
EU Commission Unveils Plans Regarding Enforcement of IP Rights

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On July 1, 2014, the European Commission adopted two Communications calling for better protection and enforcement of intellectual property rights. This is the first major initiative in the Commission's international IP rights agenda, following the European Parliament's rejection of the Anti-Counterfeiting Trade Agreement ("ACTA") in July 2012. The Commission's initiative reflects a new approach to IP rights infringements, summarized in a statement by the EU Commissioner for Internal Market and Services Michel Barnier: *"Rather than penalising the individual for infringing intellectual property rights, often unknowingly, the actions set out here pave the way towards a 'follow the money' approach, with the aim of depriving commercial-scale infringers of their revenue flows".*¹

The first Communication (the "EU Action Plan"), sets out a 10-point plan focused on improving IP rights enforcement against commercial-scale infringements in the internal EU market.² The second Communication ("Third Country Strategy") addresses enforcement of IP rights and improving IP rights standards in non-EU countries.³ The Commission plans to implement these initiatives in 2014 and 2015.

The two Communications share a common objective of improving enforcement and promotion of IP rights. The Commission begins with the premise that weak detection of, and enforcement against, IP rights infringement affects the overall economy by discouraging investments in innovation, undermining job creation, facilitating tax avoidance, and posing a risk to public health. Recent statistics on customs detentions based on suspected violations of IP rights at the EU external border show an estimated more than 90,000 violations in 2012 alone.⁴ As the EU economy relies more and more on IP rights-intensive industries, which now account for some 39% of the EU's GDP, IP rights infringements pose a serious threat to European citizens and more generally to Europe's economic growth.⁵

The Commission's actions present a good opportunity for companies active in IP-intensive sectors, or whose business may be affected by commercial-scale IP rights infringements, to provide feedback to the Commission. After taking the various actions contemplated in the Communications, the Commission will consider proposing legislative measures.

The EU Action Plan

The EU Action Plan presents ten action points. Several of these are to be implemented jointly with the Office for Harmonization in the Internal Market. The Commission proposes, among other things, the following:

1. Consult stakeholders on the opportunity to promote voluntary due-diligence best practices in IP-intensive industries to ensure the integrity of supply chains and prevent commercial-scale IP infringements. The Commission's initiative stems from the diffusion of Information and Communications Technology ("ICT") having contributed to the development of global supply chains, which created significant efficiencies such as reduced inventory costs and increased direct delivery of goods and services to final consumers. At the same time, however, this has led to a proliferation of IP-infringers who are readily able to enter a myriad of markets, globally. The Commission is already planning to organize a work-shop with suppliers, right-holders, intermediaries (including online-platforms, search engines, and shippers), Member States, and other stakeholders by the end of 2014. The Commission also intends to develop an EU due-diligence scheme.
2. Work on a Green Paper on the need for future EU action based on the best practice from nationally financed schemes assisting small and medium enterprises ("SMEs") to enforce their IP rights. The Commission's goal is to create a system of support for SMEs by, among other things, strengthening and coordinating national support, and by advising SMEs on IP in transnational business activities.
3. Work on a Green Paper on the use of chargeback and other payment confirmation schemes to address commercial-scale IP infringements. Chargeback schemes allow consumers to contest and not pay for goods or services that consumers would not have purchased had they known they were not genuine. Again, as part of this initiative, the Commission will seek stakeholders' views.
4. Establish a Member State Expert Group on IP Enforcement in which Member States could share their best practices and discussions regarding IP policy approaches. This initiative would complement the existing cooperation between customs authorities in the EU and in third countries.

The Third Country Strategy

The Commission has also announced a new strategy on enforcement of IP rights in third countries. The Commission's original strategy was established in 2004.⁶ Since then, there has been considerable technological change, and a huge increase in Internet-based transactions. The Commission intends to use trade agreements and dispute settlement to protect and enforce IP rights in this area. The Commission proposes, among the other things, the following:

1. Continue to improve the international IP rights framework and ensure that bilateral trade agreements offer adequate and efficient protection for right-holders.
2. Work with partner countries to address systemic IP issues and weaknesses in their IP rights systems.
3. Conduct surveys to identify "priority countries" on which to focus.
4. Assist SMEs and right-holders through projects such as IP rights helpdesks and improve

the level of expertise held by EU and Member States Representations in third countries.

5. Promote IP technical assistance programmes, including training, to third countries.

These two Communications complement the existing EU Customs Action Plan,⁷ which provides for border enforcement and coordination of IP rights between customs authorities in the EU and third countries. These two Communications will operate alongside the EU Customs Action Plan to provide a triple-layer of IP rights protection in the EU.

The Commission's initiatives provide avenues for interested companies to provide comments to the Commission and influence this debate at EU level. Early contact with the Commission regarding initiatives like this one typically maximizes the chances of achieving positive results.

The text of the Commission's EU Action Plan is available [here](#), and the text of the Third Country Strategy is available [here](#).

¹ European Commission - IP/14/760 of July 1, 2014.

² Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan, COM(2014) 392/2.

³ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: Strategy for the protection and enforcement of intellectual property rights in third countries, COM(2014) 389 final.

⁴ See www.ec.europa.eu/taxation_customs.

⁵ According to a recent study, IPR-intensive sectors account for around 39% of EU GDP or some EUR 4.7 trillion annually. See Intellectual Property Rights intensive industries: contribution to economic performance and employment in Europe. Available at www.oami.europa.eu.

⁶ Strategy for the enforcement of intellectual property rights in third countries. OJ C 129 of 26.5.2005, p. 3.

⁷ Council Resolution on the EU Customs Plan to Combat IPR Infringements for the Years 2013-2017 (2013/C 80/01). See also Council Resolution on the EU Customs Action Plan to combat IPR infringements for the years 2009 to 2012 (2009/C 71/01).

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