European Commission: Communications on intellectual property rights enforcement

IRIS 2018-2:1/7

Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam

On 29 November 2017, the European Commission published two notable Communications on intellectual property rights enforcement, in particular relating to Directive 2004/48/EC on the enforcement of intellectual property rights ("the Enforcement Directive") (see IRIS 2004-6/3). The Directive provides a minimum set of measures, procedures and remedies allowing the effective civil enforcement of intellectual property rights. The Commission also published an accompanying (72-page) Evaluation of the Directive.

The first Communication, entitled "A balanced IP enforcement system responding to today's societal challenges", describes a package of measures to further improve the application and enforcement of intellectual property rights within EU Member States, at EU borders, and internationally. In this regard, the Communication is divided into four main sections: the first concerns measures to make it easier for IP stakeholders to benefit from a homogeneous, fair and effective judicial enforcement system in the EU, and includes actions and recommendations to further enhance judicial capacity and predictability in the EU. These measures include the Commission providing a new Guidance (described below) on the interpretation and application of the measures, procedures and remedies provided for by the Enforcement Directive. Furthermore, the Commission calls on Member States to encourage the specialisation of judges in IP- and IP-enforcement-related matters, and to systematically publish judgments rendered in IP enforcement case. The second set of measures concerns support for industry-led initiatives to combat IP infringements, such as voluntary agreements with intermediaries, including the conclusion of a new memorandum of understanding aimed at withholding advertising on IP infringing websites. The third and fourth measures concern enhanced administrative cooperation between authorities in different Member States, and how the Commission seeks to combat IP infringements on a global scale by promoting best practices and stepping up cooperation with third countries.

The second Communication is a new (32-page) Guidance to clarify provisions of the Enforcement Directive. The Commission notes that since the Directive provides for minimum harmonisation, there is no uniform interpretation of the Directive's provisions. Thus, the Guidance seeks to facilitate the Directive's interpretation and application by competent judicial authorities and other parties

© European Audiovisual Observatory (Council of Europe) 2026

involved in the enforcement of intellectual property rights ("IPR") in proceedings before those authorities. The Guidance focuses on a number of provisions in the Directive, including those relating to scope, general obligation, entitlement to apply for measures, procedures and remedies, the presumption of authorship or ownership, injunctions, corrective measures, and the calculation of damages. The Guidance also seeks to clarify the concept of an intermediary, stating that economic operators which provide a service capable of being used by other persons in order to infringe IPR can, depending on the facts, be categorised as intermediaries within the meaning of Articles 9(1)(a) and 11 of the Directive, also in the absence of a specific relationship, such as a contractual link, between those parties. Finally, the Guidance also discusses the scope of injunctions, and that judicial authorities may, where appropriate, issue injunctions which entail specific monitoring obligations.

The Commission also published an Evaluation of the functioning of the Enforcement Directive. The Evaluation concluded that it has achieved the objective of approximating the legislative systems of the Member States for the civil enforcement of IPR, but also recognises that that there are differences in the way Member States apply certain provisions of the Directive (such as those on injunctions, damages and legal costs) across the Single Market, thereby limiting the effectiveness of the Directive. It would benefit from more best practices for public exchange, more transparency on IP-related case law and more national judges able to deal with IPR infringement claims.

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, A balanced IP enforcement system responding to today's societal challenges, COM(2017) 707 final, 29 November 2017 https://ec.europa.eu/docsroom/documents/26581

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, COM(2017) 708 final, 29 November 2017

https://ec.europa.eu/docsroom/documents/26582/attachments/1/translations/en/renditions/native

Commission Staff Working Document, Evaluation accompanying the document Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, SWD(2017) 431 final

https://ec.europa.eu/docsroom/documents/26601

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026