

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

Fields marked with \* are mandatory.

## Objectives and General Information

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

You are invited to read the privacy statement 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](mailto: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](mailto:GROW-IPRCONSULTATION@ec.europa.eu) and make reference to the "Case Id" displayed after you have concluded the online questionnaire. This helps the Commission to properly identify your contribution.

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

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

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phone: +32 2 256 75 08

**\* 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:**

43167137250-27

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

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 No publication - your answer will not be published and in principle will not be considered.

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

## A. Identification

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**\* You are an intermediary or an association representing intermediaries?**

- Intermediary  
 Association

**\* What kind of intermediary service do you provide/represent?**

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

**\* Please indicate your country of establishment?**

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

## B. Exposure to and impact of infringements

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**\* Do you experience use of your services by third parties resulting in infringement of IPR?**

- Yes  
 No

**How do you become aware of infringements?**

- |   |  |
|---|--|
| <input type="checkbox"/> In-house investigation   | <input type="checkbox"/> Use of external service provider                      |
| <input type="checkbox"/> Notification by customs  | <input type="checkbox"/> Notification by police or other enforcement authority |
| <input type="checkbox"/> Notification by customer | <input type="checkbox"/> Notification by rightholder                           |
| <input type="checkbox"/> Other                    | <input checked="" type="checkbox"/> No opinion                                 |

**\* How do infringements impact on your business?**

- Loss of turnover  
 Reputational damage  
 Enforcement costs  
 Other  
 No opinion

**\* What is the overall financial impact of IPR infringements?**

- Positive  
 Negative  
 No opinion

**Please provide an estimation of the impact in percentage of the overall turnover:**

 %

**\* How did IP infringements develop over last 10 years?**

- Decreased  
 Increased  
 Unchanged  
 Don't know

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

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

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

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

### **infringements?**

- Yes
- No
- No opinion

**\* 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

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

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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. Right of information (Article 8)**

**\* Have you received a request for information?**

- Yes
- No

**\* Do you consider the application of the rules on the right of information to be clear and unambiguous?**

- Yes
- No
- No opinion

**\* In view of your experience with the application of the right of information do you think that the existing rules have helped effectively in protecting IP and preventing IPR infringements?**

- Yes
- No
- No opinion

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

- Yes
- No
- No opinion

**\* Do you see a need to clarify the criteria used to reconcile the requirements of the right to respect for private life/right to protection of personal data on the one hand and the right to effective remedy on the other hand when assessing requests for disclosure of personal data**

**for the purpose of initiating judicial proceedings?**

- Yes
- No
- No opinion

### C.2.2. Procedures and courts, damages and legal costs (Articles 3, 13 and 14)

**\* Have you been subject to legal action in cases of IPR infringements?**

- Yes, as an applicant
- Yes, as a defendant
- No

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

- Yes
- No

**\* Have you been subject to a claim for damages by an IP rightholder for alleged active and knowing facilitation of IPR infringements?**

- Yes
- No

**\* 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

**\* 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

### C.2.3. Provisional and precautionary measures and injunctions (Articles 9 and 11)

**Provisional and precautionary measures**

**\* Have you been subject to an application for provisional and precautionary measures in case of an alleged IPR infringement?**

- Yes
- No

**Injunctions**

**\* Have you been subject to an injunction in case of an IPR infringement?**

- Yes  
 No

**In your experience what are the main reasons for applying for an injunction?**

	Very relevant	Relevant	Less relevant	Not relevant	Don't know
*Block access to infringing content online	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Stay down of infringing content online	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Adopt technical measures such as filtering	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*De-indexing infringing websites	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Permanent termination of domain	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Permanent termination of subscriber account	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Discontinue providing payment services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Discontinue providing advertising services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Discontinue providing transport services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Discontinue manufacturing of infringing products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Termination of lease for commercial premises	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**\* In view of your experience with the application of the rules for provisional/permanent injunctions do you see a need to adjust the application of that measure?**

- 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 (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

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

- Yes
- No
- No opinion

**\* Do you see a need for a clarification on how to balance the effective implementation of a measure and the right to freedom of information of users in case of a provisional measure**



or injunction prohibiting an internet service provider from allowing its customers access to allegedly IPR infringing material without specifying the measures which that service provider must take?

- Yes
- No
- No opinion

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

- Yes
- No
- No opinion

#### C.2.4. Other issues

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

- Yes
- No
- No opinion

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

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### 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

**\* Do you cooperate with rightholders or rightholders' association in the protection and enforcement of IPR?**

- Yes
- No

**\* Which intermediaries do you cooperate with?**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Advertising service provider    | <input type="checkbox"/> Business-to-business data storage provider |
| <input type="checkbox"/> Business-to-consumer data storage provider | <input type="checkbox"/> Content hosting platform                   |
| <input type="checkbox"/> Contract manufacturing service provider    | <input type="checkbox"/> DNS hosting service provider               |
| <input type="checkbox"/> Domain name registrar                      | <input type="checkbox"/> Domain name registry                       |
| <input type="checkbox"/> Internet Access Provider                   | <input type="checkbox"/> Mobile apps marketplace                    |
| <input type="checkbox"/> Online marketplace                         | <input type="checkbox"/> Other                                      |

- |   |  |
|---|--|
| <input type="checkbox"/> Payment service provider | <input type="checkbox"/> Press and media company         |
| <input type="checkbox"/> Retailer                 | <input type="checkbox"/> Search engine                   |
| <input type="checkbox"/> Social media platform    | <input type="checkbox"/> Transport and logistics company |
| <input type="checkbox"/> Wholesaler               |  |

**\* The cooperation covers the following IPR**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Copyright | <input checked="" type="checkbox"/> Trademark rights |
| <input type="checkbox"/> Design rights        | <input type="checkbox"/> Geographical indications    |
| <input type="checkbox"/> Patent rights        | <input type="checkbox"/> All IP rights               |
| <input type="checkbox"/> Other                | <input type="checkbox"/> Don't know                  |

**\* In which form do you cooperate with these rightholders?**

- Bilaterally
- Within a multilateral cooperation agreement
- Other

**\* Please specify**

*500 character(s) maximum*

IAB Europe members have been firmly supporting, for the past 18 months, IAB Europe's involvement in the Commission's stakeholder dialogue on "follow the money".

**\* Please provide detail and reference:**

*1000 character(s) maximum*

European ad misplacement initiatives were initiated in 9 countries. The first European initiative originated in 2013 in the UK with the publication of good practice principles by the Digital Trading Standards Group (DTSG). The DTSG also provides a platform for the advertising industry to use an Infringing Website List, created and hosted by the Police IP Crime Unit (PIPCU). As part of Operation Creative, rights holders in the creative industries identify and report copyright infringing websites to PIPCU, providing a detailed package of evidence indicating the site is involved in illegal copyright infringement. Officers from PIPCU then evaluate the websites and verify whether they are infringing copyright. In 2014 and 2015 respectively, Poland and France successfully launched similar initiatives. Other European initiatives, emerging in the course of 2014 and 2015, are in early development stages.

**\* Do you consider your cooperation with rightholders successful?**

- Yes
- No
- No opinion

**\* What are the elements for a successful cooperation between rightholders and intermediaries?**

*1000 character(s) maximum*

#### Inclusive Approach\*\*

The key to developing successful advertising misplacement initiatives is to embrace an approach that is voluntary, flexible, and involves the highest possible amount of relevant players. Digital advertising develops very quickly, so flexibility and voluntariness are fundamental.

Take account of legal and competition concerns

The creation of blacklists and/or whitelists of IPR infringing sites has, in some Member States, been left to the sole responsibility of government, either because the practice is considered to entail a definition of IPR infringement that industry cannot provide itself or due to competition concerns.

Competition amongst content verification tools should also be preserved.

Reasonable Goals

Ad misplacement can be diminished significantly but not entirely eradicating; the online advertising ecosystem's limitations should be understood. Millions of ads are served daily, not obvious for the players to know where their ads end up.

#### \* 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)
- Technology
- Specific regulatory requirements
- Other
- No opinion

Please explain:

*1500 character(s) maximum*

#### \* 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

#### Other comments on the role of intermediaries in IPR enforcement and the prevention of IPR infringements:

*3000 character(s) maximum*

\*A content verification tool is a technology product or service that may prevent or report the serving of a display advertisement onto sites principally dedicated to engaging in unauthorised dissemination of materials protected by copyright laws and that have no substantial non-infringing uses.

\*\*To allow the sector to continue to flourish and innovate, it is fundamental to integrate flexibility and voluntariness in any ad misplacement scheme.

Innovation in the digital advertising ecosystem is driven by a myriad of digital players. These players should all be given the opportunity to voice their opinion and potential concerns: rights holders, publishers, advertisers, agencies, agency trading desks (ATDs), demand side platforms (DSPs), advertising networks, sales houses, advertising exchanges and supply side platforms (SSPs). IAB Europe believes that the Commission should take these elements into account at EU-level.

## D.2 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

## E. Other comments

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

- Yes  
 No

**\* Please explain:**

*3000 character(s) maximum*

IAB Europe is deeply committed to minimising the misplacement of ads on Intellectual Property Rights (IPR) infringing sites. This commitment is reflected in the recent report on Digital Advertising on Suspected Infringing Websites commissioned by the EU Observatory on Infringements of Intellectual Property Rights.

Digital advertising should in no way support the illegal provision of content. It is and should remain an enabler in the digital world, as a possible source of revenue for online creation. At the same time, responsible ad placement is fundamental to the promotion and growth of the digital advertising marketplace.

With these considerations in mind, IAB Europe members have been, over the years, extremely proactive in finding adequate solutions to tackle ad misplacement on IPR infringing sites.

IAB Europe companies have been developing and implementing cutting-edge technologies to minimise the misplacement of branded ads on IPR infringing sites.

National IABs and member companies have also been involved in a number of national-level initiatives to combat ad misplacement on IPR infringing sites. According to data collected by IAB Europe, in the past 2 years, such

initiatives have been initiated in at least nine different European countries: the UK, Poland, France, Denmark, Slovakia, Italy, the Netherlands, Austria and Spain.

To encourage the convergence of such initiatives at EU level, IAB Europe members have been firmly supporting, for the past 18 months, IAB Europe's involvement in the Commission's stakeholder dialogue on "follow the money".

IAB Europe members are also committed to providing transparency to clients about the delivery of digital ad campaigns to their intended audience. Within IAB Europe, they are working together to provide the industry with a reliable and trusted framework for the converging digital and traditional media environment and improve quality in digital brand advertising.

Both individually and with public authorities, IAB Europe members are willing to continue to work on finding the best solutions to protect creation and the online world.

\*\*\*\*\*

Digital advertising keeps on generating considerable growth, value and jobs for the Digital Single Market. In 2006, the value of the EU market stood at €6.6 billion, versus €30.7 billion in 2014. This is an increase in spend of €24.1 billion and translates into a compound annual growth rate of 21.2%, or an average €3.0 billion per year. With a year-on-year growth rate of 9.7% in H1 2015 compared to a 1.6% increase in overall EU GDP, the digital advertising sector continues to outperform the overall EU economy.

## 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/dd8b2d68-19ef-46c1-94c2-5dd4895a22e6)

[DE] Hintergrund (/eusurvey/files/26d0940d-472f-4175-b55e-474f9aaf7931)

[EN] Background information (/eusurvey/files/a5da5dca-4fed-4d7d-a452-a326303ac265)

[EN] Privacy statement (/eusurvey/files/76e773ff-7057-476a-8440-0cdac45a21df)

[ES] Antecedentes (/eusurvey/files/a2ffeaea-5b75-454e-a65f-741d784e4cf5)

[ES] Declaración de confidencialidad (/eusurvey/files/567d7bec-dabe-40a6-9598-98de4eeace82)

[FR] Contexte (/eusurvey/files/81aa2212-332b-4808-9059-fde91b1043a9)

[FR] Déclaration relative à la protection de la vie privée (/eusurvey/files/af24e5d2-8a6d-4867-bb8a-8af697c057b5)

[IT] Contesto (/eusurvey/files/c5544db2-47c3-459b-bc63-d750ace25279)

[IT] Informativa sulla privacy (/eusurvey/files/f4e8e5fe-5739-4867-b2aa-1f8327318ed5)

[PL] Kontekst (/eusurvey/files/4c3e015f-c229-46a6-9330-0aa8b594df45)

[PL] Oświadczenie o ochronie prywatności (/eusurvey/files/3d746855-55a0-41ff-9ed0-f66f43c30c22)

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## **Contact**

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