



**EUROPEAN PARLIAMENT**

*Science and Technology Options  
Assessment*

**STOA**

**Towards an Intellectual Property Rights  
Strategy for Innovation in Europe**

**STUDY**

**(IP/A/STOA/FWC-2008-096/LOT8/C1/SC1)**



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SCIENCE AND TECHNOLOGY OPTIONS ASSESSMENT

# Towards an Intellectual Property Rights Strategy for Innovation in Europe

REPORT

## ABSTRACT

On October 13, 2009 the Science and Technology Options Assessment Panel (STOA) together with Knowledge4Innovation/The Lisbon Forum, supported by Technopolis Consulting Group and TNO, organised a half-day workshop entitled '*Towards an Intellectual Property Rights Strategy for Innovation in Europe*'. This workshop was part of the 1<sup>st</sup> European Innovation Summit at the European Parliament which took place on 13 October and 14 October 2009. It addressed the topics of the evolution and current issues concerning the European Patent System as well as International Protection and Enforcement of IPR (with special consideration of issues pertaining to IP enforcement in the Digital Environment). Conclusions drawn point to the benefits of a comprehensive European IPR strategy, covering a broad range of IP instruments and topics.

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It is therefore high time for the legislative bodies of the EU to start developing a consistent and coherent vision of the law of copyright and related rights at the EU level. Such a vision is hard to interpolate from the seven directives of the Community acquis. The recent debate on the Term Extension Proposal is a shameful illustration of the normative vacancy of European legislation in the field of copyright and related rights. In the absence of guiding principles and policies, lawmaking in Brussels seems to be driven solely by the agendas of major stakeholders.

Because few normative principles can be inferred from the mere aim of establishing a single market, it would be a mistake to leave to the Directorate General in charge of the Internal Market the primary responsibility for developing the Commission's future copyright policies. Although several other Directorate Generals seem to be better qualified to take on this role, it would be essential at any rate to better coordinate the norm-setting process in the field of copyright and related right within the Commission. This could be achieved, for example, by creating a Coordinating Committee charged with developing coherent and socially responsible EU copyright policies and coordinating policies between the DGs.

**Giancarlo Migliori** (Founding Director of MrGoodIDEA) focussed his contribution on the growing relationship of finance and IP.

*What is happening in the world:* Large corporations increasingly manage & trade IP as Key Assets (SMEs often do not even patent); U.S. specialist IP funds can now invest, trade or speculate with up to US\$ 7-8 Billions; IP-Based financial instruments are now quoted on U.S. stock exchange; by 2012 there will be a world-wide IP exchange based in the USA; China's prime minister stated that future competition is 'IP Competition'. CHINA is the fastest growing IP economy and Chinese Banks started lending against IP. U.S. Venture Capital Funds invest three times more on companies with IP than without; and, eventually; innovation is beginning to flow both ways: Developed to Developing countries and vice-versa.

The consequences of these developments are that administrative and legal changes are driven by the 'New Financial relevance of IP'. If Europe is looking to Innovation and IP as drivers of competitiveness and growth, more dynamic IP policies, more finance for IP and an IP marketplace are needed. That would be consistent with the true industrial situation in Europe, torn between 2 strategies: 1) to enhance the technological contents of its output (call it a high-tech strategy) and 2) to improve and accelerate the development of existing tech contents 'all-tech strategy'. Most Countries are obliged to follow this 2nd strategy, for lack of time and resources. That requires more dynamic innovation & IP demand + supply + matching of the two (i.e., trading).

*Some suggested actions:* While improving a) access to IP by all EU Enterprises, especially SMEs, and b) the functioning and cost of patenting at national and specially EPO stage, EU policies should concentrate on the weakest area : private finance for innovation and IP. To do that, it seems necessary to extend the typical R&D bias (upstream phase) to also include applied innovation (downstream). Furthermore, it should be aimed to extend the historical high-tech bias to include all-tech (covering low-to-mid-to-high technologies), and to extend the historical large firm bias to include firms of all sizes (micro to medium-sized to large enterprises). Most important of all: More funding should be provided to the Specialist IP finance sector (n.b. different from IP agents).

*Examples of huge benefits awaiting Europe with these changes:* More of the huge funding burden of EU innovation is to be taken by the private sector (like in the U.S.). The creation of much needed financial exit strategy for EU Countries with insufficient appetite for tech risks by stock exchanges, VC sector or Banking – i.e., a dynamic IP market would finance start-ups, spin-offs etc. even better than in the U.S. thanks to a mix of public and private IP finance. In this context, it is interesting to note that the anti-crisis value of IP is better than any other asset (between 2005 and 2008, S&P portion regarding IP lost 5% against 25-to-50% by all other assets!)

**Francisco Mignorance** (Senior EU Policy Director, Business Software Alliance) elaborated on the threat of online piracy and the need to have those addressed by European institutions (especially the European Parliament and the European Commission).

Online piracy presents a serious and immediate threat not only to software developers but to all copyright-based industries. Far more the consequences of piracy go beyond the billions of Euros in lost revenue for businesses every year. Piracy has substantial effects on the nation's economic health, employment and investment. Today's massive piracy also lowers tax revenues at a time of increased budgetary pressure for Governments.

A strategic and coordinated response from the European Commission and the European Parliament is essential to ensure that effective and coherent measures are put into place with all Member States. The European Parliament has an important role to play in ensuring that enforcement measures meet minimum legal standards – for example due (fair) process before any sanctions can be imposed by courts or administrative bodies- and that such measures remain technologically neutral – for example by avoiding the imposition of 'blanket' anti-piracy filtering technologies (by law or court decisions) that could hamper innovation and lead to reduced performance or decreased interoperability between systems and applications.

Finding an appropriate balance between property rights and the right to privacy will also be a challenge that this Parliament and the new Commission must meet as it is ultimately important not to lose track of the fact that the vast majority of individuals and businesses use software, computers, and the Internet for a myriad of legal and legitimate personal and business reasons.”