

Advisory Committee on Enforcement

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THE BUILDING RESPECT FOR INTELLECTUAL PROPERTY DATABASE PROJECT

Document prepared by the Secretariat

ABSTRACT

This document describes a project undertaken by the WIPO Secretariat to assist Member States in the coordination of voluntary measures undertaken in accordance with the “follow-the-money” approach to copyright infringement. It comprises a secure, access-controlled online platform, to which authorized agencies in WIPO Member States may upload lists of websites which deliberately facilitate the infringement of copyright. Legitimate players in the advertising industry are permitted as authorized users to employ the data contained in the lists to inform the placement of advertising on the Internet. By checking with the Building Respect for Intellectual Property Database (BRIP Database), advertisers can ensure that their advertising does not accidentally appear on copyright-infringing websites. The intention is to reduce the flow of money to illegal website operators, to protect brands from tarnishment and to reduce the risk that legitimate advertising may lend an appearance of legality to illegal websites, to the confusion of consumers. The BRIP Database is now open for the acceptance of Authorized Contributors from WIPO Member States and Authorized Users from the advertising sector.

I. BACKGROUND

1. Advertising on the Internet now accounts for about half of global advertising spending and is predicted to continue to grow in importance relative to traditional forms of advertising¹. Many of the advertisements which appear on websites are displayed as the result of complex technical operations undertaken by software and without direct human intervention. This

¹ eMarketer (March 28, 2019), *Digital Ad Spending 2019 – Global*, available at: <https://www.emarketer.com/content/global-digital-ad-spending-2019>.

“programmatic” advertising commonly responds to the profile of the person on whose computer the advertisement is displayed, relying on information as to the browsing history, location and other detectable features of the user. In many cases, the advertising provider will bid in a machine-operated auction for the opportunity to serve an advertisement to that particular user through a particular website. In the course of these automated procedures, a computer system may consult databases of relevant information, including, for example, a blacklist of websites deemed to constitute unsuitable locations for the placement of advertising of a particular client or product.

2. Online advertising is a major source of revenue for online operators of copyright-infringing websites. Because the system of selling online advertising is complex and hard to control, legitimate brands may find their advertising appearing on pirate websites, tarnishing their trademarks and inadvertently lending an air of legitimacy to such sites, to the potential confusion of consumers. In a survey of infringing websites carried out for the European Observatory on Infringements of Intellectual Property Rights of the European Union Intellectual Property Office (EUIPO Observatory), mainstream advertising made up 46 per cent of all advertising found on such sites². Research carried out for the Federation of Indian Chambers of Commerce and Industry (FICCI) found that of 1,143 popular piracy websites, 73 per cent were supported by advertising. The larger sites were estimated to generate USD 2 to 3.5 million per year in revenue. Of the advertisers, 54 per cent were well-known brands³.

3. In some WIPO Member States, information about pirate websites is shared with the advertising industry, enabling advertisers (that is to say, brand owners) to instruct their advertising intermediaries to avoid placing their advertising on specified illegal sites. Such schemes have been found to be effective in reducing the amount of premium advertising on infringing sites⁴. In the United Kingdom, for example, the Police Intellectual Property Crime Unit of the City of London Police (PIPCU) maintains an Infringing Website List (IWL). The IWL is compiled from evidence submitted by right holders and verified by PIPCU. It is shared with advertisers via an online portal. In France, right holders communicate lists of infringing URLs informally to advertising agencies within the framework of a Government-sponsored *Charter of Good Practices for Online Advertising for the Respect of Copyright and Neighboring Rights*, signed on March 23, 2015. Under its *Profit Source Research* program, the Korea Copyright Protection Agency of the Republic of Korea (KCOPA) monitors infringing sites for brand advertising and engages with advertisers (or their advertising agencies) to prevent the reappearance of such advertising. A number of other countries have set up similar schemes or plan to do so.

4. In addition, there are various public agencies involved in the blocking of pirate websites, such as the Communications Regulatory Authority of Italy (AGCOM) and the Federal Service for the Supervision of Communications, Information Technology and Mass Media of the Russian Federation (Roskomnadzor), which generate reliable data as to the infringing character of websites. Such site blocking activities are effective only at the national level. The information compiled by such agencies could also be used outside to restrict the flow of advertising revenues to such sites, which may remain accessible internationally, notwithstanding their being blocked domestically.

² White Bullet Solutions Ltd. (2016), *Digital Advertising on Suspected Infringing Websites*, available at: <https://euiipo.europa.eu/ohimportal/documents/11370/80606/Digital+Advertising+on+Suspected+Infringing+Websites>.

³ SIPI/Veri-Site (2017), *Badvertising: When Ads Go Rogue*, available at: <http://ficci.in/study-page.asp?spid=20987§orid=13>.

⁴ PIPCU press release (March 2, 2017), *Operation Creative Sees 64 Per Cent Drop in UK Advertising*, available at: <https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/pipcu-news/Pages/Operation-Creative-sees-64-per-cent-drop-in-UK-advertising-.aspx>; Ministry of Culture of France (March 23, 2017), *Rapport 2015-2016 de la Charte de bonnes pratiques dans la publicité pour le respect du droit d'auteur et des droits voisins*, available at: <http://www.culture.gouv.fr/Espace-documentation/Rapports/Rapport-2015-2016-de-la-Charte-de-bonnes-pratiques-dans-la-publicite-pour-le-respect-du-droit-d-auteur-et-des-droits-voisins>.

5. There is no facility for the coordination of these activities to ensure that comprehensive information is available to advertisers for incorporation in their instructions to advertising intermediaries. Potential weaknesses of national systems from a user's perspective include their reliance on a limited number of right holders for information and the difficulty of identifying suspect sites in foreign languages.

II. INCEPTION OF THE PROJECT

6. On September 29, 2017, the WIPO Secretariat invited a group of Member States active in the field to meet at WIPO to discuss the possibility of establishing an online platform to coordinate the sharing of information about copyright-infringing websites with the advertising sector.

7. The concept presented by the Secretariat was that of a secure online platform to which agencies in Member States would be able to upload lists of copyright-infringing websites. Approved actors in the advertising sector (brand owners, advertising agencies and their technical service providers) would be permitted to download the lists to inform their decisions as to the placement of advertisements on third-party websites. This would be a voluntary coordination facility, limited to the sharing of existing information. The consensus at the meeting was that a facility of that kind could be beneficial. The Secretariat therefore developed a project plan and over succeeding months constructed the web platform.

III. DETAILED OPERATION OF THE BRIP DATABASE

8. The BRIP Database can be presented schematically as follows:

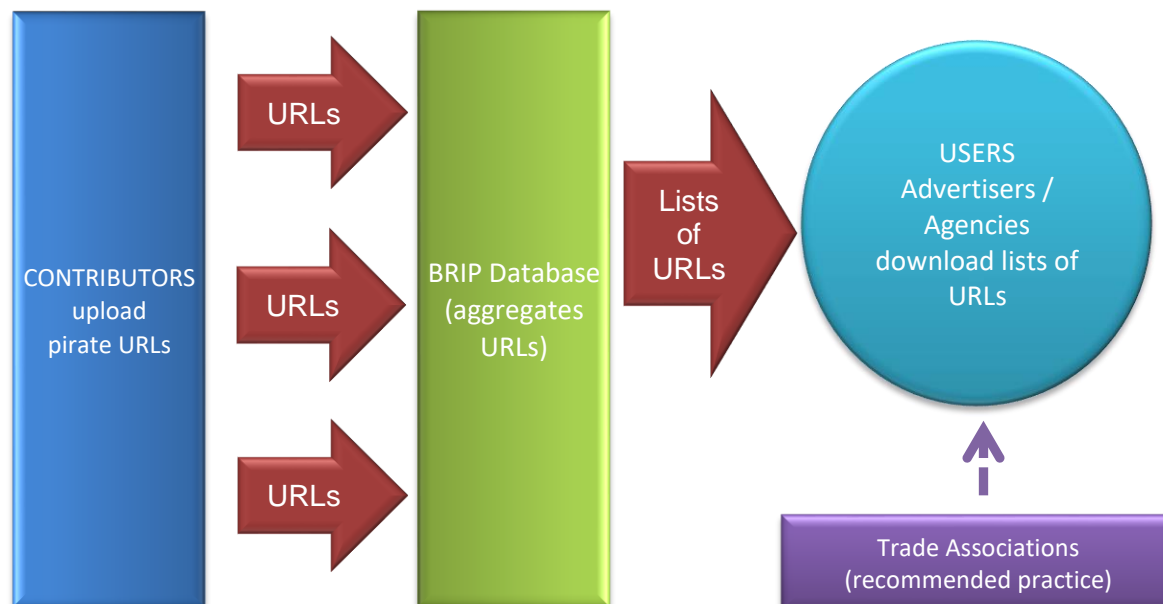


Figure 1: Schematic representation of BRIP Database operations

9. The BRIP Database consists of a secure website. Agencies which gather infringing site data (Authorized Contributors) upload lists of infringing URLs (that is, the addresses of internet locations which facilitate copyright infringement) to the database. Advertising agencies and advertisers (Authorized Users) have controlled access to the database and are able to select which lists to access as an aggregated feed. Authorized Users can use the data to instruct their

technical service providers not to permit their advertisements to appear on the listed sites. The system is structured on the basis of Letters of Understanding (LoUs) between Authorized Contributors and WIPO and User Agreements between Authorized Users and WIPO.

10. The operation of the BRIP Database is not based on any assertion by WIPO that any particular site has, as a matter of law, infringed copyright. Rather, the qualification for inclusion of a national list on the platform is that the list contains “sites of concern”. A site of concern is defined as “an online location which is reasonably suspected by an Authorized Contributor of deliberately infringing or facilitating the infringement of copyright and related rights, whether in its country of establishment or elsewhere”⁵.

11. While all Member State agencies which maintain lists of infringing websites have a process for deciding whether a website should be included in the list, the criteria applied may differ. However, in practice the sites targeted by national databases are invariably flagrant facilitators of copyright infringement. The criterion of “sites of concern” accommodates any marginal differences between national approaches, while emphasizing the purely ministerial function of WIPO in the dissemination of the data.

12. Contributing agencies remain responsible for the validity of their lists. Monitoring of the effectiveness of the system, if any, will continue to be done at national level. Persons affected by the listing of a website on a national list retain any rights of review or appeal available to them at national level. In the event that a site is removed from a national list, the Authorized Contributor concerned promptly updates its list on the WIPO platform.

13. Access to the portal will be limited to advertisers and advertising intermediaries who are accepted by WIPO, following a check on their *bona fides*. Authorized Contributors have the ability to exclude any particular Authorized User from access to their data.

14. Having signed an LoU (in the case of Authorized Contributors) or a User Agreement (in the case of Authorized Users), each site user is given log-in details by the site moderator. The site user accesses the platform via a log-in page.

15. To add sites manually, the Authorized Contributor clicks the “Add domain(s)” button.

⁵ The definition is inspired by section 115A of the Australian Copyright Act (site blocking).

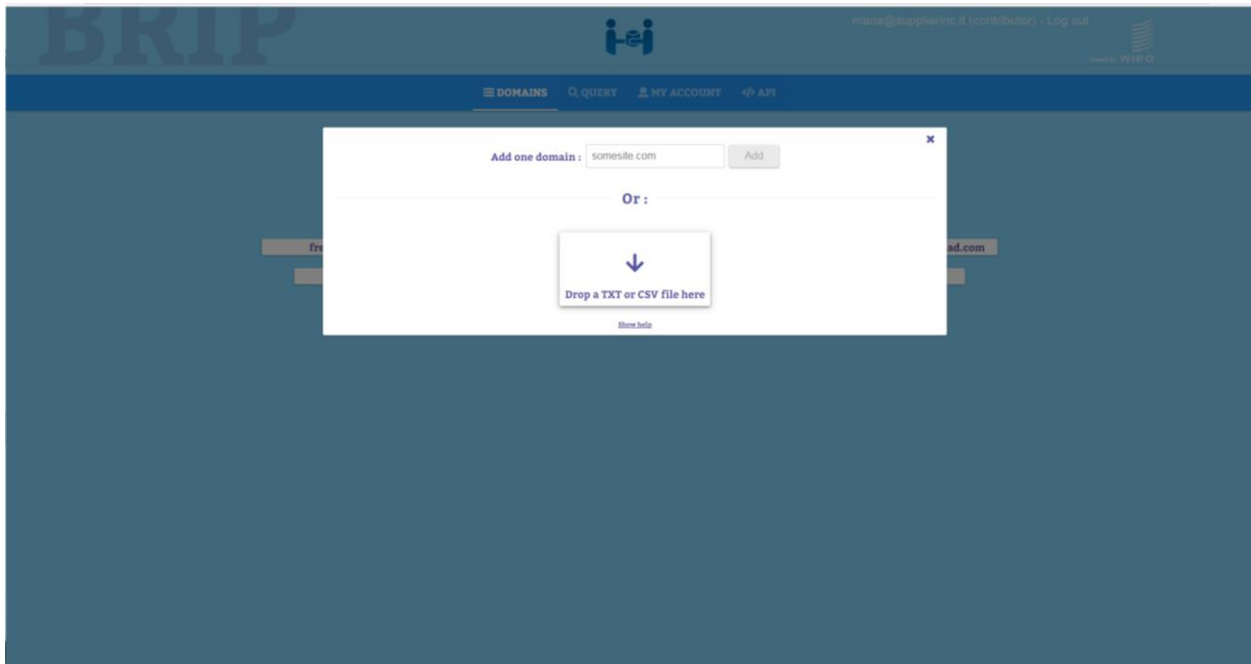


Figure 3: Contributor's tool to add URLs to a national list

16. The Authorized Contributor can enter a single site name manually, or drag a list in .txt or .csv format to the dialogue box. The listed sites will then be automatically uploaded. It is also possible to upload an Internet Protocol (IP) address, such as “193.5.93.25”. This permits the listing of piracy applications, or “apps”, typically accessed by means of adapted television set-top boxes, in addition to conventional websites.

17. A collateral benefit of the platform is that Member States do not require to develop their own online infrastructure for the storage and dissemination of lists of sites of concern. The lists can simply be made available through the BRIP Database and access to them controlled using the tools provided to Authorized Contributors.

18. It is hoped that site users will take advantage of the application programming interface (API) to update or consult the site. The Authorized Contributor can set its server to communicate automatically with the platform via the API.

19. The Authorized Contributor can control which Authorized Users can access its list by clicking on the “Manage who can see your list” button. It is presented with a list of all Authorized Users with access to the platform and can selectively block any User.

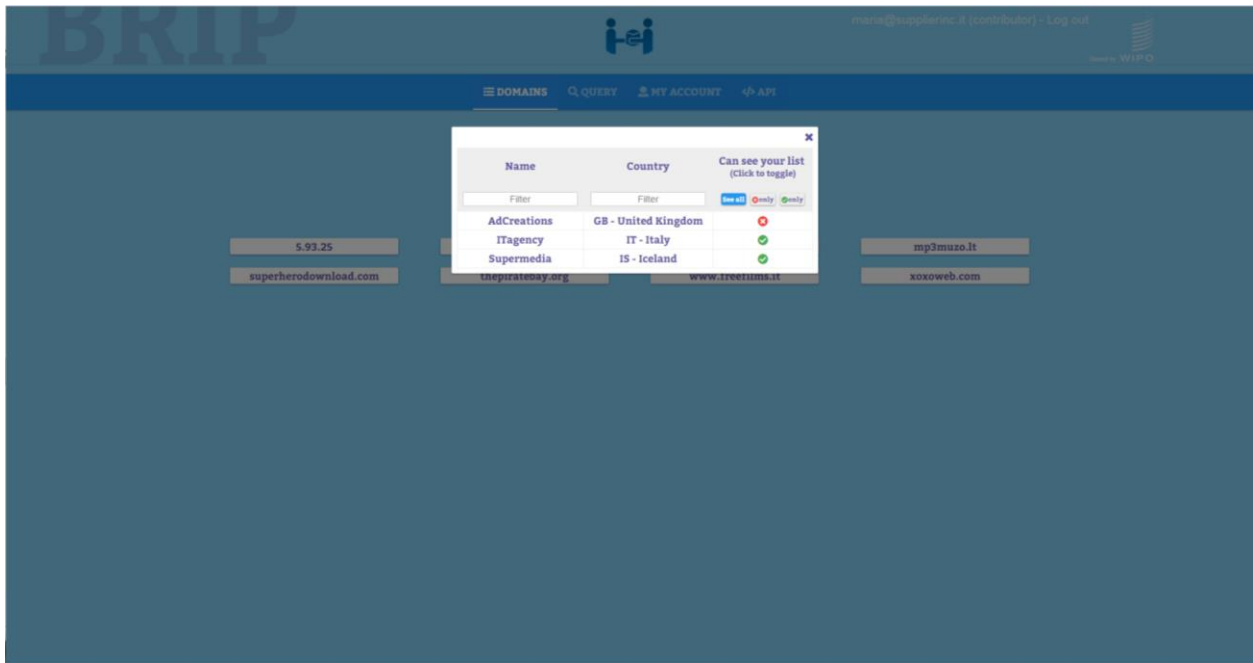


Figure 2: Authorized Contributor's tool to block access by particular Authorized Users

20. An Authorized User logs in in the same way as an Authorized Contributor, but cannot add or remove domains from the database. An Authorized User can check whether a domain has been listed on the platform by entering it manually or consulting the database automatically via the API.

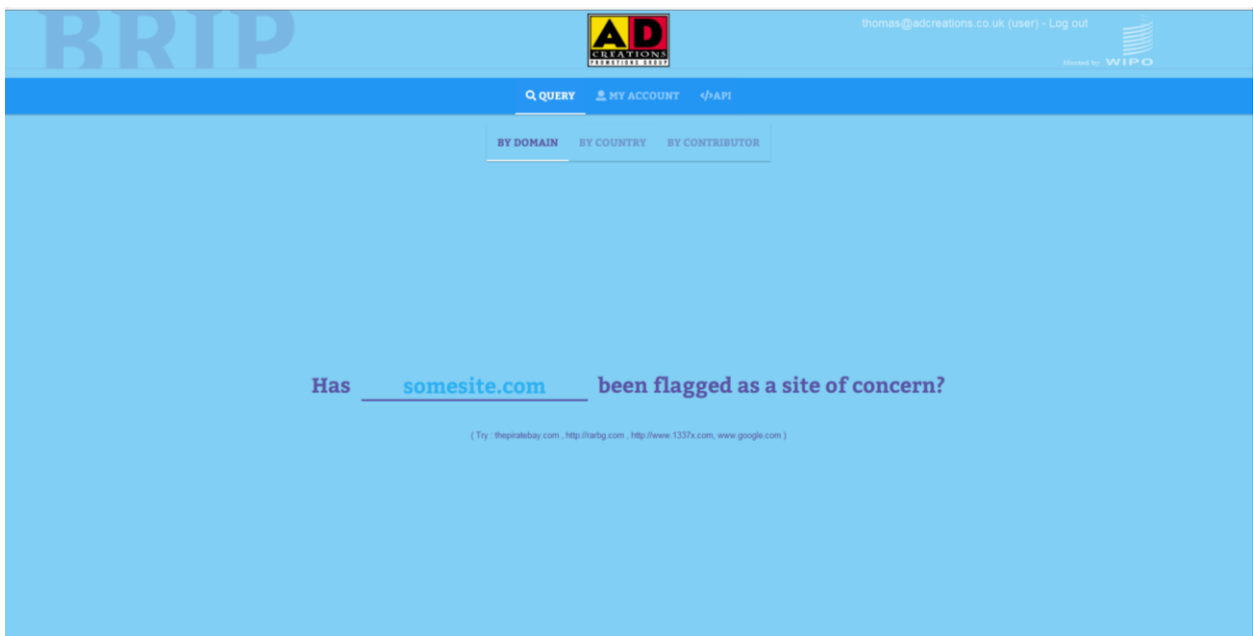


Figure 4: User's tool to check whether a URL is listed as a site of concern

21. The Authorized User can search by country or Authorized Contributor:

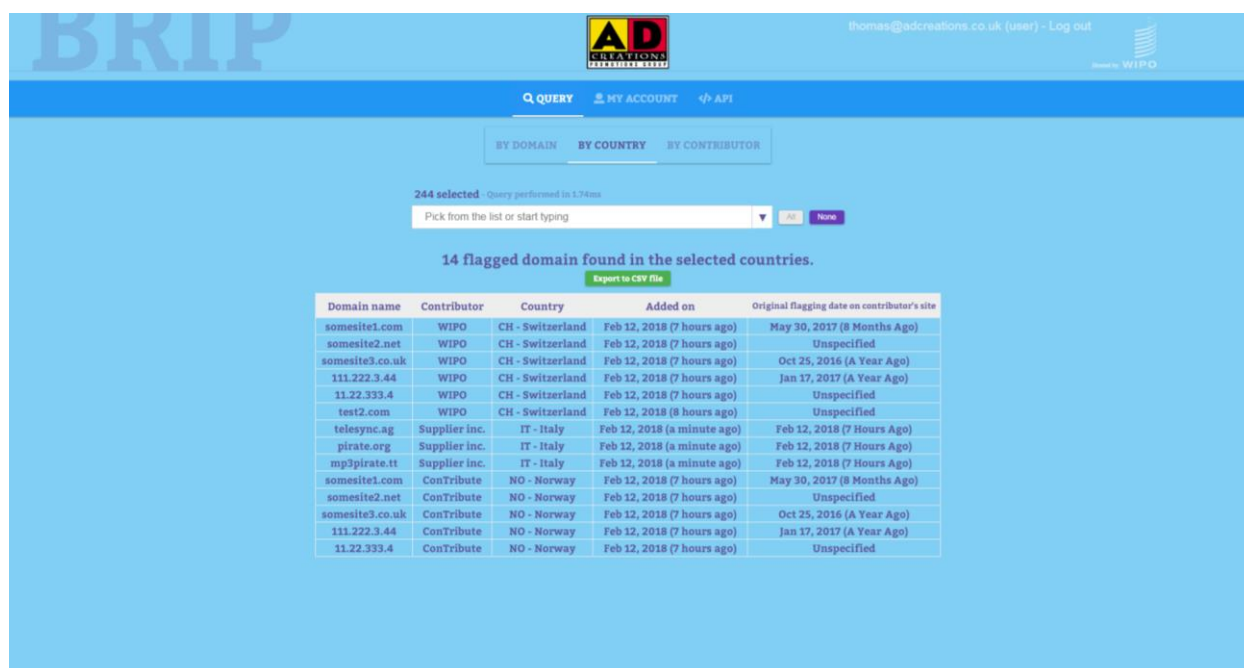


Figure 5: Result of query by specific countries

22. The key function is the possibility to query whether a given domain is listed or not. In the preferred implementation, an advertiser's advertising algorithm will consult the database via the API before placing an advertisement on a particular site. If the database replies that the site is listed, the algorithm will not serve an advertisement to that site. In this way, the operation is entirely seamless and requires no human intervention.

IV. DEVELOPMENTS AT EUROPEAN UNION LEVEL

23. On June 25, 2018, 28 stakeholders active in the field of advertising came together in Brussels, Belgium, under the aegis of the Directorate General for Internal Market, Industry, Entrepreneurship and SMEs of the European Commission (DG Grow) to sign a *Memorandum of Understanding on Online Advertising and Intellectual Property Rights* (Memorandum)⁶. Under the Memorandum, participants committed themselves to minimize the placement of advertising on websites and mobile applications that infringe copyright or disseminate counterfeit goods.

24. The BRIP Database is complementary to the work of the European Commission in this field. A close cooperation has been maintained between DG Grow and the Secretariat since September 2018.

V. CURRENT STATUS

25. The Secretariat has continued to consult with Member States on the progress of the project. Bilateral discussions have taken place with a number of Member States, with a view to the possible participation of those States as contributors of data to the BRIP Database. The database has successfully been populated with test data with the assistance of AGCOM and

⁶ See: https://ec.europa.eu/growth/industry/intellectual-property/enforcement/memorandum-of-understanding-online-advertising-ipr_en.

KCOPA. The technical arrangements having been completed, it is intended that the BRIP Database should now begin operation.

26. The Secretariat is pursuing targeted activities to solicit the advice and participation of those active in the world of online advertising, including trade associations. The Secretariat has had dialogue with regional and national associations in the sector, which have begun to publicize the BRIP Database to their members, and with individual brand owners. The project relates to a larger issue of current interest to the advertising sector, namely that of “brand safety” or the prevention of tarnishment of brands by association with advertising contexts which may damage brand reputation.

VI. CONCLUSION

27. The BRIP Database Project is now open for the acceptance of Authorized Contributors from WIPO Member States and Authorized Users from the advertising sector. The project responds to increased interest among policy-makers in methods of building respect for intellectual property which rely on voluntary cooperation, rather than on judicial or other compulsory measures. Its success will, however, depend on the extent to which it is adopted by Member State agencies and the advertising sector.

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