REPORT

on an intellectual property action plan to support the EU’s recovery and resilience (2021/2007(INI))

Committee on Legal Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on an intellectual property action plan to support the EU’s recovery and resilience (2021/2007(INI))

The European Parliament,

– having regard to the Commission communication of 25 November 2020 on a Pharmaceutical Strategy for Europe (COM(2020)0761),

– having regard to the Commission communication of 19 February 2020 on a European strategy for data (COM(2020)0066),

– having regard to the Commission communication of 25 November 2020 entitled ‘Making the most of the EU’s innovative potential – An intellectual property action plan to support the EU’s recovery and resilience’ (COM(2020)0760),

– having regard to the Charter of Fundamental Rights of the European Union, in particular Article 17(2) thereof,

– having regard to the Agreement on a Unified Patent Court¹,

– having regard to the 1995 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement),

– having regard to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications of the World Intellectual Property Organization (WIPO), which entered into force on 26 February 2020²,


⁵ OJ L 130, 17.5.2019, p. 92.
medicinal products for human use\textsuperscript{6},

\begin{itemize}
  \item having regard to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights\textsuperscript{7},
  \item having regard to Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs\textsuperscript{8},
  \item having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs\textsuperscript{9},
  \item having regard to the Commission Pharmaceutical Sector Inquiry Report of 2009,
  \item having regard to joint EPO-EUIPO firm-level analysis report on intellectual property rights and firm performance in the European Union of February 2021,
  \item having regard to the Commission’s evaluation of EU legislation on design protection,
  \item having regard to the Council conclusions setting the EU's priorities for the fight against serious and organised crime for EMPACT 2022-2025,
  \item having regard to the in-depth analysis commissioned by the European Parliament entitled ‘Standard Essential Patents and the Internet of Things’ of January 2019,
  \item having regard to its resolution of 9 June 2015 on ‘Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan’\textsuperscript{10},
  \item having regard to its resolution of 20 October 2020 on intellectual property rights for the development of artificial intelligence technologies\textsuperscript{11},
  \item having regard to its resolution of 19 May 2021 with recommendations to the Commission on challenges of sports events organisers in the digital environment\textsuperscript{12},
  \item having regard to its resolution of 6 October 2015 with recommendations to the Commission on the possible extension of geographical indication protection of the European Union to non-agricultural products\textsuperscript{13},
  \item having regard to its resolution of 10 July 2020 on the EU’s public health strategy post-COVID-19\textsuperscript{14},
  \item having regard to Rule 54 of its Rules of Procedure,
\end{itemize}

\begin{thebibliography}{9}
\item OJ L 136, 30.4.2004, p. 34.\textsuperscript{6}
\item OJ L 157, 30.4.2004, p. 45.\textsuperscript{7}
\item OJ L 289, 28.10.1998, p. 28.\textsuperscript{8}
\item OJ L 3, 5.1.2002, p. 1.\textsuperscript{9}
\item OJ C 407, 4.11.2016, p. 25.\textsuperscript{10}
\item Texts adopted, P9_TA(2020)0277.\textsuperscript{11}
\item Texts adopted, P9_TA(2021)0236.\textsuperscript{12}
\item Texts adopted, P8_TA(2015)0331.\textsuperscript{13}
\item Texts adopted, T9_0205/2020.\textsuperscript{14}
\end{thebibliography}
– having regard to the opinions of the Committee on Development, the Committee on the Internal Market and Consumer Protection, the Committee on Agriculture and Rural Development and the Committee on Culture and Education,

– having regard to the report of the Committee on Legal Affairs (A9-0284/2021),

A. whereas balanced protection and enforcement of intellectual property rights (IPR), are very important to the European economy as well as to the EU’s recovery and resilience, in particular to the COVID-19 pandemic;

B. whereas the COVID-19 pandemic has shown the importance of IP protection policies since it illustrated the need for effective measures to address the shortage of vaccines against COVID-19, threatened livelihoods and led to an existential loss of revenue for workers in the cultural and creative sectors;

C. whereas investments in intangibles were significantly less affected by the 2008 economic crisis, thereby showing IP assets’ potential for creating economic stability and growth as well as a positive correlation between IPR ownership and quality and stability of employment; whereas studies show that businesses using IPRs grow faster, are more resilient to economic downturns, increase company value and strengthen their position in the single market; whereas these facts also point to the importance of incentivising and helping SMEs protect and own their IPRs;

D. whereas IP registrations slightly increased in the first months of 2021 compared with the same period in 2020; whereas a sustainable and digital post-COVID economic recovery could be based on IPR; whereas during the current COVID-19 pandemic the rapid alert system for dangerous products (‘RAPEX’) registered an alarming new all-time high number of alerts;

E. whereas intellectual property (IP) registrations are constantly increasing, and the single market remains fragmented as a result of differences in national legislation; whereas there is a continuing need for parallel national validation procedures and litigation for European patents; whereas gaps remain, in particular in enforcement, which can hinder the development of companies, in particular micro, small and medium-sized enterprises (SMEs), limit consumers’ access to innovative and safe products, and prevent social challenges from being addressed through innovation;

F. whereas knowledge-intensive industries are a source of growth and prosperity; whereas between 2012 and 2016 they generated almost 30 % of all jobs and almost 45 % of total economic activity (GDP) in the EU, as shown in the 2019 industry-level analysis report by the European Patent Office (EPO) and the EU Intellectual Property Office (EUIPO)¹⁵; whereas IPR-intensive industries account for 93 % of total EU exports of goods to the rest of the world;

G. whereas IP is a fundamental right according to Article 17 of the European Union Charter of Fundamental Rights;

H. Whereas the development and progress of knowledge-based industries depends to a significant extent on the rules governing IPR, and in particular on ensuring effective protection through efficient legislation on patents, trademarks, designs, copyright and related rights, geographical indications and plant variety protection, as well as through appropriate and harmonised application of the rules on the protection of trade secrets,

I. whereas IP systems contribute to the development of new medicines and IP incentives are important for ensuring effective access to affordable medicines; whereas new medicines must comply with international human rights law, public international law and public health requirements;

J. whereas European innovators are front-runners in green technologies, holding a major proportion of green patents and robust IP portfolios in technologies such as climate change adaptation, carbon capture and storage, and water and waste treatment;

K. whereas there is a need to promote the valorisation and deployment of research and development in Europe, as exemplified by the fact that in the field of AI only a minority of patent applicants worldwide are European, even though a significant percentage of high-value publications on AI come from Europe;

General

1. Supports the Commission in pursuing the aims of its IP action plan of November 2020, as strong, balanced and robust IPR protection at the national, European and international level which allows return on investment is particularly important for the economic and social recovery from and long-term resilience to COVID-19 and other global crises so that the EU can respond to crises in an agile way and in line with the principles of Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility and ensures legal certainty and compliance with European legislation, as well as enables the creation of a digital and globally competitive sustainable economy in Europe where innovation also serves the purpose of contributing to the common good of society;

2. Acknowledges that IPR protection encourages creative, inventive and innovative activity, thus allowing the largest number of people to benefit from this activity; notes that this activity makes it possible for inventors, innovators and authors to obtain compensation for their creative endeavours; calls on the Commission to continue supporting European companies’ ability to innovate on the basis of a comprehensive IP regime in order to maintain effective protection for their R&D investments, secure fair returns through licensing, continue developing open technology standards that support competition and choice and ensure the participation of EU industry in the development of key technologies at global level;

SMEs and IP-protection

3. Highlights that IPRs have many benefits for small and medium-sized enterprises (SMEs) and micro-enterprises; underlines that IPR-intensive industries offer better quality jobs with better working conditions and higher remuneration; notes that SMEs

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that own IPRs generate up to 68% higher revenue per employee and pay wages that are 20% higher than those in SMEs that do not; is therefore concerned that many SMEs have difficulties in determining their own IP strategy and managing their IPRs; welcomes, therefore, IP vouchers, the IP Scan and other Commission and EUIPO initiatives to support simple registration procedures and low administrative fees for micro-enterprises and SMEs and to help them make the most of their IP; asks the Commission, the European Patent Office (EPO) and the EUIPO to consider extending these initiatives to all kinds of IP assets and to identify further measures to promote the benefits of IPR registration for the development of SME activities;

4. Is convinced that support for SMEs, including financial and non-financial measures, is the right way to provide them with better knowledge and to facilitate their access to IPRs and that the Union’s financial and legal instruments are of the utmost importance in this regard; calls on the Commission and the EUIPO, therefore, to continue implementing IP management support measures for SMEs and micro-enterprises during the economic recovery, including the provision of one-stop shop access to information and related services and advice about IP; stresses that this support will help to leverage and promote all national and regional initiatives of members of the European Union Intellectual Property Network (EUIPN);

5. Is concerned that even though intangibles are some of the most valuable assets, only a few European SMEs are aware of this and benefit from their IP when trying to obtain finance; welcomes, therefore, the announced European IP Information Centre as one of many measures that will ensure that Europe capitalises further on the value of the knowledge our companies constantly create, develop and share, and that they are equipped with the necessary tools and information or manage these assets more actively; stresses that utility models provide fast and low-cost protection for technical inventions and are very attractive for SMEs; encourages the Member States that are not yet offering this tool, therefore, to establish it and calls on the Commission to consider the possibility of introducing EU-level utility model protection, which is currently not available;

*Unitary Patent package*

6. Stresses that the unitary patent package (UPP), which includes the European patent with unitary effect (unitary patent) and the Unified Patent Court (UPC), aims at making patent protection more efficient, as well as making dispute settlement across Europe comprehensible, by avoiding parallel procedures in Member States, and less costly, by reducing legal costs, as well as more accessible and efficient, thereby enhancing legal certainty; asks the participating Member States which have not yet done so, therefore, to move forward on the ratification of the Protocol to the Agreement on a Unified Patent Court on provisional application (PPA), as soon as possible, or to declare by other means that they are bound by the PPA in order to allow the rapid entry into operation of the UPP;

7. Stresses that the unitary patent is an additional option in parallel to national patents and encourages the Member States that are not yet participating in enhanced cooperation for the creation of unitary patent protection and/or have not yet acceded to the UPC
Agreement, to continue the process that will lead to full participation; recalls that innovative SMEs benefit from a consistent European patent system, and underlines that the UPC Agreement and its Rules of Procedure represent a carefully balanced solution reflecting the Union’s fundamental principles of proportionality, flexibility, fairness and equity; takes note of the fee reductions and the reimbursement of fees for SMEs in the framework of the UPC Rules of Procedure;

8. Welcomes the one-stop-shop alternative dispute resolution system to be established under Article 35 of the UPC Agreement, which does not interfere with current national systems, so that parties’ right to justice is not undermined; asks the Member States to enable the quick roll-out of the patent arbitration and mediation centre, and calls on the Commission to assess whether the centre could, in the medium or long term, deal with all IP disputes; welcomes Member States’ efforts to find appropriate solutions to deal with the effects deriving from Brexit;

Supplementary protection certificates

9. Stresses that the supplementary protection certificate (SPC) regime within the EU, while of great practical relevance, suffers from fragmented implementation across the Member States; urges the Commission to issue guidelines for the Member States and to address this fragmentation, including by legislative proposals based on an exhaustive impact assessment;

10. Acknowledges that the UPP does not provide for a unitary SPC title and calls on the Member States to support the establishment of such a title as a logical extension of unitary patent protection;

11. Asks the Commission, in the absence of a unitary SPC title, to ensure coherence between the upcoming unitary patent and current SPC regimes within the EU by clarifying that national SPCs may be granted by national patent offices on the basis of a unitary patent;

12. Welcomes the fact that the Commission wants to assess the potential impact of a proposal for a unitary SPC; notes that the introduction of a unitary SPC title with suspensory condition depending on the formal decision at national level could even happen before the entry into force of the unitary patent, and suggests therefore that consideration be given to extending the EPO’s mandate, so that examination of SPC applications could be carried out on the basis of unified rules;

13. Points out that inefficiencies in SPC granting procedures hamper innovators and producers to the detriment of equitable patient access to treatments and that a level playing field for makers of generics and biosimilars in the Union is essential; highlights, therefore, that abuses of divisional patent applications and patent linkage have to be effectively addressed; recalls that innovation should meet the most urgent needs of society and that timely supplies of medicines, including generics and biosimilars, should be promoted in this context, as well as affordability and swift availability; stresses that a possible revision of the so-called Bolar exemption, which allows trials on patented products to be conducted to support generic and biosimilar marketing authorisation applications without being regarded as infringements of patent rights or SPCs for
medicinal products, as well as effective and immediate market entry after the expiration of patent rights and SPCs, can only take place after a comprehensive impact assessment;

14. Underlines the important role played by public investments in R&D, and calls on the Commission and the Member States to ensure that the results of publicly financed R&D in the pharmaceutical sector are transparent, so that patenting and licensing conditions guarantee a public health return on public investments;

**Standard essential patents**

15. Acknowledges that information on the existence, scope and relevance of standard essential patents (SEPs) is important for fair licensing negotiations allowing the potential user of standards to identify the scale of their exposure to SEPs and possible licensors; notes that although good faith negotiations between willing parties occur in most cases, SEPs are often litigated; suggests that the Commission looks into possible incentives for negotiation that avoid litigation as it would avoid the accompanying dispute costs and reduce other related problems;

16. Stresses that many patent applications declared potentially essential in standards development organisations during the standard setting process may eventually not be essential to the standard as finally adopted or after the granting of the patent, and that an appropriate, truly independent and transparent scrutiny mechanism would enhance transparency and increase legal certainty; welcomes in this regard the pilot study for essentiality assessment of SEPs17;

17. Asks the Commission to further investigate, together with the relevant actors, the requirements for an independent, neutral and transparent system of third party essentiality checks by identifying the demand for, assessing the impact of and defining the role that resources such as emerging technologies like AI and related technologies and/or technical expertise contributed by the EPO could play in that context, and to use the knowledge gained as input for the legislative initiative on SEP envisaged for the beginning of 2022 based on appropriate impact assessments;

18. Acknowledges the importance of a balanced licensing system for SEPs and insists on the importance of stable, efficient and fair rules for this; underlines that ‘fair, reasonable and non-discriminatory terms’ (FRAND) are vague legal terms that include legal uncertainty, and calls on the Commission to monitor industry developments and provide more clarity on various aspects of FRAND as well as case law and including through designating an observatory (competence centre) for this purpose; recalls Parliament’s previous call for the Commission to publish annual reports evidencing actual cases of non-compliance with FRAND and so-called patent ‘hold-ups’ and patent ‘hold-outs’;

19. Emphasises the importance of increasing the transparency of Standards Development Organisation (SDO) databases and calls on SDOs to update their declaration system and databases; highlights in this context Article 9(1)(c) of Regulation (EU) 1257/201218

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which provides that the EPO has the task of receiving and registering licensing commitments undertaken by the proprietor of a unitary patent in international standardisation bodies; calls on the Commission to continue observing the conduct of third country companies in international standardisation bodies which, together with recent decisions by foreign courts, places European companies at a significant disadvantage by undermining the competitiveness of the European market;

20. Notes the importance of transparency and the need to proactively provide necessary information in advance when licensing standard essential patents on FRAND terms in a way that will ensure a fair outcome of good faith negotiations between parties; highlights that the question of whether a SEP holder may choose the level of licensing in a supply chain or whether any company in the value chain must have access to a licence is not clarified yet, and therefore asks the Commission to cooperate with the relevant stakeholders in order to find an approach to this issue and to address it;

21. Highlights the value of existing industry-led voluntary initiatives to facilitate SEP licensing for the internet of things, such as licensing pools, which bring together the vast majority of European and international cellular technology developers;

**Geographical indications**

22. Recalls that around 3,300 products are protected by the EU as geographical indications (GIs) and that the yearly value of all these products has increased to over EUR 75 billion, and therefore welcomes the initiatives and actions to strengthen, modernise, streamline and better enforce the system of GIs for agricultural products, food, wines and spirits in order to make it more precise and effective, since they contribute to creating and protecting quality jobs, to the promotion of social, environmental and economic sustainability in rural areas, and to fostering European cultural diversity;

23. Considers that the issue of overburdening producers with administration in connection with the registration, amendment and management of GIs and traditional specialities guaranteed (TSG) product specifications should be at the heart of future discussions; recalls that the procedures for amending the specifications for GIs have been simplified and streamlined for wine and agri-food products as part of the review of the common agricultural policy reform, and that this approach should be strengthened in the future;

24. Recalls that farm-saved seeds are estimated to account for over 80% of farmers’ total seed requirements in some African countries; calls for the EU to support IPRs regimes that enhance the development of locally adapted seed varieties and farm-saved seeds, in line with the provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and Article 19 of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas;

25. Considers it essential to protect IPRs in a way that promotes research and innovation, in particular with the aim of introducing more resilient agricultural varieties to cope with climate change, achieve sustainable and agro-ecological farming models that are protective of natural resources and respectful of the potential of non-protected reproductive and heterogeneous material in the organic sector; stresses that protection of
plant variety rights is essential and requires a strong and enforceable protection system in the EU and highlights therefore the important role of the Community plant variety rights systems and the International Union for the Protection of New Varieties of Plants; points out that IPRs must also contribute to food security and the resilience and competitiveness of the EU agri-food model;

26. Stresses that further efforts should be made to increase transparency on the status and patentability of biological material; points out that breeders should be provided with adequate access to information on the biological material they will use in the plant breeding process; stresses that the Commission should implement new methods for effective consultation and exchange of information; opposes any patenting of live animals;

27. Believes that the recognition of GIs for non-agricultural products is relevant to the priorities of EU programmes being developed, including those of the industrial strategy, through the development of short supply chains, as well as the Green Deal by fostering locally-made products with greater traceability and transparency on the origin of the product and manufacturing processes used;

28. Supports the Commission in its initiative to establish, on the basis of a thorough impact assessment, an efficient and transparent EU sui generis protection of geographical indications (GIs) for non-agricultural products, which identify a product as originating in the territory of a Member State or a region or locality in that territory, where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin, in order to align with, inter alia, the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, which the EU has signed and which includes the possibility of protecting GIs for both agricultural and non-agricultural products; expects the Commission to propose legislation on this as soon as possible and by the end of 2021 at the latest;

29. Emphasises that the introduction of an EU sui generis protection system of GIs for non-agricultural products should aim to bring benefits to consumers, by facilitating knowledge of the authenticity product indications, have a positive economic impact on micro-enterprises and SMEs by encouraging competitiveness, and have a general impact on employment, development and tourism in rural and less developed areas, which could in particular help the EU’s recovery after the COVID-19 crisis; believes that such sui generis protection of non-agricultural GIs would also facilitate access to third country markets through EU trade agreements; considers, however, that the system must envisage necessary safeguards, including effective and transparent application and opposition mechanisms;

30. Takes note of the fact that current EU trade mark protection does not allow producers to certify the link between quality and geographical origin, and that some Member States have already established national sui generis protection systems for GIs for non-agricultural products, owing to the lack of a harmonised protection system, leading to fragmentation on the market place and legal uncertainty, and also generating impacts to the detriment of producers; takes the view that harmonised protection at Union level would create the necessary legal certainty for all players along with guaranteed prevention of IPR violations for manufactured and artisanal products so that the EU can
better protect its interests at international level;

31. Suggests assigning the EUIPO the responsibility for establishing a register for non-agricultural GIs in order to ensure their uniform examination and protection throughout the Union;

**Revision of the EU legislation on design protection**

32. Stresses that the current design protection system at EU level was established 20 years ago and should be revised; welcomes therefore the Commission’s willingness to modernise Union legislation on design protection in order to better support the transition to the digital, sustainable and green economy; calls on the Commission on the one hand to update the registration procedure to allow for new forms of design, such as graphical user interfaces, virtual and animated designs, fonts and icons, and those relevant following new developments and technologies to be protected in an easy and less burdensome way, and on the other hand to further harmonise the application and invalidation procedures in the Member States;

33. Notes that design protection for parts used for the repair of complex products is only partially harmonised; points out that some Member States have already introduced a ‘spare parts exception’ or ‘repair clause’ into their legislation, allowing for component parts of complex products to be manufactured and sold without infringing IPRs; notes that this creates fragmentation in the internal market and legal uncertainty; calls on the Commission, therefore, to include a ‘repair clause’ in its future proposal, which will contribute to support the transition towards a more sustainable and greener economy and avoid distortions of competition;

34. Believes that the EU design protection system should be aligned with the EU trademark system in order to allow for design holders to prevent design infringing goods to enter into the EU’s customs territory, since rights attached to trademarks are enforceable against infringing goods transiting though the EU, while those attached to design are not; calls on the Commission to close this gap in the revision of the design legislation and make it possible for brand owners to put a stop to design counterfeits transiting through the EU;

35. Is convinced that design protection should be offered in a uniform way throughout the single market and suggests that the Commission thinks about aligning the Design Directive and the Community Design Regulation with a view to creating a greater legal certainty;

**Fighting IPR infringements**

36. Points out that counterfeit goods, such as, for example, counterfeit medicines or fake personal protective equipment or masks in the context of health crisis like the COVID-19 pandemic pose serious threats to the health and safety of EU citizens and can cause serious harm to public health; argues that although market surveillance activities aim to protect general public interests, while counterfeit products relate to the protection of private IPRs, there is a close relation between counterfeit products and risks to health and safety of consumers;
37. Highlights that in 2016 up to 6.8 % of EU imports, or a value of EUR 121 billion, were fake goods, and that their availability on the single market caused direct sales losses worth EUR 50 billion and approximately 416 000 direct job losses for the period 2013-2017.\(^\text{19}\); points out that IPR infringement entails a low level of risk in terms of both the likelihood of detection and the sanction if detected; urges the Member States, together with the Commission, customs authorities, the EU Agency for Law Enforcement Cooperation (Europol), Interpol, and law enforcement authorities to coordinate strategies and to develop effective and dissuasive sanctions particularly in order to limit the amount of hazardous products made available to the public and to fight counterfeiting and piracy especially when it is connected to organised crime;

38. Regrets the significant use of the internet for the distribution of counterfeit products, infringing content and IPR-infringing services, with significant adverse effects for EU manufacturing industry as well as for the creative, cultural and sport sectors; welcomes the Commission proposal for a Digital Services Act; highlights the fact that the ‘know your business customer’ principle and the trusted flaggers system, would contribute enormously to the fight against counterfeiting and that AI and blockchain could play an important role in tackling counterfeiting and pirated goods available online as well as contributing to enhanced enforcement of IPR in the whole supply chain; supports, therefore, the use of new technologies to combat IP infringements and welcomes evidence-based publications produced by the EUIPO Observatory in this respect;

39. Recognises the high potential of blockchain technologies for the registration and protection of IPRs; stresses that blockchain systems can help secure the supply chain through traceability, ensuring safety and securing every step against the dangers of counterfeiting at each level of the supply chain; notes, in particular with regard to the registration of IPRs, the need for intellectual property offices (IPOs) to adopt technical standards for their blockchain solutions in order to allow interoperability; underlines that AI and related technologies used for the registration procedure for granting IPRs cannot be a substitute for human review carried out on a case-by-case basis in order to ensure the quality and fairness of decisions;

40. Points out the link between IP crime and organised and serious international crime; welcomes, therefore, the Council’s decision to put IP infringements back on the list of EU crime priorities in the framework of the European Multidisciplinary Platform Against Criminal Threats (EMPACT) for the forthcoming cycle 2022-2025, and asks the Council to maintain them on that list and to enhance cross-border cooperation between national authorities, the EUIPO, Europol, the EU Agency for Criminal Justice Cooperation (Eurojust) and the European Anti-Fraud Office (OLAF);

41. Welcomes the fact that the Commission intends to come up with a EU toolbox against counterfeiting in order to ameliorate cooperation between rights holders, public authorities, law enforcement authorities at national and EU level, and intermediaries by further clarifying roles and responsibilities, with the aim of facilitating effective information and data sharing between key actors, promoting the use of new tools and the tackling of counterfeiting activities; calls on the Commission to take concrete actions to monitor wilful infringement of IPRs, including where infringement is used in

bad faith as a deliberate commercial strategy, and to push for greater control and cross-border cooperation between customs agencies as part of the fight against the import of counterfeit products; calls the Commission to consider creating a similar EU toolbox to fight against other IPR infringements;

42. Stresses that long-term education on IP in schools, on counterfeiting and piracy would also be necessary in order to change the willingness to consume IPR-infringing goods and services; calls on the Member States, therefore, to cooperate with EUIPO in order to launch awareness campaigns, including in the field of 3D printing; recalls that 3D printing technology may raise some specific legal concerns regarding all areas of IP law, such as copyright, patents, designs, three-dimensional trademarks and geographical indications;

43. Calls on the Commission to continue protecting IPRs and promoting enforcement in non-EU countries, including through an increase in funding for targeted EU technical cooperation programmes and capacity building, such as the three ongoing IP Key cooperation programmes with China, South-East Asia and Latin America and the joint partnership with the African continent to promote better generation and management of IP, and by supporting IP regimes that enhance local agricultural development; encourages, in this context, the Commission, on the basis of the EU’s experience, to assist policymakers and enforcement authorities and provide them with knowledge and guidelines for improving their capacity to tackle IPR infringements, and to promote feasible solutions, which could significantly reduce costs and simplify the procedures for obtaining, maintaining and enforcing the protection of IPRs, as well as to provide information to rights holders about the changing infringement landscape and the supply of counterfeit goods;

New challenges for IP policy-making

44. Highlights that IP protection related to AI technologies is important and should be duly considered, and that even though current rules on the protection of computer-implemented inventions by patents may cover AI technologies, there is a need for clear criteria for the protection of inventions generated with the assistance of AI technologies; asks the Commission, therefore, in cooperation with the EPO and EUIPO, to provide legal certainty on this subject and to follow the issue closely at international level in the WIPO;

45. Encourages the Member States to transpose the provisions of the Copyright Directive without delay and in a manner which reflects the agreement struck by the co-legislators to improve the protection it provides, and to allow exceptions such as access to online education and digitised cultural heritage; calls on the Commission to monitor buy-out contracts to ensure fair remuneration of creators based on copyright or authors’ rights; underlines that the lack of harmonisation of rules on authorship and copyright ownership can lead to divergent national solutions for AI-assisted works;

46. Underlines that, despite a high level of harmonisation of IP rights across Europe, there is still a lack of efficient cross-border enforcement of these rights in the EU;

47. Welcomes the Commission’s announcement that it will review the Database Directive
in order to facilitate data access and use while safeguarding legitimate interests; points out that unnecessary barriers still hamper research and that robust data spaces have to be further developed in order to enable researchers to find scientific solutions, including under exceptional time constraints; highlights in this respect the role of limitations and exceptions to exclusive rights;

48. Regrets the fact that the Commission’s 2016 study on patent assertion entities (PAE) in Europe did not provide a clear answer to the question of whether some PAE’s business models, consisting of acquiring patents from third parties and seeking to generate revenue by asserting them against alleged infringers by misusing litigation asymmetries abuse loopholes in current legislation, and therefore constitute a problem that should be tackled; encourages the Commission to continue to monitor this issue and carry out a corresponding in-depth study;

49. Welcomes the efforts of all Member States to make sure that the courts take the principle of proportionality into consideration when dealing with injunction cases;

50. Notes that IPR protection is key to incentivising research and production of innovative products and processes, including new medicines, but is convinced that to fight global health emergencies, address the accessibility of certain medical products, and allow life-saving interventions in the public interest voluntary pooling of patents, compulsory licensing and flexibilities provided for in the WTO TRIPS Agreement are important; calls on the Commission, therefore, to analyse and explore possible options for ensuring effectiveness and better coordination of compulsory licensing in the EU, taking into account cases in which it has been used in the Union, the reasons for its use, the conditions under which it was granted, its economic consequences and whether it achieved the desired effect;

51. Stresses that a more equitable distribution of vaccines around the globe is essential for effectively combating the spread of COVID-19 and its mutations, and the need to support global access to COVID-19 vaccines; notes that the lack of access to affordable vaccines is still a major challenge in developing countries; supports; therefore; the Commission and the Member States in their efforts to push non-EU countries to lift current export bans and to step up the donation of vaccines; calls on the Commission and the Member States to further increase their efforts to support technology transfer and voluntary licensing of IPRs in order to enhance global access to affordable COVID-19-related medical products, to address global production constraints and supply shortages, and to thereby treat endemic or pandemic infectious diseases in the world population;

52. Welcomes the fact that least developed countries already enjoy a waiver, granted until 1 January 2033, on the implementation of TRIPS provisions on pharmaceuticals; urges the Commission, therefore, in cooperation with the WTO, to follow through on its promise to engage in active and constructive text-based negotiations at the WTO in order to work on incentivising and supporting the scaling up of vaccine production capacities in developing countries and incentivising voluntary and rapid pooling of IPR in times of crisis as well as voluntary licensing agreements, and to launch a dialogue on

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current obstacles to voluntary licensing and how to overcome them;

53. Suggests that an IP coordinator be established at European level in order to ensure a holistic and coordinated approach to EU IP policy and enhance cooperation between the different national IP authorities, Commission Directorates-General and other bodies in charge of IPR, such as the EPO, EUIPO, WIPO and other relevant actors; the IP coordinator could further promote the fight against IPR infringements at the highest political level and take on other duties related to IPR if necessary;

54. Defends the idea that promotion of better IP management in the research and innovation community is needed in order to materialise Europe’s excellent research into innovation that are beneficial to its citizens and businesses; stresses that, in this context, publicly funded IP must be used in a fair and effective manner, and that results achieved with EU funds should be used to improve the EU’s economy for all;

55. Recalls that IPR-intensive industries generate the bulk of EU trade activities and that also protecting and enforcing IPRs in third countries is essential; welcomes the Commission’s commitment to seek robust protection for IP in future free trade agreements; asks the Commission to call for IPRs enforcement to be addressed at the World Trade Organization (WTO) and WIPO;

56. Recalls that one of the main challenges for developing countries is to move up the global value chain through economic diversification, which requires fair and pro-development global trade rules;

57. Encourages developing countries to strengthen regional value chains and intra-regional trade and investments in health and health-related areas, in particular through collective R&D efforts in medical research and regional pooling of resources; notes with concern that, according to the Global Trade Alert, by 21 March 2020, 54 governments had introduced export curbs on key medical supplies since the beginning of that year; stresses that regional trade pacts should be used to prevent export bans on key products in times of global and regional shortages, as in the case of the ongoing pandemic crisis;

58. Instructs its President to forward this resolution to the Council and the Commission.
EXPLANATORY STATEMENT

Intangible assets such as trademarks, designs, patents and data are becoming very important in today’s knowledge-based economy. Industries that make intensive use of intellectual property rights account for 45% of the EU’s gross domestic product each year and around 63 million jobs. Businesses owning at least one patent, registered design or trade mark generate on average 20% higher revenues per employee than firms that do not own such rights. In addition, pay at firms that own intellectual property rights is, on average, 19% higher.

Developments such as the Internet of Things, Industry 4.0, networked vehicles and climate change mitigation technologies are shaping the technological landscape and ecosystems. Inventions in those sectors are helping the EU become more sustainable and more digital. Innovativeness will support Europe’s recovery from the effects of the COVID-19 pandemic. The rapporteur therefore stresses the need to support inventors and businesses in bringing new technologies to market by ensuring that they are given high-quality property rights in a timely manner and have the knowledge and tools to make effective use of them. That requires a robust, efficient, transparent and balanced system of intellectual property protection in the form of a coherent overall strategy ensuring both protection and fair access to innovations and addressing loopholes in the law or adaptations necessitated by technological refinements and developments.

The rapporteur therefore welcomes the intellectual property action plan to support the EU’s recovery and resilience, dated 25 November 2020, in which the Commission makes provision for such an overall strategy in order to make better use of the EU’s innovative potential.

She agrees with the Commission, the European Intellectual Property Office (EUIPO) and the European Patent Office (EPO) that small and medium-sized enterprises (SMEs) in particular still make virtually no use of that innovative potential despite the fact that it is smaller firms especially that can benefit most clearly from ownership of intellectual property rights. The main reasons for that are the costs associated with the relevant advisory services, but also linguistic challenges or simply a lack of information. The rapporteur welcomes the efforts of the Commission, the EUIPO and the EPO to address the challenges faced by SMEs in this regard, ranging from financial support in the form of IP vouchers through screening of intellectual property rights (IP scan) and/or help with fast-track filing of trade mark or designs. In the rapporteur’s view, this should be complemented by one-stop-shop procedures, as well as arrangements to manage intellectual property that is already registered. Further efforts, building on what has already been achieved, are essential.

With regard to patents, the unitary patent in conjunction with the Unified Patent Court is the best one-stop-shop approach and will remain so. Having a single registration procedure and obtaining a single patent which would be valid throughout Europe would radically simplify the current patent filing process, which has to take place in each and every Member State, and greatly reduce the costs involved. The Unified Patent Court would also remove the need for costly parallel legal proceedings and would increase legal certainty. The rapporteur is of the opinion that all Member States involved should make increased efforts to ratify the Unified Patent Court Agreement so that the unitary patent package can finally enter into force. She would also like to see all EU Member States joining the enhanced-cooperation process to create a unitary patent in order to reduce red tape and costs across Europe and increase legal
certainty.

The policy debate on patents gives rise to two other challenges.

The first challenge relates to supplementary protection certificates (SPC), which extend the term of basic patents that cover medicinal and plant protection products. One issue to be investigated in this connection is what role an SPC would play if the basic patent concerned were a unitary patent. The rapporteur believes that there should be a unitary SPC title; and even before the unitary patent comes into force, it should be made possible to carry out a European-level SPC assessment in order to avoid inconsistent implementation in Member States and the associated legal uncertainty. This substantive assessment could then be complemented by a formal assessment at national level.

The second challenge relates to standard-essential patents (SEP). No check at all takes place as to whether a standard patent is genuinely essential; the patentee simply makes a self-declaration. Many of the patents classified as essential are in fact not essential, resulting not only in inefficiencies, but also in legal uncertainties, including for the potential licensee. In order to counter legal uncertainty, the rapporteur believes that an essentiality assessment by a neutral and professionally competent body should be introduced. The EPO would of course be the obvious choice for that role, but the rapporteur leaves that up to the Commission to consider as part of its impact assessment. She welcomes the fact that the Commission has made provision for a proposal on SEP next year and regards that as the right framework for an appraisal with regard to an essentiality assessment.

In addition, there are a number of practical problems as a result of obligations to do with FRAND (‘fair, reasonable and non-discriminatory terms’). Firms should enter into negotiations in good faith and allow licensing without delay if a FRAND-compliant offer has been made.

However, the question as to whether an offer is in fact fair and proportionate and complies with the principle of non-discrimination has been brought before the courts on various occasions. Although there are rulings as regards interpreting what are vague legal terms, the extent of the problem should be determined in more detail. The rapporteur proposes, accordingly, that the Commission look more closely into industry developments; and a decision can then be taken on that basis, which, given that proceedings are confidential, will be no easy matter.

In addition, the Commission has the rapporteur’s backing for its plan to introduce an EU-wide protection system for geographical indications for non-agricultural products, in particular as provision has already been made for this at international level. The protection of regional products, such as handicraft, combined with specific regional production features or other know-how of local producers, can generate real added value for regional development, European cultural heritage and SMEs. As some Member States already provide for protection of geographical indications for non-agricultural products, while others do not, there is market fragmentation and, as a result, legal uncertainty. That challenge can be addressed on the basis of a single set of rules across the EU.

As regards design protection, existing tools need to be updated to take account of digital developments. In the process, the rapporteur would like to see the loopholes closed in the rules on spare parts, given that in some Member States they are exempted from design
protection and in others they are not. Furthermore, as regards enforcement of rights relating to goods transiting the EU, the enforceability of design protection should be brought into line with trade mark protection arrangements.

With regard to counterfeiting and piracy, the rapporteur takes the view that national enforcement authorities’ cooperation with the EUIPO, Europol, Eurojust and OLAF should be stepped up in order to make detection and prosecution more efficient. In many instances, organised crime is behind the circulation of counterfeit or pirated goods, meaning that these are not trivial offences. In addition, technologies such as artificial intelligence and blockchain could be used to a much greater extent to detect counterfeiting and piracy more efficiently.

With regard to other intellectual property policy challenges, the rapporteur takes the view that the use of compulsory licences should be explored in more detail. The Commission should investigate whether such licences have already been used in the Member States, and under what conditions, and whether they have produced the desired effect. These findings could be of significance in the debate on how to deal with pandemics.

The Commission’s action plan covers a host of issues, but the parameters laid down for this draft report have made it impossible for the rapporteur to go into all of them, and therefore in her draft report she has confined herself to making reference to upcoming revisions of legislation and planned Commission initiatives.
The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the draft report:

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15.7.2021

OPINION OF THE COMMITTEE ON DEVELOPMENT

for the Committee on Legal Affairs

on an intellectual property action plan to support the EU’s recovery and resilience (2021/2007(INI))

Rapporteur for opinion: Patrizia Toia

SUGGESTIONS

The Committee on Development calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Welcomes the communication on an intellectual property action plan to support the EU’s recovery and resilience, but regrets that the focus on international cooperation and assistance to developing countries is poorly addressed; in this regard, calls on the EU to assume the role of a key global player in the field of intellectual property and to lead international efforts in order to accelerate and facilitate the sustainable development of low and middle income countries;

2. Highlights that, according to UNCTAD, while developed countries have been able to mobilise massively their monetary and fiscal resources to prop up their economy (estimated at between 20 and 25 % of their GDP), the poorest countries have mobilised just 1 % to mitigate the socio-economic damage caused by the pandemic crisis; emphasises that a diversified economy is a prerequisite for resilience to future shocks; underlines that the main barriers to the industrial upgrading of developing countries are production capacity constraints such as access to technology;

3. Calls on the Commission to continue strengthening intellectual property rights (IPR) protection and enforcement in non-EU countries, also through an increase in funding for targeted EU technical cooperation programmes and capacity building, such as the three ongoing IP Key cooperation programmes with China, South-East Asia and Latin America; in this context, encourages the Commission, on the basis of the EU’s experience, to assist policymakers and enforcement authorities and provide them with knowledge and guidelines for improving the capacity to tackle infringements of IPRs, and to promote feasible solutions, which could significantly reduce costs and simplify the procedures for obtaining, maintaining and enforcing the protection of IPRs, as well as to give information to rights holders about the changing infringement landscape and the supply of counterfeit goods; welcomes in particular the intention to promote better

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generation and management of intellectual property (IP) on the African continent as part of a joint partnership building on the current four-year cooperation programme for Africa (AfrIPI), the first of its kind, which will lead to a better microclimate for SMEs, contribute to increasing competitiveness and flexibility, and, in the long-term, enhance the resilience of companies which operate in developing countries; urges the Commission to work towards forging a stronger consensus on the importance of IPR protection in increasing creativity, supporting bottom-up research and promoting socioeconomic growth and development, through which innovators and investors can encourage domestic innovation and attract sustainable foreign direct investment, also by offering the means to participate in global economic activities and by strengthening exports of local products;

4. Welcomes the proposals for measures to promote the effective use and implementation of intellectual property, to facilitate access to and exchange of assets protected by intellectual property rights and to combat infringements of intellectual property rights; points out, however, that it is very important that these measures should not result in new or excessive obligations on businesses, in particular in the SME sector;

5. Points out that SMEs should be able to take full advantage of their technology and innovative products, processes or methods; underlines the importance of protecting IPRs, since infringements lead to losses for citizens and producers, such as loss of jobs, sales or tax revenue, and could inflict serious damage and pose risks to the health and safety of consumers;

6. Recalls that one of the main challenges for developing countries is to climb up the global value chain through economic diversification, which necessitates fair and pro-development global trade rules;

7. Calls on the Commission to boost research to determine how the IP strategies of companies based in developing countries differ from firms located in developed countries, and how legal systems in developing countries address IP protection; strongly encourages the Commission and the EU Delegations to assist producers and their associations as well as local authorities in developing countries in unlocking the potential of IP and reaping the economic value of local innovations, geographical indications and traditional knowledge; reiterates its call, in this regard, to respect the progress achieved in the international protection of indigenous peoples’ rights over their genetic resources and associated traditional knowledge; encourages, moreover, consultation with business representatives and their associations, as well as with other interested groups, in order to collect and analyse the available data and information, with a view to ensuring that decisions taken in this field take into account the interests of all stakeholders in the broadest and most favourable manner possible; calls on the Commission to increase efforts to offer qualified consulting services with the purpose of helping innovative enterprises at the different stages of the research and innovation process, as well as to provide technical assistance and raise awareness as to the significance of the opportunities which new technologies, including digital means, offer for growth and competitiveness; more broadly, calls on the EU and its Member States to support regional projects such as the African Continental Free Trade Agreement, which should favour products of local enterprises and in this way support regional industrialisation processes;
8. Invites the Commission to help developing countries put in place effective policies in order to implement firmer sanctions and penalties for intellectual property right infringements, especially in relation to counterfeiting and pirated goods;

9. Calls on the Commission to ensure that owners of standard essential patents commit to licensing their patents on fair, reasonable and non-discriminatory terms in developing countries;

10. Recognises that IP systems contribute to the development of new medicines, but stresses that they must comply with international human rights law, public international law and public health requirements; notes that strong IPRs may limit access to medicines in developing countries while not necessarily encouraging pharmaceutical innovation that responds to the needs of developing countries; encourages the Commission, therefore, to initiate a broader discussion at World Trade Organization (WTO) level on how best to avoid barriers to access to vaccines, medicines and other critical health services, in particular in the event of major health crises; stresses at the same time that producers of generic medicines, unlike producers of innovative medicines, tend to be more regional; asks the Commission in particular to promote regulatory solutions that encourage competition in generic medicine production while maintaining a balance between generic and innovative medicines; calls on the Commission and the Member States to increase efforts to offer qualified technical assistance and research funding in view of developing vaccines that prevent future outbreaks of diseases recurrent in developing countries, such as malaria or zika;

11. Welcomes the announcement of the revision and harmonisation of the legislation on industrial designs and the recognition of the need to develop the protection of geographical indications for non-agricultural products; recognises that such measures are necessary and can have a very positive impact on business competitiveness;

12. Stresses that a more equitable distribution of vaccines around the globe is essential to combat effectively the spread of COVID-19 and its mutations; recalls that, while COVAX, the vaccine pillar of the World Health Organization’s (WHO) Access to COVID-19 Tools (ACT) Accelerator initiative, is aiming to have two billion vaccine doses available by the end of 2021, it will neither be enough to respond to the vaccination needs of the poorest countries to reach herd immunity, nor does it constitute an appropriate integrated global approach for scaling up production capacities worldwide;

13. Notes that the lack of access to affordable vaccines is still a major challenge in developing countries; considers, therefore, that investments in local manufacturing capacities, training of health professionals and the development of storage and roll-out capacities should be priorities in the EU external response to COVID-19;

14. Underlines that compulsory licensing only applies to patents as one category of intellectual property rights (IPR), but that other IPR categories are beyond the scope of compulsory licences;

15. Welcomes the fact that least-developed countries already enjoy a waiver, granted until 1 January 2033, regarding the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights provisions on pharmaceuticals, and is convinced
that suggestions of removing IP protections for vaccines would not remedy the existing shortage of vaccines; urges the Commission, therefore, in cooperation with the WTO, to follow through on its promise to engage in active and constructive text-based negotiations at the WTO to work on incentivising and supporting the scaling up of production capacities for vaccines in developing countries and incentivising voluntary licensing agreements, and to launch a dialogue on existing obstacles to voluntary licensing and how to overcome them;

16. Strongly supports effective measures to address the shortage of vaccines against COVID-19, especially in developing countries, and therefore supports the Commission and the Member States in their efforts to push non-EU countries to lift existing export bans and to step up the donation of vaccines; calls on the Commission and the Member States to further increase their efforts to support technology transfer and voluntary licensing for intellectual property rights to treat endemic or pandemic infectious diseases in the world population;

17. Notes that any decision taken within the existing framework should be conditional on the effective ramping up of global production capacity, ensuring that vaccines are fairly and evenly distributed through the removal of trade barriers on exports of vaccines, by encouraging voluntary licensing and sharing of know-how of leading pharmaceutical companies;

18. Calls on the Commission to engage in negotiations at the WTO to simplify the use of compulsory licenses under the TRIPS Agreement and provide more legal certainty to countries that use this flexibility, especially regarding the compensation to be paid; calls on the Commission to provide developing countries with technical assistance to enable the effective implementation of the current compulsory licensing framework when the circumstances provided for in Article 31 of the TRIPS Agreement occur in these countries, and to ensure that Member States smoothly implement Regulation (EC) No 816/2006 of the European Parliament and of the Council on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems, in order to export these products when requested by developing countries with insufficient manufacturing capacity facing public health crises; welcomes, in this regard, that the Commission is exploring with Member States the possibility of creating an emergency coordination mechanism to be triggered when Member States consider issuing a compulsory licence;

19. Insists upon the need to support global open access to COVID-19 vaccines to scale up global production through technology transfer; underlines that the Commission has so far solely focused on encouraging Western vaccine manufacturers to share technology and licences on a purely voluntary basis;

20. Urges the Commission to maintain its strong support for innovation and intellectual property rights in global discussions;

21. Calls on the Commission to refrain from seeking expansive IP chapters in Free Trade Agreements with middle-income and lower-middle income developing countries, such as TRIPS-plus measures, and to review the existing ones in order to ensure that they are in line with the Doha Declaration on TRIPS and Public Health;
22. Is of the opinion that the EU should urgently foster multilateral arrangements at WTO level, including a treaty on pandemics, as recently proposed by the President of the European Council, as part of the ‘Health and Trade Initiative’ to be adopted in November 2021 during the twelfth Ministerial Conference and at the next WHO general assembly;

23. Calls on the Commission to support developing countries in reviewing their national IP laws, taking into account available flexibilities, especially the LDCs transition waivers and those not commonly used in these countries, such as the research exception and the regulatory review exception;

24. Encourages developing countries to strengthen regional value chains and intra-regional trade and investments in health and health-related areas, notably through collective R&D efforts in medical research and regional pooling of resources; notes with concern that, according to the Global Trade Alert, as of 21 March 2020, 54 governments had introduced export curbs on key medical supplies since the beginning of that year; stresses that regional trade pacts should be used to prevent export bans on key products in times of global and regional shortages, as in the case of the ongoing pandemic crisis;

25. Takes note of the Commission’s intention to evaluate and revise the Community Plant Variety Rights (CPVR); recalls the EU’s commitments to implement the 2030 Agenda and its objective to leave no one behind; stresses that small-scale farmers (SSFs) and agricultural biodiversity are critical to achieving the SDGs; accordingly, stresses the need to support a rights-based approach to implement the Declaration on the Rights of Peasants and Other People Working in Rural Areas adopted by the United Nations General Assembly at its 73rd Session in December 2018;

26. Highlights that small-scale farmers (SSFs) and agricultural biodiversity play a critical role in healthy, nutritious diets and ensuring the resilience of agricultural production systems to cope with climate change; recalls also that seed diversity is vital in building the resilience of farming to climate change;

27. Recalls that farm-saved seeds are estimated to account for over 80% of farmers’ total seed requirements in some African countries; calls for the EU to support intellectual property rights regimes that enhance the development of locally adapted seed varieties and farm-saved seeds, in line with the provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), which safeguards the rights of farmers to maintain genetic resources for purposes of food security and climate change adaptation, and Article 19 of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, according to which peasants have the right to maintain, control, protect and develop their own seeds and traditional knowledge.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| Members present for the final vote | Anna-Michelle Asimakopoulou, Hildegard Bentele, Dominique Bilde, Udo Bullmann, Antoni Comín i Oliveres, Ryszard Czarnecki, Gianna Gancia, Charles Goerens, Mónica Silvana González, Pierrette Herzberger-Fofana, György Hölvényi, Rasa Juknevičienė, Beata Kempa, Pierfrancesco Majorino, Erik Marquardt, Janina Ochojska, Jan-Christoph Oetjen, Michèle Rivasi, Marc Tarabella, Miguel Urbán Crespo, Chrysovala Zacharopoulou, Bernhard Zimniok |
| Substitutes present for the final vote | Ewa Kopacz, Iskra Mihaylova, Marlene Mortler, Patrizia Toia |
## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention
22.6.2021

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Legal Affairs

on an intellectual property action plan to support the EU’s recovery and resilience (2021/2007(INI))

Rapporteur for opinion: Vlad-Marius Botoş

SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

A. whereas intellectual property (IP) registrations are constantly increasing, and the single market remains fragmented as a result of differences in national legislation; whereas there is a continuing need for parallel national validation procedures and litigation for European patents; whereas gaps remain, in particular in enforcement, which can hinder the development of companies, in particular micro, small and medium-sized enterprises (SMEs), limit consumers’ access to innovative and safe products, and prevent social challenges from being addressed through innovation;

B. whereas 45% of GDP comes from intellectual property rights (IPR)-intensive industries, which directly contribute to the creation of almost 30% of all jobs, but only 9% of all EU SMEs have registered IP rights; whereas high costs, administrative burdens and the lack of information on IP registration and management hinder micro and SMEs from making full use of the opportunities offered by IP and data sharing;

C. whereas there is a lack of information in some Member States about the benefits and intrinsic value of IPR; whereas IPR increases total company value, leading to a more resilient business and stronger position on the single market;

D. whereas although IPR are well regulated in most Member States, there is still no harmonised enforcement of the IPR legal framework; whereas infringements, counterfeiting, piracy, hold-backs, and a lack of cross-border enforcement are jeopardising cultural diversity, as well as IPR and open source systems that support innovation; whereas counterfeit products are still commonly found in the single market, with most of them entering the EU through the digital market, causing financial losses...
of approximately EUR 60 billion per year;

E. whereas IP registrations slightly increased in the first months of 2021 compared with the same period in 2020, though it is estimated that IP registration is still affected by the COVID-19 pandemic;

F. whereas the innovative solutions that will ensure a sustainable and digital post-COVID economic recovery could be based on IPR, few micro and SMEs benefit from their IP when trying to get access to finance;

G. whereas during the current COVID-19 pandemic the Rapid Alert system for dangerous products (‘RAPEX’) registered an alarming new all-time high number of alerts;

1. Stresses the importance of better cooperation between the European Union and the Member States on harmonising IP legislation and facilitating economic operators’ access to IPR registration at EU level, as well as on effective harmonisation and improvement of enforcement of the legal framework protecting IP rights in the EU, where gaps remain; underlines that EU innovators should have access to fast, effective and affordable protection tools; recommends that gaps in current legislation be filled in order to improve the functioning of the single market for IP and to enhance consumer protection;

2. Underlines that IPR protection is a crucial component of the European Union’s internal market as IPR-intensive industries generate a significant proportion of EU gross domestic product and contribute to the creation of quality jobs; notes that the Court of Justice of the European Union is becoming increasingly active in IPR disputes, and that the Treaty on the Functioning of the European Union (TFEU) contains a still unused clause in Article 262 allowing for significantly strengthening the competences of the Union in the field of IPR;

3. Recalls that innovative capacity across the EU is strong, with particular excellence in some essential technologies for the future; stresses the importance of an IPR framework that supports this capacity and protects the investments made by innovators and companies in new technologies or approaches;

4. Notes that the EU lags behind in IPR filing statistics and in the concentration of filings in computer technologies compared to other global competitors; underlines the risk of excessive and abusive patenting practices if the granting of patents is too permissive; recommends that the Commission takes steps to facilitate greater uptake of IPRs, including via the swift establishment of the Unified Patent Court (UPC);

5. Notes the Commission’s guidance on the implementation of Article 17 of Directive (EU) 2019/790, which assists Member States in implementing the Directive in line with fundamental rights;

6. Recalls the Commission’s 2014 Action Plan on IPR Enforcement and the subsequent industry initiatives; calls on the Commission to formulate a strategy based on past experience to tackle and minimise infringements, hold-backs and piracy, which continue to thrive and have proven to be even more dangerous during the COVID-19 pandemic, posing severe health, safety and security threats to consumers; welcomes the
Commission’s proposal for the digital services act package, which clarifies and upgrades the responsibilities of digital service providers, in particular online platforms;

7. Stresses the importance of ensuring the availability of critical IP in times of crisis, including via new harmonised licensing tools and a system to coordinate compulsory licensing in order to make the EU’s internal market more resilient by tackling, among others, the lack of availability of specific products and by better protecting of consumers’ interests by avoiding price increases;

8. Welcomes the fact that the Commission is evaluating the possibility of introducing a unified supplementary protection certificate (SPC) grant mechanism and/or creating a unitary SPC title, which would resolve current fragmented implementation of IPR across Member States;

9. Stresses the importance of urgently addressing the lack of harmonised IPR enforcement at the EU level; asks the Commission to evaluate whether new measures or guidelines that facilitate cross-border IPR enforcement could complement the IPR enforcement Directive, such as European harmonisation of legal obligations on procedures, procedural safeguards, transparency mechanisms to verify the accuracy and reliability of digital tools etc.;

10. Underlines that a green, digital and sustainable recovery and an increased single market resilience must be based on the full use of intangible assets; highlights the importance of disseminating information about the benefits of IP and the Commission’s support programmes for all economic operators; highlights the need for such information to be specifically targeted at SMEs active in knowledge-intensive sectors;

11. Stresses that owning IPR leads to stability and economic growth for companies, as studies show that these companies pay their employees up to 19% higher salaries overall and tend to be more stable; calls on the Commission and the Member States to create a strategy to accelerate and support research and development (R&D) leading to the transformation of the R&D results into valuable economic enterprises through the registration and valorisation of IP at the European level, increasing the number of the micro and SMEs using IPR, thus creating a more resilient economy and single market;

12. Stresses the importance of IPR-intensive industries in the green and digital recovery and resilience strategies; calls on the Commission to strengthen the single market by cooperating with the Member States in finding a common approach to addressing infringements and minimising hold-backs, thereby avoiding the proliferation of court cases on European-registered patents;

13. Underlines that IPR and open source system are essential for a real digital and green economy and a fast and sustainable recovery; calls on the Commission to cooperate with industry and stakeholders to find solutions, including for a better differentiation between standard essential patents and other patents, and for a clearer approach on the obligations for licensing of intermediate and final products;

14. Urges the Commission to cooperate with the Member States to facilitate further access to financial support and credits based on intangible assets in order to encourage SMEs to register their IP and reap the full benefits, ensuring a faster and more sustainable
economic recovery;

15. Underlines the importance of IPR in a resilient economy and a green recovery; urges the Commission and the Member States to extend the eligibility for European funds to all economic operators for the registration and valorisation of IP leading to an increase in the added value of the product through the integration of licenses;

16. Emphasises the potential of IPR for incentivising research and innovation in the EU;

17. Calls on the Commission and Member States to make collective efforts to ensure that implementation of the Action Plan will result in far-reaching and effective reforms and implementation of the IP Regulation, with the ultimate aim of ensuring competitiveness and innovation, as well as safe and trustworthy products for consumers in the single market;

18. Notes that not all companies wish to register rights, depending on their strategy, and so support and advice offered should take account of all valid IP strategies in order to ensure the most effective use of a company’s IPRs; considers that where registration is the preferred option, micro and SMEs should be supported through simple registration procedures and low administrative fees;

19. Highlights that different industries might require different approaches, and warns that litigation and threats thereof could be a burden on the patent system if abusive behaviour becomes widespread; calls, therefore, for increased transparency of patent ownership, including by raising awareness about the advantages of legal protection of computer programs in line with Directive 2009/24/EC, and for abuse of litigation to be limited;

20. Stresses the importance of establishing a European unitary patent system which covers all Member States and therefore considerably simplifies patenting in the EU, boosts transparency and facilitates affordable licensing; calls on the Member States to renew the impetus for the introduction of the unitary patent system and the establishment of the UPC;

21. Stresses that the initiative should effectively support and build on the EU’s efforts to adopt robust AI regulation, in order to improve citizens’ trust and address safety in issues linked to AI technologies, blockchain and the internet of things, specifically in the areas of healthcare, education, and green technology, by protecting consumers’ rights and citizens’ fundamental rights;

22. Reiterates that lowering barriers for access to data is essential for encouraging the development of new services, applying current exceptions on text and data mining (TDM) in Directive (EU) 2019/790 properly in line with the objectives of these exceptions, and supporting AI developers; believes that further guidance could be considered, if appropriate, for specific issues that may arise in the practical implementation of TDM exceptions;

23. Notes that the use of AI systems in the realms of creation, innovation and science, which are highly dependent on IPR, has grown spectacularly in recent years, and is expected to continue to do so in the years to come; notes, therefore, that new
technologies offer a unique window of opportunity to support the sustainable recovery of the EU’s economy and the resilience of the internal market while leaving no one and no region behind; underlines that the Commission must incentivise and reward green technologies and inventions;

24. Calls on the Commission to consider, on the basis of an impact assessment, whether to propose an efficient and transparent uniform mechanism for the protection of non-agricultural geographical indications (GIs) such as handicrafts, which are often an important part of local identity, attract tourism, retain unique skills and contribute to quality job creation, particularly in less developed regions; stresses that this would provide consumers with better and visible information about the authenticity of these products;

25. Welcomes the Action Plan’s aim of boosting support for the EU's geographical indication system by protecting GIs for both agricultural and non-agricultural products in order to improve their competitiveness, enable producers to fully benefit from opportunities, and contribute to the economic, social and environmental sustainability of the single market;

26. Underlines that counterfeit products placed on the internal market and failures in market surveillance have negative implications and are detrimental to consumers and overall trust in the single market; calls, in this regard, for an updated impact assessment of the overall functioning of the Enforcement Directive (2004/48/EC); urges the Commission to effectively enforce the implementation of customs legislation and harmonise customs controls throughout the EU;

27. Calls on the Commission to promote campaigns to combat the entry of all counterfeit products, with emphasis on the counterfeit goods on the market most harmful to consumers; underlines that for a well-functioning data economy, global enforcement cooperation as well the sharing of data are necessary in order to guarantee that companies not headquartered in the EU also comply with European consumer protection rules;

28. Welcomes the Commission’s intention to bolster the enforcement of IPRs at EU level by broadening the Commission’s mandate and assigning this task to the European Anti-Fraud Office (OLAF), so that the latter not only prevents counterfeit goods from entering the single market, but can also act against illicit production of counterfeit goods within the EU; calls for currently existing enforcement silos to be bridged, and for substantially improvement in the capacity of law enforcement authorities to efficiently address security problems for consumers identified in the RAPEX system alerts;

29. Reiterates the European Union’s mission to act as a global standard-setter for IP and its important role in addressing IP infringements and unfair practices and in ensuring a balanced approach at both EU and global level; underlines the global nature of IPR development, and thus in particular the need for trade-related support for European companies while ensuring a high level of consumer protection; stresses that international competitiveness and attractiveness is rooted in a strong and resilient internal market where there is IPR protection and enforcement.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| Members present for the final vote | Andrus Ansip, Pablo Arias Echeverría, Alessandra Basso, Brando Benifei, Hynek Blaško, Biljana Borzan, Vlad-Marius Botoș, Markus Buchheit, Andrea Caroppo, Anna Cavazzini, Dita Charanzová, Deirdre Clune, David Cormand, Carlo Fidanza, Evelyne Gebhardt, Sandro Gozi, Maria Grapini, Svenja Hahn, Virginie Joron, Eugen Jurzyca, Marcel Kolaja, Andrey Kovatchev, Jean-Lin Lacapelle, Maria-Manuel Leitão-Marques, Morten Lokkegaard, Antonius Manders, Beata Mazurek, Leszek Miller, Anne-Sophie Pelletier, Miroslav Radačovský, Christel Schaldemose, Andreas Schwab, Ivan Štefanec, Róża Thun und Hohenstein, Tom Vandenkendelaere, Marion Walsmann, Marco Zullo |
| Substitutes present for the final vote | Clara Aguilera, Rasmus Andresen, Geert Bourgeois, Maria da Graça Carvalho, Salvatore De Meo, Claude Gruffat, Tsvetelina Penkova |
## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention
10.9.2021

OPINION OF THE COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT

for the Committee on Legal Affairs

on an intellectual property action plan to support the EU’s recovery and resilience (2021/2007(INI))

Rapporteur for opinion: Irène Tolleret

SUGGESTIONS

The Committee on Agriculture and Rural Development calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Welcomes the presentation of the new intellectual property action plan and recognises its importance for the agri-food sector; stresses the significant role played by geographical indications (GIs) and traditional specialities guaranteed (TSGs) in protecting the intellectual rights and reputation of the EU food and drink sector in the single market and international markets; recalls that around 3 300 products are protected by the EU as GIs, and 64 as TSGs;

2. Recalls that GIs are of high economic significance, representing about 7 % of the total sales and 15.4 % of exports of EU food and beverages; notes that the yearly value of all these products has increased to over EUR 75 billion, of which more than one fifth derives from exports outside the EU;

3. Stresses, therefore, the need to enhance the protection of GI and TSG as intellectual property rights, both within the single market and worldwide through bilateral and multilateral agreements with non-EU countries; believes that GIs should be better protected against all practices of commercial misconduct in Union law, including when used as ingredients or when sold as part of a service; highlights the importance of ensuring that the reputation of the GIs in question is not weakened by a third party; emphasises the importance of this protection in preserving EU jobs associated with the production and distribution of these products; highlights the need to enhance checks on the origin of ingredients for all GIs, including protected designations of origin (PDOs) and protected geographical indications (PGIs); regrets the refusal, during the ongoing

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1 Commission communication of 25 November 2020 entitled ‘Making the most of the EU’s innovative potential An intellectual property action plan to support the EU's recovery and resilience’ (COM(2020)0760).
negotiations on the modernisation of the EU-Chile Association Agreement, to grant exclusive protection to flagship EU GIs, in particular in the wine sector;

4. Points out that promotional campaigns increase consumer trust in key parts of the food chain and raise awareness about the quality and origin of products; points out, furthermore, that these campaigns make it easy to identify the authenticity of quality products and, indirectly, to protect them against usurpation and imitations; calls on the Commission to strengthen GI and TSG promotional campaigns in the next revision of the corresponding legislation, and to enhance consumer awareness, including with the aim to increase local consumption and support short supply chains and healthy, resilient and sustainable territorialised food systems;

5. Invites the Commission and the Member States to adapt public procurement mechanisms in order to improve access to quality-labelled products such as GIs and TSGs;

6. Notes the increase in online sales during the COVID-19 pandemic and the great potential of this market for GIs and TSGs, but stresses that it can only be achieved if intellectual rights are better protected; points out that the protection of GIs should apply to all goods that are sold online and that procedures should be made available to GI producers to prevent registrations in bad faith of domain names that undermine GI protection; calls on the Commission to be at the forefront of online protection, notably by including it in bilateral and multilateral trade agreements; recalls that Parliament made proposals in this area during the discussions on the reform of the common agricultural policy and that the Commission agreed to assess these proposals; welcomes the intention of the Commission to work with international partners to protect GIs worldwide through the World Intellectual Property Organization (WIPO) multilateral Lisbon Registry and to step up its participation in global internet forums to ensure the international domain name system is fully respected with regard to intellectual property rights, including GIs;

7. Considers that the issue of overburdening producers with administration in connection with the registration, amendment and management of GI and TSG product specifications should be at the heart of future discussions; recalls that the procedures for amending the specifications for GIs have been simplified and made more efficient for wine and agri-food products as part of the review of the common agricultural policy reform, and that this approach should be strengthened in the future;

8. Stresses the need to enhance the role of GI producer groups; considers, in this regard, that extending to all agricultural and wine sectors the supply management tools applied to PDO and PGI cheeses and hams, which was agreed as part of the reform of the common agricultural policy, is an important step towards meeting this objective; calls on the Commission to make additional proposals to enable producer groups to better manage the reputation and marketing of their products and to strengthen their influence in the value chain;

9. Supports the Commission’s desire to rationalise and harmonise the rules on GIs, which are currently set out in four EU regulations (three regulations following the reform of the common agricultural policy), while stressing the need to maintain a specific, but
coherent framework for wine products and spirits;

10. Notes the Commission’s objective of encouraging producers of GIs to market sustainable products in order to meet society’s demands and consumers’ expectations; stresses that, at Parliament’s initiative, a possibility has been introduced, as part of the reform of the common agricultural policy, for producers to include in specifications, on a voluntary basis, the contribution made by their products to sustainable development; considers that such a possibility should be reinforced in future Commission initiatives;

11. Stresses that GIs are, above all, a means of protecting intellectual property and demonstrating authenticity by indicating a product’s origin; calls for future Commission initiatives not to undermine GIs and TSGs directly or indirectly through measures that could be detrimental to them; stresses, in particular, the need to find a balanced solution for nutrition labelling in the context of future initiatives under the farm to fork strategy;

12. Recognises that incentives for seed and plant variety innovation are essential in order to meet the demands of farmers and consumers; stresses that improvements in plant and animal breeding reduce greenhouse gas emissions by providing more efficient and safer agriculture;

13. Considers it essential to protect intellectual property rights in a way that promotes research and innovation, in particular with the aim of introducing more resilient agricultural varieties to cope with climate change, achieve sustainable and agro-ecological farming models that are protective of natural resources and respectful of the potential of non-protected reproductive and heterogeneous material in the organic sector, and contribute to the Sustainable Development Goals and the objectives of the European Green Deal; stresses that protection of plant variety rights requires a strong and enforceable protection system in the EU; points out that intellectual property rights must also contribute to food security and the resilience and competitiveness of the EU agri-food model;

14. Recalls its resolution of 19 September 2019 on the patentability of plants and essential biological processes; insists, however, that intellectual property rights should not lead to a reduction in the diversity of species and varieties and a loss of independence for farmers; underlines that the Community plant variety rights (CPVR) system includes conditions and safeguards for farmers’ independence and therefore must remain the sole system for the protection of plant varieties; highlights, in that regard, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas;

15. Insists, therefore, that farmers must remain the owners of their seeds and breeding material in accordance with the system for plant variety rights provided for by the International Union for the Protection of New Varieties of Plants (UPOV) and in Council Regulation (EC) No 2100/94, and must be able to select and adapt their seeds to local conditions and needs; reiterates that plant and animal varieties, including parts and traits, essentially biological processes and products emanating from such processes, must not in any way be patentable, pursuant to Directive 98/44/CE and the EU

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legislature’s intention, and remains vigilant concerning the implementation of this principle, thereby recognising that all plants and animals of the public domain constitute a common heritage for all;

16. Underlines the importance of the CPVR system in ensuring breeders can continue to develop new varieties for sustainable food production and horticulture, thereby benefiting breeders, growers, farmers, consumers and society at large; welcomes the inclusion of the CPVR system in the intellectual property action plan in order to improve the protection of plant variety rights and consequently ensure the effectiveness of the system in the future and its proper application; underlines that the strength of the plant variety rights system is the balanced way in which it protects breeders’ work, while at the same time ensuring, through the breeder’s exemption, that others may freely use protected varieties to create new varieties and market them;

17. Points out that the current intellectual property model in agriculture has worked well; stresses that the coexistence of patents with the plant variety rights protection model has been positive for the implementation of innovative solutions in agriculture; invites the Commission and the Member States to protect the innovative capacity of the sector and the general interest in a way that ensures effective access to and use of plant reproductive material so as not to interfere with practices that guarantee farmers’ rights and the plant breeders’ exemption; recalls that the system of plant variety rights enshrined in the UPOV Convention and Council Regulation (EC) No 2100/94 does not allow the holder of a plant variety right to prevent others from using the protected plant variety for the purpose of further breeding activities;

18. Stresses that further efforts should be made to increase transparency with respect to the status and patentability of biological material; points out that breeders should be provided with adequate access to information on the biological material they will use in the plant breeding process; stresses that the Commission should implement new methods for effective consultation and exchange of information; opposes any patenting of live animals;

19. Welcomes the fact that, as part of the intellectual property action plan, the Commission wishes to explore the feasibility of a GI protection system for non-agricultural products at EU level; considers that such an initiative would enable EU producers to take full advantage of the opportunities offered by the international system of the Geneva Act for the international registration of appellations of origin and GIs, which is managed by WIPO;

20. Notes that, in the context of the stakeholder consultation on the initial impact assessment carried out by the Commission with a view to establishing a system of GI protection for non-agricultural products, there was broad support for such an EU initiative, highlighting the potential benefits for the products concerned in terms of international trade, transparency and identification of origin for consumers and economic development for SMEs and the EU’s rural areas.
**INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION**

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| **Members present for the final vote** | Mazaly Aguilar, Clara Aguilera, Atidzhe Alieva-Veli, Álvaro Amaro, Eric Andrieu, Carmen Avram, Benoît Biteau, Mara Bizzotto, Daniel Buda, Asger Christensen, Angelo Ciocca, Ivan David, Paolo De Castro, Jérémy Deckerle, Salvatore De Meo, Herbert Dorfmann, Luke Ming Flanagan, Dino Giarrusso, Martin Häusling, Martin Hlaváček, Krzysztof Jurgiel, Jarosław Kalinowski, Elsi Katainen, Gilles Lebreton, Norbert Lins, Chris Mac Manus, Alin Mituța, Ulrike Müller, Maria Noichl, Juozas Olekas, Pina Picierno, Bert-Jan Ruisen, Anne Sander, Petri Sarvamaa, Simone Schmiedtbauer, Annie Schreijer-Pierik, Veronika Vrecionová, Sarah Wiener, Juan Ignacio Zoido Alvarez |

| **Substitutes present for the final vote** | Claude Gruffat, Petros Kokkalis, Cristina Maestre Martín De Almagro, Joëlle Mélin, Michaela Šojdrová, Marc Tarabella |
## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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### Key to symbols:

+ : in favour  
- : against  
0 : abstention
7.9.2021

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Legal Affairs

on an intellectual property action plan to support the EU’s recovery and resilience (2021/2007(INI))

Rapporteur for opinion: Andrey Slabakov

SUGGESTIONS

The Committee on Culture and Education calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Recalls that intellectual property (IP) is a fundamental right enshrined in Article 17 of the Charter of Fundamental Rights; acknowledges that access to education, knowledge, information and culture are fundamental rights guaranteed by copyright limitations such as those established by the revised Copyright Directive; recalls that according to the Universal Declaration of Human Rights, everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which they are the author;

2. Recognises the paramount importance of intangible assets and IP-intensive industries for the economic recovery, cultural sovereignty and resilience of the EU in the aftermath of the COVID-19 pandemic; underlines the need to enhance legal protection for these assets and industries to a sufficient degree, so as to allow all creators of cultural and creative works to benefit from their intellectual property rights (IPRs); emphasises that the collective management of authors’ rights represents an important source of income for the majority of creators and artists in Europe and is essential for the EU’s framework on copyright and authors’ rights to function effectively, while providing the broadest possible access to cultural and creative works for the public; notes with concern that European creators are systematically coming under pressure from global streaming platforms to give away their copyright or authors’ rights in exchange for one-off payments;

3. Recalls that everyone has the right to participate freely in the cultural life of their community, to enjoy the arts, and to share in scientific advancement and its benefits; highlights, in this spirit, the importance of being able to access cultural works irrespective of socioeconomic background or circumstance, including in the digital age,
in order to preserve user rights and protect the public domain;

4. Recognises the importance of ensuring that EU citizens enjoy equal opportunities to be able to access education and culture, including cultural education, under the conditions brought about by the pandemic; recognises the opportunities to improve this access courtesy of the rise of digitalisation in the cultural and educational sectors and encourages the Member States to swiftly and fully transpose the provisions of the Copyright Directive aimed at improving access to online education and digitised cultural heritage;

5. Notes that IPR protection is key to encouraging companies to invest in innovative products and processes, and in particular to produce new content and products, but is convinced that the compulsory licensing of patents is important as a tool of last resort to allow life-saving interventions in the public interest; calls on the Commission, therefore, to analyse and explore the possible options to make compulsory licensing in the EU more effective and better coordinated, taking account of the cases in which it has been used in the EU, the reasons for its use, the conditions under which it was granted, its economic consequences, and whether it achieved the desired effect;

6. Urges the Member States to support educational and cultural heritage institutions to help them make full use of the opportunities of digitalisation, including by developing public digital infrastructure for digital education and providing access to digitised cultural heritage, without relying on the services of intermediaries whose business models are based on extracting personal data from EU citizens;

7. Calls for continued intensive dialogue on the appropriate definition of copyright-protected uploaded content which truly recognises different types of licensing as well as non-licensed works, and encourages an exchange of views on remuneration models that must be commensurate with modern uses of music and media platforms;

8. Asks the Member States to ensure that companies from the cultural and creative sectors, especially content producers, are encouraged to retain or acquire IPRs for their creations and improve their position in competitive markets, without neglecting authors’ and performers’ rights; outlines that companies who own IPRs have 20% higher revenues, improving their ability to access previously untapped highly competitive markets; highlights the various benefits that employees enjoy from a high level of IPR protection, as IPR-owning companies pay wages that are higher on average; welcomes the various initiatives of the Commission and the EU Intellectual Property Office to ensure that SMEs make the most of their IP and calls on the Commission to consider further such initiatives;

9. Notes that in most Member States, more national patents are filed than EU patents; asks the Commission to evaluate whether the cost of filing EU patents and the protections they offer have a bearing on this tendency, in particular for SMEs;

10. Calls for the enhancement of the tools available to ensure that innovators from the

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cultural and creative sectors, in particular SMEs, can be guaranteed a fair return on their investments and capitalise on their creations, thereby further stimulating innovation;

11. Highlights the challenges that SMEs face in acquiring IPRs and notes with concern the fragmentation of the European IP system, which hinders the development of enterprises in their ability to engage in the research and innovation process; calls for steps to address the issue of parallel litigations in multiple EU countries; calls for the process to become more streamlined and straightforward and for SMEs to be equipped with accurate information to facilitate the IPR acquisition process and to be informed of the benefits of IPRs for their commercial competitiveness; stresses the need for the Member States to introduce concrete measures to provide better information and advice about IPRs and their legal framework in the EU and the Member States, including acquisition, protection and use, which must be adequately funded and provide a low-threshold service for SMEs; highlights the need to ensure that SMEs, NGOs, and research and academic institutions can more easily access and benefit from IPRs; emphasises the need for IPR regulations to ensure a level playing field for all actors, in particular smaller actors;

12. Welcomes the Commission’s commitment to support the full and timely transposition of the two copyright framework directives, which can play a key role in the revival of the culture and media sector; considers that the Member States should implement the Copyright Directive properly, without delay and in a manner which reflects the agreement struck by the co-legislators; regrets the fact, however, that the Commission only published the guidelines three days before the deadline for implementation; urges the Member States to take the Commission’s guidance into account to fully transpose the directives into their national legislation without further delay, using the appropriate tools to ensure copyright protection, while guaranteeing users the right to freedom of expression and artistic processing; emphasises the role of the Copyright Directive in boosting the recovery and resilience of the cultural and creative sectors; acknowledges that territorial and exclusive licensing of rights are essential for the audiovisual sector not only to guarantee its creativity, financing and sustainability but also to ensure that European consumers can access culturally diverse content and a pluralistic media; emphasises that legal and business certainty and regulatory consistency are absolutely essential to safeguard the EU’s rich cultural diversity and to ensure that content creators are able to thrive and continue to reinvest in quality content;

13. Welcomes the proposal outlined in the intellectual property action plan to establish an EU toolbox against counterfeiting; expresses its disappointment that the same level of attention is not given to other forms of IPR infringement, including copyright infringement; encourages the development of a dedicated toolbox against copyright infringement, which should be based on good industry practices and fully integrated with the Digital Services Act;

14. Highlights the ongoing problems faced by creators, artists, producers and cultural sector workers with regard to copyright and related rights, not least in the light of online piracy; highlights that protecting IPRs effectively must go hand in hand with the fight against content piracy and raising awareness among the general public of the value of IPRs for creators; notes with great concern that as a 2019 study by the EU Intellectual Property Office shows, the illegal pirated streaming of content can lead to job losses in
the creative industries, significant losses in public revenues and less investment in creative, journalistic and sports content, to the detriment of cultural diversity and, ultimately, the European consumer; notes that creators, artists, producers and cultural sector workers continue to be pressured into unfavourable contracts, often giving up their IPRs without receiving appropriate and proportionate remuneration for their creative work; stresses that Member States must ensure that sufficient protection is put in place to prevent authors, creators, artists, producers and cultural sector workers across the EU from losing their IPRs;

15. Recalls the importance of traditional handicraft and industrial products for Europe’s cultural identity and know-how; underlines the crucial role of handicraft and agricultural micro-enterprises and SMEs for the economic fabric of Europe’s regions, particularly rural areas, and their added value for cultural tourism; notes that these products urgently need legal protection at EU level in order to combat counterfeiting and unfair competition; underlines the positive impact that a sui generis EU protection of these products would have on small enterprises, employment, training and the attractiveness of Europe’s territories, while allowing local handicraft and industrial production circuits to be developed and strengthened; calls on the Commission to propose an EU system of protection for non-agricultural geographical indications, based on the model of protection for agricultural geographical indications;

16. Highlights the ongoing challenges faced by students, teachers and researchers due to the emergency closure of the premises of educational establishments, research organisations, libraries and archives; notes with great concern the lack of cross-border rules covering distance learning and other remote activities that are carried out outside the EU but are the responsibility of institutions established within the Union; urges the Member States to address this issue at an international level;

17. Supports the creation of a European digital platform focused on copyright and IPRs, which should offer assistance and guidance to creators in the fields of culture, media and education to enable them to take advantage of the full range of opportunities available across Europe; calls for specific educational and awareness-raising initiatives to help guide young creators;

18. Regrets the fact that the internet has become widely used to distribute pirated content and services that breach IPRs and urges the Commission to acknowledge the need for regulatory intervention to ensure that rights holders can protect their property rights online and enforce them effectively in line with Article 17 of the Charter of Fundamental Rights, including through measures with cross-border effect; calls on the Member States to strengthen the membership and contractual positions of authors and creators, as set out in Article 18 of the Copyright Directive in the provisions for the fair structuring of copyright contract law, by means of contractual provisions and dispute resolution mechanisms to ensure fair remuneration for all creators and insight into licence agreements with the major platforms;

19. Welcomes the Commission’s proposal for a Digital Services Act on the basis of the principle that ‘what is illegal offline is illegal online’ and the establishment thereunder of a robust framework to counter such IPR infringements, including by strengthening the enforcement of notice and action mechanisms; highlights the fact that proactive
measures from intermediaries would contribute enormously to the fight against piracy and that artificial intelligence and blockchain could play an important role in detecting piracy and enforcing IPRs; supports the use of new technologies to combat IP infringements;

20. Underlines that the cultural and creative sectors were already characterised by fragmented organisational structures and working practices before COVID-19 owing in part to insufficiently protected IP-based revenue models, among other factors; acknowledges that remuneration for artists is often unstable and uncertain as it comes from different sources such as contracts, public grants and subsidies, which renders their incomes highly unpredictable; emphasises that the COVID-19 crisis threatened the livelihoods and led to an existential loss of revenue for workers in the cultural and creative sectors; observes that for many authors, performers and cultural workers, IPRs are an essential source of revenue that provide them with economic independence and a financial safety net that serves as a type of social security, and that the digital marketplace was the only tool for generating income during lockdown; notes with concern that the winners of the digital growth of culture were predominantly not the creators but the online distributors; highlights, therefore, that a robust and fair remuneration for authors and safeguarding their related rights is essential and that Member States must bolster their IPR frameworks to protect creators and performers; notes, in the light of the experiences of the pandemic, that larger cultural and media productions can only be realised if the necessary technical and intermediary services, such as assistant directing and catering, are also available; notes that such services are usually not paid for through licencing sales but are often indirectly dependent on creators having good contracts;

21. Calls for dedicated action to ensure that all Member States and their citizens can access quality content in the fields of education, culture and the media; underlines the need for EU financial support in providing access to content in all EU languages;

22. Invites the Commission to look into the impact of non-EU-based video-on-demand platforms on European content creation and on how these platforms interact with the creators of musical and audiovisual works in the Union; notes with concern that creators are totally deprived of their copyright or authors’ rights when they are forced to accept buy-out contracts; notes with concern the ‘work-for-hire’ system used by these companies, which acquire IPRs in exchange for a one-off payment and profit from exploitation of their work; notes that these buy-out contracts are imposed on European creators through non-EU laws, despite the provisions of national and EU laws discouraging this; calls on the Commission to monitor this phenomenon and to thoroughly investigate such practices by global streaming platforms and their impact on the remuneration of creators based on copyright or authors’ rights; stresses the need to establish appropriate remuneration mechanisms for content creators and the exploitation of their work across the EU; underlines the importance of specific action and support for digital content creators;

23. Emphasises the role of IP as one of the key drivers of economic growth; calls for IP to play an important part in the EU’s future through action to promote a global level playing field, protect against IPR infringement, uphold the EU’s technological sovereignty, and facilitate Europe’s green and digital transformations; highlights the
crucial role that IP already plays in Europe’s digital transformation; emphasises that innovation should go hand in hand with creativity and digitalisation, with the pandemic underscoring the need for critical new technologies, notably in health and education; highlights the need to put in place a system to protect European businesses from cyberattacks and the resultant loss of trade secrets;

24. Welcomes the Commission’s commitment to seek robust protections for IP in future free trade agreements and to ensure such protections are fully implemented in existing agreements; regrets the fact, however, that the current template for IPRs in free trade agreements does not reflect the protections afforded by EU rules; reminds the Commission that the signatories of free trade agreements interpret IPRs differently from the EU and that the greatest threat to IP is from outside the Union; recommends that the IP chapters of the EU’s free trade agreements showcase the EU model of authors’ and related rights, which values authors’ IPRs and their right to be continuously remunerated for the exploitation of their works on all media.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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**Key to symbols:**
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- : against
0 : abstention
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| Substitutes present for the final vote | Patrick Breyer, Daniel Buda, Emmanuel Maurel, Nacho Sánchez Amor, Kosma Złotowski |
| Substitutes under Rule 209(7) present for the final vote | Isabel Benjumea Benjumea |
### FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

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| 3    | -    |
| ID   | Gunnar Beck |
| Verts/ALE | Patrick Breyer, Sergey Lagodinsky |

| 0    | 0    |

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- **-**: against
- **0**: abstention