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*Committee on the Internal Market and Consumer Protection*

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**2011/0135(COD)**

20.10.2011

# **AMENDMENTS**

## **14 - 46**

**Draft opinion**

**Adam Bielan**

(PE470.071v01-00)

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

Proposal for a regulation

(COM(2011)0288 – C7-0136/2011 – 2011/0135(COD))

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**EN**

*United in diversity*

**EN**

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**Amendment 14**  
**Matteo Salvini**

**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.

Or. it

**Amendment 15**  
**Zuzana Roithová**

**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 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.**

Or. en

*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 16**

**Matteo Salvini**

### **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, 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. ***In this context, it is worth stressing the importance of greater cooperation and exchange of information between the customs authorities of each Member State.***

Or. it

## **Amendment 17**

**Regina Bastos**

### **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, 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, ***and efforts should be intensified in sectors that are sensitive from the health and***

*safety point of view, especially where medicines and foodstuffs are concerned.*

Or. pt

*Justification*

*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 18**  
**Regina Bastos**

**Proposal for a regulation**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) The Commission, in conjunction with the Office for Harmonisation in the Internal Market and the Member States, 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 the solutions best suited to their specific needs.***

Or. pt

*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 19**  
**Regina Bastos**

**Proposal for a regulation**  
**Recital 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***(4b) To facilitate and rationalise access to all necessary information concerning infringements of intellectual property rights, Member States should make use of the single points of contact established under the Services Directive.***

Or. pt

*Justification*

*Using single points of contact would cut red tape and rationalise resources, thus helping to reduce costs for companies.*

**Amendment 20**  
**Regina Bastos**

**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. ***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.***

Or. pt

*Justification*

*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 21**

**Regina Bastos**

### **Proposal for a regulation**

#### **Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10a) To help European entrepreneurs enforce their intellectual property rights in third countries and to improve the measures taken by the authorities to prevent counterfeit products from entering the European market, close cooperation should be established between the OHIM and European External Action Service.***

Or. pt

#### *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. The European External Action Service could accordingly have an important role to play.*

## **Amendment 22**

**Rolandas Paksas**

### **Proposal for a regulation**

#### **Recital 11**

*Text proposed by the Commission*

*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.

(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 ***in order to make it a contact point for the Union and an international centre of reference for good***

*practice.*

Or. It

**Amendment 23**  
**Bernadette Vergnaud**

**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, 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 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.

Or. fr

**Amendment 24**  
**Bernadette Vergnaud**

**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 right holders, Internet service providers ***and consumer associations***. Also, a proper representation of small and medium sized enterprises should be ensured.

Or. fr

**Amendment 25**  
**Rolandas Paksas**

**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 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, ***with, furthermore, the active participation of representatives from a range of civil society organisations including employers' organisations, trade unions, societies of authors and consumer organisations. It should also be ensured that*** small and medium sized enterprises ***are offered practical assistance and information about their rights***.

**Amendment 26**  
**Zuzana Roithová**

**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 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, *an equal* representation of consumers, *of civil society* and of small and medium sized enterprises should be ensured, *as well as that of data protection authorities*.

Or. en

*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 27**  
**Regina Bastos**

**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 society;***

Or. pt

*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 28**

**Toine Manders**

### **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, so that, rather than only performing checks, awareness is also cultivated, for example by means of information incorporated into videogames which the public can access, because in this way people – and particularly young people – can be reached quickly, directly and in large numbers;***

Or. nl

## **Amendment 29**

**Bernadette Vergnaud**

**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 combat counterfeiting and piracy, including tracking and tracing systems, ***while respecting basic 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)<sup>1</sup>, 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)<sup>2</sup>***;

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*OJ L 108, 24.4.2002, p. 33.*

*OJ L 108, 24.4.2002, p. 51.*

Or. fr

**Amendment 30**  
**Zuzana Roithová**

**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 combat counterfeiting and piracy, including tracking and tracing systems ***in compliance with the Union acquis on e-commerce and data protection***;

Or. en

**Amendment 31**  
**Jürgen Creutzmann**

**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.

Or. en

*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 32**  
**Bernadette Vergnaud**

**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 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;*

Or. fr

**Amendment 33**  
**Regina Bastos**

**Proposal for a regulation**  
**Article 2 – paragraph 2 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

*(ea) assessing the measures provided for in Directive 2004/48/EC on the enforcement of intellectual property rights on the internal market, from the point of view both of the protection of rights and of its effects on consumer rights;*

Or. pt

*Justification*

*In order to gain a clear picture, the implementation of the relevant legislative measures needs to be assessed.*

**Amendment 34**  
**Bernadette Vergnaud**

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

*Text proposed by the Commission*

*Amendment*

(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 European and international levels;

(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 **and coordinating** on-line and off-line campaigns, events and meetings at European and international levels, **while taking into account restrictions in terms of financial and human resources;**

**Amendment 35**  
**Bernadette Vergnaud**

**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 36**  
**Hans-Peter Mayer**

**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*

***deleted***

**Amendment 37**  
**Zuzana Roithová**

**Proposal for a regulation**  
**Article 2 – paragraph 2 – point p a (new)**

*Text proposed by the Commission*

*Amendment*

***(pa) assessing the impact of intellectual property rights enforcement measures on innovation and the development of information society services, as explicitly required by Directive 2004/48/EC;***

Or. en

*Justification*

*The Directive on IPR Enforcement (Directive 2004/48/EC) explicitly requires a thorough assessment of the impact of the Directive on innovation. However, the European Commission has so far not provided such an assessment; on the contrary it has launched the revision of the current Directive without fulfilling this requirement, established in the law.*

**Amendment 38**  
**Zuzana Roithová**

**Proposal for a regulation**  
**Article 2 – paragraph 2 – point p b (new)**

*Text proposed by the Commission*

*Amendment*

***(pb) assessing the impact on consumers of the absence of a digital single market for online content.***

Or. en

*Justification*

*It would be useful if the Observatory could also assess the impact and the harm for consumers by the current lack of a Digital Single Market for online content.*

**Amendment 39**  
**Hans-Peter Mayer**

**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, representatives from the private sector **and representatives of consumer organisations and small and medium sized enterprises.**

Or. de

**Amendment 40**  
**Bernadette Vergnaud**

**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 the private sector **and civil society.**

Or. fr

**Amendment 41**  
**Bernadette Vergnaud**

**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

*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.

range of Union and national bodies representing the different economic sectors concerned by infringements of intellectual property rights, **as well as representatives of civil society including consumer associations.**

Or. fr

**Amendment 42**  
**Hans-Peter Mayer**

**Proposal for a regulation**  
**Article 4 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

**deleted**

Or. de

**Amendment 43**  
**Zuzana Roithová**

**Proposal for a regulation**  
**Article 4 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

Consumer organisations, **civil society** and small and medium sized enterprises shall be **equally** represented, **as well as data protection authorities.**

Or. en

*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 44**  
**Bernadette Vergnaud**

**Proposal for a regulation**  
**Article 5 – introductory part**

*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, Member States and *representatives of the private sector and civil society* meeting as the Observatory shall:

Or. fr

**Amendment 45**  
**Rolandas Paksas**

**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.

Or. lt

**Amendment 46**  
**Juozas Imbrasas**

**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.

Or. It