



COMMENTS OF THE ANTI-PIRACY COALITION ON THE AMENDMENTS TABLED TO THE PROPOSAL FOR AN IPR ENFORCEMENT DIRECTIVE

1. The Commission's Proposal should not be rejected

The Enforcement Directive is a much needed piece of legislation. Piracy and counterfeiting have reached alarming levels in the EU and epidemic proportions in the accession countries. The Commission, Parliament and Council have all recognised that the Community needs to address this scourge on the European economy (European Parliament's Written Declaration on piracy and counterfeiting in the enlarged EU adopted June 2003; and conclusions to European Council 21 March 2003).

Past EU Directives have harmonised some areas of intellectual property *rights*. Now we are looking to the Enforcement Directive to ensure that those rights are uniformly enforced. Enforcement of rights is an essential part of the intellectual property rights system at international, European and national level. Amendment 28 should therefore be rejected.

2. Scope

Civil Scope – article 2

Legal remedies should be available with respect to all infringements of rights. This is not a controversial principle. It is a fundamental criterion laid down by international law in the TRIPs Agreement – to which the European Union and its Member States are signatories.

Unfortunately, some are suggesting that the EU should back away from its international obligations and limit the scope of the Directive.

The Commission's Proposal and some amendments seek to narrow the scope to infringements committed for a "commercial purpose" or causing "significant harm". Other amendments would limit it to product counterfeiting only – depriving cultural industries such as film and music of any of the remedies provided under the Directive.

These limitations should be opposed. Not only are they contrary to the EU's international obligations, they will cause confusion and perpetuate a patchwork of differing laws across the EU – which is contrary to the stated objective of the directive to harmonise the laws in the area. In practice, they will seriously undermine the Directive's utility. We thus urge MEPs to support Amendment 5 – which brings the scope in line with national laws and the TRIPs Agreement and to oppose Amendments 34, 52, 55, 56, 57 and 58.

Criminal scope – article 20

Criminal sanctions serve as an important deterrent to piracy and thus are an essential element of an effective enforcement regime - as recognised by the WTO TRIPs Agreement. Amendment 178 reflects this important principle. We urge MEPs to support Amendment 178 and to oppose Amendments 179-186 .

3. Relationship between the Enforcement directive and existing substantive law – the Directive does not create new rights and should not be used to amend the existing rules on substantive rights

The Enforcement Directive includes solely provisions on the enforcement of rights – it does not create new substantive rights, but merely ensures that right holders can in practice benefit from the rights already granted to them by the European legislator.

The proposal does not, nor should it, revisit, alter or delete any part of the existing *acquis communautaire* relating to the substantive industrial or intellectual property rights - Articles 2(2) and 2(3) of the Commission’s Proposal already contain clear-cut provisions that leave intact the “substantive law on intellectual property” as well as the key directives in related areas, including data protection and the E-Commerce Directive. Incorporating in the proposal further references to particular articles of these Directives may affect their application. As for the amendments that actually seek to re-interpret and alter the rules relating to the specific limitations to liability provided for ISPs in the E-Commerce directive, they should be firmly resisted.

Amendments that should therefore be rejected include no 37, 38, 47, 48, 66 through 74, 138 and 165. These are either redundant or even worse risk changing the existing rules on substantive rights or the specific limitations to liability offered to ISPs in the E-Commerce directive.

4. Right of information – crucial tool in the defence of intellectual property

The ability to obtain information about the origin of infringing goods and the persons involved in the manufacture or offering of such goods is essential in the fight against counterfeiting and piracy. This has been acknowledged already in the TRIPs Agreement.

However, the proposal, as it stands, has one crucial shortcoming - it is doubtful whether it would offer a meaningful tool in the on-line environment. Unless the proposal is amended, the positive effects expected from the Enforcement Directive may remain limited.

Therefore amendment no 112 that clarifies the procedure so as to make it meaningful also in the on-line environment should be strongly supported. This amendment **reflects the established balance of interests between all stakeholders, including ISPs, legitimate consumers activities and right holders, in a proportionate manner.**

- ❑ It takes into account and safeguards the legitimate interests of the parties involved, by requiring that the handing over of information can take place only after an order by judicial authorities, and therefore **via and under the control of such authorities.**
- ❑ It doesn’t alter **the existing rules** on data protection established in the European Directives and the liability of intermediaries established in the E-Commerce directive.
- ❑ It would provide right holders with a **tool to get access to information without which they will not be able to defend their legal rights.**

Consequently amendments 113, 115 – 117, 120, 122 – 124 that would limit the applicability of this important and fair procedure should be rejected.

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