

Trademark rights	
Design rights	
Patent rights	
Geographical indications	
Utility model rights	
Plant variety rights	
Trade names	
What is the value of your IPR portfolio?	CDT does not generate significant revenue by sale or license of copyrighted works. CDT makes materials available on our website, subject to a Creative Commons license. See https://www.cdt.org/license .
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?	Because CDT makes its content available free of charge via a Creative Commons license, infringement has no impact on CDT's revenue or the total value of its IPR portfolio.
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?	This is an important question. A 2010 report by the U.S. Government Accountability Office (http://www.gao.gov/new.items/d10423.pdf) observed that economic losses are difficult to quantify accurately, and that estimates are highly sensitive to the assumptions used regarding substitution rates, and therefore "transparency in how these estimates are developed is essential for assessing the usefulness of an estimate." Transparency regarding substitution rate assumptions is crucial since private parties commissioning studies on the impact of IPR infringement often have vested interests in the results. Interestingly, as the Commission is no doubt aware, a recent study on the digital music market by the Joint Research Center / Institute for Prospective Technological Studies (http://ftp.jrc.es/EURdoc/JRC79605.pdf) found that digital music piracy does not appear to displace lawful digital music sales at all.
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)?	n.a.
What is the relevance of the quality of civil enforcement system for intellectual property rights for your research, development and innovation investments?	N/A

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
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Do you consider that alternative dispute resolution mechanisms in cases of intellectual property rights' infringements are sufficiently accessible to parties affected by an infringement?	NO OPINION
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?	N/A
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?	NO OPINION
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 OPINION
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?

First, any such proceedings should observe basic tenets of due process. For example, a defendant should have the right to expect a clear explanation of the allegations, the opportunity to present a response, adequate time to develop such a response, and a fully neutral decision maker. Second, such proceedings should be limited to addressing cases where the legal issues appear straightforward and the potential consequences for the defendant are relatively moderate, not severe. Decision makers in such proceedings should be required to refer any case for full judicial resolution where they find the legal issues to be complex or unsettled, rather than trying to resolve such complexities in the streamlined process. Damages available through such proceedings should be capped, and should be compensatory rather than punitive. Third, defendants should have the right to appeal decisions to regular courts, so that they have recourse if the abbreviated proceedings yield ill-considered results. Finally, there should be oversight regarding the overall performance of the system. For example, periodic public reporting on the number of cases appealed and the number of decisions overturned would help provide insight and transparency concerning whether such proceedings are reliably producing fair and efficient results.

Right of information

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

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

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? 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:

Notification systems tend to create an expectation that, once notified, an intermediary will act against the accused content or users. But many intermediaries have no way to assess whether allegations are valid. For Internet intermediaries in particular, case-by-case assessments cannot scale. Therefore, notification systems carry great risk of unwarranted action against users. Risk-averse intermediaries will err on the side of caution, unnecessarily restricting legitimate uses of their services and in some cases directly interfering with users' free expression rights. Notification systems may have a role if the intermediary's function is not to block or punish but simply to forward the notice to the user. There may also be a role for efforts by financial intermediaries in stopping the flow of money to commercial infringers. But financial cutoffs carry serious risks for due process and free expression; actions by financial intermediaries must include carefully crafted safeguards.

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:

Systems for notifying intermediaries are risky and of limited utility for the reasons stated above. Such notification systems seem to assume that intermediaries can and should take enforcement action against alleged infringement, when in fact many intermediaries have no feasible way to determine when and whether infringement has actually occurred. Where the rightsholder, intermediary, and alleged infringer are in multiple jurisdictions that might have differing laws, it is even more difficult for the intermediary to determine whether infringement has occurred.

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?

YES

Please explain:

Informational efforts aimed at educating or warning users can sidestep many of the more serious concerns associated with actions taken by intermediaries. This is because purely educational measures can be structured to avoid directly impairing individual rights, even in cases where they are applied in a somewhat imprecise or overbroad manner. Receiving a warning notice need not significantly impair a user's speech or privacy rights. The key is for notification mechanisms to be educational in focus, not punitive. There is a crucial role for education, because much of the challenge in reducing infringement lies in changing norms about what constitutes normal and appropriate behavior. Some Internet users lack sufficient understanding of their rights and responsibilities under copyright law. Other Internet users may believe that their online behaviour cannot be traced to them. Still others may be unaware of infringing behaviour by others using their account (such as a teenage child).

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:

Requiring punitive measures on the basis of private notices effectively puts private parties in a role best left to judicial authorities: adjudicating complaints and imposing punishments that can bear directly on human rights. Even in cases where infringement seems apparent, measures can have an overbroad impact on free expression, such as when a site contains lawful and unlawful content. Full judicial process should be required before an intermediary can be compelled to take punitive action.

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:

Repeated allegations that have not been adjudicated by full legal process are not a legitimate basis to compel punitive action by intermediaries. They are not a clear indicator of guilt, and could simply reflect a determined or aggressive accuser who keeps reiterating the same accusations. CDT therefore opposes serious punishments, such as the termination of Internet access, based on untested allegations. Internet access has become too essential to the exercise of fundamental rights to be revoked without full legal process. To guide cases where a service provider voluntarily chooses to take enforcement action based on the provider's own policies and terms of use, CDT and other advocates have developed guidelines for mitigating human rights risks (see <https://www.cdt.org/Z4Y>). In short, any such actions should be transparently disclosed in clear terms, informed by and assessed for their potential impact on human rights, consistently applied, and should include opportunities for appeals or other recourse. Risks are especially high where voluntary actions could directly interfere with users' communications, such as through blocking or content removal. Measures that focus on financial relationships may avoid some of the direct risk to free expression, but can nonetheless have a devastating impact on businesses and need to be applied carefully and with sufficient safeguards.

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? YES

Please explain under which conditions should the competent judicial authorities be able to order disposal outside the channels of commerce:

This question appears to be focused on tangible infringing goods, and CDT would suggest that an express limitation to tangible goods only would be a key condition for any corrective measures of this kind. Digital files present entirely different considerations. The ease of copying such files means that it is unclear when a file might be considered to re-enter the channels of commerce or what it would take for re-entry to be prevented. Would deleting one instance of the file be sufficient, or would right holders seek interpretations that could require extensive monitoring and filtering to identify additional copies of the same original file? Ongoing monitoring and filtering obligations raise difficult privacy questions, and the ECJ rulings in SABAM v. Netlog and SABAM v. Scarlet establish (as CDT discussed in section 2 of this article: <https://www.cdt.org/Z4g>) that mandating such filters violates Article 15 of the E- Commerce Directive. CDT believes that corrective measures of the type envisioned by this question should take care to avoid such treacherous ground.

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?

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?

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? YES

Please explain:

Where the profits fairly attributable to infringement are either easier to demonstrate or larger than the harm to the right holder, it would be reasonable for the right holder to recover this measure of damages. However, infringing use of (for example) a single photograph in a long, best-selling book should not result in the photograph owner being entitled to extract from the book author the entire profit derived from the book as a whole. Profit should be attributed proportionally.

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