

## New Intellectual Property (IP) Enforcement Policy in the EU

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Given that strategic importance of IP-sensitive industries for the EU economy, the **European Commission** (Commission) has introduced a **new initiative** with a view to strengthen the protection of EU-based IP rights by working towards a better enforcement strategy. Enhanced IP protection in the EU should allow it to compete more effectively on a global scale.

To this end, the Commission has **published two communications**: an EU Action Plan for the enforcement of Intellectual Property Rights (Action Plan) and a **strategy for the protection and enforcement of intellectual property rights in third countries** (Enforcement Strategy).

### The Action Plan

The Action Plan has two main objectives: to **impede the entry and diffusion of IP-infringing products** and to **stimulate investment, growth and employment in IP-reliant industries**. As such, it constitutes the Commission's response to the economic harm that results from commercial scale IP infringements.

The document contains a set of non-legislative steps that the Commission is intending to take in 2014 and 2015. Most notably, as a new enforcement policy tool, the Commission is intending to introduce the so-called "follow the money" approach, which aims to deprive commercial scale infringers of their revenue streams. This approach is perceived as being more effective than simply penalizing individuals for infringing IP rights, which is often done unknowingly. To this end, the Commission will seek to facilitate the development of international cooperation programs aimed at attacking the profits of commercial scale IP infringements specifically in the online environment.

Moreover, the Commission has acknowledged that it cannot attain its goals without first increasing the level of awareness as regards the economic harm caused by commercial-scale IP infringements. The European Observatory on Infringements of Intellectual Property Rights will be the organization charged with deploying targeted awareness campaigns.

The Commission will also be seeking industry views regarding the development of an EU due diligence scheme that would be used to prevent commercial-scale IP infringements or the impact of chargeback and related schemes (which could be used by consumers to decline payment on their payment cards for products that turn out not to be genuine).

Finally, the Commission will **monitor the results** of its own enforcement initiative with the publication of regular reports and studies on the economic effects of the measures taken.

### Enforcement Strategy

In 2004, the Commission developed an IP enforcement strategy which defined a broad framework for combating IP infringements in third countries. Since then, not only has there been significant technological change but also the nature and scope of the challenges to IP rights held by European companies have evolved to a considerable



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extent. These developments called for a re-orientation of the EU strategy aimed at promoting IP rights and fighting IP infringements abroad.

As such, the new **Enforcement Strategy** proposes a number of steps as regards the protection of IP outside of the EU. For example, the Commission will consistently pursue the inclusion of IPR provisions in its bilateral trade agreements. Furthermore, the Commission will work with the EU's trading partners to address systemic IP issues and key weaknesses in their IPR systems.

The Commission intends to assist IP rights holders in third countries by creating IPR Helpdesks, or by increasing the availability of IP expertise in EU delegations.

This new IP policy reflects the fact that, whereas IP holders are generally responsible for taking adequate steps to protect and enforce their IP rights, public authorities have their own role to play by providing an adequate framework for protecting rights and hence support for innovation and growth.

## Comment

The Action Plan and the Enforcement Strategy are complementary documents that—together with the EU Customs Action Plan to combat IPR infringements—establish and reflect the EU's three-pronged policy towards IP enforcement and protection:

1. The Action Plan deals with the ways of combating economic harm that results from commercial-scale IP infringements;
2. The Enforcement Strategy sets out the lines of action to enhance IPR standards and to limit trade in IPR infringing goods in third countries;
3. The EU Customs Action Plan focuses specifically on border enforcement and on developing deeper cooperation between customs authorities in the EU and in third countries.

The overall aim of the current EU policy toward IP rights is to stimulate growth and employment and to reduce the incentives for the many commercial-scale IP-infringers that undermine the EU economy.

This new policy, calling for greater protection and enforcement of IP rights, comes at a time of increased activity by the EU Commission's DG Competition in combating antitrust infringements that involve some form of misuse of IP. For example, the Commission has recently issued decisions in relation to the seeking of injunctions for FRAND-encumbered patents, as well as decisions against pharmaceutical companies concluding reverse payment patent settlement agreements (so-called "pay-for-delay" agreements). The Commission overall message seems clear: not only is the authority ready to put IP-related issues at the top of its policy agenda, it is also willing to take enforcement action by sanctioning the illegal use of IP rights.

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