

ILLEGAL IPTV IN THE EUROPEAN UNION

RESEARCH ON ONLINE BUSINESS MODELS INFRINGING INTELLECTUAL PROPERTY RIGHTS — PHASE 3

Executive Summary



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Economic, Legal and Technical analysis Report

November 2019

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Background

In 2018, the European Union Intellectual Property Office (EUIPO), through the European Observatory on Infringements of Intellectual Property Rights, commissioned a research study on IPTV crime in Europe. The purpose of the research study was to enhance the level of understanding about the ways illegal internet protocol television (IPTV) is carried out, how the business models around this phenomenon work, and thereby provide a basis for subsequent identification of possible responses to tackle the challenge of the phenomenon more effectively.

The research study was commissioned to the Centre for Intellectual Property Policy and Management (CIPPM) of Bournemouth University, which set up a team of researchers in law, economics and computer science⁽¹⁾. The research team was assisted by an expert group including rights holders, law enforcement representatives, regulatory authorities, civil society groups and digital security companies⁽²⁾.

The present report is carried out as an interdisciplinary study, surveying legal, technical and economic aspects of illegal IPTV. It is the first major study that reviews the existing literature, the legislative framework and case-law in the EU and provides structural analysis of existing business models with regard to unauthorised delivery of television content over the internet. In addition, the study provides the first assessment results of the magnitude of illegal PTV across the EU in terms of active users and unlawful revenue obtained from infringing activities.

Methodology and Data

The existing studies⁽³⁾ aiming to quantify the magnitude and economic impact of illegal IPTV coherently report on the rising trend of unauthorised IPTV proliferation in global markets⁽⁴⁾. This report has been carried out to estimate the number of individuals involved in consumption of unauthorised IPTV as well as to assess the potential revenue generated by copyright infringing IPTV providers. Quantitative estimation is based on official and harmonised data sources in order to ensure full comparability of the reported estimates among the EU Member States. Official Eurostat household survey data was applied when possible. This study also benefits from cooperation with the EUIPO

⁽¹⁾ Bournemouth University research team was led by Professor Maurizio Borghi and included Professor Vasilis Katos, Dr Antanina Garanasvili and Dr Marcella Favale as Principal Investigators, and Professor Dinusha Mendis, Ms Dimitra Poutouri and Mr Dimitris Mallis as Co-Investigators.

⁽²⁾ The expert group included Bogdan Ciinaru (Europol), Tim Cooper (Premier League), Richard Crisp (BT), Callum Cryer (UK IPO), Mattia Epifani (Re@lity Net), Matteo Feraboli (Sky Italia), Jose Luiz Gomez (Spanish Police), Gabor Ivanics (Eurojust), Jerry Gee (Kudelski-Nagra), Phillip Davies (Sky UK), Robert Kiessling (Sky UK), George Kyne (An Garda Siochana), David Lowe (UK IPO), Yuliya Morenets (TAC International), Mark Mulready (Irdeto), Marco Musumeci (UNICRI), Mathilde Persuy (Hadopi), Marco Signorelli (DCP), Laura Vilches (Spanish Liga), Alessandro Rossetti (SoftStrategy), Kevin Taylor (Comcast), Lars Underbjerg (Nordic Content Protection), Didier Wang (Hadopi).

⁽³⁾ Cybersecurity unit of Kudelski Group (2016), Hadopi (2018), Nordic Content Protection (2017), Sandvine (2017), The Industry Trust (2016).

⁽⁴⁾ See *infra* Appendix I.

Observatory stakeholders and relies on data and knowledge shared by experts of IPTV market conditions.

Business models in the unauthorised IPTV market are defined in compliance with the methodology developed by EUIPO 'Research on Online Business Models Infringing Intellectual Property Rights' ⁽⁵⁾. The analysis of the ecosystem of business models of illegal IPTV across the EU includes the applicable legal framework and the significant case-law.

The legislative framework investigation was assisted by a survey carried out in 28 EU Member States. Based on preliminary analysis of the *acquis communautaire* on copyright protection of television broadcasts, a survey of the relevant law and jurisprudence of Member States has been conducted by means of a questionnaire addressed to national correspondents. The survey allowed to collect case law on illegal IPTV, both from civil and criminal proceedings, and to identify the nuances of applicable legislation among national jurisdictions.

Legislative framework analysis

European Union law provides for a broad protection against unauthorised transmission of TV broadcasts on the internet, covering a wide range of activities. Retransmission of air, satellite or cable signal on the internet, cloud recording of TV programmes, hyperlinking to live streaming through smart TV devices and indexation of hyperlinks constitute acts of 'communication to the public' under Article 3 of the Information Society Directive. However, not all rights that subsist in TV broadcasts are protected in the same way across the EU. Rights in the content incorporated in TV broadcasts are protected against both live and on-demand streaming. By contrast, broadcasters' rights in the broadcast signal apply only to on-demand streaming (or downloading) of fixations of broadcasts. Only seven Member States (Austria, Czech Republic, Denmark, Finland, Romania, Sweden and the UK) extend broadcasters' rights to live streaming as well. In addition, reception of TV signal by means of unauthorised streaming devices is an infringement of the reproduction right under Article 2 of the Information Society Directive.

While content incorporated in TV broadcasts enjoys a high level of protection against illegal IPTV, sporting events as such are not a subject matter of copyright protection under EU law. However, audiovisual recording of sporting events is likely to meet the conditions of subsistence of copyright, by virtue of the 'free and creative choices' made by the director of the recording. Moreover, the works and other subject matter normally included in the recording and transmission of sporting events (such as background sound recording, original music and graphic works) are likely to attract copyright too.

The *acquis communautaire* leaves some uncertainty as to whether simultaneous retransmission of free IPTV signal, including by means of framing, and transmission of IPTV signal to a signal distributor by means of 'direct injection' constitute acts of communication to the public under Article 3 of the

⁽⁵⁾ EUIPO 'Research on Online Business Models Infringing Intellectual Property Rights': Phase 1, Establishing an overview of online business models infringing intellectual property rights, July 2016.

Information Society Directive. Both scenarios are addressed by the new Directive on Online Broadcast Transmission (2019/789), which will be implemented in Member States' legislations by June 2021.

Copyright Infringing Business Model Analysis

Copyright infringing IPTV distribution shows a variety of patterns and ranges from well organised large business structures to individual undertakings. While providing the same product, namely access to live streamed channels, illegal IPTV providers vary in terms of the platform on which the access to IPTV is made available, target audience, pricing strategies and other elements such as complementary products (video on demand, set-top box sales) and social media presence. Infringement can simply commence when an unlicensed content provider legally obtains a stream from a content distributor or content provider and makes it available to third parties this way violating the terms of use. These third parties may be end users and consumers of the content, or intermediaries, in which case they may also make profit by reselling it.

Technological developments as the spread of broadband penetration and higher internet speed do not only facilitate access to legitimate IPTV sources, but in turn simplify access to those that are illicit. Technological challenges must be taken into account when considering the impact of illegal IPTV thus adding to the complexity of the analysis. Despite the variety of means of distribution, the analysis shows that illegal IPTV tend to cluster around three broadly defined business models:

- The 'Illegal IPTV subscription' model, where customers are given direct access to a number of TV channels upon subscription and payment of a fee. IPTV content is made available for direct streaming on the illegal websites or through mobile device applications. This business model is based on sale of unauthorised IPTV subscriptions to consumers and revenue is generated from monthly payments collected from subscribers.
- The 'Business-to-business' model. This business model is oriented toward resale of packages of IPTV channels and facilities to set up an illegal IPTV resale. This type of business model can be described as 'business-to-business', or 'wholesale' model. It is frequently combined with the former business model of direct subscription sales. In this case two sources of revenue are guaranteed to unauthorised IPTV providers: monthly payments collected from unauthorised IPTV viewers and payments collected from unauthorised IPTV resellers.
- The 'Streaming portal' model, where links to streaming websites are collected and made available to end-users. IPTV streaming is offered free of charge and frequently in a lower quality compared to subscription-IPTV websites. As the streaming content is provided free of charge, unauthorised providers generate revenue through indirect sources, spreading malware or collecting 'pay-per-view' and 'pay-per-click' payments from advertising.

Interestingly, the analysis shows that the delivery of illegal IPTV relies substantially on the same 'ecosystem', regardless of the business models employed by the infringers. The ecosystem is defined by the interplay of a number of actors, which correspond to a specific function in the delivery of the illegal service. The analysis has identified 21 actors across four layers of content distribution: content source; hosting network; front-end delivery and applications.

Economic Analysis

Economic analysis is carried out in order to estimate two key elements:

- Number of users accessing unauthorised IPTV content;
- Revenue generated by copyright infringing IPTV subscription providers.

Assessment has been carried out for the whole EU-28 market as well as for each Member State. Main findings suggest that:

**3.6 % Europeans (13.7 million of the EU-28 population)
stream unauthorised IPTV**

**EUR 941.7 million
Unlawful revenue generated by copyright infringing IPTV providers in 2018**

**EUR 5.74
Average single user spends per month on illegal IPTV**

The scale of unauthorised IPTV consumption varies greatly within the Member States. Countries most affected by online illegal IPTV are the Netherlands and Sweden, where almost 9 % of the population is estimated to access unauthorised IPTV. Romania (0.7 %) and Bulgaria (1.3 %) are least affected by illegal IPTV.

When assessing illegal revenue, it becomes apparent that size of market in terms of total population is an important factor. Users in the United Kingdom, France and Germany alone on average spend EUR 532.4 million, accounting for 57 % total revenue made by unauthorised IPTV subscription providers.

Average single user spending on unauthorised IPTV varies significantly among EU countries. Consumers in countries such as Finland, the Netherlands and France are willing to pay more than EUR 6 per month to view unauthorised IPTV. Conversely, people in Slovakia, Hungary and Poland tend to spend only EUR 2.5 per month. It is obvious that consumers vary not only in their willingness to infringe but also in their willingness to pay to access illegal IPTV content. Many factors ought to be considered when defining diverse illegal IPTV price rates, including online piracy rate, perception to infringement, average income and prices charged to access IPTV on legal sources.

Enforcement and case-law analysis

Rights holders can avail of both civil and criminal enforcement measures. Civil enforcement measures apply against both direct infringers and intermediaries, including intermediaries whose services have been used to commit an infringement. In particular, injunctions can be sought against internet access providers to curb IPTV infringements; these include, at least in some Member States, ‘live blocking injunctions’, which block access to streaming servers during the broadcasting of a specific event or series of events. Such injunctions can also be aimed at preventing future infringements, subject to the condition of proportionality. Moreover, internet intermediaries can receive orders to disclose information on infringers; however, disclosure of information on end-users of illegal IPTV services may not be compatible with EU data protection law.

Criminal measures are also available in all EU Member States against IPTV infringers on a commercial scale. Case-law from Member States present significant examples of criminal prosecutions against individuals involved in illegal IPTV. In some cases, long sanctions of imprisonment have been imposed on infringers.

Conclusions and Perspectives

This study contributes to the understanding of the illegal IPTV phenomenon by conducting a comprehensive interdisciplinary analysis of the issue. This report joins legal, economic and technology perspectives in order to carry out an analysis of the illegal IPTV ecosystem. Moreover, this study provides the first quantitative assessment on the magnitude of illegal IPTV in the EU in terms of active users and revenue generated by such illegal activities.

The main findings of this report confirm the notable prevalence of illegal IPTV activities throughout the EU countries. The situation in Member States is not uniform, as many factors such as online infringement rates, perceptions to intellectual property and overall demand for IPTV are distinct. At the EU-28 level, a relevant 3.6 % of the population is engaged in unauthorised IPTV consumption. These users generate nearly EUR 1 billion in unlawful revenue accrued by providers of copyright infringing IPTV. Legislative and technical analysis confirms multiple challenges faced by business and governments when tackling the issue of illegal IPTV.

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