

# Position Paper

## UEAPME<sup>1</sup>'s answer to the Public Consultation on the evaluation and modernisation of the legal framework for the enforcement of intellectual property rights

As a general remark, UEAPME would like to point out to that answering this kind of questionnaire is impossible for business organisations. Indeed, none of the five questionnaires issued for this consultation is really suitable for European organisations such as UEAPME. The questionnaire targeted to right holders contains very detailed questions on court procedures that we cannot answer. Thus, we will provide only general comments to the scope of the consultation.

UEAPME welcomes the intention of the EC to examine the effectiveness of the IPR enforcement framework. We also support the horizontal approach. Indeed, it is important to treat all different IPRs under the same enforcement umbrella since from a business perspective all IPRs are of equal importance. The work on protection of formal IP rights cannot be viewed in isolation from the work on Trade Secrets, although it must be hoped that a more proportionate system for the enforcement of formally registered rights would enhance their attractiveness to SMEs, in turn boosting the evaluation and recognition of IP rights as a valuable asset of business – in turn boosting access to funding and securities.

The current IPR Enforcement Directive (IPRED) framework is comprehensive enough from a legal point of view and IPR enforcement protection is of a high standard. However, in practice there are still enterprises complaining about the placing on the market of counterfeit products, especially but not exclusively in the fashion and leisure industries. Differences in the national practices about the implementation of the IPRED cause legal uncertainty. Therefore, while we believe a revision of the IPRED is not strictly needed, we back a support system to help SMEs enforcing their IP rights. Of course SMEs need support also in securing their IPRs, but the “bottleneck” for many SMEs is the enforcement, especially in cross-border situations and against big players.

The evaluation of current litigation often requires balancing different interests. Concerning the question of the establishing of blockings, one point of view should be to consider the interests of right holders to have effective legal protection against anonymous or difficult traceable third parties. On the other hand, Internet access providers should not be harmed by third parties' infringements. In fact, high litigation costs prevent innovative SMEs not only from active enforcement of intellectual property rights but also from entering into litigation and presenting arguments for their defense.

In addition UEAPME supports the “follow the money” principle. IP rights are simply the most formal development of the underlying basis of business, which is building on skills, knowledge or opportunities not available to others in order to create products for trade or exchange. Where (as is envisaged in the detailed questions) the infringement actually acts as “free advertising” then there may not be the commercial imperative to take action. But, if the rights holder suffers commercial harm then an efficient mechanism should exist to prevent or remedy the harm, so that business can grow for the benefit of society more widely.

---

<sup>1</sup>UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](https://ec.europa.eu/transparency/regexp1/index.cfm?do=groupDetail.groupDetail&id=55820581197-35).

Overall, the cross-border cooperation and coordination between judicial, inspection and customs authorities should be improved and become more effective. The knowledge that an infringement in one Member State will be treated with similar measures if identified in another, and that simply moving the product across a border will no longer be enough to shield the perpetrator from effective sanction, will act both as disincentive to infringers and a stimulus to business and trade. The creation of common approaches to all classes of rights across borders would aid both business and the authorities in processing claims efficiently. In particular the creation of specialised IP courts would enhance confidence domestically and also aid cross border communications, as the understanding of common themes will lead to more consistent outcomes.

Brussels, 27 April 2016

**For further information on this position paper, please contact:**

Chiara Aprea  
Advisor

[c.aprea@ueapme.com](mailto:c.aprea@ueapme.com)