

# Copyright Enforcement on the Internet

## 网上版权执法

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欧洲知识产权侵权观察组织  
欧盟知识产权办公室  
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## EUIPO AND OBSERVATORY – BACKGROUND 欧盟知识产权局及观察组织——背景

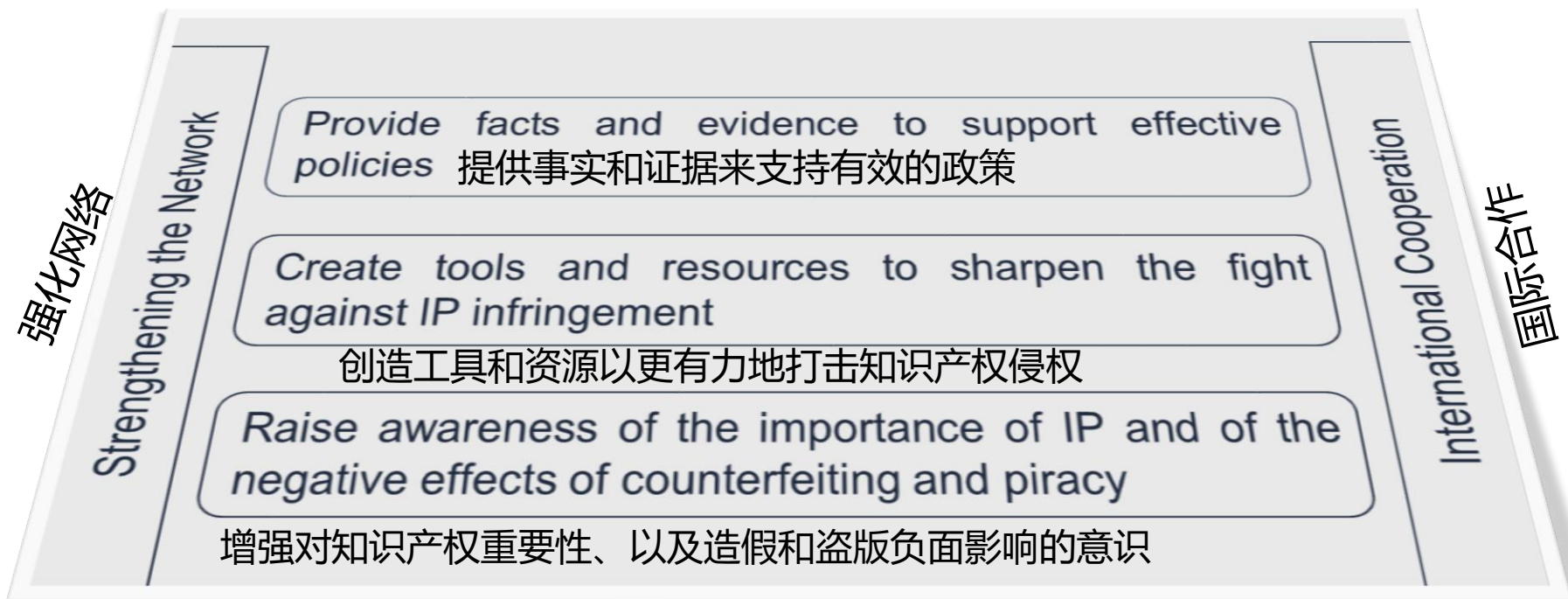


## EUIPO AND OBSERVATORY – BACKGROUND 欧盟知识产权局及观察组织——背景

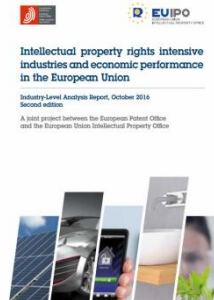
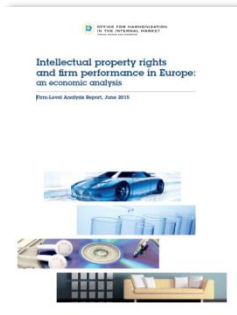
- Regulation (EU) No 386/2012 of 19 April 2012  
2012年4月19日欧盟第386/2012号指令
- Observatory goes from Commission to OHIM (EUIPO as from 5 June 2016)  
观察组织从欧委会转至欧盟内部市场协调局（2016年6月5日起，称欧盟知识产权局）



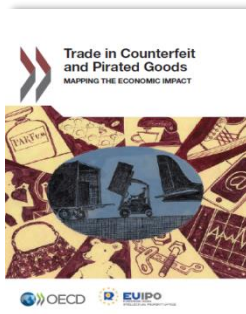
## EUIPO AND OBSERVATORY – BACKGROUND 欧盟知识产权局及观察组织——背景



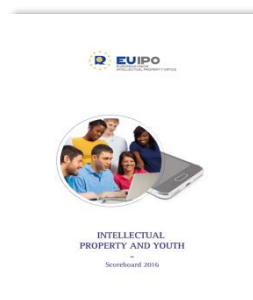
## EUIPO AND OBSERVATORY – BACKGROUND 欧盟知识产权局及观察组织——背景



### IP Contribution 知识产权的贡献



### Infringement Quantification 侵权量化



### Europeans and IP 欧洲人和知识产权



# ONLINE BUSINESS MODELS INFRINGING IPR 侵犯知识产权的网上商业模式

## Report 报告

- Aim: to deepen understanding of how the online environment interacts with IP infringements  
目的：深化理解网络环境与知识产权侵权相互作用机制
- Variety of online business models infringing IPR through numerous illicit examples of marketing on Business-to-Business (B2B) and Business-to-Consumer (B2C) websites, online marketplaces and social media  
通过B2B和B2C网站、网络市场和社交媒体的大量非法行为案例，说明各种侵犯知识产权的网上商业模式。

Published

12 July 2016

2016年7月12日发布

Research on Online Business Models  
Infringing Intellectual Property Rights

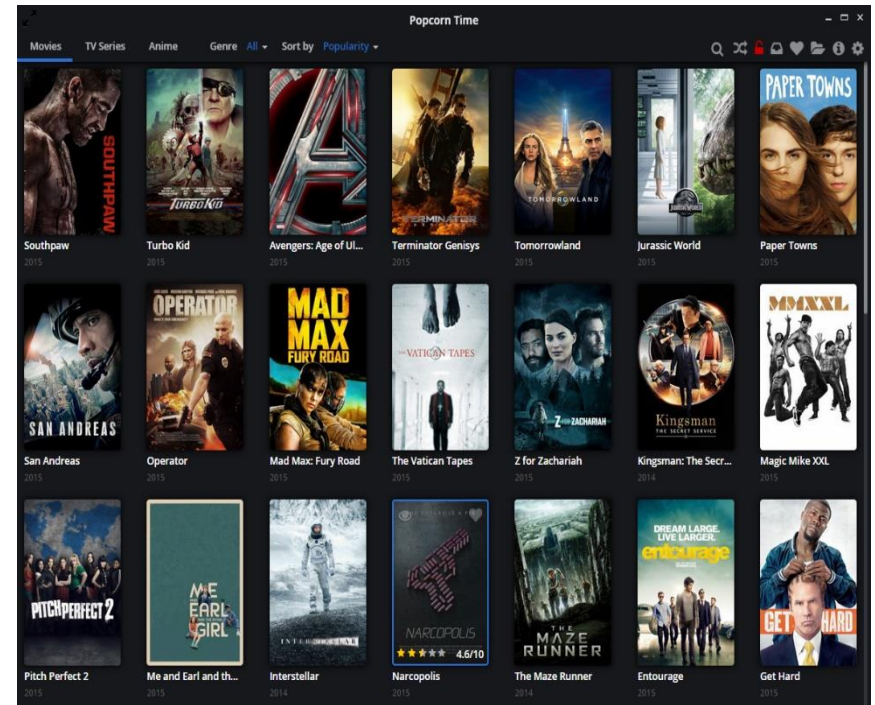
**Phase 1**  
Establishing an overview of online business  
models infringing intellectual property rights



July 2016

## ONLINE BUSINESS MODELS INFRINGING IPR 侵犯知识产权的网上商业模式

- Website dedicated to commercial activities using a domain name that is not related to the infringing activity  
使用与侵权活动不相关域名进行商业活动的网站
  - Making copyright infringing content available to the public through direct download, streaming, linking or other techniques  
通过直接下载、流媒体、链接或其它技术向公众提供侵犯版权的内容
  - Illegally contributing to making copyright infringing content available to the public  
违法协助向公众提供侵犯版权的内容

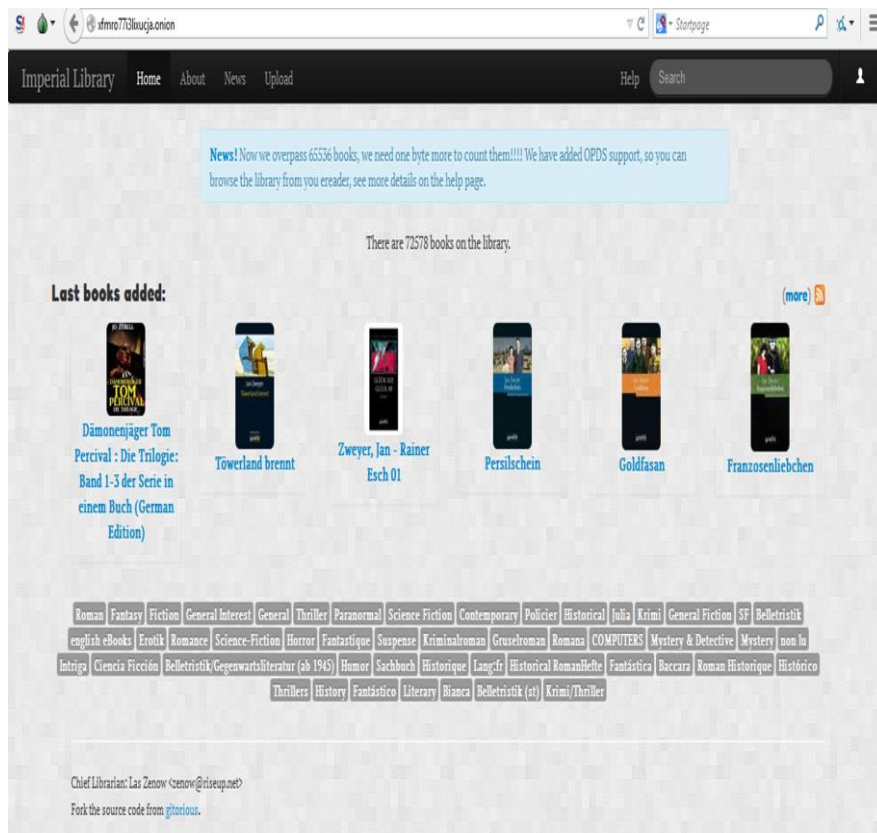


popcorntime.io



## ONLINE BUSINESS MODELS INFRINGING IPR 侵犯知识产权的网上商业模式

- Websites on darknet 暗网网站
  - Making copyright infringing content available to the public through direct download  
通过直接下载向公众提供侵犯版权的内容
- Newsgroups, blogs or other restricted user groups 新闻组、博客或其它限制用户群组
  - Making copyright infringing content available to the public direct download, streaming, linking or other techniques in a restricted-access user group  
在受限访问的用户群组中通过直接下载、流媒体、链接或其它技术向公众提供侵犯版权的内容



xfrmro773i3lixucja.onion

## ONLINE BUSINESS MODELS INFRINGING IPR 侵犯知识产权的网上商业模式

### Conclusions 结论

- A number of the online business models are **based on generally applicable legal online business models**  
大量网上商业模式的基础是**普遍适用的合法网上商业模式**
- The online business models infringing IPRs are often clearly **deceptive to the customers**  
侵犯知识产权的网上商业模式通常对**消费者有明显的欺诈行为**
- increasing number of providers of IPR-infringing goods and services are **expanding or even moving their businesses to a darknet** or are offering their services on both the open and the hidden part of the internet  
越来越多的侵权商品和服务提供商正在**向暗网扩张、甚至将业务转向暗网**，或者在互联网上的公开和隐秘场所同时提供服务
- A number of the analysed business models are based on concepts that make it easy for the providers to be able to **continue their businesses** even in the event that an enforcement action be initiated  
大量所分析商业模式的根本理念是，即便触发执法行动，提供者也能够轻松地**继续开展业务**
- The line between IPR-infringing activities and **traditional cybercriminal activities** is becoming blurred  
知识产权侵权活动和**传统网络犯罪活动**之间的界限日益模糊

## LEGISLATIVE MEASURES RELATED TO ONLINE IPR INFRINGEMENTS

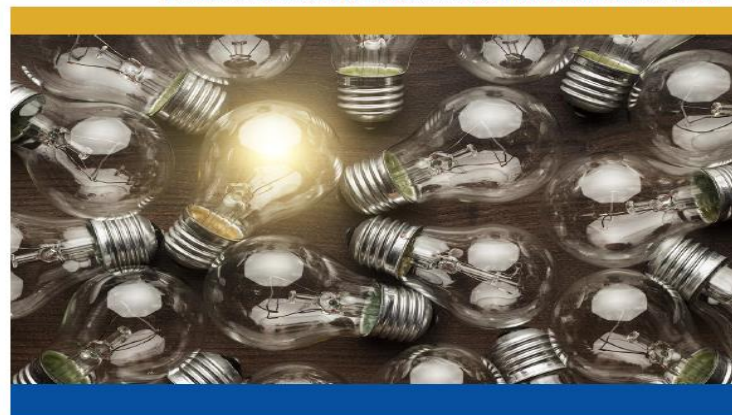
### 网络知识产权侵权相关的立法措施

#### Report 报告

- Aim: provide a **cross-sectorial view of legal remedies available** for the enforcement of intellectual property rights on the internet, which covers civil, administrative and criminal enforcement measures  
目的：提供适用于互联网上知识产权执法的、关于法律救济的跨领域观点，包括民事、行政和刑事执法措施
- Provides a practical, problem-oriented description of the legal measures available for eight specific and relevant topics that range from obtaining account information to criminal sanctions  
针对获取账户信息、刑事处罚等八个具体且密切相关的话题，提供关于适用法律措施的切实可行、问题导向型的说明

#### STUDY ON LEGISLATIVE MEASURES RELATED TO ONLINE IPR INFRINGEMENTS

A PROJECT COMMISSIONED BY THE EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE



## LEGISLATIVE MEASURES RELATED TO ONLINE IPR INFRINGEMENTS

### 网络知识产权侵权相关的立法措施

#### Key topics 主要话题

1. **Obtaining account information 获取账户信息**
2. **Blocking access to websites 阻止访问网站**
3. Domain name actions 域名行动
4. **Actions targeted at hosts 针对主机的措施**
5. European Investigation Order 欧盟调查令
6. Extradition – European Arrest Warrant 引渡——欧洲逮捕令
7. **Money laundering 洗钱**
8. **Criminal sanctions 刑事处罚**

## LEGISLATIVE MEASURES RELATED TO ONLINE IPR INFRINGEMENTS

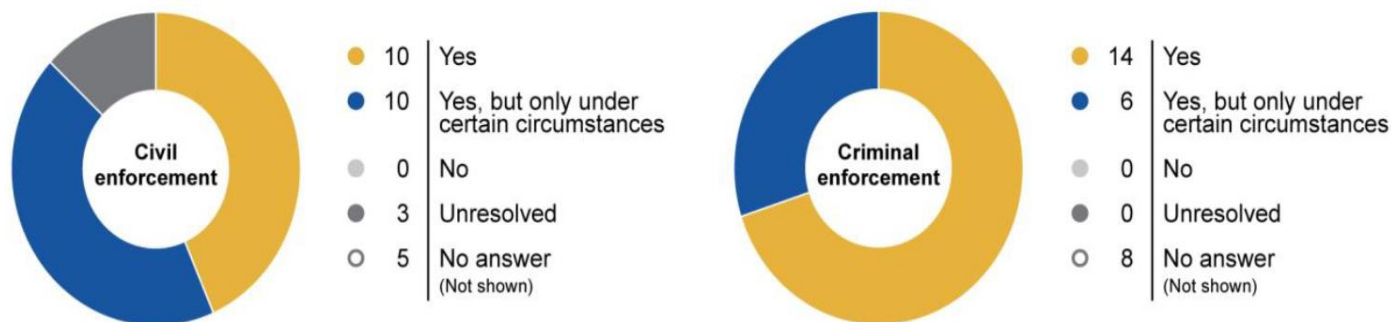
### 网络知识产权侵权相关的立法措施

Obtaining Account Information (retrieval of information from intermediaries) 获取账户信息 (检索中介机构的信息)

- Disclosure of information available in all MS 所有成员国都有信息披露
- Legal basis for national measures has been harmonised through Enforcement Directive 已通过《执行指令》统一成员国采取措施的法律依据
- Differences may exist when it comes to procedural conditions 在程序条件方面可能存在差异

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

表15——账户持有人联系信息的披露





## LEGISLATIVE MEASURES RELATED TO ONLINE IPR INFRINGEMENTS

### 网络知识产权侵权相关的立法措施

Blocking access to websites (hosted within / outside of EU Member States)

阻止访问网站（主机在欧盟成员国境内或境外）

- Blocking access to websites is in general available in all MS (IPRED)
- 通常所有成员国都可以阻止访问网站（《知识产权执行指令》）
- Differences may occur in the more detailed national procedural rules
- 具体国家程序规则方面可能会出现差异

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.

在大多数成员国中，法院是唯一有权授予阻止令的机构。但在意大利，阻止令也可以由意大利反不正当竞争机构颁布。在斯洛伐克，.sk的域名注册处SK-NIC可以依据法院指令和自行决定，阻止访问用于非法活动的.sk域名。

## LEGISLATIVE MEASURES RELATED TO ONLINE IPR INFRINGEMENTS

### 网络知识产权侵权相关的立法措施

Actions targeted at hosts (takedowns of listings, suspension, blocking, etc. of accounts)

针对主机的行动（账户的下架、暂停、阻止等）

- Fragmented overall picture 整体形势呈碎片化
- Exemption from liability of hosting providers has been harmonised through the Directive of Electronic Commerce 已通过《电子商务指令》统一了主机提供商的责任豁免
- Secondary liability is not harmonised and dealt with by national laws 间接责任没有统一，由成员国法律处理
- Host provider typically not liable, but might be required by court order to take down infringing content from its platform. 主机提供商通常不承担责任，但法院指令可能会要求其从平台上下架侵权内容。
- Suspensions and or blockings are either unavailable or the situation is unresolved in almost half of the MS 在几乎一半的成员國中，暂停或阻止措施或者不可用，或者仍待厘清。

## LEGISLATIVE MEASURES RELATED TO ONLINE IPR INFRINGEMENTS

### 网络知识产权侵权相关的立法措施

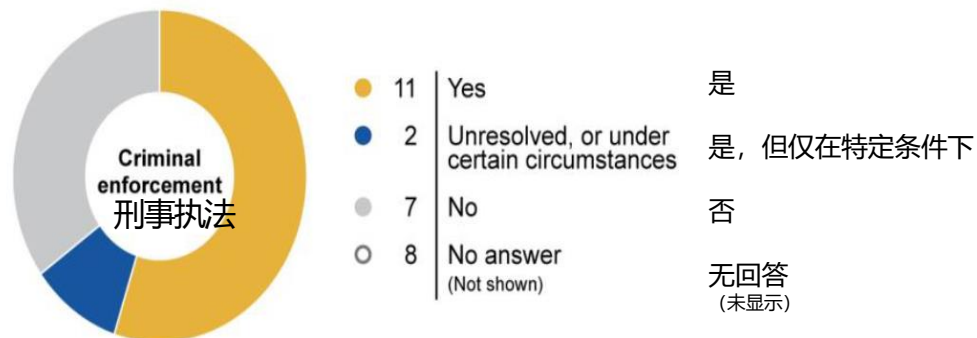
Money laundering (application to online infringements of IPR)

洗钱（适用于网络知识产权侵权）

- The Fourth Anti Money Laundering Directive and the Fund Transfer Regulation cover most types of criminal activities including such as relating to IPR infringements  
《反洗钱4号指令》和《转账条例》包含大部分类型的犯罪活动，其中包括与知识产权侵权相关的活动

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

表34——关于网络知识产权侵权洗钱规定的应用



## LEGISLATIVE MEASURES RELATED TO ONLINE IPR INFRINGEMENTS

### 网络知识产权侵权相关的立法措施

Criminal sanctions (sentences, time limits, liability for companies, etc.)

刑事处罚（判刑、时间限制、公司责任等）

- Criminal sanctions are not subject to harmonisation at EU level 刑事处罚不受欧盟统一标准的约束
- The type and duration of penalties for IPR infringements vary considerably in the MS 各成员国对知识产权侵权的刑罚类型和持续时间差别很大
- The same is true for punishing negligent infringements as well as legal persons 对过失侵权和法人的处罚亦是如此

FIGURE 35 — MAXIMUM PENALTIES FOR  
TRADE MARK INFRINGEMENT <sup>169</sup>

表35——商标侵权的最高刑罚

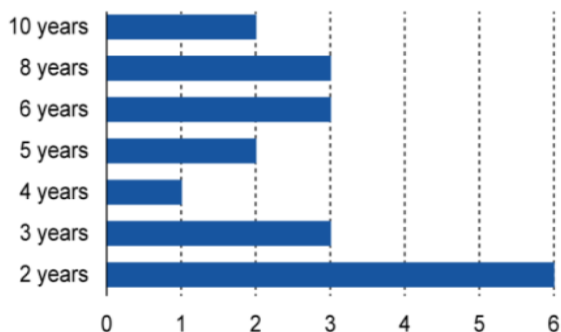
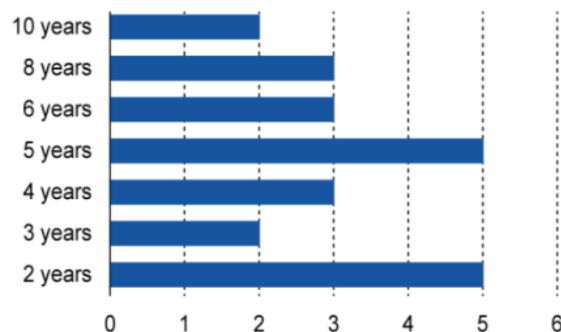


FIGURE 36 — MAXIMUM PENALTIES FOR  
COPYRIGHT INFRINGEMENT

表36——版权侵权的最高刑罚



## LEGISLATIVE MEASURES RELATED TO ONLINE IPR INFRINGEMENTS

### 网络知识产权侵权相关的立法措施

#### Conclusions 结论

- Enforcement in an online environment is **complex** 网络环境中的执法非常复杂
- **Civil measures** are **partially harmonized** 民事措施部分统一
- Specific legal measures often dealt with **general national laws** (e.g. tort law, general procedural laws)  
具体法律措施通常由一般国家法律处理（例如，侵权行为法、一般程序性法律）
- **Lack of harmonization for criminal** enforcement measures **刑事** 执法措施缺少统一标准
- **Technology** often moves faster than legislators and courts  
技术的发展通常快于立法机构和法院的动作



# VOLUNTARY COLLABORATION PRACTICES 自愿合作措施

## Report 报告

- Aim: in-depth analysis of **six voluntary collaboration practices** in addressing online infringements drawn from EU MS and the USA  
目的：深入分析欧盟成员国和美国六项应对网络侵权的**自愿合作措施**
- Voluntary practices include: codes of conduct and practices for taking down infringing sites, controlling advertising and the access to online payment systems  
自愿措施包括：下架侵权网站、控制广告以及在线支付系统访问的行为准则和措施。

## STUDY

on voluntary collaboration practices in addressing online infringements of trade mark rights, design rights, copyright and rights related to copyright



## VOLUNTARY COLLABORATION PRACTICES 自愿合作措施

Notice-and-take-down 通知 - 删除	Advertising 广告	Payment processor 付款处理器
French charter for the fight against the sale of counterfeit goods 法国打击假冒伪劣商品宪章	Ethics code of the Austrian advertising industry 澳大利亚广告业道德守则	U.S. IACC payment processor initiative & portal program 美国国际反伪联盟付款处理器方案及门户计划
Dutch notice-and-take-down code of conduct 荷兰通知与移除行为准则	UK good practice principles for digital advertising 英国数字广告的良好做法原则	
Danish code of conduct for ISPs 丹麦网络服务提供商行为准则		

丹麦网络服务提供商  
行为准则

## VOLUNTARY COLLABORATION PRACTICES 自愿合作措施

Elements analysed 分析要素

- The role of the parties involved 有关各方的角色
- Duties and procedures 职责和程序
- The coexistence of the practices with legal frameworks and case-law 措施与法律框架和判例法的共存
- The role of technology 技术的角色
- The costs involved 有关成本
- The role of educational activities 教育活动的角色
- Effectiveness 有效性



## VOLUNTARY COLLABORATION PRACTICES 自愿合作措施

### Conclusions 结论

- **Fundamental rights, privacy rights and data protection** need to be respected by any voluntary collaboration practice created  
任何自愿合作措施都需要尊重**基本权利、隐私权和数据保护**
- The duties and procedures envisaged by the VCPs examined **do not raise problems with regard to the legal frameworks** concerned  
经检验，自愿合作措施所设想的职责和程序**不会产生相关法律框架方面的问题**
- The practices examined show various **differences**, depending on their origin, IP rights concerned, structure, territorial limit, educational activities and technologies used;  
经检验，措施之间存在各种**差异**，取决于其所在国家、相关知识产权、结构、区域限制、教育活动和所使用技术；
- The practices also show several **common features**, namely their voluntary nature and implemented measures aimed to prohibit or detect IP infringements  
执行措施有多个**共同点**，即：自愿性质、旨在禁止或发现知识产权侵权
- There is **little factual data about the effectiveness** of the VCPs as it is sometimes not measured  
对自愿合作措施的有效性有时未得到衡量，有关其**有效性的实际数据很少**

## OTHER SELECTED REPORTS IN COPYRIGHT AREA 版权领域其它报告

- Identification and analysis of malware on suspected copyright-infringing websites (2018)  
《涉嫌侵权网站上恶意软件的识别与分析》 (2018)
- Feasibility Analysis for an EU Digital Deposit System (2018)  
《欧盟数字保证金制度的可行性分析》 (2018)
- Deposit systems for audiovisual works (2018)  
《音像制品的保证金制度》 (2018)
- Voluntary Registration/Deposit Systems in US and China (2018)  
《中美自愿注册 / 保证金制度》 (2018)
- Test Case, Legal Online Offers of Film (2018)  
《测试案例，合法在线提供电影》 (2018)
- Derivative use of public domain content – film industry focus (2017)  
《公共领域内容的衍生用途——聚焦电影业》 (2017)

### STUDY ON VOLUNTARY REGISTRATION AND DEPOSIT SYSTEMS: UNITED STATES AND CHINA



June 2018



## TOOLS AND RAISING AWARENESS 工具及意识提升

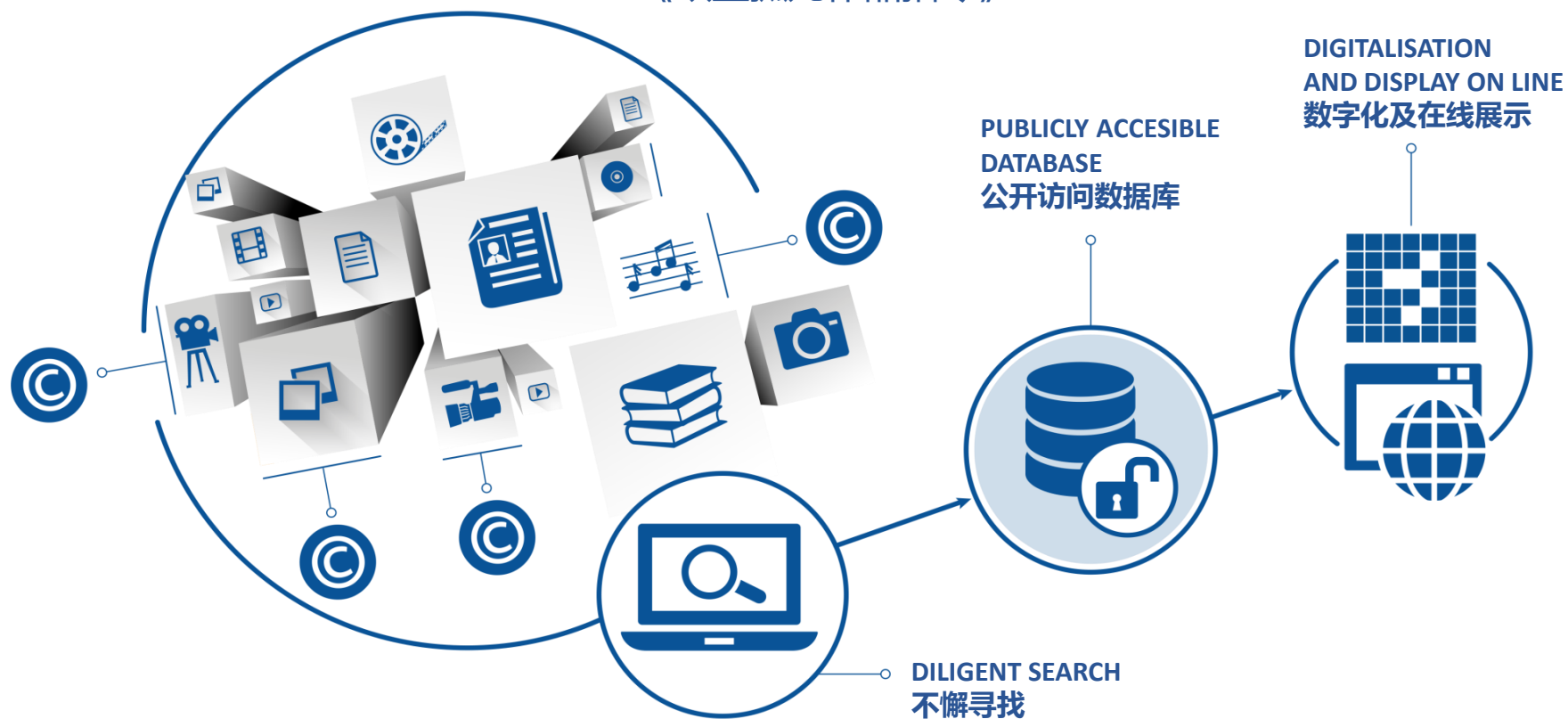


- Orphan Works Database 孤儿作品数据库
- Out-of-commerce Works Portal (potential) 禁止流通作品门户 (潜在)
- Agorateka (欧盟知识产权局的泛欧门户网站)
- FAQs on Copyright 版权常见问题答疑
- *ideas powered* 思想驱动计划



**TOOLS AND RAISING AWARENESS - ORPHAN WORKS DATABASE 工具及意识提升—孤儿作品数据库**

## THE EU DIRECTIVE ON ORPHAN WORKS 《欧盟孤儿作品指令》



## TOOLS AND RAISING AWARENESS – AGORATEKA 工具及意识提升——AGORETEKA

What is this initiative about? 该举措是关于什么的?



- AGORATEKA is a pan-European portal  
AGORETEKA是一个泛欧门户
- Where the citizens can link through to national portals  
居民可以由此链接到国家门户
- To easily find online legal offers regarding Music, TV & Films, Games, eBooks and Sport Events  
能够轻松找到在线合法提供的音乐、电视及电影、游戏、电子书和运动赛事

Launched in 2016 at the initiative of the EUIPO  
在欧盟知识产权局的倡议下于2016年推出。

## TOOLS AND RAISING AWARENESS – AGORATEKA 工具及意识提升——AGORETEKA

**agorateka**

The European online content portal

English



Home

About

Your Country

Statistics

FAQ

Contact

Finally, a way to  
identify legal content  
online

Music/TV & Films/e-books/Video Games/Sports events



## TOOLS AND RAISING AWARENESS – AGORATEKA 工具及意识提升——AGORETEKA

Why this initiative? 为什么创建这一举措?

- Helping citizens find available legal offers is a **key factor** for increasing transparency and consumer awareness  
帮助居民获得可用、合法的商品或服务是增强透明度和消费者意识的**关键因素之一**
- It can contribute in **reducing the use of illegal** sources  
有利于**减少非法资源的使用**
- **Enforcement** is part of the solution as is **facilitation of legal access**  
**执法作为对合法访问的促进**，是解决方案的一部分
- **Creating a national portal** allows Member States to **better understand the legal offer landscape** in their country  
**创建国家门户**让成员国可以**更好地理解其国内合法产品和服务的形势**



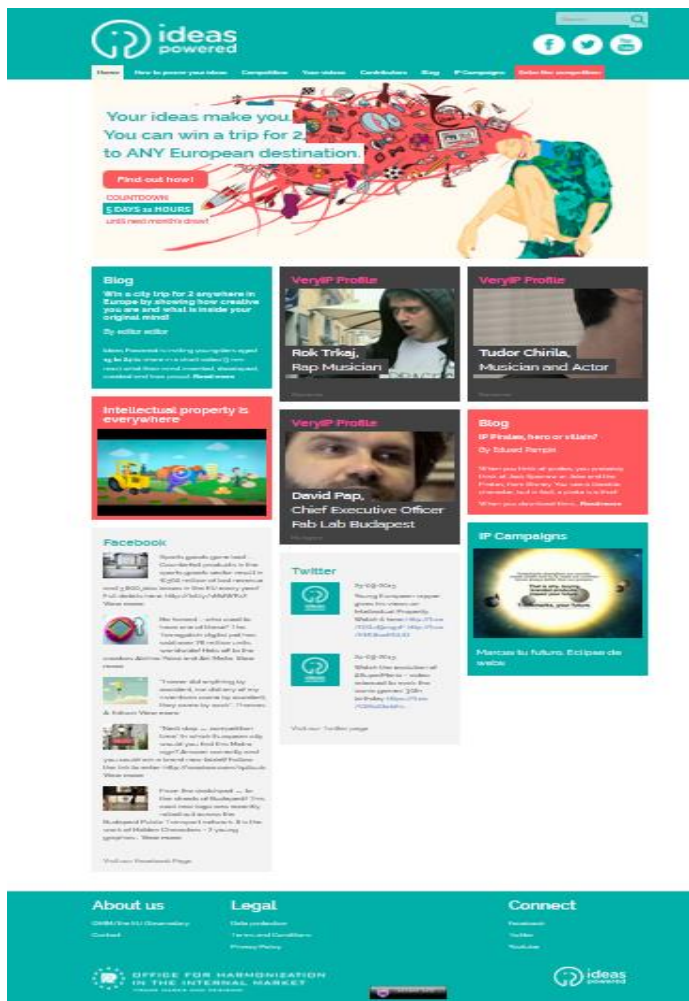
## TOOLS AND RAISING AWARENESS – FAQs ON COPYRIGHT 工具及意识提升——版权常见问题答疑

### 15 questions from consumers on copyright

Copyright, understood as authors' rights in most of continental Europe, grants a bundle of rights to authors of original works. Thanks to copyright, authors may control how others use their works, and receive remuneration from those uses. European jurisdictions also protect the interests of performers, producers and broadcasters. At least in authors' rights countries, such protection is granted by 'related rights', which are distinct from the rights granted to authors. The EU has [adopted several legal instruments in the field of copyright](#) <sup>1</sup>. Yet, unlike in other fields of intellectual property law, there is no 'single EU title' for copyright, and each of the 28 Member States has its own copyright law and policy.



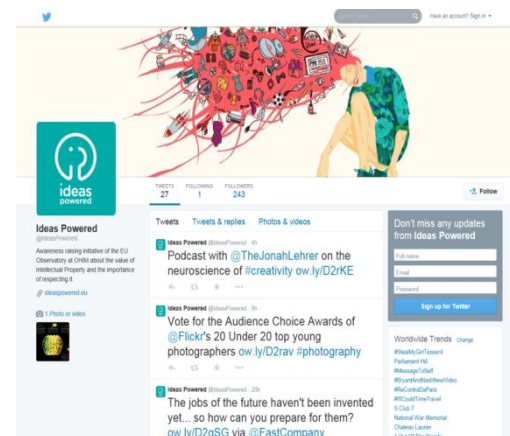
# TOOLS AND RAISING AWARENESS - IDEAS POWERED 工具及意识提升——思想驱动计划



<https://www.facebook.com/IdeasPowered>



<https://twitter.com/IdeasPowered>



## CONCLUSIONS 结论

Studies, databases and various initiatives demonstrate wide range of actions aimed at better understanding and facilitating actions against copyright infringements online

研究、数据库和各种举措提供了一系列措施，旨在更好地理解、促进对抗网上侵权的行动

- Studies ranging from socio-economic to specific subjects: infringing business models, legislative measure, voluntary collaboration practices

从社会经济到具体学科的研究：侵权商业模式、立法措施、资源合作措施

- Continued development of tools and resources for raising awareness: agorateka, FAQs, youth initiatives

意识提升工具和资源的持续发展：agorateka、常见问题答疑、青年计划

- Latest trends in online IP enforcement: intermediaries, blockchain and other new technologies

网上知识产权执法的最新趋势：中间服务提供商、区块链和其它新技术

## ADDITIONAL INFORMATION 补充信息

Publications available at:

出版物见:

<https://euipo.europa.eu/ohimportal/en/web/observatory/observatory-publications>

Information on tools, public awareness initiatives:

工具、公众意识举措信息:

<https://euipo.europa.eu/ohimportal/en/web/observatory/home>

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Thank you