

ANNUAL REPORT 2016

EUROPEAN OBSERVATORY ON INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHT

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NOTE

Regulation (EU) 2015/2424 of the European Parliament and the Council amending the Community trade mark regulation entered into force on 23 March 2016. One of the consequences is that the Office is now called the European Union Intellectual Property Office (EUIPO). The new name is used throughout this report, even though the name of the Office was OHIM during part of the period covered in it.

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MESSAGE FROM THE EXECUTIVE DIRECTOR

The European Observatory on Infringements of Intellectual Property Rights continued to develop during 2016, welcoming two new associations and one new observer. As well as representatives of the 28 Member States, the Observatory network includes 63 representatives from the private sector, 7 organisations representing civil society, 11 international organisations, and 10 MEPs designated by the European Parliament, who are invited to take part.

The 2016 Work Programme was the third year of implementation of the 2014-2018 Multiannual Work Plan, which sets out the vision for the Observatory's development and links it to the Office's overall Strategic Plan 2020.

In 2016, an update of the 2013 IP Contribution study was published, in partnership with the European Patent Office, which demonstrated that the economic importance of Intellectual Property rights (IPR) to jobs, GDP and trade in the EU has become even greater in recent years. The studies carried out by the Observatory aim to address a trilogy of themes — to quantify the importance of IPR to the economy; to map what European citizens think and know about IPR; and to quantify the extent of IPR infringement and its consequences for the economy and society.

Following on the study of the firm-level impact of IPR ownership from 2015, a survey of more than 9 000 SMEs across the EU was carried out. This SME Scoreboard, published in 2016, was designed to better understand the choices made by SMEs in respect of registering IP rights and the barriers they encounter in the process.

Another major study from late 2013 demonstrated that while the vast majority of citizens value the importance of IPR, there are sometimes contradictions in their behaviour, especially among younger people. These results were further analysed in 2016 through a qualitative and quantitative survey, the Youth Scoreboard, designed to deepen the analysis of European youngsters' attitudes towards the purchase of counterfeit goods and consumption of illegal digital content.

An important third set of studies, quantifying the economic costs of IPR infringement, was begun in 2014, and continued in 2016 with the publication of a further five sectoral studies on the impact of the presence of counterfeit goods in the EU marketplace. A major study on counterfeit goods in international trade, carried out in collaboration with the OECD, was published in 2016.



The Enforcement Database (EDB) and an anti-counterfeiting intelligence support tool (ACIST) are being developed further 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 rights holders to securely share information on products and logistics with those authorities. It also allows rights holders to automatically generate an application for customs action.

In addition, the Office is expanding the coverage of ACIST, which allows data on seizures that are provided by different enforcement authorities in the Member States, to be stored, analysed and reported using a common standard.

The Orphan Works Database has been 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. In 2016, the Office continued its efforts to encourage the use of the database as a central European repository of information related to orphan works, and created a stable network of stakeholders.

The Office is expanding the coverage of ACIST, which allows data on seizures that are provided by different enforcement authorities in the Member States, to be stored, analysed and reported using a common standard.

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 intellectual property (IP) and enforcement officials.

On the wider international stage, the Office cooperates closely with the Commission and EU enforcement agencies to ensure close alignment with broader EU policies and priorities in the field of IP. To strengthen the fight against counterfeiting and piracy, Europol and the EUIPO joined forces in 2016 to create the Intellectual Property Crime Coordinated Coalition (IPC3), which operates within Europol. In July 2016, the Office signed a Memorandum of Understanding with Eurojust to enhance cooperation in areas such as knowledge building and awareness raising.

In 2017, the Observatory will continue to look more deeply into the *modus operandi* and the economic consequences of IP infringements and other aspects of IP.

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 the understanding of intellectual property and will continue to grow in importance in years to come.



António Campinos
Executive Director, EUIPO

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THE OBSERVATORY AND THE EUIPO

The Office's Observatory Department comprises the European Observatory on Infringements of Intellectual Property Rights and the service of the EUIPO'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 IPR infringement, 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 infringement¹.

¹ - Following its transfer to the EUIPO in 2012, the name of the Observatory was changed to the current name.

During 2016, the network at the heart of the European Observatory on Infringements of Intellectual Property Rights continued to develop, welcoming two new associations and one new observer.

As well as representatives of the 28 Member States, at the end of 2016, the Observatory network included 63 representatives from the private sector, 7 organisations representing civil society, 11 international organisations, and 10 MEPs designated by the European Parliament, who were 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 IPR infringement. Consumer organisations, small- and medium-sized enterprises, authors and other creators are also represented. Thus, the Office complies with the requirement of the proper representation in the Observatory of all the actors mentioned in Article 4(2) of Regulation (EU) No 386/2012.

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

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

The Observatory has published a set of criteria for private sector stakeholders, designed to ensure that the Observatory can benefit from a broad range of expertise, whilst ensuring that meetings remain manageable and functional (See Box 1).

BOX 1: 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 civil society/consumers or 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 Observatory has five Working Groups set up on the basis of proposals by stakeholders, which are used extensively for guiding the implementation of projects.

The Working Groups cover:

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

The five Working Groups met in Alicante in February/March 2016 and in Milan in November/December 2016.

The Observatory has strong dependencies and synergies with other key activities or projects in the Office, such as the EUIPO website, the tools built by the Cooperation Fund, and the activities of the Academy and of the International Cooperation area.

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 2020 (SP2020). The Multiannual Plan is also the basis for the annual Work Programme for the Observatory, which sets out the objectives for the year ahead. Two of the Observatory's projects, the deployment of the Orphan Works database and the Virtual Training Centre for enforcers, are included as strategic projects in the SP2020.

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

- 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 IPR 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 non-EU 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 IPR infringement;
- knowledge building and learning programmes for enforcement authorities as well as for businesses — especially SMEs;
- supporting campaigns to raise overall awareness of the importance of IP and the negative effects of IPR infringement;

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

Each year, 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.

The process followed by the Observatory to produce its reports and studies 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 offered the possibility of knowing the conclusions of the reports/studies in advance and providing comments;
- the rules governing the Office and more particularly its decision-making process should be respected.

The process applies to all studies produced by the Observatory.

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. Where applicable, the activities are cross-referenced to the 2016 Work Programme using the codes that were introduced at the request of several stakeholders. Each code consists of two letters identifying the Working Group to which the activity pertains (e.g. ES for Economics & Statistics) followed by one or two digits identifying the specific activity.

Article 7(3) of Regulation (EU) No 386/2012 requires the representatives of the public administrations, bodies and organisations in the Member States to be duly consulted on the Annual Report. The public stakeholders have constantly been informed and asked for their input on the Work Programme, and the results of the work of the Observatory have been reported to them regularly. The formal submission of the report under Article 7(3) took place in the Public Sector Stakeholders' meeting, held in Malta from 28 February to 1 March 2017. The Annual Report was endorsed by the public sector representative on 28 February 2017.



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IP IN THE DIGITAL WORLD

The activities of the IP in the Digital World Working Group consist 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 the second goal: to provide tools and resources for IPR enforcement. Finally, agorateka, the European online content portal, will help consumers find legitimate digital content, thereby supporting the Observatory's third goal: to raise IP awareness.

VOLUNTARY COLLABORATION PRACTICES

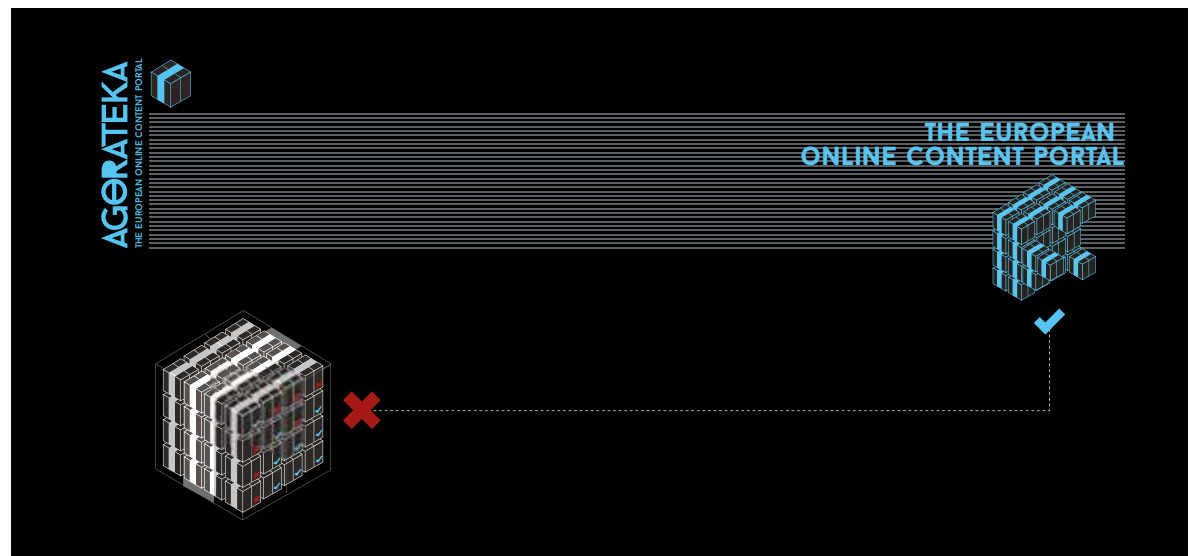
In 2016, an in-depth report was published on voluntary collaboration practices addressing online IPR infringements of IPR was published. The report covers six voluntary practices between private operators (for example, content owners and internet service providers) designed to combat online IPR infringement. Six practices from Austria, Denmark, France, the Netherlands, the UK and the USA were selected by members of the IP in the Digital World Working Group for in-depth study, from a list of some twenty such practices that had been identified in a first phase of the study.



The report analyses the application of the selected practices by assessing: the role of the parties; the duties and procedures employed; coexistence of the measures established with the legal framework, including fundamental rights and data protection rules; the role of technologies used in implementing the practice; the costs assumed by the parties involved in the implementation; the role of educational activities; and the effectiveness of the measures.

AGORATEKA — THE EUROPEAN ONLINE CONTENT PORTAL (DW1)

In September 2016, the Office launched a European portal to better inform consumers about the availability of legal offers in the realms of music, sport, films/TV, videogames and books. [agorateka](http://agorateka.eu) — the European online content portal — provides a single access point to national portals leading consumers to legal offers. After a pilot phase, the European portal went online with the information about the four pilot countries, which were France, Latvia, Portugal and the UK. Two of the pilot countries joined the European portal with already existing national portals, while the other two created their new national portals with the help of an EUIPO-developed toolkit.



More European countries are being added to the portal. A second, subsequent project is planned to extend the tool's searchability, so that consumers can search for legal content by title, and other such criteria.

FAQS ON COPYRIGHT FOR CONSUMERS (DW1)

In addition to helping consumers locate legal offers, the Observatory also wants to answer their questions about copyright, especially in the digital environment. Copyright laws are complex and vary from Member State to Member State, so that even consumers who might not wish to infringe sometimes do so because of lack of knowledge. To help address this need, the Observatory, together with its civil society stakeholders, developed a set of FAQs (Frequently Asked Questions), engaged national experts to provide country-specific answers and coordinated these answers with its public sector representatives. The outcome is a [digital guide](#) providing answers to Consumer FAQs for each EU Member State in its own language and in English. It is published on the Observatory website and accessible to citizens and other interested parties.

TEST CASE FOR AVAILABILITY OF LEGAL OFFERS (MUSIC) (DW2)

A report detailing the results of a test case undertaken to simulate searches for legal offers by consumers was published in December 2016. Panels of ordinary consumers in a number of Member States were given a list of tasks that involved finding and accessing certain songs/pieces of music from authorised services. In this context, cross-border availability and access was also assessed.

BUSINESS MODELS USED IN ONLINE INFRINGEMENT (DW3)

In 2016, the Observatory completed the first phase of a two-stage study on business models used in online infringement. The report on the first phase, published in July 2016, provides an overview of different infringing business models, assessing how they function, how they are financed, how they generate profits for their operators and what types of content they disseminate.

Based on the information collected, an analytical method was developed that makes it possible to identify, describe and analyse any IPR-infringing business model in the online environment. The method is comprised of two main tools, namely a taxonomic matrix that identifies and presents

the main characteristics of possible IPR-infringing business models in a systematic way and a business model canvas describing the specific features of each individual online business model. The analytical method developed is a dynamic tool that will enable businesses, authorities and other stakeholders to identify, describe and analyse any future IPR-infringing business methods, and relate them to the existing business models.

The second phase, which started in 2016, focuses on a specific business model identified in phase one. It will analyse, in four EU Member States, how deleted domain names are repurchased with the aim of misdirecting internet traffic to online shops susceptible to IPR infringement.



ORPHAN WORKS DATABASE (DW5)

The digitisation and dissemination of orphan works poses a particular cultural and economic challenge: the absence of a known rights 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).

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 that 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 rights holders.

The Office has implemented a strategy to encourage the use of the database as a central European repository of information related to orphan works, and has created a stable network of stakeholders.

The development of the registry was entrusted to the Office and was finalised at the end of 2014. Subsequently, the Office has implemented a strategy to encourage the use of the database as a central European repository of information related to orphan works, and has created a stable network of stakeholders. As in 2015, awareness-raising and training initiatives have been carried out in 2016 in cooperation with competent national authorities, key beneficiary organisations (such as libraries, educational establishments, museums, as well as archives, film or audio heritage institutions, and public-service broadcasting organisations) and the European Commission. The user-friendliness of the database was further improved through a further release in 2016, facilitating system-to-system integration (web services) and bulk upload. At the end of 2016, the number of records in the database stood at approximately 2 000 main works and approximately 11 000 embedded works. The deployment and enhancement of the Orphan Works database is a strategic project in the EUIPO SP2020.

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PUBLIC AWARENESS

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, but also specific awareness studies.

YOUTH ACTION PLAN (PA1)

As part of the Youth Action Plan, a qualitative and quantitative survey, the Youth Scoreboard, has been completed to deepen the analysis of European youngsters' attitudes towards the purchase of counterfeit goods and consumption of illegal digital content. The report, published in April 2016, is a follow-up to the 2013 IP Perception study, but focuses on the 15-24 age group and deepens the analysis of their behaviour and motivation, especially in the online environment.

Another strand of the Youth Action Plan, the build-up and engagement of a community and an online dialogue on social media networks continued on Facebook and Twitter accounts, currently gather over 22 000 fans on Facebook and over 8 400 followers on Twitter.

A youth event was organised in Alicante in June, in which 60 young people from across the 28 EU Member States met to discuss and develop inspiring and creative ways to communicate the importance of intellectual property and respect for it to youth in Europe. Youth Association representatives, artists, entrepreneurs, bloggers, gamers, and students were among those invited. The topics covered included trust of websites and online shops; the ability to distinguish reliable sources from unreliable ones; the sharing of personal data with unreliable sources; the consequences of the purchase of counterfeit goods and downloading from illegal sites for small artists and creators; as well as the importance of quality, availability and affordability of physical and digital products. These, and other issues, were discussed in small groups to produce creative relevant messages and campaign proposals. Videos, collages and role play were among the chosen formats used to illustrate the campaign ideas.

Day two focused on the Ideas Powered initiative itself. Participants discussed, in a world café format, how Ideas Powered could help to further engage youth, and how youth and the participants could contribute to the initiative's objectives to generate more effective conversations on social media about these topics. In a dynamic atmosphere, groups changed and proposals were built upon and fine-tuned to become recommendations to develop the initiative and generate more conversations in the issues of IP and respect for it. These recommendations focused on

reaching out to local communities, enhancing the contents of communications, and adopting new communication tools.



GRANT SCHEME (PA2 / PA4)

Apart from the repository of more than 150 awareness-raising campaigns across the EU hosted on the Observatory website and specific awareness-raising activities, the Office has responded to requests by stakeholders to help promote Member State involvement in awareness-raising initiatives.

At present, National IP 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 open and competitive fund to support existing awareness-raising initiatives in Member States or to develop new ones.

The EUIPO's financial contribution is based on the principle of co-financing, with the Office contributing up to 80 % of the total eligible costs of each project.

On the basis of the call launched in January 2015 and completed in September that year, 11 projects that were selected for financial support, amounting to a total budget of EUR 500 000 were implemented in 2016. The selected projects supported the Observatory objectives by:

- reaching out to youngsters, highlighting the positive value of IP and the importance of being fair to creators and innovators, with approaches that were relevant for the audience, such as gamification, social media dialogue and e-learning activities;
- bringing IP closer to citizens in their daily lives, at local level, and highlighting the value of originals and creativity, contrasted with the damage of counterfeiting and piracy;
- building a better understanding of IP by developing educational programmes in schools for children from various age groups.

These projects were invited to present their activities during the Public Awareness Working Group and at the Plenary Meeting of the Observatory.

On the basis of the call launched in January 2015 and completed in September that year, 11 projects that were selected for financial support, amounting to a total budget of EUR 500 000 were implemented in 2016.

SME SCOREBOARD (PA3)

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 the barriers are to such use.

A survey of some 9 000 SMEs across all 28 Member States was carried out in late 2015 and the resulting [Intellectual Property SME Scoreboard](#) 2016 was published in June 2016. The main aim of the Scoreboard was to understand why SMEs that innovate decide to use or not to use IPR, and in the case of the latter, to assess what could be done to help those SMEs that would like to use IPR but for whatever reason do not use it. The study demonstrated that a large majority of companies that have chosen to register their IPRs report positive effects, including enhanced reputation or improved image of reliability, strengthening their long-term business prospects, and increased turnover.



This assessment will be an important step forward in understanding SMEs' needs and in designing appropriate, tailor-made IP information and help systems, while at the same time it will help to prioritise enforcement/IP policies.

IP IN EDUCATION (PA6)

One finding of the IP Perception study published in 2013 was that between 35 % and 50 % of young Europeans display tolerant attitudes towards counterfeiting or illegal downloading, whereas education has been identified as a suitable channel to raise awareness about the relevance of respecting IP. Therefore, raising pupils' awareness in schools, showing how they could reap the benefits of IP knowledge in their private and professional lives is of key importance.

Helping teachers and education authorities with the provision of objective, reliable and modern resources and IP data is also necessary. These are the main objectives of the IP in Education project, which started in 2015 with the publication of the IP in Education study.

The study mapped how IPR and related concepts are taught in schools in EU Member States and compared the situation with a selected sample of the most innovative non-EU countries and regions.

To investigate this area in more depth, the Office began to work with a group of education experts in 2016. Two workshops have been organised and an IP in Education project has been established as a result. This work, in close consultation with the European Commission services (DG EAC), considers how national authorities could be supported in introducing changes on a voluntary basis to the way in which IP is treated in their education systems. The starting point of the project is to provide a national case study of a country that introduced IP into its curricula, which could serve as guidance. The next steps will be to gather the best examples of resources that are available and seek, if necessary, to fill the gaps.

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**LEGAL &
INTERNATIONAL**

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 international cooperation activities, also fall within the scope of this Working Group.

CASE-LAW ON IPR ENFORCEMENT (LI1)

A pilot project to collect national case-law related to IPR enforcement and make it available in the EUIPO case-law database² began in 2014, in collaboration with national authorities. To date, some 14 Member States have participated. The Community Plant Variety Office (CPVO) and the Observatory have provided some key judgments related to the enforcement of plant variety rights and from a few of the Member States respectively, which have not yet participated in the exercise. In total, more than 700 key enforcement judgments from 16 EU Member States are now available online³. To ensure that the quality is consistent and that all national authorities apply the rules in the same way, the Observatory has checked the quality of the information collected and met with representatives of the participating offices in order to agree improvement actions where required. This is now a standard part of the ongoing activity.

The types of IP covered include trade mark rights, design rights, copyright and related rights, patent rights, plant variety rights, geographical indications (GIs) and trade secrets.

Key judgments are judgments relating to the application of enforcement-related measures or procedures in IPR infringement cases that contribute to the jurisprudence. The case-law collected covers both civil and criminal proceedings. The types of IP covered include trade mark rights, design rights, copyright and related rights, patent rights, plant variety rights, geographical indications (GIs) and trade secrets.

The Observatory is examining ways in which the level of coverage of the exercise can be further expanded.

2 - The EUIPO's existing case-law search tool allows the user to consult trade mark and design decisions of the EUIPO, national courts in the European Union, and the General Court and Court of Justice.

3 - <https://euiipo.europa.eu/eSearchCLW/>.

COSTS OF ENFORCING IP RIGHTS (LI5)

Previously, the Observatory concentrated on the qualitative aspects (e.g. legal provisions and practice) of storage and destruction and the other costs of IPR enforcement. As a supplement, a quantitative assessment of these costs was initiated in 2015.

To carry out the quantitative study, the Office contracted a leading market research company, GfK, to conduct surveys of companies and public authorities. The surveys followed a two-stage model: the first stage, carried out in 2015, combined focus groups of private companies designed to define the relevant costs and develop the questionnaire; the second phase consisted of the execution of the surveys. The questions posed, which involved the private as well as the public sector, were as clear and concise as possible in order to extract the necessary data. All of those involved were contacted by the chosen contractor in each Member State as appropriate.

The study was completed in 2016. The results from the private sector were satisfactory, both from the point of view of the response rate and the quality of data collected. The results from the public sector were less satisfactory and, furthermore, incomplete. The issues raised were addressed in April 2016 at the Public Sector Stakeholders meeting held in Rotterdam.

SUPPORT FOR PROTECTION OF IPR OUTSIDE THE EU (LI6)

The Observatory supports a broad range of cooperation activities carried out in the framework of the EUIPO's status as the implementing agency for EU-funded programmes in non-EU countries. The EU delegations network, created in 2014, did not have the opportunity to meet in 2016.

These activities are discussed in greater detail in Section 8, below.

ACRIS (LI6)

Until now, there has been no EU-level database containing information about IPR infringement suffered by companies in non-EU countries or the response from the authorities. The newly created ACRIS (Anti-Counterfeiting Rapid Intelligence System) tool, available since June 2016, has been designed to fill that gap. It is an intelligence database that allows EU companies to report, in a structured way, information about IPR infringement that they believe they have suffered and the respective follow-up by local authorities in countries outside the European Union. Each company can upload the information to the tool through key-in or bulk upload and share it anonymously with the other companies using the tool and with DG Trade. The data can be used to:

- help companies get a better overview of the infringement situation in their company through the follow-up, review and reporting tools available in the tool;
- produce statistical information to assess the level of potential violations in each country and measure the efficiency of actions against taken by enforcement authorities, thereby allowing EU companies to make informed business decisions;
- update information on the IPR landscape for use by DG Trade with concrete cases and examples;
- feed into the bilateral dialogues between DG Trade and non-EU countries of interest.

The tool was launched in June 2016. Since then, it has been made available to EDB users and 17 companies have requested access.

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ENFORCEMENT

The activities under this heading support the second 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. Many of these activities are carried out jointly with CEPOL, Europol and Eurojust.

ENFORCEMENT DATABASE (EDB) (E1)

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



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 GIs, where updated information about the validity of the different IPR at stake can be found by enforcement authorities.

Rights holders can enter information in the tool in their own language, and the database automatically displays the same information in the language of the enforcement professionals who access it. The EDB, however, is not just a static content database; it offers a real means of communication between companies and the enforcement authorities in Member States.

The tool is accessible to customs in all 28 EU Member States, and some police authorities are also starting to use it. After the Italian and Spanish police forces joined the tool, along with Europol at the end of 2015, the EU Anti-Fraud Office — OLAF and the Gendarmerie française, also joined. A further 5 police forces have agreed to join and are currently setting up the technical details of their access.

The tool is gaining increased interest from rights holders', with almost 430 companies registered by the end of 2016.



Rights holders have started to use the new functionality to send electronically generated applications for action (AFAs) through the EDB to the DG Taxation and Customs Union (DG TAXUD) COPIS system. Forty-one applications were sent in this manner in 2016, and considerable interest in the tool has been generated in recent months.

In June 2016, the Office hosted its second edition of the EDB Forum. The event gathered approximately 200 participants, both rights holders and enforcers (police and customs officials) from the 28 Member States. The event was a unique opportunity for rights holders to meet enforcers from all EU Member States, and to share experiences and discuss the latest enforcement trends. The 2016 EDB Forum treated enforcement from the enforcers' point of view, featuring the issues and information needs of enforcers in enforcement in harbours and airports, enforcement in the internal market, digital enforcement and small consignments. As in the previous year, a number of workshops on the EDB were offered, as well as an exhibition. During the exhibition, EDB users had an opportunity to share their experiences of counterfeit goods and to show enforcers how to find their product information in the EDB.

ANTI-COUNTERFEITING INTELLIGENCE SUPPORT TOOL (ACIST) (E2)

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

In addition to data on customs detentions in each Member State, which is provided on an annual basis by DG TAXUD, data concerning detentions carried out by police and other enforcement authorities 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 obtain the complete picture by using the ACIST database. Users can access and use the information by producing statistical reports. As for detentions in the internal market, data from the national authorities in 17 EU Member States are also available in the tool.

A report is currently being finalised on the active authorities in enforcement in the different Member States as well as their level of reporting. The objective is to better understand how much of the overall flow of detentions of goods is being covered by the tool, with a view to enhancing the level of coverage of the tool.

EUIPO — EUROPOL GRANT AGREEMENT (E4)

In 2016, the first EUIPO-Europol Grant Agreement was executed. The EUIPO funded the establishment of the Europol IP Crime Coordinated Coalition (IPC3), which serves to strengthen Europol's capacity in supporting Member States' operational actions against counterfeiting and piracy, paying particular attention to online infringement. Subject to agreement by the EUIPO's Management Board and Budget Committee, IPC3 funding will continue in the future in order to guarantee continuity of Europol's efforts, especially as Europol's operational budget has focused on other forms of serious crime and terrorism in recent years. Therefore, Europol's fight against IP crime could have faced some resource constraints that the grant agreement seeks to alleviate. The partnership between the EUIPO and Europol also aims to make IPR enforcement more effective by increasing cooperation

KNOWLEDGE BUILDING FOR ENFORCERS (E7)

As in previous years, a number of initiatives in the area of knowledge building for enforcers were undertaken in 2016.

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

The successful Judges' Seminar series continued to run, bringing together senior IP judges and prosecutors from every EU Member State, and occasionally from the USA. In 2016, four seminars focusing on different thematic areas were held in Alicante. The second workshop of the **European Intellectual Property Prosecutors Network**, co-chaired by the Observatory and Eurojust, was hosted by the EUIPO in March 2016. This network is composed of prosecutors from all Member States, and its purpose is to identify and deploy effective actions to support judicial authorities involved in large-scale counterfeiting cases, and to share knowledge and best practice.

Two major knowledge-building seminars were held in 2016; the first in March on counterfeiting of food and agricultural products, and the second in November on counterfeiting and piracy affecting the toy and video game industries. Both seminars were organised in cooperation with Europol and Eurojust. A comprehensive report with conclusions and proposals was produced after each event. Both reports were widely distributed through the Europol Expert platform and are available on the Observatory's website. Regional seminars for enforcers were organised in Portugal and in the UK.



A second hands-on training course on counterfeiting with workshops and exercises, co-organised with CEPOL, was held in France. Approximately 40 law enforcement officers and prosecutors from EU Member States and from non-EU countries participated in the week-long training course.

An inter-agency coordination group on IPR infringement was set up with representatives from other EU agencies, including Europol, Eurojust and CEPOL, the Commission Directorates-General

(including DG GROW and OLAF), as well as international organisations such as Interpol, WIPO, WCO and OECD. The group met at the WCO headquarters in Brussels in January 2016.

In October 2016, the Office hosted a training event for customs on online infringement, co-organised with the Customs Cooperation Working Party (CCWP).

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ECONOMICS & STATISTICS

Activities in the economics and statistics area consist principally of studies and analyses that support the first main goal of the Observatory — to provide facts and evidence to support policy.

QUANTIFICATION OF INFRINGEMENT (ES1)

An important set of studies quantifying the economic costs of IPR infringement began in 2014. These studies aim to assess the magnitude of counterfeiting and piracy within the EU. The first sectoral report on infringement quantification, focusing on perfumes and toiletry preparations, was published in March 2015. It was followed by three more studies in 2015, and another five sectoral studies were published in 2016: handbags and luggage; jewellery and watches; recorded music; spirits and wine; and medicines.

Each report quantified the lost sales in the legitimate economy due to the presence of counterfeit products in the EU marketplace, as well as the resulting loss of employment and public sector revenue. Additional reports are in preparation.

In April 2016, the Office and the OECD issued a joint report on **counterfeit goods in international trade**. This report found that up to 2.5 % of global trade and up to 5 % of imports into the EU from non-EU countries consisted of counterfeit goods. The figures from the report have been widely reported in the international press and are quoted extensively in EU and national policy-making contexts. The EUIPO and the OECD have decided to continue their cooperation efforts for the next few years, in order to reach a more detailed analysis of the complex supply routes and other aspects of trade in counterfeit goods.

IP CONTRIBUTION STUDY UPDATE (ES2)

The original IP Contribution study (industry-level), published in 2013 in cooperation with the European Patent Office (EPO), was one of the foundation studies of the Observatory following its transfer from the Commission to the EUIPO in 2012. At that time, the Office committed itself to updating the study at periodic intervals. The first such update was published in October 2016, again in cooperation with the EPO. Compared to the 2013 study, the updated study included several improvements: for the first time, plant variety rights are included, thanks to cooperation

from the CPVO; the definition of copyright-intensive industries is completely aligned to the commonly accepted definition formulated by WIPO; and data for Croatia are now included. Overall, the study showed that the contribution of IPR-intensive industries has increased slightly in the intervening years, and that those industries have coped with the economic crisis better than the overall economy.



STUDY ON THE USE OF PUBLIC DOMAIN WORKS AS THE BASIS FOR FILMS (ES3)

Following a suggestion by three civil society members of the Observatory, a study on the value of **public domain** works was carried out in 2016. The study focused on the film industry, a highly creative and important sector for the modern economy, and aimed to examine to what extent successful films are based on works in the public domain and more generally, the role played by public domain works in film production. The analysis was completed in December 2016. Following peer review and final editing, the report is currently being prepared for publication.

STUDY ON INFRINGEMENT OF GIS (ES4)

In April 2016, the Office published a study on infringement of protected GIs, in cooperation with the European Commission. The study estimated the percentage of infringing GI products in the EU marketplace and the resulting economic loss to consumers. A study on the enforcement of GIs in all 28 Member States is being conducted in parallel.



RESEARCH ON TRADE SECRETS AND THEIR ROLE IN THE ECONOMY (ES5)

The EU directive on trade secrets, adopted in May 2016, explicitly envisaged the role of the Observatory in investigating the role of trade secrets and monitoring the effect of the directive. Accordingly, a study on the economic importance of trade secrets was carried out in cooperation with the Centre for European Economic Research (ZEW) in Mannheim. A pilot study for Germany was published in September 2016.

The study investigated which types of companies tended to use trade secrets, analysed by size, economic sector (services versus manufacturing), and other factors. There was a particular focus on the complementary use of trade secrets and registered IPR, using data collected via the Community Innovation Survey (CIS).

ECONOMETRIC ANALYSIS OF THE SME SCOREBOARD (ES6)

The data set from the SME Scoreboard contains responses to a set of questions concerning their use of IPR by more than 9 000 SMEs across the EU. While the scoreboard contains interesting descriptive statistics, a deeper analysis of the raw data has revealed additional interesting relationships between the propensity of SMEs to perceive IPR in a positive light and several other factors, such as the nature of their activity and the sources of information about the IPR available to them. The preliminary results of this analysis were presented to the Economics & Statistics Working Group in November 2016.

Taken together, the economic studies carried out by the Observatory, along with the non-economic studies such as the Youth Scoreboard or SME Scoreboard, are intended to bridge the information gap on IP among EU citizens, businesses and policy-makers and serve as the basis for creating new narratives on the value of intellectual property.



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COOPERATION ACTIVITIES INCLUDING INTERNATIONAL COOPERATION

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, and the new India project, allowed 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.

For the second time, the Observatory carried out a survey, on behalf of the EU Commission (DG Trade), among EU entities with an interest in the enforcement of IP rights in non-EU countries. The purpose of the survey, previously carried out every two years by DG Trade, was to identify the countries where businesses faced the greatest problems enforcing their IP rights, so that they could be prioritised.

A number of IP offices in non-EU countries have expressed interest in conducting IP Contribution studies for their economies. The Observatory is assisting these offices by providing information about the methodology, data and other aspects of the study.

COOPERATION WITH THE EUROPEAN COMMISSION AND AGENCIES

The Observatory's work during 2016 was assisted by a high level of cooperation with various services of the European Commission.

In this context, the European Council adopted a specific EU Customs Action Plan⁴ to combat IPR infringement over the next five years.

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.

Due to the large number of institutions and agencies with a common interest, an inter-agency coordination group on IPR infringement has been set up, as described in Section 6 above.

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



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



The EUIPO began to cooperate with Europol in the area of knowledge building in 2013 and with Eurojust in 2015.

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

In this respect, the EUIPO and CEPOL have jointly established the first EU training course on IPR and counterfeiting, which consists of hands-on training for prosecutors, police, customs and other enforcement authorities, organised once a year. The second edition of this course took place from 24 to 28 October 2016 in Paris, welcoming over 40 participants from more than 20 EU Member States and non-EU countries.

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COMMUNICATION

Communication is of crucial importance to the ability of the Observatory to fulfil the mission assigned to it by the legislator. Specific channels are used to address the different target audiences, including policymakers, public and private stakeholders and other official and private actors, enforcers and the general public.

MEDIA OUTREACH

For 2016, the Observatory achieved some 1 800 clippings in the five main target countries (France, Germany, Italy, Spain and the UK) as well as in all 28 Member States targeted during the Christmas media campaign, reporting results of its studies, sharing data and background with positive qualitative feedback. Media outreach was notably improved compared to previous years in mainstream media and the economic press, in addition to online news outlets, the audio-visual press, trade and specialised press, including IP specialised media. The cumulative equivalent advertising value (AVE) was almost EUR 5 million in 2016, by far the best result achieved to date.




PRIVATE COSTS OF ENFORCEMENT OF IPR
March 2017


Private Costs of Enforcement of IPR
European Observatory on Infringements of Intellectual Property Rights

The study is based on a survey of 1,291 companies in 14 EU Member States, which provided a detailed picture of the resources used to detect and combat infringements by both small and large companies. ...More

Languages: English

Tags: private sector - enforcement - study

> [Private Costs of Enforcement of IPR \(March 2017\)](#) 




THE ECONOMIC COST OF INFRINGEMENTS IN THE PESTICIDES SECTOR
March 2017


The Economic Cost of IPR Infringement in the Pesticides Sector
European Observatory on Infringements of Intellectual Property Rights

This study focuses on the economic impact of counterfeit pesticides in the European Union marketplace and the wider costs for businesses, governments and society as a whole. The study refers only to m ...More

Languages: EN

Tags: pesticides - counterfeiting - study - quantification of infringements

> [The Economic Cost of IPR Infringement in the Pesticides Sector \(February 2017\)](#) 

> [More related information](#) 

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The goal of the first pan-European media campaign was to remind consumers, just before the Christmas shopping season, about the damage of counterfeiting and share, in a coordinated manner in all Member States, the results of the nine sectoral studies on the quantification of infringement carried out between March 2015 and September 2016 (EUR 83 billion and 790 000 jobs are lost every year across the EU due to counterfeiting and piracy). For roll-out purposes, stakeholders received all communication materials developed for the campaign, including press releases and infographics in all EU languages.

The pan-European campaign was a pilot exercise. The results will be further assessed and discussed within the Observatory, notably with a view to exploring synergies with stakeholders as well as identifying opportunities for similar campaigns in the future.

WEBSITE

The Observatory website continued to grow in 2016. It contains a wealth of content, including all past conference reports, numerous Observatory publications and studies, and the minutes of past stakeholder and Working Group meetings as well as a dedicated restricted access area. 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 the Observatory by stakeholders.



During the last quarter of 2016, the Observatory website received on average almost 7 000 unique monthly visitors, with an average of 4 383 documents downloaded each month. The number of unique visitors and the number of documents downloaded has been rising throughout the year.

In July 2016, the Observatory hosted its first webinar on business models infringing IPR. The production of such webinars, featuring Observatory studies and tools, is now an important element of our outreach.

A review exercise began in 2016 to improve navigation and user experience.

NEWSLETTER

Further to a request from stakeholders to receive regular communication on the work of the Observatory, an Observatory newsletter has been published on a quarterly basis since December 2013.

The main objective of the newsletter is to share information with the stakeholders on the current workstreams of the Observatory and to provide members of the network with the opportunity of expressing their views and engaging 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 email to stakeholders, in addition to being published on the Observatory's website. The December 2016 issue was sent to approximately 1 500 recipients.

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OVERALL ASSESSMENT

According to Article 7(3)(c) of Regulation (EU) No 386/2012, the Annual Report should contain 'an overall assessment of the fulfilment of the Office's tasks as provided for in this Regulation and in the work programme drawn up in accordance with paragraph 1.'

The tasks assigned to the Office are set out in Article 2(1) of Regulation (EU) No 386/2012. These tasks are listed below, together with the activities and projects carried out in 2016 in support of each task. It should be noted that in some cases an activity can contribute to more than one task. In addition, the Orphan Works database is set up under a specific legal mandate to:

(a) improve understanding of the value of intellectual property;

- SME scoreboard;
- IP Contribution study;
- study of the value of the public domain in films;
- study of the economic importance of trade secrets.

(b) improve understanding of the scope and impact of IPR infringement:

- study of business models used in online infringement;
- study of the costs of enforcing IPR;
- infringement quantification (sectoral studies and joint study with OECD);
- study of infringement of GIs.

(c) enhance knowledge of best public and private sector practices to protect IPR:

- voluntary collaboration practices;
- IP in education study;
- study of the enforcement of GIs in the Member States;
- knowledge-building events.

(d) help raise citizens' awareness of the impact of IPR infringement:

- test case for availability of legal offers;
- agorateka, the European online content portal;

- FAQs on copyright for consumers;
- youth action plan;
- grant scheme.

(e) enhance the expertise of persons involved in the IPR enforcement:

- knowledge building for enforcers;
- the studies related to infringement listed under item (b) above;
- cooperation with Europol (IPC3);
- European Intellectual Property Prosecutors Network.

(f) enhance knowledge of technical tools to prevent and tackle IPR infringement, including tracking and tracing systems that help distinguish genuine products from counterfeit ones:

- the EDB (Enforcement Database);
- ACIST (Anti-Counterfeiting Intelligence Support Tool).

(g) provide mechanisms to help improve the online exchange — between Member States' authorities working in the field of IPR, of information relating to the enforcement of such rights, and to foster cooperation with and between those authorities:

- ACRIS (Anti-Counterfeiting Rapid Intelligence System);
- European Intellectual Property Prosecutors Network;
- the grant to establish the IPC3 at Europol;
- case-law on IPR enforcement.

(h) work, in consultation with Member States, to foster international cooperation with IP offices in non-EU countries so as to build strategies and develop techniques, skills and tools for IPR enforcement:

- cooperation activities discussed in Section 8, above, of this Annual Report.

In summary, the Office is carrying out a broad range of activities to accomplish all the tasks assigned to the Observatory in Regulation (EU) No 386/2012.

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CHALLENGES FOR 2017

The early years of the Observatory at the EUIPO were devoted to laying the foundation for awareness raising through studies such as the IP Contribution and IP Perception studies, and to creating tools such as the EDB and 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 benefit of IP rights holders and, ultimately, for society at large.

Tools such as the EDB, the Orphan Works database and ACIST are now established, and the focus in 2017 will be to increase their use by rights holders, beneficiaries and authorities.

The publication of the joint study with the OECD on counterfeit trade, the study on GI infringement and the sectoral studies on infringement have greatly added to the knowledge of the economic impact of counterfeiting. Infringement in the digital sphere, focusing on illicit downloading and streaming of music, film and e-books, must also be studied. Here, the challenge is the lack of reliable data on which to base such studies.

Other studies will examine the 'how' aspect of infringement, including the *modus operandi* of illicit online business models, the way they are financed, and how rights holders and platforms can cooperate to fight infringement online.

A number of projects are planned on public awareness, based on the information provided by the studies. Awareness-raising efforts will be carried out through support of initiatives in the individual Member States. In addition, tools such as *agorateka* must be made more user-friendly and extended to as many Member States as possible, in order to provide a truly European awareness platform, so that they gain wide acceptance among consumers.

A number of projects are planned on public awareness, based on the information provided by the studies. Awareness-raising efforts will be carried out through support of initiatives in the individual Member States.

Many important knowledge-building events will be organised during 2017, 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.

Among the most important events is the IP Enforcement Summit to be held in Berlin in June 2017. This event, bringing together high-level government, business and civil society participants, is co-organised by the EUIPO, the German Federal Ministry of Justice and the European Commission.

Last but not least, 2017 will be the year in which the work of the Observatory will be evaluated by an external consultant contracted by the European Commission, as envisaged in Article 8 of Regulation (EU) No 386/2012.

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ANNEX: BUDGET EXECUTION IN 2016

The Observatory is part of the EUIPO and its budget is embedded in the overall Budget of the Office. For 2016, the total spent on Observatory activities (excluding salaries of statutory staff and other staff-related expenditure) was EUR 7 million.

The table below summarises the expenditure by subject area.

SUBJECT AREA (WORKING GROUP)	AMOUNT SPENT IN 2016 (€ MILLION)
Public Awareness	1.0
Enforcement	3.5
Legal and International	0.1
IP in the Digital World	0.6
Economics and Statistics	0.4
Statutory meetings *	1.4
Total	7.0

*'Statutory meetings' refers to the cost of hosting meetings such as the Public and Private Stakeholder meetings, the Plenary and the Working Group meetings.

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