



April 15, 2016

European Commission  
DG for Internal Market, Industry, Entrepreneurship and SMEs  
Unit F/5 - Intellectual Property and Fight against Counterfeiting  
Office: N105 09/090  
BE 1049 Brussels/Belgium

**Re: EU Consultation on the Evaluation and Modernisation of the Legal Framework for the Enforcement of Intellectual Property Rights**

Dear Mr. Kleinwege,

The Wikimedia Foundation greatly appreciates the opportunity to provide comments on the functioning of the legal framework for intellectual property rights (IPR) enforcement. We are the nonprofit organization that hosts and supports [Wikipedia](#), the free online encyclopedia that anyone can edit, as well as other websites, called “projects”, that allow people around the world to produce, share, and access free educational content. The Wikimedia projects include a repository of free media files and images ([Wikimedia Commons](#)), a knowledge base for freely usable datasets ([Wikidata](#)), and free learning resources ([Wikiversity](#)). All of the Wikimedia projects are collaboratively created and updated by contributors from a global community of thousands of volunteers. Through this collaborative process, Wikipedia has grown to include over 36 million articles in over 280 languages, and the Wikimedia projects are viewed by over 430 million people each month. A large proportion of Wikimedia’s contributors and readers are in Europe.

As an online intermediary hosting content that is created globally, we find the current system of IPR enforcement to be effective. We do not see a need for the Commission to change it or to “open” the E-Commerce Directive to alter the requirements of the safe harbor norms. We encourage the Commission to remain focused on its path towards modernization of copyright in Europe. Forcing platforms like Wikipedia to actively monitor for copyright infringement, however, would be a step backwards and be detrimental to the development of free knowledge and innovation.

The Wikimedia movement is global in scope, and its users have organized themselves into groups, independent from the Wikimedia Foundation, based on geography and interest areas. One Wikimedia community organization is the [Free Knowledge Advocacy Group EU](#), which has submitted a response to the questionnaire for Consumers, Citizens and Civil Society. Read in combination with their questionnaire, this submission should expand on the Wikimedian perspectives on IPR enforcement. We are submitting this letter in addition to a questionnaire because the questionnaire does not fully allow us to represent our position.

### **An outdated distinction**

The consultation provides separate questionnaires for rightsholders, consumers, intermediaries, and others. This distinction is outdated. Current technology and Internet platforms allow people to read, write, and remix material with increasing ease and at diminishing cost. This empowers every person with an Internet connection to participate in the creation and sharing of educational and cultural content. The Wikimedia movement itself is a good example of this phenomenon: Wikipedia's users not only consume its content but also contribute their own intellectual property by writing articles, taking photographs, and writing code. They then share the IP-protectable works they create using free licenses like [Creative Commons](#) on the platforms we operate. The Commission's consultation must take into account this complex, digitally enabled environment in which the legal framework for IPR enforcement operates.

Against this background, we can say from our experience as an intermediary that the current mechanisms for IPR enforcement function well. There is not large-scale copyright infringement on Wikipedia or our similar sites. The volunteers contributing to the Wikimedia projects diligently watch for material that violates project guidelines, including prohibitions on copyright infringement, and they remove material as needed. As a result of this community oversight, we receive [relatively few](#) takedown requests. This allows us to maintain a platform that is both one of the most popular websites in the world and a free and open space for the public to create, share, and gain knowledge. We do not have to interfere with the projects' curation, and the knowledge on Wikipedia remains free and democratic.

### **No changes to the framework needed**

We strongly recommend that the Commission not change the framework for IPR enforcement. The perpetual global trend towards stronger and overbroad copyright protection gives us reason to believe that any changes to the framework would put a new burden on online intermediaries. Additional burdens would particularly threaten not-for-profit projects like Wikimedia and their platforms' users. The introduction of a new secondary copyright ("ancillary copyright" or "publishers' right") would make

it harder for open platforms to refrain from interfering with user-generated content. As we pointed out in our [submission](#) for the Platforms Consultation earlier this year, the complex field of copyright legislation requires a more nuanced approach.

The Commission's aim to "follow the money" in crafting IP legislation is laudable. From our perspective, it means that Wikipedia, which allows the collaboration of millions of volunteers and does not sell any of the information it hosts, should not be subject to stronger liability rules. There is no need to add new IPR enforcement mechanisms where the existing system provides sufficient protection for creators' rights. If the Commission does create additional burdens for intermediaries, it must carefully craft them to target commercial-scale copyright infringement. Rather than being forced to comply with additional IPR enforcement measures, small organizations that serve the public interest should continue to benefit from strong safe harbors and themselves be protected from fraudulent and invalid takedown requests. IP law must protect websites that serve as public spaces for free speech by choosing not to censor or surveille their users.

## **Conclusion**

We welcome the Commission's intentions to modernize and harmonize copyright in Europe and the corresponding series of consultations. We are, however, concerned that this "modernization" will come in the form of overbroad enforcement and the creation of harmful new rights. Wikipedia and other collaborative platforms are operated by a small number of staff who would be overwhelmed by stricter rules for enforcement that would mandate a "take down and stay down" mechanism. Wikipedia and other open projects have fared well under the current regime that has allowed them the legal room to expand. We therefore ask the Commission not to "open" the Directive on the Enforcement of Intellectual Property Rights and to preserve the safe harbors of the E-Commerce Directive that allow the Internet to continue to grow and flourish in Europe.

Thank you again for this opportunity to submit our thoughts in the context of this consultation.

Sincerely,  
Wikimedia Foundation