

# WORK PROGRAMME

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## 2017

European Observatory on Infringements of Intellectual Property Rights





## TABLE OF CONTENTS

<b>1.</b>	<b>INTRODUCTION</b> .....	<b>04</b>
1.1	STRUCTURE OF THE OBSERVATORY	
1.2	THE MULTIANNUAL PLAN	
1.3	ACTIVITIES IN 2016	
1.4	STRUCTURE OF THIS DOCUMENT	
<b>2.</b>	<b>WORKING GROUPS OF THE OBSERVATORY</b> .....	<b>09</b>
<b>3.</b>	<b>EXECUTION OF THE MULTIANNUAL PLAN IN 2017</b> .....	<b>10</b>
3.1.1	Activities planned for 2017 in the area of Public Awareness	
3.1.2	Activities planned for 2017 in the area of Enforcement	
3.1.3	Activities planned for 2017 in the area Legal and International	
3.1.4	Activities planned for 2017 in the area IP in the Digital World	
3.1.5	Activities planned for 2017 in the area Economics and Statistics	
<b>4.</b>	<b>OBSERVATORY MEETINGS AND CONFERENCES IN 2017</b> .....	<b>21</b>
4.1	EVENTS	
4.2	OBSERVATORY MEETINGS	
4.3	ADVISORY BOARD MEETINGS	13
4.4	WORKING GROUP MEETINGS	13
	<b>ANNEX 1: LEGAL BASIS FOR THE ACTIVITIES OF THE OBSERVATORY</b> .....	<b>23</b>
	<b>ANNEX 2: OUTLINE OF OBSERVATORY BUDGET FOR 2017</b> .....	<b>25</b>

# 1. INTRODUCTION

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## **1.1 STRUCTURE OF THE OBSERVATORY**

Regulation 386/2012 entrusts EUIPO with the European Observatory on Infringements of Intellectual Property Rights. The Observatory has 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.

The Observatory constitutes a representative network. In addition to the representatives of the 28 Member States, the Observatory includes 63 organisations representing the private sector, 7 organisations representing civil society and consumers, 10 MEPs and 10 European and international organisations and agencies that act as observers.

As indicated in Article 8 of Regulation 386/2012 in 2017 the European Commission will carry out in 2017 an evaluation to assess the operation of the Regulation, in particular as regards its impact on the enforcement of intellectual property rights in the internal market.

## **1.2 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 2017 in the framework of the Multiannual Plan. It includes projects that continue work begun in previous years, some of which will deliver their final results in 2017.

## **1.3 ACTIVITIES IN 2016**

Four years since the EUIPO was entrusted with the Observatory, and three years after the first studies were published, its work is playing a visible part in the debate on the future of intellectual property. Having mapped most aspects of the issues related to IP and its importance in the economy and society, it appears that a number of elements need to be addressed in order to efficiently and effectively fight against counterfeiting and piracy. These elements can be summarised as:

- Supporting a clear, efficient, modern legal framework;
- Continuing to build the knowledge base for use in policy formulation on the EU and national levels;
- Helping focus enforcement efforts directed against those who infringe the IP of legitimate rights holders;
- Raising awareness in society in general and, importantly, among young citizens and SMEs;
- Improving the knowledge about legal alternatives that correspond to the expectations of consumers.

The role of the Observatory is not to find solutions to all these questions. Its role is limited by Regulation 386/2012. However, it can contribute in all these matters. Some of the main activities that have been carried out in 2016 include, amongst others:

■ **The publication of several studies and reports**, including the study on digital advertising on suspected infringing websites, a study of international trade in counterfeit goods in collaboration with the Organisation for Economic Cooperation and Development (OECD), a study on infringement of GIs for wine, spirits, agricultural products and foodstuffs in the European Union, as well as several studies of the impact of infringement in specific industry sectors. A study on business models most commonly used to infringe IP online was also released and a report on the use of trade secrets was published in collaboration with the Centre for European Economic Research in Mannheim. Finally, a study on voluntary collaboration practices was carried out.

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■ **The Enforcement Database (EDB)** which was launched in 2014 now contains almost 400 companies, with more being added every month. 2016 saw the first Applications for Action sent electronically through the tool while more enforcement authorities have joined (e.g. Europol, OLAF and several national authorities). The second EDB Forum was held on 28-29 June, joining enforcers and rights holders from all over Europe.

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■ **The Anti-Counterfeiting Intelligence Support Tool (ACIST)** has grown from an initial phase showing information on detentions at the border in all EU Member States to also including harmonised internal market detentions from police authorities of a majority of Member States.

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■ **The Anti-Counterfeiting Rapid Intelligence System (ACRIS)** has been developed. The intelligence database 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 countries outside of the European Union.

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■ **Two major knowledge building conferences were held during 2016**, one on counterfeiting of foodstuffs, beverages and agricultural products, and the other on toys and computer games. Both conferences were organised in cooperation with Europol and Eurojust and were attended by police, customs and other enforcement authorities. There were also two regional seminars for enforcement officials, one in Lisbon (in cooperation with the Autoridade de Segurança Alimentar e Económica – ASAE) and one in the UK (in cooperation with the UKIPO), and a training session for police officials in Paris in coordination with CEPOL, the European Police College. A seminar on IPR enforcement with 130 participants from 27 EU Member States took place in February 2016 at EUIPO, organised in cooperation with European Commission (DG TAXUD). The second workshop of the European Intellectual Public Prosecutors Network in March was

co-chaired by the Observatory and Eurojust, and the successful Judges' Seminar series has continued to run, with three seminars in 2016 bringing together senior IP judges and prosecutors from every EU Member State, and occasionally from the USA.

■ As part of the **Youth Action Plan**, a qualitative and quantitative survey, the Youth Scoreboard, was completed to deepen the analysis of European youngsters' attitudes towards the purchase of counterfeit goods and consumption of illegal digital content. The report was published in April 2016. Another strand of the Youth Action Plan, the build-up of a community and an online dialogue on social media networks, supported by the Ideas Powered website, has been further developed. A workshop was organised in June, gathering a group of youngsters from different countries and backgrounds to reflect on the results of the Scoreboard, to share experience, and to discuss and identify, in an interactive format, relevant messages and approaches to convey the importance of intellectual property protection to youth across Europe, while discussing about how to expand the Ideas Powered initiative.

■ **The eleven awareness-raising initiatives** awarded with a grant in July 2015, were fully deployed in the course of 2016. These projects cover educational projects in schools or target young people in universities, through games and via social media. They also cover campaigns targeting consumers, such as in local markets and in cities.

■ **A new page was published on the Observatory's website** which provides answers to 15 of the most common questions European consumers have regarding copyright in the digital environment.

■ **"agorateka"**, a new online portal that helps consumers find legal digital content, such as music, films and TV, e-books and video games, from various European Union countries, was launched. agorateka currently has information on France, Latvia, Portugal and the United Kingdom, with more countries set to join from next year.

■ **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 rights but encounter real or perceived barriers. This research was published in June 2016. This assessment was an important step forward in understanding the needs of SMEs and in helping to prioritise IPR policies designed to meet those needs.

■ **A survey of enforcement of EU companies' IPR in third countries** was carried on behalf of DG TRADE. The results of the survey have been provided to DG TRADE which will use them as an input into its assessment of the global IPR protection scene.

The various studies, databases and tools developed during the past four years constitute the base for the continuing work of the Observatory. Thus, many of the activities in 2017 are a continuation of the activities of 2016 and prior years. The efforts initiated in 2016 to enhance the visibility of the Observatory work (especially the results of the studies) which have given very positive results, will be continued in 2017. At the same time the Observatory will work more closely with media partners and local IP authorities to increase outreach in all Member States. The main goals for 2017 are to reach more general public and in all Member States.

Many of these activities are carried out in cooperation with other European bodies and agencies, including various Directorates-General of the European Commission, Eurojust, Europol, 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 OECD.

#### **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.

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- Section 3 describes the activities the Office will undertake to implement the Multiannual Plan in 2017. Specifically, for each of the five Working Group subjects, the projects and activities to be executed to support the corresponding area during the year are briefly described.

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- Section 4 outlines the meetings and conferences planned for 2017.

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- Finally, the annexes provide information on the legal basis for the activities of the Observatory and on the 2017 budget.

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. IP Education Network), while the second digit refers to individual elements within that project (such as specific awareness-raising activities), where appropriate. In the case of activities or projects continuing from previous years, the code assigned in the 2016 Work Programme continues to be used. Conversely, if an activity from earlier years has been terminated, the corresponding code is not re-used; for that reason, gaps in the numbering sequence may appear.



## 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.



## 3. EXECUTION OF THE MULTIANNUAL PLAN IN 2017

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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 2017 to implement the Plan.

During the development of this Work Programme and in evaluating new initiatives proposed from stakeholders priority will be assigned to the projects and activities which will make a greater contribution to the achievement of the goals that are at the heart of the Observatory Multiannual Plan, to the completion or follow-up of ongoing work and to activities that are considered important to the European Commission and national authorities in formulating policy initiatives.

The activities described below will be carried out in coordination and collaboration with other agencies and international organisations in order to avoid duplication of effort and use the limited resources in the most effective manner, and taking advantage of the expertise and input of members of the relevant Working Groups.

The projects and activities for 2017 are set out below according to the Working Group with which they are associated.

### 3.1.1 ACTIVITIES PLANNED FOR 2017 IN THE AREA OF PUBLIC AWARENESS

**PA1. Targeting youth:** following the intelligence developed as part of the qualitative and quantitative research presented in the Youth Scoreboard and to capitalise on the community built up as part of the Ideas Powered social media accounts, the Ideas Powered Facebook and Twitter accounts and the website will be continued and developed with a view to generate interest/exchanges, leverage support and multiply the messages/narratives and campaigns designed nationally on the basis of the Youth Scoreboard. The evolution of Ideas Powered will be discussed in the Public Awareness Working Group.

A second edition of the youth workshop will be organised in 2017 to reflect on 2016 results, review narratives, build opportunities to engage young opinion leaders to improve understanding of IP among their peers and to ensure follow up.

**PA2. Support the deployment of awareness actions in Member States:** following the results of the Youth Scoreboard and other studies as well as the establishment of relevant narratives for the younger generation, awareness initiatives will be supported for deployment and implementation in Member States with the support of national and regional IP offices, in line with the Office's mandate to support the activities undertaken by national authorities, the private sector and EU institutions in the fight against infringements of

intellectual property rights. The projects implemented in 2016, following the grant scheme launched in 2015, will be thoroughly evaluated, and a new call for proposal will be launched which will incorporate lessons learnt and streamline projects' objectives and content according to the common narratives developed. Furthermore, national office initiatives will be supported through the existing cooperation schema. The evaluation of the proposed projects will be carried out with the highest possible degree of transparency and stakeholder involvement while respecting the strict EU financial regulation that applies to the Office.

**PA3. Helping SMEs protect their IP rights:** IPRs are essential business assets for SMEs, as shown by the firm-level IP Contribution Study published in 2015. However, few SMEs register IPRs for a variety of reasons, as shown by the SME Scoreboard. Besides, SMEs can be severely harmed by IPR infringement, as they often lack the appropriate resources and knowledge to protect and enforce their rights. On the basis of the results of the SME Scoreboard and the study of the valuation of IP assets (see ES10), specific follow-up actions or tools will be explored, notably to address information needs and IP diagnosis support of SMEs, in collaboration with the European Commission. The actions will supplement the existing reports and tools such as ACRIS, the country reports, and the surveys carried out for DG TRADE.

**PA6.** Following the IP in Education study, the Observatory is creating 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 to facilitate IP education and awareness. The network is of a voluntary and informal nature and its first meeting was held in March 2016 in Alicante. To follow up on input received from the network, a dedicated project has been created to develop, inter alia, good practices which could serve as examples for education ministries that wish to embed IP in different learning areas/subjects of current or new school curricula as well as new, modern, "fresh" material by involving both teachers and students.

**PA7. Repetition of IP Perception Study:** in the second part of 2016 the Office carried out the field work for the repetition of the study about the knowledge of and attitudes towards IP among EU citizens, carried out for the first time in 2013. The results of this work will be published at the beginning of 2017.

### 3.1.2 ACTIVITIES PLANNED FOR 2017 IN THE AREA OF ENFORCEMENT

**E1. Enforcement Database (EDB):** 2016 was a consolidation year for this flagship tool with re-engineering started in order to adapt to the ever increasing number of users and volume of data exchange and to correct technical problems. In 2017, work will start to enable right holders to renew their Application for Actions through EDB and better support the work of enforcement authorities by improving alerts and suspicious cases messages. Work to create interoperability with WCO's IPM system which was not possible to develop in 2016 due to the

consolidation work mentioned above, will also start in the course of 2017. Efforts will be made to continue enlarging the number of enforcement authorities using the tool.

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**E2. Anti Counterfeiting Intelligence Support Tool (ACIST):** Work will continue to complete the collection of data concerning detentions within the internal market by requesting the competent authorities to provide available statistical data in compliance with Article 5 of Regulation 386/2012. Furthermore, the possibility to connect ACIST with COPIS, thus enabling a regular flow of data on detentions carried out at EU borders, will be analysed.

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**E3. Data collection, analysis, reporting:** In 2017, 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 (E3.1). The Office will also continue to produce border seizure trend reports and will work on an update of the joint Europol-EUIPO Situation Report on Counterfeiting in the European Union that was published in 2015 (E3.2). Finally, a mapping of national authorities dealing with IPR enforcement and of the databases they use EU will be carried out (E3.3).

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**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. The grant agreement signed with the Office at the end of 2015 enabled to establish the Europol IP Crime Coordination Centre in 2016. In 2017, the Office will continue financing the activities of the Centre, on the basis of the current grant of 500 000 EUR, meant to increase information gathering and monitor trends in the field of online IP crime and related areas. The Office will be represented on the Advisory Board of the Centre as well. A specific item will be included in the agenda of all Enforcement Working Group meetings so that Europol can report on progress and Observatory representatives can provide their feedback and input (E4.1).

The Commission's Communication "Strengthening Europe's Cyber Resilience System and Fostering a Competitive and Innovative Cybersecurity Industry", suggests that the Office, with the support of ENISA, and EC3 at Europol, the Commission will — in dialogue with private stakeholders — set up trusted channels for voluntary reporting of cyber theft of trade secrets. This in order to make it possible to compile anonymised and aggregated data at EU level. In the course of 2017, the Office will carry out preparatory work to analyse misappropriation of trade secrets through cyber means, with a view to taking a decision on whether to include a specific initiative in the Work Programme for 2018 (E4.2).

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**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, which will also look at best practices that would help controllers to better work together across the EU, was started in 2016 and should be published in the course of 2017.

**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 2017, Europol 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. The intent in 2017 is to define a key project on which the group will concentrate during the year.

**E7. Building Knowledge and Competences in IP Enforcement:** Building on the successful events organised in the last years, 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 2017 (E7.3). Two regionally based workshops throughout the EU will be developed, targeting local judges, prosecutors, customs and police (E7.4 and E7.5).

**E8. European Intellectual Property Prosecutors Network:** Building on the conclusions from the workshops held in 2015 and 2016, specific initiatives will be undertaken in 2017 to promote stronger networking, knowledge building and experience sharing between European prosecutors involved in IP crime cases, in cooperation with Eurojust. A number of comprehensive case studies will be prepared in cooperation with the United Nations Interregional Crime and Justice Research Institute (UNICRI) (E8.1).

**E9. Virtual IP Training Centre:** The Office will work together with CEPOL and in cooperation with the European Commission (DG TAXUD, OLAF, DG HOME) and other EU agencies (such as Europol) on the creation of the Virtual IP Training Centre for enforcement authorities. The Centre is an online platform which will grant EU enforcers (police, customs, market inspectors, etc.) with an unparalleled access to a comprehensive training resource covering IP rights, their infringement and enforcement, as well as to other relevant material and information such as the Observatory studies quantifying the impact of IP infringements.

### 3.1.3 ACTIVITIES PLANNED FOR 2017 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 already carried out, 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 national and regional IP offices.

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**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 2017 on the basis of the already established terms of reference.

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**LI3. Report on trade secret litigation trends:** Directive 2016/943 of 8 June 2016 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 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 started collecting data with a view to producing a report in 2017/2018 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.

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**LI5. Study on the costs of enforcing IP rights:** one of the reasons why SMEs do not own or use IP rights may be related to the costs associated with enforcement of such rights. Building on work carried out in 2016, the Office will analyse 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 (LI5.1).



Furthermore, a mapping of existing mediation/arbitration services in the field of IP will be prepared as part of a feasibility study on the creation of a mediation service at EUIPO that the Office intends to carry out in the framework of its Strategic Plan 2020 (LI5.2).

Finally, a study on the possible benefits of IP specialised courts will be initiated in 2017. Study cases will be made to analyse existing specialised courts in Member States as well as experience in third countries (LI5.3).

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■ **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.

■ As the development of the "Anti-counterfeiting Rapid Intelligence System – ACRIS" has finished, 2017 will be an important year for the implementation of the system. The tool should not only be used by Enforcement Database users, but also associations and other actors helping the right holders enforce their rights abroad. 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 but also particularly DG TRADE as a main source of information for their work. Further developments in terms of usability will be done, and in particular the decision repository, once the possibility to publish this kind of data is clarified (LI6.1).

■ A network of IP experts in EU Delegations that deal with intellectual property matters was created in 2014. In 2017, 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). The network meets once a year.

In addition to the above activities, the Observatory will support the international EU-funded projects for which EUIPO is the implementing agency, including IP Key and ECAP projects, and the new programmes in India and Latin America, with input on issues related to IPR enforcement and infringement.

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■ **LI7. Approach to collecting data and information from Member States:** Many of the studies mentioned above involve the collection of data or information from Member States. This data has to be supplied or verified by national authorities in order to be considered sufficiently reliable. Notwithstanding the obligation foreseen by Article 5 of Regulation 386/2012, experience has shown that this can sometimes present difficulties for Member States. The purpose of this activity is to identify these difficulties in consultation with Member States and to propose measures to be taken by the Observatory and national authorities that would produce improvements.

### 3.1.4 ACTIVITIES PLANNED FOR 2017 IN THE AREA IP IN THE DIGITAL WORLD

#### **I 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. This means that each year, millions of citizens are 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 and finished in 2016 with the participation of four Member States. In 2017, the tool, now named agorateka, will be deployed to further Member States. A consumer-friendly guide on Frequently Asked Questions regarding copyright has been published in 2016 and will subsequently be updated.

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#### **I DW2. Analysis of business models in copyright-based creative industries:**

Article 2.2(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 2015/2016, a test case was undertaken to simulate internet searches by consumers in several Member States for legal offers for music. Following the assessment of the results, in 2017 the test case may be extended to additional Member States. In addition, the possibility of extending it to other content types will be evaluated.

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#### **I 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, finalised in 2016, provides an overview of the different infringing models used in the attempt to gain direct or indirect economic advantage. A taxonomic model and business model canvas was developed that allows for the classification of the already identified and possible future business models. As a second phase, in 2016, a study was carried out on a specific business model misdirecting internet traffic to IP infringing web shops under domain names purchased in bulk from expired/deleted domain names. An initiative for 2017 may be the creation of an interactive multilingual tool using the taxonomic matrix and business model canvas developed in the previous study to help enforcement authorities and right holders become more aware of business models (existing or new) with which they are faced.

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**I 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 began, in 2016, a **study on the correlation between piracy and malware** and other “Potentially Unwanted Programmes” designed to deceive or defraud citizens. The study is expected to be finalized in 2017.

**DW5. Orphan Works registry:** In 2017, further promotion of the use of the Orphan Works database and improvements of its functionalities through additional releases is envisaged. The network of key beneficiary organisations and competent national authorities from all Member States will continue to be strengthened through coordination activities as well as further releases facilitating bulk uploads for the beneficiary organizations.

**DW6. Feasibility analysis for the establishment of a Digital Deposit System (“Soleau” envelope) at EU level:** In 2016, 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 was analysed. Building on this work, in 2017, the possibilities for creating a digital deposit system at EU level will be explored further.

**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. Following consultations with experts that took place in 2016, the Observatory will continue to evaluate whether it has a potential role in efforts to assess the existence and extent of such damage and to analyse the different rights protection mechanisms available.

**DW8.** In 2017 preparatory work related to the role of the Observatory in setting up a registry of **out-of-commerce works**, envisaged in the European Commission’s proposal for the modernisation of the EU copyright framework (published in September 2016) will be carried out.

### 3.1.5 ACTIVITIES PLANNED FOR 2017 IN THE AREA ECONOMICS AND STATISTICS

**ES1. Quantification of infringement:** This is a key workstream for the Observatory. Following the publication of several additional sectorial studies during 2016, including jewellery and watches, handbags and luggage, recorded music, spirits and wine, and medicines, additional studies will be published in 2017, in particular a study of counterfeit smartphones, in collaboration with the International Telecommunications Union (ES1.1).

Following the publication of the joint study with the OECD on international trade in counterfeit goods in April 2016 and the follow-up study of production versus transit economies, further joint EUIPO/OECD studies are planned for 2017 to exploit the high-quality data collected for the 2016 study. In particular, studies are planned in two areas: the online trade of counterfeit goods and the role of Free Trade Zones in counterfeit trade (ES1.2). Further joint studies will be defined by the EUIPO and OECD and will be submitted for input to the Working Group.

These two streams of studies of counterfeit goods will reinforce and supplement each other.

In addition, EUIPO will 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. This research will be carried out in collaboration with other organisations to the extent possible (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.

Once the studies referred to in this section have been completed, a synthesis report on infringement quantification, combining the results of the sectorial and OECD studies with the studies of infringing business models (DW3, above) and the study on infringement of GIs carried out in 2016, as well as the relevant portions of the IP Perception and Youth Scoreboard surveys, will be published (ES1.4).

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**ES3. Study of open licensing:** In 2016, the Observatory analysed the economic impact of public domain works in the film industry. This work may be expanded to other types of content in 2017, for example the value of information sources such as Wikipedia, or the value of open-source software, and to issues such as infringement or misuse of open source content.

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**ES6. Econometric analysis of IP Perception Study, IP Youth Scoreboard and SME Scoreboard data:** The datasets from these studies contain a wealth of information about the attitudes of EU citizens and SMEs towards IP and IP infringement, coupled with demographic information about the respondents. In the reports published so far, 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 (including pricing and availability of legal content) or which factors determine an SME's propensity to register IP

rights. Preliminary analysis was carried out in 2016, and it will be developed further in 2017, including combining the survey data with other data sets.

**ES7. Use of IPR bundles by European firms:** The studies on trade secrets in Germany and the EU as a whole that were carried out in 2016 demonstrated that firms often use a combination of IP rights and trade secrets to protect their innovations. This study will explore further the use of such IPR bundles, using data from the Community Innovation Survey as well as data from the EUIPO, EPO and national and regional IP offices. Together with the trade secret study, this study will provide a comprehensive picture of the appropriability mechanisms employed by companies in the EU.

**ES8. The link between IPR and innovation:** In the past, studies have examined the role of patents as indicators of innovative activities. A few studies have also looked at the relationship between trade marks and innovation, and none have examined the role of designs in this context. Using the data from the CIS and those from EUIPO and national and regional IP offices, the link between those types of IPR (that is, trade marks and designs) and innovation would be examined in greater depth. This would provide another element in the overall picture of the economic value of IP rights.

1 - "Satellite Accounts" is the standard technical terminology used to indicate the type of measurement frameworks this initiative intends to develop. See, for example: <https://stats.oecd.org/glossary/detail.asp?ID=2385>.

**ES9. Creation of a measurement framework (Satellite Accounts<sup>1</sup>) for EU creative industries:** The purpose of this activity is to assess the feasibility of building an EU Satellite Account for the Creative industries and to examine the potential for integrating estimates of Intellectual Property (IP) infringement into National Accounts measurements. This analysis would build on prior uses of Satellite Accounts in introducing measurements to the National Accounts, including, where relevant, a focus on Creative industries legitimate output and infringement measurements, following, for instance, the work of UK Music and that of NESTA and DCMS on Creative Industry Economic statistics. As a starting point, a feasibility study will be carried out.

**ES10. Valuation of IP assets:** The purpose of this research will be to develop a methodology for valuing a company's stock of trade marks and other IPRs by constructing an econometric model that could estimate the value of a company IPR based on observable characteristics of the company. This work could be based on the data from IP Contribution study, and would be coherent with the Commission's earlier efforts in the context of the Expert Group on Intellectual Property Valuation of IP carried out in 2013 and 2014. This is especially relevant for SMEs for the purposes of insuring IP (against loss/theft) and securing finance. While surveys of brand values are published periodically by consulting firms, those surveys focus exclusively on the large, global brands. In carrying out this work, care will be taken to avoid conflating the value of the brand with the value of the associated trade marks. Part of this work will be covered by a study on mapping SME needs as regards IP on which the Office is embarking in cooperation with the Commission.

**ES11. Measurement of KPIs:** As from 2017 the Observatory will help the European Commission in measuring the KPIs related the MoU on the sale of counterfeit goods over the internet signed in June 2016.

## 4. OBSERVATORY MEETINGS AND CONFERENCES IN 2017

### 4.1 EVENTS

In 2017, 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 2017 include:

- Two seminars organised jointly with Europol and Eurojust: one to be held during the spring and one to be held during the autumn.
- Two judges' seminars, in May and September and a judges' symposium in November.
- A prosecutor's network event during the autumn organised jointly with Eurojust.
- Two regional enforcement seminars, in the spring, and one regional judges' seminar, in February.
- An international IP enforcement summit in June, organised in cooperation with the German Federal Ministry of Justice and Consumer Protection.

### 4.2 OBSERVATORY MEETINGS

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

The dates for the main Observatory meetings in 2017 are as follows:

Meeting	Location	Date
Plenary meeting	Alicante	27-28 September 2017
Public sector stakeholders	Malta	28 February – 2 March 2017

### **4.3 ADVISORY BOARD MEETINGS**

The Executive Director of EUIPO 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 2017:

Meeting	Location	Date
Advisory Board	Brussels	28 March 2017
Advisory Board	Alicante	26 September 2017

### **4.4 WORKING GROUP MEETINGS**

The Working Groups meet twice per year. The dates for the Working Group meetings in 2017 are shown below. Additional meetings can be convened if needed.

Meeting	Location	Date
Enforcement	3-5 May 2017	28-30 November 2017
IP in a Digital World	3-5 May 2017	28-30 November 2017
Legal and International	3-5 May 2017	28-30 November 2017
Public Awareness	3-5 May 2017	28-30 November 2017
Economics and Statistics	3-5 May 2017	28-30 November 2017

## ANNEX 1: LEGAL BASIS FOR THE ACTIVITIES OF THE OBSERVATORY

Regulation 386/2012 entrusts EUIPO 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
<b>Public Awareness</b>	
Youth Action Plan	2.1 (a) (b) (d)
Support for awareness campaigns in Member States	2.1 (a) (b) (d)
Grant scheme for national awareness-raising initiatives	2.2 (f)
Helping SMEs protect their IP rights	2.1 (a)
IP Education Network	2.1 (a) (b) (d)
IP Perception Study repetition	2.2 (b)
<b>Enforcement</b>	
Enforcement Database (EDB)	2.1 (g), 2.2 (k)
ACIST	2.2 (b)
Data collection, analysis, reporting	2.2 (b)
Special focus on online infringement including grant to Europol	2.2 (o)
Study on control mechanisms for enforcement of GIs	2.1 (c)
Reinforced cooperation (Interagency Coordination Group)	2.1 (g) (h), 2.2 (l)
Building Knowledge and Competences in IP Enforcement	2.1 (e) (h), 2.2 (l)
European Intellectual Property Prosecutors Network	2.2 (l)
Virtual IP Training Centre	2.1 (e), 2.2 (l)
<b>Legal and International</b>	
Case-law collection and analysis	2.2 (k), 5.1 (c)
Study on legislative measures related to online IPR infringements	2.2 (o)
Report on trade secret litigation trends	Art. 17.1 in Trade Secrets Directive (2016/943)
Study on the costs of enforcing IP rights	2.2 (d)
Support the protection of IP rights outside the EU	2.1 (h), 2.2 (m) in conjunction with Art. 123(b)(2) EUTMR
Approach to collecting data and information from Member States	2.2 (a) (b) (c), 5.1 (b)

Activity	Article in Regulation 386/2012 or other legal basis
<b>IP in the Digital World</b>	
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 most 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)
Generic top-level domains	2.2 (o)
<b>Economics and Statistics</b>	
Quantification of infringement	2.2 (d)
Study of open licensing	2.2 (g)
Econometric analysis of IP Perception Study, IP Youth Scoreboard and SME Scoreboard data	2.2 (b)
Use of IPR bundles by European firms	2.2 (c) (o)
Link between IPR and innovation	2.2 (c)
Satellite accounts for creative industries	2.2 (c) (d)
Valuation of IP assets	2.2 (c)
Measurement of KPIs	2.1 (b), 2.2 (b)

The events and meetings listed in section 4 are provided for in Articles 2.2 (i) and 4 of Regulation 386/2012.



## ANNEX 2: OUTLINE OF OBSERVATORY BUDGET FOR 2017

The budget for the Observatory is part of the overall EUIPO budget, and the detail is therefore contained in the EUIPO budget as approved by the Budget Committee. The table below summarises the draft 2017 Observatory budget by main area.

Activity area	2017 budget (million EUR)
Public Awareness	1,025,890.00
Enforcement	4,137,235.42
Legal and International	396,192.00
IP in the Digital World	922,070.00
Economics and Statistics	928,843.00
Conferences and meetings	633,597.00
<b>TOTAL</b>	<b>8,043,827.42</b>



# WORK PROGRAMME

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## 2017

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European Observatory on Infringements of Intellectual Property Rights



# WORK PROGRAMME 2017

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European Observatory on Infringements of Intellectual Property Rights

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