



EDRi comments on DRAFT 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 MEP

Draft Report	EDRi's suggested amendment
	Preamble New - Having regard to the Roadmap of the European Commission for a proposal for a revision of the Directive on the enforcement of intellectual property rights of January 2012

Draft Report	EDRi's suggested amendment
A. whereas intellectual property rights are one of the driving forces of innovation and creativity and a key contributor to competitiveness and employment; whereas the enforcement of intellectual property rights plays a significant role in ensuring consumers' health and safety; whereas counterfeiting is generally linked with a black economy;	A. whereas well-balanced intellectual property rights can be one of the driving forces of innovation and creativity and a key contributor to competitiveness and employment; whereas the enforcement of intellectual property rights plays a significant role in ensuring consumers' health and safety;
The deleted text has no clear meaning.	

Draft Report	EDRi's suggested amendment
D. whereas there is a certain level of tolerance among Europeans for the idea that IPR infringements could be considered	D. whereas 96% of EU citizens agree that it is important that inventors, creators and performing artists can protect their rights

<p>legitimate, especially among the young generation¹;</p>	<p>and the vast majority (91%) say they did not download unauthorised content in the last twelve months; whereas, however, “an important part of the younger European generation, despite supporting IP, is ready both in theory and in practice to challenge and question it”²</p>
<p>The cited report does not say what the proposed text says that it does. Even among young people, the report indicates that three quarters say that they have not downloaded unauthorised content at all in the previous 12 months.</p>	

<p>Draft Report</p>	<p>EDRI's suggested amendment</p>
<p>(empty)</p>	<p>J. whereas the enforcement of IPR infringements, without the adequate safeguards to protect fundamental rights such as data protection freedom of expression and information and right to education, amongst others, can be restricted;</p>
<p>There is the need to find a balance when enforcing IPR. When enforcing IPR there are a number of risks to a variety of fundamental rights that need to be assessed.</p>	

<p>Draft Report</p>	<p>EDRI's suggested amendment</p>
<p>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;</p>	<p>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 (which must be clearly defined) infringers of their revenues and make it more difficult for infringing goods to be put on the market; Stresses the rule of law and national jurisdictions must be rigorously respected in any enforcement</p>

¹ See OHIM Report ‘European Citizens and intellectual property: perception, awareness and behaviour’, November 2013.

² See OHIM Report ‘European Citizens and intellectual property: perception, awareness and behaviour’, November 2013.

measures

. With regard to “commercial scale”, the Commission itself has indicated that the definition may need improvement “so as to make sure that professional counterfeiters rather than individual consumers are targeted”.

http://ec.europa.eu/smart-regulation/impact/planned_ia/docs/2011_markt_006_review_enforcement_directive_ipr_en.pdf

Draft Report	EDRI's suggested amendment
2. 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;	2. 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 and that any such process should not undermine the predictability guaranteed by article 52 of the Charter of Fundamental Rights, freedom of expression or freedom to conduct a business.
This is in line with the rapporteur's proposals on SMEs. It is important to ensure that market players not to become a replacement for law enforcement authorities, particularly when this can lead to disproportionate, ineffective and counterproductive outcomes, restrictions on competition and legal predictability.	

Draft Report	EDRI's suggested amendment
4. 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;	4. 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; stresses the need for such measures to be rigorously assessed for effectiveness, necessity, proportionality, fundamental rights compliance and possible anti-competitive effects.
This is in line with the rapporteur's proposals on SMEs. It is important to ensure that market players not to become a replacement for law enforcement authorities, particularly when this can lead to	

disproportionate, ineffective and counterproductive outcomes, restrictions on competition and legal predictability.

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<p>14. Expresses its satisfaction about the development of the activities of the European Observatory on Counterfeiting and Piracy as a tool for collecting and exchanging data and information on all forms of IPR infringements, and welcomes in particular the efforts made and the results obtained, notably as regards the Enforcement Database and the Anti-Counterfeiting Intelligence Support Tool;</p>	<p>14. Notes information about the development of the activities of the European Observatory on Counterfeiting and Piracy as a tool for collecting and exchanging data and information on all forms of IPR infringements, and welcomes in particular the efforts made and the results obtained, notably as regards the Enforcement Database and the Anti-Counterfeiting Intelligence Support Tool;</p>
<p>In the absence of any independent appraisal of the work of the Observatory, it seems premature to give such a strong endorsement.</p>	

Draft Report	EDRI's suggested amendment
<p>15. Calls on the Commission to make use of the data collected by the Observatory, and of the results of the Observatory's activities, to draw conclusions and propose solutions for improving IPR enforcement to be used by policy-makers; calls on the Commission to report back to Parliament on this on a regular basis;</p>	<p>15. Calls on the Commission to monitor the work of the Observatory, specifically calling for the use of evidence-based reports to draw conclusions and propose solutions for improving IPR enforcement to be used by policy-makers; calls on the Commission to report back to Parliament on this on a regular basis;</p>
<p>In addition to the previous comment, there is the need to monitor the work of this EU Agency.</p>	

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<p>19. 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;</p>	<p>19. 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;</p> <p>expresses particular concern at the divergent approach to injunctions across the EU and the almost complete lack of review mechanisms regarding</p>

	measures imposed in the online environment;
Injunctions that impose restrictions on fundamental rights must be proportionate and genuinely achieve their aims. In an ever-changing online environment, a failure to foresee review processes means that this obligation risks not being respected.	