COUNCIL RESOLUTION

of 1 March 2010

on the enforcement of intellectual property rights in the internal market

THE COUNCIL OF THE EUROPEAN UNION,

1. WELCOMING the Commission Communication of 11 September 2009 on enhancing the enforcement of intellectual property rights in the internal market[1];

2. RECALLING its Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan[2];

3. RECALLING the Commission Communication of 16 July 2008 on an industrial property rights strategy for Europe[3];

4. CONSIDERING the Community instruments adopted to combat the infringement of intellectual property rights, particularly Directive 2004/48/EC on the enforcement of intellectual property rights[4], Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights[5], Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society[6] and Directive 2009/24/EC on the legal protection of computer programs[7];

5. CONSIDERING its Conclusions of 20 November 2008 on the development of legal offers of online cultural and creative content and the prevention and combating of piracy in the digital environment[8];

6. CONSIDERING its Conclusions of 22 May 2008 on a European approach to media literacy in the digital environment[9] and its Conclusions of 27 November 2009 on media literacy in the digital environment[10];

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1 COM(2009) 467 final of 11 September 2009.
2 OJ C 253, 4.10.2008, p. 1.
3 COM(2008) 465 final of 16 July 2008.
4 OJ L 195, 2.6.2004, p. 16.
5 OJ L 196, 2.8.2003, p. 7.
6 OJ L 167, 22.6.2001, p. 10.
7 OJ L 111, 5.5.2009, p. 16.
8 OJ C 319, 13.12.2008, p. 15.
9 OJ C 140, 6.6.2008, p. 8.
10 OJ C 301, 11.12.2009, p. 12.

7. 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")[11];

8. CONSIDERING Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorization of electronic communications networks and services[12];

9. RECALLING its Resolution of 23 October 2009 on a reinforced strategy for customs cooperation[13];

10. RECALLING its Resolution of 16 March 2009 on the European Union Customs Action Plan to combat IPR infringements for the years 2009 - 2012[14];

11. RECALLING its Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)[15];

12. RECALLING its Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view of reinforcing the fight against serious crime[16];

13. RECALLING its Conclusions of 24 September 2009 on "Making the internal market work better"[17];

14. CONSIDERING Commission Recommendation 2009/524/EC of 29 June 2009 on measures to improve the functioning of the single market[18];

15. CONSIDERING the ongoing international activities aimed at supporting the fight against counterfeiting and piracy, including in particular the negotiation on the Anti-counterfeiting Trade Agreement;[19]

16. EMPHASISING the importance of protecting intellectual property rights, which are fundamental to promoting culture and diversity, and for drawing full benefit from the research,

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[11] OJ L 178, 17.7.2000, p. 1.
[12] OJ L 337, 18.12.2009, p. 37.
[13] OJ C 260, 30.10.2009, p. 1.
[14] OJ C 71, 25.3.2009, p. 1.
[15] OJ L 121, 15.5.2009, p. 37.
[16] OJ L 63, 6.3.2002, p. 1.
[17] Council document 13024/09.
[18] OJ L 176, 7.7.2009, p. 17.
[19] The Commission will continue to inform the Member States and the Council, as well as the European Parliament and relevant stakeholders as appropriate.

innovation and creative activity of European undertakings, especially small and medium-sized enterprises, in order to support growth and jobs in the European Union and make Europe more competitive in the world;

17. 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;

18. 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 while safeguarding consumers' and users' interests;

19. EMPHASISING that in the field of copyright and related rights, piracy in cultural and creative goods in a rapidly developing digital environment is damaging the legal marketing of the media, hampering the arrival of competitive business models of legal supply of cultural and creative content, calling into question the adequate remuneration of right holders and holding back the dynamism of the European cultural industry that provides access to legal, diverse and high-quality cultural supply;

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. RECOGNISES 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;

22. ACKNOWLEDGES the importance of developing multi-agency administrative cooperation in the field of intellectual property rights enforcement and INVITES the Commission, in close collaboration and coordination with the competent authorities or institutions of Member States, to further analyse existing national administrative arrangements;

23. RECOGNISES the need for evidence-based and outcome-oriented policy making and in this context welcomes the recent creation and work of the European Observatory on Counterfeiting and Piracy;

24. INVITES the Commission to elaborate further on the scope of competences, tasks and role of the Observatory, supporting its activity through existing institutional structures. The

Observatory will act through the plenary or through working groups on an ad hoc basis and will make full use of available national expertise, such as in particular the national correspondents designated by Member States pursuant to Article 19 of Directive 2004/48/EC;

25. AGREES with the principal lines of action put forward by the Commission and encourages national authorities, right holders, consumer organizations and other stakeholders from all sectors, to actively participate in, and contribute to the work of the Observatory;

26. CALLS UPON Member States to develop national anti-counterfeiting and anti-piracy strategies and to establish transparent coordination structures in this field;

27. RECOGNISES the importance of reliable and comparable data on counterfeiting and piracy and INVITES the Commission, the Member States and industry to provide the Observatory with available information and to jointly develop and agree, in the context of the Observatory, on plans to collect further information. and to jointly develop a common methodology for collecting data;

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 counterfeits and pirated products for health and safety as well as for European competitiveness, creation, innovation and jobs, and encourages the Commission, the Member States and stakeholders, including consumers, to analyse and implement effective awareness campaigns. The financial implications will be assessed by the Observatory in cooperation with the Commission in order to define appropriate funding resources. The campaigns will focus on specific target audiences such as consumers and young people;

29. STRESSES, in the context of the establishment and functioning of the internal market, the importance of using all appropriate means with a view to ensuring efficient enforcement of intellectual property rights throughout the Union in accordance with the Union acquis in force;

30. INVITES the Commission, in accordance with Article 18 of Directive 2004/48/EC and in close collaboration with the Member States, to analyze the application of that Directive, 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;

31. NOTES the importance of simplifying the cross-border enforcement of judicial decisions in order to ensure an effective intellectual property rights protection; in this respect, asks the

Commission and the Member States to consider how to support the review of the Brussels I Regulation[20];

32. INVITES the Commission to analyze the opportunity of submitting an amended proposal for a Directive on criminal measures aimed at combating counterfeiting and piracy. This analysis must include an assessment of the extent to which action is essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonization measures, as well as an examination of the impact, costs and benefits of any new measures;

33. REQUESTS the Observatory to facilitate regular experts' meetings, involving representatives from public authorities, private sector bodies and consumer organizations, to promote successful and proportional solutions against counterfeiting and piracy. The Observatory will pay special attention to the compilation of best practices in public and private sectors and codes of conduct in private sectors. In its Annual Report, the Observatory should take into account the conclusions of the experts' meetings and relevant round tables;

34. PROMOTES the use, within the limits of data protection law, of the European network for administrative cooperation referred to in the Council Resolution of 25 September 2008 with a view to ensuring rapid exchanges of information and mutual assistance among the authorities engaged in the field of the enforcement of intellectual property rights;

35. INVITES the Observatory 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. This report will be prepared with the relevant information provided by the authorities of the Member States, the Commission and the private sector, within the limits of data protection law;

36. 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 explore the need for the implementation of European Union level training programmes for those involved in combating counterfeiting and piracy;

37. INVITES the Commission to 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 with the cooperation of the economic operators;

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[20] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12,

38. URGES Member States and the Commission 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;

39. WELCOMES the Commission's new and innovative approach to facilitate dialogues amongst stakeholders, aimed at jointly agreed voluntary measures to reduce counterfeiting and piracy in compliance with the legal framework;

40. ENCOURAGES the Commission, the Member States and the 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;

41. INVITES the Member States to communicate to the Commission any existing agreements referred to in the previous point and ENCOURAGES the Commission 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;

42. INVITES the Commission, within the limits of European Union competence, in cases where stakeholders' dialogues are unable to reach agreed solutions, to review the situation in cooperation with Member States and to come forward with proposals for an appropriate follow-up, including proposals for legislation, if necessary and appropriate;

43. INVITES the Member States and the Commission 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.

16.1.2001, p. 1.