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BUSINESSEUROPE COMMENTS IN RELATION TO THE COMMISSION PUBLIC CONSULTATION ON THE EVALUATION AND MODERNISATION OF THE LEGAL FRAMEWORK FOR THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS (IPRS)

BUSINESSEUROPE would like to make some general comments to the Commission's consultation on the functioning of Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED).

The adoption of this directive in 2004 was an essential step forward in the fight against counterfeiting and piracy. It provided rightholders with a key tool to ensure a harmonised framework for civil enforcement of intellectual property rights (IPRs), boost innovation, job creation and competitiveness of European business. This is why BUSINESSEUROPE welcomed and supported this legislative instrument.

In relation to the general functioning of the directive, BUSINESSEUROPE wants to highlight the important tools given to rightholders at EU-wide level with IPRED e.g. measures for obtaining and preserving evidence including provisional measures, interlocutory and provisional injunctions, damages and the right of information. Some of those means of redress were not available in all EU Member States.

This framework should not be put in question and re-opened via a revision of the directive. We deplore the fact that uniform implementation was not achieved in all Member States in many important respects. We would call on the Commission to use all means available towards pushing for uniformity of implementation. It is true that judicial practices take more time to adjust to a new legislative framework and this reality should also be taken into account.

Regarding intermediaries, BUSINESSEUROPE does not believe that the enforcement directive is the right place to revisit their definition. IPRED should continue to provide the general framework of civil enforcement for all IPRs. Tackling the definition or the role of intermediaries has no place in this directive.

Already in the Commission consultation on online platforms last year BUSINESSEUROPE spoke against reopening the current framework as set out in the E-Commerce Directive. In that context, BUSINESSEUROPE also stressed that while market – based solutions and self-regulatory models are preferred, consideration of a proposed —duty of care principle should not impose direct liability on online platforms. Such a principle could not go beyond voluntary measures e.g. systems for notice and action or other mechanisms aimed at effectively and expeditiously fighting against illegal content, or content that violates terms and conditions of service. The adoption of such measures should not be used as the basis for denying the application of the provisions set out in the E-commerce Directive.



BUSINESSEUROPE has always considered positively the idea of specialised IP courts.

It is essential to maintain an overall strategic, coherent and integrated approach for all legislative instruments dealing with IPRs, extending also to the fight against counterfeiting and piracy. In relation to IPR enforcement, we are very supportive of the Commission's intentions to fully apply the "Follow the Money" approach. Any fragmented approach from the Commission concerning the different IPRs risks endangering the structure of the legislative framework and its efficiency.

Such risk is particularly pertinent in relation to directive 2004/48/CE, whose transversal character sets a precedent for an effective global approach. The Commission should keep this mind, when embarking on various projects in relation to different IPRs that should not weaken the modernisation concepts of a legislative framework still young enough to continue producing its positive effects.
