



Call for Evidence on Combating online piracy of live content CW! Filing

Creativity Works! members create, produce, finance, publish, distribute and showcase creative content - be it films, TV series, shows, original content, news programmes, music, pictures, books, video games, sports events, and much more. Together our industries employ 15 million people¹ (directly and indirectly) in Europe, making us the **third largest employer**² in the EU. The Creative and Cultural Industries (CCIs) accounted for **4.4% of EU GDP** in terms of total turnover (compared to 4.2% in 2013). The economic contribution of CCIs is greater than that of telecommunications, high technology, pharmaceuticals or the automotive industry ([“Rebuilding Europe”](#) EY report, January 2021).

However, infringing access to or transmission of **protected content** in the digital environment continue to drain the creative and cultural sectors’ growth, jobs and investments. On average, illegal access to or transmission of protected content represented **82%** of total piracy (be it sports events, films or music) in the EU in 2020 (EUIPO, 2021 - Online copyright infringement in the European Union). According to a recent VAUNET study, *“5.9m people in Germany watched illegal live TV signals in 2022. This resulted in losses of €1.8bn, and foregone taxes and social security contributions of €390m.”* According to a study by Bournemouth University for the Audiovisual Anti-Piracy Alliance [AAPA](#), infringing services made €3.21 billion in 2021 with illicit IPTV piracy services, which are used by 17 million Europeans.

The upcoming Commission Recommendation is an opportunity to take stock of the legal gaps and operational hurdles faced by the creative and cultural industries in tackling piracy of copyright protected live and time-sensitive content online. Creativity Works! - the leading European coalition of the creative and cultural industries, would like to highlight three takeaways.

1. Injunctions - Encourage Member States to facilitate the use of this effective tool

Injunctions have proven their worth and remain one of the most effective and powerful tools to fight against piracy when requests to take down unauthorised content are ignored. Article 8(3) of the Infosoc Directive ([2001/29/EC](#)) provides that Member States must *“ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.”*

In conformity with European law and national relevant provisions, all rights holders concerned shall be able to apply for effective injunctions, including dynamic injunctions and live injunctions, against a broad

¹ *IPR-intensive industries and economic performance in the European Union* study, EUIPO & EPO, 25th September 2019, see table p. 8

² European Commission, June 2016 - *Boosting the competitiveness of cultural and creative industries for growth and jobs* by Austrian Institute for SME Research and VVA Europe and VVA

range of intermediaries and services providers as in many cases they are best placed to bring infringements to an end. Rights holders should be in a position to make the most of this effective and proportionate tool.

2. Notice and action - Ensure a swift and effective outcome-oriented obligation to act

The Digital Services Act (DSA) (2022/2065) guarantees that “sufficiently precise and adequately substantiated notices” are sent to providers of hosting services, including online platforms while hosting services are requested to “put mechanisms in place to allow any individual or entity to notify them of the presence on their services (...) of illegal content” and “process any notices that they receive under the mechanisms (...) in a timely, diligent, non arbitrary and objective manner”.

While DSA Article 16 seeks to harmonise notice and action mechanisms, it remains essential to ensure a real outcome-oriented obligation to act for providers of hosting services, not just an obligation to put in place a notice and action mechanism. Recital 51 offers a loophole for inaction allowing hosting providers who do not have “the operational or technical capacity to act”, to simply notify the notice sender, without any subsequent action required on their part.

In addition, the trusted flagger mechanism should be expanded to go beyond online platforms and allow for immediate action following a trusted flagger notice when it comes to live events and all time-sensitive content online, not merely treating such notices “with priority” as currently required under the DSA.

Overall, the ability of rights holders to seek expeditious action on notices submitted in real time should be strengthened. This is crucial for live events (sport competitions, music concerts, TV shows, pre-release tracks etc.) but also particularly important for time sensitive content generally.

3. Data accuracy & availability - Enforce transparency for commercial players

The services of intermediaries are increasingly being used by third parties for infringing activities. The targeted scope of DSA Article 30 (Regulation 2022/2065 - Digital Services Act) combined with frequent failure to adequately enforce E-Commerce Article 5 (Directive 2000/31/EC) means that verified and accurate information regarding the identity of commercial actors that use European infrastructure services and target EU citizens is not always available.

Providers of intermediary services should be obliged to collect and verify information regarding the identity of their business customers and to take action when identification provided proves to be incomplete, inaccurate or fraudulent. This would help prevent weak spots and effectively stop and deter the dissemination of infringing content.

4. Monitoring system - Assess the effects of the Recommendation based on market realities and input from rights holders

Infringing services adopt evolving tactics and build on fast-changing technologies as well as various infrastructures (mirror sites, cyberlockers etc). This requires a flexible and forward-looking approach.

The Commission Recommendation should include an effective monitoring mechanism.

