



**COUNCIL OF
THE EUROPEAN UNION**

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WORKING DOCUMENT

from: Presidency
to: Working Party on Intellectual Property
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Subject: Draft Council Resolution on a comprehensive European anti-counterfeiting plan

Delegations will find annexed hereto a draft Council Resolution on a comprehensive European anti-counterfeiting plan, prepared by the Presidency, for discussion in the Working Party on Intellectual Property on 3 September 2008 and in the Working Party on Customs Union (Customs Legislation and Policy) on 5 September 2008, for those parts which are relevant to its remit.

This Resolution follows on, and is based on, a communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee
– An industrial property rights strategy for Europe (12267/08).

Draft

COUNCIL RESOLUTION

on a comprehensive European anti-counterfeiting plan

THE COUNCIL OF THE EUROPEAN UNION,

1. CONSIDERING the Commission's strategic report¹ and the new cycle of the renewed Lisbon strategy for growth and jobs (2008-2010) launched by the European Council on 14 March 2008;
2. STRESSING that the European Union has been called upon, in this connection, to continue its efforts to make the system for protecting intellectual property rights more efficient in order to combat counterfeiting more effectively;
3. EMPHASISING the need to respect the basic freedoms of the internal market and improve the way it works;
4. POINTING OUT how important it is, in the fight against counterfeiting, to harmonise existing intellectual property rights and Community industrial property titles;
5. CONSIDERING the Community instruments adopted to combat counterfeiting and piracy, particularly Directive 2004/48/EC on the enforcement of intellectual property rights and Regulation No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights; considering the amended proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights;

¹ Communication from the Commission to the European Council "Strategic report on the renewed Lisbon Strategy for growth and jobs: launching the new cycle (2008-2010) – Keeping up the pace of change" COM(2007) 803 final.

6. CONSIDERING the anti-counterfeiting initiatives which have been developed multilaterally, particularly in the World Trade Organisation (WTO), the World Customs Organisation (WCO), the World Intellectual Property Organisation (WIPO), the Organisation for Economic Cooperation and Development (OECD), the World Health Organisation (WHO) and the G8 (Heiligendamm process);
7. CONSIDERING the OECD report on the economic impact of counterfeiting and piracy, particularly its estimate that international trade in counterfeit and pirated goods may have been some USD 200 billion in 2005, on the basis of customs seizures in OECD countries, indicating that the total value of trade in counterfeit or pirated products could exceed this amount by several hundred billion dollars, and considering its recommendations for increased cooperation between governments and industry;
8. AWARE of the seriousness and the worrying growth of the phenomenon of counterfeiting and piracy, in particular in a globalised economy, for the competitiveness of the European Union, for its businesses, creative forces and consumers; aware of the scale of this phenomenon on the Internet too; aware of the risks involved in counterfeiting products, which poses a health and safety hazard;
9. EMPHASISES 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;
10. POINTS OUT the advantages of a European patent and a patent court system in order to give users means to enforce their intellectual property rights throughout the Union, thus enabling innovative companies to obtain the best protection for their inventions and to profit from them more efficiently;

11. EMPHASISES the need to mobilise all stakeholders to boost the effectiveness of the whole range of instruments for combating counterfeiting and piracy on the internal market and to develop the protection of intellectual property rights internationally, with due regard for basic rights and the general principles of Community law, such as the protection of personal data and the protection of property rights;

12. WELCOMES the Commission communication of 16 July 2008 designed to implement an industrial property rights strategy for Europe, especially, as regards combating counterfeiting and piracy:
 - customs initiatives to combat counterfeiting at the borders and outside the European Union,

 - action to complement legislation, designed to encourage a change in public perceptions of the phenomenon of counterfeiting and piracy, to increase precise awareness of the phenomenon, to improve cooperation between all stakeholders in the Member States, to step up administrative cooperation between Member States, and to promote public/private partnership agreements and the conclusion of inter-industry agreements at European level to reduce piracy and the sale of counterfeit goods on the Internet,

 - action designed to enforce intellectual property rights in third countries, through regular inquiries, through the promotion of effective protection of those rights in bilateral trade agreements, and through closer cooperation in the framework of regular dialogues with third states, especially those with a high level of counterfeiting and piracy,

 - work on a plurilateral anti-counterfeiting trade agreement (ACTA);

13. INVITES the Commission to act on these guidelines by:
- setting up a European centre to monitor counterfeiting in order to make a regular assessment, on the basis of public and private sector data, of the extent of counterfeiting and piracy and a more precise analysis of these phenomena,
 - disseminating information, especially over the Internet, between those involved in combating counterfeiting,
 - developing action to raise awareness and to communicate with those involved in combating the counterfeiting and piracy of works on the Internet and with consumers, including by establishing a European awareness day on the dangers of counterfeiting and by drawing up operational guides;
14. INVITES the Commission and the Member States, acting within their respective spheres of competence, to:
- submit an anti-counterfeiting customs plan for the years 2009 to 2012 which gives priority to information-sharing through better use of electronic systems and the development of cooperation between the authorities concerned, in particular at the border and principally the customs authorities; to make a survey of substantive law and evaluate the improvements needed to the legal framework to improve action against counterfeit products which are a danger to consumers and to raise awareness of the risks of the phenomenon,
 - set up a network for the rapid exchange of information on counterfeit products and services, in particular by stepping up cross-border administrative cooperation, drawing on national contact points and modern information-sharing tools,

- promote coordination between institutions involved in combating counterfeiting and piracy, in particular by sharing good practice between national administrations,
- study the effectiveness of the legal framework in enforcing intellectual property rights,
- submit appropriate proposals to encourage public/private sector partnerships to combat counterfeiting and piracy, to recommend good practice, especially as regards Internet sales, and to encourage professionals to work together,
- actively contribute to stepping up the enforcement and protection of intellectual property rights in all bilateral and multilateral agreements concluded by the European Union; in particular by the draft plurilateral anti-counterfeiting trade agreement (ACTA), including by promoting a task force with the remit of scrutinising implementation of the agreement; by promoting the issue in dialogue between the European Union and third countries and in the context of cooperation activities with third countries,
- more generally, use all appropriate means to combat counterfeiting and piracy effectively.

