



Council of the
European Union

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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Draft Council Conclusions on IPR enforcement.

Delegations will find attached draft Council conclusions on IPR enforcement, drawn up by the Presidency, to be discussed at the meeting of the Working Party on Intellectual Property on 16 October 2014.

Draft Council Conclusions on IPR enforcement

THE COUNCIL (Competitiveness)

RECALLING :

1. The conclusions of the Competitiveness Council of 30 and 31 May 2012 on the Digital Single Market and Governance of the Single Market¹ ;
2. The Resolution of the Council of 1 March 2010 on the enforcement of IPR in the internal market² ;
3. The Communication from the Commission of 2/7/2014 « Towards a renewed consensus on the enforcement of Intellectual Property rights : An EU Action Plan »³ ;
4. The Communication from the Commission of 24/5/2011 « A Single Market for Intellectual Property Rights – Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe »⁴ ;
5. The Communication from the Commission of 11/9/2009 « Enhancing the enforcement of intellectual property rights in the internal market »⁵ ;
6. The Report from the Commission of 22/12/2010 « Application of Directive 2004/48/EC of the European Parliament and the Council of 29 April 2004 on the enforcement of intellectual property rights »⁶ and its Accompanying staff working document⁷ ;
7. The document from the Commission of July 2013 « Synthesis of the responses on the public consultation on the civil enforcement of intellectual property rights »⁸

¹ 9958/1/12 REV 1

² OJ C 56, 6.3.2010, p. 1.

³ 11533/14

⁴ 10667/11

⁵ 13286/09

⁶ 5140/11

⁷ 5140/11 ADD 1

⁸ http://ec.europa.eu/internal_market/consultations/docs/2012/intellectual-property-rights/summary-of-responses_en.pdf

STRESSES the Council's commitment in the fight against IPR infringements while safeguarding the rights of all parties involved in IP related disputes ;

WELCOMES the Commission's Communication « Towards a renewed consensus on the enforcement of Intellectual Property rights : An EU Action Plan » and its focus on commercial scale infringements and the « Follow the money » strategy ;

NOTES that several other aspects of IPR enforcement not contained in the Action Plan were identified as raising questions during the consultation process carried out by the Commission from 2012 to 2014 as a follow-up to the adoption of the Commission's report on the application of Directive 2004/48/EC ;

TAKES NOTE of the diverging positions of delegations expressed during the Working Parties on IP of 18 September and 2 October 2014 on the different issues raised in the Presidency non-paper on IPR enforcement ;

RECALLS that while most of the delegations agree on the validity of the questions raised in the non-paper, their opinions diverge as to whether further legislative change is required ;

NOTES on the question relating to the tools available to identify IPR infringers, that some delegations consider that the current legislative framework is no longer fit for purpose in the context of the internet and would require at least some clarification in the form of guidelines or an interpretative communication from the Commission. RECALLS in this context that the question of the more pro-active involvement of ICANN and other domain name linked service providers was raised by some delegations ;

NOTES, on the question of the involvement of intermediaries to stop IPR infringement, that it is sometimes difficult to obtain measures to stop infringements especially at cross-border level within the Internal Market. RECALLS that several delegations insist on the necessity to have a wide interpretation of the notion of intermediary in the sense of Directive 2004/48 ; that several self-regulation initiatives are being developed in certain Member States to improve the efficiency of injunctions against internet service providers ; that some delegations call for a reflection on the question of secondary liability of some intermediaries, in particular those who are not playing a purely passive or neutral role with regard to the relevant infringement ; ENCOURAGES the Commission to develop new policies in this area in close and early consultation with all relevant stakeholders.

NOTES, on the question of accessibility of judicial systems, in particular for SMEs, that some Member States already have accelerated procedures even if not specific to IP related disputes. TAKES NOTE of the position of several delegations considering that no specific small claims procedure in the field of IP is required since there is already horizontal EU legislation which is under review;

NOTES, on the allocation of damages, that some delegations are in favour of a reflection process to clarify the calculation of civil damages while others insist that the current system is working well, underlying that Directive 2004/48/EC provides for sufficient flexibility in foreseeing the possibility to take into account not only the negative economic aspects but also any unfair profits made by the infringer and other non economic factors ;

CONSIDERS that these issues are complex and need to be further considered before envisaging any hypothesis of legislative modification;

INVITES the Commission and the Member States in the framework of the group of experts on the enforcement of IPR created on 16/09/2014⁹ to continue discussing these issues and identify best practices and to determine whether or not clarifications of the legislative framework or a modification of it are required.

INVITES the Commission to come forward with a Communication setting out the findings of the afore-mentioned deliberations.

⁹ C(2014)6449final