Enforcement of intellectual property rights in the internal market

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PURPOSE: to enhance the enforcement of intellectual property rights in the internal market.

BACKGROUND: by providing incentives to create, innovate and trade, intellectual property rights are one of the cornerstones of a competitive, wealth-generating, knowledge-based society.

In Europe, counterfeiting and piracyhave a dramatic and damaging effect on business and they have the potential to become even more problematical due to the recent economic downturn and the growing range of fake products being sold. While luxury goods, fashion, music and film products have traditionally been targeted, today counterfeiting and piracy affect a wider variety of mass consumption goods such as foodstuffs, cosmetics, hygiene products, spare parts for cars, toys and various types of technical or electrical equipment. In particular, the increase in fake medicinesis of growing concern.

IPR infringements cause widespread economic harm and an increasing number of counterfeit products now pose a real threat to consumer health and safety. It is therefore in the interest of stakeholders and consumers alike to have a responsive enforcement system which is robust, proportionate and fair.

The Commission has implemented a legal framework within the Single Market that provides the tools to enforce IPR in a fair, effective and proportionate way. The IPR Enforcement Directive (Directive 2004/48/EC)is one of the cornerstones of this. It has harmonised the laws of Member States with regard to civil measures for the enforcement of all IPR and a proposal on criminal sanctions is currently under discussion in the Council.

The EU Customs Regulation, which allows for the detention of goods suspected of infringing IPR, is another pillar of the legal framework. The Commission is currently consulting Member States and stakeholders on how this Regulation can be further improved.

At global level the Commission has developed a long-term strategy for the enforcement of IPR in third countries.

With a principal body of laws in place, the Commission now proposes to supplement the regulatory framework with complementary non-legislative measures, in line with Competitiveness Council Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and piracy-plan.

CONTENT: the Commission seeks to ensure this by complementing the existing regulatory framework with non-legislative measures to make for more collaborative and focused enforcement across the Internal Market, in particular by:

1) Supporting enforcement through an EU Counterfeiting and Piracy Observatory: the Commission is now establishing an Observatory to serve as the central resource for gathering, monitoring and reporting information and data related to all IPR infringements. However, the Observatory should play a much wider role, becoming the platform for representatives from national authorities and stakeholders to exchange ideas and expertise on best practices, to develop joint enforcement strategies and to make recommendations to policy-makers.

Ensuring that the Observatory becomes the pan-European source of knowledge and a central resource for stakeholders and public authorities engaged in IPR enforcement activities will require close collaboration between the Commission, the Member Sates and the private sector. The aim therefore is to involve public and private representatives from across the European Union and to bring them together in partnership with consumers to cultivate a broader understanding of the problems. An important deliverable would be a publicly available Annual Report, presented by the Commission and providing specific information on core work areas.

2) Fostering administrative cooperation throughout the Internal Market: due to the international nature of IPR infringements, improving internal cross-frontier cooperation is not only a legislative obligation, it is a clear necessity, and while administrative cooperation already operates in the area of Customs it is clearly lacking in other areas and needs to be developed. Greater administrative cooperation in the field of IPR enforcement should also be seen in the wider context of a partnership between the Commission and the Member States in implementing a borderless internal market. To this end:

- an efficient network of contact points across the European Union is essential to promote rapid exchanges of information on suspect products, manufacturing sites, distribution routes and key sales points;
- Member States are called upon to appoint National Coordinators with a firm mandate to synchronise IPR enforcement issues between their respective national enforcement agencies;
- extend the role of National Intellectual Property Offices to new functions such as awareness-raising, specific support for SMEs and coordination;
- transparency needs to be improved in respect of the national structures to provide support to stakeholders at cross-border levels, particularly SMEs. A report will be presented at meetings of stakeholders and Member States, in the context of the Observatory, in the second half of 2009;
- an electronic network for information sharing on IPR infringements in the Internal Market will need to be available to a wide range of national bodies, including different enforcement agencies and national IP offices. It will need to: (i) support ?real-time? exchanges of information on goods and services infringing IPR in the internal market; (ii) allow the swift exchange of alerts concerning specific products, trends and potential threats, and (iii) provide facilities to overcome language barriers for national authorities.

3) Facilitating voluntary arrangements between stakeholders: to this end, the Commission aims to:

- encourage rights holders and other stakeholders to exploit the potential of collaborative approaches and to place more emphasis on joining forces to combat counterfeiting and piracy in the common interest, also taking advantage of possible alternatives to court proceedings for settling disputes;
- combat IPR infringements through Stakeholders' Dialogues: the Commission offers to act as a facilitator for such stakeholder dialogues on concrete topics by inviting the parties to get together, by organising meetings, by providing the administrative and

logistical support and by safeguarding, where necessary, a fair balance between all the different interests at stake;

- tackle the sale of counterfeit goods over the internet: the Commission has launched a stakeholders' dialogue on the sale of counterfeit goods over the internet. Brand owners and internet companies alike have recognised this and have committed themselves to developing a collaborative way forward. Consequently, the Commission has organised a structured dialogue between stakeholders to facilitate mutual understanding and to find solutions that will be in the interests of all concerned. However, if voluntary arrangements cannot be agreed, the Commission will need to consider legislative solutions, in particular in the context of the IPR Enforcement Directive.