

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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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)**

Christie Dennehy-Neil, Public Policy Manager, IAB UK.

Email: christie@iabuk.net

Address: 67-68 Long Acre, London WC2E 9JD

*** 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

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 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 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 checked="" 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 specify**

500 character(s) maximum

The Internet Advertising Bureau (IAB UK) is the industry body for digital advertising in the UK. It represents over 900 businesses engaged in all forms of online and mobile advertising, including media owners and advertising technology businesses. One of our key objectives is to enable a trustworthy and responsible medium through cross-industry standards and self-regulation.

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

- | | |
|------------------------------------|---|
| <input type="checkbox"/> Austria | <input 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 |

- Spain Sweden
 United Kingdom

B. Exposure to and impact of infringements

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

- Yes
 No

How do you become aware of infringements?

- In-house investigation Use of external service provider
 Notification by customs Notification by police or other enforcement authority
 Notification by customer Notification by rightholder
 Other No opinion

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

- Loss of turnover
 Reputational damage
 Enforcement costs
 Other
 No opinion

*** Please specify**

500 character(s) maximum

Loss of turnover (for our member businesses) and reputational damage

*** 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

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

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

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

Please explain:

1500 character(s) maximum

The IAB UK is committed to promoting legitimate business models, and supporting and championing the sustainable growth of the UK digital advertising market. We believe that the digital advertising industry should behave responsibly and be a source of funding for legitimate online content and services. While it cannot enforce IPR it can support efforts to do so. It is good practice for those involved in buying, selling or trading digital advertising inventory to actively manage the placement of display advertising, and, in accordance with instructions from their advertising clients, to use appropriate tools to minimise the risk of misplacement of ads on 'inappropriate' sites. This includes sites that are primarily devoted to hosting or providing IP-infringing content. In this way advertising intermediaries can help to stem the flow of brands' advertising money to infringing sites.

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

- Advertising service provider
- Business-to-business data storage provider
- Business-to-consumer data storage provider
- 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 checked="" 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 | |

*** Please specify**

500 character(s) maximum

We do not believe that any one intermediary can prevent infringement. Each stakeholder can take action to support a wider, holistic strategy to enforce IP rights, carried out by an appropriate body. In our experience it takes a collective effort from all those involved in each 'ecosystem' to bring about effective action. For example, in the UK, the Infringing Website List for advertisers/their suppliers is just one of many tactics used by the Police to enforce IP rights.

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

- Yes
 No

*** The cooperation covers the following IPR**

- | | |
|---|---|
| <input checked="" type="checkbox"/> Copyright | <input 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 UK is a founding partner of the Infringing Website List (IWL), managed by the City of London Police, which is used by the online advertising industry to minimise the risk of ads being placed on infringing sites. Rights holders report sites to the Police who investigate them. If the Police verify a site as structurally infringing copyright, they contact the site owners and ask them to cease their infringing activity. If the site owners do not comply, the site is placed on the IWL.

*** 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

1. Identify shared interests:
Advertisers want to protect their reputations and get good return on their spend. Intermediaries want to give advertisers confidence that their ads are placed in safe environments. Rights-holders want to ensure that ad spend isn't funding infringing sites. It is in all parties' interests to cooperate.

2. A coordinated, industry-led approach to finding solutions:
The complexity of digital ad trading processes means that representatives of all key players need to be involved in helping to tackle the problem throughout the supply chain, as well as advertisers and their agencies (and rights-holders).

3. Appointing an appropriate enforcement body:
The involvement of the police as the 'gatekeeper' of the IWL in the UK has been essential to its acceptance within the industry, as well as ensuring there are proper routes of redress for sites to challenge inclusion on this list. See the answer to the next question for more detail on the role of the police.

*** 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

For intermediaries to be able to minimise the placement of ads on IP-infringing sites, an appropriate, authorised body needs to be in place to determine whether a site is infringing IP, according to the applicable law. It is not appropriate for intermediaries within the online advertising industry to do this themselves.

The involvement of the Police in this role was critical to the creation and implementation of the Infringing Website List (IWL) in the UK. Prior to this, there was no common interpretation of what infringement looks like and the industry had not been able to respond collectively to calls from the creative industries community to withdraw display advertising from copyright infringing sites. Instead, rights holder bodies notified individual advertisers of instances of ad placement against copyright-infringing content, which led to a piecemeal approach to the problem.

The IWL provides a single, authoritative source of information about copyright infringement. The list is based on referrals from rights-holders of suspected infringing sites. The Police investigate and determine whether a site is structurally infringing copyright and - ultimately - should be added to the IWL. There is a due process that provides a route of redress for sites to challenge their inclusion in the list, which also provides appropriate assurances to advertisers and ad technology providers that their liability is limited if they withdraw their services from a particular site on the IWL.

*** Please specify**

500 character(s) maximum

Competition law can be an obstacle. Any review of the existing IPR enforcement legislation should consider the interaction with competition law, to ensure that digital advertising businesses are able to confidently take steps, whether individually or jointly, to avoid their money being used to support illegal IP infringing activity without this being deemed anti-competitive.

*** 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

While intermediaries can help to support IPR enforcement, no one set of intermediaries can do this alone. In our view, each stakeholder can take specific action to support a wider strategy of enforcing IPR and preventing infringement, often by agreeing to take tactical action to support efforts to achieve compliance or to penalise non-compliance. For example, disrupting advertising revenue (working with advertising intermediaries and payment providers) is just one of the ways that the City of London Police Intellectual Property Unit (PIPCU) use to tackled copyright-infringing sites. They also pursue restorative justice and work with law enforcement bodies to pursue site take-down and domain blocking. The actions that any one set of intermediaries can take should be considered in this wider context of holistic action to address the problem.

We believe that, for self-regulatory solutions to tackling ad misplacement on IP-infringing sites to be successful, they need to be industry-led, and fit into wider self-regulatory initiatives aimed at managing ad placement. Such initiatives provide the framework and agreed practices for managing ad placement and protecting brand safety, using existing technology. These tools can then be used to mitigate the risk of ad misplacement on IP-infringing sites, using data provided by an independent third party. For example, in the UK, the Display Trading Standards Group (DTSG) ensures advertisers have tools

to actively manage the placement of ads and this has facilitated the use of the IWL by the online advertising industry.

Specifically, roles and responsibilities need to be defined and allocated. In the UK, each set of stakeholders (rights-holders, the Police, advertisers and agencies, and advertising technology providers) has a specific role in the process of managing ad misplacement on IP-infringing sites. In our view, the role of advertising technology providers is to act on authoritative information provided to them about IP infringing sites, as a matter of good practice and in line with their clients' instructions.

However, for intermediaries to be able to minimise the placement of ads on IP-infringing sites, an appropriate, authorised body needs to be in place to determine whether a site is infringing IP, according to the law applicable in the relevant member state. It is not appropriate for intermediaries within the online advertising industry to do this themselves. In the UK the Police, via the IWL, provide independently-verified information about IP-infringing sites that advertisers can choose to exclude from their ad-buying. Advertising technology providers use existing tools to achieve this in practice.

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

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

- Yes
 No

*** Please explain:**

3000 character(s) maximum

In the context of the role that the online advertising can play to help support wider IP rights enforcement work:

1. Brand advertisers, in their role of injecting money into the advertising ecosystem, need to demand the use of measures to minimise ad misplacement from their suppliers, to help drive good practice.

The IWL is part of the UK's Government's coordinated 'Follow the money' effort to stem the flow of revenue to sites alongside other disruptive activities. In the context of digital advertising, the success of the 'Follow the money' approach depends on the existence of the self-regulatory DTSG good practice principles that aim to (i) significantly reduce the risk of misplacement of display advertising on digital media properties (ii) uphold brand safety and (iii) protect the integrity of digital advertising. These principles outline six commitments for those involved in the buying, selling or facilitating of digital display advertising (for example: the Principles

commit a Buyer and / or Seller to select or use an independently-verified Content Verification (CV) tool or Appropriate / Inappropriate Schedules to significantly reduce the risk of display advertising misplacement). These tools can, in the case of the IWL, minimise the risk that an ad is misplaced on a site that is infringing copyright. The success of the IWL depends on advertisers and their agencies mandating the use of the IWL as part of their display ad trading agreements, and choosing to work with businesses that comply with good practice principles aimed at minimising ad misplacement and protecting brand safety.

2. It is important to have realistic objectives and expectations about what can be achieved by ad misplacement initiatives.

Initiatives developed by or with stakeholders in the digital advertising industry can minimise brand advertising misplacement on IP-infringing sites, where those sites are identified by an appropriate, independent body with the authority to do so. They cannot prevent all ads from appearing on these sites. Other advertising types are likely to still be seen on IP-infringing sites. While minimising the appearance of brand advertising addresses the perceived legitimacy that IP infringing sites may gain from it, and takes brand advertising spend away from those sites, site owners can source ads from elsewhere. There are players involved in this large, complex and international market who are unlikely to be reached by or involved in self-regulatory initiatives, and/or who are based outside of the EU, and a different approach will be needed to tackle those issues.

Useful links

Enforcement of intellectual property rights

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

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

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

Background Documents

[DE] Datenschutzerklärung (/eusurvey/files/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] Declaracin de confidencialidad (/eusurvey/files/567d7bec-dabe-40a6-9598-98de4eeace82)

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

[FR] Dclaration relative la protection de la vie prive (/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)

Contact

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