

**Amendment 3**

**Toine Manders, Cecilia Wikström, Alexandra Thein**  
on behalf of the ALDE 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)<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 195, 2.6.2004, p. 16.

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

- 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 rights<sup>2</sup>,
- having regard to the Commission Strategy for the Enforcement of Intellectual Property Rights in Third Countries, of 2005, and the Commission staff working document ‘IPR Enforcement Report 2009’,
- 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 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 infringements of intellectual property rights (IPRs), including counterfeit goods, can constitute a genuine threat to consumer health and safety, our economies and societies,
- B. whereas scientific and technical innovation, patents and cultural industries make a decisive contribution to the competitiveness of the European economy, both through the number and diversity of the job openings they provide and through the wealth they create, and should be preserved and developed; whereas the cultural economy, from creation through to distribution, must be supported,
- C. whereas it is considered that the phenomenon of IPR infringements online has assumed worrying proportions,
- D. whereas there are proven connections between various forms of organised crime and IPR infringement, and this problem will lead to a fade-out of innovation in the European

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

<sup>2</sup> OJ C 74E, 20.3.2008, p. 526.

Union particularly for the creative content industries,

- E. whereas knowledge sharing and dissemination of innovation are strong traditions in the EU; whereas access by the greatest possible number to technological progress and cultural products continues to be the foundation of education and development policy; whereas the Internet has become one of the main sources of information for citizens, and access to it must not be jeopardised by arbitrary measures,
- F. whereas the EU, as a member of the World Trade Organisation, is bound by the Agreement on Trade Related Intellectual Property Rights (TRIPS); whereas EU Member States are thereby committed to the adoption and implementation of effective measures against all infringements of IPRs,
- G. whereas the unauthorised uploading of copyrighted material to the Internet is a clear infringement of intellectual rights and is prohibited by the World Intellectual Property Organisation (WIPO) treaties on copyright (WCT) and performances and phonograms (WPPT), to which the EU is a contracting party,
- H. whereas the creative industry should continue to develop models enabling access to creative content online 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 growth of unlawfully uploaded content online,
- I. 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 the new means of distribution; whereas the current system of granting licences must be improved in such a way that the Member States have a flexible system available to them which can be adapted to the new technologies,
- J. whereas in various areas, including the text-based and image-based sector, there are business models and channels and licensing schemes that provide broad access to works in a wide range of forms and formats, both within and across national borders,
- K. whereas the telecoms regulatory framework has recently been amended, with the rejection of proposals for so-called ‘graduated response’ schemes at EU level, and includes provisions for standardised public interest notices which can address, among other things, copyright and infringement thereof without jeopardising data protection and privacy rights; and whereas fundamental rights in matters relating to Internet access need to be respected,
- L. whereas data exist to demonstrate that IPR infringement is a problem affecting all sectors of industry and is particularly worrying for the creative and innovative industries, and there is a requirement for objective data concerning the scale of IPR infringement, obtained through an objective, independent impact assessment,
- M. whereas it has not yet been established whether the existing legal framework is capable of effectively protecting right-holders on the Internet while guaranteeing a balance between all the interests at stake, including those of consumers,

- N. whereas the measures provided for by Directive 2004/48/EC on the enforcement of intellectual property rights on the internal market have not yet been assessed, either from the point of view of the protection of rights or from that of their effects on consumer rights,
  - O. whereas it is desirable that, alongside measures to prevent offences in this area, protection should be provided for consumers who legally make use of products that are covered by protection of intellectual property,
  - P. whereas the possibility should be created in the European legal framework of harmonisation of certain aspects of copyright law among the EU Member States to avoid infringement of copyright,
  - Q. whereas proceedings against infringers of copyright must enjoy public backing in order not to risk eroding citizens' support for intellectual property rights,
  - R. whereas in the case of patents, protection is crucial in order to fight patent violations efficiently; whereas the protection of the unified patent system at EU level has yet to be resolved,
  - S. whereas, in order to address the question of IPR enforcement in the internal market properly, it is important to take into consideration not only EU territory but also the situation at the Union's external borders and in third countries, with a view to ensuring compatibility between, on the one hand, the protection of content of Community origin and the holders of rights thereto and, on the other, consumer access to non-Community content,
  - T. whereas the codecision role of the European Parliament in commercial matters and its access to negotiation documents is guaranteed by the Lisbon Treaty,
1. Welcomes the communication of 1 September 2009 from the Commission concerning additional non-legislative measures; regrets however that the communication does not deal with the legislative framework by combating intellectual property right infringements; 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 that of medicines;
  2. Calls on the Commission to present, as a matter of urgency and by the end of 2010, a comprehensive IPR strategy addressing all aspects of IPRs – particularly in the area of harmonisation of certain aspects of EU copyright legislation, including their enforcement as well as their promotion – which will remove obstacles to the creation of a single market in the online environment and adapt the legislative framework in the field of IPRs to current trends in society and to technical developments;
  3. Stresses that any measures taken to enforce IPRs must respect the Charter of Fundamental Rights of the European Union, in particular Articles 7 and 8 thereof, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular

Articles 6, 8 and 10 thereof, and be necessary, proportionate and appropriate in a democratic society; points out in this connection that Article 17 of the Charter of Fundamental Rights of the European Union provides for the protection of intellectual property;

4. Rejects any request addressed to the Commission to consider suggested systems such as a 'culture flat-rate' which would limit the scope of creators' control to adequate remuneration and distribution decisions relating to their works, would destroy the legitimate market for content and would require extensive monitoring of Internet users' activities;
5. Stresses that the creative industry should continue to improve and develop new models enabling access to creative content online which offer consumers improved and cost-effective choices; calls on the Commission to put pressure on industry to continue to improve and develop new models; furthermore requests the Commission to keep abreast of technological advancements and rapidly developing models as possible solutions in its IPR strategy; requests 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 healthy competition on the digital works distribution market, inter alia for the authors and users of free software;
6. Considers that the Commission should take into account the specific problems encountered by SMEs when it comes to reinforcing the 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;
7. In the light of the experiences undergone by right-holders in some Member States, does not share the Commission's certitude 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; calls on the Commission to draw up a 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 the directive's impact on innovation and the development of the information society, in accordance with Article 18(1) thereof and, if necessary, to propose amendments; calls for that report also to include an assessment of ways of strengthening and upgrading the legal framework with respect to the Internet;
8. Calls on the Commission to put forward appropriate legislative proposals based on Article 118 TFEU to address the issue of an effective EU patent system and welcomes in this respect the Council conclusions of 4 December 2009, on an enhanced patent system in Europe, as a significant positive development;

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

9. Recognises the importance of comprehensive and reliable information and data on all types of IPR infringements for the development of evidence-based and result-orientated policy making;
10. Notes the establishment of the Observatory as a tool for the centralisation of statistics and data which will serve as a basis for proposals to be implemented to combat effectively the

phenomena of counterfeiting and online IPR infringement; urges the Commission to produce a report on how best to use Europol and existing structures for cooperation between customs authorities in this field to combat criminal IPR infringements effectively;

11. Wishes the Observatory to become a tool for collecting and exchanging data and information on all forms of all IPR infringement, its tasks including the compilation of scientific research on counterfeiting and IPR regulation; points out that any collection of data must respect fundamental rights of the individual, in particular the right to privacy; emphasises that the Observatory must under no circumstances be used to register private information about individuals such as their IP addresses or their online behaviour;
12. 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, in order to increase transparency and avoid duplication of effort; stresses that a strict separation is necessary between the legislative role of the Commission and the roles of private stakeholders;
13. 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 necessary for the improvement of IPR law;

#### **Cultivating consumer awareness**

14. Calls on the Commission and the Member States, in association with stakeholders, to organise a campaign to raise awareness at European, national and local levels of the risks to consumer health and safety arising from counterfeit products and also the adverse impact of counterfeiting and online IPR infringement on the economy and society; emphasises the need to increase awareness, especially among young European consumers, of the necessity of respecting IPRs;
15. Calls on all parties concerned, including Internet service providers, online sales platforms, right-holders and consumer organisations, to adopt, with regard to IPR infringement and the sale of counterfeit products online, practical measures – such as brief, visible and relevant educational and warning messages – to alert and educate people on the value of copyright and the impact of IPR infringement and counterfeiting on jobs and growth;
16. Stresses the need to educate young people to enable them to understand what is at stake in intellectual property and to identify clearly what is legal and what is not, by means of targeted public awareness campaigns, particularly against online IPR infringement;
17. Calls on the Commission, therefore, to put pressure on the industry to devise even more payment facilities, in order to make it easier for European consumers to buy legally offered content, so as to increase legal downloading in the EU;

#### **Tackling online infringement and protecting IPRs on the Internet**

18. Agrees with the Commission that additional non-legislative measures are useful in

improving the enforcement of IPRs, particularly measures arising from in-depth dialogue among all those active in the sector on potential opportunities for innovation offered by new business models or other solutions that guarantee fair, effective remuneration to all right-holders, cultural diversity and respect for fundamental rights; while stressing that the growth of unauthorised file sharing of copyrighted works and recorded performances is an increasing problem for the European economy, in terms of job opportunities and revenues for the industry, as well as for government; and for these reasons requests an EU solution;

19. Finds it regrettable that the Commission has not addressed the problem of online IPR infringements; urges the Commission to address such infringements in its IPR strategy, while guaranteeing the right to Internet access; requests that the Commission clarify the distinction between online commercial and non-commercial infringement;
20. Stresses that support for, and development of, the provision of a diversified, attractive, high-profile, legal range of goods and services for consumers may help to tackle the phenomenon of online infringement; recognises in this respect that the lack of a functioning internal European digital market constitutes an important obstacle to the development of legal online offers and that the EU runs the risk of condemning to failure efforts to develop the legitimate online market if it does not recognise that fact and make urgent proposals to address it;
21. Asks the Commission, therefore, to pressure the industry to come up with new payment facilities, in order to make it easier for European consumers to buy legally offered content, thereby ensuring that legal downloading will increase in the EU;
22. 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;
23. Stresses that all parties concerned, including Internet service providers, should join in the dialogue with stakeholders in order to find appropriate solutions; in the interim, calls on the Commission to investigate the effects of current legislation, particularly Directive 2004/48/EC, in this field, on the basis of national experiences, new technological advances and rapidly developing models; such an evaluation should also cover the impact of the directive on fundamental rights under the European Convention and Charter;
24. 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 addressing urgently the issue of multi-territory licences where there is substantial demand from consumers, the lack of harmonised legislation with regard to copyright, and the importance of an effective and transparent system for rights management to complement the existing growth in services which are legal and which meet consumer demand for easier, ubiquitous, instant and customised access to content;
25. Calls on the Commission to identify the particular problems and needs of SMEs, to develop specific measures to assist SMEs in the fight against IPR infringements and to enable SMEs to protect themselves better both in the EU and in third countries;

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

26. Supports steps taken by the Commission with a view to identifying the best ways of further improving the EU Customs Regulation, which allows the detention of goods suspected of infringing IPRs and is, as such, one of the pillars of the Union's legal framework for enforcing IPRs, including in relation to counterfeit goods;
27. Calls on the Commission to pursue innovative and upgraded cooperation between administrative departments and the various sectors of industry concerned;
28. Calls on the Member States and the Commission to extend the cooperation between the Office for Harmonisation in the Internal Market and national intellectual property offices to cover the fight against IPR infringements;
29. Recognises the need to use existing institutional structures in the Member States in the fight against counterfeited goods, and therefore calls on the national patent and other intellectual property offices to provide greater support and training to small and medium-sized enterprises and to the public;
30. Calls on the Commission to step up 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, particularly in the framework of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);
31. Calls on the Commission to ensure that its efforts to further the negotiations on the multilateral Anti-Counterfeiting Trade Agreement (ACTA), with a view to improving the effectiveness of the IPR enforcement system against counterfeiting, are continued with full account being taken of the Parliament's position, in particular as expressed in its resolution of 18 December 2008 on the impact of counterfeiting on international trade, and calls on it to inform Parliament fully on the progress and outcome of the negotiations and to ensure that the provisions of ACTA fully comply with the *acquis communautaire* on IPR and fundamental rights;
32. Supports the continuation and enhancement by the Commission of bilateral cooperation initiatives, including 'IP dialogues' with third countries and technical assistance projects;
33. Notes that a big challenge for the internal market lies in combating infringements of intellectual property rights at the EU's external borders and in third countries; in this respect, calls on the Commission to create more intellectual property helpdesks in third countries (notably in India and Russia) in order to help European entrepreneurs with the more active enforcement of their intellectual property rights and to assist in combating infringements of intellectual property rights in third countries and the entry into the internal market of counterfeit goods manufactured in such third countries;

## **Organised crime**

34. Stresses the importance of fighting organised crime in the area of IPRs including counterfeit goods, in particular counterfeiting and online IPR infringement; points out in



this context the need for appropriate EU legislation on proportionate and fair sanctions and supports close strategic and operational cooperation between all the interested parties within the EU, in particular Europol, national authorities and the private sector, as well as with non-EU states and international organisations;

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35. 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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