

Creative industries' letter on Mr. Svoboda's draft report on the EC Communication

**"Towards a renewed consensus on the enforcement of intellectual property rights:
An EU Action Plan"**



Dear Member of the Legal Affairs Committee,

On behalf of the organisations represented above and in view of the forthcoming vote in the Legal Affairs Committee, we would like to thank you for your ongoing work on the Communication "*Towards a renewed consensus on the enforcement of intellectual property rights: an EU Action Plan*" ("the Action Plan") published by the European Commission in July 2014.

The Action Plan is a positive step forward, leading to increased awareness and cooperation between national authorities, the promotion of due diligence throughout supply chains, improved court procedures for SMEs, and better training for enforcement officials; in particular, the so-called *'Follow the Money'* approach addressed in the Action Plan (par. 4) is an important ingredient in the broader range of activities required in the fight against piracy. It is intended to prevent commercial-scale IPR infringements by involving all actors in the supply chain and by depriving commercial scale infringers of their revenue flows.

Similar initiatives have already been or are currently being launched in several EU countries such as the UK, Germany and France. These measures are not only important for creators and their business partners, but also for the protection of consumers/users and of the most vulnerable (e.g. children) against the harmful effects of certain web sites¹.

Please find below our common suggestions on the amendments tabled on the draft report of MEP Pavel Svoboda.

- **Citations 2b (new) and 14a (new)**: we support amendments 3 and 5, which provide useful references to the report on Intellectual property rights intensive industries published by OHIM and the EPO in 2013, and the Universal Declaration of Human Rights.
- **Recitals A and A new**: we support amendments 7, 9 and 11, which refer to the negative impact of IPR infringements and the importance of IPR, and oppose amendments 6 and 8.
- **Recitals B and B a (new)**: we support amendments 13, 15, 16, 17 and 18, which recognise the harm caused by IPR infringements, and oppose amendment 14.
- **Recitals D and F**: Recital D seems to imply that piracy is acceptable. We support amendments 23 and 24, as well as amendment 29 as it highlights the consequences of IPR infringements. We oppose amendments 26, 27, 30 and 31. Regarding recital F, we support am 34 (clearer wording).
- **Paragraph 1**: we oppose amendment 43 - criteria for "commercial scale" can already be found in the EU framework (Article 8 and Recital 14 of IPRED). This standard which is enshrined in the WTO/TRIPS agreement provides the necessary flexibility at the EU and national levels and has been extensively elaborated in jurisprudence. Further codification of this concept is unrealistic and risks removing the EU's margin to manoeuvre both within the EU and internationally.
- **Paragraph 2**: in the digital era where IPR infringements online are increasing, the role of actors in the supply chain in the fight against IPR infringements should not be limited to the offline environment. We therefore support amendment 52 and oppose amendment 50. We also oppose amendment 51, which limits the possibilities to look for soft law measures and co-regulation.

¹ Studies have been published in this area. See for example the Industry Trust research (<http://www.industrytrust.co.uk/press-releases/the-bogus-features-lurking-behind-pirate-film-and-tv-sites/>) and the "DCA" study (<https://media.gractions.com/314A5A5A9ABBBBC5E3BD824CF47C46EF4B9D3A76/4af7db7f-03e7-49cb-aeb8-ad0671a4e1c7.pdf>).

- **Paragraph 3:** we support amendments 58 and 59, which highlight the importance of due diligence throughout the supply chain.
- **Paragraph 4:** the *'Follow the Money'* approach is an important ingredient in the broader range of activities required in the fight against piracy and should be supported. We therefore support amendment 60, which encourages this approach, and oppose amendment 61, which seems to imply that the *'Follow the Money'* approach would be contrary to freedom of expression.
- **Paragraphs 6 and 6a (new):** we support amendment 74, which refers to OHIM, as well as amendment 75, which highlights the importance of cooperation in the fight against IPR infringements.
- **Paragraph 8:** suggests that piracy is due to the lack of legal content. This is a misrepresentation of the situation. European consumers have never been able to access a wider range of works and subject matters from legal services. Today, consumers can enjoy over 2 million e-book titles and over 43 million licensed songs. There are over 3000 Video-on-Demand (VOD) services and 230 licensed digital music services in the EU, and the total online film transactions soared to 58.8 million in 2012 (a growth rate of 2,350% since 2006). We therefore support amendments 77, 80 and 82, and oppose amendments 78, 79 and 81.
- **Paragraph 9:** suggests that infringements are due to the business models of the creative industries. This is not accurate. Infringements happen because illegal content is freely available and easily accessible. We therefore support amendments 83, 84 and 85, and oppose amendments 86 and 87.
- **Paragraphs 9 a-b (new):** we support amendment 90, which stresses that intellectual property rights are a guarantee of innovation and competitiveness, but oppose amendments 89 and 91 as they fall out of the scope of the Action Plan and are contrary to its aim.
- **Paragraph 10a (new):** we support amendment 92, which refers to improving IPR civil enforcement procedures for SMEs.
- **Paragraph 17:** we support amendment 111 which provides a broader context, highlighting the role of intermediaries in combating IPR infringements.
- **Paragraph 20:** we oppose amendment 114 as it falls out of the scope of the Action Plan.
- **Paragraph 20 a:** we oppose amendment 118, which fails to recognise that all fundamental rights should be respected and implies that IPR enforcement is not consistent with existing rules.
- **Paragraph 21:** we oppose amendment 121 as it falls out of the scope of the Action Plan.

List of signatories

Creativity Works! is a coalition which includes several organisations, federations and associations across the European cultural and creative sectors - <http://creativityworks.eu>

CEPI TV - European Coordination of Independent Producers - *Elena Lai, Secretary General.*

EUROKINEMA - Association de Producteurs de Cinéma et de Télévision, *Yvon Thiec, General Delegate.*

FIAPF - International Federation of Film Producers Associations - *Benoît Ginisty, Director General.*

IFPI - representing the recording industry worldwide - *Olivia Regnier, Director European Office and European Regional Counsel.*

IMPALA - Independent Music Companies Association - *Helen Smith, Executive Chair.*

IVF - International Video Federation - Publishers of Audiovisual Content on Digital Media and Online - *Charlotte Lund Thomsen, Legal Counsel.*

UNIC - International Federation of Cinemas - *Jan Runge, CEO.*

ACT - Association of Commercial Televisions in Europe - *Ross Biggam, Director General* and *Emilie Anthonis, EU Affairs Advisor.*

EPC - European Publishers Council - *Angela Mills Wade, Executive Director.*

FEP - Federation of European Publishers - *Anne Bergmann, Director* and *Liv Vaisberg, Legal Advisor.*

ICMP - International Confederation of Music Publishers - *Coco Carmona, Legal & Regulatory Affairs.*

IFRRO - The International Federation of Reproduction Rights Organisations - *Olav Stokkmo, Chief Executive.*

ISFE - Interactive Software Federation of Europe (ISFE), representing the European Video Games Industry - *Dara MacGreevy, Anti-Piracy Director.*

MPA - Motion Picture Association - *Stanford McCoy, President and Managing Director MPA EMEA,* and *Laurence Djolakian, VP Legal Counsel.*