

Kluwer Copyright Blog

What can the EU learn from a recently adopted US Joint Strategic Plan on Intellectual Property Enforcement?

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In December 2016, the Office of the U.S. Intellectual Property Enforcement Coordinator introduced a Joint Strategic Plan on Intellectual Property Enforcement (FY 2017-2019). Since 2014, on the other side of the Atlantic ocean, the European Union has been undertaking steps to complete a comprehensive modernisation of the copyright system, including a reform of the Enforcement Directive,² which was initiated in 2015. Although the proposed policies have different focuses, there are certain sections that can be compared, revealing similar approaches to particular aspects of the protection of IP rights.



The U.S. Strategic Plan and the European IP reform package are driven by the same forces. Their background justification lies in the recognition of new and unforeseen means of IP right infringement. That being so, governments from both sides of the ocean have acknowledged this fact, and have stated that ‘IP-intensive industries represent a major, integral, and growing part of the U.S. economy’ and that the EU defragmented digital internal market poses a threat to further economic development. Both EU and U.S. policies have set as their agenda the enhancement of safe and secure cross-border access and trade of intellectual goods.

Having regard to the fact that the U.S. Strategic Plan is mostly concerned with illicit trade and infringing activities, it effectively tackles all means and channels through which ‘piracy’ takes place. Measures for the better online protection of IP rights are proposed in Section 2 and are split into two objectives. The first objective is to strengthen the position of the parties involved in online purchasing and advertising activities by establishing a follow-the-money principle. The second seeks to increase the ability of consumers to locate content and products through lawful means. One of the proposed measures has recognised that search engines are the first in line for preventing illicit trade, since most of the activities began with a search query. The same proposal notes that ‘search engines have played an increasing role in curbing access to websites used to promote illicit activity’. It is also recommended that down-ranking algorithms which are able to affect the rankings of websites used for trade of counterfeit goods, including their removal from autocomplete predictions, should be used far more, since they can clearly point out to the consumer the ‘legitimate sources of content.’

The proposed reform of copyright in the EU is focused on different concerns and obstacles that threaten the proper functioning of the internal market. Article 13 poses new obligations for information society services providers that store and provide public access to works uploaded by users (e.g. Vimeo, Youtube). They will be required to undertake measures guaranteeing the functioning of agreements with rightholders that also include ‘the use of effective content recognition technologies’. The recognition technologies should enable the rightholder to achieve better control of the use of subject matter while also requesting that Member States put in place a redress mechanism available to users. Although not directly concerned with enforcement procedures, the proposed measure could presumably be used as a tool for online enforcement of rights. Such a measure was not explicitly mentioned in the U.S. Strategic plan, although it is clear that intermediaries are generally recognised as important partners in combating illicit trade and use of protected goods.

Both the U.S. and EU policies are seeking to establish new mechanisms for meeting the challenges posed by new technologies, while ‘pushing for’ additional obligations for intermediaries. From the enforcement perspective, it is encouraging to see that the proposal for the Enforcement Directive also introduces a follow-the-money approach, aimed at hopefully disrupting illegal practices within most existing channels, including social media and search engines, as is the case with the U.S. Strategic enforcement plan.

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