



Promoting Intellectual  
Property Rights in the  
ASEAN Region

# EU Legislative best practices in combatting online IPR infringements

Véronique Delforge | Alicante | 20/04/2022



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# Content

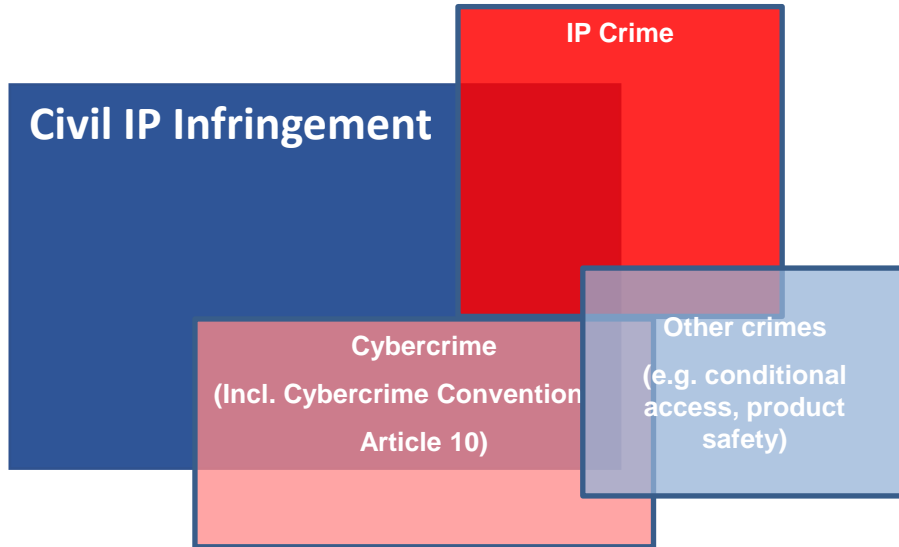
## EU approach to online IPR enforcement

<b>Robust Legislation</b>		<b>Stick</b> Intermediaries (civil) liabilities <u>Use Case</u> : CJEU YouTube/Cyando			<b>Cooperation with intermediaries</b> and good practices	<b>Carrot, Education, data</b>	<b>Next Steps: DSA!</b>
International	Europe	Direct Liability	Exemptions from Liability	Injunctions			

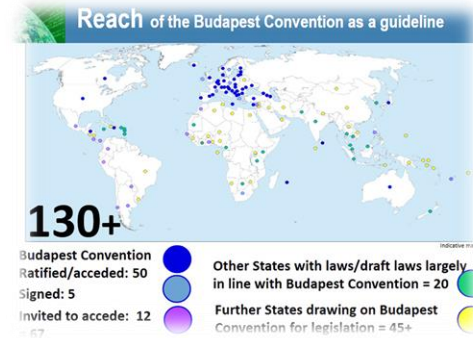


- **Robust legislation as a starting point to complement with voluntary measures**
- **Two major fronts**
  - **“At the source”** – Supply side: focus on commercial scale infringing websites
  - **Cooperation with intermediaries** (identify, dry out, block, de-list, remove)
- **4 goals:**
  - More effective remedies and sanctions against IPRs enforcement – tools coping with the online (dynamic, borderless) nature of infringement – **STICK**
  - Better - wider access to attractive legal offers (access-availability)– **CARROT**
  - Better awareness and education, in particular towards young people – **EDUCATION**
  - String cooperation between authorities at all levels, RHs, internet intermediaries “Tripartite” – **COOPERATION**





- Cybercrime Convention
- TRIPS agreements (WTO) [part III](#)



## Eurojust: The European Union's Judicial Cooperation Unit

EU MEMBER STATES  
TAKING PART IN  
THE EIO\*



EIO: European Investigation Order

- **The Regulation on customs enforcement of IPRs** (Regulation (EU) [No 608/2013](#))
- **European warrant (EAW)**: simplified cross-border judicial surrender procedure for prosecuting arrest executing a custodial sentence or detention order ([Framework decision](#))
- The **European Investigation Order (EIO) Directive** ([2014/41/EU](#)): primary tool used in the EU (except DK and Ireland) to request digital (and non-digital) evidence (including on bank accounts, banking transactions and other financial operations)
- **Key actors:** [Eurojust](#), [Europol](#) (+UNICRI: [counterfeiting cases](#) with cross-border dimension)



**unicri**

United Nations  
Interregional Crime and Justice  
Research Institute

## IP PROTECTION

**Directive 2004/48/EC**  
on the  
enforcement of  
IPRS  
(IPRED)

**EU  
Regulations  
and Directives  
Trade mark,  
Design,  
Copyright,  
Patent**

Horizontal tool - **Civil enforcement of all IPRs** (counterfeiting and piracy)

Aim: high, equivalent, homogeneous level of protection in EU

Set of Measures and remedies

- Preservation of evidence
- Right of information
- **Injunctions** (incl. dynamic and live blocking orders)
- Damages

**Article 3**

## NET NEUTRALITY

**Directive 2000/31/EC**  
on "electronic  
commerce"

**Liability regime for online intermediaries** (liability exemption)

Intermediary services should not be liable for the content they transmit, store, host as long as they act in a passive manner. (Notice and action procedures)

**No general content monitoring obligation**

**Article 12-15  
Article 18**

## PRIVATE LIFE – PERSONAL DATA

**Regulation 2016/679**  
General Data  
protection  
Regulation  
(GDPR)

Lawfulness of processing of personal data

Restrictions to safeguard enforcement of civil law claims

**Article 4,6,9,23**

**Directive 2002/58/EC**  
"Directive on  
privacy and  
electronic  
communications"

Right to privacy and confidentiality with respect to the processing of personal data in electronic communication

MS may adopt legislative measures to restrict the scope of the rights

**Article 5, 6, 15**



## Enforcement measures online

### Civil measures

- EU minimum harmonisation based on TRIPS
- In a growing number of EUMS jurisprudence have developed in regards to amongst other internet access blocking orders (incl. dynamic and live blocking orders)

### Administrative enforcement

- National systems

### Criminal enforcement

- High diversity between EUMS (e.g. sanctions, investigative tools available, money laundering)
- A growing number of successful criminal cases are being investigated (often with support from EUROPOL and EUROJUST) and later heard by the courts

#### EVIDENCE

- Presentation of Evidence (Art.6)
- Preservation of Evidence (Art. 7)

#### PROVISIONAL AND PRECAUTIONARY MEASURES; CORRECTIVE MEASURES

- (Art. 9)

#### RIGHT OF INFORMATION

- (Art.8) gathering information from infringer or another person on origin and distribution networks of IP-infringing goods
- Names and addresses

#### IPRED TOOLBOX ART. 3

EFFECTIVENESS & PROPORTIONALITY

#### MEASURES – DECISION ON THE MERIT

- Corrective measures (Art.10)
- Injunctions (Art.11)
- Alternative measures (Art. 12)

#### DAMAGES AND LEGAL COSTS

- Damages Art. 13
- Legal costs Art. 14

## Content

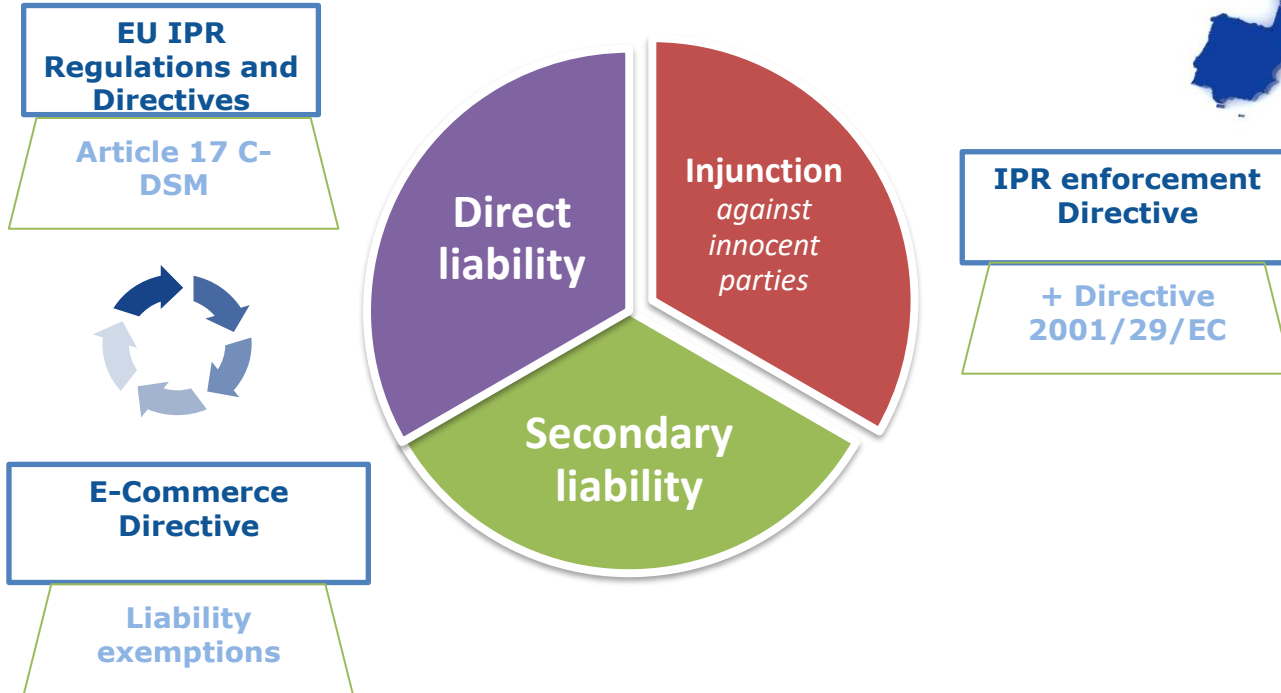
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		International	Europe	Direct Liability			





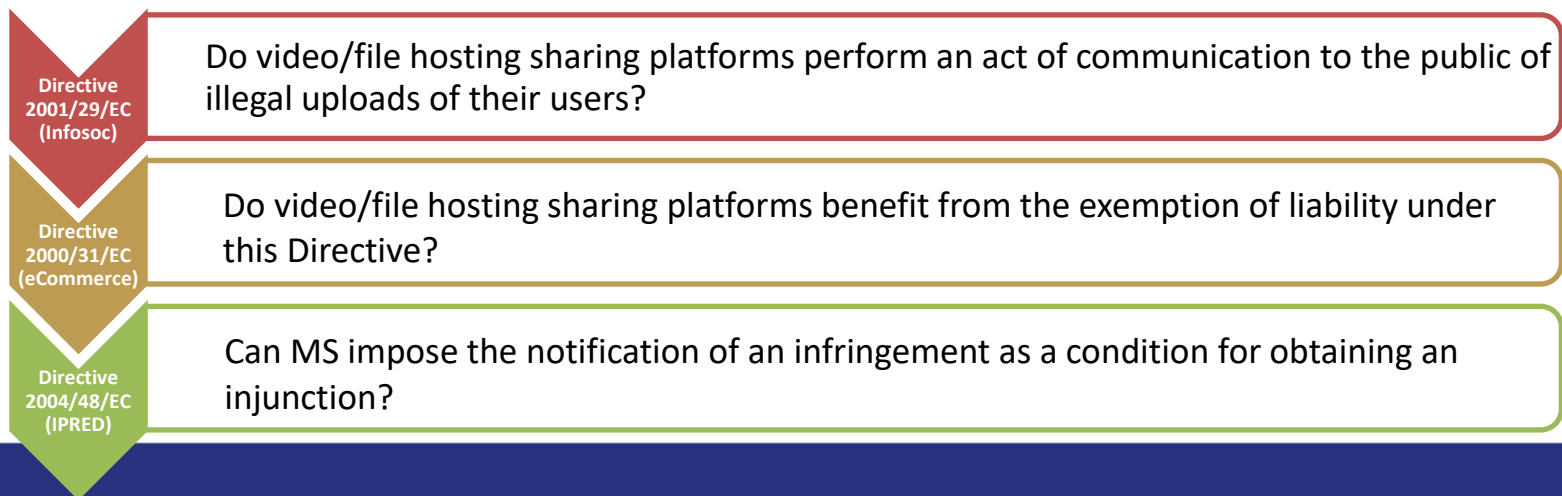
# Intermediaries (civil) liability and IPR enforcement in EU



### Facts

- Music producers vs You Tube: **video-sharing platform**
- Publisher vs Cyando: **upload file-hosting and sharing platform**
- Copyright protected works illegally posted online on such platforms by their users

Decision on the liability of operators of online platforms- at the crossroads of :



## Long complex evolving EU case law (Digital environment)

Still not about [Article 17 Directive \(UE\) 2019/790](#)

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Right of **communication to the public** of works and right of **making available to the public** other subject-matter

Article 3.1 Dir. 2001/29/EC ('Infosoc')

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Act of  
Communication

To a Public

Complementary criteria  
(interdependent)

- *Deliberate intervention*
- *New public*
- *Profit making nature*

# Offline setting

Communication to the public		No communication to the public	
SGAE C-306/05	<b>Hotel operator</b> providing TV sets with signal in guest bedrooms	DEL CORSO C-135/10 Art. 8.2 Dir.2006/115	Free broadcasting of phonogram in <b>private dental practice</b>  <i>phonogram producers, performers</i>
PREMIER LEAGUE C-403/08 and C-429/08	Display of football matches in <b>café-restaurant</b>	HOTEL EDELWEISS C-641/15 Art. 8.3 Dir.2006/115	<b>Hotel operator</b> providing TV set (signal for various TV and radio channel)in guest room.  <i>Broadcasting organisation</i> : the price of the room is not to be regarded as an "entrance fee"
OSA C-351/12	<b>Spa establishment</b> providing TV/radio set with signal	BY c CX C-637/19	The transmission by electronic means of a protected work (page of a website with a photograph) to a court, as <b>evidence in judicial proceedings</b> between individuals. No communication <b>to a public</b> (closed group of specific individuals)
REHA Training C-117/15 (Art. 8.2 Dir.2006/115)	<b>Rehabilitation Center</b> providing broadcast of TV programs by means of TV set in training rooms	STIM C-753/18	The <b>supply of radio receivers as part of hired motor vehicle</b> – is “mere provision of physical facilities for enabling or making a communication”, and does not in itself amount to <b>communication</b> to the public
Phonographic performance C-162/10 (Art. 8.2 Dir.2006/115)	<b>Hotel operator</b> providing TV and radio in guest bedrooms		

# Online

VCAST C-265/16	TV broadcasts captured and stored by a <b>cloud service</b> made available to users: <b>CTP</b> (different means of transmission)
RENCKHOFF C-161/17	A student included a <b>Photo</b> in a presentation for Spanish class then posted on the <b>school's website</b> : <b>CTP</b> (new public)
TOM KABINET C-263/18	Provider of online service of “ <b>second-hand</b> ” <b>e-books</b> to a reading club (copies offered for downloading): <b>CTP</b> (new public, not included under the user licence)
SVENSSON C-466/12 +Best Water	<b>Hyperlinking to articles freely available</b> on another website with the RHs' consent: <b>NO CTP</b> (No new public)
GS MEDIA C-160/15	<b>Hyperlinking to illegal source</b> : <b>CTP</b> (new public) – <b>Rebuttable presumption</b> that a person who links to protected content <b>for profit</b> has undertaken necessary checks to ensure that the work linked to was not illegally published (presumption of knowledge of the protected nature of work and lack of consent)
FILMSPELER C-527/15	<b>Sale of a multimedia player</b> , on which there are pre-installed add-ons, available on the internet, containing <b>hyperlinks</b> to websites: <b>CTP</b>
PIRATE BAY C-610/15	Operator making available and management of a <b>sharing platform</b> which allow users to locate works and to share them in the context of P2P network ( <b>TPB</b> ): <b>CTP</b> (full knowledge of the consequence of its conduct, New public, operate for profit)
VG BILD-KUNST C-392/19	Embedding a work in a webpage by way of <b>framing</b> , when the IP owner has imposed measures to restrict framing: <b>CTP</b> IP owner can restrict linking (framing) by contract if such restriction is imposed or implemented through effective technological measures
YOU TUBE/CYANDO C-682/18 C-683/18	<b>Operators of video sharing platforms</b> do not in principle make a CTP of protected works illegally posted online by their user ( <b>NO CTP</b> ) unless those platforms contribute, beyond merely making the platforms available, to giving access to such content
MIRCOM C-597/19	<b>Users</b> uploading from <b>peer to peer networks</b> pieces of a media file containing a protected work: <b>CTP</b> It is irrelevant that the uploading is automatically generated by the Bit Torrent software, when the user has subscribed to that software by giving his consent to his application after having been duly informed of its characteristics.

### C-682/18 and C/683-18

#### Focus:

- Indispensable role played by the platform operator
- Deliberate nature of its intervention

**Court answer: No CTP unless** contributes, beyond merely making that platform available, to giving access to such content to the public in breach of copyright – ex. *Inter alia*

#### SPECIFIC KNOWLEDGE

operator has **specific knowledge** that protected content is available illegally on its platform and **refrains from expeditiously deleting it or blocking access to it**

#### GENERAL KNOWLEDGE – NO APPROPRIATE MEASURES

that operator, despite the fact that it knows or ought to know, in a general sense, that users of its platform are making protected content available to the public illegally via its platform, **refrains from putting in place the appropriate technological measures** that can be expected from a **reasonably diligent operator in its situation**

#### “ACTIVE” ROLE?

that operator **participates** in selecting protected content illegally communicated to the public, **provides tools** on its platform specifically intended for the illegal sharing of such content or **knowingly promotes such sharing**, which may be attested by the fact that that operator has adopted a **financial model** that encourages users of its platform illegally to communicate protected content to the public via that platform.

## Art.17 in a nutshell- new rules for certain major online content-sharing services providers

**Objective:** Strengthen the position of right holders for **licensing their content**

Services perform an act of CTP – They need to obtain an authorisation from rightholders for content uploaded by their users

If no authorisation, services can avoid copyright liability under specific conditions

✓Liability mitigation mechanism: «**best efforts**» obligation

✓To obtain an authorisation/ to ensure the non-availability of unauthorised content based on the relevant and necessary information provided by stakeholders (BUT not prevent legitim uses)

✓Lighter regime for small service providers

✓Safeguards for users: licenses covering users, mandatory exceptions, redress and complaint mechanism

**E-Commerce:** When it performs an act of CTP, it does not benefit from the limitation of liability (Art.14) for the purposes of Article 17.

Necessary **cooperation** between online content sharing services and right holders ([Guidance](#)– June 2021)



### What says the CJEU about E-commerce marketplaces? Direct liability? Passive-Active role?

CJUE pending referral Louboutin v Amazon (Belgium, 2019; overturned in appeal)  
Case [C-184/21](#) 24 March 2021

Is [Amazon](#) directly liable of  
for: Advertising, stocking,  
shipping third party listing of  
counterfeits goods?



How far the degree of sophistication of the services provided to sellers by an online marketplace can go without amounting to own infringing activities of the platform.



- Harmonised **Exemptions of liability (not liability)** for illegal content
- Intermediary services providers should not be liable for the content they **transmit, store or host**, as long as they act in a **passive** manner (Neutral role)
- **Hosting providers:** exemption conditioned to their expeditious action upon obtaining knowledge- awareness of illegal activity or information (« **Notice and Action** ») **Art. 14**
  - *Ex ante enforcement mechanism:*
    - The E-Commerce directive lays down the basis for the development of N&A procedures – but does not contain detailed rules on these procedures
  - *Ex post enforcement mechanism:*
    - Does not prevent Court or administrative orders which require online service providers to terminate or prevent an infringement (Injunctions under IPRED- INFOSOC Directive)
- **Prohibition of General Monitoring obligation vs Specific (voluntary) monitoring obligations + Duties of care**

N&A

INJUNCTION

**Article 14 (3):** the service provider (storing information) is not liable for the information stored at the request of a recipient of the service, on condition:

- that the provider does not **have actual knowledge** of illegal activity or information and, as regards claims for damages, **is not aware of facts or circumstances** from which the illegal activity or information is apparent,
- or that the provider, upon obtaining such knowledge or awareness, **acts expeditiously** to remove the information or to disable access to it.

**Court answer:** Platforms (such as Youtube, Cyando) **can benefit from exemption from liability** under the Ecom, unless they play an **‘active role’** of such a kind as:

- to give it knowledge of, or control over, the information provided by the recipient of the service **(C-324/09, 236/08, DSA)**
- that gives them **knowledge of or awareness** of **specific legal** acts committed by its users relating to illegal content uploaded to its platform. (“specific”) **(You Tube/Cyando)**

**How to reconcile: voluntary/proactive monitoring (Knowledge) – ineligibility for exemptions from liability (“active”)?** EC set of Guidelines on tackling illegal content online ([2016-17-18](#)) and EC Proposal for a Regulation **DSA** «Good samaritan» (**Article 6 – Recital 25**)

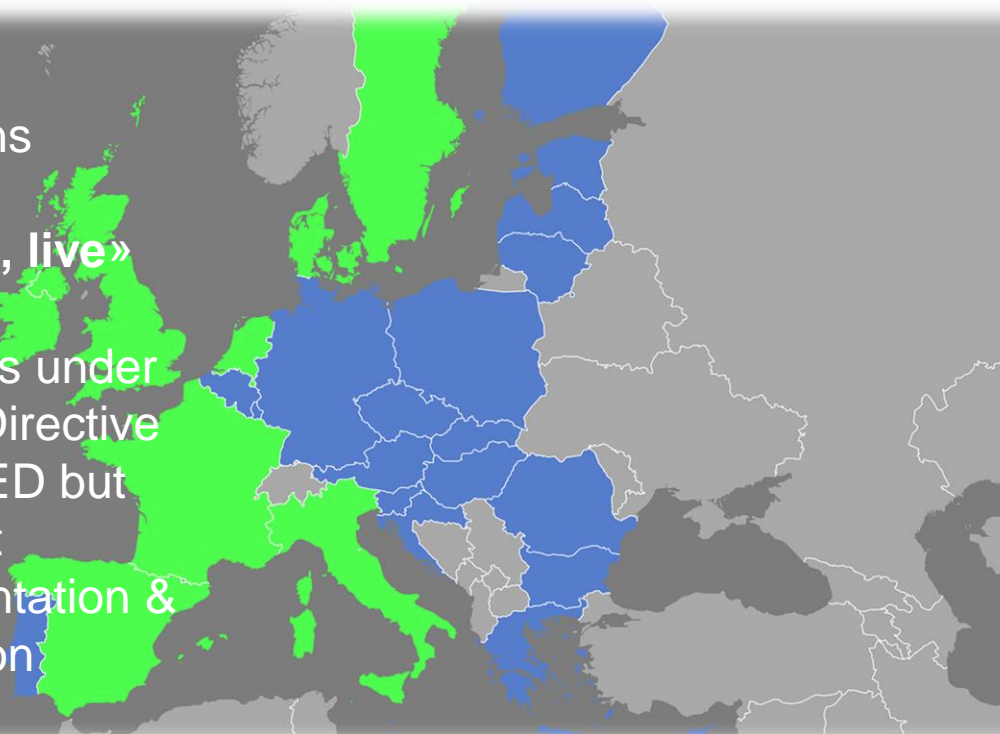
## Under which circumstances RHS can obtain injunctions against operator of online platform?

- Exemption from liability: **without prejudice** to administrative and court order to terminate or prevent an infringement – including by removing the illegal information or disabling access to such information (E-COM)
- Art 14.3 allows setting up of procedure (N&A) governing the removal of illegal information: Procedure which **precedes the legal remedy** (injunction under IPRED/ INFOSOC) taking into account that such service provider is not liable for the infringement in question

### Court answer:

- A MS may require **notification of an infringement** as a **condition for obtaining an injunction** against an online operator, unless this condition takes too long and causes a disproportionate damage: compatible with Art. 8(3) Infosoc/ IPRED

- Blocking injunctions «static, dynamic, live»
- Remedies under Infosoc Directive and IPRED but divergent implementation & application



## STUDY ON DYNAMIC BLOCKING INJUNCTIONS IN THE EUROPEAN UNION

IPR ENFORCEMENT  
CASE-LAW COLLECTION



## Main principles: Case-Law

### YES

1. The measure must be **strictly targeted** to end the infringement
2. Disabling access to specific content **without affecting legitimate users** of the services provided by the ISP  
*Overall: they cannot disproportionately impinge on fundamental rights,*
3. Capable of being **effective** but not go beyond what is proportionate and necessary for the circumstances: **discourage**, make infringement more difficult
4. do not impose '**excessive obligations**' on intermediaries and
5. address the **risk of over- and under-blocking**

**"targeted"**: Court must specify the concrete means of implementation (technical solution usually specified) Or can let Intermediaries decide on the measures required to comply with the injunctions. (obligation of result )

### NO

**Preventive general filtering system** to be installed by an ISP for filtering all traffic from all its customers, at the ISP expense and for an unlimited period – with a view of blocking the transfer of files infringing copyright

- Against general monitoring prohibition (Art.15 ECD)
- Against Art. 3 IPRED
- Against fundamental freedom (business freedom and free flow of information)
- BUT: injunction which entail specific monitoring obligations are not necessarily excluded

Varying factors – Proportionality: blocking measure, Scope ratione personae, Effectiveness in reducing the infringement, Cost)

## Last developments

### Last reports

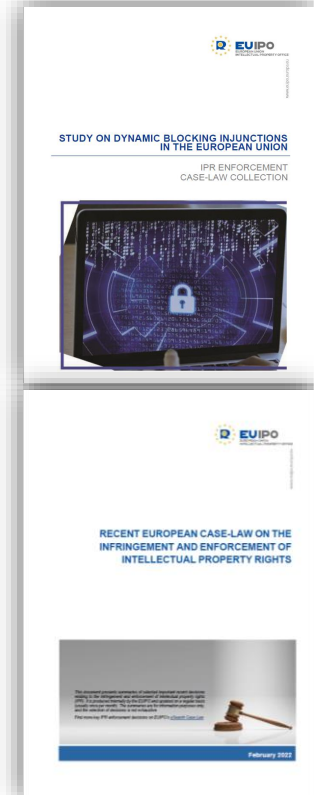
- Euipo: [Study on Dynamic blocking injunctions in the European Union - March 2021](#)
- EAO: [Mapping report on national remedies against online piracy of sports content- Dec. 2021](#)
- EP(JURI) [Study on cross border enforcement of IP rights in the EU - Dec. 2021](#)

### Recent case-law in EU:

- EUIPO: [Recent case-law on IPR enforcement](#) (last version Feb 2022)

### Main trends:

- **New targets?** DNS blocking ([Cloudflare Germany](#) & [Italy](#), [Quad9](#)), Closed groups ([Telegram](#))
- **Increasing role of administrative bodies in the EU:** Dynamic – live blocking injunctions (live sport content)
- **Voluntary initiatives** (incl. search engines desindexing linked to blocking orders)



## Administrative bodies in the EU

<b>GREECE</b>	Committee for the Notification of Copyright and Related Rights Infringement on the Internet (EDPPI)	Dynamic, live
<b>ITALY</b>	Autorità per le Garanzie nelle Comunicazioni (AGCOM)	Dynamic, live
<b>LITHUANIA</b>	Radio and Television Commission of Lithuania (RTK)	
<b>SPAIN</b>	Comisión de Propiedad Intelectual, Sección Segunda	Dynamic
<b>FRANCE</b>	Audiovisual and Digital Communication Regulatory Authority « ARCOM » (law <a href="#">26 octobre 2021</a> )	Dynamic, live
<b>PORTUGAL</b>	General Inspectorate of Cultural Activities (IGAC) – MoU	Dynamic, live
<b>BELGIUM</b>	Draft law - Service de lutte contre les atteintes au droit d'auteur et aux droits voisins commises en ligne	Dynamic

## Voluntary initiatives in the EU

<b>DENMARK</b>	Code of Conduct for handling decisions on blocking access to services, infringing intellectual property rights’ - Telecommunications Industry and the Rights Alliance
<b>BELGIUM</b>	Code of Conduct Belgian Internet Service Providers (ISPA)
<b>UK</b>	Code of Conduct with search engines (demotion of copyright infringing websites)
<b>PORTUGAL</b>	General Inspectorate of Cultural activities (IGAC)
<b>SPAIN</b>	Anti-piracy agreement between telecommunications and cultural industries on dynamic blocking injunction (2021)
<b>GERMANY</b>	Code of Conduct - Clearing Body for Copyright on the Internet (CUII) – voluntary ISP blocking after oversight from review committee and DE Government Federal Network Agency (BNetzA) (2021)
<b>NETHERLAND</b>	Agreement BREIN with Dutch ISPs: when BREIN obtains a blocking order against one ISPs, other ISPs will voluntarily apply it as well (2021) – First Ruling Rotterdam Court (24 March 2022)
<b>ITALY, FRANCE</b>	Regulatory framework for developing Code of Conduct (FR: New Law 2021-1382)





# Injunctions against intermediaries: Static, Dynamic, live blocking injunctions in EU

	Decision	Intermediaries	Key Elements
<b>Portugal</b>	Portuguese Intellectual Property Court, 520/20.0YHLSB, Visapress and GEDIPE v Telegram Fz Llc - <b>15 November 2021</b>	<b>Telegram:</b> cloud-hosted secure instant messaging application	Blocking injunction of 17 groups of conversations (UPC telekabel) – <a href="#">here</a>
<b>Greece</b>	DECISION NUMBER 28/2021 – <b>27 October 2021</b>	Internet Service Providers	Dynamic injunction - Domain name - (administrative) concerning illegal transmission of sports competitions
<b>France</b>	Tribunal Judiciaire Paris - Nintendo v. DSTORAGE SAS ('1fichier')- <b>25 May 2021</b>	<b>DSTORAGE SAS</b> : operator of a hosting platform	Injunction (N&A) and liability of the host for act of infringement Article 6-1_2 LCEN (failure to comply with the conditions for exemption from liability) <ul style="list-style-type: none"> <li>• Court decision: not a prerequisite for withdrawal (Nintendo video games)</li> <li>• Commercial loss 885,000 € / Violation mark: 50,000 € - <a href="#">here</a></li> </ul>
<b>Germany</b>	The Hamburg Regional Court, 310 O 99/21, Sony Music Entertainment Germany GmbH v Quad9 Stiftung- <b>12 May 2021.</b>  <i>Appeal, Regional Court of Hamburg, December 2021.</i>	<b>Quad 9 (Switzerland):</b> provider of a DNS resolver	DNS blocking injunction - German IP addresses <ul style="list-style-type: none"> <li>• Störerhaftung/ duty of care violation - inaction after notification: indirect involvement - DNS service resolves a domain name, providing access to a website that contains links to pirate content</li> <li>• UPC telekabel: targeted and proportional injunction (no over-blocking)</li> <li>• Appeal (liability exemption, bad precedent, efficiency, territorial limit) – <a href="#">here</a> : Hamburg Regional Court has confirmed the injunction against the DNS resolver Quad9.</li> </ul>
<b>Italy</b>	Tribunale di Roma   Decreto – R.G. 20859/2021, RTI s.p.a. v Twitch Interactive Inc-, <b>1 April 2021</b>	<b>Twitch:</b> Interactive video game streaming service (host)	Injunction ordering the removal of videos (TV shows) <ul style="list-style-type: none"> <li>• Case by case approach (no reaction to notification)</li> <li>• Assessment of the « active » role of the intermediary: filter, select, index, organise, catalog, classify, use, modify, promote content - <a href="#">here</a></li> </ul>
<b>France</b>	Paris Civil Court (Tribunal Judiciaire), March 26, 2021	Hosting services provider	President of the Paris Civil Court ruled in favour Scaleway. <ul style="list-style-type: none"> <li>• Rejected beIN SPORTS' request as Scaleway is not the host of the website, it was merely renting servers.</li> <li>• Therefore, Scaleway was not subject to the obligation to store identification data of the users of its services. (not fall under Art. 14 E-Com)</li> </ul>

# Injunctions against intermediaries: Static, Dynamic, live blocking injunctions in EU

	Decision	Intermediaries	Key Elements
UK	England and Wales High Court – Capitol Records and Others v BT and Others [2021] EWHC 409 (Ch) – <b>25 February 2021</b>	Internet Service Providers <i>to block Cyberlocker- Streamripping sites</i>	<ul style="list-style-type: none"> <li>• Injunction against six biggest ISPs in the UK: blocking their subscribers' access to a cyberlocker site, nitroflare.com</li> <li>• Joint responsibility of the operator to facilitate copyright infringements (CJEU Pirate bay) with its users.</li> <li>• Same injunction against "streamripping": massive circumvention of TPMs - joint responsibility to deliberately facilitate copyright infringements – <a href="#">here</a></li> </ul>
Italy	Two preliminary injunctions issued by the Court of Milan, 2021	Internet Service Providers	<p>New dynamic injunctions issued in Italy. Preliminary injunctions against a number of internet service providers that provided mere conduit services used to broadcast live football matches in violation of the rights of the claimants and their exclusive licensee.</p> <ul style="list-style-type: none"> <li>• The two orders applied the principles set forth by the Court of Justice of the European Union in its judgment of 27 March 2014 in Case C-314/12.</li> </ul>
Italy	Tribunale di Milano – Ordinanza n. 42163/2019 R.G. <i>Sky Italia, Lega Serie A v Cloudflare and others- 5 October 2020</i>	Cloudflare (CND) and OVH (host)	Dynamic blocking injunction: blocking of current and future domain names and IP addresses of several IPTV services for illegal distribution of audiovisual content – <a href="#">here</a>
CJUE/DE	Joined Cases C-682/18 and C-683/18 Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH (C-682/18) and Elsevier Inc. v Cyando AG (C-683/18), ECLI:EU:C:2021:503 - <b>22 June 2021</b>	<b>You tube - Cyando/ DE</b>	<ul style="list-style-type: none"> <li>• A MS may require notification of an infringement as a condition for obtaining an injunction against an online operator, unless this condition takes too long and causes a disproportionate damage – <a href="#">here</a></li> </ul>
Germany	OLG Köln (Higher Court of Cologne), Case I-6 U 32/20, <i>Universal Music v Cloudflare</i> - <b>9 October 2020</b>	Cloudflare – Content Network Delivery and Domain Name Server services	Temporary blocking injunction Liability of Cloudflare as "Störer" for not having taken the appropriate measures to put end to the breaches occurring via its CND and DNS services – <a href="#">here</a>

# Injunctions against intermediaries: Static, Dynamic, live blocking injunctions in EU

<p><b>France</b></p>	<p>Tribunal Judiciaire de Paris (Paris Judicial Tribunal) – beIN Sports France v Orange, SFR, Free, Bouygues Télécom, Colt and Outremer Télécom, <b>-20 January 2022</b></p>	<p>Internet Service Providers</p>	<ul style="list-style-type: none"> <li>• First blocking injunction granted under the provisions of the new legislation (Article L. 333-10 of the French Sports Code), which established an accelerated judicial procedure;</li> <li>• The injunction extends to mirror domains of previously identified infringing websites which can be blocked by the recently established French anti-piracy agency ARCOM (without initiating a separate legal proceeding - <a href="#">here</a>)</li> </ul>
<p><b>France</b></p>	<p>Tribunal Judiciaire de Paris (Paris Judicial Tribunal) – Professional Football League Professional Football League V SFR FIBRE, ORANGE, ORANGE CARAIBE, SFR, SRR, FREE, BOUYGUES TELECOM, COLT TECHNOLOGY SERVICES, OUTREMER TELECOM, CANAL + TELECOM -<b>March 2022</b></p>	<p>Internet Service Providers</p>	<ul style="list-style-type: none"> <li>• Blocking injunction under the provisions of the new legislation (Article L. 333-10 of the French Sports Code, which extends to any mirror domains of previously identified infringing websites which can be blocked by newly established France’s anti-piracy agency <u>Arcom</u> without initiating a separate legal proceeding by the claimant;</li> <li>• The decision has underlined that it is not for the Tribunal to decide on the time limit within which ISPs must carry out <b>the blocking of mirror infringing websites</b> and the measures concerning infringing websites not yet identified must be communicated by the claimant to ARCOM in accordance to the procedure - <a href="#">here</a></li> </ul>
<p><b>Netherlands</b></p>	<p>Rotterdam Court – Brein Foundation V Delta Fiber Netherlands B.V. – March 2022</p>	<p>Internet Service Provider</p>	<ul style="list-style-type: none"> <li>• First blocking injunction against ISP Delta Fiber Netherlands to block access to six illegal torrent sites after the conclusion of the <u>agreement</u> between BREIN and Dutch ISPs;</li> <li>• Blocking injunction must be implemented by ISP within 5 working days against listed websites and also mirror websites through other/additional IP addresses and/or (sub)domain names, after the notification by Brein;</li> <li>• Rightsholders (Dutch copyright foundation and the antipiracy foundation stitching <a href="#">BREIN</a>) and almost all Dutch Internet Service Providers (ISPs) reached an <u>website blocking agreement</u> when BREIN has obtained a blocking order against a single internet provider ISPs, then other Dutch ISPs will collectively and <u>voluntarily</u> block the websites offering illegal content - <a href="#">here</a></li> </ul>

# Content

## EU approach to online IPR enforcement

<b>Robust Legislation</b>		<b>Stick</b> Intermediaries (civil) liabilities <u>Use Case:</u> CJEU YouTube/Cyando			<b>Cooperation with intermediaries and good practices</b>	<b>Carrot, Education, data</b>	<b>Next Steps: DSA!</b>
		International	Europe	Direct Liability			



### (Voluntary) measures to support cooperation between actors

- **[MoU on the sale of counterfeit goods via the internet](#)** (2011)
  - to prevent offers of counterfeit and pirated goods from appearing in online marketplaces and commitment:
    - from rightholders and platforms for an efficient use of notice and take down mechanisms,
    - from rightholders on the information to be provided to platforms,
    - from the platforms to monitor and proactively prevent the sale of counterfeit goods.
  - Best practices”: Proactive and preventive measures, Notice and take down procedure, Tackling repeat infringer - [evaluation report on the functioning of the MoU](#) (August 2020)
  
- **[MoU on online advertising and IPR](#)** (2018)
  - Commitments: Limiting the placement of advertising on websites and mobile applications which have no substantial legitimate uses:
    - when competent authorities found that they infringe copyright or disseminate counterfeit goods on a commercial scale;
    - for which the advertisers have reasonably available evidence that they are infringing copyright or disseminate counterfeited products, on a commercial scale.
    - [Study on the impact of the MoU on the online advertising market - 2020 ad monitoring exercise](#)

**Other: Counterfeit and Piracy Watch list** identifying marketplaces or service providers whose operators or owners are allegedly resident outside the EU and which reportedly engage in, facilitate or benefit from counterfeiting and piracy

## Strategic project on enhancing IP protection on e-commerce marketplaces

### Phase 1: Information resources on IP enforcement mechanisms

*June 2021*

New website with information on  
**e-commerce marketplaces' IP protection tools**



**Have you spotted** a potentially infringing or counterfeit version of your product for sale on an e-commerce marketplace?

### Phase 2: New [IP Enforcement Portal \(IPEP\)](#) functionalities

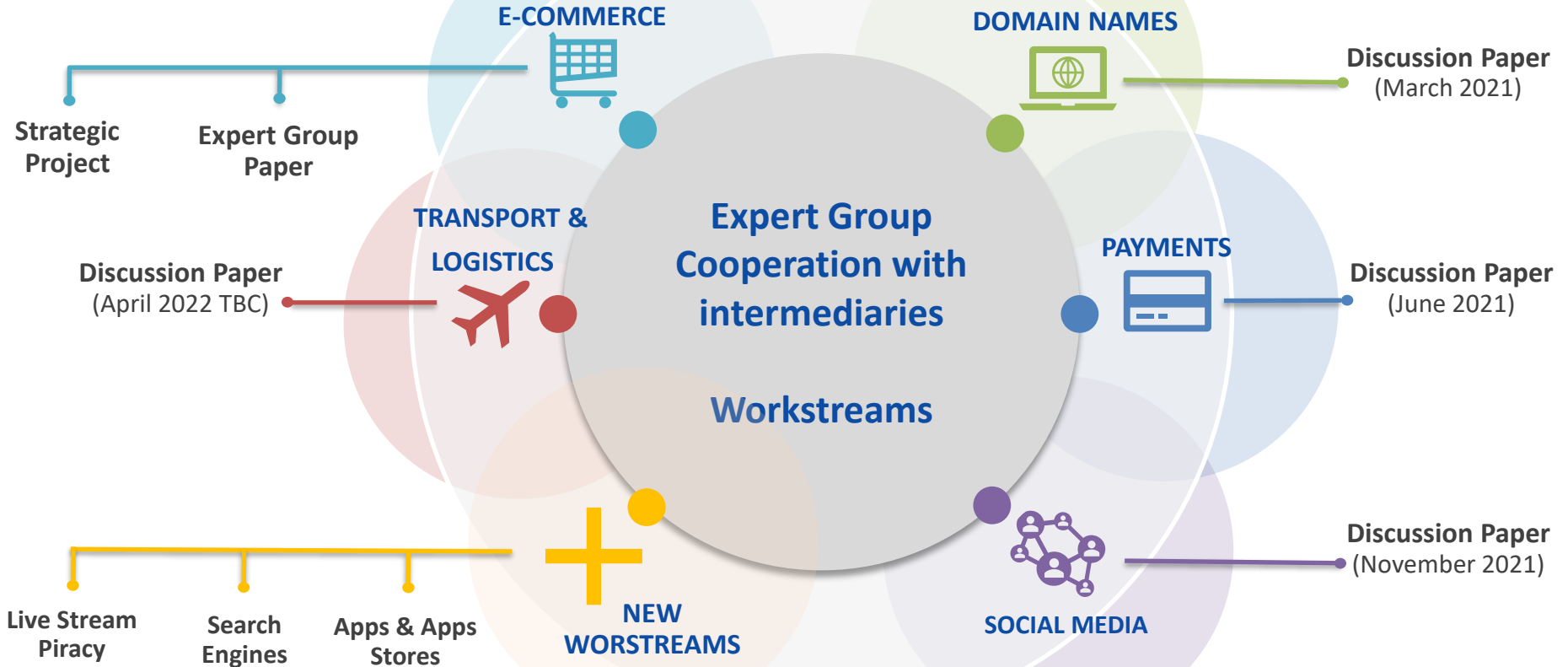
- Marketplaces gaining access to IPEP Global Search function
- IP right holders can share with marketplaces contact points and documents on entities with the legal capacity to enforce their rights.

*Q3 2022*

**Phase 3: New IPEP functionalities supporting exchange of point of contacts and information with law enforcement authorities.**

*TBC*

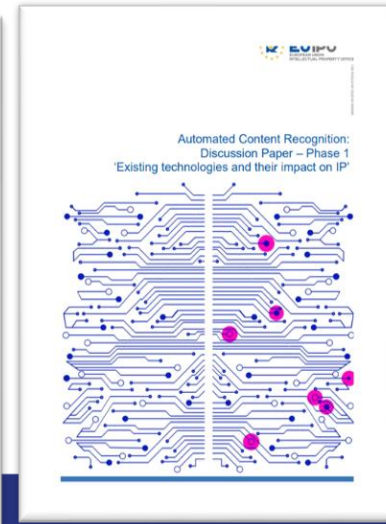
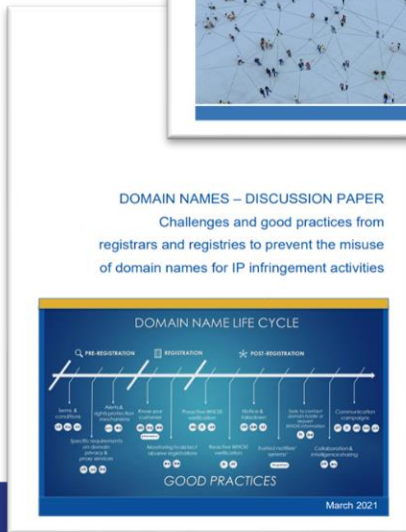
# Expert Group on cooperation with intermediaries



## Expert Group on cooperation with intermediaries

33 Experts working on 5 issues:

- E-commerce marketplaces
- Domain names
- Social Media
- Payment
- Transport (April 2022)
- Automated content recognition technologies





# Content

## EU approach to online IPR enforcement

<b>Robust Legislation</b>		<b>Stick</b> Intermediaries (civil) liabilities <u>Use Case</u> : CJEU YouTube/Cyando			<b>Cooperation with intermediaries and good practices</b>	<b>Carrot, Education data</b>	Next steps: DSA!
International	Europe	Direct Liability	Exemptions from Liability	Injunctions			





**EU IPO**  
EUROPEAN UNION  
INTELLECTUAL PROPERTY OFFICE  
Observatory

Regulation (EU) No 386/2012

## Holistic approach in combatting online IPR infringement

Strengthening the Network

Provide facts and evidence to support effective policies

Create tools and resources to sharpen the fight against IP infringement

Raise awareness of the importance of IP and of the negative effects of counterfeiting and piracy

International Cooperation

Connaissances et bonnes pratiques  
Coopération avec d'autres partenaires  
Centre de formation virtuel (CEPOL)  
IP Enforcement Portal

**La PI pour les autorités répressives et judiciaires**

IP Enforcement Portal pour les entreprises  
Respect de la PI dans les pays tiers  
Soutien aux petites entreprises  
e-commerce marketplaces

**La PI pour les entreprises**

New website with information on  
**e-commerce marketplaces' IP protection tools**

**Have you spotted a potentially infringing or counterfeit version of your product for sale on an e-commerce marketplace?**

Campagnes de sensibilisation du public  
Agorateka: trouver des offres légales en ligne  
FAQ sur les droits d'auteur  
Ideas Powered

**La PI pour les consommateurs**

Out-Of-Commerce Works Portal  
Orphan Works Database  
La PI dans l'éducation

**La PI pour l'éducation et la culture**

**OUT-OF-COMMERCE WORKS PORTAL**

**NEW!**

**Trilogie d'études sur la PI: la contribution et la perception de la PI et le coût des atteintes à la PI**

Recherche et données

**Sécurisé, sûr et connecté Pour les autorités répressives et les entreprises**

IP Enforcement Portal

**New!**

*Pan European Awareness Campaign, World Anti-Counterfeiting Day 2021*

Recherche et données sur la PI  
La PI en Europe  
Publications de l'Observatoire  
Jurisprudence

**Faits, chiffres et jurisprudence**

**01 DÉC.** Observatory International Cooperation Expert Group online meeting  
**30 NOV.** EU enforcement of IP rights: a joint report with the European Commission  
**29 NOV.** New key national enforcement judgments in the eSearch Case Law database  
**29 NOV.** Banská Bystrica has joined the European Network of 'Authenticities'

Plus d'actualités  
Prochains événements

**Actualités et événements**

2021

	11 <a href="#"><u>Report on the EU Enforcement of Intellectual Property Rights : Overall Results of Detentions 2019</u></a>
1 <a href="#"><u>Intellectual property rights and firm performance in the European Union, Firm-level analysis report 2021</u></a>	12 <a href="#"><u>Risks and damages posed by IPR infringement in Europe: Awareness campaign 2021 (Spring Campaign)</u></a>
2 <a href="#"><u>Misuse of Containerized Maritime Shipping in the Global Trade of Counterfeits</u></a>	13 <a href="#"><u>Social Media Discussion paper</u></a>
3 <a href="#"><u>Anti-Counterfeiting Technology Guide (ACT Guide)</u></a>	14 <a href="#"><u>Economic performance of IPR indicators: March 2021 update</u></a>
4 <a href="#"><u>International Judicial Cooperation in Intellectual Property Cases - Study on Legislative Measures Related to Online IPR Infringements Phase 2</u></a>	15 <a href="#"><u>OECD-EUIPO report Global Trade in Fakes - A Worrying Threat</u></a>
5 <a href="#"><u>Study on Dynamic Blocking Injunctions in the European Union</u></a>	16 <a href="#"><u>Economic performance of IPR indicators: Quaterly update</u></a>
6 <a href="#"><u>Domain names – Discussion Paper</u></a>	17 <a href="#"><u>Study on EUTMs' specifications containing goods and services related to the protection of the environment and to the sustainable development ('Green Trade Mark Study')</u></a>
7 <a href="#"><u>Monitoring and analysing social media in relation to IP infringement</u></a>	18 <a href="#"><u>Infringing business models - IBM4 - Vendor Accounts on Third Party Trading Platforms</u></a>
8 <a href="#"><u>Interagency Cooperation at National and International Level: An assessment of good practices for improving IPR enforcement</u></a>	19 <a href="#"><u>OECD-EUIPO study Misuse of e-commerce for trade in counterfeits</u></a>
9 <a href="#"><u>Focus on Cybersquatting: monitoring and analysis</u></a>	20 <a href="#"><u>Payment discussion paper Challenges and good practices from electronic payment services to prevent the use of their service for IP-infringing</u></a>
10 <a href="#"><u>Economic impact of the Covid-19 crisis on IPR-intensive sectors</u></a>	21 <a href="#"><u>Leading indicators of IPR-intensive industries discussion paper</u></a>
	22 <a href="#"><u>Annual joint brochure on detentions in the internal market and at the EU's external border 2020 - DG TAXUD</u></a>

Threat Assessment report EUROPOL/EUIPO

IPR-intensive industries and economic performance in Latin American countries

Study on plant varieties

Impact of Technology Deep Dive Report 1 - **Artificial Intelligence (AI), Copyright and Design Infringement and enforcement**

White Bullet study on advertising on IPR-infringing web sites

EUIPO IPR intensive industries - evolution of industries

OECD-EUIPO study - Fake goods health and safety

Youth Scoreboard

Discussion paper on Transport and Logistics

Infringing business models phase 5- Modus operandi organised crime

SME Scoreboard

IP Contribution Study (Industry Level) - with EPO

Demand for Counterfeits Workstreams Study

Geographical Indications (GI)

**EU ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS: OVERALL RESULTS OF DETENTIONS**

Digital Infringement in the EU - level of individual titles

Storage and destruction across the EU

Quantifying the phenomenon of counterfeiting and other types of criminal activity related to Covid-19 related products

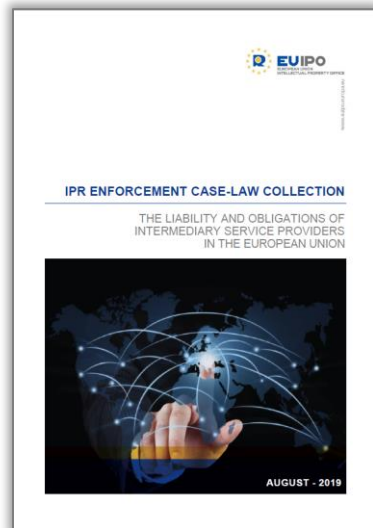
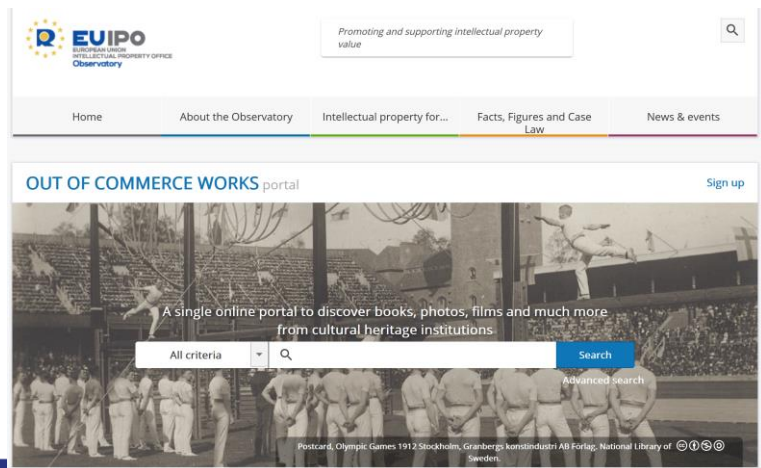
**Infringing Business Models - Applications used in IPR infringements**

**UNICRI - Criminal Measures Study**

Report on Trade Secrets Litigation Trends

## Carot: (better) visibility and access to legal offer + case-law

- **Agorateka**: Pan-European portal of EUIPO providing fast and easy access to legal offers online (music, films, video games, sport, etc.)
- **Copyright Databases (out of commerce portal, orphan works database)**
- **Case-law Database** on IPR enforcement



24

Countries  
Portals

76

(national,  
hybrid and  
pan

3311

Legal Offer  
Sites



## Grants IP in Education

<https://ideaspowered.eu/gen/our-projects/ip-teaching-materials>

Home > Intellectual Property > IP for Consumers > FAQs on copyright for consumers

### FAQs on copyright for consumers

**FAQs on copyright for consumers**  
The Frequently Asked Questions (FAQs) on copyright help inform all European consumers about what is legal and what is not when using copyright protected content, such as music or film, on the internet.

As an extension of this successful initiative, the FAQs on copyright for teachers will provide teachers and students from the EU with clear and accurate information on what use of copyright protected content is allowed in the context of education.

**15 questions from consumers on copyright for all EU Member States**  
Answers to the FAQs are given for all EU Member States. They are available in English and at least one of the official languages of the Member States in focus.

Click on a country in the map or select a country from the list to show the answers for the country.

Select a country



Go to website

**FAQs on copyright for teachers**  
This report helps teachers and students from the EU Member States find out what is legal and what is not when using copyright protected content during teaching and educational activities in particular online.

Go to website

**Summary Report on the Frequently Asked Questions on Copyright**  
This report provides an overview of the differences and similarities between the national copyright laws with regard to the FAQs.

Download

**Participating national Copyright experts**  
The answers to the FAQs on copyright are provided by national copyright experts from their EU Member States.

Download

**The EU Copyright legislation**



All you always wanted to know about copyright!  
Get informed  
euipo.europa.eu



## *ideas powered* Media outreach SMEs Authenticity FAQs on Copyright for consumers, teachers

<https://euipo.europa.eu/ohimportal/en/web/observatory/faq-for-teachers>

## Content

# EU approach to online IPR enforcement

<b>Robust Legislation</b>		<b>Stick</b> Intermediaries (civil) liabilities <u>Use Case:</u> CJEU YouTube/Cyando			<b>Cooperation with intermediaries and good practices</b>	<b>Carrot, Education data</b>	<b>Next steps: DSA!</b>
		International	Europe	Direct Liability			



## Horizontal framework for regulatory oversight, accountability and transparency of the online space

### Modernisation

#### I. Clarify/ rebalance rights and responsibilities

E-commerce principles maintained – exemptions of liabilities

#### II. Increase accountability and transparency

Assymmetric due diligence obligations

#### III. Facilitate better oversight and cooperation

Robust common framework for national/EU enforcement

### Harmonisation

**Brussels, 15 December 2020** *The*

*Commission has proposed today an ambitious reform of the digital space, a comprehensive set of new rules for all digital services, including social media, online market places, and other online platforms that operate in the European Union: the [Digital Services Act](#) and the [Digital Markets Act](#).*



# First : E-commerce principles maintained - clarification of exemptions of liabilities for providers of intermediary services (Art. 12-15 E.com)



## PAGE CONTENTS

Innovative online platform scaling-up in the EU

Thriving legitimate businesses

Empowered SMEs and start-ups

A fair and balanced internal market

Increased legal certainty for businesses

Contestable markets

More jobs

## Innovative online platform scaling-up in the EU

There are more than  
**10,000**  
platforms in the EU

**90%**  
of those are  
small and medium sized enterprises

Digital services in the EU currently have to deal with 27 different sets of national rules. Only the largest companies can deal with the resulting compliance costs.

### What the new Digital Services Act changes:

- The same rules will apply in the entire Union and will be the basis of a large domestic market for digital services to grow and prosper. Cross-border digital trade in the single market is expected to increase up to 2%.
- Small players will have legal certainty to develop services and protect users from illegal activities and they will be supported by standards and guidelines.
- Small and micro-enterprises are exempted from the most costly obligations, but are free to apply the best practices, for their competitive advantage.



Reform of the EU liability regime for online intermediaries

Background on the forthcoming digital services act

## Online Search engines?

New liability rules in-between 'caching' and 'hosting'?



## IN-DEPTH ANALYSIS

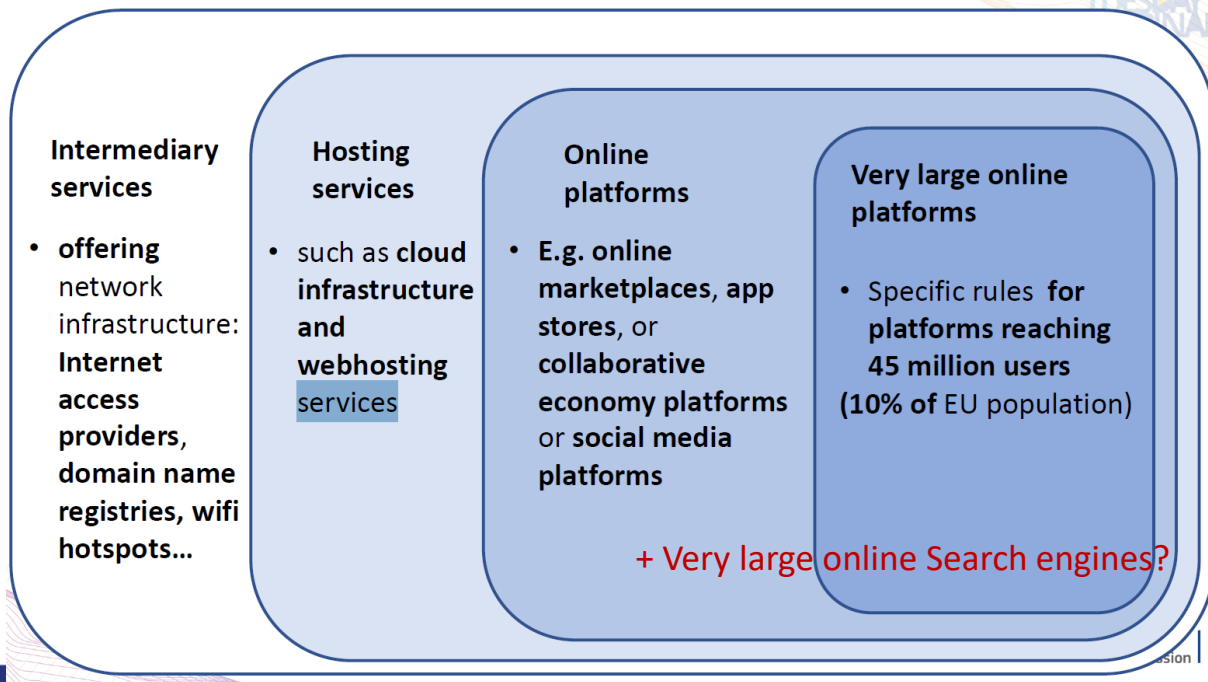
EPRS | European Parliamentary Research Service

Author: Tambara Madiega  
Members Research Service  
PE 649.404 - May 2020

## Second: Assymmetric due diligence obligations

### AIM:

- Improve the fight against illegal and harmful content online
- Improve transparency and empower users and stakeholders
- Better enforce rules





	VERY LARGE PLATFORMS	ONLINE PLATFORMS	HOSTING SERVICES	ALL INTERMEDIARIES
Points of contact	•	•	•	•
Legal representatives	•	•	•	•
Terms and conditions	•	•	•	•
Reporting obligations	•	•	•	•
N&A	•	•	•	
Statement of reasons	•	•	•	
Complaint handling	•	•		
Out-of-court dispute settlement	•	•		
Trusted flaggers	•	•		
Rules against abusive behaviour	•	•		
Know-your-business-customer	•	•		
Reporting criminal offences	•	•		
Advertising transparency	•	•		
Reporting obligations	•			
Risk assessment and mitigation	•			
Independent audits	•			
Recommender systems	•			
Enhanced advertising transparency	•			
Crisis protocols	•			
Data access and scrutiny	•			
Compliance officer	•			
Reporting obligations	•			

Extract slides DG CNECT F2 I.L

**OBLIGATIONS AGAINST ILLEGAL CONTENT**

**OBLIGATIONS TO INCREASE TRANSPARENCY**

**OBLIGATIONS TO BETTER ENFORCE RULES**

## Second: Focus on IPRs enforcement

### Notice and actions

Standardised content of a notice / by electronic means  
Acknowledgement of receipt/ info on decision taken

### Trusted Flagger status

Certified entities by DSC (entity, experience, collective interest)  
Priority/without delay  
Possibility to develop standards for API

### KYBC

Distant contract with traders  
Prior info to obtain to promote/sell: eg bank, self certification  
Platform's reasonable efforts to assess if reliable info

### Repeat infringers policies

Measures to protect against misuse, incl. unfounded notices  
Suspension of account / required transparency

### General rules on transparency - Several layers

Annual report on Notices, removals, complaints, etc.  
Possibility to standardise transparency report – get comparable data  
VLOPs: transparency on recommenders mechanisms and advertising

### Order to act against illegal content/to provide info

Judicial /Adm – standardised content  
Copy of the order to be transmit by DSC to other DSC

### + Risk assessment and mitigation measures by Very Large platforms

With External and independant audit

## Third: Common and robust framework for EU/national enforcement

### NATIONAL

#### Digital Service Coordinator (DSC)

Strong power for effective investigation and enforcement (cessation, fines, access to data, etc.)

Complaint mechanism

Cross border cooperation (information sharing system with DSC)

### EU

#### European Board for Digital Services

Independent Advisory Group of DSCs

Advise EC and DSC, contribute EC guidance

Support coordination of Joint investigation

Assist DSC and EC in supervision of VLOPs

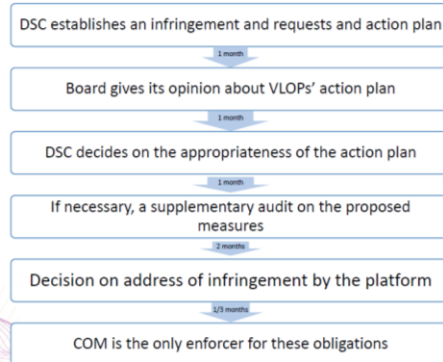
#### Commission

Strong investigative and enforcement power

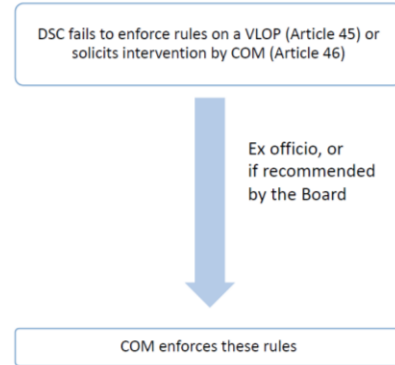
Infringement proceedings, fines- in particular VLOPs

### Enhanced supervision of VLOPs

#### Chapter III, Section 4



#### Other infringements by VLOPs



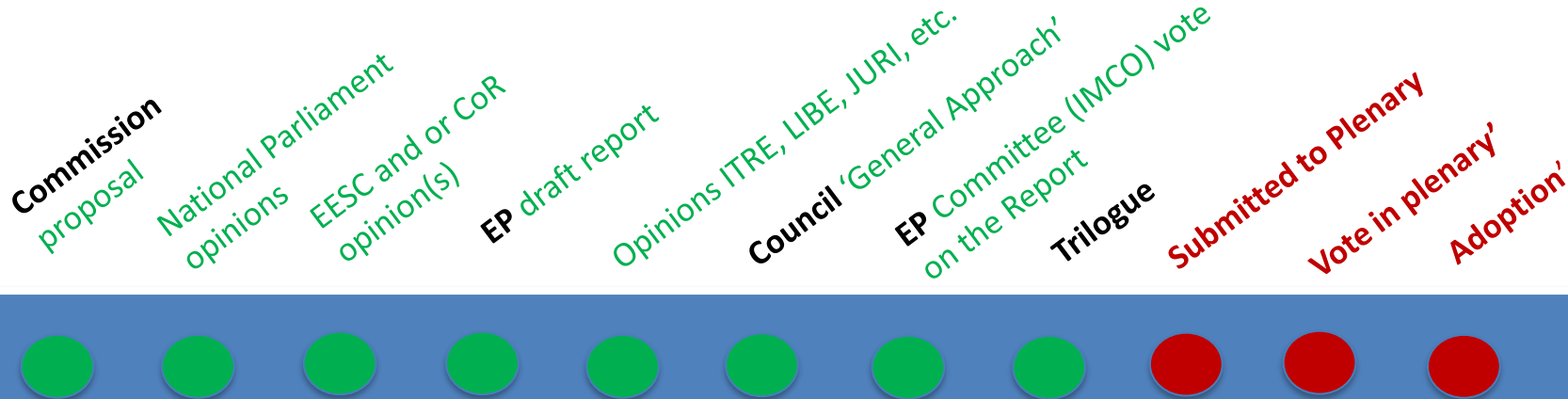
**European Commission: 15 December 2020:** proposal

**The Council: 25 November 2021- the Council agreed its position** ('general approach')

- "Online search engine" : exemption of liability "caching" - for the "search results locating the information related to the content requested by the recipient of the service.
- Very large online search engines (VLOSE) will bear the highest standard of due diligence obligations.

**EU Parliament: IMCO vote on Report - December 2021**

**End of Trilogues: April 2022?**



## IP ACTION PLAN EU Toolbox against counterfeiting

### Clarifying roles & responsibilities

- Online/offline intermediaries & rights holders
- Complementary to the DSA, etc.
- Building on good practices (e.g. [MoUs](#), [Observatory Expert Group 'Cooperation with intermediaries'](#))



### Promoting the use of adequate tools & new technologies

- Blockchain ([EUIPO Blockathon project](#))
- Artificial intelligence
- Automatic content recognition ([EUIPO discussion paper](#))
- [EUIPO IP Tech Watch Discussion Paper](#)
- [EUIPO Anti-Counterfeiting Technology Guide](#)



### Enhancing cooperation

- Between intermediaries & rights holders
- Between public authorities
- Between intermediaries, rights holders & public authorities

### Facilitating information & data sharing

- More & better data
- Better interoperability between databases
- Expanding existing tools (e.g. [IPEP](#))
- EU data protection and competition laws

**Piracy live content (sport)– EC Communication?**

- ❖ Expeditious notice and take down / Certification of trusted flaggers
- ❖ Dynamic blocking injunctions
- ❖ Reinforced cooperation between LeA (network of Independent administrative authorities to deal with online piracy?), RHs, Intermediaries (central forum for exchange of information)
- ❖ Availability and findability of legal offers (Agorateka)

## CONCLUSION – Robust law and voluntary initiatives, cooperation, flexibility and expertise

### EU approach to online IPR enforcement

Robust Legislation		Stick Intermediaries (civil) liabilities <u>Use Case</u> : CJEU YouTube/Cyando			Cooperation with intermediaries and good practices	Carrot, Education data	Next steps: DSA!
		International	Europe	Direct Liability			







Promoting Intellectual  
Property Rights in the  
ASEAN Region

THANK YOU



Funded by the European Union



This Project is funded by the European Union and implemented by the European Union Intellectual Property Office (EUIPO)