
The European Commission has recently drawn up a proposal for a Directive on measures and procedures to ensure the enforcement of intellectual property rights. The main objectives of the proposal are to harmonise national laws on the enforcement of intellectual property rights and to create a general framework for the exchange of information between the responsible national authorities. At the moment, there are considerable differences in the legislation of the Member States, which counterfeiters and pirates take advantage of, by operating from countries that provide the lowest level of protection. The harmonisation should reduce this problem to a minimum.

The background to the proposal is that in 1998 the Commission launched a consultation with a Green Paper on combating counterfeiting and piracy in the single market (see IRIS 1998-10: 6). As a result of the reactions to this Green Paper, the Commission adopted a Communication on 17 November 2000, announcing a series of practical measures intended to strengthen the fight against counterfeiting and piracy in the single market. The most important element in the Communication was the announcement that the Commission was going to submit a proposal for a Directive on the enforcement of intellectual property rights. The Commission has recently published another proposal on this subject, namely a proposal for a Regulation on the conditions for customs action against counterfeit or pirated goods.

The proposed Directive follows a “TRIPs plus” approach. The TRIPs Agreement, concluded by the World Trade Organisation, is applicable in all the Member States of the EU. It provides for minimum provisions on the enforcement of intellectual property rights. The proposed Directive goes beyond those minimum provisions, basing its proposed provisions on best practice found in the various legislations of the Member States. Examples of the proposed provisions include: the publication of judicial decisions; the recall of the infringing goods at the infringer’s own expense; the precautionary seizure of the infringer’s bank account and other assets to ensure the recovery of damages, and interlocutory injunctions to prevent any infringements or to prevent the continuation of alleged infringements.

The scope of the proposal covers infringements of all intellectual property rights that have been harmonised at European level (as set out in the Annex to the proposal). It focuses particularly on infringements committed for commercial purposes and those that cause significant harm to rightsholders. Therefore it does not introduce tougher sanctions against individuals downloading music or videos via P2P networks for non-commercial purposes, although it would not prevent Member States’ authorities from introducing and applying tougher laws in that sense. The proposal will be sent to the European Parliament and to the Council for the adoption procedure.

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