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## **International Trade and Intellectual Property Rights**

Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort

Speech at the Conference on Intellectual Property Captured –  
Which Course to Take against Counterfeiters?

**Brussels, 7 September 2011**

Meine Damen und Herren,

Dear guests,

## **Introduction: Trade policy pursues a clear economic goal: more growth & jobs**

Since my first day as European Trade Commissioner, I have been developing all my actions as Trade Commissioner in the wider context of a **growth, jobs and world affairs agenda**. We cannot conduct trade policy in a vacuum. Our trade policy pursues a clear economic goal and it is important that we reach out and explain our approach. This is why I am delighted to be here tonight to present the contribution of the European Commission to better protect Intellectual Property inside and outside the European Union.

Our approach in trade policy is based on open markets within a strong rules-based international system. This approach fosters growth and jobs in the EU, as well as among our partners around the world.

Trade, in both economic and political terms, is part of the way out of the current economic crisis. Trade fosters greater production efficiency, more competition and more consumer choice.

**A high standard of intellectual property protection is essential in a knowledge based economy, such as the EU's**, if we want to maintain the conditions necessary for an enabling environment that protects and promotes the essential innovative talent we have in Europe.

The importance of IPR is illustrated by a couple of figures. In 2009, the value of the top 10 brands in EU countries amounted to almost 9% of GDP on average. Copyright-based creative industries such as software, book and newspaper publishing, music and film, contributed 3.3% to EU GDP in 2006 and account for approximately 1.4 million SMEs, representing 8.5 million jobs. Employment in "knowledge-economy" industries increased by 24% between 1996 and 2006 compared to 6% for other industries.

## **IPR Policy within the EU**

We need rules that promote, rather than inhibit, innovation **within** the EU. My colleague, Michel Barnier, has initiated a policy review which led the Commission to adopt a comprehensive communication in May of this year. I'd like to mention just a few key steps of this communication for the next couple of years:

- Firstly, the long-awaited unitary EU patent, is now close to finalisation.
- Secondly, proposals to revise both the *Community Trade Mark Regulation* and the *Trade Mark Directive*. These proposals will aim at for example simplifying the registration procedure and clarifying the scope of trade mark rights with respect to customs procedures.
- Thirdly, a review of the 2004 *IPR Enforcement Directive* to improve IPR enforcement in the digital environment and to address problems caused by diverging implementation of some of its across the EU.
- I could mention many other IPR initiatives of the Commission, regarding for instance copyright legislation – such as a proposal for a Directive on orphan works, a proposal for multi-territorial copyright licensing, etc.

I mentioned these internal market proposals, not only because they matter to you and to our growth objectives, but also because, in our trade agreements negotiations, we will benefit from a stronger and better harmonised internal market. This creates leverage for us in our negotiations with third countries and allows us to

ask for meaningful protection in third countries for EU industry's intellectual property rights.

**This allows me to turn to our actions outside the EU:**

According to our forecasts, 90% of world growth in the coming 5 years will be outside the EU – in particular in emerging countries. This provides enormous opportunities for EU companies, but at the same time represents an important challenge. A challenge that our companies must be ready to meet and which requires a continued successful strategy to guide their investments in marketing, innovation and technological upgrading. To enable EU companies to maximise their competitiveness and continue to defend their leadership position as up-market, technology oriented global suppliers, they must be able to use of inputs from both intra and extra EU sources without the risk of their IPRs being abused.

The growing value of IPR is an indicator of success. However, it also makes them attractive to counterfeiters and pirates. Widespread violations of IPRs in certain third countries is a clear sign that infringers make full use of advances in technology and weaknesses in IPR protection and adopt modern business models to control the production, distribution and sale of illicit goods across borders and continents. The internet is increasingly one such tool.

Therefore, our IPR enforcement efforts outside the EU matter even more than before. This was recognised by the European Parliament which stated that [I quote]:

*"the biggest challenge for the internal market lies in combating infringements of intellectual property rights at the EU's external borders and in third countries".*

As most of you are industry representatives, you will be well aware of the **economic damage that IPR infringement may cause** to right-holders.

It is particularly worrying that IPR infringements seem on the rise. According to a recent Commission report, the number of shipments stopped by customs throughout the EU almost doubled compared to last year, rising from 43,500 in 2009 to almost 80,000 in 2010. Infringers are also no longer just targeting luxury goods but are increasingly targeting healthcare and other consumer products.

Another worrying trend is the growing number of detentions of postal packages which represents a particular challenge for customs officials. The German Anti-Counterfeiting Association recently also highlighted the new phenomenon of sending counterfeit goods in small consignments and noted an increase of 170% in Germany alone between 2009 and 2010.

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Ladies and Gentlemen,

So, to sum up, IPR enforcement outside the EU matters much more than before. Not only as we observe a significant increase of counterfeit goods coming in, but also because our export oriented companies see these fakes bite into their sales abroad.

**You may then ask yourself: what solutions do we put in place to deal with this problem?**

Well, there is no silver bullet to deal with this challenge but we use a variety of tools in our toolbox to confront this issue. These include both legislative and non-legislative initiatives:

- **Our "legislative initiatives"** are both multilateral, plurilateral and bilateral.
- **Multilateral initiatives** take place in fora such as the World Intellectual Property Organisation or the World Trade Organisation's "TRIPs Council",

where the Commission is actively engaged in defending the EU's interests and promoting a robust global IPR system based on general principles shared by most countries around the world.

- At **plurilateral level**, the EU has been one of the leading proponents for the conclusion of the *Anti-Counterfeiting Trade Agreement*, well known by its acronym "ACTA".
- The EU supports ACTA; along with like-minded countries such as the USA and Japan, but also Mexico, Morocco or Singapore. ACTA aims to improve enforcement mechanisms to help its members to combat IPR infringement more effectively. ACTA is born out of the frustration by several countries to see their efforts at to improve the protection of IPRs systematically blocked at multilateral level.

I know that many have criticised this agreement - often for matters that were not even on the negotiation table – but the truth is that it will help our European export businesses, of all sizes, to protect their intellectual property from being stolen - and so to maintain their **competitiveness and jobs** at this critical time.

- On a **bilateral level**, the European Commission is engaged in the conclusion of a series of bilateral trade agreements (with Singapore, India, Ukraine, Canada, etc.) which aim to include a comprehensive IPR chapter. The FTA concluded with Korea recently entered into force. The EU will also soon launch the ratification procedures for bilateral trade agreements with Central America, and with Colombia and Peru.

While the IPR chapters we negotiate should as far as possible offer identical levels of IPR protection to that existing in the EU we are, of course, prepared to take into account the level of development of the countries concerned and adapt our levels of ambitions.

- **Besides "legislative initiatives", we also pursue non-legislative paths.** These include more informal activities such as:
  - **"IP Dialogues"** with the authorities of key third countries, and
  - **"technical assistance"** projects to promote capacity building in certain countries lacking basic IPR resources and skills.

The IPR dialogues allow us to engage in result oriented discussions on specific issues with our counterparts. Such dialogues have allowed us to share best practices in area of IPR protection, but also to resolve particular problems. Many German companies are active partners in these dialogues and problems such companies bring to our attention are often raised with the relevant national authorities by my services.

## Looking forward

The world does not stand still; there are **many changes** taking place, which we are addressing. Let me mention **two** of them: the Internet and the development dimension.

- Firstly, **the Internet** has tremendous benefits for companies and individuals but may also be misused to enable large-scale infringement of IP rights, through the illegal sharing of copyright-protected files or the trading of counterfeit goods over e-commerce platforms. Its global reach represents a challenge for the current (territorial) IPR systems.

Our approach towards the internet infringements must be based on the principle that internet users have both rights, such as freedom of expression and data privacy, but also obligations, and namely to respect the same law that applies to them in the physical world. In order to reach the right balance,

the Commission is ready to work with all the stakeholders, including consumers, internet service providers and creators of content.

- Secondly, the **development dimension** is particularly challenging. Until a few years ago, discussions about IPR were mainly seen as the preserve of IPR experts and the general public was little concerned by IP policy. This is however changing fast and although the area remains very technical it is only a slight exaggeration to say that everybody has a view on IPR these days and nowhere is this more felt than in the discussion on development and IPR.
- Developing countries and many NGOs have sceptic views on IP rights: some even see it as a weapon used by powerful foreign companies to invade their domestic markets. Many developing countries have traditionally provided weak protection for intellectual property and, indeed, have hosted industries that rely on copying foreign technology and products.

The situation of developing countries however varies considerably and a differentiated approach is called for.

First, while some developing countries do face important challenges in putting in place appropriate IP regimes and will need time and assistance I do not subscribe to the view that weak IP protection in developing countries is inherently in their interest, as these regimes should also enable them to leverage the value of their own intangible assets, such as local culture and local agricultural products (which can be protected as plant varieties or as geographical indications) and to avoid them becoming a target of infringers.

Secondly, **emerging countries** play as I have already noted an increasing role in the world economy. However, some of these countries are characterised by high IPR infringement rates often as a result of lax or even selective enforcement of the IPR laws. Last year, for instance, more than 80 % of all goods detained at EU borders, suspected of infringing IP rights, originated from China. As these countries increasingly are moving up the value chain and thus moving into areas where our innovative industry relies in part on IPR to protect their competitive edge this threat cannot simply be ignored and requires a response.

- While I hope that EU businesses will seize the vast opportunities offered by these emerging economies, there is also a clear need to be aware of the related IPR risks, and to fight them where appropriate.

These are some of the issues which will be developed in a forthcoming Commission **Communication** defining a revised *IPR strategy vis-à-vis third countries*, to be adopted by the end of this year.

This Communication is a good opportunity to review our current strategy and means of action, and to engage in discussions with a broad range of stakeholders.

Before concluding, I would like to **call upon you** to support our efforts to improve and implement IPR regimes in a more active manner. The European Commission defends your interests by promoting the development of effective IP systems, within the EU and also in third countries. However, we are increasingly faced with loud voices that come out against IP for many different reasons, often unfounded. We need you to help us to help you by enlarging the debate.

**Your support** may take different forms, of which I would like to give two examples:

- **Making a case for IPR**, towards policy makers, local public authorities and civil society (NGOs, etc.). While confirming the merits of good functioning IPR systems and the detrimental consequences of IPR infringement, we should not ignore the **criticism** expressed by certain parts of civil society and developing countries, broadly opposed to strengthening IPR regimes. We

need to acknowledge that "more is not always better", and that a **balanced** approach is needed, which considers the interests of right-holders, consumers and citizens at large. While this is already achieved to some extent – e.g. through the "TRIPs flexibilities", and various exceptions in EU legislation –, there is a need to better emphasise and explain these mechanisms to all stakeholders.

- **Voluntary cooperation** between relevant stakeholders. For instance, a "[Memorandum of Understanding on the sale of Counterfeit Goods over the Internet](#)" was signed by several companies and associations [such as Amazon, eBay, LVMH, Nokia and many others], under the auspices of the Commission, in May 2011. "Private" initiatives of that nature are able to significantly enhance the impact of the initiatives taken by public authorities, such as legislative initiatives.

As a conclusion, ladies and gentlemen, I would like to stress again my commitment to ensure effective protection of IP rights in third countries, and I count on your support to raise awareness on the importance of this objective.

I thank you for your attention.