



IPR ENFORCEMENT- REVISION OF THE DIRECTIVE 2004/78 (IPRED)

Letter sent to the Cabinet of the
Commissioner Barnier

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Dear Mrs Jorna,

I am writing on behalf of BEUC, the European Consumers' Organisation to express our thoughts and concerns in relation to the Commission's intention to revise the legal framework for the enforcement of Intellectual Property Rights, and namely the Directive 2004/48 (IPRED).

Firstly, I would like to underline that we strongly believe in the establishment of a fair, balanced and forward-looking framework for Intellectual Property Rights. Copyright law should aim to encourage creativity and innovation for the benefit of society as a whole. For this goal to be achieved, the interests of both creators and consumers need to be recognised and protected.

However, the adoption of stronger and longer copyright rules without proper assessment of the possible impact on consumers and the public interest, risks shifting the balance to the benefit of rights holders and to the detriment of creativity and consumers' interests.

Furthermore, the revision of the IPRED Directive in 2011 has not been included in the recently published Work Programme of the Commission nor has it been foreseen in the EU Digital Agenda. On the contrary, the European Commission has simply reserved the right to assess in 2012 whether there is a need for additional measures for enforcement of Intellectual Property Rights. This change in the timeline seems not to comply with the Commission's commitment to promoting a Digital Single Market for content online and shifts the focus on stronger enforcement.

It is surprising to see that despite the fact that the European Commission has yet to publish the first implementation report in order to assess the effectiveness of the IPRED Directive, it has been announced to the participants of the stakeholders' dialogue on illegal up- and down-loading, that DG Markt has already decided to review the Directive in 2011.

This announcement undermines the credibility of the public consultation that is expected to be launched in the coming weeks. How can the College fulfil its Treaty obligations to consult widely on policy issues and ensure a democratic and transparent process where all stakeholders have the opportunity to present their arguments, if on the other hand, key Commissioners have already made up their mind as to the Commission's decision on the consultation?

We are also concerned with the focus of the European Commission exclusively on IPR enforcement. **Further harmonisation of IPR enforcement legislation when the substantive copyright law is far from being harmonised and adapted to the digital environment is not only premature, but it also entails the risk of further fragmenting the Internal Market and shifting the balance to the detriment of consumers.**

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The argument that the provisions are out of date, since the Directive was adopted at a time when online infringements of IPRs were only marginal ignores the fact that the Copyright Directive was adopted in the late 1990s. The European Commission should give priority to revising the current system of copyright exceptions and limitations, which is not only out of date, but it also hinders innovation and creativity.

Copyright rules must evolve as the technologies that are used to create and distribute them evolve. With the new opportunities arising from the ways content is accessed and distributed there is a need to rethink the European legal framework for copyright rather than enforcement.

From the consumers' point of view, the current copyright framework is far from balanced. A number of permitted uses of copyright-protected material are only allowed as exceptions and limitations to the copyright owners' exclusive rights. However, these exceptions and limitations are not absolute conditions and consumers often face unclear boundaries as to which acts are permitted under the current copyright legislation. Just as copyright holders own some core rights and interests, consumers also hold some inviolable rights to use and disseminate protected works.

In addition, the current copyright framework which is based on an exhaustive list of optional exceptions and limitations lacks sufficient flexibility to take account of technological developments. A dynamically developing market, such as the market for online content, requires a flexible legal framework that allows new and socially valuable uses that do not affect the normal exploitation of copyright works to develop without the copyright owners' permission.

BEUC fully agrees with the statement of the previous Commission that *"There is a need to restore the balance between rights and exceptions – a balance that is currently skewed by the fact that the harmonisation Directives mandate basic economic rights, but merely permit certain exceptions and limitations"*¹. Vice-President Kroes, responsible for the EU Digital Agenda, has clearly pointed to the failure of the current copyright law, noting that *"our fragmented copyright system is ill-adapted to the real essence of art, which has no frontiers. Instead, that system has ended up giving a more prominent role to intermediaries than to artists. It irritates the public who often cannot access what artists want to offer and leaves a vacuum which is served by illegal content, depriving the artists of their well deserved remuneration."*

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As repeatedly stressed, BEUC considers the development of new, innovative and user-friendly business models that would allow consumers to access legal content online as the sole solution to fight against unauthorised use of copyright-protected material on the Internet.

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¹ Reflection Paper on creative content online.

We urge you to reconsider the approach of the European Commission regarding Intellectual Property Rights and particularly copyright with the aim of promoting the establishment of a truly Digital Single Market for content online to the benefits of both consumers and authors. A revision of the IPRED Directive, together with the forthcoming proposal on criminal sanctions for IPR infringements and the ambiguous provisions of ACTA, will simply send the signal that there is no need for new and innovative business models in order to respond to consumers' clear demand for legal content online.

We remain available to discuss this issue at your convenience.

Yours sincerely,

Ursula Pacht
Deputy Director General

Konstantinos Rossoglou
Legal Officer

Cc: Mrs Lorena Boix Alonso, Deputy Head of Cabinet of Commissioner Neelie Kroes
Mrs Eliana Garces Tolon, Member of the Cabinet of Commissioner Joaquín Almunia
Mrs Rossella Delfino, Member of Cabinet of Commissioner John Dalli
Mrs Silvia Bartolini, Member of Cabinet of Commissioner Antonio Tajani
Mrs Catherine Sustek, Member of Cabinet of Commissioner Androulla Vassiliou