

SEMINAR 5.

THE DIGITAL SINGLE MARKET AND INTELLECTUAL PROPERTY IN THE EU;

September 2019
Prof. Lúdia Ballesta Martí ©

EU DIGITAL SINGLE MARKET STRATEGY AND PRINCIPLES OF DIGITAL LAW: CONTENT

1. 25 years of Single Market in the EU
 - A. Single Market background.
 - B. Single Market Challenges.
2. Digital Single Market
 - A. The Digital Single Market Strategy
 - B. The 3 pillars of the DSM Strategy
 - a. Better access for consumers and business to online goods
 - b. The right environment for digital networks and
 - c. Economy and Society
3. Introduction to Intellectual property and Copyright
 - a. WIPO and EUIPO
 - b. Intellectual Property regulation
 - c. Patents
 - d. Trademarks
 - e. Copyright and the new Directive DSM

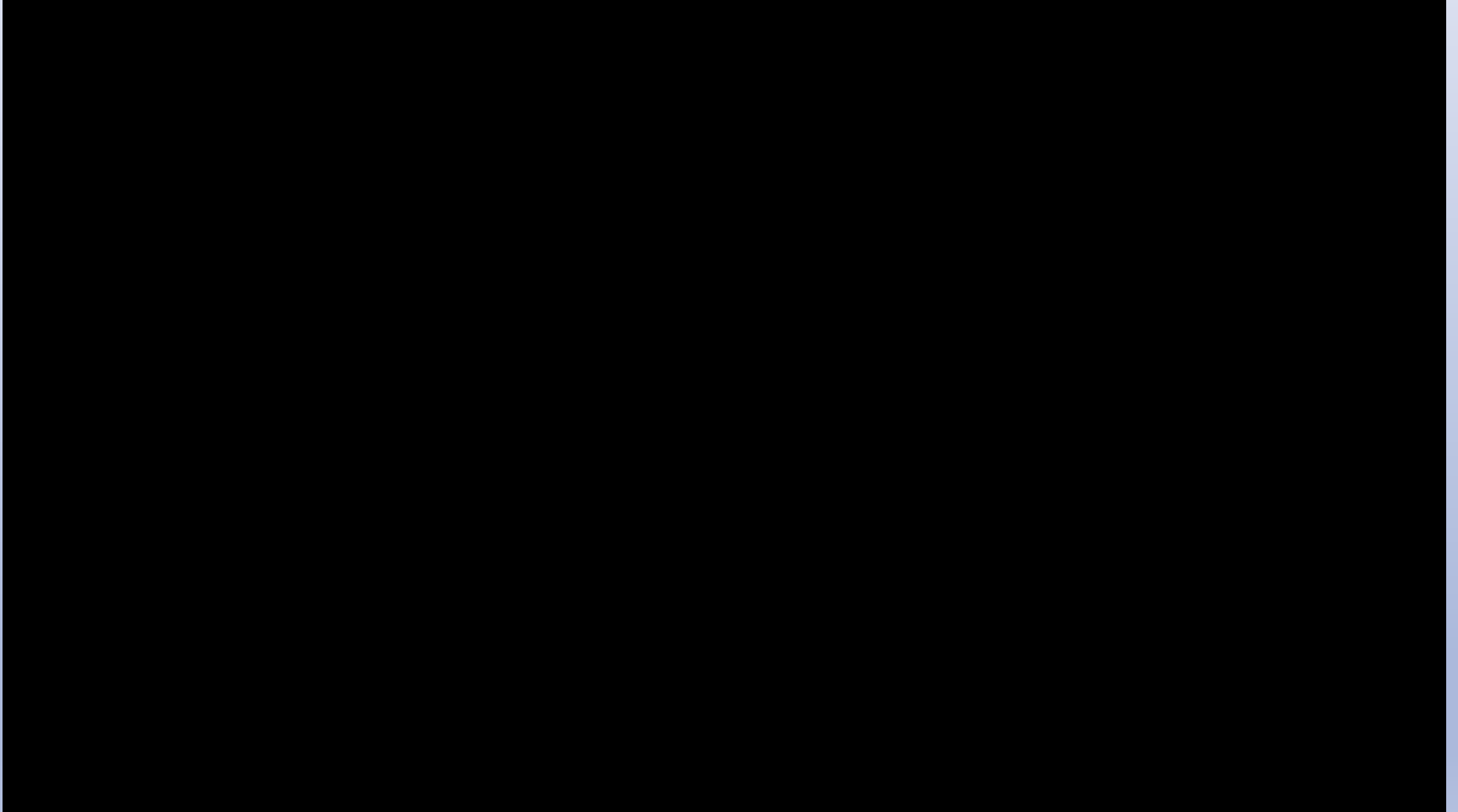
WHAT IS THE DIFFERENCE BETWEEN A FREE-TRADE AREA AND A SINGLE MARKET?

A free-trade area a group of countries come together and agree not to impose tariffs or quotas on trade in goods between them
it can also be extended to some liberalization of trade in services, but most free trade areas provide for no free movement of labour or capital.

A customs union the members also agree to impose a common tariff on imports coming from the outside world.
buying and selling across borders is thus even easier than in a free-trade area, since businesses know that if their produce meets standards in their home country it can also be sold elsewhere.

A single market: as well as tariffs and quotas, it seeks to remove various other barriers to trade.
For example, member countries agree to harmonise product standards – on the strength of alcoholic drinks, for instance, or fuel efficiency levels in cars – across their markets; otherwise, these could be used by countries to restrict trade.

HISTORY; THE SINGLE MARKET



25 YEARS OF SINGLE MARKET IN THE EU

MILESTONES IN CREATING THE SINGLE MARKET

1957-1980s

The Single Market offering free movement of goods, service, people and capital is one of the original core objectives of the European Economic Community, but is difficult to implement in practice.

1985-1992

EU adopts the Single European Act, followed by the adoption of common EU rules in many areas, vastly reducing complications and costs for businesses wishing to market a product throughout the EU. In other areas, Member States agree to give each other's laws and technical standards the same validity as their own (the 'mutual recognition' principle).

1992

Maastricht Treaty sets about to create an Economic and Monetary Union with a single currency to boost the Single Market.

1993

The Single Market becomes a reality for 12 EU countries: Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom.

1993-2014

An enlarged EU continuously improves the functioning of the Single Market by facilitating the provision of services, free movement of people and of workers, developing European transport, energy and telecommunications networks.

2014-now

The Juncker Commission adopts initiatives to further unlock the potential of the Single Market and creates new opportunities, including:

- ▶ Make it easier to **buy or sell goods and services** from or in another Member State;
- ▶ Strengthen controls by national authorities and customs officers to **prevent unsafe products** from being sold to European consumers;
- ▶ Ensure that **intellectual property rights** are well protected, thereby encouraging European companies, in particular SMEs and start-ups, to invest in innovation and creativity;
- ▶ Increase the impact of the €2 trillion yearly public investment in public services and products through **efficient and professional procurement**;
- ▶ Boost the **Digital Single Market** in which 360 million people go online every day for work, study, shopping or just to stay connected with family and friends, with free roaming, more affordable cross-border parcel delivery, free-wifi hotspots in local communities and new data protection laws to protect personal information;
- ▶ Ensure there are **no second class Europeans** in our Single Market and so there is no room for second class products or for second class workers; meaning the same pay for the same work in the same place, the same quality of food and the same safety of toys and other products.
- ▶ Create a **Capital Markets Union** to make it easier for companies — small and big — to raise money and make Europe a more attractive place to invest;
- ▶ **Encourage workers** to take up jobs in other EU countries in order to fill vacancies and meet the need for special skills;
- ▶ **Promote social fairness and equality**;
- ▶ Boost administrative cooperation among national **tax authorities**;
- ▶ Work for the adoption of a Common Consolidated Corporate Tax Base (CCCTB) in the EU and a **single EU VAT area** that is fit for purpose.

25 YEARS OF SINGLE MARKET IN THE EU

The Single Market is one of the EU's greatest achievements

Hundreds of technical, legal and bureaucratic barriers to free trade and free movement between EU Member States have been removed to make things flow more easily within the Single Market.

As a result, companies have expanded their operations and competition has brought prices down and given consumers more choice.

Thanks to the Single Market the EU's economy is one of the largest in the world.

THE EU SINGLE MARKET REPRESENTS...



€14 TRILLION GDP/YEAR
The world's largest economy



500 MILLION
European citizens



24 MILLION
companies



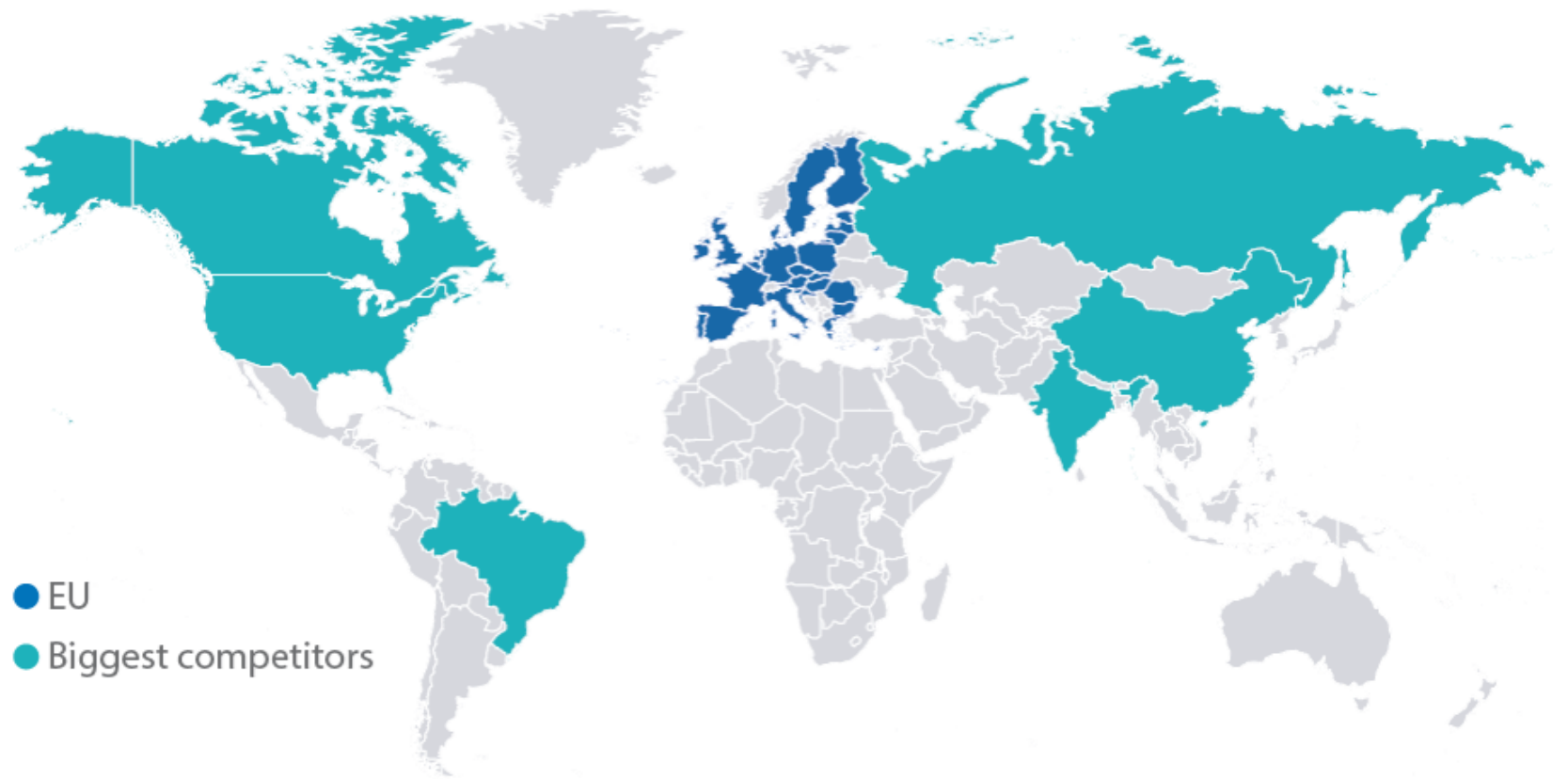
TRADE IN GOODS

- 75% of intra-EU trade
- 25% of EU's GDP
- 15% of the world's trade in goods is from the EU



SERVICES

- Two thirds of the EU economy
- Account for some 90% of job creation



Source European Commission - © European Union, 2018

SINGLE MARKET

(AKA INTERNAL MARKET; ORIGINALLY THE COMMON MARKET)

Free movement between
Member States in relation to:

GOODS

(Art. 28 TFEU
et seq.)

PERSONS

(Art. 45 TFEU et seq.)

SERVICES

(Art. 56 TFEU et
seq.)

CAPITAL

(Art. 63
TFEU et
seq.)

Workers

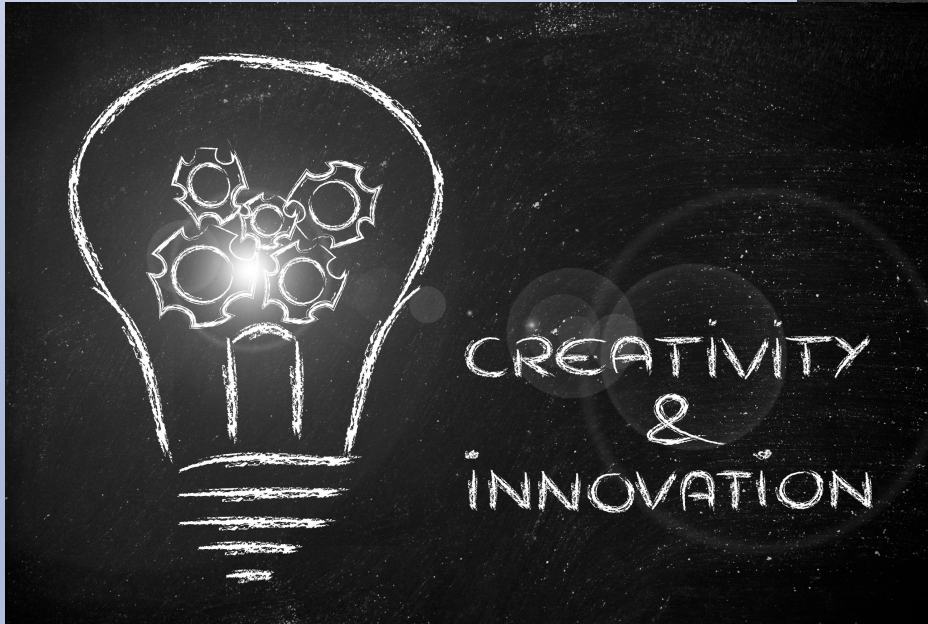
(Art. 45
TFEU
et seq.)

Establish -ment

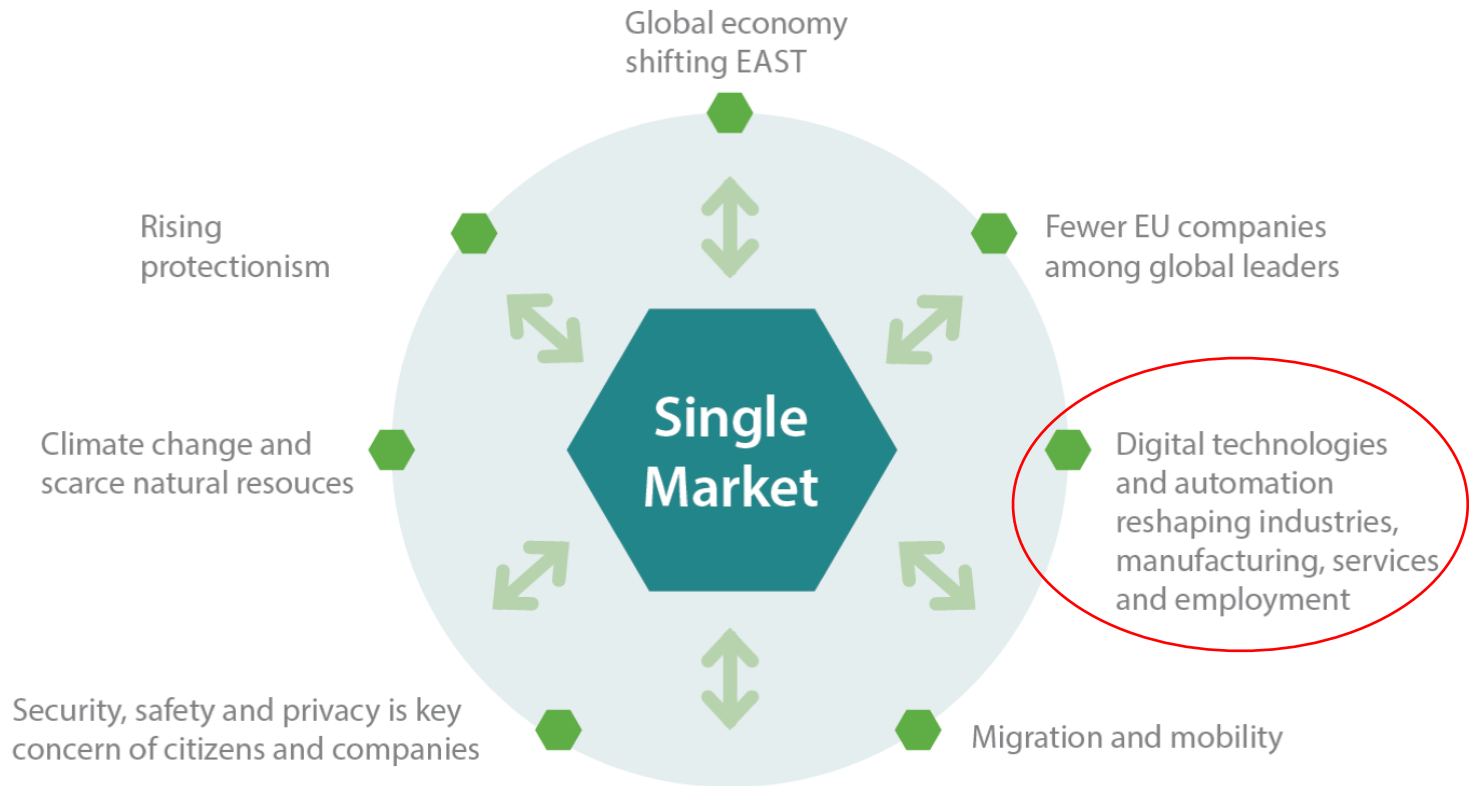
(Art. 49
TFEU et
seq.)

FREE MOVEMENT IN THE SINGLE MARKET

And Ideas...



SINGLE MARKET CHALLENGES



1980S. TRANSFER CONTROL PROTOCOL /INTERNET

1980' Transfer Control and Internet Protocols

- Every network works independently
- Best effort method
- Use of routers
- No global control of the operations

2000s

- **Mobiles**
- Blogs
- Early e-commerce
- **Social Networks**

1990s. WWW (World Wide Web)

- Hyperlinks
- IP addressesBrowsers
- Domain Name Systems
- ISPs



BIG DATA



Etsy

Spotify®



Uber



Global Internet leaders by market valuation, 2016.

Rank	Company	Region	Current Market Value (\$B)	Q1:16 Cash (\$B)	2015 Revenue (\$B)
1	Apple	USA	\$547	\$233	\$235
2	Google / Alphabet	USA	510	79	75
3	Amazon	USA	341	16	107
4	Facebook	USA	340	21	18
5	Tencent	China	206	14	16
6	Alibaba	China	205	18	15
7	Priceline	USA	63	11	9
8	Uber	USA	63	--	--
9	Baidu	China	62	11	10
10	Ant Financial	China	60	--	--
11	Salesforce.com	USA	57	4	7
12	Xiaomi	China	46	--	--
13	Paypal	USA	46	6	9
14	Netflix	USA	44	2	7
15	Yahoo!	USA	36	10	5
16	JD.com	China	34	5	28
17	eBay	USA	28	11	9
18	Airbnb	USA	26	--	--
19	Yahoo! Japan	Japan	26	5	5
20	Didi Kuaidi	China	25	--	--
Total			\$2,752	\$447*	\$554*

DIGITAL SINGLE MARKET

A DIGITAL SINGLE MARKET FOR EUROPE

A HUGE POTENTIAL BUT LARGELY UNUSED AT EU LEVEL

315 million
Europeans
use the
internet
every day

54%

US-based services

4%

EU-cross-border services

42%

national -
Member States
services

Only **15%** of
consumers shop
online from another
EU country

Only **7%** of SMEs sell
cross-border



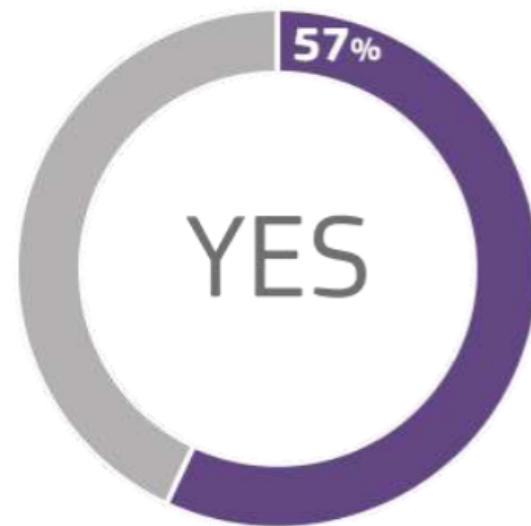
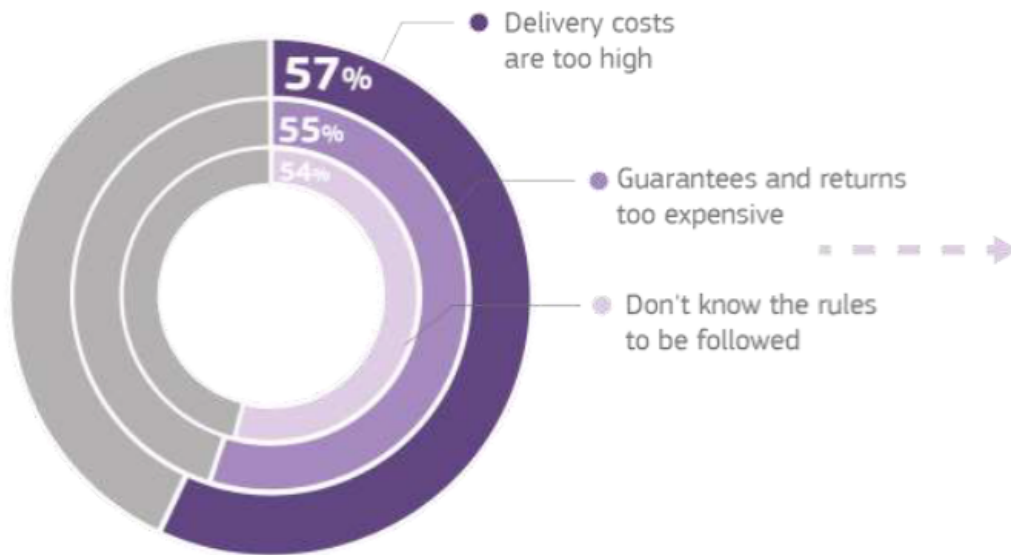
Source: JRC/Institute for Prospective Technological Studies,
Digital Economy Working Paper, 2015

A DIGITAL SINGLE MARKET FOR EUROPE

WHY BUSINESSES STAY OFFLINE

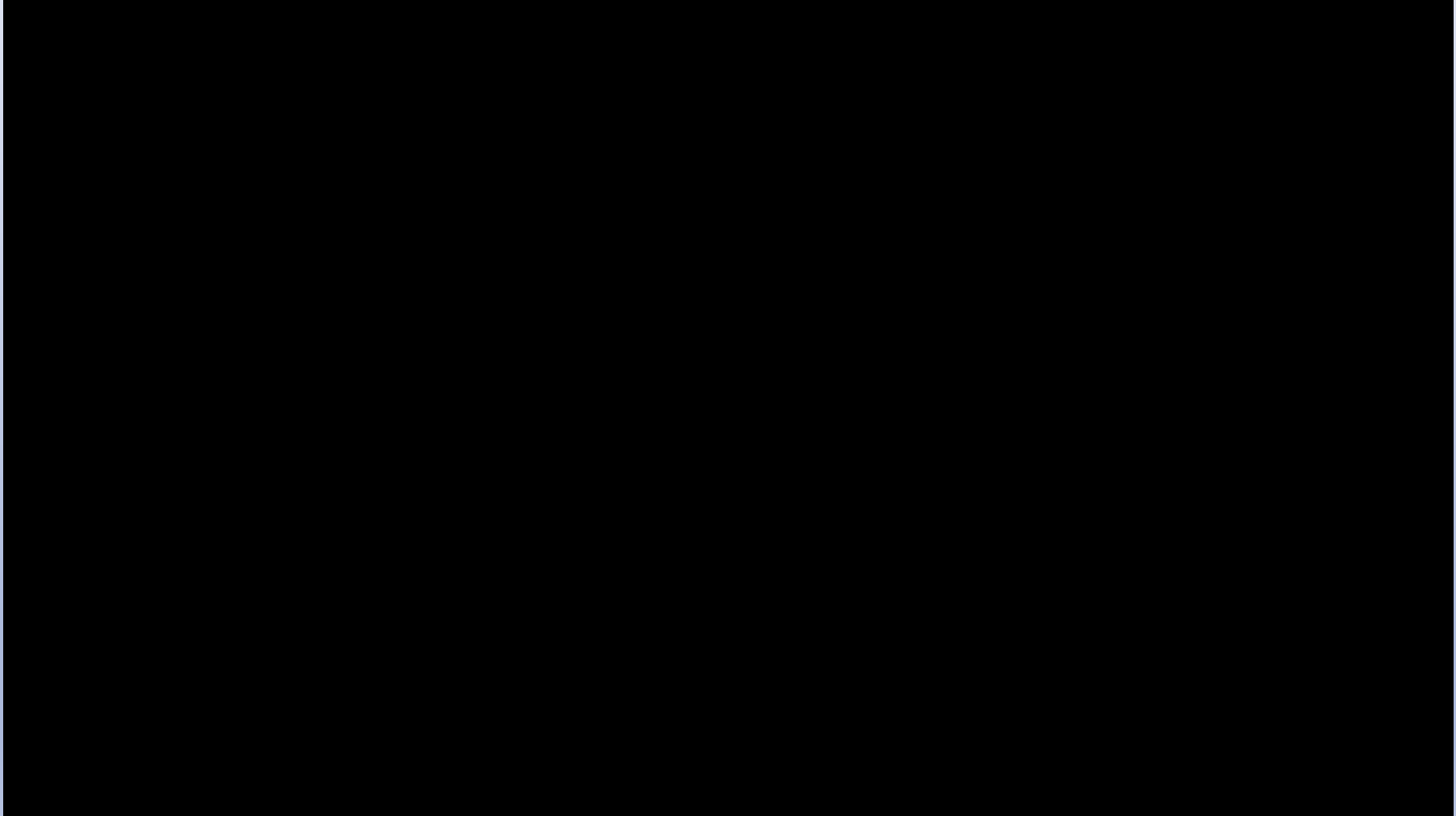
Too many problems with selling online

However, harmonisation of EU e-commerce rules
would boost online sales



Source: Eurobarometer, May 2015

DSM: Improving access to digital goods and services



DIGITAL SINGLE MARKET: THREE PRIORITY AREAS

1

Better access for consumers and businesses to digital goods and services across Europe

Unlocking e-commerce potential



15% of consumers bought online from other EU countries in 2014, while **44%** did so **domestically**

- EU consumers could **save €11.7 billion** each year if they could choose from a full range of EU goods and services when shopping online



Only **7% of SMEs** in the EU sell cross-border

Small online businesses wishing to trade in another EU country face around **€9,000 extra costs** for having to adapt to national laws

- If the same rules for e-commerce were applied in all EU Member States, **57% of companies** would either start or increase their online sales to other EU countries

Affordable parcel delivery costs



More than **90% of e-shoppers** consider **low delivery prices** and **convenient return options** as important when buying online

62% of companies that are willing to sell online say that too high delivery costs are a problem

Tackling geo-blocking

In **52% of all attempts** at cross-border orders the seller does not serve the country of the consumer

- less clients, less revenues for companies



Simplifying VAT arrangements

Small online businesses wishing to trade in another EU country face a VAT compliance cost of at least **€5,000** annually for each Member State where it wishes to supply

DIGITAL SINGLE MARKET: THREE PRIORITY AREAS

Modernising copyright



1 in 3 Europeans is interested in watching or listening to content from their home country **when abroad**



1 in 5 Europeans is interested in watching or listening to content from **other EU countries**

→ An opportunity not to be missed: **Images, films or music and games** are the most popular online activities and digital spending on entertainment and media has double digit growth rates (around **12%**) for the next five years



Copyrighted
protected
content online



New Copyright
protection
rules needed



DIGITAL SINGLE MARKET: THREE PRIORITY AREAS

2

Shaping the right environment for digital networks and services to flourish

Strong European data protection rules to boost the digital economy



72% of Internet users in Europe still worry that they are being asked for too much **personal data online**

Rolling out fast broadband for all

Take-up of fast broadband is low: only **22.5% of all subscriptions** are fast ones (above 30Mbps) and Europe has witnessed significant time lags in the roll-out of the latest 4G technology due to the non-availability of suitable spectrum

Spectrum reforms can decrease prices of mobile services and boost productivity over time (estimated EU-wide GDP increase **between 0.11% and 0.16% over 5 years**)



Only **59%** of Europeans can access **4G**, dropping to **15%** in **rural areas**

DIGITAL SINGLE MARKET: THREE PRIORITY AREAS

3

Creating a European Digital Economy and society with growth potential

Big data and cloud



Digital data stored in cloud:

2013: 20% - 2020: 40%

The use of big data by the top 100 EU manufacturers could lead to **savings worth €425 billion**

Studies estimate that, by 2020, big data analytics could boost EU economic growth by an additional **1.9%**, equalling a **GDP increase of €206 billion**

An inclusive e-society

Almost half the EU population (**47%**) is not properly digitally skilled, yet in the near future, **90% of jobs** will require some level of digital skills

A strategy of 'digital by default' in the public sector could result in around **€10 billion of annual savings**



EU COMPETENCE TO REGULATE DSM

DSM Legal Basis

Article 5 TEU →
principles of
proportionality
and
subsidiarity

Art. 14 TFEU;
General
economical
interest

Arts. 49/56 TFEU
→ IP, info
technology and
telecom

Article 114
TFEU → Single
Market legal
basis.

Digital Single Market achievements



As of **15 June 2017**, **mobile roaming charges will finally be abolished** in the EU.



As of **May 2018**, a new single set of EU rules on **data protection and privacy** in electronic communications.



As of **2020**, EU Member States will for the first time coordinate their use of the **high-quality band 700 MHz**.



As of **early 2018**, citizens will be able to **enjoy their online films, sports broadcasts, music, video games, and e-book subscriptions when travelling** in the EU.



As of **May 2018**, the EU will be equipped with its first ever **common cybersecurity law** to help keep network and information systems safe in all Member States.



If EU governments follow the Commission **e-government action plan**, they could save up to €5 billion per year as of **2020**.

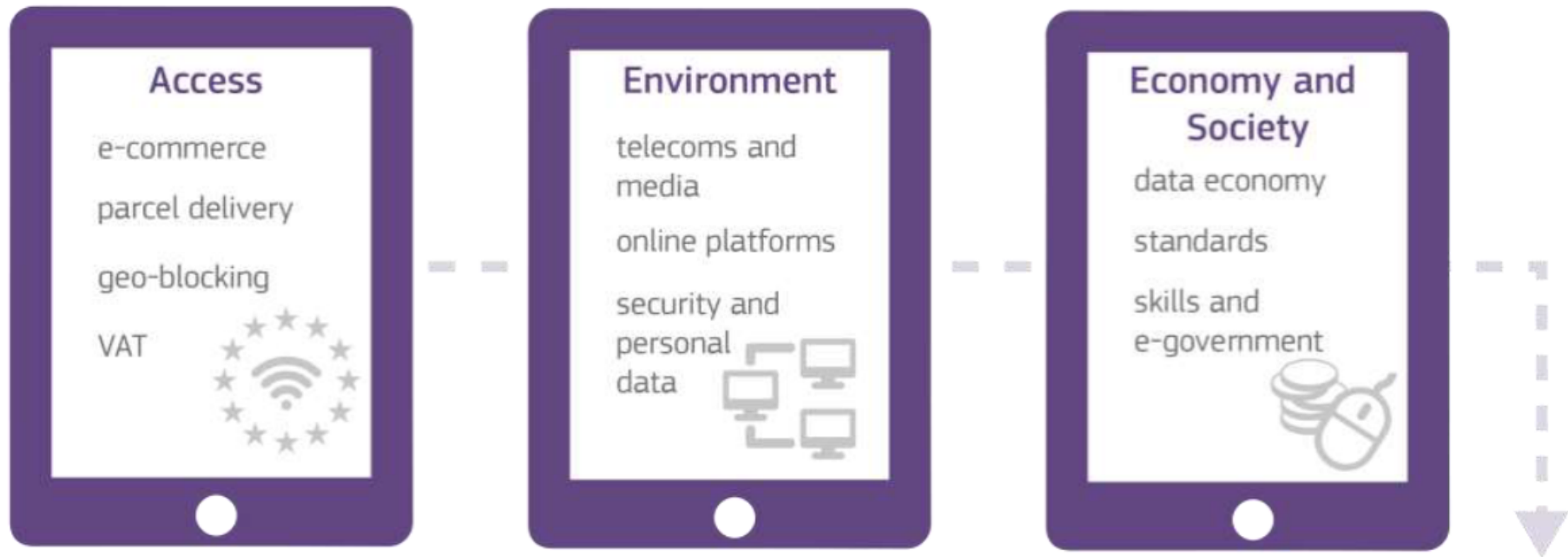
DIGITAL SINGLE MARKET MID-TERM ACHIVEMENTS



2.- DIGITAL SINGLE MARKET

A DIGITAL SINGLE MARKET FOR EUROPE

MORE INTEGRATED NETWORKS, PRODUCTS AND SERVICES



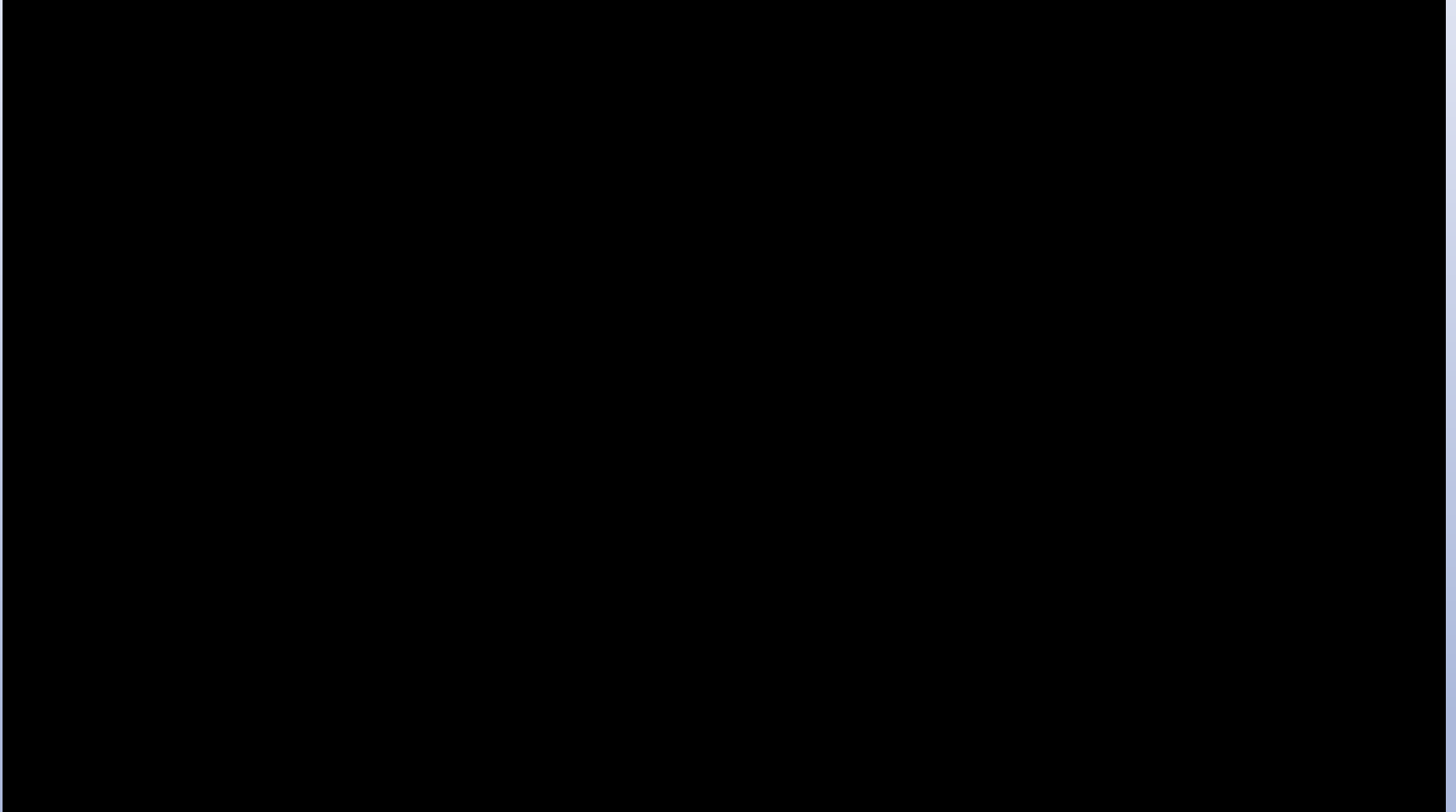
Creating a #DigitalSingleMarket

- **Better access for consumers and business to online goods**
- Rules to make cross-border e-commerce easier:
 - Updated EU rules (the e-commerce directive), clarified contractual rights, and develop
 - enforcement (cross border enforcement cooperation).
- Enforcing consumers rules:
 - review the Regulation on Consumer Protection Cooperation.
- More efficient and affordable parcel delivery:
 - Launch complementary measures to improve price transparency and enhance regulatory
 - oversight of parcel delivery.
- Ending unjustified geo-blocking:
 - Rules to end unjustified geo-blocking
- Launching an antitrust competition inquiry into e-commerce:
 - Competition Sector Inquiry to identify potential competition concerns affecting European ecommercemarkets.
- A modern, more European copyright framework:
 - Modernised copyright rules
- A review of the Satellite and Cable Directive:
 - The Satellite and Cable Directive has been reviewed to facilitate the online cross-border distribution of TV and radio programmes.
- Reducing VAT burdens:
 - for example with a single interaction point

Right environment for digital networks and services

- Overhaul of the telecom rules: Connectivity package is a set of measures to ensure that everyone in the EU will have the best possible internet connection and includes:
 - The European Electronic Communications Code
 - Common broadband targets for the Gigabit Society
 - A plan to foster European leadership in 5th generation (5G) wireless technology
 - A support scheme for public authorities to offer free Wi-Fi access to their citizens.
- A review of the audiovisual media framework
- An analysis of the role of online platforms: issues of transparency, use of information (including the right to be forgotten) relationships between platforms and suppliers, and how to tackle illegal content on the internet.
- Reinforcing trust and security in digital services and in the handling of personal data:
 - draft Regulation on Privacy and Electronic Communications
 - new EU Data protection rules: DPGR
- A partnership with industry on cybersecurity: invest up to EUR 450 million in its research and innovation programme Horizon 2020. o build cybersecurity solutions

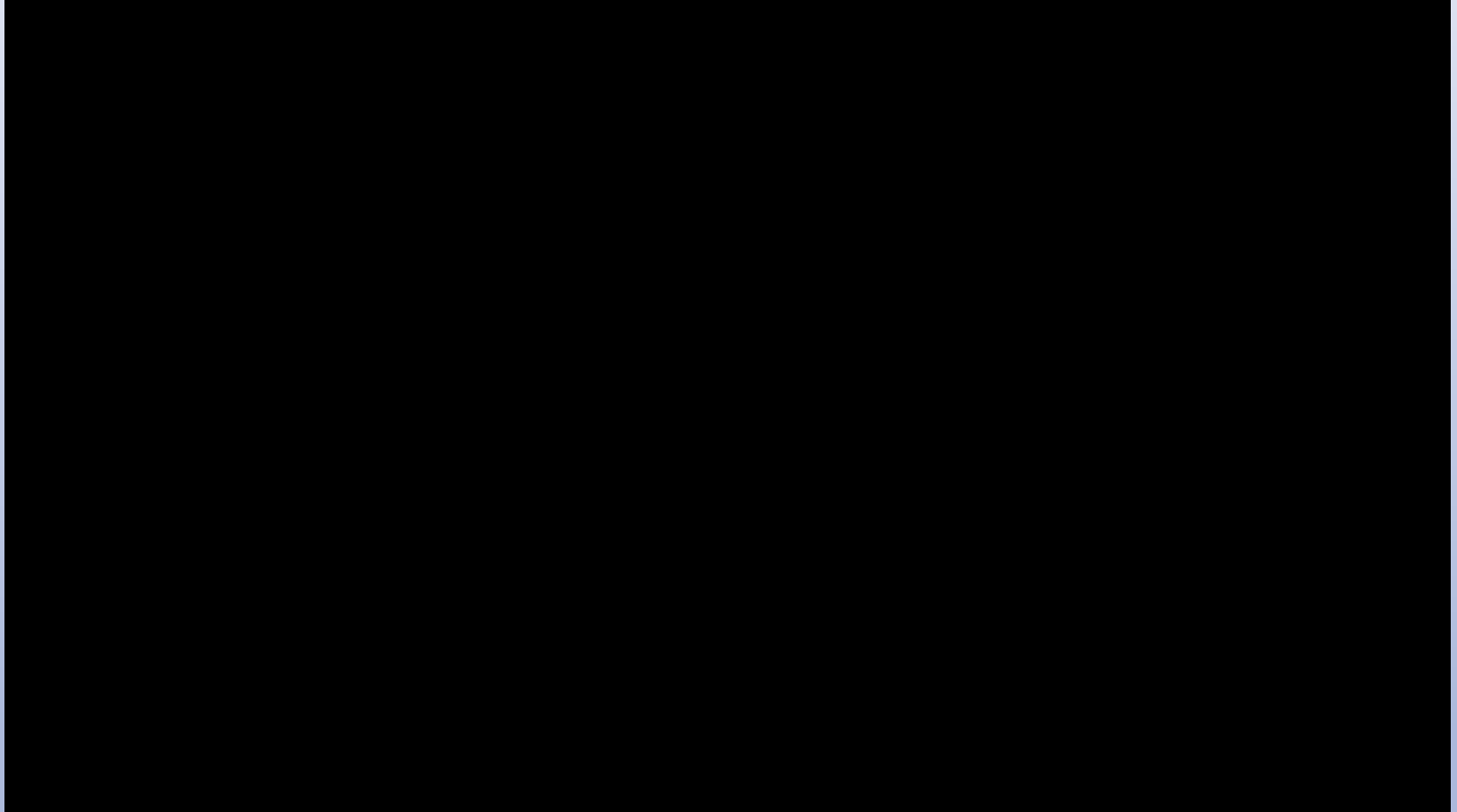
DSM: BETTER DIGITAL NETWORKS FOR INNOVATION



Growth of European Digital Economy and Society

- <https://youtu.be/ZcaOH0wiX60>
- Address barriers in the European Data Economy
 - legislative proposal to ensure the free flow of non-personal data
 - European Cloud initiative,
- Define priorities for standards and interoperability
- Support an inclusive digital society
 - A new e-government plan will also connect business registers across Europe

DSM: DRIVING ECONOMIC GROWTH



3. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT PROTECTION



INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT PROTECTION

- **Article 27 of the Universal Declaration of Human Rights:**

(1) Everyone has the **right freely to participate** in the **cultural** life of the community, to enjoy the **arts** and to **share in scientific advancement** and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Laws to
Protect
IP for
two
main
reasons:

- to give statutory expression to the **rights of creators and innovators** in their creations and innovations, **balanced** against the **public interest in accessing** creations and innovations;

- to **promote creativity and innovation**, so contributing to **economic and social development**.

INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT PROTECTION IN THE DIGITAL WORLD - CONTENTS

The
importance
of protecting
IP was first
recognized in

```
graph LR; A[The importance of protecting IP was first recognized in] --- B[the Paris Convention for the Protection of Industrial Property (1883)]; A --- C[the Berne Convention for the Protection of Literary and Artistic Works (1886)];
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*the Paris Convention
for the Protection of
Industrial Property
(1883)*

*the Berne
Convention for the
Protection of
Literary and Artistic
Works (1886)*

INTELLECTUAL PROPERTY RIGHTS INCLUDE:

literary, artistic and scientific works;	performances of performing artists,	phonograms and broadcasts	“all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields”.
inventions in all fields	scientific discoveries;	industrial designs	
trademarks and service marks,	commercial names and designations	protection against unfair competition	

INTRODUCTION TO INTELLECTUAL PROPERTY AND COPYRIGHT

INTELLECTUAL PROPERTY



INDUSTRIAL PROPERTY



COPYRIGHT

INTELLECTUAL PROPERTY: INDUSTRIAL PROPERTY AND COPYRIGHT

INDUSTRIAL PROPERTY

patents for inventions,

Industrial designs

layout-designs of integrated circuits,

trademarks, service marks,

Commercial names and designations,

Geographical indications

protection against unfair competition.

COPYRIGHT

books,

music,

paintings

sculptures,

films

technology-based works

- computer programs
- electronic databases

INTELLECTUAL PROPERTY

IP is really a type of property or **asset**, even though it may be **intangible** (knowledge.)

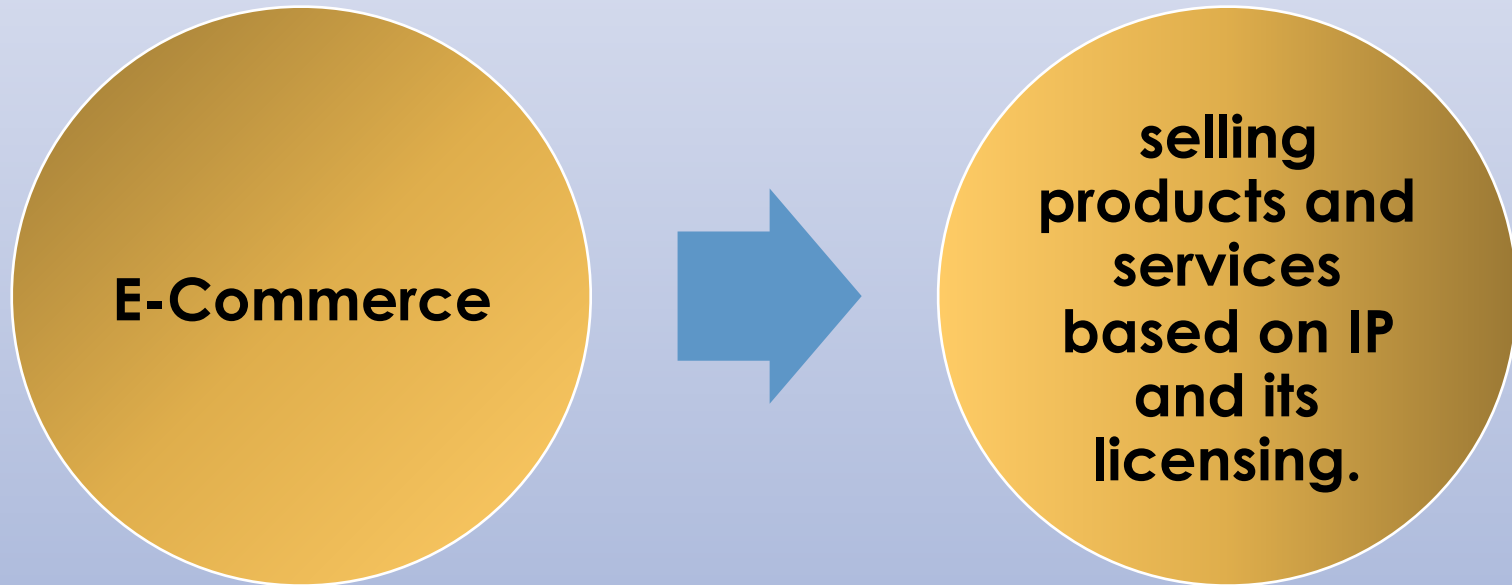
IP is as **valuable** as physical or real property,

The value of IP assets relative to physical assets has increased because of the importance of technology and creative works in the modern economy.

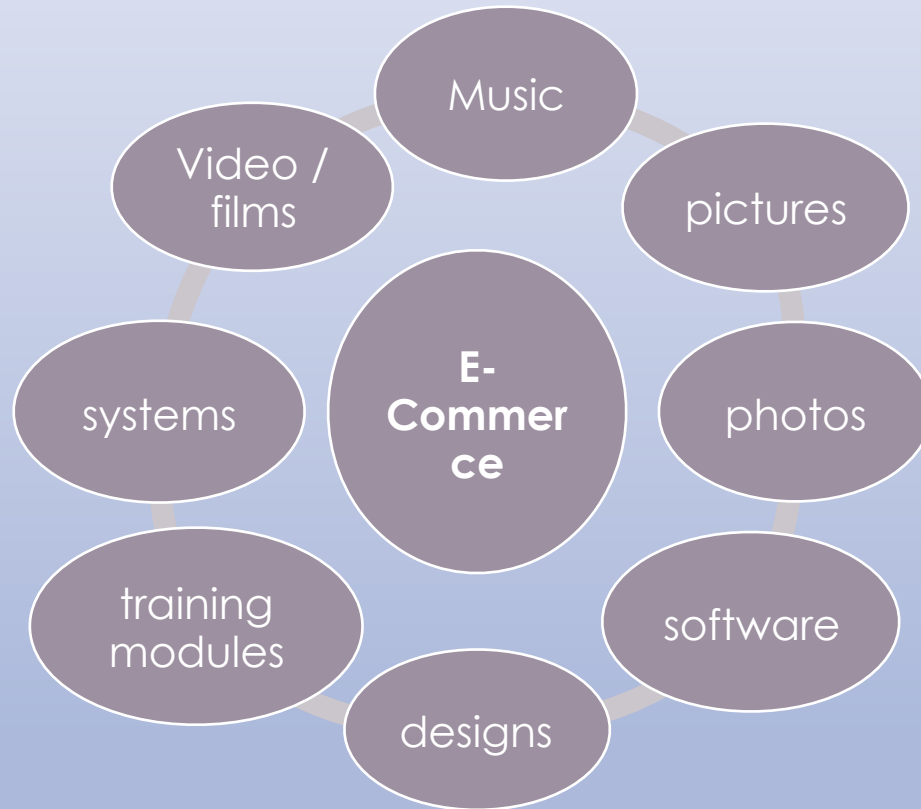
IP consists of new ideas, original expressions, distinctive names, and appearance that make products unique and valuable.

IP is often traded (or licensed) on its own right without trading in the value of an underlying product or service, by means of patent or other IP licenses from a rights owner to another.

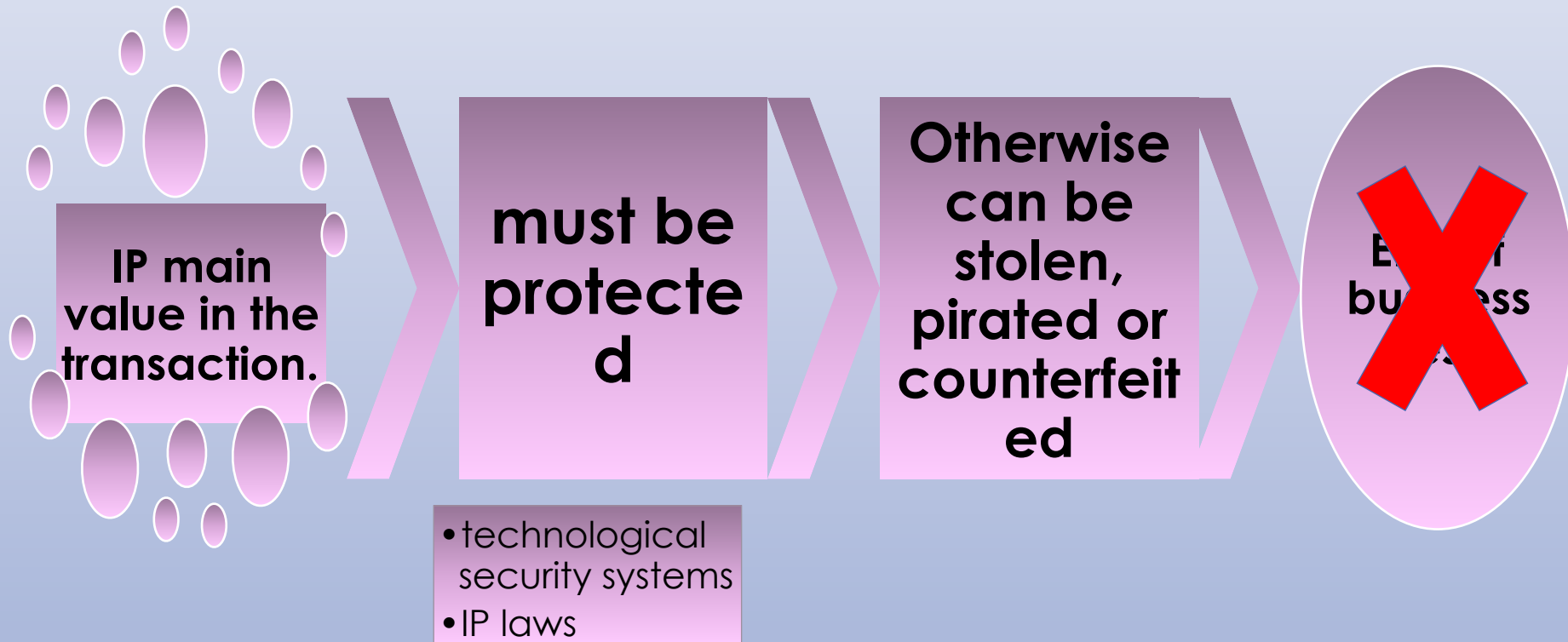
INTELLECTUAL PROPERTY AND ECOMMERCE OR ONLINE CONTENT PROVIDERS



INTELLECTUAL PROPERTY AND E-COMMERCE



INTELLECTUAL PROPERTY AND E-COMMERCE



WE HAVE TO BE AWARE ON



IP
PROTECTION

VS



IP
INFRINGEMENT

IP INTERNATIONAL REGULATION : WIPO

The WIPO-administered systems include four different mechanisms of protection for specific industrial property rights:

- the Patent Cooperation Treaty (PCT) System, for filing patent applications in multiple countries;
- the Madrid System for the International Registration of Marks, for trade and service marks;
- the Hague System for the International Registration of Industrial Designs;
- the Lisbon System for the International Registration of Appellations of Origin

<http://www.wipo.int/wipolex/en/index.jsp?tab=3>

IP PROTECTION IN THE EUROPEAN UNION

EUIPO: European Union Intellectual Property Office <https://euipo.europa.eu/ohimportal/en/home>

responsible for managing the EU trade mark and the registered Community design.

work with the IP offices of the EU Member States and international partners

A European Union trade mark is valid in all 28 countries of the European Union.

to offer a similar registration experience for trade marks and designs across Europe and the world.

EUIPO

The European Union Intellectual Property Office (EUIPO), in Alicante, in Spain, which was known as OHIM until 23 March 2016, was created as a decentralised agency of the European Union to offer IP rights protection to businesses and innovators across the European Union (EU) and beyond. B

EUIPO

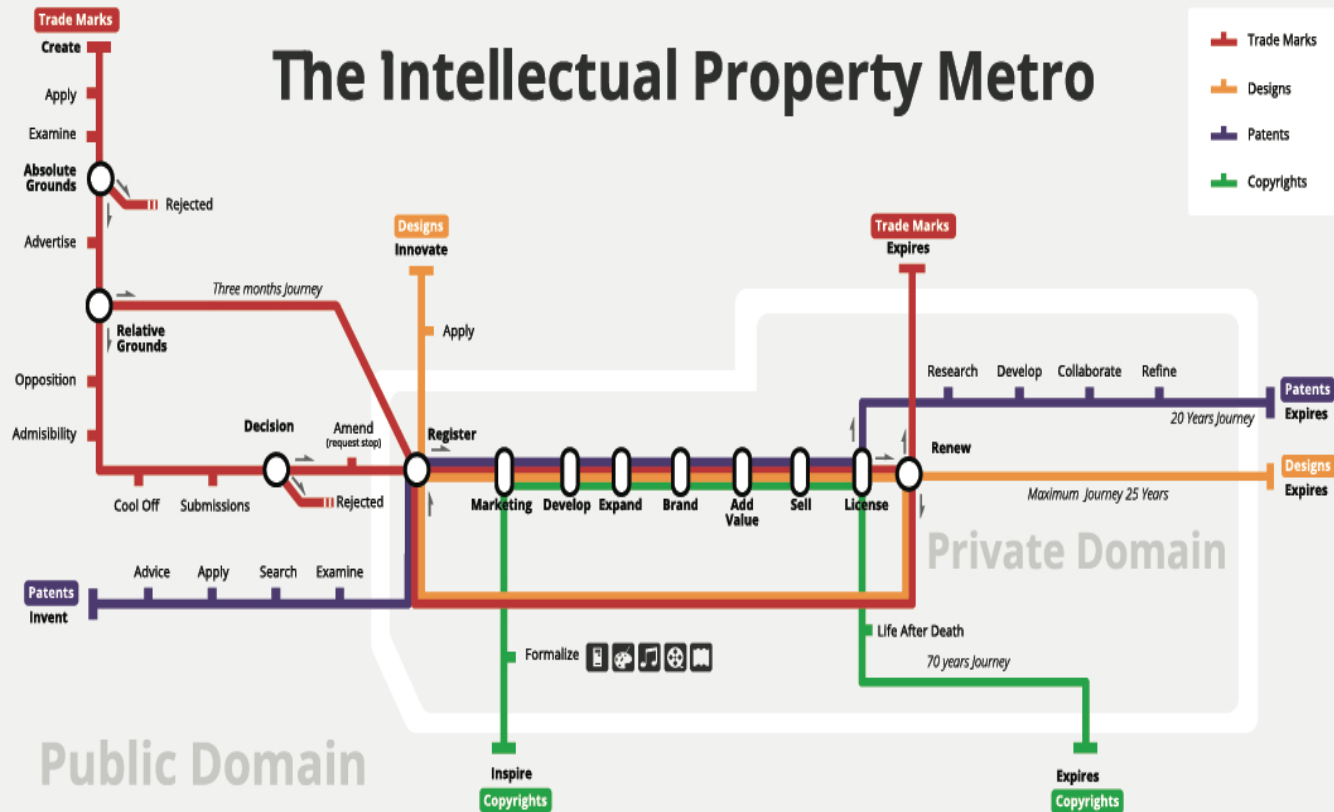
EUIPO manages the registration of the EU trade mark and the registered Community design.

The European Observatory hosted by EUIPO provides accurate, impartial and verifiable information to help safeguard Europe's knowledge and competitive edge in the global marketplace. The Boards of Appeal are responsible for deciding on appeals against first instance decisions taken by EUIPO concerning European Union trade marks and registered Community designs. The decisions of the Boards are, in turn, liable to actions before the [General Court](#), whose judgments are subject to a right to appeal to the [Court of Justice of the European Union](#) (EU) on points of law. The Boards of Appeal are independent and, in deciding a case, are not bound by any instructions.

IP PROTECTION IN THE EUROPEAN UNION: EUIPO



PROTECTING IP



EXAMPLE OF IP PROTECTION

APP



- Utility patent – new??
- Design patent - the appearance of the app's icon and of its user interface

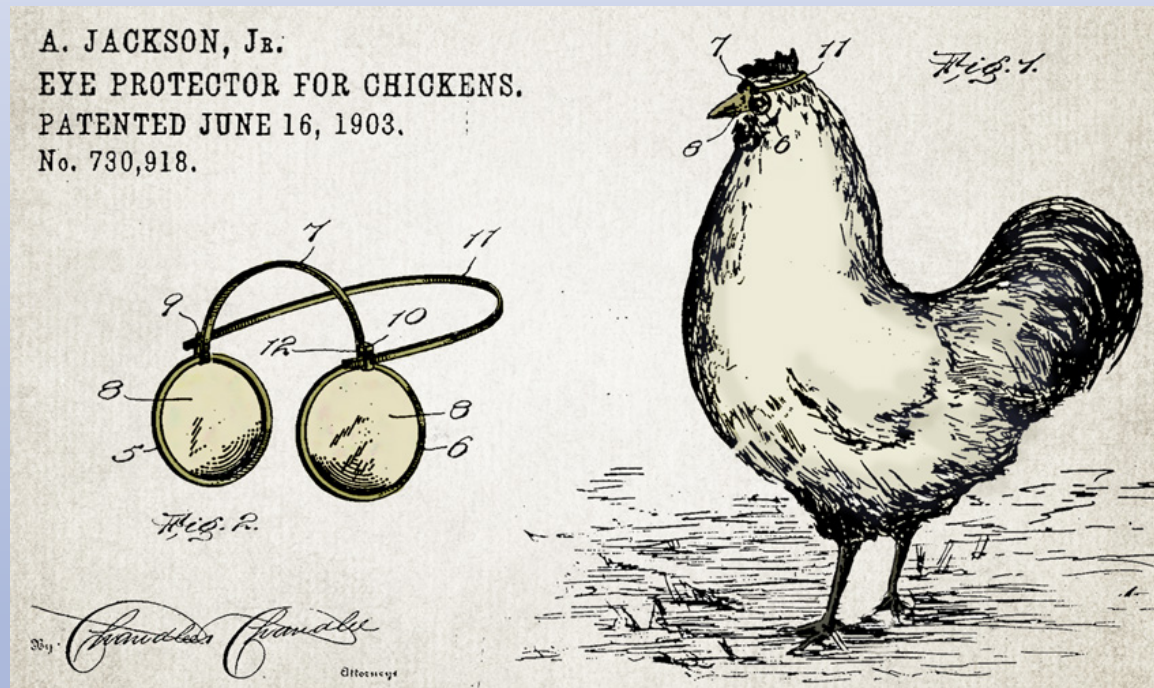


- app's name,
- the appearance of its icon, and of its user interface

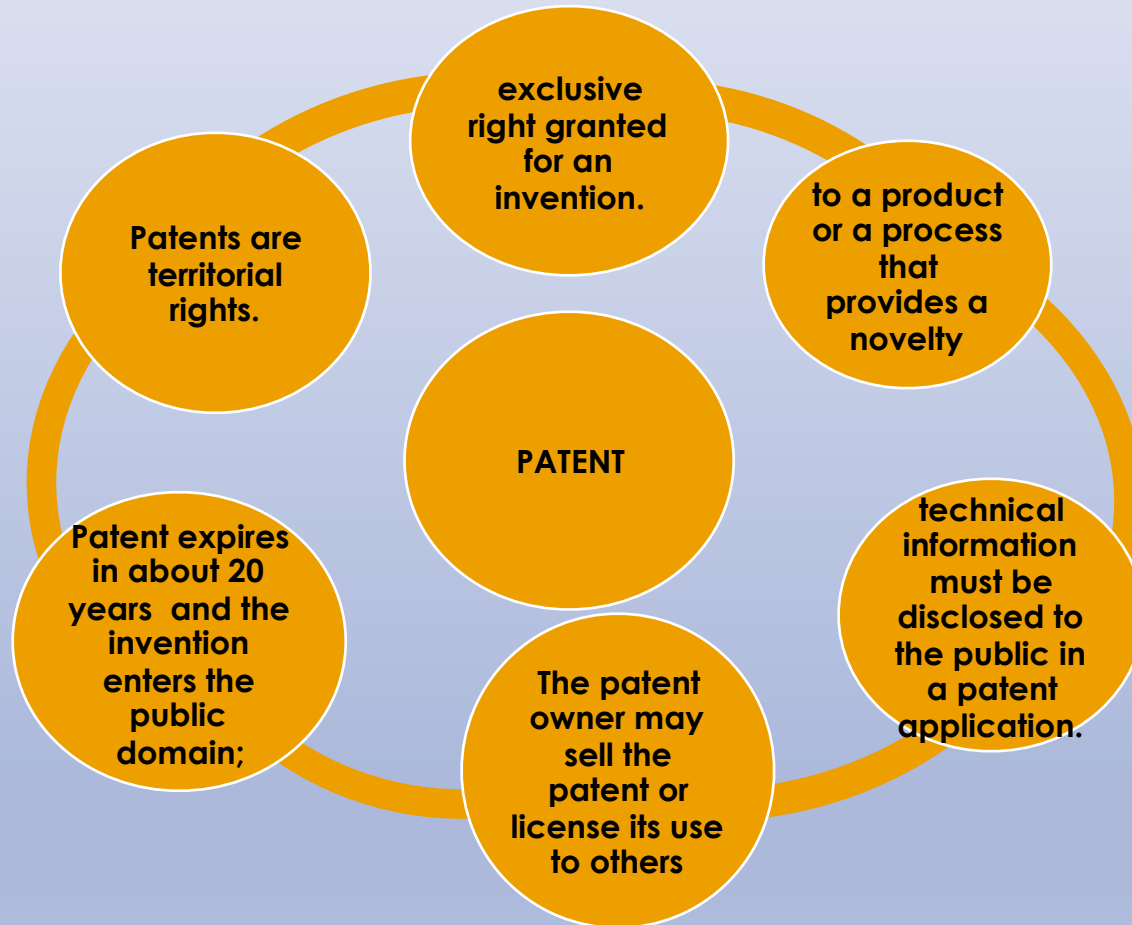


- app's software, code
- App's pictorial and graphic works
- App's music

INDUSTRIAL PROPERTY: PATENTS



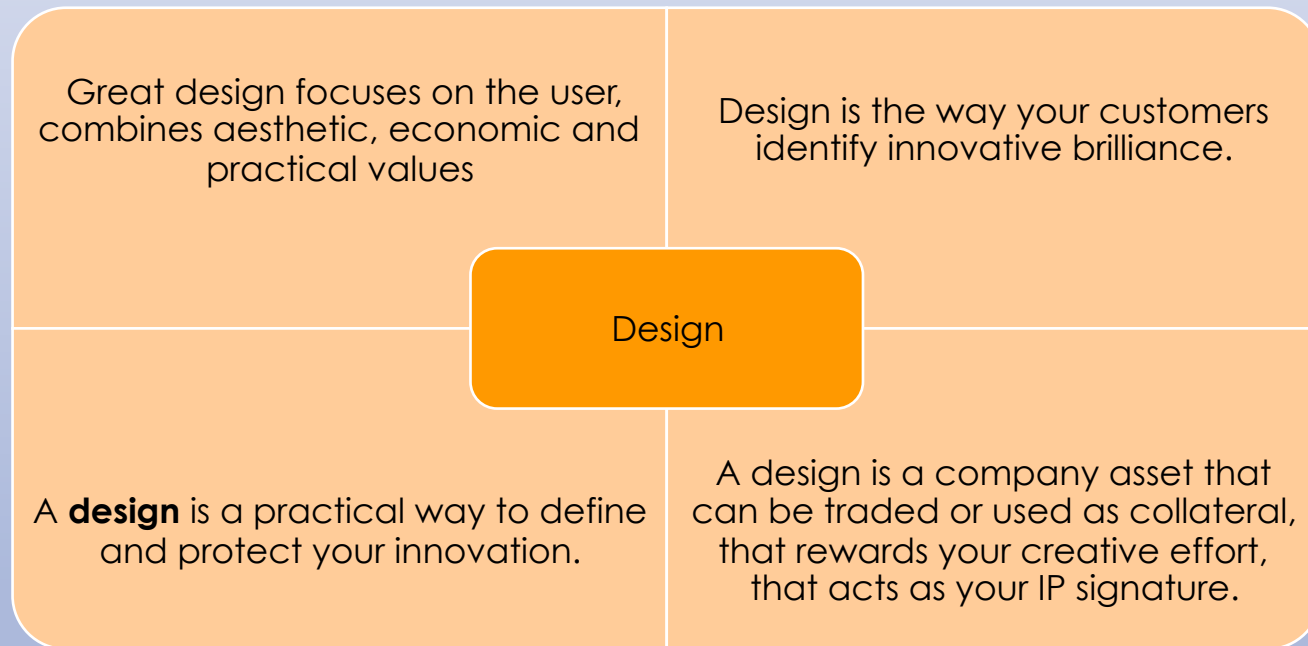
INDUSTRIAL PROPERTY: PATENTS



DESIGN APPLICATIONS



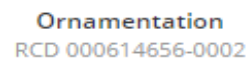
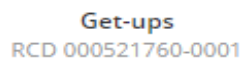
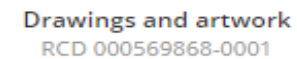
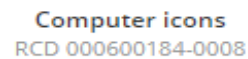
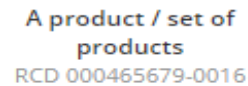
DESIGNS



Article 3 of the Design Regulation:

'The appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation'.

Almost any industrial or handicraft item can be eligible for design protection (except for computer programs)



INDUSTRIAL PROPERTY: TRADEMARKS



TRADEMARK

Is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises.



WHAT KINDS OF TRADEMARK CAN BE REGISTERED?



A word or a combination of words, letters, and numerals.



drawings,



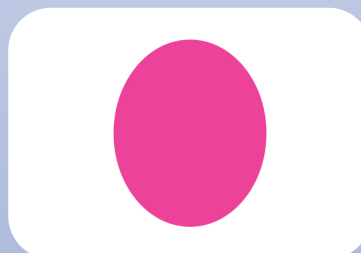
symbols,



three-dimensional features (shape and packaging of goods,



non-visible signs such as sounds or fragrances or phrases,



colour shades used as distinguishing features



Limitless possibilities

TRADEMARKED COLORS



Trademark functions

the essential
function of
the brand

other functions

Identity of
the product
or service

- Origin of
the product
or service
- Guarantee
for
consumers

Quality

Communicat
ion

Investment

Advertising.

ESSENTIAL FUNCTION OF A TRADEMARK

10th Recital of the first Trade Mark Directive 89/104 :

“... it is the essential function of trademark to **guarantee and offer protection to the origin and identity between the mark and the sign and goods or services**[...] The entire purpose is to guarantee and certify that the trademark is as an indicator of origin”

EUCJ - Case Arsenal Football Club v Matthew Reed:

*“(...) the essential function of a trade mark is to **guarantee the identity of origin of the marked goods or services to the consumer** or end user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin”*

QUALITY FUNCTION:

even though one cannot require a constant quality of branded goods, consumers do expect that to be the case (e.g. Luxury brands)

takes responsibility for quality the quality of the product

COMMUNICATION FUNCTION:

The exclusive right to a trademark allows its owner to gain additional benefits by using it as an exclusive channel of communication within certain areas of the market.

In particular, instead of simply guaranteeing the origin of goods or services, the trademark owner uses it in promotional campaigns to persuade consumers to associate a certain lifestyle with the trademark.

Consumers are actually willing to pay for the 'trademark experience' associated with the brand, independent of the product itself

INVESTMENT FUNCTION:

protecting what the trade mark holder has invested in, in particular the ability to attract and retain customers

- *investment function* may overlap with the advertising function. indeed, when the trade mark is used to acquire or preserve a reputation, not only advertising is employed, but also various commercial techniques.

ADVERTISING FUNCTION:

the trade mark holder will have to be able to use the trade mark to advertise for his goods or services

indicating, by means of that mark, the origin of its goods or services, but also that of using its mark for advertising purposes designed to inform and persuade consumers.

- (92) Accordingly, the proprietor of a trade mark is entitled to prohibit a third party from using, without the proprietor's consent, a sign identical with its trade mark in relation to goods or services which are identical with those for which that trade mark is registered, in the case where that use adversely affects the proprietor's use of its mark as a factor in sales promotion or as an instrument of commercial strategy.

INVESTMENT FUNCTION:



EU TRADEMARK LEGISLATION



In Force:

- Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark
- Directive (EU) 2015/2436 to approximate the laws of the Members States relating to trade marks,
- Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks



No longer in force:

- Regulation (EU) 2015/2424 amending Regulations on the Community trade mark
- Council Regulation (EC) no. 40/94 on the Community trade mark,
- First Council Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks,

Regulations

EUTMR	European Union trade mark regulation 	(EU) 2017/1001
EUTMDR	European Union trade mark delegated regulation  (repealing Delegated Regulation (EU) 2017/1430)	(EU) 2018/625
EUTMIR	European Union trade mark implementing regulation  (repealing Implementing Regulation (EU) 2017/1431)	(EU) 2018/626

Directive

Directive approximating the laws of the Member States relating to trade marks 	(EU) 2015/2436
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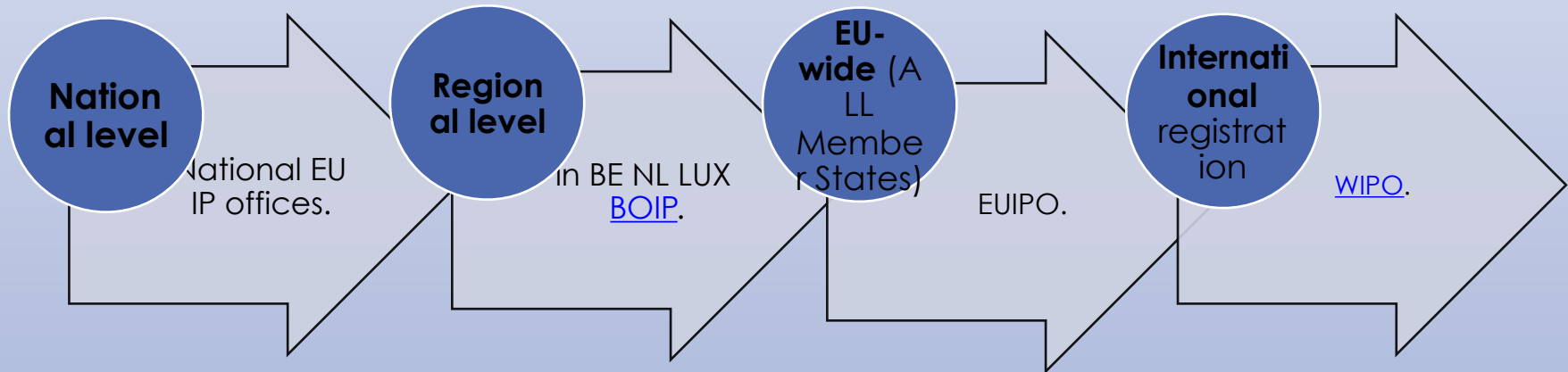
Navigating the EUTMR legislative changes

Correlation table		Colour-coded comparison	Transitional provisions
CTMIR ►	EUTMR EUTMDR EUTMIR	Regulation (EU) 2017/1001 v Regulation (EC) 207/2009 (as amended)	(EUTMIR, EUTMDR)

Previous legislation

	Amending Regulation 	(EU) No 2015/2424
CTMR	Community trade mark regulation 	(EC) 207/2009
CTMIR	Community trade mark implementing regulation 	(EC) 2868/95
CTMFR	Community trade mark fees regulation	(EC) 2869/95
	Directive approximating the laws of the Member States relating to trade marks 	(EC) 2008/95
	Rules of procedure for the Boards of Appeal 	(EC) 216/96

TRADEMARK PROTECTION IN THE EU



NEW EU TRADE MARK REFORM

DISCLAIMER

SUMMARISED

IP PROTECTION AGAINST UNFAIR COMPETITION - ART 10BIS PARIS CNV

Acts of competition considered contrary to honest trade and industry practices:

- all acts of such a nature as to create **confusion** with the establishment, the goods or the industrial or commercial activities of a competitor;

- false allegations in the course of trade of such a nature as to **discredit** the establishment, the goods or the industrial or commercial activities of a competitor;

- indications or allegations, the use of which in the course of trade are liable to **mislead the public** as to the characteristics of certain goods.

INFRINGEMENT IN THE EU


where the parties' marks and goods/services are identical



where the parties' marks and goods/services are similar and there is confusion



where the senior mark has a reputation and the junior use causes detriment to the distinctive character or repute of the senior mark, or takes unfair advantage of the senior mark



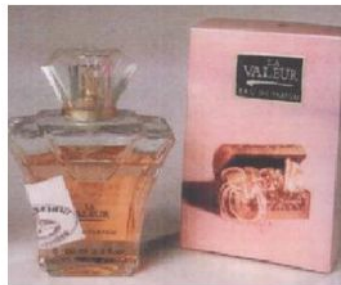
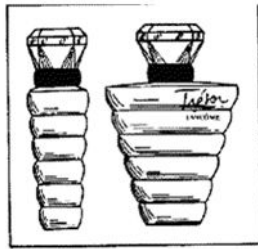
Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market
- ANNEX I COMMERCIAL PRACTICES WHICH ARE IN ALL CIRCUMSTANCES CONSIDERED UNFAIR



Trademark Infringement

L'ORÉAL V BELLURE - C-478/07

L'Oréal v Bellure



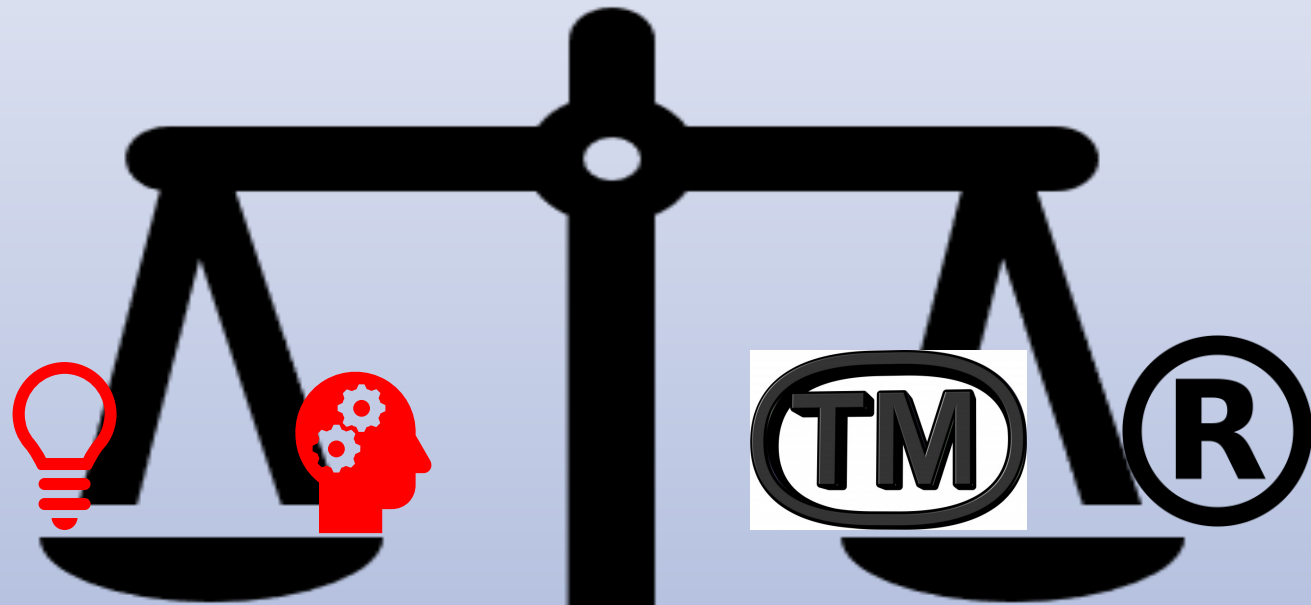
L'ORÉAL V BELLURE - C-478/07

- In, Bellure, a producer of inexpensive 'smell-alikes', used a comparative table of Bellure and L'Oréal smells, as well as alluded in the names and design of its perfumes to L'Oréal's luxury products.
- The Court ruled that intentional use of a trademark without in any way confusing consumers as to the origin of the goods, can nevertheless be regarded as unfair 'free riding' and thereby be illegal.
- The CJEU ruled that Bellure was 'riding on the coat tails' of L'Oréal, gaining an unfair advantage from the luxury brand's reputation which is prohibited by the Directive.
- It was clear in the case that the L'Oréal trademark was not subject to any other harm, such as blurring (detriment to distinctiveness) or tarnishment (detriment to reputation).
- There was no risk of misleading consumers as to the identity of Bellure's 'smell-alikes'.
- In effect, what the CJEU **protected**, was not the consumer's right not to be misled by a fake, but **L'Oréal's investment** in its brand image.

ADVERTISING KEYWORDS



REMEMBER:



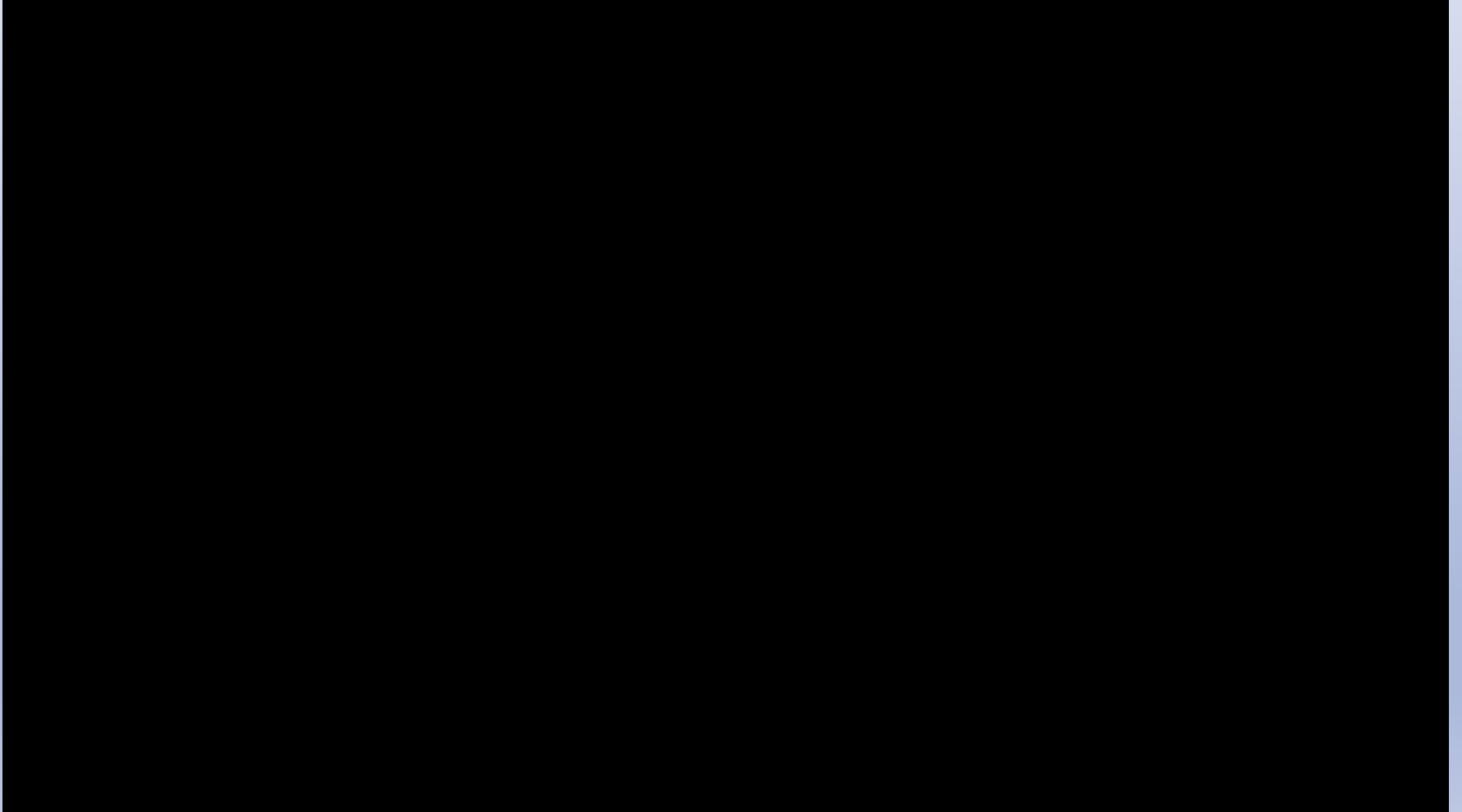
**Protect
your IP**

**Respect
others'
IP rights**

COPYRIGHT PROTECTED CONTENT ON INTERNET

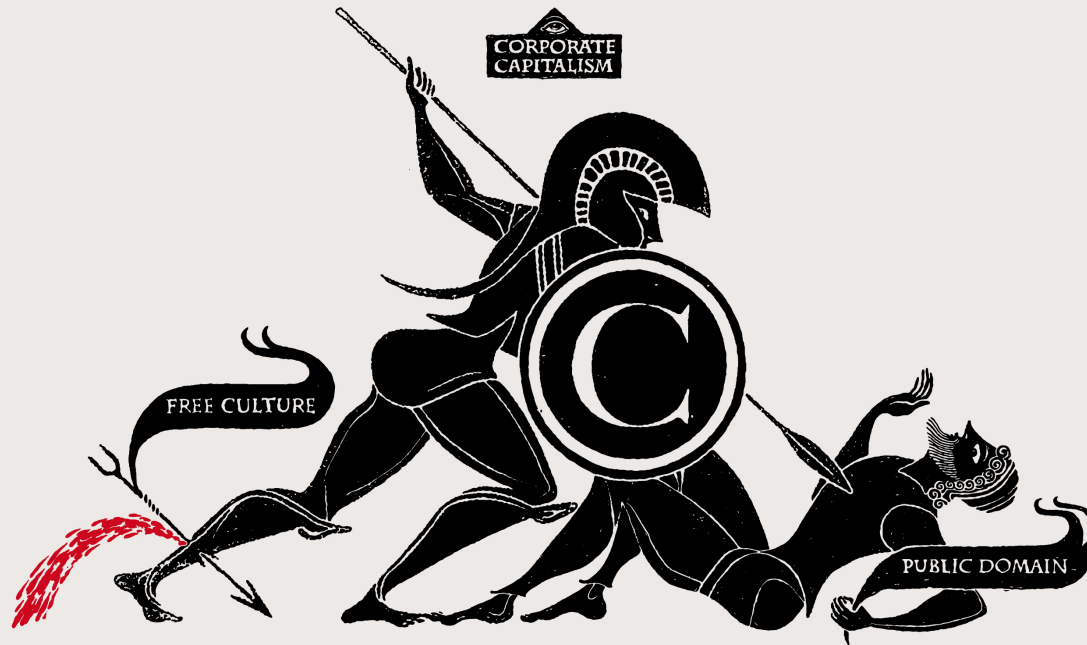


IDENTICAL: IMAGINE A WORLD
WITHOUT CREATIVITY



Copyright?





THE BATTLE OF COPYRIGHT

copyright law and neighboring rights protects only the form of expression of ideas, not the ideas themselves.

The works protected by copyright are creative with regard to the choice and arrangement of the medium of expression such as words, musical notes, colors and shapes.

Copyright protects the owner of the exclusive property rights against those who copy or otherwise take and use the original work

the legal protection of literary and artistic works

copyright

prevents only unauthorized use of the expressions of ideas.

duration of protection for copyright and related rights is much longer than for patents.



Copyright in most countries is simply declaratory,

i.e., the law may state that the author of an original work has the right to prevent other persons from copying or otherwise using the work.

A created work is thus considered protected as soon as it exists, and a public register of copyright-protected works is not necessary.

WORKS PROTECTED BY COPYRIGHT

The ideas in the work do not need to be original, but the form of expression must be an original creation by the author .

Article 2 of the Berne Convention states that: *“The expression ‘literary and artistic works’ shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression.”*

WORKS PROTECTED BY COPYRIGHT

- Examples

- • books, pamphlets and other writings;
- • lectures, addresses, sermons;
- • dramatic or dramatico-musical works;
- • choreographic works and entertainments
- • musical compositions with or without words;
- • cinematographic
- • works of drawing, painting, architecture, sculpture, engraving and lithography;
- • photographic works
- • works of applied art; illustrations, maps, plans, sketches three-dimensional
- works relative to science;
- • “translations, adaptations, arrangements of music and other alterations
- **Computer programs**

RIGHTS PROTECTED BY COPYRIGHT

Copyright protects two types of rights.

Economic rights allow right owners to derive financial reward from the use of their works by others.

Moral rights allow authors and creators to take certain actions to preserve and protect their link with their work.



The author or creator may be the owner of the economic rights or those rights may be transferred to one or more copyright owners.



Many countries do not allow the transfer of moral rights.

RIGHTS PROTECTED BY COPYRIGHT: ECONOMIC RIGHTS

The owner of a copyright-protected work may decide how to use the work, and may prevent others from using it without permission.

National laws usually grant copyright owners exclusive rights to allow third parties to use their works, subject to the legally recognized rights and interests of others.

Most copyright laws state that authors or other right owners have the right to authorize or prevent certain acts in relation to a work.

Right owners can **authorize or prohibit**:

- **reproduction** of the work in various forms, such as printed publications or sound recordings;
- **distribution** of copies of the work;
- **public performance** of the work;
- broadcasting or other **communication of the work to the public**;
- **translation** of the work into other languages; and
- **adaptation or modification** of the work,

RIGHTS PROTECTED BY COPYRIGHT: MORAL RIGHTS

The Berne Convention, in Article 6*bis*, grant authors the following rights: (**moral rights**)

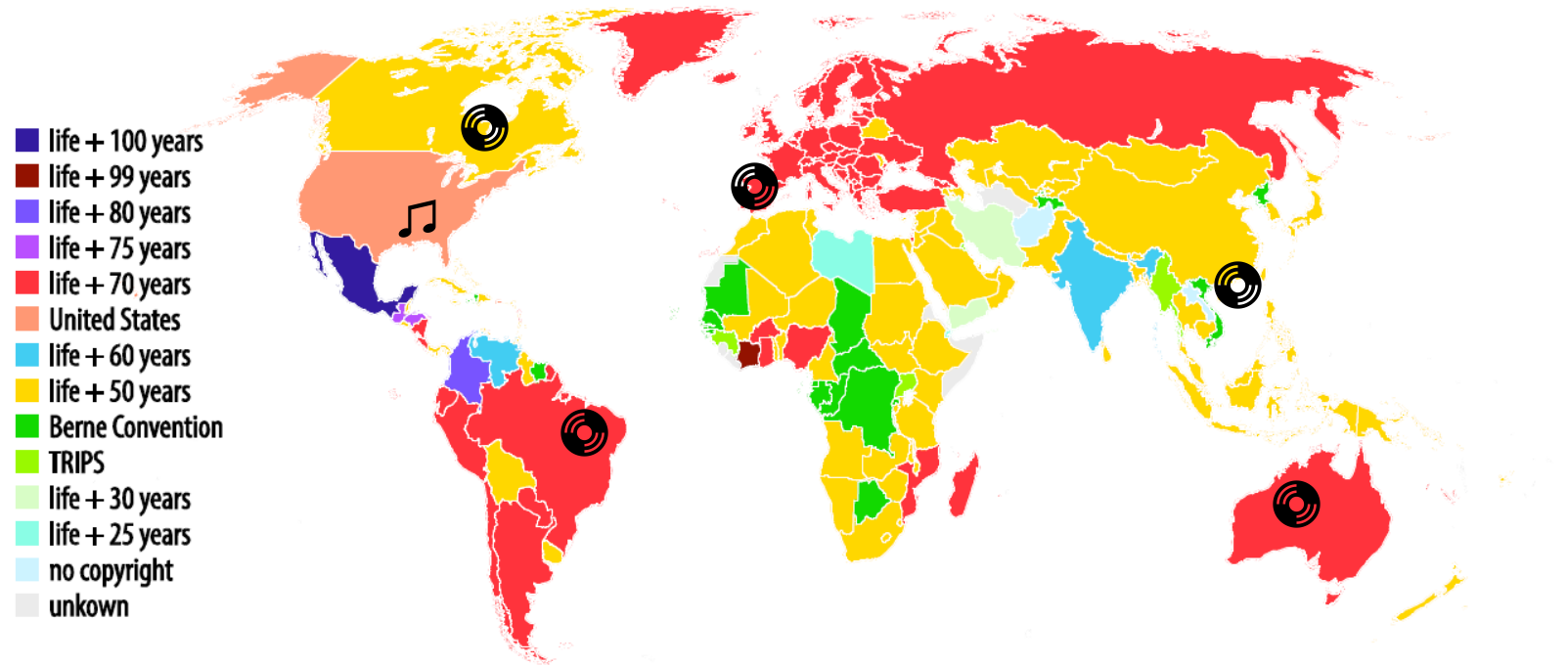
- (i) **right of paternity** or the **right of attribution** the right to claim authorship of a work (sometimes called the); and
- (ii) **right of integrity**: the right to object to any distortion or modification of a work, or other derogatory action in relation to a work, which would be prejudicial to the author's honor or reputation (sometimes called the).

The Berne Convention requires these rights to be independent of authors' economic rights.

Moral rights are only accorded to individual authors and in many national laws they remain with the authors even after the authors have transferred their economic rights.

TERRITORIALITY

Figure 2 – Duration of copyright protection in the world



Data source: [Public Domain Day](#), 2015.

EU COPYRIGHT DIRECTIVES

Council Directive
(EEC) 91/250
**'Computer Programs
Directive'**

Council Directive
(EEC) 92/100
**'Rental Right
Directive'**

Directive (EC) 96/9
'Database Directive'

Directive (EC)
2001/29 **'Information
Society Directive'**

Directive 94/48/EC
on enforcement of
intellectual property
rights

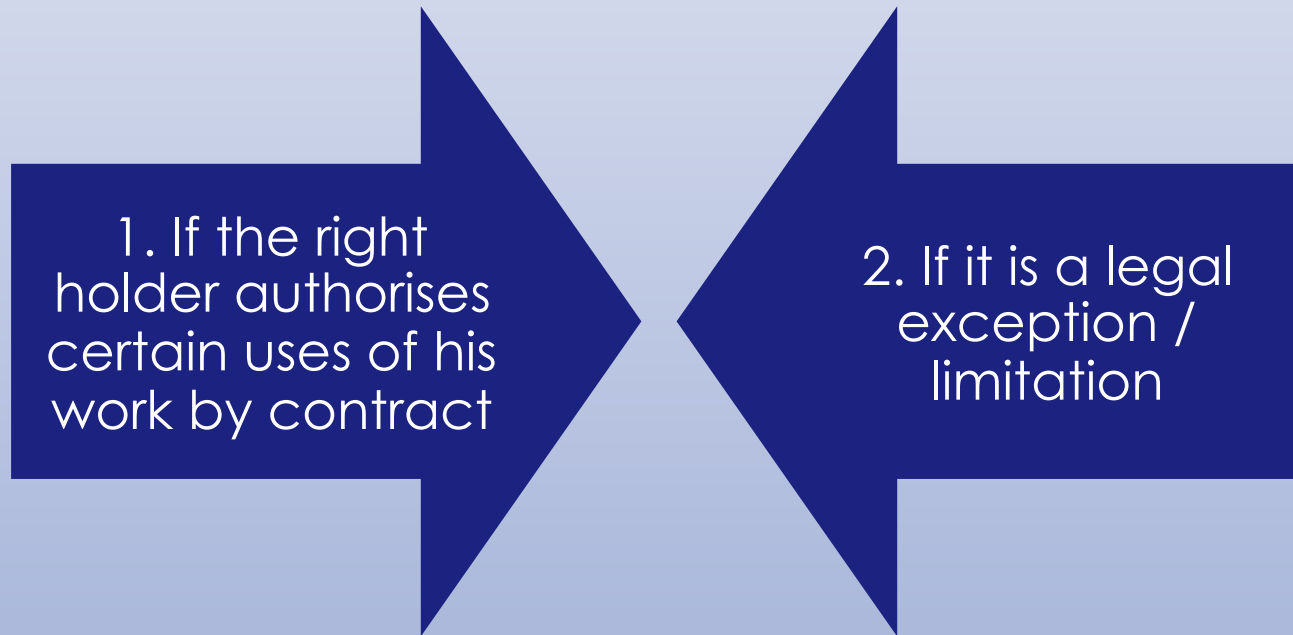
Directive (EU)
2012/28 on
**collective
management of
copyright**

NEW COPYRIGHT DSM DIRECTIVE:
[Directive \(EU\) 2019/790](#)

THE POLEMIC COPYRIGHT DIRECTIVE



NO INFRINGEMENT OF COPYRIGHT:



CRITICISM

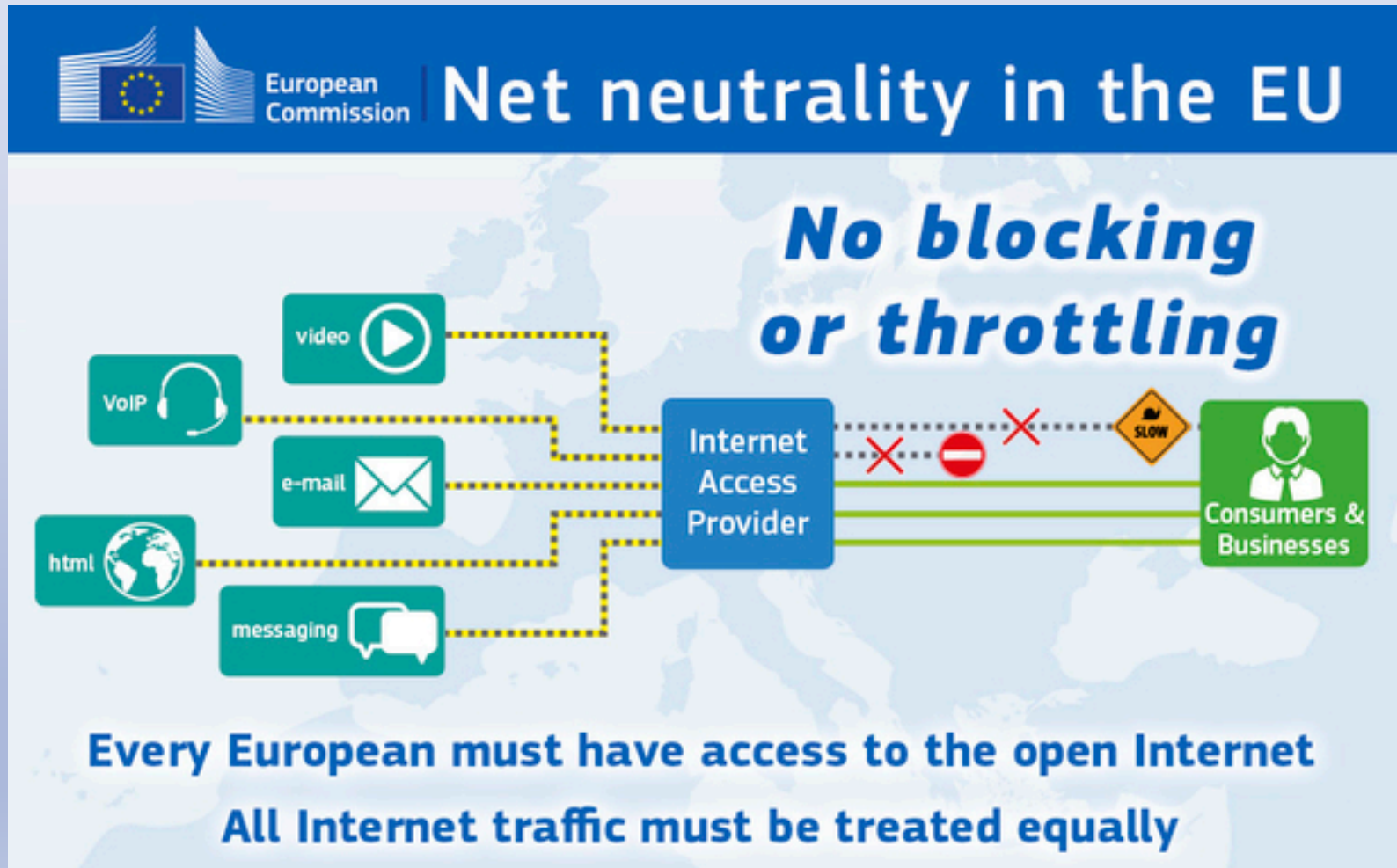


Liability of
intermediaries
ISP (art. 17)

No net neutrality
!?

EU: EUROPEAN REGULATORS FOR ELECTRONIC COMMUNICATIONS (BEREC)

[HTTPS://BEREC.EUROPA.EU/](https://berec.europa.eu/)



Thanks for your
attention!