



IPR enforcement and fight against counterfeiting

Update from DG GROW

CLEPA Counterfeit Day 2018

High levels of counterfeiting

- **IP protection is key to foster innovation and growth**
 - IP-intensive sectors account for **42%** of EU GDP worth **€5.7 trillion**, generate **38%** of employment
- **But IPR infringements are on the rise**
 - **5%** of goods imported into the EU are counterfeit or pirated, corresponding to **€85 billion** in illegal trade
 - due to the presence of counterfeits sales of the legitimate sectors are lowered by an average of **7.5%** across the EU in the selected IPR intensive industries - **€59 billion** losses on annual basis, loss of almost **435 000 jobs**

Counterfeiting negatively affects jobs & growth, creates safety & security issues – serious problem that requires attention of policy makers and enforcement authorities

Better enforcement of IPR

- **Need for a comprehensive approach**
 - robust legislation as a starting point
 - IPR Enforcement Directive
 - E-Commerce Directive
 - focus on commercial scale infringements ('follow the money')
 - enforcement as well as prevention
 - acting within Europe, at Europe's borders and at a global level (including in cooperation with WIPO)
- **Complementing legislation with voluntary measures**
 - development of voluntary agreements bringing together representatives of the industry
 - European Commission acts as facilitator, ensuring that the EU measures are complementing and stimulating national initiatives
- **Commitment confirmed in the latest Action Plan (Nov 2017)**

IP Package - key documents

■ Overall strategy

- Communication "A balanced IP enforcement system responding to today's societal challenges" [COM\(2017\) 707](#)

■ IPR Enforcement

- Communication "Guidance on certain aspects of Directive 2004/48/EC on the enforcement of intellectual property rights" [COM\(2017\) 708](#)
- Commission SWD: Evaluation Report on IPRED [SWD\(2017\) 431](#)
- Commission SWD: Overview of the functioning of the MoU on the sale of counterfeit goods via internet [SWD\(2017\) 430](#)

■ Standard Essential Patents (SEPs)

- Communication "Setting out the EU approach to Standard Essential Patents" [COM\(2017\) 712](#)

Evaluation of the Enforcement Directive

- **IPRED still fit for purpose**
- **Evaluation's results** show that:
 - the measures, procedures and remedies set out in the Directive have effectively helped to better protect IPR throughout the EU and are still fit for purpose
 - IPRED has led to the creation of a common legal framework where the same set of tools is applied across the EU
 - however, the provisions of IPRED are not implemented and applied in a uniform manner in all EU countries
 - thus, the EU legal framework for civil enforcement of IPR could benefit from the clarification of certain aspects of the Directive, allowing a more consistent and effective interpretation and application.

IPRED Guidance Communication

Objective: to ensure a more homogeneous, effective and balanced judicial redress, e.g.:

- **Injunctions against intermediaries:**
 - Can be granted independent of whether or not the latter is liable
 - May entail specific monitoring obligations
- **Clarification of 'commercial scale'**

What issues are covered?

- ✓ Scope of injunctions, injunctions against intermediaries, dynamic injunctions
- ✓ Rules on obtaining and preserving evidence, digital evidence
- ✓ Availability of certain specific measures (e.g. right of information)
- ✓ Focus on commercial scale infringements
- ✓ Calculation of damages (including moral damages)
- ✓ Reimbursement of legal costs
- ✓ Cross-border dimension

Enforcement Directive – next steps

- **Building on the Guidance, the Commission is:**
 - Working closely with **Member States** to ensure full compliance with the Guidance
 - Working with **Member States** and the legal community to develop best practice and further practical guidance
- **Member States are called up on:**
 - To invest in a specialisation of judges
 - To improve publication of judgements

MoU on the sale of counterfeit goods via the internet

▪ Objectives

- establishing a **code of practice** in the fight against online sale of counterfeit goods
- enhancing **collaboration** among the stakeholders
- exchanging **experiences**, identifying **best practice** and disseminating it across the market

▪ Commitments

- notice and take-down procedures
- pro-active and preventive measures
- information sharing, transparent policies
- evaluation of key performance indicators (KPIs)

Stakeholders involved

- **24 Signatories**
 - **Right Owners** of products for which counterfeit versions are often sold online (Adidas, Chanel, Gant, Lacoste, Lexmark, Luxottica, Moncler, Nike, Procter & Gamble, Philip Morris, Philipp Plein, Zanellato)
 - **Internet Platforms** - online marketplaces (Alibaba, Allegro, Amazon, eBay, Priceminister Rakuten)
 - **Associations** (ACG, AIM, BASCAP, FESI, IVF, TIE, MPA)
- **Commission's role**
 - honest broker, facilitating discussions
 - **not** a signatory
- **EUIPO's role**
 - assistance with data collection, aggregation and analysis
 - **not** a signatory

MoU meetings



Achievements and challenges

- **Cooperation already brought positive results...**
 - useful forum which allows strengthening trust and cooperation between parties
 - detailed assessment of best practices and practical measures that successfully prevent the sale of counterfeits online
 - voluntary cooperation, in parallel with legislative and policy measures, significantly contributes to curbing online counterfeiting
- **... but further progress is needed:**
 - wider participation (e.g. social media, classified websites)
 - improved information exchange
 - further dissemination of best practice identified
 - focus on new technologies

MoU on online advertising and IPR

■ Problems identified

- Websites and mobile applications that provide access to IP-infringing content, goods or services often **use the sale of advertising space as one of their revenue sources**.
- Presence of advertising for household brands or the availability of well-known payment services on IP-infringing websites and mobile applications **can confuse consumers**, who may mistakenly believe to access legal content.

■ Solution?

- Launch of a **stakeholder dialogue** that brought together representatives of the advertisement industry, both advertisers and advertising intermediaries, as well as other interested stakeholders, such are IP right holders.

MoU on online advertising and IPR

- **Signed in June 2018 by 28 companies and associations**
- **Objective:** to minimise the revenue websites and mobile applications that infringe intellectual property rights on a commercial scale gain from online advertising



- <https://www.youtube.com/watch?v=5-yXMWk3cW0>

MoU - Commitments

- **Collective efforts** aiming at limiting the placement of advertising on:
 - websites and mobile applications,
 - which have been found by **judicial, administrative or other enforcement authorities** to infringe copyright or to disseminate counterfeit goods,
 - on a commercial scale.
- **Individual efforts** aiming at limiting the placement of advertising on:
 - websites and mobile applications,
 - for which the **advertisers have reasonably available evidence** that these websites and applications are infringing copyright or disseminate counterfeit products, on a commercial scale,
 - based on signatories' own individual policies and assessment criteria.

Next steps

- **Cooperation in a form of a stakeholder dialogue**
 - four quarterly meetings
 - assessment period of one year
 - report on the MoU functioning
 - agreement open for new signatories

- **Evaluation of the work**
 - measuring the signatories' efforts under the MoU on the basis of annual reporting
 - monitoring the MoU's impact on the market

European Observatory on Infringements of Intellectual Property Rights

- Network of experts and specialist stakeholders that brings together representatives from EU bodies, authorities in EU countries, businesses, and civil society
- Aim: to improve the fight against counterfeiting and piracy by sharing information and best practice, raising public awareness, strengthening cooperation, and developing better tools
- The Observatory is managed by the European Union Intellectual Property Office (EUIPO)
- More information on their [website](#)



Thank you!

More information:

[Enforcement of intellectual property rights](#)

[MoU on the sale of counterfeit goods via the internet](#)

[MoU on online advertising and IPR](#)

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