

# Introduction

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Europe today stands at a crossroads. In fact, the European model based on a high level of social protection and a welfare state is currently under pressure. Shaken by the economic crisis and already seriously in debt, the European states, devoid of natural resources, have no option for recovery other than by making full use of their trumps. In order to do this, they can, in particular, rely on the existence of relatively high-performing educational systems that allow the emergence of new ideas, sources of economic development. With labour being considerably cheaper elsewhere, the Old World is faced with a relatively simple equation: 'innovate or disappear', and has thus no choice but to rely on its brain power. High hopes are undeniably being placed on what economists call the 'knowledge economy',<sup>1</sup> and the European Council in Lisbon already made this one of its priorities at the turn of the century in the year 2000. More than ten years later, recent strategic documents from the European Union have emphasized the extreme importance of sectors based on intangibles and new technologies for the development of the European economy.<sup>2</sup> However, the objectives set today go considerably further than strictly economic preoccupations. In fact, a recent

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<sup>1</sup> See e.g. D. Foray (2004), *The Economics of Knowledge*, Cambridge: MIT Press; OECD, 'Innovation in the Knowledge Economy, Implications for Education and Learning' (Paris, OECD Publishing, Centre for Educational Research and Innovation, 2004).

<sup>2</sup> See the 'Europe 2020' strategy (COM (2010) 2020) and the Digital Agenda for Europe (COM (2010) 245). This view is shared at a more global level by the OECD and WIPO. In a recent report examining the major trends of knowledge and innovation within the global economy, the OECD in effect emphasized that the role of innovation will be essential 'in lifting economies out of the downturn and finding new and sustainable sources of growth and competitiveness' (OECD Science, Technology and Industry Scoreboard 2011, 'Innovation and Growth in Knowledge Economies', Paris, OECD, 2011, Summary). According to a recent study done by the WIPO, intellectual property rights have thus become a central element for the strategies adopted by innovative firms worldwide as the knowledge markets based on intellectual property rights continue to grow. As a result, policies in the field of intellectual property have become the very first priority in innovation-related policies (WIPO, 'World Intellectual Property Report 2011 – The Changing Face of Innovation', WIPO Economics & Statistics Series, Geneva, November 2011).

Commission document entitled 'A single market in intellectual property rights' dated 24 May 2011 emphasizes that,

innovation not only helps the European economy to flourish. It is indispensable to address the challenges that humankind is facing in the 21<sup>st</sup> century: ensuring food security, containing climate change, dealing with demographic change and improving citizen's health. It also has an essential role to play in the quality of daily life by fostering cultural diversity.<sup>3</sup>

And the document concludes that it is the system of intellectual property rights that will have to bear the main responsibility for achieving all these objectives!

Intellectual property law, or more generally the law on intangibles, will therefore inevitably play an essential role in the future, since it will have the delicate function of giving a framework to a rapidly expanding array of activities, regarded by decision makers as being the main factor for development and the guarantee for the survival of the competitiveness of the European economy.<sup>4</sup> However, the topic is complex. In fact, intellectual property has become a sensitive subject. Astonishingly, the more intellectual property rights have become the centre of economic activity, the more their legitimacy has been contested within public opinion and in various circles. Amongst economists in particular, certain voices have been raised against a development of the law that tends towards 'over-protection' and the consequences of which on the economy and the collective well-being have in part been insufficiently evaluated.

The task for lawmakers is thus crucial but likewise difficult. Of course, the European legislator is not starting from scratch. Legislative activity in the field of intellectual property has been significant, given the number of directives and regulations that have been adopted over the last 20 years. Intellectual property has thus been the subject of considerable sectorial regulatory initiatives at European Union level. Despite this, however, the construction of a coherent European intellectual property law is still to be undertaken. The task is important. Of course, certain areas of intellectual property have benefitted

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<sup>3</sup> See the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A single market for intellectual property rights: Boosting creativity and innovation to provide economic growth, high quality jobs and first-class products and services in Europe', Brussels, 24 May 2011, (COM (2011) 287 final, p. 3).

<sup>4</sup> *Ibid.* p. 3: 'A modern, integrated European IP regime will make a major contribution to growth, sustainable job creation and to the competitiveness of our economy [...], objectives which are essential to sustain the EU's recovery from the economic and financial crisis. It will enable the development of sectors such as commerce and digital industries which offer the greatest potential for future growth.'

from more attention than others: some fields have been considerably harmonized, others – much less; some areas benefit from unitary rights while others do not (or, at least, not yet). Certain initiatives have likewise been subject to serious blockages during the legislative process and have not reached their conclusion. However, the establishment of a truly European intellectual property model, a balanced model that could ensure growth while at the same time being supported by public opinion, still requires considerable reflection. This is the aim of this volume, the result of a conference organized at the European Parliament in Strasbourg on 24 and 25 February 2011 within the framework of the EIPIN network (European Intellectual Property Institutes Network). This volume reflects the structure of the conference, namely the first part containing an evaluation of the European intellectual property law system ('Assessing the European Intellectual Property System') and the second part analysing the prospects for the development of this system ('Developing the European Intellectual Property System'). While the majority of the oral contributions have led to a chapter in this book, not everything that was said on the occasion of the conference was laid down in written form. This is particularly the case of the very stimulating discussions held on the occasion of the final round table closing the conference, which were moderated with great talent by Professor Manuel Desantes of the University of Alicante, during which speakers, in particular the representatives of the principal European institutions and intellectual property organizations, replied very freely and without stonewalling to questions prepared in advance by the conference participants. Moreover, certain other chapters have been added in order to complete the discussion. This is for instance the case for the chapter by Xavier Seuba on the European Union's free trade agreements and the rules on enforcement of intellectual property rights, which has been specially written for this volume, or the joint article on the Impact of the Anti-Counterfeiting Trade Agreement on the Legal Framework for IP Enforcement in the European Union. The final result, it is hoped, might serve as an inspiration in putting forward useful ideas for the elaboration of a genuine European intellectual property law.

Anyhow, there is still much work to do. The definition of a European identity will require the continuation of the development of common visions, in the field of intellectual property as well as in other fields. As rightly emphasized by the Romanian political scientist, Cristian Pârvolescu, 'Europe is neither a geographical area nor a market, it is a state of mind based on values.'<sup>5</sup> It is surely this state of mind that gave rise to the creation of the EIPIN network in 1999, and which still inspires it today. There is no doubt that its future work

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<sup>5</sup> C. Pârvolescu, interview published in *Libération*, Monday 30 June 2008, p. 19.

will continue to contribute to the progress of the European spirit in the field of IP. At this point, it is appropriate to express our warmest thanks to the directors and members of the European Intellectual Property Institutes Network (currently made up of the Queen Mary Intellectual Property Research Institute (QMIPRI) at Queen Mary, University of London; the Magister Lycentinvs at the University of Alicante; the Intellectual Property Law and Knowledge Management (IPKM) at Maastricht University; the Centre for International Intellectual Property Studies (CEIPI) of the University of Strasbourg; and the Munich Intellectual Property Law Center (MIPLC)), in particular Professors Guido Westkamp, Josef Drexl, Manuel Desantes, Anselm Kamperman Sanders, Aurelio López-Tarruella, Dieter Stauder and Yves Reboul, as well as Dr Nari Lee and Seth Ericson of the MIPLC for chairing some of the panels, and of course to all the students from the four academic institutions who participated at the conference and whose enthusiasm contributed to its success. Enormous thanks are also due to Mrs Catherine Trautmann, Member of the European Parliament and a confirmed European, for having agreed to be the patron of the conference and for having delivered an inspiring closing speech. We are extremely grateful to her for this important support.

However, this work could not have been possible without the meaty contributions of the speakers at the conference who have been so kind as to submit a written version of their contributions in the form of chapters, and the decisive assistance provided by Roberto D'Erme and Oleksandr Bulayenko, research assistants and doctoral students at the CEIPI. Mr D'Erme was particularly involved in the organization of the conference and participated very actively in its preparation, while Mr Bulayenko carried out impressive work during the editing phase, thus permitting the results of the conference to be accessible in the form of this volume. Our warmest thanks are addressed to all of them.

