



## SROC Position on the possible measures to further improve the effectiveness of the fight against illegal content online

Following-up on the adoption of the European Commission (EC) Communication "Tackling illegal content online, towards an enhanced responsibility of online platforms" on 28 September 2017 and the EC Recommendation on "Measures to effectively tackle illegal content online" on 1 March 2018, the Sports Rights Owners Coalition (SROC) is pleased to offer its thoughts on the inception Impact Assessment. As rightsholders subject to a dangerous and growing volume of infringements, we are particularly concerned about effective enforcement. As we develop and expand our current range of online services and adapt our business models, it is particularly important that illegal offers of our content do not strangle our potential markets.

It was acknowledged by the EC in the **September 2017 Communication** that **"what is illegal offline is also illegal online"** which we welcome. For too long, online intermediaries have felt that spreading illegal content was acceptable and that no real enforcement was possible online. Various confusions and misinterpretation of the liability exemption included in the E-Commerce Directive have not helped either. Therefore, far from stating the obvious, the EC underlining that the rule of law also applies and should be respected online is a very positive step forward. The clarifications about the scope and the interpretation of the Article 14 of the E-Commerce Directive were also very useful.

As acknowledged by the EC in its 2011 Communication on the European Dimension of sport, **our ecosystem is highly dependent on IPR for investment, in both professional and amateur competitions.** Sports would struggle without direct investment in grassroots competitions from commercially successful rights owners. In many European countries, investment in grassroots sport is directly and proportionately dependent upon the value of sports rights. Therefore, the securing of media rights is fundamental to sustainable grassroots sport and its contribution to the social wellbeing and health of European citizens.

SROC members find it particularly difficult to address digital piracy of live sports broadcasts due to the swift nature of the reaction needed to shut down these websites. **The value of our events is almost entirely in their live broadcast, so time is of the essence, and we need near-instant tools to remove or block illegal content.** We do not face the same challenges as some other sectors in terms of identifying the legality of our content and are able to provide a clear and easy-to-use list to law enforcement and civil enforcement bodies of the authorized exploiters of our content.

We are happy to provide the EC with some concrete information about the number of notices about infringements of our content. Taking a sample of **only 3 SROC members** (two large football competitions and one motor sport competition) we reached **almost 300 000 notices sent during the season 2016-17.** Unfortunately, **the situation has not really improved** since the EC Communication has been published as from the **beginning of the season 2017-18 to date those 3 SROC members have already sent over 260 000 notices.** More importantly, **the % of removal of the infringing content within 30 min** (which is not ideal but acceptable) varies from **27,2% to 45%.** Finally, less than 10 notices sent by those 3 SROC members have been challenged which means that the **error rate is less than 0.002%.**

Clearly there is a growing issue both in terms of number of infringements and time of removal and our members consider that we now need the EC to build up on its positive Communication and Recommendation and to come up with **horizontal legislation addressing targeted issues as suggested in the Inception Impact Assessment**. This would be the only way to have a real impact on piracy. We would suggest **two sets of measures**: Guidelines clarifying some already existing EU law provisions and an obligation to provide a real time take down tool as part of the “trusted flaggers” idea developed in the EC Communication and Recommendation.

### 1) Legally binding guidelines clarifying existing EU law provisions

#### **Transparency/right of information (Article 8 IPRED, Article 5 of the E-commerce Directive)**

The basic principal is that **no businesses in the EU should be able to operate in full anonymity**. We already have the right provisions in the existing Directives but unfortunately there is a clear issue with their application. If the EC would step to clarify the obligations for any online intermediaries in the EU, that would be very useful.

**Identification of suppliers and content providers to online platforms/websites is one of the biggest challenges in seeking to protect IP rights online**. When an online platform/website registers a new supplier or content provider, full contact details should be obtained and properly verified. Attempted registrations where the identity of the registrant cannot be verified, such as those made through proxy services, should not be permitted.

**SROC calls upon the Commission to produce, by the end of its current term, clear legally binding guidelines ensuring that the right of information in the article 8 of the IPRED is meaningful**. The lack of enforcement of the transparency requirements in Article 5 of the E-Commerce Directive means that this is not happening. Illegal websites/platforms are in practice running their online businesses in complete anonymity within the EU. The problem is exacerbated by the prevalence of anonymous online intermediaries (e.g. hosting providers, ad-brokers).

#### **Injunctions (Article 11 IPRED)**

There is a need for better cross border enforcement, for example, by way of recognition of evidence across borders. **The website Pirate Bay has been blocked in 13 Member States, each court requiring evidence to its own national standards. There should be a simplified procedure to facilitate the granting of a corresponding injunction against comparable intermediaries in other Member States in relation to the same infringing service**. This could be done, for example, by implementing or recognising, through expedited procedures, orders obtained in other EU jurisdictions against intermediaries enabling, contributing to or supporting the same illegal service.

Several Member States have not implemented the provisions envisaged by Articles 9 and 11 IPRED, sometimes despite official Commission complaints filed by local rights holders (e.g. in Germany and Poland). The lack of harmonisation in this area is one of the greatest obstacles to EU-wide “level playing field” enforcement. **The Commission should act to require all Member States to provide for the implementation of Articles 9/11 IPRED**, recognising the scope of the provisions and the way in which that should be applied and to clarify the availability of injunctive relief against all intermediaries whose services are used to infringe, including payment providers, advertising companies, search engines and domain registrars.

## **2) Obligation on the platforms to provide a real-time take down tool**

Sports events are extremely pirated, due to their popularity but also to the fact that they are “live” events. **Most infringers exploit our content to create profit, thanks to subscriptions or advertising revenues, without contributing to the development of the sports sector or tax revenues.** This is a major problem for sports rights owners as well as for the uptake of new content distribution technologies (since broadcasters and partners will decrease investments).

SROC members find it particularly difficult to address digital piracy of live sports broadcasts as the current legal rights and remedies dictate a timeframe for action which can only be viewed as inappropriate for tackling the “live” element of delivery and consumption of pirated sport content. In this context, **the traditional litigation options are ineffective, as they take far too long and are disproportionately expensive.** The situation is compounded by the lack of consistent legal rights, processes, procedures, remedies and effective enforcement options, across the EU (and beyond).

**SROC therefore calls on the Commission to propose an initiative at EU level whereby online intermediaries must provide “trusted flaggers” with a real-time take down tool to effectively remove infringing content and make sure it stays down.** SROC members believe that only such an obligation for platforms/websites to provide a technology to enable the immediate removal of illegal content could have a real impact.

**This would be the benefit/incentive for fulfilling the criteria of a “trusted flagger”.** Moreover, those “trusted flaggers” would take the responsibility to monitor and to flag the unauthorised content should a mandatory real-time tool be provided. A counter notice could be available if it discloses the full identity of the content provider including verified residential address information. **We believe this measure does not contravene the ban on general monitoring** (Art 15 E-Commerce Directive). As acknowledged by the EC in its Communication, only truly neutral and passive intermediaries can avail themselves of the hosting exception (Art 14 ECD), provided they have implemented takedown and stay-down policies. **We also believe that a real-time take down would not constitute an unbearable cost for intermediaries** as we are talking about a simple interface with secured log in for “trusted flaggers” to identify themselves.

Day-in, day-out, SROC members are investing a lot of time and money to monitor and flag illegal content but without a real time take down tool, this equates to a “whack a mole game”. We are conscious we need to keep doing it, but we do believe that there is a **shared responsibility from all stakeholders to contribute to the fight against illegal content.** Cooperation between different stakeholders, is key to the effective battle against illegal activities. Our view is that the legal certainty required to drive the development of innovative content services online can only be provided by a comprehensive regime to protect IPRs, both within the EU and beyond its borders.

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**About SROC ([www.sroc.info](http://www.sroc.info))**

SROC is an informal group of 50 representatives of international, European and national sports bodies, operating as a forum through which sports can share information and experiences. Individually and collectively, we represent a majority of European and international leading and most popular sports and competitions, attracting millions of spectators, with many of our events available to consumers across a growing variety of broadcast platforms. Our members will also be submitting individual responses to this consultation.