REVAMPING INTELLECTUAL PROPERTY RIGHTS IN THE EUROPEAN UNION
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What are Intellectual Property Rights?

Intellectual property is generated through intellectual or creative activities: from an author writing a novel, a musician creating music or a researcher inventing something. Like any property, the owner gets a certain set of rights. He or she can use it, license it, give it away or sell it. These rights exist for example for literary, musical and artistic works (copyright); inventions (patents) as well as words, phrases, symbols, trademarks and designs.

Intellectual Property Rights in figures

The value of the top 10 brands in each EU country amounts to almost 10% of GDP on average. Copyright-based creative industries such as software, book and newspaper publishing, music and film, contributed around 3.3% to EU GDP in 2006 and account for 1.4 million SMEs, representing 8.5 million jobs. Employment in IP-based or “knowledge-economy” industries increased by 24% between 1996 and 2006 compared to 6% for other industries.

Why a strategy?

IPR is a driver for innovation and creativity. Many of Europe’s industries and sectors depend on well-managed intellectual property. Patents and trademarks for example make European companies more competitive on an international scale. Copyright too is an essential tool to stimulate new investments in European products and services, especially in light of the growing importance of the digital markets. Just think of book and newspaper publishing, the film industry, the video game business or the music sector.

The IPR Strategy serves as a blueprint for a series of future IPR-initiatives aimed at fostering the EU’s economic growth, cultural diversity and international competitiveness as well as providing consumers with a wide choice of first class products and services.
Capitalising on intellectual property is key for European creators, workers and businesses to sustain operations, generate revenues and develop new market opportunities.

Innovation is indispensable in addressing the big challenges for mankind in the 21st century: food security, climate change, competitiveness, health and cultural diversity.

Intellectual property is not just for big business; it is equally crucial for small companies and individuals. A smarter intellectual property rights regime will encourage creativity in both big and small players.

“Our progress depends on new knowledge and new ideas. Protecting intellectual property can therefore never be an end in itself. Yes, these rights can be exclusive, but they should also be used and traded for the benefit of our economy. Our aim today is to make this possible. To make Europe’s intellectual property framework more efficient, effective and fit for the online world.”

Michel Barnier - Commissioner for Internal Market and Services
Europeans are avid lovers of music. Albums such as Lady Gaga’s *The Fame* or Muse’s *Revolution* easily sold over two million copies last year in Europe. However, we spend less on music than in the US and Japan on average.

**Top selling albums Europe 2010**

- Lady Gaga: *The Fame*
- Black Eyed Peas: *The E.N.D*
- Michael Bublé: *Crazy Love*

Source: billboard.com

### Table 1: Per capita spending on music, 2009

<table>
<thead>
<tr>
<th>Region</th>
<th>High street retail spending</th>
<th>Digital retail spend</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>10.70 €</td>
<td>7.90 €</td>
</tr>
<tr>
<td>JAPAN</td>
<td>24.00 €</td>
<td>6.90 €</td>
</tr>
<tr>
<td>EU average</td>
<td>11.80 €</td>
<td>1.90 €</td>
</tr>
<tr>
<td>FRANCE</td>
<td>13.00 €</td>
<td>2.50 €</td>
</tr>
<tr>
<td>GERMANY</td>
<td>17.00 €</td>
<td>1.80 €</td>
</tr>
<tr>
<td>ITALY</td>
<td>3.60 €</td>
<td>0.60 €</td>
</tr>
<tr>
<td>SPAIN</td>
<td>4.10 €</td>
<td>0.80 €</td>
</tr>
<tr>
<td>UK</td>
<td>20.40 €</td>
<td>5.00 €</td>
</tr>
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</table>

Source: IFPI
Meanwhile, the digital market for music is still lagging behind the US.

Table 2: Music downloads - US level four times bigger than the EU

| Table 2: Music downloads - US level four times bigger than the EU |
| Music single downloads per quarter (in millions) |

While we can buy CDs in every shop, many Europeans are often unable to buy music from online platforms across the EU because rights are licensed on a national basis. Europe still lacks a unified market in the digital content sector.

Table 3: Availability of major online music providers serving EU countries and population

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Source: European Commission
Source: IFPI
Consumers rightly expect that they can access music online at least as effectively as in the high-street.

Therefore, the Commission will come forward with proposals that will enable musicians to license their music across Member States – in this way opening up choice for consumers, but also to make it easier for online services such as iTunes, Spotify and others to offer music in more EU countries than is currently the case.

But copyright is not only about music, it is equally important for books and films:

Table 4: Number of films produced in 2009

Source: European Commission
The fragmentation of the intellectual property rights landscape in the EU has implications for Europe’s growth, job creation and competitiveness.

Licensing transactions are impaired by high costs, complexity and legal uncertainty for creators, users and consumers.

Orphan works: Opening up the wealth from our libraries

Europe’s libraries, museums and archives are still brimming with treasures that have yet to be uncovered. Millions of films, newspapers and books are currently stacked away, and cannot be displayed on the Internet as the legitimate rightholders cannot be found. It is estimated that there are 13 to 50 million of these orphan works in the UK alone, e.g. 5-10% of works in library collections.

Searching for the rightholders of such works is time consuming. It is estimated that it would take half a day to trace the rightholder of a single orphan work. Therefore, for one person to clear the estimated UK orphan works collection, more than 6 million days or almost 18,000 years would be needed. This is of course extremely impractical for large-scale digitisation projects.

The Commission will table proposals to establish clear rules for orphan works, while respecting the rights of their creators.
What are patents?

Patents protect new inventions. They can cover how things work, what they do, what they are made of, and how they are made. It gives the owner, for a limited period of time, the right to prevent others from making, using or selling the invention without permission, and provides the incentive for investing in innovation.

Cutting-edge patented technology from Europe:

Full of European patented technology:
In April, the Commission proposed for a system that would radically reduce the costs of patenting in Europe by up to 80%. This would make it more affordable for our 20 million SMEs in Europe to apply for unitary protection throughout the EU.

Table 5: The cost of patenting in Europe compared to elsewhere in the world (in €)

<table>
<thead>
<tr>
<th></th>
<th>Procedural fees</th>
<th>Validation costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU 27</td>
<td>32112</td>
<td>4045</td>
</tr>
<tr>
<td>COM proposal</td>
<td>4045</td>
<td>680</td>
</tr>
<tr>
<td>Japan</td>
<td>1550</td>
<td>0</td>
</tr>
<tr>
<td>USA</td>
<td>0</td>
<td>1850</td>
</tr>
</tbody>
</table>

Source: European Commission

In total 134,542 were filed at the European Patent Office in 2009. However, it is just as important that European patents are enforced uniformly. Therefore the Commission is discussing with EU Member States judicial arrangements that should lead soon to the creation of a unified and specialised patent court.

Table 6: Leading European patent applicants at the European Patent Office in 2009

<table>
<thead>
<tr>
<th></th>
<th>Patent applications</th>
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<tbody>
<tr>
<td>Philips</td>
<td>2556</td>
<td></td>
</tr>
<tr>
<td>Siemens</td>
<td>1943</td>
<td></td>
</tr>
<tr>
<td>BASF</td>
<td>1699</td>
<td></td>
</tr>
<tr>
<td>Bosch</td>
<td>1284</td>
<td></td>
</tr>
</tbody>
</table>

Source: EPO
Streamlining Trademarks

What are trademarks?

A trademark is typically a name, word, phrase, logo, symbol, design, image or a combination of these elements that are used by business or people to make clear that the products and services they offer originate from a unique source. They allow for distinguishing their offerings from competitors.

Trademarks are indispensable in building brand value:

The 5 most valuable brands in the world

- Apple
- Google
- IBM
- McDonald's
- Microsoft

Some of Europe’s most valuable brands

- Vodafone
- T-Mobile
- Movistar
- SAP
- Louis Vuitton

Source: Millword Brown Brandz Global Top 100

Trademarks and other intellectual property rights have helped these companies to grow from small companies to the household names they are today:
The Community trademark

Since 1996, the Office for Harmonisation in the Internal Market (OHIM) is responsible for the registration of the Community trademark, which provides trademark protection throughout the whole European Union.

With an attractive price point of around €1000, the Community trademark has been a resounding success. The OHIM is expected to reach 1 million trademarks in 2011.

Table 7: Number of Community trademarks filed at OHIM.

![Graph showing Community Trademark applications at OHIM from 2004 to 2010.](image)

Further improvements

In the first quarter of 2012, the European Commission will come forward with proposals to revise the Community trademark’s legal framework and that which harmonises national trademark protection. Not only to meet the increasing demand for faster, higher quality and more streamlined registration systems, but also to make them more consistent and publicly accessible.
Moving into Geographical Indications

Since the 1990s, agricultural products such as Champagne, Feta and Parma Ham enjoy name protection under EU law. These geographical indications (GIs) secure a link between a product’s quality and its geographical origin.

For example: only Champagne that genuinely originates from the Champagne region can call itself “Champagne” and can be traded as such in the EU.

However, there is currently no system available for a uniform and EU-wide protection of GIs for non-agricultural geographical products. Think of Carrara marble from Italy, Solingen knives from Germany or Herend porcelain from Hungary. This leads to an uneven level playing field in the Single Market.

The Commission will therefore carry out an in-depth analysis of the current situation and assess appropriate further steps.
Stepping up the Fight against Counterfeiting and Piracy

Counterfeiting and piracy are a major problem for the EU.

In 2009, the OECD estimated that the international trade in counterfeit goods had grown from just $100 billion in 2000 to $250 billion in 2007. Meanwhile, business estimates that in 2008 alone, €10 billion and more than 185,000 jobs were lost due to piracy in the music, movie, TV, and software industries in the EU.

IPR infringers harm artists, developers and inventors. They create barriers to innovation and harm competitiveness. They destroy jobs, decrease public finances and in certain cases threaten health and safety. Europol reports that the range of counterfeits now includes items such as toys, medicines, deodorants, toothpaste, food and beverages. Meanwhile, Interpol established in 2003 that there is a clear link between IPR theft and terrorist financing.

The EU has already begun to address this challenge through civil law measures that allow right holders to enforce their intellectual property rights, through the EU Customs Regulation which allows for the seizure of counterfeit and pirated goods at the EU’s external borders and by launching a European Observatory on Counterfeiting and Piracy in 2009.

But the continuing growth of counterfeiting and piracy show that this is not enough and that the EU needs to introduce further concrete measures to step up the fight.
<table>
<thead>
<tr>
<th><strong>IPR Enforcement</strong></th>
<th><strong>Regulation on the European Observatory on Counterfeiting and Piracy</strong></th>
<th><strong>Proposal for a Regulation to entrust the tasks of the European Observatory on Counterfeiting and Piracy to the Office for Harmonisation in the Internal Market (OHIM) and to provide for additional tasks of the OHIM in that context</strong></th>
<th><strong>May 2011</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IPR Enforcement</strong></td>
<td><strong>Replacement of the Regulation concerning customs action against goods suspected of infringing intellectual property rights</strong></td>
<td><strong>Proposal for a new Customs Regulation to strengthen customs enforcement of Intellectual Property Rights and create conditions for effective action, while streamlining procedures.</strong></td>
<td><strong>May 2011</strong></td>
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<tr>
<td><strong>Copyright</strong></td>
<td><strong>Legislative initiative on mutual recognition of orphan works</strong></td>
<td><strong>The legislative initiative will provide a legal base to allow EU libraries to scan and display ‘orphan’ works</strong></td>
<td><strong>May 2011</strong></td>
</tr>
<tr>
<td><strong>Copyright</strong></td>
<td><strong>Green Paper on Audiovisual productions</strong></td>
<td><strong>To determine how the delivery of audio-visual media services, in particular on a cross-border basis, can be developed and improved for the benefit of rights holders and consumers alike</strong></td>
<td><strong>July 2011</strong></td>
</tr>
<tr>
<td><strong>Industrial property</strong></td>
<td><strong>Geographical indications</strong></td>
<td><strong>An in-depth analysis is to be carried out on the existing legal framework in Member States as well as the potential economic impact on protection for non-agricultural GIs.</strong></td>
<td><strong>3rd Quarter 2011</strong></td>
</tr>
<tr>
<td><strong>Copyright</strong></td>
<td><strong>Report on the Resale Right Directive</strong></td>
<td><strong>This report will examine whether a hereditary resale right has negative repercussions on smaller and mid-sized art galleries. The aim is to assess the effect of the Directive on the competitiveness of art markets in the European Union with regard to markets which do not apply the resale right.</strong></td>
<td><strong>4th Quarter 2011</strong></td>
</tr>
<tr>
<td><strong>IPR Enforcement</strong></td>
<td><strong>Review of the Commission’s 2004 strategy for the protection and enforcement of IP rights in third countries</strong></td>
<td><strong>Redefined strategy to adapt it to recent needs and evolutions, to ensure higher standards of IPR customs enforcement in third countries and cooperation in the framework of trade agreements.</strong></td>
<td><strong>4th Quarter 2011</strong></td>
</tr>
<tr>
<td><strong>Copyright</strong></td>
<td><strong>Legislative proposal on collective rights management</strong></td>
<td><strong>To provide a clear and stable framework for cross-border services which rely on clearing a variety of copyrights.</strong></td>
<td><strong>1st Quarter 2012</strong></td>
</tr>
<tr>
<td><strong>Trademarks</strong></td>
<td><strong>Revision of the Community Trademark Regulation and of the Directive approximating national trademark laws</strong></td>
<td><strong>The aim is to upgrade, streamline and modernise both the EU Regulation and Directive, where appropriate, and to establish an enhanced cooperation between the OHIM and National Trade Mark Offices with the purpose of making the trade mark system in Europe, as a whole, more effective, efficient and consistent.</strong></td>
<td><strong>1st Quarter 2012</strong></td>
</tr>
<tr>
<td><strong>IPR Enforcement</strong></td>
<td><strong>Review of the Directive on the enforcement of intellectual property rights</strong></td>
<td><strong>In particular to deliver solutions for rapidly developing IPR infringements on the Internet which were not envisaged when the Directive was first adopted.</strong></td>
<td><strong>2nd Quarter 2012</strong></td>
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