

ROADMAP			
TITLE OF THE INITIATIVE	Commission Communication on better valuation and utilisation of IPRs in the Internal Market		
LEAD DG – RESPONSIBLE UNIT	MARKT D3	DATE OF ROADMAP	04/2013
<p>This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</p>			

A. Context and problem definition	
<p>(1) What is the political context of the initiative?</p> <p>(2) How does it relate to past and possible future initiatives, and to other EU policies?</p> <p>(3) What ex-post analysis of existing policy has been carried out? What results are relevant for this initiative?</p>	
<p>The Single Market Act II recognises the need to encourage investment in intangible assets and to help EU based innovative companies to transform their R&D efforts into competitive gains. While the EU intellectual property acquis establishes measures for the protection and enforcement of intellectual property rights (IPRs), it does not provide guidelines on the cross-border management of these rights that would increase commercial benefits for both innovative enterprises and consumers. The latter could be achieved i.a. by encouraging (i) proper valuation (estimating value) of intellectual property so as to encourage cross-border public and private investment by accepting the use of IP-related assets as collateral, and (ii) cross-border valorisation (maximising profit through efficient management) of IPRs that would increase the competitiveness of European innovative companies. This, in turn, would result in the creation of broader and more easily accessible choice of IP-related goods and services for consumers.</p> <p>The initiative should give rise to more investment in creation and innovation within the EU leading to growth and job creation. Low or insufficient valuation of IPRs that account for 50% of total intangible assets within the EU impedes the achievement of the Europe 2020 growth strategy that aims at stimulating innovation and growth and also prevents the internal market from yielding its full economic potential.</p> <p>Improved valuation of IPRs would complement the EU's IP and innovation policies, creating an attractive environment for the development of innovative enterprises within the EU and having an Internal Market characterised as a "brain pole" instead of a "brain drain". It would also help improve the performance of public R&D funds by ensuring that commercial spin offs of public entities (such as University research labs) become economically more viable and less subject to takeover by major international corporations.</p>	
<p>What are the main problems which this initiative will address?</p>	
<p>EU IPRs are not being fully exploited within the Internal Market partly because their actual market value is not recognised as collateral against which business credit or venture capital can be raised. The sub-optimal valuation of IPRs is undermining the possibility for innovative and creative SMEs within the European Union to grow and create the sustainable, high quality jobs that the EU requires, in particular in these recessionary times.</p> <p>This sub-valuation of IPRs results in or is accompanied by a lack of proper valorisation of IPRs: If owners of IPR cannot properly assess its value, it is even more difficult for them to make proper use of it, e.g. by licensing it, by selling it or by using it as collateral in financing deals. The Internal Market does not allow for an optimal management of IPRs in terms of offering the most welfare-enhancing licensing opportunities to EU creators and innovators, nor for an efficient cross-border matching between the innovators/creators and potential financiers/licensees. This impedes the mobilisation of the full potential for investment into innovative activities that should play a key role in recreating sustainable growth within the EU.</p> <p>A number of factors can explain why this market is currently not working. They include</p> <p>(i) the relatively high costs of IP registration within the EU (compared to other major trading blocs),</p> <p>(ii) dissuasive litigation costs,</p> <p>(iii) ineffective redress against abusive practices of certain large rights holders and non-practicing entities and</p> <p>(iv) uncertainty regarding cross-border enforcement.</p>	

Who will be affected by it?
All companies in the knowledge economy, i.e. the vast majority of European businesses, their employees and EU consumers who are not being offered the level of innovative services and products that they should expect from a smooth functioning Internal Market for innovative and creative businesses. Arguably SMEs and research entities are most affected as they often do not possess of the necessary resources to set up their own IP valuation systems and would therefore benefit most from, e.g., more standardised valuation systems. Obviously, the current sub-optimal situation affects public (research) institutions in a similar way if they want to exploit the value of their IPR, be it by commercialising it or simply by using it to demonstrate their effectiveness.
Is EU action justified on grounds of subsidiarity? Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? Can the EU achieve the objectives better?
Member States are aware of this problem and some are seeking to address it. However, they recognise that innovation networks and services should be increasingly cross-border in nature. Therefore, a European initiative establishing conditions to ensure optimal cross-border commercialisation of goods and services protected by IPRs within the Union is in line with the principle of subsidiarity.

B. Objectives of the initiative
What are the main policy objectives?
<ul style="list-style-type: none"> • Improve the smooth functioning of the Internal Market by providing tools that would encourage investment in research and development of innovative products and technologies and subsequently facilitate their commercialisation by creating the market for financing and efficient licensing of IPRs in the Union. • Ensure that public R&D funding is optimised. • Encourage FDI and technology transfer into the EU to stimulate growth and investment.
Do the objectives imply developing EU policy in new areas?
No

C. Options
(1) What are the policy options (including exemptions/adapted regimes e.g. for SMEs) being considered? (2) What legislative or 'soft law' instruments could be considered? (3) How do the options respect the proportionality principle?
<p>ad (1): Policy options:</p> <ol style="list-style-type: none"> 1. to investigate the issue further through the collection of more comprehensive data and information from all stakeholders involved; 2. to identify and promote best practices via a Commission Communication ; 3. to identify and promote best practices via Commission Guidelines; 4. to review the existing IP acquis to include elements on valuation and valorisation; 5. (legislative) harmonisation that will allow the development of best practices applied in some of the MS to the entire Union <p>ad (2): The Communication could</p> <ul style="list-style-type: none"> • present an initial stock-taking of current (best) practices and describe the deficiencies, in particular with regard to the proper functioning of the internal market; <p>and announce:</p> <ul style="list-style-type: none"> • the creation of an expert group of economists to analyse the issue; • the creation of a Member States expert Group for IP-related issues; • a public consultation on potential initiatives identified in the Communication; • awareness campaigns aimed at relevant stakeholders (rights-holders, bankers, venture capitalists etc). <p>ad (3): To be ensured, where and when relevant, at a later stage, depending of the follow-up on a potential Communication.</p>

D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?

In general terms, the options would have the following pros and cons:

Option 1 in insulation would not help improving the situation and would hardly have any impact of its own.

Option 2 would go beyond option 1 in following up on the initial stock-taking by setting-up a structure for an in-depth analysis of the main issues identified. This option would have some low one-off administrative costs for the Commission and potentially for Member States for the expert groups and campaigns. Benefits would be a better and potentially mutually shared understanding of the issues at hand. The promotion of best practices via a communication would not bind anybody and therefore not trigger any adverse impacts but would provide the stage for considering further action/a new initiative, if the work of the expert group(s) would advise so.

Option 3 would go beyond option 2 in directly proposing guidelines on how to value IPRs. Although not legally binding either, it can be anticipated that such guidelines would have a much stronger impact on companies and research institutions as they might be expected by their stakeholders to apply these guidelines. While this should have a net benefit as such guidelines should help limit the adverse effects of the status quo described above, there would either be a risk of jumping to conclusions before having analysed the issue in all detail, or the development of the guidelines would result from what has been described as option 2 above and would therefore simply pre-determine the follow-up action while it was left open in option 2.

Option 4 would require legislative changes but it would be very difficult to assess whether such changes in EU intellectual property law would be sufficient and the most appropriate way to achieve the objectives. It might go too far in some respects while not addressing others at all.

Option 5 would have the advantage of building up on what already exists and has proven beneficial at Member State level. However, it cannot be taken for granted that best practices at Member State level would necessarily work in other Member States and in an internal market context as well.

Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?

No, we believe that any such initiatives should enhance simplification, reduce administrative burden and not give rise to any significant implementation costs. More transparency and streamlining of valuation techniques would lead to a simplification of the valuation process for companies that already value their IPRs and would allow those that did not so far, in particular SMEs, to start doing so. These valuations would then, in turn, help investors to value their stakes in the respective companies. However, as these valuations are not required by law, they do not represent administrative burden in the narrow sense; and a Communication would of course not lead to simplification in its narrow meaning used in the European Commission.

We see no reason why such initiatives would be problematic for third countries or any of our Member States. To the contrary, as outlined above, more transparency and streamlining should facilitate cross-border activities. However, one could envisage administrative burden if options 4 and 5 make valuation of intellectual property obligatory but at this stage this is not the intention and neither option 4 nor option 5 are being followed at the moment. Should this change, an IA would be required and we would look more closely into this issue.

ad (v): N/A. Obviously, no transposition would be required.

(1) Will an IA be carried out for this initiative and/or possible follow-up initiatives?

(2) When will the IA work start?

(3) When will you set up the IA Steering Group and how often will it meet?

(4) What DGs will be invited?

(1) No IA will be carried for this initiative as it will not define a policy or legislative initiative but rather lay down the problem and initiate further work; as for the possible follow-up initiatives the need for IA would be decided once these initiatives are identified. However, should for whatever reason option 4 or option 5 become the preferred approach, an IA would be required.

(2) N/A

(3) N/A

(4) N/A

<p>(1) Is any option likely to have impacts on the EU budget above € 5m?</p> <p>(2) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial Regulation? If not, provide information about the timing of the ex-ante evaluation.</p>
N/A

E. Evidence base, planning of further work and consultation

- (1) What information and data are already available? Will existing IA and evaluation work be used?
- (2) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?
- (3) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?
- (4) Is any particular communication or information activity foreseen? If so, what, and by when?

Evidence from a network of IP economists that we are about to establish in the second half of the year 2013 as well as other work undertaken by national IP offices, EUROSTAT and the OECD will be used. We will also collect information through the EU Observatory on infringements of intellectual property rights. Evidence from DG MARKET's on-going review of civil enforcement of IPRs will also be used as will the output of DG RTD's expert group on IP valuation which DG MARKET is contributing to.

Which stakeholders & experts have been or will be consulted, how, and at what stage?

The appropriate form and time to consult stakeholders is still to be decided.
 Experts are being consulted via the Expert group mentioned above.