

EVALUATION ROADMAP			
TITLE OF THE EVALUATION	Evaluation of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (IPRED)		
LEAD DG – RESPONSIBLE UNIT	GROW – F5	DATE OF THIS ROADMAP	24/05/2016
TYPE OF EVALUATION	Evaluation Ex-post Mixed	PLANNED START DATE	3 rd quarter 2015
		PLANNED COMPLETION DATE	3 rd quarter 2016
		PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm
This indicative roadmap is provided for information purposes only and is subject to change.			

A. Purpose
(A.1) Purpose
<i>The initiative will assess the functioning of IPRED¹ and in particular the functioning of a number of its key provisions in the online environment, with a view to identify the possible need for updating such provisions and to propose corrective measures. The evaluation is part of the Commission's Regulatory Fitness and Performance Programme (REFIT).</i>
(A.2) Justification
<i>IPRED was adopted more than 10 years ago and there is wide consensus on the need for an evaluation, assessing its suitability in view of developments in the digital environment and the increasingly cross-border nature of IPR infringements. This evaluation will provide the basis for the Commission's initiative to modernise the enforcement of IPR, as announced in the Digital Single Market Strategy² and the Single Market Strategy³.</i>

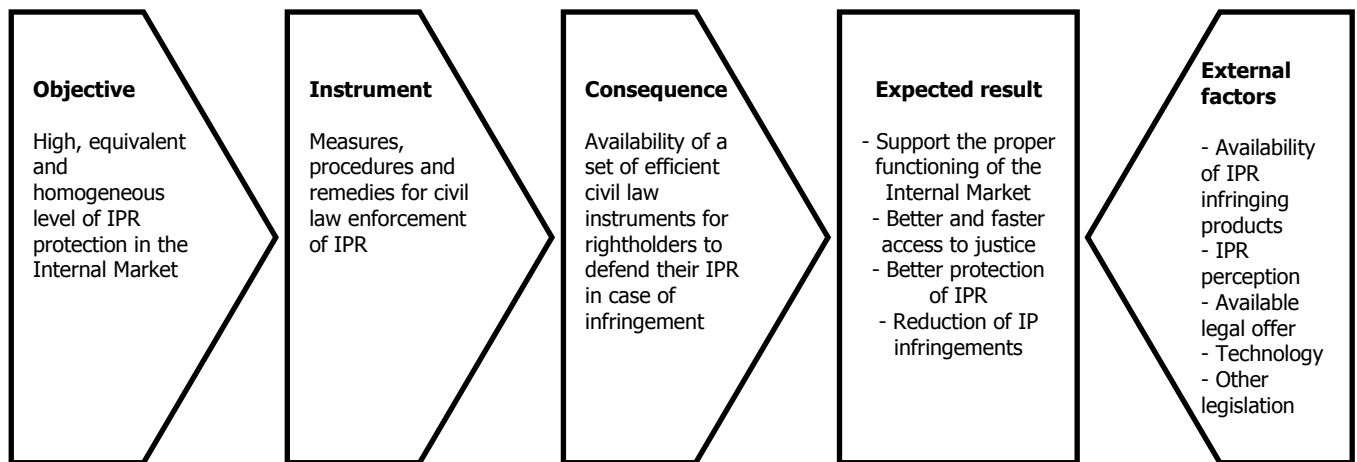
B. Content and subject of the evaluation
(B.1) Subject area
<i>IPRED approximates the laws of the Member States in the area of civil enforcement of Intellectual Property Rights (IPR). It covers all types of rights, notably copyright, trademark, patent and design. Specifically as regards copyright it complements the EU's 2001 Copyright Directive⁴.</i>
(B.2) Original objectives of the intervention
<i>IPRED is a legislative instrument whose overall aim is to provide effective means of enforcing intellectual property rights with a view to support the better functioning of the internal market. Disparities between the Member States' systems for enforcing intellectual property rights undermined at the time the directive was established the proper functioning of the internal market and weakened the enforcement of the substantive law on such rights. This led to barriers to cross-border activities, loss of confidence in the internal market and lower investment in innovation and creation. The Directive draws national legislative systems closer together to give rightholders and Member States' authorities a minimum but standard toolbox to combat infringements of intellectual property rights.</i>

¹ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (IPRED)

² Communication from the Commission "A Digital Single Market Strategy for Europe" (COM(2015) 192 final)

³ Communication from the Commission "[Upgrading the Single Market: more opportunities for people and business](#)" (COM(2015) 550 final)

⁴ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society



Measures, procedures and remedies

Member States should set up the measures and procedures needed to ensure the enforcement of intellectual property rights and take appropriate action against those responsible for counterfeiting and piracy. These measures and procedures, ensuring a high, equivalent and homogeneous level of protection in the internal market, should be sufficiently dissuasive, but avoid creating barriers to legitimate trade and offer safeguards against their abuse. They concern primarily:

- Gathering of evidence and measures to preserve evidence
- Requesting information from the infringer or another person on the infringement of an intellectual property right
- Injunctive relief against the infringer and against intermediaries
- Corrective and alternative measures
- Calculation of damages and reimbursement of legal costs

Consequences

- Accessibility of effective means of presenting, obtaining and preserving evidence
- Possibility to obtain precise information on the origin and distribution networks of the IP infringing products
- Availability of provisional measures for the immediate termination of infringements, preventing the emergence of irreparable harm to the holder of an IPR
- Availability of prohibitory measures aimed at preventing further infringements of IPR
- Proportionate corrective measures
- Appropriate damages to compensate the prejudice suffered
- Reasonable and proportionate legal costs
- Safeguards for fundamental rights, such as the right of defence and the protection of personal data

External factors

- Availability and accessibility of IPR infringing products
- Perceptions and behaviour regarding IPR and its infringements
- Availability and accessibility of a legal offer of IPR protected products
- Development of technology, for the distribution of legal and illegal products as well as for the detection and prevention of IPR infringements
- Availability of resources (human and financial) for businesses to detect, investigate and pursue IPR infringements
- Impact of other legislation, such as rules for intermediary service providers or for civil procedures in a cross-border context

Expected results/impacts

- Enhance the proper functioning of the Internal Market
- Better and faster access to civil law measures for IP rightholders in case of an infringement of their rights
- Better protection of IPR
- Effective action against counterfeiting and piracy and an overall reduction in IPR infringements
- Higher levels of investment in innovative and creative activities

C. Scope of the evaluation

(C.1) Topics covered

The evaluation of the functioning of IPRED in its entirety, covering the last 5 years (2010-2015) and all 28 MS, will provide an assessment on whether the measures, procedures and remedies provided by the Directive are fit for purpose and are still achieving their objectives, in particular in the fast developing digital environment. While no instrument provided for by the Directive has been excluded from the evaluation, particular attention will be given to issues already identified as problematic. Previous consultations led to the conclusion that a number of key provisions of the Directive might not function properly or might not be delivering the expected results, in particular in the online environment and in a cross-border context. These included the right of information, provisional and precautionary measures, injunctions, damages, legal costs and publication of judicial decisions.

(C.2) Questions/issues to be examined

The evaluation will assess the evaluation criteria of effectiveness, efficiency, coherence, relevance and EU added value.

Effectiveness

- To what extent has the Directive, with its different measures, procedures and remedies it provides for, achieved its objective, i.e. to improve the access to efficient civil enforcement of intellectual property rights?
- What have been the effects of the Directive? To what extent do those observed effects/changes correspond to the objectives? To what extent can those effects/changes be attributed to the directive? To what extent can those effects be linked to other EU instruments?
- What are the main factors, e.g. in the formulation but also the implementation and application of the rules, that support or hamper achieving these objectives? To what extent have the different measures, procedures and remedies provided for by the Directive been complemented by non-legislative interventions at EU and national level, including voluntary stakeholder initiatives?
- What are the consequences or effects (both positive and negative) that were not originally planned?

Efficiency

- What are the costs and benefits associated with the implementation and application of IPRED? To what extent are they proportionate?
- To what extent have the different measures, procedures and remedies provided for by the Directive been efficient means of ensuring the enforcement of intellectual property rights? What factors influence the efficiency of the different measures, procedures and remedies?
- How affordable were the costs borne by different addressees for the measures, procedures and remedies provided for by the Directive? Are they proportionate to the benefits achieved?
- If there are significant differences in costs, length of procedure or other necessary resources invested between Member States, what is causing them?

Relevance

- To what extent do the objectives of IPRED (still) correspond to the needs of stakeholders, including holders of intellectual property rights?
- To what extent have the measures, procedures and remedies provided for by IPRED been relevant to meet the objective of ensuring the enforcement of intellectual property rights? - In view of the development of the digital environment, to what extent are the measures, procedures and remedies provided for by IPRED still relevant for achieving the objectives of IPRED or have other approaches currently not provided for by the Directive become more important?
- Have there been developments since the entering into force of the Directive, in particular with regard to the development of the digital environment and technology in general, that contributed to achieving the objectives?

Coherence

- To what extent are the different measures, procedures and remedies provided for by the Directive coherent and complement each other or do they overlap or even contradict?
- To what extent have the different measures, procedures and remedies provided for by the Directive been complemented by non-legislative interventions at EU and national level, including voluntary stakeholder initiatives?
- To what extent is IPRED coherent with other instruments and policies at EU level having similar objectives, such as e.g. the E-commerce Directive⁵ and the InfoSoc Directive⁶?

EU added value

- What has been the EU added value of the Directive, compared to what could have been achieved by Member States at national level in ensuring the enforcement of intellectual property rights?
- Do the objectives addressed by the Directive continue to require action at EU level?

(C.3) Other tasks

Depending on the conclusions, the evaluation will provide the basis for the Impact Assessment of policy options for the modernisation of the enforcement of intellectual property rights, as announced in the Commission's Digital Single Market Strategy.

D. Evidence base

(D.1) Evidence from monitoring

The Directive did not establish any regular monitoring or reporting obligations.

(D.2) Previous evaluations and other reports

A first evaluation of IPRED took place in 2010. The [Report](#) from the Commission of 22 December 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" and its accompanying [staff working document](#) have provided a first indication on the functioning of the directive. The value of the report is however limited, due to the late implementation of the directive in many Member States.

A comprehensive consultation process on the functioning of IPRED started with the publication of the application report in December 2010. This report provided the basis for an extensive [public consultation](#) which closed in late March 2011. A [public hearing](#) on the application of IPRED 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. A broad [public consultation](#) on the efficiency of proceedings and accessibility of measures in the civil enforcement of intellectual property rights was launched in November 2012. Finally, in December 2013, a [public consultation](#) on the review of the EU copyright rules gathered stakeholders' views on IPR enforcement in the digital age.

The European Observatory on Infringements of Intellectual Property Rights is currently preparing a study on legislative measures and procedures combatting or preventing IP right infringement over the internet. This study will conduct a mapping of existing national legislative provisions combatting or preventing IP right infringements over the internet and analyse their effectiveness. Results should be available in 2016.

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

Information on the implementation of IPRED at national level is available from a conformity assessment of the Directive.

(D.4) Consultation

The purpose of consultation is to gather stakeholder views in order to support an ex-post evaluation of the Directive. It seeks views from those concerned with the application of the Directive as to whether the provisions of the Directive are still fit for purpose or require amendment.

Stakeholder categories relevant for or interested in the concerned policy area:

1. Industry and businesses holding IPR, IP rightholders' associations

⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

⁶ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

2. *Intermediary service provider*
3. *Member States and national authorities responsible for IPR enforcement*
4. *Judiciary and legal profession, academia*
5. *Consumer and consumer organisations, civil rights associations*

Consultation methods and tools:

- *An open internet-based consultation of 12 weeks on the evaluation of the Directive on the enforcement of intellectual property rights and the possible modernisation of the legal framework was launched in December 2015 and was running until April 2016. The target groups of this consultation were public authorities and Member State authorities, rightholders, intermediary service providers, the judiciary and consumers and civil society. The consultation aimed at collecting information and gathering stakeholders' views in line with the evaluation criteria developed above. Further information can be found at:
http://ec.europa.eu/yourvoice/consultations/index_en.htm*
- *A stakeholder conference will be organised in 2016 in order to present the results of the evaluation process and to generate stakeholder feedback on the findings of that process.*
- *Further stakeholder opinions will be collected through the organisation of thematic workshops, in particular with the judiciary and intermediary service providers.*
- *Member States' authorities responsible for intellectual property policy and, in particular, the enforcement of intellectual property rights, will be closely involved in the process through the Commission's Group of experts on the enforcement of intellectual property rights.*

More information on the consultation strategy for this evaluation will be made available in due time on the [dedicated website of DG GROW](#).

(D.5) Further evidence to be gathered

In order to sufficiently evaluate the functioning of IPRED existing knowledge gaps need to be closed and further evidence to be gathered. Quantitative and qualitative data on the application of the right of information, of the provisions on legal costs and damages and the use of provisional and precautionary measures and of injunctions, in a domestic and cross-border context, will be collected and processed by external contractors.

E. Other relevant information/ remarks

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