Towards a renewed consensus on the enforcement of intellectual property rights: an EU action plan

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PURPOSE: to propose an EU Action Plan on the protection of Intellectual Property Rights (IPR).

BACKGROUND: the EU needs innovation and creativity to stay competitive relative to countries with lower labour, energy and raw materials costs. A recent study has estimated that IPR-intensive sectors account for around **39% of EU GDP** (worth some EUR 4.7 trillion annually) and, taking indirect jobs into account, up to 35% of all jobs.

The March 2014 European Council reaffirmed the importance of intellectual property as a key driver for growth and innovation and highlighted the need to **fight against counterfeiting** to enhance the EU's industrial competitiveness globally.

At EU level, statistics on **customs detentions** for suspected violations of IPR at its external border recorded **more than 90 000 cases in 2012**. Around 70% of these cases related to postal and courier traffic, a reflection of the growth of e-commerce. In total, almost 40 million articles were detained, with an estimated value - in terms of equivalent genuine products - of just below EUR 1 billion.

One Member State has estimated that **81% of IPinfringing products are associated with organised crime**. It calculates that while the illicit revenue generated by organised crime in these activities was over EUR 100 million, the cost to its economy as a whole - in terms of direct lost revenue to legitimate businesses, lost revenue to the exchequer, lost jobs and high enforcement costs - came to almost five times that amount (EUR 470 million).

In order to dissuade commercial scale infringements, the Commission must apply a **holistic, balanced and flexible system** that can react rapidly to the evolving challenges that face the EU knowledge economy.

CONTENT: this Communication sets down a **ten point action plan** which constitutes a decisive first step in building an effective IP enforcement policy targeted at commercial scale infringements at EU and national levels. The objective should be to arrive at a renewed consensus on how Intellectual Property Rights are exercised, and in a manner which **fully involves all relevant stakeholders**.

A number of the actions will be implemented by the Commission where appropriate in partnership with the Office for Harmonization in the Internal Market (OHIM), which since June 2012 houses the European Observatory on Infringements of Intellectual Property Rights.

The Action Plan focuses on the following issues:

Raising awareness of consumers, employees and clients: in 2014, the Observatory shall assist Member States to launch **targeted communication campaigns** aiming to raise awareness amongst citizens, especially young people on the economic harm caused by commercial scale IP infringements, as well as campaigns to highlight the benefits for consumers from choosing IP respecting products and to facilitate access to such products.

Ensuring the integrity of supply chains: the diffusion of Information and Communications Technology (ICT) has facilitated the development of ever longer - and frequently global - supply chains. While these developments are positive, they have also been applied by IP-infringing commercial operators. The Commission will launch a series of **consultation actions** on applying due diligence throughout supply chains as a means to prevent commercial scale IP infringements. On the basis of the collected information it intends to develop an **EU due-diligence scheme** for this purpose. It will, in the first instance, seek to encourage the voluntary take-up of the scheme.

Infringing products on the internet: "follow the money": the Commission will facilitate the development of further **voluntary Memoranda of Understanding** to reduce the profits of commercial scale IP infringements in the online environment, following Stakeholder Dialogues involving advertising service providers, payment services and shippers. Any such memorandum should have well-embedded mechanisms for the protection of fundamental rights and a competitive environment, focusing in particular on preventing potential abuses.

Assisting SMEs to enforce their IP rights: the Commission intends to:

- analyse and report on existing national initiatives seeking to **improve IP civil enforcement procedures** for SMEs, in particular in respect of low value claims and consider possible action in this field;
- issue a **Green Paper** to consult stakeholders on the need for future EU action based on the best practice found in nationally financed schemes assisting SMEs to enforce their IP rights.

Chargeback systems: a tool for consumers: certain credit and debit card providers offer chargeback schemes where, up to a certain value, consumers can contest and not pay for a service or product that they would not have wished to purchase had they already known it was not genuine. In certain Member States these schemes are required by law.

The Commission will issue a **Green paper to consult stakeholders on the impact of chargeback and related schemes to tackle commercial scale IP infringements**.

Cooperation between national authorities: the Commission will establish a **Member State Expert Group on IP Enforcement**, where Member States could share best practice on the work within the EU of all their concerned authorities and be informed on the delivery of this Action Plan.

Training for national authorities in the Single Market: the Commission will support the Observatory in the development of a **comprehensive set of sectoral IP enforcement related training programmes** for Member State authorities in the context of the Single Market.

Screening public procurement for IP-infringing products: the Commission intends to develop, promote and publish a guide on best practice for public authorities to avoid purchasing counterfeit products.

Analysing trends in IP and in IP-infringing activities: starting in 2014, the Commission intends to provide **economic reports**. These will serve as the monitoring tool for the Commission's policies against commercial scale IP infringement activities.