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DRAFT REPORT

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

Committee on Legal Affairs

Rapporteur: Marielle Gallo

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The European Parliament,

- having regard to the communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee of 11 September 2009 on enhancing the enforcement of intellectual property rights in the internal market (COM(2009)0467),
 - having regard to the resolution of the Competitiveness Council of 25 September 2008 on a comprehensive European anti-counterfeiting and piracy plan,
 - having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce),
 - having regard to Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society,
 - having regard to Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights,
 - having regard to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights,
 - having regard to Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs,
 - having regard to the European Parliament legislative resolution of 25 April 2007 on the amended proposal for a directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights,
 - having regard to the Commission Strategy for the Enforcement of Intellectual Property Rights in Third Countries of 2005 and to the Commission Staff Working Document 'IPR Enforcement Report 2009',
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Industry, Research and Energy (A7-0000/2010),
- A. whereas violations of intellectual property rights (IPR), defined as any violation of any IPR, such as copyright, trade marks, designs or patents, constitute a genuine threat not

only to consumer health and safety but also to our economies and societies,

- B. whereas in order to properly address the question of IPR enforcement in the internal market, it is important to take into consideration not only EU territory but also the situation at the EU's external borders and in third countries,
- C. whereas data concerning the scale of IPR infringements are inconsistent, incomplete, insufficient and dispersed,
- D. whereas innovation and creativity have considerable added value for the European economy and, taking account of the economic context, they should be preserved and developed,
- E. whereas the violation of IPR is a problem across the board which affects all sectors of industry and particularly the creative and innovative industries,
- F. whereas the phenomenon of on-line piracy has assumed very alarming proportions, particularly for the creative content industries, and whereas the existing legal framework has proven incapable of effectively protecting rights-holders on the Internet and the balance between all the interests at stake, including those of consumers,
- G. whereas, with the exception of legislation on penalties under the criminal law, a Community legal framework already exists with regard to the phenomenon of counterfeiting and piracy of physical goods, but whereas lacunae persist with regard to Internet piracy,
- H. whereas the measures provided for by Directive 2004/48/EC on the enforcement of intellectual property rights on the internal market have not been assessed from the point of view of the protection of rights,
- I. whereas, in the case of patents, their protection is crucial in order to efficiently fight patent violations; whereas the question of the unified patent system at the EU level has yet to be resolved,
- J. whereas there are proven connections between various forms of organised crime and IPR infringements, in particular counterfeiting and piracy,
 1. Welcomes the communication of 11 September 2009 from the Commission concerning additional non-legislative measures; regrets however that the communication does not deal with the completion of the legislative framework;
 2. Calls on the Commission to urgently present a comprehensive IPR strategy addressing all aspects of IPRs, including their enforcement;
 3. Considers that the Commission should take IPR aspects into account in all its policies or legislative initiatives and consider these aspects in all processes relating to impact assessments where a proposal would have an impact on intellectual property;
 4. Does not share the Commission's certitude that the current civil enforcement framework in the EU is effective and harmonised to the extent necessary for the proper functioning of

the internal market and reminds the Commission that the report on the application of Directive 2004/48/EC is essential to confirm those claims;

5. Calls on the Commission to draw up the report on the application of Directive 2004/48/EC, including an assessment of the effectiveness of the measures taken, as well as an evaluation of its impact on innovation and the development of the information society, in accordance with Article 18(1) of that Directive and, if necessary, to propose amendments; calls for that report also to include an assessment of the ways to strengthen and upgrade the legal framework with respect to the Internet;
6. Does not share the Commission view that the principal body of laws with respect to IPR enforcement is already in place; points out in this respect that negotiations on the directive on criminal sanctions have not been successfully concluded and calls on the Commission to put forward a new proposal on criminal sanctions under the Treaty of Lisbon;
7. Calls on the Commission to put forward appropriate legislative proposals based on Article 118 of the TFEU which will address the issue of an effective EU patent system;

European Observatory on Counterfeiting and Piracy ('the Observatory')

8. Recognises the importance of comprehensive and reliable information and data on all types of IPR infringements for the development of evidence-based and result-oriented policy-making;
9. Welcomes the establishment of the Observatory as a tool for centralisation of statistics and data which will serve as a basis for proposals to be implemented to combat effectively the phenomena of counterfeiting and piracy, including on-line piracy;
10. Wishes the Observatory to become a tool for collecting and exchanging data and information on all forms of all IPR infringements;
11. Calls on the Commission to clarify the tasks which are to be entrusted to the Observatory and stresses that the success of the Observatory largely depends on the involvement and cooperation of all stakeholders, including the national authorities, rights-holders, consumers' organisations and the industries concerned, in order to increase transparency and avoid duplication of effort;
12. Calls on the Commission to inform Parliament and the Council fully and comprehensively about the results of the Observatory's activities through annual reports in which the Commission draws conclusions and proposes solutions necessary to enhance the enforcement of IPRs;

Cultivating consumer awareness

13. Stresses the need to organise a campaign to raise awareness at European, national and local level of the risks to consumer health and safety arising from counterfeit products and also the adverse impact of counterfeiting and piracy on the economy and society;
14. Calls on all parties concerned, including Internet service providers, on-line sales

platforms, rights-holders and consumers' organisations, with regard to piracy and the sale of counterfeit products on line, to establish a dialogue on practical measures to be adopted to alert people, such as brief, visible and relevant warning messages;

15. Stresses the need to educate young people to enable them to understand what is at stake in intellectual property and to identify clearly what is legal and what is not, by means of targeted public awareness campaigns, particularly against on-line piracy;

Combating on-line piracy and protecting IPR on the Internet

16. Agrees with the Commission that additional non-legislative measures are useful to improve the application of IPR, particularly measures arising from in-depth dialogue among stakeholders;
17. Regrets that the Commission has not mentioned or discussed the delicate problem of on-line piracy, which constitutes a major aspect of this worldwide phenomenon in the age of digitisation of our societies, particularly the issue of the balance between free access to the Internet and the measures to be taken to combat this scourge effectively; urges the Commission to broach this problem in its IPR strategy;
18. Stresses that a number of factors have allowed this phenomenon to develop, particularly technological advances; recalls however that this phenomenon constitutes a violation of IPR to which appropriate, urgent solutions need to be found, geared to the sector concerned;
19. Stresses that support for and development of the provision of a diversified, attractive, high-profile, legal range of goods and services for consumers may help to tackle the phenomenon, but recognises that this is not sufficient: piracy is today the biggest obstacle to the development of legal online offers and the EU runs the risk of condemning to failure efforts to develop the legitimate online market if it does not recognise that fact and make urgent proposals to address it;
20. Stresses that all parties concerned, including Internet service providers, must join in the dialogue with stakeholders in order to find the appropriate solutions in the course of 2010; calls on the Commission, failing this, to submit a legislative proposal or to amend existing legislation, particularly Directive 2004/48/EC, so as to upgrade the Community legal framework in this field on the basis of national experiences;
21. Calls on the Commission to think broadly about methods of facilitating industry's access to the digital market without geographical borders by addressing urgently the issue of multi-territory licences as well as an effective and transparent system for rights management, as this is a requirement for the growth in services which are legal and which meet consumer demand for ubiquitous, instant and customised access to content;

The international dimension and impact on the internal market

22. Supports steps taken by the Commission with a view to identifying the best ways to further improve the EU Customs Regulation which allows the detention of goods suspected of infringing IPRs and is, as such, one of the pillars of the Union legal

framework designed to enforce IPRs;

23. Calls on the Commission to pursue innovative and upgraded cooperation between administrative departments and the various sectors of industry concerned;
24. Calls on the Commission to step up its cooperation with priority third countries with regard to intellectual property and continue its efforts in the context of the negotiations on intellectual property under the auspices of the World Trade Organisation concerning intellectual property, particularly in the framework of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);
25. Calls on the Commission to continue its efforts to further the negotiations on the multilateral Anti-Counterfeiting Trade Agreement (ACTA) to improve the effectiveness of the IPR enforcement system against counterfeiting and to fully inform Parliament on the progress and outcome of the negotiations;
26. Supports the continuation and enhancement by the Commission of bilateral cooperation initiatives, including 'IP dialogues' with third countries and technical assistance projects;

Organised crime

27. Stresses the importance of fighting organised crime in the area of IPRs, in particular counterfeiting and piracy; points out in this context the need for appropriate EU legislation on criminal sanctions and supports close strategic and operational cooperation between all the interested parties within the EU, in particular Europol, national authorities and the private sector, as well as with non-EU states and international organisations;
28. Instructs its President to forward this resolution to the Council, the Commission, the European Economic and Social Committee and the parliaments and governments of the Member States.