



Protecting representatives: combatting misuse of User Area credentials and misrepresentation

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Speakers:

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** This document contains the answers to questions submitted by the audience during the webinar that could not be answered during the live session.*

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Questions and answers – Protecting representatives: combatting misuse of User Area credentials and misrepresentation

You mentioned that you have sent letters to some representatives as they have many filings coming from non-EEA countries? Can you maybe reveal the content of those letters and the outcome?

Each case is assessed on its own merits.

For data protection reasons, the content of the letter cannot be shared. In general terms, the letter refers to the rules as set out in Decision No EX-20-9 of the Executive Director of the Office of 3 November 2020 (including Annexes) and the factors that led the Office to send the letter as the initial step in investigating a breach of these rules.

The letter will refer to those EUTM and RCD filings for which the Office has reason to investigate whether they were filed by the representative and/or from an establishment within the EEA in compliance with the above decision.

The representative will be asked to declare on their honour that all filings were indeed done in accordance with the rules and may be asked for evidence of this, depending on the circumstances. **The Office will determine the next steps, which could be further investigations,** closure of the matter, or taking the actions provided for in the above decision.

Questions and answers — Protecting representatives: combatting misuse of User Area credentials and misrepresentation

What is your advice, tips and tricks on how I can protect myself so no one can use my ‘User Area’ or my company name as representative without my authorisation?

- As with all **usernames and passwords**, it is important to ensure that they are **secured** and not revealed to third parties.
- **Change the password regularly.**
- It is **recommended to activate the receipt of an email alert** whenever a notification or communication is sent to, or received from, the EUIPO. Although these email alerts have no legal value as communications of the Office, they ensure that you become aware whenever your user area might have been used by someone else.

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Brexit has resulted in many UK firms opening token offices in Ireland. The User Area is still used by staff in the UK. Is this allowed? It is happening a lot.

During 2020, in light, in particular, of Brexit and [Communication 2/19 on the impact of the United Kingdom's withdrawal from the European Union](#), the Office noticed an increase in requests for new ID numbers for professional representatives with a new 'place of business or employment' in a different Member State of the EU.

Most of these professional representatives were originally based in the UK. In accordance with paragraphs 42 and 43 of the Communication of the Executive Director, the Office requested **the submission of evidence that real and effective business is being carried out from the new place of establishment, prior to accepting the change of address**. This included proof of invoicing for services. In the cases where no real and effective establishment in Ireland was shown, the ID was removed.

Therefore, the Office proactively checked to reduce the risk that 'token offices' are being used. If you have reason to believe that the representation requirement is circumvented or the User Area misused, please report to customercare@euipo.europa.eu. The Office does not disclose the identity of those who report suspicious activity to those who are investigated.

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Do you also look for patterns?



The Office is looking into patterns, such as heightened filing activity for non-EEA applicants or heightened EUTM filings where the fees are not paid.

With the help of our IT colleagues, **we can extract different types of information from the filing and User Area logs**. This is an area where more effort is being directed and where actions are intensifying.

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If an EUTM was filed using borrowed credentials, might it be found to be filed in bad faith?
If a few EUTMs were revoked for bad faith this might discourage the practice.

The Office has laid down the legal sanctions in the [Annex I: Conditions of Use of the User Area](#) to Decision [EX-20-9](#). Whether the conditions of Article 59(1)(b) EUTMR are fulfilled in this case is a separate question and will have to be assessed on a case-by-case basis.

An *ex officio* cancellation due to bad faith is not anticipated in our Regulation. However, in case of misrepresentation (e.g. when the non-EEA applicant appoints an EEA applicant without their consent) the Office can revoke the registration according to Article 103 EUTMR and then proceed to the examination of formal requirements and an eventual refusal of the EUTM.

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In other words, besides the number of filings, there are other factors that might flag something up.
For instance, if provisional refusals or oppositions are filed and there is never a reply...

Indeed, therefore **the Office aims to put in place a more proactive monitoring process of filing logs and actions taken in the User Areas** in order to detect any possible pattern that might indicate fraudulent activity.

The Office also counts on the collaboration of users to advise it of suspicious activity, and users should not turn a blind eye.

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**I'm aware of US colleagues (law firms for example) filing directly at the EUIPO.
We made them aware that this is not allowed but they mentioned**

According to Article 119 EUTMR: ‘...., natural or legal persons having neither their domicile nor their principal place of business or a real and effective industrial or commercial establishment in the European Economic Area shall be represented before the Office in accordance with Article 120(1) in all proceedings provided for by this Regulation, other than the filing of an application for an EU trade mark’

Therefore, in the EU system, anybody (not only a representative) from anywhere in the world can file an EUTM or RCD.

However, after the filing, in order for an EUTM applied for by a non-EEA applicant to proceed to registration, the EUIPO requires that an EEA representative* be appointed.

* Representatives in the sense of Articles 119 and 120 EUTMR **must have a place of business or employment in the EEA.**

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**How is other applicant's data protected if access is allowed without their consent?
Even if you announce the authorities, this should not be possible!**

Indeed, that is why **the Office has given a legal framework** by having amended in 2021 the [Annex I: Conditions of Use of the User Area](#) to Decision [EX-20-9](#) of the Executive Director of the Office of 3 November 2020 on communication by electronic means, establishing, under paragraph 4b), what is to be understood by the proper use of the user account, and the steps the Office would take in the event of a reasonable belief of prohibited disclosure.

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Are paralegals who sit outside the EA allowed to access the User Area, process communications from the Office and communicate (e.g. prepare filings, responses) with the Office?

Working (other than occasionally) in the User Area from outside the EEA can be problematic on several fronts.

Representatives in the sense of Articles 119 and 120 EUTMR **must have a place of business or employment in the EEA**. Whether this requirement is circumvented depends on the circumstances of each case but if a significant amount of work is carried out outside the EEA this can be evidence that real and effective business is not in the EEA.

Furthermore, Decision No EX-20-9 of the Executive Director of the Office of 3 November 2020 (including Annexes) makes it clear that account holders may open sub-accounts (or ‘subprofiles’), which are dependent on the master account. The purpose of a sub-account is exclusively for the convenience of account holders to assist with case management and can only be used directly by the registered account holder or by **other members of the account holder’s organisation** who operate under the **registered account holder’s direct control, responsibility and supervision**.

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Is the Office at some point considering reporting these misuse practices to the National IP Institutes of the concerned representatives to assess the application of disciplinary measures?

As stated in the [Annex I: Conditions of Use of the User Area](#) to Decision [EX-20-9](#) the list of sanctions also include:

- the temporary or permanent suspension of the User Area account;
- **informing the national authorities and professional bodies that are competent to impose sanctions on the representative (the Office does not have any such powers); and/or**
- informing the data protection supervisory authorities if a data breach has occurred.

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Is there a particular region of the world that the abusive applications are coming from?

The investigations conducted so far have shown certain trends although they are not conclusive and often differ from case to case.

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Why is it possible to use the name of some representative (copy & paste as you mentioned) without their consent being verified?

For most co-filers, who are bona fide filers, the express consent would be a burden. Therefore, asking for express consent is not considered proportionate given that it is onerous for many innocent users.

However, the Office plans to send the EEA co-owner or EEA representative the confirmation of the filing immediately, so that any misuse can be detected as soon as possible.

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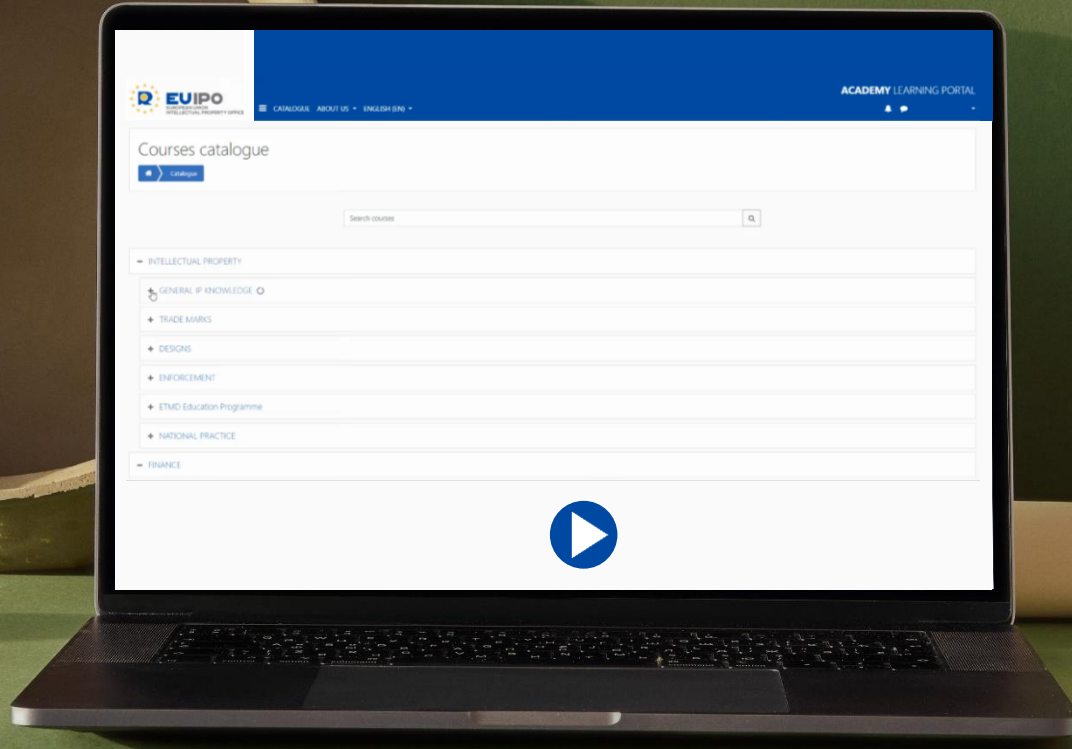
Some users are wondering whether the EUIPO will follow the example of the USPTO and cancel/reject (in bulk) all trade marks and/or applications applied for through a ‘leased’ or ‘usurped’ account.

The Office has contacts with the USPTO and has discussed these very issues. As the law stands, the USPTO has broader powers to act, and the Office must operate under a different regulatory framework.

The Office has endeavoured to come up with means of tackling the issue. The Executive Director has put the most robust framework in place allowed by the current regime, and activities in this area have been stepped up significantly.

If the Office proves a misuse of User Area credentials, it will apply the sanctions laid down in the [Annex I: Conditions of Use of the User Area](#) to Decision [EX-20-9](#) of the Executive Director of the Office.

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