Basic information

2009/2178(INI) INI - Own-initiative procedure	Procedure completed
Enforcement of intellectual property rights in the internal market **Subject** 3.50.15 Intellectual property, copyright 7.30.30.10 Action against counterfeiting	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	BOULLIER GALLO Marielle (PPE)	05/10/2009

Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	RÜBIG Paul (PPE)	25/11/2009
IMCO Internal Market and Consumer Protection	ROITHOVÁ Zuzana (PPE)	05/01/2010

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2999	2010-03-01

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

Key events

Date	Event	Reference	Summary
11/09/2009	Non-legislative basic document published	COM(2009)0467	Summary
11/11/2009	Committee referral announced in Parliament		
01/03/2010	Resolution/conclusions adopted by Council		Summary
01/06/2010	Vote in committee		Summary
03/06/2010	Committee report tabled for plenary	A7-0175/2010	

20/09/2010	Debate in Parliament		
22/09/2010	Decision by Parliament	T7-0340/2010	Summary
22/09/2010	Results of vote in Parliament		
22/09/2010	End of procedure in Parliament		

Technical information	
Procedure reference	2009/2178(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/01257

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE438.164	13/01/2010	
Amendments tabled in committee		PE439.233	02/03/2010	
Committee opinion	ITRE	PE438.391	19/03/2010	
Committee opinion	IMCO	PE438.494	12/04/2010	
Committee report tabled for plenary, single reading		A7-0175/2010	03/06/2010	
Text adopted by Parliament, single reading		T7-0340/2010	22/09/2010	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2009)0467	11/09/2009	Summary

Enforcement of intellectual property rights in the internal market

2009/2178(INI) - 22/09/2010 - Text adopted by Parliament, single reading

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).

Enforcement of intellectual property rights in the internal market

2009/2178(INI) - 01/03/2010

The Council adopted a resolution on the enforcement of intellectual property right in the internal market.

The Council recognises the shared responsibility of the Commission and the Member States to make the internal market work more effectively, particularly in the field of the protection of intellectual property. It stresses the **importance of developing new competitive business models** enlarging the legal offer of cultural and creative content and at the same time **preventing and combating piracy** as necessary means for fostering economic growth, employment and cultural diversity. Therefore, efforts to encourage creation of and access to online content and services in the European Union should be increased and, to that effect, robust solutions, which are practical, balanced and attractive for both users and right holders alike, need to be found. The Council welcomes the recent creation and work of the European Observatory on Counterfeiting and Piracy.

The resolution calls upon Member States to **develop national anti-counterfeiting and anti-piracy starategies** and to establish transparent coordination structures in this field.

In particular, the **Commission** is called upon to:

- to analyse the application of Directive 2004/48/EC, including an assessment of the effectiveness of the measures taken, and, if necessary, propose appropriate amendments to ensure a better protection of intellectual property rights;
- to consider how to support the review of Council Regulation 44/2001/EC (Brussels I) Regulation with a view to simplifying the cross-border enforcement of judicial decisions in order to ensure an effective intellectual property rights protection;
- to analyse the opportunity of submitting an amended proposal for a Directive on criminal measures aimed at combating counterfeiting and piracy;
- assess, in close cooperation with Member States, how best to enhance coordination, cooperation, information exchange and mutual assistance between all national and European authorities involved in combating counterfeiting and piracy;
- to analyse, in cooperation with Member States and economic operators, the efficacy of these agreements in the fight against counterfeiting in the internal market in order to state the existing best practices.

The resolution encourages the **Commission, the Member States and stakeholders**,including consumers:

- to analyse and implement effective awareness campaigns with a view to public awareness in relation to the impact of counterfeiting and piracy on society and on the economy;
- to pursue ongoing dialogues and to resolutely seek agreements on voluntary practical measures aimed at reducing counterfeiting and piracy in the internal market, both online and offline.

The **Member States and the Commission** are invited to:

- to explore how to make best use of the experience and knowledge readily available in the European Union and in national intellectual property offices to examine the possibilities for providing information to right holders, in particular small and medium-sized enterprises, through the strengthening of existing and the possible creation of new portals or helpdesks, in order to enable them to effectively and efficiently protect their intellectual property;
- to act towards promoting appropriate and effective levels of protection of intellectual property in both bilateral and multilateral international agreements with due regard to the Union acquis.

Lastly, the Council invites the **European Observatory on Counterfeiting and Piracy** to:

- to facilitate regular experts' meetings, involving representatives from public authorities, private sector bodies and consumer organisations, to promote successful and proportional solutions against counterfeiting and piracy;
- to publish each year a comprehensive Annual Report covering the scope, scale and principal characteristics of counterfeiting and piracy, as well as its impact on the internal market;
- to extend the study of causes, consequences and the effects of violations of intellectual property rights on innovation, competitiveness, the labour market, healthcare, security, creativity and cultural diversity in the internal market;
- to explore the need for the implementation of European Union level training programmes for those involved in combating counterfeiting and piracy.

Enforcement of intellectual property rights in the internal market

2009/2178(INI) - 11/09/2009 - Non-legislative basic document

PURPOSE: to enhance the enforcement of intellectual property rights in the internal market.

BACKGROUND: by providing incentives to create, innovate and trade, intellectual property rights are one of the cornerstones of a competitive, wealth-generating, knowledge-based society.

In Europe, counterfeiting and piracyhave a dramatic and damaging effect on business and they have the potential to become even more problematical due to the recent economic downturn and the growing range of fake products being sold. While luxury goods, fashion, music and film products have traditionally been targeted, today counterfeiting and piracy affect a wider variety of mass consumption goods such as foodstuffs, cosmetics, hygiene products, spare parts for cars, toys and various types of technical or electrical equipment. In particular, the increase in fake medicinesis of growing concern.

IPR infringements cause widespread economic harm and an increasing number of counterfeit products now pose a real threat to consumer health and safety. It is therefore in the interest of stakeholders and consumers alike to have a responsive enforcement system which is robust, proportionate and fair.

The Commission has implemented a legal framework within the Single Market that provides the tools to enforce IPR in a fair, effective and proportionate way. The IPR Enforcement Directive (Directive 2004/48/EC)is one of the cornerstones of this. It has harmonised the laws of Member States with regard to civil measures for the enforcement of all IPR and a proposal on criminal sanctions is currently under discussion in the Council.

The EU Customs Regulation, which allows for the detention of goods suspected of infringing IPR, is another pillar of the legal framework. The Commission is currently consulting Member States and stakeholders on how this Regulation can be further improved.

At global level the Commission has developed a long-term strategy for the enforcement of IPR in third countries.

With a principal body of laws in place, the Commission now proposes to **supplement the regulatory framework with complementary non-legislative measures**, in line with Competitiveness Council Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and piracy-plan.

CONTENT: the Commission seeks to ensure this by complementing the existing regulatory framework with non-legislative measures to make for more collaborative and focused enforcement across the Internal Market, in particular by:

1) Supporting enforcement through an EU Counterfeiting and Piracy Observatory: the Commission is now establishing an Observatory to serve as the central resource for gathering, monitoring and reporting information and data related to all IPR infringements. However, the Observatory should play a much wider role, becoming the **platform** for representatives from national authorities and stakeholders to exchange ideas and expertise on best practices, to develop joint enforcement strategies and to make recommendations to policy-makers.

Ensuring that the Observatory becomes the pan-European source of knowledge and a central resource for stakeholders and public authorities engaged in IPR enforcement activities will require close collaboration between the Commission, the Member Sates and the private sector. The aim therefore is to involve public and private representatives from across the European Union and to bring them together in partnership with consumers to cultivate a broader understanding of the problems. An important deliverable would be a publicly available Annual Report, presented by the Commission and providing specific information on core work areas.

2) Fostering administrative cooperation throughout the Internal Market: due to the international nature of IPR infringements, improving internal cross-frontier cooperation is not only a legislative obligation, it is a clear necessity, and while administrative cooperation already operates in the area of Customs it is clearly lacking in other areas and needs to be developed. Greater administrative cooperation in the field of IPR enforcement should also be seen in the wider context of a partnership between the Commission and the Member States in implementing a borderless internal market. To this end:

- an **efficient network of contact points** across the European Union is essential to promote rapid exchanges of information on suspect products, manufacturing sites, distribution routes and key sales points;
- Member States are called upon to appoint **National Coordinators** with a firm mandate to synchronise IPR enforcement issues between their respective national enforcement agencies;
- extend the **role of National Intellectual Property Offices** to new functions such as awareness-raising, specific support for SMEs and coordination;
- **transparency** needs to be improved in respect of the national structures to provide support to stakeholders at cross-border levels, particularly SMEs. A report will be presented at meetings of stakeholders and Member States, in the context of the Observatory, in the second half of 2009;
- an **electronic network for information sharing on IPR infringements** in the Internal Market will need to be available to a wide range of national bodies, including different enforcement agencies and national IP offices. It will need to: (i) support ‘real-time’ exchanges of information on goods and services infringing IPR in the internal market; (ii) allow the swift exchange of alerts concerning specific products, trends and potential threats, and (iii) provide facilities to overcome language barriers for national authorities.

3) Facilitating voluntary arrangements between stakeholders: to this end, the Commission aims to:

- **encourage rights holders and other stakeholders** to exploit the potential of collaborative approaches and to place more emphasis on joining forces to combat counterfeiting and piracy in the common interest, also taking advantage of possible alternatives to court proceedings for settling disputes;
- **combat IPR infringements through Stakeholders' Dialogues**: the Commission offers to act as a facilitator for such stakeholder dialogues on concrete topics by inviting the parties to get together, by organising meetings, by providing the administrative and logistical support and by safeguarding, where necessary, a fair balance between all the different interests at stake;
- **tackle the sale of counterfeit goods over the internet**: the Commission has launched a stakeholders' dialogue on the sale of counterfeit goods over the internet. Brand owners and internet companies alike have recognised this and have committed themselves to developing a collaborative way forward. Consequently, the Commission has organised a structured dialogue between stakeholders to facilitate mutual understanding and to find solutions that will be in the interests of all concerned. However, if voluntary arrangements cannot be agreed, the Commission will need to consider legislative solutions, in particular in the context of the IPR Enforcement Directive.