

ROADMAP

Roadmaps aim to inform citizens and stakeholders about the Commission's work in order to allow them to provide feedback and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have.

TITLE OF THE INITIATIVE	Intellectual property action plan
LEAD DG – RESPONSIBLE UNIT	DG GROW – F3
LIKELY TYPE OF INITIATIVE	Commission Communication
INDICATIVE PLANNING	Q3 2020
ADDITIONAL INFORMATION	https://ec.europa.eu/growth/industry/policy/intellectual-property_en

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A. Context, Problem definition and Subsidiarity Check

Context

Innovation and intangible assets are cornerstones of today's economy. The market value of leading companies is increasingly determined by intangible assets such as brands, designs, inventions, artistic or literary works, know-how and data. The proportion of intangible assets in companies' overall value rose from 17% in 1975 to 84% in 2015.¹

Industries intensively using intellectual property (IP) rights play an essential role in the EU's main economic ecosystems.² IP rights (IPRs) such as patents, trade marks, designs, geographical indications and copyright promote the deployment and diffusion of inventions and creations to the benefit of the EU economy. Well-calibrated and balanced IP policies can build up resilience and boost Europe's industrial competitiveness, putting the EU on track towards economic recovery from the crisis following the Covid-19 outbreak. By stimulating technological developments, IP can also play an important role in promoting a greener and digital economy. This, in return, should put the EU's businesses in the lead of global competition.

Studies show that small and medium-sized enterprises using IP rights grow faster and are more resilient to economic crises.³ Industries relying on IPR contribute for more than 80% of employment and value added in the renewable energy and low-carbon energy intensive ecosystems. For digital and electronics ecosystems, nearly all employment comes from IPR-intensive industries.⁴

The EU's capacity to assume and maintain world leadership in industrial areas that are key to a greener and digital economy depends on IP protection, management and sharing. This is all the more important for improving the resilience of EU's businesses and industry when facing current and future economic crises. Smart IP policies are needed to protect state-of-the-art technologies and creativity, and to secure their deployment, their use and their sharing by all relevant players. Green technology businesses and digital companies require fast procedures to protect their inventions; effective ways to co-create new technologies, and quick pathways to bring these new technologies to the market.

The EU has already a robust IP framework. Over recent decades, significant progress has been made in creating a single market for IP to the benefit of the EU economy. For instance, EU-wide titles for trade marks, designs and plant varieties were created. IP civil enforcement procedures as well as trade secrets rules have been harmonised. However, more needs to be done to ensure that IP boosts the resilience of the EU economy and promotes the transition to the digital and the green economy. This should benefit the EU's society as a

¹ S&P 500 intangible Asset Value Study, 2017.

² "Ecosystems" encompass all players operating in a value chain: from the smallest start-ups to the largest companies, from academia to research, service providers to suppliers.

³ [High-growth firms and intellectual property rights, EUIPO-EPO, 2019.](#)

⁴ For the renewable energy ecosystem the employment contribution of IP intensive industries is 87% and the value added contribution is 81%, for low carbon energy intensive ecosystem it is 88% (both indicators), for the digital ecosystem it is 97% and 99% respectively; and for the electronics industry it reaches 100% (both indicators).

<p>whole.</p> <p>The IP action plan will set out the Commission's vision on the role of IP in these challenging times, and propose concrete initiatives to improve the IP framework and the way it is used in practice.⁵</p> <p>The initiative was announced in the Commission Communications "A New Industrial Strategy for Europe"⁶ and "An SME Strategy for a Sustainable and Digital Europe" of 10 March 2020.⁷ The IP action plan will contribute to the Commission's priorities set out in the Green Deal⁸ and the Digital Agenda.⁹</p>
<p>Problem the initiative aims to tackle</p>
<p>Whilst the EU already has a strong IP system, there is a need to address a number of challenges.</p> <p>First, parts of the EU's IP system remain too fragmented with procedures that are too complex and costly. European patents are subject to expensive national validation procedures and parallel litigation in multiple EU countries. For pharmaceuticals in particular, protection through supplementary protection certificates (SPCs) is only available at national level. Design and geographical indication (GI) protection remain too cumbersome and for non-agricultural products sui generis GI protection is currently unavailable. In addition, there is a need to adjust the IP framework so that the digital and green economy can fully benefit from innovation. For instance, more clarity is required as regards the protection of new forms of designs; the implications of 3D printing, and the protection of inventions generated or implemented using artificial intelligence (AI).</p> <p>Second, the uptake of IP in particular by SMEs and research centres is still limited. Only 9% of EU SMEs have registered IP rights compared to 36% of larger companies. In the current crisis, IP registration numbers have further dropped, to the detriment of their competitiveness and resilience. Recent analysis shows that SMEs' reluctance to use IP rights is largely due to lack of knowledge about IP.¹⁰ Even if they do use IP rights, they find the system too costly, complex and difficult to navigate. Sound IP management is also needed to support the deployment of R&D results in Europe. For example, whilst 26% of high-value research publications on AI currently come from Europe, only 4 out of the top 30 applicants (13%) and 7% of businesses, engaged in AI patenting worldwide, are European.¹¹</p> <p>Third, tools to share out IP are insufficiently developed. For instance, the licensing of standard-essential patents (SEPs) remains a risky and costly exercise for patent holders and implementers. Whilst data sharing gains in importance in many sectors, the implications of the IP framework for data sharing remain to be clarified - otherwise we risk that essential new technologies will not be developed in time. The Covid-19 crisis illustrated our dependence on critical technologies particularly in the health sector. It requires us to invest in tools to make such technologies available, where needed, whilst ensuring a fair return on investment.</p> <p>Fourth, in spite of several efforts to turn the tide, there is still an unacceptable high level of counterfeiting and piracy and cybertheft is posing new challenges. Imports of counterfeit and pirated goods into the EU amount to as much as € 121 billion, representing up to 6.8% of EU imports (against 5% of EU imports in 2013).¹² Annually, this results in direct lost sales of € 56 billion and direct employment losses of 468 000 jobs.¹³ These also constitute serious health, safety and security threats to consumers¹⁴ and negatively affect public revenues and the environment. Cyber theft of trade secrets accounts for an estimated € 60 billion of losses in the EU.¹⁵</p> <p>Furthermore, there is lack of global fair play. Our businesses often lose out when dealing abroad, because non-EU countries either do not sufficiently protect IP or apply divergent standards. The EU must harness its potential to act as a global norm-setter. By promoting the open strategic autonomy model, it must step up efforts to fight abusive practices, such as bad-faith registrations of domain names (cybersquatting) and other misappropriations of IP.</p>
<p>Basis for EU intervention (legal basis and subsidiarity check)</p>
<p>The action plan will promote a coherent EU-wide approach to IP policies and will be the basis for further</p>

⁵ See for instance the calls from the Council to improve the system for supplementary protection certificates ((<https://www.consilium.europa.eu/en/press/press-releases/2016/06/17/epsco-conclusions-balance-pharmaceutical-system>) and to enhance IP enforcement (<http://data.consilium.europa.eu/doc/document/ST-6681-2018-INIT/en/pdf>).

⁶ https://ec.europa.eu/info/sites/info/files/communication-eu-industrial-strategy-march-2020_en.pdf

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A103%3AFIN>

⁸ https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

⁹ <https://ec.europa.eu/digital-single-market/en>. See for instance also the Data Strategy: https://ec.europa.eu/info/sites/info/files/communication-european-strategy-data-19feb2020_en.pdf

¹⁰ SMEs that did not own IP rights reported lack of knowledge about IP as the main reason for not seeking registration (38% of respondents). Intellectual property SME scoreboard, EUIPO 2019.

¹¹ Science, Research and Innovation Performance of the EU (SRIP) report, 2020

¹² [Trends in Trade in Counterfeit and Pirated Goods](#), OECD and EUIPO, 2019.

¹³ [Status Report on IPR infringement, EUIPO, 2019.](#)

¹⁴ [Qualitative Study on Risks Posed by Counterfeits to Consumers](#), EUIPO 2019.

¹⁵ [The scale and impact of industrial espionage and theft of trade secrets through cyber](#), 2018.

initiatives to be taken at EU level, both legislative and non-legislative. The action plan will focus on the need to align EU initiatives with measures taken at national level.

IPR are exclusive rights in the territory in which they are valid. Within the single market, divergence between the different national IP titles creates fragmentation and unequal conditions of trade within the EU. Many initiatives in the context of this action plan relate to single market barriers covered by Article 114 of the Treaty on the Functioning of the EU (TFEU) and they will be based on a critical assessment of existing legislation. In this regard, action at EU level (e.g. the modernisation of the EU's designs acquis) is justified to ensure the smooth functioning of the single market, and to enable Union-wide use of an efficient IP framework. The objectives cannot be effectively achieved by any Member State acting alone.

Article 118 TFEU concerns unitary intellectual property rights and is the legal basis for more specific actions regarding e.g. Community design rights, the unitary patent and the possible unitary SPC.

The legal basis for industrial policy, Article 173 TFEU, also entitles the Commission to take a wider set of measures to improve the uptake and deployment of IPRs, as part of our efforts to boost the competitiveness and resilience of our industries.

B. What does the initiative aim to achieve and how

The action plan should present the Commission's approach on the role of IP in the drive for industrial leadership against the backdrop of challenging times for the EU's economy and society. It intends to identify current shortcomings and propose practical measures to improve the quality and consistency of the IP framework.

The overall objective of the action plan will be to ensure that the EU has in place well-calibrated and modern IP policies that contribute to the resilience and competitiveness of the EU's economy and facilitate the digital and green transition, benefitting the EU society as a whole.

To achieve the overall objective, in particular, the Commission explores ways to:

- **upgrade the system for IP protection**, e.g. i) enable the Unitary Patent system to offer a “one-stop-shop” for patent protection and enforcement; ii) consider ways to make the SPC system less fragmented; iii) assess ways to modernise the EU legislation on industrial designs; iv) establish a European approach to AI and IP protection; v) explore ways to strengthen the protection system for GIs for agricultural products; vi) consider the introduction of an EU protection system for non-agricultural GI; vi) ensure the Copyright Directive is implemented promptly;
- **promote a better uptake and deployment of IP**, e.g. i) mitigate the impact of the Covid-19 crisis by setting up financial support systems; ii) help all SMEs, researchers, innovators etc. have access to information and advice on IP, including by building IP advice into financing programmes; iii) promote the use of platforms and other tools to enable co-operation and technology transfers across sectors; iv) enable IP to be used as a lever to get access to finance;
- **promote better licensing and sharing of IP-protected assets**, e.g. i) promote an efficient use of high quality rights-management metadata in the copyright market; ii) explore ways to promote more transparency and predictability on licensing of SEPs; iii) explore ways to promote the sharing of privately held data whilst retaining return on investment; iv) develop a wider toolbox to ensure the availability of critical IP in times of crisis;
- **fight IP theft**, e.g. i) continue to monitor the application of the IPR Enforcement Directive to ensure it is effective and balanced, particularly on injunctions; ii) step up the fight against counterfeiting by strengthening the responsibilities of online platforms through the Digital Services Act and iii) by further clarifying how right holders, intermediaries and law enforcement authorities at national and EU level should act, co-operate and share data; iv) offer targeted guidance to businesses to help prevent cyber-theft of trade secrets;
- **promote a global fair play**, e.g. i) harness the EU's capacity to act as a global standard-setter in key areas such as IP and AI, or access to health; ii) take further steps to ensure that our businesses can effectively use their IP when operating world-wide; iii) step up technical co-operation and engage in dialogues with the developing world; iv) stimulate a better level playing field for international R&D co-operation.

C. Better regulation

Consultation of citizens and stakeholders

The action plan builds on input provided by a broad range of stakeholders (representing e.g. the EU Member States, businesses and civil society organisations), including contributions received from interested parties on

the new Commission's priorities.

In the context of preparing for the action plan, both general (e.g. discussion on the future of EU's IP policy during the meetings of the Commission Expert Group on Industrial Property Policy¹⁶ and of the Council Working Party on IP; public consultation on the evaluation of EU legislation on design protection¹⁷) and targeted consultations (e.g. conference on making IP work for SMEs¹⁸; workshop on the results of an economic study on GIs for non-agricultural products¹⁹; workshop on cybertheft of trade secrets²⁰) have already taken place. Stakeholders have confirmed the relevance and importance of the IP action plan and they have already made practical contributions to shape it.

Possible future proposals announced in the action plan will be preceded by dedicated open public consultations, in full respect of better regulation rules.

Evidence base and data collection

This IP action plan is intended to be a document of a strategic and programmatic nature. Therefore, it does not require an impact assessment.

Specific quantitative and qualitative evidence for justifying individual actions will be presented in the action plan.

Whenever significant impacts are expected, impact assessments will be prepared in line with the better regulation requirements for the adoption of the initiatives to be announced in the action plan.

¹⁶ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3434&NewSearch=1&NewSearch=1>

¹⁷ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1846-Evaluation-of-EU-legislation-on-design-protection/public-consultation>

¹⁸ https://ec.europa.eu/growth/content/conference-making-ipr-work-smes_en

¹⁹ https://ec.europa.eu/growth/content/study-economic-aspects-geographical-indication-protection-eu-level-non-agricultural-products_en

²⁰ https://ec.europa.eu/growth/industry/policy/intellectual-property/trade-secrets_en