



European Communities Trade Mark Association

By Email to: Member of the Legal Affairs Committee of the European Parliament

Antwerp, 20 February 2007

Dear Member of the Legal Affairs Committee of the European Parliament,

Concern: Analysis of the amendments presented by the Committee on Legal Affairs for voting on the Draft Directive on criminal measures aimed at ensuring the enforcement of Intellectual Property rights

On 26 February, the Legal Affairs committee is set to vote on the proposed amendments to the Directive on criminal measures aimed at ensuring the enforcement of Intellectual Property rights. The European Communities Trade Mark Association (ECTA), which brings together some 1,400 experts in the field of trade marks, designs and related IP matters from 85 countries, already submitted its comments to the Commission's Proposal by way of a letter sent to Mr Nicola Zingaretti and other relevant Members of European Institutions in November 2006.

Instead of going into detail on all the 124 amendments to the Commission's proposal of 26 April 2006 that we know about, ECTA, based on its long experience in the field of intellectual property specifically, would like to call attention to certain aspects it considers most essential, so that they may be taken into account when finally approving the Directive. We would like to raise just five main points.

1.) Definition of the scope of the Directive

We fully support amendment 30 to Article 1. The scope of applicability of the law should be limited to counterfeiting and piracy.

We support amendment 5 to Article 2. We agree that inspiration should be drawn from the definitions in Council Regulation 1383/2003 on border measures, additionally expanded beyond goods to cover services protected by rights including at least other rights such as appellations of origins,.

However, we believe that the concepts of counterfeiting and piracy should be better defined in the future by an objective element, "e.g.: unauthorized use of a right identical to the right validly registered in respect of the same or similar type of goods or services, or which reproduces in its essential aspects such a right".

2.) The term intentional (Article 3)

The subjective element would be better expressed as “wilful”, meaning that the infringement should be caused by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity (see Article.45.1.TRIPS).

3.) The term commercial scale

We support the wording of amendment 5 letter b) to Article 2.

4.) The term “inciting” should be removed from Article 3.

5.) The level of penalties (Article 5).

ECTA supports extending harmonization measures, specifically the penalty of imprisonment, to cases other than those considered as the most serious ones, where any act of counterfeiting or piracy involves criminal organizations or a threat to health and safety.

We support amendments 6 and 7 to Article 5.

We would ask you to bear in mind that inappropriate or imprecise final wording of the Directive as approved could worsen the situation currently existing in many European Union countries, which we view as contrary to the underlying spirit and intent of this legislative initiative.

Thank you for taking these comments into consideration.

ECTA remains available for any further assistance that may be required.

Yours sincerely,



Mireia Curell
President



Ignacio D. Rivera Elzaburu
Chair of the Anti-Counterfeiting Committee



Doris Bandin
Chair of the Law Committee