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## A new Action Plan on the Enforcement of Intellectual Property Rights in EU: Toward a copyright modernization in Europe?

*//Marco Bellezza, Senior Associate Portolano Cavallo Studio legale and an AnOx 2013 Participant, analyzes ongoing changes to the enforcement of intellectual property rights in the EU.*

On July 1<sup>st</sup> the European Commission issued two new communications related to the enforcement of intellectual property rights (IPRs). The first communication focused on IPR protection between the EU and non-EU countries while the other aimed at building a “[...] renewed consensus on the enforcement of Intellectual Property Rights” through a [10 point action plan](#) which lists actions to be developed in the next future.

The latter communication is particularly ambitious and represents a turning point in the EU policies related to the enforcement of IPRs, specifically in connection with the online environment. The Commission suggests that efforts in the coming years should focus on a wide set of non- legislative measures that are able to tackle the commercial scale of IPRs’ infringements online, in addition to more traditional mechanisms.

The Commission remarks that, as a general approach, the enforcement measures “[...] must be proportionate and minimize the risk that they be abused for anti-competitive practices that could undermine the emergence of new innovative products and business model and unduly restrict fundamental freedoms.” This comes in light of the approach suggested and taken by the CJEU in its recent case-law (see [the Telekabel case](#) for reference).

Regarding online infringements, as anticipated, the Commission stresses that a different and new approach is needed to fight against the mass-scale infringements. In this field a prominent role is played by the so called “follow the money” approach which requires agreements among all the stakeholders involved (i.e. right holders, ISPs, payment-services providers, advertising providers, shippers, sellers, etc.) aimed at depriving IPRs’ infringers of their revenue streams.

The Commission devotes a point of its action plan to the “follow the money” policy planning a new stakeholder dialogue for the 2014-2015 (following the Memorandum of Understanding signed on the matter in 2011) aimed at reaching new agreements between stakeholders in order to put in place rapid response mechanisms against IPRs’ infringements. Such agreements, as stressed by the Commission, must be construed in a way compatible with the protection of fundamental rights of the subjects involved, as provided by the EU Charter of Fundamental Rights, and preserving a competitive environment.

The preference of the Commission for innovative non-legislative measures in the field of the IPRs enforcement is surely a turning point for EU, especially considering the strong apparatus of procedural instruments already prevailing on the enforcement side. But, as Ms. Neelie Kroes, vice-president of the Commission responsible for the digital agenda, very recently and effectively [remarked](#), “[...] that approach to enforcement cannot stand alone. It must be accompanied by wider and significant reform.”

The outcomes and the contributions offered in the context of the [public consultation](#) "on the review of EU copyright rules" closed by the Commission on March 2014 were promising and directed to achieve a new legislative framework with much space for exceptions and limitation to copyright in order to foster innovation and innovative business models in the rising EU digital single market. The hope is that the new Commission will handle this dossier quickly, since, as Ms. Kroes stated, "Now it's time to act."

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