



European Communities Trade Mark Association

Report on the Public hearing concerning the Proposal for a European Parliament and Council Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights.

22 November 2005 - The appointed reporter of the Legal Affairs Committee of the European Parliament, Mr Nicola Zingaretti MEP, invited associations, organizations, lobbies and interested groups to a public hearing in the European Parliament in order to promote debate and exchange views on the proposed Directive on criminal measures. This was aimed at ensuring the enforcement of intellectual property rights and the Framework Decision to strengthen the criminal framework to combat intellectual property offences.

MEP Zingaretti advised that he had begun to examine the two proposals and that he would deal with them rapidly. He announced a draft report for January 2006. Mr Zingaretti hopes to address his final report to the plenary session of the Parliament in spring 2006.

During the public hearing it immediately became evident that it would be very difficult to reach a consensus on the proposed measures.

Numerous pressure groups and companies (including the European Consumers Association, the Business Software Alliance, the Foundation for a Free Information Infrastructure, Sun Microsystems, a Free Software Association, British Telecom, and the European Pharmaceutical Association), have stressed that patents should be removed from of the scope of the proposed measures. The two main arguments invoked were that patent infringements are too subtle to be assessed by criminal courts and that the searches for prior rights are insufficient.

It has been advocated by many (including ECTA and INTA), that the EU should not go beyond the requirement of Article 61 of the TRIPS Agreements, which makes it mandatory to provide for criminal sanctions for trade mark infringements and copyright piracy.

Several associations (including ECTA, INTA, and the European Consumers Association), and companies (Sun Microsystems) have requested that infringing acts be defined in more detail.

Some have even been further than that: the European Consumers Association has requested that 'inciting' be taken out of the list of criminal acts of Article 3 of the Directive as this may, in their view, limit freedom of speech. The same Association stated that the enforcement of private rights through criminal measures is disproportionate. The ABLEDA (an association of librarians) voiced concerns that criteria such as 'intentional'

and 'commercial scale' may be too restrictive as admittedly a lot of pirated goods go through libraries.

Others (like IFPA and IFPI), have emphasized that the EU should go beyond the minimum standards of TRIPS. IFPA has emphasized that courts should be able to order the destruction of moulds and matrices, and that witness protection should be available. The organization welcomed that the sharing of information between law enforcement authorities and right-holders was provided for and that law enforcement authorities were provided with ex officio powers. IFPI pointed out that intellectual property rights infringements should already be criminalized in the Member States and that the draft Directive should only be seen as a means of harmonizing the criminal measures.

INTA pointed out that the unconditional destruction of infringing goods should be provided for under Article 4, the actual wording of which was considered as insufficient.

The presence of Mme Janelly Fourtout MEP during the public hearing was noted

Marius SCHNEIDER, Belgium, Member of the ECTA Anti-Counterfeiting Committee