

The Importance of IP for Europe: 'Turning the Tide' Towards More Effective Intellectual Property Policies

Intellectual property (IP) is vital for European innovation, creativity and competitiveness. The European Commission and the EU have long recognised the importance of intellectual property for the economy and society. IP provides the market-based incentives and rewards for a virtuous circle of innovation and creativity that underpins a constantly improving stream of innovations and creative products. This has widespread benefits for consumers and society at large. These inventions, brands and works help us stay healthy, improve our work, increase our efficiency and effectiveness, express our culture, let us interact with other people, and otherwise improve our quality of life.

IP also helps to give all of us in society a wider choice among the products and services that we might want or need, in virtually every area. It improves the overall state of knowledge in society, through disclosure of new inventions and wider dissemination of information and creative expression. It promotes collaboration and competition, by encouraging licensing and the development of different innovative features among products and services. IP-based industries and companies also represent a substantial part of the jobs, tax revenues, GDP growth and competitiveness of the EU. As the Commission has recognised:

*"Intellectual property protection and enforcement of intellectual property are crucial for the EU's ability to compete in the global economy. Because European competitiveness is built on the innovation and value added to products by high levels of creativity, protection and enforcement of intellectual property go to the heart of the EU's ability to compete in the global economy."*¹

IP is often undermined unnecessarily. A lack of understanding or appreciation of the importance of IP—as the 'intellectual currency' for valuing and trading inventions, brands and works created by clever and talented people—sometimes leaves IP vulnerable to being undermined through short-term expediency. Numerous challenges, including special interest situations, competition disputes, and even business or personal preferences to take someone else's material rather than pay for it, can inadvertently or quite intentionally become vehicles for weakening the overall IP system.

The resources and policy approach of the new Commission toward IP should be strengthened in the following ways. It is vital that the new European Commission's approach to intellectual property issues reflects the increasing importance of creativity and innovation for Europe's competitiveness and growth. By allocating increased resources and taking an integrated approach to IP policy in the following ways, the new Commission can help to drive creation of a legitimate Single Digital Market and help turn the tide against illegitimate activities.

Increased resources dedicated to IP

1. **Allocating much needed additional resources (staffing and budget) to IP for Europe.**
2. **Exercising consistent, co-ordinated policy support for IP.**

Integrated policy support for IP

3. **Championing and defending the European and international IP regulatory scheme.**
4. **Establishing a regulatory preference for market-based licensing.**
5. **Reviewing Member State implementation of IP directives and regulations more effectively.**
6. **Improving the use of EU trade mechanisms to protect IP in third countries.**
7. **Concluding the Anti-Counterfeiting Trade Agreement (ACTA) successfully.**
8. **Getting the 'IP value' message out to the public more effectively.**
9. **Addressing priority regulatory needs.**

¹ DG Trade, *Intellectual Property*, http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/index_en.htm.

INCREASED RESOURCES DEDICATED TO IP

1. *Allocating much needed additional resources (staffing and budget) to IP for Europe.*

Commission resources dedicated to IP need to grow to reflect the increasing importance of innovation and creativity for Europe's competitiveness and growth. It is important that the Commission further recognise and support the vital role of IP in terms of jobs and the economy by ensuring that the Commission's staffing and resources dedicated to IP policy, enforcement, support and awareness are adequate to do the important work at hand. The greatest needs here seem to be to increase the human resources, budget and scope of activities of the IP Observatory so as to make it evolve into an effective task force, and appointing additional dedicated resources in other key directorates. **Recommendations:**

- 1.1. **Additional staffing, funding and scope of activities for the IP Observatory.** In the Commission's words, "The launch of the European Observatory on Counterfeiting and Piracy answers the urgent need for a better targeted and more focused enforcement of intellectual property rights. It will be a platform that is to collect data, raise awareness, facilitate dialogue, exchange views and share best practices in enforcing intellectual property rights between business and national authorities."²

At present, however, DG MARKT must staff the Observatory only on a part-time basis with existing staff that must juggle other important commitments within the IP Enforcement unit (D.3), and with limited funds to conduct needed studies and other work. Both staffing and funding for the work within the Observatory need to be increased in order for it to do its current important work of documenting the nature and scale of the problem, exploring legal and enforcement issues and best practices, and helping to raise public awareness on the issue.

We believe that an even more pro-active role for the Observatory would be helpful, however. The stated activities of the Observatory provide the necessary basis for other more strategic activities: the elaboration of concrete recommendations to the Group of Commissioners, advice on devising a comprehensive IP training programmes for enforcement authorities (in conjunction with other relevant directorates and private-sector programmes), integrated input to relevant directorates on third-country IP issues and internet infringement problems, and tracking and compilation of relevant cases. In short, the Observatory would be a useful strategic task force on the full range of IP and enforcement issues.

- 1.2. **Additional, dedicated IP resources in the Home Affairs, Tax and Enterprise directorates.** The Commission's Internal Market and Trade directorates each have capable staff dedicated to working on IP-related issues; this staffing needs to be maintained at least at present levels. By contrast, the Justice (soon to be Home Affairs) directorate's staffing for IP crime-related issues at present essentially amounts to one person. The Tax and Customs directorate seems to have no-one dedicated exclusively to Customs-related IPR counterfeiting issues, despite the fact that counterfeiting represents an important part of EU Customs authorities' work—with more than 43,000 seizures made and nearly 80 million counterfeit articles seized annually.³ The Enterprise directorate's valuable work in providing practical IP advice, training tools and helpdesks, particular for SMEs, could be strengthened along the lines of some of the Member States' programmes. We would recommend establishment of a specific unit in each of these directorates, and additional dedicated IP-related staffing and funding, to deal with these particular IP- and enforcement-related areas.

² By way of background, the Commission, when launching the Observatory recognised that Counterfeiting and piracy – the infringement of intellectual property rights such as copyright, trademarks, designs and patents – is becoming an alarming problem for the economy and society. Counterfeiting and piracy have devastating effects on the economy, including on employment and citizens' health and safety. A 2009 study by the Organisation for Economic Cooperation and Development (OECD) estimated that cross-border trade in fake goods alone—not including domestic or on-line piracy or indirect economic effects—represented a US\$ 250 billion problem. http://www.oecd.org/document/23/0,3343,en_2649_34173_44088983_1_1_1_1,00.html.

³ DG Taxud, Counterfeiting and Piracy: A Serious Problem for Everyone (Jan. 2010), http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/combating/index_en.htm.

2. **Exercising consistent, co-ordinated policy support for IP.**

It is vital that the Commission maintain a consistent, co-ordinated approach to policies and initiatives affecting IP. The Commission's current fragmented approach to IP is unhelpful. In recent months 'stakeholder dialogues' involving IP issues have been undertaken by not less than five directorates (Internal Market, Information Society, Competition, Consumer Affairs, Trade). While the directorate in charge of IP (Internal Market) is negotiating a robust pan-European patent with the Member States, the directorate in charge of competition is entertaining ways to restrict market-based patent practices in several areas. Multiple consultations on copyright issues related to on-line content have been undertaken by two directorates (Internal Market, Information Society). Even user-based industry groups have complained that a more co-ordinated approach is needed.

Given the importance of IP for the EU's innovation and competitiveness agendas, the new Commission would benefit greatly from a mechanism for co-ordinating support for IP policy. Moreover, given the EU's newly increased competence in the area of criminal matters, it is time to develop improved mechanisms for co-ordination between the Member States and the Commission on practical issues regarding cross-border enforcement against criminal intellectual property violations. **Recommendations:**

- 2.1. **'Group of Commissioners' to co-ordinate policies and decisions related to IP.** We believe that the President should establish a 'Group of Commissioners' to devise an overall IP strategy for Europe. Like the Group of External Relations Commissioners and similar groups established before, we believe a 'Group of Commissioners for Intellectual Property Policy' should be established, with input from and participation of Member States and stakeholders, and with the Internal Market Commissioner, who is most directly involved in establishing IP policies, serving as the President's deputy.

We also believe that the Trade, Tax and Customs, Home Affairs, Enterprise, and Information Society Commissioners should also be among the key members of this Group of Commissioners, given that they are in charge of directorates that directly promote and in some cases also develop IP-related policies (i.e. on Customs and criminal enforcement). Such a Group of Commissioners should co-ordinate initiatives and decisions that touch on intellectual property on an ongoing basis, and in particular before these become public initiatives or proposed formal decisions. The overarching objective of this group should be to support the intellectual property protection system and its innovation and competitiveness benefits for the EU.

- 2.2. **Establishment of an IPR Enforcement Committee.** Particularly in light of the Lisbon Treaty, the traditional contact groups and other loose mechanisms related to cross-border intellectual property enforcement need to be formalised and strengthened. An IPR Enforcement Committee should be established that includes Commission representatives, Member States' representatives from all relevant national agencies and representatives of the Observatory. Rapid exchange of information and mutual assistance in the field of enforcement should be the focus of the Committee. The Committee should also make recommendations on how to best improve co-operation, exchange of information, and mutual assistance in enforcing IP rights across Europe.

INTEGRATED POLICY SUPPORT FOR IP

3. **Championing and defending European and international substantive IP rules.**

Substantive European and international IP laws are generally fit for purpose and should be defended and enforced. The substantive copyright, patent, trademark and other IP rights and exceptions contained in EU and Member State legislation, and reflected in substantive international IP treaties, generally work very well in promoting innovation and creativity and in balancing other interests. These rules (particularly for copyright) have been updated over the past ten years to deal with new digital technology issues, sometimes requiring hard-fought reconciliation of multiple competing

interests. Re-opening or re-balancing IP substantive legislation is largely unnecessary at this time; indeed, such proposals can unnecessarily unsettle market expectations and be used to undermine the specific and general value of IP.

- 3.1. **Presumption of supporting existing substantive IP legislation, and robust economic analysis of any proposals to weaken such protection.** EU IP policy decisions should proceed on the general presumption that the existing substantive IP rights and exceptions are adequate, fit for purpose and well-balanced. The Commission should adopt a presumptive policy to champion and defend the IP rights and exceptions contained in Community and international law. Likewise, it should apply a presumption against creating new limitations or exceptions to IP rights, and only to propose or enact such new proposals after robust and empirical analysis of their economic effects, documenting the extent to which these might conflict with the normal exploitation of the IP right or otherwise unreasonably prejudice the rights owners' legitimate interests in violation of international law.⁴

4. **Establishing a regulatory preference for market-based licensing.**

Compulsory licensing is virtually never necessary. The essential mechanism of the 'intellectual currency' system of IP is to give the inventor, author and other rights owners the right to decide whether and how to use the material they develop. The market then determines the value of that right, through consumer demand for products and services based on the IP right, the sales that ensue, and the market valuation that the IP-owner company enjoys as a result. Market success drives further innovation. This essential mechanism is undermined whenever non-market licences are imposed on the rights owner for any reason—the pricing and market conditions are then by definition artificial and typically low, in comparison to what the market would have produced.

Despite what seems like a frequent call for more compulsory licences—recently, in the name of addressing climate change, promoting internet business, or even helping one competitor at the expense of another—compulsory licences are rarely permitted by international law, and are even more rarely necessary, given that market-based solutions usually can be found and that non-market solutions actually reduce investment in new technologies and creative works. **Recommendations:**

- 4.1. **Presumption against compulsory licensing.** EU IP policy decisions should proceed on the strong presumption that market-based licensing is preferable to compulsory licensing, capped or zero royalty requirements, or other similar expropriations or non-voluntary restrictions on the exercise or ownership of IP rights. Compulsory licences should be considered a highly disfavoured policy tool. Moreover, it should never be considered appropriate to deprive the rights owner of FRAND royalties and licence terms, or otherwise to implement a wholesale expropriation of an IP right.
- 4.2. **Respect for IP in Climate Change Convention.** The EU position in the Climate Change Convention negotiations stressing “the necessity of protecting and enforcing intellectual property rights for promoting technological innovation and incentivising investments from the private sector” is to be applauded. The EU should maintain its goal of achieving such a Convention free from new limitations, exceptions or compulsory licences in any field of technology.⁵

5. **Reviewing Member State implementation of IP directives and regulations more effectively.**

IP-based markets work more effectively where harmonisation is carried out faithfully and consistently. It is important that, in areas where EU legislation has effected full or minimum harmonisation of IP rules, this is implemented promptly and faithfully in the Member States. It appears, though, that implementation has become more lax in recent years. Member States often implement EU rules late, do not always do so faithfully, and at times do not adequately report their implemen-

⁴ See Articles 13 and 30, WTO TRIPs Agreement.

⁵ Council of the European Union, Council Conclusions on EU position for the Copenhagen Climate Conference (21 Oct. 2009), http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/envir/110634.pdf.

tations. There are not always rigorous consultations of stakeholders as to inadequate implementations, and infringement proceedings are few, far in between and overly slow.

With respect to the civil IPR Enforcement Directive⁶, for example, several Member States were late in meeting the April 2006 implementation deadline. Some implementations appear not to comply with the Directive, and the Commission still has not received adequate information from several Member States about the details of their implementations. The result is a lack of robust evaluation of Member State implementation, leading to inconsistent legislation, piecemeal enforcement and a less effective Single Market for IP-based goods and services.

The same problems prevail with respect to implementation of other more general directives that have an impact on IP enforcement. These include the 2000 E-commerce Directive,⁷ whose chapter on intermediaries' exemptions from IP and other liability does not appear to have been faithfully implemented across Europe—as the Commission's own 2003 report recognises.⁸ To our knowledge, no infringement proceedings have ever been brought.

Moreover, there are unhelpful inconsistencies in the implementation of various directives and regulations affecting IP that require prompt attention. For example, whilst the substance of the civil IPR Enforcement Directive is to require that certain pre- and post-trial powers and remedies are available to judicial authorities of all Member States, little is said as to how those powers and remedies should be applied by the courts in practice and the factors that should be taken into account in deciding whether and how these should be applied. As a result, even where the Directive has been implemented, there are significant disparities between the Member States as to how the required judicial powers are exercised and applied. This means that the expressed objective of the Directive to “ensure a high, equivalent and homogeneous level of protection in the internal market” has not been achieved.

In a similar vein, the recent *Nokia* case⁹ in the UK has again put into question whether the EU Customs regulation¹⁰ actually allows Member States' Customs authorities to stop counterfeit goods in transit. Likewise, the Framework Data Protection Directive's provisions on the processing of data for the purpose of civil enforcement of other fundamental rights, including IP rights and the right to an effective remedy,¹¹ require a review and fix as to their coherent implementation at national level.

Recommendation:

- 5.1. Rigorous review of conformance and consistency of national implementations of EU IP and other relevant directives and regulations.** A new mechanism needs to be developed whereby failure to implement EU IP-related legislation is addressed immediately; where Member States that have implemented such legislation are required (under penalty of sanctions for inadequate response) to provide timely, detailed reports on relevant legislative provisions and their compliance with the directive; where stakeholders are formally consulted to supply information of any inadequate or diverging implementations; and where decisions to bring infringe-

⁶ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, O.J. L 195/16 (2 Jun. 2004) (corrected version), http://eur-lex.europa.eu/pri/en/oj/dat/2004/l_195/l_19520040602en00160025.pdf.

⁷ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, pp. 1–16 (17 Jul. 2000), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:EN:NOT>.

⁸ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee, First report on the application of the Directive on electronic commerce, COM(2003) 702 final, p. 7 (21 Nov. 2003) (“one or two adopted laws contain[ing] problems related, in particular, to the transposition of the provisions concerning the liability of internet intermediaries”), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0702:FIN:EN:PDF>.

⁹ *Nokia v. HM Commissioners of Revenue and Customs*, [2009] EWHC 1903 (Ch) (UK High Ct. 27 Jul. 2009), <http://www.bailii.org/ew/cases/EWHC/Ch/2009/1903.html>, question referred to the ECJ, Appeal No. A3/2009/1726 (UK Ct. App. 26 Nov. 2009).

¹⁰ 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, O.J. L 196/7 (2 Aug. 2003), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:196:0007:0007:EN:PDF>.

¹¹ See *Productores de Música de España (Promusicae) v. Telefónica de España SAU*, Case C-275/06 (Eur. Ct. Justice, 29 Jan. 2008), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0275:EN:HTML>,

ment cases or take other action to fix inadequate or inconsistent implementations are taken promptly, objectively and as a matter of course.

6. Improving the use of EU trade mechanisms to protect IP in third countries.

Trade relations are a vital mechanism for protecting European IP abroad. In recent years, the Commission has stepped up the use of its trade directorate to survey the problem of counterfeiting and other misuse of European IP in third countries, to highlight 'priority' third countries, to engage in dialogue and co-operative programmes to address such problems, and to intervene bilaterally or through WTO dispute resolution where specific acute problems have arisen.¹² Moreover, the Commission has extended its dialogue with the US both on particular problems in the US, and on common goals with respect to IP in key third-country markets. These are all very good uses of EU resources in protecting the vital IP of European interests abroad, and in creating a more level playing field for EU IP-based products and services internationally. **Recommendation:**

- 6.1. **Annual 'IPR Enforcement Reports' by DG Trade.** The Commission's 2009 IPR Enforcement report¹³ and its 2006 predecessor have been very useful tools, both for setting the EU's external trade priorities to deal with IP problems abroad, and also as intelligence for European IP owners (especially SMEs) on the problems that others face in particular countries. Conducting these reports more regularly—biannually or, ideally, annually—would be of great value. It would also be helpful in these and other IP-related policies that the Commission develops to include concrete objectives that it would expect to see met, in order to measure the practical progress and effectiveness of these IPR Enforcement Reports and other initiatives.
- 6.2. **Scrutiny of innovation, procurement and market access policies.** Another priority in trade-related IP policy should be close scrutiny of procurement and tariff regimes and market access policies in third countries that protect local industry and IP assets to the detriment of European innovators and creators—at times even in the guise of economic stimulus or innovation policy. In all such cases, the principle of national treatment is paramount. No foreign trade policy should single out European IP owners or assets for less favourable treatment than local counterparts.

7. Concluding the Anti-Counterfeiting Trade Agreement (ACTA) successfully.

ACTA is a needed next step in addressing the global counterfeiting and piracy problem. As of the end of 2009, counterfeiting and piracy remained a \$250 billion problem in cross-border trade of physical goods,¹⁴ and an estimated \$750 billion overall problem world-wide¹⁵. Counterfeiting and piracy produce results directly opposite to those of the IP system: they undermine inventiveness and creativity, deprive governments of tax revenues, and hurt legitimate companies and jobs. They also injure consumers, support criminal activity and support the 'black economy'.

The 1996 WTO TRIPs (Trade-Related Aspects of Intellectual Property Rights) Agreement was an excellent first step in establishing minimum international standards to address these problems. However, the 11 developing and developed countries negotiating ACTA with the EU and its 27 Member States are on the right track in seeking improved international co-operation, enforcement practices and legal frameworks in the IP enforcement area, among countries willing to work towards such goals. **Recommendation:**

¹² DG Trade, Intellectual Property, note 1.

¹³ DG Trade, Report on intellectual property right (IPR) infringements targets countries for closer cooperation (21 Oct. 2009), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=470>.

¹⁴ OECD, Magnitude of Counterfeiting and Piracy of Tangible Products: An Update (Nov. 2009), <http://www.oecd.org/dataoecd/57/27/44088872.pdf>.

¹⁵ International Chamber of Commerce, BASCAP, Research Report on Consumer Attitudes and Perceptions on Counterfeiting and Piracy (Dec. 2009), <http://www.iccwbo.org/bascap/index.html?id=34047>.

- 7.1. **Successful conclusion of ACTA treaty in 2010.** We agree entirely with the EU's and its Member States' view of the importance of ACTA: "This initiative fits both in the Lisbon Agenda (under which the Commission identified intellectual property as one of EU's key competitive assets) and in the Global Europe strategy (of which better enforcement of IP rights is one of the key objectives).... The EU's objective with ACTA partners is to have a new plurilateral treaty improving global standards for the enforcement of IPR, to more effectively combat trade in counterfeit and pirated goods."¹⁶

8. **Getting the 'IP value' message out to the public more effectively.**

Public and private sector efforts can help to improve the 'brand of IP'. Public perception of various aspects of intellectual property has suffered in recent years, as the result of a variety of social trends and specific flare-ups.¹⁷ With respect to counterfeiting and piracy in particular, a new ICC survey in five countries found that 80% of consumers admit to purchasing fake products—14% regularly—with little remorse or concern about possible consequences, including potential health and safety risks.¹⁸ The underlying messages of the societal and economic value of IP and the harm done by counterfeiting and piracy are not coming through loudly and clearly.

Some good research on awareness campaigns and consumer perceptions, careful evaluation of effective and ineffective messaging, and talented public relations and marketing expertise have started to be applied to this challenge, at ICC/BASCAP, the Authenticity Foundation, the IP Brand Development Group, the UN Interregional Crime and Justice Research Institute (UNICRI), the World Intellectual Property Organisation (WIPO), and other national and regional anti-counterfeiting groups. The Commission's Observatory itself has set up a public awareness working group, and has made this one of its primary work streams. **Recommendation:**

- 8.1. **Encourage co-ordination and focus of the disparate efforts related to IP awareness, with the goal of producing sustained, effective public and private awareness campaigns.** Affecting public awareness of the value of IP and the importance of avoiding counterfeits is a major undertaking. It requires a good understanding of existing perceptions, well-researched and tested messages, professional PR campaigns developed with marketing and PR expertise and flair, and substantial funding. The Commission should use its influence to encourage the various private-sector interests and public bodies already pursuing one or more of these tracks to combine efforts and develop some truly effective awareness campaigns that have real, measurable effects on public perception of IP.

9. **Addressing priority regulatory needs.**

It is important that regulatory resources are focussed on procedural and enforcement improvements to IP. There seems to be a constant stream of consultations and enquiries on various elements of IP legislation, but it is important to focus Commission and EU efforts not on 'reinventing the wheel' or reopening old fights in existing substantive IP legislation, but in improving how the IP system actually works in practice. For example, DG MARKET's 'stakeholder dialogues' are a welcome mechanism for compelling the affected stakeholders to try and find workable, co-operative solutions to address various types of internet infringement.

The Commission should also give legislative attention in the new term to a few particular areas of legislation that could make securing and enforcing IP rights more efficient and effective—without putting the underlying substantive IP law into question. **Recommended priorities:**

¹⁶ DG Trade, Intellectual Property: Anti-counterfeiting, <http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/>

¹⁷ R. Ghafele, Perceptions of Intellectual Property: A Review (London: Intellectual Property Institute, Aug. 2008), <http://www.ip-institute.org.uk/pdfs/Perceptions%20of%20IP.pdf>.

¹⁸ ICC/BASCAP, www.iccwbo.org/.../BASCAP/Pages/Consumer%20Awareness%20Release.pdf.

- 9.1. **Updating the Customs Regulation.** The Tax and Customs directorate's pending review of Regulation 1383/2003¹⁹ is a high priority for a broad cross-section of IP owners. Needed updates include improved availability and usability of information from law enforcement, simplified procedures for summary disposal, more flexibility in the time periods and permitted coverage of various procedures, deletion of the 'personal allowance' exemption, and better allocation of the costs of storage, destruction and other procedures to remove disincentives to enforcement and thus incentives to piracy. The difficulty of seizing goods in transit within the EU also needs urgent attention, whether in this Regulation or separately; 'transit' should not be read out of the Customs regulation.
- 9.2. **Concluding a high-quality, accessible, robust EU Patent system.** The Member States' and Commission's progress in trying to develop a single-title patent valid throughout the EU, and to address the costs and consistency of European Patent applications and litigation, has been impressive to date. However, several fundamental requirements must be met if this project is to succeed where previous projects have derailed. These non-negotiables include maintaining the highest quality standards for the issuance and adjudication of patents, reducing translations, implementing a high-quality litigation structure that is more efficient than today's system (and that does not suffer from delays and costs resulting from a cumbersome linguistic regime) so that IP owners will want to use it, and avoiding any efforts to change the underlying patent rules that have been developed under the European Patent Convention.
- 9.3. **Reviewing civil and criminal IPR mechanisms.** The civil IPR Enforcement Directive is presently under review within the Internal Market directorate, and discussion of resurrecting the Criminal Sanctions Directive has begun in the Justice (soon to be Home Affairs) directorate. In both of these areas, the overarching, driving objective must be to make practical improvements and develop better cross-border co-operation and consistency in IP enforcement. Whether or not new EU-wide legislation is necessary, the areas of damages, provisional measures, and right of information (including data protection issues) in civil IP enforcement need attention. Consideration should also be given as to whether and how appropriate guidance might be given to Member States as to what factors should be taken into account and how pre- and post-trial powers and remedies should be applied in practice by civil courts. For criminal enforcement, the development of practical, multi-territorial enforcement mechanisms is a high priority. At the same time, it is important to avoid the contentious issue of criminal enforcement of patents—which is unnecessary to address and diverts attention away from needed improvements in the criminal IP enforcement area. We would not support the inclusion of criminal sanctions for patents in any IP enforcement directive.
- 9.4. **Stakeholder co-operation.** The fight against digital piracy and on-line sales of counterfeits, as well as the establishment of legitimate commerce on the internet, involve multiple stakeholders and complex economic and technical aspects. The debate over finding adequate solutions to such issues is well suited to being advanced through good-faith negotiation among the stakeholders concerned. DG MARKET's stakeholder dialogues on these issues, with widespread rights owner, service provider, consumer, government and other participation, are a very welcome initiative that should be pushed to reach effective solutions in these areas within a time frame that reflects their urgency.

¹⁹ 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, O.J. L 196, pp. 7–14 (2 Aug. 2003), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R1383:en:NOT>.