

EU Green Paper on Counterfeiting and Piracy: A Call to Action

The European Union has an epidemic problem with counterfeits and other pirated copies of music, films and software.

These include fake music and video CDs, videocassettes, and business and leisure software, passed off to an unsuspecting public as the genuine article. This activity is not innocent fun. **Counterfeiting and piracy is big business.** Europe's software, music and audiovisual sectors are estimated to lose some **4.5 billion euros** annually from counterfeiting and piracy.

Consumers, governments and the creative industries all lose out from these activities:

- Consumers have no redress for fake video and audio products of poor quality, or incomplete or bug-ridden pirated software products.
- Governments lose literally **billions of euros** in tax revenues.
- Potential profits have attracted sophisticated, large-scale **criminal operations** into the business of piracy.
- This has cost approximately a **quarter of a million jobs** in the entertainment and software industries and diminished incentives to invest in the creation of new works and products.

With digital technology, it is possible to make greater quantities of pirate copies in shorter periods of time, and to distribute them faster and wider than ever before over the Internet. **Without quick action, the blight will only spread.** The major copyright-based associations listed below welcome the European Commission's Green Paper on Combating Counterfeiting and Piracy in the Single Market and call on the European institutions and national governments to improve enforcement and deterrence against such activities in four main ways:

1 Deterrent levels of damages and penalties, harmonised at the EU level, are vital to any effective action against piracy.

Counterfeiting and piracy have one major cause: **these activities remain profitable in the EU.** To combat such activities, it simply must be made **more risky, embarrassing and costly to pirate than to obey the law:**

- **Criminal penalties should be harmonised at a high level**, commensurate with other forms of theft. This will not only deter piracy, but will prevent the development of piracy havens in countries with lower levels of penalties.
- **Civil damages likewise should be strengthened** throughout the EU. Damages reflecting the full economic value of piracy, whether to the copyright owner or the infringer, are essential. In appropriate cases, **pre-determined and exemplary damages** should be available.
- **Attorneys' fees and costs** should be fully recoverable by successful civil plaintiffs. This puts the cost of finding and prosecuting piracy on the infringer rather than the copyright owner.

Additionally, to ensure that pirates are brought to justice, artificial barriers to proof of piracy must be eliminated:

- **Unannounced ("ex parte") search orders** should be available in civil as well as criminal cases in every Member State, as required by the WTO TRIPs treaty. Such procedures should not be unduly complicated or costly.
- **Clear presumptions of copyright ownership and subsistence** should be available.



2 Anti-piracy efforts should be co-ordinated at the Community level, with an EU agency to handle copyright-related crime.

Counterfeiting rings conduct manufacturing, packaging and distribution operations in different Member States. New technologies such as the Internet allow pirates to make their products available from one State to another. The increasingly international scope of these operations must be matched by increased Community co-ordination in anti-piracy cases that cross Member State borders. An **EU-level agency** whose remit extends to copyright-related crimes is vital to this end.

- This **specialised EU-level unit** should co-ordinate the exchange of information in cross-border investigations; work with the private sector in developing and maintaining an enforcement-related database; monitor piracy levels and case statistics inside and outside the EU; propose reforms and new legislation; and recommend trade actions against third countries.
- **Improved cross-border co-operation** among customs and law-enforcement officials is also necessary.
- **Additionally, dedicated copyright-enforcement units** within national law-enforcement bodies, charged with investigating and prosecuting counterfeiting offences are needed.

3 A comprehensive attack on counterfeiting and piracy must include effective measures to stop piracy at optical disc (CD, CD-ROM and DVD) replication plants.

Industry estimates suggest that over **100 million pirate CDs**—including music CDs, video CDs, CD-ROMs and business and leisure software—are produced in the European Union annually.

- **The single most effective step in controlling CD piracy is EU action regulating the manufacture of such optical discs**, by legislation if necessary, through registration and licensing of replication plants and compulsory use by plants of unique identification codes such as Source Identification (SID) codes. Such a step would not only prevent the considerable pirate manufacture of CDs that takes place within the Single Market, but will also set an important precedent for third countries.

4 The enforcement of European intellectual property rights should be made a key criterion in EU accession negotiations and the EU's trade relations with third countries.

- **Piracy levels** even among the first six candidates for EU membership are **well above the Community** average. Accession candidates should **not be allowed to import piracy into the EU**.

The Green Paper initiative is vital to the economic, cultural and social welfare of the European Union. We look forward to working with EU and national governments to eradicate the scourge of counterfeiting and piracy in the Single Market.



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