



EPC | European Publishers Council

**CONTRIBUTION FROM THE EUROPEAN PUBLISHERS COUNCIL (EPC)
ON THE CIVIL ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS:
PUBLIC CONSULTATION ON THE EFFICIENCY OF PROCEEDINGS
AND ACCESSIBILITY OF MEASURES**

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The European Publishers Council (EPC) is a high level group of Chairmen and CEOs of Europe's leading media groups representing companies with newspapers, magazines, online publishing, journals, databases, books and broadcasting. We have been communicating with Europe's legislators since 1991 on issues that affect freedom of expression, media diversity, democracy and the health and viability of media in the European Union. A list of our members is attached.

➤ **Introduction**

The EPC would like to applaud the European Commission's efforts to establish a strategy 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. Widespread theft of media and creative content is injurious to the overall objectives of the European Digital Agenda, damaging the potential of professional journalism and entertainment to thrive in future and limiting the growth more generally of the European digital economy.

We are happy to see that the European Commission has recognised many of the problems that the EPC, as well as other stakeholders, identified during the previous rounds of consultations; particularly recognising the adverse impact of intellectual property infringements on employment in the creative sector and on the European economy in general.

EPC

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We understand that the survey has a more targeted and technical character, which will be addressed by the EPC members in their individual submissions. EPC as a European high-level group will provide some more general comments and attempt to reply to questions of a more general nature.

➤ ***A robust civil enforcement framework for intellectual property rights***

A robust framework is essential to ensure both effective and uniformly-applied measures throughout the EU involving all relevant players in the creative and distribution chain, including those internet-based businesses which continue to both facilitate and profit from infringing activity.

It is now urgent that the body of European laws which directly relate to a lawful functioning of the internet economy work now hand in hand rather than impeding proper enforcement of IP rights.

It is quite simply unacceptable for certain companies to evade their responsibilities by playing one piece of legislation off against another. This is particularly the case when it comes to the Enforcement, E-Commerce and Data Protection Directives. As we have recommended previously, the duties and obligations for intermediaries should be clarified and upheld so that it is no longer possible to benefit from limitations of liability while flouting normal responsibilities in a functioning market. For example:

➤ ***Freedom of Expression, property rights and data protection***

Very often we hear arguments that regulation of the internet, particularly the enforcement of copyright, will harm irreparably the ***freedom of expression***. Of course this is absurd; copyright provides the incentive and legal protection to make available as widely as possible all manner of creative works in return for both recognition and payment. The EPC members promote and protect the freedom of expression at both national and European levels. We remain vigilant so as to prevent any encroachment on rights deemed essential to our democratic societies. Nevertheless it is axiomatic that fundamental freedoms need to be balanced.

This is particularly so when it comes to data protection. The right to property – which includes intellectual property - is a fundamental right as much as ***the right to the protection of personal data*** and so when seeking a balance between those rights it is essential not use (or misuse) one to the detriment of the other. In the framework of the Enforcement of IP Rights there is often the phenomenon that those who infringe intellectual property rights

“hide” behind the right of the protection of personal data, disqualifying in this way the right to property. We absolutely recognise everyone’s right to data protection, but this cannot mean tolerance for illegal activities which are blatantly hiding behind a right¹.

➤ **Recommendations to improve enforcement in the B2B market**

The EPC welcomes that the report specifically addresses the internet and the challenges posed by digital technologies. It is clear that the current measures are not powerful enough to offer a solution to an ever increasing problem. In the field of publishing B2B piracy is often the major issue, where search engines and content aggregators index, copy, aggregate and provide snippets and deep links without prior permission or remuneration. To address this issue, collaboration with intermediaries such as ISPs, search engines, content aggregators and e-retailers is essential.

To do so, it is important to have a clear understanding of ‘piracy’ which can occur in the ‘B2B’ market as well as elsewhere, and of the variety of technical means by which it takes place, whether via ‘peer to peer’ services, websites illegally hosting content or otherwise. The way the publishing sector (newspapers, magazines, journals, news agencies, books) is affected by piracy sometimes differs from the situation in the music industry for example, but the vulnerability (due to ease and low cost of illegal storage and dissemination) is comparable and requires coherent measures in order to protect the functioning of an otherwise sound market. It is important in this regard that there is a full and proper evaluation of the role played by all those within the ‘copyright value chain’, to ensure that with benefit goes responsibility. In particular, we think it is important to undertake:

1. A thorough analysis of the role and effect of search engines and content aggregators and
2. To ensure that reproductions or displays of copyright material for commercial purposes (e.g. by deep linking and/or using search engine technology to copy and reproduce snippets or photographs) are treated within copyright law as a “distribution or making available to the public” and as such subject to permissions.

A sub-group of the EU Media Futures Forum in 2012 produced a set of Recommendations which are **attached at Annex 2**. It is important to note that this paper does not focus on

¹ As we have mentioned in our previous submission “[...] there are perverse outcome arising from Data Protection legislation where it interacts with notice and take down practice; where the mantel of privacy is facilitating piracy. The Telefonica judgement from the ECJ said we must balance the provisions in Community law that protected intellectual property rights (IPRs) with those that protected personal privacy. So introducing legal measures that could, in carefully prescribed circumstances, force the disclosure of user information is not precluded.”

individual consumers but on the many instances in which other businesses monetise our content without authorization or payment. Nor does this paper address specifically the special nature of scientific research and the scientific, educational and academic communities.

➤ ***Explicit provisions for intermediaries***

Some ISPs have deliberately exploited the fact that the ***exemptions in legislation do not require any concomitant standards of corporate governance*** and have chosen to operate a policy of ***poor identification of users and slow response to rights-holders complaints***.

Therefore, we believe that explicit provisions for intermediaries² should be set out in a Recommendation or Interpretative Guidelines. An “internet intermediary” which is eligible for liability privileges with respect to IPR infringements should be clarified in order to rule out any irresponsible actors who are not solely neutral intermediaries and who seek to take advantage of the broad scope of the current definition.

➤ ***Reassessment of Commercial Scale***

The specific criterion of “commercial scale” as defined in the legislation is no longer solely appropriate in the current online environment. Sometimes, commercial enterprises engage in IPR infringements on a large scale that do not involve sales of the infringing products, yet result in financial benefits to the company, which are sometimes very large commercial gains indeed e.g. in advertising revenues. Ease of mass distribution of IPR infringing content online such as unlawful file-sharing services are as destructive to the value of copyright content as any conventional pirate business, but without having the traditional notion of commercial activity, as such infringements may be carried out without payment. However the number of infringing acts and the harm inflicted on right holders is at least as great as is the case with other types of IPR infringements undertaken for the purpose of financial gain.

The EPC is pleased that the European Commission recognises the complexity of these matters and the need to engage advertisers and payment companies in the fight against piracy.

² An intermediary, besides ISPs, can be a search engine, a content aggregator, an e-retailer, a payment processor, an ad network, a domain name registrar etc.

➤ **Reducing Piracy of legal offers**

Combating piracy is essential in encouraging and facilitating legal offers of content to thrive online, a core part of incentivising the creation of new digital content services. The EPC supports the widely held view that there are two essential and interdependent requirements to creating a vibrant and sustainable market for digital content online. The first is the availability of 'legal offers', the second is the availability of effective legal measures and sanctions to combat all forms of piracy of copyrighted material.

The implementation of the **Directive has had a positive effect** as it has contributed in many cases to a decrease in illegal downloading. This shows the importance of dissuasive measures to fight illegal use of protected material. However, since the adoption of the directive, the challenges to fighting piracy in the digital environment have grown exponentially. One of the reasons why these challenges are still present arises not from the lack of a legislative framework, but rather the need for better implementation, a responsibility which lies with the member states. In addition, the lack of clarity of some provisions aggravates the situation.

The industry must play its part too by ensuring that the identity or rights and rightsholders, and the terms and conditions for re-use of their content are easily accessible. **Transparency of who owns what not only aids the management of rights but also the enforcement of rights in the event of infringement.**

Copyright and management of our media assets are all too often cited as barriers to making it easier for consumers to access lawfully the media content they want. We hear this not only from consumers and politicians but from content aggregators and distribution companies who are building multimedia businesses, sometimes in direct competition with traditional media companies. Search engines and content aggregators have said that the Internet does not lend itself to traditional licensing models and assert that it is not possible to find out who owns the rights they need. If content is subsequently distributed without permission of the rights holders, this in turn leads to greater levels of piracy.

To address the growing need for easy but pervasive ways, built into the fabric of the internet, to **identify, grant, and communicate information about our rights throughout our supply chains and with end users** the EPC, together with owners of content of all media types (audio, image, audiovisual and text) have been addressing these issues directly in a project called the **Linked Content Coalition³ (LCC)**. More information here: www.linkedcontentcoalition.org

➤ ***Pre-emptive action against new forms of piracy of self-published works***

The first LCC deliverables will be published in early April 2013 including ***an innovative Rights Reference Model for all forms of professional produced media and creative content; and an important White Paper on the “Digital Identifier Network”***. This will lead to further work on ***multi-media identifiers for self-published new works, and user-generated content incorporating in-copyright content***.

Today there is no easy way for individuals to identify their rights in new works (including adaptations). Although new works are of course protected by copyright at the point of creation, unless there is an easy means of managing these works on the network, piracy will only escalate.

However, there is currently no easy way to “declare” identities of these new self-published works, i.e. the identities of and rights in the content of new works, in a computer-readable way so that this data can enter the digital supply chain upon uploading to a network like YouTube or DailyMotion, Flickr, Soundcloud, Vimeo and various blogs with their active cooperation and facilitation.

The LCC will be considering the scope of content of all media types (audio, image, audiovisual and text) which is “self-published” by individuals or organizations. New creators need a simple way to create and follow their own digital journey, especially if along the way their works become popular and/or with commercial potential to avoid hundreds of millions of digital orphans being created every day. Information is often declared in textual form, but this normally requires further human intervention before it can be turned into reliable, computer-readable identifiers, and for the great majority of content, this never happens risking widespread unauthorised re-use and commercialisation.

The volume of this content is of course enormous and a significant proportion of it is of some actual or potential commercial value. The LCC has already developed a workable approach to the data architecture required. Technology for the subsequent automatic identification of digital artefacts themselves is now widespread, growing and improving constantly. Cost will not be prohibitive – so there is a real opportunity to establish the authoritative identity of content and rights in machine-readable form at the point at which it enters the World Wide Web. More effective forms of monetisation and protection will then have a robust data infrastructure to build on, providing tools which can minimise further escalations of piracy.

➤ ***Education and awareness raising campaigns***

Finally, the EPC would also like restate our belief in the importance of developing education and awareness raising campaigns about the role and value of intellectual property rights to encourage creativity and participation in the growth of the digital single market.

Every day the number of new or derived works of all kinds loaded onto the World Wide Web is greater than the total published physical output of civilisation since the invention of the printing press. This is the most fabulous opportunity for participation in the most brilliant invention of our time. There are already many information campaigns about the risks and damage brought about by copyright theft but these all too often fail under the general illusion perpetuated by piracy that “everything is available for free”. We must therefore find new ways of communicating the value and role of intellectual property rights to our inventors, designers and creators of the future so the act of creating is placed at the heart of such campaigns.

Brussels, March 2013



Annex A: EPC members

Annex B: Recommendations on Licensing, EU Media Futures Forum

Annex A: EPC MEMBERS | March 2013:

Chairman:

Mr. Francisco Pinto Balsemão, *Chairman and CEO, [Impresa](#), Portugal*

Members:

Dr. Carlo de Benedetti, *Chairman, [Gruppo Editoriale L'Espresso](#), Italy*

Mr. Jonas Bonnier, *CEO, [Bonnier](#), Sweden*

Mr. Oscar Bronner, *Publisher & Editor in Chief, [Der Standard](#), Austria*

Dr. Hubert Burda, *Chairman and CEO, [Burda Media](#), Germany*

Mr. Juan Luis Cebrian, *CEO, [Grupo Prisa](#), Spain*

Mr. Mike Darcey, *Chief Executive, [News International Ltd](#), UK*

Dr. Mathias Döpfner, *Chief Executive, [Axel Springer AG](#), Germany*

Mr. Erik Engstrom, *Chief Executive, [Reed Elsevier](#)*

Mr. Luis Enriquez, *CEO, [Vocento](#), Spain*

Ms. Rona Fairhead, *Chief Executive, [Financial Times Group](#), UK*

Mr. Simon Fox, *Chief Executive, [Trinity Mirror plc](#), UK*

Dr. Stefan von Holtzbrinck, *President and Chairman of the Executive Board, [Verlagsgruppe Georg von Holtzbrinck GmbH](#), Germany*

Mr. Harri – Pekka Kaukonen, *CEO, [Sanoma Corporation](#), Finland*

Dr. Torsten-Jörn Klein, *[Gruner + Jahr](#), Germany*

Mr. Steffen Kragh, *President and CEO, [The Egmont Group](#), Denmark*

Mr. Murdoch MacLennan, *Chief Executive, [Telegraph Media Group Ltd](#), UK*

Mr Andrew Miller, *Chief Executive, [Guardian Media Group](#), UK*

Mr. Piotr Niemczycki, *CEO, [Agora](#), Poland*

Mr Giulia Lattanzi, *[RCS Media Group SpA](#), Italy*

Mr. Panayotis Psycharis, *CEO, [Lambrakis Press Group](#), Greece*

Mr. Michael Ringier, *President, [Ringier](#), Switzerland*

The RT. Hon. The Viscount Rothermere, *Chairman, [Daily Mail and General Trust](#), UK*

Mr. Rolv Erik Ryssdal, *CEO, [Schibsted](#), Norway*

Mr. Jim Smith, *Chief Executive, [Thomson Reuters](#)*

Mr. Christian Van Thillo, *Chief Executive, [De Persgroep](#), Belgium*