



European Observatory on Infringements of Intellectual Property Rights

WORK PROGRAMME

2016



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1. INTRODUCTION



1.1 Structure of the Observatory

The European Observatory on Infringements of Intellectual Property Rights was established in 2009 by the European Commission as a centre of excellence on information and data relating to the value of Intellectual Property rights (IPR) and the negative consequences of IPR infringements.

The Observatory was entrusted to OHIM in June 2012 by Regulation (EU) No 386/2012 of the European Parliament and the Council.

Regulation 386/2012 entrusts OHIM with a wide range of tasks relating to research, communication, spread of best practice, and support for enforcement of all types of intellectual property rights.

The tasks listed in the Regulation include:

- Improving the understanding of the scope and impact of infringements of intellectual property rights, including industrial property rights, copyright, and rights related to copyright;
- Improving the understanding of the value of intellectual property;
- Enhancing the knowledge of best public and private sector practices to protect intellectual property rights;
- Raising citizens' awareness of the impact of infringements of intellectual property rights;
- Enhancing the expertise of persons involved in the enforcement of intellectual property rights;
- Enhancing the knowledge of technical tools to prevent and combat counterfeiting and piracy, including tracking and tracing systems;
- Improving the online exchange between Member States' authorities and fostering co-operation with and between the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property;
- Fostering international cooperation with intellectual property offices in third countries to build strategies and develop techniques for the protection of intellectual property rights, skills, and tools.

In order to carry out the assigned tasks, an Observatory Department was formed within OHIM in late 2012. It currently consists of two main areas: Operations and Projects (which includes a specific unit dedicated to IP in the Digital World), and Economics and Statistics, which includes the Chief Economist of the Office. Thus the Observatory is fully integrated into OHIM, and benefits from the full capabilities and resources of the Office.

1.2 Activities in 2015

During 2015, the third full year of operation of the Observatory within OHIM, a number of important activities came to fruition; in particular:

- Several studies and reports were published, including: the second phase of the IP Contribution Study which analyses the relationship between the ownership of IPR and economic performance at the level of individual companies; studies of the impact of IPR infringement in specific industry sectors such as perfumes and toilet preparations, clothing, footwear and accessories, sports goods, and games and toys; a joint OHIM/Europol situation report on counterfeiting, providing information on routes, entry points, and modus operandi of criminal organisations involved in counterfeiting; a research report on IP in education; a report on Inter-Agency Cooperation at national and international level in IPR enforcement; updates on earlier reports on Storage and Destruction and Costs and Damages; and a guide to IPR protection in the Ukraine, to supplement similar guides for Brazil, China, India, Russia and Turkey, published in 2014.
- The Observatory network was strengthened and made more representative by the addition of a number of new associations. In addition to the representatives of the 28 Member States, the Observatory now includes more than 60 organisations representing the private sector, 7 organisations representing civil society and consumers, 10 MEPs and 10 international organisations that act as observers.
- The five working groups – Legal, Enforcement, Public Awareness, Economics and Statistics, and IP in the Digital World – met twice during 2015 in regular February/September sessions. A new format for these meetings was adopted in 2015. The overall duration was shortened from 5 to 3 days (with a common session for all working groups), and the February meeting was held in Alicante. Following suggestions from stakeholders, OHIM continues to seek ways to further improve the organisation of the Working Groups and their meetings.
- The Enforcement Database (EDB) which was launched in 2014 now contains more than 200 companies, with more being added every month. During 2015, all EU customs authorities have become users of EDB. Several police forces are also using the tool, with the Italian Guardia di Finanza and the Spanish Guardia Civil and Policía Nacional as pioneers. The first EDB Forum was held on 8-9 September, joining enforcers and rights holders from all over Europe. The integration with the CO-PIS system of DG Taxation and Customs Union will enable EDB users to file electronic Applications for Action. Moreover, work is ongoing to permit the exchange of product information between EDB and the World Customs Organization (WCO)/IPM system and to federate EDB with Europol and the European Anti-Fraud Office (OLAF).
- The Anti-Counterfeiting Intelligence Support Tool (ACIST) has grown from an initial phase showing information on seizures at the border in all EU Member States to also including harmonised internal market seizures from a majority of Member States.
- Two major knowledge building conferences were held during 2015, on the Counterfeiting of Cosmetics, Perfumes and Luxury Products in June, and one on the Infringements of Designs protected by Design and Copyright Law in November. Both conferences were organised in cooperation with Europol and Eurojust.
- The first workshop of the European Intellectual Public Prosecutors Network, co-chaired by the Observatory and Eurojust, was held at OHIM in June.
- 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.

- 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. Another strand of the Youth Action Plan, the build-up of a community and an online dialogue on social media networks has been launched, with the creation of Facebook and Twitter accounts and a mapping of young opinion leaders, influencers and multipliers for the younger generation in the 28 Member States.
- An online platform, the Ideas Powered website, has been developed to serve as a repository of content for the social media accounts, but 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.
- A survey of SMEs in all 28 Member States, the SME Scoreboard, was carried out to understand why SMEs decide to use – or to not use – IP rights; and in the case of the latter, to assess what could be done to help those SMEs which would like to use IP but encounter real or perceived barriers. This assessment will be an important step forward in understanding the needs of SMEs and in helping to prioritise enforcement and IP policies.
- A grant scheme has been published to support awareness-raising initiatives on the value and benefits of intellectual property, and on the damage caused by infringements. Among the 125 proposals evaluated, 11 projects have been selected for financial support, amounting to a total budget of € 500 000.

Many of these activities are carried out in cooperation with other European institutions, including the European Commission, Eurojust, Europol, the European Police College (CEPOL), the European Patent Office (EPO), with EU Member States, and with international organisations such as the World Customs Organization (WCO), the World Intellectual Property Organization (WIPO), Interpol and the Organization for Economic Cooperation and Development (OECD).

1.3 The Multiannual Plan

The Observatory operates under a Multiannual Work Plan 2014-2018 in order to provide a longer-term perspective and integration with the Office's Strategic Plan. The multiannual plan is also the basis for the annual Work Programme for the Observatory, which sets out the objectives for the year ahead.

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

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

The present Work Programme outlines the activities to be undertaken by the Observatory during 2016 in the framework of the Multiannual Plan. It includes projects that continue work begun in 2014, as well as new projects and activities that were initiated during 2015, some of which will deliver their final results in subsequent years.

1.4 Structure of this document

The remainder of this document consists of four parts:

- **Section 2** provides a brief description of the working groups that comprise the Observatory. These working groups are organised along the lines of five main subjects.
- **Section 3** describes the activities the Office will undertake to implement the Multiannual Plan in 2016. Specifically, for each of the five working group subjects, the projects to be executed to support the corresponding activity during the year are briefly described.
- **Section 4** outlines the meetings and conferences planned for 2016.
- Finally, **the annexes** provide information on the legal basis for the activities of the Observatory and on the 2016 budget.

Following requests from several stakeholders, a numbering scheme for the various initiatives and projects has been introduced in this Work Programme. Each activity has been assigned a code; the first one or two letters identify the Working Group principally dealing with the subject (e.g. PA for Public Awareness), the first digit identifies the main project (e.g. Youth Scoreboard), while the second digit refers to individual elements within that project (such as specific awareness-raising activities), where appropriate.

2. WORKING GROUPS OF THE OBSERVATORY



The Observatory is made up of a network of public and private sector representatives which are concerned by and/or involved in the fight against infringements of IP rights. These stakeholders represent a wide range of perspectives and interests, including enforcement authorities, industry, small and medium-sized enterprises, consumer organisations, civil society, authors and creators.

The Observatory representatives collaborate in working groups that have been created corresponding to a number of different subjects:

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

The members of these working groups provide valuable feedback and support for the Observatory's projects, so that expert advice from all involved sectors can be taken on board.

The working group meetings are held twice a year over three consecutive days, with a common session for all the working groups held on one morning, and the specific points of the five groups discussed during the remaining 2 ½ days. In scheduling the meetings, overlaps are avoided to the greatest extent possible in order to make it possible for stakeholders to participate in the working groups in which they are interested.

3. EXECUTION OF THE MULTIANNUAL PLAN IN 2016



As mentioned above, the Observatory has developed its own Multiannual Plan for 2014-2018. The present Work Programme specifies the activities that the Observatory will carry out in 2016 to implement the Plan.

During the development of this Work Programme, numerous comments and suggestions were received from the public and private stakeholders. In evaluating the new initiatives proposed, the Observatory has had to prioritise. In this context, precedence has been given to completion or follow-up of ongoing work, and to new activities that are considered important to the European Commission in formulating policy initiatives.

In order to carry out the activities outlined in this Work Programme, the Observatory strives to ensure that its resources are used in the most efficient and effective manner. OHIM's framework contracts such as those with PAU for public awareness campaigns and communication, and with Deloitte for consulting services, as well as the list of experts established in 2013 are used to supplement in-house resources with external expertise as appropriate. Should the need arise, specific calls for tender may be launched to secure access to specialised services and resources to fulfil requirements that cannot be covered with available internal and external resources.

The activities described below will be carried out in coordination with other agencies and international organisations in order to avoid duplication of effort and use the limited resources in the most effective manner. Members of the working groups will be consulted when appropriate.

The projects and activities for 2016 are set out below according to the working group with which they are associated.

3.1 Activities planned for 2016 in the area of Public Awareness

- **PA1. Targeting youth:** the **Youth Action Plan** will see its full implementation and deployment. Social media activities will be further developed to build and activate online communities, and to seek the involvement of opinion leaders, "multipliers" and personalities of reference from areas of interest for younger generations, to leverage their support for awareness campaigns.
- **PA2. New narratives, design and deployment of awareness campaigns:** following the results of the Youth Scoreboard and with the addition of the results of the quantification of IPR infringement series of studies which highlight the negative consequences of infringement, new and compelling narratives will be developed and used to design awareness campaigns, including contributions from youngsters, with a view to deploy and implement them in Member States with the support of national IP offices. Projects supported as part of the 2015 grant scheme will be able to take into account these narratives in the implementation of their awareness campaigns and activities, with a view to exploiting synergies.

■ **PA3. Helping SMEs protect their IP rights:** IPRs can be essential business assets for SMEs, as shown by the second IP Contribution Study published in 2015. However, SMEs can be severely harmed by IPR infringement, as they often lack the appropriate resources and knowledge to protect and enforce their rights. The results of the SME Scoreboard report which monitored the problems and needs of SMEs regarding IP protection will be explored with a view to identify specific actions or tools intended to address those needs.

■ **PA4.** As the Office has a mandate to support the activities undertaken by national authorities, the private sector and EU institutions in the fight against infringements of intellectual property rights and since some of these activities are fully aligned with OHIM's awareness approach as based on Observatory studies, 11 projects were selected under the grant scheme launched in 2015. These projects will be followed and steered in the implementation of **national awareness-raising initiatives**, aiming to enhance awareness of IP under three main lines of action:

Reaching out to youngsters, highlighting the positive value of IP and the importance to be fair to creators and innovators, with a specific "hook" in areas of particular relevance for them such as sport or music;

Bringing IP closer to consumers/citizens in their daily lives and making IP more concrete at local level and highlighting the value of genuine goods and original creation, contrasted with the damages caused by counterfeiting and piracy either in physical goods or digital content;

Education projects designed to build a better understanding of IP and of the damages of counterfeiting and piracy, targeting children from various age groups.

■ **PA5. Improved Communication of the Observatory's work:** Outreach activities targeting policy makers, businesses and media engaged in the previous years to raise visibility of Observatory activities, studies and tools will be developed and strengthened with the help of relevant stakeholders.

■ **PA6.** Following the IP in Education study, the Observatory will create and coordinate a specialised **IP Education Network** made up of representatives of the Ministries of Education and specialised stakeholders with the aim of jointly developing appropriate resources and tools featuring IP for teachers and pupils.

■ **PA7. Repetition of IP Perception Study:** As established in the Multiannual Plan, in 2016 the Observatory will repeat the study of the knowledge of and attitudes towards IP among EU citizens, carried out for the first time in 2013. This will help identify trends in the way EU citizens perceive IP and the degree to which they respect it.

3.2 Activities planned for 2016 in the area of Enforcement

■ **E1. Enforcement Database (EDB):** 2016 will be a year of consolidation for this flagship tool. While some new features will be added, the main thrust will be to ensure that the tool works as intended for the increasing number of companies using it. As a continuation of work carried out in 2015, EDB will be further improved. With the support of the European Commission (DG TAXUD), the integration with the COPIS system will be further studied to explore the possibility of offering rights holders the ability to submit electronically other actions (for example, for renewals or amendments) concerning their applications for action (AFA) from EDB. Interoperability with WCO's IPM system is expected in 2016.

Improved access to the information from mobile devices will be developed in order to facilitate the work of the enforcement agents on the ground by providing easy access to product and company information and a way to contact the rights holder.

Efforts will be made to enlarge the number of police forces using the tool.

■ **E1.2.** Following the success of the first EDB Forum in 2015, a second EDB-focused event will take place in 2016, to further improve communication between enforcers and companies using the tool.

The possibility of mapping NICE classification of goods and services and CN Tariff codes will be assessed, as it would permit more streamlined reporting and analysis of enforcement information, linking the rights holders and the customs product management systems.

■ **E2. Anti Counterfeiting Intelligence Tool (ACIST):** As a continuation of work carried out in 2015, the tool will be further improved to adapt to user experience. Integration of additional countries in their reporting of internal market seizures should lead to a more complete picture of both border and internal market seizures in the EU. Efforts will be made to establish a framework for harmonised and continuous data flow from enforcement forces, enabling better reporting and analysis, in particular sectorial analyses such as those used as a basis for the knowledge building activities.

■ **E3. Data collection, analysis, reporting:** In 2016, a number of sectorial reports will be produced based largely on data available in ACIST, but also complemented by open source research and other data sources. Each report will be designed to support an associated knowledge building event, and also to contribute towards an overarching Framework to Reduce IP Infringement in Europe project (see below), which is designed to identify, define and offer potential solutions to current weaknesses in business supply chains that, if addressed, may help curb IP infringement. The Office will also continue to produce border seizure trend reports.

■ **E4. Special focus on online infringements:** Europol and the Office have decided to expand the scope of their collaboration to include a special focus on tackling the problem of online IP crime. In particular, in 2016 Europol will implement the activities under the grant agreement signed with OHIM which are meant to increase information gathering and to monitor trends in the field of online IP crime and related areas, and to support the activities of national competent authorities.

■ **E5. Study on control mechanisms for ensuring the enforcement of Geographical Indications:** The European Commission has requested the collaboration of the Observatory in an analysis of the implementation at Member State level of the controls foreseen by the GI regulations. The analysis will also look at best practices and tools that would help controllers to better work together across the EU.

- **E6. Reinforced cooperation:** Due to the higher profile of IP activities and the large number of institutions and agencies with a common interest, an inter-agency Coordination Group on Infringements of IP Rights was set up in 2014 with representatives of other EU agencies, the European Commission and international organisations such as WIPO and Interpol. In January 2016, WCO will host a meeting of the group in which ongoing activities, projects and issues among those agencies that deal with IPR infringements will be discussed to avoid duplication of efforts and to identify new opportunities for collaboration.
- **E7. Building Knowledge and Competences in IP Enforcement:** Building on the successful events organised in 2013, 2014 and 2015, two knowledge-building events in specific sectors (E7.1 and E7.2) will be developed in collaboration with Europol and Eurojust. The events will target enforcement authorities and involve relevant private stakeholders to highlight concrete examples. A hands-on training on techniques to investigate IP crimes, both offline and online (including digital infringement), will be organised in collaboration with CEPOL during the second half of 2016 (E7.3). Two regionally based workshops (one in spring and the other in autumn 2016) throughout the EU will be developed, targeting local judges, prosecutors, customs and police (E7.4 and E7.5). Finally, the Office has agreed to work together with CEPOL to create a Virtual IP Training Centre for enforcement authorities (E7.6). As part of the work of the Coordination Group, the Office will further broaden its cooperation in the area of knowledge building with the European Commission, the European Anti-Fraud Office (OLAF), Europol, CEPOL, Eurojust, Interpol, WIPO and WCO.
- **E8. European Intellectual Property Prosecutors Network.** Building on the conclusions from the first workshop held in 2015, specific initiatives will be undertaken in 2016 to promote stronger networking, knowledge building and experience sharing between European prosecutors involved in IP crime cases.
- **E9. Framework to Reduce IP Infringements in Europe:** This activity was launched in early 2015 and aims to provide a practical view and understanding of how commercial scale IP infringers employ and use intermediaries, facilitators and enablers. The main objective of this activity is to map the life circle of IP infringements in relation to physical products and content into their component parts to allow for a better understanding of how each element works (E9.1). On this basis possible intervention methods will be identified that effectively disrupt the ability of commercial scale IP infringers and their networks to operate through intermediaries, facilitators and enablers. The activity will also support initiatives targeting law enforcement authorities and areas of potential public-private cooperation, including engagement with intermediaries, shippers and advertisers (E9.2). In 2015 a study on supply chain in the cosmetics sector, a comprehensive study of a cosmetics counterfeit case and a mapping of identified intermediaries, facilitators and enablers were prepared. In 2016 a mapping of the alcohol sector supply chain will be prepared, with a focus on intermediaries within shipping, self-storage and domain name registrations (E9.3). It is also foreseen to prepare a number of further comprehensive case studies in cooperation with the United Nations Interregional Crime and Justice Research Institute (UNICRI) (E9.4).
- **E10. Technical solutions to combat counterfeiting:** In collaboration with the Institute for the Protection and Security of the Citizens of the Joint Research Centre of the European Commission, the Observatory will develop a situation study on technologies which can help to fight against counterfeiting. The objective is to map the solutions available today, as well as their deployment by rights holders and enforcers.

3.3 Activities planned for 2016 in the area Legal and International

- **LI1. Case-law collection and analysis:** One of the main tasks entrusted to the Office by Regulation 386/2012 is to improve knowledge on IP rights infringements in Member States. Article 5.1 of the Regulation on information obligations sets out that “[...] Member States shall, at the request of the Office or on their own initiative: [...] (c) inform the Office of important case-law”. As a continuation of the work begun in 2014, the Office will collect relevant jurisprudence related to enforcement of IP rights rendered at national level in the EU Member States. Whenever possible, the activity will be implemented in collaboration with the EU IP offices, building on the results of the pilot run at the end of 2014 and the experience gained through the expansion of this activity during 2015.
- **LI2. Study on legislative measures related to online IPR infringement:** the purpose of this fact-based, descriptive study will be to identify the available legislative measures to tackle online sales of counterfeit goods and online distribution of infringing content, and to understand the benefits and shortcomings in the implementation and applications of these measures. The study will be developed in 2016 on the basis of the terms of reference established in 2015.
- **LI3. Report on trade secret litigation trends:** A proposal for a Directive on the protection of undisclosed know-how and business information (trade secrets) against unlawful acquisition, use and disclosure foresees a role for the Office, through the Observatory, in monitoring of the application of the legal text. Under Article 17(1) of the draft Directive, the Office is to prepare a report on litigation trends regarding the unlawful acquisition, use or disclosure of trade secrets pursuant to the application of the Directive. The report will be due by the end of the third year following the end of the transposition period. In order to better measure the impact of the Directive on trade secret litigation, in 2015 the Office established a subgroup to oversee the collection of data on trade secret litigation before the adoption of the Directive. The Observatory will start collecting data with a view to producing a report in 2016 on the volume of legal actions and damages awarded, thus establishing a baseline view of the situation before the adoption of the Directive. The elements to be analysed include levels of trade secret litigation in EU Member States, profiles of the parties involved in litigation, courts dealing with trade secret matters and duration of proceedings.
- **LI4. Assist the European Commission (DG GROW) with organisation of workshops and other events relating to the various aspects of the upcoming evaluation of the IPR Enforcement Directive (IPRED),** targeting specific stakeholders such as the judiciary, intermediaries or legal practitioners and focusing on specific topics, including legal costs, damages and other relevant issues.
- **LI5. Study on the costs of enforcing IP rights:** one of the reasons why the majority of SMEs do not own or use IP rights may be related to the costs associated with enforcement of such rights. This study will examine the costs faced by companies when enforcing their IPR, based on hypothetical cross-border cases involving trade mark, design or patent infringement taking place in different territories. The study will seek to capture the legal costs involved, such as court fees and financial guarantees.
- **LI6. Support the protection of IP rights outside the EU:** The aim of this work stream is to cooperate with the European Commission's DG TRADE on improving the protection of IP rights in third countries. The main activities include the development of an “Anti-counterfeiting Rapid Intelligence System – ACRIS”, an intelligence database that allows EU companies to report, in a structured format, information about IPR infringements they believe they were victims of and respective follow-up by local authorities in the countries outside of the European Union. This data will be used to:

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

The completion the first phase of ACRIS development is planned for the first half of 2016 (LI6.1). The extent to which the information in the database can provide statistically meaningful results depends on the degree of utilisation of the tool by companies.

A network of IP experts in EU Delegations that deal with intellectual property matters was created in 2014. In 2016, the Office will continue to cooperate with DG TRADE to consolidate the network mainly by providing technical support to improve IP knowledge and exchange of information among its members (LI6.2).

In 2016 the Observatory and DG TRADE will jointly launch another round of the bi-annual survey intended to gather EU stakeholders' feedback on the level of IPR protection outside the EU (LI6.3).

In addition to the above activities, the Observatory will support the international EU-funded projects for which OHIM is the implementing agency, such as IP Key or ECAP III, with input on issues related to IPR enforcement and infringement.

3.4 Activities planned for 2016 in the area IP in the Digital World

- **DW1. Help consumers to better differentiate legitimate from infringing websites:** According to the IP Perception Study, 6% of interviewed citizens have purchased counterfeit goods as a result of being misled over the last 12 months. Extrapolating to the EU population, this would mean that in just one year around 25 million citizens were misled while buying products online. In 2015, the Observatory launched a new work stream to develop initiatives to assist consumers to better differentiate legitimate from infringing sites, both for physical goods and digital products. A pilot project for a European Aggregator of Legal Offers was started in 2015 with four Member States. Upon the pilot's finalisation, the aggregator will be deployed to further Member States in 2016 and subsequent years. A consumer-friendly guide on Frequently Asked Questions regarding copyright is in preparation and is expected to be published in early 2016. Further initiatives for 2016 may include, among others, the support for private sector initiatives intended to help consumers identify legitimate sites, for example through technical solutions.
- **DW2. Analysis of business models in copyright-based creative industries:** Article 2.1(g) of the Regulation 386/2012 establishes that the Office shall "monitor the development of new competitive business models which enlarge the legal offer of cultural and creative content, and encourage the exchange of information and raise consumer awareness in this respect". This is one of the areas that require further study through objective and independent research. As a first step, in 2015, a test case was undertaken to simulate internet searches by consumers in eleven Member States for legal offers for music. Following the assessment of the results, the test case will be extended in 2016 to additional Member States and other content types. In addition the test cases, a more general study on legal offers in the EU may be carried out.

- **DW3. Research on business models most commonly used to infringe IP online:** An independent data-driven study was launched in 2015 to assess and analyse specific techniques used for facilitating online IP rights infringements on a commercial scale. This independent research, to be finalised during 2016, will provide an overview of the different infringing models assessing how they function, how they are financed, how they generate profits for their operators, the kind of content disseminated and the size of their user bases. In addition to providing enhanced understanding to policymakers, civil society and private businesses, this research will help to identify and better understand the range of responses necessary to tackle the challenge of large scale online IP infringements.
- **DW4.** The results of 2015 IP Youth Scoreboard indicate that the notion of online security can play a crucial role in communication strategies. The study indicated that a significant majority of youngsters would be ready to switch to legal sources if it would reduce a risk for their computers of getting infected with viruses or malware. Based on these insights the Observatory will explore the possibility of carrying out a **study on the correlation between piracy and malware** and other “Potentially Unwanted Programmes” designed to deceive or defraud citizens.
- **DW5. Orphan Works registry:** After becoming fully operational and publicly accessible in the end of October 2014, in 2015 the single online Orphan Works Database has been promoted to its final users, such as libraries, museums, archives, film or audio heritage institutions and public service broadcasting organisations, in order to raise awareness and increase the use of the tool. The objective is to promote the use of the tool and to create an Orphan Works database network consisting of key beneficiary organisations and competent national authorities from all Member States. To that end, a key event for this network took place in April 2015, followed by a train-the-trainer session in July 2015 to help beneficiary organisations and competent national authorities explain the functionalities of the database and to provide information about its correct use. Two new releases of the database in 2015 accommodated new requirements requested by the users. In 2016, further promotion of the use of the Orphan Works database and improvements of its functionalities through additional releases is envisaged.
- **DW6. Feasibility analysis for the establishment of a “Soleau” envelope digital system at EU level:** The purpose of this initiative is to analyse the feasibility of developing a digital platform enabling authors, inventors and other creators to upload their works to a central repository in a secure and confidential manner so as to keep evidence of the date of creation or invention. Once the technical and legal feasibility of the solution has been evaluated, the activity will be completed by carrying out an assessment of the impact and costs of such a solution.
- **DW7.** It has been claimed by some that the new **generic top-level domains (gTLD)** introduced by ICANN have the potential to cause problems for trade mark owners who could be forced to choose between using resources to acquire new top-level domains for defensive purposes or taking no action and risking potentially damaging registrations by other parties. The Observatory will evaluate whether it has a potential role in efforts to assess the existence and extent of such damage.

3.5 Activities planned for 2016 in the area Economics and Statistics

- **ES1. Quantification of infringement:** This is a key workstream for the Observatory. Following the publication of several sectorial studies during 2015, including perfumes and toilet preparations, clothing, footwear and accessories, sports goods, and toys and games, additional studies of the 15

sectors selected for analysis will be published in 2016, with the possible addition of other sectors, such as smartphones, depending on the availability of data (ES1.1).

At the same time, following the signing of a MoU with the OECD in late 2014, OHIM is collaborating with OECD to carry out a study designed to estimate the total value of counterfeit goods traded in the EU, using a methodology developed by OECD and employed in their 2008 study “The Economic Impact of Counterfeiting and Piracy.” This work started in late 2014 and has progressed considerably during 2015, with the final report to be published in 2016 (ES1.2). These two streams of studies of counterfeit goods will reinforce and supplement each other.

The feasibility of quantifying online sales of counterfeits in separate sales channels, especially online, will be evaluated as part of the follow-up of this study.

In addition, OHIM will, partly in collaboration with the European Commission’s Joint Research Centre (JRC) and partly through its own efforts, carry out studies of the extent and impact of infringement of digital content, such as music, film, TV programmes, streaming of events and e-books, with the first results to be published in the first half of 2016 (ES1.3).

The ultimate goal of this workstream is to develop an objective assessment of the extent and impact of infringement across the EU, including not only the loss of sales and employment suffered by the affected industries, but also broader societal impacts such as the loss of tax revenue, enforcement costs borne by the public and private sectors, and other quantifiable effects.

- **ES2. Repetition of the IP Contribution Study (industry-level):** in September 2013, the Office published the first IP Contribution Study, quantifying the contribution of IPR-intensive industries to the EU economy. This study will be repeated in 2016 in order to assess trends in that contribution. Community Plant Variety Rights will be included in the analysis alongside the five IP rights included in the original study. Furthermore, the possibility of improving the methodology used to quantify the contribution of copyright-intensive sectors will be examined.
- **ES3. Study of open licensing and the public domain:** in addition to copyright, increasingly creative works are made available under alternative types of licensing, including open source in the case of software or Creative Commons in the case of other types of works. Works can be in the public domain either because they have been placed there by their creators or because copyright has expired. In 2015, the Observatory is analysing the economic impact of public domain works in the film industry. Depending on the results, this work may be expanded to other types of content in 2016.
- **ES4. Study on infringement of Geographical Indications.** Like other IP rights, GIs are subject to infringement, the extent of which and the resulting consequences for consumers will be analysed in cooperation with the European Commission (DG AGRI), with the report to be published in 2016.
- **ES5. Research on trade secrets and their function in the economy:** As mentioned above, the proposed Directive on the protection of undisclosed know-how and business information (trade secrets) foresees a role for the Office in terms of monitoring the impact of the directive. In addition, trade secrets are of significant interest to the stakeholders of the Observatory, as they often complement other IP rights and are particularly important in certain sectors and to certain business segments, particularly SMEs. During 2015, a study using data from the periodic Community Innovation Surveys was carried out for Germany in cooperation with the Centre for Economic Research in Mannheim, and for other EU Member States, in cooperation with Eurostat. The report will be published in the first

half of 2016. Further research will also examine the extent and consequences of misappropriation of trade secrets.

- **ES6. Econometric analysis of IP Perception Study, IP Youth Scoreboard and SME Scoreboard data.** The dataset resulting from the IP Perception Study carried out in 2013 contains a wealth of information about the attitudes of EU citizens towards IP and IP infringement, coupled with demographic information about the respondents. In the report published in November 2013, this data was only analysed using descriptive statistics. This study aims to delve more deeply into the data to extract additional information from this material, for example which factors are related to a consumer's propensity to infringe IP rights. Preliminary assessment of the data has begun in the autumn of 2015, and the study will be carried out in 2016 (ES6.1). Depending on the results, a similar analysis will be carried out on the raw data from the Youth Scoreboard (ES6.2) and SME Scoreboard (ES6.3) studies which were carried out in 2015.

4. OBSERVATORY MEETINGS AND CONFERENCES IN 2016



4.1 Events

In 2016, the Observatory will continue to organise events to ensure that policymakers, enforcers and other relevant stakeholders are fully aware of relevant issues surrounding IP.

The main events planned for 2016 include:

- Two seminars organised jointly with Europol and Eurojust: one to be held during the spring and one to be held during the autumn.
- Three judges seminars, in February, May and November.
- Two regional seminars, in the spring and in the autumn.
- An EDB event in June.

4.2 Observatory Meetings

According to Regulation (EC) 386/2012, the Observatory Plenary, its public stakeholders and its private representatives meet at least once a year.

Following the entry into force of the trade mark reform legislation, which will have an impact on the governance of OHIM and hence the Observatory, there is a need to review the scheduling of meetings such as the Plenary. In addition, it became apparent during 2015 that a Plenary held within a month of the autumn Working Group meetings was not an optimal arrangement. Therefore, the schedule of the Working Group meetings have been adjusted for 2016, as shown below.

The dates for the main Observatory meetings in 2016 are as follows:

Meeting	Location	Date
Plenary meeting	Alicante	28-29 September 2016
Public sector stakeholders	Rotterdam	19-21 April 2016

4.3 Advisory Board Meetings

The President of OHIM is assisted by an Advisory Board, which provides recommendations in relation to specific Observatory issues to ensure and guarantee progress and where appropriate, to suggest necessary improvements. Two meetings are foreseen for 2016:

Meeting	Location	Date
Advisory Board	Brussels	4 February 2016
Advisory Board	Alicante	27 September 2016

4.4 Working Group Meetings

The working groups meet twice per year. The dates for the working group meetings in 2016 are shown below. Additional meetings can be convened if needed.

Meeting	First meeting (Alicante)	Second meeting (Brussels)
Enforcement	1-3 March 2016	29 November – 1 December 2016
IP in the Digital World	1-3 March 2016	29 November – 1 December 2016
Legal and International	1-3 March 2016	29 November – 1 December 2016
Public Awareness	1-3 March 2016	29 November – 1 December 2016
Statistics and Economics	1-3 March 2016	29 November – 1 December 2016

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ANNEX 1: LEGAL BASIS FOR THE ACTIVITIES OF THE OBSERVATORY



Regulation 386/2012 entrusts OHIM with a wide range of tasks relating to research, communication, spread of best practice, and support for enforcement of all types of intellectual property rights. The activities to be carried out under this Work Programme are all designed to comply with the mandate under which the Observatory operates. Accordingly, the table below lists the specific article of the Regulation that forms the legal basis for each activity or project listed in Section 3.

Activity	Article in Regulation 386/2012 or other legal basis
Public Awareness	
Youth Action Plan	2.1 (a) (b) (d)
Awareness campaigns	2.1 (a) (b) (d)
SME initiatives	2.1 (a)
Grant scheme for national awareness-raising initiatives	2.2 (f)
Communication of Observatory work	2.1 (all)
IP Education Network	2.1 (a) (b) (d)
IP Perception Study repetition	2.2 (b)
Enforcement	
Enforcement Database	2.1 (g), 2.2 (k)
ACIST and related reports	2.2 (b)
Grant to Europol to focus on online infringement	2.2 (o)
Study on control mechanisms for enforcement of GIs	2.1 (c)
Inter-agency Coordination Group	2.1 (g) (h), 2.2 (l)
Building Knowledge and Competences in IP Enforcement	2.1 (e), 2.2 (l)
European Intellectual Property Prosecutors Network	2.2 (l)

Framework to Reduce IP Infringements in Europe	2.2 (o)
Technical solutions to combat counterfeiting	2.1 (f), 2.2 (j)
Legal and International	
Case-law collection and analysis	2.2 (k), 5.1 (c)
Study on legislative measures related to online sales of counterfeits	2.2 (o)
Report on trade secret litigation trends	Art. 17.1 in proposed Trade Secrets Directive
Workshops and other events relating to evaluation of IPRED	2.2 (o)
Study on the costs of enforcing IP rights	2.2 (d)
Support the protection of IP rights outside the EU	2.2 (m)
IP in the Digital World	
Help consumers to differentiate legitimate from infringing websites	2.1 (a) (d)
Analysis of business models in copyright-based creative industries	2.2 (g)
Research on business models commonly used to infringe IP online	2.2 (a) (b)
Study on the correlation between piracy and malware	2.2 (d)
Orphan Works registry	Art. 3(6), directive 2012/28
Feasibility and impact analysis for the establishment of a "Soleau" envelope digital system at EU level	2.2 (e)
Assessment of generic top-level domains	2.2 (o)

Economics and Statistics	
Quantification of infringement	2.2 (d)
Repetition of the IP Contribution Study (industry-level)	2.2 (c)
Study of open licensing and the public domain	2.2 (g)
Study on infringement of Geographical Indications	2.2 (d)
Research on trade secrets and their function in the economy	2.2 (c) (o)
Econometric analysis of IP Perception Study, IP Youth Scoreboard and SME Scoreboard data	2.2 (b)

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ANNEX 2: OUTLINE OF OBSERVATORY BUDGET FOR 2016



The budget for the Observatory is part of the overall OHIM budget, and the detail is therefore contained in the OHIM budget as approved by the Budget Committee. The table below summarises the draft 2016 Observatory budget by main area.

Activity area	2016 budget (million EUR)
Public Awareness	3.8
Enforcement	4.5
Legal and International	0.8
IP in the Digital World	1.9
Economics and Statistics	0.5
Conferences and meetings	1.0
TOTAL	12.5

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