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NOTE

From: General Secretariat of the Council
To: Delegations
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Subject: Enforcement of intellectual property rights
- Presidency paper

Delegations will find in the Annex a Presidency paper aimed at structuring the exchange of views on IPR enforcement at the meeting of the Working Party on Intellectual Property on 18 September 2014.

Enforcement of intellectual property rights

On 1 July 2014, the Commission adopted an Action Plan on the enforcement of Intellectual Property Rights (IPR) on which the Presidency intends to prepare conclusions. The Action Plan only covers non-legislative actions, but during the presentation of the Action plan made by the Commission to this IP working group, several delegations indicated that they would like certain issues linked to the legislative framework applicable to enforcement of IPR to be examined and discussed. The Presidency therefore proposes to discuss this question within the working group before preparing draft conclusions. This would allow the draft conclusions to cover both parts of the IPR enforcement policy: the non-legislative priorities and a possible work stream relating to the legislative framework, (mainly contained in EU law in Directive 2004/48/EC).

As regards this second work stream, the Commission has already carried out public consultations following the adoption in December 2010 of a report on the application of Directive 2004/48/EC . The first public consultation took place in 2013 and gave rise to the publication of a summary of responses in July 2013.

It follows from the review of Directive 2004/48/EC and the public consultation carried out that the current legislative framework is not necessarily fit for purpose in the digital environment. It is important to:

1. Clarify which tools are available to identify IPR infringers: clarify the retention and disclosure of personal data by intermediaries, in order to improve identification in case of commercial scale infringements while guaranteeing the protection of fundamental rights of individuals (thus avoiding abuses); clarify to what extent due diligence obligations such as « know your customer » are or should be imposed on intermediaries.

2. Improve the efficiency of actions to stop IPR infringements through better involvement of intermediaries: clarify the notion of intermediary in the context of Directive 2004/48 (are payment and advertising service providers included ?), clarify the conditions for imposing injunctions on them (to what extent should intermediaries be involved in the infringement ?), clarify what type of injunction can be imposed on intermediaries (which measures ? should priority be given to the « follow the money principle » to deprive commercial scale infringers of the revenue flows that draw them into such activities?); clarify the duration of injunctions and the possibility of obtaining cross-border or even pan-European injunctions.
3. Improve the accessibility of judicial systems, in particular for SMEs: introduce fast track procedures for small claims.
4. Clarify the allocation of damages: increase the predictability of the amounts allocated and ensure that damages awarded are sufficient to cover the prejudice suffered.

Apart from judicial proceedings, harmonise notice and action procedures for IPR infringements.

The Presidency would like to receive delegations' opinions, be informed about recent or pending reforms in Member States and exchange views on the main issues and possible solutions mentioned during the review of Directive 2004/48 and the public consultation.