

**Amendment 1****Marie-Christine Vergiat, Rui Tavares, Cornelia Ernst**

on behalf of the GUE/NGL Group

**Report****A7-0175/2010****Marielle Gallo**

Enforcement of intellectual property rights in the internal market

COM(2009)0467 – 2009/2178(INI)

**Motion for a resolution (Rule 157(4) of the Rules of Procedure) replacing non-legislative motion for a resolution A7-0175/2010****European Parliament resolution on enhancing the enforcement of intellectual property rights in the internal market***The European Parliament,*

- having regard to the communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee of 11 September 2009 on enhancing the enforcement of intellectual property rights in the internal market (COM(2009)0467),
- having regard to the resolution of the Competitiveness Council of 25 September 2008 on a comprehensive European anti-counterfeiting and piracy plan,
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')<sup>1</sup>,
- having regard to Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society<sup>2</sup>,
- having regard to Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights<sup>3</sup>,
- having regard to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights<sup>4</sup>,
- having regard to Directive 2009/24/EC of the European Parliament and of the Council of

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<sup>1</sup> OJ L 178, 17.7.2000, p. 1.

<sup>2</sup> OJ L 167, 22.6.2001, p. 10.

<sup>3</sup> OJ L 196, 2.8.2003, p. 7.

<sup>4</sup> OJ L 157, 30.4.2004, p. 45.

23 April 2009 on the legal protection of computer programs<sup>1</sup>,

- having regard to the Commission Strategy for the Enforcement of Intellectual Property Rights in Third Countries of 2005 and to the Commission Staff Working Document 'IPR Enforcement Report 2009',
  - having regard to its resolution of 26 March 2009 on strengthening security and fundamental freedoms on the Internet<sup>2</sup>,
  - having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms,
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Industry, Research and Energy (A7-0000/2010),
- A. whereas free access to cultural goods and technological progress for all is the foundation of every education and development strategy,
- B. whereas innovation and creativity generate considerable added value in Europe, and whereas they must be preserved and developed, taking into account the economic context,
- C. whereas the term 'piracy' does not relate to any recent legal reality, particularly in the cultural area, and whereas it cannot be used on its own to designate an offence which has not been legally defined,
- D. whereas, like any other similar infringement of rights in a purely digital environment, illegal online file-sharing of works protected by intellectual property rights (IPR) should be addressed separately from the issue of the counterfeiting of goods,
- E. whereas the measures provided for by Directive 2004/48/EC have not yet been assessed, either from the point of view of the protection of rights or from that of their effects on consumers' rights,
- F. whereas no reliable and independent data is available as to the impact of online IPR infringements, and whereas the existing legal framework needs to be clarified to ensure a balance between all the interests at stake, including those of consumers,
- G. whereas the telecoms regulatory framework has recently been amended, with proposals for so-called graduated response schemes at EU level being rejected; whereas the revised framework instead includes provisions for standardised public interest notices which can address, among other things, copyright and infringements thereof without jeopardising data protection and privacy rights; stressing the need to respect fundamental rights in matters relating to Internet access,
- H. whereas if the issue of IPR enforcement is to be properly addressed it is important to take

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<sup>1</sup> OJ L 111, 5.5.2009, p. 16.

<sup>2</sup> Texts adopted, P6\_TA(2009)0194.

into consideration not only EU territory, but also the situation at the EU's external borders and in third countries; stressing the fact that no enforcement measure should deprive developing countries of their right to develop their own strategies by not granting them access to cultural goods and denying them the benefits of progress,

1. Notes the Communication of 11 September 2009 from the Commission concerning additional non-legislative measures;
2. Views as regrettable the fact that the Commission links the terms 'piracy' and 'counterfeiting' in its communication, thereby creating a legal grey area with regard to the offence being referred to; points out that the use of the term 'piracy' to designate the non-commercial exchange of content on-line may lead to the de facto criminalisation of millions of European citizens, particularly young people;
3. Urges the Commission to distinguish, in the above-mentioned strategy, between counterfeiting of goods, which is an obvious infringement of IPR and should be punished, and on-line file-sharing;
4. Emphasises that any effective IPR enforcement policy must start by mapping out the existing legal alternatives for on-line file-sharing and on-line access to information and focusing on the creation of more readily accessible and affordable legal on-line file-sharing platforms and instruments before imposing a blanket ban on any form of personal use of on-line data;
5. Points out that an exception to the rules on IPR exists in the cultural area: the 'private copy'; calls on the Commission to retain this exception and to adapt it to new technological progress and the Internet; stresses the potential value of authorising the sharing of copies between individuals for non-commercial use and linking that arrangement to new, mutualised forms of funding for creative endeavour;
6. Calls on the Commission to present as a matter of urgency a comprehensive strategy addressing all aspects of IPR, including their implementation;
7. Stresses that any measures taken to enforce IPR must be consistent with the European Convention for the Protection of Human Rights and Fundamental Freedoms, including Articles 6, 8 and 10 thereof, and be necessary, proportionate and appropriate in a democratic society;
8. Takes note of the Commission's view that the current civil law enforcement framework in the EU contributes to the proper functioning of the internal market and reminds the Commission that the report on the application of Directive 2004/48/EC is essential to confirm those claims;
9. Calls on the Commission to draw up the report on the application of Directive 2004/48/EC, including an assessment of the effectiveness of the measures taken, as well as an evaluation of its impact on innovation and the development of the information society, in accordance with Article 18(1) of the Directive and, if necessary, to propose amendments; calls for the report to include, too, an assessment of ways to strengthen and upgrade the legal framework in relation to the Internet, in a manner compatible with

fundamental rights, as well as an assessment of the directive's impact on the digital market in creative content and on consumers' rights;

10. Shares the Commission view that the principal body of laws with respect to IPR enforcement is already in place; points out, in this regard, that negotiations on the directive on criminal sanctions have not been successfully concluded;
11. Emphasises that the length of the protection period (from 50 years or 75 years after the author's death or 75 years in the case of a corporate body) and the excessive rights granted to the entertainment companies for media control stifle innovation and technological development; stresses that the aim of this protection is to secure a fair reward for authors and entertainers and not to guarantee additional income for distributors coupled with an entitlement to interfere;

#### **'European Observatory on Counterfeiting and Piracy' ('the Observatory')**

12. Recognises the importance of comprehensive and reliable information and data on all types of IPR infringements for the development of evidence-based and result-oriented policy making;
13. Proposes that the name of the Observatory be changed to avoid the mention of 'piracy', which is often a source of confusion and is a very controversial notion;
14. Wishes the Observatory to become a tool for collecting and exchanging data and information on all forms of all IPR infringements; its prime objective should be to compile scientific research regarding counterfeiting and IPR regulation;
15. Calls on the Commission to inform Parliament and the Council fully and comprehensively about the results of the Observatory's activities through annual reports in which the Commission draws conclusions and proposes solutions to improve IPR law;

#### **Cultivating consumer awareness**

16. Stresses the need to organise a campaign to raise awareness, at European, national and local level, of the risks to consumer health and safety arising from counterfeit products and also the adverse impact of counterfeiting and piracy from an economic and social point of view;
17. Calls on the Member States to conduct awareness campaigns about the sale of counterfeit products online, where applicable and appropriate by way of the public-interest information mechanism provided for in the Citizens' Rights Directive;

#### **Adapting intellectual property rights to the digital environment**

18. Cautions against non-legislative measures in relation to the application of IPR, as they may lead to the circumvention of legal safeguards, including those concerning data protection and privacy;
19. Stresses that support for, and development of, the provision of a diversified, attractive,

high-profile, legal range of goods and services for consumers will ensure the development of a dynamic market for online creative content;

20. Urges the Commission to rethink the critical issue of intellectual property and to invite all those active in the sector, including in particular consumers' representatives, telecom operators and Internet service providers, to join forces and seek solutions that are equitable for all parties, including large and small stakeholders and consumers, and that guarantee fair, effective remuneration to all categories of rightsholders, real choice for consumers, cultural diversity and respect for fundamental rights, including the right to data protection and privacy;
21. Asks the Commission to recognise the non-commercial file-sharing associated with alternative reward systems, including through the creation of a new exception or limitation to the making-available and reproduction rights;
22. Stresses the need to ensure that any legislative measure should not restrict in any way the fundamental rights to data protection and privacy as recognised in EU law;

#### **The international dimension and impact on the internal market**

23. Supports steps taken by the Commission with a view to identifying the best ways to further improve the EU Customs Regulation which allows the detention of goods suspected of infringing IPRs and is thus one of the pillars of the Union's legal framework for enforcing IPRs; calls on the Commission and the Member States to ensure that the detention of goods whose illegality is not proven should be as short as possible to avoid illegitimately blocking international transfers of such goods when an overriding general interest, such as public health, is at stake in countries of destination;
24. Calls on the Commission to inform Parliament fully on the progress and outcome of negotiations on the Anti-Counterfeiting Trade Agreement (ACTA); reiterates its calls on the Commission to ensure that ACTA concentrates only on IPR enforcement measures and not on substantive IPR issues and that it is not used as a vehicle for modifying the existing European IPR enforcement framework; calls on the Commission to refuse any provision that could allow trademark holders and copyright holders to intrude on the privacy of alleged infringers without due legal process, further criminalise non-commercial copyright and trademark infringements or reinforce digital rights management technologies at the cost of the rights of the public;
25. Supports the continuation and enhancement by the Commission of bilateral cooperation initiatives, including 'IP dialogues' with third countries and technical assistance projects;
26. Instructs its President to forward this resolution to the Council, the Commission, the European Economic and Social Committee and the parliaments and governments of the Member States.

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