



EBLIDA Position

Proposal for a Directive of the European Parliament and of the Council on measures and procedures to ensure the enforcement of Intellectual Property Rights

EBLIDA, the European Bureau of Library, Information and Documentation Associations, is an independent, non-profit umbrella organization of national library, information, documentation and archive associations in Europe. EBLIDA represents the interests of its members to the European Institutions with a focus on information society issues, including copyright, culture, education and EU enlargement.

EBLIDA promotes an unhindered access to culture and knowledge in the digital age and the role of cultural heritage institutions in achieving this goal.

The main aims of the European Commission through this Directive are to harmonize the national laws of the EU member States in this area, and to provide for new measures and procedures to enforce intellectual property rights in order to effectively combat counterfeiting and piracy.

EBLIDA welcomes this initiative from the European Commission, but is concerned with the potential impact on our community of the following articles of the proposed text:

Article 2. Scope

The wording of Article 2 could potentially widen the scope of this Directive beyond its objective. Firstly, Article 2 applies to "any" infringement of intellectual property rights deriving from the Directives as listed in the Annex. This could be construed to give too wide an application of the measures and procedures proposed by the Directive, especially since the Annex lists every Directive in the area of intellectual property rights adopted since 1986.

Secondly, it permits Member States to introduce more onerous measures and procedures for infringements committed for commercial purposes or for infringements that cause significant harm to the rights holder. The term "commercial purpose" is not defined within the Directive. Taking into account that several Member States will use the same term for the implementation of the phrase "for direct or indirect economic or commercial advantage" as mentioned in Article 5.2 (c) of the EU Directive on the harmonization of copyright and related rights in the information society (2001/29/EC), special care should be taken in using this term undefined.

Thirdly, the term "significant harm" is not specific enough and could also lead to a much wider application than intended.

According to Recital 10, the remit of Article 2 should exclude minor and isolated infringements which in themselves do not cause significant harm to the rights holder. The text of Article 2 needs to reflect this; otherwise minor infringements may end up being punishable by disproportionate penalties.

Article 9. Right of information

EBLIDA is concerned that the right of information may interfere with the protection of private data, and recommends that Member States should be obliged to establish suitable legal procedures to ascertain that the protection of private information is not unduly violated, preferably that the obligation to disclose private data information should only be on the basis of a court order.

Article 16. Alternative measures

It seems unclear in which cases this alternative measure would be applicable.

EBLIDA is concerned that this provision might apply to for instance a university whose network has carried a work infringing copyright without fault or negligence. This would be unreasonable and EBLIDA would therefore appreciate it if the Commission would clarify this provision further, in view of the risk of criminal liability based on unawareness.

Article 20. Criminal law provisions

The term "serious infringements" has been defined but insufficiently. An infringement is considered serious if it is intentional and committed for commercial purposes. To be constituted as a criminal offence, the conduct should at the very least cause substantial financial loss to the rights holder otherwise its application could be too wide.

EBLIDA therefore urges the European Commission and the Member States to redraft Article 2, 9, 16 and 20, so that their application would be in accordance with the objective of this Directive. Unrestricted, the present anti-counterfeiting and piracy Directive risks criminalizing even the most minor breach of copyright.

The Hague, August 2003

