Enforcement of intellectual property rights

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The Commission has issued **new guidelines** which provide clarifications on how to implement Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights (IPRED). The Directive has proved useful in the fight against infringements of intellectual property rights (IPR), but Member States have sometimes had differing interpretations of some of its provisions.

These guidelines seek to clarify these issues with the aim of improving legal certainty for all parties concerned and facilitating the consistent application and interpretation of civil law provisions across the EU without the need for new legislation.

The views presented in the guidance are based on the preliminary rulings issued by the **Court of Justice of the European Union** (CJEU) since the Directive's adoption, and on the conclusions from IPRED's evaluation, including public consultations, as well as best practices identified at national level.

The guidelines are an integral part of a broader IPR package. More specifically, they aim to:

Improving the effectiveness of the civil enforcement framework for IPRs: the guidelines place particular importance on issues affecting SMEs, including the rules on **calculating damages** and the rules on **reimbursing legal costs** differ across the EU and are in some situations insufficient to cover the full costs incurred by the successful party.

The guidelines deal in particular with lump sum damages, types of expenses to be reimbursed (ex: legal fees, services of a technical adviser).

Ensuring a balanced approach to IPR enforcement and preventing abuse: the Commission recalled that the IPRED Directive respects **fundamental rights** and observes the principles recognised by the EU Charter of Fundamental Rights; in particular, it aims to ensure **full respect for intellectual property**.

In consequence, the rules set out in the Directive must be interpreted and applied in such a way that not only is this specific fundamental right safeguarded, but other fundamental rights at issue are also fully considered and respected. The latter can include, as the case may be, the rights to effective judicial protection and to **protection of privacy and personal data**, as well as the freedoms of expression and to conduct a business.

The guidelines stressed the importance of striking a fair balance between different fundamental rights when applying the **right of information** set out in Article 8 of the IPRED. They stated that any order by the competent judicial authorities to provide information issued under Article 8 should only concern information which is actually needed to identify the source and scope of the infringement. Lastly, they called for effect to be given to the obligation to protect **confidential information** through appropriate means which provide for the necessary safeguards.

Ensuring effective IPR enforcement, including in a digital environment: the guidelines focus in particular on the issue of **injunctions and intermediaries**. The views expressed in the public consultation show that right holders consider preliminary injunctions as an essential instrument to protect their rights. In addition, in the digital environment, in particular, the services of intermediaries may increasingly be used by third parties for infringing activities; in many cases, such intermediaries are best placed to bring such infringing activities to an end.

The guidelines also clarify the possibility which exists in the national laws of certain Member States to allow **screenshots** as evidence in legal proceedings brought under IPRED, provided that they indicate the allegedly infringing goods or services in a sufficiently visible and precise manner and comply with certain procedural safeguards, can in the Commission's view be considered as best practice.

Ensuring the 'single market' dimension of IPR enforcement: the guidelines clarify the rights covered by the Directive as well as the question of the right to request the application of measures, procedures and remedies.

It is stipulated that the **rebuttable presumption of authorship or ownership** provided in Article 5 of IPRED should be interpreted and applied in such a manner that its objective to facilitate the enforcement of the relevant IPR by authors and holders of rights related to copyright is safeguarded.

Issues relating to **jurisdiction of courts**, the recognition and enforcement of court decisions and applicable law arising in the context of IPR-related litigation are to be decided in accordance with the EU legal instruments regulating these matters, in particular the Brussels I and Rome II Regulations.