital Rights, 2014: 3) are also known and have been showcased to European policy-makers, requiring the EC in suggesting changes to the IPRED Directive to take utmost care about the potential, even non-intended, global implications of any new rules or amendments to the current ones.

## 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/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)

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## Contact

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