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**Stocktaking on industrial and
intellectual property**

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

European Parliament Legal Affairs Committee

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Mr Chairman, Members of the Committee,

It is a pleasure for me to be here today before the Legal Affairs Committee. Some time has elapsed since my last visit and it is certainly time to revisit together a few issues of common interest.

A number of Members expressed an interest in how we should move forward on intellectual and industrial property related issues, I will start with that. I will also say a few words on ongoing activities in the company law field.

Intellectual and industrial property

A good patent system benefits innovation. A bad one can be very prejudicial. Good intellectual property rules are essential: they stimulate and reward innovation, lead to the successful development of new products and processes and thus generate growth and new jobs. It should come as no surprise therefore that industrial property has been identified as one of the seven cross-sectoral policy initiatives for Industrial policy. We need to improve the framework conditions for industry. This includes an effective IPR system.

Intellectual property as such - invention, ingenuity know-how, creativity, call it what you will - is the driver for developing new products and services. It remains one of Europe's key competitive advantages in the global economy. Intellectual property protection rewards and stimulates innovation but we need to be sure that we frame our rules carefully: over-protection does nothing to boost our competitiveness. If we get the legal framework wrong we even run the risk of discouraging investment or distorting competition and we may lose public support and understanding – a crucial element in the fight against piracy and counterfeiting.

What does business want? In my view it wants: clear substantive rules, ideally agreed at a pan-European, or even a global level; access to simple inexpensive procedures for obtaining IPR rights; and reliable, predictable and inexpensive remedies when disputes arise.

How has Europe met this challenge? In the area of industrial property, it's instructive to compare progress on trade marks, industrial designs and patents. The Community Trade Mark has been in existence for 10 years now. Its success has exceeded all predictions. So far over half a million Community Trade Marks have been registered and last month the Commission was able to reduce the fees payable for registration and renewal with savings for businesses operating in the single market of between €37 and €40 million a year. The Trade Mark's success is, I venture to suggest, proof that Community IPR titles can meet the needs of business, especially when supported by an efficient organisation for processing applications. More remains to be done of course (for example in relation to the time taken to rule on appeals) but we can be proud of progress so far.

Secondly, we also have the system for the protection of designs which became operational in 2003. It is modelled on the Community Trade Mark and provides for acquisition of protection with effect for the whole of Europe. This system is also a success. Community business has embraced the new system: since 1 April 2003, the Office in Alicante has registered and published over 130 000 designs in total.

Turning to patents, the situation is, unfortunately, very different. The Community has made only two forays into the field of harmonisation of the substantive rules governing patentability, both in sectors crucial to the competitiveness of European industry. The biotechnology directive adopted in 1998, was agreed after long and difficult discussions in Parliament and Council.

It is perhaps symptomatic of the complexity of this area of technology and the emotions it arouses that three Member States have still not fully transposed the Directive, five years after the due date.

The debate surrounding the proposal on computer implemented inventions had one incontrovertible benefit: it interested a great many people in IPR and demonstrated that this is not a dry and dull subject for fusty lawyers. But it also showed the degree of misunderstanding which attaches to this area of law.

We need to do better in explaining why patent protection may be needed and the benefits it may have. Of course, we need to take account of the internet-driven debate on the so-called 'economic enclosure' of knowledge. We need to ensure that future debates take place on the basis of empirical data and sound analysis of the possible consequences of changes in the current rules. That is why my services have commissioned a study on the value of patents.

One proposal which clearly meets business demands for reducing the costs of IPR protection and provides legal security is the Community Patent proposal: it is central to achieving the aims of our revised Lisbon Strategy. Nonetheless, 5 years have now passed since the Commission presented its proposals for a Community patent to the Council and the Parliament, and there is still no agreement. The reason for this delay lies in entrenched postures resulting in an unwillingness to put the long term economic interests of all of European industry ahead of short-sighted national concerns. This single, pan-European patent would be an attractive alternative option for users of patent systems in Europe.

There is a danger that the debate on the Community Patent will parallel the play "Waiting for Godot". Lots of clever discussion but Compat, like Godot, the main character, never shows up. During my mandate I am willing to make one determined effort to ensure the adoption of the Community Patent. However, I do not want to be in the situation, four years from now, when I am handing this portfolio over to my successor, to be telling him or her that I am still waiting for the Community Patent.

We owe it to industry, investors, researchers, to have an effective patent regime in the EU. Unless we can find agreement soon on the Community Patent, this is not going to happen.

I do not see the circumstances arising in the next few months that will create the conditions for the one determined effort I envisage. Accordingly, I would like to use the next three months to launch and engage in a dialogue to determine what might usefully be done to provide Europe with a sound IPR framework. As well as continuing to strive for the Community Patent an issue to be considered is the existing framework of the European Patent Office, especially the litigation arrangements. I would like to hear what stakeholders think of this idea.

I know that some of you have suggested a third way: the harmonisation of national patent rules. Of course, at this stage, all avenues should be explored. But before going up this avenue, we would need to be sure of the added value, so I intend also to seek views on this suggestion.

This should help us form a clear picture on what our next steps should be.

In the area of copyright and related rights area, we have already set out our stall.

On 18 October this year, the Commission adopted a Recommendation on Management of Online Music Rights. The online music market was worth 330 million euro in 2004 and estimates expect it to double in 2005. But the EU online music turnover is still only 1/8th of US turnover, so the need for getting our Internet licensing process into shape is obvious. The recommendation is already a concrete result of the new better regulation policy-making in the EU.

This proposal is based on factual evidence and large-scale stakeholder consultation. Therefore, the recommendation was preceded by an empirical study to see what was necessary to streamline the labyrinth created by territory-by-territory online licensing in Europe. The study revealed that what was necessary was the creation of an EU license that is valid throughout the Community.

And there is a second initiative in the pipeline, in the Commission's 2006 Work Programme, namely a Recommendation on copyright levies in the information society. On-line content is increasingly sold by using digital rights management devices (DRMs) that protect the work being sold and often ensure direct payment by the consumer. Consumers download music on to portable devices in a protected format and, while doing so, pay for it. The 2001 Copyright Directive states that fair compensation must take account of the use of DRM. In practical terms, this should mean that as the use of DRMs increases, the use of levies should decrease. This does, however, not appear to be the case. This effectively means that consumers who use legitimate on-line services to download music against payment, pay twice.

I am also concerned that levies are being increasingly deployed on multi-function devices such as personal computers, hard disks and even printers. We are now carrying out an impact study and collecting empirical evidence on what needs to be done to give both the new technologies and their producers a fair deal in Europe. In the course of 2006, we will come forward with proposals to determine when and how the availability of DRM should trigger the phase-out of equipment levies.

These are two initiatives which I believe reflect good IP policy. We are not proposing measures without collecting empirical evidence that these measures are necessary and that they will clearly help the growth of creative industries rather than hurt them.

Company Law

Let me also say a few words on company law and corporate governance. We are now approaching the end of the first phase of implementation of the Action Plan on the modernisation of company law and corporate governance.

The short term priorities have been successfully implemented. Priorities and timing have been respected. We are putting the final touches to a couple of measures, such as the modification of the accounting directives and a draft directive on the cross-border exercise of shareholders' rights.

The main underlying principles in the Action Plan have been enhancing transparency and empowering shareholders. These principles will remain valid for the second phase.

However, the context for the medium term is different. The main thrust for our action in the next four to five years must be the Lisbon agenda and competitiveness, together with the Commission's efforts on better regulation. The emphasis must now be on ensuring our companies can thrive and make the most of the opportunities of globalisation.

The time has come to focus on the second phase of the Action Plan. A consultative document will soon be posted on the web and stakeholders and all interested parties will have a three-month deadline for reply.

This consultation will seek the stakeholders' views, on all measures scheduled for adoption in the medium to long term and whether they are still relevant. Stakeholders will also be invited to comment on modernisation and simplification of company law directives.

The consultation will include the issue of how to improve further shareholder democracy and the merits of the "one share, one vote" principle. I personally see merits in this principle that should bring a better balance between the owners of the capital of a company and those responsible for its day-to-day control.

Chairman, these are my views and this is our common agenda. I am looking forward to working closely with you on all these issues.

Let me pay tribute, to all Members of this committee, in particular to the respective rapporteurs, who have worked hard in the last few months on key initiatives for the Internal market, such as the cross border mergers, audit and accounting directives, which are now, or are about to be, part of the EU legislative *acquis*.

Thank you very much for your support.