

## Civil enforcement of intellectual property rights: public consultation on the efficiency of proceedings and accessibility of measures

Introduction	
Creation date	19-03-2013
Last update date	
User name	[SecuredAndAnonymous]
Case Number	403298135361807813
Invitation Ref.	490217236451533412
Status	N
Language	en

Background information	
Name of the respondent:	Francesco Panicucci
Identity of the respondent: &nbsp; &nbsp; &nbsp; &nbsp; &nbsp;	CITIZEN HOLDING INTELLECTUAL PROPERTY RIGHT(S)
Country of residence:	IT - Italia
In which Member States do you operate or trade?	IT - Italia
Please provide your contact information (name, address and e-mail address):	Francesco Panicucci via Pacinotti 3 Rosignano Solvay(LI) panasa@inventati.org
What type of IPRs do you hold?	COPYRIGHT RIGHTS RELATED TO COPYRIGHT

How would you evaluate the significance of&nbsp;your intellectual property rights and related&nbsp;assets based on the performance and growth?	
Copyright	HIGH
Rights related to copyright	HIGH
Sui generis right of a database maker	NONE
Rights of the creator of the topographies of a semiconductor product	NONE
Trademark rights	NONE
Design rights	NONE
Patent rights	NONE
Geographical indications	NONE
Utility model rights	NONE
Plant variety rights	NONE

Trade names	NONE
What is the value of your IPR portfolio?	
How do infringements of your intellectual property rights impact the total value of your IPR portfolio (eg. estimated annual loss of turnover)? How do you calculate this impact?	
What is the substitution rate between original goods and counterfeited/pirated goods in your sector according to your estimation? How do you measure this rate?	
How do infringements of your intellectual property rights impact your investment in research, development and innovation (eg. estimated loss in investments/amount of investments not undertaken)?	
What is the relevance of the quality of civil enforcement system for intellectual property rights for your research, development and innovation investments?	None

### Efficiency and effectiveness of civil proceedings in cases concerning infringements of intellectual property rights

Did you pursue alternative dispute resolution mechanisms before instituting court proceedings in the cases of intellectual property rights' infringements?	Yes
What kind of alternative dispute resolution mechanisms did you undertake?	MEDIATION
What were the costs and the length of proceedings?	
Were your rights sufficiently safeguarded (including right to privacy, right to be heard, and due process)? Please explain:	
Do you consider that alternative dispute resolution mechanisms in cases of intellectual property rights' infringements are sufficiently accessible to parties affected by an infringement?	YES
Please explain:	
Did you take part in litigation of cases concerning the infringements of IPRs during the period under examination?	NO
In approximately what percentage of infringements/alleged infringements you detected did you decide to litigate against the infringer/alleged infringer?	0
For what reasons did you refrain from litigating?	OTHER
Please explain:	Perchè occorre una riforma alle leggi sul copyright per cui non si violi il copyright comportandosi secondo le normali consuetudini sociali

Did your decision on whether or not to litigate depend on the jurisdiction?	NO
Did your decision on whether or not to litigate depend on the type of court concerned (e.g. courts specialised in intellectual property as opposed to standard commercial courts)?	YES
Please explain:	I tribunali speciali sono parte del problema
Do you think it would be useful to establish, at EU level, model rules for fast track proceedings for civil law cases concerning infringements of IPRs?	NO
Please explain, what would be in your opinion the drawbacks of this system?	Perchè le violazioni riguardanti questa tematica devono rientrare nella normale giurisdizione
Do you think it would be useful to establish, at EU level, specific (in addition to Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure) model rules for small claims proceedings for civil law cases concerning infringements of IPRs?	NO
Please explain, what would be, in your opinion, the drawbacks of this system?	
Do you think it would be useful to establish rules for fast track proceedings for litigation of infringements of community trademarks and community designs?	NO
Do you think it would be useful to establish rules for small claims proceedings for litigation of infringements of community trademarks and community designs?	NO
What safeguards of defendant's rights should be put in place in case of the EU-level fast track/small claims proceedings concerning infringements of IPRs?	Le procedure di fast track non danno garanzie

### Right of information

How do you identify infringers/alleged infringers of your IPRs?	
Do you face problems identifying infringers/alleged infringers of your IPRs?	NO
Has it been possible for you to obtain information allowing identification of infringers/alleged infringers directly from an intermediary?	NO
What was the justification when the request was denied?	
Has it been possible for you to obtain a court order obliging an intermediary to disclose the identity of the infringer/alleged infringer?	N/A
Has it been possible for you to obtain a court order obliging an intermediary to disclose the identity of the infringer/alleged infringer of your IPRs in case where the intermediary and/or the infringer/alleged infringer of your IPRs were incorporated, or resident in a Member State other than the one in which you operate?	N/A

## Mechanisms to inform about the alleged infringement and to impede access to goods and services allegedly infringing IPRs

Do you consider the possibility to use notification mechanisms to be a useful tool to inform the intermediary about the fact that his services are being (allegedly) used to infringe an intellectual property right and thus bring a stop to the infringing/allegedly infringing activity? NO

Please explain:

Do you consider the possibility to use notification mechanisms to be a useful tool also where the infringements/alleged infringements occurred in, or the intermediaries are incorporated in, a Member State other than the one in which you operate? NO

Please explain:

I sistemi di notifica non possono funzionare

Do you consider the possibility to use notification mechanisms to be a useful tool to inform the infringer/alleged infringer about the infringing/allegedly infringing character of his activity? NO

Please explain:

In cases of commercial scale infringements of intellectual property rights, do you consider that there should be particular consequences (i.e. including e.g. suspension of the infringer's/alleged infringer's account) resulting from a notification mechanism? NO

Please explain:

Questo tipo di conseguenze è sproporzionata e inutile

In cases of notorious infringers of intellectual property rights, do you consider that there should be particular consequences (i.e. including e.g. suspension of the infringer's/alleged infringer's account) resulting from a notification mechanism? NO

Please explain:

## Requirements for granting injunctions

## Injunctions imposed on intermediaries

## Third party facilitation of infringements of IPRs

### Corrective measures

Should the competent judicial authorities privilege one specific type of corrective measure? NO

Should the competent judicial authorities be able to order that the goods that were found to infringe an intellectual property right should be disposed of outside the channels of commerce? NO

Should the consent of the right holder constitute a *conditio sine qua non* for disposing of the goods that were found to infringe an intellectual property right outside the channels of commerce? NO OPINION

Please explain how in your opinion the infringing goods could be disposed of outside the channels of commerce:

Would you be in favour of introducing sanctions for a party who, notwithstanding that the infringing goods were subject to corrective measures ordered by the competent judicial authorities, allowed these goods to subsequently return to the channels of commerce? NO

Please explain:

### Damages

How do you determine the amount of damages to be awarded for the purpose of filing a civil claim concerning an infringement of an IPR?

Do you take into account the resources invested in research and development while determining the damages to be awarded for the purpose of filing a civil claim concerning an infringement of an IPR? N/A

Would you agree that the level of damages awarded to the right holder in civil law cases concerning an infringement of IPRs should at least equal the profits made by the infringer? NO

Please explain:

### Use of IPR enforcement measures for frivolous and/or anti-competitive purposes