

INCEPTION IMPACT ASSESSMENT

TITLE OF THE INITIATIVE	Modernising the enforcement of intellectual property rights		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	GROW.F.5	DATE OF ROADMAP	24/05/2016
LIKELY TYPE OF INITIATIVE	Undetermined		
INDICATIVE PLANNING	-		
ADDITIONAL INFORMATION	-		
This Inception Impact Assessment is provided for information purposes only and can be 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, Subsidiarity Check and Objectives

Context
<p>The May 2015 Digital Single Market Strategy (DSM)¹ states that the Commission will make legislative proposals [...] in 2016 [...] modernising enforcement of intellectual property rights, focusing on commercial-scale infringements (the "follow the money" approach) as well as its cross-border applicability, notably with regard to copyright issues. This need for modernisation is re-emphasised in the Single Market Strategy of 28 October 2015², complementing the objective of the DSM that only relates to copyright issues, privileging a "follow the money" approach to commercial-scale infringements of all types of IPR, which would also contribute to promoting a fair Single Market and the fight against fraud.</p> <p>Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (IPRED) is a legislative instrument whose overall aim is the better functioning of the internal market. It approximates the laws of the Member States in the area of civil enforcement of Intellectual Property Rights (IPR). It contains minimum harmonisation rules on measures and remedies available to rightholders in order to enforce their IPRs, meaning that Member States can provide for greater protection if they so choose. IPRED covers all types of rights, notably copyright, trademark, patent and design³. Specifically as regards copyright, it complements the EU's 2001 Copyright Directive⁴. IPRED is now over 10 years old and there is wide consensus on the need for a thorough evaluation, assessing its suitability in view of developments in the digital environment and the increasingly cross-border nature of IPR infringements linked to e-commerce.</p> <p>In July 2014 the Commission adopted the IPR enforcement action plan⁵, establishing a new consensus on the enforcement of intellectual property rights. With this Action Plan the Commission seeks to re-orientate its policy for intellectual property enforcement towards a better compliance of IP rights by all economic actors. Rather than penalising the citizen for infringing – often unknowingly – IP rights, the actions set out in this Action Plan pave the way towards a "follow the money approach", seeking to deprive commercial scale infringers of the revenue flows that draw them into such activities. While the action plan proposes a number of actions aiming at improving the enforcement of IPR, the question on whether the EU legislative framework for the enforcement of IPR, and in particular IPRED, is still fit for purpose, was left unanswered. In response to the action plan, the other Institutions have called on the Commission to look at this very question:</p> <ul style="list-style-type: none"> – The Conclusions of the Council of the European Union of 5 December 2014 on IPR enforcement recall that several other aspects of IPR enforcement not contained in the Action Plan were identified as raising questions [...], including the use of tools available to identify IPR infringers; the role of intermediaries in

¹ Communication from the Commission "A Digital Single Market Strategy for Europe" (COM(2015) 192 final)

² Communication from the Commission "Upgrading the Single Market: more opportunities for people and business - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions" (COM(2015) 550 final)

³ At EU level it complements the Community Trademark Regulation (EC) No 207/2009, the Community Designs Regulation (EC) No 6/2002 as well as the Regulation (EU) No 1257/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection.

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

⁵ Communication from the Commission "Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan" (COM(2014)0392 final)

assisting the fight against IPR infringement; and the allocation of damages in IPR disputes; [and] encourage the Commission to consider all possible options to address these matters.

- The Report of the European Parliament of 9 June 2015 "Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan" calls on the Commission to come up with a detailed assessment of the limitations of the current legal framework as regards online activities and, if appropriate, with proposals for adapting the EU legislative framework to the internet environment.

Furthermore the DSM also foresees that the Commission will make legislative proposals on the EU copyright framework. It also announced possible legislative proposals to clarify the rules on the activities of intermediaries in relation to copyright-protected content. The content of this reform may have implications for the substance and scope of the review of the enforcement framework. The same applies to any forthcoming initiative affecting the e-commerce framework. The Commission has launched a comprehensive assessment of the role of online intermediaries, which covers issues such as to how best to tackle illegal content on the internet.

A first evaluation of IPRED has taken 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. The public consultation on the efficiency of proceedings and accessibility of civil enforcement measures for intellectual property rights, launched in November 2012, and the public consultation on the review of the EU copyright rules, launched in December 2013 with a dedicated chapter on enforcement issues, provided further information on the functioning of key provisions of the directive and helped to identify those provisions for which a more thorough assessment is required.

As part of the preparatory work for the revision of IPRED, a REFIT evaluation is currently being launched to complement the preliminary evidence and findings on the functioning of the Directive.

Issue

The initiative will seek to solve issues identified in relation to the proper functioning of a number of key provisions of IPRED in the online environment, to define the need for adapting such provisions and to propose corrective measures, focusing on commercial-scale infringements (the 'follow the money' approach) and cross-border applicability and in full respect of fundamental rights. Stakeholder responses to previous consultations, as mentioned above, led to the conclusion that a number of key provisions of the Directive might not function properly or do not deliver the expected results, in particular in the online environment and in a cross-border context. Based on the preliminary conclusions of the investigations mentioned above in section "context", the Directive's implementation in all Member States civil procedures for the enforcement of IPR still seem to raise a number of issues:

1. Right of information

Article 8 IPRED establishes a right of information in cases of commercial scale infringements, in response to a justified and proportionate request of the claimant. However, either justified requests for access to information are systematically denied (due to failure to apply data privacy rules in line with the principle of proportionality) or access is granted without proper assessment of the validity of the request.

2. Cross-border execution of injunctions

Today Article 11 of IPRED establishes the possibility for rightholders to apply for an injunction against the IPR infringer (1st sentence) or against intermediaries whose services are used by a third party to infringe an IPR (2nd sentence), aimed at prohibiting the continuation of an infringement. Already in its current form IPRED allows for injunctions against all kinds of intermediaries. However, while infringements typically take place in various jurisdictions, the enforcement landscape is still fragmented. Rightholders find it very difficult to execute injunctions in other Member States, in a cross-border context. Reasons given are costs and length of proceedings, strict requirements for injunctions against certain intermediaries (e.g. internet service providers) and the absence of a harmonised system of substantive law.

3. Damages

According to Article 13 of IPRED Member States shall ensure that rightholders are paid damages appropriate to the actual prejudice suffered as a result of the infringement. However, rightholders complain about the amount of damages ordered by the competent judicial authority, which according to them in many cases does not even cover the litigation costs and thus does not appropriately compensate for the actual prejudice suffered.

4. Legal costs

Article 14 of IPRED requires Member States to ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this. It is claimed though by all stakeholders, and in particular SMEs, that reimbursement of

legal costs awarded to the successful party often only cover a fraction of the total costs incurred.

5. Publication of judicial decisions

Article 15 of IPRED provides for the possibility to order the publication of judicial decisions, in order to facilitate uniform application of the Directive and exchange of information. However, this possibility has not been used yet to any significant scale.

The initiative will also address a number of issues, raised in previous consultations and requested by the Council and the European Parliament, which are currently not dealt with by the directive but might be taken up in any future initiative in order to modernise the civil enforcement of IPR and thus deserve further reflection:

1. The role of intermediaries in IPR enforcement

While IPRED allows for injunctions against all kinds of intermediaries, such as internet service providers, payment service providers or shippers, it does not establish an explicit liability of intermediaries for IPR infringements, in cases of failure to act (for an information society service provider acting as intermediary liability can be established under the conditions set forth in Section IV of the E-Commerce Directive⁶). Yet, given that intermediaries unwittingly provide the essential infrastructure for IP infringements on a commercial scale, they can play a key role in the enforcement of IPR.

2. Specialised courts

Specialised national courts of first and second instance having jurisdiction in matters of infringement and validity of IPR could strengthen the protection of IPR and the efficacy of IPR enforcement. While such courts have already been established for all IPR in some jurisdictions across all Member States they only exist for Community trade marks and designs.

3. Other issues

Other issues for consideration will include the need for a comprehensive framework for enhanced cooperation between Member States, at the level of the enforcement authorities and the judiciary, and for assisting SMEs in enforcing their IPR.

IP infringements on a commercial scale (where the infringer makes money on the back of the rightholder's investment) have progressively increased in recent years. In 2013, international trade in counterfeit and pirated products represents up to 2.5% of world trade, up to € 338 billion, based on the latest available data from 2013. In the EU, these products amount up to 5% of all EU imports, worth up to €85 billion⁷. It is estimated that the EU perfumes and toilet preparations sector alone loses approximately €4.7 billion of revenue annually due to the presence of counterfeit cosmetics (perfumes, beauty and make-up) and other personal care products (7.8% of the sector's sales)⁸. Further sectorial studies (e.g. on clothing, footwear and accessories, medicines, computers and automotive parts) quantifying the scope, scale and impact of IPR infringement in the EU have been and are currently prepared by the EUIPO. The DSM Strategy refers to estimated value losses due to piracy in the creative and cultural industries in the range of €35-50 billion over the 2008-2011 period. This illicit offer of IPR infringing products is likely to continue. The EUIPO's sectorial report on the economic cost of IPR infringement in the sector of recorded music estimates that €170 million, or 5.2 % of all music sales, were lost in the EU in 2014 due to music piracy. The responses to the latest Commission consultation stressed that in view of these developments an efficient civil enforcement system is crucial to secure investments in research and development, in innovation and creativity, concerning all types of IPR.

A future initiative, subject to the outcome of the public consultation and depending on its scope, might involve rightholders, intermediaries (e.g. shippers, insurers, wholesalers, retailers, business registrars, telecommunications operators, internet intermediaries, advertising agencies, media operators and payment service providers), regulatory authorities, the judiciary and legal profession, consumers and civil society.

Subsidiarity check

Directive 2004/48/EC on the enforcement of intellectual property rights is based on Article 114 TFEU (ex-Article 95 TEC). The achievement of the internal market entails eliminating restrictions on freedom of movement and distortions of competition, while creating an environment conducive to innovation and investment. In this context, the protection of IP is an essential element for the success of the internal market. The protection of IP is important not only for promoting innovation and creativity, but also for developing employment and improving competitiveness. IP-infringing activities, in particular those carried out on a commercial scale, dissuade

⁶ 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')

⁷ <https://euipo.europa.eu/ohimportal/en/web/observatory/mapping-the-economic-impact>

⁸ <https://euipo.europa.eu/ohimportal/en/web/observatory/quantification-of-ipr-infringement>

<p>investment in innovation, undermine job creation and put consumers and businesses at risk. A comprehensive enforcement policy is required to successfully combat such IP infringements at EU and national level.</p> <p>The persisting difficulties of cross-border protection of IP, often linked to the borderless nature of the internet, require a common EU approach. The markets that the intermediaries covered by this initiative (e.g. advertising agencies, media operators, payment service providers and shippers) act in are not limited by national borders. Commercial scale IP-infringement schemes operate cross-border, not only within the EU but globally. The recent OHIM study on IPR infringements in the clothing sector⁹ summarises for example that counterfeit clothes or shoes destined for the EU market are manufactured outside or inside the EU, imported into the EU and/or distributed across internal EU borders, promoted on global social networks and offered on internet sales platforms. The cross-border nature of commercial scale IP infringing activities has been highlighted in the 2015 Situation Report of Europol and OHIM¹⁰. Therefore, due to the nature of the activity and the international dimension of some of the key challenges, the EU is better placed than individual Member States to tackle this issue.</p>
<p>Main policy objectives</p> <p>The overall policy objective is to ensure that the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights are fit for purpose, in particular in their cross-border application and in the online environment and focusing on commercial-scale infringements.</p> <p>In view of this objective and without prejudice to the assessment of the functioning of the current provisions of the legal framework the initiative might aim at</p> <ul style="list-style-type: none"> • Clarifying the application of the right of information, safeguarding the balance between the different fundamental rights concerned; • Clarifying the scope and application of the rules concerning provisional and precautionary measures and injunctions, including the cross-border execution of injunctions, in concurrence with the applicable rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and the law applicable to non-contractual obligations; • Clarifying the rules for the calculation and allocation of damages and legal costs; • Strengthening the involvement of intermediary service providers in the prevention of IPR infringements; • Promoting the setting up of specialised national courts in matters of infringement and validity of IPR.
<p>B. Option Mapping</p> <p>Baseline scenario – no EU policy change</p> <p>While in some sectors an increasing legal offer, adapted to the needs of consumers, has shown an impact on the size of the illicit market, overall the offer of IPR infringing products is expected to remain at a high level or even increase. Without an EU policy change, the measures, procedures and remedies provided for in the current legal framework and aimed at ensuring the enforcement of intellectual property rights covered by that framework risk to become inapplicable in a fast moving knowledge and internet based economy. Without clarification of the EU legislative framework diverging interpretations at national level will persist, to the detriment of a common high level of protection. Without effective means of enforcing intellectual property right, innovation and creativity will be discouraged and investment diminished. Industry cooperation, a promising tool in preventing IPR infringements, might not take up sufficiently due to a lack of regulatory safeguards and incentives. At the same time national initiatives in this area risk to lead to a fragmentation of the internal market.</p> <p>Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation</p> <p>Improving implementation and enforcement of the existing legislation can be considered in order to ensure the uniform application of the measures, procedures and remedies provided for in the legal framework and thus remedy cases of misapplication at national level and clarify the scope of the directive.</p> <p>However, such an option would only improve the efficiency of IPR enforcement and address the problems related to possible misapplication of the current legal framework at national level.</p>

⁹ The economic cost of IPR infringement in the clothing, footwear and accessories sector, OHIM, 2015

¹⁰ <https://www.europol.europa.eu/content/counterfeit-goods-produced-eu-rise>

Alternative policy approaches
<p><i>Clarification of key provisions of the current legal framework may be achieved by providing guidance in the form of an Interpretative Communication or similar instruments. On the basis of the case-law at EU and national level, applying the rules of the existing framework, guidance on the interpretation of the current rules could help to ensure a uniform, more predictable and thus more efficient application of these rules.</i></p> <p><i>A priori, these approaches will be sufficient only if the consultation, contrary to the provisional results of those of 2012 and 2013, demonstrates that the problem is limited to the fragmented application or misinterpretation of the existing rules.</i></p>
Alternative policy instruments
<p><i>On the basis of the current legal framework the effectiveness of the enforcement of intellectual property rights may be enhanced through the promotion and facilitation of self-regulatory initiatives, for instance concerning the involvement of intermediaries in the prevention of IPR infringements. A number of self-regulatory initiatives already exist at EU and national level and the Commission has announced its support for such initiatives in the 2014 IPR enforcement action plan. It remains to be assessed however if purely voluntary initiatives, in particular in view of the coexistence of rights, such as the protection of personal data, and regulatory challenges, such as competition rules, can be sufficient to improve the level of enforcement.</i></p>
Alternative/differentiated scope
<p><i>The current legal framework concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. It applies horizontally to all intellectual property rights and provides for measures for the enforcement of such rights for all rightholders, irrespectively and indistinctly of their form or size. While an assessment and possible amendment of the legal framework would not aim to alter this scope particular attention will be given to small and medium-sized enterprises (SMEs) when analysing the need for refining the scope in order to assess if the measures, procedures and remedies available can be effectively used by SMEs.</i></p>
Options that take account of new technological developments
<p><i>One of the objectives of the initiative is to assess the suitability of the legal framework for the enforcement of intellectual property rights in view of developments in the digital environment and to amend, if need be, this framework in order to ensure that it functions well in both the digital and the physical world.</i></p>
Preliminary proportionality check
<p><i>The objective of the initiative is to assess the suitability of the current legal framework for the enforcement of intellectual property rights in view of legislative and technological developments and to amend it, if need be, in order to ensure its smooth functioning. Any amendment proposed should not go beyond what is necessary to solve the identified malfunctioning or shortcomings of the current legal framework, if any. The EU actions that may finally be selected will in any event be tested for their proportionality and checked against the achievable policy objectives.</i></p>
C. Data Collection and Better Regulation Instruments
Data collection
<p><i>In 2012 the Commission commissioned a study, "Measuring IPR infringements in the internal market", in order to assess the scope, scale and impact of IPR infringements on the European economy and to develop evidence-based policies in the area of intellectual property rights. The results of the 2010 evaluation and the contributions to the consultations on the IPR enforcement framework have provided initial evidence and information on the functioning of IPRED which will be used to scope the evaluation exercise and which will be further analysed in the course of this exercise.</i></p> <p><i>The European Observatory on Infringements of Intellectual Property Rights has prepared comprehensive data and information on the scale of the problem and the impact of IPR infringements on the economy. It is currently preparing two studies that will support the work of the Commission in this area. The study on voluntary collaboration practices in addressing online infringements of IP rights provides a comprehensive description of existing relevant voluntary collaboration practices and analyse the effectiveness of a selected number of these voluntary collaboration practices. The study on legislative measures and procedures combatting or preventing IP right infringement over the internet will conduct a mapping of existing national legislative provisions combatting</i></p>

<p>or preventing IP right infringements over the internet and analyse their effectiveness. Results should be available in 2016. The Observatory is also carrying out research on the business models most commonly used to infringe IP online, in order to assess and analyse the specific techniques used for facilitating online IP rights infringements on a commercial scale. The results of this research will be available during 2016 and will provide enhanced understanding to policymakers on the scope of the problem and the responses necessary to tackle the challenge of large scale online IP infringements.</p> <p>The Commission is also launching an REFIT evaluation of IPRED in order to complement the preliminary evidence and findings on the functioning of IPRED. The REFIT evaluation will assess the functioning of the directive and in particular of a number of its key provisions in the online environment. It will provide an assessment on whether and to what extent the measures, procedures and remedies provided by the Directive are fit for purpose and are still achieving their objectives and if not, what are the barriers and extent of the issues. This includes the right of information, provisional and precautionary measures, injunctions, damages, and legal costs and publication of judicial decisions.</p> <p>The scope of the revision of IPRED will take into account the final shape of the copyright reform.</p>
<p>Consultation approach</p> <p>The consultation process on the evaluation of IPRED started with the publication of the Report from the Commission on the application of IPRED 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.</p> <p>These consultations were complemented and followed upon by an open stakeholder consultation which aims to help to assess the functioning of IPRED, with a view to identify the need for updating such provisions and to propose corrective measures. It will gather experience on the use and impact of IPRED and also views and opinions on the functioning of the legislative framework for the enforcement of IPR and on the role intermediaries and specialised courts can play in enhancing the efficiency of IPR enforcement. It would also invite stakeholders' views on all elements of the IA, covering the above mentioned main issues.</p> <p>The expert group on the enforcement of intellectual property rights will advise and assist the Commission in the preparation of the initiative.</p> <p>Consultation method for the current initiative:</p> <ul style="list-style-type: none"> An open internet-based consultation of 12 weeks on the evaluation of the Directive on the enforcement of intellectual property rights and the modernisation of the applicable legal framework was launched in December 2015 and is running until April 2016. The target groups of this consultation will be public authorities and Member State authorities, rightholders, intermediary service providers, the judiciary and consumers and civil society. Further information can be found on the following website: http://ec.europa.eu/yourvoice/consultations/index_en.htm
<p>Will an Implementation plan be established?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>D. Information on the Impact Assessment Process</p> <p>An impact assessment will be carried out. The IA work will start following validation of the initiative and an inter service steering group will be set up. SG, LS, BUDG, COMP, SANTE, EMPL, AGRI, TRADE, EAC, HOME, JUST, CNECT, JRC, OLAF, RTD, ENER, FISMA, EPSC, MOVE and TAXUD will be invited to participate in its work. The IA will be presented to the Regulatory Scrutiny Board.</p>
<p>E. Preliminary Assessment of Expected Impacts</p> <p>The benefits and costs of each of the policy options depend very much on the outcome of the assessment and the identified need for action with regard to the issues identified above.</p>

Likely economic impacts
<p>All policy options are expected to have an economic impact. Commercial-scale intellectual property rights infringements result in economic harm for inventors and creators but also for the society as a whole. Improving the effectiveness of the infrastructure for the enforcement of intellectual property rights in a balanced manner helps the inventor or creator to derive a legitimate profit from his/her invention or creation and to reduce the negative economic impact on consumers and businesses unintentionally purchasing IPR infringing products.</p> <p>In the absence of EU action, negative economic costs will increase, due to the growing problem and its negative impact on all stakeholders. Improving implementation and enforcement of the existing legislation, in cases of misapplication of the current legal framework at national level, will give rightholders access to the full toolbox of measures for the civil enforcement of IPR, allowing them, in exceptional cases, where Member States have chosen not to allow for all the proposed tools to be used, to better protect their investment and profits. Providing guidance on the interpretation should result in a more harmonised application of the Directive and increase predictability and legal certainty for IPR enforcement, limited however to the current set of measures and without binding effect on those applying them. Promotion and facilitation of self-regulatory initiatives could provide an efficient alternative to civil proceedings, subject to compliance with the applicable regulatory framework. While it should have a positive impact on enforcement costs for rightholders, other parties not yet involved in IPR enforcement could encounter additional direct costs whilst encouraging their competitive performance. A legislative amendment would increase the overall efficiency of IPR enforcement, possibly modifying existing rules and introducing new ones. This could result in direct economic costs for affected stakeholders, positive for some (e.g. for rightholders having access to more efficient enforcement tools and as a result of fairer and more appropriate calculation and allocation of damages and legal costs), negative for others (e.g. for intermediaries in case of stronger involvement in IPR enforcement). Due account should be taken of the indirect benefits occurring to all economic stakeholders that result from operating in a secure business environment that stimulates investment.</p>
Likely social impacts
<p>All policy options are likely to have a social impact, varying depending on the scope and binding nature of the option. An efficient and balanced system for the enforcement of IPR stimulates investment, creates jobs and growth, provides welfare-enhancing innovation for EU citizens and ensures respect for fundamental rights. Preventing IPR infringing products from entering into the supply chain and consumer markets also reduces the risk of consumers and businesses unintentionally purchasing IPR infringing products, products which often do not comply with product standard regulations, and therefore has a positive impact on health and safety. Clarifying the interpretation and application of the different measures will allow for the reinforcement of consumer trust and safeguarding of the balance between the fundamental rights concerned, such as the right to property and the right to judicial review on the one hand and the right to respect for private life and the right to protection of personal data on the other.</p>
Likely environmental impacts
None
Likely impacts on simplification and/or administrative burden
<p>In the absence of EU action, fragmentation in the regulation of a number of issues, such as the involvement of intermediary service providers in the prevention of IPR infringements, might increase and businesses will be confronted with diverging rules and multiplication of costs in the different Member States.</p> <p>Promotion and facilitation of self-regulatory initiatives, subject to compliance with the applicable regulatory framework, could provide for simplified and less burdensome procedures for the protection of IPR. Improving the consistent implementation and application of the existing legislation in all Member States should increase predictability and legal certainty and simplify the application of the legal framework for all parties concerned. Certain legislative amendments, such as promoting the setting up of specialised national courts in matters of infringement and validity of IPR, could render court proceedings in the area of IPR enforcement more efficient.</p>
Likely impacts on SMEs
<p>The high costs and complexity of litigation often dissuade innovative SMEs from enforcing their IP rights. Particular attention will therefore be given to SMEs in the assessment and possible amendment of the legal framework in order to ensure the efficient use of the measures, procedures and remedies available by SMEs and to improve access to IPR enforcement measures for SMEs, if necessary.</p> <p>SMEs will benefit from improvements in the consistency of the implementation and application of the existing legislation in all Member States like all other rightholders. Certain measures, such as a fairer and more appropriate calculation and allocation of damages and legal costs and the setting up of specialised national courts in matters of infringement and validity of IPR, could have a particular positive impact on SMEs.</p>

Likely impacts on competitiveness and innovation
<i>In the absence of EU action, investment in innovation and creativity might deteriorate and have a negative impact on the competitiveness of European businesses. An efficient and effectively enforced IPR infrastructure stimulates investment in innovation and creativity.</i>
Likely impacts on public administrations
<i>IPRED is an instrument for civil enforcement of IPR and contains in general no rules or obligations for public administrations. Amending the rules on civil enforcement of IPR might however imply training needs for courts applying these rules. In addition, the setting up of specialised courts in matters of infringement and validity of all IPR in all Member States could have an impact on the national judicial administration. Promotion and facilitation of self-regulatory initiatives might require the involvement of national administrations overseeing IPR enforcement policies.</i>
Likely impacts on third countries, international trade or investment
<i>From the different policy options amending the Directive may, depending on its scope, have an impact on the EU's international obligations, as IPR enforcement is part of a number of international agreements, bilateral and multi-lateral, the EU is party to.</i>
Likely impacts on fundamental rights
<i>Strengthening the effectiveness of the enforcement of IPR will be beneficial to the right to protection of property as enshrined in article 17 of the Charter of Fundamental Rights. Any measures in this respect will however have to provide sufficient safeguards to ensure that other rights, including the right to private life and data protection, the right to freedom of information, the freedom to conduct a business as well as the right to judicial review and the right of defence, are properly upheld.</i>