

European Commission's Action Plan on Intellectual Property

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On 25 November 2020, the European Commission (“**Commission**”) published its Action Plan on Intellectual Property¹(“**Action Plan**”) which proposes to implement specific intellectual property (“**IP**”) policies with the particular objective of modernising the European Union (“**EU**”) framework in this field and helping small and medium enterprises (“**SMEs**”) benefit from their inventions and creations, especially in times of health and economic crisis.

This Action Plan is an ambitious policy document with multiple proposals for actions. Our developments below focus on selected topics we would like to draw your attention to.

“Democratising” IP

The Commission points out that the COVID-19 crisis highlighted the populations’ and governments’ reliance on innovations, specifically in the health sector, and the importance of easy and fast access to such innovations in situations of emergency.

The Commission is therefore currently looking into ways to incentivise the rapid pooling of critical IP such as COVID-19 related therapeutics and vaccines (via a licensing system making critical IP available in a controlled manner and on a temporary basis) and to ensure that effective systems for issuing compulsory licences are in place. The Commission nonetheless insists on the fact that compulsory licences shall be used only when the other options to make IP available have failed.

Enhanced support to SMEs

One of the main goals of the Commission is to support and encourage SMEs to manage their IP assets more efficiently and improve their competitiveness by giving them an easier access to

personalised and strategic IP advice (via public funding programmes).

The Commission also announces concrete financial support for SMEs jointly with the European Intellectual Property Office² the implementation of which started in January 2021 in the form of partial reimbursements (up to a maximum amount of EUR 1 500 per SME) for trademark and design registrations and, in certain Member States, for IP pre-diagnostic service (“IP scan”).

Fight against infringements of IP rights

Reporting direct lost sales amounting to EUR 50 billion and direct employment losses of 416 000 jobs annually³ as a result of the significant presence of counterfeit products in the EU marketplace, the Commission emphasises the necessity to be more efficient in fighting counterfeiting.

To that end, new rules have been drafted by the Commission to clarify and upgrade the responsibilities of digital service providers (and in particular online platforms) in the context of the Commission’s Digital Services Act Package (please find our article here on this topic) and an EU toolbox against counterfeiting will be created notably to promote existing reported practices implemented by industry players and public enforcement authorities. Considering the primary importance of the fight against counterfeiting and piracy, the Commission also plans to strengthen the role of law enforcement authorities such as the European Anti-Fraud Office.

Expected developments with regard to IP matters in the following months/years

- **Patents:** as the German parliament approved the ratification bill on the Agreement on a Unified Patent Court (“UPC”) in December 2020, it is now expected that the Unitary Patent System⁴ could start in 2022. The Commission will urge the non-participating Member States to join the Unitary Patent System, which aims at simplifying patent protection in the EU, reducing the related costs and strengthening legal certainty. The Court of Appeal of the UPC will have its seat in Luxembourg⁵.
- **Author’s rights:** Member States must transpose the Directive on copyright in the Digital Single Market⁶ and the Directive on television and radio programmes⁷ by 7 June 2021. On 10 February 2021, the Luxembourg Government has published a draft legislation aiming at transposing the Directive on copyright in the Digital Single Market into Luxembourg law and has launched a public consultation until 2 April 2021 allowing the stakeholders to express their views and needs with respect to the draft legislation.
- **Databases and Trade Secrets:** Following up on the European Strategy for Data⁸, the Commission plans to review the Database Directive⁹ in order to promote the sharing of and trading in machine-generated data and data generated in the context of rolling out the Internet of Things (“IoT”). A study has also been initiated to assess whether clarifying a certain number of the Trade Secrets Directive’s¹⁰ provisions is necessary.

- **Designs:** The Commission will modernise the EU legislation on design protection with the objective, notably, of clarifying the protection of new forms of design (e.g. animated designs, graphical user interfaces) and the scope of the rights granted under design protection (with respect to 3D printing for example).

This may also interest you:

- Focus on European Commission's proposal for a Digital Services Act
- Adoption of new European copyright directive

- 1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of The Regions: "Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience". The Commission's full communication can be found **here**.
- 2 Please read more information on IP vouchers for SMEs **here**.
- 3 Status report on IPR infringement, EUIPO, 2020: average annual figures, 2013-2017.
- 4 Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection.
- 5 Please find our article **here** on this topic.
- 6 Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.
- 7 Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC.
- 8 As one of the six Commission's priorities for 2019-2024, the European data strategy aims to make the EU a leader in a data-driven society and create a single market for data within the EU and across the different sectors.
- 9 Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.
- 10 Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

For any further information please contact us or visit our website at **www.elvingerhoss.lu**.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter

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