

Please provide your contact information (name, address and e-mail address):	Federation of European Publishers Rue Montoyer 31 1000 Bruxelles
What is your sector of activity (if possible with a 3 digit NACE classification)?	Interest organisation
What type of IPRs do you hold?	COPYRIGHT RIGHTS RELATED TO COPYRIGHT

How would you evaluate the significance of your intellectual property rights and related assets based on the performance and growth?

Copyright	CRUCIAL
Rights related to copyright	CRUCIAL
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?	The annual turnover of our members is approximately 23 billion Euro.
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?	It is hard to get estimation of the economic impact of piracy on our business. We mostly lack data on this at European level but a couple of national study have indicated that piracy significantly harm the economy of book publishers (eg study of the MOTIF, TERA Study, OFCOM Study). Some types of books are much more pirated than others (bestsellers, comic strips, practical books, STM books).
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?	The substitution rate of between pirated books and legally acquired books is almost a 1:1 ratio. As a matter of fact, there is a higher substitution rate in scientific and education sectors as they are specialised products targetting a specific audience. In the trade publishing sector a higher substitution rate applies in the first weeks of a release.

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)?	As explained above we do not have figures but it is clear that in so far as piracy impact sales of books it impacts publishers' ability to invest in new content and innovation.
--	--

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:	We represents undertakings, book publishers, who acquire exclusive intellectual property rights from authors in a specific language. Publishers' core business is to acquire, manage and licence those rights worldwide to enable authors to find their market by editing, producing, promoting and distributing their copyright-protected content in a most professional and efficient manner. It is a risky business and publishers need revenue stream to invest in new and existing talent. Moreover, publishers need to adapt to digital environment by investing into the production of e-books, digitalisation of back catalogues, new standards such as ePub and to offer innovative licensing solutions and new business models. All this has a cost and to keep piracy as low as possible, if not eradicated is more than crucial for publishers to be able to continue investing in new and existing talent and innovation. Piracy represents unfair competition to the content publishers license.
-----------------	--

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?	OTHER
---	-------

What were the costs and the length of proceedings?	Our members notified us that it can last from several months to several years. In some cases, it takes months for preliminary injunctions.
--	--

Were your rights sufficiently safeguarded (including right to privacy, right to be heard, and due process)? Please explain:	
---	--

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?	NO

Please explain:	They need legal assistance they cannot always afford.
-----------------	---

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?	PROCEDURES TOO COSTLY PROCEDURES TOO LONG
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?	YES
Please explain, specifying in particular what types of infringements of IPRs could be covered, and what kind of measures should be granted, in the course of such fast track proceedings:	Yes. When rightsholders wish to take action against infringing sites they are often deterred from doing so due to the length of the process and the associated costs incurred as a result. A fast track process would be very welcome to ensure all rightsholders would be able to take actions, including smaller ones, should they wish to do so. A standardisation of procedures across Europe would also be welcome, as legal process can be more complex and costly in other jurisdictions, and can therefore also act as a deterrent for proceedings.
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:	It is important that smaller companies do not feel excluded from a legal system because they do not have the financial means nor the time. Publishing houses are mostly SMEs and companies of all size should have access to the public. Preliminary measures and fast track injunction relief could be covered.
Do you think it would be useful to establish rules for fast track proceedings for litigation of infringements of community trademarks and community designs?	
Do you think it would be useful to establish rules for small claims proceedings for litigation of infringements of community trademarks and community designs?	

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?

Right of information

How do you identify infringers/alleged infringers of your IPRs? The bulk of the copyright infringement in the publishing industry takes place on file sharing sites and torrents, making it extremely difficult to identify infringers. Uploaders are identified only by their usernames and so it is almost impossible to identify them individually and finding out who is behind an IP address requires a court order and the cooperation of the relevant ISP. Given the difficulties in identifying infringers, rightsholders need as much support as possible; a suite of tools at their disposal; and the cooperation of intermediaries to protect their IPRs.

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

Please explain what are the main difficulties: Where you need to go through a judicial order, it is very lengthy.

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?

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:

Yes, but notice and action procedures shows some serious limits as they depend largely on the willingness of the intermediary in question. Publishers have been contributing to the development of web-crawlers to send automatic notice and take down action (PA's Infringement Portal, SINBAD), but usually the link to the pirated copy is immediately put back and not all hosting services are providing for easy to use method to give notice (manually filling). Its efficiency depends largely on the bona fide of the platforms. All in all, it remains largely ineffective and insufficient and requires huge investment to develop and update the web-crawlers. . For this reason NTD procedures must be sided by efficient civil enforcement proceedings.

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:

However, notification mechanisms are less useful when infringements occur in other Member States, particularly if rightsholders do not have specific partner organisations in the country in question. Instead, the sending of notices can be useful as part of an evidence gathering process for further action, such as for use in court at a later date. Streamlining the notice and takedown process across member states would be welcome.

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:

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:

We would support a sliding scale of penalties that could be accessed by rights holder to enforce their rights. For example, in the case of non-response to notification after repeated warnings, it is appropriate for further action to be at the disposal of rights holders, such as applying for the suspension of an alleged infringers account. ISPs and other online intermediaries have a role to play in this regard. In all cases however, there should be consequences for non compliance.

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:	Rightsholders should have recourse to deal with notorious or repeated infringers as quickly and effectively as possible. ISPs and other intermediaries/third party platforms should also be responsible for identifying and blocking duplicate accounts set up by infringers, and not just the primary account, to avoid the risk of infringement by the same user but from a different account or ID.

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 <i>conditio sine qua non</i> for disposing of the goods that were found to infringe an intellectual property right outside the channels of commerce?	YES
Please explain how in your opinion the infringing goods could be disposed of outside the channels of commerce:	Physical copies of counterfeited books for example could be destroyed.
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?	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? YES

Please explain:

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