

Forging an industrial policy that reflects the value of European innovation and building a global level playing field, to create the world's leading open digital economy.

PRIORITY POLICY AREAS

I. Strengthen Europe's highly successful collaborative open standardisation model

Europe needs to strengthen and leverage its unique and highly successful collaborative open standardisation model. This will enable European innovators to continue leading the way in next-generation technologies and in key areas such as 5G and IoT, providing fair access and fair rewards for all, enabling a growing ecosystem of stakeholders, in particular for SMEs.

Background: risks

Europe's inventors can play a central role in the development of mobile technologies like 5G—in which Europe leads the way—because their inventions are protected by Intellectual Property Rights (IPR). By contributing cutting-edge technologies to open standards, European innovators are creating a global ecosystem that fosters interconnectivity and competition, and enables companies large and small to participate. Consumers benefit from constantly improved performance, choice and lower prices.

Today, this ecosystem is at risk. Encouraged by the activities of some large corporates, many leading manufacturers of connected devices do not take licences for the standardised patented technologies they use. This denies European developers a fair return on their IP and investments, endangering the incentive to invest in 5G and the Internet of Things (IoT), and could force European innovators to abandon the development of open standards for connectivity as they fail to recoup years of high-risk investments.

For instance, Europe is ideally positioned to be the world leader in connected autonomous vehicles. However, with 5G and IoT tech increasingly used, many automotive manufacturers refuse to take a licence of only US \$15 per car (for the vast majority of all cellular technologies needed for connected cars)—then charging consumers thousands of euros for features enabled by cellular connectivity.

The threat to the European model is exacerbated by a growing systemic imbalance in key standards developing organizations (SDOs) such as ETSI, where implementers of standards now largely outnumber and out-vote those who make most of the technical contributions to the standards.

Left unchecked, this situation will benefit only a handful of global companies whose business models are based either on the exclusive use of proprietary technology or on the monetisation of data, and will have severe long-term implications for EU jobs, innovation and growth, harming European consumers.

What EU institutions need to do:

Promote and champion Europe's collaborative open standardisation model that provides fair access and fair rewards for all. This is critical to safeguard European leadership in 5G and IoT technologies.

1. **Champion the European Open Standards Model** Europe’s successful open standardisation model rewards investment in innovation ensures access to best-in-class open technologies for all, and underpins a healthy open technology ecosystem.
2. **Develop industry licensing guidelines for new market entrants** Promote fact-based industry guidelines to make the SEPs licensing process more understandable for all, particularly new market entrants and SMEs. Such guidelines are already documented in the CENELEC Workshop Agreement developed through AFNOR¹.
3. **Find balance between the few technology contributors and the many implementers** Ensure that European Standardisation Organisation (ESO) rules maintain an appropriate balance between the various categories of stakeholders represented in the standards development process. The right balance will ensure the continued contribution of cutting-edge technology to standards by a relatively small group, enhancing the value of standards and enabling their broad commercial deployment through product development.

II. Promote a competitive global level playing field and international respect for Intellectual Property Rights (IPR)

Build a global level playing field and drive international respect for IPR as a key element of a forward-looking EU industrial policy, based on the EU's strengths in research and development

Background: risks

IP protection need to be an integral part of any forward-looking EU industrial policy. Europe’s competitiveness and the success of its future digital infrastructures—including 5G and IoT—has to be underpinned by new and strengthened ways for European innovators to retain control over and gain value from their technology and IPR.

As digitalisation is a global mega-trend, policymakers have to consider the impact of every policy initiative on the competitiveness of Europe’s innovators alongside their overarching aim of completing the Digital Single Market (DSM). This will mean dealing with long-identified trade issues that include ensuring reciprocity of treatment for EU companies, forced tech transfers imposed in certain jurisdictions, and widespread IPR infringement in some markets.

The global digital economy is evolving into a landscape where the “winner takes all”. In digital technologies manufacturing is moving away from the EU, which is increasingly dependent upon its research and development expertise. The EU needs to take every opportunity to support and strengthen IPR as one of the few tools that European innovators, large and small, can leverage in commercial discussions with global digital players.

The EU needs to fund and support research and innovation across the Digital Single Market. As President Macron wrote in his March 2019 manifesto ‘For European renewal’, “Europe needs to look ahead to create jobs. This is why it needs not only to regulate the digital giants by putting in place European supervision of the major platforms (prompt penalties for unfair competition, transparent algorithms, etc.), but also to

¹ [ftp://ftp.cenelec.eu/EN/News/WS/2018/SEP/CWA-for-public-comments.pdf](http://ftp.cenelec.eu/EN/News/WS/2018/SEP/CWA-for-public-comments.pdf)

finance innovation by giving the new European Innovation Council a budget on a par with the US in order to spearhead new technological breakthroughs such as artificial intelligence.”²

What EU institutions need to do:

Drive international respect for IP; build a global level playing field; ensure reciprocity so that non-European companies do not have an unfair advantage.

- 1. Make IP protection a priority at the highest political level** Ensure IP protection is taken up as a political priority at the highest levels by EU policy-makers.
- 2. Open international public procurement markets** EU public procurement opportunities should be open to third country companies so long as these countries grant EU companies a similar privilege.³
- 3. Reciprocal access to EU funded R&D** Access to publicly funded R&D must be reciprocal to enable global fair competition: acceptance of EU public R&D funding by a non-EU company should be conditional to European companies have equivalent access to that company’s domestic funding programmes.
- 4. Oppose ‘efficient infringement’ business models** More actively oppose the ‘efficient infringement’ business model in which global companies deliberately infringe patents because this is cheaper than actually licensing protected tech, or because SMEs cannot afford the prohibitive costs of enforcement.
- 5. Support international dispute resolution** Support efficient enforcement of IPRs in global licensing transactions through arbitration and other international dispute resolution mechanisms.
- 6. Call for high level international IP protection** Call on EU trading partners to maintain a reciprocal high level of IP protection consistent with their international commitments and oppose foreign policies that seek to advantage national champions, such as rules on forced technology transfer.

III. Give Europe’s SMEs a fair chance to grow and compete globally

*Provide small and medium-sized enterprises with the means to compete globally using their IPR as a strategic asset to become global champions.*⁴

Background: risks

The EU is home to countless small and medium-sized enterprises that share the ambition of scaling up and becoming global champions. Their ability to protect their IP, often the result of expensive and lengthy R&D work, is critical to ensure they have a fighting chance in today’s global digital economy.

However, these SMEs face many difficulties, particularly at the scale up stage, and difficulties in building and enforcing an IPR portfolio within and outside the EU. These factors contribute to an ever growing (and ever narrower) “winner takes all” digital landscape. As a result, they can be vulnerable to IP theft, making

² <https://www.elysee.fr/emmanuel-macron/2019/03/04/for-european-renewal.en>

³ [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/614610/EPRS_BRI\(2017\)614610_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/614610/EPRS_BRI(2017)614610_EN.pdf)

⁴ Over 3,000 venture capital funding deals totaling €30 billion (average of €10 million per deal) were reported in Europe for 2018 by *TechE*. Chinese firms received nearly 4 times what is invested in Europe: a total of \$55.8 billion was awarded in the first half of 2018 compared with \$42.2 billion for US companies in the same period (*Study by Preqin and INSEAD Global Private Equity Initiative*)

them more vulnerable to bankruptcy or acquisition—or the inability to scale up simply means they are more likely to be acquired by global tech companies.

What EU institutions need to do:

The situation requires an ambitious new agenda to create a virtuous circle of innovation and investment in new tech, prioritising targeted financing, investment incentives and protection of IPR assets.

Specifically: enable investment of at least €150 million⁵ per year to qualifying companies via co-funding and matching national initiatives to help Europe’s innovators and start-ups generate new IPR and patents, to protect their R&D investments, make them more competitive beyond Europe, and ensure European innovators stay in the EU Digital Single Market.

- 1. Fair access to justice** Ensure that IPR enforcement in all jurisdictions remains affordable to SMEs so they can challenge patent infringers who profit from their inventions without a licence. Guarantees and bonds required from companies seeking injunctions against larger companies should not be prohibitive *per se*, and should take into account the financial position of SMEs.
- 2. Mobilise €150 million per year for IPR generation** Use *InvestEU* and industry initiatives like Patent factory Europe to mobilise up to €150 million per year to help start-ups and innovative companies to generate (without equity dilution) the IPR they need to protect their R&D investments, attract investors and boost their global competitiveness
- 3. Create innovation incentives: R&D tax credits and patents for loans** Promote innovation incentives including R&D tax credits for Europe’s innovators, and promote the use of patents as collateral for bank loans.
- 4. Secure the introduction of the Unified Patent Court** This long-awaited reform has the potential to significantly reduce costs and simplify procedures for obtaining, maintaining and enforcing patent protection in Europe.

⁵ One out of three EU start-ups could benefit from a €150,000 financing (average) to build their IP portfolio without equity dilution. This is based on the fact that there are over 3,000 Venture Capital deals reported in Europe in 2018 (Source: Pitchbook 2018, 2018 Annual European Venture Report <https://pitchbook.com/news/reports/2018-annual-european-venture-report>).