

# 2020 STATUS REPORT ON IPR INFRINGEMENT

Why IP Rights are important, IPR Infringement, and the fight against counterfeiting and piracy

## *EXECUTIVE SUMMARY*

*June 2020*

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## Foreword

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The evidence that IP crime is not victimless crime has been there for many years and is further strengthened by this latest Status Report, highlighting some of the key research carried out by the EUIPO through the Observatory.

This report underlines the importance of IP rights to the EU economy and therefore to any recovery from the Covid-19 crisis, which has dominated the first half of 2020 and threatens to have long-lasting effects.

One of the studies of IP infringement, carried out with the Organisation of Economic Cooperation and Development, covers the area of fake pharmaceuticals, which must be one of the most heartless areas of counterfeit activity. This has served to cast the spotlight even more clearly on the threat to the public.

Counterfeit medicines, children's toys, and fake cosmetics are just a few of the problem areas but there are hidden dangers that apply to all IP crime, going beyond the displacement of jobs in legitimate industries and damage to public revenues.

IP crime appears to criminals as a relatively low-risk activity that is used to support other types of organised crime. A joint report with Europol presents case studies showing the link with money laundering, document fraud, cybercrime, financial fraud, drug production and trafficking.

It is increasingly clear that the damage to consumers' health and safety and to the environment as well as the relationship between IP crime and other types of crime requires urgent and coordinated international action.

Society as a whole is a victim of IP crime and this report shows, once again, the need for IP enforcement to return as one of the EU priorities in the fight against organised crime.



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Executive Director, EUIPO

## Executive summary

This report brings together the findings of the research carried out in recent years by the European Union Intellectual Property Office (EUIPO), through the European Observatory on the Infringement of Intellectual Property Rights (Observatory), on the extent, scope and consequences —both economic and non-economic— of Intellectual Property Right (IPR) infringement in the EU. Evidence on the economic value of IPRs in the EU economy, the extent to which this value is exploited, the infringement mechanisms used to capture that value and the actions being taken in response to these challenges are outlined and discussed. Involvement of organised crime groups (OCG) is also highlighted, based on cases investigated by Europol (European Union Agency for Law Enforcement Cooperation).

In a study carried out in partnership with the European Patent Office (EPO) in 2019, the EUIPO found that the total contribution of IPR-intensive industries to the EU economy accounts for approximately 45 % of gross domestic product (GDP) and 29 % of employment (with another 10 % generated in sectors that supply goods and services to the IPR-intensive industries). Those sectors account for the bulk of the EU's trade with the rest of the world, generating 96 % of goods exports from the EU. They pay their workers 47 % higher salaries than other sectors. IPR-intensive industries also appear to have weathered the financial crisis better than the rest of the economy, as indicated by their greater share of employment and GDP compared to the earlier 2016 study. On the individual firm level, a study of fast-growing small and medium-sized enterprises (SME) published in 2019, also in cooperation with the EPO, showed that IPR-using SMEs were more likely to achieve growth in subsequent years than other companies.

Because of the high value associated with IPR, infringement of those rights is a lucrative criminal activity with a relatively low level of risk in terms of likelihood of detection and punishment if detected. OCGs are heavily involved in counterfeiting and piracy, and IP crime is often combined with other types of crime such as money laundering, human trafficking and occasionally forced labour, as documented in two joint Europol-EUIPO reports, the *IP Crime Threat Assessment 2019* (which even reported one case in the EU with links to a terrorist organisation) and the report on polycriminality published in June 2020. The modus operandi of the OCGs is becoming increasingly complex as technology and distribution channels evolve hand in hand with the range of products being counterfeited.

The business models adopted by counterfeiters make significant use of the internet to distribute their products and to promote the distribution and consumption of illegal digital content.

According to a study carried out by the EUIPO and the Organisation for Economic Co-operation and Development (OECD) in 2019, estimates of IPR infringement in international trade in 2016 could reach as much as 3.3 % of world trade. Up to 6.8 % of EU imports, or EUR 121 billion per year, are fake goods. Both sets of figures are significantly higher than those found in the previous edition published by the two organisations in 2016, indicating that the problem has become even more serious in recent years.

In a series of sectorial studies, the EUIPO has estimated lost sales in 11 sectors in the EU (directly in the industries being analysed and across their associated supply chain), as a result of counterfeiting. These losses totalled more than EUR 83 billion per year during the period 2013-2017. In addition, more than 671 000 jobs in legitimate businesses were lost, and the Member States lost EUR 15 billion per year in tax revenue.

As serious as these economic damages are, the harm caused to public health, consumer safety and the environment as a result of counterfeit goods is arguably an even more serious consequence. In March 2020, the EUIPO and the OECD published a joint study on counterfeit medicines, showing that not only 'lifestyle' medicines but also medicines to treat serious diseases, including antibiotics, cancer therapies or heart disease medications, are subject to being counterfeited, with potentially deadly consequences for the patients who consume those medicines. Following the outbreak of the COVID-19 pandemic in late 2019 and its subsequent spread around the world, counterfeiters have turned their attention to producing fake testing kits, counterfeit personal protection equipment and, even before treatments have been approved by the authorities, fake medicines purporting to cure the disease <sup>(1)</sup>.

By analysing data from the market surveillance authorities (MSA) across the EU, the EUIPO has further documented the dangers to consumers' health and safety stemming from counterfeit products such as toys, clothing, electrical appliances and other common consumer goods. The dangers included exposure to hazardous chemicals and toxins that could cause acute or long-term harm to health, choking, electric shock, fire and various types of injuries. Some types of counterfeits, such as fake pesticides, can cause harm both to the farmers applying them to their crops and to the consumers who consume the resulting produce.

In addition to analysing the supply of counterfeit goods and pirated content, the EUIPO has also studied the demand side, that is, the attitude of EU citizens towards IPR and their willingness to consume IPR-infringing goods and services. The incentives for consumers to purchase counterfeit goods and to access copyright-protected content illegally include lower prices, easy accessibility and a low degree of social stigma associated with such activities. A particular focus is on young people and, in 2019, an updated IP and Youth Scoreboard was published showing that, compared to the previous edition in 2016, young people in the EU are less likely to consume pirated digital content but slightly more likely to purchase counterfeit goods.

In response to these developments the EUIPO, together with public and private partners, is undertaking and supporting a number of actions to meet these challenges. These actions include providing rights holders with information on the changing infringement landscape; working with Europol on wider responses to IP crime, not least by participating in the funding of a specialised IP crime unit within Europol; helping to train enforcers across the EU in cooperation with CEPOL (European Union Agency for Law Enforcement Training) and Eurojust (European Agency for Criminal Justice Cooperation); supporting the European Commission's efforts to address the supply of counterfeit goods in third countries. The IP Enforcement Portal provides a unique platform for rights holders and enforcers to share information in a secure way, to collect data on enforcement for further analysis, and to inform about third-party infringements and the European Commission's activities in the area of IP crime. The EUIPO has also initiated workstreams on new technologies which could play a significant role in helping to combat infringements, and on working with intermediaries such as e-commerce marketplaces to enhance IP protection in the online environment.

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<sup>(1)</sup> Europol is monitoring the situation and published a report entitled *Viral Marketing - Counterfeits, substandard goods and intellectual property crime in the COVID-19 pandemic* in April 2020. Available at: [https://www.europol.europa.eu/sites/default/files/documents/report\\_covid\\_19\\_-\\_viral\\_marketing\\_counterfeits.pdf](https://www.europol.europa.eu/sites/default/files/documents/report_covid_19_-_viral_marketing_counterfeits.pdf).

On the enforcement side, EU and global-scale enforcement operations are coordinated by Europol, OLAF (European Anti-Fraud Office) and INTERPOL, and operations are carried out by enforcement authorities in individual Member States.

Enforcement activities are designed primarily to reduce the supply of IP-infringing goods and services. The other side of the coin is the demand side. The EUIPO, working with the Member States and private and civil society partners, seeks to raise citizens' awareness of the importance of IP and the need to respect it, through a number of channels:

- the 'IP in Education' workstream, designed to integrate IP in school curricula at all levels;
- outreach activities such as Ideas Powered or media campaigns, such as the one in conjunction with the release of this report, with an emphasis on educating consumers about the dangers of counterfeit goods;
- providing consumers with information on the availability of legally accessible digital content through the *agorateka* portal;
- the AUTHENTICITY programme, the build-up of a network of European cities that resolve to promote awareness of the importance of protection of intellectual property rights.



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