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## Draft council position brings IP Enforcement Directive a step closer

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The [Council of the European Union](#) has adopted a draft common position on the draft EU [IP Enforcement Directive](#), which will be the subject of a council vote on March 11. Although the common position advances the debate on the directive, it also means that it is less likely to be adopted before the new member states, which are often seen as major sources of counterfeit goods, join the European Union on May 1 2004.

Although the draft directive mainly focuses on offline issues, it may have unforeseen consequences for businesses operating in an online environment. It aims to harmonize existing national legislation on the enforcement of intellectual property rights such as copyrights, database rights and trademarks (see [IP Enforcement Directive moves closer to approval](#) and [Proposed IP directive may adversely affect digital use](#)).

The draft council position suggests a number of changes to the draft directive. It extends the obligations placed on member states to require them to decide on applicable sanctions only after considering (i) the specific circumstances of a case, and (ii) whether the infringement was intentional. The draft position also clarifies that only those who knowingly (or who should reasonably have known) engage in infringement would be liable for damages. This is in line with Article 45 of the [Agreement on Trade-related Aspects of Intellectual Property Rights](#).

In addition, the draft position states that criminal sanctions would only be imposed in the case of serious and intentional infringement. Finally, it sets out that national courts would be able to authorize the seizure of equipment and materials used in the production and/or distribution of infringing goods.

However, some of the criticisms of the draft directive have not been dealt with in the draft position. For example, corporate copyright owners might have to prove ownership before they could use any enforcement measures available under the directive. Although the draft provides for a presumption of authorship for names featured on the copyrighted work, it could be argued that this presumption only applies to natural persons, leaving corporate owners out in the cold.

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