

Position Paper

UEAPME¹ position on the Civil Enforcement of Intellectual Property Rights: on the Efficiency of Proceedings and Accessibility of Measures

1. Introduction

UEAPME welcomes the consultation on the civil enforcement of intellectual property rights: on the efficiency of proceedings and accessibility of measures and the possibility to comment on it at such an early state.

UEAPME is of the opinion that the enforcement of intellectual property rights are crucial to the proper functioning of the Single Market and that it is important for its success that companies have confidence in the ability of Community legislation to help them expand and to safeguard their rights effectively.

We want to draw attention to the fact that SMEs are generally not in a position to bear the high expenses required to protect intellectual property rights nor to follow the long procedures inherent to fight such an infringement. Therefore, UEAPME demands a reduction of the length, complexity and cost of procedures so as to avoid putting off small firms that are wronged.

2. Opinion on the initiative

The majority of SMEs will decide against litigation after they detected infringements or alleged infringements of intellectual property rights due to the high costs, length and the complexity of procedures. The decision not to litigate usually does not depend on the type of court concerned, whether one is specialised in intellectual property as opposed to standard commercial courts.

Once SMEs decide to take actions against infringements, it is in general not more important for SMEs to stop infringements that are committed for profit than infringements committed not for profit. Both infringements can cause significant damage to SMEs. The general intention in initiating civil law court proceedings concerning infringements of intellectual property rights is to stop the infringement activity as soon as possible and to take measures to prevent further infringements.

The amount of court fees for instituting first instance proceedings on the merits of the case concerning infringement of intellectual property rights differs in the various Member States. In Sweden e.g. one can start a copyright case for 45 Euro; in other countries, costs are significantly higher.

UEAPME is of the opinion that the level of damages awarded to the right holder in civil law cases concerning an infringement of intellectual property rights should at least equal the profits made by the infringer, to avoid any financial incentive for infringing intellectual property rights. However, collecting the infringer's profits should be one but not the only option to calculate damages. Whereas this method of calculation may lead to a fair result in many cases, in some cases, infringers may keep their profits deliberately low (eg within a group of companies

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

where the infringing activities are centred at a subsidiary that is not making any profits). In such cases, alternative methods of calculation should be available and profits made by group companies should be taken into account.

The measures and procedures for enforcing intellectual property rights are as important or even more than substantive law. The creation of a European judicial area could help to improve the effectiveness of these measures, and so could an efficient co-operation between the different actors involved in the fight against counterfeiting, including the professional organisations representing the sectors affected.

The differences which still exist between procedures for implementing complaints and penalties in the various Member States hampers activities in the Internal Market. As the legal procedures differ from one country to another, it is important to ensure that these procedures can be applied efficiently. The simplification of procedures is essential to this purpose, as well as providing appropriate training to the competent authorities and benchmarking within the EU.

Last but not least, the defense of the intellectual property rights is based on protection being obtained beforehand for these rights. Therefore, and especially when it comes to SMEs, information campaigns explaining the different mechanisms of protection and enforcement of intellectual property rights existing at the disposal of companies are of particular importance.

3. Conclusion

Raising awareness of the risk relating to the non-protection of intellectual property rights at national, European and international level for companies – but especially for SMEs – is crucial for the acceptance of an EU action by the companies.

UEAPME is of the opinion that reducing the fragmentation of enforcing intellectual property rights within the EU will increase business activities in the Internal Market.

For any further legislative steps at EU level, we urge policy makers to keep the Think Small First principle in mind from the drafting phase of the procedure until its implementation.

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