



EBLIDA Position on the European Parliament Committee on Legal Affairs and the Internal Market Report (*First reading*) on the Proposal for a Directive of the European Parliament and of the Council on measures and procedures to ensure the enforcement of intellectual property rights

(A5-0468/2003, 5 December 2003)

EBLIDA, the European Bureau of Library, Information and Documentation Associations, is an independent, non-profit umbrella organisation 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, intellectual property rights, professional education and enlargement.

EBLIDA promotes unhindered access to culture and knowledge in the digital age, as proclaimed by the Lisbon Council 2000, and the role of cultural heritage institutions in achieving this goal.

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

In its First Reaction and Position Paper EBLIDA has welcomed this initiative from the European Commission, expressing at the same time its concern about the potential impact on our community of certain articles of the proposed text.

Our position is that the Directive should remain faithful to its purpose, namely to combat counterfeiting and piracy. It will have an unintended deadening effect on the healthy development of the information society if its scope is widened to threaten ordinary people with penalties for minor infringements. Its provisions should be consistent with its stated objectives, and should not extend to inadvertent and/or trivial infringements, for example by schoolchildren, students, library and archive staff acting in good faith on behalf of their customers, or educational institutions whose networks are misused in isolated instances in spite their proper precautions.

Further to the voting of the Draft Report by the EP Committee on Legal Affairs and Internal Market and prior to its discussion in plenary session, EBLIDA issues this new Position Paper in order to reflect its concerns about the recent amendments.

Article 1

EBLIDA supports the EP Committee on Industry, External Trade, Research and Energy (ITRE) amendment to Article 1 (Amendment 5, see [Appendix](#)), in which it is made clear that the Directive should solely apply to acts of counterfeiting and piracy.

Article 2

EBLIDA considers the scope of the Directive to go beyond its objective as it still applies to 'any' infringement. EBLIDA strongly recommends the adoption of the EP ITRE amendments 7 and 8 to Article 2 (see [Appendix](#)).

Recital 10

The original wording of this Recital limited the scope of Article 2, excluding minor and isolated infringements of intellectual property rights. The amendment adopted by the EP Committee on Legal Affairs and Internal Market has extended the remit of Article 2 beyond what should be considered to be acceptable. EBLIDA urges the European Parliament to adopt an amendment containing the original text of Recital 10 as proposed by the European Commission.

Recital 13

Recital 13 extends the scope of the Directive towards certain activities which fall outside the counterfeiting and piracy field. As the terms misleading and parasitic copying are unclear and could widen the scope of the Directive, EBLIDA strongly recommends the adoption of the wording proposed by the EP ITRE in its amendments 3 to Recital 13 and amendment 4 for a new Recital 13a (see [Appendix](#)).

Article 3

The justification for the amendment to Article 3 (Amendment 16) clearly limits the measures with a deterrent effect to counterfeiters and pirates. This should be reflected in the text of Article 3. As it stands Amendment 16 implies that every measure for any infringement shall have a deterrent effect. EBLIDA recommends the adoption of the EP ITRE Amendment 10 (see [Appendix](#)). In any case Article 3 should reflect that measures should have a deterrent effect to counterfeiters and pirates only.

Article 15 & Article 16

It remains unclear in which cases these preventive and alternative measures would be applicable. EBLIDA is concerned that these provisions 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 European Parliament and the European Commission would clarify these provisions further, in view of the risk of liability and payment of damages based on unawareness.

Article 20

EBLIDA welcomes Amendment 43 to Article 20 as adopted by the Committee on Legal Affairs and Internal Market. Criminal law is a Third Pillar issue which should not be decided in a co-decision procedure. EBLIDA urges the European Parliament to adopt Amendment 43 to Article 20 in plenary.

EBLIDA urges the European Commission, the European Parliament and the Member States to reconsider Recitals 10 and 13, and Articles 1, 2, 3, 15 and 16, in order to adjust them to the aims of the Directive without threatening the legitimate functioning of libraries, educational and cultural institutions.

The Hague, December 2003

APPENDIX
**Amendments proposed by the European Parliament Committee on Industry, External Trade,
 Research and Energy in its Opinion of 2 October 2003 (PE 332.534, Rapporteur: Luis Berenguer
 Fuster)**

Amendment 3
Recital 13

(13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field and by the resulting national provisions, and also to improve the availability of appropriate instruments to combat counterfeiting and piracy, while excluding certain activities which do not involve intellectual property in the strict sense. Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive to include acts involving unfair competition or similar activities.

Justification

It is important to emphasise here the crucial importance of improving the availability of existing instruments for combating counterfeiting and piracy.

Amendment 4
Recital 13 a (new)

(13 a) The aim of this directive is to prosecute piracy and counterfeiting, but penalties and compensation should only apply in settling intellectual property disputes where infringements entail deliberate and fraudulent acts.

Justification

The amendment takes up the idea by the rapporteur to keep the focus of the Directive on combating counterfeiting and piracy, but not to intervene in other disputes involving intellectual property rights

Amendment 5
Article 1

This Directive concerns the measures necessary to ensure the enforcement of intellectual property rights in the event of acts of counterfeiting and piracy.

Justification

It must be made clear that the aim of this directive is to combat counterfeiting and piracy, not to intervene in other disputes concerning intellectual property rights.

Amendment 7
Article 2, paragraph 1a (new)

1a. For the purposes of this directive, counterfeiting shall be deemed to exist when an intellectual property right is deliberately and fraudulently infringed.

Justification

It must be made clear that the aim of this directive is to combat counterfeiting and piracy, not to intervene in other disputes concerning intellectual property rights.

Amendment 8
Article 2, paragraph 1b (new)

1b. For the purposes of this directive, anyone in possession of such quantities or varieties of counterfeit goods that their possession cannot reasonably be explained on other grounds shall be assumed to have commercial purposes.

Justification

The aim is to establish a 'iuris tantum' presumption of commercial purposes. Anyone who has in his possession significant quantities and varieties of counterfeit goods must be presumed to have commercial purposes.

Amendment 10
Article 3, paragraph 2

These measures shall provide for means which are proportional and in keeping with the infringement in question and act as a deterrent in respect of future infringements. They shall be fair and equitable, and shall not be unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays.

Justification

If the directive is to prove successful, it is important that the measures provided should have a clearly deterrent effect on counterfeiters and perpetrators of piracy. At the same time, it is necessary to ensure an approach based on the principle of proportionality.

