Enforcement of intellectual property rights

2003/0024(COD) - 09/03/2004 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution based on the draft by Janelly FOURTOU (EPP-ED, F). The resolution was adopted by 330 votes in favour, 151 against and 39 abstentions. Parliament welcomed a compromise agreement with the Council, which means that the Directive can be adopted before the European elections. The main amendments are as follows: -the measures and procedures outlined in the Directive should apply to all violations of intellectual property rights covered by Community legislation and/or the national legislation of the Member State concerned; -for the purposes of the directive, the term "intellectual property rights" includes industrial property rights; -the main enforcement measures need to be applied only in respect of acts committed on a commercial scale. The latter are those carried out for direct or indirect economic or commercial advantage; this would normally exclude acts done by end consumers acting in good faith. Private individuals who download music or films for their personal use will not be targeted; -measures and remedies provided for in the Directive should be determined on a case by case basis, taking into account the specific features of each intellectual property right as well as the intentional or unintentional character of the infringement. -the main enforcement measures mentioned above, that are applied in respect of acts committed on a commercial scale, concern elements of proof (Article 7), the right to information (Article 9) and provisional measures such as court orders and seizures (Article 10.). The text adopted provides that remedies available to right holders consist in the destruction, recall or permanent withdrawal from the market, as well as financial compensation and interest. Information rights permit judges to order certain persons to reveal details of anyone having participated in the distribution of illegal goods and services, as well as details regarding quantities and prices; -Parliament adopted amendments regarding persons authorised to bring proceedings, the presumption of ownership of copyright, and the award of legal costs; -with regard to obtaining and protecting evidence, Parliament stated that the procedures must have regard to the rights of the defence and must provide the necessary guarantees including the protection of confidential information. For infringements carried out on a commercial scale it is also important that the courts may order access, where appropriate, to banking, financial or commercial documents under the control of the alleged infringer; -where the evidence-protection measures have been revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of any intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant with appropriate compensation for any injury caused by these measures; -Member States may take measures to protect witnesses' identity; -in addition to the civil and administrative measures and procedures provided for under the directive, criminal sanctions also constitute, in appropriate cases, a means of ensuring the enforcement of intellectual property rights. The directive does not oblige governments to launch criminal proceedings overinfringement of intellectual property rights as originally drafted by the European Commission. Parliament limited the scope to administrative and civil action alone. However, the Directive will not affect any national provisions in Member States on criminal penalties for IPR infringement, nor will it affect Member States' international obligations, including those relating to criminal procedures and penalties. Remedies under this directive must be effective, proportionate and dissuasive; -finally, the date of transposition will be 24 months after the entry into force of the directive rather than 18 months.