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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

A Single Market for Intellectual Property Rights
Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe

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1. INTRODUCTION

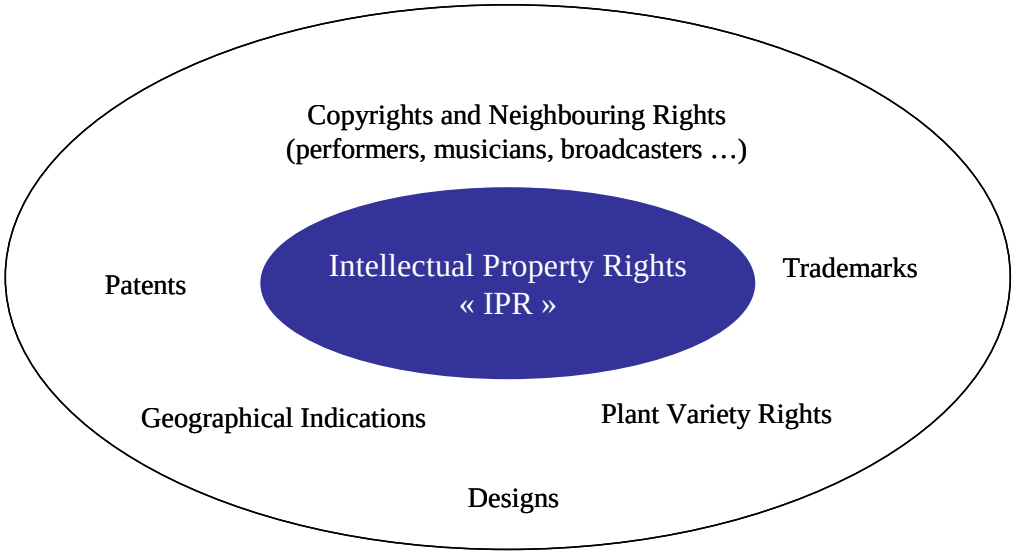
Putting in place a seamless, integrated Single Market for Intellectual Property Rights (IPR) is one of the most concrete ways to release the potential of European inventors and creators and empower them to turn ideas into high quality jobs and economic growth.

This Communication presents the Commission's overall strategic vision for delivering the true Single Market for intellectual property that is currently lacking in Europe – a European IPR regime that is fit for tomorrow's new economy, rewarding creative and inventive efforts, generating incentives for EU-based innovation and allowing cultural diversity to thrive by offering additional outlets for content in an open and competitive market.

A modern, integrated European IPR regime will make a major contribution to growth, sustainable job creation and to the competitiveness of our economy – key objectives of the EU 2020 agenda and the Annual Growth Survey which are essential to sustain the EU's recovery from the economic and financial crisis. It will enable the development of sectors such as e-commerce and digital industries which offer the greatest potential for future growth.[1] Innovation not only helps the European economy to flourish. It is indispensable to address the big challenges that humankind is facing in the 21st century: ensuring food security, containing climate change, dealing with demographic change and improving citizens' health. It also has an essential role to play in the quality of daily life by fostering cultural diversity.

IPR comprise industrial property rights, such as patents, trademarks, designs and geographical indications, copyright and rights related to copyright.

The galaxy of IP rights



IPR are property rights that protect the added value generated by Europe's knowledge economy on the strength of its creators and inventors. IPR catalogues are an important part of

[1] See: Europe 2020 Strategy (COM (2010) 2020), the Annual Growth Survey 2011 (COM (2011) 11), the Digital Agenda for Europe (COM (2010) 245), the Single Market Act (COM (2011) 206) and the Innovation Union (COM (2010) 546).

many European businesses. Capitalising on IPR portfolios is key for European creators and businesses to sustain operations, generate revenues and develop new market opportunities.[2]

In the era of globalisation and international competition, the revenue potential of IP is just as important as the access to commodities or the reliance on a manufacturing base.

The virtuous IPR circle relies on an IPR policy that incentivises innovation, which in turn attracts investment, thereby resulting in new products and services for new consumer demand which enhances growth and employment.

Fast-paced technological progress has altered the way we do business and disseminate, receive and consume products and services, such as online music and audiovisual services. New business models are developing and traditional ones are adapting. New economic players and service providers are entering the market. Consumers are changing the way they interact with the market place. European IPR legislation must provide the appropriate "enabling framework" that incentivises investment by rewarding creation, stimulates innovation in an environment of undistorted competition and facilitates the distribution of knowledge.

2. OPPORTUNITIES AND CHALLENGES FOR A SINGLE MARKET FOR IPR

The case does not need to be made anymore: IPR in their different forms and shapes are key assets of the EU economy

1.4 million European SMEs operate in the creative industries. IP-based industries represent above average potential for growth and job creation. According to the European Competitiveness Report 2010, creative industries account for 3% of employment (2008) and are among the most dynamic sectors in the EU. The number of employees in the creative industries in the EU-27 was 6.7 million in 2008.

Overall employment in creative industries increased by an average of 3.5% a year in the period 2000-2007 compared to 1% a year for the total EU economy. Most of the new jobs in the EU created over the past decade were in the knowledge-based industries where employment increased by 24%. In contrast, employment in the rest of the EU economy increased by just under 6%.[3]

An indicative 2002 survey of the Fortune 500 companies estimated that anywhere from 45% to 75% of the wealth of individual companies derives from their IPR.[4] In 2009, it was estimated that intangible assets represented about 81% of the value of the S&P 500 market.[5] The value of the top ten brands in each EU country amounted to almost an average of 9% of GDP per capita in 2009.[6] IPR incentivise and protect investment in technical Research and

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2 "The value of knowledge: European firms and the intellectual property challenge" an Economist Intelligence Unit White Paper, The Economist, January 2007. 53% of respondents said that the use of IPR will be very important or critical to their business models in two years, compared to 35% who considered this to be the case at the time of the survey.

3 The Work Foundation: The knowledge economy in Europe, report prepared for the 2007 Spring European Council.

4 Source: http://www.wipo.int/sme/en/documents/valuing_patents.htm.

5 Source: Ocean Tomo as cited in "The 2011 drug patent 'cliff' and the evolution of IP evaluation" by Liza Porteus Viana, Intellectual Property Watch, 11.01.2011.

6 Source: Eurobrand Study 2009, Country Review, http://study.eurobrand.cc

Development (1.9% of EU GNP in 2008).[7] Copyright-based creative industries (comprising software and database production,[8] book and newspaper publishing,[9] music[10] and film[11]) contribute 3.3% to the EU GDP (2006).[12]

IPR shape the everyday life of citizens

Patent protection, for instance, is essential for the development of new groundbreaking drugs or medical equipment. Ever more sophisticated technical devices, such as smart phones or tablet computers, third and future generations of mobile telephony, consumer electronics, more environmentally-friendly cars or high-speed trains, rely on thousands of patents.

The protection of brand equity stimulates investment in the quality of products and services by helping the customer identify the relevant producer of goods or services, particularly in sectors which rely heavily on brands and customers' brand loyalty. These sectors comprise those for food products, household goods, pharmaceuticals, fashion, sporting ware, cosmetics, consumer electronics, or services offered by the telecommunications, travel, leisure and sports industries. In the agri-food sector, the geographical indications and plant variety rights ensure protection of quality products and access to authentic products throughout the single market. Copyright stimulates the creation of creative content, such as software, books, newspapers and periodicals, scientific publications, music, films, photography, visual arts, video games or software.

Finally, Europe's IPR system has helped to create the competitive edge for European industries

The development of standards such as GSM and UMTS is a European success story based on diligent management of IPR. These European standards have evolved into globally successful technologies, due to their technological superiority and Europe's viable IPR system. Europe-based companies are at the cutting edge in licensing the semiconductor technologies that are found in more than 90% of the mobile phones sold globally. Many European companies nowadays generate a large part of their revenue through licensing of their IP portfolios.

Maintaining momentum

The economic potential of IPR increasingly depends on the ability of multiple IPR owners to collaborate and license technologies, products and creative content and to bring new products and services to consumers. Online music services need to duplicate complex clearing processes in order to be available across several territories. This requires a holistic and coherent IPR legal framework. In that context, IPR legislation should be seen as a governance tool that regulates and optimises the relationship between the three main players: creators,

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7 Source: Eurostat.

8 Software and database production are by far the biggest contributors to copyright industries producing nearly a fourth of turnover attributed to these industries.

9 According to the Federation of European Publishers, book publishing employs 135,000 people full time and contributes approximately EUR 24 billion to EU GDP.

10 According to IFPI, total value of the EU recorded music market is around EUR 6 billion. The recorded music market presents around a fifth of the total music market which is worth close to EUR 30 billion.

11 Motion picture production, distribution and exhibition as well as video rentals and sales account for 10% of copyright turnover. The audiovisual industry in Europe produces more than 1,100 films per year and employs over 1 million people. Source: Multi-Territory Licensing of Audiovisual Works in the European Union, KEA study, October 2010.

12 European Competitiveness Report 2010, Commission Staff Working Document, SEC(2010) 1276 final.

service and content providers and consumers. IPR policy should therefore be designed as "enabling legislation" allowing for the management of IPR in the most efficient way, thereby setting the right incentives for creation and investment, innovative business models, the promotion of cultural diversity and the broadest possible dissemination of works for the benefit of society as a whole.

Europe must become a world leader in innovative licensing solutions for the seamless exploitation of innovative technological products and of knowledge and cultural products. The benefits of an enabling IPR framework should be available to all players, irrespective of their size. SMEs should stand to benefit from IPR as much as the largest market players operating within the internal market. An IPR framework should also provide the necessary incentives for all creative sectors to thrive and flourish thereby contributing to a rich diversity of cultural goods and services and expressions.

The answer is in the Single Market

The fragmentation of the IPR 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. This is one reason why e-commerce has not realised its full potential in the EU and why it is often the biggest players who can navigate the rules and truly benefit from the Single Market. High transaction costs disincentive innovation and creation. Innovative SMEs struggle to benefit from IPR and develop IPR-based strategies. The circulation of cultural goods and services remains below its potential.

Existing rules are also under the additional strain from the acceleration of technological progress, which changes the way products and services are produced, disseminated and consumed. Europe is not always sufficiently at the forefront of providing new digital services. For example, the legal complexities of digitising its cultural heritage with a view to making it accessible online could provoke a "knowledge gap", if not addressed.

The enforcement of IPR within Europe and at its borders remains imperfect. At the moment the development of new technologies poses a challenge for the prevention of the unauthorised use of protected works. So far, the EU's IP enforcement framework has not been reconciled with the new digital environment. In the context of a general reflection on adapting EU policies to the digital era, attractive and affordable legal offers of digital content to consumers must be developed in parallel to any measures to further strengthen IPR enforcement. The promotion and the protection of IPR, furthermore, do not stop at the EU's borders. This has become a pressing issue in the context of the globalisation of trade flows, and as IPR constitute a major asset for the EU's competitiveness on emerging markets.

Promoting creation and innovation and driving economic growth are common goals of intellectual property and competition law. Strong protection and enforcement of IPR should be accompanied by rigorous application of competition rules in order to prevent the abuse of IPR which can hamper innovation or exclude new entrants, and especially SMEs, from markets.

The need for a vision to manage change

The governance of the EU IP framework should be modernized so that, in particular, the complexity of costs and transactions are reduced and legal certainty is increased, in particular

for SMEs. This should include an increased recourse to new technologies and tools such as machine translation and search tools.

Care should be taken to ensure the right balance between protection of rights and access, i.e. to develop fair regimes rewarding and incentivising inventors and creators, whilst ensuring the circulation and dissemination of goods and services, the exercise of other fundamental rights and the promotion and preservation of cultural and linguistic diversity. The consolidation and streamlining of the governance of IPR should go hand in hand with strengthening enforcement tools both on the EU and international levels.

3. KEY POLICY INITIATIVES TO MEET THE CHALLENGES AHEAD

3.1. Reform of the patent system in Europe and accompanying measures

3.1.1. A unitary patent protection

The current European patent system is complex, fragmented and costly: obtaining a European patent validated in only 13 Member States can cost up to ten times more than a US patent. To date, if an SME wants to obtain or maintain patent protection for all 27 EU Member States for 20 years, the company would, over this period, need to disburse an estimated EUR 200,000, a large part of these costs consisting in translation costs and costs resulting from necessary transactions with national offices.

However, work is underway to create unitary patent protection for twenty-five Member States within the framework of enhanced cooperation.[13] Following the adoption of the decision of the Council authorising enhanced cooperation,[14] the Commission has tabled proposals for implementing measures.[15] It will work with the European Parliament and the participating Member States to adopt these measures as quickly as possible. The overall aim of the unitary patent is that companies will enjoy significant cost-savings as soon as possible and it will contribute largely to the simplification of administrative procedures through the elimination of the need to validate these patents at national level.

In addition, the development of machine translation systems is an essential feature that can help reduce high translation costs and make patent protection affordable for companies of all sizes. As such, machine translations will not only increase access to patent protection but also to patent information in different languages as from the application stage. This is crucial for spreading technological knowledge and for fostering innovation in general. In that respect, the Commission welcomes and promotes the machine translation programme for patent documents which was launched by the European Patent Office in 2010. The aim is to make machine translations available for the official languages of the contracting states to the European Patent Convention - which includes all official EU languages.

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13 COM (2010) 790 final.

14 Council Decision 2011/167/EU of 10 March 2011 authorizing enhanced cooperation in the area of the creation of unitary patent protection, OJ L 76, 22.3.2011, p. 53.

15 COM (2011) 215 final and COM (2011) 216 final.

3.1.2. A unified patent litigation system

Disputes related to patents have to be resolved in different national courts. As well as being extremely expensive and time-consuming for patent holders, this fragmentation risks producing different decisions in different Member States, creating legal uncertainty.

The creation of unitary patent protection has to be accompanied by appropriate jurisdictional arrangements responding to the needs of the users of the patent system. In order for the unitary patent protection to work properly in practice, appropriate jurisdictional arrangements should allow for patents to be enforced or revoked throughout the territory of the participating Member States and at the same time should ensure high quality judgements and legal security for companies. Work on specific jurisdictional arrangements is currently being taken forward, taking also into account the recent opinion of the Court of Justice of the European Union (A-1/09) on the compatibility of the draft agreement on the European and EU Patents Court with the Treaties.

A unified patent litigation system which would govern both European bundled patents and European patents with unitary effect would considerably reduce litigation costs and the time taken to resolve patent disputes, whilst increasing legal certainty for users.

3.1.3. An IPR valorisation instrument

Intangible assets may account for up to three quarters of corporate value[16] and intellectual property rights have reached such a level of financial visibility and impact, that IP-based transactions are gaining more and more importance. As a consequence, companies need to develop appropriate management of such intangible assets, such as patents, trademarks and copyright.

In its conclusions of February 2011, the European Council invited the Commission to explore options for setting up an intellectual property rights valorisation instrument at European level, in particular to ease SMEs' access to the knowledge market. In this context, 'valorisation' refers to valuing intangible assets in accounting terms and to increasing the opportunities to get better value out of IPR and leverage financing.

In order to carefully examine this issue, the Commission has launched a comprehensive analysis including an expert group and a feasibility study. These activities will offer a general picture of the situation and help the Commission to consider potential options for the setting up of such an IPR valorisation instrument, as e.g. an innovative European IPR knowledge market platform to facilitate transfer and trading. The Commission will report back to the European Council before the end of 2011.

3.2. Modernisation of the trade mark system in Europe

National trade mark registration in the EU Member States has been harmonised for almost 20 years[17] and the Community trade mark was established 15 years ago[18]. The trade mark system in Europe shows clear successes. This is reflected, inter alia, in new record figures for Community trade mark applications filed in 2010 (more than 98,000), and the expected

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16 See point 2 and footnote 5.

17 Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks, OJ L 299, 8.11.2008, p. 25.

18 Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, OJ L78, 24.3.2009, p.1.

receipt, in 2011, of the millionth application since the creation of the Community trade mark in 1996. However, stakeholders are increasingly demanding faster, higher quality, more streamlined trade mark registration systems, which are more consistent, user friendly, publicly accessible and technologically up-to-date. To meet these demands, the trade mark system in Europe needs to be modernised and adapted to the internet era.

In 2009, the Commission launched a comprehensive evaluation of the overall functioning of the trade mark system in Europe. On the basis of this evaluation and an impact assessment, the Commission will present proposals to revise both the Community Trade Mark Regulation and the Trade Mark Directive in the last quarter of 2011.

The objective of the review is to modernise the system both at EU and national levels by making it more effective, efficient and consistent as a whole. Particular focus will be on possibilities of: (1) simplifying and speeding up the registration procedure, taking into account the requirements of the electronic age; (2) increasing legal certainty, such as by redefining what may constitute a trade mark; (3) clarifying the scope of trade mark rights inter alia as regards goods in various situations throughout the EU customs territory; (4) providing a framework for increased cooperation between the Office for Harmonisation in the Internal Market (OHIM) at Alicante and national trade mark offices with the aim of harmonising administrative practice and developing common tools, such as those which offer far greater options for conducting priority searches, and watching the registry for infringing registrations; and (5) making the Directive more coherent with the Regulation, in particular, by further aligning the legal grounds of refusal for registration at European level, and (6) aligning the grounds for refusal and for coexistence under both the Directive and the Regulation to rules on geographical indications.

In any case, any amendment which the Commission will propose to the Regulation on the Community trade mark will be consistent with the single market concept and preserve the unitary character of this successful IP title.

3.3. Creation of a comprehensive framework for copyright in the digital single market

The internet is borderless but online markets in the EU are still fragmented by multiple barriers. Europe remains a patchwork of national online markets and there are cases when Europeans are unable to buy copyright protected works or services electronically across a digital single market. Technology, the fast evolving nature of digital business models and the growing autonomy of online consumers, all call for a constant assessment as to whether current copyright rules set the right incentives and enable right holders, users of rights and consumers to take advantage of the opportunities that modern technologies provide.

Authors and other creators expect a fair return for the use of their work, be they books, newspaper articles, sound recordings, performances, films or photographs. This is also true of publishers and producers who provide investments to produce and disseminate creative works. The potential exists to increase authors' and creators' returns if a proper copyright environment facilitates the licensing and the dissemination of works in a digital single market.

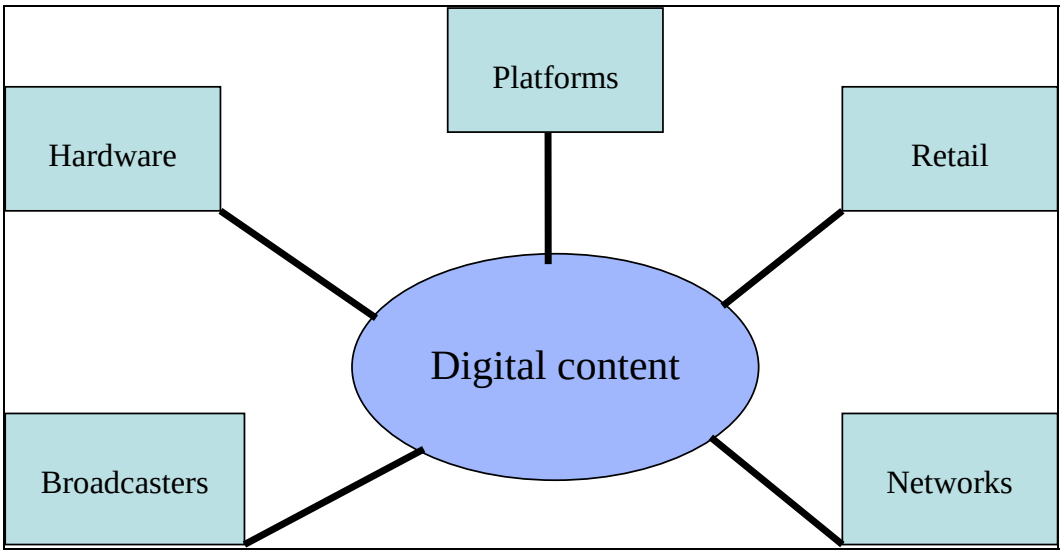
A European governance framework to manage the interface between creators, commercial users and consumers is crucial if Europe is to exploit the full potential that new technologies and the digital marketplace offer. Europe must develop copyright licensing services, combined with web applications and tools, to foster vibrant cultural and creative industries

that allow millions of citizens to use and share published knowledge and entertainment easily and legally across the Union irrespective of their Member State of residence. A series of Commission initiatives, set out below, will be proposed to make this goal a reality.

3.3.1. European copyright governance and management

Irrespective of the technology used, reforms of copyright in the internal market should take the form of "enabling legislation" for the use of copyright in the most efficient way, thereby setting the right incentives for creation and investment, innovative business models and dissemination of works. They should help to enhance the depth and breadth of repertoire that is available to all consumers across the European Union. Gaps in the availability of online services for consumers in certain Member States should be closed by creating a stable framework for the governance of copyright at European level which will be fit for new emerging business models.

Emerging Business Models



The creation of a European framework for online copyright licensing would greatly stimulate the legal offer of protected cultural goods and services across the EU.[19] Modern licensing technology could help make a wider range of online services available cross-border or even create services that are available all over Europe.[20]

This is why, in 2011, the Commission will submit proposals to create a legal framework for the collective management of copyright to enable multi-territorial and pan-European licensing. While the focus on the cross-border management of copyrights in the online environment is of particular importance in view of the development of a digital marketplace for cultural goods and services, attention should also be given to the governance structures of other forms of collectively managed rights.

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19 The 2010 IFPI Music Report shows that an average European spends less than EUR 2 on digital music, whereas an average American spends almost EUR 8 and an average Japanese EUR 7.

20 EMusic, a leading service provider, is present in 27 Member States and has a catalogue of 10 million tracks. iTunes is present in 15 Member States; 7digital and Vodafone in 12 Member States; Nokia (OviMusic) in 11 Member States; YouTube in 10 Member States; whereas LastFM is present in 9 Member States: http://www.pro-music.org/Content/GetMusicOnline/stores-europe.php.

The new framework should establish common rules on governance, transparency and effective supervision, including collectively managed revenue streams. Clearer rules on copyright licensing and distribution of revenues will ultimately create a level playing field for all actors: right holders, collecting societies, service providers and consumers.

To foster the development of new online services covering a greater share of the world repertoire and serving a greater share of European consumers, the framework should allow for the creation of European "rights brokers" able to license and manage the world's musical repertoire on a multi-territorial level while also ensuring the development of Europe's cultural diversity. To that end, an enforceable European rights management regime that facilitates cross-border licensing should be put in place. Cross-border management of copyright for online services requires a high level of technical expertise, infrastructure and electronic networking. The means should be provided to ensure that all operators comply with a high level of service standards for both right holders and users and that competition is not distorted.

Another approach for a more far-reaching overhaul of copyright at European level could be the creation of a European Copyright Code. This could encompass a comprehensive codification of the present body of EU copyright directives in order to harmonise and consolidate the entitlements provided by copyright and related rights at EU level. This would also provide an opportunity to examine whether the current exceptions and limitations to copyright granted under the 2001/29/EC Directive[21] need to be updated or harmonised at EU level. A Code could therefore help to clarify the relationship between the various exclusive rights enjoyed by rights holders and the scope of the exceptions and limitations to those rights.

The Commission will also examine the feasibility of creating an optional "unitary" copyright title on the basis of Article 118 TFEU and its potential impact for the single market, right holders and consumers.

These issues require further study and analysis. The Commission will examine these issues, inter alia, in the context of the dialogue with stakeholders foreseen in the Digital Agenda for Europe and report in 2012, in particular on whether the 2001/29/EC Directive needs to be updated.

3.3.2. Technology and database management

The ubiquity of the internet has spurred the need to improve collective licensing practices. Technology can provide a rich source of pragmatic solutions to adapt copyright licensing to the internet and support the distribution of collectively managed revenue streams. Against this backdrop, the Commission will support measures to make it simpler and efficient to access copyright protected works through innovative licensing technologies, certification of licensing infrastructures, identification and data exchange of actual usage and electronic data management. It will encourage and support projects undertaken by various stakeholders to develop automated and integrated standards-based rights management infrastructures.[22] Inter-

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[21] Directive 2001/29/EC of 22 May 2011 on the harmonization of certain aspects of copyright and related rights in the information society, OJ L167, 22.6.2001, p. 10.

[22] Examples of these initiatives include the development of a Global Repertoire Database (GRD) and the Automated Content Access Protocol (ACAP). The Commission is already supporting the Accessible

operable online databases should help identify right holders and foster the development of licensing infrastructures. For example, the compilation and availability of accurate information on music authors´ rights ownership information in one authoritative database is key to facilitating efficient cross border licensing and distribution of royalties to the relevant right holders in a consistent manner across Europe and will also facilitate licensing of European repertoire abroad and corresponding distribution of royalties back to their European authors. This information should be publicly available and provide transparent information to users, thus facilitating licensing.

3.3.3. User-generated content

In light of the fast development of social networking and social media sites which rely on the creation and upload of online content by end-users (blogs, podcasts, posts, wikis, mash-ups, file and video sharing), specific attention will be given to possible approaches to deal with so-called user-created or user-generated content (UGC).[23] In line with its overall approach, the Commission advocates responsible use while ensuring that users enjoy the full benefits of new interactive online services.

There is a growing realisation that solutions are needed to make it easier and affordable for end-users to use third-party copyright protected content in their own works. Users who integrate copyright-protected materials in their own creations which are uploaded on the internet must have recourse to a simple and efficient permissions system. This is particularly pertinent in the case of "amateur" users whose UGC is created for non-commercial purposes and yet who face infringement proceedings if they upload material without the right holders' consent. The time has come to build on the strength of copyright to act as a broker between rights holders and users of content in a responsible way. The Commission will explore the issue further, including via contacts with all interested parties notably in the context of the above mentioned dialogue with stakeholders, in order to strike a balance between the rights of content creators and the need to take account of new forms of expression.

3.3.4. Private copying levies

The proper functioning of the internal market also requires conciliation of private copying levies with the free movements of goods to enable the smooth cross-border trade in goods that are subject to private copying levies.[24] Efforts will be redoubled to kick-start a stakeholder agreement built on the achievements of a draft Memorandum of Understanding (MoU) brokered by the Commission in 2009. A high level independent mediator will be appointed in 2011 and tasked with exploring possible approaches with a view to harmonising the methodology used to impose levies, improve the administration of levies, specifically the type of equipment that is subject to levies, the setting of tariff rates, and the inter-operability of the various national systems in light of the cross-border effects that a disparate levy system has on

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Registries of Rights Information and Orphan Works (ARROW) to identify right holders and clarify the rights status of a work, e.g., whether it is an orphan or out-of-commerce work.

[23] This issue had been raised in the Commission's Green Paper on Copyright in the Knowledge Economy and subsequent Communication of the same name (COM (2008) 466 and COM (2009) 532 respectively). The conclusion was that further study on the subject was necessary.

[24] Levies are payments due on recording equipment and blank recording media in some of the Member States that have introduced a statutory exception for private copying. According to Econlaw (2007), EUR 453 million of private copying levies have been collected on digital devices and carriers in 2006 in the European Union.

the internal market. A concerted effort on all sides to resolve outstanding issues should lay the ground for comprehensive legislative action at EU level by 2012.

3.3.5. Access to Europe's cultural heritage and fostering media plurality

Facilitating the preservation and dissemination of Europe's rich cultural and intellectual heritage and encouraging the creation of European digital libraries is key for the development of the knowledge economy. Innovative licensing solutions are needed to promote the seamless sharing of knowledge and culture that allow academic institutions, businesses, researchers and private individuals to lawfully use copyright-protected materials while compensating authors, publishers, and other creators for the use of their works. In 2011, the Commission intends to proceed by way of a two-pronged approach to promote the digitisation and making available of the collections of European cultural institutions (libraries, museums and archives). One strand is the promotion of collective licensing schemes for works still protected by copyright but no longer commercially available (works that are "out-of-commerce"). The other is a European legislative framework to identify and make available so-called "orphan works".[25] The successful completion of these two initiatives will also boost the development of Europeana[26] as an online platform through which citizens can access the diversity and richness of Europe's cultural heritage.

The Commission is also committed to continue working with Member States to develop viable solutions to tackle the "book famine" faced by millions of visually-impaired people. At present, only a very small percentage of publications are available in accessible formats such as Braille, large print or audio. The Commission recently brokered a MoU[27] (signed in September 2010) to facilitate the cross-border exchange of works in special formats and make them accessible to persons with a visual impairment. The MoU establishes a system of "trusted intermediaries" tasked with the online delivery of special format materials across national borders. The Commission will continue to work with stakeholders to set up a network of trusted intermediaries in each Member State. This will allow the seamless delivery of special format materials in a safe environment across the EU. The system set up by the MoU will be subject to an annual review in order to determine whether the cross-border exchange of specially formatted material actually increases or whether action needs to be stepped up.

Journalists are authors and their work is important not only because they report, comment on and interpret the world we live in but also because freedom of the press is living testimony to Europe's pluralistic and democratic society. Protecting authors' rights for journalists and ensuring that they maintain a say over how their works are exploited is therefore central to maintaining independent, high-quality and professional journalism. Publishers themselves play an important role in disseminating the work of writers, journalists, researchers, scientists, photographers and other creators. In this respect, it is important to safeguard the rights that journalists and publishers have over the use of their works on the internet, in particular in view of the rise of news aggregation services. The Commission will continue to examine these issues in the light of new legal and technical developments.

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25 Out-of-commerce works differ from orphan works to the extent that their authors or publishers are known, but the book is not available in traditional or in the new electronic channels of trade. Orphan works are works where the author is not known or, even if known, cannot be located.

26 http://www.europeana.eu/portal/.

27 http://ec.europa.eu/internal_market/copyright/copyright-infso/copyright-infso_en.htm#otherdocs.

Open access as a way of maximising the dissemination of research results is a relatively recent phenomenon. Different ways to achieve open access exist, in particular open access publishing (for example in open access journals) and self-archiving by authors in institutional or subject-based repositories. The potential of open access to increase access to knowledge is already widely recognised among the science community, and is being further explored.[28]

3.3.6. Performers' rights

The Commission is committed to ensuring that all forms of creativity are rewarded. In an age that thrives on multi-media formats, it is often the case that performers, including professional ones, are not duly recognised and rewarded for their creative input to an artistic work. One way to achieve a fair and level playing field amongst creators is to bring the term of protection of performers in the music field more in line with that of authors. The Commission has made such a proposal[29] and expects its adoption in the very near future. The benefits of this early deliverable, as part of the Commission's overall copyright policy, will also extend to producers whose increased revenue streams, particularly from the internet, will encourage new talent and incentivise producers to invest in new musical acts.

3.3.7. Audiovisual works

Getting the conditions right for smooth, easier and technologically neutral solutions for cross-border and pan-European licensing in the audiovisual sector will help content producers to increase the availability of content, to the benefit of European citizens. The Commission, in 2011, will launch a consultation on online distribution of audiovisual works with a view to reporting in 2012. The consultation will address copyright issues, video-on-demand services, their introduction in the media chronology, the cross-border licensing of broadcasting services, licensing efficiency and the aspect of promotion of European works. The audiovisual Green Paper will also address the status of audiovisual authors and their participation in the benefits of online revenue streams.

3.3.8. Artists' resale right

In October 2011, the Commission will report on the implementation and effects of the Resale Right Directive.[30] It is currently conducting a public consultation to address a wide range of questions relating to the implementation of this Directive, including: the impact of the Directive on the internal market, on the competitiveness of the EU market in modern and contemporary art, on the effect of the introduction of the resale right in those Member States that did not apply the resale right in national law prior to the entry into force of the Directive,[31] and on the fostering of artistic creativity.

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28 The Digital Agenda for Europe (p. 23) highlights that knowledge transfer activities should be managed effectively and supported by suitable financial instruments and publicly funded research should be widely disseminated through Open Access publication of scientific data and papers. The Innovation Union Communication announces that the Commission will promote open access to the results of publicly funded research and that it will aim to make open access to publications the general principle for projects funded by the EU Research Framework Programmes (Commitment 20).

29 COM (2008) 464 final.

30 Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art, OJ L272, 13.10.2001, p. 32.

31 Some Member States benefit from an exemption to apply the resale right to the works of deceased artists which expires on 1 January 2012. Trade in works subject to the hereditary resale right is four

3.4. The issue of complementary protection of intangible assets

Current EU legislation on the protection of IPR is complemented by national rules on certain practices of "competing at the edge of the law" which often lie at the boundaries between the protection of industrial property and other areas of law.

3.4.1. Trade secrets and parasitic copies

One example is the protection of trade secrets.[32] Trade secrets are valuable intangible assets of a company such as a technology, a business or marketing strategy, a data compilation (for example, a customer list) or a recipe. The legal regimes in the Member States and the level of protection granted throughout the EU differ considerably.

A number of Member States have specific civil law provisions on trade secrets: Bulgaria, Czech Republic, Denmark, Estonia, Germany, Italy, Lithuania, Poland, Portugal, Slovakia, Slovenia, Spain, and Sweden. Some of these additionally provide for criminal sanctions. However, a significant number of Member States do not have any specific provisions of civil law on trade secrets: Belgium, Cyprus, United Kingdom, Ireland, Finland, Luxembourg, Malta, the Netherlands, Romania, and France (although the French IP Code regulates some aspects of it). Trade secrets can nevertheless be protected, at least in part, by other means, such as a general cause of prohibition of unfair competition, tort law, contract law, labour law and criminal law.

The significant differences in national laws on the nature and scope of trade secrets protection, as well as regards the available means of redress and respective remedies, inevitably result in different levels of protection; with the consequence that, depending on their location, some companies are better equipped than others to face the challenge of an information based economy. In recent years, trade secrets have become increasingly vulnerable to espionage attacks from the outside,[33] in particular due to enhanced data exchange and use of the internet, and they are also more and more threatened from the inside of the company: according to a private sector study, employee theft of sensitive information, e.g., is ten times costlier than accidental loss on a per-incident basis.[34] In other circumstances however, trade secrets can also be invoked to withhold critical information to hamper innovation and technical developments by competitors. Considering the complexity of this issue and its various implications, the Commissions needs to pursue its reflection and gather comprehensive evidence before taking a position on a possible way forward.

Another area of interest is the protection against so-called 'parasitic copies' or 'look-alikes'.[35] Parasitic copies are designed to resemble existing products of well established brands while

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times greater than trade in works by living artists. In these circumstances, the Commission's report will be prospective in nature.

32 Trade secrets refer to know-how that has not or not yet been registered as industrial property rights but that is actually or potentially valuable to its owner and not generally known or readily ascertainable by the public, and which the owner has made a reasonable effort to keep secret.

33 See e.g. Bundesministerium des Innern, Verfassungsschutzbericht 2009, available at http://www.bmi.bund.de/SharedDocs/Downloads/DE/Broschueren/2010/vsb2009.pdf?__blob=publicationFile.

34 Forrester Consulting (study carried out on behalf of RSA and Microsoft), 'The Value of Corporate Secrets: How Compliance and Collaboration Affect Enterprise Perceptions of Risk.', March 2010, available at http://www.rsa.com/go/press/RSATheSecurityDivisionofEMCNewsRelease_4510.html.

35 Referred to in some jurisdictions as 'slavish imitations'.

maintaining certain differences that prevent them from qualifying as counterfeits. They may confuse consumers who either do not pay much attention while shopping or who do not know the brand well enough to recognise the differences.

Also this phenomenon is dealt with by Member States using different concepts and providing different levels of protection. Thus, while some Member States have specific provisions on parasitic copying under unfair competition law (Austria, Germany, Czech Republic, Spain), in some others parasitic copying is dealt with under a catch-all or general clause of prohibition of unfair competition (Belgium, Denmark, Finland). Other Member States' laws do not contain any provisions on unfair competition applicable to parasitic copying and such matters are dealt with by the Civil Code, either in specific provisions (Italy), or by the provisions generally applicable to tort (France, The Netherlands). Finally, in the United Kingdom there is no law on unfair competition, and there are no specific provisions on parasitic copying: rather the tort of passing off must be used. For this reason, the effectiveness of the protection varies considerably.

The Commission has embarked on work to determine the economic impact of the current fragmentation of the legal framework with a view to the protection of trade secrets and against other practices of "competing at the edge of the law", such as parasitic copying. This work will include a comprehensive external study and a stakeholder consultation to examine the actual economic and societal impact of these practices. It will also assess the economic benefits that would derive from an EU approach in these areas.

3.4.2. Non-agricultural geographical indications

Geographical indications (GIs) are a tool for securing the link between a product's quality and its geographical origin. This allows for niche marketing, brand development and reputation-based marketing.

However, for the protection of non-agricultural products, Member States offer different legal systems (for instance, through competition or consumer protection law, or through collective or certification marks) and only on third of them have developed specific legislation considering GIs as a specific IPR. This fragmentation of the legal framework to grant protection for GIs for non-agricultural products may negatively affect the functioning of the internal market. Besides, protection for GIs for non-agricultural products is also an important issue in bilateral and multilateral trade negotiations with third countries.

The Commission is about to launch a feasibility study on the issue of GIs for non-agricultural and non-food products, encompassing all areas of law in this context. The work will notably provide an analysis of the existing legal frameworks in the Member States, an in-depth assessment of the stakeholders' needs and the potential economic impact of protection for non-agricultural GIs. Drawing on the results of this work, following further reflection and comprehensive evidence gathering, the Commission will decide on the appropriate way forward.

3.5. Enhanced fight against counterfeiting and piracy[36]

Products and services based on IPR can be difficult and expensive to create but cheap to replicate and reproduce. Organised and large-scale infringement of IPR has become a global phenomenon and is causing worldwide concern. The latest OECD study (2009) estimates that international trade in counterfeit goods grew from just over USD 100 billion in 2000 to USD 250 billion in 2007.[37] According to the OECD, this amount is larger than the national GDPs of about 150 economies. The figures published by the European Commission on national customs activities reflect that the number of registered cases of goods suspected of infringing IPR rose from 26,704 in 2005 to 43,572 in 2009, an increase of more than 60 percent in five years.[38]

Infringers of IPR deprive EU creators of appropriate rewards, create barriers to innovation, harm competitiveness, destroy jobs, decrease public finances and possibly threaten the health and safety of EU citizens. A study carried out by the Centre for Economics and Business Research (CEBR) stresses that losses caused by counterfeiting and piracy could reduce EU GDP by EUR 8 billion annually.[39] Counterfeiting also generates large profits for organised crime groups and distorts the internal market by encouraging illicit practices within businesses.[40]

The EU has begun to address this challenge through civil law measures allowing right holders to enforce their intellectual property rights,[41] through the EU Customs Regulation N°1383/2003[42] which allows for the detention of goods suspected of infringing IPR at the EU's external borders, and by launching, in 2009, a European Observatory on Counterfeiting and Piracy.[43] The Observatory's main objectives are to collect and report data on the economic and societal implications of counterfeiting and piracy and to create a platform for representatives from national authorities and stakeholders to exchange ideas and expertise on best practices.

The success of these first measures shows that the EU is on the right path. The initial work of the Observatory has triggered positive responses from the European Parliament, the Member States and private-sector stakeholders. However, these reactions also show that there is need to expand the current work. Furthermore, the Commission report on the application of the IPR

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36 The term "counterfeiting and piracy" should be understood as covering the infringement of all intellectual property rights as referred to in the Statement by the Commission concerning Article 2 of Directive 2004/48/EC, OJ L94, 13.4.2005, p. 37.

37 OECD, Magnitude of counterfeiting and piracy of tangible products – November 2009 update, http://www.oecd.org/document/23/0,3343,en_2649_34173_44088983_1_1_1_1,00.html.

38 http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm.

39 CEBR (2000), The Impact of Counterfeiting on four main sectors in the European Union, Centre for Economic and Business Research, London.

40 See e.g. Europol, 'OCTA 2011 - EU Organised Crime Threat Assessment', http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA_2011.pdf.

41 Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights, OJ L157, 30.4.2004, p. 16.

42 Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, OJ L 196 , 02.08.2003, p. 7.

43 See Communication on enhancing the enforcement of intellectual property rights in the Internal Market of 11 September 2009, COM (2009) 467.

Enforcement Directive published in December 2010[44] confirmed the need to strengthen the existing legislative framework for enforcement and to supplement this by voluntary arrangements between stakeholders. Finally, the review of the EU Customs Regulation, which included a public consultation in 2010, concluded that the legislation should be revised to extend the scope for customs control, as well as to clarify some procedures to safeguard the interests of legitimate traders.

3.5.1. Public awareness

Consumers tend not to be aware of the value of IPR and the negative economic and societal impact of counterfeiting and piracy and the potential dangers related to counterfeit products.[45] Better information of citizens is therefore an important factor for a successful IP policy. Also the European Parliament has called on the Commission, the Member States and on stakeholders to raise consumers' awareness, especially among young people, and enable them to understand what is at stake in intellectual property.[46]

The Commission will therefore take action, in close cooperation with the European Parliament and with stakeholders, to foster appropriate public awareness campaigns. The European Observatory on Counterfeiting and Piracy is also expected to contribute to this objective.

3.5.2. A more sustainable structure for the European Observatory on Counterfeiting and Piracy and new tasks

To meet the challenges requires solid evidence of the scope of the problem, improved knowledge about the origins of counterfeit and pirated goods, of the distribution channels and the different actors involved. Furthermore, as trends are changing quickly, in particular in the online sphere, stakeholders and public administrations have to cooperate more.

The Commission, therefore, proposes to extend the tasks currently assigned to the European Observatory on Counterfeiting and Piracy. In future, these tasks should encompass also the design and organisation of public-awareness campaigns, the provision of appropriate training measures for enforcement authorities, conducting research on innovative enforcement and detection systems that on the one hand allow licit offers to be as innovative and attractive as possible and on the other allow for more effective enforcement against counterfeiting and piracy (e.g. traceability systems), and the coordination of international cooperation on capacity building with international organisations and third countries. To this end, the Observatory will need a more sustainable structure in terms of expertise, resources and technical equipment. The tasks of the Observatory should therefore be entrusted to the Office for Harmonisation in the Internal Market (OHIM) which, in relation to these tasks, should be mandated to cover all categories of IPR.

In that context, the OHIM will also improve day-to-day cooperation between enforcement authorities and cooperation with private stakeholders, *inter alia*, by building a new electronic

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44 COM (2010) 779, http://ec.europa.eu/internal_market/iprenforcement/directives_en.htm.

45 A 2009 Eurobarometer study carried out by DG MARKT (available at: http://ec.europa.eu/public_opinion/) revealed that only between 55% (LT and DK) and 84% (FR) of consumers are aware that there are EU rules on counterfeiting and piracy. This was a much lower awareness percentage than in other policy areas. Furthermore, the study revealed that that one out of five EU citizens had, on at least one occasion, unintentionally bought a counterfeit product.

46 European Parliament Resolution of 22 September 2010, 2009/2178(INI).

information exchange and an early warning system on counterfeit and pirated products. An external study establishing an inventory of existing IT systems that could be used to build such a network was published by the Commission in 2010.[47] This study will form the basis for further consultations and assessments aimed at identifying cost-efficient solutions and creating synergies with existing systems and ongoing projects, with a view to presenting a concept for such an electronic network by end 2012. The network would operate in full compliance with the EU data protection legislation.

3.5.3. A review of the IPR Enforcement Directive

In parallel, the Commission intends to review the IPR Enforcement Directive 2004/48/EC in Spring 2012. The recently published Report on the application of the IPR Enforcement Directive[48] shows that the challenge lies in reconciling IPR enforcement in the digital environment. The Commission will identify ways to create a framework allowing, in particular, combating infringements of IPR via the internet more effectively. Any amendments should have as their objective tackling the infringements at their source and, to that end, foster cooperation of intermediaries, such as internet service providers, while being compatible with the goals of broadband policies and without prejudicing the interests of end-consumers. The Commission will ensure that such amendments respect all fundamental rights recognised by the EU Charter of Fundamental Rights, in particular also the rights to private life, protection of personal data, freedom of expression and information and to an effective remedy.[49]

In parallel, the Commission will continue its efforts, on the basis of the Memorandum of Understanding signed between stakeholders on 4 May 2011,[50] to explore to what extent, in particular, the sale of counterfeit goods over the internet can be reduced through voluntary measures, involving the stakeholders most concerned by this phenomenon (right holders, internet platforms and consumers).

3.6. The international dimension of IPR

The increase in international trade has put the spotlight on the international dimension of IPR. Globalisation provides Europe with immense opportunities to export and trade in its IP-intensive products, services and know-how to third-countries. At the same time, the growth in IP infringements creates the need to focus on a robust global enforcement strategy, in accordance with fundamental rights.

The European Parliament noted in a Resolution[51] that "the biggest challenge for the internal market lies in combating infringements of intellectual property rights at the EU's external borders and in third countries".

This reasoning was already made when developing the Commission's 2004 "Strategy for the Enforcement of Intellectual Property Rights in Third Countries"[52] which is currently being

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47 See http://ec.europa.eu/internal_market/iprenforcement/documents_en.htm.

48 http://ec.europa.eu/internal_market/iprenforcement/directives_en.htm.

49 The right to intellectual property is recognised as a fundamental right in Article 17(2) of the Charter.

50 http://ec.europa.eu/internal_market/iprenforcement/stakeholders_dialogues_en.htm#Sale.

51 http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2010-0340.

52 OJ C129 of 26.5.2005.

reviewed. In addition, the Commission is committed to ensuring the coherence of its IPR policy with development policy objectives.[53]

3.6.1. Multilateral initiatives, including co-ordination with international organisations

The Commission will pursue its objective to enhance respect for IPR standards at an international level through enhancing effective cooperation and engagement with third countries in international fora, in particular through its work in the context of WIPO, WTO and UPOV aimed at improving protection and enforcement of IPR at global level. It will contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.[54] Currently the actions of the EU and of international organisations often lack sufficient coordination thereby hampering their effectiveness.[55]

In the context of WIPO, the Commission will continue to support large-scale ratification of the 1996 WIPO Internet Treaties and their proper implementation into domestic laws. It will also foster efforts to produce the appropriate tools for assessing the functioning of copyright systems. It will support ongoing efforts to combat the global phenomenon of signal piracy and internet retransmissions of pirated broadcast signals. The Commission will also redouble its efforts to create a WIPO agreement on the cross-border delivery of materials in special formats tailored to the needs of the reading disabled in line with the objectives of the UN Convention on the Rights of Persons with Disabilities. In June 2010, the EU already proposed to WIPO a Joint Recommendation concerning the improved access to works protected by copyright for persons with a print disability.

At international level, the Patent Law Treaty has already harmonised and streamlined formal procedures in respect of national and regional patent applications and patents. The EU will therefore continue to support discussions at WIPO on substantive patent law harmonization. This would enhance patent quality and reduce costs, for the benefit of users of the patent system world-wide.

The EU should also be in a position to ratify the Anti-Counterfeiting Trade Agreement (ACTA)[56] once it has been signed by the contracting parties in the course of 2011. ACTA, which is fully in line with the EU acquis, is an important step in improving the international fight against IPR infringements, in cooperation with countries sharing the same concerns and views. The Commission will table its proposal for an EU decision to sign the agreement in the coming weeks.

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53 In line with Article 21 of TEU and Article 208 of TFEU.

54 Article 7 of the 1994 TRIPS Agreement. The Commission will fully support the implementation of the commitments taken in Istanbul on 13 May 2011 with a view to providing flexibilities for the protection of public health and, in particular, to promote access to medicines for all and to encourage the provision of assistance to developing countries in this regard, whilst ensuring that any such flexibilities are balanced with the legitimate rights of right holders.

55 See e.g. the findings of the ADE study, commissioned by the Commission's Directorate General for Trade, 'Evaluation of the Intellectual Property Rights Enforcement Strategy in Third Countries', November 2010, http://trade.ec.europa.eu/doclib/cfm/doclib_section.cfm?sec=180&langId=en.

56 The ACTA (available at http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/) builds on the 1994 TRIPS agreement to improve global standards for the enforcement of IPR. It addresses the way in which companies and individuals can enforce their rights in court, at the borders and on the Internet.

3.6.2. Bilateral negotiation and co-operation on IP protection with third countries

The EU will continue to negotiate IPR provisions in its free trade agreements (FTAs) with third countries. In negotiating FTAs, the IPR clauses should as far as possible offer identical levels of IPR protection to that existing in the EU while taking into account the level of development of the countries concerned. Cooperation through political and technical dialogues also form part of the EU's strategy on the trade related elements of IPR.

The right balance also needs to be struck between protection of IPR in third countries and access to knowledge. IPR policy therefore can support inclusive and sustainable growth if it is part of an overall development strategy aiming at enhancing the business environment, promoting research calibrated to development needs and ensuring that health, biodiversity or food security objectives are properly taken into account. Affordable technology transfers that meet basic needs of populations are key for the least developed countries (LDCs). For such transfers to happen, the EU and its Member States must revisit the incentives provided to their enterprises or institutions for the purpose of promoting and encouraging innovation and technology transfer to the benefit of LDCs. As an example of a possible avenue, the pilot Global Access in Action partnership involving the WIPO aims at promoting best practices in IP licensing for the benefit of LCDs without compromising core commercial markets for IP owners.[57] In this context, further reflection is needed as to what extent an exemption of LDCs from TRIPS obligations beyond 2013 should be pursued.

Developing and emerging countries are particularly vulnerable to activities infringing IPR and are sometimes used by complex criminal networks as manufacturing and distribution bases. Training measures and capacity-building activities of the EU are therefore essential in order to support these countries in their fight against organised intellectual property infringements. Such measures will be fostered through the Office for Harmonisation in the Internal Market (OHIM) in the context of its work on the European Observatory on Counterfeiting and Piracy and through other programmes managed by the Commission. Cooperation on this subject will focus on those countries where the highest impact on enforcement capacity and value for money can be expected.

3.6.3. Enhanced IPR protection and enforcement at the EU border

At the EU border, customs authorities are in a privileged position to take effective action. The EU Customs Action Plan to combat IPR infringements for the years 2009-2012[58] sets as the priority for the Commission and the Member States taking action to strengthen customs enforcement. In this context, the Commission is proposing a new regulation replacing Regulation 1383/2003, with the objective of strengthening enforcement while streamlining procedures. A central EU database called COPIS is being developed to store all companies' applications for customs action, which are foreseen in the said Regulation. National customs authorities and the Commission should make joint efforts to enforce IPR effectively. For example, the Commission will establish an expert group and a network of national customs contact points in order to prevent the import of IPR-infringing goods sold over the Internet.

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57 The "Global Access In Action" project, incubated by the World Economic Forum Global Agenda Council on IP and supported by WIPO and other public and private partners, http://globalaccessinaction.org.

58 Council Resolution of 16 March 2009, OJ C71, 25.3.2009, p. 1.

Moreover, combating IPR infringements at the border also means preventing the exportation of illicit goods to the EU. The Commission and the Member States are actively engaged in customs cooperation with both source countries and other consuming countries by means of specific initiatives such as the EU-China Action Plan on customs cooperation on IPR enforcement. The Plan should provide the basis for reducing the scale of IPR infringements in the bilateral trade between the EU and China.

4. CONCLUSIONS

All forms of IPR are cornerstones of the new knowledge-based economy. Much of the value, market capitalization and competitive advantage of Europe's companies will in future reside in their intangible assets. IP is the capital that feeds the new economy. Better use of IP portfolios by means of licensing and commercial exploitation is central to successful business models.

The potential of the digital single market where creators, service providers and consumers can all benefit and thrive cannot be underestimated. Europe must urgently harness the human and technological resources at its disposal to create a vibrant and competitive online market for creative transactions, allowing the largest possible dissemination of digital goods and services for the benefit of all.

This over-arching IPR strategy addresses this challenge. Fulfilment of the Commission's ambitious work programme detailed above will require a sustained level of commitment at the European Parliament, Council, Commission and Member State levels. Fully capitalising Europe's rich IPR resources requires commitment to make full use of Europe's intellectual assets. As the above initiatives demonstrate, more work needs to be done to turn these assets into true engines for growth and high quality employment.

As new challenges and new priorities emerge in the light of experience and of rapid changes in technology and society, the Commission is committed to review this strategy and draw the appropriate conclusions in close cooperation with stakeholders.

ANNEX: LIST OF FUTURE COMMISSION ACTIONS

No	Action	Description	Timing
1	Unitary patent protection	Proposals for Regulations of the European Parliament and of the Council on (1) a unitary EU patent and (2) translation arrangements.	The Commission adopted proposals on points (1) and (2) on 13 April 2011.
2	IPR valorisation instrument	Comprehensive analysis on the basis of ongoing feasibility study and report to the European Council.	Report to be submitted before the end of 2011.
3	Revision of the Community Trade Mark Regulation and the Trade Mark Directive	Proposals will aim at rendering the EU trade mark system more effective, efficient and coherent.	Second half 2011
4	Orphan works	Legislative proposal for a Directive on certain permitted uses of orphan works.	First half 2011
5	Multi-territorial collective management of copyright	Proposal for a legal instrument to create a European framework for online copyright licensing in order to create a stable framework for the governance of copyright at the European level.	Second half 2011
6	Audiovisual works	Green Paper public consultation on various issues relating to the online distribution of audiovisual works.	Second half 2011
7	Further measures in the area of copyright	To report following the stakeholder consultation and assess the need for further measures to allow EU citizens, online content services providers and right holders to benefit from the full potential of the digital internal market.	2012
8	Private copying levies	Appointment of a high-level mediator with a view to brokering stakeholder agreement on private copying levies.	Second half 2011

No	Action	Description	Timing
9	User-generated content	Stakeholder consultation.	Second half 2012
10	European Copyright Code	Assessment and discussions with stakeholders and reporting back.	2012 and beyond
11	Review of Directive 2001/29/EC	Report on the application of Directive 2001/29/EC as required by Article 12 of that Directive.	2012
12	European Observatory on Counterfeiting and Piracy	Proposal for a Regulation on entrusting the Office for Harmonisation in the Internal Market (OHIM) with certain tasks related to the protection of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Counterfeiting and Piracy.	May 2011
13	Rights complementing IPR	Study to assess the economic and societal impact of infringements of trade secrets and practices of "competing at the edge of the law" like parasitic copies and to assess the economic benefits of an EU approach in this area.	End 2012
14	Non-agricultural geographical indications	Feasibility study to consider an EU-wide protection of GIs for non-agricultural products. This study will provide an analysis of the existing legal frameworks in the Member States and an in-depth assessment of the stakeholders' needs and the potential economic impact on protection for non-agricultural GIs.	Second half 2012
15	Review of the IPR Enforcement Directive	Review of the Directive aimed at creating a framework allowing, in particular, to combat more effectively IPR infringements via the internet at their source.	First half 2012

No	Action	Description	Timing
16	Replacement of the Regulation concerning customs action against goods suspected of infringing intellectual property rights	Proposal for a new Customs Regulation to strengthen customs enforcement of Intellectual Property Rights and create conditions for effective action, while streamlining procedures.	May 2011
17	Voluntary measures of stakeholders targeting IPR infringements	Stakeholder agreement (Memorandum of Understanding) on the sale of counterfeit goods over the internet and follow-up process.	MoU signed on 4 May 2011, evaluation and review by mid-2012.
18	EU database COPIS	Development of database to ensure efficient management of companies' applications for customs action and produce statistics of customs detentions.	First half 2012
19	Review of the Commission's 2004 strategy for the protection and enforcement of IP rights in third countries	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.	End 2011