

Key findings from the mapping report on national remedies against online piracy of sports content

Protecting the Film Industry Post Digital Services Act, What Now?
Venice, 4 September 2022

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Purpose of the mapping

- **Project launched upon request of the European Commission**



To track the national remedies against online piracy of sports content



Special focus on the availability and functioning of blocking and take-down injunctions, including dynamic injunctions in relation to live sports audiovisual content

National remedies, enforcement rules and procedures

- **Notice and take-down procedures**
- **Civil and/or criminal sanctions and remedies**
- **Permanent and interim injunctions**
- **Removal or blocking injunctions (orders)**

Notice and take-down procedures

Not fully harmonised at EU level (E-Commerce Directive)

Strong fragmentation across Europe in NTD procedures

- NTD procedures provided by law
- Introduction of new administrative procedures
- Defined by case law

Varied approaches across Europe

- Notification addressed to private parties (e.g. to ISP) / to an administrative authority
- Different level information required in the notification
- NTD procedure as condition of admissibility for filing a judicial claim / or not
- Different persons entitled to submit the notification...

Legal remedies

Civil and/or criminal sanctions and remedies are applicable

- Commercial/ for-profit purpose taken into consideration in the majority of countries, with some exceptions

Injunctions

- **Injunctions against the infringer**
- **Specific enforcement measures to be used by rightsholders: injunctions against ISPs** whose services are used to commit an infringement (Art. 8(3) InfoSoc)
- **Permanent injunctions** (after a procedure on the merits)
- **Interim injunctions** (without full hearing of the parties: to prevent further imminent damages)
- **Provisional and precautionary measures** (without the defendant being heard (*ex parte* measures) based on *prima facie* evidence)

Removal and blocking injunctions

Definition:

- Blocking or disabling access to the infringing content made available through a website or a platform by appropriate technical measures

Scope and criteria:

- Generally addressed to the access provider
- Conditions of application differ across countries
- Measures adopted against the ISP depend on the type of activity carried out
- National courts usually apply blocking orders indifferently against IP addresses and Domain Name Systems (DNS), often jointly.

Must be proportional in light with fundamental rights

Dynamic injunctions

Definition (*EU Guidance on IPRED*):

- When the same website becomes available immediately after issuing the injunction with a different IP address/URL and which is drafted in a way that allows to also cover the new IP address or URL without the need for a new judicial procedure to obtain a new injunction

Duration

- Differs in each country, decided on a case-by-case approach

Why?

- Considered as more flexible and effective in the case of repeated infringements

Live blocking and other injunctions

Live blocking injunctions:

- Aims at blocking the illegal broadcasting of a real-time event (applied only in Ireland, UK, the Netherlands, Spain and Portugal).
- E.g. notification of lists of infringing websites to the ISP on a weekly basis, limited in time (e.g. one season), to be blocked within 30 minutes (Ecatel case); within 3 hours (Spain) from the notification of new listing...

De-indexing injunctions

- Requires search engine to remove from its index of search results those results leading to illegal pages

Dynamic and live-blocking injunctions



Dynamic injunctions

Extend blocking orders to future URLs
(not limited to currently-existing websites)

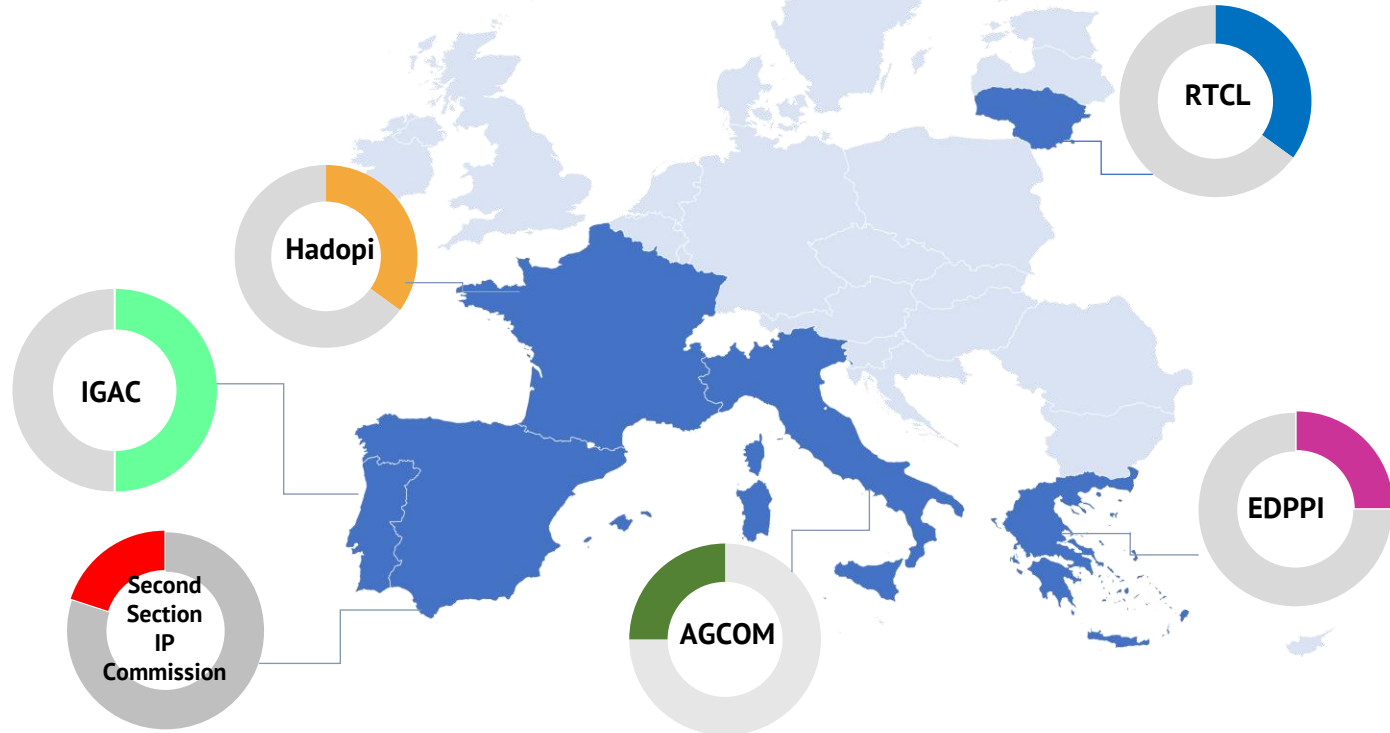
Live-blocking injunctions

Allow repeated blocking of a site every time
a live broadcast is in process

De-indexing injunctions

Require search engine to remove the
appearance of the results leading to pages
containing illicit copyrighted content

Special national bodies in copyright enforcement



More information in:



Mapping report on
national remedies against
online piracy of sports content

<https://bit.ly/3E1vcpE>

THANK YOU!

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