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

Fields marked with * are mandatory.

Objectives and General information

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

You are invited to read the privacy statement^[1] for information on how your personal data and contribution will be dealt with.

Please complete this section of the public consultation before moving to other sections.

Respondents with disabilities can request the questionnaire in .docx format and send their replies in email to the following address: GROW-IPRCONSULTATION@ec.europa.eu.

If you are an association representing several other organisations and intend to gather the views of your members by circulating the questionnaire to them, please send us a request in email and we will send you the questionnaire in .docx format. However, we ask you to introduce the aggregated answers into EU Survey. In such cases we will not consider answers submitted in other channels than EU Survey.

If you want to submit position papers or other information in addition to the information you share with the Commission in EU Survey, please send them to GROW-IPRCONSULTATION@ec.europa.eu and make reference to the "Case Id" displayed after you have concluded the online questionnaire. This helps the Commission to properly identify your contribution.

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

[1] Add link.

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

Name; IMPF, Independent Music Publishers Forum;
Address; 100 rue de Veeweyde, 1070 Brussels;
Website; <http://impforum.org/home/>
Contact; gh@gerhatton.eu

*** 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

***Register
ID number**

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

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

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

A. Identification

***You are a rightholder or a rightholders'
association?**

- Rightholder
- Rightholders' association

***You are what type of rightholders'
association?**

- Umbrella/cross-sector association
- Sector association
- SME
- National
- European
- International

***Please indicate your country of residence,
establishment or
profession:**

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

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

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

If possible please specify with four-digit NACE classification:

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In which Member State(s) do you trade?

- | | | |
|---|--|---|
| <input type="checkbox"/> Austria | <input type="checkbox"/> Belgium | <input type="checkbox"/> Bulgaria |
| <input type="checkbox"/> Cyprus | <input type="checkbox"/> Croatia | <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"/> 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 | <input checked="" type="checkbox"/> All EU member states | |

***What type of IPR do you hold/represent?**

- | | |
|--|--|
| <input checked="" type="checkbox"/> Copyright | <input type="checkbox"/> Community trademark rights |
| <input type="checkbox"/> Community design rights | <input checked="" type="checkbox"/> Rights related to copyright |
| <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 | |

B. Exposure to and impact of infringements

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

- Yes
 No

Please provide detail:

1500 character(s) maximum (329 characters left)

Despite the existence of a myriad of legal services of all kinds (pay-per-download, subscription services, ad-based services, etc.), and despite the great efforts to adapt to new technologies (currently, there are more than 200 different online services in Europe, offering a digitised catalogue of more than 43 million tracks), music publishers continue to experience unacceptable levels of copyright infringements that affect a wide variety of lines of business. The situation is so dramatic that monetisation has become almost impossible due to its wide availability from unauthorised sources. Additionally, the extended occurrence of copyright infringements in the audio-visual (AV) sector undermines the value of synchronisation licenses for the use of music in AV products, affecting music publishers' bottom line. Finally, there are business models constantly being created which are based on third parties incurring in copyright infringement. These services then leverage the difficulty for rightsholders (RHs) to enforce their copyright as a way to acquiring licenses at rates that are way below what would be requested if copyright could be adequately enforced.

How do infringements impact on your business?

- Loss of turnover
 Monitoring costs (e.g. technical measures for prevention and detection)
 Litigation costs
 Free promotion of the brand/product
 Reputational damage
 Non-legal enforcement costs (e.g. notice and action procedures)
 Other

Please specify:

1000 character(s) maximum (104 characters left)

There's a decrease in the perceived value of music in all formats due to its widespread availability through unlicensed services. Most of these hide behind safe harbour to avoid licensing, which allow them to make available user uploaded copyright protected content in such quantities that it's impossible to track. This puts rightsholders at a disadvantage when trying to negotiate a remuneration with those services that want to legitimise their services, which results in low rates and exercises a downward pressure on tariffs negotiated with legitimate services. Due to the decrease of income and increase of monitoring and enforcement costs, the capacity to invest in finding and nurturing talent has been severely diminished. It's frustrating for music publishers, especially SMEs, all the members of IMPF, to see their capacity to support songwriters & composers undermined in this way.

What is the overall financial impact of IPR infringements on your turnover?

- Positive
 Negative

Please provide an estimation in percentage of overall turnover.

%

From your experience, how did the occurrence of IPR infringements develop over the last 10 years?

- Decreased
 Increased
 Unchanged
 Don't know

Please provide detail:

1500 character(s) maximum (8 characters left)

Although the past years have seen significant growth of legal offer, music publishers have experienced an increase in copyright infringements, notably online. While physical infringement is still occurring (such as physical copies of sheet music), new forms of copyright infringements have been developed over the past decade, such as cyber lockers, torrent and stream ripping services, as well as accessed to unlicensed user uploaded content through online platforms, such as YouTube and social media. However, the most disappointing development has been the institutionalisation of certain types of online copyright infringements. A myriad of companies, such as YouTube or SoundCloud, were created with business models based on the near impossibility to enforce copyright when third parties make it available through their services. Google has reported that it has been asked to remove 100,000 every hour, which shows the ineffectiveness of a system that is based on rightsholders policing the Internet. Even in those cases where services of this kind agree to pay remuneration, the amounts paid are way lower than what could have been negotiated at an arm's length transaction, i.e. if they would have been able to prevent the unauthorised making available of copyrighted content. Additionally, illegal services compete unfairly with legal ones, putting downward pressure on the royalties that rightsholders (RHs) can request; i.e. there is a transfer of value from RHs to online platforms

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

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

C.1. Overall functioning of the enforcement framework

Have you filed legal action against infringers of your IPR?

- Yes
 No

In which Member State(s) did you litigate most?

at most 3 choice(s)

- Austria Belgium Bulgaria
 Cyprus Croatia Czech Republic
 Denmark Estonia Finland

- France Germany Greece
 Hungary Ireland Italy
 Latvia Lithuania Luxembourg
 Malta Netherlands Poland
 Portugal Romania Slovakia
 Slovenia Spain Sweden
 United Kingdom

For these jurisdictions please provide your overall experience and satisfaction with the legal framework for civil enforcement of IPR (please indicate Member State concerned first)?

	Overall experience and satisfaction
Member State 1	
Member State 2	
Member State 3	

Do you think that the existing rules – as provided by the Directive and implemented at national level – have helped effectively in protecting IP and preventing IPR infringements?

- Yes
- No
- Partly
- No opinion

Please explain:

1500 character(s) maximum (153 characters left)



While the Directive has had an overall effect in curbing offline piracy; its impact as regards online piracy has been limited and it does not provide adequate remedies for RHs. There are also problems with implementation and application. This was confirmed by the Commission itself in its 2010 Report on the Application of the Directive, where it is said that "[t]he Directive was not designed with the challenge [of the unprecedented increase in opportunities to infringe intellectual property rights offered by the Internet] in mind". 12 years after its adoption it is clear that copyright infringements on the Internet adversely affect copyright holders of all sectors and of all sorts, who in this period of time have not ceased to warn against the negative impact of the current situation on the cultural sector. Additionally, there have been many calls in Commission Communications, Council Resolutions and reports of the European Parliament to address this problem, which is proof that the current legal framework has not achieved the objective of ensuring a high level of copyright protection in the Internal Market. However, the limitations of the current legal framework are not restricted to the IPR Enforcement Directive. The eCommerce Directive, for example, has addressed ISP-hosted content through notice and take down procedures.

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Do you consider that the measures and remedies provided for in the Directive are applied in a homogeneous manner across the MS?

- Yes
 No
 No opinion

Please explain:

1500 character(s) maximum (111 characters left)

As has been noted by the report of the Legal Sub-Group of the European Counterfeiting and Anti-Piracy Observatory (EUIPO), the conditions imposed by national law or by jurisprudence for injunctions with respect to intermediaries vary widely from one Member State (MS) to another. These variations allow that in some countries the injunctions may cover future infringements of musical works, while in others they are limited to the specific infringements that are the subject matter of the case. The lack of harmonised implementation of art. 11 of the IPR Enforcement Directive (and Article 8 (3) of the InfoSoc Directive) makes it very difficult for RHs to pursue their rights in other MS. Different legal regimes throughout the European Union render the cross border enforcement of rights confounded and consequently very costly. Additionally, national differences have also been detected as regards the right of information, the production and preservation of evidence and the application of damages and corrective measures. These differences have as a consequence that potential infringers may engage in forum-shopping and establish themselves in the friendliest jurisdictions. It is of paramount importance that the EU legislates to harmonise Member State's practices and to provide effective cross border measures. This is especially important in the online and mobile environment.

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

Responses to this section should be based on the overall experience with the measures, procedures and remedies provided for by IPRED as implemented and applied at national level. If appropriate please specify in your response, to the extent possible, particular national issues or practices and the jurisdiction concerned.

C.2.1 Evidence (Articles 6 and 7)

Would you consider that the measures provided by IPRED are effective means for presenting, obtaining and preserving evidence?

- Yes
 No
 No opinion

Please explain:

1500 character(s) maximum (40 characters left)

As indicated in the Report on Evidence and Right of Information on IPR of the European Observatory on Counterfeiting and Piracy (now EUIPO), there are a number of shortcomings as regards the tools provided by the IPR Enforcement Directive on presenting, obtaining and preserving evidence that affect the disclosure of financial documents in cases of non-commercial scale infringements, search and seizure orders, prohibitive costs and the lack of certainty of computer and/or Internet based evidence. Concerning the presentation of evidence, the Directive leaves it to national laws which results in different requirements being asked in different MS. The EU should ensure that Articles 6/7 are updated for the digital age, including the acceptance of internet-based evidence without additional formalities being required, and uniformly applied across the EU. In particular, music publishers still have to establish full chain of title before being in a position to bring proceedings. Moreover, we are concerned that representative action (for instance by trade associations) is not possible under the rules of the IPR Enforcement Directive. Such an option for trade associations, including European or international ones, would be welcome. In addition to the costs, in particular smaller music publishers or composers are often unwilling to engage in legal proceedings in view of the reputational damage if they put their name publicly towards litigation.

Did you face problems using evidence when making use of your right of information/taking legal action/applying for an injunction in a cross-border situation (judicial authority in your country of establishment and (alleged) infringer/intermediary incorporated or resident in another Member State and/or judicial authority of another EU Member State)?

- Yes
- No

Please explain (please specify to the extent possible the issues and the jurisdictions concerned):

1500 character(s) maximum (16 characters left)

National differences as regards the production and preservation of evidence have occasionally caused that court orders issued in one MS be not accepted in other MS, forcing RHs to bring new legal proceedings. Additionally, the identification of IP addresses by RHs in order to gather evidence of copyright infringement is challenging to say the least. Regardless of whether the ISP allocates a permanent or a dynamic IP address to a subscriber, it is only the ISP which knows the user that has been allocated which IP address. To gather evidence of infringement, RHs use therefore peer-to-peer services and may request that the ISP in question disclose the identity of the infringer. However, ISPs will not normally disclose the identity of the infringer without a court order, and the only way in which a RH can obtain such an order is by invoking the right of information. If RHs are not able to make applications for disclosure in accordance with the right of information, and if such applications are not considered properly by the courts, it is not possible for a RH to identify infringers and RHs are not able to take any action against infringers. It should also be noted that in some EU MS, IP address are considered to constitute personal data. Another problem encountered is the non-harmonised implementation of the EU Data Retention Directive where RHs are finding that, in practice, ISPs don't always retain data for the period required by the Data Retention Directive.

In view of your experience with the application of the rules for having access to and preserving evidence do you see a need to adjust the application of that measure, in particular with regard to preserving evidence in the digital environment?

- Yes
- No
- No opinion

Please explain:

1500 character(s) maximum (1243 characters left)

Arts. 6 and 7 should be updated to facilitate the production, preservation and cross-border acceptance of evidence, notably for computer and/or Internet based evidence, in a homogeneous manner throughout the EU. Please see response to the previous question.

C.2.2. Right of information (Article 8)

Have you made use of your right of information by applying for an order by a judicial authority?

- Yes, against an infringer
- Yes, against an intermediary
- No

Right of information against an infringer

For infringements

at most 2 choice(s)

- Offline
- Online

Where and how often in the past 5 years?

	Never	Once	Rarely (in average not more than once a year)	Occasionally (between 1 and 5 times a year)	Frequently (more than 5 times a year)
In your country of establishment -Against alleged infringer incorporated or resident in your country of establishment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

In your country of establishment - Against alleged infringer incorporated or resident in another Member State	<input type="checkbox"/>	Login About Support Download Documentation				
In other EU Member States (seat or residence of the alleged infringer)	<input type="checkbox"/>					

Did you face problems when making use of your right of information in a cross-border situation (judicial authority in your country of establishment and alleged infringer incorporated or resident in another Member State and/or judicial authority of another EU Member State)?

- Yes
 No
 No experience

Please explain

1500 character(s) maximum (1147 characters left)

The lack of a homogeneous system to exercise the right of information and for orders issued in one MS to accept orders in another MS due to different requisites being applied acts as a deterrent for the exercise of the right of information in cross-border situations. For further details, please see responses to the questions included in section C.2.1.

What was the information requested?

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

Did you usually obtain the information?

- Yes
 No

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

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

How did you use the information?

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

Right of information against an intermediary

For infringements

- Offline
 Online

Against which type of intermediary?

For the purpose of this consultation:

- "Advertising service provider"

Advertising agencies, advertising broker

- "Contract manufacturing service provider"

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

- "Business-to-business data storage provider"

Data storage space and related management services for commercial user.
 • "Business-to-consumer data storage provider"

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

Please specify:

500 character(s) maximum (162 characters left)

Domain privacy services. Although these services are usually US based and beyond the reach of EU courts, they are often used by infringing websites to hide their true identity. We believe that websites offering content to EU consumers should be required to disclose their true identity and not be permitted to use domain privacy services.

Where and how often in the past 5 years?

	Never	Once	Rarely (in average not more than once a year)	Occasionally (between 1 and 5 times a year)	Frequently (more than 5 times a year)
In your country of establishment - Against intermediary incorporated in your country of establishment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In your country of establishment - Against intermediary incorporated in another Member State	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In other EU Member States (seat of the intermediary)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Did you face problems when making use of your right of information in a cross-border situation (judicial authority in your country of establishment and alleged infringer incorporated or resident in another Member State and/or judicial authority of another EU Member State)?

- Yes
 No
 No experience

Please explain:

1500 character(s) maximum (1285 characters left)

Please see responses to questions included in section C.2.1 and C.2.2, in particular as regards the lack of harmonised and homogeneous approach acting as a deterrent for the exercise of the right of information.

What was the information requested?

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

Please specify:

500 character(s) maximum (231 characters left)

Rightsholders face numerous difficulties in accessing information about the identity of infringers, notably due to the lack of obligation for certain intermediaries (hosting service providers and domain name registrars) to verify that users provide their real identity.

Did you usually obtain the information?

Yes No All public surveys

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

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

How did you use the information?

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

Please specify:

500 character(s) maximum (263 characters left)

The ID provided by the infringer to the intermediary is false or inaccurate. Issues with personal data protection rules in the different jurisdictions. Additionally, please see our responses to questions in sections C.2.1 and C.2.2.

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

- Yes
 No
 No opinion

Please explain:

1500 character(s) maximum (486 characters left)

Even in countries where Article 8(1) is implemented, it is often applied inconsistently at national level. The main problems encountered are (1) the fact that courts have rejected claims that the intermediaries' services are not provided on a commercial scale (e.g. in Belgium); (2) the fact that data protection and data retention rules often hinder the right in practice (eg Austria, Germany, Czech Republic, Belgium, Italy, and Sweden); and (3) the fact that accurate data is not available by intermediaries which do not have accurate customer details because there is no obligation for them to obtain and verify customer data, and because they have no obligation to retain the data. Rules that facilitate the access to ID of infringers behind an IP address should therefore be introduced. Please see responses to questions in section C.2.1. Intermediaries, notably those providing hosting services and similar activities, should have an obligation to verify that the ID provided by their customers is real.

Do you consider that the right balance is struck between the right to property and the right to judicial review on the one hand and the right to respect for private life and/or the right to protection of personal data on the other?

- Yes
 No
 No opinion

Please explain:

1500 character(s) maximum (38 characters left)

There is a problem with the right of information when invoked in connection with Internet infringements – in some MS the interpretation of data protection and data retention rules has prevented courts from making information orders altogether and, despite two CJEU cases, the issue has not been clarified. The right to information is a vital tool to address IP infringements on the Internet. Inconsistent or limited application of the right to information allow even IP infringing commercial operators to hide behind privacy rules, depriving RHs of judicial remedies altogether. Some countries apply legislation in such a way as to give preference to data protection over the right of information, making IP enforcement difficult. MS should not impose a requirement that infringement be proved as a precondition for granting an order for disclosure. The words "without prejudice" in Article 8(3) of the Enforcement Directive do not mean that legislation protecting the rights to protection of personal data should take precedence over the right of information. Instead, national courts should have regard to such rights when deciding whether or not to grant an order pursuant to the right of information. Furthermore to ensure that RHs are not prevented from gathering evidence of online copyright infringement, we call for confirmation that gathering and processing IP addresses for the purposes of collecting evidence of infringement is not contrary to EU Law.

C.2.3. Procedures and courts, damages and legal costs (Articles 3, 13 and 14)

Have you filed legal action against infringers of your IPR?

at most 2 choice(s)

- Yes
- No

For infringements of your IPR

at most 2 choice(s)

- offline
- online

Where and how often in the past 5 years?

	Never	Once	Rarely (in average not more than once a year)	Occasionally (between 1 and 5 times a year)	Frequently (more than 5 times a year)
In your country of establishment - Against alleged infringer incorporated or resident in your country of establishment	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In your country of establishment - Against alleged infringer incorporated or resident in another Member State	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In other EU Member States (seat or residence of the alleged infringer)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

- Yes
- No
- No experience

Please explain:

1500 character(s) maximum (1169 characters left)

Some of our members have found it difficult to pursue their rights in other Member States due to lack or inadequate implementation of art. 11 of the IPR Enforcement Directive and art. 8.3 of the InfoSoc Directive. In general lack of harmonisation is a barrier for the cross-border enforcement of copyright and increases its costs.

What was the reason for taking an infringer to court?

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

Please specify:

500 character(s) maximum (430 characters left)

To have a deterrent effect on other entities engages in online piracy.

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

months

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

months

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

- Yes
 No

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

- Yes
 No

Please explain:

500 character(s) maximum (381 characters left)

Even if the reimbursement of legal costs is granted, it is normally insufficient to fairly compensate the rightsholder.

The reimbursement of legal costs covered the following expenses:

	Fully covered	Partly covered	No
Court fees for instituting proceedings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other court fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
External expert(s) costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In-house costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Attorney's charge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Additional attorney's fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was the reimbursement of legal costs sufficient?

- Yes
 No

Please explain:

500 character(s) maximum (396 characters left)

They are insufficient because they normally don't take into account the actual costs of the proceedings.

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

- Yes
 No
 Don't know

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

- Yes
 No
 No opinion

Please explain:

500 character(s) maximum (221 characters left)

The IPR Enforcement Directive should be amended to ensure that limitations such as caps do not prevent RHDs from being awarded their actual costs, including research ones. Additionally, deterrent costs should be imposed on defendants making meritless claims for delaying purposes.

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

- Yes
 No

Did you receive damages?

- Yes
 No

The damages received included:

	No	Partly covered	Fully covered	Not applied for	Not applicable
Lost profit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unfair profits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Moral prejudice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lump sum	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

- Yes
 No
 No opinion

What are the main obstacles to a sufficient compensation?

- Limitations in law
 Application of the rules in court
 Other

Please specify:

500 character(s) maximum (98 characters left)

Until the recent CJUE judgement on the Liffers case (C-99/15), damages could only be established applying either art. 13.1(a) or 13.1(b) of the IPR Enforcement Directive. Following the judgement, the Directive needs to be adjusted to allow for both options to be applied. Additionally, damages are often based on the sample of works used in the proceedings, which is only a part of total infringements.

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

- Yes
 No
 Don't know

Please specify:

500 character(s) maximum (148 characters left)

Liability for secondary copyright infringements is not harmonised at EU level: While in some countries there is a good legal basis for secondary liability (e.g. UK), in others, no legal basis exist (e.g. Holland) or courts rarely apply it (e.g. in Germany where courts often only grant injunctive relief based on its concept of "interferer liability").

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

Please explain:

500 character(s) maximum (117 characters left)

Rightsholders are often only compensated under the lost profits standard, which is almost impossible to calculate online. The implementation of a regime of statutory damages, punitive damages and lump sums or additional damages covering all works infringed by a service without being required to submit evidence in respect of each title is required to make civil enforcement viable.

C.2.4. Provisional and precautionary measures and injunctions (Articles 9 and 11)

Have you applied for provisional and precautionary measures in case of an infringement of your IPR?

- Yes, against an infringer
 Yes, against an intermediary
 No

Have you applied for an injunction in case of an infringement of your IPR?

- Yes, against an infringer
 Yes, against an intermediary
 No

No use of injunctions

What are the reasons for not applying for an injunction?

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

Please specify:

500 character(s) maximum (65 characters left)

Unfortunately, music publishers have little experience in applying for provisional and precautionary measures in cross border situations. The reason is the difficulty and costs of trying to enforce these measures cross border. We call upon the EC to amend IPRED to provide for an improved system of cross border measures. This should include obliging Courts to enforce provisional and precautionary measures made by Courts of other MS.

In view of your experience with the application of the rules for provisional and precautionary measures and injunctions do you see a need to adjust the application of these measures?

- Yes
 No
 No opinion

Should the Directive explicitly establish that all types of intermediaries can be enjoined?

- Yes
 No
 No opinion

Please explain:

1500 character(s) maximum (860 characters left)

The Directive should explicitly establish that all types of intermediaries can be enjoined, as well as any person "likely to contribute to resolving the problem", as is indicated in French law. Additionally, even though there are clear rules in the eCommerce Directive and in the InfoSoc Directive on the continued availability of injunctive relief irrespective of liability, there has been some confusion in this respect. Therefore, it should be clearly established that all intermediaries should be subject to injunction, regardless of liability status, since they are undoubtedly the best placed to stop or prevent further infringement.

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

Please explain:

1500 character(s) maximum (1500 characters left)

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

Please explain:

1500 character(s) maximum (766 characters left)

Although, this principle is already included in recital 45 of the E-Commerce Directive, which allows "orders by courts or administrative authorities requiring the termination or prevention of any infringement, including the removal of illegal information or the disabling of access to it", the obligation for intermediaries to take measures preventing further infringements should be included in the Directive itself to avoid litigation. Otherwise, intermediaries may wait until this obligation is imposed upon them by a court of law before implementing those measures. A court, however, should be allowed to assess to what extent the intermediary is indeed adopting all the measures that are available to comply with this obligation.

In that respect should the Directive establish criteria on how preventing further infringements is to be undertaken (in the on-line context without establishing a general monitoring obligation under the E-Commerce Directive)?

- Yes
 No
 No opinion

Please explain:

1500 character(s) maximum (29 characters left)

A set of criteria on how to prevent further infringements would be useful, but they should be open enough to avoid obsolescence due to changes in technology or the activities of the intermediaries. Applying the same rules to a website hosting provider and to a YouTube-like service, as the E-Commerce Directive does, has proven ineffective. Attention should be paid as to whether or not the service is already applying measures to prevent the dissemination of certain contents (such as nudity) and not others, if it provides tools to facilitate the search of specific copyright protected content or makes recommendations based on past searches of copyright protected content. The application of those tools give an indication of the technical capability of the service in terms of content identification, and as such can define the extent of its cooperation. Additionally, the Directive could include a combination of all the different measures that have been implemented at national level. Regarding monitoring, the E-Commerce Directive prevents obligations of a general nature, but allows case specific monitoring, as confirmed in its Recital 47. Criteria on what constitutes a general versus a specific monitoring obligation could also be useful. It should also be noted that ISPs already use filtering techniques and similar network management technology to deal with malware, spam, cyber-attacks, etc., and generally to allow for bandwidth allocation and management.

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

Please explain:

All public surveys

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1500 character(s) maximum (8 characters left)

While a definition of the term "intermediary" might be useful, the key question remains the degree of involvement of the intermediary with the content they transmit, store or other. The exemption of liability for certain types of "intermediaries" is being exploited by services which are not merely hosting content but knowingly providing access and sharing unlicensed copyrighted content. The current situation, characterised by an unbalanced market, leads to diminishing income for creators who cannot sufficiently monetise their works. Any so-called "intermediary" engaged in acts which constitute active participation or intervention including adapting, presenting, selecting, organising, promoting, aggregating or curating the works being communicated or made available, or expanding the circle of people who may access those works should not be considered "intermediaries" any longer. This should apply irrespective of whether the works have been or are being communicated or made available to the same members of the public already. Under the current situation, RHs only have the following options: accept licenses at an unacceptable value; accept the fact that they would receive no remuneration at all; or send extremely costly and burdensome NTD notices with the unfortunate certainty that the illegal content will pop up again in another site. The current situation allows a negotiating "card" to be played by services in order to avoid or reduce royalty fees to content owners.

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

Please explain:

1500 character(s) maximum (1070 characters left)

These issues have already been subject of clarification by CJEU cases. Although it is true that alleged attack on the right of freedom of information has often been used as an excuse not to block access to unlicensed copyright protected material, we believe that generally courts are best placed to assess whether a balance between the effective implementation of a measure and the right to freedom of information has been struck.

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

- Yes
 No
 No opinion

Please explain:

1500 character(s) maximum (914 characters left)

Further issues that should be considered may include the introduction of measures that prevent the same type of infringements to re-appear under different IP addresses or domain names, or in general any circumvention of the law. Additionally, any measure that facilitates the application of provisional and precautionary measures and injunctions with cross-border effects and for similar intermediaries would also be extremely useful. For RHs, the introduction of injunctions that cover a whole catalogue would be very welcomed, as would the introduction of of cross border injunctions.

C.2.5. Publication of judicial decisions

Have you requested in legal proceedings instituted for infringement of an IPR the decision to be published in full or in part?

- Yes
 No

Do you see a need for / added value in a more systematic dissemination of the information concerning the decision in legal proceedings instituted for infringement of an IPR?

- Yes
 No
 No opinion

Please explain:

1500 character(s) maximum (1324 characters left)

One additional point for improvement would be allowing associations representing RHs to bring litigation on behalf of their members. Article 4 should be amended in this regard.

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C.2.6. Other issues

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

- Yes
 No
 No opinion

Please specify the relevant provisions and explain.

1500 character(s) maximum (1367 characters left)

One additional point for improvement would be allowing associations representing RHs to bring litigation on behalf of their members.

D. Issues outside the scope of the current legal framework

D.1. Role of intermediaries in IPR enforcement and the prevention of IPR infringements

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

- Yes
 No
 No opinion

Which intermediaries are best placed to prevent infringements of IPR?

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

Do you cooperate with intermediaries in the protection and enforcement of your IPR?

- Yes
 No

Which intermediaries do you cooperate with?

- | | |
|---|---|
| <input type="checkbox"/> Advertising service provider | <input type="checkbox"/> Contract manufacturing 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"/> Domain name registrar |
| <input type="checkbox"/> Domain name registry | <input type="checkbox"/> DNS hosting service provider |
| <input checked="" type="checkbox"/> Internet Access Provider | <input type="checkbox"/> Mobile apps marketplace |
| <input type="checkbox"/> Press and media company | <input type="checkbox"/> Online marketplace |
| <input type="checkbox"/> Payment service provider | <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 |
| <input checked="" type="checkbox"/> Other | |

Please specify:

500 character(s) maximum (60 characters left)



ISPs are the gatekeepers of the Internet. It is unrealistic to suppose that RHs have the resources to deal with all unlicensed uses of their copyrighted content across all providers. It is through the efforts of ISPs and other intermediaries, working with RHs, that effective solutions can be found. All intermediaries, including domain privacy services, should have a duty of care to prevent their services being used for IPR infringement.

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How do you cooperate with these intermediaries?

- Bilaterally
 Within a multilateral cooperation agreement
 Other

Please specify the agreement and its scope:

500 character(s) maximum (381 characters left)

This cooperation depends greatly on the specific situation with the intermediary and the country where it is based.

Please specify:

500 character(s) maximum (432 characters left)

Cooperation is often more effective if encouraged by the government.

Do you consider your cooperation with intermediaries successful?

- Yes
 No
 No opinion

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

- Economic interests (e.g. additional costs involved)
 Technology
 Specific regulatory requirements
 Other

Please specify:

500 character(s) maximum (113 characters left)

It varies depending on the type of intermediary, but a combination of all of the above plus a lax application of the safe harbour provisions are the main challenges in realising a full cooperation from intermediaries. Regardless of the liability regime, some specific obligations to cooperate with rightholders should be placed on intermediaries depending on their level of involvement.

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

D.2. Specialised courts

Have you filed legal actions with a court, a court's chamber or a judge specialised in IP matters?

- Yes
 No

In which Member State(s)?

- Austria Belgium Bulgaria
 Cyprus Croatia Czech Republic
 Denmark Estonia Finland
 France Germany Greece



- All public surveys
- | | | |
|--|--------------------------------------|--|
| <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"/> Poland |
| <input type="checkbox"/> Portugal | <input type="checkbox"/> Romania | <input type="checkbox"/> Slovakia |
| <input type="checkbox"/> Slovenia | <input type="checkbox"/> Spain | <input checked="" type="checkbox"/> Sweden |
| <input checked="" type="checkbox"/> United Kingdom | | |

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Which rights were covered by the competence of the court?

- | | |
|--|--|
| <input type="checkbox"/> Copyright | <input type="checkbox"/> Community trademark rights |
| <input type="checkbox"/> Community design rights | <input checked="" type="checkbox"/> Rights related to copyright |
| <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 | |

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

- Yes
 No
 No opinion

Please specify the added value:

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

Please specify:

500 character(s) maximum (361 characters left)

In addition to specialised courts, specialized IPR Police Units, such as the UK Police Intellectual Property Crime Unit, bring added value.

D.3. Other issues outside the scope of the current legal framework

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

- Yes
 No
 No opinion

Please specify:

3000 character(s) maximum (4 characters left)

First, an obligation for online operators to verify the identity of their users. Second, a review of the scope of safe harbour provisions under the eCommerce Directive to avoid abuse, notably by services providing user uploaded content. Third; notice and take down procedures be replaced by notice and stay down ones. On a more general note, while the importance of copyright is often praised publicly by EU officials and institutions, its protection has not been a priority at EU level in the past decade. The different calls for action made in Commission Communications, Council Resolutions and reports from the European Parliament in respect to bringing enforcement rules in line with the challenges of the digital era have so far not been answered. However, if the inaction of EU institutions as regards the protection of copyright, notably in the Internet, has been disappointing, it is even more discouraging to see how the ECJ has abandoned in its recent jurisprudence the high level of protection introduced by the Copyright in the Information Society Directive. The "new public" criterion set by the ECJ in the Svensson case for acts of communication to the public is a good example thereof. It's fallacious and it opens the door for services to avoid requesting a license for cases of retransmission of copyright protected content, even if the retransmitting service is building its business on serving up said content. But what's more important is that it introduces an unheard of limitation to the exercise of the right of communication to the public showing that the provision of a high level of copyright protection has ceased to be the standard for the ECJ. Decisions like this one give fuel to those online platforms that just want to take a free ride on the investment in creation incurred by RHs. It is therefore paramount that once and for all the EU institutions go back to a high level of copyright protection as standard and that they put IPR enforcement high on its list of priorities. Now that the depiction of copyright as out-dated and as an obstacle to the development of the Information Society has proved to be unfounded, it is time to act and abandon past ambiguities as regards copyright protection. Copyright is the tool to create value out of something that is intangible such as creativity.

With that in mind, and albeit not completely unrelated to the legal framework, the Commission should develop an IPR enforcement strategy based on key performance indicators. In other words, the objective should not be to introduce cosmetic changes but to develop a comprehensive agenda with a clear objective in mind: reducing the level of copyright infringements to acceptable levels. That agenda should include the implementation of a variety of strategies that combined will surely be more effective than in isolation. For a long time we have heard that copyright enforcement in the Internet is impossible. It is not. If there is political will it can be achieved.

E. Other comments

Do you have any other comments?

- Yes
 No

Please specify:

3000 character(s) maximum (923 characters left)

As stated above, the level of copyright infringement, notably in the Internet, has reached alarming levels. Piracy, but perhaps more importantly the dramatic decrease in the perceived value of music, has hit music publishers, as well as songwriters and composers, very hard. Small and medium sized publishers and niche creators have proved to be particularly vulnerable to widespread availability of licensed music. Due to piracy, it has become increasingly difficult for non-mainstream musicians (and those who invest in music) to survive in the current market conditions. Many small and medium-sized music publishers have been forced to close operations, while others are struggling to stay afloat. There are thousands of talented songwriters and composers who find it very hard, if not impossible, to make a living in the current conditions. However, the irony lies in the fact that never before has the consumption of music been so high. In the face of a vast amount of anonymous stories of musicians and music publishers being forced out of business, we see the many success stories of online platforms based on the provision of copyright protected content. In some cases some of those services simply refuse to acquire licenses. In others, legitimate services push for rates that do not reflect the true value of music in order to compete with illegitimate ones. The bottom line is a transfer of value in various degrees from creators and from those who invest in creation to online platforms and Internet Service Providers. It is paramount to reverse the situation in order to guarantee a viable future, for without the creators and the investment in talent, those services will ultimately lose consumer appeal.

Note re completing the survey; IMPF, as an umbrella organisation representing independent music publishers has no direct involvement in legal proceedings for copyright enforcement. Our responses therefore do not reflect direct experience in trying to enforce copyright in courts of law, but summarise information received from music publishers members.

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