

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

I. Introduction

A. Context of the Survey

As a part of its overall strategy on intellectual property[1] and in line with the Conclusions of the Competitiveness Council of 31 May 2012[2], the European Commission is continuing to consult stakeholders in order to evaluate the overall functioning of the civil enforcement system for intellectual property rights (e.g. patents, trademarks, designs and copyright) in the EU. This survey is a part of the broad strategy of the Commission to improve the legal framework for intellectual property rights and their enforcement in order to allow innovative services and products to create growth and jobs in Europe.

This consultation process started with the publication of the Report from the Commission on the application of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights ("Directive 2004/48/EC") in December 2010[3]. This report provided the basis for an extensive public consultation which closed in late March 2011[4]. A public hearing on the application of Directive 2004/48/EC in a digital environment was held on 7 June 2011[5]. Furthermore, a conference on the enforcement of intellectual property rights was held on 26 April 2012[6]. This conference was webcasted and allowed for questions and comments by online participants. As a further stage, the Commission services wish to collect additional data, and to obtain views of stakeholders on specific issues that have been raised during the consultation process by means of this detailed questionnaire.

B. Purpose and scope of the Survey

The purpose of this survey is to gather specific information about the enforcement of intellectual property rights through contracts, litigation or other means. This information would allow for comprehensive assessment of efficiency and costs of the civil enforcement systems that are put in place for intellectual property rights in the Member States. Additionally, this round of public consultations gives an opportunity to identify complementary work streams where appropriate.

The survey focuses on the period from May 2006 onwards. It is directed at all interested public and private stakeholders. In particular, this survey is seeking information from stakeholders that participated in civil proceedings concerning infringements of intellectual property rights, namely plaintiffs and defendants as well as from other parties involved in such proceedings.

C. Confidentiality

Received contributions, together with the identity of the contributor, will be published on the Internet, unless the contributor objects to publication of the personal data on the grounds that such publication would harm his or her legitimate interests. In this case the contribution may be published in anonymous form upon the contributor's explicit request. Otherwise the contribution will not be published nor will, in principle, its content be taken into account.

The information and contributions gathered in this round of consultation will be published on the website of DG MARKT in a statistical and aggregated form. A summary report of responses will be published in parallel.

II. Guidance on how to complete this Survey

A. Deadline

You are kindly asked to send your replies by 30 March 2013. On that date the electronic registering of replies will end. It will therefore not be possible to register replies from that date onwards.

The public consultation is available in English, French and German, the three working languages of the Commission. Responses can however be sent in any of the 23 official languages of the EU. Answers to the questions must be submitted using the electronic Interactive Policy Making application (IPM)[7].

B. How to fill in this Survey

For the sake of simplicity and consistency, the questions in this survey have been assigned, according to their nature, to the categories of respondents that are most likely to possess the information in question. Consequently, once you identify yourself by choosing one of the categories of respondents in question 2, you will only be asked those questions from the survey that have been assigned to your particular group of respondents. In order to enable you to consult all the questions to all stakeholders, the full list of questions is accessible on DG MARKT website.

In your answers to the questions below, you are invited to refer to the situation in EU Member States.

The questions in the survey refer to all the intellectual property rights that are covered by Directive 2004/48/EC[8].

As some of the questions require communication of specific data, we would ask you to provide your best estimate where you cannot provide an exact answer. If you do not dispose of data that are requested for a particular question, please indicate that the information requested is not available. You are not obliged to answer all of the questions.

If in your answer to questions, you are also referring to the Members States other than your Member State/country of residence/country of incorporation please list the Member States that you are referring to.

In the questions enquiring about the costs of proceedings, annual turnover and value of IPR portfolio we would ask you to provide the amounts in EURO (calculated on the basis of the relevant average exchange rate for the year in question), so that the data coming from all respondents are easily comparable using the IPM tool.

[1] COM(2011) 287 final

[2] Council Conclusions on the governance of the Single Market and the Digital Single Market, 31 May 2012:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/130562.pdf.

[3] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0779:EN:NOT>

[4] http://ec.europa.eu/internal_market/consultations/2011/intellectual_property_rights_en.htm

[5] http://ec.europa.eu/internal_market/iprenforcement/docs/conference20110607/hearing-report_en.pdf

[6] http://ec.europa.eu/internal_market/iprenforcement/conferences_en.htm

[7] hyperlink

[8] These were enumerated in the Statement by the Commission concerning article 2 of Directive 2004/48/EC (2005/295EC), and consisted of copyright, rights related to copyright, sui generis right of a database maker, rights of the creator of the topographies of a semiconductor product, trademark rights, design rights, patent rights, including rights derived from supplementary protection certificates, geographical indications, utility model rights, plant variety rights, and trade names, in so far as these are protected as exclusive property rights in the national law concerned.

Questions marked with an asterisk * require an answer to be given.

Background information

This survey is addressed to public and private stakeholders who are affected by IPR enforcement issues. You are first asked to provide basic background information about you as a respondent.


Name of the respondent: * (between 1 and 200 characters)

Identity of the respondent:

*

CITIZEN

MEMBER STATE


 *The answers for the Member States should be supplied by national correspondents mentioned in the article 19 of Directive 2004/48/EC.*

UNDERTAKING

JUDGE

OTHER

CITIZEN HOLDING INTELLECTUAL PROPERTY RIGHT(S)

 *This category encompasses all the physical persons that fall into the scope of art. 4 of Directive 2004/48/EC*


OTHER PUBLIC ORGANISATION


UNDERTAKING HOLDING INTELLECTUAL PROPERTY RIGHT(S)

 *This category encompasses all the undertakings that fall into the scope of art. 4 of Directive 2004/48/EC*

ASSOCIATION

 *This category encompasses also NGOs.*

 Member State: *

 *The answers for the Member States should be supplied by national correspondents mentioned in the article 19 of Directive 2004/48/EC*

AT - Österreich

BE - Belgique / België

BG - България

CZ - Česká republika

CY - Κύπρος

DE - Deutschland

DK - Danmark

EE - Eesti

EL - Ελλάδα

ES - España

FI - Suom/Finland

FR - France

HU - Magyarország

IE - Éire/Ireland

IT - Italia

LT - Lietuva

LU - Luxembourg

LV - Latvija

MT - Malta

NL - Nederland

PL - Polska

PT - Portugal

RO - România

SK - Slovensko

SI - Slovenija

SE - Sverige

UK - United Kingdom



Country of residence: *

- | | | |
|--|---|---|
| <input type="radio"/> AT - Österreich | <input type="radio"/> FI - Suom/Finland | <input type="radio"/> PL - Polska |
| <input type="radio"/> BE - Belgique / België | <input type="radio"/> FR - France | <input type="radio"/> PT - Portugal |
| <input type="radio"/> BG - България | <input type="radio"/> HU - Magyarország | <input type="radio"/> RO - România |
| <input type="radio"/> CZ - Česká republika | <input type="radio"/> IE - Éire/Ireland | <input type="radio"/> SK - Slovensko |
| <input type="radio"/> CY - Κύπρος | <input type="radio"/> IT - Italia | <input type="radio"/> SI - Slovenija |
| <input type="radio"/> DE - Deutschland | <input type="radio"/> LT - Lietuva | <input type="radio"/> SE - Sverige |
| <input type="radio"/> DK - Danmark | <input type="radio"/> LU - Luxembourg | <input type="radio"/> UK - United Kingdom |
| <input type="radio"/> EE - Eesti | <input type="radio"/> LV - Latvija | <input type="radio"/> OTHER |
| <input type="radio"/> EL - Ελλάδα | <input type="radio"/> MT - Malta | |
| <input type="radio"/> ES - España | <input type="radio"/> NL - Nederland | |



Country of establishment: *

- | | | |
|--|---|---|
| <input type="radio"/> AT - Österreich | <input type="radio"/> FI - Suom/Finland | <input type="radio"/> PL - Polska |
| <input type="radio"/> BE - Belgique / België | <input type="radio"/> FR - France | <input type="radio"/> PT - Portugal |
| <input type="radio"/> BG - България | <input type="radio"/> HU - Magyarország | <input type="radio"/> RO - România |
| <input type="radio"/> CZ - Česká republika | <input type="radio"/> IE - Éire/Ireland | <input type="radio"/> SK - Slovensko |
| <input type="radio"/> CY - Κύπρος | <input type="radio"/> IT - Italia | <input type="radio"/> SI - Slovenija |
| <input type="radio"/> DE - Deutschland | <input type="radio"/> LT - Lietuva | <input type="radio"/> SE - Sverige |
| <input type="radio"/> DK - Danmark | <input type="radio"/> LU - Luxembourg | <input type="radio"/> UK - United Kingdom |
| <input type="radio"/> EE - Eesti | <input type="radio"/> LV - Latvija | <input type="radio"/> OTHER |
| <input type="radio"/> EL - Ελλάδα | <input type="radio"/> MT - Malta | |
| <input type="radio"/> ES - España | <input type="radio"/> NL - Nederland | |



Please specify your country of origin: * (between 1 and 100 characters)



Are you a part of a multinational group?

- YES NO



In which Member States do you operate or trade?

(at most 27 answers)

- | | | |
|---|---|--|
| <input type="checkbox"/> AT - Österreich | <input type="checkbox"/> BE - Belgique / België | <input type="checkbox"/> BG - България |
| <input type="checkbox"/> CZ - Česká republika | <input type="checkbox"/> CY - Κύπρος | <input type="checkbox"/> DE - Deutschland |
| <input type="checkbox"/> DK - Danmark | <input type="checkbox"/> EE - Eesti | <input type="checkbox"/> EL - Ελλάδα |
| <input type="checkbox"/> ES - España | <input type="checkbox"/> FI - Suom/Finland | <input type="checkbox"/> FR - France |
| <input type="checkbox"/> HU - Magyarország | <input type="checkbox"/> IE - Éire/Ireland | <input type="checkbox"/> IT - Italia |
| <input type="checkbox"/> LT - Lietuva | <input type="checkbox"/> LU - Luxembourg | <input type="checkbox"/> LV - Latvija |
| <input type="checkbox"/> MT - Malta | <input type="checkbox"/> NL - Nederland | <input type="checkbox"/> PL - Polska |
| <input type="checkbox"/> PT - Portugal | <input type="checkbox"/> RO - România | <input type="checkbox"/> SK - Slovensko |
| <input type="checkbox"/> SI - Slovenija | <input type="checkbox"/> SE - Sverige | <input type="checkbox"/> UK - United Kingdom |



What is the average annual turnover of your undertaking/association in EURO?

(maximum 200 characters)



Can your undertaking be classified as a SME? *



According to Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, 2003/361/EC: enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

- YES NO



Are you registered in the EU Interest Representative Register?



You have the opportunity to register at http://europa.eu/transparency-register/index_en.htm before you submit your contribution.

- YES NO



Number: (between 1 and 200 characters)



Please provide your contact information (name, address and e-mail address):



(between 1 and 500 characters)



What is your sector of activity (if possible with a 3 digit NACE classification)?* (between 1 and 500 characters)



http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-RA-07-015/EN/KS-RA-07-015-EN.PDF



What type of IPRs do you hold? (at most 12 answers)



- | | | |
|--|--|--|
| <input type="checkbox"/> COPYRIGHT | <input type="checkbox"/> RIGHTS RELATED TO COPYRIGHT | <input type="checkbox"/> SUI GENERIS RIGHT OF A DATABASE MAKER |
| <input type="checkbox"/> RIGHTS OF THE CREATOR OF THE TOPOGRAPHIES OF A SEMICONDUCTOR PRODUCT | <input type="checkbox"/> TRADEMARK RIGHTS | <input type="checkbox"/> DESIGN RIGHTS |
| <input type="checkbox"/> PATENT RIGHTS (Including rights derived from supplementary protection certificates) | <input type="checkbox"/> GEOGRAPHICAL INDICATIONS | <input type="checkbox"/> UTILITY MODEL RIGHTS |
| <input type="checkbox"/> PLANT VARIETY RIGHTS | <input type="checkbox"/> TRADE NAMES (In so far as these are protected as exclusive property rights in the national law concerned) | |



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

Please provide an answer for the rights that you have indicated in the previous question.

- a: NONE
- b: LOW
- c: MEDIUM
- d: HIGH
- e: CRUCIAL

	a	b	c	d	e
Copyright	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rights related to copyright	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sui generis right of a database maker	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rights of the creator of the topographies of a semiconductor product	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trademark rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Design rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Patent rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
 Including rights derived from supplementary protection certificates	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Geographical indications	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Utility model rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Plant variety rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trade names	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
 In so far as these are protected as exclusive property rights in the national law concerned	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



What is the economic importance of licensing intellectual property rights from other entities for your undertaking?

- NONE
 LOW
 MEDIUM
 HIGH
 CRUCIAL



Please explain: (maximum 1000 characters)

Empty text box for explanation.



Please explain:

(maximum 1000 characters)

Empty text box for explanation.



Please explain:

(maximum 1000 characters)

Empty text box for explanation.



Please explain:

(maximum 1000 characters)

Empty text box for explanation.



What is the economic importance of licensing your intellectual property rights to other entities for your undertaking?



NONE



LOW



MEDIUM



HIGH



CRUCIAL



Please explain: (between 1 and 500 characters)



Please explain:

(maximum 1000 characters)



Please explain:

(maximum 1000 characters)



Please explain:

(maximum 1000 characters)



What is the value of your IPR portfolio? (between 1 and 200 characters)



Please provide the amount in 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?

(between 1 and 2000 characters)



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?

(between 1 and 2000 characters)



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)?

(between 1 and 2000 characters)



What is the relevance of the quality of civil enforcement system for intellectual property rights for your research, development and innovation investments?

- None Low Medium High Crucial
 N/A



Please explain: (between 1 and 1000 characters)



Please explain: (maximum 1000 characters)



Please explain: (maximum 1000 characters)



Please explain: (maximum 1000 characters)

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

In the course of the public consultation process on Directive 2004/48/EC, stakeholders indicated high costs and long duration of court proceedings as principal factors impeding access to justice, in particular for SMEs and individual right holders. The questions below aim to provide the Commission services with basic information about the costs and duration of civil law court proceedings in cases concerning infringements of intellectual property rights and about the rationale of right holders in launching these proceedings; they also intend to identify possible future work streams that could address these problems.



Did you pursue alternative dispute resolution mechanisms before instituting court proceedings in the cases of intellectual property rights' infringements?

*

Yes

No

N/A



What kind of alternative dispute resolution mechanisms did you undertake?

ARBITRATION

MEDIATION

BILATERAL
NEGOTIATIONS

OTHER



What were the costs and the length of proceedings? (maximum 1000 characters)



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

Please explain: (maximum 1000 characters)



Please explain: (between 1 and 500 characters)



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

NO

NO OPINION



Please explain:

(between 1 and 500 characters)



Please explain:

(maximum 500 characters)



Did you take part in litigation of cases concerning the infringements of IPRs during the period under examination? *



The survey focuses on the period from May 2006 onwards.

YES

NO



In how many cases per year do you take part on average? (maximum 100 characters)



How many of these cases were subject to an appeal? (maximum 100 characters)



In which capacity? * (between 1 and 4 answers)

PLAINTIFF

DEFENDANT

JUDGE

THIRD PARTY

OTHER



Please explain: (between 1 and 500 characters)



Please explain: (maximum 500 characters)



In which countries? Please indicate relevant Member States: * (between 1 and 27 answers)

- | | | |
|---|---|--|
| <input type="checkbox"/> AT - Österreich | <input type="checkbox"/> BE - Belgique / België | <input type="checkbox"/> BG - България |
| <input type="checkbox"/> CZ - Česká republika | <input type="checkbox"/> CY - Κύπρος | <input type="checkbox"/> DE - Deutschland |
| <input type="checkbox"/> DK - Danmark | <input type="checkbox"/> EE - Eesti | <input type="checkbox"/> EL - Ελλάδα |
| <input type="checkbox"/> ES - España | <input type="checkbox"/> FI - Suom/Finland | <input type="checkbox"/> FR - France |
| <input type="checkbox"/> HU - Magyarország | <input type="checkbox"/> IE - Éire/Ireland | <input type="checkbox"/> IT - Italia |
| <input type="checkbox"/> LT - Lietuva | <input type="checkbox"/> LU - Luxembourg | <input type="checkbox"/> LV - Latvija |
| <input type="checkbox"/> MT - Malta | <input type="checkbox"/> NL - Nederland | <input type="checkbox"/> PL - Polska |
| <input type="checkbox"/> PT - Portugal | <input type="checkbox"/> RO - România | <input type="checkbox"/> SK - Slovensko |
| <input type="checkbox"/> SI - Slovenija | <input type="checkbox"/> SE - Sverige | <input type="checkbox"/> UK - United Kingdom |



Did you already launch proceedings concerning infringements of your IPRs that occurred in another Member State?

- YES NO N/A



Please explain why: (maximum 1000 characters)



Did you already launch proceedings concerning infringements of your IPRs that occurred in several Member States?

YES

NO

N/A



Were you able to consolidate all these claims in one jurisdiction or were you obliged to launch the proceedings in the jurisdiction of several Member States? Please explain: (maximum 2000 characters)



Have claims against the validity of infringed/allegedly infringed intellectual property rights been made in the context of the litigation you were a party to?

YES

NO



Please explain what was the impact of these claims on the procedure concerning the infringement:
(between 1 and 500 characters)



In approximately what percentage of cases were these intellectual property rights found to be invalid as a result of these claims? (between 0 and 100)

%



In approximately what percentage of infringements/alleged infringements you detected did you decide to litigate against the infringer/alleged infringer? (between 0 and 100)

%



For what reasons did you refrain from litigating? (at most 6 answers)

- ONLY FOCUS ON SOME OF THE INFRINGEMENTS
- PROCEDURES TOO COSTLY
- PROCEDURES TOO LONG
- LOW LIKELIHOOD OF SUCCESSFULLY PROVING THE INFRINGEMENT TO THE REQUIRED STANDARD
- LOW LIKELIHOOD OF BEING COMPENSATED AT THE END OF THE PROCEEDINGS
- OTHER
- N/A



On the basis of what criteria did you choose these infringements? (between 1 and 500 characters)



Please explain: (between 1 and 500 characters)



Did your decision on whether or not to litigate depend on the jurisdiction?

- YES
- NO
- N/A



Please explain: (between 1 and 500 characters)



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

NO

N/A



Please explain: (between 1 and 500 characters)



For you, is it more important to stop infringements that are committed for profit than infringements committed not for profit?

IT IS MORE IMPORTANT

IT IS NOT MORE IMPORTANT

NO OPINION



What is your general intention in instituting civil law court proceedings concerning infringements of intellectual property rights? (at most 5 answers)

TO STOP THE INFRINGING ACTIVITY

TO TAKE MEASURES TO PREVENT FURTHER INFRINGEMENTS

TO BE COMPENSATED FOR THE INFRINGEMENT

TO DISSUADE INFRINGING BEHAVIOUR IN THE FUTURE

OTHER

N/A



Please explain:

(between 1 and 500 characters)



What was the amount of a court fees that you had to pay for instituting first instance proceedings on the merits of the case concerning an infringement of your IP right?

(maximum 1000 characters)



Please indicate the Member State(s) where the proceedings took place and the intellectual property right(s) that constituted the subject of these proceedings.



Did you have to pay any other court fees in relation to the first instance proceedings on the merits of the case concerning an infringement of your IP right?

YES

NO



Please specify total additional costs and explain what the fee was paid for and indicate the Member State(s) where the proceedings took place and the intellectual property right(s) that constituted the subject of these proceedings. (between 1 and 1000 characters)



What was the amount of external experts' costs you had to pay in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right? (between 1 and 1000 characters)



Please indicate the costs per expert and the number of experts usually called.



What was the amount of in-house costs you had to bear in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right? (between 1 and 1000 characters)



Please indicate the number of full-time equivalent employees devoted to this activity and average salary cost as well as the Member State(s) where the proceedings took place and the intellectual property right(s) that constituted the subject of these proceedings.



What was the amount of legal representation costs you had to pay in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right? (between 1 and 1000 characters)



Please explain indicating the amount of attorney's charge (according to national rules concerning lawyer's fees) and the amount of additional attorney's fees (costs related to representation other than basic attorney's charge, e.g. legal advice proceeding the litigation, etc.) as well as the Member State(s) where the proceedings took place and the intellectual property right(s) that constituted the subject of these proceedings.



Please indicate, if appropriate, other costs that you had to bear in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right: (between 1 and 1000 characters)



e.g. security provided with regard to the request of provisional/precautionary measures, payment provided for the execution of corrective measures – if not included above as "court fees"




What was the total amount of costs you had to bear in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right? (between 1 and 1000 characters)



Please explain how do these costs change for the preliminary proceedings: (between 1 and 1000 characters)




Please explain how do these costs change for the appeal proceedings: (between 1 and 1000 characters)

 Please indicate which of the various costs associated with the proceedings on the merits of the case at first instance were ordered by the court to be reimbursed to the winning party by the losing party following the final decision:

Please indicate whether there was a reimbursement separately for the proceedings concerning different intellectual property rights if appropriate.

- a: COURT FEES FOR INSTITUTING PROCEEDINGS
- b: OTHER COURT FEES
- c: EXTERNAL EXPERT(S) COSTS
- d: IN-HOUSE COSTS
- e: ATTORNEY'S CHARGE
- f: ADDITIONAL ATTORNEY'S FEES

	a	b	c	d	e	f
Copyright: (at most 6 answers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rights related to copyright: (at most 6 answers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sui generis right of a database maker: (at most 6 answers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rights of the creator of the topographies of a semiconductor product: (at most 6 answers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trademark rights: (at most 6 answers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Design rights: (at most 6 answers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Patent rights: (at most 6 answers)  including rights derived from supplementary protection certificates	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Geographical indications: (at most 6 answers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Utility model rights: (at most 6 answers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plant variety rights (at most 6 answers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trade names: (at most 6 answers)  in so far as these are protected as exclusive property rights in the national law concerned	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

 Do you consider that the general rule, according to which legal costs and other expenses incurred by the successful party shall be borne by the unsuccessful party, is effectively applied by the courts?

- YES
 NO
 NO OPINION



Please explain: (between 1 and 500 characters)



Please explain: (maximum 500 characters)



Please indicate the average time (months and days) between the lodging of a request before a court and the granting of a preliminary injunction (e.g. cease and desist orders against the infringer) in civil law cases concerning infringement of an IP right in your Member State/in the Member States in which you have been a party to court proceedings:

(between 1 and 1000 characters)



Please explain indicating the Member State(s) where the proceedings took place and the intellectual property right(s) that constituted the subject of these proceedings



Please indicate the average length (months and days) of court proceedings on the merits of the case (from lodging the claim to obtaining the final decision of the court at first instance) in civil law cases concerning infringement(s) of an IP right(s) in your Member State/ in the Member States in which you have been a party to court proceedings: (between 1 and 1000 characters)



Please explain indicating the Member State(s) where the proceedings took place and the intellectual property right(s) that constituted the subject of these proceedings.



Please indicate the average length (months and days) of the appeal court proceedings (from lodging the appeal to obtaining the final decision of the court at appeal) in civil law cases concerning infringement(s) of an IP right(s) in your Member State/ in the Member States in which you have been a party to court proceedings:

(between 1 and 1000 characters)




Please indicate the Member State(s) where the proceedings took place and the intellectual property right(s) that constituted the subject of these proceedings.




In your Member State, which courts are competent to hear civil law cases concerning infringements of IPRs in first instance and how many of these courts exist? (between 1 and 500 characters)



Other than courts designated to hear the cases concerning the Community trademarks and designs

 In your Member State, which courts are competent to hear civil law cases concerning infringements of IPRs at appeal and how many of these courts exist? (between 1 and 500 characters)

 Other than courts designated to hear the cases concerning the Community trademarks and designs


 Are there courts specialised in litigation of intellectual property related cases in your Member State?

 Other than courts designated to hear the cases concerning the Community trademarks and designs

YES


NO

 Please give more details: (between 1 and 500 characters)

 In the "general" courts competent to hear civil law cases concerning infringements of IPRs, are there judges specialised in intellectual property?

YES

NO

 Please give more details: (between 1 and 500 characters)



In your Member State, are fast track proceedings accessible in civil law cases concerning infringements of IPRs?



For the purposes of this survey, "fast track proceedings" should be understood as simplified proceedings established for certain types of cases, in order for the competent judicial authorities to rule in a timeframe that is shorter than in standard proceedings.

YES

NO



Are these fast track proceedings specifically established for civil law cases concerning infringements of IPRs?

YES

NO



Please give more details:

(between 1 and 500 characters)



In your Member State, are there maximum amounts for damages awarded through such fast track proceedings?

YES

NO



Please specify the relevant maximum amounts in EURO: (between 1 and 200 characters)



In your Member State, are small claims proceedings accessible in civil law cases concerning infringements of IPRs?



For the purposes of this survey, "small claims proceedings" should be understood as simplified proceedings established for cases with relatively low financial value, in order for the competent judicial authorities to rule in a timeframe that is shorter than in normal proceedings.

YES

NO



Please give more details specifying in particular which criteria are applied to define a "small" claim:

(between 1 and 500 characters)



Are there maximum amounts for damages that can be awarded as a result of these proceedings?

YES

NO



Please specify the relevant maximum amounts in EURO: (between 1 and 200 characters)



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

NO

NO OPINION



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:

(between 1 and 2000 characters)



Please explain, what would be in your opinion the drawbacks of this system? (between 1 and 2000 characters)



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

NO

NO OPINION



Please explain, specifying in particular what types of infringements of IPRs could be covered by such small claims proceedings: (between 1 and 2000 characters)



Please explain, what would be, in your opinion, the drawbacks of this system? (between 1 and 2000 characters)



Do you think it would be useful to establish rules for fast track proceedings for litigation of infringements of community trademarks and community designs?

YES

NO

NO OPINION



Please explain:

(between 1 and 500 characters)



Do you think it would be useful to establish rules for small claims proceedings for litigation of infringements of community trademarks and community designs?

YES

NO

NO OPINION



Please explain:

(between 1 and 500 characters)



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? (between 1 and 2000 characters)

Accessibility of measures necessary to ensure civil enforcement of intellectual property rights

The December 2010 Evaluation Report and the public consultation process show that Directive 2004/48/EC has provided a solid


basis for the application of intellectual property rights in the Internal Market. However, they also stress that some of the provisions of the Directive are considered unclear and there have been differing interpretations by Member States and their courts of certain provisions.


Two major points of focus for the assessment of Directive 2004/48/EC have emerged from this public consultation process on the Directive. According to the respondents, firstly, the applicability of enforcement measures in the digital environment should be addressed, and secondly, the relationship between protection of intellectual property and protection of other fundamental rights should be clarified. Among other issues that should be addressed in the opinion of certain stakeholders is the need to determine the scope for third party participation in enforcement, clarification of principles regulating the award of damages, and frivolous use of enforcement procedures.

Right of information

Currently, one of the key obstacles for parties seeking to enforce their intellectual property rights is the difficulty in obtaining information allowing identification of infringers who offer infringing goods/services via the services of an intermediary^[1]. Without such information, the party is not able to launch legal proceedings against these infringers and thus cannot make use of the measures established in the Directive. The questions below seek to examine whether under the current rules it is possible, in conformity with fundamental rights and in particular the data protection acquis, to obtain information on the identity of an infringer or alleged infringer, and try to determine what the scope of intermediaries' obligations to disclose such information could be.

[1] For the purposes of this survey, an intermediary should be understood as indicated in Directive 2004/48/EC, i.e. as a natural or legal person whose services are being used by a third party to infringe an intellectual property right.

 How do you identify infringers/alleged infringers of your IPRs? (between 1 and 1000 characters)

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

YES NO N/A



Please explain what are the main difficulties:

(between 1 and 500 characters)



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



YES



NO



N/A



Please explain by which type of intermediary and by what means:

(between 1 and 1000 characters)



What was the justification when the request was denied?



IT IS REQUIRED TO FIRST OBTAIN AN ORDER



OTHER

FROM A COMPETENT JUDICIAL AUTHORITY



Please explain: (between 1 and 500 characters)



Has it been possible for you to obtain a court order obliging an intermediary to disclose the identity of the infringer/alleged infringer?

YES

NO

N/A



Please explain the procedure involved, the type of intermediary involved and what was the cost and duration of the proceedings: (between 1 and 500 characters)



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

LIMITS IMPOSED BY DATA PROTECTION RULES

OTHER



Please explain: (between 1 and 500 characters)



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?

YES

NO

N/A



Please explain: (maximum 2000 characters)



Please explain:

(maximum 2000 characters)

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

The public consultation process on Directive 2004/48/EC revealed that measures allowing right holders to inform about the fact that an infringer/alleged infringer offers infringing/allegedly infringing goods and/or services via the services of offline or online intermediaries are sometimes seen as insufficient. It has also been argued that, where such measures exist, it is sometimes unclear under what conditions the intermediary should impede access to infringing goods and/or services upon receipt of a notification sent by a right holder. Additionally, there are some fears that the obligations resulting from these measures on the intermediary may be too burdensome. Furthermore, since in some cases impeding access to goods or services may be too easily obtainable, access to legitimate products may be put at risk. Some concerns were also raised on whether the scope of the measures against infringers that continue to commit infringements or were found to commit infringements on the commercial scale^[1] should be broader.

Notification mechanisms, understood as mechanisms that enable a right holder to, at least, notify an intermediary, acting in an online and/or offline environment, that his services are being used by a third party to infringe that right holder's intellectual property right, should be clearly distinguished from "notice-and-action procedures" that are based on Article 14 of the E-commerce Directive and apply exclusively in an online environment to "hosting" service providers. Notice-and-action procedures are the subject of a separate initiative dealing with different categories of illegal content^[2].

[1] For the purposes of this survey, "commercial scale infringements" should be understood as infringements carried out for direct or indirect economic advantage on a magnitude of typical/usual commercial activity, while excluding consumers acting in good faith or for personal/non-profit purposes.

[2] http://ec.europa.eu/internal_market/e-commerce/notice-and-action/index_en.htm



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?



For the purposes of this survey, a "notification mechanism" should be understood as any mechanism that enables a right holder to, at least, notify an intermediary, acting in an online and/or offline environment, that his services are being used by a third party to infringe that right holder's intellectual property right.

YES

NO

NO OPINION



Please explain:

(between 1 and 1000 characters)



Please explain: (maximum 1000 characters)



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

NO

N/A



Please explain: (maximum 2000 characters)



Please explain: (maximum 2000 characters)



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?

(at most 1 answers)

YES

NO

NO OPINION



Please explain: (between 1 and 1000 characters)



Please explain: (maximum 1000 characters)



Are notification mechanisms being used by the rights holders in your Member State?

YES

NO



Please provide us with more specific information about these mechanisms indicating in particular whether it is mandatory for the intermediaries to establish them: (maximum 2000 characters)



Does the infringer/alleged infringer have a possibility to contest a notification sent by the right holder?

YES

NO



Please explain: (between 1 and 500 characters)



Is it possible for a right holder to use the notification to ask an intermediary to impede access to goods or services that he considers to be infringing his IPRs and that are offered through the services of this intermediary?

YES

NO



Please explain: (maximum 2000 characters)



Is the right holder obliged to obtain an order from the competent judicial authorities if he wants to oblige the intermediary to impede access to goods or services that he considers to be infringing his IPRs?

YES

NO



Is it possible to ask for such a measure already at the preliminary proceedings stage?

YES

NO



Is a review of the measure resulting from the use of this mechanism (e.g. when access to an offer displayed on a website was impeded) provided for?

YES

NO



Are judicial authorities involved in this review?

YES

NO



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?



For the purposes of this survey, "commercial scale infringements" should be understood as infringements carried out for direct or indirect economic advantage on a magnitude of typical/usual commercial activity, while excluding consumers acting in good faith or for personal/non-profit purposes.

YES

NO

NO OPINION



Please explain: (between 1 and 500 characters)



Please explain: (maximum 500 characters)



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?



For the purposes of this survey, "notorious infringers" are considered as infringers who have been the subject of a number of procedures based on the notification mechanism.

YES

NO

NO OPINION



Please explain: (between 1 and 500 characters)



Please explain: (maximum 2000 characters)

Requirements for granting injunctions

In the course of the public consultation process on Directive 2004/48/EC, some stakeholders pointed out that the possibility to award injunctions as established within the Directive is at times used in an unjustified manner, and they called for providing further safeguards that would reduce the risk of these measures being used in manner that was not in line with the underlying public interest objectives.




Have preliminary injunctions been sought in the context of the litigation you were party to?



For the purposes of this survey, "preliminary injunction" should be understood as an interim injunction that can be issued by the competent judicial authorities even before the commencement of the proceedings on the merits of the case.

YES

NO

 In approximately what percentage of cases were these injunctions granted by the competent judicial authorities? (between 0 and 100)

%



Have permanent injunctions been sought in the context of the litigation you were party to?



For the purposes of this survey, "permanent injunction" should be understood as an injunction issued by the competent judicial authorities as a part of the decision on the merits of the case.

YES

NO



In approximately what percentage of cases were these injunctions granted by the competent judicial authorities? (between 0 and 100)

%



Is the urgency of the case taken into account by the competent judicial authorities when granting a provisional injunction?

YES

NO

DON'T KNOW



Is the potential harm of the measure for either of the parties taken into account by the competent judicial authorities when granting a provisional injunction?

YES

NO

DON'T KNOW



Is the impact of the measure on the market, competition and consumers taken into account by the competent judicial authorities when granting a provisional injunction?

YES

NO

DON'T KNOW





Are claims against the validity of IPRs taken into account by the competent judicial authorities when granting a provisional injunction?


YES

NO

DON'T KNOW


 What other circumstances are taken into account by the competent judicial authorities when granting a provisional injunction? (between 1 and 500 characters)

 Is it possible in your Member State to file a 'protective letter' with the competent judicial authorities in case a person considers it likely that an application for ex parte provisional measures against him/her as a defendant may be lodged in the near future?

 For the purposes of this survey, "protective letter" should be understood as a document that may be filed by a party who considers it likely that an application for ex parte measures may be lodged before competent judicial authorities against this party. Such document may seek to inform the competent judicial authorities about a non-infringing character of the party's activity, requesting these authorities to take account of party's arguments and/or its request to be heard in order to prevent ordering of ex parte measures.


YES

NO

 Please explain: (between 1 and 500 characters)

Injunctions imposed on intermediaries

The public consultation process on Directive 2004/48/EC revealed that in some Member States it is not possible to obtain preliminary injunctions against intermediaries, especially where they are not a party to the proceedings. In addition, it was suggested that where it is possible to obtain these injunctions, their scope does not necessarily reflect the requirements set in the Directive.

 Have you obtained a preliminary injunction imposed on an intermediary who was not a party to the proceedings?

YES

NO

N/A



Please explain on what grounds such a preliminary injunction was not granted:

(between 1 and 500 characters)



Have you obtained a permanent injunction imposed on an intermediary who was not a party to the proceedings?

YES

NO

N/A



Please explain on what grounds such a permanent injunction was not granted:

(between 1 and 500 characters)



Have you obtained a permanent injunction imposed on an intermediary providing services necessary for the financing of the infringing activity (e.g. a payment service provider)?

YES

NO

N/A



Please specify the type of intermediary that was involved: (between 1 and 200 characters)



Please explain on what grounds such a permanent injunction was not granted:

(between 1 and 1000 characters)



Have you obtained a permanent injunction imposed on an intermediary providing services necessary to access the infringing services/goods?

YES

NO

N/A



Please specify the type of intermediary that was involved: (between 1 and 200 characters)



Please explain on what grounds such a permanent injunction was not granted:

(between 1 and 500 characters)



Have you obtained a preliminary injunction imposed on an intermediary providing services necessary to access the infringing services/goods when the intermediary or the person infringing/allegedly infringing your IPRs were incorporated in a Member State other than the one in which you operate?

YES

NO

N/A



Please explain on what grounds such a preliminary injunction was not granted:

(maximum 1000 characters)



Have you obtained a permanent injunction imposed on an intermediary providing services necessary to access the infringing services/goods when the intermediary or the person infringing/allegedly infringing your IPRs were incorporated in a Member State other than the one in which you operate?

YES

NO

N/A



Please explain on what grounds such a permanent injunction was not granted: (maximum 1000 characters)

Third party facilitation of infringements of IPRs

In the course of the public consultation process on Directive 2004/48/EC, the role in the enforcement process of third parties was raised on several occasions. This concerns in particular third parties who are not themselves infringing intellectual property rights, but are actively and knowingly facilitating infringements of these rights by others on a commercial scale. The questions below seek to examine the possibility to bring a claim, or undertake other measures, against such third parties.




Is it possible in your Member State to launch legal proceedings against a third party who, even if not directly liable for an infringement of IPR under current rules, is engaged in an activity that actively and knowingly facilitates infringements of IPRs on the commercial scale by others?

YES


NO

 Please explain: (maximum 2000 characters)

 Is it possible in your Member State for the right holder to claim damages from a third party who actively and knowingly facilitates infringements of IPRs?

YES

NO


 Please explain: (maximum 2000 characters)

Corrective measures

In the course of the public consultation process on Directive 2004/48/EC, it was stressed that because of the lack of clarity and various interpretations of the provisions by different Member States and their courts, the current civil enforcement system does not guarantee that infringing goods and services are ultimately prevented from returning to the channels of commerce. It was also stated by stakeholders that such preventive measures are frequently exercised at the cost of the right holder. It was suggested that it should be possible for the competent judicial authorities, under certain strict conditions, to dispose of the goods that were found to infringe an intellectual property right outside the channels of commerce^[1].

[1] E.g. recycling of parts of the goods that could be reused, charity donations.

 Have corrective measures been ordered in cases in which you have been a party?

 *For the purposes of this survey, "corrective measures" should be understood as measures ordered by a court to prevent the possibility for the goods that were found to infringe an intellectual property right to return into the channels of commerce.*

YES


NO

 Who paid for the execution of the corrective measures?


RIGHT HOLDER


INFRINGER


OTHER

 Were the costs imposed on the infringer directly or did you have to pay the costs first and claim reimbursement?

- COSTS DIRECTLY IMPOSED ON INFRINGER REIMBURSEMENT OTHER

 Please explain: (between 1 and 500 characters)

 Please explain: (maximum 500 characters)

 Please explain: (maximum 500 characters)

 Should the competent judicial authorities privilege one specific type of corrective measure?

- YES NO NO OPINION



Please explain which one:

(between 1 and 500 characters)



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

NO

NO OPINION



Please explain under which conditions should the competent judicial authorities be able to order disposal outside the channels of commerce: (maximum 2000 characters)



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?

YES

NO

NO OPINION



Please explain how in your opinion the infringing goods could be disposed of outside the channels of commerce: (between 1 and 2000 characters)



Are there accredited recycling schemes for the goods that were found to be infringing intellectual property rights in your Member State?

YES

NO



Please explain specifying, if possible, who becomes the owner of such goods, whether and if so who can sell them and whether there are any restrictions imposed:

(between 1 and 500 characters)



Are there schemes for donating the goods that were found to be infringing intellectual property rights to accredited charity organisations in your Member State?

YES

NO



Please explain specifying, if possible, information whether there are any restrictions imposed on the use or transfer of the ownership of the donated goods:


(between 1 and 500 characters)



Are there specific modalities of destruction of goods that were found to be infringing intellectual property rights in your Member State?

YES

NO


 Please explain: (between 1 and 500 characters)



Are there sanctions for parties who, notwithstanding that the infringing goods were subject to corrective measures, allowed these goods to subsequently return to the channels of commerce?

YES

NO

 Please explain: (between 1 and 500 characters)



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

NO

NO OPINION

 Please explain: (maximum 2000 characters)



Please explain: (maximum 2000 characters)

Damages

In the course of the public consultation process on Directive 2004/48/EC, interested parties considered that the rules on damages established in the Directive are not precise enough, and as a consequence that the system of calculating damages strongly differs across Member States. Interested parties also complained about difficulties in determining lost sales as the basis for demonstrating the amount of damage suffered, and argued that it was unfair that the infringer should be able to keep any benefit from the infringing activity.



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? (between 1 and 1000 characters)



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?


YES

NO


N/A




Please explain: (between 1 and 1000 characters)


 On what basis do the competent judicial authorities establish the amount of damages awarded to the right holder in its final decision in a civil claim concerning an infringement of an IPR?

(between 1 and 1000 characters)

 Is the unjust enrichment of the infringer taken into account by the competent judicial authorities in the course of establishing the amount of damages to be awarded to the right holder in its final decision in a civil claim concerning infringement of an IPR?

- YES NO
- DON'T KNOW

 Is due diligence of the right holder taken into account by the competent judicial authorities in the course of establishing the amount of damages to be awarded to the right holder in its final decision in a civil claim concerning infringement of an IPR?


 *E.g. right holder's diligence in contracting and applying fair contractual terms in line with the fundamental rights applied in the EU, investment in the implementation of recognised ethical auditing and track and trace procedures, and providing access to his works in the territory where the infringement took place.*

- YES NO
- DON'T KNOW

 Is it possible for the competent judicial authorities in civil law cases concerning an infringement of IPRs to award damages on the joint basis of provisions on compensation for lost profits and those on unjust enrichment?


- YES NO
- DON'T KNOW


 Please explain: (between 1 and 500 characters)


 Is it possible for the competent judicial authorities in civil law cases concerning an infringement of IPRs to award damages on the basis of the alleged infringement of a broader portfolio of intellectual property rights, despite the fact that normally only a very limited number of these rights are asserted during one particular court proceeding?

YES NO


DON'T KNOW


 Please explain: (between 1 and 1000 characters)


 Please explain: (maximum 1000 characters)

 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 NO NO OPINION


 Please explain: (between 1 and 500 characters)


 Please explain: (maximum 500 characters)

 Do you consider the award of damages in cases of intellectual property rights' infringements is sufficient to compensate for the actual prejudice suffered by the parties affected by an infringement?


YES NO NO OPINION


 Please explain: (between 1 and 500 characters)

 Please explain: (maximum 500 characters)


 Is it possible in your Member States to award punitive damages in a case of IPRs infringements?


YES NO


 Please explain: (between 1 and 500 characters)

 Is it possible in your Member State for a relevant third party to claim compensation for damages arising out of an infringement?


YES NO


 Please explain: (between 1 and 500 characters)

 Please explain: (maximum 500 characters)

 Is it possible in your Member State for a relevant third party to claim compensation for damages arising out of measures taken to enforce IPRs which are subsequently held unfounded?


YES NO

 Please explain: (between 1 and 500 characters)

 Please explain: (maximum 500 characters)

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

In the course of the public consultation process on Directive 2004/48/EC, stakeholders pointed out that the measures established in the Directive are at times used in an unjustified manner, and they called for further safeguards that would reduce the risk of these procedures being used in manner that was not in line with the underlying public interest objectives. It is widely considered that some entities, instead of using their intellectual property rights to recoup the investment made, use them instead to e.g. block their competitors (i.e. "offensive" use of intellectual property rights), leading to a use of the enforcement system that can be inappropriate.

 In approximately what percentage of cases would you consider that a party used IPR enforcement measures frivolously and/or for anti-competitive purposes?

%



What is the impact of the frivolous use of IPR enforcement measures and/or use of these measures for anti-competitive purposes on your undertaking (eg. estimated additional costs/amount of investments not undertaken/exit from the market)? (maximum 2000 characters)



Are there provisions on frivolous and/or anti-competitive use of the enforcement measures established in your Member State?

YES

NO



Please explain: (between 1 and 500 characters)



Are there sanctions for frivolous and/or anti-competitive use of the enforcement measures established in your Member State?

YES

NO



Please explain indicating which authorities are responsible for enforcing these sanctions:

(between 1 and 500 characters)



How does the legislation in your Member State safeguard your rights as a defendant, in particular in terms of (1) right to privacy, (2) due process requirements? Please explain:

(maximum 2000 characters)

Useful links

: http://ec.europa.eu/internal_market/iprenforcement/directive/index_en.htm

Background documents

: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0048R\(01\):EN:NEINT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0048R(01):EN:NEINT)