

## Consultation response

# AmCham EU's contribution to the Intellectual Property Action Plan



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and U.S. positions on business matters. Aggregate U.S. investment in Europe totalled more than €3 trillion in 2019, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

As the European Union (EU) faces unprecedented geopolitical, economic and health challenges, it has become increasingly necessary to identify key pillars that will support not only the economic recovery, but that also pave the way towards EU leadership on the global stage. We believe that intellectual property (IP) is one of these key pillars. A robust IP system based on strong IP rights (IPR) and appropriate enforcement drives European research, manufacturing, employment and innovation, and attracts capital to innovative and creative enterprises. In addition, IP-intensive industries create high-value, long-term jobs.<sup>1</sup>

In order to further strengthen European IP protection, the American Chamber of Commerce to the European Union (AmCham EU) wishes to make the following recommendations:

### 1. Complete the Unitary Patents System

AmCham EU welcomes the European Commission's support for the Unitary Patent System and the unitary Supplementary Protection Certificate (SPC), which address major fragmentation concerns in the internal market. A balanced system based on proportionate enforcement would encourage innovation, competitiveness and growth and increase the EU's capacity to attract further investments. We encourage Member States to ratify the agreement of the Unitary Patent Court (UPC) and to move forward with implementation of the UPC and UP system.

### 2. Strengthen the enforcement of IPR

Certain research has shown that some IP infringements have an adverse impact on rights holders and legitimate businesses, and undermine critical competitive advantages in innovation while at times posing threats to consumers' health and safety, jobs and economic growth. IP enforcement in the EU is generally well supported by the current Enforcement Directive and we welcome the European Commission's intention to continue monitoring its application while ensuring that appropriate remedies are available.

The swift and faithful implementation at national level of the Copyright Directive can contribute to a more robust European framework for IP protection.

We encourage the Commission to coordinate with Member States to prioritise and resource border controls and enforcers within the Single Market to address all forms of IP including counterfeiting and piracy. We also encourage the Commission to strengthen enforcement against online piracy services, which often take advantage of EU-based infrastructure such as hosting, payment processing, advertising, etc., while targeting EU consumers and undermining legitimate markets.

AmCham EU supports the continued efforts on IP enforcement by the EU in third countries. World-class IP protection for all industries reliant on IP is vital for maintaining European competitiveness as well as for promoting EU and third country protection of inventions and content (consistent with international trade agreements) and the fight against counterfeiting and piracy. Recent official data shows that IP violations are on the rise and amount up to 6.8% of all imports to the EU or as much as EUR 121 billion a year. A global challenge requires a global response, but Europe and the US must take the lead. The magnitude of all types of IP violations requires effective enforcement responses, as well as coordinated and timely interventions from all players, from the local to the global level. DG Trade and the European External Action Service should prioritise enforcement improvement in third countries to complement the additional domestic focus set out above.

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<sup>1</sup> According to a recent EUIPO study, IPR-intensive industries account for 38.9% of all employment in the EU (83.3 million), directly or indirectly. They generate 45% of the total economic activity (GDP) in the EU (EUR 6.6 trillion) and pay significantly higher wages than other industries, with a wage premium of 47%.

Effective IP enforcement also requires the availability of trustworthy data sources. We therefore encourage the Commission to take the necessary steps to clarify the legitimacy and public interest purpose required for uniform, accurate and preferably centralised access to domain registrants' data included in the so called WHOIS database maintained by domain name registrars. The WHOIS database has been made largely inaccessible since May 2018 and the entry into force of the GDPR, even for purposes of law enforcement, data protection, IPR enforcement and consumer protection to the detriment of the public interest and with a measurable negative impact on cybersecurity.

AmCham EU therefore supports the Commission's approach to strengthening international efforts to raise awareness of the damage caused by IP theft on innovation-driven businesses, jobs and consumers' safety and to encourage sustainable and meaningful actions to prevent IP violations throughout the global supply chains.

We also welcome the establishment of a European approach to artificial intelligence (AI) and IP protection based on a risk-based approach with 'high-risk' applications being subject to stricter requirements and lower-risk applications remaining subject to the existing legislative framework.

### 3. Adapt the EU framework to an increasingly digital ecosystem

The COVID-19 crisis has accelerated Europe's digital transformation, forcing European consumers and companies to operate in a digital-only environment. The impact of the crisis is most likely going to bring about long-term change in consumer behavior. In order to maximise the growth potential of increased digitalisation, there is a need to build a safe and sustainable digital ecosystem around a modernised EU framework. Based on the European Commission's motto of 'what is illegal offline should be illegal online', AmCham EU believes that the upcoming publication of the Commission's Digital Services Act (DSA) represents a unique opportunity to strengthen IPR protection in the digital space.

### 4. Modernise the EU design legislation

The modernisation of the EU IP framework is an opportunity to update the rules on industrial designs. We believe such a review should be based on the following principles:

- Promote innovation, creativity and new product development in the EU;
- Allow simple and affordable registration of community designs, especially for small and medium-sized enterprises (SMEs) and individual designers;
- Offer the same level of design protection throughout the Single Market;
- Prevent the infringement and copying of designs within the EU; and
- Enable a simplified application of Community design rights.

AmCham EU is looking forward to continuing the dialogue with EU policymakers on the above elements of the IP Action Plan.