Enforcement of intellectual property rights in the internal market

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The European Parliament adopted by 328 to 245 votes with 81 abstentions a resolution on the enforcement of intellectual property rights in the internal market.

in response to the Commission’s communication on the same subject. It regrets that 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 (IPR) infringements in an effective manner.

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

While Parliament 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 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. 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.

In the light of the experiences undergone by rights-holders in some Member States, Parliament 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. Nor does it share the Commission's view that the principal body of laws with respect to IPR enforcement is already in place; pointing out in this respect that negotiations on the directive on criminal sanctions have not been successfully concluded. Parliament is of the opinion that the possibility of proceeding against infringers of intellectual property rights should be created in the European legal framework. It 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.

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: Parliament 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: Members stress 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. A number of factors have allowed this phenomenon to develop, particularly technological advances and the lack of legal offers. 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. Parliament states that 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. It recognises 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. As well as pressure on the industry to come up with new payment facilities, the Commission is asked 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. It should be up to interested parties to prove any violation of rules under the protection of intellectual property rights.

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;
- 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.

The international dimension and impact on the internal market: Members call 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);

-ensure that the latter's 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.

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, Parliament points 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

It should be noted that Parliament rejected two alternative resolutions tabled by the S&D, Greens/EFA and EUL/NGL groups (rejected by 373 votes to 235 with 48 abstentions) and by the ALDE group (rejected by 555 votes to 78 with 19 abstentions).