

## Comparison of tabled resolutions.

The table below compares the most important excerpts of three resolutions tabled on IPR enforcement, and which will be voted upon on Wednesday, September 22nd, 2010.

Category	Comments	Gallo	ALDE	S&D - Green
Criminal sanctions	<p>The recital mentions the IPRED 2, which was dropped while being debated at the EU Parliament. One of the main reasons for its rejection is that <b>criminal sanctions are a costly and most often irrelevant way to deal with IPR infringements</b>. Many law practitioners and scholars argue that criminal law is badly suited for IP law, since the illegality of a given situation is often open for interpretation, such as in the case of patent litigation<sup>[1]</sup>. In view of such uncertainty, criminal law places too much risk on both producers and users of informational goods, thus <b>chilling innovation and undermining fundamental rights</b> such as freedom of expression.</p>	<p><i>having regard to its resolution of 25 April 2007 on the amended proposal for a directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights</i></p>	<p><i>having regard to its resolution of 25 April 2007 on the amended proposal for a directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights</i></p>	
	<p>With this language, the Gallo report suggests criminal sanctions should be adopted in the EU, dismissing the arguments raised against IPRED 2. It is all the more dangerous given that <b>the EU approach to IPR enforcement – as resulting of the 2004 IPRED directive – is already strongly criticized</b> and has not been assessed. • It also specifically calls for the adoption of measures regarding online IPR infringements, which it says is not sufficiently addressed by EU law.</p>	<p><i>15. whereas, with the exception of legislation on penalties under the criminal law, a Community legal framework already exists with regard to the phenomenon of counterfeiting and piracy of physical goods, but whereas lacunae persist with regard to online IPR infringements,</i></p>		
	<p>Again, the Gallo resolution <b>suggests that criminal sanctions need to be harmonized at the EU level without ever giving a proper justification</b> for why this is needed, when there is currently an obvious lack of sound evidence and data regarding the phenomenon of IPR.</p>	<p><i>13. Does not share the Commission's view that the principal body of laws with respect to IPR enforcement is already in place; points out in this respect that negotiations on the directive on criminal sanctions have not been successfully concluded;</i></p>		

<p><b>Legal status of file-sharing</b></p>	<p>This seems to be a false assertion: Uploading is illegal only to the extent that EU law itself does not provide any ad hoc exception for non-profit sharing of cultural works. International law does not say anything against "file-sharing". Moreover the international instrument for exceptions and limitations – the <b>Three Step test of the Berne convention – would allow for the creation of collective or legal licenses aimed at legalising file-sharing while funding creation.</b></p>	<p><i>12. whereas the unauthorised uploading of copyrighted material to the Internet is a clear infringement of intellectual property rights and is prohibited by the World Intellectual Property Organisation (WIPO) treaties on copyright (WCT) and performances and phonograms (WPPT), to which the European Union is a contracting party,</i></p>	<p><i>G, whereas the unauthorised uploading of copyrighted material to the Internet is a clear infringement of intellectual rights and is prohibited by the World Intellectual Property Organisation (WIPO) treaties on copyright (WCT) and performances and phonograms (WPPT), to which the European Union is a contracting party,</i></p>	
<p><b>Impact of file-sharing on legal services</b></p>	<p>Contrarily to what is asserted by both the Gallo report and the ALDE resolution, there is no clear scientific indication that the development of legal services suffers from file-sharing. A number of other factors have been mentioned, such as the hassles of copyright licensing for online services (which is an issue addressed by the Digital Agenda and mentioned by the alternative resolution).</p> <p>It should also be stressed that a growing number of independent studies - including from the OECD, IPSOS, the Canadian Department of Industry and other academic as well as governmental sources - show a neutral or positive economic impact of file-sharing on the creative sector.</p>	<p><i>13. (recital) whereas the creative sector should continue to develop models enabling access to creative content online which offer improved and cost-effective choices to consumers, including access to unlimited subscription services; whereas the development of these legal services is inhibited by the growth of unlawfully uploaded content online,</i></p>	<p><i>H, whereas the creative industry should continue to develop models, enabling access to creative content online which offer improved and cost-effective choices to consumers, including access to unlimited subscription services; whereas the development of these legal services is inhibited by the growth of unlawfully uploaded content online.</i></p>	<p><i>K, whereas the creative sector should continue developing models enabling access to creative content on-line which offer improved and cost-effective choices to consumers, including access to unlimited subscription services; whereas the development of these legal services is inhibited by the territoriality of copyright licenses,</i></p>
<p><b>Impact of file-sharing on jobs</b></p>	<p>Mid-March, a “study” by TERA consultants was sent to MEPs in order to "demonstrate" that file-sharing will result in impressive job losses in the European Union. As usual, the methodology was highly debatable, and the Social Science Research Council - which is undergoing a major study on piracy - was quick to publish a document debunking the study's findings<sup>[4]</sup>. According to the SSRC, even if one admits that some sectors in the industry suffer losses directly because of file-sharing,</p>	<p><i>26. Stresses that the enormous growth of unauthorised file sharing of copyrighted works and recorded performances is an increasing problem for the European economy in terms of job opportunities and revenues for the industry as well as for government</i></p>	<p><i>18. (...) the growth of unauthorised file sharing of copyrighted works and recorded performances is an increasing problem for the European economy in terms of job opportunities and revenues for the industry as well as for government; and for these reasons we request an EU solution;</i></p>	

	<p>the TERA study overlooks the fact that the money not spent on, say, CDs and DVDs is simply transferred to other activities and sectors, which potentially better contribute to EU economic and social wealth.</p>			
<p><b>Extra-legislative enforcement of online IPR</b></p>	<p>The Commission's communication proposed “taking advantage of possible alternatives to court proceedings for settling disputes”. These “non-legislative”, extra-judicial measures are praised by both the Gallo and ALDE resolution. Given the dialogue that has taken place between the industry and the Commission, and given the pressure put by rights holders on Internet Service Providers to “cooperate” in their war against file-sharing, we can infer that these measure would consist in:</p> <ul style="list-style-type: none"> <li>- the implementation of <b>blocking and filtering practices</b> by ISPs, in order to disable the exchange of copyrighted works through the network.</li> <li>- the implementation of targeted <b>Internet access restrictions</b> such as three strikes policies or bandwidth capping.</li> </ul>	<p>1. Welcomes the communication of 11 September 2009 from the Commission concerning additional non-legislative measures; regrets however that the communication does not deal with the matter of completing the legislative framework by introducing a set of measures to combat intellectual property right infringements in an effective manner;</p>	<p>1. Welcomes the communication of 1 September 2009 from the Commission concerning additional non-legislative measures; regrets however that the communication does not deal with the legislative framework by combating intellectual property right infringements;</p>	<p>1. Welcomes the progress made in the EU in harmonising the fight against counterfeiting; encourages the Commission to step up its efforts in areas that are sensitive in terms of health and safety, including that of medicinal products, foodstuffs, cosmetics, spare parts for vehicles and technical and electrical equipment;</p>
		<p>25. Agrees with the Commission that additional non-legislative measures such as discussions on possible improvements to the digital market in Europe through voluntary harmonisation of procedures and standards amongst stakeholders can be useful to improve the application of IPRs, particularly measures arising from in-depth dialogue among stakeholders;</p>	<p>18. Agrees with the Commission that additional non-legislative measures are useful to improve the enforcement of IPR, particularly measures arising from in-depth dialogue among all those active in the sector on potential opportunities for innovation offered by new business models or other solutions that guarantee fair, effective remuneration to all right holders, cultural diversity and respect for fundamental rights; (...)</p>	<p>26. Warns against non-legislative measures regarding the application of IPR, as they may lead to the circumvention of legal safeguards, including those concerning data protection and privacy;</p>
<p><b>Legislative threats on ISPs</b></p>	<p>The Gallo resolution, as well as the ALDE resolution( although to a lesser extent) both <b>threaten ISPs with legislative measure</b> if they refuse to “cooperate” with rights holders in their war against filesharing.</p>	<p>32. Stresses that all parties concerned, including Internet service providers, must join in the dialogue with stakeholders in order to find appropriate solutions; calls on the Commission, failing this, to submit a legislative proposal or to amend existing legislation, particularly Directive 2004/48/EC,</p>	<p>23. Stresses that all parties concerned, including internet service providers should join in the dialogue with stakeholders in order to find appropriate solutions; in the interim, calls on the Commission to investigate the effects of current</p>	<p>34. Calls the Commission to open a reflection on how to adapt intellectual property to the new technologic developments and to invite all those active in the sector, including in particular telecom operators and Internet service</p>

		so as to upgrade the Community legal framework in this field on the basis of national experiences;	legislation particularly that of Directive 2004/48/EC in this field, on the basis of national experiences, new technological advances and quick developing models; such an evaluation should also look at the impact of the directive on fundamental rights under the European Convention and Charter;	providers, to join forces and seek solutions that are equitable for large and small stakeholders as much as for consumers, that guarantee fair, effective remuneration to all categories of rights holders, real choice for consumers, cultural diversity and respect for fundamental rights, including the right to data protection and privacy and the right to access to the internet;
<b>Lack of evidence</b>	Both the Gallo and the ALDE resolutions call on a comprehensive strategy to tackle IPR infringements without ever making a distinction between the different types of infringements. This is all the more worrying given the fact that the <b>2004 IPR enforcement directive has yet to be assessed</b> (as pointed out by the alternative resolution).	3. Calls on the Commission to urgently present, by the end of 2010, a comprehensive IPR strategy addressing all aspects of IPRs, including their enforcement as well as their promotion, in particular the role of copyright as an enabler and not an obstacle, helping creators earn a living and disseminating their works;	2. Calls on the Commission to urgently present, by the end of 2010, a comprehensive IPR strategy addressing all aspects of IPRs, particularly in the area of harmonisation of certain aspects of EU copyright legislation, including their enforcement as well as their promotion, which will remove obstacles to the creation of a single market in the online environment and adapt the legislative framework in the field of IPRs to current trends in society as well as to technical developments;	2. Draws attention to the serious impact of counterfeiting on the internal market and therefore calls on the Commission to review, where appropriate, the effectiveness of existing legislation; particular attention should be given to the fight against the increase in counterfeit goods from third countries and against counterfeit goods that put consumer health at risk;
	Unlike what the Gallo and ALDE resolutions suggest, there is <b>no proven connection between non-profit file-sharing and organized crime</b> .	47. Stresses the importance of fighting organised crime in the area of IPRs, in particular counterfeiting and online IPR infringement; points out in this context the need for appropriate EU legislation on proportional and fair sanctions and supports close strategic and operational cooperation between all the interested parties within the EU, in	34. Stresses the importance of fighting organised crime in the area of IPRs including counterfeit goods, in particular counterfeiting and online IPR infringement; points out in this context the need for appropriate EU legislation on proportional and fair sanctions and supports close strategic and	53. Stresses the importance of fighting organised crime in the area of counterfeiting of goods; points out in this context the need for appropriate EU legislation on proportional and fair sanctions and supports close strategic and operational cooperation between all the interested parties

		<p>particular Europol, national authorities and the private sector, as well as with non-EU states and international organisations;</p>	<p>operational cooperation between all the interested parties within the EU, in particular Europol, national authorities and the private sector, as well as with non-EU states and international organisations;</p>	<p>within the EU, in particular Europol, national authorities and the private sector, as well as with non-EU states and international organisations;</p>
<p><b>Awareness campaigns</b></p>	<p>Again, the Gallo and ALDE resolution call for a “awareness campaigns” regarding online IPR infringements, stressing their adverse effect on the economy and society when a <b>growing number of independent study suggest otherwise</b> (see above).</p>	<p>21. Calls on the Commission and the Member States in association with the stake holders to organise a campaign to raise awareness at European, national and local level of the risks to consumer health and safety arising from counterfeit products and also the adverse impact of counterfeiting and on-line IPR infringement on the economy and society; emphasises the need to increase awareness, especially among young European consumers, of the need to respect IPR;</p>	<p>14. Calls on the Commission and the Member States in association with the stake holders to organise a campaign to raise awareness at European, national and local level of the risks to consumer health and safety arising from counterfeit products and also the adverse impact of counterfeiting and on-line IPR infringement on the economy and society; emphasises the need to increase awareness, especially among young European consumers, of the need to respect IP.</p>	<p>44. Takes note of the limited success of the awareness campaigns for respecting online IPR;</p>
		<p>23. Stresses the need to educate young people to enable them to understand what is at stake in intellectual property and to identify clearly what is legal and what is not, by means of targeted public awareness campaigns, particularly against online IPR infringement;</p>	<p>16. Stresses the need to educate young people to enable them to understand what is at stake in intellectual property and to identify clearly what is legal and what is not, by means of targeted public awareness campaigns, particularly against online IPR infringement;</p>	

<p><b>ACTA resolution</b></p>	<p>Both the Gallo and the ALDE proposals mention a 2008 resolution on trade policies when <b>a much more recent, relevant and stronger March 10th resolution regarding ACTA was massively adopted by MEPs.</b></p>	<p><i>44. Calls on the Commission to ensure that its efforts to further the negotiations on the multilateral Anti-Counterfeiting Trade Agreement (ACTA) with a view to improving the effectiveness of the IPR enforcement system against counterfeiting are continued with full account being taken of the Parliament's position, in particular as expressed in its resolution of 18 December 2008 on the impact of counterfeiting on international trade, and calls on it to fully inform Parliament on the progress and outcome of the negotiations and to ensure that the provisions of ACTA fully comply with the <i>acquis communautaire</i> on IPR and fundamental rights;</i></p>	<p><i>31. Calls on the Commission to ensure that its efforts to further the negotiations on the multilateral Anti-Counterfeiting Trade Agreement (ACTA) with a view to improving the effectiveness of the IPR enforcement system against counterfeiting are continued with full account being taken of the Parliament's position, in particular as expressed in its resolution of 18 December 2008 on the impact of counterfeiting on international trade, and calls on it to fully inform Parliament on the progress and outcome of the negotiations and to ensure that the provisions of ACTA fully comply with the <i>acquis communautaire</i> on IPR and fundamental rights;</i></p>	<p><i>50. Calls on the Commission to ensure that its efforts in the negotiations on the multilateral Anti-Counterfeiting Trade Agreement (ACTA) are limited to the existing European IPR enforcement system against counterfeiting, in accordance with its resolution of 10 March 2010; (...).</i></p> <p><i>51. Reiterates its calls on the Commission to ensure that ACTA only concentrates on IPR enforcement measures and not on substantive IPR issues such as the scope of protection, limitations and exceptions, secondary liability or liability of intermediaries, and that ACTA is not used as a vehicle for modifying the existing European IPR enforcement framework;</i></p>
-------------------------------	--	--	--	--