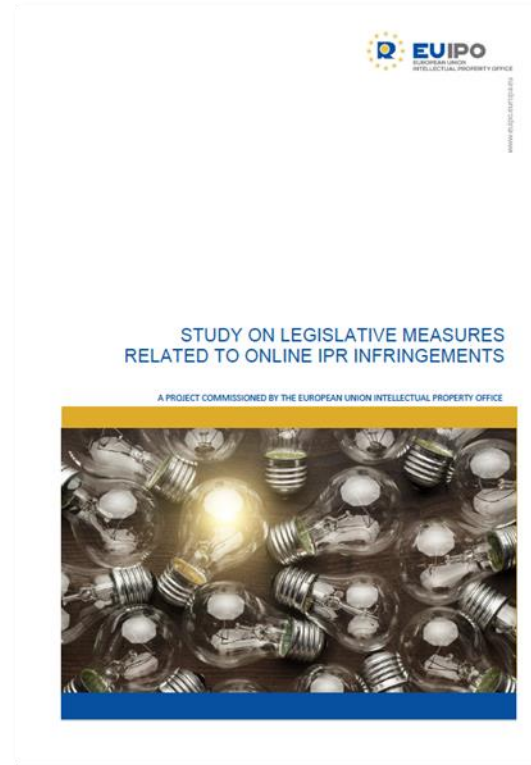


Study on Legislative Measures Related to Online IPR Infringements

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Alicante, 9 October 2018

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- Published on 13 Sept. 2018
- Available on Observatory [Website](#)
- Executive Summaries
in 23 Languages



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The study sheds light on specific legal measures available for the enforcement of IPR on the internet and to what extent they exist in the EU Member States.

Content

- Why ?
- What ?
- How ?
- Main Findings
- Conclusions

Why ?

- IPR infringements in the online environment on the rise
- Numerous legislative measures have been adopted
- No previous study did target legal measures applicable to online IPR infringements

What ?

- Take a cross-sectorial view
- Look at civil, administrative and criminal enforcement measures
- Develop a problem focused description of legal measures
- Provide legal overview rather than full picture

How ?

- Expert group established
- Focus on 8 key topics
- 2 sets of questionnaires (civil and criminal)

Key Topics

1. Obtaining account information
2. Blocking access to websites
3. Domain name actions
4. Actions targeted at hosts
5. European Investigation Order
6. Extradition – European Arrest Warrant
7. Money laundering
8. Criminal sanctions

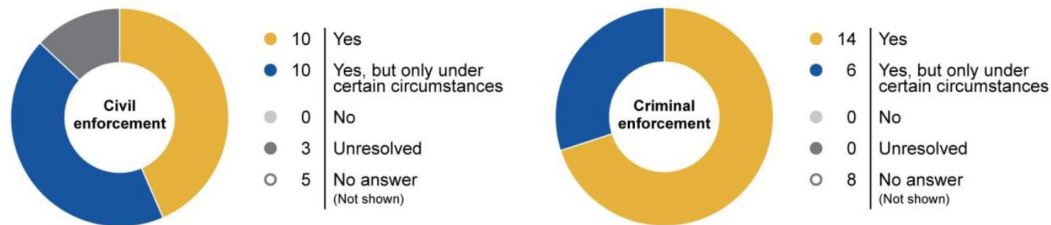
Main Findings

1. Obtaining Account Information

[retrieval of information from intermediaries]

Disclosure of information available in all MS. Legal basis for national measures has been harmonised through IPRED. Differences may exist when it comes to procedural conditions.

FIGURE 15 — DISCLOSURE OF THE CONTACT INFORMATION OF AN ACCOUNT HOLDER



Main Findings

2. Blocking access to websites

[hosted within / outside of EU Member States]

Blocking access to websites is in general available in all MS (IPRED). Differences may occur in the more detailed national procedural rules.

In most Member States, the courts are the only competent authority to grant blocking orders. In Italy a blocking order may however also be issued by the Italian Competition Authority (AGCM). In Slovakia, the .sk domain name registry SK-NIC can block access to an .sk domain name that is used for illegal activities, not only based on a court order but also at its own discretion.

Main Findings

3. Domain name actions

[suspension, transfer, deletion, seizure of domain names]

National legislation on registration/administration of country code top-level domains not harmonised. Legislative measures are subject to national laws and specific rules or user terms of the administrators of ccTLDs. The legislative measures analysed are available in most MSs, though none of them are available in all MSs. For example, a court order to transfer an infringing domain name from the holder to the right holder might be possible in some MSs but not in others although the parties might be the same.

Main Findings

4. Actions targeted at hosts

[takedowns of listings, suspension, blocking, etc. of accounts]

Fragmented overall picture. Exemption from liability of hosting providers has been harmonised through the Directive of Electronic Commerce. Secondary liability is not harmonised and dealt with by national laws. Host provider typically not liable, but might be required by court order to take down infringing content from its platform anyways. Suspensions and or blockings are either unavailable or the situation is unresolved in almost half of the MSs.

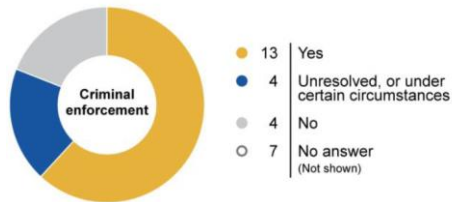
Main Findings

5. European Investigation Order (EIO)

[application to online infringements of IPR]

Counterfeiting and product piracy are covered by the EIO provided the basic requirements are met (offence is subject to a max. period of at least 3 years of imprisonment). However, not every IPR infringement qualifies as counterfeiting or piracy, and the maximum sentences is not 3 years in all MSs.

FIGURE 30 — APPLICATION OF AN EIO ON ONLINE IPR INFRINGEMENTS

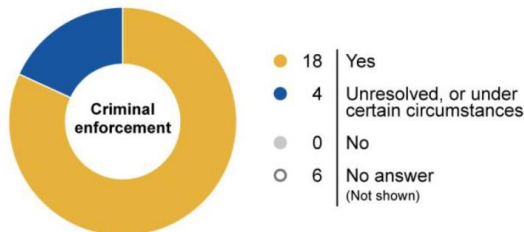


Main Findings

6. Extradition – European Arrest Warrant (EAW) [application to online infringements of IPR]

EAW applicable for counterfeiting, piracy of products as well as computer related crimes. An EAW can only be issued, if an offence is punishable by imprisonment of a maximum of at least 3 years, which precludes its application in some MSs.

FIGURE 32 — APPLICATION OF THE EAW ON ONLINE IPR INFRINGEMENTS IN GENERAL



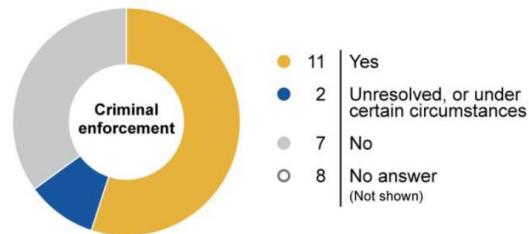
Main Findings

7. Money laundering

[application to online infringements of IPR]

The Fourth Anti Money Laundering Directive and the Fund Transfer Regulation cover most types of criminal activities including such as relating to IPR infringements.

FIGURE 34 — APPLICATION OF PROVISIONS ON MONEY LAUNDERING TO ONLINE IPR INFRINGEMENTS



Main Findings

8. Criminal sanctions

[sentences, time limits, liability for companies, etc.]

Criminal sanctions are not subject to harmonisation at EU level. The type and duration of penalties for IPR infringements vary considerably in the MSs. The same is true for punishing negligent infringements as well as legal persons.

FIGURE 35 — MAXIMUM PENALTIES FOR TRADE MARK INFRINGEMENT¹⁶⁹

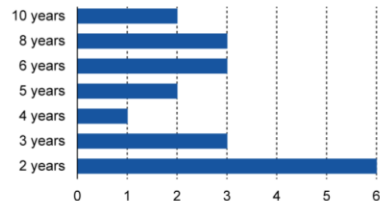
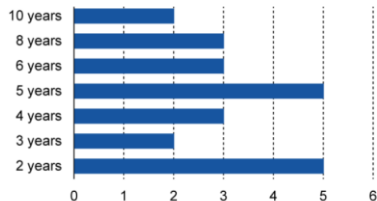


FIGURE 36 — MAXIMUM PENALTIES FOR COPYRIGHT INFRINGEMENT



Last but not Least

- Listing of online IPR infringements [most relevant for the study]
- Overview of legal landscape to combat online IPR infringements
- Identification of future challenges

Conclusions

- Enforcement in an online environment is complex.
- Civil measures are partially harmonized (IPRED, TMDIR, INFOSOC, E-COMDIR).
- Specific legal measures often dealt with general national laws (e.g. tort law, general procedural laws).
- Lack of harmonization for criminal enforcement measures.
- Technology (often) moves faster than legislators and courts.

Appetite for more?

- [Study on Legislative Measures related to Online IPR Infringements](#)
- [Observatory Publications](#)



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Thank you