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## **Governing the European Union's Intellectual Property Rights' Regime: From market failures to governance failures?**

### **Abstract**

Since the early 1990s the European Union has engaged in a process of rapid harmonization and unification of intellectual property rights regulations among its member states. Today the EU holds a bunch of laws in the fields of copyrights, trademarks, plant varieties, and is about to pass regulations creating the EU-wide Community patent and utility model. This regulatory thrust at EU level responds to the political will to low trade barriers among member states, to low the transaction costs and uncertainties involved in obtaining and exercising such rights, and more generally, to foster innovation and competitiveness in the single market. All of them very laudable objectives.

The aim of this paper is to raise the questions concerning the governance of the new IPR regime in the EU. The creation of these legal figures at EU level is not the end of the road. Quite the contrary, it is the beginning of the active EU involvement in these matters (in the so-called "positive integration" terms). In particular, this paper will concentrate on the issue of the potential "governance failures" of the newly established EU regime. This notion will be defined in continuation to the discussions about "market failures" and "systemic failures", and will delve from the theoretical discussions about "governance" that are taking place within the discipline of political science in general, and of European studies in particular.

The paper will proceed as follows. First, it will give a short account of the transformations of the EU IPR regime, both in terms of content and form, showing how rapid and in which way has the Europeanization of these rights taken place. Second, the paper will link these transformations to the issue of system of innovation perspective. The systemic approach will allow understanding the essentially constitutive nature of these rights in terms of a European system of innovation, and will raise some matters related to the formal and informal role of IPRs in the system. After that, the paper will move on to discuss the issue of "governance failure". To do so, it will first introduce briefly the well known neo-classical approach to "market failure" discussing it in relation to the relatively new definition of "systemic failures". After that, a definition of "governance failures" will be developed on the cross field of political science theory and European studies. It will be argued that the concept "governance failures" allows to examine some specific situations, namely, the (under and over-) protective effects of IPRs, the formal aspects of IPRs regulation (rigidity/flexibility and mechanisms of adaptation), the legitimacy aspect of the IPR regime, and the questions related to the delegation of power (principal-agent relationship). The last part of the paper will be devoted to the design of an analytical strategy, that will allow to address the question whether there are potential and identifiable "governance failures" in the current rapid establishment of the EU IPR regime, beyond (but related to) the "systemic failures" currently identified by economists.