



EUROPEAN PARLIAMENT

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Committee on the Internal Market and Consumer Protection

2009/2178(INI)

12.4.2010

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

on enhancing the enforcement of intellectual property rights in the internal market
(2009/2178(INI))

Rapporteur: Zuzana Roithová

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SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. 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, enhances innovation, creates better incentives and supports legal clarity for both rights-holders and consumers in the Internal Market;
2. Considers that ongoing infringements of intellectual property rights will reduce innovation and creativity in the EU and will lead to job losses in the EU;
3. Calls on the Commission to organise the work of the European Observatory in a way which makes it possible to develop a more comprehensive view of the economic, social and societal implications of infringements of intellectual property rights, including indirect costs to the public budget, such as tax losses and loss of employment in the EU;
4. Emphasises, in order to find suitable solutions for tackling infringements of intellectual property rights in the Internal Market, the need for collection of independent, reliable and comparable data on the causes, effects, consequences and scope of infringements of different intellectual property rights and their impact on consumers and on the functioning of the Internal Market;
5. Welcomes the Commission's initiatives to enhance the enforcement of intellectual property rights and calls on the Commission and Member States to look into the long-term financing (including ensuring sufficient infrastructure and human resources) and governance of the European Counterfeiting and Piracy Observatory, where use of the existing budget of the Office for Harmonisation of Internal Market can be one of the future options; emphasises that the European Parliament should have oversight over the future governance of, and structural changes to, the European Observatory; calls on the Commission to ensure that small and medium-sized enterprises can participate actively in the European Observatory by guaranteeing that enough places are available for them in its advisory, and possibly also supervisory, bodies;
6. Draws attention to the serious impact of the infringement of intellectual property rights on the internal market and therefore calls on the Commission to review, where appropriate, the effectiveness of existing legislation and, with respect for fundamental rights, strengthen it, while also examining the possibility of adopting criminal sanctions in cases giving rise to risks to human life; 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, in which connection the causes of such increases should also be considered;
7. 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, avoiding problems similar to those faced with the CE marking;

8. 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;
9. Calls for closer cross-border cooperation and information exchange between supervisory authorities and closer cooperation between customs and market surveillance authorities concerning the infringement of intellectual property rights; ; calls on the Commission in this connection to do more to monitor the implementation by the Member States of the market surveillance regulations, particularly Regulation (EC) 765/2008 and, if necessary, bring infringement proceedings without delay;
10. 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 market everywhere in the Union;
11. Calls upon the Commission to streamline, consolidate and strengthen the cooperation and information exchanges between the Commission and the Member States, as well as within and amongst Member States, on all matters concerning the enforcement of intellectual property rights by the creation of a single, flexible and efficient coordination platform; takes the view that the European Parliament should be regularly informed of the results of this cooperation;
12. Calls on the Commission to develop international measures for cooperation by the consumer protection supervisory authorities with third countries (in accordance with Article 18 of the Regulation on consumer protection cooperation) and to step up international cooperation with their customs and market surveillance authorities to make it easier to impose penalties on international counterfeit goods distributors;
13. Considers that, with regard to the need to deal effectively with the large quantities of counterfeit goods from third countries entering the internal market, it is necessary, without violating European privacy legislation, for Parliament to be immediately and fully informed at all stages on the negotiation of the Anti-Counterfeiting Trade Agreement (ACTA), in accordance with Article 218(10) of the Treaty on the Functioning of the European Union; recalls in this regard Parliament's previous decisions on tackling intellectual property infringements, as recently decided in the amended Framework Directive on a common regulatory framework for electronic communications networks and services (2002/21/EC1); observes that the information provided should include a full impact assessment of the relationship between such an agreement and fundamental rights and European privacy legislation;

¹ OJ L 337, 18.12.2009, p. 37.

14. Welcomes the Communication from the Commission of 11 September 2009 concerning additional non-legislative measures; regrets however that the communication did not include legislative proposals to address infringements of intellectual property rights;
15. Calls on the Commission to prepare the updated EU strategy on intellectual property rights, which will propose proportional measures for effective and successful combating of infringements of intellectual property rights;
16. Calls therefore on the Commission to urgently propose a comprehensive legislative strategy addressing all aspects of intellectual property rights by the end of 2010, in order to improve their enforcement;
17. 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 for this reason the introduction of a single EU patent providing seamless protection across the EU is urgently needed; stresses, further, that using a Community trade mark ensures such seamless protection across the EU and accordingly makes effective seizure possible at all the EU's external borders; 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;
18. 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 reuse of the counterfeit goods with the consent of the rights-holders for the needs of non-profit organisations with social purposes;
19. Encourages the Commission, the Member States and stakeholders to develop more targeted and more new media-focused public awareness campaigns, including a European Day against Counterfeiting and Piracy, which would seek to empower consumers in the fight against counterfeited goods, especially to instruct them about how to recognise counterfeited goods; emphasises the need to educate, especially young European consumers, to recognise the value of intellectual property and to raise awareness of the fact that its misuse can cause a real value loss to the owners of intellectual property rights;
20. 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; is of the opinion that the possibility of proceeding against infringers of intellectual property rights should be created in the European legal framework, and reminds the Commission that the report on the application of Directive 2004/48/EC is essential to confirm those claims;
21. Reaffirms the importance of the CE mark in the fight against counterfeiting; recalls that 'the Goods Package' introduces obligations on manufacturers and importers in that they will be legally liable, and can therefore be prosecuted, if they abuse the CE mark; calls on the Commission to take these provisions into consideration when considering new proposals to strengthen the legal framework for copyright infringement;

22. Requests closer involvement of Parliament and the public in work on the next steps against infringements of intellectual property rights; in this respect criticises the lack of information on the progress of the stakeholders' working groups established by the Commission and the European Observatory; therefore calls for the creation of a parliamentary platform to the stakeholders' working groups;
23. Notes that the law enforcement and data protection authorities, EUROPOL and EUROJUST representatives, academics, representatives of legal practitioners and civil society should be more involved in the Commission's work on combating infringements of intellectual property rights; therefore calls for these representatives to be invited to the stakeholders' working groups;
24. Looks forward to the Commission communication on transposition of the IPR enforcement directive in the Member States and is prepared to discuss possibilities which would improve legal clarity for the parties involved;
25. Calls for proportionate measures to be proposed for effectively and successfully combating the negative impact of infringement of intellectual property rights in the digital environment on the internal market and calls on the European Observatory to analyse the impact of alternative systems of equitable compensation;
26. Calls on the Commission, taking into account the rapidly developing digital environment, to adapt the existing rules for combating infringements of intellectual property rights more rapidly to changes in the markets and in technologies;
27. Notes that the biggest 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 in combating infringements of intellectual property rights in third countries and the entry into the Internal Market of counterfeited goods manufactured in such third countries;
28. Calls on Member States and the Commission to extend the cooperation between the Office for Harmonisation in the Internal Market and national intellectual property offices to also cover the fight against infringements of intellectual property rights;
29. Recognises the need for the use of 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. Notes that intellectual property rights are one of the most important tools available for SMEs to enhance their competitiveness; is concerned, however, that the perceived lack of enforcement of intellectual property rights, combined with the costs and complexity of securing intellectual property rights, often dissuade SMEs from using the protection offered; therefore, urges the Commission and Member States to consider possible joint actions to help SMEs to protect their intellectual property rights; calls on the Commission to investigate the value of developing such an initiative through the European

Counterfeiting and Piracy Observatory;

31. Calls on the Commission to identify the particular problems and needs of SMEs, to develop specific measures to assist SMEs in the fight against infringements of intellectual property rights and to enable SMEs to better protect themselves both in the EU and in third countries;
32. 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;
33. Calls on the European Observatory to analyse the issue of multi-territory licences for digital content in order to further develop the legal offer of digital content;
34. Calls on the Commission, in the context of the research it proposes to carry out and the reports it intends to produce, also to explore the subject of the collection and correct distribution of authors' royalties by the organisations responsible for collective rights management;
35. Emphasises the shared responsibility of the Commission and the Member States to make the internal market work also in the field of intellectual property rights, particularly in order to enable creators and inventors to reap the full benefits of the internal market in the digital age, to sustain innovation and employment, to combat cross-border organised crime and to protect consumers against potentially dangerous fakes.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	17.3.2010
Result of final vote	+: 29 -: 2 0: 1
Members present for the final vote	Pablo Arias Echeverría, Cristian Silviu Buşoi, Lara Comi, António Fernando Correia De Campos, Jürgen Creutzmann, Christian Engström, Evelyne Gebhardt, Louis Grech, Małgorzata Handzlik, Malcolm Harbour, Philippe Juvin, Sandra Kalniete, Eija-Riitta Korhola, Kurt Lechner, Toine Manders, Gianni Pittella, Mitro Repo, Robert Rochefort, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Laurence J.A.J. Stassen, Catherine Stihler, Róza Gräfin Von Thun Und Hohenstein, Kyriacos Triantaphyllides, Bernadette Vergnaud
Substitute(s) present for the final vote	Regina Bastos, Cornelis de Jong, Othmar Karas, Sylvana Rapti, Wim van de Camp