

EUROPEAN PARLIAMENT

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2009

Committee on Legal Affairs

2008/2133(INI)

4.11.2008

OPINION

of the Committee on Legal Affairs

for the Committee on International Trade

on the impact of counterfeiting on international trade
(2008/2133(INI))

Rapporteur: Eva Lichtenberger

PA_NonLeg

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on International Trade, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas it is fundamentally important, when considering legal measures, to recognise the substantive difference between intellectual and material property rights, and accordingly between infringement of rights and theft,
 - B. whereas all intellectual property infringements are damaging to trade and business but commercial scale infringements have additional and widespread effects,
 - C. whereas small and medium-sized enterprises play a key role in the economy of the EU and whereas it is essential to recognise their legitimate concerns with regard to protection of research and innovation endeavours,
 - D. whereas, in the case of patents on pharmaceutical products, whilst infringements of patents are settled case-by-case on the basis of substantive arguments made in civil proceedings on the grounds of a patent infringement, infringements of copyright and trademarks constitute intentional offences,
1. Calls on the Commission and the Presidency to clarify the role and competence of the Article 133 Committee and the other committees involved in the negotiation of the Anti-Counterfeiting Trade Agreement (ACTA);
 2. Notes the concerns expressed about the lack of transparency involved in the negotiation of ACTA, especially with regard to its scope, the range of measures discussed, and its relation to existing international agreements on intellectual property protection, notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the agreements concluded within the framework of the World Intellectual Property Organization (WIPO), and urges early formal disclosure of the work in progress;
 3. Considers it important that international initiatives such as ACTA that are taken to combat counterfeiting and piracy should not lead to the adoption of more stringent patent-protection measures that go beyond the TRIPS Agreement;
 4. Considers that it is not yet certain whether the EC Treaty provides a legal basis for Community measures prescribing the type and level of criminal penalties and that, in consequence, the Commission may not have competence to negotiate on behalf of the Community an international agreement which specifies the nature and level of criminal-law measures to be taken against trademark and copyright violators;
 5. Recalls that the EC Treaty includes derogations where the negotiation and conclusion of agreements in the field of commercial aspects of intellectual property relates to trade in cultural and audiovisual services; points out that, in such instances, the negotiation and conclusion of agreements falls within the shared competence of the Community and its Member States; further points out that, in addition to a Community decision taken in accordance with the relevant provisions of the EC Treaty, the negotiation of such

agreements requires the common accord of the Member States and agreements negotiated in this way must be concluded jointly by the Community and the Member States;

6. Asks the Commission to take duly into account the differing views of Member States in relation to criminal-law measures, with specific reference to their nature and level, and to reconsider the negotiations accordingly;
7. Considers that the terms “counterfeiting” and “piracy” do not follow a single agreed definition and are used in various ways, and so calls on the Commission to clarify those terms;
8. Observes that, while use of the two terms overlaps, counterfeiting usually applies to wilful trade mark infringement, and piracy to wilful copyright infringement, and that it would be useful to restrict these particular terms specifically to commercial scale infringements; calls on the Commission to take into account the specificities of Internet counterfeiting and to measure the impact of this practice on the Member States’ economy by developing statistical and quality tools in order to facilitate a coordinated response to this phenomenon;
9. Further suggests that significant aspects of counterfeiting (product imitation/trademark infringement on a commercial scale) differ from those of piracy (copyright infringement on a commercial scale), and that consideration should be given to dealing with them independently and separately, especially having regard to the urgent need to address public health and safety aspects prevalent in counterfeiting;
10. Highlights the importance of respecting fundamental rights such as the protection of privacy and data when taking measures to combat counterfeiting and piracy;
11. Calls on the Commission to guarantee, in line with Parliament's position and Article 61 of the TRIPS Agreement¹, that ACTA will be restricted to promoting criminal measures applicable to copyright and trademark infringements, and that such measures will not cover the area of patents;
12. Reminds the Commission, within the framework of ACTA negotiations, of Article 8 of the Charter of Fundamental Rights of the European Union, which concerns the protection of personal data, and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data²;
13. Calls on the Commission to guarantee – as is already the case under Article 3(2) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights³ – that measures promoted at international

¹ Article 61 of the TRIPS Agreement: “Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale”.

http://www.wto.org/english/docs_e/legal_e/27-trips_05_e.htm

² OJ L 281, 23.11.1995, p. 31.

³ OJ L 157, 30.4.2004, p. 45. Article 3(2) states that “those measures, procedures and remedies (...) shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse”.

level to combat counterfeiting and piracy will be applied in such a way as to avoid creating barriers to legitimate trade; considers that, in addition, safeguards should be put in place against any abuse of those measures;

14. Reiterates that in relation to international agreements, as specified in the Framework Agreement of 26 May 2005 on relations between the European Parliament and the Commission¹, the Commission “shall provide early and clear information to Parliament both during the phase of preparation of the agreements and during the conduct and conclusion of international negotiations”; calls on the Commission to explain which measures it has taken in order to achieve this commitment vis-à-vis Parliament;
15. Takes the view that the public interest in disclosure of ACTA preparatory drafts, including progress reports, and of the Commission's negotiating mandate should not be overridden by Article 4 of Regulation (EC) No 1049/2001², and urges the Council to enforce Article 255 of the EC Treaty in such a way as to ensure the widest possible access to documents, provided that the necessary security measures are taken as required by data-protection law;
16. Supports, as regards the area of public health, the WHO definition of counterfeit medicine: “a medicine which is deliberately and fraudulently mislabelled with respect to identity and/or source. Counterfeiting can apply to both branded and generic products and counterfeit products may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient active ingredients or with fake packaging”.

¹ OJ C 117 E, 18.5.2006, p. 125.

² Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	4.11.2008
Result of final vote	+ : 25 - : 0 0 : 0
Members present for the final vote	Carlo Casini, Titus Corlăţean, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Othmar Karas, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Antonio Masip Hidalgo, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sharon Bowles, Eva Lichtenberger, Rareş-Lucian Niculescu, Georgios Papastamkos, József Szájer, Jacques Toubon, Renate Weber