Basic information

2003/0024(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Enforcement of intellectual property rights **Subject** 3.50.15 Intellectual property, copyright	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs and Internal Market	FOURTOU Janelly (PPE-DE)	20/02/2003

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, External Trade, Research, Energy	BERENGUER FUSTER Luis (PSE)	20/03/2003

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2490	2003-03-03
Competitiveness (Internal Market, Industry, Research and Space)	2570	2004-03-11
Agriculture and Fisheries	2578	2004-04-26

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	

Key events

Date	Event	Reference	Summary
30/01/2003	Legislative proposal published	COM(2003)0046	Summary
03/03/2003	Debate in Council		
10/03/2003	Committee referral announced in Parliament, 1st reading		
27/11/2003	Vote in committee, 1st reading		Summary
27/11/2003	Committee report tabled for plenary, 1st reading	A5-0468/2003	

09/03/2004	Decision by Parliament, 1st reading	T5-0147/2004	Summary
09/03/2004	Debate in Parliament		
26/04/2004	Act adopted by Council after Parliament's 1st reading		
29/04/2004	End of procedure in Parliament		
30/04/2004	Final act signed		
30/04/2004	Final act published in Official Journal		

Technical information

Procedure reference	2003/0024(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0468/2003	27/11/2003	
Text adopted by Parliament, 1st reading/single reading		T5-0147/2004 OJ C 102 28.04.2004, p. 0033-0242 E	09/03/2004	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2003)0046	30/01/2003	Summary
Follow-up document	COM(2010)0779	22/12/2010	Summary
Follow-up document	SEC(2010)1589	22/12/2010	Summary
Commission document (COM)	COM(2017)0708	29/11/2017	Summary
Commission working document (SWD)	SWD(2017)0431	30/11/2017	
Commission working document (SWD)	SWD(2017)0432	30/11/2017	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	CZ_CHAMBER	COM(2017)0708	23/03/2018	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1385/2003 OJ C 032 05.02.2004, p. 0015-0019	29/10/2003	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2004/0048
OJ L 195 02.06.2004, p. 0016-0025 Summary

Enforcement of intellectual property rights

2003/0024(COD) - 29/11/2017 - Document attached to the procedure

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.

Enforcement of intellectual property rights

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

The Commission presents a Staff working document which accompanies the report from the Commission on the application of Directive 2004/48/EC on the enforcement of intellectual property rights. The paper describes the transposition of the different articles of the Directive by Member States and their application in practice, problems which have arisen in the interpretation of some provisions but also sets out other issues that currently are not explicitly covered by the Directive but have proved to be of importance for an effective enforcement of intellectual property rights. It draws a number of conclusions as to the issues that could be addressed in the context of a possible review of the Directive. These issues include the following:

- the concept of intermediaries and the workability of injunctions;
- the scope of the Directive;
- the question of the right balance between the right of information and privacy laws;
- other issues including options available to address problems in collecting evidence in cross-border cases and the usefulness of harmonising the secondary use of goods infringing intellectual property rights and possible problems related to such harmonisation.

Enforcement of intellectual property rights

2003/0024(COD) - 30/01/2003 - Legislative proposal

PURPOSE : to harmonise the legislation of the Member States on the means of enforcing intellectual property rights in the Internal Market and to establish a general framework for the exchange of information and administrative cooperation. CONTENT : the protection of intellectual property rights is an essential element for the success of the internal market. The protection of intellectual property is important not only for promoting innovation and creativity but also for developing employment and improving competitiveness. The means of enforcing these rights are of paramount importance for the success of the single market. In the Member States, and despite the provisions of the TRIPS Agreement, there are still major disparities as regards the means of enforcing intellectual property rights. For instance the arrangements for applying provisional measures, which are used in particular to safeguard evidence, the calculation of damages, or the arrangements for applying injunctions, vary widely from one Member State to another. In some Member States, there are no measures and procedures such as the right of information and recall, at the infringers' expense, of the goods placed on the market. The current disparities also lead to a weakening of the substantive law on intellectual property and to a fragmentation of the internal market in this field. The main provisions of this proposal are as follows: - the scope of the directive is defined as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field; - the measures and procedures will be such as to remove from those responsible for an infringement the economic benefits of that infringement; - the persons entitled to apply for an application of the measures and procedures are first and foremost the right holders and their representatives. Member States must also provide for rights management or professional defence bodies to be entitled to apply for the application of the measures and to initiate legal proceedings of the defence of those rights; - the proposal adopts Rule 15 of the Bernie Convention, which establishes the presumption whereby the author of a literary or artistic work is regarded as such if his name appears in the work. - the evidence protection measures provide that, even before an examination of the merits of a case have started, the right holder may invoke a procedure involving seizure if there is a risk that evidence may be destroyed. Physical seizure may be subject to the lodging of a guarantee to ensure compensation for the defendant in the event of an unjustified application. The applicant has 31 calendar days to initiate substantive proceedings, failing which the seizure is null and void. This measure is modelled on the Anton Pillar order in England and Wales and the saisie-contrefacon in France; - the right holder has the right to certain prescribed information on the infringing goods and on the networks for their distribution; - there are a number of provisions with regard to provisional measures which competent authorities may take. The measures are of paramount importance, since in almost all cases, it is in the interest of the right holder to take rapid action; - in certain cases, and particularly if the right holder demonstrates circumstances likely to threaten the recovery of damages, the courts may order the precautionary seizure of property, including

the blocking of the defendant's bank accounts and other assets. This is modelled on the law of England and Wales known as the Mareva injunction; -damages are intended to compensate for the prejudice suffered because of an infringement committed intentionally or by mistake. The level and calculation of damages are proposed as part of the legislation.

Enforcement of intellectual property rights

2003/0024(COD) - 09/03/2004 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution based on the draft by Janelly FOURTOU (EPP-ED, F). The resolution was adopted by 330 votes in favour, 151 against and 39 abstentions. Parliament welcomed a compromise agreement with the Council, which means that the Directive can be adopted before the European elections. The main amendments are as follows: -the measures and procedures outlined in the Directive should apply to all violations of intellectual property rights covered by Community legislation and/or the national legislation of the Member State concerned; -for the purposes of the directive, the term "intellectual property rights" includes industrial property rights; -the main enforcement measures need to be applied only in respect of acts committed on a commercial scale. The latter are those carried out for direct or indirect economic or commercial advantage; this would normally exclude acts done by end consumers acting in good faith. Private individuals who download music or films for their personal use will not be targeted; -measures and remedies provided for in the Directive should be determined on a case by case basis, taking into account the specific features of each intellectual property right as well as the intentional or unintentional character of the infringement. -the main enforcement measures mentioned above, that are applied in respect of acts committed on a commercial scale, concern elements of proof (Article 7), the right to information (Article 9) and provisional measures such as court orders and seizures (Article 10.). The text adopted provides that remedies available to right holders consist in the destruction, recall or permanent withdrawal from the market, as well as financial compensation and interest. Information rights permit judges to order certain persons to reveal details of anyone having participated in the distribution of illegal goods and services, as well as details regarding quantities and prices; -Parliament adopted amendments regarding persons authorised to bring proceedings, the presumption of ownership of copyright, and the award of legal costs; -with regard to obtaining and protecting evidence, Parliament stated that the procedures must have regard to the rights of the defence and must provide the necessary guarantees including the protection of confidential information. For infringements carried out on a commercial scale it is also important that the courts may order access, where appropriate, to banking, financial or commercial documents under the control of the alleged infringer; -where the evidence-protection measures have been revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of any intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant with appropriate compensation for any injury caused by these measures; -Member States may take measures to protect witnesses' identity; -in addition to the civil and administrative measures and procedures provided for under the directive, criminal sanctions also constitute, in appropriate cases, a means of ensuring the enforcement of intellectual property rights. The directive does not oblige governments to launch criminal proceedings overinfringement of intellectual property rights as originally drafted by the European Commission. Parliament limited the scope to administrative and civil action alone. However, the Directive will not affect any national provisions in Member States on criminal penalties for IPR infringement, nor will it affect Member States' international obligations, including those relating to criminal procedures and penalties. Remedies under this directive must be effective, proportionate and dissuasive; -finally, the date of transposition will be 24 months after the entry into force of the directive rather than 18 months.

Enforcement of intellectual property rights

2003/0024(COD) - 29/04/2004 - Final act

PURPOSE : to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market. LEGISLATIVE ACT : Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights. CONTENT : the Council, by approving the European Parliament's first reading amendments, adopted the Directive as amended, with Austria and Italy abstaining, on measures and procedures to ensure the enforcement of intellectual property rights. To recall, the disparities between the systems of the Member States as regards the means of enforcing intellectual property rights are prejudicial to the proper functioning of the Internal Market and make it impossible to ensure that intellectual property rights enjoy an equivalent level of protection throughout the Community. This situation does not promote free movement within the Internal Market or create an environment conducive to healthy competition. The current disparities also lead to a weakening of the substantive law on intellectual property and to a fragmentation of the Internal Market in this field. This causes a loss of confidence in the Internal Market in business circles, with a consequent reduction in investment in innovation and creation. Infringements of intellectual property rights appear to be increasingly linked to organised crime. Increasing use of the Internet enables pirated products to be distributed instantly around the globe. Effective enforcement of the substantive law on intellectual property should be ensured by specific action at Community level. Approximation of the legislation of the Member States in this field is therefore an essential prerequisite for the proper functioning of the Internal Market. The aim of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market. This Directive concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. For the purposes of this Directive, the term "intellectual property rights" includes industrial property rights. This Directive shall not affect : - the Community provisions governing the substantive law on intellectual property, Directive 95/46/EC, Directive 1999/93/EC or Directive 2000/31/EC, in general, and Articles 12 to 15 of Directive 2000/31/EC in particular; - Member States' international obligations and notably the TRIPS Agreement, including those relating to criminal procedures and penalties; - any national provisions in Member States relating to criminal procedures or penalties in respect of infringement of intellectual property rights. The Directive stipulates that : - as regards measures, procedures and remedies : Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be fair and equitable and shall not beunnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays. Those measures, procedures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. For the purposes of applying the measures, procedures and remedies provided for in this Directive, - for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his name to appear on the work in the usual manner; - the provision above shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter. As regards sanctions by Member States, the Directive states that Member States may apply other appropriate sanctions in cases where

intellectual property rights have been infringed. On the issue of codes of conduct : industry should take an active part in the fight against piracy and counterfeiting. The development of codes of conduct in the circles directly affected is a supplementary means of bolstering the regulatory framework. The Member States, in collaboration with the Commission, should encourage the development of codes of conduct in general. In particular, Member States shall encourage: - the development by trade or professional associations or organisations of codes of conduct at Community level aimed at contributing towards the enforcement of the intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture; - the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct. On the exchange of information and correspondents : for the purpose of promoting cooperation, including the exchange of information, among Member States and between Member States and the Commission, each Member State shall designate one or more national correspondents for any question relating to the implementation of the measures provided for by this Directive. It shall communicate the details of the national correspondent to the other Member States and to the Commission. Lastly, measures are provided with a view to protecting the confidentiality of information sources or the processing of personal data. ENTRY INTO FORCE : 20/05/2004. TRANSPOSITION : 29/04/2006.

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.