

BUSINESSEUROPE



ARE WE HEADING IN THE RIGHT DIRECTION FOR AN EFFICIENT AND WELL BALANCED ENFORCEMENT OF IP RIGHTS?

A BROAD ANALYSIS

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THE CONTEXT

- IP rights are legal rights granted by States giving their owners an exclusivity for the exploitation of the corresponding subject matter;
- The actual exclusivity depends on the ability of the owner to enforce his IPRs against infringers;
- Efficient enforcement mechanisms and procedures are therefore essential to a well-functioning IP system;



THE CONTEXT

- Well-functioning IPR enforcement mechanisms are the best means to:
 1. fight against counterfeiting and piracy, including health and safety threats and the loss of jobs;
 2. make sure that rightholders and the society as a whole can reap the benefits of the IP system;
 3. protect consumers' rights to make informed purchasing decisions;



KEY REQUIREMENTS

- Easily accessible in terms of procedures and costs;
- Full cooperation of all enforcement-related authorities (customs, police, etc.) both among themselves and with rightholders;
- Conducive to a timely decision;
- Effective and dissuasive sanctions, when infringement is found;



WHAT ARE THE CHALLENGES?

- Do we have the right legal framework in Europe?
- How do we boost international cooperation?
- How do we support customs and other operational activities?



LEGAL FRAMEWORK

- Harmonised civil framework in place with enforcement directive → important tool for rightholders;
- No harmonised criminal framework for IP infringements;
- New Commission should give clear signal how it will handle the issue;
- ACTA to consolidate effective international standards to enforce IPRs;



ACTA

- ACTA should build on TRIPs and recent trade agreements to produce a measureable improvement in the prevailing legal framework for the protection and enforcement of IPRs;
- ACTA should include robust IPR enforcement provisions in both physical and online environments;
- ACTA should include an effective and credible mechanism to monitor and provide incentives to encourage parties' compliance with obligations;



INTERNATIONAL COOPERATION

- Strengthened EU-US IPR cooperation (TEC and IPR Enforcement Group); and ...
- EU bilateral IP dialogues (e.g. China, Russia, Latin America): should produce results when it comes to the enforcement situation in those countries; and ...
- Projects like IPR2 in China useful. Expansion of the model in other countries to be considered; and ...
- Economic Agreements and Free Trade Agreements: to include strong IPR provisions;



EU-US IPR COOPERATION

- European business supports the ongoing cooperation process and specific actions/projects developed;
- Further paths to be explored:
 - ✚ Be a driver for the successful conclusion of ACTA;
 - ✚ Improve coordination on capacity building in third-countries;
 - ✚ Improve consumer awareness together with consumer representatives;
 - ✚ Free trade zones/transit;



THE ROLE OF CUSTOMS

- Customs indispensable player in IPR enforcement; it is more effective to seize full consignments at the borders than small amounts appearing in the market;
- Priorities:
 - increase protection through an improved Customs regulation;
 - strengthen customs/business partnerships;
 - reinforce and support international co-operation among customs authorities;



WHY CUSTOMS MATTER

- The Commission 2008 customs statistics provide interesting data:
- Fake articles detained at EU borders more than doubled in 2008 to 178 million compared to 79 million in 2007;
- Cooperation with industry intensified with 80% of customs interventions in 2008 being initiated by right owners;
- 20 million of articles seized were potentially dangerous to the health and safety of European consumers;



FURTHER DEVELOPMENTS

- Creation of European OBSERVATORY on Counterfeiting and Piracy positive development;
- Business supports main pillars of the work of the Observatory:
 - collection, analysis and reporting of data,
 - strengthening and promoting best practices amongst public authorities,
 - spreading best practices throughout the private sector, strengthening public awareness raising and strengthening private - public partnership at national and European levels;



WHAT'S NEXT?

- Positive results on IPR enforcement but pressing need for a strategic, integrated and coherent IP strategy in Europe to also encompass IPR enforcement;
- New European Commission an opportunity to improve this;
- Growing trend towards lowering intellectual property standards needs to be addressed (latest example climate change negotiations);



WHAT'S NEXT?

- « Well-balanced » IP enforcement does not mean that the rightholder and the infringer should be given equal consideration from a social or economic point of view;
- Online world creates new challenges;
- Rightholders and consumers should work together with the Commission to address them;
- IP is a motor for innovation and welfare, not an obstacle;



WHAT'S NEXT

- Council's adoption of a set of conclusions on the reform of the patent system in Europe is a major step forward
- But much work remains to be done
 - ✓ Translations for the EU patent: an essential aspect on which no clear direction is given
 - ✓ Creation of EU patent should preferably not require amendments to the EPC or other Treaties to which EU Member States are parties
 - ✓ Many features of Patent Court are cumbersome, notably on the operation of decentralised divisions and language of proceedings, and reflect more the preservation of national interests than a truly European endeavour



WHAT WE NEED

- Focus on the future, not on the past
- Education for judges, lawyers, patent attorneys
 - Languages
 - Cooperation towards the future
 - Think EU and not purely national
 - Innovation for all EU Countries / Industries

