



OFFICE FOR HARMONIZATION
IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

EUROPEAN OBSERVATORY ON INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS

ANNUAL REPORT 2014

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01 PRESIDENT'S INTRODUCTION

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01 - PRESIDENT'S INTRODUCTION

1 - The OHIM Strategic Plan 2011-2015 has three principal goals: Goal 1 – Build a strong, vibrant and creative organisation; Goal 2 – Increase quality and optimise the timeliness and efficiency of operations; Goal 3 – Promote convergence of practice within the European Trade Mark and Design Network and beyond.

The European Observatory on Infringements of Intellectual Property Rights continued to develop during 2014, welcoming seven new associations from a variety of sectors. As well as representatives of the 28 Member States, the Observatory network includes 57 representatives from the private sector, seven organisations representing civil society, 10 international organisations, and 10 MEPs designated by the European Parliament, who are invited to take part.

The 2014 work programme was the first year of implementation of the Multiannual Work Plan 2014-2018, which sets out the vision for the Observatory's development and links it to the Office's overall Strategic Plan.

In 2013, we published the first major research study, in partnership with the European Patent Office, which demonstrated the economic importance of IP rights to jobs, GDP and trade in the EU. That study continued to be widely disseminated during 2014 and is already starting to have an impact on the general debate on intellectual property.

In 2014, the second phase of the IP contribution study has been carried out, consisting of firm-level research, analysing the differences between companies that use IPR and those that do not, as well as describing the use of IP rights among European SMEs. The results of the study will be published during the spring of 2015.

Another major study from late 2013 showed that while the vast majority of citizens value the importance of IP rights, there are sometimes contradictions in their behaviour, especially among younger people. These results form the basis of follow-on studies and awareness efforts aimed at the young generations, begun in 2014 and set to expand in 2015 and beyond.

An important third set of studies, quantifying the economic costs of IP infringement, was begun in 2014. These studies aim to assess the magnitude of counterfeiting and piracy within the EU and are being carried out in collaboration with OECD, the Commission's Joint Research Centre, and through OHIM's own efforts.

An Enforcement database (EDB) and an Anti-Counterfeiting Intelligence Support Tool (ACIST) are being further developed by the Observatory in partnership with stakeholders including enforcement organisations and agencies, with the goal of increasing the amount of information they contain and encouraging greater use.

The EDB helps law enforcement authorities to recognise counterfeit goods by enabling right holders to securely share with those authorities information on products and logistics. It also allows right holders to automatically generate an application for customs action.

In addition we are expanding the coverage of the Anti-Counterfeiting Intelligence Support Tool that allows data on seizures that are provided by different enforcement authorities in the Member States, to be stored, analysed and reported in a common standard.

A third major database launched in 2014 is the Orphan Works database. Fully operational since October 2014, it is a single EU database on orphan works to be shared by all Member States, in accordance with Directive 2012/28/EU.

The Observatory is also working on best practice studies in a number of areas, and is taking part in many important knowledge-sharing initiatives that will help bridge the gap between the world of IP and enforcement officials.

On the wider international stage, we are cooperating closely with the Commission and EU enforcement agencies to ensure a close alignment with broader EU policies and priorities in the field of IP.

In 2015 we will be looking more deeply into the economic consequences of IP infringements. We will also analyse the role of trade secrets, the use of IP by European SMEs, and the attitudes towards IP among young people.

Thorough professional studies on the economic value of IP rights, combined with research on the cost of infringements and better understanding of how citizens perceive IP rights will combine to produce new narratives about the value of IP rights.

There are many challenges ahead for the Observatory, but the broadly-based network representing all aspects of society, combined with the expertise in the Office as a whole, is already making a contribution to our understanding of Intellectual Property and will continue to grow in importance in years to come.



António Campinos
President, OHIM





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02 - THE OBSERVATORY AND OHIM

The Office's Observatory Department comprises the European Observatory on Infringements of Intellectual Property Rights and the service of OHIM's Chief Economist.

The European Observatory on Counterfeiting and Piracy was established by the European Commission in 2009 as an EU-wide network of representatives to support the protection of Intellectual Property Rights and to help combat the growing threat of IP infringements, as well as being a centre of excellence on information and data relating to the value of Intellectual Property Rights and the negative consequences of IPR infringements.

During 2014, the network at the heart of the European Observatory on Infringements of Intellectual Property Rights continued to develop, welcoming seven new associations from a variety of sectors and one additional

civil society organisation, bringing the total membership to more than 110 (See Box 1).

As well as representatives of the 28 Member States, at the end of 2014, the Observatory network included 57 representatives from the private sector, seven organisations representing civil society, 10 international organisations, and 10 MEPs designated by the European Parliament, who are invited to take part.

Private-sector representatives include a broad and balanced range of EU and national bodies representing the various economic sectors, including creative industries, most involved or experienced in the fight against infringements of Intellectual Property Rights. Consumer organisations, small- and medium-sized enterprises, authors and other creators are also represented.

Box 1: Growth in Observatory network

During 2014 a number of new associations joined the Observatory's network from a variety of sectors, including representation from civil society. The new representatives are:

Civil society:

- **COMMUNIA** (International Association on the Public Domain)

Private sector:

- **Association Internationale pour la Protection de la Propriété Intellectuelle (AIPPI)**
- **Association des Praticiens du Droit des Marques et des Modèles (APRAM)**
- **Communauté Internationale des Obtenteurs de Plantes Ornementales et fruitières à Reproduction Asexuée (CIOPORA)**
- **European Composer & Songwriter Alliance (ECSA)**
- **Fédération Internationale des Conseils en Propriété Industrielle (FICPI)**
- **International Confederation of Music Publishers (ICMP)**
- **Union Internationale des Cinémas (UNIC)**

A full list of members of the Network is available on the Observatory website at:

<https://oami.europa.eu/ohimportal/en/web/observatory/observatory-network>





To build up the contingent of private-sector stakeholders, the Observatory has a published set of criteria designed to ensure that the Observatory can

benefit from a broad range of expertise, whilst ensuring that meetings remain manageable and functional (See Box 2).

Box 2: Criteria for new private stakeholders for the Observatory

- Pan-European associations or international organisations
- Registered in the EU Transparency Register
- Not individual corporations
- Affected by counterfeiting or piracy and/or active in enforcement
- Able to represent companies/authors/creators within their specific sectors

Able to provide key information about a particular sector, including statistical data in compliance with Article 5(2)(b) of Regulation (EU) No 386/2012



The Working Groups cover:

- IP in the Digital World
- Public Awareness
- Legal & International
- Enforcement
- Economics and Statistics

The five Working Groups met in Brussels in February and September 2014.

and includes Frederick Mostert, José Louis Arnault, Gerhard Bauer and Professor Ian Hargreaves.

In 2014, the Observatory truly reached “cruising speed”, benefitting from the full capabilities and resources of the Office. The Observatory has strong dependencies and synergies with other key activities or projects in the Office, such as the new OHIM website, the tools built by the Cooperation Fund, and the activities of the Academy and of the International Cooperation area.



The Observatory also draws on an Advisory Board composed of experts from the academic, business, and political spheres, which advises the President on the Observatory's work. The Board is chaired by Lord Mogg

The Observatory operates under a Multiannual Work Plan 2014-2018 in order to provide a longer-term perspective and integration with the Office's Strategic Plan. The multiannual plan is also the basis for the an-



02 - THE OBSERVATORY AND OHIM

nual Work Programme for the Observatory, which sets out the objectives for the year ahead.

At the heart of the Multiannual Plan are the three main goals of the Observatory:

- To provide facts and evidence for use in the formulation of effective IP policies by policymakers;
- To create tools and resources to sharpen the fight against IP infringement;
- To raise awareness of IP and of the negative effects of counterfeiting and piracy.

In a similar way to the overall Strategic Plan for the Office, the Observatory's Multiannual Work Plan rests on two complementary pillars. The first pillar aims at strengthening the public-private network that makes up the core of the Observatory's function and the second at facilitating and promoting cooperation with third countries in order to advance knowledge and enhance protection of intellectual property.

The goals of the Observatory are achieved by developing initiatives grouped in the following five Lines of Action:

- Evidence-based contributions and data to enable EU and national policymakers to shape effective IP enforcement policies and to support innovation and creativity;

- Data, tools and databases to support EU and national authorities in the fight against IP infringement;

- Knowledge building and learning programmes for enforcement authorities as well as for businesses – especially SMEs;

- Campaigns to raise overall awareness of the importance of IP and the negative effects of IP infringement;

- Initiatives to help right holders protect their IP rights within and outside the EU.

Each year the specific projects and activities are developed, described and prioritised in the annual Work Programme of the Observatory.

Further refinement takes place on a yearly basis in line with developments in EU policies, taking into consideration the input and feedback received from Member States, EU Institutions, and Observatory stakeholders. Much of this work is carried out through the Working Groups of the Observatory.

Following discussions at the public and the private sector stakeholder meetings in September 2014, a new Observatory process to produce reports and studies was introduced. The process is based on the following principles:

■ **Observatory stakeholders should be involved in the identification of the reports and studies to be undertaken, as well as in the definition of the scope and terms of references for the identified reports/studies;**

■ **The reports/studies should be carried out in full according to the agreed terms of reference in an independent manner;**

■ **Observatory stakeholders should be provided with the possibility to know in advance the conclusions of the reports/studies and provide comments;**

■ **The rules governing the Office and more particularly its decision-making process should be respected.**

The process will apply to all new studies that the Observatory produces.

In the following sections, the activities carried out to support the three main goals within the scope of each of the five Working Groups are described in detail.





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The activities of the IP in the Digital World Working Group consist mainly of studies in support of the first main goal of the Observatory, to provide facts and evidence for enforcers and policymakers. In addition, the Orphan Works Database, set up under a specific legal mandate, contributes to the attainment of Goal 2: to provide tools and resources for IPR enforcement.

ORPHAN WORKS DATABASE

The digitisation and dissemination of orphan works poses a particular cultural and economic challenge: the absence of a known right holder means that cultural institutions are unable to obtain the required authorisation, to digitise a book, for example. Orphan works represent a substantial part of the collections of Europe's cultural institutions (e.g. the British Library estimates that 40 per cent of its copyrighted collections – 150 million works in total – are orphan works).

The database, which has been designed and developed by the Observatory in close collaboration with the European Commission and Member States went live at the end of October 2014. As the database is not yet populated with many entries, the Observatory has devised a strategy to encourage its use as a central European repository of information related to orphan works, and create a stable network of stakeholders.



Directive 2012/28/EU sets out common rules on the digitisation and online display of orphan works and establishes the creation of a single European registry of all recognised orphan works which will be shared by all Member States. The inclusion of a work in the register will enable cultural institutions to use orphan works while ensuring adequate protection for right holders.

In order to promote the database, there will be cooperation with national authorities, key beneficiary organisations, other relevant stakeholders and the European Commission. Additional functionalities are planned for the database in order to increase its user-friendliness, alongside a stakeholder network which can advise on developments in the tool.



VOLUNTARY COOPERATION PRACTICES

In 2014, members of the IP in the Digital World Working Group, as well as OHIM's TM5 partners¹, were asked for help in order to identify voluntary cooperation practices between private operators (for example, content owners and Internet service providers) in their respective countries, designed to combat online IPR infringement. Some 20 such practices were identified as a result of this process.

In the second phase of the study, six practices have been selected by the Working Group for a very thorough analysis of their legal framework and efficacy. They will be analysed not only from the perspective of the rights holders but also mapped from the perspective of consumers, data protection and the legal framework.

The final report is due by the end of 2015 and will offer new findings regarding best practices in this specific area.

BUSINESS MODELS USED IN ONLINE INFRINGEMENT

An Observatory two-stage study on business models used in online infringement has commenced, in order to map the models used and consequently, to raise awareness amongst enforcement officials and policymakers. In the first phase, the main business models will be identified using a combination of literature review, case law and other qualitative methods. In the second phase, between 200 and 300 websites will be chosen for a closer analysis, designed to ascertain which of the business models identified in the first phase are most relevant in terms of use, traffic and impact.

1 - TM5 is a cooperation forum for the world's five leading trade mark registration offices, including OHIM, the United States Patent and Trademark Office, the Japan Patent Office, the Korea Intellectual Property Office, and China's State Administration for Industry and Commerce.



TEST CASE FOR AVAILABILITY OF LEGAL OFFERS

A test case will be undertaken to simulate searches by consumers for legal offers for music. Panels of ordinary consumer in a number of Member States will be given a list of tasks that involve accessing, downloading, streaming and where necessary purchasing content from authorised services. In this context, cross-border availability and access, payment and portability will be assessed.

The terms of reference are currently being formulated and the study will be carried out during 2015.

LEGAL OFFERS AGGREGATOR

In order to help consumers find legal offers online, the Observatory has launched a project to create a European Aggregator of Legal Offers website in order to better inform consumers about the available legal offers in the realms of music, sport, films, games, books and TV. The European Aggregator website will link with national aggregators of legal offers which already exist, or that will be built with the help of OHIM.

One of the deliverables of the project is the construction of an aggregator toolkit with supporting software, which will enable national administrations to build national aggregators. A pilot will take place in 2015 involving Latvia, France, Portugal and the UK.





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The activities of the Public Awareness Working Group support the third main goal of the Observatory: to raise awareness of IP and of the negative effects of counterfeiting and piracy. Much of this work is based on the studies that are conducted in the Observatory within the scope of the other working groups, particularly Economics & Statistics and IP in the Digital World.

IP IN EDUCATION

Following the IP Perception study carried out in 2013, which examined the knowledge of and attitudes towards IP among European citizens, the IP in Education study was carried out in 2014, with the final report to be published in 2015. This study aims to map and understand how children are exposed to IP, IPR and associated subjects within primary and secondary schools. The mapping exercise focuses on how IP is taught across the 28 EU Member States. In addition, the results are compared with four innovative countries outside the EU, namely the USA, Hong Kong, Singapore and Switzerland.

The results of the study show that in the EU and non-EU countries/regions analysed, no specific stand-alone IP subject or comprehensive IP education programme exists in the current official curricula. Nevertheless, IP and related themes are integrated into one or several subjects as a cross-curricular subject throughout all education levels. Emphasis on specific IP rights varies according to their specificities, complexity and relevance for different age groups.

The final report will also include a number of actions that could be taken by the Observatory after publication of the report.



04 - PUBLIC AWARENESS

YOUTH ACTION PLAN

An awareness action plan targeting youth at EU level was launched in 2014, on the one hand to complete the IP Perception study and deepen the analysis regarding youngsters aged 15 to 24, and on the other hand to build the community on social media networks and online, identifying and engaging young opinion leaders and multipliers in order to leverage support and dissemination, for future campaigns.

A social media campaign aimed at youngsters was kicked off in October 2014. Identified with a common logo, the "Ideas Powered" tagline and specific visual identity (all tested among audiences), dedicated pages on Facebook and Twitter, as well as YouTube, have been developed with a view to offer youngsters an online space for dialogue where they can express themselves

on IP related issues and thus build a community with the support of partners and multipliers.

A website (www.ideaspowered.eu) has been designed to include the following elements:

- **Video testimonials of young opinion leaders;**
- **Comments in the format of blog posts;**
- **Similar video testimonials for youngsters all over Europe in the format of video "selfies";**
- **Links to social media activities and stakeholders' IP-related campaigns, selected from the repository of IP campaigns on the Observatory website.**

In parallel, a mapping of around 480 young opinion leaders, influencers and multipliers covering the 28 Members States has been established, thus identifying the people youngsters are listening to, valuing and seeing as models or references, in areas of personal and daily interests such as music, sport, fashion, or technology.

At the same time, market research activities have been launched to deepen the insights from the IP Perception study and to understand better youngsters' behaviours regarding both counterfeiting and piracy, notably in the digital environment.



A study is targeting young people (15 to 24 years old) on a qualitative (focus groups in all Member States) and quantitative basis in 28 Member States. This study will be complemented with an online sentiment analysis, monitoring in real time the perceptions and views of the young people, allowing us to better take the pulse of what young people think, expect, and react to, thus gaining a continuously updated picture.

All this information will be consolidated in a Youth Scoreboard, to be carried out on an annual basis.

FUND/CALL FOR PROPOSAL

The Observatory website hosts an inventory featuring approximately 130 awareness-raising campaigns across the EU.

In addition to direct communication and other awareness-raising activities, OHIM has responded to requests by stakeholders to help promote Member State involvement in awareness-raising initiatives.

At present National Offices can request the support for initiatives and events intended to raise awareness through the annual bilateral cooperation framework. For other stakeholders, the Office has designed an annual EUR 500 000 fund to support existing awareness-raising initiatives in Member States or develop new ones.

OHIM's financial contribution is based on the principle of co-financing, with OHIM contributing up to 80% of the total eligible costs of each individual initiative.

A formal "call for proposals" was published in January 2015, with a deadline at the end of the first quarter 2015. Approximately 130 proposals have been received. These proposals will be evaluated during April and May 2015, with a goal of signing the grant agreements in June.

SME SCOREBOARD

Most European companies are SMEs, and most of these SMEs do not use any registered IP rights. Accordingly, it is important for the Observatory to understand how SMEs decide whether or not to use IPR, and what are the barriers to such use.

During 2014, preparatory work has been carried out on the SME Scoreboard, a survey to further explore if and how SMEs use IP, what issues they encounter when protecting their IPR; when, where and how they register their rights - and if they do not, why not. The survey also covers licensing and its impact as well as enforcement issues.

Carried out by the professional polling organisation GfK, the survey is intended to cover all Member States with a representative sample segmented by industry sectors and company size. The survey will be administered by phone with opportunities to respond on demand online. The results, expected for September 2015, will be used to inform awareness raising efforts and other activities designed to assist SMEs protect their IP rights.





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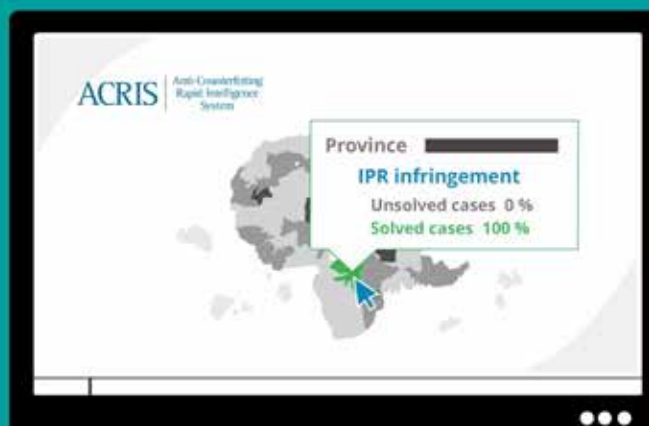
The activities under this heading mainly support Goals 1 and 2 of the Observatory, to provide fact-based evidence and to create tools and databases for enforcement.

In addition, specific activities aimed at rights owners, such as the country guides, and international cooperation activities also fall within the scope of this Working Group.

COUNTRY GUIDES

Country guides have been produced by the Observatory to provide basic assistance to IP rights holders and their advisers on the IP protection and enforcement system in the countries concerned. The current batch of guides, published in 2014, includes Russia, China, Brazil, Turkey and India.

Each guide gives some brief background information on the country concerned, outlines the legal framework and identifies weak points concerning IP protection and enforcement. Some basic advice is provided together with details of useful contacts. Links to online resources are provided where they are available. The guides have been published, along with other Observatory publications, on the Observatory website.





05 - LEGAL AND INTERNATIONAL

2 - OHIM's existing Case Law search tools allows the user to consult trade mark and design decisions of OHIM, national courts in the European Union, and the General Court and Court of Justice.

ACRIS

Currently, there is no EU-level database that contains information about IPR infringements suffered by companies in the Member States. ACRIS (Anti-counterfeiting Rapid Intelligence System) is designed to fill that gap. It is an intelligence database that allows EU companies to report, in a structured format, information about IPR infringements that they believe were the victims of and respective follow-up by local authorities in countries outside the European Union. This data will be used to:

- **Produce statistical information to assess the level of potential violations in each country and measure the efficiency of actions against taken by enforcement authorities. This will allow EU companies to make informed business decisions;**
- **Update information on the IPR landscapes for use by DG TRADE;**
- **Feed into the bilateral dialogues of DG TRADE with non-EU countries of interest.**

The project brief has been shared with prospective users, and feedback collated and analysed in order to design the system. The tool will be developed during 2015.

CASE-LAW ON IPR ENFORCEMENT

A pilot project aimed at collecting national case-law related to enforcement of IP rights and making it available in the OHIM case-law database² began in 2014 and is being carried out in collaboration with national IP offices. In countries where the IP office does not have the mandate to assist in this task, collaboration will be sought with the competent national administration. Case-law in relation to enforcement of plant variety rights will be collected in collaboration with the Community Plant Variety Office.

The project has collected 168 key judgements in both civil and criminal jurisprudence in collaboration with eight national IP offices (Denmark, Sweden, Spain, UK, France, Lithuania, Romania and Slovenia).

Key judgments are to be understood as judgments in relation to the application of enforcement-related measures or procedures in IP infringement cases. The types of IP covered include trade mark rights, design rights, copyright and rights related to copyright, patent rights, plant variety rights, geographical indications and trade secrets.

New countries which will participate in 2015 include the Czech Republic, Ireland, Austria and Hungary.

STORAGE AND DESTRUCTION

A comprehensive study on the costs of storage and destruction of counterfeit goods in each Member State was published by the Legal Working Group (the predecessor of today's Legal & International Working Group) in 2010, before the establishment of the Observatory as it is known today. The study was based on the practice and consequences reported by litigators³ and focused on differences in laws and practices among the Member States.

Since the establishment of the Observatory at OHIM, an updating exercise has been carried out, channelled through national authorities to map the changes in the situation in each Member State, including new Member States. The updated report was published in 2014 and is available on the Observatory website. To supplement the information contained in the existing report, which focuses on the practices in each Member State, a quantitative assessment of the costs of storage and destruction costs will be carried out in 2015, and will form part of the overall quantification of infringement work stream.

To carry out this quantitative assessment, OHIM plans to retain a leading market research company, GfK, to carry out a survey of companies and public authorities. It will follow a two stage model: the first stage will combine focus groups of private companies designed to define the relevant costs and develop the questionnaire; and the second phase will see the execution of the

questionnaire. The questions posed in the survey will be as clear and concise as possible in order to extract the necessary data, and the survey will involve the private sector as well as the public sector. Those involved will be contacted by the chosen contractor in each Member State in a suitable manner.

The completion of the study is foreseen during 2015.

COSTS AND DAMAGES

Similar to storage and destruction, a comprehensive study on national practices in the area of costs and damages was carried out in 2010 and updated by the Observatory in 2014.

INTERNATIONAL COOPERATION

The Observatory supports a broad range of cooperation activities carried out in the framework of OHIM's status as the implementing agency for EU-funded programmes in third countries. The highlights during 2014 included the creation of an EU delegations network, with the first meeting held in March 2014; the publication of a report on inter-agency cooperation at national and international level; and the survey on protection and enforcement of IPR in non-EU countries, carried out in 2014.

These activities are discussed in greater detail in section 8 below.

3 - Available at: http://ec.europa.eu/internal_market/iprenforcement/docs/corrective_measures_en.pdf.



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The activities under this heading support the third main goal of the Observatory: to provide tools and databases for use in enforcement, and to carry out knowledge-building activities for enforcers and other stakeholders.

ENFORCEMENT DATABASE (EDB)

The EDB helps law enforcement authorities to recognise counterfeit goods by enabling right holders to securely share with those authorities information on products and logistics.

The tool is free of charge and is built on existing IP databases such as TMview, Designview and the European Commission's (DG AGRI) database on Geographical Indications where updated information about the validity of the different IP rights at stake can be found by enforcement authorities. Right holders can place information in the tool in their own language, and the database automatically translates it into the language of the enforcement professionals who access it.

Launched at the end of 2013, the EDB is currently used by more than 140 companies. In collaboration with the European Commission (DG TAXUD), the EDB can now be seamlessly accessed by customs authorities in all Member States via the EU customs secure network, CCN. Police authorities in some Member States are also beginning to access the tool.

The EDB can also automatically generate a pre-filled customs Application for Action (AFA), making it even easier for companies to assert their IP rights. Preparations have been made to enable the electronic sending of the generated application to customs authorities. This will be possible via an interface which will be created between EDB and DG TAXUD's COPIS

(the database used by European Customs authorities to manage applications for customs action) which will be developed during the first half of 2015.

Meanwhile interoperability with the World Customs Organization's IPM tool is also foreseen.

ANTI-COUNTERFEITING INTELLIGENCE SUPPORT TOOL (ACIST)

ACIST allows data on seizures, provided by different enforcement authorities in the Member States, to be stored, analysed and reported according to a common standard.



06 - ENFORCEMENT

In addition to data on customs seizures in each Member State, which will be provided on an annual basis by DG TAXUD, data concerning seizures carried out by police within the Member States is also being collected. The goal is to ensure a regular and sustainable flow of data to enable all interested parties to get the complete

from the police authorities of the remaining Member States. Finally, since early 2014, Belgium and Denmark are directly keying-in in their seizures in ACIST.

The tool was made available on the Observatory website for consultation as from November 2014.



picture by querying the ACIST database. Data on all 28 EU customs border seizures of counterfeit goods for 2012 and 2013 has already been reported and published in ACIST. National police authorities from Spain, Portugal, Belgium, Estonia, Slovakia and Denmark have also reported their seizures from the last 2-3 years. Data from Italy, Romania and Slovenia have been received and are in the process of validation for its later publication in the tool. Work is ongoing to obtain data

EUROPOL-OHIM SITUATIONAL REPORT ON COUNTERFEITING

The joint situation report, co-drafted with Europol during 2014, describes the situation of counterfeiting in the EU, focusing on several areas of concern:

- **Top countries of provenance: third-country vs. EU production of counterfeit goods;**
- **The role of Free Trade Zones (FTZs) in providing opportunities for criminal networks to export larger amounts of counterfeit goods to the EU;**
- **Links to other forms of crime such as fraud, forgery, tax evasion, smuggling and human trafficking;**
- **The role of trans-national organised crime networks;**
- **Infiltration of the legal distribution chain by counterfeited products;**
- **Sale and distribution of counterfeits via the Internet.**

The final report was published in April 2015.

KNOWLEDGE BUILDING FOR ENFORCERS

A number of initiatives in the area of knowledge building for enforcers were undertaken in 2014.

Partnering with Europol, a joint knowledge and competences programme for law enforcement officers has been set up. This has resulted in several sectorial seminars each involving more than 100 participants. Those taking part included enforcement authorities (police, customs and prosecutors) from across the EU as well as experts from the specific sector in focus.

Two events have been held as part of this programme in 2014:

- Seminar on IP crime in sports;
- Seminar on IP infringements in the Internet.

The seminar on IP infringements in the Internet was, for the first time, co-chaired by Eurojust, together with OHIM and Europol.

Moreover, a regionally-based model for holding workshops throughout the EU to target local judges, prosecutors, customs and police forces has been established. Three **regional workshops** were held during 2014.

A CEPOL online seminar was held in May 2014 to raise awareness about new trends and international instruments to fight counterfeit goods, and a Europol best port practice event on fake and illicit pesticides in June 2014 in Antwerp.

An **IP Toolkit for Enforcers** has now been finalised, and train-the-trainer events will be carried out alongside CEPOL and the European Commission during 2015 and 2016.



Knowledge and Awareness Building Conference
Intellectual Property
Crimes in Sports





06 - ENFORCEMENT

The successful **Judges' Seminar** series has continued to run, bringing together senior IP judges and prosecutors drawn from all EU Member States, and occasionally from the USA.

Over 600 different judges have attended the seminars or symposia at OHIM since their inception. In March 2014 there was a seminar focused on transnational enforcement of provisional measures related to IPR infringement and a seminar on the Community trade mark and design systems for the Judges of the Finnish

Market Court. A joint seminar co-organised with EPO took place in June 2014 dealing with the protection of confidential information, and a third one in October 2014 addressed the relationship between counterfeiting and money laundering. In November 2014 a seminar took place dealing with the detention of suspected counterfeit goods in external transit.

To improve the understanding of these topics and to improve inter-relations between all parties involved in this domain, several lectures from enforcers working in these fields were also delivered during these meetings.



A **European Intellectual Property Prosecutors' Network** is currently being set up. It will be composed of prosecutors from across all Member States in order to identify and deploy effective actions to support judicial authorities involved in large scale counterfeiting cases, and to share knowledge and best practice. OHIM will sign a Memorandum of Understanding (MoU) with Eurojust at the beginning of June 2015, which will be followed by the inaugural workshop.

The first **International IP Enforcement Summit** was organised by the UK IP Office, OHIM and the European Commission and was held in London from 11 to 12 June. It was the first event of its kind, bringing together key European and international decision makers, enforcement agencies, multinational companies and other stakeholders to discuss the growing impact of intellectual property right infringements and the challenges facing enforcement and society.

With a view to increasing the engagement between national and international partners, this event aimed at providing strategic but also practical orientations on general and more specific international enforcement issues, as well as sharing best practices with a view to promoting the adaptation of enforcement regimes which are important for trade and investment.

The Summit provided an effective forum for discussion and debate on crucial international IP enforcement matters. It served to increase engagement between national and international partners in combating counterfeiting and piracy. It supported interaction and sharing of successful examples of international best practice strategies and techniques.

The programme was themed around Europe, with a broader international element, involving keynote speeches, plenary and breakout sessions on key elements of IP enforcement and with a strong positive message on respecting IP, particularly in the digital world.

There were 307 participants at the event, 70 speakers and 13 exhibitors. The event was streamed live and the videos are available on the Observatory website. There was extensive media coverage, especially in the five countries that were targeted (France, Germany, Italy, Spain, UK).





06 - ENFORCEMENT



07 ECONOMICS & STATISTICS

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07 - ECONOMICS & STATISTICS

The activities in the Economics & Statistics field consist principally of studies and analyses that support the first main goal of the Observatory, to provide facts and evidence to support policy.

The **IP Contribution study**, prepared jointly with the EPO and published in September 2013, was widely disseminated during 2014 and has had and continues to have an impact on the general debate on intellectual property.

The first wave of interest was for the EU-wide picture, but this research is also proving a rich resource for adding a sound, economic dimension to the debate at the national level.

In summary, the key findings are that 39% of total economic activity in the EU (EUR 4.7 trillion annually) is generated by IPR-intensive industries, and almost 90% of external trade. In addition, 26% of all employment in the EU (56 million jobs) is provided directly by these industries and a further 9% of jobs – that is 20 million – are indirectly dependent on IPR-intensive industries.

During 2014, the second phase of the IP Contribution study has been carried out, consisting of firm-level research, analysing the differences between companies that use IPR and those that do not, as well as describing the use of IP rights among European SMEs. The results of the study will be published during the spring of 2015.

The second major study from the Observatory, the **IP Perception study**, published in November 2013, deals with the complex and sometimes contradictory issue of what citizens know, think and perceive about IP. It was conducted by telephone interviews with 26 500 citizens drawn from all 28 Member States. In addition, focus groups were held with groups of citizens in nine Member States who were selected to be representative of different age groups, education levels, occupations, sexes and nationalities.

The study shows that while most people have positive attitudes towards IP in the abstract, there also many contradictions in their behaviours, declarations and actions.

While they acknowledge the importance of IP, many believe that IP infringements can be acceptable for certain reasons, with younger people, in particular, more ready to challenge the rules.

Overall, 96% of citizens say they support innovation and creativity by rewarding inventors, creators and artists for their work and more than two-thirds (69%) agree that companies generating a lot of IP contribute significantly more to the creation of jobs and economic growth.

A majority of respondents say that they have not downloaded or streamed illegal content from the Internet or bought counterfeit goods intentionally in the previous 12 months.

However, looked at from a personal perspective, a significant number of Europeans believe that IP infringements can be justified, either because it is a 'smart purchase' or a 'protest' against a market-driven economy and big brands.

The IP Perception study will be repeated in the future, with a closer focus on the younger generations.

An important third set of studies, **quantifying the economic costs of IP infringement**, was begun in 2014. These studies aim to assess the magnitude of counterfeiting and piracy within the EU. It will be a difficult task, although an OECD study in 2008 has demonstrated that estimations based on solid and transparent methodologies are indeed possible. This work is being carried out in collaboration with OECD (in the case of counterfeiting), the Commission's Joint Research Centre (for digital content, including music, film and e-books), and sectorial studies carried out through OHIM's own efforts, such as a recently completed study that estimated the extent and economic impact in the perfumes and toilet preparations sector in the EU. Approximately ten sectorial studies will be finalised in 2015, while the joint study with OECD will be completed in 2016.

In addition, OHIM has also begun work on a study of infringement of **Geographical Indications**, in cooperation with the European Commission.

Following a suggestion by three civil society members of the Observatory, a pilot study on the value of **public domain** works has begun. This study focuses on the film industry, a highly creative and important sector for the modern economy, and aims to examine to which extent successful films are based on works in the public domain.

The directive on **trade secrets** proposed by the European Commission explicitly foresees the role of the Observatory in investigating this matter. Accordingly, a study on the economic importance of trade secrets was begun in 2014, with a view towards completion in late 2015.

This study will investigate which types of companies tend to use trade secrets, analysed by size, economic sector (services versus manufacturing), and other factors. There will be a particular focus on the complementary use of trade secrets and registered IP rights, using data collected via the Community Innovation Survey (CIS).

Taken together, the trilogy of studies on economic contribution of IP rights, the perception of IP and the economic cost of infringement, and their follow-up studies, are intended to bridge the information gap on IP among EU citizens and serve as the basis for creating new narratives on the value of intellectual property.





07 - ECONOMICS & STATISTICS





08 COOPERATION ACTIVITIES INCLUDING INTERNATIONAL COOPERATION ANNUAL REPORT 2014





Under the regulation entrusting it with the Observatory, the Office was also tasked with encouraging international cooperation, in close alignment with broader EU policies and priorities in the field of IP.

In line with this principle, the Office's engagement in ECAP III, covering the ten countries in the ASEAN region, IP Key in China, the Russia project and the new India project allows the Observatory to provide input on how to increase respect for IP and help European companies investing in these areas to protect their IP rights.

The Office carried out a survey, on behalf of the EU Commission (DG Trade) of EU entities with an interest in the enforcement of IP rights in third countries. The purpose of the survey, previously carried out by DG

TRADE every two years, is to identify the countries where businesses face the biggest problems enforcing their IP rights, so that they can be prioritised.

An EU Delegations Network was set up in 2014 following two main aims: (1) to create and launch a network to increase the effectiveness with which Delegations deal with IP matters and help EU companies to protect its IP assets in third countries and (2) build awareness and increase knowledge of IP and how it fits into the global framework. The membership is made of EU Delegations in countries that the European Commission considers a priority, such as China, Brazil, Russia, and Turkey. The inaugural meeting of the Network took place in Alicante in March 2014 and was attended by DG TRADE, DG TAXUD and DG GROWTH. The next meeting will take place on 17 July 2015 in Brussels.

08.1 COOPERATION WITH EUROPEAN COMMISSION AND AGENCIES

A series of regional events planned for 2015 will provide knowledge building for Network members but also other Delegations. A pilot event took place in Costa Rica in October 2014 involving delegations of 25 Central and Latin American countries.

A number of IP offices in third countries have expressed an interest in conducting IP Contribution studies for their economies. The Observatory is assisting such offices by providing information about the methodology, data and other aspects of the study. A workshop for the ASEAN countries designed to assess the availability of relevant economic data in the region was held in Jakarta in April 2014 as an activity under the ECAP III programme.

In June 2014, an MoU was signed with the World Customs Organization (WCO). The MoU aims to strengthen the cooperation between the Observatory and the WCO as well as to develop a range of activities in the field of combating counterfeiting and piracy. Cooperation will focus on the areas of Information Technology systems, exchange of statistical data and exchange of expertise.

In December 2014, an MoU was signed with the OECD, covering the joint study on trade in counterfeit goods. OHIM is contributing both financial and human resources to this project.

The Observatory's work during 2014 was assisted by a high level of cooperation with various services of the European Commission.

In this context, the European Council has adopted a specific EU Customs Action Plan⁴ to combat Intellectual Property Rights infringements during the next five years.

4 - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=O:C:2013:080:0001:0007:EN:PDF>



One of the objectives of this action plan is to strengthen cooperation between the Commission and the Observatory. In order to do this, the Office has been working with DG TAXUD on knowledge building, the development of an e-learning module for customs, and cooperation on databases.



08 - COOPERATION ACTIVITIES INCLUDING INTERNATIONAL COOPERATION

Due to the large number of institutions and agencies with a common interest, an inter-agency Coordination Group on Infringements of IP Rights has been set up with representatives of other EU agencies and Commission Directorate-Generals.



This group discusses ongoing activities, projects and issues among those agencies that deal with IP rights infringements to avoid duplication of efforts and seize opportunities for collaboration. The second meeting of the Coordination group was held in Brussels on 1 July 2014.

With the help of the Member States representatives, the Observatory has completed a study on inter-agency cooperation on enforcement of IP rights.

The study, largely based on a questionnaire circulated to all Member States, underlines the value of good practices such as the establishment of cooperation structures, preferably with a single agency taking the lead role, and the involvement of both the judiciary and private stakeholders.

The Observatory has also been working closely with DG ENTR (now DG GROW) to make sure there are synergies between our respective activities and avoid duplication, with particular emphasis on supporting the needs of SMEs.

OHIM and Europol already began to cooperate in the area of knowledge building in 2013; and in 2014, because of the "alarming" increase in counterfeit online purchases, the two agencies agreed a special focus on tackling this problem.

The Office will finance Europol initiatives with an annual contribution of EUR 500 000, in order to improve information gathering and monitor trends in the field of online IP crime and related areas. Assistance will also be given to the relevant law enforcement authorities in the Member States. This cooperation will benefit users by strengthening the enforcement of IP rights.

Following the signing of a cooperation agreement between OHIM and Europol in November 2013, in 2014 collaboration was also extended to:

- Setting up regular assessments of counterfeiting in the EU, including the sale of counterfeit goods on the Internet;
- Facilitating secure access to the Enforcement Database by police authorities in the Member States and ;
- Cooperating in gathering statistics on counterfeiting and piracy cases from police authorities to feed the ACIST database.

Many of the knowledge-building events and activities that are organised in cooperation with Europol also benefit from cooperation with Eurojust and CEPOL, the European police training college.





08 - COOPERATION ACTIVITIES INCLUDING INTERNATIONAL COOPERATION



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WEBSITE

The Observatory website was launched at the end of 2013, along with a new version of the OHIM website.

During this first year, a number of improvements have been carried out; a section on awareness and knowledge building events and conferences has been created, which includes all past conference reports. There are now clearer tables for the IP perception tab within the IP Map of Europe section. Numerous Observatory publications have been made available, and the minutes of past meetings have been integrated under the pertinent sections. The list of stakeholders and working group members are updated when there are any changes, and any new events are published on the events page, as are any new public

awareness campaigns, videos and other material sent to us by stakeholders. A specific section was created for the International IP Enforcement Summit, and the video archive of the live streaming of the event, along with the summit report, will remain available on the website.

Finally, there is a new section for SMEs as part of the business and consumers section, including testimonial videos and an e-learning section, as well as guides and support.

During 2014, the Observatory website received on average 4 000 unique monthly visitors, with nearly 400 documents downloaded each month. The number of unique visitors has been rising throughout the year, averaging nearly 6 000 during the fourth quarter.

NEWSLETTER

Further to a request from stakeholders to have regular communication on the work of the Observatory, an Observatory Newsletter was published for the first time in December 2013. The newsletter is issued every three





09 - COMMUNICATION

months and therefore six Observatory Newsletters have been published to date.

The main objective of the newsletter is to share information with the stakeholders on the current work streams of the Observatory and to provide members of the network the opportunity to express their views and to engage actively in our work by providing input to each edition. Each issue contains an editorial, which gives a policy perspective of the Observatory's work, an update on activities, the calendar of upcoming events and news from stakeholders.

The newsletter is published in English. It is disseminated by e-mail to stakeholders, in addition to being published on the Observatory website.

SOCIAL MEDIA

As explained in section 4 above, a social media campaign aimed at youngsters was kicked off in October 2014. Identified with a common logo, the "Ideas Powered" tagline and specific visual identity (all tested among audiences), dedicated pages on Facebook and Twitter, as well as YouTube, have been developed with a view to offer an online space for dialogue to youngsters to express themselves on IP related issues and thus build a community with the support of partners and multipliers.

A website (www.ideaspowered.eu) has also been created to support the social media activities.



Ideas Powered is an initiative of the EU Observatory on Infringements of Intellectual Property Rights to raise awareness about the value of intellectual property and the importance of respecting it.

Follow us on



10 CHALLENGES FOR 2015

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10 - CHALLENGES FOR 2015

2015 will see an acceleration of the execution of Multiannual Work Plan for the Observatory, with important reports and databases planned for delivery, and other work streams increasing their pace and scope.

Highlights will include further expansion of the reach and functionality of the enforcement tools, such as the linking of the Enforcement Database to DG TAXUD's COPIS system; publication of the second phase of the IP Contribution study to cover the contribution of

IP rights at the level of the individual company; and a number of studies on the quantification of the cost of IP infringement.

Together with the studies already published, these studies will combine to provide new narratives that will be central to efforts to provide more effective communication on the value and importance of IP to the 21st century economy and society.

A number of projects are planned on public awareness, based on the information provided by the studies. Connecting with young people and helping SMEs better protect their IP rights by providing accessible learning materials will be among the top priorities.

More than ten important knowledge-building events will be organised during 2015, in cooperation with partners such as Europol, Eurojust and CEPOL, as well as the EPO. In addition, the Observatory will participate in numerous events organised by others.

2015 will be the year during which many of the activities begun in 2013 and 2014 will show their full results. The first two years of the Observatory at OHIM have been devoted to laying the foundations for awareness raising through studies such as the IP Contribution and IP Perception studies, and creating tools such as EDB or the Orphan Works Database. Now that those foundations are laid and the tools have been built, the challenge is to maximise their impact for the benefits of the IP rights holders and ultimately society at large.





10 - CHALLENGES FOR 2015





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ISBN 9789291561988



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