



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 January 2010

5022/10

PI 1

WORKING DOCUMENT

from: General Secretariat of the Council

to: Working Party on Intellectual Property

No. prev. doc.: 13286/09 PI 87 UD 188

Subject: Commission communication: Enhancing the enforcement of intellectual property rights in the internal market
- Presidency proposal for a Council Resolution

Delegations will find in Annex a draft Council Resolution drawn up by the Presidency for discussion at the meeting of the Working Party on 13 January 2010.

DRAFT COUNCIL RESOLUTION of xx xxx 2010
on the enforcement of intellectual property rights in the internal market.

THE COUNCIL OF THE EUROPEAN UNION,

1. CONSIDERING the Commission's Communication of 11 September 2009, on enhancing the enforcement of intellectual property rights in the internal market¹.
2. RECALLING its Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan².
3. RECALLING the Communication of 16 July 2008 from the Commission about an industrial property rights strategy for Europe.³
4. CONSIDERING the EP/Gallo Report (*only if available in time*)⁴.
5. CONSIDERING the EESC/ Ratureau Report (*only if available in time*)
6. CONSIDERING the Community instruments adopted to combat the infringement of intellectual property rights, particularly Directive 2004/48/EC on the enforcement of intellectual property rights⁵, Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights⁶, Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society⁷ and Directive 2009/24/EC on the legal protection of computer programs⁸.

¹ COM(2009) 467final of 11 September 2009.

² OJ C253, 4.10.2008, p.1.

³ COM(2008) 465 final of 16 July 2008.

⁴ Reference to be added.

⁵ OJ L195, 2.6.2004, p.16.

⁶ OJ L196, 2.8.2003, p.7.

⁷ OJ L167, 22.6.2001, p.10.

⁸ OJ L111, 5.5.2009, p.16.

7. CONSIDERING Council conclusions of 20 November 2008, on the development of legal offers of on line cultural and creative content and on combating piracy⁹.
8. CONSIDERING Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce")¹⁰.
9. RECALLING Council Resolution of 23 October 2009 on a reinforced strategy for customs cooperation¹¹.
10. RECALLING Council Resolution of 16 March 2009 on the EU Customs Action Plan to combat IPR infringements, for the years 2009 - 2012¹².
11. RECALLING Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office¹³.
12. RECALLING Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust, with a view of reinforcing the fight against serious crime¹⁴.
13. RECALLING the Council Conclusions of 24 September 2009 on "how to make the internal market work better"¹⁵.
14. CONSIDERING the Commission Recommendation of 29 June 2009 on measures to improve the functioning of the single market¹⁶.
15. EMPHASISING the importance of protecting intellectual property rights, which are fundamental to promoting culture and diversity, and for drawing full benefit from the research, innovation and creative activity of European undertakings, especially SMEs, in order to support growth and jobs in the European Union and make Europe more competitive in the world.

⁹ OJ C319,13.12.08, p.15

¹⁰ OJ L178, 17.7.2000,p.1

¹¹ OJ C260, 30.10.2009, p.1.

¹² OJ C71, 25.3.2009, p. 1.

¹³ OJ L121, 15.5.2009, p.37.

¹⁴ OJ L63, 6.3.2002, p.1.

¹⁵ <http://register.consilium.europa.eu/pdf/en/09/st13/st13024.en09.pdf>

¹⁶ OJ L176, 7.7.2009, p.17.

16. STRESSING that the European Union has been called upon, in this respect, to continue its efforts to make the system for protecting intellectual property rights more efficient in order to more effectively combat infringements of intellectual property rights.
17. REITERATING its ambition to establish a consistent, high level of enforcement across the Internal Market, avoiding the creation of barriers to legitimate trade, and providing legal certainty
18. EMPHASISING that in the field of copyright and related rights, piracy in cultural and creative goods is reaching critical levels in some sectors, especially through the Internet, damaging the legal marketing of the traditional physical media, hampering the arrival of competitive business models of legal supply of cultural and creative content, holding back the dynamism of the European cultural industry and threatening access to legal, diverse and high quality cultural supply.
19. WELCOMES the Commission's Communication of 11 September 2009 on enhancing the enforcement of intellectual property rights in the internal market.
20. 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.
21. ACKNOWLEDGES the need to develop multi-agency administrative cooperation in the field of IPR enforcement and invites the Commission, in close collaboration with the Member States, to further analyze existing national administrative arrangements.
22. RECOGNISES the need for evidence-based and outcome-oriented policy making and in this context welcomes the creation of the European Observatory on Counterfeiting and Piracy.
23. INVITES the Commission to further define and fulfill the scope of competences of the Observatory, supporting its activity through existing institutional structures and through the below mentioned Enforcement Committee.
24. AGREES with the principal lines of action put forward by the Commission and encourages national authorities, right holders, consumer organizations, and other stakeholders to actively participate in, and contribute to the work of the Observatory.

25. ENCOURAGES Member States to develop national anti-counterfeiting and anti-piracy strategies and to establish transparent coordination structures in this field, including the designation of national coordinators.
26. CALLS upon the Commission to consolidate cooperation with and between Member States through the creation of an IPR Enforcement Committee, encompassing the IPR Enforcement Directive contact points, Member States' representatives to the Observatory and designated National Coordinators.
27. RECOGNISES the importance of reliable, uniform and comparable data on counterfeiting and piracy and invites the Commission, Member States and industry to systematically collect information and to jointly develop robust assessments.
28. NOTES the importance of public awareness in relation to the impact of counterfeiting and piracy on society and on the economy, in particular the potential danger of fakes for health and safety as well as for European competitiveness, creation, innovation and jobs, and encourages the Commission, the Member States and stakeholders to analyze and implement effective awareness campaigns, including a European Day against Counterfeiting and Piracy on 11 June.
29. STRESSES that, in accordance with the Union acquis in force, in the context of the establishment and functioning of the internal market measures shall be established providing uniform protection of intellectual property rights throughout the Union.
30. INVITES the Commission, in close collaboration with the Member States, to analyze the application of the Directive 2004/48/EC, including an assessment of the effectiveness, of the measures taken and, while taking account of the rapidly developing digital environment, if necessary propose appropriate amendments,.
31. REQUESTS the Observatory 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. In its Annual Report, the Observatory should take into account the conclusions of the experts' meetings and relevant round tables.

32. PROMOTES the introduction and use of a European network of contact points for the appropriate authorities engaged in the field of enforcing intellectual property rights, to allow rapid exchanges of information and mutual assistance.
33. INVITES the Observatory to publish each year a comprehensive Annual Report covering scope, scale and principle characteristics of counterfeiting and piracy as well as its impact on the internal market. This report will be prepared with the information provided by the authorities of the Member States and the private sector.
34. INVITES the Observatory 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 and to promote the implementation of Community level training programmes for those involved in combating counterfeiting and piracy .
35. INVITES the Commission to assess, in close cooperation with the future IPR Enforcement Committee, how best to enhance coordination, cooperation, information exchange and mutual assistance between all national and European authorities involved in combating counterfeiting and piracy.
36. URGES Member States and the Commission to explore how to make best use of the experience and knowledge, readily available in the national trademark and patent offices, to examine the possibilities for assisting right holders, in particular SMEs, to effectively and efficiently protect their intellectual property through the possible creation of a portal or helpdesk that would provide Community level guidance to the private sector in this field.
37. WELCOMES the Commission's new and innovative approach to facilitate dialogues amongst stakeholders, aimed at jointly agreed voluntary measures to reduce counterfeiting and piracy within the existing legal framework.

38. ENCOURAGES the Commission and relevant stakeholders 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.
39. INVITES the Commission, in cases where stakeholders' dialogues are unable to reach agreed solutions, to review the situation and to come forward with proposals for an appropriate follow-up, including proposals for legislation, if necessary and appropriate.
