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SOFT LAW MECHANISMS AS A MEANS TO ENHANCE IP ENFORCEMENT POLICIES: SHARING PRACTICES FROM THE EUROPEAN UNION

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ABSTRACT

In the European Union (EU), intellectual property (IP) enforcement policies are characterized by a mix of legislative and non-legislative actions. The core principles are enshrined in legislation, the main piece of legislation on IP enforcement being Directive 2004/48/EC on the enforcement of IP rights. To maintain a flexible and effective IP enforcement policy, the EU also relies on non-legislative actions. This approach allows for more dynamic and sometimes targeted actions that can quickly and efficiently address new trends in IP infringement. This contribution outlines the latest efforts of the EU in this field.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

I. INTRODUCTION

1. To ensure the efficient, balanced and comprehensive enforcement of intellectual property (IP) rights, the European Union (EU) has adopted several pieces of legislation, notably Directive 2004/48/EC on the enforcement of IP rights and Regulation (EU) No. 608/2013 concerning customs enforcement of IP rights. Although not limited to the field of IP, other pieces of legislation, such as Regulation (EU) 2022/2065 on the Digital Services Act, which focuses on tackling illegal content made available online, provide further enforcement tools, enabling a comprehensive approach within the EU to the enforcement of IP rights both online and offline.

2. Beyond legislative actions, the EU is committed to amplifying its toolkit to fight IP infringements with additional soft law measures. In 2024, the European Commission issued Recommendation (EU) 2024/915 on measures to combat counterfeiting and enhance the enforcement of IP rights¹. This recommendation is the result of an extensive consultation exercise with a large set of stakeholders, which revealed the importance of non-legislative actions and leveraging best practices in crucial areas, such as increasing cooperation and information-sharing among all relevant stakeholders, promoting the use of dynamic injunctions and ecological destruction. It also recognized the importance of promoting IP awareness and training and facilitating dispute resolution. Finally, it underlined the role new technologies can play in fighting IP infringement and cybertheft.

3. Two further soft law measures have recently been adopted to make the EU IP enforcement toolkit more effective. One is Commission Recommendation (EU) 2023/1018 of 4 May 2023 on combating online piracy of sports and other live events. The Commission is currently assessing the effects of this recommendation. The other is the European Commission's E-commerce Communication, adopted in February 2025, which puts Recommendation (EU) 2024/915 into the context of a larger EU-wide effort to tackle issues related to trade on e-commerce platforms, which include not only counterfeiting but also unsafe products and environmental concerns.

4. This contribution will focus on the most effective measures contained in Recommendation (EU) 2024/915 and highlight best practices within the EU to fight counterfeiting.

II. MEASURES TO COMPLEMENT LEGISLATIVE ACTIONS

5. The stakeholder consultation that informed Recommendation (EU) 2024/915 showcased the importance of increased cooperation and sharing of information among all relevant stakeholders, particularly public authorities, rights holders and providers of intermediary services, when building any IP enforcement policy based on existing tools and existing EU legislation.

6. With this objective, Recommendation (EU) 2024/915 includes a set of non-legislative measures aimed at encouraging all actors along the value chain to take the necessary steps to enhance enforcement of IP rights. Although Recommendation (EU) 2024/915 primarily focuses on the EU market, many of its measures are equally valid in third country jurisdictions, particularly in view of the international dimension of supply chains and IP-infringing activities. Any soft law measure and its implementation must comply with applicable EU or national laws

¹ Commission Recommendation (EU) 2024/915 of 19 March 2024 on measures to combat counterfeiting and enhance the enforcement of intellectual property rights.

and with the principle of proportionality, including in relation to the processing of personal data, the right to privacy and to conduct business, and the right to an effective remedy.

A. RECOMMENDATIONS TO TARGETED CATEGORIES OF STAKEHOLDERS

7. Each player along the value chain has a unique position, enabling them to take specific actions or collect specific information. For instance, rights holders are uniquely positioned to detect, identify and notify enforcement authorities about infringing activities, particularly counterfeit goods. Intermediary services, such as transport and logistics services or payment services, can act to prevent the misuse of their services by infringers. Against that background, the EU has adopted a set of recommendations aimed at specific stakeholders.

a) Transport and logistics service providers

8. To facilitate the detection of IP-infringing activities, transport and logistics service providers are encouraged to state clearly in their terms and conditions:

(1) under what circumstances they have a right to open and inspect a shipment for assessment as to whether that shipment contains IP-infringing goods;

(2) the procedure for informing the consignee or owner of the goods of the outcome of that assessment in all circumstances, irrespective of whether evidence of IP-infringing goods is found; and

(3) the means of redress and compensation available to the consignee or owner of the shipment where shipments are opened and there is no evidence of IP-infringing goods.

These services are also encouraged to have in place a system to verify shipment-related data with the aim of sending reliable pre-arrival data to customs authorities, at their request, and thereby contributing to an effective customs risk assessment against IP-infringing activities.

b) Payment service providers

9. To prevent the misuse of their services for IP-infringing activities, payment service providers are encouraged to implement the following good practices:

(1) to state clearly in their terms and conditions, as a ground for suspension or termination of their contract with sellers, any finding, including by the competent authority, of the use of their payment services for IP-infringing activities;

(2) to set up notification mechanisms allowing rights holders using their payment services to report any IP-infringing activity;

(3) where technically and economically feasible, to have an information system in place to enable the identification of operators engaging in IP-infringing activities, across different payment services, when one payment service provider has terminated its services with such operators on the grounds of IP-infringing activities;

(4) to exchange information with other payment service providers on trends regarding IP-infringing activities and to put in place specific measures against repeated misuse of their services, particularly where there has been a finding by a competent authority that their services have been used for IP-infringing activities.

c) Social media providers

10. To prevent the misuse of their services for IP-infringing activities, social media providers are encouraged to implement the following good practices:

- (1) to support rights holders, particularly trademark holders, and competent authorities in fighting illegal use of their trademarks in social media account names, notably in private communications or closed groups, including by providing trademark holders with verified accounts;
- (2) to have appropriate systems in place to identify and act upon identification of natural or legal persons allegedly misusing their services to carry out IP-infringing activities;
- (3) to have policies in place that make administrators of social media groups aware of the risk of IP-infringing activities by social media users in private communication or in closed groups.

d) Domain name providers

11. Top-level domain (TLD) name registries and entities providing domain name registration services established in the EU and/or offering services in the EU are encouraged to implement the following good practices:

- (1) to provide in their terms and conditions that a finding of IP-infringing activities by the competent authority in relation to a domain name or its usage may lead to the termination of the registration and/or suspension and deletion of the delegation of the domain name, which means the removal of the domain name's delegation from the Domain Name System on a non-temporary basis, preventing it from resolving on the internet, typically as a step accompanying or preceding termination of registration;
- (2) to provide registrants during the registration process with links to relevant publicly available and online searchable IP registers to enable them to check the domain name for possible conflicts with registered IP rights, and to encourage TLD-name registries to replicate existing information and alter systems.
- (3) to provide for verification procedures for domain name registration data by using, for example, electronic identification solutions and/or publicly accessible registers, such as civil and commercial registers, to verify the identity of the registrant;
- (4) to take voluntary measures to detect incorrect registration data for existing domain names and to give registrants a reasonable time period to correct or complete such data, after which a notice of suspension of the delegation of their domain name may be given.

B. DESIGNATING A SINGLE CONTACT POINT FOR IP ENFORCEMENT

12. One of the first obstacles in establishing cooperation among stakeholders is the lack of an identified contact point to address issues related to IP rights and IP-infringing activities. This prevents quick and agile enforcement of IP rights and affects cooperation among stakeholders. To address this issue, Recommendation (EU) 2024/915 encourages competent authorities, rights holders and providers of intermediary services to designate a contact point for IP enforcement and to clearly indicate it on their website and other relevant channels of communication. They are further encouraged to use the EU Intellectual Property Office (EUIPO) IP Enforcement Portal (IPEP) to share their designated contact point for IP enforcement.

C. FOSTERING ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

13. Alternative dispute resolution (ADR) procedures offer a cost-effective, faster and more efficient alternative to traditional legal proceedings, especially for cross-border disputes and for small and medium-sized enterprises. Access to ADR proceedings should therefore be expanded to cover all types of IP dispute, including domain name disputes. To this end, Recommendation (EU) 2024/915 encourages national IP offices, when offering mediation, and other ADR providers to provide mediation services for IP-related disputes other than registration and opposition proceedings for all types of IP rights, including geographical indications.

14. In addition, TLD name registries established in the EU and/or offering services in the EU are encouraged to take the following steps to provide for an ADR procedure where IP rights can be invoked by:

- (1) taking into account the international good practices in this area and particularly the relevant recommendations of the World Intellectual Property Organization (WIPO) to ensure that speculative and abusive registrations are avoided as far as possible;
- (2) complying with uniform procedural rules in line with those set out in the ICANN Uniform Domain-Name Dispute-Resolution Policy.

15. Finally, after an ADR procedure where the rights holder has prevailed, and which can be considered as final or in respect of which no appeal is available, the registry is encouraged either to revoke the domain name or to transfer it to the prevailing party upon request.

D. PROMOTING THE USE OF DYNAMIC INJUNCTIONS

16. Dynamic injunctions are an important tool in addressing the evolving nature of IP infringements, particularly in the online environment. They enable courts to issue injunctions that are not limited to a specific website or domain initially identified, but can also extend to new websites, domains or technical pathways used by infringers to continue the same unlawful activity. This helps to prevent situations where infringers quickly reappear under slightly different digital identities once enforcement measures are taken and enables rights holders to reduce their enforcement costs and avoid repetitive litigation. The EU encourages its Member States to promote the use of such injunctions.

E. ENCOURAGING ECOLOGICALLY SOUND DESTRUCTION OF IP-INFRINGING GOODS

17. Traditional destruction methods can be environmentally harmful. In line with the EU agenda to develop and foster ambitious and comprehensive environmental measures, Recommendation (EU) 2024/915 encourages competent authorities and economic operators to ensure that IP-infringing goods that are ordered for destruction undergo a preparation for re-use, recycling or other recovery operations, and are incinerated or disposed of in landfill only as a last resort, when such solutions deliver the best environmental and human-health outcome.

F. LEVERAGING ARTIFICIAL INTELLIGENCE AND ADVANCED TECHNOLOGIES

18. To keep pace with increasingly sophisticated counterfeiting methods, Recommendation (EU) 2024/915 encourages economic operators – in particular intermediary service providers and rights holders – to make use of advanced technologies. This includes data-analysis methods, automated content-recognition systems and machine learning (including deep learning) to detect counterfeit goods online. Such technologies can enhance the speed and accuracy of detection, reduce the burden on enforcement authorities and strengthen preventive measures.

G. FOSTERING INTELLECTUAL PROPERTY AWARENESS, TRAINING AND EDUCATION AMONG RELEVANT STAKEHOLDERS

19. Consultations have uncovered the need for targeted actions to raise awareness around the negative effects of counterfeiting, with a particular emphasis on raising awareness about the health and safety risks of buying counterfeit products. To that end, Recommendation (EU) 2024/915 encourages EU Member States to introduce the core concepts of IP rights and their value, the ethical use of IP-protected materials, and IP infringement into their national education curricula and into vocational training, especially business studies at higher education level. They are also encouraged to promote creativity, innovation, entrepreneurship and responsible digital engagement.

20. In addition, EU Member States are encouraged to promote IP awareness in educational textbooks and the dissemination of training materials on IP rights to relevant teacher-training institutions, using educational and training materials produced and collected through the Ideas Powered @ School project managed by the EUIPO. Such materials should include evidence on the health and safety risks posed by counterfeit products.

21. Finally, EU Member States are encouraged to include tailor-made content on IP protection and enforcement in mandatory national training curricula for competent authorities, including police, customs services and public prosecution services, and in national training curricula designed for market surveillance and border and coast guard authorities. Competent authorities, including market surveillance authorities and border and coastguard authorities, are encouraged to promote the participation of their personnel in regular training sessions on IP enforcement and to share training materials with their staff.

III. CONCLUSION

22. The EU approach to IP enforcement is based on a combination of legislative and non-legislative measures. Legislation provides rights holders with a clear and predictable legal environment, while non-legislative initiatives build on this foundation to address new and emerging trends. This balanced approach allows for effective responses to the cross-border and evolving nature of IP-infringing activities. Close coordination with international partners remains essential to addressing these challenges and ensuring that enforcement efforts remain consistent, proportionate and effective across jurisdictions. Developing a soft law approach can also pave the way for adapting existing legislation by testing the impact of soft law measures and turning them into legislative measures, if they prove effective. With this in mind, the European Commission, together with the EUIPO and EU Member States, will continue its implementation and monitoring work and ensure a review of Recommendation (EU) 2024/915 to combat counterfeiting in 2027 and further guarantee a high level of protection and enforcement of IP rights.

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