



EUROPEAN OBSERVATORY ON INFRINGEMENTS OF
INTELLECTUAL PROPERTY RIGHTS

ANNUAL REPORT 2015

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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 the period covered in it.

EUROPEAN OBSERVATORY ON THE RECEIPT OF INTELLECTUAL PROPERTY RIGHTS

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01. INTRODUCTION



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The European Observatory on Infringements of Intellectual Property Rights continued to develop during 2015, welcoming three new associations from a variety of sectors. As well as representatives from the 28 Member States, the Observatory network includes 61 representatives from the private sector, 7 organisations representing civil society, 10 international organisations, and 10 MEPs designated by the European Parliament, who have been invited to take part.

The 2015 Work Programme was the second 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.

In 2013, the first major research study was published, in partnership with the European Patent Office, which demonstrated the economic importance of IP rights to jobs, GDP and trade in the EU. The studies carried out since then have aimed to address a trilogy of themes — to quantify the importance of intellectual property rights (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.

In 2015, the second phase of the IP Contribution study was released, 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 small to medium-sized enterprises (SMEs). The study showed that companies that own IP rights perform better than those that do not, with the effect being particularly pronounced for SMEs.

Another major study from late 2013 indicated 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 were further analysed in 2015 through a qualitative and quantitative survey, the Youth Scoreboard, designed to deepen the analysis of European youngsters' attitudes towards purchasing counterfeit goods and using illegal digital content.



An important third set of studies, quantifying the economic costs of IP infringement, was begun in 2014 and continued in 2015. These studies aim to assess the magnitude of counterfeiting and piracy within the EU and are being carried out in collaboration with the Organisation for Economic Cooperation and Development (OECD) and the European Commission services, as well as through the Office'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 rights holders to securely share information on products and logistics with them. It also allows rights holders to automatically generate an application for customs action.

1 - OJ L 299,
27.10.2012, p. 5–12.

In addition, the Office is expanding the coverage of the Anti-Counterfeiting Intelligence Support Tool, 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 of the European Parliament and of the Council of 25 October 2012¹. In 2015, the Office devised a strategy 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 the Anti-Counterfeiting Intelligence Support Tool, 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 participating in many important knowledge-sharing initiatives that will help to bridge the gap between the world of 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.

In 2016 the Observatory will continue to look more deeply into the modus operandi and economic consequences of IP infringements. Other studies will analyse the role of trade secrets, the use of IP by European SMEs, and the role played by works in the public domain.

All these studies will combine to produce new narratives about the value of IP rights.

There are many challenges ahead for the Observatory, but the extensive network representing all aspects of society, combined with the expertise in the Office as a whole, is already contributing to the understanding of intellectual property and will continue to grow in importance in years to come.

A handwritten signature in black ink, appearing to read 'António Campinos'.

António Campinos
Executive Director, EUIPO

02. 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 (IPR) and to help combat the growing threat of IP infringements, as well as to be a centre of excellence in the field of information and data relating to the value of IPR and the negative consequences of IPR infringements.

During 2015, the network at the heart of the European Observatory on Infringements of Intellectual Property Rights continued to develop, welcoming three new associations from a variety of sectors.

At the end of 2015, the Observatory network included 61 representatives from the private sector, 7 organisations representing civil society, 10 international organisations, and 10 MEPs designated by the European Parliament that have been invited to take part, as well as representatives from the 28 Member States.

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 infringements. Consumer organisations, SMEs, 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 of the European Parliament and the Council of 19 April 2012².

2 - OJ L 129, 16.5.2012, p. 1-6.

A full list of the network members is available on the Observatory's 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 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 from stakeholders, which are used extensively to guide the implementation of projects.

The Working Groups cover:

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

In 2015, the five Working Groups met in Alicante in March and in Brussels in September.

The Observatory also draws on an Advisory Board composed of experts from the academic, business and political spheres, which advises the Executive Director on the Observatory's work. The Board is chaired by Lord Mogg and includes Frederick Mostert, José Luís Arnaut, Gerhard Bauer and Professor Ian Hargreaves.



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

The Observatory operates under its 2014-2018 Multiannual Work Plan, 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 annual Work Programme for the Observatory, which sets out the objectives for the year ahead.

The three main goals of the Observatory are at the heart of the Multiannual Work Plan and are the following.

- To provide facts and evidence for use in the formulation of effective IP policies by policymakers.
.....
- To create tools and resources to step up 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 to strengthen the public-private network that makes up the core of the Observatory's function and the second to facilitate and promote cooperation with third countries, in order to advance knowledge and enhance protection of intellectual property.

The Observatory's goals 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.
.....
- Supporting campaigns to raise overall awareness of the importance of IP and the negative effects of IP infringement.
.....
- Initiatives to help rights 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.

The process followed by the Observatory to produce its reports and studies is based on the following principles.

- Observatory stakeholders should be involved in identifying the reports and studies to be undertaken, as well as in defining the scope and terms of references for the reports/studies identified.
.....
- The reports/studies should be carried out independently, entirely in line with the agreed terms of reference.
.....
- Observatory stakeholders should be given the opportunity to know about the conclusions of the reports/studies in advance and to 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 conducts.

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.

Article 7(3) of Regulation (EU) No 386/2012 requires the representatives from the public administrations, bodies and organisations in the Member States to be duly consulted on the Annual Report. The public stakeholders have been kept informed and asked for their input on the Work Programme, and the results of the Observatory's work have been reported to them regularly. The formal submission of the report under Article 7(3) took place at the Public Sector Stakeholders' meeting which was held in Rotterdam from 19 to 20 April 2016.

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03. IP IN THE DIGITAL WORLD



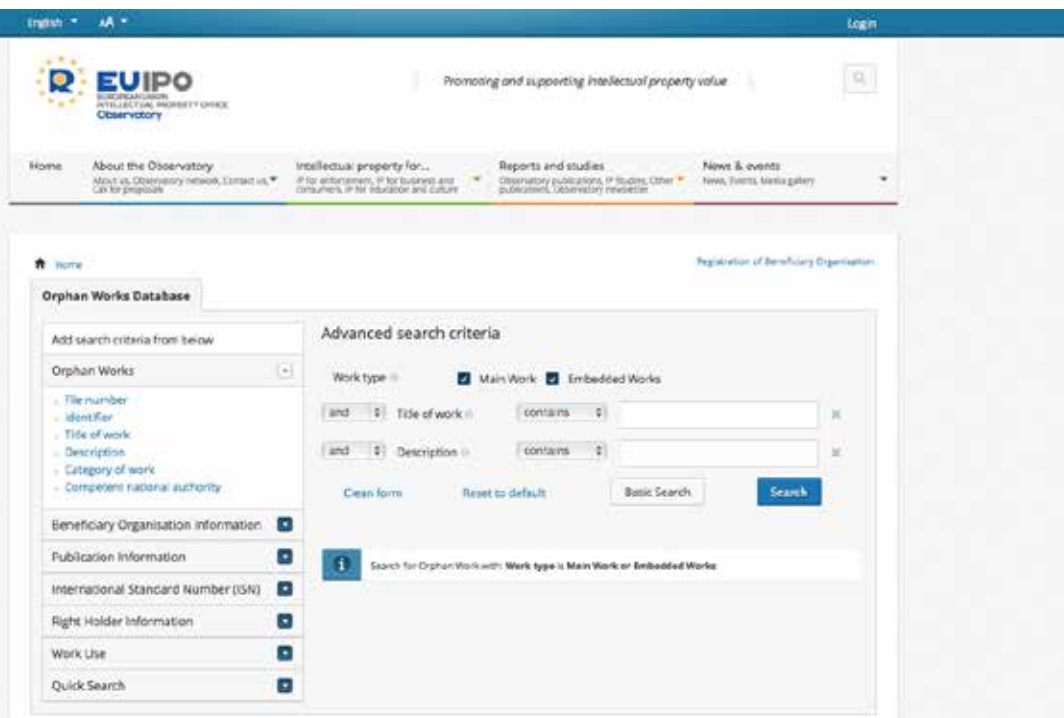
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The activities of the IP in the Digital World Working Group consist of studies to support the first main goal of the Observatory, to provide facts and evidence for enforcers and policymakers. In addition, the Orphan Works database, set up under a specific legal mandate, contributes to achieving the second goal, which is to provide tools and resources for IPR enforcement. Finally, a European Aggregator of Legal Offers will help consumers to find legal digital content and thereby support the third Observatory goal of raising awareness of IP.

ORPHAN WORKS DATABASE

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 % 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 register for all recognised orphan works to 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 screenshot shows the EUIPO Orphan Works Database search interface. At the top, there is a navigation bar with the EUIPO logo and the tagline "Promoting and supporting intellectual property value". Below this is a horizontal menu with links for Home, About the Observatory, Intellectual property for..., Reports and studies, and News & events. The main content area is titled "Orphan Works Database" and features an "Advanced search criteria" section. This section includes a "Work type" dropdown menu with "Main Work" and "Embedded Works" selected. There are two search criteria: "Title of work" and "Description", both with "contains" operators and input fields. A "Search" button is located at the bottom right of the search criteria section. Below the search criteria, there is a message: "Search for Orphan Work with: Work type is Main Work or Embedded Works". On the left side of the search interface, there is a list of search criteria that can be added to the search, including File number, Identifier, Title of work, Description, Category of work, and Competent national authority. Below this list, there are several expandable sections for registration information: Beneficiary Organisation information, Publication information, International Standard Number (ISN), Right Holder information, Work Use, and Quick Search.

The development of the registry was entrusted to the Office and was finalised at the end of 2014. In 2015, the Office devised 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. Awareness-raising and training initiatives have been carried out in collaboration 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 by two releases in 2015, facilitating, in particular, bulk uploading of works into the database. The number of records in the database stood at approximately 1 430 at the end of 2015.

The user friendliness of the database was further improved by two releases in 2015, facilitating, in particular, bulk uploading of works into the database. The number of records in the database stood at approximately 1 430 at the end of 2015.

3 - TM5 is a cooperation forum for the world's five leading trade mark registration offices, including the EUIPO, the United States Patent and Trademark Office, the Japan Patent Office, the Korean Intellectual Property Office, and the State Administration for Industry & Commerce of the People's Republic of China.

VOLUNTARY COLLABORATION PRACTICES

In 2014, members of the IP in the Digital World Working Group, as well as the Office's TM5 partners³, were asked for help to identify voluntary collaboration 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 were selected by the Working Group for a very thorough analysis of their legal framework and efficacy. The study analyses in depth the application of the selected practices by assessing: the role of the parties; the duties and procedures employed; coexistence of measures established by 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 implementation; the role of educational activities; and the effectiveness of the measures. During 2015, the analyses of voluntary practices from Austria, France and the UK were completed. Once the analyses for the other countries (Denmark, the Netherlands and the USA) have been completed, the combined report will be published.

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 have been identified using a combination of literature review, case law and other qualitative methods. The report has been finalised and has been circulated to the members of the Working Group.

The second phase will be carried out in 2016, when between 200 and 300 websites will be chosen for closer analysis.

TEST CASE FOR AVAILABILITY OF LEGAL OFFERS

A test case is being undertaken to simulate searches by consumers for legal offers of music. Panels of ordinary consumers 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 will also be assessed.

A pilot study was carried out in Austria in November 2015, after which the test scenario was adapted. Other Member States will follow in 2016.


LEGAL OFFERS AGGREGATOR

In order to help consumers find legal offers online, the Observatory has launched a project to create a European portal (and aggregator) in order to inform consumers better about the legal offers available in the realms of music, sport, films/TV, videogames and books. The European website will link to national aggregators of legal offers that already exist or that will be built with the help of the Office.

One of the deliverables of the project is the construction of a toolkit with supporting software, which will enable national administrations to build national aggregators. A pilot study has begun involving France, Latvia, Portugal and the UK that is expected to be finalised during 2016, after which point, the addition of further Member States is envisaged. In a second, subsequent project, the searchability of the tool will be extended so that consumers can search for legal content by title of the work and other criteria.

FREQUENTLY ASKED QUESTIONS (FAQ) ON COPYRIGHT FOR CONSUMERS

In addition to helping consumers locate legal offers, the Observatory also wants to help 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 their lack of knowledge. To help address this need, the Observatory, together with its civil society stakeholders, has developed a set of FAQ and has engaged a dedicated coordinator, who has obtained country-specific answers to those questions from academic experts in each Member State. During the first half of 2016, the FAQ will be published online, in a form that is accessible to the ordinary citizen.



To help address this need, the Observatory, together with its civil society stakeholders, has developed a set of FAQ and has engaged a dedicated coordinator, who has obtained country-specific answers to those questions from academic experts in each Member State.

STUDY OF DIGITAL ADVERTISING ON SUSPECTED INFRINGING WEBSITES

One of the ways in which rights holders across the world seek to combat IPR infringement is by employing a 'Follow the Money' strategy to tackle the revenue sources providing infringing websites with their financial resources. This strategy includes drying up financial support from advertising, thus making these websites less commercially viable. In many cases, major brands inadvertently advertise on suspected infringing websites, lending these sites credibility and possibly funding infringement and risking brand damage. Often this is due to a lack of understanding about which websites pose an IPR infringement risk. Accordingly, the Observatory carried out a study on digital advertising on websites suspected of selling infringing goods in 2015 and published the resulting report in January 2016.

04. 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 by the Observatory within the scope of its other working groups, particularly Economics & Statistics and IP in the Digital World.

IP IN EDUCATION

One finding from the IP Perception study published in 2013 was that between 35 % and 50 % of young Europeans display attitudes that favour counterfeiting or illegal downloading. Education would seem to be one of a number of ways of tackling the issue. It was for this reason that a mapping study on intellectual property education in school curricula in EU Member States was carried out, with its final report published in September 2015. This study aims to understand how children are exposed to IP, IPR and associated subjects within primary and secondary schools across the 28 EU Member States. In addition, the results are compared with three innovative countries outside the EU, namely, Singapore, Switzerland and the USA, as well as the Hong Kong Special Administrative Region of the People's Republic of China.



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. IP issues mostly target the secondary school level in EU Member States, whereas they target younger children in the non-EU countries studied.

The study provides examples from the European Union and elsewhere from which suitable models can be adapted to fit in with the diverse nature of the educational systems in the 28 Member States. The study also clearly indicates that copyright is by far the most frequently mentioned in EU curricula, leaving other IP rights far behind.

YOUTH ACTION PLAN

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 purchasing counterfeit goods and using illegal digital content. This is a follow-up to the 2013 IP Perception study, but focuses on the 15-24 age group and analyses youngsters' behaviour and motivation more deeply.

The creation of Facebook and Twitter accounts and mapping young opinion leaders, influencers and multipliers for the younger generation in the 28 Member States.

Another strand of the Youth Action Plan, the build-up of a community and online dialogue on social media networks has been launched, with the creation of Facebook and Twitter accounts and mapping young opinion leaders, influencers and multipliers for the younger generation in the 28 Member States. The Ideas Powered Facebook account accumulated over 20 000 'likes', mainly from the target audience (91 % are aged 15 to 24) and the Twitter account has over 8 000 followers.

An online platform, the Ideas Powered website, has been developed to serve as a repository of content for the social media accounts, and also as an operational platform to support and share the contributions of youth opinion leaders and influencers, while supporting the organisation of a monthly video competition designed to generate interest and traffic to the website and to the social media accounts.

GRANT SCHEME

The Observatory's website hosts an inventory featuring more than 150 awareness-raising campaigns across the EU.

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



National Offices can currently 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 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.

A formal 'call for proposals' was published on 16 January 2015, with a deadline of 31 March 2015. Among the 125 eligible proposals evaluated, 11 projects were selected for financial support, amounting to a total budget of EUR 500 000. The selected projects will support 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 of relevance 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 damages of counterfeiting and piracy;
- building a better understanding of IP by developing educational programmes in schools for children from various age groups.

THE SME SCOREBOARD

Most European companies are SMEs, and the majority 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 their use.

During 2015, the Office commissioned the SME Scoreboard, a survey to further explore whether 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 took place between June and September 2015 and involved almost 9 000 telephone interviews with companies in all 28 EU Member States. The results will be used to inform awareness-raising initiatives and other activities designed to help SMEs protect their IP rights. The final report will be published in early 2016.

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05. LEGAL & INTERNATIONAL



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The activities under this heading mainly support the first two goals of the Observatory, to provide fact-based evidence and to create tools and databases for enforcement. In addition, specific activities aimed at rights holders, 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 Brazil, China, India, Russia, and Turkey. In 2015, a country fact sheet was added for Ukraine.



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.

ACRIS

Currently, there is no EU-level database that contains information about IPR infringements suffered by companies in third countries. 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 they are the victims of and the 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 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 tool was developed during 2015, and the first (restricted) release was launched in February 2016.

CASE-LAW ON IPR ENFORCEMENT

A pilot project to collect national case-law related to enforcement of IP rights and make it available in the Office's case-law database⁴ began in 2014 and is being carried out in collaboration with National IP Offices. IP offices of the EU were invited to participate in this pilot project. Eight National Offices agreed to take part in the pilot: Denmark, Spain, France, Lithuania, Romania, Slovenia, Sweden and the United Kingdom. The Community Plant Variety Office (CPVO) was invited to provide key judgments related to enforcement of plant variety rights. In total, 339 judgments were provided by National Offices implementing the pilot project and the CPVO. The work was reimbursed according to normal cooperation agreement procedures. To ensure that the quality of service is uniform and that all National Offices apply the rules in the same way, the Observatory performed quality control of information collected for the pilot project and met with representatives from the participating offices in order to agree improvement actions where required.

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.

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

In 2015, the Czech Republic, Ireland, Latvia, Hungary and Austria joined the project, with additional Member States expected to join in 2016.

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 litigators⁵ and focused on differences in laws and practices among the Member States.

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



Since the establishment of the Observatory at the EUIPO, 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's 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 was begun in 2015 that will form part of the overall quantification of infringement workflow.

To carry out this quantitative assessment, the Office has retained a leading market research company, GfK, to carry out a survey of companies and public authorities. The survey follows 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; and the second phase, currently under way, consists of distributing and administering the questionnaire. The questions posed in the survey are as clear and concise as possible in order to extract the necessary data, and the survey involves the private sector as well as the public sector. Those involved are being contacted by the chosen contractor in each Member State.



The study is expected to be finalised during 2016.

International cooperation

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 third countries. The EU delegations network, created in 2014, met in Brussels in July 2015. These activities are discussed in greater detail in Section 8 below.

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06. ENFORCEMENT



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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 those activities are carried out jointly with Europol and Eurojust.

ENFORCEMENT DATABASE (EDB)

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

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

After the latest roadshow of the EDB for customs, which ended in February 2015, the tool was made accessible to all EU customs and some police authorities have also started to use it. The tool has developed and become a real means of communication between companies and the enforcement authorities in Member States. At the end of 2015, more than 270 companies had entered information into the tool. The EDB has been linked to the DG Taxation and Customs Union COPIS system. Since July 2015, it has been possible to send electronically generated Applications for Action (AFAs) via the EDB.



EDB forum gathered around 90 police and customs officials from the 28 Member States and more than 100 rights holders. It was a unique opportunity for rights holders to meet EU enforcers from all EU Member States.

In September 2015, the Office hosted its first EDB Forum. The event gathered around 90 police and customs officials from the 28 Member States and more than 100 rights holders. It was a unique opportunity for rights holders to meet EU enforcers from all EU Member States, and to share experiences and discuss the latest enforcement trends. The Forum featured several sectoral workshops addressing the problems of IP infringement by industry sector, a number of workshops on the EDB, as well as an exhibition. During the exhibition, EDB users had an opportunity to share their experiences of counterfeit goods and to show enforcers where to find their product information in the EDB.

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 under a common standard.

In addition to data on customs seizures in each Member State, which the DG Taxation and Customs Union provides annually, 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 give the complete picture to all interested parties that consult the ACIST database. Users can access and use the information by producing statistical reports. As for seizures in the internal market, data from the national authorities in 15 EU Member States are also available in the tool.

The tool has been available on the Observatory's website for consultation since November 2014.



THE EUIPO-EUROPOL SITUATIONAL REPORT ON COUNTERFEITING

The joint situation report, published in April 2015, describes the situation of counterfeiting in the EU, focusing on several areas of concern.

- Top countries of provenance: third-country versus EU production of counterfeit goods.
- The role of Free Trade Zones (FTZs) in providing opportunities for criminal networks to export larger quantities 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 counterfeit goods.
- Sale and distribution of counterfeits via the internet.



KNOWLEDGE BUILDING FOR ENFORCERS

As in previous years, several initiatives in the area of knowledge building for enforcers were undertaken in 2015.

Partnering with Europol, a joint knowledge and competences programme for law enforcement officers was set up. This resulted in several **sectoral 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.

The successful Judges' Seminar series has continued to run, bringing together senior IP judges and prosecutors from every EU Member State, and occasionally from the USA. In 2015, four seminars focusing on different thematic areas and the biannual symposium were held in Alicante. The first workshop of the **European Intellectual Property Prosecutors Network**, co-chaired by the Observatory and Eurojust, was hosted by the EUIPO in June 2015. 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 practices.

Two major knowledge-building conferences were held during 2015, on the Counterfeiting of Cosmetics, Perfumes and Luxury Products in June, and on the Infringements of Designs protected by Design and Copyright Law in November. Both conferences were organised in cooperation with Europol and Eurojust. A comprehensive report was produced after each of the events, including conclusions and proposals. These reports were widely distributed through the Europol Expert Platform and are available on the Observatory's website. Regional seminars for enforcers were organised in Italy and in Hungary.

An interagency coordination group on infringements of IP rights was set up with representatives from other EU agencies and Commission Directorate-Generals, as well as international organisations such as the World Intellectual Property Organisation (WIPO), the World Customs Organisation (WCO) and the OECD. The group met at WIPO's headquarters in Geneva in March 2015.

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07. ECONOMICS & STATISTICS



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The activities in the Economics & 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.

The IP Contribution study (firm-level) was published in June 2015. This major study, a follow-up to the 2013 industry-level study, examined the relationship between ownership of IP rights and economic performance for more than 130 000 companies in 12 EU Member States. It found that companies that owned trade marks, patents or registered designs had higher revenue per employee, employed more workers, and paid higher wages than companies that owned no IP rights. This relationship was particularly strong for SMEs.

An important set of studies quantifying the economic costs of IP infringement began in 2014. These studies aim to assess the magnitude of counterfeiting and piracy within the EU. It is a complex task, although an OECD study in 2008 demonstrated that estimations based on solid and transparent methodologies are indeed possible. This work is partly being carried out in collaboration with the OECD (in the case of trade in counterfeit goods), and partly through the EUIPO's own efforts, such as the sectoral studies on infringement. The first sectoral report on infringement quantification, focusing on perfumes and toilet preparations, was published in March 2015. A report on clothing, footwear and accessories was published in June 2015. In September 2015, the third report in the series was released, on sports goods, followed by a report on toys and games in December 2015. Several more sectors will be investigated using this methodology. Each report quantifies the lost sales in the legitimate economy due to the presence of counterfeit goods in the EU marketplace, as well as the resulting loss of employment and public sector revenue.



In addition, the Office 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 what extent successful films are based on works in the public domain.

The directive on trade secrets proposed by the European Commission explicitly envisages the role of the Observatory in investigating this matter. Accordingly, a study on the economic importance of trade secrets is being carried out in cooperation with the Centre for European Economic Research (ZEW) in Mannheim. A pilot study for Germany has been completed, while the study of the other EU Member States is ongoing, with a view to publication in the first half of 2016.



This study investigates which types of companies tend to use trade secrets, analysed by size, economic sector (services versus manufacturing), and other factors. There is 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 the economic contribution of IP rights, the perception of IP and the economic cost of infringement, and their follow-up studies, such as the Youth Scoreboard or SME Scoreboard, are intended to bridge the information gap on IP among EU citizens and to serve as the basis for creating new narratives on the value of intellectual property.

08. 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, the Russia project and the new India project, has 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.

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. The next survey will be carried out in early 2016.

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.

8.1 COOPERATION WITH THE EUROPEAN COMMISSION AND AGENCIES

In 2015, a high level of cooperation from several of the European Commission's services assisted the Observatory in its work.

In this context, the European Council has adopted a specific EU Customs Action Plan⁶ to combat IPR infringements during 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 the DG Taxation and Customs Union on knowledge building, the development of an e-learning module for customs, and cooperation on databases.

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

Due to the large number of institutions and agencies with a common interest, an Interagency Coordination Group on IPR infringements has been set up with representatives from other EU agencies and Directorates-General of the Commission.

This group discusses ongoing activities, projects and issues among those agencies that deal with IPR infringements to avoid duplication of efforts and to seize opportunities for collaboration. The fourth meeting of the coordination group was held in Geneva on 25 March 2015.

The Observatory has also been working closely with DG Enterprise and Industry (now DG Internal Market, Industry, Entrepreneurship and SMEs) to ensure there are synergies between our respective activities and to avoid duplication, with particular emphasis on supporting the needs of SMEs.

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

In 2015, the EUIPO and Europol signed an agreement, under which the Office will finance a newly created Europol IPR Crime Coordination Centre 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. The work on setting up the centre began in 2015, with the official launch envisaged for the second quarter of 2016.

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.

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09. COMMUNICATIONS



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WEBSITE

The Observatory's website continued to grow in 2015. 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. 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. There are also videos of events, such as the 2014 IP Enforcement Summit or the Observatory Plenary meetings.

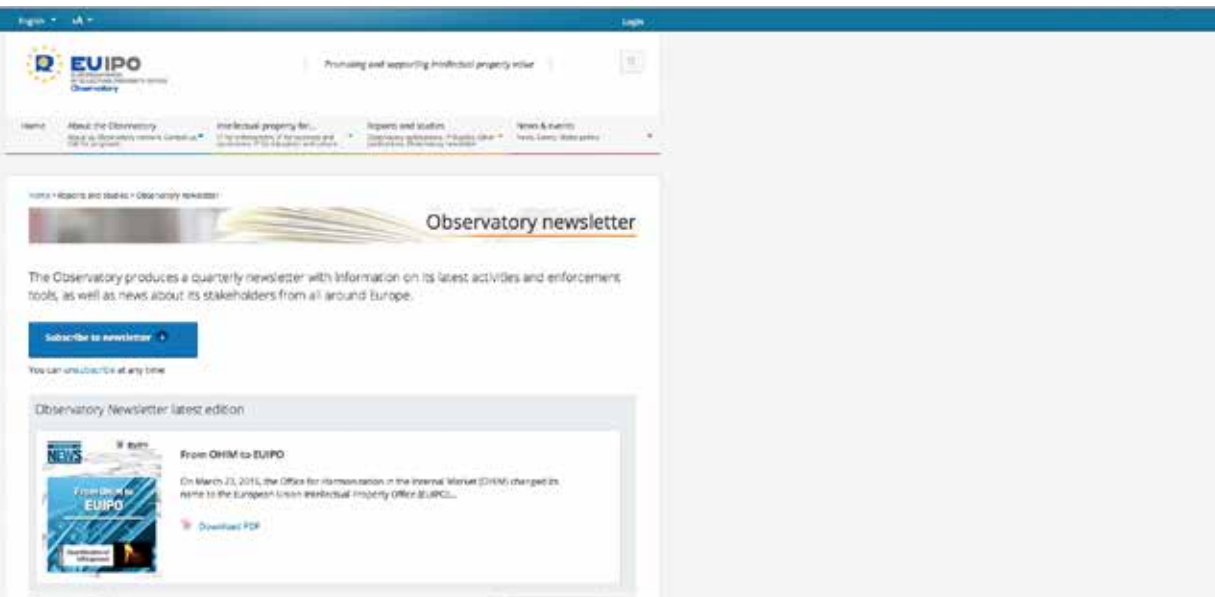
Finally, there is a section for SMEs as part of the business and consumers' section, including testimonial videos and an e-learning section, as well as guides and support.

During the last quarter of 2015, the Observatory's website received on average almost 7 000 unique monthly visitors, with about 600 documents downloaded each month. The number of unique visitors has been rising throughout the year.

NEWSLETTER

Further to a request from stakeholders to receive regular communications about the Observatory's work, an Observatory Newsletter has been published on a quarterly basis since December 2013.

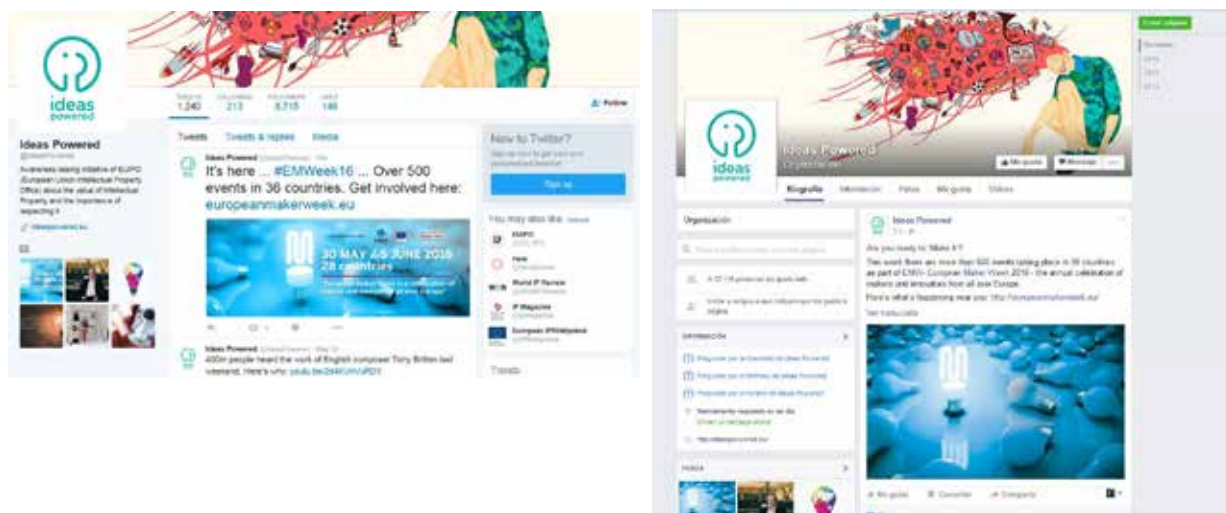
The main objective of the newsletter is to share information with the stakeholders on the Observatory's current workflows and to give members of the network the opportunity to express their views and to engage actively in our work by providing input to each edition. Each issue contains an editorial, 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 circulated to stakeholders by email, and is also published on the Observatory's website. The October 2015 issue was sent to approximately 1 500 recipients, including 328 Observatory stakeholders, about 1 000 event participants and some 150 subscribers.

SOCIAL MEDIA

As explained in Section 4 above, a social media campaign aimed at youngsters kicked off in October 2014. Identified by 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, were launched in 2015, with a view to offering an online space for dialogue for youngsters to express themselves on IP-related issues and thus build a community with the support of partners and multipliers. The Facebook page averages 1 post per day and has achieved over 20 000 'likes', while the Twitter account averages 3 posts per day and had over 8 200 followers at the end of 2015.



A website (www.ideaspowered.eu) supports the social media activities.

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10. OVERALL ASSESSMENT



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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 2015 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.

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

- SME Scoreboard;
- IP Contribution study (firm-level);
- study of the value of the public domain in films;
- study of the economic importance of trade secrets.

(b) improving understanding of the scope and impact of infringements of intellectual property rights:

- study of business models used in online infringement;
- study of digital advertising on suspected infringing websites;
- storage and destruction study;
- the EUIPO-Europol situational report on counterfeiting;
- infringement quantification (sectoral studies and joint study with the OECD);
- study of infringement of geographical indications.

(c) enhancing knowledge of best public and private sector practices to protect intellectual property rights:

- voluntary collaboration practices;
- IP in education study;
- knowledge-building events.

(d) assisting in raising citizens' awareness of the impact of infringements of intellectual property rights:

- test case for availability of legal offers;
- legal offers aggregator;
- FAQs on copyright for consumers;

- youth action plan;
- grant scheme.

(e) enhancing the expertise of persons involved in the enforcement of intellectual property rights:

- knowledge building for enforcers;
- the studies related to infringement listed under item (b) above.

(f) enhancing knowledge of technical tools to prevent and tackle infringements of intellectual property rights, including tracking and tracing systems which help to distinguish genuine products from counterfeit ones:

- EDB;
- ACIST.

(g) providing mechanisms which help to improve the online exchange, between Member States' authorities working in the field of intellectual property rights, of information relating to the enforcement of such rights, and fostering cooperation with and between those authorities:

- ACRIS;
- European Intellectual Property Prosecutors Network;
- case-law on IPR enforcement.

(h) working, in consultation with Member States, to foster international cooperation with intellectual property offices in third countries so as to build strategies and develop techniques, skills and tools for the enforcement of intellectual property rights:

- country guides;
- cooperation activities discussed in Section 8 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 by Regulation (EU) No 386/2012.

In late 2015, the Office carried out a survey of Observatory stakeholders. The overall results were positive, showing that in general stakeholders are satisfied with the work the Observatory is carrying out. This can be seen under the section regarding overall satisfaction and fulfilment of the Observatory's mandate, where a total of 94 % of respondents are satisfied with the progress made by the Observatory since it was transferred to the Office and consider that the Observatory has been successful in carrying out the tasks entrusted to it by Regulation (EU) No 386/2012.

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11. CHALLENGES FOR 2016



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The first years of the Observatory at the EUIPO have been devoted to laying the foundations for awareness raising through studies such as the IP Contribution and IP Perception studies, and to creating tools such as the 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 IP rights holders, and ultimately society at large.

Tools such as the EDB, the Orphan Works database and ACIST are now established, and in 2016 the focus will be on increasing 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 a number of sectoral studies on infringement will further add 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, will also be studied.

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 online infringement.



A number of projects have been planned on public awareness, based on the information provided by the studies. Awareness-raising efforts will be carried out by supporting initiatives in the individual Member States. In addition, consumers must be provided with accurate information about what is and what is not permitted, for example, in terms of copyright law, and where they can obtain content from legitimate sources.

Many important knowledge-building events will be organised during 2016, 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.

In late 2015, the Office and CEPOL agreed to set up an e-learning platform for enforcement authorities across the EU, the Virtual IP Training Centre. During 2016, the two organisations will work together on formulating and executing the project plan to operationalise this agreement.

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ANNEX. 2015 BUDGET EXECUTION



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The Observatory is part of the EUIPO and its budget is embedded in the overall Budget of the Office. For 2015, the total expenditure for Observatory activities (excluding salaries of statutory staff and other staff-related expenditure) was EUR 8.5 million.

The table below summarises the expenditure by subject area.

Subject Area (Working Group)	Amount spent in 2015 (€ million)
Public Awareness	2.5
Enforcement	3.5
Legal & International	0.5
IP in the Digital World	1.3
Economics & Statistics	0.4
Statutory meetings *	0.3
Total	8.5

* '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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EUIPO

EUROPEAN UNION
INTELLECTUAL PROPERTY OFFICE

Avenida de Europa, 4,
E-03008 - Alicante
Spain

www.euiipo.europa.eu

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978-92-9156-218-3