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## **REPORT**

on ‘Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan’  
(2014/2151(INI))

Committee on Legal Affairs

Rapporteur: Pavel Svoboda

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on ‘Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan’ (2014/2151(INI))

*The European Parliament,*

- 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 (‘the IPR Enforcement Directive’)<sup>1</sup>,
- having regard to Article 17 of the Charter of Fundamental Rights of the European Union,
- having regard to Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights<sup>2</sup>,
- having regard to Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003,
- having regard to the report submitted by OHIM and the European Patent Office (EPO) in September 2013 entitled ‘Intellectual property rights intensive industries: contribution to economic performance and employment in the European Union’,
- 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 entitled “‘Think Small First” – A “Small Business Act” for Europe’ (COM(2008)0394),
- 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 entitled ‘Enhancing the enforcement of intellectual property rights in the internal market’ (COM(2009)0467),
- having regard to the report from the Commission to the Council, the European Parliament and the European Social Committee of 22 December 2010 entitled ‘Application of Directive 2004/48/EC of the European Parliament and the Council of 29 April 2004 on the enforcement of intellectual property rights’ (COM(2010)0779) and its accompanying staff working document<sup>3</sup>,

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<sup>1</sup> OJ L 157, 30.4.2004, p.45.

<sup>2</sup> OJ L 129, 16.5.2012, p.1.

<sup>3</sup> ‘Analysis of the application of Directive 2004/48/EC of the European Parliament and the Council of 29 April

- having regard to the summary made by the Commission of the responses to the public consultation ‘Civil enforcement of intellectual property rights: public consultation on the efficiency of proceedings and accessibility of measures’ of July 2013<sup>1</sup>,
  - having regard to the communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 1 July 2014 entitled ‘Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan’ (COM(2014)0392),
  - having regard to the communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 1 July 2014 entitled ‘Trade, growth and intellectual property – Strategy for the protection and enforcement of intellectual property rights in third countries’ (COM(2014)0389),
  - having regard to the Commission’s plan to create a single EU digital market and to Parliament’s resolution of 20 April 2012 on a competitive digital single market<sup>2</sup>,
  - having regard to the Council Conclusions of 4-5 December 2014 on IPR enforcement<sup>3</sup>,
  - having regard to the Council resolution on the EU Customs Action Plan to combat IPR infringements for the years 2013 to 2017<sup>4</sup>,
  - having regard to its resolution of 22 September 2010 on enforcement of intellectual property rights in the internal market<sup>5</sup>,
  - having regard to the Committee on Legal Affairs’ letter of 24 March 2011 on the Report on the application of Directive 2004/48/EC,
  - having regard to Article 27 of the Universal Declaration of Human Rights, which stipulates that everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which they are the author,
  - having regard to Rule 52 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and to the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education (A8-0169/2015),
- A. whereas particular emphasis is placed on intellectual property in Article 118 of the Treaty of Lisbon and in Article 17 of the Charter of Fundamental Rights of the European Union;
- B. whereas intellectual property rights are one of the driving forces of innovation and

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2004 on the enforcement of intellectual property rights in the Member States’, SEC(2010)1589.

<sup>1</sup> [http://ec.europa.eu/internal\\_market/consultations/docs/2012/intellectual-property-rights/summary-of-responses\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2012/intellectual-property-rights/summary-of-responses_en.pdf)

<sup>2</sup> Texts adopted, P7\_TA(2012)0140

<sup>3</sup> <http://data.consilium.europa.eu/doc/document/ST-15321-2014-INIT/en/pdf>.

<sup>4</sup> OJ C 80, 19.3.2013, p. 1.

<sup>5</sup> Texts adopted, P7\_TA(2010)0340.

- creativity and a key contributor to competitiveness, employment and cultural diversity; whereas product authenticity should not always be conflated with product safety and product quality issues, and the enforcement of intellectual property rights plays a significant role in ensuring consumers' health and safety; whereas revenue from counterfeiting generally feeds into the black economy and organised crime;
- C. whereas the EU faces a high number of intellectual property rights infringements, and whereas the volume and financial value of these infringements are alarming, as reported by the Commission in its report on the application of the Directive on the enforcement of intellectual property rights (COM(2010)0779); whereas these figures also illustrate the added value which IPR represent for the European economy in global competition;
  - D. whereas IPR infringements, including counterfeiting, discourages growth, job creation, innovation and creativity;
  - E. whereas infringements of IPR cause both non-material and economic damage to European undertakings and bring about heavy economic and fiscal losses to states;
  - F. whereas adequate protection of intellectual property rights is a prerequisite for the development of the digital economy and of the digital single market;
  - G. whereas the rapidly increasing development of e-commerce and online activities has changed the way IPR enforcement should be considered in the digital environment, particularly because it affords new possibilities for infringement, owing not least to new social behavioural patterns among users;
  - H. whereas Parliament notes with concern what the OHIM report points out regarding the existence of a certain level of tolerance among a significant minority of Europeans for the idea that IPR infringements could be considered acceptable<sup>1</sup>; whereas there is a lack of adequate knowledge of the social and cultural importance of IPR and of the actions considered as infringements of them, and a lack of awareness, especially among young Europeans, of the potential consequences of IPR infringements on the EU economy and society, and on the general safety of citizens; whereas it is necessary and possible to run suitable user awareness and information campaigns;
  - I. whereas there is a need to redouble efforts to combat the illegal trade in counterfeit goods, and whereas no one should make a profit out of IPR infringements;
  - J. whereas law enforcement is essential with regard to the foreseeability of the law, and whereas it is of the utmost importance to find effective, proportionate and dissuasive means of enforcing IPR across borders;
  - K. whereas IPR infringements have a particular impact on SMEs, including in business-to-business services, and can lead to the loss of markets and bankruptcy;
  - L. whereas taking into account international aspects is fundamental for IPR enforcement as

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<sup>1</sup> See OHIM Report 'European Citizens and intellectual property: perception, awareness and behaviour', November 2013.

IPR infringement is a global phenomenon;

- M. whereas both online and offline infringements should be considered in policy actions against IPR infringement;
1. Welcomes the communication of the Commission of 1 July 2014 presenting an action plan on the enforcement of intellectual property rights; supports its approach to IPR enforcement, based on preventive actions and on policy tools which intend to deprive commercial-scale infringers of their revenues and make it more difficult for infringing goods to be put on the market;
  2. Stresses that the prime responsibility for IPR enforcement rests with the Member States' public authorities;
  3. Stresses that the key objective of the action plan should be to ensure the effective, evidence-based enforcement of IPR, which plays a key role in stimulating innovation, creativity, competitiveness, growth and cultural diversity; notes that measures taken to enforce IPR should be based on precise, reliable data;
  4. Stresses that, at times of financial crisis, when major cuts are being made in financial support for the cultural sector, IPR are often among individual creators' main sources of income; stresses, therefore, that ensuring fair remuneration for creators should be a crucial element of the EU action plan;
  5. Takes the view that, in the interests of innovation, creativity and competitiveness, it is crucial that IPR protection measures are transparent and that full information is available to the public and to all other actors concerned;
  6. Recognises that the enforcement of IPR is not merely a driver for jobs and growth across the Union but is essential for the proper functioning of the single market – especially in view of factors such as the share of EU GDP and employment, and range, of industries which benefit from and exploit IPR – and plays a key role in stimulating innovation, creativity, competitiveness and cultural diversity;
  7. Stresses that intellectual property rights are guarantors of the creativity, innovation and competitiveness of the cultural and creative industries in particular, but also of other industrial sectors, as underlined by the Commission in its communication 'For a European industrial renaissance'; calls on the Commission to continue the work of taking IPR into account as a factor in the competitiveness of the European economy;
  8. Underlines that IPR are not just copyrights but also trademarks and patents, among others, and that each of these is vital to the value of Europe's goods and services;
  9. Notes that, according to the Commission, the cultural and creative sectors, which are often IPR-intensive, already account for up to 4.5 % of GDP, and up to 8.5 million jobs in the EU and are not only essential for cultural diversity but also contribute significantly to social and economic development;

***Involving all actors in the supply chain, both on- and offline***

10. Believes that all actors in the supply chain have a role to play in the fight against IPR infringement and should be involved in this process; stresses that an approach involving all actors should be developed both in the online and in the offline context; believes that fundamental rights need to be balanced for this to be successful, as measures that impact fundamental rights cannot be undertaken voluntarily by commercial operators, but need a legal basis and judicial oversight;
11. Stresses that the inclusion of online actors in measures to combat IPR infringements must comply with the principles of Directive 2000/31/EC (the Electronic Commerce Directive) and the Charter of Fundamental Rights of the European Union;
12. Notes that counterfeit and IPR-infringing physical goods are increasingly being traded and sold via online marketplaces, where Member State authorities have limited abilities to control sales; stresses the need to involve marketplace platform owners in all efforts to enforce IPRs, including efforts to remove counterfeit goods and ban sellers of counterfeit goods from their sites;
13. Stresses the importance of ensuring the application of due diligence throughout the supply chain, including the digital supply chain and all the key actors and operators therein, such as creators, artists and rights holders, producers, intermediaries, internet service providers, online sales platforms, end users and public authorities;
14. Believes that applying due diligence throughout the supply chain and enhanced market surveillance and information sharing between customs authorities would improve the business environment and contribute to preventing infringing goods and services from entering the market; stresses that the cost-benefit ratio and effectiveness of any qualitative auditing schemes should be well assessed before being pursued, and that providing support to SMEs should be a strong consideration in that respect;
15. Further notes the inclusive stakeholder consultation proposals on applying EU due diligence throughout the supply chain, including to providers of payment services, to prevent IPR infringements, and asks that the outcome of the consultations and the voluntary EU due diligence scheme be presented to Parliament on an annual rather than biennial basis;
16. Calls on the Commission to make all stakeholder consultations transparent and timely and to ensure that the outcome of consultations is analysed both qualitatively as well as quantitatively and shared with stakeholders, including Parliament and other EU institutions;
17. Stresses the importance of sector-based agreements and good practice guides to combat IPR infringements; calls on operators in the industry to exchange information about platforms which provide access to content that infringes IPR, and to take coordinated and proportionate measures, such as notice and takedown, to reduce the income generated from such content and platforms; notes that such measures should not include the non-judicial blocking of websites;
18. Points out that ‘cyberlocker’ platforms are one of the main hubs for IPR infringements, from which they indirectly derive income via advertising and/or subscriptions;

19. Welcomes the approach of depriving IPR infringers of their revenues by means of agreements between right-holders and their partners; supports the elaboration of memoranda of understanding as soft-law measures to fight against counterfeiting and piracy, and supports the idea of developing such measures further among stakeholders; recommends the Commission, in this regard, to conduct a study on how these counterfeiting operations are cross-funding their activities (selling counterfeit products and providing illegal content);
20. Recalls that a voluntary Memorandum of Understanding on the Sale of Counterfeit Goods via the Internet has been in existence since May 2011, and calls on the Commission to assess the results of the implementation of this MoU, and to report back to Parliament;
21. Believes that the Commission should also consider the effectiveness of existing initiatives, and possible future activities, with regard to the role of intermediaries in tackling IPR infringement;
22. Points out that in the cultural and creative sector, in particular, cooperation – including on the basis of self-regulation – between rights holders, authors, platform operators, intermediaries and final consumers should be encouraged with a view to detecting IPR infringements at an early stage; emphasises that the effectiveness of such self-regulation must be assessed by the Commission in the near future, and that further legislative measures may be necessary;
23. Emphasises that, in the cultural and creative sector, payment service providers should be involved in the dialogue with a view to reducing the profits generated by IPR infringements in the online sphere;
24. Recalls the involvement of organised crime in international IPR-infringing activities and the high importance of delivering a European coordinated solution, strengthening the audit measures in place while implementing the ‘follow the money’ principle, to safeguard consumer interests and the integrity of the supply chain;

#### ***Consumer awareness and information***

25. Welcomes the approach taken by the Commission to develop targeted awareness campaigns; believes that it is essential that the concrete consequences of IPR infringements for society as a whole, and for consumers and citizens individually, should be understood by all; believes that consumers should be better informed of what IPR consist of, and what can be done or not done with protected goods and content; calls on the Commission and the Member States to further develop awareness actions aimed at specific audiences and relevant markets;
26. Recommends a broader information campaign regarding the Intellectual Property Right Holders and Enforcement Authorities Platform so that right holders have a more active role in defending their rights across the European Union through the Enforcement Database integrated in the secure network of the Directorate-General for Taxation and Customs Union; calls for further and faster integration with police authorities and other customs authorities worldwide to ensure better IPR enforcement;

27. Stresses the need to address, more specifically, the younger generation by means of appropriate campaigns to raise awareness, bearing in mind that, as a recent survey of perceptions of IP has revealed, it is that particular generation that is least respectful of IPR;
28. Stresses the importance of initiatives to assess and monitor the development of knowledge of young people's understanding and perception of IP in order to better understand their needs and to define the most appropriate action to take;
29. Welcomes, in particular, the efforts of the European Observatory on Infringements of Intellectual Property Rights, located within the Office for Harmonisation in the Internal Market (OHIM), aimed at raising awareness among consumers of the benefits of choosing products that respects IPR and at facilitating access to such products;
30. Believes, at the same time, that consumers should be better able to identify infringing offers so that they can decide not to proceed with a given purchase; deplores the fact that the Commission's action plan does not include any action designed to improve consumers' ability to identify infringing goods and contents; calls on the Commission and the Member States to reflect further on the development of specific tools and guidelines, and to have an evidence-based examination and possible development of a harmonised system of procedures for notification/withdrawal of infringing goods and content, so that consumers and undertakings can take action when they are misled, in the same way as they can act to draw attention to undesirable content, based on the experiences gathered by the Commission and the European Observatory on Infringements of Intellectual Property Rights, especially with regard to the sharing of best practices;
31. Notes that the system for the notification and removal, one URL at a time, of content that infringes IPR has practical limitations in view of the speed with which the content in question can be made available again; calls, therefore, on operators in this sector to start thinking about how to make the notification and removal system more effective in the long term;
32. Points out that all actors involved in the distribution chain should cooperate in the development of information campaigns giving consumers information on their rights and obligations, while easily accessing and using creative content;
33. Considers that it will be possible to achieve greater transparency and better information in an effective manner only with the cooperation of the main internet stakeholders who convey content protected by IPR, and that it is therefore desirable to involve them in such efforts to achieve transparency and the circulation of information;
34. Insists on the need to coordinate initiatives and campaigns in all Member States in order to avoid duplication of work and ensure coherence and efficiency;
35. Asks Member States' authorities to ensure that IPR infringing goods that are a safety risk are included in RAPEX notifications, regardless of whether these goods are sold legally or illegally in the Member State in question;

### *Developing new business models*

36. Believes that, in certain sectors, the lack of consumer awareness about legal offers, and the sometimes difficult-to-access or costly supply of non-infringing products and content can make it difficult to deter consumers from buying unlawful goods or using unlawful content; takes the view that further progress needs to be made in this area, and reiterates its demand that the Commission and the Member States put more pressure on the industry to develop, in all Member States, licit offers that are both diversified and attractive so that consumers genuinely have every opportunity to purchase licit goods or to use licit content;
37. Stresses the need for a more holistic approach focussing on how to meet consumer demand by increasing the availability and consumption of innovative and affordable legal offers, based on business models that are adapted to the internet and that allow for the removal of barriers, creating a truly European digital single market, while maintaining a balance between the rights of consumers and the protection of innovators and creators;
38. Takes the view that one way of strengthening IPR could be to develop innovative business models; further stresses that the improvement and constant adaptation of such models to the advance of technology should be reconsidered for certain sectors of the industry;

### *Focus on SMEs*

39. Emphasises the importance of improving civil enforcement procedures for SMEs and individual creators as regards IP, as they play a key role in the creative and cultural sectors and often do not have the capacity to have their rights enforced, given the complexity, cost and length of such procedures;
40. Welcomes the Commission's declared intention to support SMEs in enforcing their IPR through improving accessible ways of civil redress in order to better fight market abuse from larger competitors and, in particular, to further assess SMEs' needs for future EU action;
41. Welcomes the decision set out in the Commission's communication of 1 July 2014 on an EU Action Plan, and more specifically Action 4 therein, which was aimed at improving IPR civil enforcement procedures for SMEs, in particular in respect of low value claims and possible action in that field;
42. Emphasises that for SMEs, clear and manageable structures for enforcement of their IPRs are crucial;
43. Calls on the Commission to make sure that any measure taken will have a limited impact in terms of the burden and cost imposed on SMEs; in particular, calls on the Commission to assess further how SMEs could take part in qualitative auditing schemes and to identify what specific measures could be taken in favour of SMEs to this end;
44. Insists on the need to take into account SMEs when drafting legislation, and reiterates

- that the ‘think small first’ principle should be applied at all times;
45. Stresses the importance of access to justice and of the cost-effectiveness of judicial proceedings, especially for SMEs, and calls for the development of mediation services and other business-to-business alternative dispute resolution schemes in the area of IPR;
  46. Stresses the importance of regularly analysing the factors which decisively influence decisions by SMEs to make use, or not to make use, of their IPR, so as to identify where improvements could be made, whether in the case of innovative SMEs or in the case of SMEs which encounter problems, in particular, in exercising their IPR;
  47. Looks forward to receiving information on existing national initiatives addressing IPR civil enforcement for SMEs by the end of 2015; welcomes the forthcoming Green Paper on the need for future Union action based on the best practice found in nationally financed schemes assisting SMEs to enforce their IPR;

### ***European Observatory on Infringements of Intellectual Property Rights***

48. Expresses its satisfaction about the development of the activities of the European Observatory on Infringements of Intellectual Property Rights as a useful aid to the deliberations of political decision-makers and as a tool for collecting and exchanging data and information on all forms of IPR infringements;
49. Emphasises that the duty of the Office for Harmonisation in the Internal Market (OHIM) – to obtain data documenting IPR infringements from the industry and to generate reliable data and analysis of the real impact of infringements on economic actors – should be part of the ten-point Action Plan and of the basis for further actions in the different sectors most affected; calls, in this connection, on the Commission to improve the Anti-Counterfeiting Intelligence Support Tool (ACIST) database developed by the OHIM, so as to provide information concerning counterfeiters and ensure that counterfeit products are not purchased by contracting authorities;
50. Stresses that in order to achieve a meaningful enforcement of IPR, all information should be made available and accessible regarding the type of IP rights (patent, trademark and copyright, for example) that are of relevance in each situation, the status of the validity of these rights and the identity of the owners, including in the form of metadata in the case of digital files;
51. Calls on the Commission to make full use of the data collected by the Observatory, and of the results of the Observatory’s activities, to draw conclusions with regard to, and propose solutions for improving, IPR enforcement that can be used by policy-makers; calls on the Commission to report back to Parliament on this on a regular basis;
52. Notes that training for the development of sectorial IPR enforcement at national level is essential, as is the role which the Observatory will play in helping train Member State authorities and in sharing best practice, in particular by promoting digitally accessible value-for-money campaigns and coordinating these with the relevant agencies and bodies;

### ***Commission's group of experts on the enforcement of IPR***

53. Welcomes the establishment by the Commission of an expert group on IPR enforcement, and calls on the Commission to ensure that Parliament and, where necessary, the European Observatory on Infringements of Intellectual Property Rights, is involved more closely in the group's work and, in particular, that it be asked to send experts to attend its meetings;

### ***Evolution of the legal framework***

54. Welcomes the publication of the Commission's report on the application of the IPR Enforcement Directive<sup>1</sup>, while noting that only limited conclusions can be drawn in some respects, owing to the late transposition of the directive by some Member States; calls on the Commission to provide further analysis of the impact of the directive, in particular on innovation and on the development of the information society, as required by its Article 18(1) and as called for by Parliament in its resolution of 22 September 2010; recalls, however, that a number of other aspects of enforcing IPR have been identified by the Commission, such as the role of intermediaries in combating infringements, which could also prove useful in the fight against abuses;
55. Takes note of the Commission's report indicating that the IPR Enforcement Directive is in some respects out of step with the digital age and insufficient for combating online infringements; calls on the Commission to come up with a detailed assessment of the limitations of the current legal framework as regards online activities and, if appropriate, with proposals for adapting the EU legislative framework to the internet environment; stresses that any such proposals must be subject to a detailed impact assessment;
56. Takes note of the finding that divergent interpretations of certain provisions of the directive result in differences in its application in the Member States, and calls on the Commission to take action to remedy the problems identified in the report, including by means of further clarification of the directive;
57. Reiterates its call for an IPR strategy, including a comprehensive legal framework to combat IPR infringement adapted to the online environment, with full regard for fundamental rights and freedoms, fair trials, proportionality and data protection; considers that legal protection is urgently needed for new creations since this will encourage investment and lead on to further innovations;
58. Stresses that any IPR-related legislation needs to reflect the development of the digital era, taking into account the online environment and various means of distribution, guaranteeing a balanced approach representing the interests of all stakeholders involved, and, in particular, of consumers and their right of access to content, whilst at the same time promoting artists, creators and innovation in Europe;
59. Reiterates that a modern pro-competitive and consumer-friendly copyright framework is needed, one that also supports creativity and innovation by guaranteeing a safe,

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<sup>1</sup> COM(2010) 779.

adequate and secure environment for inventors and creators;

60. Stresses that the European Union's cultural and creative industries are a driving force for social and economic development as well as job creation in Europe, while recalling that notable contribution to the economic growth, innovation and job creation in the Union is also generated by creators, designers and institutions relying on exceptions and limitations to copyright; stresses that any legislative initiative to modernise copyright should be based on independent evidence regarding the impact on growth and jobs (particularly as regards SME's in the cultural and creative sectors), access to knowledge and culture, as well as the potential costs and benefits;

#### ***International supply chains and the role of customs and international cooperation***

61. Insists on the important role played by customs authorities, and international cooperation in the customs field, in the fight against IPR infringement in cross-border trade, and stresses the need to support and facilitate the work performed by customs services in mutual cooperation, by clarifying operational rules, particularly in order that this work may permit the effective performance of inspections on goods in transit within EU territory;
62. Calls on the Commission to take into account, when implementing the IPR Enforcement Action Plan, related initiatives, especially the EU Customs Action Plan to combat IPR infringements and the strategy for the protection and enforcement of IPRs in third countries;
63. Calls for enhanced market surveillance, risk management and sharing of information among customs authorities on issues raised in the context of IPR enforcement by customs, for example, in relation to the storage and destruction of infringing goods;
64. Stresses the importance of close cooperation and information exchange and appropriate training of customs authorities, market surveillance authorities and judicial authorities;

#### ***Other issues***

65. Highlights the vital role public authorities play at all levels, including local, regional and national, through procurement and purchasing, and commends the Commission's desire to develop, promote and publish a guide on best practices to avoid public authorities on all levels purchasing counterfeit goods;
66. Welcomes the Commission's proposed Green Paper on consulting stakeholders on the impact of chargeback and related schemes in order to tackle commercial-scale IPR infringements and assess the need to take more concrete actions in this field, in both the online and offline context; believes that the introduction of an EU-wide right to 'chargeback' on all unwillingly bought counterfeit goods could be a positive benefit for consumers and encourage traders to verify goods before putting them on sale;
67. Supports the emphasis placed in the Action Plan on the importance of working with Member States, sharing information and best practice, and coordinating activities on cross-border enforcement;

68. Emphasises that in order to stimulate innovation and competitiveness in knowledge-based sectors in the Union, in a manner compatible with IPR, it is necessary to stimulate open research and knowledge sharing, which are also identified as key elements in the Global Europe and Europe 2020 strategies;
69. Emphasises the need for precise detection systems that lead to the swift interruption of commercial-scale IPR-infringing activities;
70. Points out that the income generated by using IPR represents an important source of external funding for research projects and thus a driving force for innovation and development and cooperation between universities and companies;
71. Calls for the action plan to be implemented quickly, so that, if necessary, the measures needed to enforce IPR, in particular in the cultural and creative sector, can be revised in the near future to take account of real needs;
72. Calls on the Commission to evaluate the implementation of each of the actions presented in the Action Plan and to report back on them to Parliament by July 2016 at the latest;

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73. Instructs its President to forward this resolution to the Council and the Commission, and to the parliaments and governments of the Member States.

25.3.2015

## **OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION**

for the Committee on Legal Affairs

on 'Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan'  
(2014/2151(INI))

Rapporteur: Catherine Stihler

### **SUGGESTIONS**

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Recognises that the enforcement of intellectual property rights (IPRs) is not merely a driver for jobs and growth across the Union but is essential for the proper functioning of the single market, especially in view of factors such as share of EU GDP, employment, and the range of industries which benefit from and exploit IPRs, and plays a key role in stimulating innovation, creativity, competitiveness and cultural diversity;
2. Underlines that IPRs are not just copyrights but also trademarks and patents, among others, and that each of these is vital to the value of Europe's goods and services;
3. Welcomes the Commission's Action Plan with its emphasis on tackling enforcement, including by adopting a 'follow the money' approach aimed at ensuring that those who are significant IPR offenders, in particular on a commercial scale, will be targeted and suffer financial loss; stresses that the prime responsibility for IPR enforcement rests with the Member States' public authorities;
4. Stresses the need for the Commission's actions on IPR enforcement to be adapted to the growth of the Digital Single Market and to address both digital and physical IPR infringement equally; notes that counterfeit and IPR infringing physical goods are increasingly being traded and sold via online marketplaces, where Member State authorities have limited abilities to control sales; stresses the need to involve marketplace platform owners in all efforts to enforce IPRs, including efforts to remove counterfeit goods and ban sellers of counterfeit goods from their sites;

5. Recalls that a voluntary Memorandum of Understanding on the Sale of Counterfeit Goods via the Internet has been in existence since May 2011, and calls on the Commission to assess the results of the implementation of this MoU and to report back to Parliament;
6. Recognises the importance of voluntary Memoranda of Understanding that establish firm principles agreed upon during stakeholder dialogues, as they will help reduce commercial-scale IPR infringements in the online environment, and looks forward to a report back on the success of any voluntary measures on a regular basis;
7. Stresses the need to establish performance benchmarks in respect of these agreements, so as to gauge their effectiveness and keep European citizens informed;
8. Believes that the Commission should also consider the effectiveness of existing initiatives and possible future activities with regard to the role of intermediaries in tackling IPR infringement;
9. Stresses that IPR infringing products not only cause a direct loss of revenue to legitimate businesses and the European economy but also lead to direct and indirect job losses, to reputational damage and to increased enforcement costs, whilst often having links with organised crime, in addition to posing a potential threat and being a potential source of damage to consumer health and safety; stresses, in this context, that product quality and safety is not automatically linked to product authenticity, and that IPR status and the possible infringement thereof is governed by a different set of rules than consumer product safety and quality;
10. Compliments the Commission on its engagement with consumers, in particular those of the younger generation, who are unaware of the consequences of such infringements, via public information campaigns and other relevant means, and encourages the Commission and the Member States to further develop awareness actions aimed at specific audiences and relevant markets, for example by developing an online consumer warning system; welcomes, in particular, the efforts of the Observatory located within the Office for Harmonisation in the Internal Market (OHIM) that are aimed at raising awareness among consumers of the benefits of choosing IPR respecting products and facilitating access to such products;
11. Believes, at the same time, that consumers should be better able to identify infringing offers so that they can decide not to proceed with a given purchase; deplores the fact that the Commission's action plan does not include any action designed to improve consumers' ability to identify infringing goods and contents, and calls on the Commission to reflect further on the development of specific tools, in particular with regard to the sharing of best practices;
12. Asks Member States' authorities to ensure that IPR infringing goods that are a safety risk are included in RAPEX notifications, regardless of whether these goods are sold legally or illegally in the Member State in question;
13. Looks forward to receiving information on existing national initiatives addressing IP civil enforcement for SMEs by the end of 2015; welcomes the forthcoming Green Paper on the need for future Union action based on the best practice found in nationally financed

schemes assisting SMEs to enforce their IP rights; calls on the Commission to take into account SMEs when drafting legislation and reiterates that the ‘think small first’ principle should be applied at all times;

14. Emphasises that for SMEs, clear and manageable structures for enforcement of their IPRs are crucial;
15. Requests the development of mediation services and other alternative dispute resolution schemes, in particular for SMEs, in the area of IPR;
16. Welcomes the Commission’s proposed Green Paper on consulting stakeholders on the impact of chargeback and related schemes to tackle commercial-scale IP infringements and to assess the need to take more concrete actions in this field, in both the online and offline context; believes that the introduction of an EU-wide right to ‘chargeback’ on all unwillingly bought counterfeit goods could be a positive benefit for consumers and encourage traders to verify goods before putting them on sale;
17. Supports the emphasis placed in the Action Plan on the importance of working with Member States, sharing information and best practice, and coordinating activities on crossborder enforcement; welcomes the establishment of the Member State Expert Group on IP Enforcement, as sharing best practice will help with the development of policies and the implementation of the Action Plan, building upon data and research prepared nationally and via the Observatory;
18. Notes that training for development of sectorial IPR enforcement at national level is essential, as is the role which the Observatory located within OHIM will play in helping train Member State authorities and sharing best practice, in particular by promoting digitally accessible value for money campaigns and coordinating these with the relevant agencies and bodies;
19. Emphasises that the duty of the Office for Harmonisation in the Internal Market (OHIM) to obtain data documenting IPR infringements from the industry and to generate reliable data and analysis of the real impact of infringements on economic actors should be part of the ten-point action plan and of the basis for further actions in the different sectors most affected; calls on the Commission in this connection to improve the ACIST database developed by the OHIM, so as to provide information concerning counterfeiters and ensure that counterfeit products are not purchased by contracting authorities;
20. Stresses that in order to achieve a meaningful enforcement of IPR, full information should be available and accessible regarding the type of IP rights (patent, trademark and copyright, for example) concerned in each situation, the status of the validity of these rights and the identity of the owners, including in the form of metadata in the case of digital files;
21. Highlights the vital role public authorities play on all levels, including local, regional and national, through procurement and purchasing, and commends the Commission’s desire to develop, promote and publish a guide on best practices to avoid public authorities on all levels purchasing counterfeit goods;

22. Further notes the inclusive stakeholder consultation proposals on applying EU due diligence throughout the supply chain, including to providers of payment services, to prevent IP infringements, and asks that the outcome of the consultations and the voluntary EU due diligence scheme be presented to Parliament on an annual rather than biennial basis;
23. Welcomes any potential actions on due diligence throughout the supply chain, which leads to fewer IP infringing goods; stresses that such actions must be targeted in nature, without creating additional administrative burdens on the average trader, and flexible, as IP infringers move from one product to another to avoid controls;
24. Calls on the Commission to make all stakeholder consultations transparent and timely and to ensure that the outcome of consultations is analysed both qualitatively as well as quantitatively and shared with stakeholders, including Parliament and other EU institutions;
25. Calls on the Commission to bring forward necessary proposals in line with stakeholders if voluntary measures are found not to be working after the first publication of the 'IP in the EU economy' report, which should be published annually;
26. Stresses that any IPR-related legislation needs to reflect the development of the digital era, taking into account the online environment and various means of distribution, guaranteeing a balanced approach representing the interests of all stakeholders involved, and in particular of consumers and their right of access to content, whilst at the same time promoting artists, creators and innovation in Europe;
27. Is of the opinion that enforcement of intellectual property rights should fully respect the principle of proportionality, balancing the rights of content owners with those of the users, which need to be fully compatible with the Charter of Fundamental Rights of the European Union and data protection rules, namely the protection of personal data, respect for private life and the right of access to justice.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	24.3.2015
<b>Result of final vote</b>	+ :                33 - :                1 0 :                3
<b>Members present for the final vote</b>	Dita Charanzová, Carlos Coelho, Sergio Gaetano Cofferati, Lara Comi, Daniel Dalton, Nicola Danti, Pascal Durand, Vicky Ford, Ildikó Gáll-Pelcz, Evelyne Gebhardt, Maria Grapini, Antanas Guoga, Sergio Gutiérrez Prieto, Liisa Jaakonsaari, Antonio López-Istúriz White, Jiří Maštálka, Marlene Mizzi, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Igor Šoltes, Ivan Štefanec, Catherine Stihler, Mylène Troszczynski, Anneleen Van Bossuyt, Marco Zullo
<b>Substitutes present for the final vote</b>	Roberta Metsola, Adam Szejnfeld, Ulrike Trebesius, Sabine Verheyen, Inês Cristina Zuber
<b>Substitutes under Rule 200(2) present for the final vote</b>	Jonathan Arnott, Philippe De Backer, Norbert Lins, Andrey Novakov

5.3.2015

## **OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION**

for the Committee on Legal Affairs

on ‘Towards a renewed consensus on the enforcement of Intellectual Property Rights: an EU action plan’  
( 2014/2151(INI))

Rapporteur: Silvia Costa

### **SUGGESTIONS**

The Committee on Culture and Education calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Welcomes the EU Action Plan on the Enforcement of Intellectual Property Rights (IPR) and, in particular, emphasises the importance of and supports the application of due diligence throughout the supply chain, the ‘follow the money’ approach, the improvement of civil enforcement procedures for SMEs as regards IP, the targeted communication campaign and the focus on commercial-scale IPR infringements;
2. Calls for the action plan to be implemented quickly, so that, if necessary, the measures needed to enforce IPR, in particular in the cultural and creative sector, can be revised in the near future to take account of real needs;
3. Stresses that the key objective of the action plan should be to ensure the effective, evidence-based enforcement of IPR) which plays a key role in stimulating innovation, creativity, competitiveness, growth and cultural diversity; notes that measures taken to enforce IPR should be based on precise, reliable data;
4. Notes that while data on the number and type of IPR in existence is relatively easy to collect and analyse, studies on the scope and scale of IP infringements and their relationship with criminality have been more difficult; emphasises, to this end, the important role played by the European Observatory on Infringements of Intellectual Property Rights in providing data, tools and databases to support the fight against IP infringements;
5. Notes that according to the Commission, the cultural and creative sectors, which are often

IPR-intensive, already account for up to 4.5 % of GDP and up to 8.5 million jobs in the EU and are not only essential for cultural diversity but also contribute significantly to social and economic development;

6. Stresses that in a time of financial crisis, when funding for culture suffers from severe cuts, remuneration stemming from IPR is often a primary source of revenue for artists and creators; stresses, therefore, that attaining and safeguarding fair remuneration for artists, creators and rights holders should be one of the key objectives of the action plan;
7. Stresses the importance of ensuring the application of due diligence throughout the supply chain, including the digital supply chain and all the key actors and operators therein, such as creators, artists and rights holders, producers, intermediaries, internet service providers, online sales platforms, end users and public authorities;
8. Emphasises the importance of improving civil enforcement procedures for SMEs and individual creators as regards IP, as they play a key role in the creative and cultural sectors and often do not have the capacity to have their rights enforced given the complexity, cost and length of such procedures;
9. Supports the launching of targeted communication campaigns to raise awareness on the economic and potential health and safety risks associated with commercial-scale IPR infringements, particularly among the younger generations growing up in the digital era;
10. Notes that, in preventing commercial-scale IPR infringements, it is also important to expand the legal offering of diversified cultural and creative content online and to increase accessibility thereto; calls on the Commission, to this end, to take actions to support such efforts and promote investment in new competitive business models that broaden the legal offering of creative and cultural content and restore consumer trust and confidence online;
11. Points out that in the cultural and creative sector, in particular, cooperation, including on the basis of self-regulation, between rights holders, authors, platform operators, intermediaries and final consumers should be encouraged with a view to detecting IPR infringements at an early stage; emphasises that the effectiveness of such self-regulation must be assessed by the Commission in the near future and that further legislative measures may be necessary;
12. Emphasises that, in the cultural and creative sector, payment service providers should be involved in the dialogue with a view to reducing the profits generated by IPR infringements in the online sphere;
13. Notes that the system for the notification and removal, one URL at a time, of content that infringes IPR has practical limitations in view of the speed with which the content in question can be made available again; calls, therefore, on operators in this sector to start thinking about how to make the notification and removal system more effective in the long term;
14. Notes that, in Member States in which this is permitted by law, the blocking by a court ruling of internet sites which allow IPR infringements has practical limitations in the long term;

15. Notes that, where IPR infringements are committed by the public, this is sometimes because it is hard or impossible to find the desired content offered legally; calls, therefore, for a wide range of user-friendly legal offers to be developed and promoted to the public;
16. Stresses the need for a more holistic approach with a focus on how to meet consumer demand by increasing the availability and the consumption of an innovative and affordable legal offer, based on business models adapted to the internet which allow for the removal of barriers to the creation of a truly European digital single market, but maintain a balance between the rights of consumers and the protection of innovators and creators;
17. Stresses that in the interests of innovation, creativity and competitiveness, it is crucial to achieve the meaningful enforcement of IPR through a fully transparent, holistic, balanced and flexible system that can react rapidly to the evolving challenges that face the EU knowledge economy in the digital era;
18. Takes note of the need for a stable and harmonised framework for the enforcement of IPR and recalls that the current legal framework does not constitute an impediment to the development of multi-territory licensing systems; encourages the Commission, to this end, to take note of the European unitary patent and the current revision of the trademark regulation, as well as the high fragmentation of cultural and creative markets along cultural and linguistic lines;
19. Points out that all the actors involved in the distribution chain should cooperate in the development of information campaigns which would allow consumers to have access to information on their rights and obligations, while easily accessing and using creative content;
20. Reiterates that a modern pro-competitive and consumer-friendly copyright framework is needed, one that also supports creativity and innovation by guaranteeing a safe, adequate and secure environment for inventors and creators;
21. Is of the opinion that the implementation of effective measures against all IPR infringements, taking into account today's digital world and the various means of distribution and the rights of IPR holders while guaranteeing a balance between all interests at stake and the rights of consumers, providing them with easy access to the widest possible choice of legal content, will only be of benefit, contributing to economic development and growth, employment and wealth creation;
22. Stresses in particular that in order to achieve a meaningful enforcement of IPR, full information should include a clear indication of the type of IPR (for example patent, trademark, copyright), the identity of the owners and, where relevant, the status of its validity;
23. Emphasises that in order to stimulate innovation and competitiveness in knowledge-based sectors in the Union, in a manner compatible with IPR, it is necessary to stimulate open research and knowledge sharing, which are also identified as key elements in the Global Europe and Europe 2020 strategies;

24. Emphasises the need for precise detection systems that lead to the swift interruption of commercial-scale IPR-infringing activities;
25. Points out that the income generated by using IPR represents an important source of external funding for research projects and thus a driving force for innovation and development and cooperation between universities and companies;
26. Stresses the importance of sector-based agreements and good practice guides to combat IPR infringements; calls on operators in the industry to exchange information about platforms which provide access to content that infringes IPR, and to take coordinated and proportionate measures, such as notice and takedown, to reduce the income generated from such content and platforms; notes that such measures should not include the non-judicial blocking of websites;
27. Insists that remedies be put in place for platforms adversely affected by any measures having a financial impact taken to combat commercial infringements of IPR by operators in the sector on the basis of the exchange of information;
28. Notes that some ‘cyberlocker’ platforms pay their users on the basis of the number of registered downloads of their files, a practice which is an incitement to disseminate content that infringes IPR; calls, therefore, on the Member States to take proportionate steps to prevent such practices;
29. Points out that ‘cyberlocker’ platforms are one of the main hubs for IPR infringements, from which they indirectly derive income via advertising and/or subscriptions;
30. Stresses that IPR-infringing products not only cause the direct loss of revenue for legitimate businesses but also lead to direct and indirect job losses, reputational damage and increased enforcement costs, while often having links to organised crime and posing potential health and safety risks;
31. Encourages the Commission, when addressing whether there is a need to adapt the IPR enforcement legislation to the digital era, to safeguard a fair balance between all key actors in the supply chain while fully respecting the Charter of Fundamental Rights of the European Union, in particular as regards the protection of personal data and respect for private life, the right to property and the right to access to justice;
32. Recalls that several other issues of IPR enforcement not included in the action plan were identified in the consultation process for the civil enforcement of IPR carried out by the Commission in 2012-2013, including difficulties in identifying infringers and alleged infringers, the role of intermediaries in assisting the fight against IPR infringements and the attribution of damages in IPR disputes; recalls, in this connection, that the action plan is just a starting point in securing the enforcement of IPR;
33. Calls on the Commission to consider all possible options to address the enforcement of IPR, including the proposal of more concrete legislative actions;
34. Stresses that the distribution of counterfeit and pirate goods has increased in recent years, given that these goods are easily circulated online; reaffirms the importance of an

education campaign by the Commission to raise awareness among consumers, employees and clients, and in particular among young people, informing and educating them on the economic and social harm caused by commercial-scale IP infringement activities;

35. Recalls the involvement of organised crime in international IP-infringing activities and the high importance of delivering a European coordinated solution, strengthening the audit measures in place while implementing the 'follow the money' principle, to safeguard consumer interests and the integrity of the supply chain;
36. Calls on the Commission to study the feasibility of a European label indicating to the public those internet sites which are considered to be free of commercial IPR infringements.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	26.2.2015
<b>Result of final vote</b>	+ : 20 - : 9 0 : 2
<b>Members present for the final vote</b>	Isabella Adinolfi, Dominique Bilde, Andrea Bocskor, Silvia Costa, Damian Drăghici, Angel Dzhambazki, Emmanouil Glezos, Giorgos Grammatikakis, Petra Kammerevert, Rikke Karlsson, Andrew Lewer, Svetoslav Hristov Malinov, Fernando Maura Barandiarán, Luigi Morgano, Momchil Nekov, Michaela Šojdrová, Martin Sonneborn, Yana Toom, Helga Trüpel, Sabine Verheyen, Julie Ward, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver, Krystyna Łybacka
<b>Substitutes present for the final vote</b>	Therese Comodini Cachia, Marc Joulaud, Dietmar Köster, Ilhan Kyuchyuk, Ernest Maragall, Martina Michels, Michel Reimon
<b>Substitutes under Rule 200(2) present for the final vote</b>	Marco Affronte, Julia Reda

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	7.5.2015
<b>Result of final vote</b>	+: 19 -: 2 0: 0
<b>Members present for the final vote</b>	Max Andersson, Joëlle Bergeron, Jean-Marie Cavada, Therese Comodini Cachia, Rosa Estaràs Ferragut, Laura Ferrara, Lidia Joanna Geringer de Oedenberg, Dietmar Köster, António Marinho e Pinto, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Tadeusz Zwiefka
<b>Substitutes present for the final vote</b>	Daniel Buda, Sergio Gaetano Cofferati, Pascal Durand, Angel Dzhambazki, Jytte Guteland, Sylvia-Yvonne Kaufmann, Virginie Rozière, Cecilia Wikström
<b>Substitutes under Rule 200(2) present for the final vote</b>	Morten Messerschmidt