

EUROPEAN PARLIAMENT RESOLUTION OF 22 SEPTEMBER 2010 ON ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN THE INTERNAL MARKET (2009/2178(INI))

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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)(1) ,
- 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(2) ,
- 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(3) ,
- 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(4) ,
- 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(5) ,
- having regard to its 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(6) ,

- 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 its resolution of 29 March 2009 on strengthening security and fundamental freedoms on the Internet,
- having regard to the European Convention for the Protection of Human rights and Fundamental Freedoms,
- having regard to the European Convention for the Protection of Human rights and Fundamental Freedoms and having regard to the legally binding character of the Charter of Fundamental Rights,
- having regard to its resolution of 10 April 2008 on cultural industries in Europe,
- having regard to the communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 25 June 2008 on the Small Business Act for Europe establishing the "Think Small First" principle for an ambitious policy agenda for SMEs,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection (A7-0175/2010),

A. whereas infringements of intellectual property rights (IPR) constitute a genuine threat not only to consumer health and safety but also to our economies and societies,

B. whereas scientific and technical innovation, patents and the cultural industries make a decisive contribution to the competitiveness of the European economy, both through the number and diversity of the job openings they provide and through the wealth created; whereas the cultural economy, from creation through to distribution, must be supported,

C. whereas the European Union, as a member of the World Trade Organisation, is bound by the Agreement on Trade Related Intellectual Property Rights (TRIPS); whereas EU Member

States are thereby committed to the adoption and implementation of effective measures against all infringements of IPRs,

D. whereas knowledge sharing and dissemination of innovation are strong traditions in the European Union; whereas access by the greatest possible number to technological progress and cultural products continues to be the foundation of education and development policy,

E. whereas in order properly to 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, in order to ensure compatibility between the protection of content of Community origin and the holders of rights thereto and consumer access to non-Community content,

F. whereas data concerning the scale of IPR infringements are inconsistent, incomplete, insufficient and dispersed, and whereas an objective, independent impact assessment is needed for any additional legislative proposal,

G. 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,

H. whereas the violation of IPRs is a problem across the board which affects all sectors of industry, particularly the creative and innovative industries and sport,

I. whereas ongoing infringements of IPRs will lead to a fade-out of innovation in the EU,

J. whereas the phenomenon of on-line IPR infringements has assumed worrying proportions, particularly for the creative content industries, and whereas it has not been established yet whether the existing legal framework is capable of effectively protecting rights holders on the Internet while guaranteeing a balance between all the interests at stake, including those of consumers,

K. whereas efforts to tackle infringement of copyright must enjoy public support in order not to risk eroding support for intellectual property rights amongst the citizens,

L. whereas the unauthorised uploading of copyrighted material to the Internet is a clear infringement of intellectual property rights and is prohibited by the World Intellectual Property

Organisation (WIPO) treaties on copyright (WCT) and performances and phonograms (WPPT), to which the European Union is a contracting party,

M. whereas the creative sector should continue to develop models enabling access to creative content online which offer improved and cost-effective choices to consumers, including access to unlimited subscription services; whereas the development of these legal services is inhibited by the growth of unlawfully uploaded content online,

N. whereas, in order to maintain and increase the attractiveness of what they can offer their public, producers of audiovisual media must be in a position to use all the new means of distribution; whereas the current system of granting licences must be improved in such a way that the Member States have a flexible system available to them which can be adapted to the new technologies,

O. 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 online IPR infringements,

P. whereas the measures provided for by Directive 2004/48/EC on the enforcement of intellectual property rights on the internal market have not yet been assessed, from the point of view of the protection of rights or from the point of view of its effects on consumers' rights,

Q. whereas the telecoms regulatory framework has recently been amended, includes provisions for standardised public interest notices which can address, among other things, copyright and infringement thereof without jeopardising data protection and privacy rights and stresses the need to respect fundamental rights in matters relating to Internet access,

R. whereas the possibility should be created in the European legal framework of proceeding against infringers of copyright, since international treaties are barely able to address IPR infringements,

S. 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 EU level has yet to be resolved,

T. whereas there are proven connections between various forms of organised crime and IPR infringements,

U. whereas the co-decision role of the European Parliament in commercial matters and its access to negotiation documents is guaranteed by the Lisbon Treaty,

V. whereas it is desirable that, alongside measures to prevent offences in this area, protection should be provided for consumers who legally make use of products that are covered by protection of intellectual property,

W. whereas current Community law constitutes no impediment to the development of multi-territory licensing systems,

X. whereas in various areas, including the text- and image-based sector, there are business models and channels and licensing schemes that provide broad access to works in a wide range of forms and formats, both within and across national borders,

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 matter of completing the legislative framework by introducing a set of measures to combat intellectual property right infringements in an effective manner; welcomes the progress made in the EU in harmonising the fight against counterfeiting; encourages the Commission to step up its efforts in areas that are sensitive in terms of health and safety, including that of medicines;

2. Recalls that an exception to IPRs exists in the cultural area: the "private copy";

3. Calls on the Commission to urgently present, by the end of 2010, a comprehensive IPR strategy addressing all aspects of IPRs, including their enforcement as well as their promotion, in particular the role of copyright as an enabler and not an obstacle, helping creators earn a living and disseminating their works;

4. Calls on the Commission to propose a comprehensive strategy on IPRs which will remove obstacles to creating a single market in the online environment and adapt the European legislative framework in the field of IPRs to current trends in society as well as to technical developments;

5. Stresses that any measures taken to enforce IPRs must respect the Charter of Fundamental Rights of the European Union, in particular Article 7 and Article 8, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, Article 8,

and Article 10, and be necessary, proportionate, and appropriate within a democratic society; recalls in this connection that Article 17 of the Charter of Fundamental Rights of the European Union provides for the protection of intellectual property;

6. Considers that the Commission should take IPR aspects into account in all relevant 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;

7. Takes the view that the Commission should take into account the specific problems encountered by SMEs when it comes to reinforcing the intellectual property rights corresponding to the principle of "Think Small First" established by the Small Business Act for Europe, inter alia by applying the principle of non-discrimination for SMEs;

8. In the light of the experiences undergone by rights-holders in some Member States, 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;

9. Is of the opinion that the possibility of proceeding against infringers of intellectual property rights should be created in the European legal framework and reminds the Commission that the report on the application of Directive 2004/48/EC is essential to confirm those claims;

10. Calls on the Commission to draw up a 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;

11. Take account of the existence of particular formats making works accessible for those with disabilities and adopt the necessary measures to promote the distribution thereof;

12. Does not share the Commission's 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;

13. Calls on the Commission to ensure that the measures aimed at strengthening the application of intellectual property rights in the internal market do not impinge on the legitimate right to interoperability, this being essential to healthy competition on the digital works distribution market, inter alia for the authors and users of free software;

14. 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 and welcomes in this respect the Council conclusions of 4 December 2009 on an enhanced patent system in Europe as a significant positive development;

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

15. 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;

16. Welcomes the establishment of the Observatory as a tool for the centralisation of statistics and data which will serve as a basis for proposals to be implemented to combat effectively the phenomena of counterfeiting and online IPR infringements; urges the Commission to produce a report on how best to use Europol and existing structures for cooperation between customs authorities in this field to combat criminal IPR infringements effectively;

17. Wishes the Observatory to become a tool for collecting and exchanging data and information on all forms of all IPR infringements, including compiling scientific research on counterfeiting and IPR regulation;

18. 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;

19. 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 improve IPR law;

Cultivating consumer awareness

20. Calls on the Commission and the Member States in association with the stake holders 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 on-line IPR infringement on the economy and society; emphasises the need to increase awareness, especially among young European consumers, of the need to respect IPR;

21. Calls on all parties concerned, including Internet service providers, online sales platforms, rights holders and consumers" organisations, with regard to IPR infringements and the sale of counterfeit products online, to adopt practical measures to alert and educate people on the value of copyright and the impact of IPR infringements and counterfeiting on jobs and growth, such as brief, visible and relevant educational and warning messages;

22. 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 online IPR infringement;

23. Calls on the Commission therefore to put pressure on the industry to devise even more payment facilities, in order to make it easier for European consumers to buy legally-offered content, so as to increase legal downloading in the EU;

#### Tackling on-line infringement and protecting IPRs on the Internet

24. Agrees with the Commission that additional non-legislative measures such as discussions on possible improvements to the digital market in Europe through voluntary harmonisation of procedures and standards amongst stakeholders can be useful to improve the application of IPRs, particularly measures arising from in-depth dialogue among stakeholders;

25. Stresses that the enormous growth of unauthorised file sharing of copyrighted works and recorded performances is an increasing problem for the European economy in terms of job opportunities and revenues for the industry as well as for government;

26. Stresses that a number of factors have allowed this phenomenon to develop, particularly technological advances and the lack of legal offers; recalls however that this phenomenon constitutes a violation of IPRs to which appropriate, urgent solutions need to be found, geared to the sector concerned and in compliance with fundamental rights;



27. 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 of online infringement, and recognises in this respect that the lack of a functioning internal European digital market constitutes an important obstacle to the development of legal online offers and that 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;

28. Asks, therefore, the Commission to pressure the industry to come up with new payment facilities, in order to make it easier for European consumers to buy legally-offered content, thereby ensuring that legal downloading will increase in the EU;

29. Calls for specific legislation ensuring that private consumers who have legitimately received, for their own private use, reproductions of original products which are covered by protection under intellectual property rights are not required to demonstrate the legitimacy of those reproductions, but that it should be up to interested parties to prove any violation of rules under the protection of intellectual property rights;

30. Stresses that all parties concerned, including Internet service providers, must join in the dialogue with stakeholders in order to find appropriate solutions; 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;

31. Calls on the Commission to think broadly about methods of facilitating industry access to the digital market without geographical borders, taking account of the particular features of each sector, by addressing urgently the issue of multi-territory licences, where there is substantial demand from consumers, and the lack of harmonised legislation with regard to copyright as well as an effective and transparent system for rights management, which would complement this existing growth in services which are legal and which meet consumer demand for easier ubiquitous, instant and customised access to content;

32. Stresses that the system for granting licences should be improved on the basis of technical neutrality, in such a way that the Member States have available to them a flexible, effective and transparent system which can be adapted to the new technologies;

33. Calls on the Commission to review the issue of cross-border management of rights and change the current situation of legal uncertainty created by Commission Recommendation

2005/737/EC of 18 October 2005 on collective cross-border management of copyrights, taking into account the fact that copyright is inherently territorial for cultural, traditional and linguistic reasons and ensuring a pan-European licensing system providing consumers with access to the widest possible choice of content and not at the expense of European local repertoire;

34. Draws attention, furthermore, to the growing problem of Internet-based industrial espionage and theft of data constituting industrial property, in particular technical documentation and source code;

35. Proposes that the Observatory should carry out a detailed analysis of the problem of data theft and put forward proposals for combating the problem;

36. Calls on the Commission to identify the particular problems and needs of SMEs, to develop specific measures to assist SMEs in the fight against infringements of intellectual property rights and to enable SMEs to better protect themselves both in the EU and in third countries;

37. 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's legal framework designed to enforce IPRs;

38. Calls on the Commission to pursue innovative and upgraded cooperation between administrative departments and the various sectors of industry concerned;

39. Calls on the Member States and the Commission to extend the cooperation between the Office for Harmonisation in the Internal Market and national intellectual property offices to also cover the fight against infringements of intellectual property rights;

40. Recognises the need for the use of existing institutional structures in the Member States in the fight against counterfeited goods, and therefore calls on the national patent and other intellectual property offices to provide greater support and training to small and medium-sized enterprises and to the public;

The international dimension and impact on the internal market

41. Calls on the Commission to step up its cooperation with priority third countries with regard to intellectual property and promote a balanced approach 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);

42. Calls on the Commission to ensure that its efforts to further the negotiations on the multilateral Anti-Counterfeiting Trade Agreement (ACTA) with a view to improving the effectiveness of the IPR enforcement system against counterfeiting are continued with full account being taken of the Parliament's position, in particular as expressed in its resolution of 18 December 2008 on the impact of counterfeiting on international trade, and calls on it to fully inform Parliament on the progress and outcome of the negotiations and to ensure that the provisions of ACTA fully comply with the *acquis communautaire* on IPR and fundamental rights;

43. Supports the continuation and enhancement by the Commission of bilateral cooperation initiatives, including "IP dialogues" with third countries and technical assistance projects;

44. Notes that the biggest challenge for the internal market lies in combating infringements of intellectual property rights at the EU's external borders and in third countries; in this respect, calls on the Commission to create more intellectual property helpdesks in third countries (notably in India and Russia) in order to help European entrepreneurs with the more active enforcement of their intellectual property rights and in combating infringements of intellectual property rights in third countries and the entry into the Internal Market of counterfeited goods manufactured in such third countries;

#### Organised crime

45. Stresses the importance of fighting organised crime in the area of IPRs, in particular counterfeiting and online IPR infringement; points out in this context the need for appropriate EU legislation on proportional and fair 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;

46. 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.

(1) OJ L 178, 17.7.2000, p. 1.

- (2) OJ L 167, 22.6.2001, p. 10.
- (3) OJ L 196, 2.8.2003, p. 7.
- (4) OJ L 195, 2.6.2004, p. 16.
- (5) OJ L 111, 5.5.2009, p 16.
- (6) OJ C 74 E, 20.3.2008, p. 526.