

ROADMAP			
TITLE OF THE INITIATIVE	Commission Communication on civil enforcement of IP within the Internal Market		
LEAD DG – RESPONSIBLE UNIT	MARKT/D3	DATE OF ROADMAP	03/2013
This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.			

A. Context and problem definition

- (1) What is the political context of the initiative?
- (2) How does it relate to past and possible future initiatives, and to other EU policies?
- (3) What ex-post analysis of existing policy has been carried out? What results are relevant for this initiative?

The Commission has been conducting an extensive public consultation process on the civil enforcement of intellectual property rights in the internal market.

This consultation process started with the publication of the Report from the Commission on the application of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights ("Directive 2004/48/EC") in December 2010. The main conclusion drawn from the first evaluation is that the Directive has had a substantial and positive effect on the protection of intellectual property rights by civil law in Europe. However, the Directive was not designed with the challenge posed by the internet and several other issues deserve attention. This is in particular the case for the use of provisional and precautionary measures such as injunctions, procedures to gather and preserve evidence (including the relationship between the right of information and protection of privacy), clarification of the meaning of various corrective measures, including the costs of destruction, and calculation of damages.

This report provided the starting point for gathering stakeholders' views through an extensive public consultation, the first phase of which closed in late March 2011 and a summary of the comments received was published in summer 2011.

Subsequently, a public hearing on the application of Directive 2004/48/EC in a digital environment was held on 7 June 2011.

Furthermore, a conference on the enforcement of intellectual property rights was held on 26 April 2012. This conference was webcasted and allowed for questions and comments by online participants.

As announced at this conference, the Commission launched a detailed questionnaire in November 2012 in order to collect additional data and to obtain views of stakeholders on specific issues that have been raised during the consultation process. The aim is to carry out a detailed and holistic evaluation of the efficiency of existing national IP civil enforcement systems, including those implementing Directive 2004/48/EC, but equally looking at issues such as access to justice by SMEs, costs and duration of proceedings etc. This online questionnaire is opened until the end of March 2013.

Bearing in mind also the recent difficult debates on IPR enforcement (e.g. ACTA), the Commission will continue to be particularly attentive to the views of all interested parties regarding IPR enforcement in the EU and to communicate the outcomes of public consultations in a transparent manner.

In addition, the Commission has adopted at the end of last year a Communication on content in the Digital Single Market. This Communication foresees that by 2014 the Commission will take a decision on whether to table legislative reform proposals. To prepare for that, the Commission agreed on two parallel tracks of action: a stakeholder dialogue and the completion of the necessary preparatory work which will address, among other issues, how to improve the legitimacy of enforcement in the context of wider copyright reform.

What are the main problems which this initiative will address?

The application report regarding Directive 2004/48/ EC and the subsequent public consultation revealed a certain number of shortcomings in the IPR enforcement system in the internal market (e.g. unclear legal provisions, diverging national interpretations/practices, uneven access to justice for SMEs, unsuitability of the legal framework for the digital age etc.). The Communication will give a structured overview of the issues identified, so that they can be addressed by appropriate initiatives subsequently.

Who will be affected by it?
Presenting the outcome of an extensive public consultation, that includes the views of all interested parties and can form the basis for founded and balanced future initiatives will be beneficial for all stakeholders, such as IP right holders, citizens/consumers, judicial authorities, undertakings concerned.
Is EU action justified on grounds of subsidiarity? Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? Can the EU achieve the objectives better?
As IPR is to a significant extent harmonized at EU level, there is a real need for convergence also regarding IPR enforcement. That was also the basis for the adoption of Directive 2004/48/EC. A legal fragmentation harms the internal market. Many of the problems revealed so far in the public consultation relate to difficulties concerning the cross-border protection of rights and are often linked to the borderless nature of the internet, thus requiring a common EU approach.
The aim is to present all the challenges identified in a structured form and have a basis to determine whether further actions are necessary, and if so, their nature..

B. Objectives of the initiative
What are the main policy objectives?
The Communication will wrap-up the on-going public consultation process and present conclusions that can be drawn from it. It will be part of the preparatory work on a possible reform of the copyright framework mentioned above.
Do the objectives imply developing EU policy in new areas?
Depending on the outcome of the extensive public consultation that is still taking place, the Communication may announce that within the context of the EU's IPR enforcement policy, certain particular issues which have not yet been specifically addressed, may be the subject of more focussed initiatives in the future (e.g. SMEs' access to justice, availability of fast track/small claims procedures).

C. Options
(1) What are the policy options (including exemptions/adapted regimes e.g. for SMEs) being considered?
(2) What legislative or 'soft law' instruments could be considered?
(3) How do the options respect the proportionality principle?
At this stage, no policy options are considered.

D. Initial assessment of impacts
What are the benefits and costs of each of the policy options?
At this stage, no policy options are considered, so no cost/benefit analysis is possible at this stage.
Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?
No.
(1) Will an IA be carried out for this initiative and/or possible follow-up initiatives?
(2) When will the IA work start?
(3) When will you set up the IA Steering Group and how often will it meet?
(4) What DGs will be invited?
No. The document will not define future policies, only present stakeholders' views and possibly identify areas where future action can be envisaged. Follow-up initiatives will be subject, where relevant, to the corresponding IA.
(1) Is any option likely to have impacts on the EU budget above € 5m?
(2) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial Regulation? If not, provide information about the timing of the ex-ante evaluation.
No.

E. Evidence base, planning of further work and consultation

- (1) What information and data are already available? Will existing IA and evaluation work be used?
- (2) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?
- (3) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?
- (4) Is any particular communication or information activity foreseen? If so, what, and by when?

Significant amount of information was gathered in preparation of the report on the application of the Directive that was presented in December 2010. The subsequent stages of the public consultation (public hearing, conference) provided further information on the issues at stake. More data is expected from the online questionnaire published in November 2012.

Which stakeholders & experts have been or will be consulted, how, and at what stage?

During the various stages of this public consultation process, all stakeholders (Member States' authorities, holders of IPR, citizens/consumers, concerned undertakings (e.g. internet service providers, internet platforms), legal practitioners etc.) have been consulted.