

## **EARTO Proposed Amendments to the Draft Motion for the Resolution “Towards a thriving data-driven economy”**

10 May 2015

The European Commission is strengthening its efforts to ensure that Europe’s internal market functions efficiently. In this regard, harmonization of technological standards is considered an important factor. EARTO supports this effort. However, radical change through EC policy has been proposed to Europe’s industry and innovation system. Led by representatives of the EC DG CONNECT and the United States Department of Justice, pressure is being placed on European and other technical standard setting organisations (SSOs) to change their standards policies which are now offered in the Motion for the Resolution “Towards a thriving data-driven economy” (2015/0000(RSP)).

Today, it appears that pressure for dilution of Europe’s competitive advantage and economic growth is the result of external (US) politics, lobbying by non-European multinationals and media hype and that basic principles established to form the European Union are being used to the detriment of the European Members States themselves. Accordingly, **EARTO hereby would like to warn MEPs that if adopted as such, the resolution “Towards a thriving data-driven economy” will alter or remove fundamental legal rights for European companies and research & technology organisations (RTOs). The proposed resolution encourages the EC to increase investment in infrastructure to support (i) the digital, connected economy and (ii) industry growth based on Big Data while at the same time it seeks to devalue such investments as well as raise barriers to innovation and new market entry. Amendments are needed!**

### **Issues regarding standard setting organisations (SSOs)**

**Here, the proposed EC policy intervention and consequential legal changes will undermine investment in innovation and business decisions aimed at making Europe more globally competitive, as:**

- **the economic value of standard essential patents (SEPs) will automatically be diminished;**
- **the right to protect high quality research and IP systems against wilful infringement will be substantially diluted.**

Today, the draft motion is placing SEPs returns at stake by lowering the economic value of SEPs, and by removing the right to protect such investments. In the environment proposed by the draft motion, there will be less funding sources for innovative European companies to support innovation and create infrastructures driving innovation. In turn, this lessens societal advancement and reduces incentives to innovate. This proposed environment could only benefit third party stakeholders: overseas implementers of technology with some of the highest profit margins in the world. Reducing the cost for such companies to use European innovation is not expected to lead to interoperable technology becoming more widespread for societal benefit and European competitiveness. Reducing the value of innovative property and removing the right to protect such property is expected to increase current offshore profit margins, without reduced cost for consumers.

#### **Example Fraunhofer: Importance of standard essential patents (SEPs) revenues for RTOs**

An estimated €40 billion annual economic impact is derived from RTOs in Europe (over €100 billion if taking into account longer-term spill over effects). Fraunhofer is the largest RTO in Germany and as many RTOs members of EARTO is a holder and licensor of SEPs. The audio codec .mp3 is a famous example of Fraunhofer’s standard essential patents (SEPs) which, in cooperation with other companies and research organisations, created mobile devices. This SEP generates €1.5 billion per annum and as at 2008 had secured 9000 jobs in Germany alone. Such returns are at stake today!

### **Issue regarding Big Data**

The current Draft Motion is inconsistent with evidence-based decision making and counters its own objectives. For example, in paragraph 19, BIG DATA seems to be mixed up with OPEN DATA, which is certainly not the same concept. In many cases, putting data in OPEN DATA can be harmful for

European economy and favourable to the US economy, particularly given the US monopoly of digital industrials (GAFAs: Google, Apple, Facebook, Amazon). The combination of OPEN DATA with the development of the Internet of Things could lead to the absorption by the GAFAs of a large part of the European economic value, even in non ICT industries. European policies should be driven by the identification of benefits for Europeans rather than being a general policy of freedom of access for all, worldwide. **Globally, the analysis of the huge risk for Europe's economy is totally absent in the Draft Motion.** The draft motion if not amended will be weakening our European innovation system and have a disastrous impact on European competitiveness and employment.

**EARTO hereby requests MEPs' support to amend the draft motion as offered below to avoid harming EU innovation system by reducing the value of innovative property of EU RTOs and removing the right to protect such property.**

**EARTO proposes that Paragraph 13 of the Draft Motion be amended to state one of the following options as well as text on open data be removed of article 19 as follows:**

| §               | Draft text  | Amendment  | Reasoning   |
|-----------------|---|--|---|
| § 13 - Option 1 | Encourages the Commission and Member States to increase investments in the area of fixed, mobile, cable and satellite infrastructure, adjusted to the future requirements for the digital, connected economy, and to adopt policies that enable the IoT to flourish, such as making harmonized spectrum available for Short Range Devices, mobile and WiFi, expanding 5G technology, and encouraging IPv6 deployment, addressing excessive license payments for standard-essential patents. | Encourages the Commission and Member States to increase investments in the area of fixed, mobile, cable and satellite infrastructure, adjusted to the future requirements for the digital, connected economy, and to adopt policies that enable the IoT to flourish, such as making harmonized spectrum available for Short Range Devices, mobile and WiFi, expanding 5G technology, <del>and encouraging IPv6 deployment,</del> <b>addressing excessive license payments for standard essential patents.</b>  | SEPs have to be licensed on FRAND terms, as is set out in the Common Patent Policy of ISA/IEC, ITU-T, NIST, and the IP Policy of ETSI. There is no evidence of a market-failure indicating that excessive royalties are paid, nor that such IP policies are ineffective. There is, however, a serious threat to the European innovation system – a growing trend for many implementers of standards to free-ride on the technology investments of innovators, infringe patents on a large scale, and lobby for removal of rights to protect such investments. This makes any innovation system and its economic environment unsustainable. The successful implementation of Big Data initiatives should not be at the expense of the broader European innovation system. Rather, Big Data can build on and complement current European success. |
| § 13 - Option 2 | Encourages the Commission and Member States to increase investments in the area of fixed, mobile, cable and satellite infrastructure, adjusted to the future requirements for the digital, connected economy, and to adopt policies that enable the IoT to flourish, such as making harmonized spectrum available for Short Range Devices, mobile and WiFi, expanding 5G technology, and encouraging IPv6 deployment, addressing excessive license payments for standard-essential patents. | Encourages the Commission and Member States to increase investments in the area of fixed, mobile, cable and satellite infrastructure, adjusted to the future requirements for the digital, connected economy, and to adopt policies that enable the IoT to flourish, such as making harmonized spectrum available for Short Range Devices, mobile and WiFi, expanding 5G technology, encouraging IPv6 deployment, <del>addressing excessive license payments for standard essential patents</del> <b>and facilitate standardization, via a framework effectively enabling (standard-essential) patent licensing agreements on fair, reasonable and non-discriminatory (FRAND) terms.</b> | SEPs have to be licensed on FRAND terms, as is set out in the Common Patent Policy of ISA/IEC, ITU-T, NIST, and the IP Policy of ETSI. There is no evidence of a market-failure indicating that excessive royalties are paid, nor that such IP policies are ineffective. There is, however, a serious threat to the European innovation system – a growing trend for many implementers of standards to free-ride on the technology investments of innovators, infringe patents on a large scale, and lobby for removal of rights to protect such investments. This makes any innovation system and its economic environment unsustainable. The successful implementation of Big Data initiatives should not be at the expense of the broader European innovation system. Rather, Big Data can build on and complement current European success. |
| § 19 - Option   | Asks for addressing challenges of data security, interoperability, data limitation and storage, transparent transportation rules, cross-border mechanisms, open data exchange between administration, business, and civil society.  | Asks for addressing challenges of data security, interoperability, data limitation and storage, transparent transportation rules, cross-border mechanisms, <del>open data exchange between administration, business, and civil society.</del>  | Open data has many different meanings, and does not necessarily mean that data is exchanged without restriction, regulation or economic value. It is premature to incorporate the concept of open data into objectives relating to Big Data. The risk is that 'open data' will mean 'no data'. Here we would let our doors open to the US without any protection nor clear return for Europe.   |



***EARTO - European Association of Research and Technology Organisations***

*EARTO is the European trade association of the research and technology organisations (RTOs), a non-profit organisation founded in 1999. EARTO groups over 350 RTOs with a combined staff of 150,000, an annual turnover of €23 billion, special equipment and facilities to a value of many €billions and more than 100,000 customers from the public and private sectors annually.*

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