



Striking a balance between enforcement tools to tackle commercial-scale online copyright infringement and an effective human rights protection system
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This paper seeks to strike a balance between policy enforcement tools to tackle commercial-scale online copyright infringement and an effective human rights protection system. The analysis draws on the 2016 European Commission's consultation on the evaluation and modernisation of the legal framework for the enforcement of intellectual property rights in the online environment. In particular, it analyses compliance of the 'follow the money' approach with the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights. It argues that the general monitoring of infringing behaviour by the private sector carried out in order to detect commercial-scale infringers should only take place after a prior check and authorisation by State authorities (the courts or the data protection authorities). It discusses the position of infringers as both, the enablers of infringement such as, websites providing and facilitating access to infringing content, and initial uploaders, namely, those individuals who first upload copyrighted material in file-sharing networks to attract millions of BitTorrent users to their websites for financial gain. It concludes that in order to strike a balance between, on the one hand, the disclosure of information on the identity of the infringer, under Article 8 of the Intellectual Property Rights Enforcement Directive 2004/48/EC, and on the other, the protection of their privacy and data protection rights, under Article 15(1) of the E-Privacy Directive 2002/58/EC and Articles 8 and 6(c) of the Data Protection Directive 95/46/EC, State authorities should ensure that infringer monitoring is limited in scope (specific, existing or future court proceedings); in time (at only certain times or days); and in number (only serious commercial-scale infringers). It also recommends that State authorities should check and authorize rightholder evidence-gathering techniques and Internet Service Provider initial uploader retention and disclosure.