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*****I REPORT**

on the proposal for a regulation of the European Parliament and of the Council on entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with certain tasks related to the protection of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Counterfeiting and Piracy (COM(2011)0288 – C7-0136/2011 – 2011/0135(COD))

Committee on Legal Affairs

Rapporteur: Antonio Masip Hidalgo

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with certain tasks related to the protection of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Counterfeiting and Piracy
(COM(2011)0288 – C7-0136/2011 – 2011/0135(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0288),
 - having regard to Article 294(2) and Articles 114 and 118(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0136/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 21 September 2011¹,
 - having regard to the undertaking given by the Council representative by letter of 21 December 2011 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education (A7-0003/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 0, 0.0.0000, p. 0./Not yet published in the Official Journal.

Amendment 1

Proposal for a regulation Title

Text proposed by the Commission

Proposal for a Regulation of the European Parliament and of the Council on entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with **certain** tasks related to the **protection** of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on **Counterfeiting and Piracy**.

Amendment

Proposal for a Regulation of the European Parliament and of the Council on entrusting the Office for Harmonisation 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**.

Amendment 2

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) A sound, harmonised and progressive approach to intellectual property rights is fundamental in the endeavour to fulfil the ambitions of the Europe 2020 Strategy¹.

Amendment

(3) A sound, harmonised and progressive approach to intellectual property rights is fundamental in the endeavour to fulfil the ambitions of the Europe 2020 Strategy **including A Digital Agenda for Europe**¹.

¹COM(2010)0245, 26.8.2010.

Amendment 3

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) The constant rise of infringements of intellectual property rights constitutes a genuine threat not only to the Union economy, but also to the health and safety of Union consumers. Therefore, effective,

Amendment

(4) The constant rise of infringements of intellectual property rights constitutes a genuine threat not only to the Union economy, but also **in many cases** to the health and safety of Union consumers.

immediate and coordinated actions at European and global levels are needed to successfully combat this phenomenon.

Therefore, effective, immediate and coordinated actions at ***national***, European and global levels are needed to successfully combat this phenomenon.

Amendment 4

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) In the context of the overall intellectual property rights strategy foreseen by the Council Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan, the Council called on the Commission to launch a European Observatory on Counterfeiting and Piracy (***hereinafter referred to as ‘the Observatory’***). The Commission therefore formed a network of experts from the public and the private sectors and described its tasks in the Communication ‘Enhancing the enforcement of intellectual property rights in the internal market’.

Amendment

(5) In the context of the overall intellectual property rights strategy foreseen by the Council Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan, the Council called on the Commission to launch a European Observatory on Counterfeiting and Piracy. The Commission therefore formed a network of experts from the public and the private sectors and described its tasks in the Communication ‘Enhancing the enforcement of intellectual property rights in the internal market’. ***This Regulation changes the name of the European Observatory on Counterfeiting and Piracy to the European Observatory on Infringements of Intellectual Property Rights (hereinafter referred to as ‘the Observatory’).***

Amendment 5

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) The Communication set out that the Observatory should become the central resource for gathering, monitoring and reporting information and data related to

Amendment

(6) The Communication set out that the Observatory should become the central resource for gathering, monitoring and reporting information and data related to

all intellectual property rights infringements. It should be used as a platform for cooperation between representatives from national authorities and stakeholders to exchange ideas and expertise on best practices, ***to develop joint enforcement strategies*** and to make recommendations to policy-makers. The Communication specified that the Observatory would be hosted and managed by the services of the Commission.

Amendment 6

Proposal for a regulation Recital 7

Text proposed by the Commission

(7) In its Resolution on the enforcement of intellectual property rights in the internal market of 1 March 2010, the Council invited the Commission, the Member States and industry to provide the Observatory with available reliable and comparable data on counterfeiting and piracy and to jointly develop and agree, in the context of the Observatory, on plans to collect further information. The Council also invited the Observatory to publish each year a comprehensive annual report covering the scope, scale and principal characteristics of counterfeiting and piracy as well as its impact on the internal market. That annual report should be prepared with the information provided by the authorities of the Member States, the Commission and the private sector, within the limits of data protection law, on the scope, scale and principal characteristics of counterfeiting and piracy as well as its impact on the internal market.

all intellectual property rights infringements. It should be used as a platform for cooperation between representatives from national authorities and stakeholders to exchange ideas and expertise on best practices and to make recommendations ***for joint enforcement strategies*** to policy-makers. The Communication specified that the Observatory would be hosted and managed by the services of the Commission.

Amendment

(7) In its Resolution on the enforcement of intellectual property rights in the internal market of 1 March 2010, the Council invited the Commission, the Member States and industry to provide the Observatory with available reliable and comparable data on counterfeiting and piracy and to jointly develop and agree, in the context of the Observatory, on plans to collect further information. The Council also invited the Observatory to publish each year a comprehensive annual report covering the scope, scale and principal characteristics of counterfeiting and piracy as well as its impact on the internal market. That annual report should be prepared with the information provided by the authorities of the Member States, the Commission and the private sector, within the limits of data protection law, on the scope, scale and principal characteristics of counterfeiting and piracy as well as its impact on the internal market. ***The Council also recognised the importance of developing new competitive business models that enlarge the legal offer of cultural and creative content and at the same time preventing and combating infringements of intellectual property rights as necessary***

means for fostering economic growth, employment and cultural diversity.

Amendment 7

Proposal for a regulation Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) The European Parliament , in its recommendation of 26 March 2009 on strengthening security and fundamental freedoms on the Internet¹, recommended that the Council preserve full and safe access to the Internet while encouraging private/public cooperation in enhancing law enforcement cooperation.

¹ *OJ C 117 E, 6.5.2010, p. 206.*

Amendment 8

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) The European Parliament, in its resolution of 12 May 2011 on unlocking the potential of cultural and creative industries¹ urged the Commission to take into account the specific problems encountered by small and medium-sized enterprises when it comes to asserting their intellectual property rights and to promote best practice and effective methods to respect those rights.

¹ *Texts adopted, P7_TA(2011)0240.*

Amendment 9

Proposal for a regulation Recital 10 b (new)

Text proposed by the Commission

Amendment

(10b) The European Parliament, in its resolution of 6 July 2011 on a comprehensive approach on personal data protection in the European Union¹, called on the Commission to ensure full harmonisation and legal certainty, providing a uniform and high level of protection of individuals in all circumstances.

¹ Texts adopted, P7_TA(2011)0323.

Amendment 10

Proposal for a regulation Recital 14

Text proposed by the Commission

Amendment

(14) Those tasks should relate to all intellectual property rights covered by Union law or the national law of the Member State concerned in this field since in many cases, infringing acts affect a bundle of intellectual property rights. Furthermore, data and the exchange of best practices are needed on the entire range of intellectual property rights, in order to obtain a complete picture of the situation and allow designing comprehensive strategies to reduce intellectual property rights infringements. ***In the context of those tasks, the Office's mandate should therefore be extended to cover also the protection of patents, copyright and related rights as well as geographical indications.***

(14) Those tasks should relate to all intellectual property rights covered by ***Directive 2004/48/EC***, since in many cases, infringing acts affect a bundle of intellectual property rights. Furthermore, data and the exchange of best practices are needed on the entire ***above-mentioned*** range of intellectual property rights, in order to obtain a complete picture of the situation and allow designing comprehensive strategies to reduce intellectual property rights infringements.

Amendment 11

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) The Office should offer a forum that brings together public authorities and the private sector, ensuring the collection, analysis and dissemination of relevant objective, comparable and reliable data regarding the value of intellectual property rights and the infringements of those rights, ***the development of*** best practices and strategies to ***protect*** intellectual property rights, and raising public awareness of the impacts of intellectual property rights infringements. Furthermore, the Office should fulfil additional tasks, such as to improve the understanding of the value of intellectual property rights, enhance the expertise of persons involved in the enforcement of intellectual property rights by appropriate training measures, increase knowledge on techniques to prevent counterfeiting, and improve cooperation with third countries and international organisations.

Amendment

(17) The Office should offer a forum that brings together public authorities and the private sector, ensuring the collection, analysis and dissemination of relevant objective, comparable and reliable data regarding the value of intellectual property rights and the infringements of those rights, ***identifying and promoting*** best practices and strategies to ***enforce*** intellectual property rights, and raising public awareness of the impacts of intellectual property rights infringements. Furthermore, the Office should fulfil additional tasks, such as to improve the understanding of the value of intellectual property rights, ***exchange of information on new competitive business models enlarging the legal offer of cultural and creative content***, enhance the expertise of persons involved in the enforcement of intellectual property rights by appropriate training measures, increase knowledge on techniques to prevent counterfeiting, and improve cooperation with third countries and international organisations. ***The Commission should be associated with the activities undertaken by the Office under this Regulation.***

Amendment 12

Proposal for a regulation Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) The Office should thus facilitate and support the activities of national

authorities, private sector and the EU institutions related to the enforcement of intellectual property rights and in particular their activities in the fight against infringements of those rights. The exercise by the Office of its powers under this Regulation shall not result in Member States being prevented from exercising their competences. The Office's tasks and activities under this Regulation do not extend to participation in individual operations or investigations carried out by the competent authorities.

Amendment 13

Proposal for a regulation Recital 17 b (new)

Text proposed by the Commission

Amendment

(17b) In order to fulfil those tasks in the most efficient manner, the Office should consult and cooperate with other authorities at national, European and, where appropriate, international levels, create synergies with the activities carried out by such authorities and avoid any duplication of measures.

Amendment 14

Proposal for a regulation Recital 17 c (new)

Text proposed by the Commission

Amendment

(17c) The information obligations imposed by this Regulation on the Member States and on the private sector should not create unnecessary administrative burdens and should endeavour to avoid duplication as regards data already provided by Member States and private sector representatives to EU institutions under existing EU reporting requirements.

Amendment 15

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) With regard to representatives of the private sector, the Office should involve, when assembling the Observatory in the context of its activities, a representative selection of the economic sectors most concerned by and most experienced in the fight against infringements of intellectual property rights, in particular representatives of right holders and Internet **service providers**. Also, a proper representation of consumers and of small and medium sized enterprises should be ensured.

Amendment

(18) With regard to representatives of the private sector, the Office should involve, when assembling the Observatory in the context of its activities, a representative selection of the economic sectors, **including the creative industries**, most concerned by **or** most experienced in the fight against infringements of intellectual property rights, in particular representatives of right holders, **including authors and other creators, as well as** Internet **intermediaries**. Also, a proper representation of consumers and of small and medium sized enterprises should be ensured.

Amendment 16

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) The Office should implement the tasks and activities related to the **protection** of intellectual property rights by making use of its own budgetary means.

Amendment

(19) The Office should implement the tasks and activities related to the **enforcement** of intellectual property rights by making use of its own budgetary means.

Amendment 17

Proposal for a regulation Article 1

Text proposed by the Commission

Article 1 Subject matter

This Regulation entrusts the Office for Harmonization in the Internal Market (hereinafter referred to as "the Office") with ***certain*** tasks related to the ***protection*** of intellectual property rights. In carrying out these tasks the Office shall ***regularly invite*** experts, authorities and stakeholders ***which will assemble*** under the name "European Observatory on ***Counterfeiting and Piracy***" (hereinafter referred to as "the Observatory").

Amendment

*Article 1 Subject matter **and scope***

This Regulation entrusts the Office for Harmonization in the Internal Market (hereinafter referred to as "the Office") with tasks ***aimed at facilitating and supporting the activities of national authorities, the private sector and the institutions of the Union in the fight against infringements of the intellectual property rights covered by Directive 2004/48/EC on the enforcement of*** intellectual property rights.

In carrying out these tasks, the Office shall ***organise, administer and support the gathering of*** experts, authorities and stakeholders ***assembled*** under the name "European Observatory ***on the infringements of Intellectual Property Rights***" (hereinafter referred to as "the Observatory").

The tasks and activities of the Office under this Regulation do not extend to participation in individual operations or investigations carried out by the competent authorities.

Amendment 18

Proposal for a regulation Article 2 – paragraph 1 – point a

Text proposed by the Commission

(a) improving the understanding on the scope and impact of infringements of intellectual property rights, protected under European Union law or the

Amendment

deleted

*national laws of the Member States,
including industrial property rights,
copyright and rights related to copyright;*

Amendment 19

Proposal for a regulation

Article 2 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

*(aa) improving the understanding on the
value of intellectual property;*

Justification

Moving article 2 1a and article 2 1b.

Amendment 20

Proposal for a regulation

Article 2 – paragraph 1 – point b

Text proposed by the Commission

Amendment

*(b) improving the understanding on the
value of intellectual property;*

*(b) improving the understanding on the
scope and impact of infringements of
intellectual property rights;*

Amendment 21

Proposal for a regulation

Article 2 – paragraph 1 – point d

Text proposed by the Commission

Amendment

*(d) raising citizens' awareness of the
impact of infringements of intellectual
property rights;*

*(d) **assisting in** raising citizens' awareness
of the impact of infringements of
intellectual property rights;*

Amendment 22

Proposal for a regulation

Article 2 – paragraph 1 – point f

Text proposed by the Commission

(f) enhancing the knowledge on technical tools to prevent and combat **counterfeiting and piracy**, including tracking and tracing systems;

Amendment

(f) enhancing the knowledge on technical tools to prevent and **tackle the infringement of intellectual property rights**, including tracking and tracing systems **which help to distinguish genuine from counterfeit products**;

Amendment 23

Proposal for a regulation

Article 2 – paragraph 1 – point g

Text proposed by the Commission

(g) **improving** the online exchange, between Member States' authorities **involved in the protection** of intellectual property rights, of information related to the **protection of intellectual property** rights, and fostering cooperation with and between **the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property**;

Amendment

(g) **providing mechanisms which help to improve** the online exchange, between Member States' authorities **working in the field** of intellectual property rights, of information related to the **enforcement of such** rights, and fostering cooperation with and between **these authorities**;

Amendment 24

Proposal for a regulation

Article 2 – paragraph 1 – point h

Text proposed by the Commission

(h) **fostering** international cooperation with intellectual property offices in third countries to build strategies and developing techniques for the **protection** of intellectual property rights, skills and tools.

Amendment

(h) **working, in consultation with Member States, to foster** international cooperation with intellectual property offices in third countries to build strategies and developing techniques for the **enforcement** of intellectual property rights, skills and tools.

Amendment 25

Proposal for a regulation

Article 2 – paragraph 2 – introductory part

Text proposed by the Commission

2. In the fulfilment of the tasks set out in paragraph 1, the Office shall carry out the following activities:

Amendment

2. In the fulfilment of the tasks set out in paragraph 1, the Office shall carry out the following activities ***in accordance with the work program adopted pursuant to Article 7, and in line with European Union law:***

Amendment 26

Proposal for a regulation

Article 2 – paragraph 2 – point a

Text proposed by the Commission

(a) assembling, in accordance with Article 4, the Observatory at regular intervals;

Amendment

deleted

Amendment 27

Proposal for a regulation

Article 2 – paragraph 2 – point b

Text proposed by the Commission

(b) establishing a methodology for the collection, analysis and reporting of independent, objective, comparable and reliable data related to infringements of intellectual property rights;

Amendment

(b) establishing a ***transparent*** methodology for the collection, analysis and reporting of independent, objective, comparable and reliable data related to infringements of intellectual property rights;

Amendment 28

Proposal for a regulation

Article 2 – paragraph 2 – point e

Text proposed by the Commission

(e) providing regular assessments and specific reports by economic sector, geographic area and type of intellectual property right infringed, which evaluate, inter alia, the impact of intellectual property rights infringements on society, economy, health, environment, safety and security, ***and the relation of such infringements with organized crime and terrorism;***

Amendment

(e) providing regular assessments and specific reports by economic sector, geographic area and type of intellectual property right infringed, which evaluate, inter alia, the impact of intellectual property rights infringements on society, economy, ***including an assessment of the effects on SMEs, as well as*** health, environment, safety and security;

Amendment 29

Proposal for a regulation

Article 2 – paragraph 2 – point f

Text proposed by the Commission

(f) collecting, analysing and disseminating information regarding best practices between the representatives meeting as the Observatory, and ***developing*** strategies based on such practices;

Amendment

(f) collecting, analysing and disseminating information regarding best practices between the representatives meeting as the Observatory, and, ***if applicable, making recommendations for*** strategies based on such practices;

Amendment 30

Proposal for a regulation

Article 2 – paragraph 2 – point g

Text proposed by the Commission

(g) drawing up reports and publications to raise awareness ***of*** the Union's citizens of the impact of infringements of intellectual property rights, and organising conferences, ***on-line and off-line campaigns***, events and meetings at

Amendment

(g) drawing up reports and publications to raise awareness ***among*** the Union's citizens of the impact of infringements of intellectual property rights, and ***to this end***, organising conferences, events and meetings at European and international

European and international levels;

levels *as well as assisting national and pan-European actions, including on-line and off-line campaigns, principally by providing data and information;*

Amendment 31

Proposal for a regulation

Article 2 – paragraph 2 – point g a (new)

Text proposed by the Commission

Amendment

(ga) monitoring the development of new competitive business models that enlarge the legal offer of cultural and creative content, encouraging the exchange of information and raising consumer awareness in this respect;

Amendment 32

Proposal for a regulation

Article 2 – paragraph 2 – point i

Text proposed by the Commission

Amendment

(i) organising ad hoc meetings of experts to support its work under this Regulation;

(i) organising ad hoc meetings of experts, ***including meetings of academic experts and meetings of relevant representatives of the civil society,*** to support its work under this Regulation;

Amendment 33

Proposal for a regulation

Article 2 – paragraph 2 – point j

Text proposed by the Commission

Amendment

(j) ***researching, evaluating*** and promoting technical tools for professionals and benchmark techniques, including tracking and tracing systems which help to distinguish genuine from counterfeit

(j) ***identifying*** and promoting technical tools for professionals and benchmark techniques, including tracking and tracing systems which help to distinguish genuine from counterfeit products;

products;

Amendment 34

Proposal for a regulation

Article 2 – paragraph 2 – point k

Text proposed by the Commission

(k) working with national authorities to develop an on-line network to exchange information ***related to the*** protection of intellectual property rights, ***including real-time alerts and information on*** infringements of ***intellectual property*** rights ***between administrations, bodies and organisations in the Member States dealing with the protection of intellectual property rights***;

Amendment

(k) working with national authorities ***and the Commission*** to develop an on-line network to ***facilitate the*** exchange of information ***between public administrations, bodies and organisations in the Member States dealing with the*** protection ***and enforcement*** of intellectual property rights, ***related to*** infringements of ***such*** rights;

Amendment 35

Proposal for a regulation

Article 2 – paragraph 2 – point l

Text proposed by the Commission

(l) building ***strategies in cooperation*** with the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property, and developing techniques, skills and tools related to the ***protection*** of intellectual property rights, including training programmes and awareness campaigns;

Amendment

(l) ***working in cooperation with and*** building ***synergies between*** the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property, ***and other Member States' authorities working in the field of intellectual property rights, to develop and promote*** techniques, skills and tools related to the ***enforcement*** of intellectual property rights, including training programmes and awareness campaigns;

Amendment 36

Proposal for a regulation

Article 2 – paragraph 2 – point m

Text proposed by the Commission

(m) developing programmes on technical assistance for third countries as well as developing and delivering specific training programmes and events for officials from third countries involved in the protection of intellectual property rights;

Amendment

(m) developing, ***in consultation with the Member States***, programmes on technical assistance for third countries as well as developing and delivering specific training programmes and events for officials from third countries involved in the protection of intellectual property rights;

Amendment 37

Proposal for a regulation

Article 2 – paragraph 2 – point n

Text proposed by the Commission

(n) making recommendations to the Commission on issues falling within the scope of this Regulation, ***including*** on the basis of a request from the Commission;

Amendment

(n) making recommendations to the Commission on issues falling within the scope of this Regulation on the basis of a request from the Commission;

Amendment 38

Proposal for a regulation

Article 2 – paragraph 2 – point o

Text proposed by the Commission

(o) drawing up an annual work programme for the meetings referred to in point (a) in line with the Union's policies and priorities in the field of protection of intellectual property rights;

Amendment

deleted

Amendment 39

Proposal for a regulation

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In carrying out the tasks and activities referred to in paragraphs 1 and 2, the Office shall comply with existing provisions of European Union law on data protection.

Amendment 40

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. **The** Office shall invite to **the** meetings referred to in **point (a) of** Article 2(2) representatives from public administrations, bodies and organisations dealing with **the protection of** intellectual property rights and representatives from the private sector.

1. **In order to carry out the activities** referred to in Article 2(2), **the** Office shall invite to meetings **of the Observatory, at least once a year,** representatives from public administrations, bodies and organisations **in the Member States** dealing with intellectual property rights and representatives from the private sector, **for the purpose of participating in the Office's work under this Regulation.**

Amendment 41

Proposal for a regulation

Article 4 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

Representatives meeting as the Observatory invited from the private sector shall include a broad and **representative** range of Union and national bodies representing the different economic sectors most concerned by **and** most experienced in the fight against infringements of intellectual property rights.

Representatives meeting as the Observatory invited from the private sector shall include a broad, **representative and balanced** range of Union and national bodies representing the different economic sectors, **including the creative industries,** most concerned by **or** most experienced in the fight against infringements of

intellectual property rights.

Amendment 42

Proposal for a regulation

Article 4 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Consumer organisations **and** small and *medium sized* enterprises shall be properly represented.

Amendment

Consumer organisations, small and *medium-sized* enterprises, **authors and other creators** shall be properly represented.

Amendment 43

Proposal for a regulation

Article 4 – paragraph 3

Text proposed by the Commission

3. The Office shall invite **one national representative from** each Member State, **and five representatives each** from **the European Parliament and the Commission**.

Amendment

3. The Office shall invite each Member State **to send at least one representative** from **its public administration to meetings of the Observatory**. **In that context, Member States shall ensure continuity in the Observatory's work.**

Amendment 44

Proposal for a regulation

Article 4 – paragraph 4

Text proposed by the Commission

4. The names of the representatives, the agenda and the minutes of the meetings shall be published on the Office's website.

Amendment

deleted

Amendment 45

Proposal for a regulation Article 4 – paragraph 5

Text proposed by the Commission

5. The meetings referred to in ***point (a) of Article 2(2)*** ***may also be organised in*** working groups within the Observatory. ***Up to two*** representatives from ***the European Parliament and up to two*** representatives from ***the Commission*** shall be invited to the meetings of the working groups as observers.

Amendment

5. The meetings referred to in ***paragraph 1*** ***may be complemented by*** working groups within the Observatory ***made up of*** representatives from ***Member States and*** representatives from private sector.

Amendment 46

Proposal for a regulation Article 4 – paragraph 35a (new)

Text proposed by the Commission

Amendment

5a. When appropriate, and in addition to the meetings referred to in paragraph 1, the Office shall organise meetings consisting of:

(a) representatives from the public administrations, bodies and organisations in the Member States, or

(b) private sector representatives.

Amendment 47

Proposal for a regulation Article 4 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. Members or other representatives of the European Parliament and representatives from the Commission shall be invited to any of the meetings covered by this Article, either as participants or observers, as appropriate.

Amendment 48

Proposal for a regulation Article 4 – paragraph 5 c (new)

Text proposed by the Commission

Amendment

5c. The names of the representatives, the agenda and the minutes of the meetings referred to in this Article shall be published on the Office's website.

Amendment 49

Proposal for a regulation Article 5

Text proposed by the Commission

Amendment

1. Without prejudice to law governing the processing of personal data, Member States and private sector representatives meeting as the Observatory shall:

- (a) inform the Office of their policies and strategies on the ***protection*** of intellectual property rights and any changes thereto;
- (b) provide statistical data on infringements of intellectual property rights;
- (c) inform the Office of ***any relevant*** case law.

1. As appropriate, in accordance with national law, including the law governing the processing of personal data, Member States shall, at the request of the Office or on their own initiative:

- (a) inform the Office of their ***overall*** policies and strategies on the ***enforcement*** of intellectual property rights and any changes thereto;
 - (b) provide ***available*** statistical data on infringements of intellectual property rights;
 - (c) inform the Office of ***important*** case law.
- 1a. Without prejudice to the law governing the processing of personal data and to the protection of confidential information, private sector representatives meeting as the Observatory shall, when possible, at the request of the Office:***
- (a) ***inform the Office of policies and strategies in their field of activity on the enforcement of intellectual property rights and any changes thereto;***

(b) provide statistical data on infringements of intellectual property rights in their field of activity.

Amendment 50

Proposal for a regulation Article 6 – title

Text proposed by the Commission

Amendment

Internal administrative instructions and notices

Office

Amendment 51

Proposal for a regulation Article 6 – paragraph -1 a (new)

Text proposed by the Commission

Amendment

Title XII of Council Regulation 207/2009 shall apply to the implementation of the tasks and activities provided for under this Regulation.

Amendment 52

Proposal for a regulation Article 7 – title

Text proposed by the Commission

Amendment

Content of the management report

Content of the ***work programme and of the*** management report

Amendment 53

Proposal for a regulation

Article 7 – paragraph -1 a (new)

Text proposed by the Commission

Amendment

-1a. The Office shall draw up an annual work programme that prioritises the activities appropriately under this Regulation and for the meetings of the Observatory, in line with the Union's policies and priorities in the field of protection of intellectual property rights, and in cooperation with the Observatory representatives referred to in Article 4(5a) point (a).

Amendment 54

Proposal for a regulation

Article 7 – paragraph -1 b (new)

Text proposed by the Commission

Amendment

The work programme referred to in paragraph -1a shall be submitted to the Office's Administrative Board for information.

Amendment 55

Proposal for a regulation

Article 7 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) an overall assessment of the fulfilment of the Office's tasks as provided for in this Regulation;

(c) an overall assessment of the fulfilment of the Office's tasks as provided for in this Regulation ***and in the work programme drawn up in accordance with paragraph -1a;***

Amendment 56

Proposal for a regulation

Article 7 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) recommendations on the future policies in the area of the protection of intellectual property rights, including on how to enhance an effective cooperation between Member States;

deleted

Amendment 57

Proposal for a regulation

Article 7 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) observations on the enforcement of intellectual property rights and potential future policies and strategies, including on how to enhance an effective cooperation with and between Member States;

Amendment 58

Proposal for a regulation

Article 7 – paragraph 1 – point e b (new)

Text proposed by the Commission

Amendment

(eb) an overall assessment of the proper representation in the Observatory of all the actors mentioned in Article 4(2).

Amendment 59

Proposal for a regulation

Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The President of the Office shall consult the Observatory representatives referred to in point (a) of Article 4 (3a) on the relevant parts of the management report referred to in this Article before submitting the report to the European Parliament, the Commission and the Administrative Board.

Amendment 60

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. The evaluation report shall assess ***the performance of the Office in*** the operation of this Regulation, in particular as regards its impact on the ***protection*** of intellectual property rights in the internal market.

2. The evaluation report shall assess the operation of this Regulation, in particular as regards its impact on the ***enforcement*** of intellectual property rights in the internal market.

Amendment 61

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall, when preparing the evaluation report, consult the representatives meeting as the Observatory on the issues set out in paragraph 2.

3. The Commission shall, when preparing the evaluation report, consult the ***Office, the Member States and the*** representatives meeting as the Observatory on the issues set out in paragraph 2.

Amendment 62

Proposal for a regulation Article 8 – paragraph 4

Text proposed by the Commission

4. The Commission shall transmit the evaluation report to the European Parliament ***and*** the Council and undertake a broad consultation among stakeholders on the evaluation report.

Amendment

4. The Commission shall transmit the evaluation report to the European Parliament, the Council ***and the European Economic and Social Committee*** and undertake a broad consultation among stakeholders on the evaluation report.

30.11.2011

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with certain tasks related to the protection of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Counterfeiting and Piracy (COM(2011)0288 – C7-0136/2011 – 2011/0135(COD))

Rapporteur: Adam Bielan

SHORT JUSTIFICATION

Set up in 2009, as an initiative of the Council and the Commission to address the growing threat of trade in counterfeit and pirated goods, the European Observatory on Counterfeiting and Piracy became a centre of expertise for gathering, monitoring and reporting information and data related to intellectual property rights (IPRs) infringements and a platform for cooperation between representatives from national authorities and stakeholders to exchange ideas on best practices in view of developing enforcement strategies in terms of IPR. Since the conception of the Observatory, further responsibilities were added to its competencies by the Council¹ on needs for implementation of EU training programmes for partners involved in combating counterfeiting and piracy, and by the European Parliament² calling for compilation of scientific research data on counterfeiting and IPR regulation. Finally, following the study commissioned by DG Trade³ it was recommended that the Observatory becomes a point of single contact within the Commission, for external parties and an international point for the creation and dissemination of best practice.

In order to properly proceed with the implementation of the tasks acquired by the Observatory since the launch of the project in 2009 and to further develop its operational activities, it is deemed necessary to modify its current status by introducing sustainable changes in respect to

¹ Council Resolution, 1.03.2010, Enforcement of the intellectual property rights in the internal market

² European Parliament Resolution, 22.09.2010

³ Nov. 2010 'Evaluation of the Intellectual Property Rights Enforcement Strategy in Third Countries'

infrastructure, human resources, IT and, most importantly, necessary expertise. These changes will necessitate significant financial resources.

The proposal of the European Commission is to entrust the Office of Harmonisation in the Internal Market (OHIM) with the tasks which are currently being dealt with by the Observatory. As a result of the impact assessment undertaken by the Commission and with the support of all the interested parties involved¹, the transfer of the Observatory to the OHIM was deemed appropriate given especially that the latter has at its disposal appropriate financial resources and expertise capable of delivering on the Observatory's recently expanded tasks and activities.

The Rapporteur welcomes the proposal of the Commission to entrust the OHIM with the tasks of the Observatory in view of improved implementation of the responsibilities assigned to it. In the context of the continuous growth of trade in counterfeit and pirated goods which leads in consequence to reduced incentive for innovation of EU enterprises and often result in reducing the number of jobs it seems appropriate to strengthen a coordinated policy in this regard. Also, the Rapporteur wishes to underline that in terms of certain categories of products (such as medicines, toys, automotive components, household equipment, etc.) counterfeiting threaten human health and leads to considerable decrease in consumer protection which is one of the main concerns of the Committee on the Internal Market and Consumer Protection. Therefore, the Rapporteur considers it to be duly justified to inform the public and raise awareness about the possible dangers and consequences resulting from exponential increase of counterfeiting and piracy observed in recent years. It needs to be highlighted that SMEs also have to face the challenge of counterfeiting to a large degree.

All the above mentioned issues are a serious threat to the proper functioning of the internal market. Also, for the Member States, growth in counterfeiting or piracy results in considerable tax revenue losses.

With this in mind the Rapporteur welcomes the idea of entrusting the OHIM with the tasks related to the protection of intellectual property rights and assembling of public and private representatives as a European Observatory on Counterfeiting and Piracy. The Rapporteur believes that the presented solution is cost efficient and would allow the Observatory to have access to necessary expertise, resources and financing as soon as possible. Nevertheless the Rapporteur considers it essential to underline that access to the necessary financial resources for the fulfilment of the tasks of the Observatory has to be ensured at all times.

More specifically the Rapporteur would like to emphasise the importance of guaranteeing that the information collected, analysed and disseminated by the OHIM fulfil numerous criteria with regard to completeness and quality of data. Moreover, in Rapporteur's opinion it is crucial to ensure that the activities carried out by the OHIM, especially in terms of the meetings of the Observatory, are guided by robust transparency principles. Finally, the fact that a number of strategies with regard to infringements of intellectual property rights are already put in place in different Member States should be taken into consideration when envisaging new activities of the OHIM.

¹ No standard consultation was organised as the proposal received broad support from all interested parties at different occasions (Forum on counterfeiting (2010), Pan-European IP summit 2010, Brussels.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) Intellectual property rights are vital business assets that help to ensure that innovators and creators get a fair return for their work and that their investment in research and new ideas is protected.

Amendment

(2) Intellectual property rights are business assets ***vital to the whole European production system, including small and medium-sized enterprises***, that help to ensure that innovators and creators get a fair return for their work and that their investment in research and new ideas is protected. ***They also allow for innovation and enhance consumers' access to knowledge and information.***

Justification

Intellectual Property Rights should allow both creators to receive a fair return on their investment and the general public to get access to information and knowledge. The EU needs a balanced system if it wants to become a knowledge based economy. Excessive protection and disproportionate enforcement risks shifting the balance to the detriment of consumers and citizens. The EU must recognise the two-fold mission of IPRs.

Amendment 2

Proposal for a regulation

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) This Regulation seeks to ensure protection of intellectual property, in accordance with Article 17(2) of the Charter of Fundamental Rights of the European Union (the Charter), and

protection of personal data, in accordance with Article 8 of the Charter.

Amendment 3

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) The constant rise of infringements of intellectual property rights constitutes a genuine threat ***not only*** to the Union economy, ***but also*** health and safety ***of Union consumers***. Therefore, effective, immediate and coordinated actions at European and global levels are needed to successfully combat this phenomenon.

Amendment

(4) The constant rise of infringements of intellectual property rights constitutes a genuine threat to the Union economy, ***especially as it negatively affects the competitiveness of small and medium-sized enterprises. Moreover, an exponential increase in counterfeit products used in the daily lives of Union consumers threatens their*** health and safety. ***Accordingly, efforts should be intensified in that area, especially where medicines and foodstuffs are concerned.*** Therefore, effective, immediate and coordinated actions at European and global levels are needed to successfully combat this phenomenon. ***In this context, it is worth stressing the importance of greater cooperation and exchange of information between the competent authorities of each Member State.***

Justification

Small and medium sized enterprises are of particular importance to Union economy therefore negative impacts resulting from infringements of the intellectual property rights deserve a specific mention. Moreover, not only luxury goods are affected by counterfeiting, but increasingly the goods used by consumers in their daily lives (personal care products, automotive parts, household appliances, etc) are concerned, therefore it is important to emphasise the hazards to safety and health of consumers. In addition to harming European industry, counterfeiting of medicines and foodstuffs endangers the lives of European consumers, and the outcome can be fatal. More intensive efforts should therefore be brought to bear on these two sectors.

Amendment 4

Proposal for a regulation Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The Office for Harmonisation in the Internal Market (hereinafter referred to as 'the Office'), in cooperation with the Member States and the Commission, should carry out an in-depth analysis of the consequences that intellectual property infringements entail for companies and small and medium-sized enterprises in particular, with a view to determining best solutions and sharing best practices.

Justification

Infringements of intellectual property rights severely curtail innovation, destroy jobs, and create serious problems for industry, especially SMEs. That is why we need to establish which solutions would be most suitable in the light of companies' problems and needs.

Amendment 5

Proposal for a regulation Recital 10

Text proposed by the Commission

Amendment

(10) The European Parliament, in its Resolution of 22 September 2010 on enforcement of intellectual property rights in the internal market, called on the Member States and the Commission to extend the cooperation between the Office and national intellectual property offices to also include the fight against infringements of intellectual property rights.

(10) The European Parliament, in its Resolution of 22 September 2010 on enforcement of intellectual property rights in the internal market, called on the Member States and the Commission to extend the cooperation between the Office and national intellectual property offices to also include the fight against infringements of intellectual property rights. ***Moreover, it expressed its wish that the Observatory should inter alia compile scientific research on counterfeiting and the regulation of intellectual property rights. It proposed in addition that the Observatory should carry out a detailed***

analysis of the problem of online data theft and put forward proposals for combating that problem.

Justification

Scientific innovation makes a substantial contribution to European economy; therefore it is of particular importance to ensure that scientific research is being collected. Internet-based industrial espionage is posing a growing problem, as is online theft of data constituting industrial property, including technical documentation and source code.

Amendment 6

**Proposal for a regulation
Recital 10 a (new)**

Text proposed by the Commission

Amendment

(10a) To help Union entrepreneurs enforce their intellectual property rights in third countries and to improve the measures taken by national authorities to prevent counterfeit products from entering the Union market, close cooperation should be established between the Office and the Commission.

Justification

To deal properly with IPRs on the internal market, the approach should not be confined to EU territory, but should instead allow for the situation on the EU's external borders with third countries.

Amendment 7

**Proposal for a regulation
Recital 16 a (new)**

Text proposed by the Commission

Amendment

(16a) The task of collecting, analysing and disseminating information regarding best practices between the representatives meeting as the Observatory, and developing strategies based on such practices should duly respect fundamental

rights and freedoms, in accordance with Article 1(3a) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)¹, and Article 1(3) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)².

¹ OJ L 108, 24.4.2002, p. 33.

² OJ L 108, 24.4.2002, p. 51.

Amendment 8

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) The Office should ***offer a forum that brings*** together public authorities and the private sector, ensuring the collection, analysis and dissemination of relevant objective, comparable and reliable data regarding the value of intellectual property rights and the infringements of those rights, the development of best practices and strategies to protect intellectual property rights, and raising public awareness of the impacts of intellectual property rights infringements. Furthermore, the Office should fulfil additional tasks, such as to improve the understanding of the value of intellectual property rights, enhance the expertise of persons involved in the enforcement of intellectual property rights by appropriate training measures, increase knowledge on techniques to prevent counterfeiting, and improve cooperation with third countries and international

Amendment

(17) The Office, ***when assembling the Observatory***, should ***bring*** together, ***where appropriate***, public authorities, ***including data protection authorities, as well as civil society, including consumer associations***, and the private sector, ensuring the collection, analysis and dissemination of relevant objective, comparable and reliable data regarding the value of intellectual property rights and the infringements of those rights, the development of best practices and strategies to protect intellectual property rights, and raising public awareness of the impacts of intellectual property rights infringements. Furthermore, the Office should fulfil additional tasks, such as to improve the understanding of the value of intellectual property rights, enhance the expertise of persons involved in the enforcement of intellectual property rights by appropriate

organisations.

training measures, increase knowledge on techniques to prevent counterfeiting, and improve cooperation with third countries and international organisations.

Justification

Consumers associations and civil society should be represented on equal numbers with industry to ensure the good governance of the Observatory. Furthermore, measures for the enforcement of IPRs may have a serious impact on consumers and citizens' fundamental rights, including the right to the protection of personal data, the right to confidentiality of communications, the right to presumption of innocence and the right to a fair trial. This is also recognised by the European Court of Justice in the Promusica case and is also reflected in Article 8 of the IPR Enforcement Directive, which establishes limits to IPR enforcement measures when the consumers' privacy is jeopardised. It is therefore crucial to ensure that Data Protection Authorities participate in the work of the Observatory.

Amendment
9

Proposal for a regulation **Recital 18**

Text proposed by the Commission

(18) With regard to representatives of the private sector, the Office should involve, when assembling the Observatory in the context of its activities, a representative selection of the economic sectors **most** concerned by and **most experienced** in the fight against infringements of intellectual property rights, in particular representatives of right holders and Internet service providers. Also, a proper representation **of consumers and** of small and medium sized enterprises should be ensured.

Amendment

(18) With regard to representatives of the private sector, the Office should involve, when assembling the Observatory in the context of its activities, a representative selection of the economic sectors concerned by and **involved** in the fight against infringements of intellectual property rights, in particular representatives of right holders and Internet service providers. Also, a proper representation of small and medium sized enterprises should be ensured.

Amendment 10

Proposal for a regulation **Article 2 – paragraph 1 – point a**

Text proposed by the Commission

(a) improving the understanding on the scope and impact of infringements of intellectual property rights, protected under European Union law or the national laws of

Amendment

(a) improving the understanding on the scope, **scale, value** and impact of infringements of intellectual property rights, protected under European Union

the Member States, including industrial property rights, copyright and rights related to copyright;

law or the national laws of the Member States, including industrial property rights, copyright and rights related to copyright;

Justification

In order to have a clear overview of the magnitude of infringements of intellectual property rights a wider range of criteria seems to be justifiable.

Amendment 11

Proposal for a regulation

Article 2 – paragraph 1 – point d

Text proposed by the Commission

(d) raising citizens' awareness of the impact of infringements of intellectual property rights;

Amendment

(d) raising citizens' awareness of the impact of infringements of intellectual property rights ***by continuing and intensifying awareness campaigns on the risks that counterfeit products pose to consumer health and safety and on the adverse impact that counterfeiting and piracy have on the economy and on society;***

Justification

Given the adverse effects which counterfeiting and piracy have on society and the economy at national level, the campaigns should highlight the value of copyright and the fact that piracy and counterfeiting damage employment and growth, especially where young European consumers are concerned, and that IPRs therefore have to be respected.

Amendment 12

Proposal for a regulation

Article 2 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) making available resources to inform the public about intellectual property rights, thereby not only enabling checks to be carried out but also increasing awareness;

Amendment 13

Proposal for a regulation

Article 2 – paragraph 1 – point f

Text proposed by the Commission

(f) enhancing the knowledge on technical tools to prevent and combat counterfeiting and piracy, including tracking and tracing systems;

Amendment

(f) enhancing the knowledge on, ***and promoting***, technical tools to prevent and combat counterfeiting and piracy, including tracking and tracing systems, ***while respecting fundamental rights and freedoms***;

Justification

It seems to be appropriate to ensure that not only information on technical tools is collected but also that technical tools are further developed and innovated and accordingly put in practice in view of combating counterfeiting and piracy.

Amendment 14

Proposal for a regulation

Article 2 – paragraph 1 – point h

Text proposed by the Commission

(h) fostering international cooperation with intellectual property offices in third countries ***to build*** strategies and developing techniques for the protection of intellectual property rights, skills and tools.

Amendment

(h) fostering international cooperation with intellectual property offices in third countries ***and relevant international organisations with a view to building*** strategies and developing techniques for the protection of intellectual property rights, skills and tools.

Justification

There are several international organisations which are either specifically dedicated to intellectual property rights (IPR), e.g. WIPO, or that at least deal with IPR infringement issues such as the OECD or the WTO. As these organisations equally conduct research into the origins, the scale and the prevention of IPR infringements they should be included in cooperation initiatives.

Amendment 15

Proposal for a regulation

Article 2 – paragraph 2 – point b

PE474.085v03-00

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Text proposed by the Commission

Amendment

(b) establishing a methodology for the collection, analysis and reporting of independent, objective, comparable and reliable data related to infringements of intellectual property rights;

(b) establishing a methodology for the **regular** collection, analysis and reporting of independent, objective, comparable, **robust** and reliable data related to infringements of intellectual property rights;

Justification

In order to ensure a comprehensive methodology, collection, analysis and reporting should be carried out at regular intervals. Moreover, it is necessary to establish a methodology that ensures that the obtained data confirms to the numerous requirements that guarantee completeness and quality of data.

Amendment 16

Proposal for a regulation

Article 2 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) collecting, analysing and disseminating relevant objective, comparable and reliable data regarding infringements of intellectual property rights;

(c) **regularly** collecting, analysing and disseminating relevant **independent**, objective, comparable, **robust** and reliable data regarding infringements of intellectual property rights;

Justification

In order to have a comprehensive overview of the infringements of intellectual property rights the data should be collected, analysed and disseminated at regular intervals. Moreover, it is necessary to ensure that the obtained data confirms to the numerous requirements that guarantee completeness and quality of data.

Amendment 17

Proposal for a regulation

Article 2 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) collecting, analysing and disseminating

(d) **regularly** collecting, analysing and

relevant objective, comparable and reliable data regarding the economic value of intellectual property and its contribution to economic growth, welfare, innovation, creativity, cultural diversity, the creation of high quality jobs and the development of high quality products and services within the Union;

disseminating relevant **independent**, objective, comparable, **robust** and reliable data regarding the economic value of intellectual property and its contribution to economic growth, welfare, innovation, creativity, cultural diversity, the creation of high quality jobs and the development of high quality products and services within the Union, **and to consumer protection and safety**;

Justification

In order to fully comprehend the value of intellectual property rights the data should be collected, analysed and disseminated at regular intervals. Moreover, it is necessary to ensure that the obtained data confirms to the numerous requirements that guarantee completeness and quality of data.

Amendment 18

Proposal for a regulation

Article 2 – paragraph 2 – point e

Text proposed by the Commission

(e) providing regular assessments and specific reports by economic sector, geographic area and type of intellectual property right infringed, which evaluate, inter alia, the impact of intellectual property rights infringements on society, economy, health, environment, safety and security, and the relation of such infringements with organized crime and terrorism;

Amendment

(e) providing regular assessments and specific reports by economic sector, geographic area and type of intellectual property right infringed, which evaluate, inter alia, the impact of intellectual property rights infringements on society, **the economy, especially as regards small and medium-sized enterprises**, health, environment, safety and security, and the relation of such infringements with organized crime and terrorism;

Justification

Small and medium sized enterprises are of particular importance to Union economy therefore they deserve a specific mention. Moreover, small businesses are particularly vulnerable to piracy and counterfeiting especially because they lack the resources and expertise available to larger corporations.

Amendment 19

Proposal for a regulation
Article 2 – paragraph 2 – point i

Text proposed by the Commission

(i) organising ad hoc meetings of experts to support its work under this Regulation;

Amendment

(i) organising ad hoc meetings of experts ***and of representatives of all the relevant stakeholders*** to support its work under this Regulation;

Amendment 20

Proposal for a regulation
Article 3

Text proposed by the Commission

The Office shall at all times ensure that the activities entrusted to it by this Regulation are carried out by making use of its own budgetary means.

Amendment

The Office shall at all times ensure that the activities entrusted to it by this Regulation are carried out by making use of its own budgetary means, ***and that appropriate financial resources are allocated so that those activities can be carried out properly.***

Justification

OHIM's competence already entails a number of activities, especially in the field of registration of trade marks and designs. It is crucial to ensure that new activities, resulting from the transfer of Observatory to OHIM, are carried out appropriately, in particular that necessary financial resources are earmarked.

Amendment 21

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

1. The Office shall invite to the meetings referred to in point (a) of Article 2(2) representatives from public administrations, bodies and organisations dealing with the protection of intellectual property rights and representatives from the private sector.

Amendment

1. The Office shall invite to the meetings referred to in point (a) of Article 2(2) ***the appropriate*** representatives from public administrations, bodies and organisations, ***including data protection authorities,*** dealing with the protection of intellectual property rights ***as well as consumer***

associations and representatives from the private sector.

Justification

Consumers associations should be represented on equal numbers with industry to ensure the good governance of the Observatory. Furthermore, measures for the enforcement of IPRs may have a serious impact on consumers and citizens' fundamental rights, including the right to the protection of personal data, the right to confidentiality of communications, the right to presumption of innocence and the right to a fair trial. This is also recognised by the European Court of Justice in the Promusica case and is also reflected in Article 8 of the IPR Enforcement Directive, which establishes limits to IPR enforcement measures when the consumers' privacy is jeopardised. It is therefore crucial to ensure that Data Protection Authorities participate in the work of the Observatory.

Amendment 22

Proposal for a regulation Article 4 – paragraph 2

Text proposed by the Commission

2. Representatives meeting as the Observatory invited from the private sector shall include a broad and representative range of Union and national bodies representing the different economic sectors **most** concerned by and **most experienced** in the fight against infringements of intellectual property rights.

Consumer organisations and small and medium sized enterprises shall be properly represented.

Amendment

2. Representatives meeting as the Observatory invited from the private sector shall include a broad and representative range of Union and national bodies representing the different economic sectors concerned by and **involved** in the fight against infringements of intellectual property rights. ***In particular, small and medium-sized enterprises shall be properly represented.***

Amendment 23

Proposal for a regulation Article 4 – paragraph 4

Text proposed by the Commission

4. The names of the representatives, the agenda **and** the minutes of the meetings shall be published on the Office's website.

Amendment

4. The names of the representatives, the agenda, the minutes, **other relevant information and related documentation** of the meetings shall be published on the

Office's website, **while respecting the confidentiality of sensitive information.**

Justification

Access to additional information and documents would enhance transparency and public confidence in the activities carried out by OHIM.

Amendment 24

Proposal for a regulation

Article 5 – introductory wording

Text proposed by the Commission

Without prejudice to law governing the processing of personal data, **Member States and private sector** representatives meeting as the Observatory shall:

Amendment

Without prejudice to law governing the processing of personal data, representatives meeting as the Observatory shall:

Justification

It seems to be necessary to extend the reference to any type of representatives and ensure that not only public administrations, but also public bodies and organisations are covered (in line with Article 3), therefore it is justifiable to remove a concrete reference to Members States and private sector. Moreover, in order to ensure coherence throughout the text it is appropriate to align the wording used in introductory wording of Article 5 with the wording used in point (f) of Article 2(2) and Article 8(3).

Amendment 25

Proposal for a regulation

Article 7 – point d

Text proposed by the Commission

(d) an overview of the activities that the Office intends to undertake in the future;

Amendment

(d) an overview of the activities that the Office intends to undertake in the future, **taking into consideration the activities carried out in the Member States so as to avoid unnecessary duplication;**

Justification

A number of strategies are already put in place in different Member States, therefore in order to avoid overlapping efforts at EU and Member States levels it seems to be appropriate to

reflect on the work carried out by the Member States in the relevant area when considering strategic planning for the possible new activities to be undertaken by the Office.

Amendment 26

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

3. The Commission shall, when preparing the evaluation report, consult the representatives meeting as the Observatory on the issues set out in paragraph 2.

Amendment

3. The Commission shall, when preparing the evaluation report, consult the representatives meeting as the Observatory on the issues set out in paragraph 2. ***The Commission shall also consider the possible involvement of any other interested parties in the process of evaluation.***

Justification

All the interested parties should be able to contribute to the process of consultation on the assessment of the performance of the Office in the operation of this Regulation.

Amendment 27

Proposal for a regulation

Article 8 – paragraph 4

Text proposed by the Commission

4. The Commission shall transmit the evaluation report to the European Parliament ***and*** the Council and undertake a broad consultation among stakeholders on the evaluation report.

Amendment

4. The Commission shall transmit the evaluation report to the European Parliament, the Council and ***the European Economic and Social Committee and shall*** undertake a broad consultation among stakeholders on the evaluation report.

PROCEDURE

| | | | | | | | |
|---|---|----|----|----|---|----|---|
| Title | Entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with certain tasks related to the protection of intellectual property rights | | | | | | |
| References | COM(2011)0288 – C7-0136/2011 – 2011/0135(COD) | | | | | | |
| Committee responsible Date announced in plenary | JURI 7.6.2011 | | | | | | |
| Committee(s) asked for opinion(s) Date announced in plenary | IMCO 7.6.2011 | | | | | | |
| Rapporteur(s) Date appointed | Adam Bielan 20.7.2011 | | | | | | |
| Date adopted | 22.11.2011 | | | | | | |
| Result of final vote | <table> <tr> <td>+: </td><td>32</td></tr> <tr> <td>–: </td><td>0</td></tr> <tr> <td>0: </td><td>1</td></tr> </table> | +: | 32 | –: | 0 | 0: | 1 |
| +: | 32 | | | | | | |
| –: | 0 | | | | | | |
| 0: | 1 | | | | | | |
| Members present for the final vote | Pablo Arias Echeverría, Adam Bielan, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia De Campos, Jürgen Creutzmann, Cornelis de Jong, Evelyne Gebhardt, Małgorzata Handzlik, Iliana Ivanova, Eija-Riitta Korhola, Edvard Kožušník, Hans-Peter Mayer, Phil Prendergast, Mitro Repo, Robert Rochefort, Heide Rühle, Matteo Salvini, Christel Schaldemose, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Bernadette Vergnaud, Barbara Weiler | | | | | | |
| Substitute(s) present for the final vote | Regina Bastos, María Irigoyen Pérez, George Lyon, Ramona Nicole Mănescu, Emma McClarkin, Konstantinos Poupakis, Sylvana Rapti, Marc Tarabella, Kyriacos Triantaphyllides, Wim van de Camp | | | | | | |

1.12.2011

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council on entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with certain tasks related to the protection of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Counterfeiting and Piracy
(COM(2011)0288 – C7-0136/2011 – 2011/0135(COD))

Rapporteur: Sabine Verheyen

SHORT JUSTIFICATION

The EU's economic well-being relies on sustained creativity, cultural diversity and innovation as these are driving forces in the evolving knowledge society. Therefore the protection of intellectual property rights (IPR) equally serves business, innovators, consumers and those involved in cultural creation. Over the last ten years, however, IPR infringements and the trade in counterfeited and pirated goods have been rising. In particular the evolving digital economy has given rise to increased online IPR infringements related to counterfeiting, unauthorised copying and piracy which significantly harm the European economy and the cultural and creative sectors.

To encourage greater cooperation between the Member States regarding the protection of IPR, the European Commission has created the European Observatory on Counterfeiting and Piracy, which is administered by the Commission's Directorate General for Internal Market and Services (MARKT). The Observatory serves as a forum for public authorities and private stakeholders to exchange information and experiences as well as to promote best practices in IPR enforcement. Moreover, it functions as a central platform for collecting, monitoring and reporting crucial information on technical tools to prevent counterfeiting, unauthorised copying and piracy.

However, the Observatory faces a major challenge to perform the tasks and activities entrusted to it, as it is not equipped with the appropriate infrastructure to operate effectively. The establishment of an appropriate legal framework as well as measures for the enforcement of IPR requires a better understanding of the nature of infringements including their economic

and cultural impact. Therefore, the Observatory and its growing activities and tasks must be embedded in an operational and cost-efficient institutional structure, which allows it to perform its tasks effectively and support the fight against IPR infringements.

The Draftswoman supports the Commission proposal for a Regulation whereby the Office for Harmonisation in the Internal Market (OHIM) will be entrusted with the operation of the European Observatory on Counterfeiting and Piracy. This merger would allow the Observatory access to the necessary financing and infrastructure required to carry out the tasks and activities as well as to benefit from the Office's expertise. Moreover, the draftswoman believes that the creation of synergies between the tasks of the Observatory and those already being carried out by the Office would allow for an efficient use of financial and human resources at no extra cost to the EU budget. It is estimated that this merger would allow for savings of around EUR 40 000 in the EU budget as the costs of the Observatory would in future be borne by the OHIM budget.

Nevertheless, the draftswoman believes that the proposal makes insufficient reference to the cultural dimension of IPR and therefore to the associated activities and tasks of the Observatory, which promote cultural diversity and the sustainable preservation of cultural heritage in Europe. Thus, it is essential that in addition to stakeholders from public administration and the economic sector, an adequate number of representatives from the cultural and creative sectors, namely those involved in cultural creation, participate in the meetings of the Observatory.

Moreover, the draftswoman believes that it would be beneficial to European citizens, business and public administration, if the Observatory developed a publicly accessible online platform providing information, best practice, freely downloadable awareness-raising tools and capacity-building initiatives concerning the numerous legislative and non-legislative means to fight IPR infringements.

Finally, the draftswoman is convinced that the Observatory should not deal, in the context of its activities, with organised crime and terrorism, as there is no infrastructure at the Office to deal with sensitive security data. Furthermore, there is no need to enhance the Office's competencies in this area, given that there are other European authorities already dealing with these issues.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) The economic well-being of the European Union (hereinafter referred to as "the Union") relies on sustained creativity and innovation. Therefore measures for their effective protection are indispensable in ensuring *its future* prosperity.

Amendment

(1) The economic well-being of the European Union (hereinafter referred to as "the Union") relies on sustained creativity and innovation. Therefore measures for ***both their promotion and*** their effective protection are indispensable in ensuring ***that they will continue to be a source of*** prosperity ***in the future***.

Amendment 2

Proposal for a regulation
Recital 2

Text proposed by the Commission

(2) Intellectual property rights are vital business assets ***that help to ensure*** that innovators and creators get a fair ***return*** for their work and that their investment in research and new ideas is protected.

Amendment

(2) Intellectual property rights are vital business assets ***which provide an essential legal basis for ensuring*** that innovators and creators get a fair ***reward*** for their work and that their investment in research and new ideas is protected. ***A balanced level of protection will promote innovation, growth and access to culture and creative works.***

Amendment 3

Proposal for a regulation
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The evolving and constantly changing digital economy has had an impact on the effectiveness of the current legislative framework of measures and instruments for the protection of intellectual property rights, in particular in relation to online infringements. It should therefore be ensured that the European Observatory on Counterfeiting and Piracy has the necessary

infrastructure and funding to perform its tasks effectively.

Amendment 4

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) A ***sound, harmonised and progressive*** approach to intellectual property rights is fundamental in the endeavour to fulfil the ambitions of the Europe 2020 Strategy.

Amendment

(3) A ***global and balanced*** approach to intellectual property rights ***which is harmonised at Union level and which also takes due account of World Trade Organization rules, the related legal framework and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)***¹ is fundamental in the endeavour to fulfil the ambitions of the Europe 2020 Strategy ***and the Digital Agenda for Europe***².

¹

<http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>.

² *Communication from the Commission of 26 August 2010: 'A Digital Agenda for Europe' (COM(2010)0245/2).*

Amendment 5

Proposal for a regulation Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) In the context of duly enforcing the current legal framework and considering future changes and amendments thereto, due respect should be shown for the public's right of access to culture and to the new creativity and personal development tools provided by new information and communication

technologies.

Amendment 6
Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) The constant rise of infringements of intellectual property rights constitutes a genuine threat not only to the Union economy, ***but also to*** the health and safety of Union consumers. Therefore, effective, immediate and coordinated actions at European and global levels are needed to successfully combat this phenomenon.

Amendment

(4) The constant rise of infringements of intellectual property rights constitutes a genuine threat not only to the Union economy, ***cultural and creative work and*** the health and safety of Union consumers, ***but also to the sustainable preservation, promotion and protection of the diversity of cultural expression and heritage.*** Therefore, effective, immediate and coordinated actions at European and global levels are needed to successfully combat this phenomenon, ***while at the same time ensuring a fair return for authors and fair public access.***

Amendment 7
Proposal for a regulation
Recital 6

Text proposed by the Commission

(6) The Communication set out that the Observatory should become the central resource for gathering, monitoring and reporting information and data related to all intellectual property rights infringements. It should be used as a platform for cooperation between representatives from national authorities and stakeholders to exchange ideas and expertise on best practices, to develop joint enforcement strategies and to make recommendations to policy-makers. The Communication specified that the Observatory would be hosted and managed by the services of the Commission.

Amendment

(6) The above-mentioned Communication set out that the Observatory should become the central resource for gathering, monitoring and reporting information and data related to all intellectual property rights infringements. It should be used as a platform for cooperation between representatives from national authorities and ***all public and private*** stakeholders to exchange ideas and expertise on best practices, to develop joint enforcement strategies and to make recommendations to policy-makers. That Communication specified that the Observatory would be hosted and managed by the services of the Commission.

Amendment 8

Proposal for a regulation Recital 7

Text proposed by the Commission

(7) ***In its Resolution on the enforcement of intellectual property rights in the internal market of 1 March 2010, the Council invited*** the Commission, the Member States and industry ***to*** provide the Observatory with available reliable and comparable data on ***counterfeiting and piracy*** and ***to*** jointly develop and agree, in the context of the Observatory, on plans to collect further information. The ***Council also invited the*** Observatory ***to*** publish each year a comprehensive annual report covering the scope, scale and principal characteristics of ***counterfeiting and piracy*** as well as its impact on the internal market. That annual report should be prepared with the information provided by the authorities of the Member States, the Commission and the private sector, within the limits of data protection law, on the scope, scale and principal characteristics of ***counterfeiting and piracy*** as well as ***its*** impact on the internal market.

Amendment

(7) The Commission, the Member States and industry ***should*** provide the Observatory with available reliable and comparable data on ***infringements of intellectual property rights*** and jointly develop and agree, in the context of the Observatory, on plans to collect further information. The Observatory ***should*** publish each year a comprehensive annual report covering the scope, scale and principal characteristics of ***infringements of intellectual property rights*** as well as its impact on the internal market. That annual report should be prepared with the information provided by the authorities of the Member States, the Commission and the private sector, within the limits of data protection law, on the scope, scale and principal characteristics of ***infringements of intellectual property rights*** as well as ***their*** impact on the internal market.

Amendment 9

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) In view of the range of tasks assigned to the Observatory, a solution is needed to ensure an adequate and sustainable infrastructure for the fulfilment of the tasks of the Observatory.

Amendment

(11) In view of the range of tasks assigned to the Observatory, a solution is needed to ensure an adequate and sustainable infrastructure for the fulfilment of the tasks of the Observatory ***as well as the resources required to that end.***

Amendment 10

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) The Office should offer a forum that brings together public authorities **and** the private sector, ensuring the collection, analysis and dissemination of relevant objective, comparable and reliable data regarding the value of intellectual property rights and the infringements of those rights, the development of best practices and strategies to protect intellectual property rights, and raising public awareness of the impacts of intellectual property rights infringements. **Furthermore, the Office should fulfil additional tasks, such as to improve the understanding of the value of intellectual property rights, enhance the expertise of persons involved in the enforcement of intellectual property rights by appropriate training measures, increase knowledge on techniques to prevent counterfeiting, and improve cooperation with third countries and international organisations.**

Amendment

(17) The Office should offer a forum that brings together public authorities **in cooperation with stakeholders as a whole, including representatives of** the private sector **and civil society**, ensuring the collection, analysis and dissemination of relevant objective, comparable and reliable data regarding the value of intellectual property rights and the **impact of** infringements of those rights **on creativity and innovation within the Union, identifying and promoting** the development of best practices and strategies to protect intellectual property rights, and raising public awareness of the impacts of intellectual property rights infringements. **In this connection, due consideration should be given to the impact of digitisation and new technologies for protecting** intellectual property rights **and the encouragement of new niches and business models expanding the legal offer of cultural and creative content.**

Amendment 11

Proposal for a regulation Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) The Office should also fulfil additional tasks, such as improving the understanding of the value of intellectual property rights, enhancing the expertise of persons involved in the enforcement of intellectual property rights by appropriate training measures and increasing knowledge concerning techniques to

prevent infringements of intellectual property rights. The cooperation with third countries, international and non-governmental organisations specialised in this field should be improved.

Amendment 12

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) With regard to representatives of the private sector, the Office should involve, when assembling the Observatory in the context of its activities, a representative selection of the ***economic*** sectors most concerned by and most experienced in the fight against infringements of intellectual property rights, in particular representatives of right holders and Internet ***service providers***. Also, a proper representation of consumers ***and of*** small and *medium sized* enterprises should be ensured.

Amendment

(18) With regard to representatives of the private sector, the Office should involve, when assembling the Observatory in the context of its activities, a representative selection of the sectors most concerned by and most experienced in the fight against infringements of intellectual property rights, in particular representatives of right holders and Internet ***intermediaries***. ***In this connection, particular attention should be paid to sectors which, by their very nature, generate value which is to a large extent intangible, such as the creative and cultural sector.*** Also, a proper representation of consumers, small and *medium-sized* enterprises, ***creators and users of cultural services and platforms, including stakeholders of the non-profit sector,*** should be ensured.

Amendment 13

Proposal for a regulation Article 2 – paragraph 1 – point b

Text proposed by the Commission

(b) improving the understanding on the value of intellectual property;

Amendment

(b) improving the understanding on the value ***and complexity*** of intellectual property ***and knowledge about the impact of infringements of intellectual property rights on creativity and innovation within***

the Union;

Amendment 14

Proposal for a regulation

Article 2 – paragraph 1 – point d

Text proposed by the Commission

(d) raising citizens' awareness of the impact of infringements of intellectual property rights;

Amendment

(d) raising citizens' awareness of the impact of infringements of intellectual property rights ***by promoting information campaigns in all Member States;***

Amendment 15

Proposal for a regulation

Article 2 – paragraph 1 – point e

Text proposed by the Commission

(e) enhancing the expertise of persons involved in the enforcement of intellectual property rights;

Amendment

(e) enhancing the expertise of persons involved in the enforcement of intellectual property rights ***and their ability to deal with the new challenges posed by the digital era;***

Amendment 16

Proposal for a regulation

Article 2 – paragraph 1 – point f

Text proposed by the Commission

(f) enhancing ***the*** knowledge ***on*** technical tools to prevent and combat ***counterfeiting and piracy, including tracking and tracing systems;***

Amendment

(f) enhancing ***and fostering*** knowledge ***concerning*** technical tools to prevent and combat ***infringements of intellectual property rights;***

Amendment 17

Proposal for a regulation

Article 2 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) improving knowledge of existing, functioning, legal business models which make copyright works available commercially or otherwise;

Amendment 18

Proposal for a regulation

Article 2 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) drawing up and promoting the best strategies on national practices and techniques for enforcing intellectual property law, whether originating from the public or from the private sector;

Amendment 19

Proposal for a regulation

Article 2 – paragraph 1 – point h b (new)

Text proposed by the Commission

Amendment

(hb) monitoring and reporting on the effect of legal online offers on use of unauthorised content;

Amendment 20

Proposal for a regulation

Article 2 – paragraph 1 – point h c (new)

Text proposed by the Commission

Amendment

(hc) assessing barriers to the completion of an effective digital single market and recommending effective policy options to overcome such barriers.

Amendment 21

Proposal for a regulation

Article 2 – paragraph 2 – point a

Text proposed by the Commission

(a) assembling, in accordance with Article 4, the Observatory at regular intervals;

Amendment

(a) assembling, in accordance with Article 4, the Observatory at regular intervals, ***at least once a year, and duly providing information on the holding and outcome of such meetings via public consultation platforms;***

Amendment 22

Proposal for a regulation

Article 2 – paragraph 2 – point b

Text proposed by the Commission

(b) establishing a methodology for the collection, analysis and reporting of independent, objective, comparable and reliable data related to infringements of intellectual property rights;

Amendment

(b) establishing a ***transparent*** methodology for the collection, analysis and reporting of independent, objective, comparable and reliable data related to infringements of intellectual property rights;

Amendment 23

Proposal for a regulation

Article 2 – paragraph 2 – point d

Text proposed by the Commission

(d) collecting, analysing and disseminating relevant objective, comparable and reliable data regarding the ***economic*** value of intellectual property and its contribution to economic growth, welfare, innovation, creativity, cultural diversity, the creation of high quality jobs and the development of high quality products and services within the Union;

Amendment

(d) collecting, analysing and disseminating relevant objective, comparable and reliable data regarding the value of intellectual property and its contribution to economic growth, welfare, innovation, creativity, cultural ***and linguistic*** diversity, the creation of high quality jobs and the development of high quality products and services within the Union;

Amendment 24

Proposal for a regulation
Article 2 – paragraph 2 – point e

Text proposed by the Commission

(e) providing regular assessments and specific reports by economic sector, geographic area and type of intellectual property right infringed, which evaluate, inter alia, the impact of intellectual property rights infringements on society, economy, health, environment, safety and security, and the relation of such infringements with *organized crime and terrorism*;

Amendment

(e) providing regular assessments and specific reports by economic sector, geographic area and type of intellectual property right infringed, which evaluate, inter alia, the impact of intellectual property rights infringements on society, economy, health, environment, safety and security, and the relation of such infringements with *organised crime, and which take account of the challenges posed by new information and communications technology in devising new models for management of those rights*;

Amendment 25

Proposal for a regulation
Article 2 – paragraph 2 – point f

Text proposed by the Commission

(f) collecting, analysing and disseminating information regarding best practices between the representatives meeting as the Observatory, and developing strategies based on such practices;

Amendment

(f) collecting, analysing and disseminating information regarding best practices between the representatives meeting as the Observatory *and the Member States' competent bodies*, and developing *and disseminating* strategies based on such practices;

Amendment 26

Proposal for a regulation
Article 2 – paragraph 2 – point g

Text proposed by the Commission

(g) drawing up reports and publications to raise awareness *of the Union's* citizens of the impact of infringements of intellectual property rights, and organising

Amendment

(g) drawing up reports and publications to raise awareness *amongst Union* citizens of the impact of infringements of intellectual property rights, and organising

conferences, *on-line* and *off-line* campaigns, events and meetings at European and international levels;

conferences, *online* and *offline* campaigns, events and meetings at European and international levels ***which examine new, balanced and flexible proposals for protecting intellectual property rights in particularly sensitive areas, such as the cultural and creative sector, while upholding citizens' access rights, in accordance with applicable law;***

Amendment 27

Proposal for a regulation

Article 2 – paragraph 2 – point j

Text proposed by the Commission

(j) ***researching***, evaluating and promoting technical tools for professionals and benchmark techniques, including tracking and tracing systems which help to distinguish genuine from counterfeit products;

Amendment

(j) ***collecting information***, evaluating and promoting technical tools for professionals and benchmark techniques, including tracking and tracing systems which help to distinguish genuine from counterfeit products;

Amendment 28

Proposal for a regulation

Article 2 – paragraph 2 – point k a (new)

Text proposed by the Commission

Amendment

(ka) developing a publicly accessible online platform providing information, examples of best practices, freely downloadable awareness-raising tools and capacity-building initiatives concerning the numerous legislative and non-legislative means to fight infringements of intellectual property rights;

Amendment 29

Proposal for a regulation

Article 2 – paragraph 2 – point l

Text proposed by the Commission

(l) **building** strategies in cooperation with the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property, **and developing techniques, skills and tools** related to the protection of intellectual property rights, including training programmes and awareness campaigns;

Amendment

(l) **developing** strategies, in cooperation with the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property, related to the protection of intellectual property rights, including training programmes and awareness campaigns;

Amendment 30

Proposal for a regulation

Article 2 – paragraph 2 – point p

Text proposed by the Commission

(p) carrying out similar activities necessary for the Office to fulfil the tasks set out in paragraph 1.

Amendment

deleted

Amendment 31

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

1. The Office shall invite to the meetings referred to in point (a) of Article 2(2) representatives from public administrations, bodies and organisations dealing with the protection of intellectual property rights and representatives from the private sector.

Amendment

1. The Office shall invite to the meetings referred to in point (a) of Article 2(2) representatives from public administrations, bodies and organisations dealing with the protection of intellectual property rights and representatives from **non-governmental organisations and** the private sector.

Amendment 32

Proposal for a regulation

Article 4 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Representatives meeting as the Observatory invited from the private sector shall include a broad and representative range of Union and national bodies representing the different ***economic*** sectors most concerned by and most experienced in the fight against infringements of intellectual property rights.

Amendment

Representatives meeting as the Observatory invited from the private sector shall include a broad and representative range of Union and national bodies representing the different sectors most concerned by and most experienced in the fight against infringements of intellectual property rights.

Amendment 33

Proposal for a regulation

Article 4 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Consumer organisations ***and*** small and *medium sized* enterprises shall be properly represented.

Amendment

Consumer organisations, small and *medium-sized* enterprises, ***internet intermediaries and creators and users of cultural services and platforms, including stakeholders of the non-profit sector,*** shall be properly represented.

Amendment 34

Proposal for a regulation

Article 4 – paragraph 3

Text proposed by the Commission

3. The Office shall invite one national representative from each Member State, and five representatives each from the European Parliament and the Commission.

Amendment

3. The Office shall invite one national representative from each Member State, and five representatives each from the European Parliament and the Commission. ***When the European Parliament's representatives are appointed, due account must be taken of the committees on which those representatives sit in their capacity as Members of the European Parliament, so as to ensure that areas in which the impact of intellectual property rights is the greatest, such as industry, culture or health, are represented as fully***

as possible.

Amendment 35

Proposal for a regulation

Article 4 – paragraph 5

Text proposed by the Commission

5. The meetings referred to in point (a) of Article 2(2) may also be organised in working groups within the Observatory. Up to two representatives from the European Parliament and up to two representatives from the Commission shall be invited to the meetings of the working groups *as observers*.

Amendment

5. The meetings referred to in point (a) of Article 2(2) may also be organised in working groups within the Observatory. Up to two representatives from the European Parliament and up to two representatives from the Commission shall be invited to the meetings of the working groups.

Amendment 36

Proposal for a regulation

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The Office shall take account of existing obligations incumbent on Member States requiring them to provide information on infringements of intellectual property rights, and shall seek to avoid duplication of effort.

Amendment 37

Proposal for a regulation

Article 5 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Personal data shall not be transferred, processed, stored or used for any other purpose, even on the instructions of the Office or the Observatory.

Amendment 38

Proposal for a regulation

Article 7 – paragraph 1 – point e

Text proposed by the Commission

(e) ***recommendations on the future policies in the area of*** the protection of intellectual property rights, including on how to enhance ***an effective*** cooperation between Member States.

Amendment

(e) ***observations*** on the protection of intellectual property rights ***and potential future policies and strategies***, including on how to enhance cooperation ***with and*** between Member States, ***drawing on their own experiences***.

Amendment 39

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

2. The evaluation report shall assess the performance of the Office in the operation of this Regulation, in particular as regards its impact on the protection of intellectual property rights in the internal market.

Amendment

2. The evaluation report shall assess the performance of the Office in the operation of this Regulation, in particular as regards its impact on the protection of intellectual property rights in the internal market, ***and shall focus on the various areas and sectors on which intellectual property rights have a bearing***.

PROCEDURE

| | | | | | | | |
|---|---|----|----|----|---|----|---|
| Title | Entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with certain tasks related to the protection of intellectual property rights | | | | | | |
| References | COM(2011)0288 – C7-0136/2011 – 2011/0135(COD) | | | | | | |
| Committee responsible Date announced in plenary | JURI 7.6.2011 | | | | | | |
| Committee(s) asked for opinion(s) Date announced in plenary | CULT 7.6.2011 | | | | | | |
| Rapporteur(s) Date appointed | Sabine Verheyen 13.7.2011 | | | | | | |
| Discussed in committee | 4.10.2011 | | | | | | |
| Date adopted | 23.11.2011 | | | | | | |
| Result of final vote | <table> <tr> <td>+: </td><td>22</td></tr> <tr> <td>–: </td><td>5</td></tr> <tr> <td>0: </td><td>2</td></tr> </table> | +: | 22 | –: | 5 | 0: | 2 |
| +: | 22 | | | | | | |
| –: | 5 | | | | | | |
| 0: | 2 | | | | | | |
| Members present for the final vote | Magdi Cristiano Allam, Maria Badia i Cutchet, Malika Benarab-Attou, Lothar Bisky, Piotr Borys, Silvia Costa, Santiago Fisas Aixela, Mary Honeyball, Petra Kammerevert, Morten Løkkegaard, Emma McClarkin, Marek Henryk Migalski, Doris Pack, Chrysoula Paliadelis, Marie-Thérèse Sanchez-Schmid, Marco Scurria, Joanna Senyszyn, Emil Stoyanov, Hannu Takkula, Sampo Terho, László Tőkés, Helga Trüpel, Gianni Vattimo, Sabine Verheyen, Milan Zver | | | | | | |
| Substitute(s) present for the final vote | Ramona Nicole Mănescu, Hans-Peter Martin, Mitro Repo | | | | | | |
| Substitute(s) under Rule 187(2) present for the final vote | Jaromír Kohlíček | | | | | | |

PROCEDURE

| | | | |
|---|--|------------------|------------------|
| Title | Entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with certain tasks related to the protection of intellectual property rights | | |
| References | COM(2011)0288 – C7-0136/2011 – 2011/0135(COD) | | |
| Date submitted to Parliament | 24.5.2011 | | |
| Committee responsible Date announced in plenary | JURI 7.6.2011 | | |
| Committee(s) asked for opinion(s) Date announced in plenary | ITRE 7.6.2011 | IMCO 7.6.2011 | CULT 7.6.2011 |
| Not delivering opinions Date of decision | ITRE 15.6.2011 | | |
| Rapporteur(s) Date appointed | Antonio Masip Hidalgo 11.7.2011 | | |
| Discussed in committee | 11.10.2011 | 22.11.2011 | |
| Date adopted | 20.12.2011 | | |
| Result of final vote | +: -: 0: | 19 0 2 | |
| Members present for the final vote | Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Alexandra Thein, Diana Wallis, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka | | |
| Substitute(s) present for the final vote | Jan Philipp Albrecht, Jean-Marie Cavada, Luis de Grandes Pascual, Vytautas Landsbergis, Kurt Lechner, Eva Lichtenberger, Arlene McCarthy | | |
| Date tabled | 9.1.2012 | | |