

## **SUMMARY**

### **Observatory – Public Sector Representatives Meeting**

Rotterdam

19 – 20 April 2016

## List of Participants:

### Public Sector Representatives:

Austria	Federal Ministry of Finance	Gerhard Marosi
Belgium	Federal Public Service Economy	Jannik Grooten
Bulgaria	Patent Office of the Republic of Bulgaria	Evgeni Hristov
Croatia	State Intellectual Property Office	Ana Rački
Cyprus	Department of Customs and Excise of the Republic of Cyprus	Niki Protopapa
Czech Republic	General Directorate of Customs	Markéta Krčmářová
Denmark	Danish Patent and Trademark Office	Barbara Suhr-Jessen
Estonia	Ministry of Finance	Piret Liira
Finland	Finnish Customs	Riikka Pakkanen
France	National Institute of Industrial Property	Stéphanie Leguay
France	Ministry of Culture and Education	Ludovic Julié
Germany	Federal Ministry of Justice and Consumer Protection	Harald Schoen
Greece	Hellenic Industrial Property Organisation	Ioannis Kaplanis
Hungary	Hungarian Intellectual Property Office	Mónika Németh
Ireland	Intellectual Property Unit, Department of Jobs, Enterprise and Innovation	James Kelly
Italy	Ministry of economic development - Italian Patents and Trademarks Office	Francesca Cappiello
Latvia	Patent Office of the Republic of Latvia	Ieva Abelite
Lithuania	Ministry of Culture Republic of Lithuania	Simona Martinavičiūtė
Luxembourg	Customs General Directorate	Daniel Koener
Malta	Malta Customs Department	George Agius
Netherlands	Ministry of Economic Affairs	Angela van der Meer
Poland	Ministry of Culture and National Heritage	Maria Andrzejewska
Portugal	Portuguese Institute of Industrial Property	Ana Bandeira
Romania	Public Ministry - Prosecutor's Office attached to High Court of Cassation and Justice	Monica Pop
Slovakia	Financial Directorate of the Slovak Republic, Customs Division	Henrieta Bakova
Spain	Spanish Patent and Trademark Office	Cristina Fernández
Sweden	The Swedish Patent and Registration Office	Benjamin Winsner
United Kingdom	UK Intellectual Property Office	Elizabeth Jones

### Observers:

EFTA	European Free Trade Association	Grímur Jóhannsson
EFTA - Iceland	Icelandic Patent Office	Jón Gunnarsson
EFTA - Norway	Norwegian Industrial Property Office	Hedvig Bengston



EFTA - Switzerland	Swiss Federal Institute of Intellectual Property	Juerg Herren
OECD	Organisation for Economic Co-operation and Development	Piotr Strykowski
UNICRI	United Nations Interregional Crime and Justice Research Institute	Marco Musumeci

**Representative from the European Commission:**

DG GROW Jorge Novais

**Representatives from EUIPO:**

Director of the Observatory	Paul Maier
Observatory	Andrea Di Carlo
Observatory	Nathan Wajsman
Observatory	Alexandra Poch
Observatory	Vincent O'Reilly
Observatory	Claire Castel
Observatory	Erling Vestergaard
Observatory	Mario Gradi
Observatory	Stephanie Rowland

**INTRODUCTION AND WELCOME SPEECHES**

The chair, Paul Maier, opened the meeting, welcomed the participants and gave the floor to Angela van der Meer, who further welcomed participants to Rotterdam for the Observatory public sector representatives meeting, being held in the Netherlands on the occasion of the EU Presidency. There was a *tour de table* for participants to introduce themselves.

**REVIEW OF OBSERVATORY ACTIVITIES**

The chair gave an overview of the ongoing Observatory work, as set out in the summary of activities and the draft 2015 Observatory Annual Report that participants had received in advance of the meeting. Stakeholders were invited to provide feedback on the report and endorse it in view of its submission to the management Board of EUIPO for adoption.

A number of countries congratulated the Observatory for the amount of work carried out, and there was general endorsement of the draft annual report.

**UPDATE FROM EUROPEAN COMMISSION**

The representative of the European Commission (DG GROWTH) provided an update on their latest topics:

The unitary patent project has advanced since the public sector representatives meeting of last year. The legal actions pending before the Court of Justice have been dismissed and there are developments in terms of ratification, with ten member states ratifying the Unified Patent Court Agreement. The work of the Select

Committee is almost complete: it has adopted the rate of the renewal fees for the unitary patent and the distribution key. In addition the Preparatory Committee agreed on the rules on court fees and recoverable costs for the UPC. The issue of how the unitary patent will work together with national patents still has to be considered, for example as concerns supplementary protection certificates, which are national-based.

There has been good output regarding the pending trade secrets file. The previous week a large majority had voted in favour of it in the European Parliament. The text, which includes a role for EUIPO on litigation trends, still has to be adopted by the Council. This is likely to take place on 15 May.

An external study is looking into a long due analysis of the design system for which there are no preconceived ideas on what should be changed. The issue of spare parts is one that will be tackled.

There is a possibility that the work on non-agricultural GIs may give rise to a future legislative initiative, as recommended by the European Parliament in the recently-adopted report.

Work on the reform on copyright is ongoing.

The IP legal framework is an integral part of the Single Market Strategy adopted by the Commission in October last year. In this respect, it has been very useful for the Commission to be able to use the reliable data contained in the work the Observatory is carrying out.

There is an ongoing review of the enforcement legal framework. The Commission will favour a follow the money approach. Studies are being made by an external contractor and workshops will be carried out. Some of the issues being dealt with are how cross-border injunctions are working, as well as damages and the costs of litigation.

There are several work streams regarding IP for SMEs, which is another element within the Single Market Strategy, and for which data from the Observatory firm performance study is being used. The Commission is working closely with national offices with a view to seeing how information reaches SMEs and to try to clarify how SMEs can access national and regional funds, as well as the possibility of using mediation and arbitration.

The Commission will be carrying out an evaluation on the Observatory to be released in June next year. Stakeholders will be consulted on the work they have been carrying out with the Observatory, either with a questionnaire or a face-to-face meeting. The terms of reference on how the assessment will take place are currently being discussed with an external contractor.

Participants were given the floor for questions and comments.

#### **QUANTIFICATION OF IP INFRINGEMENT**

The results of the joint OECD-EUIPO study of counterfeit trade that had been launched the previous day in Paris were presented. The study is based on

voluminous and high quality data on customs seizures from the World Customs Organization (WCO), the European Commission (DG TAXUD) and the US Department of Homeland Security.

The increasing importance and economic value of IP makes trade in counterfeited and pirated goods a very profitable activity. Since the economic crisis there has been a revival of trade. This, coupled with the emergence of global value chains and a boom in e-commerce, provides counterfeiters with opportunities from which they have taken advantage.

To analyse trade in counterfeits, statistics on seizures from customs was analysed. The methodology and information from OECD's 2008 study was used, but the higher quality data available for this new study allowed for improvements in the methodology and the data was supplemented with interviews with customs officials that were carried out in order to gain in depth knowledge of their working methods so as to better understand the data. Some key numbers include the fact that global trade in fake goods in 2013 was worth as much as 461 billion US dollars, or 338 billion euros (the combined GDP of Ireland and the Czech Republic), and 85 billion euros of EU imports, which is up to 5% of the total of EU imports. High-income countries are more targeted than countries with lower incomes.

The trade routes are complex, with many transit points. All countries are involved to some extent either as markets for counterfeits, transit points, or as producing countries, but China dominates by far as a source of counterfeit goods, followed by Hong Kong. Emerging economies dominate production of counterfeits. Any IP-protected product can become a target for counterfeiters, from high-end consumer luxury goods, such as watches, perfumes or leather goods to ordinary consumer products such as toys or foodstuff, and even highly sensitive pharmaceutical products and business-to-business products such as machine spare parts.

US brands are the most frequently targeted, followed by Italian, French, Swiss or Japanese brands. However, all innovative companies that rely on IPRs are at risk, and also Chinese companies are targeted. There is growth in small shipments, due to lower costs of express services, improved e-commerce and lower risks in case of seizure. Consequently, small shipments are now more frequently used by counterfeiters.

The next steps are to try to analyse in more depth both the location of production companies and transit points.

Stakeholders congratulated the Observatory and the OECD on the report and reference was made by some to studies being prepared on the impact of counterfeiting at national level.

The Observatory then gave an overview of the main data of sectorial quantification of IP infringement studies carried out by the EUIPO to date. UKIPO was thanked for the review carried out on the music report, due to be published in May. After the music report, the report on wine and spirits will be released in early July. As regards smartphones, some data has already been received from the ITU and work will commence soon.

Stakeholders were invited to provide feedback on the reports presented and to consider how they could help disseminate the results in their respective countries.

### **BUSINESS MODELS ONLINE**

The Observatory gave an overview on the main business model applied in the online environment with regard to IPR infringement, which include B2B, B2C and C2C models, payment services, App stores, online advertising and cloud computing, amongst others. The main revenue sources, according to an OECD study on taxation challenges in the online environment, include advertising, digital content purchase, selling of goods, subscriptions and services, licencing of content and technology, and selling of user data.

As concerns the use of illegal business models, a current Observatory study soon to be finalised analysed 25 distinct online business models using a newly developed 'Taxonomic Matrix' and a 'Business Model Canvas' that has been created as a versatile instrument that could also be used to analyse any future online business models. It is clear that many legal and illegal business models are, to a large extent, the same, but the illegal business models sometimes apply clearly deceptive marketing practices, and some have been specifically developed to intentionally benefit from IPR infringement. It has been found that vendors often conceal identity, expand (or move) to Darknet and show resilience against enforcement action. It has also been found that the borderline between IPR infringing activities and traditional cybercrime is blurring.

Revenue in these illegal business models is gained from payment for goods or services, subscription fees, donations, different forms of advertising and affiliate marketing. There is also clearly fraudulent revenue gained by phishing, malware injection and ransomware payments that have no parallel in the legal economy.

Stakeholders were informed of the scope of phase 2 of the research study on online business models infringing IPR, which will look at the re-acquisition of deleted domain names and their use for web shops susceptible to IP infringement, as well as the resilience to enforcement action of such web shops. The scope of phase 2 was discussed at the working group meetings in March 2016.

The Observatory also reminded that the study *Digital Advertising on Suspected Infringing Websites*, published in January, showed that 25% of advertising on such websites originates from 25 companies. About 45% consists of malware ads placed by only 10 primary advertising intermediaries. The proposal for further research into this phenomenon already has been discussed in the working groups and the suggestion is to carry out a study that combines the examination of suspected copyright infringing websites to see how they potentially disseminate malware (by way of advertisement, copyright infringing digital content, media players, codecs' or any other means).

Stakeholders were invited to provide feedback and share their views on how the Observatory can further develop work in the area of online infringing business models. It was noted that although it is difficult to gather evidence from around the world, it is vital to disrupt the chain and to raise awareness of these illegal business models. It was also suggested to take a closer look at how newspaper pages are affected and if they are delivering malware. Attention should also be given to the new generic top level domains that are currently being released by ICANN.

The Observatory then gave an overview on the status of the European aggregator of legal offers, an important project for the continued development of legal business models used in the area of digital content, as well as consumer awareness on the existence of legal offers in their respective countries. IT development is ongoing and, following the testing over summer, the tool should go live with the four pilot countries (France, UK, Latvia and Portugal) in October.

Stakeholders were given the floor to indicate their potential interest in participating and/or to specify a relevant contact person for the Observatory to investigate a potential participation of their respective member state. Some stakeholders provided direct feedback, others stated that they would find out. In this context, the Observatory agreed to send stakeholders an e-mail with information on the project to facilitate the identification of the relevant national contact person.

### **YOUTH AND SME SCOREBOARD – WORKSHOP**

The group was split up into four to debate on possible proposals of how to maximise the use of information generated by the Observatory scoreboards at member state level. Two groups dealt with the IP youth scoreboard and two groups with the IP SME scoreboard. After the workshops, there was a plenary session with all participants, during which the rapporteurs indicated the following most relevant findings and action points:

#### IP youth scoreboard

From an early age, youngsters are used to having free access to music, TV shows and films, and this mind-set is difficult to change as regards consumption of digital content. Illegal downloading is as easy as or easier than legal downloading and the little money available to youngsters they want to spend on other things. Consumers' habits have changed considerably over the last years, and many want to have access to new film/series/games straight away.

When asking the question “what can be done?” one of the first messages to take into account is that “no one size fits all”, as there is a different perception and knowledge of IPR in different countries, as well as different elements for digital content and counterfeits. No one action is going to be sufficient to fight against the problem, but rather a combination. Some elements to bear in mind:

- There should be an identification of elements that are important to youngsters, which should then be divided into digital and physical: price, safety, risk, quality.
- The messages to be transmitted – preferably real stories by SMEs with positive business models and local artists and creators – should be simple and positive and not patronising nor manipulative.
- There is a need to fight the cultural mind-set “it’s on the internet so I can get it for free” referring to the consequences for creators and the respect for creation and quality (“I love original” or “I love real”).
- Reputation and image is important for youngsters. Recommendations from friends and peers is a strong element to take into account, and the image issue of what is cool and what is not is a strong message, especially for physical goods, which creates opportunities for local creators.
- The issue is not all about consumers; industry needs to adapt to meet customers' expectations. Nevertheless, appropriate legal sanctions should



exist and access to illegal offers should be blocked (whilst avoiding a scapegoat effect). A good example of a business model evolving well can be found in the games' industry, and one that needs to do more to meet consumers' expectations seems to be the broadcasting industry.

- All education and awareness raising should be part of a bigger picture and should be done on a long term basis. IP should be included in the basic values that are taught, not only for youngsters, but also for parents and teachers.
- Personal safety is important to youngsters, so education on the existence and effects of malware, spyware, and credit card fraud, which is not so well known, should be widely used.

### IP SME scoreboard

The main insights from the SME scoreboard show that the numbers are relevant for each country to organise the follow-up plans, and that SMEs using IP receive a very positive impact on their business. This is good starting point for these SMEs in that they are open to receiving information. However, there is also an identified reluctance or ignorance of many companies to IPRs, and the added difficulty of making IP a priority for them, as many do not have the time nor the means. They do not express an intention to receive information as they do not see the business relevance of IP. The scope of IP training should be amplified for small companies and it should be inserted into the whole business process, such as in start-up information, at secondary level education and at business schools. The communication about IP should stress its value as an asset that can bring about different benefits, such as during negotiations with bigger companies.

As with youngsters, no solution fits all member states as regards providing information to SMEs. Chambers of commerce, for instance, would be a good starting point for companies in Germany, as they can offer training, but in some countries this is not the case. The majority of SMEs work with accountants or sector-specific associations, so these could be targeted for receiving training. Other ways are via helpdesks, simple websites, finding partners to promote IP, and tailor-made courses for member states to educate SMEs, including methodologies on how to present IPR to SMEs. It could also be relevant to provide concrete example or case studies to illustrate the importance of IP in an SME.

The monitoring of markets could be interesting for looking at more closely, and insurance schemes to provide assistance in court cases is another option to look into for IPR infringement cases. The legal system does not necessarily help SMEs, but, although it is difficult, there is a lot to gain in mediation. It was also mentioned that the UK is looking into IP lawyers providing pro bono work to SMEs.

### **WRAP UP AND AGREED ACTIONS**

The Observatory representative asked participants to reflect if there were any expectations for the next steps that could be taken and enumerated the conclusions of the day, which were as follows:

- Members states endorsed the draft annual report;
- The Observatory will look into the data that has been collected for the OECD-EUIPO study, especially the production countries and transit, for possible follow-up studies;
- As regards online business models, the Observatory will look into how new top level domains enter into the equation;



- The Observatory will send an email to the public sector representatives to provide information and to ask who the contact person is for the aggregator;
- The workshop format is a model that could work in future for analysing reports and discuss follow-up actions.

### **COLLECTION OF DATA IN MEMBER STATES**

The Observatory explained the different methods in which data is collected in member states for the various tools and activities in its work programme. The presentation focussed on the crucial role of the public sector representatives in this data collection and how this could be improved, as in some instances there is a gap in the feedback received from some countries. A number of past and current examples were given, such as the collection of information for the inter-agency report, the work carried out on storage and destruction, and ACIST.

The floor was then given to representatives to ask what they think could be done to improve the situation for the Observatory to receive sound, objective, clear information. There were a number of comments from representatives, who reminded of the difficulty of collecting data from different bodies in their countries. They stated the need for the Observatory to indicate clearly, from the beginning, what data is expected, as well as the help that a standardised procedure would offer.

The Observatory will analyse the feedback received to make the process for requesting data and information more effective.

### **STAKEHOLDER PRESENTATIONS**

The Italian *Ministero dello Sviluppo Economico* presented Carta Italia, a charter whose aim is to establish shared key principles concerning the fight against counterfeiting, by putting in place a simple and effective notice and take down procedure for counterfeit products offered on online markets, and best practices to combat the offering of counterfeit products on online sales channels and to prevent the re-offering of counterfeit products.

The Italian representative listed the main commitments of right holders, web operators and the ministry and indicated that there are two representatives of consumers' associations involved in the process. An English version of the charter is also available.

Following the meeting, the French representative informed participants that there is a similar charter in France, but with no consumers on board. Additionally there is great difficulty to get stakeholders on board and there is the added difficulty of counterfeiting moving to social media platforms.

Stakeholders congratulated Italy for the initiative.

### **IMPROVING COMMUNICATION AT NATIONAL LEVEL – WORKSHOP**

The group was split up into four to debate on how to improve communication in Member States of Observatory studies for which national data is also available. After the workshops, there was a plenary session with all participants, during which the rapporteurs indicated the following most relevant findings and action points on the issues discussed.

The main target audience identified for spreading information to is SMEs, press, youth, policy makers, police/local networks, right holders, consumers and consumer organisations. Academia is not as informed, and it could be useful for universities. Cooperation with the private sector is useful for reaching many people. Government networks and journalist networks are also seen as an efficient way to disseminate information.

There is a need for a link to the country to be able to "sell" study results to the press/policy makers, so reports are needed in advance for messages to be prepared and put in context, before spreading them in local networks. The reports or information sheets are needed in the language of the member state, and ideally in a format which can be edited. A leaflet that contains the different reports would also be appreciated, as well as direct links to simplified results of the studies, and short videos to explain the data. The promotion of studies is helped when linked to a well-known organisation (such as OECD) or linked back to the sectorial studies, and it helps when there are case studies, so member states are requested to send such case studies where available.

It is worth noting that dedicated press releases usually get higher media impact, and therefore different versions should be used: one for specialised press (such as economy), one for business and one for general press. Following each publication, the Observatory will share clipping reports covering the countries targeted during the launch, in the restricted access area.

Social media has an increasing role and Twitter, Facebook, LinkedIn and, to some extent, YouTube, is being used by many official agencies, so it is a good way to communicate with the public. The Observatory will map the existing national social media accounts to share with all stakeholders, to enable better promotion of such accounts. It is noted that infographics of the studies and reports are good to tweet.

The chair listed the conclusions of the workshop, which were as follows:

- The Observatory will map social media accounts to help create links and more will be done on social media;
- Executive summaries of studies and reports will be translated in other languages when possible;
- There will be continued support for national events from Observatory whenever possible;
- There will be tailor-made releases for different press whenever possible;
- It is noted that it is possible for stakeholders to use all the material available on the Observatory website, including pictures, indicating the source.

The chair concluded the meeting by thanking all participants for their attendance and intervention.