

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?	The member companies of the UNIVIDEO (a trade association) contribute substantially to the annual VIDEO trade market value of about 600€ billion.
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?	According to the 2011 FAPAV-IPSOS research the value of the lawful distributors channel of Audiovisual market has been about € 500 million (estimated growing in 2012); IPSOS estimated “lost transactions” € 384,00 (more than 60% of market value). The most damage was inflicted to video sell-through followed by rentals but also theatrical business and, more recently, online business are affected.
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)?	The intellectual property rights of the UNIVIDEO’s member companies are essential to the performance and growth of their businesses. IP rights are a key element in enabling film producers to attract the necessary investments into the creation of new films, TV programmes and other kinds of audiovisual content. IP rights also allow right holders to manage the works they create so that they can distribute these to various platforms (cinema, DVD, Blu-ray, television, Internet, IPTV, cloud-based services, etc.).
What is the relevance of the quality of civil enforcement system for intellectual property rights for your research, development and innovation investments?	Crucial
Please explain:	A high standard of enforcement is a necessary prerequisite for the willingness of stakeholders to invest in the creation of new content. There is notably an urgent need to incentivise increased cooperation from intermediaries and ensuring adequate remedies to address rogue sites, many of which are still located in the EU.

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?	N/A
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:	UNIVIDEO is a member of FAPAV, the Italian Federation for the protection of Audiovisual, IP and copyright. Disputes are usually managed by our members directly or through FAPAV. In case of copyright infringements on a commercial scale, ADR tends to be ineffective. In UNIVIDEO'S opinion, ADR tends to be more effective and easily accessible to the parties involved, when it comes to minor infringements.
Did you take part in litigation of cases concerning the infringements of IPRs during the period under examination?	NO
In approximately what percentage of cases were these intellectual property rights found to be invalid as a result of these claims?	
For what reasons did you refrain from litigating?	OTHER
Please explain:	UNIVIDEO is a member of FAPAV, the Italian Federation for the protection of Audiovisual, IP and copyright. Disputes are usually managed by our members directly or through FAPAV.
Did your decision on whether or not to litigate depend on the jurisdiction?	N/A
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)?	N/A
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?	
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?	YES

Please explain, specifying in particular what types of infringements of IPRs could be covered by such small claims proceedings:

We believe that it would be useful to establish model rules for small claims proceedings. However, right holders should not be forced to use fast track/small claims procedures if the claim is below the threshold as there may be reasons why normal procedures are more appropriate. In particular smaller companies often feel excluded from the legal system and find enforcing their rights too costly and time consuming. Small claims proceedings could address that lack of balance. Small claim proceedings should not focus on monetary claims only and should include the ability to file for injunctive relief. Companies of all sizes should have access to justice, including the ability to stop on-going infringements.

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 OPINION

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 OPINION

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?

Small claim proceedings should be subject to judicial oversight. Only the procedural timeframes should be shortened.

Right of information

How do you identify infringers/alleged infringers of your IPRs?

Given the high levels of online infringement, UNIVIDEO prioritises the most damaging forms of infringement and, as a result, it focuses on large scale pirate websites. These websites tend to operate anonymously, i.e. they register fake WHOIS data and operate their business through empty shell companies in for instance the Seychelles (i.e. The Pirate Bay).

Do you face problems identifying infringers/alleged infringers of your IPRs?

YES

Please explain what are the main difficulties:

The problem is compounded by a lack of cooperation from intermediaries which offer anonymizer services facilitating anonymous registration of domain names, hide actual IP address of the infringing website, and generally provide services such as hosting without any interest in ensuring that contact details are accurate and/or up to date, etc. High profile website use several layers of anonymization.

Has it been possible for you to obtain information allowing identification of infringers/alleged infringers directly from an intermediary?

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?

NO

What was the court's particular justification for a denial?

LIMITS IMPOSED BY DATA PROTECTION RULES

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?

YES

Please explain:

Notice and action procedures are useful and effective in the context of bona fide platforms. Notice and action procedures are not useful in the context of platforms(intermediaries that encourage infringement, and obviously, they serve no purpose whatsoever with platforms that ignore notices altogether. In Italy, AGCOM (the Italian Communication Authority) developed a draft regulation that, if enacted, might have entrusted itself with the task of preventing infringements and taking down protected materials made available to the public without the consent of the stakeholders. However, the enactment of this regulation is still pending.

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?

YES

Please explain:

Notice and action procedures are useful in the international or cross-border context although their effectiveness could be substantially increased by adding repeat infringement policies. Notice and action procedures are not useful for platforms/intermediaries that encourage infringement, and obviously they serve no purpose whatsoever with regard to platforms that ignore notices altogether. Where the right holder sending the notice is located in another jurisdiction, the intermediary in question is often even more unlikely to cooperate.

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?	YES
Please explain:	UNIVIDEO supports strict enforcement against commercial scale infringement which would include account suspension, but also other measures such as providing contact details of the infringer allowing the right-holder the possibility of taking action against the infringer directly.
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?	YES
Please explain:	We support appropriate enforcement against notorious infringers, including account suspension, account deletion but also other measures such as providing valid contact details of the infringer.

Requirements for granting injunctions

Injunctions imposed on intermediaries

Third party facilitation of infringements of IPRs

Corrective measures

Have corrective measures been ordered in cases in which you have been a party?	
Should the competent judicial authorities privilege one specific type of corrective measure?	
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?	
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?	
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?	YES
Please explain:	

Damages

<p>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?</p>	<p>Courts can calculate damages on the basis of a variety of factors including the following elements: “lost revenue”, “lost license fees”, “lessened value of the IPR rights”, “reputational damages”, “legal costs”, “costs for experts and investigations” and “profits made by the infringer”. In practice, exact calculation of damages is difficult since most infringers try to hide the level of infringements that they are responsible for. Right holders therefore tend to focus on claims for the recovery of the infringers profits. Damage claims and recovery of profit claims are rarely effective due to the lack of adequate disclosure obligations.</p>
---	--

<p>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?</p>	<p>YES</p>
--	------------

Please explain:

<p>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?</p>	<p>YES</p>
---	------------

<p>Please explain:</p>	<p>The infringer should be stripped of his gains and the right holder (as the victim) should at least be placed in the position he was in before the infringement. The infringer should not be better off. However, we also support regulation whereby there is a deterrent element so as to provide a disincentive to infringe; if damages just equal the license fee an infringer should have paid, there is no incentive to take a license in the first place.</p>
------------------------	---

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