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# Making the most of the EU's innovative potential

An intellectual property action plan to support the EU's  
recovery and resilience



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SUMMARY			
<b>Document Title</b>	European Commission, 'Making the most of the EU's innovative potential - An intellectual property action plan to support the EU's recovery and resilience' (Communication), Brussels, <a href="#">COM(2020) 760 final</a> , 11 November 2020.		
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### Abstract

In this Communication, the European Commission discusses the goal of making the most out of the EU's innovative potential. Therefore, it sets out an intellectual property (IP) action plan to support the European Union, covering how to capitalise on Europe's intellectual assets to help recovery, how to better protect IP, the promotion of the effective use and deployment of IP, in particular by SMEs, and of easier access to and sharing of IP-protected assets. The Communication also covers the topic of IPR infringements and fair play at global level, regarding the protection of IPRs.

### Keywords

*IPR Policy, SMEs*

### Summary

The EU already has a vigorous intellectual property (IP) framework. However, the Communication states the necessity of developing strengths "by upgrading the EU's framework, where needed, and putting in place well-calibrated IP policies to help companies capitalise on their inventions and creations, whilst at the same time ensuring that inventions and creations are serving economy and society at large".<sup>1</sup>

The Communication identifies five challenges: (a) An IP system that is too fragmented "with procedures that are complex and costly and that sometimes lack clarity"<sup>2</sup>; (b) the high numbers of SMEs (small and medium-sized enterprises) and researches that do not make full use of the opportunities offered by IP protection<sup>3</sup>; (c) the tools meant to facilitate access to IP (and therefore allow the take up and diffusion of technologies) are not developed well enough<sup>4</sup>; (d) counterfeiting and piracy are still growing, including through digital technologies<sup>5</sup>; (e) a lack of fair play at global level.<sup>6</sup>

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<sup>1</sup> Page 1.

<sup>2</sup> Page 2.

<sup>3</sup> Only 9% of EU SMEs have registered IP rights. Page 3.

<sup>4</sup> Page 3.

<sup>5</sup> Ibid.

<sup>6</sup> Page 4.

In order to overcome the problems in the areas mentioned above, the Commission put forth the following suggestions:

### **Better protection of IP**

Ascertain access “to fast, effective and affordable protection tools for innovators, by launching the unitary patent system”.<sup>7</sup> After a recent decision of the German Constitutional Court, Germany's ratification of the Unified Patent Court Agreement is possible. Subsequently, the launch of the unitary system will also be possible.<sup>8</sup>

The Communication also expressed the Commission's intention of modernising the EU legislation on industrial designs, “to make it more accessible and better support the transition to the digital and green economy”.<sup>9</sup>

The Commission is also assessing the possibility of a unified grant of supplementary protection certificates (SPCs) and a new approach to protecting geographical indications (GIs).<sup>10</sup> The possibility of creating an EU GI protection system for non-agricultural products is being considered.

Regarding copyright, the Communication states that the implementation of Article 17 of the Copyright Directive is of high importance, reason why “the Commission will soon issue guidance to support Member States in implementing this provision”.<sup>11</sup>

### **Promoting an effective use and deployment of IP, in particular by SMEs**

In collaboration with the EUIPO, the Commission will offer a scheme for financial support (IP Vouchers for SMEs impacted by the COVID-19 crisis) to subsidize IPR registration and strategic IP advice. This aims to increase incentives for the use of the EU IP system.<sup>12</sup>

The Commission will also offer “tailor-made IP advice in the Horizon Europe programme, assisting innovative businesses at different stages of the R&I process”,<sup>13</sup> and in cooperation with the EUIPO, it will offer a “one-stop shop access to information and advice about IP”.<sup>14</sup> A platform will also be developed by the EUIPO (the European IP Information Centre) to provide “access to all relevant information not only on IP formalities but also on related services (e.g. filing for domain name protection,

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Page 8.

<sup>10</sup> Page 5.

<sup>11</sup> Page 8.

<sup>12</sup> Page 11.

<sup>13</sup> Page 9.

<sup>14</sup> Ibid.

registration of company names), while at the same time offer easy-to-use filing systems for SMEs”.<sup>15</sup>

### **Easier access to and sharing of IP-protected assets**

To facilitate licensing and sharing of IP, especially regarding copyright, the Commission would like to “ensure the availability of critical IP in times of crisis, including via new licensing tools and a system to co-ordinate compulsory licensing (2021-22)”,<sup>16</sup>

The Communication discusses the improvement of “transparency and predictability in SEP licensing via encouraging industry-led initiatives, in the most affected sectors, combined with possible reforms, including regulatory if and where needed, aiming to clarify and improve the SEPs framework and offer effective transparency tools (Q1 2022)”.<sup>17</sup> The Commission also intends to “explore the creation of an independent system of third-party essentiality checks in view of improving legal certainty and reducing litigation costs”.<sup>18</sup>

Another goal is to encourage data access and sharing, while protecting legitimate interests, by elucidating key provisions of the Trade Secrets Directive, such as the scope of the right<sup>19</sup> and an evaluation of the Database Directive.<sup>20</sup>

### **Fighting IPR infringements**

In order to fight IPR infringements, the Commission’s goals are to “clarify and upgrade the responsibilities of digital services, in particular online platforms, through the Digital Services Act (Q4 2020), strengthen the role of OLAF [the European Anti-Fraud Office] in the fight against counterfeiting and piracy (2022), establish an EU Toolbox against counterfeiting setting out principles for joint action, cooperation and data sharing among right holders, intermediaries and law enforcement authorities (Q2 2022)”.<sup>21</sup>

### **Fair play at global level**

The Commission aims to “ensure a level playing field for EU businesses and boost economic growth”,<sup>22</sup> with high standards of protection, through the use of Free Trade Agreements (FTAs).

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<sup>15</sup> Ibid.

<sup>16</sup> “The Commission is looking into ways to incentivise the rapid pooling of critical IP in times of crisis, for instance through a novel licensing system making critical IP available in a controlled manner and on a temporary basis, so that the production of IP-protected products can be quickly ramped up including via repurposing manufacturing”. Page 11.

<sup>17</sup> Page 14.

<sup>18</sup> Page 13.

<sup>19</sup> For example, which type of dataset can be considered a “trade secret”. Page 13.

<sup>20</sup> Page 14.

<sup>21</sup> Page 16.

<sup>22</sup> Page 17.

“The Commission will make full use of IP dialogues with main trading partners and other priority countries, such as the United States, China, Republic of Korea, Thailand, Turkey and Brazil to promote reforms, and will further enhance the reach of its IP Key programmes offering technical co-operation in China, South East Asia and Latin America.”<sup>23</sup>

The Communication also highlights that, in order to safeguard the value of brands, EU accession to the Singapore Treaty on the Law of Trademarks should be considered.<sup>24</sup>

### **Working together with Member States and Stakeholders**

In order to implement this action plan and its many actions, the support and help of all stakeholders, of the European Parliament and the Council, will be necessary. The Commission also urges the Member States to develop their own national IP policies and strategies “in line with the objectives set out in this action plan, and make better protection and enforcement of IP a priority in their own efforts to secure economic recovery”.<sup>25</sup>

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<sup>23</sup> Page 17.

<sup>24</sup> Page 18.

<sup>25</sup> Page 19.