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

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[1] 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)

  The International Trademark Association (INTA)

* 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
10141574643-32

*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

*You are a rightholder or a rightholders’ association?
☐ Rightholder
☐ Rightholders’ association

*You are what type of rightholder?

"SME"

According to Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, 2003/361/EC: enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million (SME definition).

☐ Individual
☐ EU based SME operating in one EU Member State
☐ EU based SME operating in various EU Member States
☐ EU based company (other than SME) operating in one Member State
☐ EU based company (other than SME) operating in various EU Member States
☐ Non-EU based SME
☐ Non-EU based company (other than SME)
☐ Company, part of multinational corporate group
☐ Other

*Please specify:

500 character(s) maximum

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:

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

*Please specify:

500 character(s) maximum

The United States of America

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

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

*Please specify:

500 character(s) maximum

INTA is a global association of trademark owners and professionals dedicated to supporting trademarks and related IPR in order to protect consumers and to promote fair and effective commerce. Its
membership includes over 6,700 trademark owners and professional firms all industries, from more than 190 countries throughout the world. INTA undertakes advocacy work throughout the world to advance trademarks and offers educational programs and informational and legal resources of global interest.

If possible please specify with four-digit NACE classification:

In which Member State(s) do you trade?

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

*What type of IPR do you hold/represent?

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

*Please specify:

500 character(s) maximum

B. Exposure to and impact of infringements

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

☐ Yes
☐ No

Please provide detail:
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

Please specify:

1,000 character(s) maximum

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:

1,500 character(s) maximum

While the number of IP litigation cases decreased during the years of the recession in 2008-2013, the overall number of cases has increased over the last 10 years. Some of the factors leading to the higher number of cases are the increase in online IP infringement, the increase in registered IPRs including registration of color, shape and other non-traditional marks, the larger number of grey market imports and a surge in the number of cross-border infringement activity.

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

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)*

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

<table>
<thead>
<tr>
<th>Member State 1</th>
<th>Overall experience and satisfaction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Proceedings are fairly fast in France but the results can be unpredictable and vary between courts. In addition, strong evidence is required to succeed against infringers.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Member State 2</th>
<th>Overall experience and satisfaction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The system works very well in Germany – courts are specialized and proceedings are fast. Injunctions are issued within a few days, subsequent oral hearings in main proceedings within 6 months. Courts are well equipped to assess IP infringements based on evidence submitted, but evidentiary requirements are not exaggerated.</td>
</tr>
</tbody>
</table>
Proceedings are slow in Portugal but the outcome of court proceedings is reasonably predictable.

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:
1,500 character(s) maximum

Rights to information have increased the predictability of litigation enabling rights holders to understand at an early stage whether it will be worthwhile to pursue a claim.

In addition the Directive has provided further tools to restrain or, at least, limit the damage from infringements where infringers cannot be identified or are outside the reach of a right owner by way of measures such as so-called “Blocking Injunctions”.

Still, procedural rules differ significantly in the Member States and interpretations of the rules also vary, creating the unwanted effect of forum shopping. However, the situation has improved over the past ten years.

In short, the Directive sets a minimum common denominator for dealing with IPR enforcement in the European Union. It is also the first EU directive that contains provisions awarding damages for IP infringements. While there is room for improvement especially where the harmonization of national procedural rules and court practices are concerned, it shows the commitment of the Member States to protect and enforce IP rights. However, because technology and its commercial application develop faster than the corresponding legislation, new provisions are needed to ensure a more flexible approach to IP protection to match these developments and limit the gray areas for IP enforcement.

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:
1,500 character(s) maximum

Member States can select from several options to implement the Directive in their national legisla
tion. This leads to differences in the way Member States deal with IP rights enforcement, including sanctions and damages, which are decided in accordance with the practice of national courts. Additionally, some difficulties arise from Member States’ divergent interpretation of provisions of the Directive, data protection law or bank secrecy laws. These differences are preventing the harmonization of IP enforcement in the European Union and increasing the difficulty of sanctioning IP infringers.

Also, differing national court procedural laws seem to interfere with the way measures and remedies provided for in the Directive are applied. By way of example, the national procedural requirements for the filing of evidence, the issuance of a preliminary injunction or the recovery of damages seem to differ from country to country. Furthermore, cost, length, predictability and outcome of IP infringement procedures vary between Member States, leading to legal uncertainty and forum shopping.

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

Please explain: 1,500 character(s) maximum

IPRED mostly provides for effective means of evidence processing but the collection and preservation of evidence remains problematic in some instances, especially in cross-border infringement or online infringement cases. A longer period of time for the preservation of evidence may be needed in complex IP infringement cases. Additionally, the protection of witnesses in IP infringement cases requires the setting of a minimum standard to prevent the dissuasion of witnesses from testifying for fear of exposure.

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

Please explain (please specify to the extent possible the issues and the jurisdictions concerned): 1,500 character(s) maximum

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

Please explain:
*1,500 character(s) maximum*

For the most part, there is no need to adjust the rules for access to and preservation of evidence.

However, the significant move of infringing activity to the internet and digital world increasingly creates difficulties when trying to determine the identity of an infringer and gathering evidence about the infringement and its extent, such as in cases where the domain owner or administrative contact of an infringing domain is anonymous or located outside the EU. Likewise, it can be complicated in personality infringement cases to take action against infringing reviews - the right owner may be able to force the host provider to delete an infringing post but has no claim to force the host provider to disclose the name and address of the anonymous author. Also, the requirements for a rights owner to force an access provider to block infringing websites are high. Finally, the creation of rules for the prevention of modification and suppression of evidence would improve the IP owner’s position in the prosecution of online infringements.

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

Right of information against an infringer

For infringements

*at most 2 choice(s)*

- Offline
- Online

Where and how often in the past 5 years?

<table>
<thead>
<tr>
<th></th>
<th>Never</th>
<th>Once</th>
<th>Rarely (in average not more than once a year)</th>
<th>Occasionally (between 1 and 5 times a year)</th>
<th>Frequently (more than 5 times a year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>In your country of establishment - Against alleged infringer incorporated or resident in your country of establishment</td>
<td></td>
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<td></td>
</tr>
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<tr>
<td>In other EU Member States (seat or residence of the</td>
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</tr>
</tbody>
</table>
Did you face problems when making use of your right of information in a cross-border situation (judicial authority in your country of establishment and alleged infringer incorporated or resident in another Member State and/or judicial authority of another EU Member State)?

☐ Yes
☐ No
☐ No experience

Please explain

1,500 character(s) maximum

What was the information requested?

☒ Origin and distribution network of the infringing product
☒ Quantities and price
☒ Names and addresses
☐ Other

Please specify:

500 character(s) maximum

The information requested form the infringer most often relates to turnover, gross margin, contracts with retailers as well as names and addresses of suppliers and clients

Did you usually obtain the information?

☐ Yes
☐ No

How long did it take in average to obtain an order obliging the infringer to disclose the requested information?

☐ Less than 7 days
☐ Between 7 and 14 days
☐ Between 14 and 30 days
☐ Between 30 and 60 days
☐ More than 60 days

How did you use the information?

☒ Cease and desist letter
☒ Request for preliminary injunction
☒ Request for permanent injunction
☒ Application for damages
☐ For internal purposes only
☐ Did not use the information
☐ Other

What was the reason for not obtaining the information?

☐ Unjustified/disproportionate request
Protection of confidentiality of information
Right to respect for private life and/or right to protection of personal data
Information not available (anymore)
Information request inaccurate
Other

Please specify:
500 character(s) maximum

Right of information against an intermediary

For infringements
☑ Offline
☑ Online

Against which type of intermediary?

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 use.
- "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
- "Advertising service provider"
- Business-to-business data storage provider
- Content hosting platform
- Domain name registry
- Internet Access Provider
- Press and media company
- Payment service provider
- Search engine
- Transport and logistics company
- Other
- Contract manufacturing service provider
- Business-to-consumer data storage provider
- Domain name registrar
- DNS hosting service provider
- Mobile apps marketplace
- Online marketplace
- Retailer
- Social media platform
- Wholesaler

Please specify:
500 character(s) maximum
Where and how often in the past 5 years?

<table>
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<th></th>
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<tr>
<td>In your country of establishment - Against intermediary incorporated in your country of establishment</td>
<td>☐</td>
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<tr>
<td>In your country of establishment - Against intermediary incorporated in another Member State</td>
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<tr>
<td>In other EU Member States (seat of the intermediary)</td>
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</tbody>
</table>

Did you face problems when making use of your right of information in a cross-border situation (judicial authority in your country of establishment and alleged infringer incorporated or resident in another Member State and/or judicial authority of another EU Member State)?
- Yes
- No
- No experience

Please explain:
1,500 character(s) maximum

What was the information requested?
- ✓ Origin and distribution network of the infringing product
- ✓ Quantities and price
- ✓ Names and addresses
- ☐ Other

Please specify:
500 character(s) maximum

Did you usually obtain the information?
- Yes
- No

How long did it take in average to obtain an order obliging the infringer to disclose the requested information?
- ☐ Less than 7 days
- ☐ Between 7 and 14 days
- ☐ Between 14 and 30 days
- ☐ Between 30 and 60 days
- ☐ More than 60 days

How did you use the information?
- ✓ Cease and desist letter
- ✓ Request for preliminary injunction
Request for permanent injunction
☑ Application for damages
☐ For internal purposes only
☐ Did not use the information
☐ Other

Please specify:
500 character(s) maximum

What was the reason for not obtaining the information?
☐ Unjustified/disproportionate request
☐ Protection of confidentiality of information
☐ Right to respect for private life and/or right to protection of personal data
☐ Information not available (anymore)
☐ Information request inaccurate
☐ Other

Please specify:
500 character(s) maximum

No use of the right of information

What was the reason for not making use of the right of information?
☐ Low probability of success
☐ Length of procedure
☐ Lawyers' fees and other costs related to the application
☐ Court in another Member State
☐ Not needed
☐ No judgment on the merits yet
☐ Court fee
☐ Defendant established in another Member State
☐ Applicable law of another Member State
☐ Other

Please specify:
500 character(s) maximum

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

Please explain:
1,500 character(s) maximum

While Art 8 of the Directive is quite efficient, it would be desirable if its provisions included further definition and clarification on the balance between the brand owner’s right to information and third party rights involved. In addition, there is still reluctance in some jurisdictions to apply the Directive regarding the right to information, although progress is certainly being made in this respect. Clearer and more specific provisions could increase the application of the right of information throughout the EU by encouraging courts through the provision of clear guidelines for...
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

Please explain:
1,500 character(s) maximum

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?

*a most 2 choice(s)*

- Yes
- No

For infringements of your IPR

*a most 2 choice(s)*

- offline
- online

Where and how often in the past 5 years?

<table>
<thead>
<tr>
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<tr>
<td>- Against alleged infringer incorporated or resident in your country of establishment</td>
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<td>In your country of establishment</td>
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<tr>
<td>- Against alleged infringer incorporated or resident in another Member State</td>
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<tr>
<td>In other EU Member States (seat or residence of the alleged infringer)</td>
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</tbody>
</table>

Did you face problems when taking legal action in a cross-border situation (judicial authority in your country of establishment and infringer incorporated or resident in another Member State and/or judicial authority of another EU Member State)?

- Yes
- No
- No experience

Please explain:
1,500 character(s) maximum
Not all Courts seem to be aware of the lawsuit service rules, and mistakes in the application of these rules can provide the infringer with grounds to challenge the lawsuit notification process and thereby cause delays. Further, cross-border proceedings can face delays such as in Italy, where preliminary proceedings against an infringer in another Member State can take twice as long as usual.

**What was the reason for taking an infringer to court?**

- ✔ Request for preliminary injunction
- ✔ Request for permanent injunction
- ✔ Application for damages
- ✔ Other

Please specify:

500 character(s) maximum

Seizure of infringing goods
Delivery up /or destruction of infringing goods

In view of your experience with filing legal actions against infringers of your IPR, what was the average time needed (in months) to resolve infringement cases by courts of **first** instance?

20 months

In view of your experience with filing legal actions against infringers of your IPR, what was the average time needed (in months) to resolve infringement cases by courts of **second** instance?

18 months

**What was the reason for not seeking civil redress?**

<table>
<thead>
<tr>
<th>Reason</th>
<th>Very relevant</th>
<th>Relevant</th>
<th>Less relevant</th>
<th>Not relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court fee</td>
<td></td>
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<td></td>
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<tr>
<td>Lawyers' fees and other costs related to litigation</td>
<td></td>
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<tr>
<td>Length of procedure</td>
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<tr>
<td>Low probability of obtaining appropriate compensation for the damages suffered</td>
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<tr>
<td>Low probability of obtaining appropriate compensation of legal costs and other expenses</td>
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<tr>
<td>Low probability of obtaining a provisional and/or permanent injunction</td>
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<tr>
<td>Low probability of enforcing the judgment</td>
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<tr>
<td>Court in another Member State</td>
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<tr>
<td>Applicable law of another Member State</td>
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<td></td>
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<tr>
<td>Risk of IPR being invalidated</td>
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<tr>
<td>Protection of confidential information</td>
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<tr>
<td>Use of alternative dispute resolution methods</td>
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<tr>
<td>Perceived lack of independence of courts</td>
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</tbody>
</table>
Lack of specialisation/expertise in courts

Infringement not significant to business

Infringement beneficial to business (e.g. free advertisement)

Other

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

☑ Yes
☐ No

Please explain:
500 character(s) maximum

Was the reimbursement of legal costs claimed at least partly granted?

☑ Yes
☐ No

Please explain:
500 character(s) maximum

The reimbursement of legal costs covered the following expenses:

<table>
<thead>
<tr>
<th></th>
<th>Fully covered</th>
<th>Partly covered</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court fees for instituting proceedings</td>
<td>☑</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Other court fees</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
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<tr>
<td>External expert(s) costs</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
</tr>
<tr>
<td>In-house costs</td>
<td>☐</td>
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<tr>
<td>Attorney's charge</td>
<td>☐</td>
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<tr>
<td>Additional attorney's fees</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
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<tr>
<td>Other</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
</tr>
</tbody>
</table>

Please specify:
500 character(s) maximum

Barrister's fees and other third party disbursements.

Was the reimbursement of legal costs sufficient?

☑ Yes
☐ No

Please explain:
500 character(s) maximum

Even if the claimant succeeds on all counts with an IPR infringement claim, there is an irrecovera
ble percentage of the costs, which tends to be smaller where the court has pre-approved a cost budget. In some jurisdictions such as Italy or Ireland, cost recovery ranges from 60-75%.

Is there a cap on the recoverability of legal costs in your national legislation or any other of the jurisdictions where you litigated?

- Yes
- No
- Don't know

Please explain:

500 character(s) maximum

Restrictions on recoverable costs are widespread among the Member States. In the UK, recoverable costs are capped at £50,000 or cost budgeting rules apply. In Ireland, only the costs arising from dealings with the other party are awarded, in Italy the Bar Associations set caps depending on proceeding, value and complexity of the matter. In Germany, recoverable fees are calculated based on a statute regulating attorneys’ fees, in Portugal the court’s statutory regulations contain a cap on fees.

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

- Yes
- No
- No opinion

Please explain:

500 character(s) maximum

There is a need for a more consistent application of rules for cost awards in IPR proceedings across Member States. While claimants may expect reimbursement of at least a portion of the incurred costs in some Member States, in others, the actual cost award as well as the amount of the reimbursement are left to a judge’s discretion. The inconsistency in cost awards may deter claimants altogether and keep them from pursuing their claims. INTA-supported IP Courts could apply a cap on cost awards.

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

- Yes
- No

Did you receive damages?

- Yes
- No

The damages received included:

<table>
<thead>
<tr>
<th></th>
<th>No</th>
<th>Partly covered</th>
<th>Fully covered</th>
<th>Not applied</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lost profit</td>
<td></td>
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<tr>
<td>Unfair profits</td>
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<tr>
<td>Moral prejudice</td>
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<tr>
<td>Lump sum</td>
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<tr>
<td>Other</td>
<td></td>
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</tr>
</tbody>
</table>

Please specify:

500 character(s) maximum

Damages based on notional license for IP right in question.

Do you consider the award of damages in cases of IPR infringements to be sufficient to compensate for the actual prejudice suffered by the parties affected by an infringement?

- Yes
- No
- No opinion

What are the main obstacles to a sufficient compensation?

- Limitations in law
- Application of the rules in court
- Other

Please specify:

500 character(s) maximum

Is it possible in your Member State for the right holder to claim damages from a third party who actively and knowingly facilitates infringements of IPRs?

- Yes
- No
- Don't know

Please specify:

500 character(s) maximum

In some Member States, a third party can be jointly liable if it actively and knowingly facilitate d the IP infringement, either by colluding with the primary infringer or by enabling the infringe r's acts. In some Member States, a negligent or willful act is required. The basis for this joint liability can be found in Civil law (Portugal), unfair competition provisions (Italy) or other sta tutes.

What was the reason for for not claiming damages?

<table>
<thead>
<tr>
<th></th>
<th>Very relevant</th>
<th>Relevant</th>
<th>Less relevant</th>
<th>Not relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court fee</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyers’ fees and other costs related to litigation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Length of procedure</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low probability of obtaining appropriate compensation for the damages suffered</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Low probability of obtaining appropriate compensation of legal costs and other expenses

Court in another Member State

Applicable law of another Member State

Infringement not significant to business

Infringement beneficial to business (e.g. free advertisement)

Company policy not to claim damages for IPR infringements

Other

Please specify:

500 character(s) maximum

In view of your experience with the application of the rules for the calculation of damages do you see a need to adjust the application of that measure?

● Yes

● No

● No opinion

Please explain:

500 character(s) maximum

While the Directive contains broader rules dealing with the calculation of damages than in most Member States, detailed rules for different cases would facilitate the cost calculation process. For example, in cases where the infringed IP was clearly used but damages cannot be shown or intangible damages including to the claimant’s reputation caused by dilution, free-riding, spring-board activity etc, statutory damage rules would facilitate the calculation of damages and serve to deter infringers.

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

Provisional and precautionary measures against infringer

For infringements

at most 2 choice(s)

● Offline

● Online

Where and how often in the past 5 years?

<table>
<thead>
<tr>
<th>Never</th>
<th>Once</th>
<th>Rarely (in average not more)</th>
<th>Occasionally (between 1 and 5 times a)</th>
<th>Frequently (more than 5)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In your country of establishment - Against alleged infringer incorporated or resident in your country of establishment</td>
<td>than once a year</td>
<td>year</td>
<td>times a year</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------------------------------------</td>
<td>-----------------</td>
<td>------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>In your country of establishment - Against alleged infringer incorporated or resident in another Member State</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In other EU Member States (seat or residence of the alleged infringer)</td>
<td>yes</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Did you face problems when applying for provisional and precautionary measures in a cross-border situation (judicial authority in your country of establishment and (alleged) infringer incorporated or resident in another Member State and/or judicial authority of another EU Member State)?

☐ Yes
☐ No
☐ No experience

Please explain:  
1,500 character(s) maximum

Not all Courts seem to be aware of the lawsuit service rules, and mistakes in the application of these rules can provide the infringer with grounds to challenge the lawsuit notification process and thereby cause delays.

What are the reasons for applying for provisional and precautionary measures against an infringer?

☐ Prevent an imminent infringement
☐ Lodging of guarantees
☐ Seizure or delivery up of the goods suspected of infringing an IPR
☐ Precautionary seizure of other movable and immovable property of the alleged infringer
☐ Blocking of his/her bank accounts and other assets
☐ Other

Please specify:  
500 character(s) maximum

Did you usually obtain the provisional and precautionary measures?

☐ Yes
☐ No

What are the reasons for not obtaining provisional and precautionary measures?

☐ Insufficient evidence
☐ Protection of confidentiality of information
☐ Right to respect for private life and/or right to protection of personal data
☐ No commercial scale infringement
☐ Request for a security or an equivalent assurance
☐ Measure requested too severe
☐ No likelihood of success on the merits of the case
☐ Other

Please specify:
What was the average number of days between the lodging of a request for provisional and precautionary measures before the court and the adoption of a decision?

☐ Less than 7 days
☐ Between 7 and 14 days
☐ Between 14 and 30 days
☐ Between 30 and 60 days
☐ More than 60 days

Is the decision to grant provisional and precautionary measures against an infringer usually appealed?

☐ Yes
☐ No
☐ Don’t know

Provisional and precautionary measures against an intermediary

For infringements
☑ Offline
☑ Online

Against which type of intermediary?
☑ Advertising service provider
☑ Business-to-business data storage provider
☑ Content hosting platform
☐ Domain name registry
☑ Internet Access Provider
☐ Press and media company
☐ Payment service provider
☑ Search engine
☐ Transport and logistics company
☐ Other

Contract manufacturing service provider
Business-to-consumer data storage provider
Domain name registrar
DNS hosting service provider
Mobile apps marketplace
Online marketplace
Retailer
Social media platform
Wholesaler

Please specify:

500 character(s) maximum

Where and how often in the past 5 years?

<table>
<thead>
<tr>
<th></th>
<th>Never</th>
<th>Once</th>
<th>Rarely (in average not more than once a year)</th>
<th>Occasionally (between 1 and 5 times a year)</th>
<th>Frequently (more than 5 times a year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>In your country of establishment - Against intermediary incorporated in your country of establishment</td>
<td></td>
<td></td>
<td></td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>In your country of establishment - Against</td>
<td></td>
<td></td>
<td></td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
intermediary incorporated in another Member State

In other EU Member States (seat of the intermediary)

Did you face problems when applying for provisional and precautionary measures in a cross-border situation (judicial authority in your country of establishment and intermediary incorporated in another Member State and/or judicial authority of another EU Member State)?
- Yes
- No
- No experience

Please explain:
1,500 character(s) maximum

Does the availability of provisional and precautionary measures against an intermediary depend on whether or not the infringer has been identified?
- Yes
- No
- Don’t know

Please explain:
1,500 character(s) maximum

What are the reasons for applying for provisional and precautionary measures against an intermediary?
- Prevent an imminent infringement
- Lodging of guarantees
- Seizure or delivery up of the goods suspected of infringing an IPR
- Blocking of his/her bank accounts and other assets
- Precautionary seizure of other movable and immovable property of the alleged infringer
- Other

Please specify:
500 character(s) maximum

Did you usually obtain the provisional and precautionary measures?
- Yes
- No

What are the reasons for not obtaining provisional and precautionary measures?
- No sufficient link between the intermediary and the infringement
- Insufficient evidence
- Protection of confidentiality of information
- No commercial scale infringement
- Other
- No likelihood of success on the merits of the case
- Measure requested too severe
- Right to respect for private life and/or right to protection of personal data
- Request for a security or an equivalent assurance
What was the average number of days between the lodging of a request for provisional and precautionary measures before the court and the adoption of a decision?
- Less than 7 days
- Between 7 and 14 days
- Between 14 and 30 days
- Between 30 and 60 days
- More than 60 days

Do courts usually specify in the injunction the exact measures which the intermediary should implement in order to stop the continuation of the alleged infringement?
- Yes
- No
- Don't know

Please specify:
1,500 character(s) maximum

Courts in most Member States issue very precise orders which can be policed and which have little room for interpretation whether or not the measures have been complied with.

Is the decision to grant provisional and precautionary measures against an intermediary usually appealed?
- Yes
- No
- No opinion

From your experience, from the total of final court decisions in IPR infringement cases, how many uphold the provisional injunction (in percentage)?

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

Please specify:
500 character(s) maximum
Have you applied for an injunction in case of an infringement of your IPR?

- [X] Yes, against an infringer
- [ ] Yes, against an intermediary
- [ ] No

Injunction against infringer

For infringements

- [X] Offline
- [ ] Online

Where and how often in the past 5 years?

<table>
<thead>
<tr>
<th></th>
<th>Never</th>
<th>Once</th>
<th>Rarely (in average not more than once a year)</th>
<th>Occasionally (between 1 and 5 times a year)</th>
<th>Frequently (more than 5 times a year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>In your country of establishment - Against alleged infringer incorporated or resident in your country of establishment</td>
<td></td>
<td></td>
<td></td>
<td>[X]</td>
<td></td>
</tr>
<tr>
<td>In your country of establishment - Against alleged infringer incorporated or resident in another Member State</td>
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<td>[X]</td>
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</tr>
<tr>
<td>In other EU Member States (seat or residence of the alleged infringer)</td>
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<td>[X]</td>
</tr>
</tbody>
</table>

Did you face problems when applying for an injunction in a cross-border situation (judicial authority in your country of establishment and (alleged) infringer incorporated or resident in another Member State and/or judicial authority of another EU Member State)?

- [X] Yes
- [ ] No

Please explain:

500 character(s) maximum

Not all Courts seem to be aware of the lawsuit service rules, and mistakes in the application of these rules can provide the infringer with grounds to challenge the lawsuit notification process and thereby cause delays.

Did you usually obtain the injunction?

- [X] Yes
- [ ] No

What are the reasons for not obtaining an injunction?

- [ ] Right to respect for private life and/or right to protection of personal data
- [ ] No commercial scale infringement
- [ ] Measure requested too severe
Protection of confidentiality of information
Other

Please specify:
500 character(s) maximum

Injunction against an intermediary

For infringements
✓ Offline
✓ Online

Against which type of intermediary?
✓ Advertising service provider
✓ Business-to-business data storage provider
✓ Business-to-consumer data storage provider
✓ Content hosting platform
✓ Domain name registry
✓ Internet Access Provider
✓ Press and media company
✓ Payment service provider
✓ Search engine
✓ Transport and logistics company
✓ Other
✓ Contract manufacturing service provider
✓ Domain name registrar
✓ DNS hosting service provider
✓ Mobile apps marketplace
✓ Online marketplace
✓ Retailer
✓ Social media platform
✓ Wholesaler

Please specify:
500 character(s) maximum

Where and how often in the past 5 years?

<table>
<thead>
<tr>
<th></th>
<th>Never</th>
<th>Once</th>
<th>Rarely (in average not more than once a year)</th>
<th>Occasionally (between 1 and 5 times a year)</th>
<th>Frequent (more than 5 times a year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>In your country of establishment - Against intermediary incorporated in your country of establishment</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>In your country of establishment - Against intermediary incorporated in another Member State</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>In other EU Member States (seat of the intermediary)</td>
<td></td>
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</tbody>
</table>

Did you face problems when applying for an injunction in a cross-border situation (judicial authority in your country of establishment and intermediary incorporated in another Member State and/or judicial authority of another EU Member State)?
✓ Yes
✓ No
✓ No experience
Please explain:
1,500 character(s) maximum

Does the availability of an injunction against an intermediary depend on whether or not the infringer has been identified?
- Yes
- No
- Don't know

What are the reasons for applying for an injunction against an intermediary with regard to a third party using its services infringing an IPR?

<table>
<thead>
<tr>
<th>Reason</th>
<th>Very relevant</th>
<th>Relevant</th>
<th>Less relevant</th>
<th>Not relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Block access to infringing content online</td>
<td></td>
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<tr>
<td>Stay down of infringing content online</td>
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<tr>
<td>Adopt technical measures such as filtering</td>
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<tr>
<td>De-indexing infringing websites</td>
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<tr>
<td>Permanent termination of domain</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Permanent termination of subscriber account</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discontinue providing payment services</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discontinue providing advertising services</td>
<td></td>
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<tr>
<td>Discontinue providing transport services</td>
<td></td>
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<tr>
<td>Discontinue manufacturing of infringing products</td>
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<tr>
<td>Termination of lease for commercial premises</td>
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<tr>
<td>Other</td>
<td></td>
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</tr>
</tbody>
</table>

Please specify:
500 character(s) maximum

Did you usually obtain the injunction?
- Yes
- No

Did the court usually specify in the injunction the exact measures which the intermediary should implement in order to stop the continuation of the alleged infringement?
- Yes
Please specify:

1,500 character(s) maximum

It depends on the nature of the injunction sought against the intermediary. However, in most cases where the intermediary is not himself responsible for the infringement, precise instructions will be given as to the action to be taken by the intermediary.

What are the reasons for not obtaining an injunction?

- No sufficient link between the intermediary and the infringement
- Right to respect for private life and/or right to protection of personal data
- No commercial scale infringement
- Measure requested too severe
- Protection of confidentiality of information
- Other

Please specify:

500 character(s) maximum

No use of injunctions

What are the reasons for not applying for an injunction?

- No need for a permanent injunction
- Costs of procedure
- Length of procedure
- Court in another Member State
- Applicable law of another Member State
- Intermediary in question not covered
- Other

Please specify:

500 character(s) maximum

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
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

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

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

Do you see a need for criteria defining the proportionality of an injunction?
- Yes
- No
- No opinion

Further restricting the possibility to obtain an injunction apart from the existing criteria would considerably curtail the right holder's enforcement options.

Do you see a need for a definition of the term "intermediary" in the Directive?
- Yes
- No
- No opinion
The Directive in its present form does not contain a definition of “intermediary”, but there has been case law clarifying it. While there may be an advantage to defining what exactly an intermediary is by listing non-exhaustive examples, any definition will likely be unable to keep pace with future technological developments.

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

This has been adequately clarified through case law.

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

☐ Yes
☐ No
☐ No opinion

Decisions in proceedings for injunctive and precautionary measures should be issued within specific, short timelines to account for the urgency involved. Likewise, the expedited issuance of ex parte injunctions should be mandatory. There should also be directions on the time limit to initiate injunctive or precautionary action after the discovery of the infringement – the limits applied by the courts vary, sometimes even within a Member State, but more so between Member States.

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

Publishing a decision in favor of the right holder spreads awareness of the rights and the fact that the right holder has taken action to defend his right. It is also important for consumers and other third parties. This reestablishes the right holder’s position and deters third parties from p
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:
1,500 character(s) maximum

Increasing the amount of published decisions would improve awareness and knowledge of IP infringement decisions, which in turn could increase public awareness of counterfeit products. However, the right holder does have the option to request dissemination of the decision by the infringing party and is also free to publish the decision. On the other hand, the potential consequences of the publication of such a decision on a defendant’s business require a certain amount of discretion and consideration to be applied by a judge on a case-by-case basis. In summary the available options seem sufficient.

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.
1,500 character(s) maximum

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?

☐ Advertising service provider
☐ Contract manufacturing service provider
☐ Business-to-business data storage provider
☐ Business-to-consumer data storage provider
☐ Content hosting platform
☐ Domain name registrar
☐ Domain name registry
☐ DNS hosting service provider
☐ Internet Access Provider
☐ Mobile apps marketplace
☐ Press and media company
☐ Online marketplace
Payment service provider
Search engine
Transport and logistics company
Other

Retailer
Social media platform
Wholesaler

Please specify:
500 character(s) maximum

Do you cooperate with intermediaries in the protection and enforcement of your IPR?
Yes
No

Which intermediaries do you cooperate with?
Advertising service provider
Business-to-business data storage provider
Business-to-consumer data storage provider
Content hosting platform
Domain name registry
Domain name registrar
DNS hosting service provider
Internet Access Provider
Mobile apps marketplace
Press and media company
Online marketplace
Payment service provider
Retailer
Search engine
Social media platform
Transport and logistics company
Wholesaler
Other

Please specify:
500 character(s) maximum

How do you cooperate with these intermediaries?
Bilaterally
Within a multilateral cooperation agreement
Other

Please specify the agreement and its scope:
500 character(s) maximum

Please specify:
500 character(s) maximum

These intermediaries are members of the International Trademark Association. The most effective means that we cooperate with them is through meetings with trademark owners, IP practitioners, the intermediaries and government officials. We bring all the stakeholders together to discuss common solutions.

Do you consider your cooperation with intermediaries successful?
Yes
No
What are the elements for a successful cooperation between rightholders and intermediaries?

The rights holders and intermediaries need a setting where both parties are working together on solutions, rather than putting the onus on one party or the other. Opening the lines of communication can show the risks and struggles of both parties to tackle IPR enforcement issues and allow the parties to work together for the best solution.

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

Please specify:

Lack of resources: Often times the rights holders and intermediaries struggle with the lack of manpower and financial resource to tackle counterfeiting.

Why do you not cooperate with intermediaries?

- Not aware of the possibility
- Investigation and reporting costs
- Negative experience
- 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

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:

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

In which Member State(s)?

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

Which rights were covered by the competence of the court?

☐ Copyright
☐ Community design rights
☐ National trademark rights
☐ Patent rights (including rights derived from supplementary protection certificates)
☐ Rights of the creator of the topographies of a semiconductor product
☐ Sui generis right of a database maker
☐ Utility model rights
☐ Don't know

☐ Community trademark rights
☐ Rights related to copyright
☐ National design rights
☐ Geographical indications
☐ Plant variety rights
☐ 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

Rights to confidential information (usually in conjunction with copyright, design or other IP infringement claims)

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
INTA strongly supports the creation of specialized IP courts since they are staffed with judges especially trained in IP matters and therefore efficiently and consistently render high quality IP judgments in a cost- and time-efficient way.

Why not?
- Specialised courts not available
- Longer proceedings
- Higher costs
- Other

Please specify:
1,500 character(s) maximum

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:
3,000 character(s) maximum

Harmonization of requirements for precautionary and provisional measures within Member States would allow for better predictability of the chances of success before initiating proceedings. Creating a dispute resolution forum for company and business name disputes similar to the WIPO UDRP proceedings would enable efficient resolution of these cases.

E. Other comments

Do you have any other comments?
- Yes
- No

Please specify:
3,000 character(s) maximum

The interpretation of certain provisions of the Directive and their precedence over national law needs to be harmonized across the Member States – one example is the extent of Art 8(3)(e) which the CJEU recently decided overrules bank secrecy laws. More clarification on the relationship between the Directive’s rules favoring IP right owners and national privacy laws would facilitate the enforcement activities of brand owners.
Addressing and clarifying the issues arising out of the enforcement of IP rights on the internet, including jurisdictional and evidentiary issues related to the difficulty to identify and locate the infringer, will prevent legal uncertainty and help curb forum shopping.

The creation of a small claims procedure and forum similar to the one described in EC Regulation 861/2007 for civil law cases concerning cross-border IPR infringements would increase effectiveness and reduce the workload of the courts.

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

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-94a9-9add6e4fe5)
[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] Contexe (eusurvey/files/7e7a0e47-d9be-490d-8b1b-525669e7a5e8)
[FR] Déclaration relative à la protection de la vie privée (eusurvey/files/1be50e4b-4cb8-458b-b95e-2d7f1f2d419)
[IT] Contesto (eusurvey/files/d559d41e-c037-4811-9abb-9aa8f3c666f6)
[IT] Informativa sulla privacy (eusurvey/files/e49823dc-1131-41e1-9eecc-a2ef1a0945bc)
[PL] Oświadczenie o ochronie prywatności (eusurvey/files/e6b2bfff-5c2a-430f-8c33-12d61290f76b)

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