

Intellectual Property Strategy – Frequently Asked Questions

1. What are Intellectual Property Rights?

Intellectual property rights (IPR) cover all forms of commercial activities and artistic creations. They fall into two categories: industrial property and copyright. Industrial property includes a diversity of rights such as patents (which protect inventions), trade marks, geographical indications and designs. Copyright - or authors' rights - protects literary and artistic works (books, plays, films, musical works, paintings, photographs, sculptures, maps etc.). Copyright also includes related or neighbouring rights such as those of performers, producers of films and sound recordings, and broadcasters.

IPR provides their owners with the means to decide, for a specific and limited time, how their inventions and creations are to be used, reproduced and commercialised. IPR rewards innovation and creativity and promotes the dissemination of goods and services. For many industries and sectors, well-managed intellectual property rights are a core element of their business strategy and a key factor for their European and global competitiveness.

2. How do Intellectual Property Rights affect the EU economy?

Currently, there are 1.4 million European SMEs working in the creative industries covering for example book and newspaper publishing, music and film. Intellectual property-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.

In its report prepared for the 2007 Spring European Council, the economic think-tank, the Work Foundation, estimated that 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%.

According to a 2009 study conducted by Eurobrand, the value of the top ten brands in each EU country amounted to almost an average of 9% of GDP per capita in 2009.¹ Intellectual property rights incentivise and protect investment in technical Research and Development and according to Eurostat contributed to 1.9% of EU GNP in 2008.

¹ Source: Eurobrand Study 2009, Country Review, <http://study.eurobrand.cc>

3. Why an IPR Strategy?

The IPR Strategy forms part of the Commission's overall agenda to foster sustainable growth and jobs in the Single Market and improve Europe's competitiveness on a global level. IPR policy affects a broad range of the EU's policies and actions, ranging from the internal market to agriculture, the information society and competition policy. The Strategy is therefore complementary to and an essential element of the Europe 2020 Strategy, the Single Market Act and the Digital Agenda for Europe.

While the internal market is one of the success stories of the EU, some obstacles still persist which impede the seamless cross-border flow of goods and services. Problems include the complexities and costs of obtaining patent protection, the fragmentation of the internal market with respect to the multi-territorial online distribution and accessibility of creative content such as music, film and books, as well as the prevalence of internet piracy and counterfeiting.

All these issues require an ambitious, well-managed and efficient IPR framework at European level. The IPR Strategy is the Commission's response to these challenges. It is a forward-looking "blueprint" of the policy initiatives that the Commission intends to take during its current mandate.

4. What is the focus of the Strategy?

The importance of IPR as an engine for growth cannot be under-estimated. The Strategy therefore serves as a blueprint for a series of well synchronized 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.

Whilst, arguably, the current IPR legislative framework has served Europe well, it is necessary to make it more efficient and streamlined and to adapt it to the digital environment.

5. What are the existing EU rules on intellectual property rights?

The free movement of goods and services are at the heart of the Single Market. As intellectual property rights (IPR) affect the free movement of both goods and services - think of an author selling his books in multiple Member States or a company doing business in a number of countries using a common logo - the EU has a number of common rules in place that are to avoid barriers to trade.

Key legislation includes:

- **The Copyright in the Information Society Directive** (2001/29): This 2001 Directive ensures that all copyright protected goods and services are adequately protected – be they online or offline. It harmonises the rights of reproduction, distribution, communication to the public, the legal protection of anti-copying devices and rights management systems (see [IP/01/29](#)).

The EU legal framework on Trademarks and Designs: National trademark² registration in the EU Member States has been harmonised for almost 20 years and a Community trademark was established 15 years ago. A single Community system for the protection of industrial designs³ was set up in 2001. The Office for Harmonisation (OHIM) in Alicante, Spain, is responsible for granting the EU-wide rights for trademarks and designs.

- **The Enforcement Directive (2004/48):** The 2004 Enforcement Directive is an essential piece of legislation in the fight against counterfeiting and piracy. It aims to harmonise the laws of the Member States on means of enforcing intellectual property rights (via sanctions and remedies). The Directive covers infringements of all intellectual property rights (trade marks, designs, patents, copyright etc.) which are for commercial purposes or which cause significant harm to right holders.

It only covers civil measures. For example, remedies are available to right holders, such as the destruction, recall or permanent removal from the market of pirated or counterfeited goods, as well as financial compensation, injunctions and damages. The Directive also contains the necessary safeguards and limitations to protect the interests not only of the defendant but also of potentially innocent offenders, who have unknowingly been involved in counterfeiting or piracy (see [IP/04/316](#)).

6. Why is the existing framework for intellectual property rights not good enough?

Intellectual property rights have only been partially harmonised at EU level. A number of IPR-related provisions still exist at Member State level that impede the free movement of goods and services, certainly in the light of new technology, the continuing rise of the Internet and innovative business models.

While the Internet is borderless for example, Europe still remains a patchwork of national online markets. There are cases where Europeans are simply unable to buy copyright-protected works or services electronically across a single digital market.

Another example is the current European patent system: once a patent is granted, there is still a need for validation at Member State level which is very expensive and complex and a substantial hindrance to innovation in Europe.

² 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.

³ An industrial design, or simply a design, is the ornamental or aesthetic aspect of an article. Designs may consist of three-dimensional features (the shapes or surface of an article) or two-dimensional features (lines, patterns or colours).

7. What is the scope and magnitude of counterfeiting and piracy?

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. Still, it is very difficult to produce exact figures, as counterfeit and pirated goods fall outside the mainstream economy.

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 2007.⁴ This figure is larger than the national GDPs of about 150 economies.

Over the last few years, there has been an alarming expansion in the types of products being infringed. They range from luxury items such as sportswear, watches and jewellery, to more ordinary items that have an impact on personal health and safety such as pain killers, razor blades, baby milk, children's toys and car parts. Asia emerges as the largest source for counterfeited and pirated products, with China being the largest source.

According to European Commission figures on national customs activities, the number of registered cases of goods suspected of infringing IPR over the last five years rose from 26 704 in 2005 to 43 572 in 2009, an increase of more than 60 percent in five years.⁵

In respect of piracy, the economic impact is less clear at this stage, due to the very recent nature of this phenomenon. The European industry itself indicates that EUR 10 billion and more than 185,000 jobs were lost due to piracy in the music, movie, TV, and software industries in the EU in 2008.⁶

8. What is the IPR Strategy proposing for Industrial property rights?

- (1) **Patents:** It is very costly and complex to obtain and enforce patent protection in Europe. Therefore, the Commission has launched in April proposals for **the creation of unitary patent protection** in the framework of enhanced cooperation (see [IP/11/470](#)). In addition, after the opinion of the EU Court of Justice in March, work has also resumed on the establishment of a unified and specialised patent court for classical European patents and future European patents with unitary effect. **A unified patent court** will increase legal certainty for business and avoid the same patent cases being dealt with in courts of different Member States, potentially resulting in contradictory judgments. It would also considerably reduce litigation costs and the time it takes to resolve patent disputes.

⁴ The report can be found on:

http://www.oecd.org/document/23/0,3746,en_2649_34173_44088983_1_1_1_1,00.html

⁵ http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm.

⁶ See:

[http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Building%20a%20Digital%20Economy%20-%20TERA\(1\).pdf](http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Building%20a%20Digital%20Economy%20-%20TERA(1).pdf)

- (2) **Trade marks:** It's been over 15 years since the harmonisation of domestic trade mark legislation and the creation of the Community trade mark. **A comprehensive revision of the trade mark system** in Europe is necessary to modernise this system both at EU and national levels by making it more effective, efficient and consistent as a whole, including through increased cooperation between the OHIM (the Office of Harmonisation for the Internal Market, based in Alicante) and national trade mark offices. The Commission intends to present proposals to revise both the Community Trade Mark Regulation and the Trade Mark Directive in the last quarter of 2011.
- (3) **Geographical indications (GIs):** GIs secure a link between a product's quality and its geographical origin. Under EU law, agricultural products such as champagne, Feta cheese and Parma ham already enjoy name protection. However, apart from legislation that exists in some Member States, there are no EU-wide rules that ensure name protection for non-agricultural products such as Carrara marble, Solingen knives, Herend porcelain or Calais lace. This fragmentation or absence of protection in a number of Member States means that there is an unlevel playing field in the European Union which could negatively affect the functioning of the Internal Market. The Commission is about to launch **a feasibility study that will consider an EU-wide protection of GIs for non-agricultural products**. Based on the results of this work, an impact assessment analysing different options could be carried out in 2012 followed by eventual proposals.

9. What is the IPR Strategy proposing concerning copyright?

- (1) In 2011, the Commission will present a legislative proposal to **simplify the collective management of copyright** in the EU. Collecting societies licence the rights of creators and collect and distribute their royalties. The Commission's focus will be two-fold. First will be the establishment of common rules for collecting societies in order to enhance the governance and transparency of all collectively-managed revenue streams. Clearer rules on the governance and transparency of collecting societies will create a level playing field amongst right holders, commercial users and collecting societies. Second, the creation of a clear and well-functioning legal framework for the multi-territorial licensing of musical works for online services will encourage the take-up of new business models to provide online services to European consumers.

- (2) In order to promote the dissemination of Europe's intellectual and cultural heritage, the Commission has today tabled a **legislative proposal to facilitate the digitisation and making available of "orphan works"** (see [MEMO/11/333](#)). Orphan works are works such as books, newspapers or films that are still protected by copyright but the copyright holders are not known or locatable. Therefore, they cannot be contacted to give their permission to libraries and archives to digitise their works and make them available online. The lack of a common EU framework on orphan works is impeding the development of European large-scale digital libraries and the functioning of the Europeana portal (see for example [IP/09/1544](#)). As part of its efforts in the creation of digital libraries, the Commission is also supporting efforts for the conclusion of an agreement between authors, publishers, libraries and collecting societies to enable the online **access to out-of-commerce books through licensing models**. The agreement is expected to be adopted in mid-2011. Out-of-commerce books are works that are in-copyright but that are no longer commercially available in traditional or new electronic formats. They differ from orphan works in that their right holders (authors and publishers) are known and locatable.
- (3) The proper functioning of the Internal Market requires the development of a durable approach to private copying levies. Remuneration for private copying of copyright-protected works is collected in the form of levies on recording media or recording equipment (photocopiers, printers, Mp3 players, CDs and DVDs etc.). However, different rules and tariffs apply across Member States. This impedes the smooth cross-border flow of goods that are subject to levies. The Commission will appoint a high-level mediator, tasked with resolving differences amongst relevant stakeholders to find workable solutions **to improve the administration of levies** and which will be used as the basis for legislative action. The issues that will be looked at specifically are the methodology used to impose set tariffs, which equipment should be subject to levies, and ways to improve the cross-border functioning of disparate national levy systems.
- (4) In the audio-visual sector, the Commission will launch a public consultation on the **online distribution of audiovisual works**. A consultative Green Paper is due for adoption in October 2011. On the basis of the results, the Commission will determine whether any follow-up action needs to be taken in order to stimulate the European audiovisual sector as regards issues such as video-on-demand (VoD) services and cross-border broadcast services.
- (5) In October 2011, the Commission will present its **report on the application of the Artists' Resale Right Directive**⁷ as required by Article 11 of the Directive. One aspect of the report is to quantify the impact that the resale right has had on the sale of works whose authors have deceased ("hereditary resale right"). Five of the 27 Member States (the United Kingdom, the Netherlands, Austria, Malta and Ireland) currently benefit from an exemption to apply the hereditary resale right which expires on 1 January 2012. The Commission is currently analysing the results of a public consultation on the Directive's implementation in order to quantify the impact of the hereditary resale right on the Internal Market.

⁷ Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art.

- (6) As part of its long-term strategy on copyright, the Commission will assess the feasibility of creating a **European Copyright Code**. A future Code could envisage a comprehensive codification of the EU copyright directives and provide an opportunity to examine the feasibility of an optional "unitary" copyright title to provide right holders with the flexibility to choose whether to license and enforce their copyrights nationally or on a multi-territory basis. Given its far-reaching implications, the creation of a European Copyright Code requires further study and analysis.

9. What are you proposing on the enforcement side?

- 1) In the first year of the existence of the European Observatory on Counterfeiting and Piracy, its institutional framework was set up and initial activities were launched.⁸ In the future, the Observatory should focus increasingly on operational tasks, such as organising training for enforcement authorities (customs, police and judicial authorities etc.), setting up a database of national and European case law and fostering cooperation with and support for those third countries which are particularly vulnerable to counterfeiting and piracy and are used by complex criminal networks as manufacturing and distribution bases. As the Observatory is unable to fulfil its full potential under the current set-up, the Commission has today tabled a draft **Regulation to provide the Observatory with additional responsibilities and a sustainable structure**. Until these arrangements are formally in place following adoption by the European Parliament and the Council, a "Memorandum of Understanding", also published today, enables OHIM to support the Observatory's work in the interim period.
- (2) The report on the application of the IPR Enforcement Directive (Directive 2004/48/EC) of 22 December 2010 (see [EXME11/11.01](#)) shows that the Directive has provided a solid basis for the enforcement of intellectual property rights in the internal market. However, the report also shows that major provisions of the Directive have led to very diverging interpretations by Member States and their courts, and that the Directive is not fit to deal with new issues related to the Internet. The results of a public consultation on the report are currently being evaluated. On the basis of the consultation process, the Commission will in Spring 2012, propose a **revision of the Directive**.
- (3) Furthermore, the Commission will pursue its efforts to explore to what extent the sale of counterfeit goods over the internet can be reduced through voluntary measures, involving the stakeholders most concerned by this phenomenon (right holders and internet platforms). In this context, a **Memorandum of Understanding** was signed by major internet platforms and right holders on 4 May 2011.⁹ Over the coming twelve months, these stakeholders will review and measure progress, under the auspices of the Commission services.

⁸ see http://ec.europa.eu/internal_market/iprenforcement/observatory/index_en.htm for more information

⁹ Full text available at http://ec.europa.eu/internal_market/iprenforcement/stakeholders_dialogues_en.htm.

- (4) The increase in international trade has put the spotlight on the international dimension of IPR. For this reason, schemes to prevent and reduce IPR infringements that are based on the internal market have to be complemented by others that focus on the EU's external borders and on third countries. The Commission will therefore strengthen customs enforcement of intellectual property rights through the adoption of a **new Customs Regulation** and create conditions for effective action, while streamlining procedures; it will ensure higher standards of IPR customs enforcement in third countries and cooperation in the framework of trade agreements and through coordination with international organisations; and it will pursue customs cooperation in order to reduce the scale of IPR infringements in bilateral trade between the EU and China (see also [MEMO/11/327](#)).

10. Concerning enforcement in the Strategy, what is the Commission's position regarding illegal downloading?

The Strategy promotes an approach aimed at tackling infringements at their source. Illegal file sharing is a complex phenomenon and involves several different parties all playing a specific role, the Internet Access Provider being one of them.

The follow-up work announced in the Strategy will focus on service providers who either infringe copyright themselves or who systematically and knowingly facilitate or sustain the piracy activities of others, and profit there from. Such an approach will target the corrosive forces driving online piracy, while respecting at the same time the innovative powers of broadband internet without prejudging the legitimate interest of consumers, including those who download. All service providers concerned have to respect an appropriate level of care in their commercial operations.

This approach fully complies and does not alter the existing rules on limited liability for certain types of ISP activities¹⁰, such as laid down in the [e-Commerce Directive](#). It also does not change the current possibility in the EU *acquis* to have injunctions imposed by courts upon internet intermediaries who are not infringing themselves but whose networks are used by third parties to infringe.

Along the lines set out in the Strategy and in compliance with the Commission's Better Regulation approach, the Commission services are currently preparing, in full consultation with all stakeholders concerned, an Impact Assessment on the different potential options for action, on the basis of which the Commission will decide on the way forward. All options are on the table.

¹⁰ An ISP (Internet Service Provider) is a very general term which covers many more types of internet related activities than just "access to the internet". For example, it could also be a website showing in a structured way online content available for downloading (a so-called indexing site). While this is also an ISP, they are mostly different and distinct from a provider offering internet access to business and consumers.

11. What is the international dimension of intellectual property rights?

In the light of international trade, a number of international agreements have been put in place to create an international framework for intellectual property rights.

Key international agreements are:

- **The Paris Convention:** The 1883 Paris Convention for the Protection of **Industrial Property** is one of the oldest intellectual property treaties in the world. The Convention requires its signatories to recognise applications for trademarks, designs or patents from other signatory countries in the same way as it recognises applications from its own nationals. Furthermore, the Convention stipulates that, once the applicant indeed becomes the owner of a patent, design or trademark, the owner will have the same protection and the same remedies against an infringement as a national owner. The Convention is administered by the World Intellectual Property Organisation (WIPO), a specialised agency of the UN. The Convention currently has 173 signatory countries - including all EU Member States, China and the United States.
- **The Berne Convention:** The 1886 Berne Convention for the protection of Literary and Artistic Works is an international agreement that governs the internationalisation of **copyright**. The Convention requires its signatories to automatically recognise the copyright of works of authors from other signatory countries in the same way as it recognises the copyright of its own nationals. In addition, the Convention requires the signatories to provide strong minimum standards for copyright law, including on the duration of protection. The general rule is that protection must be granted until the expiration of the 50th year after the author's death. The Convention is also administered by the WIPO and currently has 164 signatory countries - including all EU Member States, China and the United States.
- **The TRIPS Agreement:** The 1994 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) introduces for the first time intellectual property law, including the provisions of the Paris and the Berne Conventions, into the international trading system. It is administered by the World Trade Organisation (WTO) and sets down minimum protection standards for a number of intellectual property rights, such as copyright, geographical indications, patents and trademarks. The Agreement also lays down certain general principles applicable to all IPR enforcement procedures and contains provisions on civil and administrative procedures, remedies and provisional measures. It also contains special requirements related to border measures and criminal procedures, which specify, in a certain amount of detail, the procedures and remedies that must be available so that right holders can effectively enforce their rights. The agreement also makes disputes between signatories about the respect of the TRIPS obligations subject to the WTO's dispute settlement procedures. All of the 153 WTO members are members of the TRIPS agreement and includes all EU Member States, the United States and China.

- **The WIPO Copyright Treaty:** In the light of the rise of information technology, this 1996 Treaty provides additional protection for **copyright** as it covers in particular on-demand, interactive communication through the Internet. It forms a special agreement under the 1886 Berne Convention and ensures that computer programmes are protected as literary works as well as the arrangement and selection of databases. The Treaty also enables authors to have control over the rental and distribution of their works, prohibits the circumvention of technological measures for the protection of works and the unauthorized modification of rights management information contained in works. It entered into force in 2002. There are 89 signatory countries, including all EU Member States, China and the United States.

In the light of these international agreements, the EU will continue to work in international fora such as the WIPO and the WTO to see IPR standards respected by third countries.

Furthermore, the EU is currently negotiating IPR provisions in its bilateral trade agreements and works closely at a technical level with its trading partners on IPR issues.

Developing and emerging countries are particularly vulnerable to activities infringing IPR and are sometimes used by complex criminal networks as manufacturing and distribution bases. With the authorities of certain third countries, the EU conducts "political dialogues" on IP issues (usually involving European industry), and/or runs technical co-operation programmes intended to help enhance IPR.

12. What is the timeline for adopting these measures?

The Strategy outlines the policies that the European Commission intends to take during its current mandate, i.e. until 2014. The time line for adoption or action by the Commission is specified in the previous question. Certain legislative initiatives will only come to fruition after agreement is reached between the Council and the European Parliament.

13. What are the next steps?

The Commission will continue working in the coming months to ensure timely and rapid delivery of the various policy proposals outlined in the Strategy. It will also continue to monitor and assess these policies and update them as and when necessary.

See also [IP/11/630](#) and [MEMO/11/333](#)

More information is available at:

http://ec.europa.eu/internal_market/top_layer/index_52_en.htm