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*Committee on Legal Affairs*

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## **DRAFT REPORT**

on ‘Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan’  
(2014/2151(INI))

Committee on Legal Affairs

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on ‘Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan’ (2014/2151(INI))

*The European Parliament,*

- 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 (‘the IPR Enforcement Directive’)<sup>1</sup>,
- having regard to Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights<sup>2</sup>,
- 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 entitled ‘“Think Small First” – A “Small Business Act” for Europe’ (COM(2008)0394),
- having regard to the communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee entitled ‘Enhancing the enforcement of intellectual property rights in the internal market’ (COM(2009)0467),
- having regard to the report from the Commission to the Council, the European Parliament and the European Social Committee of 22 December 2010 entitled ‘Application of Directive 2004/48/EC of the European Parliament and the Council of 29 April 2004 on the enforcement of intellectual property rights’ (COM(2010)0779) and its accompanying staff working document<sup>3</sup>,
- having regard to the summary made by the Commission of the responses to the public consultation ‘Civil enforcement of intellectual property rights: public consultation on the efficiency of proceedings and accessibility of measures’ of July 2013<sup>4</sup>,
- having regard to the communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee entitled ‘Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan’ (COM(2014)0392),
- having regard to the communication from the Commission to the European Parliament,

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<sup>1</sup> OJ L 157, 30.4.2004, p.45.

<sup>2</sup> OJ L 129, 16.5.2012, p.1.

<sup>3</sup> ‘Analysis of the application of Directive 2004/48/EC of the European Parliament and the Council of 29 April 2004 on the enforcement of intellectual property rights in the Member States’, SEC(2010)1589.

<sup>4</sup> [http://ec.europa.eu/internal\\_market/consultations/docs/2012/intellectual-property-rights/summary-of-responses\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2012/intellectual-property-rights/summary-of-responses_en.pdf).

the Council and the European Economic and Social Committee entitled ‘Trade, growth and intellectual property - Strategy for the protection and enforcement of intellectual property rights in third countries’ (COM(2014)0289),

- having regard to the Council Conclusions of 10 November 2014 on IPR enforcement<sup>1</sup>,
  - having regard to the Council resolution on the EU Customs Action Plan to combat IPR infringements for the years 2013 to 2017<sup>2</sup>,
  - having regard to its resolution of 22 September 2010 on enforcement of intellectual property rights in the internal market<sup>3</sup>,
  - having regard to the Committee on Legal Affairs’ letter of 24 March 2011 on the Report on the application of Directive 2004/48/EC,
  - having regard to Rule 52 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and to the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education (A8-0000/2015),
- A. whereas intellectual property rights are one of the driving forces of innovation and creativity and a key contributor to competitiveness and employment; whereas the enforcement of intellectual property rights plays a significant role in ensuring consumers’ health and safety; whereas counterfeiting is generally linked with a black economy;
- B. whereas the EU faces a high number of intellectual property rights infringements, and whereas the volume and financial value of these infringements are alarming, as reported by the Commission in its report on the application of the Directive on the enforcement of intellectual property rights (COM(2010)0779);
- C. whereas the development of e-commerce and online activities has changed the way IPR enforcement should be considered, particularly because it affords new possibilities for infringement;
- D. whereas there is a certain level of tolerance among Europeans for the idea that IPR infringements could be considered legitimate, especially among the young generation<sup>4</sup>;
- E. whereas no one should make a profit out of IPR infringements;
- F. whereas law enforcement is essential, and whereas it is of the utmost importance to find effective means of enforcing IPR;
- G. whereas IPR infringements have a particular impact on SMEs, including in business-to-

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<sup>1</sup> <http://data.consilium.europa.eu/doc/document/ST-15321-2014-INIT/en/pdf>.

<sup>2</sup> OJ C 80, 19.3.2013, p. 1.

<sup>3</sup> Texts adopted, P7\_TA(2010)0340.

<sup>4</sup> See OHIM Report ‘European Citizens and intellectual property: perception, awareness and behaviour’, November 2013.

business services, and can lead to the loss of markets and bankruptcy;

- H. whereas taking into account international aspects is fundamental for IPR enforcement as IPR infringement is a global phenomenon;
- I. whereas both online and offline infringements should be considered in policy actions against IPR infringement;
- 1. Welcomes the communication of the Commission of 1 July 2014 presenting an action plan on the enforcement of intellectual property rights; supports its approach to IPR enforcement, based on preventive actions and on policy tools which intend to deprive commercial-scale infringers of their revenues and make it more difficult for infringing goods to be put on the market;

#### ***Involving all actors in the supply chain***

- 2. Believes that all actors in the supply chain have a role to play in the fight against IPR infringement and should be involved in this process; stresses that an approach involving all actors should be developed both in the online and in the offline context;
- 3. Believes that applying due diligence throughout the supply chain would improve the business environment and contribute to preventing infringing goods from entering the market; stresses, however, that the cost-benefit ratio of qualitative auditing schemes should be well assessed and that providing support to SMEs should be considered in that respect;
- 4. Welcomes the approach of depriving IPR infringers of their revenues by means of agreements between right-holders and their partners; supports the elaboration of memoranda of understanding as soft-law measures to fight against counterfeiting and piracy, and supports the idea of developing such measures further among stakeholders;

#### ***Consumer awareness and information***

- 5. Welcomes the approach taken by the Commission to develop targeted awareness campaigns; believes that it is essential that the concrete consequences of IPR infringements for society as a whole, and for consumers and citizens individually, should be understood by all; believes that consumers should be better informed of what IPR consist of, and what can be done or not done with protected goods and content; calls on the Commission and the Member States to further develop awareness actions aimed at specific audiences and relevant markets;
- 6. Believes at the same time that consumers should be better able to identify infringing offers so that they can decide not to proceed with a given purchase; deplores the fact that the Commission's action plan does not include any action designed to improve consumers' ability to identify infringing goods and contents, and calls on the Commission to reflect further on the development of specific tools, including labelling, based on the experiences gathered by the Commission and the European Observatory on Counterfeiting and Piracy, especially with regard to the sharing of best practices;
- 7. Insists on the need to coordinate initiatives and campaigns in order to avoid duplication

of work and ensure coherence and efficiency;

### ***Developing new business models***

8. Believes that the lack of a competitive supply of non-infringing products and content makes it difficult to deter consumers from buying unlawful goods or using unlawful content; takes the view that sufficient progress has not been made in this area, and reiterates its demand that the Commission and Member States put more pressure on the industry to develop, in all Member States, licit offers that are both diversified and attractive;
9. Takes the view as well that opportunities for infringement should not be created, and that business models should be reconsidered by the industry in certain sectors;

### ***Focus on SMEs***

10. Welcomes the Commission's declared intention to support SMEs in enforcing their IPR and, in particular, to further assess SMEs' needs for future EU action;
11. Calls on the Commission to make sure that any measure taken will have a limited impact in terms of the burden and cost imposed on SMEs; in particular, calls on the Commission to assess further how SMEs could take part in qualitative auditing schemes and to identify what specific measures could be taken in favour of SMEs to this end;
12. Insists on the need to take into account SMEs when drafting legislation, and reiterates that the 'think small first' principle should be applied at all times;
13. Stresses the importance of access to justice and of the cost-effectiveness of judicial proceedings, especially for SMEs, and calls for the development of mediation services and other business-to-business alternative dispute resolution schemes in the area of IPR;

### ***European Observatory on Counterfeiting and Piracy***

14. Expresses its satisfaction about the development of the activities of the European Observatory on Counterfeiting and Piracy as a tool for collecting and exchanging data and information on all forms of IPR infringements, and welcomes in particular the efforts made and the results obtained, notably as regards the Enforcement Database and the Anti-Counterfeiting Intelligence Support Tool;
15. Calls on the Commission to make use of the data collected by the Observatory, and of the results of the Observatory's activities, to draw conclusions and propose solutions for improving IPR enforcement to be used by policy-makers; calls on the Commission to report back to Parliament on this on a regular basis;

### ***Commission's group of experts on the enforcement of IPR***

16. Welcomes the establishment by the Commission of an expert group on IPR enforcement, and calls on the Commission to invite Parliament to send experts to attend its meetings;

### ***Evolution of the legal framework***

17. Welcomes the publication of the Commission's report on the application of the IPR Enforcement Directive<sup>1</sup>, while noting that only limited conclusions can be drawn in some respects owing to the late transposition of the directive by some Member States; calls on the Commission to provide further analysis of the impact of the directive, in particular on innovation and on the development of the information society, as required by its Article 18(1) and as called for by Parliament in its resolution of 22 September 2010;
18. Takes note of the Commission's report indicating that the IPR Enforcement Directive is in some respects out of step with the digital age and insufficient for combating online infringements; calls on the Commission to come up with a detailed assessment of the limitations of the current legal framework as regards online activities and, if appropriate, with proposals for adapting the EU legislative framework to the internet environment;
19. Takes note of the finding that divergent interpretations of certain provisions of the directive result in differences in its application in the Member States, and calls on the Commission to take action to remedy the problems identified in the report, including by means of further clarification of the directive;
20. Reiterates its call for a comprehensive IPR strategy, including a complete and strong legal framework to combat counterfeiting and piracy adapted to the online environment;

#### ***International supply chains and the role of customs and international cooperation***

21. Insists on the important role played by customs and international cooperation in the fight against IPR infringement in cross-border trade;
22. Calls on the Commission to take into account, when implementing the IPR Enforcement Action Plan, of related initiatives, especially the EU Customs Action Plan to combat IPR infringements and the strategy for the protection and enforcement of IPRs in third countries;
23. Calls on the Commission to reflect further on the remaining issues raised in the context of IPR enforcement by customs, for example in relation to the storage and destruction of infringing goods;

#### ***Other issues***

24. Calls on the Commission to evaluate the implementation of each of the actions presented in the Action Plan and to report back on them to Parliament by July 2016 at the latest;

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25. Instructs its President to forward this resolution to the Council and the Commission, and to the parliaments and governments of the Member States.

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<sup>1</sup> COM(2010)0779.

