

Intellectual property: Commission welcomes European Parliament support against counterfeiting and piracy

The European Commission has welcomed the European Parliament's vote in favour of a Directive on the enforcement of intellectual and industrial property rights, such as copyright and related rights, trademarks, designs or patents. The Directive would require all Member States to apply effective, dissuasive and proportionate remedies and penalties against those engaged in counterfeiting and piracy and so create a level playing field for right holders in the EU. The Commission proposed the Directive on 30 January 2003 (see [IP/03/144](#) and [MEMO/03/20](#)). The proposal will now go forward to the Council of Ministers. The Commission is hopeful that, as a result of close cooperation between the Commission, the European Parliament and the Council, the Directive will be adopted definitively at first reading, possibly in April 2004. Member States would then have two years to implement it.

Internal Market Commissioner Frits Bolkestein said: "Today the European Parliament has taken an important step forward in the fight against counterfeiting and piracy while keeping the emphasis on catching "the big fish" rather than the "tiddlers" who commit relatively harmless acts like downloading a couple of tracks off the Internet for their own use. Counterfeiting and piracy is on the rise. Nowadays it is often even more attractive to criminals than drug trafficking and its perpetrators are linked more and more to organised crime. What is more, sub-standard fake products can be dangerous to public health and safety. Counterfeiters and pirates undermine legitimate business, and frustrate innovation."

The new Directive, based on 'best practice' found in at least one Member State's laws, would bring national legislation on sanctions and remedies closer into line across the EU and signal to Member States certain measures (such as the publication of judicial decisions and the development of professional codes of conduct) that would contribute to the fight against counterfeiting and piracy. Member States would also appoint national correspondents to cooperate and exchange information with the other Member States and with the Commission.

The draft Directive, which covers infringements of intellectual property rights provided under Community law and/or by national law of the Member States, includes procedures covering evidence and the protection of evidence and provisional measures such as injunctions and seizure. Remedies available to right holders would be the destruction, recall or permanent removal from the market of illegal goods, as well as financial compensation, injunctions and damages. There would be a right of information allowing judges to order certain persons to reveal the names and addresses of those involved in distributing the illegal goods or services, along with details of the quantities and prices involved.

There are also rules about those who may apply to the courts, the presumption of authorship of copyright or ownership of related rights and legal costs. Over and above general obligations for proportionality, fairness and equity, the draft Directive contains the necessary safeguards and limitations to protect the interests not only of the defendant but also of potentially innocent offenders, who have unknowingly been involved in illegal practices. The text voted by the Parliament represents an appropriate balance among all interests involved, including right holders, commercial users, consumers and intermediaries. The Commission can accept this compromise text despite certain differences from its original proposal as the overall, important balance has been safeguarded.

One important element is missing from the text voted today – a provision on criminal sanctions such as that included in the Commission proposal. On this Commissioner Bolkestein said: “The Commission considers that effective action against counterfeiting and piracy requires criminal sanctions for serious, intentional infringements committed for commercial purposes. We will therefore examine the possibility of proposing in due course further measures providing for criminal sanctions in this field. Moreover, the Directive will not prevent Member States from applying criminal sanctions if they wish to.”

The Directive will be officially adopted once it has been approved by the Council of Ministers. Indications are that this could take place as early as April. Broad agreement has been achieved so quickly, despite the involvement of many different types of national legislation and different national traditions, thanks to the recognition by all parties of the importance of combating counterfeiting and piracy and to the excellent cooperation among the Institutions involved. Although the draft Directive is based on ‘best practice’ found already in Member States’ legislation, no one Member State has it all – they will all, including the ten accession countries, have to adapt their national legislation.

Of course, Member States are free to go further than the proposed Directive and the Commission hopes that the clear political signal being given in support of a strong stance against counterfeiting and piracy will also lead to a concerted information effort by national and regional authorities and other interested parties, leading ultimately to more public awareness.