

Enforcement of intellectual property rights

2003/0024(COD) - 22/12/2010 - Follow-up document

This report provides the first assessment of the implementation and impact of Directive 2004/48/EC on the enforcement of intellectual property rights ('the Directive'). The assessment is based both on the Commission's appraisal of developments and on feedback received from Member States through national reports, which, in turn, reflect views expressed by industry, legal practitioners, consumers' associations and other interested parties.

The report notes that infringements of intellectual property rights cause widespread economic harm. A significant number of products infringing intellectual property rights now pose a real threat to consumer health and safety. Proper protection of intellectual property rights is fundamental to stimulate innovation and culture in a competitive, wealth-generating, knowledge-based economy. Different interests have to be carefully balanced. To this end, the Commission will continue to be actively engaged with all stakeholders.

The information received points to the conclusion that the Directive has had a substantial and positive effect on protecting intellectual property rights under civil law in Europe. The Directive created a straightforward framework for enforcing intellectual property rights which, broadly, provides comparable protection across national borders. In particular the presumption of authorship or ownership (Article 5), the possibility of "sampling" in the context of information gathering (Article 6), provisional measures to preserve evidence (Article 7) and the possibility of injunctions against intermediaries (Articles 9 and 11) have helped render the enforcement of intellectual property rights in the EU more effective. However, due to late transposition of the Directive in many Member States (the transposition process was not completed until 2009) experience in applying the Directive is limited and only few court cases have been reported. Therefore, the Commission has not been able to conduct a critical economic analysis of the impact that the Directive has had on innovation and on development of the information society, as provided for in the Directive.

Despite these limitations, this initial evaluation of the effectiveness of the Directive comes at the right time. Several studies have shown that infringements of intellectual property rights have reached a significant level, with certain of these goods posing a danger to consumers' health and safety.

The analysis shows that certain provisions of the Directive including the **relationship with other Directives** are understood in different ways in the different Member States and have given rise to different interpretations and application in practice. These provisions could warrant further clarifications to make the Directive fully effective.

The **Internet and digital technologies** have added an extra, challenging dimension to enforcing intellectual property rights. On the one hand, the Internet has allowed creators, inventors and their commercial partners to find new ways to market their products. On the other hand, it has also opened the door to new forms of infringements, some of which have proved difficult to combat.

The report sets out a series of **concrete issues where clarification may be needed**, in particular to adapt the Directive to the new challenges inherent in a modern Digital Society. Among them, one could mention the use of provisional and precautionary measures such as injunctions, procedures to gather and preserve evidence (including the relationship between the right of information and protection of privacy), clarification of the meaning of various corrective measures, including the costs of destruction, and calculation of damages.

EU action: the report goes on to note that a [European Observatory on Counterfeiting and Piracy](#) has been set up to improve the understanding on IPR infringements and create a platform for representatives from national authorities and stakeholders to exchange ideas and expertise on best practices, develop joint enforcement strategies and make recommendations to policy-makers. The [report](#) adopted by the European Parliament also expressed support for an enhanced policy, including a strong legal framework to combat counterfeiting and piracy.

Infringements of intellectual property rights taking place outside of the EU also constitute a major source of concern. The Commission is addressing them in different ways, for instance by including ambitious chapters on intellectual property rights in bilateral trade agreements and through participation in international initiatives, such as the on-going negotiation of the ACTA agreement

With a view to informing the Commission's decisions on any future measure that might be envisaged and to feed the thorough impact assessment work that the Commission is launching concerning the issues mentioned in the report, the Commission welcomes any feedback from all interested parties on the report by 31 March 2011.

Lastly, the report is complemented by a Commission Staff Working Document which provides additional information and background on its findings.