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Respondent

33 Anonymous

44:43

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Contact details

Kindly submit your and your groups contact details below. Please also include the authors of the reports.

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AIPPI Netherlands

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I) Current law and practice

Please answer the below questions with regard to your Group's current law and practice.

Please answer all questions in Part I on the basis of your Group's current law. You may differentiate your answers based on different IP rights if applicable under your Group's current law.

5. **A. Recognition of Dynamic Injunctions:**

1) Does your jurisdiction recognise Dynamic Injunctions to enforce IPRs?

If you answered YES to question A above, please continue answering all questions below. If you answered NO to question A above, please move directly to Part III below.

Yes

No

6. **B. Availability of Dynamic Injunctions:**

2) In which situations have Dynamic Injunctions been typically granted in your jurisdiction

i. Movie Piracy **Yes**

i. **No**

ii. Unauthorized streaming of live events **Yes**

ii. **No**

iii. Counterfeits **Yes**

iii. **No**

iv. AI-Generated Content **Yes**

iv. **No**

v. Deep-fakes **Yes**

v. **No**

vi. Others **Yes**

vi. **No**

7. **2) (continued)** Please provide a brief explanation, if required

Ad iii) However, in other scenarios (liability of Hosting Service Providers), regular blocking injunctions against counterfeit content (e.g. websites that offer replica watches) have been made possible, also in ex parte proceedings.

8. **3)** What categories of Dynamic Injunctions are granted in your jurisdiction?

- i. Complete blocking of Rogue/mirror websites **Yes**
- i. **No**
- ii. Specific URL of rogue contents **Yes**
- ii. **No**
- iii. Blocking of key-words/domain name **Yes**
- iii. **No**
- iv. Take down orders for infringing/rogue accounts on e-commerce and social media **Yes**
- iv. **No**
- v. Blocking of live-streaming **Yes**
- v. **No**
- vi. App blocking **Yes**
- vi. **No**
- vii. Others **Yes**
- vii. **No**

9. **3) (continued)** Please provide a brief explanation,if required]

Ad iii) No regarding key-words; yes regarding domain names.

Ad v) But no precedents are set regarding situations when a live-stream is still pending. Matters on regular streaming sites (e.g. video on demand, music streaming) are available though.

10. 4) For which IPRs are Dynamic Injunctions applied for and granted/refused in your jurisdiction

- i. Copyrights Applied **Yes**
- i. Copyrights Applied **No**
- i. Copyrights Granted **Yes**
- i. Copyrights Granted **No**
- ii. Trademarks Applied **Yes**
- ii. Trademarks Applied **No**
- ii. Trademarks Granted **Yes**
- ii. Trademarks Granted **No**
- iii. Designs Applied **Yes**
- iii. Designs Applied **No**
- iii. Designs Granted **Yes**
- iii. Designs Granted **No**
- iv. Patents Applied **Yes**
- iv. Patents Applied **No**
- iv. Patents Granted **Yes**
- iv. Patents Granted **No**
- v. Geographical Indications Applied **Yes**
- v. Geographical Indications Applied **No**
- v. Geographical Indications Granted **Yes**
- v. Geographical Indications Granted **No**
- vi. Trade Secrets Granted **Yes**
- vi. Trade Secrets Grated **No**
- vi. Trade Secrets Applied **Yes**
- vi. Trade Secrets Applied **No**
- vii. Others **Yes**
- vii. Others **No**

11. 4) (continued) Please provide a brief description, if required

Ad vii) Neighbouring rights

12. **C. Authority for Granting Dynamic Injunctions:**

5) Which is the authority before which an application for Dynamic Injunction can be filed in your jurisdiction?

- i. IP authority **Yes**
- i. IP authority **No**
- ii. Court **Yes**
- ii. Court **No**
- iii. Other governmental body? **Yes**
- iii. Other governmental body? **No**
- iv. Other?

13. **5) (continued)** Please provide a brief explanation, if required

Ad ii) There is no exclusive jurisdiction determined by Dutch legislation. However, based on a covenant between ISPs and the leading anti-piracy organisation for copyrights and neighbouring rights, (Stichting BREIN) the District Court of Rotterdam is the preferred forum.

14. **6)** Can the decision be appealed and to whom?

- Yes
- No

15. **6) (continued)** Please provide a brief explanation

Regular court decision, open to appeal by involved parties. Not to be appealed by other interested parties, unless these parties have formally become a party to the proceedings. Aforementioned covenant may limit appeal possibilities in practice in specific cases.

16. **7)** Please select what are the factors considered by the authority in your jurisdiction for grant of Dynamic Injunction?

- i. Special damage entitling right holder to a Dynamic Injunction? **Yes**
- i. Special damage entitling right holder to a Dynamic Injunction? **No**
- ii. Traditional injunctions would not suffice for the violation? **Yes**
- ii. Traditional injunctions would not suffice for the violation? **No**
- iii. Public interest considerations for grant of a Dynamic Injunction? **Yes**
- iii. Public interest considerations for grant of a Dynamic Injunction? **No**
- iv. Special urgency for grant of a Dynamic Injunction? **Yes**
- iv. Special urgency for grant of a Dynamic Injunction? **No**
- v. Defendant/Infringer is a repeat/rogue infringer, warranting of dynamic injunction **Yes**
- v. Defendant/Infringer is a repeat/rogue infringer, warranting of dynamic injunction **No**
- vi. Any other factor? **Yes**
- vi. Any other factor? **No**

17. **7) (continued)** Please add a brief explanation, if any

Ad iv) Jet only precedents are known in PI and ex parte accelerated proceedings for which the standard rules on procedural urgency apply.
Ad vi) Evident infringement, risk of harm/damage to IP rights owner.

18. **8)** While granting dynamic injunctions, please select how do authorities assess the evidence?

- i. Illustrative evidence provided by Plaintiff to assert that an Infringer is a rogue infringer/website (Qualitative test) **Yes**
- i. Illustrative evidence provided by Plaintiff to assert that an Infringer is a rogue infringer/website **No**
- ii. Voluminous evidence must be provided that the activities of the infringer consist of piracy/counterfeiting (Quantitative test) **Yes**
- ii. Voluminous evidence must be provided that the activities of the infringer consist of piracy/counterfeiting (Quantitative test) **No**
- iii. Any other test? **Yes**
- iii. Any other test? **No**

19. **8) (continued)** Please add a brief explanation, if any

Ad iii) An injunction has to meet requirements of proportionality and subsidiarity. Proof of no 'over-blocking' should be provided (i.e. no other bona fide websites present on IP addresses)

20. **9)** In determining whether an infringer is rogue/repeat infringer, please select which factors do Authorities consider:

- i. Primary purpose is to commit/facilitate infringement **Yes**
- i. Primary purpose is to commit/facilitate infringement **No**
- ii. Flagrancy of infringement **Yes**
- ii. Flagrancy of infringement **No**
- iii. Anonymity of infringer **Yes**
- iii. Anonymity of infringer **No**
- iv. Silence/inaction despite receipt of legal notice **Yes**
- iv. Silence/inaction despite receipt of legal notice **No**
- v. Availability of alternative modes/indexes for continuing with infringing activities **Yes**
- v. Availability of alternative modes/indexes for continuing with infringing activities **No**
- vi. Prior injunctive orders already issued **Yes**
- vi. Prior injunctive orders already issued **No**
- vii. Any other factor? **Yes**
- vii. Any other factor? **No**

21. **9) (continued)** Please add a brief explanation, if any

Ad vii) Although not mandatory, Dutch courts tend to pay attention (if presented as evidence) to available decisions of other jurisdictions against same infringers and/or parallel cases. Based on the Netherlands' open system of evidence, in principle all relevant factors taken into account.

22. **10)** Whether the tests described in questions (7) to (9), apply equally for different kinds of IP?

- Yes
- No

23. **10) (continued)** Please provide a brief description, if any

Unknown, due to a lack of precedent. Only precedents are available regarding neighbouring rights. We assume and expect though that tests of (7) to (9) will also apply to other IP rights.

24. **D. Characteristics of Dynamic Injunction**

11) Are Dynamic Injunctions:

- i. Granted only for online infringements? **Yes**
- i. Granted only for online infringements? **No**
- ii. Granted for a fixed duration and limited extension thereof? **Yes**
- ii. Granted for a fixed duration and limited extension thereof? **No**
- iii. Mandate implementation of subsequently identified websites/platforms? **Yes**
- iii. Mandate implementation of subsequently identified websites/platforms? **No**
- iv. Can be granted for future works of the Plaintiff? **Yes**
- iv. Can be granted for future works of the Plaintiff? **No**
- v. Granted only at the interlocutory stage? **Yes**
- v. Granted only at the interlocutory stage? **No**
- vi. Allow right to seek clarifications/pushback to implementing entities? **Yes**
- vi. Allow right to seek clarifications/pushback to implementing entities? **No**
- vii. Others **Yes**
- vii. Others **No**

25. **11) (continued)** Please provide a brief description, if any

Ad ii) Article 1019i Dutch Civil Procedural Code only provides for a temporary character of the injunction if obtained in PI or ex parte proceedings. For injunctions to have a permanent nature the PI or ex parte will have to be followed-up in final relief proceedings. In a decision rendered in final relief proceedings will have a permanent nature. All decisions can be appealed via the Courts of Appeal up to the Supreme Court.

Ad iii) However, if content remains roughly the same and only moves from one domain to another, the website is assumed to have, for the larger part, the same nature. In such a scenario, the content will typically be regarded to be able to fall under the injunction.

Ad v) Although in practice mostly PI injunctions are requested (in view of accelerated handling). In the past, prior to implementation of Dynamic Injunctions ex parte proceedings were a favourable approach, based on a single 'mother' decision. Since dynamic blocking is available, in practice ex parte proceedings have become less common.

26. **12)** Apart from the primary rogue infringer, please select other kind of entities to whom directions can be passed:

- i. Internet Service Providers (ISP) **Yes**
- i. Internet Service Providers (ISP) **No**
- ii. Hosting Service providers (HSP) **Yes**
- ii. Hosting Service providers (HSP) **No**
- iii. Domain Name Registrars (DNRs) **Yes**
- iii. Domain Name Registrars (DNRs) **No**
- iv. E-commerce websites **Yes**
- iv. E-commerce websites **No**
- v. Social medial websites **Yes**
- v. Social medial websites **No**
- vi. App aggregators **Yes**
- vi. App aggregators **No**
- vii. Others **Yes**
- vii. Others **No**

27. **12) (continued)** Please provide a brief description, if any

In Dutch practice only cases against ISPs have seen the light of day. In principle, the court decisions are only applicable inter partes, so other parties are not bound to such decision (although a decision comes with a chilling effect of course; and the abovementioned covenant requires the other access providers to block the same websites after an order was handed down to one access provider). If and when a court decision is already rendered between certain parties, other parties are by nature more inclined to comply.

28. Implementation and monitoring

13) Does your current law specify any particular manner of implementation or monitoring of the Dynamic Injunction?

- Yes
- No

29. **13) (continued)** If the answer to question is YES, please select the nature of over-sight/monitoring provided in your jurisdiction:

No answer provided.

30. **13) (continued)** Please provide a brief description, if any

A covenant between ISPs and the leading anti-piracy organisation (Stichting BREIN / BREIN Foundation) contains practical arrangements between these parties. In this 'Website Blocking Agreement' the Internet Service Providers and rights holders have reached an agreement on blocking websites containing content that, according to the courts, infringes copyrights or neighbouring rights. Under this agreement, Dutch ISPs will jointly block websites that facilitate illegal downloading. This will only take place following a positive court ruling in proceedings initiated by the BREIN Foundation against a single provider (rather than having to initiate court proceedings against all various ISP's).

31. Vacation of a Dynamic Injunction

14) Can a Dynamic Injunction be vacated/terminated during its term?

Yes

No

32. **14) (continued)** If the answer to the question is YES, Who can apply for vacation of a dynamic injunction?

i. Court on its own motion **Yes**

i. Court on its own motion **No**

ii. Infringers **Yes**

ii. Infringers **No**

iii. Any party wrongly affected by the order **Yes**

iii. Any party wrongly affected by the order **No**

iv. Any person aggrieved **Yes**

iv. Any person aggrieved **No**

v. Service providers and other entities, apart from infringers **Yes**

v. Service providers and other entities, apart from infringers **No**

vi. Others **Yes**

vi. Others **No**

33. **14) (continued)** Please provide a brief description, if any

Ad ii) Only if these are a party. Can be done (regarding final relief / PI) via appeal proceedings or (regarding ex parte proceedings) specific proceedings aimed at lifting the injunction.

Ad iv) Unless it has formally become a party to pending proceedings.

Ad v) Yet only if such court order is aimed at an ISP (or any other party to that effect).

Ad vi) Parties are allowed to agree on lifting an injunction per settlement arrangements.

34. **15)** Please select the ground for vacation/termination of dynamic injunction in your jurisdiction:

- i. Misrepresentation of material fact **Yes**
- i. Misrepresentation of material fact **No**
- ii. Conditions warranting grant of the dynamic injunction are sufficiently mitigated? **Yes**
- ii. Conditions warranting grant of the dynamic injunction are sufficiently mitigated? **No**
- iii. Abuse of the Dynamic Injunction? **Yes**
- iii. Abuse of the Dynamic Injunction? **No**
- iv. Failure to comply with implementation/reporting requirements? **Yes**
- iv. Failure to comply with implementation/reporting requirements? **No**
- v. Unintended chilling effect on legitimate content/speech? **Yes**
- v. Unintended chilling effect on legitimate content/speech? **No**
- vi. Public interest of other nature. Please add a brief explanation. **Yes**
- vi. Public interest of other nature. Please add a brief explanation **No**
- vii. Others **Yes**
- vii. Others **No**

35. **15) (continued)** Please add a brief explanation, if any

Ad ii) Could however, be a ground for a successful request for lifting an injunction.

Ad vii) Settlement or voluntary compliance with the injunction.

II. Policy considerations and proposals for improvements of your Group's current law

Please answer the questions of this Part II below. You may differentiate your answers based on different IP rights if appropriate and/or desirable in your view.

36. **16)** According to the opinion of your Group, is your current law regarding Dynamic Injunctions adequate and/or sufficient?

- Yes
- No

37. **17)** If the answer to question (16) is NO, please briefly explain what aspect needs further consideration?

- i. Procedure for grant **Yes**
- i. Procedure for grant **No**
- ii. Applicability to other IPs **Yes**
- ii. Applicability to other IPs **No**
- iii. Conditions for grant **Yes**
- iii. Conditions for grant **No**
- iv. Characteristics of Dynamic Order **Yes**
- iv. Characteristics of Dynamic Order **No**
- v. Award of costs and damages and accompanying directions **Yes**
- v. Award of costs and damages and accompanying directions **No**
- vi. Applicability to other entities apart from infringer **Yes**
- vi. Applicability to other entities apart from infringer **No**
- vii. Consideration for vacation of dynamic injunction order **Yes**
- vii. Consideration for vacation of dynamic injunction order **No**
- viii. Implementation/over-sight mechanism **Yes**
- viii. Implementation/over-sight mechanism **No**
- ix. Others **Yes**
- ix. Others **No**

38. **17) (continued)** Please provide a brief description, if any

Ad i) Specific ex parte, accelerated proceedings would be a suitable solution, obtaining an injunction within hours. Injunction should be in principle granted, if there is a clear infringement and proof that no over-blocking will take place. Regarding live events an even more accelerated regime would be desirable. A decision should include practical conditions for granting an injunction.

Ad v) The majority of the Dutch group considers it to be opportune that the ISPs should execute the implementation of an injunction, without being compensated for the costs hereof. The majority of the group is against establishing a government-backed 'emergency fund' for covering these implementation costs. Regarding legal fees of e.g. the IP owners and ISPs it is common practice that these parties bear their own costs. The group does not see an immediate urge to deviate from this common practice.

Ad viii) A decision should include practical conditions for granting an injunction

Ad ix) A swift handling mechanism of a request for an injunction is key and requires improvement. The group suggests a 'trusted flagger' system as well (as seen with e.g. Amazon, eBay), where a substantial track record of bona fide and fitting requests have been made form the basis for new blocking requests.

39. **18)** Is there a need to amend legal statutes to recognize Dynamic Injunctions?

Yes

40. **18) (continued)** Please provide a brief description, if any

No answer provided.

41. **19)** Have Dynamic Injunctions led to mitigation of infringement within your jurisdiction?

Yes. Statistical reports regarding illegal torrent website 'The Pirate Bay' demonstrate a positive effect on illegal downloading and a concrete decrease of infringing websites. Further, online services such as Similarweb, the number of visit(or)s to websites can be tracked per country. These services show in general, a significant decrease of usage of the infringing websites after a blocking order concerning these websites is implemented. Hence, the group is of the opinion that Dynamic Injunctions demonstrate a positive and chilling effect.

42. **19) (continued)** Please provide a brief description, if any

No answer provided.

43. **20)** Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?

Yes

No

44. **20) (continued)** Please provide a brief description, if any

Blocking of live events should be facilitated in an organised, efficient and swift manner, either by statutory provisions or soft market regulation.

III. Proposals for harmonisation

Please consult with relevant in-house / industry members of your Group in responding to Part III.

45. **A. Recognition & Availability of Dynamic Injunctions:**

21) Should Dynamic Injunctions be recognized and granted to enforce IPRs?

Yes

No

46. **21) (continued)** Please provide a brief description, if any

No answer provided.

47. **22)** Is there a need to amend legal statutes to recognize Dynamic Injunctions?

Yes

No

48. **22) (continued)** Please provide a brief description, if any

Improvements are to be made, please see above.

49. **23)** For which IPRs Dynamic Injunctions be applicable/granted:

- i. Copyrights **Yes**
- i. Copyrights **No**
- ii. Trademarks **Yes**
- ii. Trademarks **No**
- iii. Designs **Yes**
- iii. Designs **No**
- iv. Patents **Yes**
- iv. Patents **No**
- v. Geographical Indications **Yes**
- v. Geographical Indications **No**
- vi. Trade Secrets **Yes**
- vi. Trade Secrets **No**
- vii. Others **Yes**
- vii. Others **No**

50. **23) (continued)** Please provide a brief description, if any

Ad vii) Also to be based on slavish imitation (unfair competition) and (AI) deepfakes; misleading advertising targeting weaker groups (e.g. minors) and sensitive sectors (e.g. crypto, finance, medical advice).

51. **24)** In which situations should Dynamic Injunctions be typically granted:

- i. Movie Piracy **Yes**
- i. Movie Piracy **No**
- ii. Unauthorized streaming of live events **Yes**
- ii. Unauthorized streaming of live events **No**
- iii. Counterfeits **Yes**
- iii. Counterfeits **No**
- iv. AI-Generated Content **Yes**
- iv. AI-Generated Content **No**
- v. Deep-fakes **Yes**
- v. Deep-fakes **No**
- vi. Others **Yes**
- vi. Others **No**

52. **24) (continued)** Please provide a brief description, if any

Ad iv) Only if infringing, misleading or harmful.

Ad vi) The group believes that all sorts of infringements based on all sorts of IP rights should be embedded in the legislation, including music, film and gaming related infringements.

53. **25)** What categories of dynamic Injunctions should be granted in your jurisdiction?

- i. Complete blocking of Rogue/mirror websites **Yes**
- i. Complete blocking of Rogue/mirror websites **No**
- ii. Specific URL of rogue contents **Yes**
- ii. Specific URL of rogue contents **No**
- iii. Blocking of key-words/domain name **Yes**
- iii. Blocking of key-words/domain name **No**
- iv. Take down orders for infringing/rogue accounts on e-commerce and social media **Yes**
- iv. Take down orders for infringing/rogue accounts on e-commerce and social media **No**
- v. Blocking of live-streaming **Yes**
- v. Blocking of live-streaming **No**
- vi. App blocking **Yes**
- vi. App blocking **No**
- vii. Others **Yes**
- vii. Others **No**

54. **25) (continued)** Please provide a brief explanation, if any.

Ad vii) The group is keen on extending the scope of Dynamic Injunctions to deepfake blocking too.

Further, if the question is intended to clarify whether dynamic blocking injunctions should also be obtainable against parties other than ISPs, the group believes that, if the infringer is or remains anonymous, dynamic injunctions should be possible against all intermediaries within the meaning of Court of Justice UPC Wien, i.e. all intermediaries whose services are used in the infringement. This may therefore also include payment providers and/or banks.

The same may also be desirable against VPN providers and alternative DNS providers

55. **B. Authority for Granting Dynamic Injunctions:**

26) Which should be the authority before which an application for Dynamic Injunction ought to be filed in your jurisdiction?

- i. IP authority **Yes**
- i. IP authority **No**
- ii. Court **Yes**
- ii. Court **No**
- iii. Other governmental body? **Yes**
- iii. Other governmental body? **No**
- iv. Other? **Yes**
- iv. Other? **No**

56. **26)** (continued) Please add a brief explanation, if any

Ad iii) In view of accelerated handling, a designated governmental / juridical body could be an appropriate alternative.

57. **27)** Should the decision of grant/refusal be appealable?

Yes

No

58. **27)** (continued) Please add a brief explanation, if any

Yes, however only if done rapidly, especially regarding live events.

59. **28)** Please select what should be the factors considered by the authority in your jurisdiction for grant of Dynamic Injunction?

- i. Special damage entitling right holder to a Dynamic Injunction? **Yes**
- i. Special damage entitling right holder to a Dynamic Injunction? **No**
- ii. Traditional injunctions would not suffice for the violation? **Yes**
- ii. Traditional injunctions would not suffice for the violation? **No**
- iii. Public interest considerations for grant of a Dynamic Injunction? **Yes**
- iii. Public interest considerations for grant of a Dynamic Injunction? **No**
- iv. Special urgency for grant of a Dynamic Injunction? **Yes**
- iv. Special urgency for grant of a Dynamic Injunction? **No**
- v. Defendant/Infringer is a repeat/rogue infringer, warranting of dynamic injunction **Yes**
- v. Defendant/Infringer is a repeat/rogue infringer, warranting of dynamic injunction **No**
- vi. Any other factor? **Yes**
- vi. Any other factor? **No**

60. **28)** (continued) Please add a brief explanation, if any

Ad vi) The balance between subsidiarity and a desired swift grant should play a key role, especially regarding live events.

A Dynamic Injunction should in principle, be granted in the event of (i) a very urgent interest; (ii) the infringer is anonymous / cannot be located using regular means; (iii) valid IP rights; (iv) evident infringement; (v) reported by a 'trusted flagger'. The group believes that, in principle, the IP rights owner or collecting society should not be liable for damage in the event of a faulty report.

Last, the group is keen on as few formalities as possible (e.g. online submission form). In that online form, it should then be indicated why the platform is illegal/infringing, that the risk of overblocking is either very limited or manageable, and that the infringer is anonymous and/or that legal action against it is not possible or would be excessively burdensome. In this regard, a prima facie showing of evidence should suffice in first instance. The threshold should not be set too high, since otherwise it would not be possible to request an injunction at very short notice.

61. **29)** While granting dynamic injunctions, please select how should authorities assess the evidence?

- i. Illustrative evidence provided by Plaintiff to assert that an Infringer is a rogue infringer/website (Qualitative test) **Yes**
- i. Illustrative evidence provided by Plaintiff to assert that an Infringer is a rogue infringer/website (Qualitative test) **No**
- Voluminous evidence must be provided that the activities of the infringer consist of piracy/counterfeiting (Quantitative test) **Yes**
- Voluminous evidence must be provided that the activities of the infringer consist of piracy/counterfeiting (Quantitative test) **No**
- vii. Any other test? **Yes**
- vii. Any other test? **No**

62. **29)** (continued) Please add a brief explanation, if any

Ad ii) Quality of evidence should be essential, in view of evidently infringing nature and/or very urgent interest the group prefers that no major stacks of evidence are to be presented in first instance.

63. **30)** In determining whether an infringer is rogue/repeat infringer, please select which factors should authorities consider:

- i. Primary purpose is to commit/facilitate infringement **Yes**
- i. Primary purpose is to commit/facilitate infringement **No**
- ii. Flagrancy of infringement **Yes**
- ii. Flagrancy of infringement **No**
- iii. Anonymity of infringer **Yes**
- iii. Anonymity of infringer **No**
- iv. Silence/inaction despite receipt of legal **Yes**
- iv. Silence/inaction despite receipt of legal **No**
- v. Availability of alternative modes/indexes for continuing with infringing activities **Yes**
- v. Availability of alternative modes/indexes for continuing with infringing activities **No**
- vi. Prior injunctive orders already issued **Yes**
- vi. Prior injunctive orders already issued **No**
- viii. Any other factor? **Yes**
- viii. Any other factor? **No**

64. **30)** (continued) Please add a brief explanation, if any

Ad vii) The authority must be able to take all the circumstances of the case into account, however not all aforesaid factors are required to be present (no cumulative requirements).

65. **31)** Whether the tests described in questions (28) to (30) should apply equally for different kinds of IP?

i. Copyrights **Yes**

i. Copyrights **No**

ii. Trademarks **Yes**

ii. Trademarks **No**

iii. Designs **Yes**

iii. Designs **No**

iv. Patents **Yes**

iv. Patents **No**

v. Geographical Indications **Yes**

v. Geographical Indications **No**

vi. Trade Secrets **Yes**

vi. Trade Secrets **No**

ix. Others **Yes**

ix. Others **No**

66. **31) (continued)** Please add a brief explanation, if any

Also to be based on slavish imitation (unfair competition) and (AI) deepfakes; misleading advertising targeting weaker groups (e.g. minors) and sensitive sectors (e.g. crypto, finance, medical advice).

67. **C. Characteristics of Dynamic Injunction**

32) Should Dynamic Injunctions be:

- i. Granted only for online infringements? **Yes**
- i. Granted only for online infringements? **No**
- ii. Granted for a fixed duration and limited extension thereof? **Yes**
- ii. Granted for a fixed duration and limited extension thereof? **No**
- iii. Mandate implementation of subsequently identified websites/platforms? **Yes**
- iii. Mandate implementation of subsequently identified websites/platforms? **No**
- iv. Can be granted for future works of the Plaintiff? **Yes**
- iv. Can be granted for future works of the Plaintiff? **No**
- v. Granted only at the interlocutory stage? **Yes**
- v. Granted only at the interlocutory stage? **No**
- vi. Allow right to seek clarifications/pushback to implementing entities? **Yes**
- vi. Allow right to seek clarifications/pushback to implementing entities? **No**
- x. Others **Yes**
- x. Others **No**

68. **32) (continued)** Please add a brief explanation, if any

Ad i) In view of an effective IP enforcement system, the group sees in principle no major objections towards applying Dynamic Injunctions for other categories than only online infringements. However, the group believes that in the actual 'offline' world, the infringer is more likely to be known, the chance of follow-up infringements may be less substantive and the actual urgency may be more limited too – leading to less urge for granted Dynamic Injunctions.

Ad ii) E.g. only a dynamic injunction for a specific sports match or concert or a sports season, with an easy-to-fix extension. This aligns with the current principle that an injunction should remain in place as long as there is (a threat of) an infringement. It is noted that, if one is to deviate from this and let an injunction have a temporary character, this may impose additional burdens on ISPs and the judiciary system.

Ad iv) However, if valid IP rights are by then uploaded into e.g. online reporting tool, the group is not opposed towards extending an existing injunction or facilitating a new injunction more easily. This is especially desired regarding live events, in view of the limited time available. Sufficient safeguards are to be built-in.

Ad vi) Yes, but the group is keen to apply a time-bound clarification/pushback mechanism with respect to urgent events (e.g. reply within 1 hour with a live sports event)

69. **33)** Apart from the primary rogue infringer, please select other kind of entities to whom directions should be passed:

- i. Internet Service Providers (ISP) **Yes**
- i. Internet Service Providers (ISP) **No**
- ii. Hosting Service providers (HSP) **Yes**
- ii. Hosting Service providers (HSP) **No**
- iii. Domain Name Registrars (DNRs) **Yes**
- iii. Domain Name Registrars (DNRs) **No**
- iv. E-commerce websites **Yes**
- iv. E-commerce websites **No**
- v. Social medial websites **Yes**
- v. Social medial websites **No**
- vi. App aggregators **Yes**
- vi. App aggregators **No**
- xi. Others **Yes**
- xi. Others **No**

70. **33) (continued)** Please add a brief explanation, if any

Ad vi) An open system is desired, especially regarding payment providers and the like. See answers with question 25 (vii).

71. Implementation and monitoring

34) Should there be any particular manner of implementation or monitoring of the Dynamic Injunction?

- Yes
- No

72. **34) (continued)** If the answer is YES, what should be the nature of over-sight/monitoring:

- i. Court appointed representative to certify that subsequent infringements are covered within the order **Yes**
- i. Court appointed representative to certify that subsequent infringements are covered within the order **No**
- ii. Affidavits/reports detailing subsequent infringements to which the dynamic injunction need to be extended **Yes**
- ii. Affidavits/reports detailing subsequent infringements to which the dynamic injunction need to be extended **No**
- iii. Regular listing of the matter before the authority/court **Yes**
- iii. Regular listing of the matter before the authority/court **No**
- iv. Others **Yes**
- iv. Others **No**

73. **34) (continued)** Please add a brief explanation, if any

The group is keen on an open system. It believes that ISPs should preferably take on a role of a self-regulator in this respect, taking care of proper implementation. In principle, every injunction is and should be technology-neutral, and per EU case law the ISP has an obligation to demonstrate that it has done everything reasonably possible to give effect to the injunction (in view of existing case law, such as CJEU UPC Telekabel Wien and UPC YouTube Cyando).

As long as the injunction provides that it remains in force for as long as the platform is manifestly infringing/illegal and/or retains the same characteristics as set out in the original injunction, there is, in the group's view, no need for separate monitoring. If the ISP or other entity that has implemented the injunction considers that the nature of the platform has changed (is no longer illegal and/or infringing), it could be argued that it would no longer be required to comply, and, if necessary, a new hearing could take place.

74. Vacation of a Dynamic Injunction

35) Should a Dynamic Injunction be vacated/terminated during its term?

- Yes
- No

75. Vacation of a Dynamic Injunction

35) (continued) If the answer to the question is YES, who may apply for vacation of a dynamic injunction?

- i. Court on its own motion **Yes**
- i. Court on its own motion **No**
- ii. Infringers **Yes**
- ii. Infringers **No**
- iii. Any party wrongly affected by the order **Yes**
- iii. Any party wrongly affected by the order **No**
- iv. Any person aggrieved **Yes**
- iv. Any person aggrieved **No**
- v. Service providers and other entities, apart from infringers **Yes**
- v. Service providers and other entities, apart from infringers **No**
- vi. Others **Yes**
- vi. Others **No**

76. **35) (continued)** Please add a brief explanation, if any

The group is of the opinion that a Dynamic Injunction should be appealable. Therefore, such injunction should be able to be terminated in due course. In principle, only the parties themselves and possibly in specific cases parties directly affected by the injunction, should be able to request this.

77. **36)** Please select the possible ground for vacation/termination of dynamic injunction in your jurisdiction:

- i. Misrepresentation of material fact **Yes**
- i. Misrepresentation of material fact **No**
- ii. Conditions warranting grant of dynamic injunction are sufficiently mitigated. **Yes**
- ii. Conditions warranting grant of dynamic injunction are sufficiently mitigated. **No**
- iii. Abuse of the Dynamic Injunction? **Yes**
- iii. Abuse of the Dynamic Injunction? **No**
- iv. Failure to comply with implementation/reporting requirements? **Yes**
- iv. Failure to comply with implementation/reporting requirements? **No**
- v. Unintended chilling effect on legitimate content/speech? **Yes**
- v. Unintended chilling effect on legitimate content/speech? **No**
- vi. Public interest of other nature. Please add a brief explanation. **Yes**
- vi. Public interest of other nature. Please add a brief explanation. **No**
- vii. Other? **Yes**
- vii. Other? **No**

78. **36)** (continued) **vi.** Please add a brief explanation.

No answer provided.

79. **36)** (continued) Please add a brief explanation, if any

The Group has no specific preferences, yet an open system for re-assessment is believed to make sense

80. **37)** Please comment on any additional issues concerning any aspect of Dynamic Injunctions you consider relevant to this Study Question.

None, see above for the group's input.

81. **38)** Please indicate which industry sector views provided by in-house counsel are included in your Group's answers to Part III.

The questionnaire and its answers have been shared and discussed within the Dutch Group, which includes representatives from large and small/medium sized companies. This includes Dutch anti-piracy organization Stichting BREIN and one manufacturer of FMCG.