Enforcement of intellectual property rights in the internal market

2009/2178(INI) - 01/06/2010

The Committee on Legal Affairs adopted the report by Marielle GALLO (EPP, FR) in response to the Commission's communication on the enforcement of intellectual property rights in the internal market.

Although Members welcome the Commission's communication, they regret that it does not deal with the matter of completing the legislative framework by introducing a set of measures to combat intellectual property right (IPR) infringements in an effective manner.

Members also recall that an exception to IPRs exists in the cultural area: the 'private copy'.

While the committee welcomes the progress made in the EU in harmonising the fight against counterfeiting, it calls on the Commission to step up its efforts in areas that are sensitive in terms of health and safety, e.g. medicines. It also calls on it to present, by the end of 2010, **a comprehensive IPR strategy** addressing all aspects of IPRs, including their enforcement and promotion. This strategy would seek to 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.

Members also stress that any measures taken to enforce IPRs must respect the Charter of Fundamental Rights of the EU and the European Convention for the Protection of Human Rights and Fundamental Freedoms and be necessary, proportionate, and appropriate within a democratic society. MEPs also recall, in this connection, that Article 17 of the Charter of Fundamental Rights provides for the protection of intellectual property.

The committee does not share the Commission's certitude that the current civil enforcement framework in the EU is effective and harmonised and believes that the possibility of proceeding against IPR infringers should be created in the legal framework. It reminds the Commission, therefore, that the report on the application of Directive 2004/48/EC is essential to confirm those claims.

The Commission is urged to ensure that the measures aimed at strengthening the application of IPR 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.

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

Members welcome 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. They urge 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.

Recognising 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, Members want 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.

They invite the Commission to clarify the tasks to be entrusted to the Observatory and stress that the success of the Observatory largely depends on the involvement and cooperation of all stakeholders in order to increase transparency and avoid duplication of effort. They also call on the Commission to keep Parliament fully informed about the results of the Observatory's activities through annual reports in which it draws conclusions and proposes solutions necessary to improve IPR law.

Cultivating consumer awareness

The committee 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. It emphasises the need to increase education and awareness, especially among young consumers, of the need to respect IPR.

Members consider that pressure needs to be exerted on the industry to devise more payment facilities, in order to make it easier for 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

MEPs regret that the Commission has not cited the delicate problem of online IPR infringements, particularly the issue of the balance between free access to the Internet and the measures to be taken to combat this scourge effectively. Urgent solutions need to be found, geared to the sector concerned and in compliance with fundamental rights.

The committee 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 IPR 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 IPR.

Members call on the Commission to:

- think broadly about methods of facilitating industry access to the digital market without geographical borders 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;
- identify the particular problems and needs of SMEs, to develop measures to assist them in the fight against infringements of IPRs both in the EU and in third countries.

The international dimension and impact on the internal market

MEPs support steps taken by the Commission to identify the best ways to further improve the EU Customs Regulation, which allows the detention of goods suspected of infringing IPRs. Recognising the need for the use of existing institutional structures in the Member States in the fight against counterfeited goods, they call for greater support and training for SMEs and to the public.

They urge the Commission to:

- step up its cooperation with priority third countries with regard to IP and promote a balanced approach in the context of the negotiations under the auspices of the World Trade Organisation, particularly in the framework of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);
-

- 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 December 2008 position on the impact of counterfeiting on international trade;
- 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.

Noting 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, Members call on the Commission to create more IP helpdesks in third countries (e.g. in India and Russia).

Organised crime

Stressing the importance of fighting organised crime in the area of IPRs, in particular counterfeiting and online IPR infringement, MEPs point to the need for appropriate EU legislation on proportional and fair sanctions and support close strategic and operational cooperation between all the interested parties within the EU, as well as with non-EU states and international organisations.