EUROPEAN
COMMISSION

Brussels, 29.11.2017
COM(2017) 707 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

A balanced IP enforcement system responding to today's societal challenges

{SWD(2017) 430 final}

I. INTRODUCTION

Efficient, well-designed and balanced intellectual property (IP) systems are a key lever to promote investment in innovation and growth. Intellectual Property Rights (IPRs) are one of the principal means through which companies, creators and inventors generate returns on their investment in knowledge and creation. Studies estimate that IPR-intensive sectors account for around 42 % of EU GDP (worth some EUR 5.7 trillion annually), generate 38 % of all jobs[1], and contribute to as much as 90 % of EU exports[2].

The digital revolution has opened up a wealth of new opportunities. The internet has brought innovative goods, technology and creative content to a much wider consumer base, thus enabling innovators and creators to reach new markets and audiences. But the digital revolution also exposes the EU's IP system to greater risks. The on-line environment allows for a much wider and quicker proliferation of IP-infringing goods and content, and makes it often more difficult for consumers to distinguish infringing goods and content from genuine and legal ones. Moreover, infringers of IPRs can hide behind fake identities and are often located outside the EU in jurisdictions with weak enforcement regimes.

All this has resulted in an **increase of IP infringements across the globe**[3]. Today counterfeit and pirated goods account for 2.5 % of global trade. The EU industry is badly affected: according to a recent study[4], 5 % of all imports into the EU are counterfeit and pirated goods, corresponding to an estimated EUR 85 billion in illegal trade.

IPR infringements pose a specific threat to sectors where EU businesses are world leaders, such as clothing, luxury goods and pharmaceuticals, and account for major losses of revenue and jobs in these sectors. The European Union Intellectual Property Office (EUIPO) recently analysed the scope, scale and impact of IP infringements in nine sectors[5] and put total losses in the EU at EUR 48 billion[6]. Europe's creative and cultural industries (music, film, software, books) are negatively affected as well[7]. The damage suffered by businesses because of

---

[1] Taking into account both direct and indirect employment.

[2] EUIPO, *Intellectual property rights intensive industries and economic performance in the EU*, 2016.

[3] This being said, there are some positive developments as well. In the field of copyright for example, new business models have led to a decrease of copyright infringements in some markets (available at: https://copia.is/library/the-carrot-or-the-stick/). The successful development of legal offers also depends on effective enforcement measures of course. The Commission has consistently held that fighting online piracy should be combined with complementary actions including the development of legal offers and educational initiatives (see for instance, the Commission Communications on *Creative content online in the Single Market* (COM(2007/0836 final) and *Towards a modern, more European copyright framework* (COM(2015) 626 final).

[4] OECD/EUIPO, *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact*, 2016.

[5] Cosmetics and personal care; clothing, accessories and footwear; sporting goods; toys and games; handbags and luggage; jewellery and watches; recorded music; spirits and wine; and pharmaceuticals.

[6] Available at https://euipo.europa.eu/ohimportal/en/web/observatory/quantification-of-ipr-infringement.

[7] See for instance BASCAP/INTA, *The economic impact of counterfeiting and piracy*, 2017, available at: http://www.inta.org/Communications/Documents/2017_Frontier_Report.pdf, which estimated the global value of digital piracy in movies, music and software in 2015 to $ 213 billion. See also EUIPO, *The Economic cost of IPR Infringement in the recorded Music industry* - May 2016, available at: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/ip_infringement/study7/Music_industry_en.pdf. This study found that in 2014 the recorded music industry lost approximately €170 million of sales revenue in the EU as a consequence of the consumption of recorded music from illegal sources. See also the UK Intellectual Property Office's tracking studies into the extent of online copyright infringement. The latest version (May 2016) estimated that 15 % of UK internet users aged 12+ consumed at least one item of online content illegally between March-May 2016 and that 5% of the 12+ UK users have exclusively consumed illegal content (available at:

counterfeiting and piracy has a negative impact on the jobs they provide in the EU and leads to losses of tax revenue and social security contributions[8].

Meanwhile, profits from counterfeiting and piracy often go to criminal organisations. These organisation typically operate inside and outside the EU, use both regular and clandestine manufacturing plants, infiltrate supply chains, exploit labour, do not pay taxes, launder money and endanger consumers[9].

The 2014 IPR Enforcement Action Plan[10] marked a shift in focus of the Commission's IP enforcement policy towards a 'follow the money' approach, seeking to deprive commercial-scale IP infringers of the revenue flows that make their activities profitable. Better IPR enforcement contributes to the Commission's priorities to create jobs, boost growth and enhance competitiveness. It also plays a key role in completing and strengthening the Single Market and reducing fragmentation across Member States. This is why the Commission announced in the Digital Single Market[11] and Single Market[12] strategies that Europe needs to do more to guarantee that IPR enforcement also becomes a reality – in the digital environment – supporting the 'follow the money' approach and paying special attention to small- and medium sized enterprises (SMEs).

Following up on recent initiatives to improve the copyright framework[13], the Commission is presenting a **comprehensive package of measures to further improve the application and enforcement of IPRs within the EU Member States, at our borders and internationally**[14]. The measures contained in this package are set out in this Communication, as well as in the following documents:

- a Communication providing guidance on how to apply the Directive on the enforcement of Intellectual Property Rights (IPRED)[15], accompanied by a Staff Working Document with an evaluation of IPRED;
- a Communication on Standards Essential Patents;
- a Staff Working Document on the evaluation of the Memorandum of Understanding on the sale of counterfeit goods via the internet.

---

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546223/OCI-tracker-6th-wave-March-May-2016.pdf).

[8] The recent EUIPO analysis (see footnote 6) estimates that direct and indirect job losses in the nine sectors exceed 786 000. Government revenue lost in the same nine sectors amounts to EUR 14.4 billion.

[9] UNODC, *The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime*, 2014, available at: https://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf Europol-EUIPO, *Situation report on counterfeiting in the EU*, 2015, available at: https://euipo.europa.eu/ohimportal/documents/11370/80606/2015+Situation+Report+on+Counterfeiting+in+the+EU and UNICRI, *Illicit pesticides, Organized crime and supply chain integrity*, 2016, available at: http://www.unicri.it/in_focus/files/The_problem_of_illicit_pesticides_low_res1.pdf

[10] *Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan*, COM(2014)392, 1 July 2014. On the basis of this Action Plan, the European Parliament called on the Commission to come up with a detailed assessment of the current legal framework, see resolution of 9 June 2015.

[11] Commission Communication, *A Digital Single Market Strategy for Europe*, COM/2015/0192, 6 May 2015.

[12] Commission Communication, *Upgrading the Single Market: more opportunities for people and businesses*, COM/2015/0550, 28 October 2015.

[13] See in particular *Promoting a fair, efficient and competitive European copyright-based economy in the Digital Single Market*, COM(2016)592, 14 September 2016 and Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market of 14 September 2017.

[14] The Annex provides an overview of the main actions.

[15] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, (OJ L 157, 30.4.2004, p. 45).

This Communication provides a framework for all of these actions on IP enforcement, and is composed of four main sections which set out:

1) measures to make it easier for IP stakeholders to benefit from a homogeneous, fair and effective **judicial enforcement** system in the EU. Together with the IPRED guidance, this includes actions and recommendations to further enhance judicial capacity and predictability in the EU;
2) actions to support **industry-led initiatives to combat IP infringements**, such as voluntary agreements with intermediaries and steps to better protect supply chains against counterfeiting;
3) initiatives to **strengthen the capacity of custom and other authorities to enforce IP rights**;
4) measures to **strengthen efforts to fight IP infringements at a global scale**, by promoting best practices and stepping up co-operation with third countries.

Whilst there is a clear need for stronger action against IP infringements, at the same time, the EU should have policies to ensure that **respect of IPRs is reconciled with** the need for **a smooth roll-out of new and innovative technologies**. This is of particular importance when such technologies are incorporated into standards. In today's fast-changing and interconnected world, widespread standards based on IP-protected technologies — known as standard-essential patents (SEPs) — are necessary for interoperability, and in particular for an effective roll-out of the Internet of Things. A balanced, efficient and sustainable framework for SEPs is therefore essential to guarantee fair access to standardised technologies, whilst ensuring that patent-holders are rewarded for their investments in R&D and standardisation activities and are thus incentivised to offer their best technologies for inclusion in standards.

That is why a **separate Communication sets out a framework for SEPs.** It offers guidance and recommendations on how to make the declaration system more transparent and efficient, clarifies some core principles regarding fair, reasonable and non-discriminatory practices (the 'FRAND' approach), and offers guidance on how to secure effective enforcement whilst making abusive litigation less likely. More clarity on these points will help ensure that the EU can be a leader in global technological innovation while facilitating an effective roll-out of new technologies in the EU such as the Internet of Things or 5G, which are the foundation of the Digital Single Market.

II. TOWARDS A MORE EFFICIENT AND PREDICTABLE JUDICIAL ENFORCEMENT REGIME IN THE EU

In line with the better regulation guidelines[16], the Commission has finalised a comprehensive performance evaluation of IPRED. The results show that the directive has led to the creation of a common legal framework, where the same set of tools is applied in civil courts across the EU, thereby generally ensuring a high level of protection in the internal market. The Directive has also given rise to pan-European enforcement strategies of companies and has encouraged judges and legal professionals to exchange litigation experiences. Furthermore, the evaluation showed that IPRED has been cost-efficient, coherent with other EU interventions with similar objectives and creating added value at EU level. The evaluation therefore concluded that IPRED is still fit for purpose.

[16] The better regulation guidelines set out the principles for the European Commission when managing and evaluating existing legislation. See https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox_en.

However, the evaluation also found that there are **differences in the way certain IPRED provisions** (for instance on injunctions, damages and legal costs) **are implemented and applied in practice.** These differences often stem from uncertainties and diverging views as to how the provisions should be understood, especially because of the challenges linked to the new digital environment. They may also be due to the minimum harmonisation character of IPRED. Probably most importantly, divergences stem from the fact that IPRED works against the background of very diverse national civil enforcement frameworks and judicial traditions. As a consequence, depending on where judicial proceedings are initiated, outcomes may be very different, both in terms of substance as in terms of efficiency or effectiveness. This may hamper predictability and can render enforcement difficult, in particular in a cross-border context.

The results of the public consultation on the evaluation of IPRED[17] confirm these findings. While most stakeholders felt that the existing rules have indeed helped protect IP and prevent IP infringements, many asked for more clarity on the way IPRED should be applied in practice. Rightholders and intermediaries in particular considered that IPRED's measures, procedures and remedies were not being applied consistently across the Member States, resulting in different levels of protection within the EU. While respect of IP is itself a fundamental right[18], citizens, for their part, raised concerns about the respect for their fundamental rights in IPR enforcement procedures.

Guidance on IPRED

To ensure a more consistent and effective application of IPRED, the Commission issues, by way of a separate Communication, **guidance on the interpretation and application of the measures, procedures and remedies provided for by IPRED**[19]. Drawing on Court of Justice case-law and available best practice, the guidance document sets out the Commission's views on those IPRED provisions which have caused interpretation problems. Reflecting the results of the evaluation, including the public consultation, it addresses key aspects of IPRED, notably:

- its scope;
- the meaning of the requirement that those measures, procedures and remedies must inter alia be 'fair and equitable';
- the rules on evidence, on the right of information, on the right to provisional and precautionary measures and on injunctions;
- compensation for the prejudice suffered (damages); and
- reimbursement of legal costs.

The document also provides guidance on how to apply measures set out in IPRED in a way that ensures striking a fair balance between the different fundamental rights which may be at issue in IP litigation while avoiding disproportionate outcomes and abusive litigation.

IP litigation, in particular in the digital age, might take place simultaneously in several Member States. For instance, copyright holders seeking to fight illegal online content may have to lodge claims in several Member States in relation to the same infringement, at the same time. Applying for the same remedy for the same infringement in more than one

[17] The results of the public consultation are available on the Commission website at: http://ec.europa.eu/growth/content/have-your-say-enforcement-intellectual-property-rights-0_de

[18] See Article 17(2) of the Charter of Fundamental Rights.

[19] Commission Communication, *Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights*, COM(2017) 708.

jurisdiction generally involves significant costs and lengthy procedures however, in particular where no uniform EU IP title exists and where, because of differences in substantive law, exceptions and limitations may be applied in a different manner across Member States. While it does not and cannot address all the challenges that exist in this regard[20], by helping to achieve a more coherent interpretation and application of IPRED, the guidance on IPRED should make it easier for rightholders to engage in **cross-border litigation**.

The guidance is without prejudice to enforcement action the Commission could consider taking under Article 258 TFEU, and which will be in line with the interpretation set out in the guidance document.

The roles and responsibilities of **intermediaries**, in particular online intermediaries, emerged as an important concern for stakeholders in both the evaluation and the public consultation. As the Guidance clarifies, the possibility to issue an injunction against an intermediary on the basis of IPRED does not depend on the intermediary's liability for the (alleged) infringement in question.[21] In fact, the e-Commerce Directive[22] governs the conditions under which certain online intermediaries are exempt from liability. Whilst in its 2016 Communication on online platforms[23] the Commission considered that this framework provided by this latter Directive is still fit for purpose, the Commission recently issued concrete guidance[24] designed to combine the swift and effective detection and removal of illegal content online, including IP-infringing content, with the necessary legal safeguards, for instance through so-called notice-and-action procedures. Its proposal for a Directive on copyright in the Digital Single Market also provides for certain specific tools and mechanisms to achieve a well-functioning marketplace for copyright and proposed, in particular, appropriate measures taken by certain online service providers to prevent in cooperation with rightholders the availability of copyright protected content without those rightholders' consent.

Building a stronger 'IP enforcement knowledge community': improving judicial enforcement in the EU

The evaluation has shown that many rightholders complained of difficulties with regard to access to justice, lengthy and costly procedures and uncertain outcomes. The evaluation further revealed a perceived lack of transparency and predictability about the way judicial proceedings are managed and the (likely) outcomes thereof. Overall it appears that factors such as differences in national civil law traditions and judicial practices are still holding back the development of a predictable and consistent system for enforcing IPRs in the EU.

In this context, in addition to providing the IPRED guidance, the Commission **calls on Member States to step up their efforts to provide for effective and predictable civil redress** against IP infringements in the EU in accordance with IPRED and will support those efforts. In fact, more transparency and predictability would be of great benefit, in particular to

[20] As explained in Recital 11 of IPRED, that Directive does not aim to establish harmonised rules for judicial cooperation, jurisdiction, the recognition and enforcement of decisions in civil or commercial matters, or deal with applicable law, there being other instruments of EU law governing such matters in general terms which are in principle equally applicable to IP.

[21] See section IV.1 of the Guidance.

[22] 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 (OJ L 178, 17.7.2000, p. 1).

[23] Commission Communication, *Online Platforms and the Digital Single Market Opportunities and Challenges for Europe*, COM(2016)288 of 25 May 2016.

[24] Commission Communication, *Tackling Illegal Content Online – Towards an enhanced responsibility of online platforms*, COM(2017) 555 of 28 September 2017.

SMEs. It would facilitate their access to justice and help promote the roll-out of affordable IP litigation insurance schemes[25].

As a first step, the Commission will work closely with the Member States and stakeholders to seek to complement the guidance document referred to above, where necessary and appropriate, with **further, more targeted guidelines** to support a homogeneous and effective enforcement of IPRs in the EU. To this end it will identify, together with national experts, including national judges, and other stakeholders, some concrete issues and problem areas where further specific guidelines, based on best practice experiences, would be useful. A concrete case in this respect could be the calculation of damages and evidence needed to compensate for the harm caused by IPR infringements.

The Commission intends to publish all guidance on IP enforcement online, inter alia, via the Your Europe portal[26] so that practical information about judicial enforcement of IP rights in the EU is available not only to judges and legal practitioners, but to all stakeholders.

Further, as the IPRED evaluation has shown, having **judges specialised in IPR and in particular in IPR enforcement** is very important for the effective and efficient use of IPRED's measures, procedures and remedies. Such specialisation can bring considerable advantages, especially faster, more efficient and more consistent decisions leading to greater legal certainty. The Commission therefore calls on Member States to increase such specialisation.

Another element to enforce IPRs more effectively and consistently in the EU is the availability of **judicial training** and the **development of best practices**. To support Member States' efforts in this area, the Commission will further step up its work with the Observatory to develop a comprehensive curriculum of seminars and training sessions for judges. This should encourage networking and learning practices among judges dealing with IPR infringements. In this context, three dedicated seminars are foreseen for 2018.

Finally, **transparency** about judgments on IPR enforcement is an essential pre-requisite for knowledge exchanges across the single market, more predictability and a cross-border debate among IP practitioners. To date, however, only a few Member States have published IP-related case law on dedicated websites, and rules on availability and publication differ rather widely. The Commission therefore calls on Member States to **systematically publish** judicial decisions in proceedings relating to IPR infringements, at least from appeal courts and higher[27]. For its part the Commission will, together with the EUIPO and the Observatory, step up work on the **case law collection database** launched by the EUIPO to make it as comprehensive and as user-friendly as possible.

Apart from more effective judicial enforcement systems, the development of further **alternative dispute resolution** (ADR) tools should also be considered. Using ADR for mediation and arbitration can serve as an alternative means of IP enforcement. Whilst it is still rarely used to settle IP claims, ADR solutions have advantages (for example, cross-border issues can be resolved more easily, and ADR can be faster and cheaper than court litigation). Together with the EUIPO, the Commission is currently mapping existing ADR tools and

[25] As announced in its Start-up and Scale-up Initiative, (*Putting intellectual property at the service of SMEs to foster innovation and growth*, SWD(2016) 373 of 22 November 2016), the Commission is taking action to stimulate the roll-out of such IP insurance schemes in Europe, in particular to help SMEs.

[26] www.youreurope.be

[27] This should be done in compliance with legislation on the protection of personal data. As a separate matter, Member States must also comply with Article 15 of IPRED, which enables judicial authorities to order the publication of judicial decisions, at the request of applicants and at the expense of infringers.

analysing the merits of establishing a mediation centre at the EUIPO to cover trade mark and design issues. It also intends to work with the future Unified Patent Court on the development of mediation and arbitration in patent cases. This should help roll out an EU IP mediation and arbitration network, as announced in the Start-up and Scale-up Initiative[28].

With the view to further improving the system of judicial enforcement in the EU, the Commission:

- provides guidance on how to interpret and apply key provisions of the IPR enforcement Directive (IPRED);

- will work with Member States' national experts and judges on further, more targeted guidelines, to give more detailed and practical guidance on specific IPRED issues, based on best practices experience;

- will bring the above-mentioned guidelines and best practices online, *inter alia* via the Your Europe portal;

- calls on Member States to encourage the specialisation of judges for IP and IP enforcement-related matters, and to systematically publish judgments rendered in IP enforcement cases;

- will, together with the EUIPO, take further action to facilitate the wider use of alternative dispute resolution (ADR) to settle IP disputes, including mapping existing ADR tools and analysing the merits of establishing a mediation centre at the EUIPO.

III. STEPPING UP INDUSTRY-LED EFFORTS TO PREVENT AND COMBAT IP INFRINGEMENTS

The fight against IP infringements should be a joint effort involving all actors, both public and private, and make use not only of judicial enforcement but of all possible tools. For a number of years, the Commission has been working with the industry to support and promote industry-led actions against IP infringements. The idea is to encourage **due diligence** by all parties potentially involved in the development of and transactions related to products or content that are IPR-infringing, including suppliers, advertising agencies, payment service providers as well as the rightholders themselves. Despite significant progress, more can and should be done to stop the proliferation of IP-infringing goods and practices.

Fully exploiting the potential of voluntary agreements

The Commission encourages more stakeholder dialogues to promote an effective cooperation between industry partners in the fight against IP infringments and spread best industry practice. A first Memorandum of Understanding ('MoU') was concluded between rightholders and internet platforms in 2011 and updated in 2016[29]. It sets out a cooperative approach for fighting the sale of counterfeit goods. Since then, two further developments can be noted:

Firstly, in the context of this first MoU on counterfeiting, **key performance indicators** ('KPIs) have been introduced to assess the results of the voluntary agreement and identify possible areas for further improvement. The results of a first monitoring cycle on the basis of these KPIs show that **the MoU is proving effective and has already yielded significant**

[28] See footnote 26.

[29] Memorandum of Understanding on the sale of counterfeit goods via the Internet of 21 June 2016, available at http://ec.europa.eu/DocsRoom/documents/18023/attachments/1/translations. The MoU applies to trademarks, designs and copyright.

results. They show that voluntary cooperation can substantially contribute to curbing online counterfeiting and can deliver efficient solutions. Since the MoU came into effect, a substantial amount of offers for counterfeit products have been removed from online platforms, mainly as a result of more pro-active and preventive measures. However, given that IP infringing goods increasingly find their way onto the single market, the Commission encourages all signatories and new participants to intensify their efforts[30].

Secondly, under the auspices of the Commission, stakeholders are finalising their work towards the conclusion of a **new MoU aimed at withholding advertising on IP infringing websites.** Revenues from advertising are an important income stream for such sites and the measures to be agreed should help cut off this important source of support for IP infringers. The presence of ads for household brands and well known payment services on IP infringing sites can lead consumers to believe that the site they are accessing is providing access to content, goods, or services in a legal manner, when in fact it is not. This can confuse consumers, eroding their confidence, and thereby damaging brand equity.

Work is also underway on an MoU for the **transport and shipping industries.** It aims to prevent the services of these companies from beeing used by commercial-scale counterfeiters to channel fake goods into the EU. A further MoU in preparation is expected to cover providers of **payment services**, which are often vital for IP-infringing online offers.

The Commission supports the further development of these voluntary agreements, in particular in an online environment, and will seek to ensure that all signatories act diligently and in full respect of EU law generally, and of Articles 101 and 102 TFEU in particular. It will also seek to ensure that a proper balance is found between the various interests of the parties involved and that consumers rights are duly respected. The Commission will promote as well a wide participation to such agreements of all sectors and industries.

The Commission considers that the monitoring of such MoUs should be based on key performance indicators. It will report regularly on the effectiveness of these agreements, with a view to distilling best practice; identifying areas for future improvement and assessing the need for legislative measures at EU level.

Protecting supply chains against IP infringement threats

Another strand of work involving the Commission, industry and other partners seeks to protect supply chains against threats of counterfeiting and other IP infringements. Here, too, challenges are multiplying. A workshop on due diligence and supply chain integrity for IP protection in 2015[31] concluded that companies are increasingly confronted with cases of counterfeit products (such as, for instance, counterfeit electronic parts) infiltrating their supply chains. This is largely due to the fact that supply chains are increasingly complex, making it often difficult for companies — SMEs in particular — to monitor their suppliers and sub-suppliers. Furthermore, the emergence of new technologies and the internet has helped infringers improve their counterfeiting techniques and infiltrate legitimate supply chains. There are best practices for supply chain transparency (risk management, corporate social responsibility). However, they are not used routinely to detect and combat IP infringements.

[30] More details on the results of the first monitoring cycle of the MoU on counterfeiting — including analysis using the key performance indicators and the results of a stakeholder survey — can be found in the Staff Working Document *overview of the functioning of the Memorandum of Understanding on the sale of counterfeit goods via the internet*, SWD(2017) 430 attached to this Communication.

[31] The video of the workshop is available on the Commission website at:
http://ec.europa.eu/growth/industry/intellectual-property/enforcement/index_en.htm.

A lack of due diligence weakens the security of the supply chain and allows in counterfeits, which are harmful to businesses and expose citizens to risks.

In the view of the Commission there is an urgent need to further harness supply chains against counterfeits. This can be done by testing out new tools and helping to build and expand best practices.

Traceability of goods is a cornerstone of supply chain security, consumer safety and quality of products. The Commission will consequently seek to enhance the cooperation between rightholders and key actors such as standard organisations and security solutions providers in order to facilitate the dissemination of traceability technologies[32] and support the emergence of new traceability and authentication systems such as **blockchain**. By recording assets, transactions and participants, this shared digital ledger provides valuable information about the origin and history of products, so that they can be tracked and authenticated more easily. Blockchain-based solutions may therefore make it possible to detect rapidly counterfeit parts or products that have entered legitimate supply chains, as well as a possible diversion of goods to illicit marketplaces[33]. As part of its project #Blockchain4EU: Blockchain for Industrial Transformations, the Commission is analysing how blockchain can be used to strengthen the transparency of supply chains and better protect IPRs. Together with the Observatory, the Commission will further map and test (in particular through *Blockathon*) different possible uses of blockchain in the fight against counterfeits and identify potential legal and economic barriers to its take-up[34].

In addition, there is also scope for more awareness-raising and more widespread best practice. Industries should be made aware of the need to protect their supply chains and should be encouraged to take action for better protection. The **further inclusion of IP protection in accreditation processes** can bring a helpful tool in this context. For instance, on 10 May 2017, a new ISO standard on sustainable procurement was adopted (ISO 20400) containing for the first time an explicit reference to measures to combat IP infringement. The Commission will now seek to further promote this standard through information sessions to companies[35] or larger IP enforcement events[36].

Moreover, the Commisison will also look more closely at how compliance with IP protection standards could become part of the process for acquiring the **status of 'authorised economic operator (AEO)'**[37] in the future. The AEO concept is based on a World Customs Organization (WCO) customs-to-business partnership. The AEO is granted by the customs authorities and gives economic operators certain benefits in customs procedures. It is open to all supply chain actors who meet certain quality criteria set out in EU customs rules and work in close cooperation with customs authorities to ensure the security and integrity of supply chains. The fight against counterfeiting could further gain prominence here. In order to

[32] The Joint Research Centre of the European Commission carried out an extensive mapping of authentication technologies and track and trace systems, which was published in 2016, available at: http://publications.jrc.ec.europa.eu/repository/bitstream/JRC104204/kjna28400enn.pdf

[33] Provided, of course, that blockchain-based solutions comply with applicable law, notably as regards the protection of personal data.

[34] The Commission will also launch an 'EU Blockchain Observatory and Forum', together with the European Parliament.

[35] For instance, with the support of IPR Helpdesks.

[36] ISO 20400 was addressed during the IP Enforcement Summit held in Berlin on 23 June 2017.

[37] https://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo_en

increase supply chain security, economic operators are encouraged to choose trusthworthy partners who have efficient compliance schemes, such as AEO, in place.

Finally, specific attention should be paid to the **situation of SMEs**, who often have very limited means to harness their supply chains. The EUIPO is launching a specific study into this, with the view to distilling best practice and offering concrete solutions.

The Commission calls on industry to undertake the necessary due diligence steps to combat IP infringements. To support the industry in these efforts and to promote best practice, it will:

- further engage with stakeholders to improve and expand voluntary agreements to fight IP infringements. It will work on promoting dedicated MoUs involving rightholders, internet platforms, advertising companies, shippers and payment service providers;

- continue to monitor the functioning and effectiveness of such MoUs and report on their results;

- further promote due diligence in supply chains, explore the potential of new technologies such as blockchain and encourage the use of existing accreditation processes to introduce IP compliance schemes.

IV. FIGHTING IP INFRINGMENTS THROUGH ENHANCED ADMINISTRATIVE COOPERATION

There is now a wealth of information on the value and impact of counterfeit and pirated goods[38], on the origin of criminal organisations and the routes they use to channel these goods into the EU[39]. Thanks to a huge data collection effort[40], the worst affected sectors have now been identified, the routes are known, the evidence is there. It is time, therefore to join forces within the EU and to step up the fight against IP infringements at its borders and beyond.

To improve respect for IPRs within the EU, the Commission will seek to **enhance cooperation between all the relevant authorities**. First, it will explore how economic and trade inspection bodies, along with consumer protection authorities, can be more closely involved in combating counterfeiting and piracy. In some Member States this is already the case; in others it is not. Based on existing best practices in some areas and Member States, the Commission will discuss with Member States how to secure the proper involvement of all relevant authorities. The Commission will for instance continue to stimulate the sharing of best practices between Member States in the agri-food sector for the control and enforcement in particular of geographical indication (GI) rights, including the continuation of the audit programme of Member States' control structures.

[38] See Europol/EUIPO, *Situation Report on Counterfeiting and Piracy in the European Union*, 2017, at: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Situation%20Report%20EUIPO-Europol_en.pdf.

[39] See OECD/EUIPO, *Mapping the Real Routes of Trade in Fake Goods*, of June 2017, available at: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Mapping_the_Real_Routes_of_Trade_in_Fake_Goods_en.pdf.

[40] More publications on specific issues regarding IP and infringements are available at the homepage of the Observatory: https://euipo.europa.eu/ohimportal/en/web/observatory/observatory-publications.

Further, together with the EUIPO and Europol, the Commission will map the various databases used in the fight against counterfeiting to identify data gaps and possible ways of improving data-sharing among the relevant authorities.

Together with the EUIPO, and based on the evidence and data collected, the Commission will also seek to work with Member States to **raise further public awareness** about the role of IP and the negative effects of IPR infringements.

To **fight counterfeiting and piracy at the Union's borders**, the Commission will continue assisting Member States in **customs enforcement**. It is currently assessing how the Customs Action Plan to combat IP infringements has performed over the 2013-2017 period[41]. It will report on this still in 2017 and take the necessary next steps, focusing on the following priorities:

- ensuring homogeneous implementation of IPR border enforcement legislation throughout the EU;
- strengthening customs cooperation and exchange of information with police and other enforcement authorities;
- developing risk management tools for IPR enforcement.

Furthermore, the Commission recalls the obligations on Member States to transpose the new EU rules laid down in the Trade Marks Directive, including the regime for public authorities. These rules serve inter alia to stop the flow of counterfeit goods, including those in transit[42].

Counterfeited products usually do not comply with EU product legislation and may constitute a safety risk for consumers. As this Communication focuses on a better enforcement of EU IPR legislation, the enforcement of other EU product legislation will be addressed in the forthcoming 'Goods Package', as announced in the Single Market Strategy.

The Commission will:

- together with the EUIPO, ensure that relevant enforcement authorities in the EU have the tools to co-operate in the fight against counterfeiting and piracy including by means of better market surveillance;

- together with the EUIPO, step up efforts to make the public more aware about risks related to IP infringements;

- offer more targeted assistance to national custom authorities, based on the results of the current Customs Action Plan, and work with the Council towards a new Customs Action Plan in 2018.

V. FIGHTING IP INFRINGEMENTS WORLDWIDE

Counterfeiting and piracy are mostly global problems requiring global responses. Measures taken within the EU should be accompanied by international efforts to prevent IP violations throughout global supply chains.

The Commission promotes the EU approach to IPR enforcement worldwide: bilaterally, in trade agreements and IPR dialogues with key trading partners; and multilaterally, in international organisations such as the World Intellectual Property Organisation (WIPO), the

[41] Council Resolution on the EU Customs Action Plan to combat IPR infringements, (OJ C 80, 19.3.2013, p. 1).
[42] See Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of Member States relating to trade marks (OJ L 336, 23.12.2015, p. 1).

World Trade Organisation (WTO) TRIPS Council and the OECD, as well as relevant bodies such as ICANN[43]. The objective is to strengthen and standardise IP enforcement internationally and raise awareness of the damage caused by counterfeiting and piracy.

The Commission, in close cooperation with the EUIPO, is launching three **IP technical cooperation programmes** ("IP Key") with China, South East Asia and Latin America respectively. It is doing this based on the positive experience of previous cooperation programmes with China and the ASEAN region. The budget of these three programmes will total EUR 20 million between 2017 and 2020. The programmes will support the development of an effective system for IP protection in the participating countries, based on EU good practices, helping EU businesses protect their IP rights in these markets.

As part of the Strategy for the Protection and Enforcement of Intellectual Property in Third Countries,[44] the Commission will publish an updated **report on the protection and enforcement of IPRs in third countries.** The Report will contain a list of new priority countries. The Commission will intensify its activities in the priority countries and focus its resources on the identified areas of concern, including free trade zones and geographical indications.

The Commission, in collaboration with the EUIPO, will set up an **IP markets watch-list**. The watch-list will identify online and physical markets situated outside the EU that are reported to engage in, or facilitate, substantial IPR infringements, and in particular piracy and counterfeiting, in relation to EU consumers. The final output of this exercise will be a list of the most problematic markets with a description of their main features. The necessary information and safeguards as regards the content and purpose of the list will be provided by the Commission. The Commission will also monitor the measures and actions taken by the local authorities in relation to the listed markets as well as the measures and actions taken by the operators and market owners to curb IP infringements.

In this context, the Commission will launch a public consultation to collect information on these markets. The data verified with the help of the Observatory will be used in the selection of the markets to be placed on the list. The first IP Markets Watch-List is to be published in the second half of 2018 and will be updated regularly.

The Commission will also continue to promote the use of online information on IP protection, including the anti-counterfeiting rapid intelligence system database (ACRIS) which gathers information on IP infringement cases affecting EU companies in countries outside the EU. To make the information online more accessible and user-friendly, the Commission intends to set up a portal bringing together the access points to its IP-related websites and databases.

To step up the fight against IP infringements in non-EU countries, the Commission will:

- publish in the first quarter of 2018 a new report on the protection and enforcement of intellectual property rights in third countries, introducing new areas (i.e. free trade zones, geographical indications);

- set up an IP markets watch-list in the second half of 2018, identifying online and physical markets that engage in or facilitate substantial IPR infringements;

- implement on the basis of annual work plans the technical cooperation programmes (the IP Key programmes) with China, South-East Asia and Latin America.

[43] The Internet Corporation for Assigned Names and Numbers.

[44] https://euipo.europa.eu/ohimportal/documents/11370/0/Report+on+the+protection+and+enforcement+of+intellectual+property+rights+in+third+countries

VI. CONCLUSION

This Communication sets out a comprehensive set of measures and actions aimed at ensuring a coordinated and effective approach across EU policies to further improve the fight against IP infringements. To ensure a maximum visibility, the Commission is working with the EUIPO to make information on all measures and actions available via a single web portal.

The magnitude of counterfeiting and piracy and their impact on our society require effective enforcement responses, involving fast and coordinated intervention from a multitude of players, both public and private, acting at every level, from local to global.

With this in mind, the Commission encourages all parties to follow up on the guidance, recommendations and actions outlined in this Communication. It will monitor the progress made and, on this basis, assess the need for further steps.

Overview of main actions

ACTION	ACTORS	TIMELINE
1. TOWARDS A MORE EFFICIENT AND PREDICTABLE JUDICIAL ENFORCEMENT REGIME IN THE EU		
Guidance on how to interpret and apply key provisions of the IPR Enforcement Directive (IPRED).	Commission	done
Working with national experts and judges on further, more targeted guidelines based on best practice.	Commission/Member States/Observatory	by 2019
Bring above guidelines and best practices online, i.a. via the Your Europe portal.	Commission/Observatory	by 2019
Encourage: - the specialisation of judges for IP and IP enforcement-related matters; - the systematic publication of judgements in IP enforcement cases.	Member States	-
Facilitate the wider use of alternative dispute resolution (ADR) to settle IP disputes, including mapping of existing ADR tools and analysing the merits of establishing a mediation centre at the EUIPO.	Commission/EUIPO	by 2019
2. STEPPING UP INDUSTRY-LED EFFORTS TO PREVENT AND COMBAT IP INFRINGEMENTS		
Improve and expand voluntary agreements to fight IP infringements, in particular by dedicated Memoranda of Understanding (MoUs) involving rightholders, internet platforms, advertising companies, shippers and payment service providers.	Commission/Industry	by 2019
Promote these MoUs; monitor their functioning and effectiveness and report on their results.	Commission/Observatory	by 2019
Promote due diligence in supply chains to combat IP infringements, explore the potential of new technologies such as blockchain and encourage the use of	Commission/Member States/EUIPO/Observatory	by 2019

existing accreditation processes to introduce IP compliance schemes.		
3. FIGHTING IP INFRINGMENTS THROUGH ENHANCED ADMINISTRATIVE COOPERATION		
Step up efforts and make the public more aware about risks related to IP infringements.	EUIPO	by 2019
Offer more targeted assistance to national custom authorities, based on the results of the current Customs Action Plan, and work with the Council Presidency towards a new Customs Action Plan.	Commission/Council	2018
4. FIGHTING IP INFRINGEMENTS WORLDWIDE		
Publish a new report on the protection and enforcement of intellectual property rights in third countries, introducing new focus areas (i.e. free trade zones, geographical indications).	Commission	First half of 2018
Set up an IP markets watch-list, identifying online and physical markets that engage in or facilitate substantial IPR infringements.	Commission	2018
Implement on the basis of annual work plans the technical cooperation programmes (the IP Key programmes) with China, South-East Asia and Latin America.	Commission/Observatory	2018-2019