

IPR ENFORCEMENT FRAMEWORK

AFEP POSITION PAPER

1. Context

In the framework of its Digital Single Market Strategy, the European Commission committed to foster the cross-border digital economy and to ensure a safe online environment for business operators and consumers. Among the concrete actions envisaged is the modernisation of Intellectual Property Rights (IPR) enforcement.

Therefore, the **European Commission** has worked since several months on **the evaluation and modernisation of the legal framework for the enforcement of intellectual property rights** (Directive **IPRED 2004/48/EC**), with a view to identify possible needs for adapting such provisions in the online environment and to propose corrective measures.

2. State of play

The Commission intends to present over the next few months an “Intellectual property package”. This would include **a proposal for a Directive reviewing IPRED**.

3. Position

French companies consider essential for the European Union to ensure protection and enforcement of the intellectual property of Europe’s innovators as this goes to the heart of its ability to compete in the global economy. The IPR Enforcement Directive has provided a broadly harmonised legal framework in Europe regarding IPR infringements. French companies have always taken the stance that efficient enforcement mechanisms and procedures are essential to a well-functioning intellectual property system.

But counterfeiting increases every year. Its accelerating growth clearly constitutes a major obstacle to the creation of a safe and sustainable environment for businesses and consumers.

The phenomenon is in constant geographical and material expansion, and its scope is now comparable to the strongest European industrial sectors. The latest figures published by the OECD confirm its exponential growth rate: in 2013, international trade in counterfeit and pirated goods represented up to 2.5% of world trade (compared to 1.9% in 2005), a total value of €411 billion. More specifically, counterfeit and pirated products amounted to up to 5% of imports in 2013 in the European Union, i.e. €116 billion.

Well-functioning IPR enforcement mechanisms are the best means to fight against counterfeiting and piracy, make sure that right holders and the society as a whole can fully enjoy the benefits of the IP system, address the threats resulting from counterfeiting and piracy (health, safety, loss of jobs), and protect consumers’ rights to make informed purchasing decisions. Therefore, **two main points** have to be fostered through the upcoming revision of IPRED:

- **Rebalance responsibilities in order to involve online intermediaries in the fight against IPR infringement**

The interplay between the E-Commerce Directive and IPRED has generated much confusion regarding the role and responsibility of online intermediaries in the fight against IPR infringements. A correct balance of responsibilities between right holders and intermediaries is necessary to incentivize cooperation from the latter, otherwise they will keep settling for the minimum (the “notification and action” system, a costly and inefficient solution which requires a prior notification from rightholders).

As a general rule, **intermediaries should actively cooperate with right holders by taking three types of reasonable and adequate measures:**

- Preventive measures (aimed at preventing IPR infringing products from reaching the final consumer),
- Reactive measures (aimed at the swift removal of the illicit content or good),
- Follow-up measures (aimed at preventing reoffending).

Notwithstanding the above, the IPRED should make clear that injunctions and court orders (notably right of information orders) can be used against all types of intermediaries, irrespective of their liability.

- **Specialised IPR judges**

Specialised IPR Courts has provided an added value compared to legal actions in other courts, notably more fit-for-purpose proceedings and a better quality of the decision. However, in many Member States, including France (although there are specialised IP Courts, the judges themselves are often not specialised), there is still a **need for more specialised IPR judges**. Therefore, a **specialised training of the judges** in all Member States is necessary to ensure a better understanding of the complex issues related to intellectual property.

AFEP encourages the Commission to take advantage of the upcoming revision of the Directive on Intellectual Property Rights Enforcement to modernise the existing rules and to ensure that all actors in the value chain take an active part in addressing this issue and join forces against the presence of illicit goods in the online and offline economy.

About AFEP

Since 1982, Afep brings together large companies operating in France. The Association is based in Paris and Brussels. Afep aims to foster a business-friendly environment and to present the company members’ vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is Afep’s core priority. Afep has 118 members. More than 8.5 million people are employed by Afep companies and their annual combined turnover amounts to €2,600 billion.

Afep is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility and trade.

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