

Amendment 2**Bernhard Rapkay, Françoise Castex**

on behalf of the S&D Group

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on behalf of the Verts/ALE Group

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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 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)¹,
- 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 society²,
- 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 rights³,
- having regard to Directive 2004/48/EC of the European Parliament and of the Council of

¹ OJ L 178, 17.7.2000, p. 1.

² OJ L 167, 22.6.2001, p. 10.

³ OJ L 196, 2.8.2003, p. 7.

29 April 2004 on the enforcement of intellectual property rights⁴,

- having regard to its resolution of 25 April 2007 on the amended proposal for a directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights⁵,
- having regard to its resolution of 29 March 2009 on strengthening security and fundamental freedoms on the Internet,
- having regard to the European Convention for the Protection of Human rights and Fundamental Freedoms and having regard to the legally binding character of the Charter of Fundamental Rights,
- having regard to its resolution of 10 April 2008 on cultural industries in Europe,
- having regard to the communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 25 June 2008 on the Small Business Act for Europe establishing the ‘Think Small First’ principle for an ambitious policy agenda for SMEs,
- having regard to its resolution of 10 March 2010 on the transparency and state of play of the ACTA negotiations,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection (A7-0175/2010),

- A. whereas commercial goods counterfeiting can constitute a genuine threat not only to consumer health and safety but also to our economies and societies,
- B. whereas scientific and technical innovation, patents and the cultural industries make a decisive contribution to the European economy, both through the number and diversity of the job openings they provide and through the wealth created; whereas the whole value-chain of the cultural economy, from creation through to distribution, must be supported,
- C. whereas knowledge-sharing and dissemination of innovation are strong traditions in the European Union; whereas access by the greatest possible number to technological progress and cultural products continues to be the foundation of education and development policy,
- D. whereas the evolving information and digital technology society creates new forms of production, distribution and consumption that call for new commercial models able to provide consumers with access to the diversity of emerging goods and services while

⁴ OJ L 195, 2.6.2004, p. 16.

⁵ OJ C 74E, 20.3.2008, p. 526.

guaranteeing appropriate remuneration for authors and other stakeholders involved in their creation,

- E. whereas data concerning the scale of IPR infringements are inconsistent, incomplete, and dispersed, and whereas an objective, independent impact assessment is needed before making any additional legislative proposal,
- F. whereas innovation and creativity have considerable added value for the European economy and, given the economic context, should be preserved and developed,
- G. whereas the phenomenon of IPR infringements in a purely digital environment, even if they represent an important challenge for the creative content industries, should be addressed separately from the issue of the counterfeiting of physical goods,
- H. whereas efforts to tackle on-line non-commercial file sharing have created a strong and damaging antagonism between the creative industries and their public, and it is therefore necessary to explore new ways of creating a synergy between the rights of the public and the revenues of authors and creators,
- I. whereas ongoing IPR infringements may lead to the collapse of the innovation sector in the EU,
- J. whereas the worldwide phenomenon of on-line IPR infringements has reached worrying proportions, particularly for the creative content industries, and whereas it has not yet been established whether the existing legal framework is capable of effectively protecting rights holders on the Internet while guaranteeing a balance between all the interests at stake, including those of consumers and citizens,
- K. whereas the creative sector should continue to develop models enabling access to creative content on-line which offer improved and cost-effective choices to consumers, including access to unlimited subscription services; whereas the development of these legal services is inhibited by the territoriality of copyright licences,
- L. whereas, in order to maintain and increase the attractiveness of what they can offer their public, producers of audiovisual media must be in a position to use all new and existing means of distribution; whereas the current system of granting licences must be adapted to the new technologies, and become more flexible,
- M. whereas a Community legal framework already exists on counterfeit physical goods, but whereas lacunae persist with regard to trade in counterfeit goods over the Internet,
- N. whereas it is necessary to assess the measures provided for by Directive 2004/48/EC on the enforcement of intellectual property rights on the internal market, from the point of view of the protection of rights and from the point of view of its effects on consumer rights,
- O. whereas the telecoms regulatory framework has recently been amended, rejecting proposals for so-called graduated response schemes at EU level, and instead including provisions for standardised public interest notices which can address, among other things,

copyright and infringement thereof without jeopardising data protection and privacy rights, and stressing the need to respect fundamental rights in matters relating to Internet access,

- P. whereas the question of a unified patent system at EU level has still to be resolved,
 - Q. whereas there are proven connections between various forms of organised crime and commercial goods counterfeiting in contrast to organised crime and non-commercial file sharing,
 - R. whereas the co-decision role of the European Parliament in commercial matters and its access to negotiation documents is guaranteed by the Lisbon Treaty,
 - S. whereas current Community law makes the development of multi-territory licensing systems difficult in many areas,
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- 1. Welcomes the progress made in the EU in harmonising the fight against counterfeiting; encourages the Commission to step up its efforts in areas that are sensitive in terms of health and safety, including those concerning medicinal products, foodstuffs, cosmetics, spare parts for vehicles and technical and electrical equipment;
 - 2. Draws attention to the serious impact of counterfeiting on the internal market and therefore calls on the Commission to review, where appropriate, the effectiveness of existing legislation; particular attention should be given to the fight against the increase in counterfeit goods from third countries and against counterfeit goods that put consumer health at risk;
 - 3. Calls on Member States and the Commission to put into place an efficient mechanism for market surveillance, in particular an early warning system for counterfeited goods, which would make it possible to have these goods rapidly withdrawn from the whole European market;
 - 4. Calls on the Commission to develop international measures for cooperation between consumer protection supervisory authorities and third countries (in accordance with Article 18 of the Regulation on consumer protection cooperation) to make it easier to impose penalties on international counterfeit goods distributors;
 - 5. Considers that, with regard to the need to deal effectively with the large quantities of counterfeit goods entering the internal market, it should as a matter of urgency be possible, on the basis of the EU Customs Regulation, for such goods to be seized and taken off the market at any point on the EU's external borders, regardless of where they were imported; stresses that a Community trade mark ensure in this respect such seamless protection across the EU; considers it vital, therefore, that the use of Community trade marks should not be hampered by the introduction of a new requirement according to which a Community trade mark would be conditional on effective use in several Member States;

6. Takes note of the Commission's view that the current civil enforcement framework in the EU is effective and harmonised to the extent necessary for 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;
7. Calls on the Commission to ensure that the measures aimed at strengthening the application of intellectual property rights in the internal market do not impinge on the legitimate right to interoperability, this being essential to competition on the digital works distribution market, *inter alia* for the authors and users of free software;
8. Calls on the European Commission to promote interoperability and technological neutrality, allowing content to be distributed regardless of the technology or format used, and allowing convertibility of content between formats;
9. Calls on the Commission to create an EU system for certification marks, which on the one hand would give a high level of IPR protection for certification marks established at European or at national level, create common rules and a legal framework for certification, guarantee, quality and safety marks, and provide additional effective tools against counterfeited goods which abuse such certification marks, and on the other hand would ensure that the use of such certification marks would achieve the desired level of safety for European consumers;
10. Notes that the EU certification mark system should provide additional protection going beyond that afforded by the collective Community trade marks and should be run by the Office for Harmonisation in the Internal Market;
11. Takes the view that the Commission should take into account the specific problems encountered by SMEs when it comes to reinforcing intellectual property rights corresponding to the principle of 'Think Small First' established by the Small Business Act for Europe, *inter alia* by applying the principle of non-discrimination for SMEs;
12. Takes account of the existence of particular formats making works accessible for those with disabilities, in particular the visually impaired, and adopts the necessary measures to promote the distribution thereof throughout the internal market and to the rest of the world; calls on the Commission to evaluate the possibility of introducing a mandatory Europe-wide exemption to increase access to works for people with disabilities, and to report its findings to Parliament;

European Observatory on Intellectual Property ('the Observatory')

13. Welcomes the establishment of the Observatory as a tool for the centralisation of statistics and data which will serve as a basis for proposals; urges the Commission to conduct a report on how best to use existing structures for cooperation between customs authorities in this field to combat criminal IPR infringements effectively;
14. Recognises the importance of comprehensive and reliable information and data on all types of markets affected by IPR infringements, as well as reliable data on the infringements themselves, for the development of evidence-based and result-oriented policy-making;

15. Wants the Observatory to become a tool for collecting and exchanging data and information on all forms of IPR infringements, with its prime objective being to compile and produce scientific research on counterfeiting and IPR regulation;
16. Calls on the European Observatory to analyse the problems relating to the storage and disposal of large quantities of counterfeit goods and to simplify the existing rules for the reuse of counterfeit goods with the consent of rights holders for the needs of non-profit organisations with social purposes;
17. Calls on the Observatory to include, where relevant, an evaluation of the impact of IPR and knowledge flows, in particular with respect to SMEs and especially those situated in less-favoured regions, in all impact assessments;
18. Calls on the Commission to clarify the tasks which are to be entrusted to the Observatory and stresses that the success of the Observatory largely depends on the involvement and cooperation of all stakeholders, including the national authorities, rights holders, consumer organisations and the industries concerned, in order to increase transparency and avoid duplication of effort;
19. Calls on the Commission to inform the European Parliament and the Council fully and comprehensively about the results of the Observatory's activities through an annual report in which the Commission draws conclusions and proposes necessary solutions to improve IPR law;
20. Requests closer involvement of the European Parliament and civil society in work on the next steps to combat infringements of intellectual property rights; in this respect, is critical of the lack of information on the progress of the stakeholders' working groups established by the Commission and the European Observatory; calls therefore for the creation of a parliamentary platform in the stakeholders' working groups;
21. Notes that the law enforcement and data protection authorities, academics, representatives of legal practitioners and civil society should be more involved in the Commission's work on combating infringements of intellectual property rights; calls therefore for these representatives to be invited to the stakeholders' working groups;
22. Urges the Commission to guarantee that the Observatory complies with EU rules in the field of privacy and data protection;

Innovating to adapt IPR to the Internet

23. Calls on the Commission to propose a comprehensive strategy on IPRs contributing to the creation of an on-line single market and adapting the European legislative framework on IPRs to current trends in society and technical developments in order to guarantee effective protection of IPRs while ensuring wide access to users;
24. Emphasises the need for a consistent, efficient and balanced system of protection of intellectual property rights, which takes into account users' rights and obligations and fundamental freedoms and supports legal clarity for both rights holders and consumers in the internal market;

25. Stresses that measures taken to enforce IPRs online with an impact on fundamental rights and freedoms must respect the Charter of Fundamental Rights of the European Union, in particular Articles 7 and 8, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Articles 6, 8, and 10; recalls in this connection that Article 17 of the Charter of Fundamental Rights of the European Union provides for the protection of intellectual property; recalls also Directive 95/45 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
26. Warns against non-legislative measures regarding the application of IPR, as they may lead to the circumvention of legal safeguards, including those concerning data protection and privacy;
27. 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;
28. Wonders about the accuracy of the word ‘piracy’ as used to designate the non-commercial exchange of content on line, which leads to a *de facto* criminalisation of millions of European citizens;
29. Urges the Commission to distinguish in the abovementioned strategy between massive unauthorised commercial or for profit dissemination of files, which is an obvious infringement of intellectual property rights and should be punished, and non-commercial online file sharing;
30. Recalls that the ‘private copy’ exception to IPRs exists in the cultural area; calls on the Commission to consider how this provision can be adapted to new technological progress and the Internet and linked to new business models for the creative sector;
31. Stresses that the European Commission, Members States and stakeholders should take into account the fact that technological development generates other forms of production, making it necessary to develop new economic and trade models which must guarantee fairer returns for all categories of rights holders;
32. Stresses that support for, and development of, a diversified, attractive, high-profile, legal range of goods and services available for consumers as soon as possible may help to tackle the phenomenon of on-line infringement; recognises in this respect that the lack of a functioning internal European digital market constitutes an important obstacle to the development of legal on-line offers;
33. Calls for specific legislation ensuring that private consumers who have legitimately received, for their own private use, reproductions of original products which are covered by protection under intellectual property rights are not required to demonstrate the legitimacy of those reproductions, but that it should be up to interested parties to prove any violation of rules under the protection of intellectual property rights;
34. Calls on the Commission to reflect on how to adapt intellectual property to new technological developments and to invite all those active in the sector, including in

particular telecoms operators and Internet service providers, to join forces in seeking solutions that are fair for large and small stakeholders as well as for consumers, and guarantee fair, effective remuneration to all categories of rights holders, real choice for consumers, cultural diversity and respect for fundamental rights, including the right to data protection and privacy and the right to access to the Internet;

35. Calls on the Commission to make proposals to the Member States and European Parliament that envisage alternative reward systems aimed at compensating authors for the on-line use of their works;
36. Calls on the Commission to think broadly about methods of facilitating industry access to the digital market without geographical borders, taking account of the particular features of each sector, by urgently addressing the issue of multi-territory licences for which there is substantial demand from consumers, and the lack of harmonised legislation with regard to copyright, as well as an effective and transparent system for rights management which would complement this existing growth in legal services;
37. Stresses that the system for granting licences should be improved on the basis of technical neutrality, in such a way that Member States have available to them a flexible, effective and transparent system which can be adapted to new technologies;
38. Calls on the Commission to review the issue of cross-border management of rights and change the current situation of legal uncertainty created by Commission Recommendation 2005/737/EC of 18 October 2005 on collective cross-border management of copyrights, taking into account the fact that copyright is inherently territorial for cultural, traditional and linguistic reasons and ensuring a pan-European licensing system providing consumers with access to the widest possible choice of content but not at the expense of European local repertoire;
39. Invites the Commission to adopt an open-ended approach to the proposals that have emerged regarding the recognition of online non commercial file sharing, by producing comprehensive data regarding the economic aspects of mutualised funding schemes for creation based on non-market exchanges of digital content (such as the 'creative contribution' or 'Kulturflatrate');
40. Considers it essential to have adequate funding for cultural and creative industries as well as for creative communities, and calls on the Council, the Commission and the Member States to take the action required, recommending mixed methods of funding and financial security, and promoting a regulatory and fiscal framework that favours cultural industries as well as creative communities, and more particularly the application of tax credits and reduced rates of VAT to all cultural products, including online works;
41. Asks the European Commission to promote availability of EU-wide licences for intellectual property rights (IPR), which have first been subject to a detailed impact assessment, taking into account the differences between content industries;
42. Draws attention, furthermore, to the growing problem of Internet-based industrial espionage and theft of data constituting industrial property, in particular technical documentation and source code;

43. Calls on the Commission to identify the particular problems and needs of SMEs, to develop specific measures to assist SMEs in disputes relating to intellectual property rights, and to enable SMEs to better protect themselves both in the EU and in third countries;

Strengthening relations with consumers

44. Takes note of the limited success of the awareness campaigns for respecting online IPR;
45. Calls on the Commission to work together with the industry to develop more diverse payment facilities that can be used for on-line and cross-border purchases by consumers who do not have access to a credit card, in order to make it easier for European consumers to buy legally-offered content, and thereby promote the digital internal market;

The international dimension and impact on the internal market

46. Supports steps taken by the Commission with a view to identifying the best ways to further improve the EU Customs Regulation and calls on the Commission and 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;
47. Calls on the Commission to pursue innovative and upgraded cooperation between administrative departments and the various sectors of industry concerned, without prejudice to the traditional and legal distinction between the roles and competences of the law enforcement and judicial authorities and of the industry;
48. Considers that any measure restricting free access to the Internet should only be issued by a judicial body;
49. Calls on the Commission to resume its cooperation with priority third countries with regard to intellectual property and to promote a balanced approach in the context of the negotiations on intellectual property under the auspices of the World Trade Organisation concerning intellectual property, particularly within the framework of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);
50. Calls on the Commission to ensure that its efforts in the negotiations on the multilateral Anti-Counterfeiting Trade Agreement (ACTA) are limited to the existing European IPR enforcement system against counterfeiting, in accordance with its resolution of 10 March 2010; reiterates its requests that the Commission keep Parliament immediately and fully informed at all stages of the negotiations and ensures that the ACTA provisions fully comply with the *acquis communautaire* on IPR and fundamental rights;
51. Reiterates its calls that the Commission ensure that ACTA concentrates only on IPR enforcement measures and not on substantive IPR issues such as the scope of protection, limitations and exceptions, secondary liability or liability of intermediaries, and that ACTA is not used as a vehicle for modifying the existing European IPR enforcement framework;
52. Calls on the Commission to refuse any provision that could allow trademark and copyright

holders to intrude on the privacy of alleged infringers without due legal process, could further criminalise non-commercial copyright and trademark infringements or reinforce Digital Rights Management technologies at the cost of the rights of the public;

Organised crime

53. Stresses the importance of fighting organised crime in the area of the counterfeiting of goods; highlights in this context the need for appropriate EU legislation on proportionate and fair sanctions and supports close strategic and operational cooperation between all interested parties within the EU, the national authorities and the private sector, as well as with non-EU states and international organisations;
54. 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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