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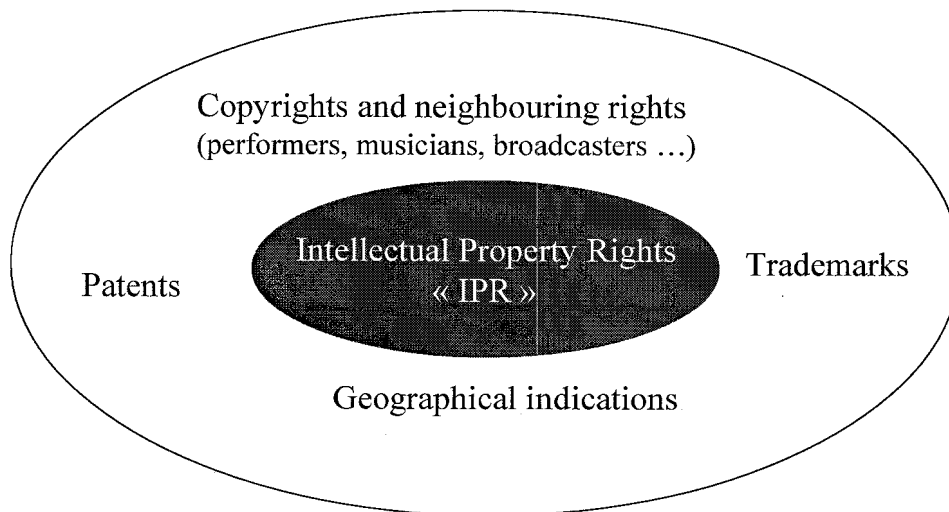
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## 1. INTRODUCTION

This Communication presents the Commission's overall strategic vision that will shape future rulemaking in the area of Intellectual Property Rights (IPRs). IPRs comprise industrial property rights, such as patents, trademarks, designs and geographical indications, as well as copyright (authors' rights) and rights related to copyright (for performers, producers and broadcasters).



IPRs are key assets underpinning the European economy and core ingredients that enable Europe to remain competitive in a global market place. The single market remains the biggest enabler for inventors and creators to thrive and succeed. Promoting and protecting IPRs at European level is crucial for the goal of a single market where creative and inventive effort is rewarded, where incentives are generated for future EU-based innovation, and where cultural diversity can thrive.

IPRs protect the added value generated by Europe's knowledge economy and its creators and inventors. IPR portfolios are an important part of many European businesses. They drive innovation and economic growth. Capitalising on IPR portfolios is key for European creators, workers and businesses to sustain operations, generate revenues and develop new market opportunities. A forward-looking IPR framework at the European level must both protect the value of these rights and contribute to the optimal dissemination of knowledge in the single market.

A sound IPR system can deliver high quality jobs and first class products and services to European citizens. Products and services based on IPRs can be difficult and expensive to create but cheap to replicate and reproduce. Effective enforcement of IPRs is therefore essential to provide an adequate level of protection for products and services based on intellectual creation.

In essence, IPRs are property rights that confer on their owners the exclusive right to decide how their creations and inventions are to be used, reproduced, traded or commercialised. However, fast-paced technological progress has altered the way we do business and disseminate, receive and consume products and services. As new business models are developed and traditional ones adapted, and as new economic players and service providers come onto the market, it is necessary to adjust European IPR legislation to provide the

appropriate "enabling framework" that incentivises investment and facilitates the distribution of knowledge.

IPR is essential in promoting investment and growth for Europe. An ambitious single market should provide European creators, consumers and businesses with a coherent, clear and harmonised legal framework. A sound and coherent approach to all forms of IP is fundamental to Europe's endeavour to fulfil the ambitions of the Europe 2020 Strategy,<sup>1</sup> the Digital Agenda for Europe,<sup>2</sup> the Single Market Act<sup>3</sup> and the Innovation Union.<sup>4</sup>

This Communication is structured as a blueprint for a coherent approach to all IPRs and will announce a series of actions that the Commission will be working on in the course of 2011-2015.

## **2. PART 1: IPRs IN THE SINGLE MARKET AND IN THE GLOBAL ECONOMY**

### **2.1. IPRs as a driver for creativity, innovation, economic growth and welfare in Europe**

Intellectual property (IP) is the capital on which innovative European companies build their businesses. In the era of globalisation and international competition, the revenue potential of IP is just as important as the ownership of commodities or the reliance on a manufacturing base. European companies are aware their business models and IP policies must converge if they want to remain competitive.<sup>5</sup>

Nowadays, a company's intangible assets consist mainly of IPR. A 2002 survey of the Fortune 500 companies estimated that anywhere from 45% to 75% of the wealth of individual companies derives from their intellectual property rights.<sup>6</sup> In 2009, it was estimated that intangible assets represented about 81% of the value of the S&P 500 market.<sup>7</sup> The value of the top ten brands in each EU country amounts to almost 10% of GDP per capita. In smaller countries valuable brands can amount to over 30% of GDP per capita. The economic value of trade marks serves as an indicator for the economic wealth of a country. In terms of market value, the top ten brands in each EU Member State are, on average, worth € 35 billion. Copyright-based creative industries (comprising software and database production,<sup>8</sup> book and newspaper publishing,<sup>9</sup> music<sup>10</sup> and film<sup>11</sup>) contribute 3.3% to the EU GDP (2006).<sup>12</sup>

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<sup>1</sup> Europe 2020: A strategy for smart, sustainable and inclusive growth, COM (2010) 2020, 3.3.2010.

<sup>2</sup> A Digital Agenda for Europe, COM (2010) 245, 19.05.2010.

<sup>3</sup> Towards a Single Market Act, COM (2010) 608 final, 27.10.2010.

<sup>4</sup> Europe 2020 Flagship Initiative, Innovation Union, COM(2010) 546 final, 6.10.2010.

<sup>5</sup> "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 IPRs 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.

<sup>6</sup> Source: [http://www.wipo.int/sme/en/documents/valuing\\_patents.htm](http://www.wipo.int/sme/en/documents/valuing_patents.htm).

<sup>7</sup> 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.

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

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

IPRs are valuable not only because they protect investment in new products and services but also because they can be licensed and assigned.<sup>13</sup> IPRs also increase competition by facilitating the entry of newcomers to a market, in particular SMEs, which can attract venture capital or license production to incumbents. Furthermore, bearing in mind that 1.4 million SMEs operate in the creative industries in Europe, the possibility of using IPRs as security facilitates SMEs' access to bank loans.<sup>14</sup> This is particularly true in the aftermath of the financial crisis.

## 2.2. IPRs as a driver for high quality jobs in Europe

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 1.0% a year for the total EU economy.

IP industries create and sustain high-quality jobs. The software industry, for example, employs 54,000 highly qualified R&D people in 2009, an increase of 4% from 2008.<sup>15</sup> Most of the new jobs across the EU created over the past decade arose in the knowledge-based industries: employment across these industries increased by 24%. In contrast, employment in the rest of the EU economy increased by just under 6%.<sup>16</sup>

In the period 2000-2007, the annual average salary of employees in IP-intensive industries were on average approximately 60% higher than the workers at similar levels in non-IP-intensive industries. Meanwhile, even annual salaries of low-skilled workers in IP-intensive industries were, on average, still about 40 percent higher than in non-IP-based industries.<sup>17</sup>

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

<sup>11</sup> 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 1100 films per year and employs over 1 million people. However, the nature and size of the main market players in Europe and the US differ significantly – in 2007, the 20 most important audiovisual companies worldwide included 11 US companies and only 5 EU companies, the largest EU company being Vivendi Universal from France with a turnover of \$ 15,007 million, compared to Disney with \$ 24,884 million. Source: Multi-Territory Licensing of Audiovisual Works in the European Union, KEA study, October 2010, p.2.

<sup>12</sup> European Competitiveness Report 2010, Commission Staff Working Document, SEC(2010) 1276 final  
<sup>13</sup> A report issued by PricewaterhouseCoopers in 1999 found that the global IP licensing market totalled more than US\$100 billion, giving an idea of how economically important IP assets are today: [http://www.wipo.int/export/sites/www/freepublications/en/intproperty/888/wipo\\_pub\\_888\\_1.pdf](http://www.wipo.int/export/sites/www/freepublications/en/intproperty/888/wipo_pub_888_1.pdf).

<sup>14</sup> OECD, Intellectual Assets and Value Creation: Synthesis Report, 2008, <http://www.oecd.org/dataoecd/36/35/40637101.pdf>.

<sup>15</sup> Truffle 100: Ranking of the Top 100 European Software Vendors, September 2010 ([www.truffle100.com](http://www.truffle100.com))

<sup>16</sup> The Work Foundation: The knowledge economy in Europe, report prepared for the 2007 Spring European Council.

<sup>17</sup> The Impact of Innovation and the Role of Intellectual Property Rights on U.S. Productivity, Competitiveness, Jobs, Wages and Exports, NDP Consulting, 2010.

From 2000 to 2004, new science and engineering jobs were created at a 28% higher rate in IP-intensive industries than in non-IP-intensive areas.<sup>18</sup> Employees in IP-intensive countries earn approximately \$7,000 more per year on average than those in non-IP-intensive countries.<sup>19</sup> Jobs in IP-intensive industries, such as pharmaceuticals and computers and electronics, are expected to grow faster over the next decade than the overall average.<sup>20</sup>

### **2.3. IPRs as a driver for high quality products and services for European citizens**

IPRs play a vital role in the development of high-quality products and services. Patent protection, for instance, provides an incentive for investment in R&D and 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 generation consumer electronics, more environmentally-friendly cars or high-speed trains, depend on thousands of patents. There are countless patents behind the technology that enables mobile phones and the more recent phenomenon of applications that run on mobile operating systems.

The protection of brands stimulates investment in the quality of products and services in all sectors which rely heavily on brands and customers' brand loyalty. These comprise food products, household goods, pharmaceuticals, fashion, sporting ware, cosmetics, consumer electronics, or services offered by the telecommunications, travel, leisure and sports industries.

For its part, the strength of copyright is to act as a broker between right holders and the users of protected works. Copyright thus plays an indispensable role in the effort to create a true digital market where creators, service providers and consumers interact for the exchange of cultural goods. The creation of attractive content is fundamental for innovative services and sustainable business models to thrive. Copyright is a governance tool enabling a more efficient organisation of economic exchanges. In this role, it enables a return on investment in a variety of creative content, such as software, books, newspapers and periodicals, scientific publications, music, films, photography, visual arts, video games, software, and educational or distance learning tools. It also enables the development of new and innovative online services such as music downloads, video on-demand, video games and e-books. Copyright ensures that creators and innovators are rewarded for the often considerable commercial risks they take.

Promotion of creation and innovation and driving economic growth are common goals of intellectual property and competition law. Strong protection of intellectual property rights should be accompanied by rigorous application of competition rules.

### **2.4. IPRs as a driver for Europe's standing in the global economy**

Creative businesses will invest in regions where creation and innovation are rewarded and a high level of protection is secured. Conversely, a lack of IP protection, an unpredictable approach to policy formulation or a lack of effective IP management presents a liability. Jurisdictions that do not protect IP or do not provide for effective protection or management of IP risk attracting less investment and innovation.

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<sup>18</sup> Robert J. Shapiro and Nam D. Pham, "Economic Effects Of Intellectual Property-Intensive Manufacturing In The United States," World Growth, July 2007

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

There are many examples of how Europe's IPR system plays a central role in the development of new leading technologies and products. The development of standards such as GSM and LTE<sup>21</sup> 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 their revenue exclusively through licensing of their IP portfolios.

On the other hand, Europe's success in the production of competitive software appears more mitigated. While Europe's software industry invests heavily in R&D and demonstrates an 8.4% year-on-year growth, the latest data from a representative index of the European software industry indicates that European IT and software industries are still lagging behind their US counterparts.<sup>22</sup> In these circumstances, Europe needs to give the software industry the attention that it merits in a global economy and encourage R&D incentives for SMEs.

If Europe manages to further improve the laws that govern the management and enforcement of its valuable IP rights, European-based inventions "can move faster from the back room to the High Street". Unitary patent protection, unified patent enforcement and multi-territorial licensing for copyrights are core planks furthering this aim.

### 3. PART 2: KEY POLICY INITIATIVES TO MEET THE CHALLENGES AHEAD

#### 3.1. Optimising the EU's legal framework for IPR

The economic potential of IPRs increasingly depends on the ability of multiple IPR owners to collaborate and licence technologies, products and creative content and to bring new products and services to consumers. 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 of the "knowledge triangle": creators, service and content providers and consumers. IPR policy should therefore be designed as "enabling legislation" allowing for the management of IPRs 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.

*IPR legislation is a **governance tool to optimize transactions involving intellectual property rights between creators, users and consumers in order to incentivise creation and innovation and promote the circulation and distribution of IPR-protected goods and services:***

Europe must become a world leader in innovative licensing solutions for the seamless sharing 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 IPRs 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 expressions.

<sup>21</sup> LTE stands for Long Term Evolution and is the latest standard in mobile telecommunications technologies that currently power GSM/EDGE, HSPA/UMTS networks.

<sup>22</sup> Truffle 100: ranking of the top 100 European software vendors, September 2010, [www.truffle100.com](http://www.truffle100.com).



IPRs are the pivot upon which the symbiotic relationship between creators, users and consumers is based. There is no innovation or cultural diversity without IPRs. There is no sustainable economic growth without innovation. A holistic European legal framework is central so as to calibrate the correct balance between creation, investment and access. This is what this Strategy sets out to do.

### **3.2. Reform of the patent system in Europe and accompanying measures**

#### *3.2.1. 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 €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.<sup>23</sup> Following the adoption of the decision of the Council authorising enhanced cooperation,<sup>24</sup> the Commission has tabled proposals for implementing measures.<sup>25</sup> 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.

In addition, the creation of the unitary patent must be accompanied by the development of machine translation systems which are necessary to 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 supports 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.

#### *3.2.2. 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.

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<sup>23</sup> COM (2010) 790 final.

<sup>24</sup> On 10 March 2011.

<sup>25</sup> 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).

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 practise, 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. Specific jurisdictional arrangements will be proposed as soon as possible, 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.

U 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.

### 3.2.3. *An IPR valorisation instrument*

Intangible assets may account for up to three quarters of corporate value<sup>26</sup> 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, from their valorisation to their funding.

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 order to carefully examine this issue, the Commission has launched a comprehensive analysis including a feasibility study. This study 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. The Commission will report back to the European Council before the end of 2011.

## 3.3. **Modernisation of the trade mark system in Europe**

Trade mark registration in the EU has been harmonised in Member States for almost 20 years and the Community trade mark was established 15 years ago. 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 receipt, by the end of 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,

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<sup>26</sup> See point 1.1 and footnote 5.

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) extending the scope of trade mark rights, inter alia, to cover goods in transit; (4) providing a framework for increased cooperation between the OHIM 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.

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.

### **3.4. Creation of a comprehensive framework for digital copyright**

The internet is borderless. Technology, the fast evolving nature of business models based on copyright and the growing autonomy of online consumers, 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 invest and consume using the opportunities that modern technologies provide.

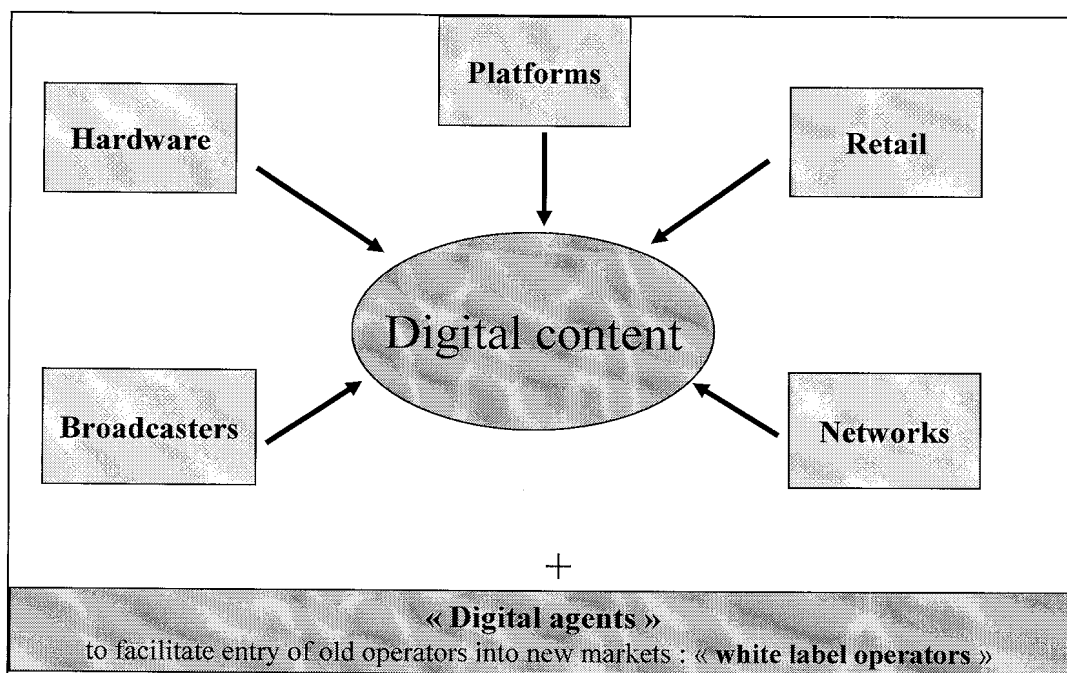
Copyright is fundamental to intellectual and cultural creation. It is also crucial for the maintenance of media plurality. The culture and media sectors can only be sustained when accompanied by adequate protection and income for those who devote their life to creative efforts or who invest heavily in the cultural and creative industries. Moreover, without adequate protection, there is a real risk that young talent today will not be motivated to work in these sectors, thereby squandering the enormous potential of Europe's future workforce.

Authors and other creators expect a fair return when others use their work. This is also true of publishers and producers that provide financial and other investments for the production and dissemination of creative works. These aspirations are the same in the on-line world and in the off-line world concerning the exploitation of creative works, be they books, journals, newspaper articles, songs, films and photographs.

Europe must become a world leader in innovative copyright licensing solutions. 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 products across the Union. A series of Commission initiatives, set out below, will be proposed to make this goal a reality.

### 3.4.1. European copyright governance

Irrespective of the technology used, reforms of copyright in the internal market are designed as "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. Copyright also enhances 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<sup>27</sup> must now be closed by creating a stable framework for the governance of copyright at European level which will be fit for new emerging business models.



The creation of a European framework for online copyright licensing would greatly stimulate the legal offer of protected cultural goods across the EU.<sup>28</sup> Modern licensing technology could help to make a wider range of online services available in more than one Member State, or even create services that are available all over Europe.<sup>29</sup> In response to consumer demand and where such demand exists, over time, electronic rights brokering can also contribute to making cultural goods more widely available across the EU.

This is why, in 2011, the Commission will submit proposals to create a legal framework for the multi-territorial collective management of copyrights. While the focus on the cross-border

<sup>27</sup> The creation of a European framework for online copyright governance and central licensing would greatly stimulate the legal offer of protected cultural goods across the EU. The 2010 IFPI Music Report shows that digital music sales accounted for 14% of music sales in Europe. This compares with a digital music percentage of 44% in the USA and 25% in Japan. These figures reveal the enormous potential for growth that lies in Europe's digital marketplace (see also footnote 50).

<sup>28</sup> The 2010 IFPI Music Report shows that an average European spends less than € 2 on digital music, whereas an average American spends almost € 8 and an average Japanese € 7.

<sup>29</sup> EMusic, a leading service provider, grants access to over 7 million tracks and is the most widely available service in the EU. It covers 24 Member States. iTunes is present in 15 Member States; 7digital and Nokia in 12 Member States, and Vodafone in 11 Member States. LastFM and YouTube are present in 10 Member States.

management of copyrights in the online environment is of particular importance in light of the development of a digital marketplace for cultural goods, attention will also be given to the governance structures of several other forms of collectively managed revenue streams. Therefore, the proposed rules will follow a two-tier approach.

First, the new framework will establish common rules on the transparent governance and distribution to right holders of all collectively managed revenue streams.<sup>30</sup> 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. The aim is therefore to create a "common foundation" of good governance for all collectively managed revenue streams.

Secondly, new licensing opportunities, particularly in the music sector, are expected to lead to the development of new online services covering a greater share of the world repertoire and serving a greater share of European consumers. The aim should also be to 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. Cross-border management of copyright for online services requires a high level of technical expertise, infrastructure and electronic networking. The means to ensure that all operators active in several levels comply with a high level of service standards for both right holders and users is the creation of an enforceable European rights management passport.

While the ubiquity of the internet has spurred the need to improve the governance, transparency and multi-territorial practices of online licensing, technology itself can simplify the management of online copyright. Technology can provide a rich source of pragmatic solutions to adapt copyright to the internet and the internet to copyright. To this end, the Commission will support measures to make it simpler and efficient to utilise copyright protected works through innovative licensing technologies, certification of licensing infrastructures and electronic data management. It will encourage and support projects undertaken by various stakeholders to develop automated and integrated standards-based rights management infrastructures. Underpinned by inter-operable online databases, these licensing infrastructures will help identify right holders and spell out copyright permission terms to users in easy and accessible language.<sup>31</sup> In addition, innovative licensing technology and the increased use of electronic data management would allow the European Union to overcome significant differences in digital take-up that still prevail between national markets in the Union.<sup>32</sup>

In the long term, another approach to create good governance for the management of copyrights at European level could be the creation of a European Copyright Code. Such a

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<sup>30</sup> Harmonised standards will focus on the technical and logistical capacity to license at European level, licensing on non-discriminatory terms, databases that allow the precise identification of ownership in licensed repertoire, interlinking of ownership databases, electronic data exchange on actual usage of works by online service providers, invoicing and distribution schedules.

<sup>31</sup> Examples of these initiatives include the development of a Global Repertoire Database (GRD) as an authoritative source of ownership in musical works which will streamline the granting of copyright permissions in the online environment; the Accessible Registries of Rights Information and Orphan Works (ARROW) to identify rightholders and clarify the rights status of a work including whether it is orphan or out of print work; and the Automated Content Access Protocol (ACAP) which sets out the copyright terms and conditions to use published works.

<sup>32</sup> While digital sales are high in Denmark (25%) and the UK (20%), Belgium, the Czech Republic, Finland, Hungary and the Netherlands all record digital sales at less than 10% of sales by trade value.

code could envisage 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. At the same time, the Code could provide an opportunity to examine how the current exceptions and limitations to copyright granted under the 2001/29/EC Directive<sup>33</sup> are functioning and whether these need to be updated or harmonised at EU level. A Code would 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. It may also provide the opportunity to examine the feasibility of creating an optional "unitary" copyright title. A unitary title could operate on an optional basis but would 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.

#### 3.4.2. *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).<sup>34</sup> In line with its overall approach, the Commission advocates responsible use.

At the same time, there is a growing realisation that the time has come to find solutions to make it easier and affordable for end-users to use third-party copyright protected content in their own works. The digital rights management tools described above have an important role to play in this regard. 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.

#### 3.4.3. *Private copying*

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.<sup>35</sup> 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 mediator will be appointed and tasked with exploring possible approaches to improve the administration of levies, specifically the type of equipment that is subject to levies, the setting of tariff rates with a view to harmonising the methodology used to impose levies, and the inter-operability of the various

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<sup>33</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001, pp. 10-19

<sup>34</sup> 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.

<sup>35</sup> 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), € 453 million of private copying levies have been collected on digital devices and carriers in 2006 in the European Union.

national systems in light of the cross-border effects that a disparate levy system has on the internal market. A concerted effort on all sides to resolve outstanding issues should result in a positive outcome which will serve as a blueprint for consensual legislative action at EU level and enhance the smooth functioning of the single market.

#### 3.4.4. *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 to the development of the knowledge economy. The core challenge is to find solutions to promote the seamless sharing of knowledge through innovative licensing solutions that allow academic institutions, businesses, researchers and private individuals to obtain the necessary permissions to use copyright-protected materials while compensating authors, publishers, and other content creators for the use of their works. The Commission therefore intends to proceed by way of a two-pronged approach with respect to digital libraries 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".<sup>36</sup> The successful completion of these two initiatives will also boost the development of Europeana as a true portal through which citizens will be able to access the diversity and richness of Europe's cultural heritage.

Journalists are amongst those authors for whom copyright is essential, as it enables them to earn a living from their work. 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. Creators must continue to exert control over the way their content is licensed while at the same time reconciling this with the need to allow for effective information-gathering techniques on the internet.

Open access publishing is a relatively recent phenomenon. Different forms of "open access" publishing have emerged. Their common theme is that the authors will deposit their research articles in an open access repository while, in parallel, the publisher will include the work in a publication. It is too early to speculate on how the open access model will affect the industries specialised in scientific and scholarly publishing. It is also unclear whether the "open access" model will increase access to knowledge in comparison to the current system of scientific and scholarly publishing. In these circumstances, no firm legislative or regulatory conclusions can be drawn and developments on the marketplace must be awaited.

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<sup>36</sup> 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.

### 3.4.5. *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 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.

In the audiovisual sector, the Commission, in 2011, will launch a consultation on the copyright issues of online distribution of audiovisual works. The consultation will also address video-on-demand services, their introduction in the media chronology and the cross-border dissemination of broadcast services. The audiovisual Green Paper will also address the status of audiovisual authors, the demand for a higher level of participation of creators in online revenue sources and the best way to conserve and make available audiovisual archives.

### 3.4.6. *Artist's Resale right*

The Commission is currently preparing the report on the implementation and effects of the Resale Right Directive, as foreseen by Article 11 of the relevant Directive. In order to inform this report with up-to-date data, the Commission is conducting a public consultation addressing a wide range of questions relating to this implementation.<sup>37</sup> One aspect of the report will be to quantify the impact that the resale right has had on the sale of works whose authors have deceased ("hereditary resale right"). Several Member States are benefiting from an exemption to apply the resale right to the works of deceased artists and which expires on 1 January 2012. In this context, it is interesting to note that trade in works subject to the hereditary resale right, is four times greater than trade in works by living artists. In these circumstances, the Commission's report, scheduled for October 2011, will still necessarily be prospective in nature.<sup>38</sup> It is also important to note that the exemption from the hereditary resale right was at no time intended to become a permanent state of affairs.

## 3.5. **Complementary industrial property rights**

Current EU legislation on the protection of IPR is not sufficient to ensure a comprehensive protection of creativity and know-how in the EU. Therefore, these rules are 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.

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<sup>37</sup> The consultation can be accessed at: [http://ec.europa.eu/internal\\_market/consultations/2011/resale\\_right\\_en.htm](http://ec.europa.eu/internal_market/consultations/2011/resale_right_en.htm).

<sup>38</sup> With regard to international negotiations on the resale right, the Commission has, for some time, been in contact with the USA and Switzerland. However, neither of those is considering introducing a resale right. Furthermore, the EU has consistently requested all partners currently engaged in bilateral Free Trade Area negotiations to introduce a resale right to the benefit of artists. These partners include: Canada, India, Singapore, Malaysia, Colombia and Peru.



### 3.5.1. Trade secrets and parasitic copies

One example is the protection of trade secrets.<sup>39</sup> 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. In the absence of European Union legislation in this area, 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 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. Additionally, this fragmented and inconsistent framework poses obstacles to intra-Union trade by imposing high transactional costs on valuable information due to the lack of a consistent and sound legal protection throughout the Internal Market. It discourages knowledge sharing and undermines the value of know-how as an economic asset which is strategic for competitiveness and innovation.

At the same time, the threats to this asset are growing. In recent years, trade secrets have become increasingly vulnerable to espionage attacks from the outside,<sup>40</sup> 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.<sup>41</sup> In the US, the number of cases of trade secret infringements that were brought before the courts have doubled every seven to ten years since the 1980s.<sup>42</sup> In the EU, there is little data on the exact value of trade secrets because trade secrets are, by definition, secret<sup>43</sup>. However, there is considerable evidence to assume that the overall damage caused to the national economies of the Member States is massive,<sup>44</sup> putting at risk, in particular, the

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<sup>39</sup> 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.

<sup>40</sup> See e.g. Bundesministerium des Innern, *Verfassungsschutzbericht 2009*, available at [http://www.bmi.bund.de/SharedDocs/Downloads/DE/Broschueren/2010/vsb2009.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Broschueren/2010/vsb2009.pdf?__blob=publicationFile).

<sup>41</sup> 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](http://www.rsa.com/go/press/RSATheSecurityDivisionofEMCNewsRelease_4510.html).

<sup>42</sup> D. S. Almeling, D. W. Snyder, M. Sapoznikow, W. E. McCollum, and J. Weader5. 'A Statistical Analysis of Trade Secret Litigation in Federal Courts', April 2010.

<sup>43</sup> Ibid.

<sup>44</sup> Bundesministerium des Innern, see footnote 27.

competitiveness of many SMEs. Therefore, it has to be explored whether addressing this problem requires overcoming the current fragmentation of the legal framework within the EU, while avoiding the creation of any unjustified obstacles to innovation and technical development.

Another area of concern is the protection against so-called 'parasitic copies' or 'look-alikes'.<sup>45</sup> Parasitic copies are designed to resemble existing products of well established brands while maintaining certain differences that prevent them from qualifying as counterfeits. The objective of parasitic copies is to confuse consumers who either do not pay much attention while shopping or who do not know the brand well enough to recognise the differences. This widely spread practice diverts revenues and undermines investment returns.

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 in the EU, and against other practices of 'competing at the edge of the law', such as parasitic copying. This work, which will include a comprehensive external study and a stakeholder consultation, will also assess the economic benefits that would derive from an EU-wide harmonisation of legislation in these areas.

### 3.5.2. *Non-agricultural geographical indications (GIs)*

A third example is the lack of EU-wide protection for geographical indications. Geographical indications 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. A 1999 EU consumer survey revealed that 40% of consumers are ready to pay a 10% premium for origin-guaranteed products.

However, for non-agricultural products, there is currently no system available for the entire territory of the 27 EU Member States and applicable on a uniform basis. On the contrary, most Member States offer different protections of geographical indications for non-agricultural products (for instance, through competition or consumer protection law, or, through collective or certification marks) and only nine of them (Bulgaria, Czech Republic, Estonia, Hungary, Poland, Portugal, Romania, Slovakia, and Slovenia) have developed a system of *sui generis* protection, i.e. a specific legislation considering geographical indications as a specific, separate intellectual property right. The fragmentation or the absence of protection for GIs for non-agricultural products in a number of Member States means that there is no level playing field within the EU. This negatively affects the functioning of the internal market. In addition, the protection granted in some Member States can be circumvented by imports from third countries via Member States where there is no such protection and where, consequently, Customs Regulation N°1383/2003<sup>46</sup> may not be applied at the external borders. Besides, EU-wide protection of GIs for non-agricultural products would facilitate trade negotiations with third countries that themselves have this form of protection, like Brazil, China, India, Russia and Switzerland.

The Commission has launched work including a feasibility study that will consider an EU-wide protection of GIs for non-agricultural and non-food products. The work will notably

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<sup>45</sup> Often referred also referred to as 'slavish imitations'.

<sup>46</sup> Council Regulation (EC) N° 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, 2.8.2003, p.7.

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 on protection for non-agricultural GIs. Based on the results of this work, including a study and comprehensive consultations with stakeholders, an impact assessment analysing different options could be carried out in 2012 and proposals made by the Commission by the end of 2012.

### 3.6. Launch of a new action plan on counterfeiting and piracy

Organised and large-scale infringement of IPR has become a global phenomenon. Counterfeiting and piracy<sup>47</sup> are 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.<sup>48</sup> According to the OECD, this amount is larger than the national GDPs of about 150 economies. The figures published by EU customs authorities reflect that the number of registered cases of counterfeiting, over the last ten years, rose from 4,694 in 1999 to 43,572 in 2009, an increase of 920 percent in ten years.

Infringers of IPR deprive EU creators of appropriate rewards, create barriers to innovation, harm competitiveness, destroy jobs, decrease public finances and 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 EUR8 billion annually.<sup>49</sup> A study by Frontier Economics estimates that 2.5 million jobs were destroyed by counterfeiting and piracy in 2009 in the G20 countries alone.<sup>50</sup>

The EU has begun to address this challenge through civil law measures allowing right holders to enforce their intellectual property rights,<sup>51</sup> through the EU Customs Regulation<sup>52</sup> which allows for the seizure of counterfeit and pirated goods at the EU's external borders and by launching, in 2009, a European Observatory on Counterfeiting and Piracy. The Observatory's aim is to collect and report data on the economic and societal implications of counterfeiting and piracy, to raise awareness among consumers and public opinion, and to create a platform for representatives from national authorities and stakeholders to exchange ideas and expertise on best practices. The growth of counterfeiting and piracy over the last few years has shown that the EU needs to boost the impact of these measures, in order to fight this threat more effectively.

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<sup>47</sup> 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 L 94, p. 37.

<sup>48</sup> 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](http://www.oecd.org/document/23/0,3343,en_2649_34173_44088983_1_1_1_1,00.html).

<sup>49</sup> CEBR (2000), The Impact of Counterfeiting on Four main sectors in the European Union, Centre for Economic and Business Research, London.

<sup>50</sup> Frontier Economics (a report commissioned by BASCAP), 'The impact of counterfeiting on Governments and Consumers', May 2009, available at: <http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Impact%20of%20Counterfeiting%20on%20Governments%20and%20Consumers%20-%20Final%20doc.pdf>.

<sup>51</sup> Directive 2004/48 on the enforcement of intellectual property rights, OJ L157, 30.4.2004, p. 16.

<sup>52</sup> 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.

### 3.6.1. *A new infrastructure and new tasks for the European Observatory on Counterfeiting and Piracy*

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 of the European Observatory on Counterfeiting and Piracy. So far, the Observatory has been tasked with collecting and reporting comprehensive and robust data, organising awareness campaigns and disseminating best practices of the public and the private sectors. In future, the Observatory should in addition ensure the provision of appropriate training measures for enforcement authorities, conduct research on how to prevent counterfeiting, and coordinate international cooperation with international organisations and third countries. To this end, the Observatory will need to be equipped with infrastructure that allows fulfilment of these additional tasks. The tasks of the Observatory should therefore be entrusted to the Office for Harmonisation in the Internal Market (OHIM) at Alicante. The Observatory will also improve day-to-day cooperation between enforcement authorities and cooperation with private stakeholders, *inter alia*, by building a new electronic information exchange and an early warning system on counterfeit and pirated products, in particular imports from third countries.

### 3.6.2. *A review of the IPR Enforcement Directive*

In parallel, the Commission intends to review the IPR Enforcement Directive.<sup>53</sup> The recently published Report on the application of the IPR Enforcement Directive<sup>54</sup> shows that the challenge lies in reconciling IPR enforcement in the digital environment. The Commission will propose amendments to the Enforcement Directive in order to create a framework allowing, in particular, combating infringements of IPRs via the internet more effectively. These amendments should tackle the infringements at their source and, to that end, foster cooperation of intermediaries, such as internet service providers. Furthermore, in order to allow the parties involved to work together successfully, an appropriate balance needs to be struck between the right to information and the right to privacy.

In parallel, the Commission will continue its efforts, initiated following its 2009 Communication<sup>55</sup>, 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 and internet platforms).

### 3.6.3. *Development of enhanced IPR protection through stronger protection of the EU border and increased international cooperation*

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-

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<sup>53</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L157, 30.4.2004, p. 16.

<sup>54</sup> [http://ec.europa.eu/internal\\_market/iprenforcement/directives\\_en.htm](http://ec.europa.eu/internal_market/iprenforcement/directives_en.htm).

<sup>55</sup> Communication on enhancing the enforcement of intellectual property rights in the Internal Market of 11 September 2009, COM(2009) 467.

intensive products, services and know-how to third-countries. At the same time, the growth in IP infringements necessitates the need to focus on a robust global enforcement strategy.<sup>56</sup>

Europe is faced with the challenge of maintaining its global competitiveness in those industries which rely heavily on the development, exploitation and protection of its IPRs. This is especially true in the light of the fast-paced technological and economic development of both established and emerging economies.

For these reasons, schemes based on the internal market have to be complemented by others that focus on the EU's external border and on third countries.

#### *3.6.4. Protection at EU borders*

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<sup>57</sup> 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,<sup>58</sup> 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.

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. Furthermore, higher standards of IPR customs enforcement are also ensured in the framework of trade agreements.

#### *3.6.5. Co-operation with developing and emerging countries*

Developing and emerging countries are particularly vulnerable to counterfeiting and piracy and are 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.

At the same time, Europe needs to calibrate the right balance between enforcement and access. Therefore, in conjunction with its enforcement agenda, Europe must also use IPR

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<sup>56</sup> Lack of a clear IP enforcement strategy proves highly detrimental to IP industries. In 2008, the European Union's creative industries most impacted by piracy (film, TV series, recorded music and software) suffered revenue losses of €10 billion (out of €860 billion contributed to total European GDP). These industries also lost more than 185.000 jobs due to, largely digital, piracy (out of 14 million workers employed in the EU).

<sup>57</sup> Council Resolution of 16 March 2009, OJ C71, 25.3.2009, p.1.

<sup>58</sup> 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, 2.8.2003, p. 7.

policy as a tool to promote development in third countries, in particular when it concerns biodiversity, or food security.<sup>59</sup>

In this context, affordable technology transfers for the development of local suppliers of goods and services that meet basic needs of populations is key for Less 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 technology transfer to LCDs. 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.<sup>60</sup>

### 3.6.6. *Co-ordination with international organisations*

Currently the actions of the EU and of international organisations often lack sufficient coordination thereby hampering their effectiveness.<sup>61</sup>

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 (1) through its work in the context of WIPO and WTO aimed at improving protection and enforcement of IPR at global level; (2) through bilateral trade agreements with third countries; and (3) through cooperation and political dialogues with third country authorities.

The Commission's 'Strategy for the Enforcement of Intellectual Property Rights in Third Countries',<sup>62</sup> which defined a framework for these actions, will be reviewed in 2011. Capacity building in third countries will be fostered through the European Observatory on Counterfeiting and Piracy. In addition, the relationship between IPR and development policies is currently being explored in the framework of the Commission's "Policy Coherence for Development" initiative. The EU should also be in a position to ratify the Anti-Counterfeiting Trade Agreement (ACTA)<sup>63</sup> once it has been signed by the contracting parties in the spring of 2011.

The EU will furthermore continue to negotiate IPR provisions in its free trade agreements with third countries. The aim is to balance the benefits of free trade with an adequate level of IP protection, including protection for valuable EU-made products whose international

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<sup>59</sup> Relationships between IPR and development policies are currently being explored in the framework of the "Policy Coherence for Development" initiative - [http://ec.europa.eu/europeaid/what/development-policies/policy-coherence/index\\_en.htm](http://ec.europa.eu/europeaid/what/development-policies/policy-coherence/index_en.htm). See also e.g., "The Relationship between Intellectual Property Rights (TRIPS) and Food Security", Queen Mary Intellectual Property Research Institute, June 2004.

<sup>60</sup> 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>.

<sup>61</sup> 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](http://trade.ec.europa.eu/doclib/cfm/doclib_section.cfm?sec=180&langId=en).

<sup>62</sup> OJ C129 of 26.5.2005

<sup>63</sup> The ACTA 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.

reputation requires adequate protection. Cooperation through political and technical dialogues also form part of the EU's strategy on the trade related elements of IPRs.

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 revive 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.<sup>64</sup> The Commission is already actively engaged at WIPO<sup>65</sup> to achieve a result that is expected to yield tangible benefits.

Finally, the EU will 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.

#### 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 online market for creative transactions.

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 both EU 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.

This IPR Strategy is but a snapshot of the current challenges and the envisaged measures to address the future. The IPR strategy will evolve in the light of experience and of rapid changes in technology and society.

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<sup>64</sup> At EU level, the Commission brokered a Memorandum of Understanding (September 2010) to address the cross-border exchange of material in special formats and establish a system of "trusted intermediaries" which would be tasked with the electronic delivery of special format materials across national borders within the EU. The form of a MoU was chosen to achieve immediate effects in practical terms. The success of the MoU will be subject to annual monitoring aimed to determine whether the cross-border exchange of specially formatted material actually increases.

<sup>65</sup> In June 2010, the EU proposed to WIPO a Joint Recommendation concerning the improved access to works protected by copyright for persons with a print disability.

**ANNEX: COMMISSION ACTION PLAN ON COUNTERFEITING AND PIRACY**

No	Action	Description	
1	Extend the scope of the European Observatory on Counterfeiting and Piracy and provide it with a sustainable infrastructure	A Regulation will be proposed to entrust the tasks of the European Observatory on Counterfeiting and Piracy to the Office for Harmonisation in the Internal Market (OHIM) and to provide for additional tasks of the Observatory.	
		Communication and Awareness raising	Organisation of public awareness events, including EU-wide competitions, aimed at increasing the public's awareness of the dangers and the negative economic impact of IPR infringements.
			Identification of successful public awareness campaigns and events and spreading of best practices, in close cooperation with consumer organisations and with a particular emphasis on products causing a threat to health and safety of citizens (including pharmaceuticals).
			Creation of an accessible online inventory of public awareness campaigns and studies.
		Training and development	Development and organisation of training events and programmes for judges, prosecutors, police, customs.
			Research on and evaluation of existing training events and programmes in the Member States.
			Creation of a searchable online directory of training events and programmes, in order to allow interested parties to identify training programmes suited for their purposes.
		Research of technical tools for professionals	Research on and evaluation of technical tools for professionals and benchmark techniques, including tracking and tracing techniques as well as supply chain and internal quality controls.
			Identification of user needs.
			Organisation of events to promote benchmark techniques.
		International cooperation	Cooperation with IP offices in third countries to build strategies and develop enforcement techniques and skills.
			Programmes on technical assistance for third countries, by way of secondment of experts (in cooperation with other European and international organisations such as Europol and OECD).
			Development and delivery of specific training programmes and events for third country authorities involved in enforcement activities (in cooperation with other European and international organisations).



No	Action	Description
2	Revise the IPR Enforcement Directive	Create a framework allowing, in particular, combating more effectively infringements of IPRs via the internet at their source.
3	Revise the Regulation concerning customs action against goods suspected of infringing intellectual property rights	Strengthen customs enforcement of Intellectual Property Rights and create conditions for effective action, while streamlining procedures.
4	Promote voluntary measures of stakeholders	Pursue efforts 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 and internet platforms)
5	Develop the EU database COPIS	Ensure efficient management of companies' applications for customs action.
6	Strengthen customs enforcement in third countries	Ensure higher standards of IPR customs enforcement in third countries and cooperation in the framework of trade agreements.
6	Implement the EU-China Action Plan	Pursue customs cooperation in order to reduce the scale of IPR infringements in bilateral trade between the EU and China.

Description	Date	Page
<p>1. From a list of names of persons who have been identified in the past as being active in the Communist Party of the United States, Inc. (CPUSA) and its branches, the following names were identified:</p>	<p>1950-1951</p>	<p>1</p>
<p>2. From a list of names of persons who have been identified in the past as being active in the Communist Party of the United States, Inc. (CPUSA) and its branches, the following names were identified:</p>	<p>1950-1951</p>	<p>2</p>
<p>3. From a list of names of persons who have been identified in the past as being active in the Communist Party of the United States, Inc. (CPUSA) and its branches, the following names were identified:</p>	<p>1950-1951</p>	<p>3</p>
<p>4. From a list of names of persons who have been identified in the past as being active in the Communist Party of the United States, Inc. (CPUSA) and its branches, the following names were identified:</p>	<p>1950-1951</p>	<p>4</p>
<p>5. From a list of names of persons who have been identified in the past as being active in the Communist Party of the United States, Inc. (CPUSA) and its branches, the following names were identified:</p>	<p>1950-1951</p>	<p>5</p>