



**COUNCIL OF  
THE EUROPEAN UNION**

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**PI 10**

**WORKING DOCUMENT**

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from: General Secretariat of the Council

to: Working Party on Intellectual Property

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

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Delegations will find in Annex a revised proposal for a Council Resolution drawn up by the Presidency for discussion at the meeting of the Working Party on 5 February 2010.

Changes in relation to the previous draft (5022/10) are indicated.

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**REVISED 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 market<sup>1</sup>.
2. RECALLING its Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan<sup>2</sup>.
3. RECALLING the Communication of 16 July 2008 from the Commission about an industrial property rights strategy for Europe.<sup>3</sup>
4. CONSIDERING the EP/Gallo Report (*only if available in time*)<sup>4</sup>.
5. CONSIDERING the EESC/ Retureau 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 rights<sup>5</sup>, Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights<sup>6</sup>, Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society<sup>7</sup> and Directive 2009/24/EC on the legal protection of computer programs<sup>8</sup>.

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<sup>1</sup> COM(2009) 467final of 11 September 2009.

<sup>2</sup> OJ C253, 4.10.2008, p.1.

<sup>3</sup> COM(2008) 465 final of 16 July 2008.

<sup>4</sup> Reference to be added.

<sup>5</sup> OJ L195, 2.6.2004, p.16.

<sup>6</sup> OJ L196, 2.8.2003, p.7.

<sup>7</sup> OJ L167, 22.6.2001, p.10.

<sup>8</sup> 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 piracy<sup>9</sup>.
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")<sup>10</sup>.
- 8a) 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 authorisation of electronic communications networks and services<sup>11</sup>
9. RECALLING Council Resolution of 23 October 2009 on a reinforced strategy for customs cooperation<sup>12</sup>.
10. RECALLING Council Resolution of 16 March 2009 on the EU Customs Action Plan to combat IPR infringements, for the years 2009 - 2012<sup>13</sup>.
11. RECALLING Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office<sup>14</sup>.
12. RECALLING Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust, with a view of reinforcing the fight against serious crime<sup>15</sup>.
13. RECALLING the Council Conclusions of 24 September 2009 on "how to make the internal market work better"<sup>16</sup>.

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<sup>9</sup> OJ C319, 13.12.08, p.15

<sup>10</sup> OJ L178, 17.7.2000, p.1

<sup>11</sup> OJ L337, 18.12.2009, p.37

<sup>12</sup> OJ C260, 30.10.2009, p.1.

<sup>13</sup> OJ C71, 25.3.2009, p. 1.

<sup>14</sup> OJ L121, 15.5.2009, p.37.

<sup>15</sup> OJ L63, 6.3.2002, p.1.

<sup>16</sup> <http://register.consilium.europa.eu/pdf/en/09/st13/st13024.en09.pdf>

14. CONSIDERING the Commission Recommendation of 29 June 2009 on measures to improve the functioning of the single market<sup>17</sup>.

14a) CONSIDERING the ongoing international activities aimed at supporting the fight against counterfeiting and piracy, especially the negotiation on the Anti-counterfeiting Trade Agreement

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.

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 [...] media, hampering the arrival of competitive business models of legal supply of cultural and creative content, questioning creators' fair and equitable remuneration and holding back the dynamism of the European cultural industry [...] that provides access to legal, diverse and high quality cultural supply

19. Deleted.

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.

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<sup>17</sup> OJ L176, 7.7.2009, p.17.

- 20a. RECOGNISES that the development of a legal offer of cultural and creative content, on the one hand, and preventing and combating piracy on the other, are necessary for the economic growth, employment and cultural diversity.
21. ACKNOWLEDGES the need to develop multi-agency administrative cooperation in the field of IPR enforcement and INVITES the Commission, in close collaboration and coordination with the Member States and their agencies, 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 recent creation and work 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 [...]. The Observatory will act through the plenary or through working groups on “ad hoc” basis.
24. AGREES with the principle lines of action put forward by the Commission and encourages national authorities, right holders, consumer organizations, and other stake holders, in particular the entertainment industry, to actively participate in, and contribute to the work of the Observatory.
25. CALLS UPON Member States to develop national anti-counterfeiting and antipiracy strategies and to establish transparent coordination structures in this field [...].
26. Deleted.

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, 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 to analyze and implement effective awareness campaigns, including a European Day against Counterfeiting and Piracy on 11 June. 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 audience targets like consumers and young people
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 [...] ensuring efficient enforcement 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 [...], if necessary propose appropriate amendments taking into account the rapidly developing digital environment.
- 30a. NOTES the importance of simplifying the cross-border enforcement of judicial decisions in order to ensure an effective IPR protection. In this respect, calls for the Commission's and Member States' support for reviewing Brussels I Regulation and abolishing the exequatur requirement.

- 30b. INVITES the Commission to analyse the opportunity of submitting an amended proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights, in order to complete the EU legislative framework in the field of IPR enforcement.
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. The Observatory will pay special attention to the compilation of best practices in public and private sectors and conduct codes in private sectors. In its Annual Report, the Observatory should take into account the conclusions of the experts' meetings and relevant round tables.
32. PROMOTES the [...] role of the Observatory to allow rapid exchanges of information and mutual assistance among the authorities engaged in the field of the enforcement of intellectual property rights
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 relevant information provided by the authorities of the Member States, the Commission and the private sector, within the limits of data protection law,
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 [...] explore the need for the implementation of [...] EU level training programmes for those involved in combating counterfeiting and piracy

35. INVITES the Commission to assess, in close cooperation with the [...] Observatory and its expert groups where necessary 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.
36. URGES Member States and the Commission to explore how to make best use of the experience and knowledge, readily available in the [...] EU and national IPR 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 [...] for providing information 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 in compliance with the [...] legal framework.
38. 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.
- 38a. INVITES the Member States to communicate to the Commission existing agreements and ENCOURAGES the Commission to analyse, in cooperation with economic operators, the efficacy of these agreements in the fight against counterfeiting in the internal market in order to state the existing best practices.
39. INVITES the Commission, within the limits of EU competence, 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.

39a. INVITES the Member States and the Commission to act towards promoting a high level of protection of Intellectual Property in both bilateral and multilateral international agreements.

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