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

Fields marked with \* are mandatory.

## 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)**

Organisation:

Mozilla

<https://www.mozilla.org/>

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**\* 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**

174457719063-67

**\* 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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### \* Who are you?

- Individual
- National consumer protection organisation
- National civil rights organisation
- Other
- Legal counsellor representing consumer
- European consumer protection organisation
- European civil rights organisation

### \* Please specify:

*500 character(s) maximum*

Mozilla is a technology company and non-profit foundation whose mission is to promote openness, innovation and opportunity on the web. We produce the Firefox web browser and other products and services, together adopted by hundreds of millions of Internet users globally. We educate and empower Internet users to be the web's makers, not just its consumers. To do this, we operate as a global community of technologists, thinkers and builders working together to keep the Internet alive and accessible.

### \* How old are you?

- Under 18
- 18-34
- 35-44
- 45-55
- 55+

### \* What is your gender?

- Female
- Male

### \* Please indicate your country of residence or establishment:

- Austria
- Belgium
- Bulgaria
- Cyprus
- Croatia
- Czech Republic
- Denmark
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland

- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Other
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom

\* Please specify:

500 character(s) maximum

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## B. Exposure to IP infringing goods and services

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\* Do you believe that products (goods and services) are promoted and presented in such a manner that you can easily identify that they are legitimate products respecting IPR?

- Yes
- No
- No opinion

\* Please explain:

1,500 character(s) maximum

As the IPRED covers all forms of IP infringements we would first like to specify that our responses will mostly focus on copyright infringements online. We responded "no" because it is very difficult to assess legality because context means everything. A binary framing such as "legal" vs "illegal" can't be determined immediately in the online environment based solely on posted content, as the legality depends on the context of the use. A piece of content is neither "licensed" nor "infringing" nor "illegal" per se; it is only so in a particular context - who uploaded it, what parts of it are used, what it has been combined with, what the artistic purpose of the use (or derivative work) is, and what jurisdiction it falls under, whether one of the 28 member states or a third country's. The importance of context is built into the fabric of copyright law by design, to promote the optimal balance of creativity, innovation, competition, and investment.

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

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Directive 2004/48/EC on the enforcement of intellectual property rights introduced different instruments for IP right holders to protect their intellectual property. This section aims to provide the Commission with citizen's and stakeholder' views, opinions and information about the functioning of the overall enforcement framework and of key provisions of IPRED. The different instruments consulted on will be briefly explained before each sub-section.

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

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

- Yes
- No
- No opinion

Please explain:

*1,500 character(s) maximum*

The "effective" nature of the existing rules depends on how one measures effectiveness. These processes have been effective in the protection and prevention of online IP infringements in the sense that they often result in the expeditious removal of targeted content without significant harm to the economic market for the copyrighted good, and without exposing service providers to lawsuits over the actions of their users, particularly where such users ultimately may not be guilty of infringement. On the other hand, they have been less effective in that, in the framework's current form, it does not properly prevent bogus or untargeted infringement notices (see for instance, ACS:Law in the UK: <http://bit.ly/1RVO3Y6>). Thus any changes to the IPRED framework should focus on the specific, tractable problem of invalid notices, rather than any fundamental shift in the law.

### \* Do you consider that the measures and remedies provided for in the Directive are applied in a homogeneous manner across the EU Member States?

- Yes
- No
- No opinion

\* Please explain:

*1,500 character(s) maximum*

Under the EU legal framework, a Directive, like IPRED, is designed to provide minimum standard guidelines for member states to inform their approach, and is not designed to be applied in a homogeneous manner across them. We do not view this as a problem in practice, however, and moving to greater homogeneity could potentially pose risk of duplication of pros

ecution or other inefficiencies.

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

Responses to this section should be based on your overall experience with the measures, procedures and remedies provided for by IPRED as implemented and applied in your jurisdiction. If appropriate please specify in your response, to the extent possible, particular national issues or practices. If your response concerns a jurisdiction other than your jurisdiction of residence or establishment or covers more than one jurisdiction please also add the jurisdiction concerned.

### C.2.1. Identification of an alleged infringer

This measure should assist rightholders in identifying an alleged infringer of their IPR. Subject to certain requirements the rightholder can ask the competent judicial authorities to order any person to disclose information on the origin of the goods or services that are thought to infringe intellectual property rights and on the networks for their distribution or provision.

**\* Have you been concerned with a procedure for an alleged IPR infringement?**

- Yes  
 No

**\* For alleged infringement(s):**

- Online  
 Offline

**\* The alleged infringement concerned what kind of IPR?**

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

**\* Please specify:**

500 character(s) maximum

**\* The alleged infringement concerned what kind of product?**

- |   |   |
|---|---|
| <input type="checkbox"/> Automotive parts                   | <input type="checkbox"/> Books          |
| <input type="checkbox"/> Clothing, footwear and accessories | <input type="checkbox"/> Computers      |
| <input type="checkbox"/> Cosmetics and personal care        | <input type="checkbox"/> E-books        |
| <input type="checkbox"/> Film and video                     | <input type="checkbox"/> Games and toys |
| <input type="checkbox"/> Luggage and handbags               | <input type="checkbox"/> Luxury goods   |
| <input type="checkbox"/> Medicines Tobacco                  | <input type="checkbox"/> Music          |
| <input type="checkbox"/> Others                             | <input type="checkbox"/> Sports goods   |
| <input type="checkbox"/> Watches and jewellery              |   |

**\* Please specify:**

500 character(s) maximum

**\* Have you been contacted by a rightholder or a third party acting on her/his behalf?**

- Rightholder
- Third party
- Don't know

**\* Have you been contacted by a party from your country of residence or another country?**

- Country of residence
- Another EU member state
- 3rd country
- Don't know

**\* To your knowledge from where did the person receive your contact information?**

- Own resources
- Intermediary service provider
- Don't know

**\* To your knowledge which intermediary did provide the information?**

For the purpose of this consultation:

- "Advertising service provider"

Advertising agencies, advertising broker

- "Contract manufacturing service provider"

Contract manufacturing is an outsourcing of certain production activities previously performed by the manufacturer to a third-party. This may concern certain components for the product or the assembly of the whole product.

- "Business-to-business data storage provider"

Data storage space and related management services for commercial user.

- "Business-to-consumer data storage provider"

File-storing or file-sharing services for personal media files and data

- "Content hosting platform"

Platforms providing to the user access to audio and video files, images or text documents.

- "Press and media company"

Newspaper, broadcaster

- |   |  |
|---|--|
| <input type="checkbox"/> Advertising service provider               | <input type="checkbox"/> Mobile apps marketplace         |
| <input type="checkbox"/> Contract manufacturing service provider    | <input type="checkbox"/> Press and media company         |
| <input type="checkbox"/> Business-to-business data storage provider | <input type="checkbox"/> Online marketplace              |
| <input type="checkbox"/> Business-to-consumer data storage provider | <input type="checkbox"/> Payment service provider        |
| <input type="checkbox"/> Content hosting platform                   | <input type="checkbox"/> Retailer                        |
| <input type="checkbox"/> Domain name registrar                      | <input type="checkbox"/> Search engine                   |
| <input type="checkbox"/> Domain name registry                       | <input type="checkbox"/> Social media platform           |
| <input type="checkbox"/> DNS hosting service provider               | <input type="checkbox"/> Transport and logistics company |
| <input type="checkbox"/> Internet Access Provider                   | <input type="checkbox"/> Wholesaler                      |
| <input type="checkbox"/> Don't know                                 | <input type="checkbox"/> Other                           |

\* Please specify:

500 character(s) maximum

\* What kind of request did you receive?

- Cease and desist letter (letter requesting to stop an alleged IPR infringement)
- Request for damages
- Court order to stop an actual infringement
- Court order to stop an actual and any future infringement
- Other

\* Please specify:

500 character(s) maximum

\* Are you aware of any out of court procedure for cease and desist notices for alleged IPR infringements in your country of residence?

- Yes
- No



Please provide detail:

1,500 character(s) maximum

Many informal or voluntary measures aim at addressing allegedly copyright infringing material online. These measures are made more complicated by the globally distributed nature of Internet systems; one individual user could be subject to multiple jurisdictions at the same time. For instance, one major component of copyright law in the United States, the DMCA, is effectuated by some companies that target the content - for instance de-indexing on search engines - regardless of the identity or geography of its source, including content uploaded and accessed in the EU. Such measures - whether the user is subject to laws of third countries, or more generally informal processes and voluntary measures - can be problematic as, unlike legal processes, they fail to consider authorisation or exceptions, the context and applicable copyright law, provide due process, or permit counter-notice or appeal. Formal measures, where all interests can be considered, are therefore preferable to informal processes. Financial measures that are informal or voluntary are even more concerning (see: <http://bit.ly/1NpF9wG>). By their nature, they target an entire organisation, an extraordinarily broad scope for a copyright infringement claim. If an organisation is engaged in copyright infringement on such a broad scale that aggressive financial measures against it are potentially appropriate, then legal process and a judicial determination are surely worth the undertaking.

**\* Did you ever appeal a judicial decision ordering information to be provided or the notice/cease and desist submitted on the basis of the information provided?**

- Yes
- No
- Did not receive such an order

**Why did you not appeal?**

1,500 character(s) maximum

**What was your reason for appeal?**

	Very relevant	Relevant	Less relevant	Not relevant
No infringement of IPR	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Unjustified/disproportionate request	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Breach of protection of confidentiality of information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Breach of protection of rights to respect for private life and protection of personal data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information provided in the request for information inaccurate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

\* Please specify:

500 character(s) maximum

\* Was your appeal (usually) successful?

- Yes  
 No

Please provide detail:

1,500 character(s) maximum

\* Do you have the feeling that your rights including the right to respect for private life and protection of personal data are well respected in Court proceedings for the identification of alleged infringers of IPR?

- Yes  
 No  
 No opinion

Please explain:

1,500 character(s) maximum

In some countries, court proceedings result in the unnecessary release of personally identifying information about Internet users. There are many examples of solicitors sending notices to users en masse for alleged infringements of copyright. The ACS:Law case in the UK is exemplary in this regard: <http://bit.ly/1RVO3Y6>. These bad practices exist in Germany as well, where rightsholders, or alleged rightsholders go to court with up to a thousand IP addresses they have monitored and request that ISPs hand over the subscribers' postal addresses. It is difficult to track the exact figures, but it was reported that in 2011, around 300,000 IP addresses \*per month\* were being handled by German courts: <http://bit.ly/1qUkOuX>. Where the accuser can acquire such information without the user receiving the benefit of prior due process, the right to respect for private life and protection of personal data are far from well respected. Pra

ctically, this also means that users can be pressured directly by the rightsholder, or alleged rightsholder, bypassing the judicial system and its inherent safeguards.

**\* From your experience, do you believe that the proportionality test, balancing the protection of IPR and the protection of procedural and fundamental rights, was appropriately applied in your case?**

- Yes
- No
- No opinion

**\* Please explain:**

*1,500 character(s) maximum*

**\* In view of your experience with the implementation and application of the procedure for the identification of alleged infringers of IPR do you see a need to adjust the provisions for the application of that procedure?**

- Yes
- No
- No opinion

**Please explain:**

*1,500 character(s) maximum*

Currently, as noted above, users do not have sufficient protection under the current approach. Users ought to be made aware of accusations against them, and given opportunity to pursue recourse for unjust accusation, without risk of divulging private data. Canada's notice and notice system is worth exploration in this regard. In Canada, a service provider receiving a notice of alleged infringement forwards the notice to the user, but does not divulge personally identifying data about the user. We encourage the European Commission to examine the implementation of Canada's notice system, and in particular the added safeguards that are baked in by design which reinforce user privacy, while at the same time prove effective in addressing copyright infringement online. For more information, see: <http://bit.ly/1zozBzv>.

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

*3,000 character(s) maximum*

## C.2.2. Legal proceedings for infringing IPR

The Directive set up measures and procedures to ensure the civil enforcement of intellectual property rights. This sub-section should help to get a better understanding of the nature of civil proceedings consumers and citizens are involved in in the area of IPR enforcement. It will furthermore look at the provisions on damages and reimbursement of legal costs. On application of the injured party, the competent judicial authorities may order an infringer to pay the right holder damages to compensate for the actual loss incurred. Furthermore, as a general rule court costs, lawyer's fees and any other expenses incurred by the successful party will normally be borne by the other party.

**\* Have you ever been involved in legal proceedings before courts in your Member State for an alleged infringement of IPR?**

- Yes
- No

**\* Were you involved as an applicant (person who is applying to the court for legal action) or defendant (person who is being sued)?**

- Applicant
- Defendant
- Both

**\* What was the subject-matter of the case?**

- Request for information/cease and desist letter
- Request for provisional and precautionary measures
- Request for an injunction
- Claim for damages
- Request for review of an injunction issued against an internet intermediary to block content uploaded by you on the grounds that the content is IPR infringing
- Reimbursement of legal costs
- Other

**\* Please specify:**

*500 character(s) maximum*

**\* The legal action concerned an alleged infringement of an IPR:**

- Online
- Offline

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

- Copyright
- Rights related to copyright
- Community trademark rights
- Community design rights
- National trademark rights
- National design rights

- |  |  |
|--|--|
| <input type="checkbox"/> Patent rights (including rights derived from supplementary protection certificates) | <input type="checkbox"/> Geographical indications  |
| <input type="checkbox"/> Rights of the creator of the topographies of a semiconductor product                | <input type="checkbox"/> Plant variety rights  |
| <input type="checkbox"/> Sui generis right of a database maker   | <input type="checkbox"/> Trade names (in so far as these are protected as exclusive property rights in the national law concerned) |
| <input type="checkbox"/> Utility model rights  | <input type="checkbox"/> Other   |
| <input type="checkbox"/> Don't know  |  |

**\* Please specify:**

*500 character(s) maximum*

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

- |   |   |
|---|---|
| <input type="checkbox"/> Automotive parts                   | <input type="checkbox"/> Books          |
| <input type="checkbox"/> Clothing, footwear and accessories | <input type="checkbox"/> Computers      |
| <input type="checkbox"/> Cosmetics and personal care        | <input type="checkbox"/> E-books        |
| <input type="checkbox"/> Film and video                     | <input type="checkbox"/> Games and toys |
| <input type="checkbox"/> Luggage and handbags               | <input type="checkbox"/> Luxury goods   |
| <input type="checkbox"/> Medicines Tobacco                  | <input type="checkbox"/> Music          |
| <input type="checkbox"/> Others                             | <input type="checkbox"/> Sports goods   |
| <input type="checkbox"/> Watches and jewellery              |   |

**\* Please specify:**

*500 character(s) maximum*

**\* The other party in the legal action was resident or established in your country of residence or in another country?**

- Country of residence
- Another EU member state
- 3rd country
- Don't know

**\* Did you appeal a judicial decision?**

- Yes
- No

**\* What was the reason for your appeal?**

- Disproportionate claim for damages

- Disproportionate reimbursement of legal costs
- Insufficient evidence
- No commercial-scale infringement
- No infringement of IPR
- Other

**\* Please specify:**

*500 character(s) maximum*

**\* Was your appeal successful?**

- Yes
- No

Please explain:

*1,500 character(s) maximum*

**\* In view of your experience with the implementation and application of the rules for setting damages do you think that the existing rules have helped effectively in protecting IP and preventing IP infringements?**

- Yes
- No
- No opinion

Please explain:

*1,500 character(s) maximum*

While we do not have direct experience on this particular issue, in our view, the current framework has provided sufficient and effective protection of IPRs in Europe. Over the past few years, the online market has greatly expanded, providing users with increasingly more opportunities to access and purchase content and goods online, thus greatly reducing the need to use blunt enforcement measures. And, as the legal instrument is a Directive, it provides ample flexibility to allow member states specific implementation. Thus, while the framework is not perfect, we do not believe there is a compelling reason to review IPRED at this time. Furthermore, should IPRED be reopened and revised fundamentally in an attempt to address illusory enforcement gaps or weaknesses - particularly through the expansion of rules on the responsibility and liability of intermediaries - we fear for the current core policy balance we have today, which undergirds the European technical market and is needed to preserve innovation and growth potential for European businesses.

**\* In view of your experience with the implementation and application of the rules for setting damages do you see a need to adjust the provisions for the application of that measure?**

- Yes
- No
- No opinion

Please explain:

*1,500 character(s) maximum*

**\* In view of your experience with the implementation and application of the rules for the reimbursement of legal costs do you think that the existing rules have helped effectively in protecting IP and preventing IP infringements?**

- Yes
- No
- No opinion

Please explain:

*1,500 character(s) maximum*

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

- Yes
- No
- No opinion

Please explain:

*1,500 character(s) maximum*

**Other comments on legal proceedings for infringing IPR:**

*3,000 character(s) maximum*

### C.2.3. Procedural safeguards

The measures, procedures and remedies provided for by the Directive shall be fair and equitable and be applied in such a manner as to provide for safeguards against their abuse.

**\* Do you have the feeling that procedural and fundamental rights, such as the right of defence, the right to respect for private life or the right to protection of personal data, are (usually) well respected in the application of the measures, procedures and remedies provided for by the current Directive?**

- Yes
- No
- No opinion

**\* Please explain:**

*1,500 character(s) maximum*

**Comments on procedural safeguards:**

*3,000 character(s) maximum*

#### C.2.4. Other issues

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

- Yes
- No
- No opinion

**\* Please explain:**

*1,500 character(s) maximum*

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

- Yes
- No
- No opinion

**Please explain:**

*1,500 character(s) maximum*

We believe that the current framework has, on many levels, been a success in promoting innovation and opportunity online, to the benefit of Internet users. In freeing service providers to grow their services without having to become censors or monitors, it has helped support the emergence of the Internet economy, generating benefit both for the general public and for copyright holders who have been able to access new markets for



their works.

Liability limitations, such as those established in the E-Commerce Directive, have helped expand the value of and the market for copyrighted works. They have facilitated the growth of online services which, in turn, have become conduits for the marketing and licensing of copyrighted works to far more people than might have had access to them if such services had not existed. They have enabled a market for smaller and amateur content creators who can easily generate revenue from their content for the first time. With effective limitations on liability, copyright owners, online services, and the public can enjoy a mutually beneficial relationship.

**\* Do you consider that the Directive has been implemented by all Member States in a way that a high, equivalent and homogeneous level of IPR protection has been achieved in the Internal Market?**

- Yes
- No
- No opinion

Please explain:

*1,500 character(s) maximum*

As we answered in the similar question #1, a Directive, like IPRED, is designed to provide minimum standard guidelines for member states to inform their approach, and is not designed to be implemented in a homogeneous manner across them. We do not view this as a problem in practice, and moving to greater homogeneity could potentially pose risk of duplication of prosecution or other inefficiencies.

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

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This section will address a number of issues which are currently not dealt with by the directive but might be taken up in any future initiative in order to modernise the enforcement of IPR.

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### D.1. Intermediaries

This sub-section aims to generate views on the role, responsibility and scope of engagement of intermediaries in IP enforcement. The questions should provide the Commission services with stakeholder experience with the implementation and application of voluntary cooperation initiatives involving intermediaries in the prevention of IP infringements.

**\* Do you have experience with the involvement of intermediaries in the prevention of IPR infringements?**

- Yes  
 No

**\* This experience concerned which intermediary?**

- |   |   |
|---|---|
| <input type="checkbox"/> Advertising service provider               | <input checked="" type="checkbox"/> Mobile apps marketplace |
| <input type="checkbox"/> Contract manufacturing service provider    | <input type="checkbox"/> Press and media company            |
| <input type="checkbox"/> Business-to-business data storage provider | <input type="checkbox"/> Online marketplace                 |
| <input type="checkbox"/> Business-to-consumer data storage provider | <input type="checkbox"/> Payment service provider           |
| <input checked="" type="checkbox"/> Content hosting platform        | <input type="checkbox"/> Retailer                           |
| <input type="checkbox"/> Domain name registrar                      | <input type="checkbox"/> Search engine                      |
| <input type="checkbox"/> Domain name registry                       | <input type="checkbox"/> Social media platform              |
| <input type="checkbox"/> DNS hosting service provider               | <input type="checkbox"/> Transport and logistics company    |
| <input type="checkbox"/> Internet Access Provider                   | <input type="checkbox"/> Wholesaler                         |
| <input type="checkbox"/> Don't know                                 | <input type="checkbox"/> Other                              |

\* Please specify:

*500 character(s) maximum*

**\* Which IPR were covered by these voluntary cooperation schemes?**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Copyright  | <input checked="" type="checkbox"/> Rights related to copyright   |
| <input checked="" type="checkbox"/> Community trademark rights   | <input type="checkbox"/> Community design rights  |
| <input checked="" type="checkbox"/> National trademark rights  | <input type="checkbox"/> National design rights   |
| <input type="checkbox"/> Patent rights (including rights derived from supplementary protection certificates) | <input type="checkbox"/> Geographical indications   |
| <input type="checkbox"/> Rights of the creator of the topographies of a semiconductor product                | <input type="checkbox"/> Plant variety rights   |
| <input type="checkbox"/> Sui generis right of a database maker   | <input checked="" type="checkbox"/> Trade names (in so far as these are protected as exclusive property rights in the national law concerned) |
| <input type="checkbox"/> Utility model rights  | <input type="checkbox"/> Other  |
| <input type="checkbox"/> Don't know  |   |

\* Please specify:

*500 character(s) maximum*

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

- Yes
- No
- No opinion

Please explain:

*1,500 character(s) maximum*

The phrasing of this question makes it difficult to answer in a binary yes/no format, so although we answered "no", the truth is far more nuanced and somewhere in between. We could just as easily answer "yes", as intermediaries play an important role in practice in many aspects of the communication and processes inherent in identifying and managing infringing activity. For more details please see EDiMA's IPRED filing, which provides greater depth and detail on this aspect.

Instead, we answer "no" because private actors such as intermediaries are not institutionally competent to determine nor enforce the rights of copyright holders. Practical problems as well as principle violations occur when intermediaries are coerced to play the role of judge, jury and executioner for content and activities which they may have no knowledge or direct control over. We believe that any changes that would, through voluntary measures or otherwise, oblige intermediaries to face greater liability would risk stunting the growth of e-commerce, innovation, and opportunity in the Single Market, and would fundamentally undermine the benefits of the E-Commerce Directive.

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

- |   |  |
|---|--|
| <input type="checkbox"/> Advertising service provider               | <input type="checkbox"/> Mobile apps marketplace         |
| <input type="checkbox"/> Contract manufacturing service provider    | <input type="checkbox"/> Press and media company         |
| <input type="checkbox"/> Business-to-business data storage provider | <input type="checkbox"/> Online marketplace              |
| <input type="checkbox"/> Business-to-consumer data storage provider | <input type="checkbox"/> Payment service provider        |
| <input type="checkbox"/> Content hosting platform                   | <input type="checkbox"/> Retailer                        |
| <input type="checkbox"/> Domain name registrar                      | <input type="checkbox"/> Search engine                   |
| <input type="checkbox"/> Domain name registry                       | <input type="checkbox"/> Social media platform           |
| <input type="checkbox"/> DNS hosting service provider               | <input type="checkbox"/> Transport and logistics company |
| <input type="checkbox"/> Internet Access Provider                   | <input type="checkbox"/> Wholesaler                      |
| <input type="checkbox"/> Don't know                                 | <input type="checkbox"/> Other                           |

**\* Please specify:**

*500 character(s) maximum*

**In your opinion, what are the essential elements for a successful voluntary cooperation between rightholders and intermediaries?**

*1,500 character(s) maximum*

**\* On the basis of your experience what are the main challenges in establishing a successful cooperation between rightholders and intermediaries?**

- Economic interests (e.g. additional costs)
- Specific regulatory requirements
- Technology
- Other
- No opinion

**\* Please specify:**

*500 character(s) maximum*

**\* Did you experience any limitation in terms of access to services or products previously provided by intermediary service providers due to their involvement in the prevention of IPR infringements?**

- Yes
- No
- No opinion

Please explain:

*1,500 character(s) maximum*

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

- Yes
- No

**\* How could fundamental rights be negatively affected?**

- Limitation of freedom of expression
- Limitation of freedom to conduct business
- Limitation of the right to due process
- Limitation to the dissemination of legal content
- Other

**\* Please specify:**

*500 character(s) maximum*

Enhancing the role and obligation of intermediaries-beyond the current framework-can have negative impacts, particularly if implemented through i

informal/self-regulatory measures. The core competency of intermediaries is to deliver technical services, not make legal judgments. Shifting more involvement to them puts them in a role they're not institutionally competent: being arbiters of legality & rights. Such duty should remain the province of judicial and legal authorities.

**\* In view of your experience which model would you consider most efficient for the involvement of intermediaries in the prevention of IPR infringements?**

- Voluntary cooperation between rightholders and intermediaries (partners adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements))
- Co-regulation (basic principles laid down in a legislative act and entrusting the attainment of the objectives defined to the partners)
- Statutory cooperation
- Other model
- No opinion

\* Please specify:

*1,000 character(s) maximum*

## D.2. Specialised courts

This sub-section seeks to explore if, following the example of the Community trade mark courts, the designation of specialised national courts for matters of infringement and validity of IPR could help to strengthen the protection of IPR and the efficacy of IPR enforcement.

**\* Do you have experience with courts, courts' chamber or judges specialised in IP matters in your country of residence?**

- Yes
- No

Please provide detail:

*1,500 character(s) maximum*

**\* Does legal action at a court specialised in IPR matters provide an added value compared to legal actions at other courts?**

- Yes
- No
- No opinion

Please explain:

*1,500 character(s) maximum*

**\* What is the added value?**

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

**\* Please specify:**

*500 character(s) maximum*

### D.3 Other issues

**\* Do you identify any other issue outside the scope of the current legal framework that should be considered in view of the intention to modernise the enforcement of IPR?**

- Yes
- No
- No opinion

Please explain:

*1,500 character(s) maximum*

### E. Other comments

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

- Yes
- No

**\* Please explain:**

*3,000 character(s) maximum*

Given Mozilla's diversity of interests as a united organisation, we believe the forced choice of type of stakeholder, through the selection of a form and the first section of the chosen form, impedes our ability to make our full views known to the Commission. We innovate and create as a technology company, a non-profit foundation, and a global community. We

hold copyrights, trademarks, and other exclusive rights, and we've pioneered open licenses to share our works with others. With this backdrop, we would have preferred a consultation structured to accommodate all interests through the same questions and structure. In lieu of such opportunity for fulsome engagement, we take the liberty to send a letter to complement this filing which further articulates Mozilla's positioning in the digital ecosystem, and why this is relevant for the Commission's approach to enforcement of IPR.

## Useful links

Enforcement of intellectual property rights ([http://ec.europa.eu/growth/industry/intellectual-property/enforcement/index\\_en.htm](http://ec.europa.eu/growth/industry/intellectual-property/enforcement/index_en.htm))

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

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

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## Background Documents

[DE] Datenschutzerklärung (</eusurvey/files/25c5d987-2467-47e8-910c-a4733cd7488b>)

[DE] Hintergrund (</eusurvey/files/81667da2-51bf-4f65-b9e8-a978a9498268>)

[EN] Background information (</eusurvey/files/2ed412ac-400d-4796-94c9-37d58e724cd4>)

[EN] Privacy statement (</eusurvey/files/995adeb9-0ad8-4ed4-b036-d07e70b73b30>)

[ES] Antecedentes (</eusurvey/files/5128cccf-9568-4cde-90cd-0b87b1462cee>)

[ES] Declaración de confidencialidad (</eusurvey/files/1b6fc94d-687b-4787-acb0-e59eee9b193d>)

[FR] Contexte (</eusurvey/files/9949a17c-9deb-4eeb-8d42-d7405a10b80c>)

[FR] Déclaration relative à la protection de la vie privée (</eusurvey/files/52d0153e-0bb3-4809-9074-d3c945daa693>)

[IT] Contesto (</eusurvey/files/0397c708-3a93-450b-99f8-d238986f3227>)

[IT] Informativa sulla privacy (</eusurvey/files/574a2286-b14a-471a-a803-f94ff5173ba8>)

[PL] Kontekst (</eusurvey/files/685910a4-4a2e-481e-8bdd-35739080d305>)

[PL] Oświadczenie o ochronie prywatności (</eusurvey/files/72d8d32c-a541-4395-923a-5d3b6688d2e3>)

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## Contact

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