



Response to European Commission Call for Evidence for an Impact Assessment Regarding Compulsory Licensing in the EU

Intellectual Property Owners Association (IPO) appreciates the opportunity to provide comments regarding the European Commission’s call for evidence regarding a potentially revised framework for compulsory licensing of patents. If the EU should undertake to improve coordination of compulsory licensing procedures within it, IPO would emphasize that the framework should be evidence-based and, as noted within the Call for Evidence, remain “within the bounds of the TRIPs Agreement.”

IPO is an international trade association representing a “big tent” of diverse companies, law firms, service providers and individuals in all industries and fields of technology that own, or are interested in, intellectual property (IP) rights. IPO membership includes over 125 companies and spans over 30 countries. IPO’s vision is the global acceleration of innovation, creativity, and investment necessary to improve lives. The Board of Directors has adopted a strategic objective to foster diverse engagement in the innovation ecosystem and to integrate diversity, equity, and inclusion in all its work to complement IPO’s mission of promoting high quality and enforceable IP rights and predictable legal systems for all industries and technologies.

The importance of the IP system has been especially evident during the COVID-19 pandemic. The incentives provided by the IP system have enabled innovators to build the infrastructure that has allowed them to devote the resources, technical knowledge, and know-how necessary to develop the solutions required to counter the pandemic. IP has also enabled an unprecedented amount of innovation and facilitated voluntary collaboration between innovators and their partners. Companies have voluntarily cooperated to provide technology to facilitate contact tracing, produce high quality personal protective equipment, improve testing, and create potential treatments and vaccines for COVID-19.

Unfortunately, despite the many voluntary collaborations that have been entered into across sectors to address many different types of public needs, compulsory licenses have increasingly been proposed. There is, however, no evidence to support that compulsory licenses are needed to produce vaccines or other tools needed to counter the pandemic. The World Health Organization has stated: “[w]ith global vaccine production now at nearly 1.5 billion doses per month, there is enough supply to achieve our targets, provided they are distributed equitably. This is not a supply problem; it’s an allocation problem.”¹

In contrast, frequent or widespread use of compulsory licensing risks undermining the very incentives that have led to the groundbreaking developments in vaccines, medicines, and other solutions to the current pandemic. Importantly, the straightforward use of voluntary licenses to secure supply from innovator companies is bound to be more efficient as a means of facilitating successful access to innovative solutions, as opposed to a compulsory license.

¹ WHO website, [Vaccine equity \(who.int\)](https://www.who.int/news-room/feature-stories/vaccine-equity), accessed on April 21, 2022.



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In order to prepare for a future crisis, whether that crisis be health-related or of another nature, a stable and predictable IP framework must be in place to provide confidence to investors, the private sector, and other organizations that they can take the necessary risks associated with innovation. Compliance with national obligations under TRIPS is crucial to providing this stability and predictability. IPO appreciates the Commission's recognition that the use of a compulsory license is a "last-resort tool." However, any action that would insert uncertainty into the IP system or broaden the scope of issuing a compulsory license, particularly in a market of such importance to IPO members, may only serve to undermine investments in the very technology that will be needed to address future crises.