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UK Implementation of the Directive on the enforcement of IP rights

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The Current Position:

- Set out detail proposals for implementation in consultation (15 July – see <http://www.patent.gov.uk/about/consultations/enforce05/index.htm>);
- Consultation closes on 7 October;
- We will then implement the proposals taking account of comments received.



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Changes required to implement the Directive

- Should not be substantial;
- Additional presumptions for Article 5;
- Clarify courts powers for Articles 9, 10, 15;
- But Scotland different, and need to take account of comments from consultation.



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Analysing the implications of the Directive has not been easy:

- Scope extending to all IP, hence the Commission's statement (2005/295/EC);
- Applies to civil law and procedures in general rather than just IP;
- Different legal traditions/frameworks, even within the UK.



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Different legal history:

- Common law tradition in England & Wales;
- Mixed common & civil law in Scotland;
- During Renaissance many Scottish lawyers trained in France;
- Union of Parliaments (1707) made House of Lords final court of appeal for Scotland



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ENGLAND & WALES:

- Civil Procedure Rules introduced in 1999 with the overriding objective of enabling courts to deal with cases justly;
- Consolidate court practices and procedures;
- Part 63 deals specifically with IP;
- See http://www.dca.gov.uk/civil/procrules_fin/index.htm





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SCOTLAND

- Procedures are regulated by the Scottish Court rules;
- These are made by Lords of Council & Session as Acts of Sederunt;
- See <http://www.scotcourts.gov.uk/library/rules/index.asp>



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COURT REFORM

- Modernisation of court system in England & Wales derives from Court and Legal Services Act 1990;
- Scotland has an equivalent act, but changes have proceeded at a slower pace;
- Patent and trade mark agents do not have rights of audience in Scotland, but being considered



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IP ENFORCEMENT-BROADER ISSUES

- The response to an IP infringement needs vary depending on the particular circumstances—counterfeiting is very different to a patent validity dispute;
- A key problem for a IP right holder is assessing how to protect a right and what it will cost;
- Price transparency is recognised as a problem for legal services and a market study is investigating such issues (see <http://www.dca.gov.uk/ismarket.htm>)





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CURRENT INITIATIVES

- Alternative Dispute Resolution (ADR);
- IP Crime;
- G8 Statement;
- Reforms to the Legal System;
- See

<http://www.patent.gov.uk/about/enforcement/index.htm>



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CURRENT INITIATIVES-ADR

- IP court cases are usually very expensive;
- Increasing pressure for parties to consider ADR, particularly mediation, and to justify any decision not to consider this option;
- Patent Office held a meeting on 10 June to discuss a possible IP mediation scheme;
- Paper outlining a scheme published at end of July and under discussion.





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CURRENT INITIATIVES – IP Crime

- First National Strategy published in Aug 2004;
- First Annual Enforcement Report published earlier this year;
- See

<http://www.patent.gov.uk/about/enforcement/ipcrime.htm>



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CURRENT INITIATIVES – G8

- Gleneagles 2005 Statement “Reducing IPR piracy and counterfeiting through more effective enforcement”;
- G8 IPR meeting 12 October attended by all G8, EC, WIPO, WTO, WCO, Interpol, OECD;
- Preceded by UK co-ordination meeting on 11 October.



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CURRENT INITIATIVES – LEGAL REFORMS

- Clementi Report on future regulation of legal services in England & Wales – Gov response – Dec 2004;
- A Single Civil Court ? – Consultation closed April 2005;
- Legal services market study
- Quality in the legal services industry, a scoping study- Aug 2005.

