


Ten years of the European Observatory on Infringements of Intellectual Property Rights:

ACHIEVEMENTS AND PERSPECTIVES

2012–2022



Ten years of the European Observatory on Infringements of Intellectual Property Rights:
Achievements and Perspectives, 2012-2022

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2012–2022

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Foreword

Regulation (EU) 386/2012 of the European Parliament and of the Council of 19 April 2012, entrusting the European Union Intellectual Property Office (EUIPO) with the European Observatory on Infringements of Intellectual Property Rights (the Observatory), entered into force ten years ago – on 5 June 2012.

For a decade, through its network and in cooperation with all interested parties, the Observatory has been striving to pursue the three main objectives of its mandate: provide evidence to enable EU policymakers to shape effective IP enforcement policies, support enforcement authorities in the fight against IP infringement and raise awareness of the value of IP and the negative consequences of IP infringement.

It has been a formidable journey. Over the past 10 years, the Observatory has built a broad and rich network of public, private and civil society stakeholders which today includes 27 EU Member States, 69 private sector organisations, 11 civil society organisations and 15 observers. The Observatory Department of the EUIPO has also grown, from a small team of five or six people, to one of over 60 people with a wide range of profiles and expertise working on over 50 initiatives laid out in the Observatory work programme.

The Observatory has become a true reference as regards providing a multi-faceted understanding of IP, its value, perception and infringement. Ultimately, the Observatory's efforts to raise awareness of the threat posed by IPR infringing goods to the economy, health and safety, and the environment, and to support authorities in their efforts to tackle IP crime, serve the interests of European citizens and companies. The Observatory has published more than 110 studies, covering economic subjects, infringing business models, market research and threat assessment issues, among others. Observatory studies and initiatives have been cited more than 800 times in EU policy documents, and the European Commission's report evaluating the work carried out by the EUIPO through the Observatory, published in November 2020, states that 'the EUIPO has become a hub of excellence on IP infringements, a central source of knowledge, development and sharing of best practice in the EU and internationally. The EUIPO acts as a facilitator and driver for cooperation between national authorities and rights holders across the EU and is an important contributor to the Commission's initiatives in IP within the EU and further afield'.

This publication celebrates a decade of achievement by the European Observatory on Infringements of Intellectual Property Rights as part of the EUIPO – a partnership that has brought forward elements to answer many of the questions posed about IP rights.

The Observatory is a flagship of the EUIPO, helping close the IP circle from registration to enforcement, raising awareness on the way. While we can be proud of the achievements to date, we can also look forward to an exciting future, with new fields of study, strengthened cooperation with partners at national, European and international levels to tackle IP crime, and further initiatives to raise IP awareness.

Christian Archambeau
Executive Director, EUIPO

Jorma Hanski
Chair of the Management Board, EUIPO

Alicante, June 2022



Intellectual property and more generally the protection of our immaterial assets has always been central to Europe's economy, its industry and its companies of all sizes. Our excellence in creativity and innovation deserves a robust and effective legal framework for its protection. This is all the more important to support the recovery and resilience of our continent. The cooperation with the EUIPO is very important to achieve our objectives. Its Observatory has an important role to play by leveraging its network of stakeholders and expertise.

Thierry Breton
European Commissioner for Internal Market





Observe

“

*To act properly one must first understand.
To understand to act.*

”

Michel Barnier

European Commissioner for Internal Market, 2010-2014



01

Observatory Plenary Meeting, 2019, Alicante

Humans are creative, innovative and constantly seek to improve their lives. From the beginning, property has been protected as a necessary means to further progress. Extending this protection from physical property to intellectual property has taken millennia. Written references to the protection of innovative ideas can be found in Ancient Greek and Roman texts, and the predecessor of patents is generally considered to be in Venice in the middle of the 15th century. Then, by the end of the 18th century, these rights were recognised at constitutional level in countries such as the USA and France.

However, even though IP rights continued to grow in importance and gained official recognition worldwide through successive international treaties (Paris and Berne Conventions in the 19th century, World Trade Organization - WTO - TRIPs), their legitimacy and value has sometimes been disputed and poorly understood.

This was the context in which, in 2009, the European Commission decided to create an observatory on counterfeiting and piracy as a small unit within the Directorate-General for the Internal Market. As the importance of encouraging and protecting innovation and creativity continued to rise, it became clear that understanding the role of IP rights was a larger-scale task than initially envisaged.

The Observatory team in EUIPO brings together carefully selected professionals with recognised expertise in the different fields covered. Senior collaborators from all relevant horizons, empowered in their role and supported by experienced and competent colleagues, support our network of stakeholders and carry out the initiatives defined by them in the Observatory work programme.

Paul Maier
Director, EU Observatory on Infringements of IP Rights, EUIPO

From the beginning, the Observatory has been about welcoming input from all possible stakeholders. I had the opportunity actively to contribute to the definition of the strategy, help make the right choices and input ideas. The remarkable results achieved show that the thinking was right, and I am proud to have been part of it.

Lord Mogg
Chair of the Observatory Advisory Board (2013-2016)

To secure the necessary resources in terms of staff and funding, 10 years ago, the European Commission proposed to entrust the Observatory to the EU's largest agency devoted to IP rights, the European Union Intellectual Property Office (EUIPO). This proposal was backed by the European Parliament and the Council, which decided to fully entrust the Observatory to EUIPO, formerly known as OHIM, on 5 June 2012.¹

One of the Observatory's first tasks was to conduct independent research to establish the facts, backed by a comprehensive network representing the public sector, private sector and civil society.



¹ Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Infringements of Intellectual Property Rights.



Investigate

02



EUIPO Campus, Alicante



Benoît Battistelli (President, EPO), Michel Barnier (European Commissioner for Internal Market) and António Campinos (President, OHIM), IP Contribution Study Launch, 2013, Brussels

Intellectual property is a category of assets covering intangible creations of the human intellect. The better-known IP rights include trade marks, patents, designs, copyright, plant variety rights and geographical indications. These rights are crucial in promoting innovation and artistic creation by providing inventors and creators an exclusive and temporary right so they can profit from their creativity.

However, questions of value present difficulties when compared with traditional property like land or goods. In addition, unlike more traditional assets, IP can potentially have an unlimited number of users. This means that, without suitable protection, there is a risk of misappropriation via counterfeiting and other forms of copying. The growth of global markets, combined with the advent of a digital world that allows cheap reproduction, 3-D printing and online sales, presents many opportunities for rights holders, but has also created numerous challenges.

In spite of the questions sometimes raised about IP rights these rights had come to be considered as among the most important, and possibly most valuable assets of businesses and the entire economy.

IP was no longer only a matter for debate among 'experts', whether in business or the political sphere. It had also become a subject of conversation among the public, including young people. How important were these rights to the economic prospects of countries or citizens? Were counterfeiting and illegal downloading

victimless crimes? Would data-driven answers to these questions change people's minds or influence policy? Was the protection of IP contradicting freedom of speech?

The Observatory set out to investigate some of the main questions in an independent, comprehensive and rigorous manner, providing greater certainty for citizens, businesses and policy makers. Many of these investigations were carried out with influential and knowledgeable partners such as the European Patent Office (EPO), the Organisation for Economic Co-operation and Development (OECD), United Nations Interregional Crime and Justice Research Institute (UNICRI), alongside academics or experts.

This led to the 'trilogy' of studies on the economic contribution of IP rights in the EU, the damage caused by infringements and the attitude and understanding of IP among EU citizens and SMEs.

The main results of these studies, and related investigations or updates, have become a vital part of the ongoing debate on the future of IP rights in the EU and globally.

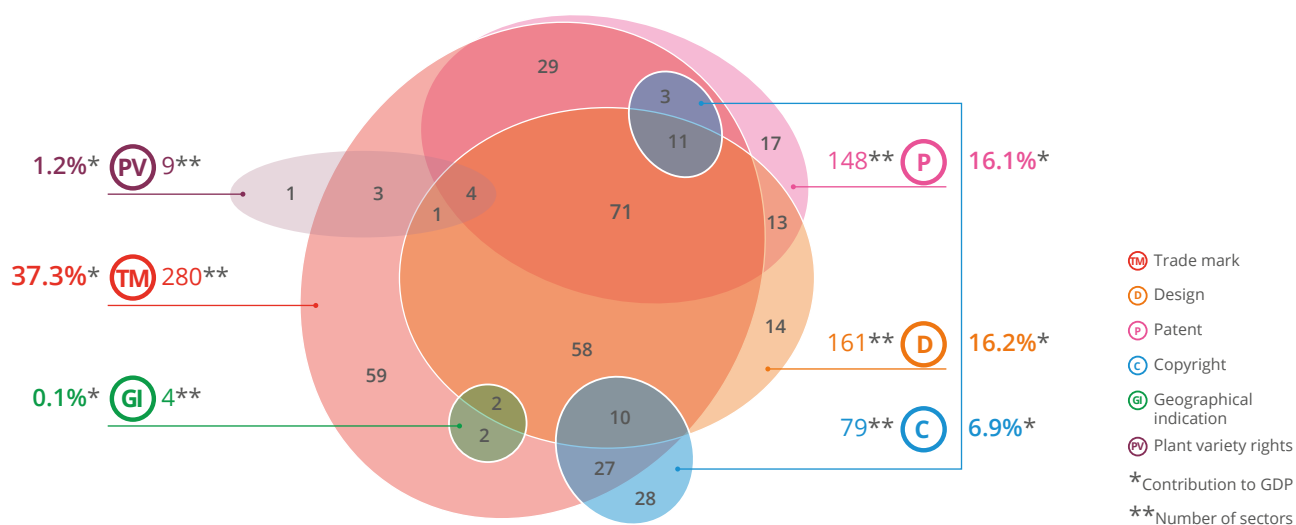
The studies on IP Contribution at an industry level carried out in conjunction with the EPO (2013, 2016, 2019 and upcoming in 2022) and at firm level (2015 and 2021), as well the high-growth firms study from 2019, have underlined the importance of IPR-intensive industries for the economy, and the opportunities being missed by SMEs and other actors.

Such a big issue for the economic development, the social and the scientific progress, is too crucial to be dealt with separately, by the key actors, individually: a joint effort, a convergent action is needed, to understand, to counteract, to involve and mobilise the public in a credible manner.

Carlo De Masi
President, Adiconsum, Italy



IPR intensive industries in the EU and their contribution to GDP²



These studies show the positive side of IP rights by underlining their link with jobs and economic growth. They also include important indications about how their accessibility and value could be improved for segments of the economy such as SMEs.

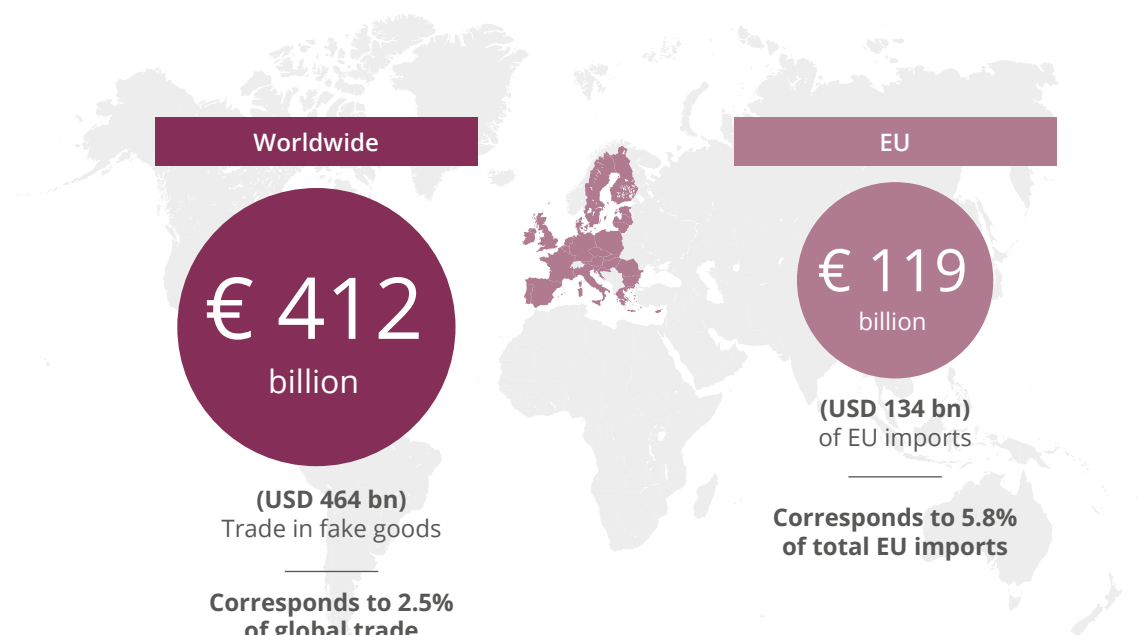
Research shows that IPR-intensive sectors generate 45 % of the EU's GDP and that 39 % of employment can be attributed, directly or indirectly, to these industries. Companies that own IPRs are more

productive, pay higher wages and are more likely to achieve high growth (these positive relationships are especially strong for SMEs).

The regular studies on international trade in counterfeit goods show that global trade in fake goods remains a serious problem. The EU, as a high-income region, is a specific target, with counterfeit goods reaching 5.8 % of total imports from the rest of the world.

² EUIPO/EPO, IPR-intensive industries and economic performance in the European Union (September 2019).

International trade in counterfeit goods - key results³



Working alone, or with partner bodies and organisations, the Observatory has produced reports on most aspects of IP. Their results on the economic damage caused by IP infringement have focused international attention on this global threat and require closer cooperation between all the stakeholders and a vigilant policy response. Likewise, research on the perception of IP by EU citizens has led to a shift in attention towards better education and communication.

Observatory studies demonstrate not only the economic damage, but also the damage to the health and safety of the public and to the environment.

As regards the infringement of intellectual property rights, the Observatory cooperates with European Police Office (Europol) on a regular IP Crime Threat Assessment and also investigates the online business models of infringers. There is proof that organised crime groups are often behind many of these infringements. Last, but not least, the Observatory monitors, collects, and analyses key European case-law on the enforcement of intellectual property rights and publishes case-law studies on selected legal issues.

In a decade, the Observatory has issued more than 110 studies or reports, including many ground-breaking ones that have been widely quoted both in the media and in official documents at international, EU and Member State levels.

A deep dive into the impact of artificial intelligence, the updated IP Crime Threat Assessment with Europol and a discussion paper on the important topic of misuse of transport and logistics services for counterfeits are among the most recent publications.

Observatory research, carried out with partners, is already answering many of the main questions initially posed about IP rights and their importance. Keeping this research up-to-date and relevant to the needs of a period of significant geo-political and technological change is an ongoing challenge.

At the same time, investigations and greater knowledge are helping to change attitudes and supporting action on the ground that will help IP rights continue to deliver on their promise of creating tangible benefits for the public and the economy in the years ahead.

I welcome and thank the tireless effort of the EU Observatory and its staff to quantify the importance of IPRs to the economy, to map what the European public and SMEs think and know about IP and to quantify the extent and the consequences of IPR infringement for the economy and society.

Zeger Vink
President, International Trademark Association (INTA)

³ EUIPO/OECD, Global Trade in Fakes: A Worrying Threat (June 2021).



Inform

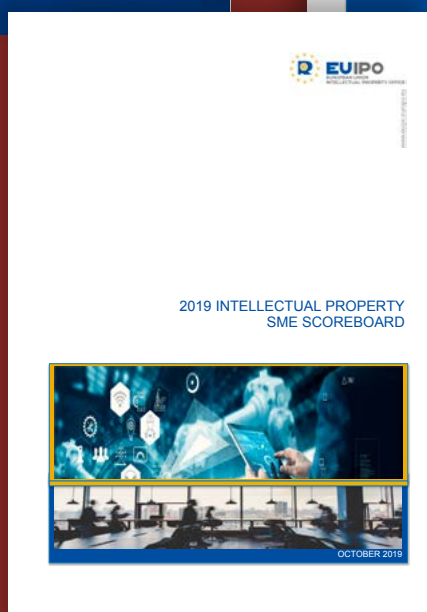
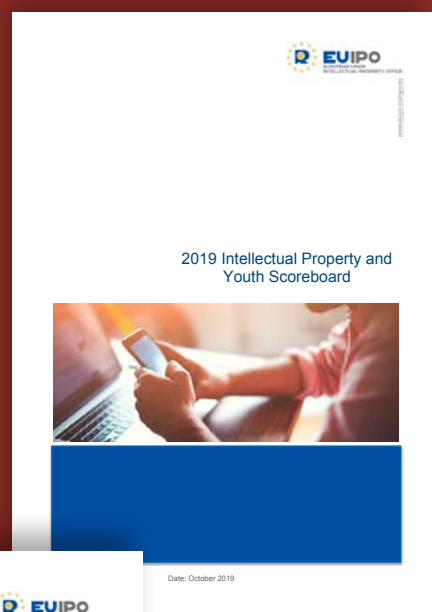
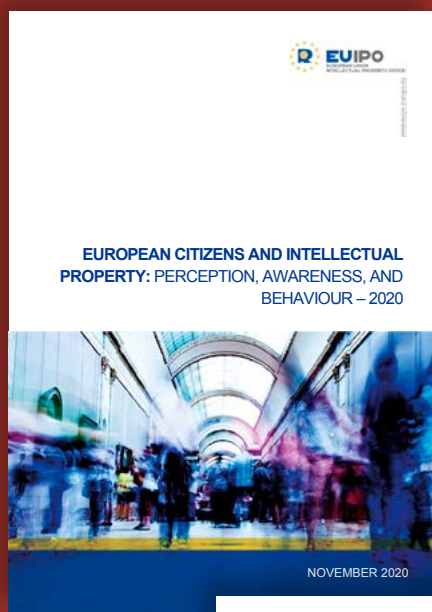
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Over the past 10 years, the Observatory has established itself as an indispensable source of information and has set standards of EU-wide and international cooperation. This has stimulated us to improve our national system of IP information in Germany.

”

Dr J. Christian Wichard

Deputy Director General, German Federal Ministry of Justice and Consumer Protection



In an increasingly digital and interconnected world, it is important to understand the degree to which IP rights are respected, and to make sure that accurate information about these rights is widely shared.

The 2020 IP Perception survey, conducted in the 27 EU Member States, included 25 636 interviews with residents aged 15 and over.

Positive developments but IP infringement remains a challenge

- A decrease in intellectual property infringements – from 7 % in 2017 to 5 % in 2020 for the intentional purchase of counterfeits and from 10 % in 2017 to 8 % in 2020 for intentional piracy.
- A decrease of 1 % from 10 % in 2017 to 9 % in 2020 of those who were misled into buying counterfeit goods.
- Young people are more likely to buy counterfeit goods and/or access pirated material.
- However, people are more willing to pay for content, with a 69 % increase since the last study (from 25 % in 2017 to 42 % in 2020).

Over the past decade, the connection between IP rights and economic and social well-being has become more visible as a result of the Observatory's research.

The IP Perception Study, first launched in 2013 and repeated in 2017 and 2020, is the most comprehensive study of the attitudes of EU citizens in relation to IP. While the latest issue shows more understanding of IP and a positive shift in attitudes, infringement nonetheless remains a challenge and some of the most important stakeholders, young people, continue to be the biggest group that buy counterfeits and access unlicensed content.

Ideas Powered

To better understand what drives young European citizens when they are faced with the alternatives of respecting or ignoring the associated IP rights, the EUIPO has so far released two IP Youth Scoreboards (with a third one in 2022), which focus on young people aged 15-24 across the EU. A series of online and social media activities targeting youngsters and raising awareness on IP have also been launched under the Ideas Powered brand. Over the 2017-2020 period, the reach of social media posts generated by Observatory messaging increased their impact by around 400 % in terms of 'impressions' or views.

IP in Education

While education is under the responsibility of the Member States, the Observatory is a central source of information on all types of IP rights. Its remit includes training and awareness-raising, working through its comprehensive network of stakeholders.

As a result of the findings in The Intellectual Property and Education in Europe report, published in 2015, the EUIPO set up a network of experts from the education ministries of EU Member States and representatives from national IP offices.

The resulting Intellectual Property in Education project has played a key role in the overall EU education strategy, confirmed by the 2020 Council conclusions on digital education in Europe's knowledge societies, which acknowledge and endorse the contribution of both the project and network.

In 2022, the European Commission published a new Digital Competence Framework for Citizens containing IP competencies for the first time and referring specifically to the EUIPO's copyright Frequently-Asked Questions (FAQ) for teachers. This is a major step towards getting IP on the curriculum throughout Europe.

Highlights of the project include the Ideas Powered@School initiative and engaging educational materials such as case studies showing the importance of protecting creativity and innovation.

The IP in Education project has now expanded to include vocational education and training, and tertiary education. More generally, the university sector is important to encourage innovation at the grassroots, which is relevant to the EUIPO's work with SMEs and to the young entrepreneurs who will launch the SMEs of tomorrow.



Ideas Powered Youth Workshop, 2016, Alicante

Spreading awareness about the value of Intellectual Property to Europe's economy, society and culture is essential. The Observatory makes an important contribution to a better understanding of the value of IP and to the promotion of creativity, innovation, entrepreneurship and responsible digital engagement among young Europeans through education at all levels.

Ibán García del Blanco
Member of the European Parliament

The regular youth scoreboards, the Ideas Powered initiative and the IP in Education project as well as social media outreach have the common theme of understanding young people and their relationship with IP, informing them and influencing their choices.

As a young entrepreneur and content creator it is important for me to know about IP and how to use it to my advantage. The Ideas Powered Youth workshop gave me exactly that. It has helped me realise the importance to protect and look after your right, your work. It also made me want to spread that message of how important it is to protect your work and at the same time, respect the work of others.

Laura Musuroaea
Entrepreneur

Through the IP in Education network and education resources, the EUIPO Observatory has emerged as an important educational partner in fostering innovation, creativity and entrepreneurship in the European educational community. For teachers and students in the European Union and beyond, it is a lighthouse guiding us in learning the value of intellectual property.

François Jourde
Digital Education Coordinator, European Schools

I became enlightened and passionate about IP protection in 2018 when I attended the Ideas Powered Youth Workshop in Alicante. This led me to the realisation of #fightfake, a bold awareness campaign the following year in Greece. The Observatory's contribution to our education and empowerment helps us, creators and designers, to strengthen our legacy and shape the future so that the original can thrive.

John Pan
Designer



Educational fair, Vienna, 2022

Ideas Powered for business

The Ideas Powered for business SME programme was developed by the EUIPO in partnership with the European Commission and EU Member State IP offices. The rationale behind this project and a number of its objectives were strongly influenced by Observatory research on SMEs. This notably includes the SME Scoreboards, which look at how companies learn about IPRs and why and how they protect their IP. The work of the expert group on SMEs was particularly useful in helping to determine the needs of this important business sector.

This high-profile programme has adopted the 'Ideas Powered' branding, recognising the synergies and mutually reinforcing nature of the Observatory's integration as part of the EU's largest agency devoted to IP rights. In addition, following a cooperation agreement signed with the European Institute

of Innovation & Technology (EIT), the EUIPO has implemented several joint activities on IP.

Outreach

Society as a whole, as well as priority groups such as young people, future entrepreneurs and existing smaller businesses, need to be engaged in the future of IP and understand the message that 'IP is for everyone'. With this in mind, the Observatory has coordinated awareness campaigns across the EU that are run at a national level in cooperation with the national authorities and several national partners.

Awareness of legal offers and access to them is promoted through the agorateka portal. In addition, cultural heritage is supported through the Orphan Works Database and the Out-Of-Commerce Works Portal, which has already recorded over 900 000 entries in less than a year.

I knew that I had found my unique expression, but I was worried that someone might copy it. Therefore, I wanted to protect my design. After four years of development, design protection would be nice. I managed to change my focus towards the creation of a strong and authentic brand that reflects my values.

Marlene Corydon
SME owner

*Christian Archambeau and Thomas Lütke
during the Design Europa Awards, 2021, Eindhoven*



Over the last ten years, Hadopi, now Arcom, and the Observatory have forged rich and trust-based working relations. The Observatory has developed unique expertise and produces essential data on digital cultural practices which it uses to guide European citizens towards legal offers.

Roch-Olivier Maistre

President, French Regulatory Authority for Audiovisual and Digital Communication, ARCOM



International IP Enforcement Summit, 2017, Berlin



National memory institutions have a mission to preserve the objects of cultural heritage for the future, and share them with as many members of society as possible. By digitisation, one single work can be multiplied in a quick and easy manner. The legal solutions devised by the legislators to make copyright protected materials available to the general public require a stable infrastructural background. The Observatory is tasked with bridging the theory and the practice, which is a challenge, a quite huge one.

Szabolcs Dancs

Head of Office for Library Standards, Hungarian Library Institute, National Széchényi Library

At the institutional level, the EUIPO has organised four international IP Enforcement Summits (the most recent edition held online in 2021) in cooperation with the European Commission, national authorities and other partners.

As well as working with the broad spectrum of Observatory stakeholders, direct engagement with conventional media and influencers on social media has grown significantly. This engagement benefits from the snowball effect of awareness-raising at the local or national level combined with pan-European media campaigns, notably on the occasion of the annual world anti-counterfeiting day in June. These campaigns have each reached on average over 1 500 press clippings across all Member States.

In order to involve as many stakeholders as possible, every second year since 2015, the EUIPO has launched a grant scheme to invite interested groups to submit new ideas and projects on IP awareness. So far, as part of four grant schemes, around 50 projects have received financial support worth a total EUR 2.5 million.

Consumer associations have also been largely involved in the dissemination of awareness campaigns, notably as part of grants.

Authenticities

Initiatives such as the Authenticities project, which was supported under the grants scheme and has now developed into a fully-fledged EUIPO European Cooperation Project, show the importance of working at all levels. This network brings together national and regional intellectual property offices in the EU, municipalities across the EU and local organisations, to help combat the problem of fake products and piracy.

The Authenticities network already comprises six European cities: Thessaloniki and Mykonos (Greece),

Sofia and Plovdiv (Bulgaria), Banská Bystrica (Slovakia) and Madrid (Spain). Several other EU cities are in the process of joining.

As society as a whole, including people of all ages, businesses and policy makers at all levels, has become more informed about the importance of IP rights, this sets the scene for IP stakeholders to be both more connected and strategic in their thinking and actions.





Connect

04





Launch of the Fake Toys Report, 2015, Ibi (Spain)

Regulation 386/2012 says that the Observatory should include representatives from the private and public sectors as well as civil society. The work of the Observatory needs to reflect a broad spectrum of interest and expertise, bringing together all the relevant parties in what is increasingly being referred to as the 'IP ecosystem'.

From the beginning, one of the first tasks was to ensure all types of stakeholders were represented as broadly as possible. The public sector representatives in the Observatory network are designated by each Member State, and private sector representatives include a broad and balanced range of international, EU and national bodies.

The representation of civil society is the most challenging, as these groups often have limited resources and find it difficult to take part in work so specifically related to IP issues. However, even if participation by European associations of consumers or civil society may be fluctuating, the representation of consumers is ensured by a combination of European and national organisations.

The Observatory cooperates closely with national IP offices. A dozen Member States have appointed their IP office as public sector representatives to the Observatory network, and many offices take part in specific initiatives, such as IP in education or awareness. The Observatory team at the EUIPO also relies on the expertise of several colleagues seconded by national offices, which is a great source of knowledge exchange.

Jorma Hanski
Chair of EUIPO Management Board

The Alliance for Safe Online Pharmacy in the EU (ASOP-EU) as a long-standing Civil Society member of the Observatory, greatly appreciates the collaboration and support afforded to raise public awareness about the rising tide of falsified medicines found on the internet, which has greatly helped in protecting the European citizen from harm.

Mike Isles

Executive Director, European Alliance for Access to Safe Medicines (ASOP-EU)

Combating infringements of intellectual property is neither simple nor easy. But we believe that there is a whole space for action that must be covered by the different stakeholders, collaborating and carrying out initiatives that contribute to the rejection of counterfeit products, leading consumers to prefer original products that comply with IP rules, labour and environmental laws, with more quality and less risk to their health and safety

Luís Salvador Pisco

Portuguese Association for the Defence of the Consumer (DECO)



IP in education network meeting, 2017, Alicante



Dialogue between national judges serving at EU trademark and Community design courts is vital for the harmonisation of the interpretation of the EU IPR legislation. The IPR judges' network brings us together to share national practices and discuss problematic issues together with highly competent experts, and, by doing so, significantly contributes to the efficiency of legal protection and enforcement of the IPRs within the EU.

Goda Ambrasaitė-Balynienė
Judge, Supreme Court of Lithuania



Judges' seminars have established a body of practice among EU judges and prosecutors who regularly deal with intellectual property and enforcement issues. Attendance at seminars is by invitation and, in order to encourage a free exchange of views, the discussions are not held publicly. The network participants communicate with each other to share judgements and other information on their national practices.

In 2015, European Union Agency for Criminal Justice Cooperation (Eurojust) and the EUIPO began working cooperatively to enhance links between prosecutors from the EU and other European countries, working on IP crime cases. The European Intellectual Property Prosecutor's Network (EIPPN) collects and shares experiences and cases. Participants discuss new trends, challenges with emerging technologies and international judicial cooperation. This network also reaches out to prosecutors from third countries to enhance cooperation and the sharing of best practices.

International action

The EUIPO is the implementing agency for EU-funded projects in several regions, such as China and the Association of Southeast Asian Nations (ASEAN). The Observatory promotes this work by providing technical support and training, sharing knowledge and encouraging the creation of enforcement-related networks. A series of studies

dedicated to measuring the economic contribution of IPRs in five Latin American countries (Mexico, Peru, Argentina, Uruguay and Chile), following the methodology of previous joint EUIPO-EPO publications, was also carried out by IPKey, with Observatory support.

Other important contributions include cooperating with EU Commission IP initiatives related to third countries such as the 'Counterfeit and Piracy Watch List' and the 'Report on the protection and enforcement of intellectual property rights in third countries'. In addition, the Observatory is actively involved in supporting the EU Delegation IP Network, which consists of EU delegates dealing with IP matters in third countries.

The Observatory does not make policy recommendations. However, the influence of the studies, talks and the advocacy of stakeholders, is producing new thoughts and action in numerous fields of the innovation ecosystem.

For example, the study on Free Trade Zones (FTZ) carried out in conjunction with the OECD, casts light on the potential for their misuse for trading counterfeit and pirated goods. This led to the OECD adopting a recommendation introducing a code of conduct for operating FTZs and tighter controls. This is just one example of how fact-finding supported by the Observatory is translating into action that supports 'clean trade' in the innovation ecosystem.

As US IP Enforcement Coordinator I called on all nations, as well as international organisations, industry, educational institutions, and consumer protection and public interest groups to work together to combat illicit IP-based activities. The EU Observatory's invaluable research, network and expertise on IP infringements in Europe fed into our collective efforts to curb illicit trade in counterfeit and pirated goods and to ensure that IP enforcement remains a priority.

Danny Marti
US IP Enforcement Coordinator (2015-2017)

The OECD-EUIPO cooperation and joint studies in the framework of the Task Force on Countering Illicit Trade have brought important evidence to help policymakers understand the threat posed by illicit trade, and in particular counterfeiting and piracy, to knowledge-based, open and globalised economies. The OECD Recommendation on Enhancing Transparency in Free Trade Zones is a positive example of a policy initiative based on this solid evidence.

Jeffrey Schlagenhauf
Deputy Secretary-General, Organisation for Economic Co-operation and Development (OECD)

Perspectives

In a globalised market, it is important that IPR protection does not stop at the borders of the EU. Thus, the Observatory is increasingly involved in supporting activities aimed at third countries.

The work of the Observatory is essential for the European Commission Directorate-General for Trade in its efforts to improve IPR protection and enforcement in third countries. This includes the valuable cooperation in the preparation of the Commission Third Country Reports and the Counterfeit and Piracy Watch Lists as well as the support to IP-Keys – the EU-funded IP programmes in third countries – and to the ‘IP network’ of EU Delegations.

Maria Martin-Prat
Deputy Director-General for Trade, European Commission

The Observatory has proven to be an invaluable partner to WIPO in its mission to build respect for intellectual property in a balanced, holistic manner. Similar to WIPO's efforts at the international level, the Observatory's work in facilitating cooperation amongst key stakeholders, sharing experiences, providing technical assistance and raising citizens' awareness on the impacts of IP infringements are all imperative aspects to ensuring IP can fulfil its role as a driver of economic, social and cultural development.

Edward Kwakwa
Assistant Director-General, Global Challenges and Partnerships, World Intellectual Property Organization (WIPO)

Supporting EU IP and innovation policy

The Observatory network, supported by the EUIPO, including its other specialised networks (network of networks) and other stakeholders and partners from the public and private sectors and civil society, is now regarded as a key actor and central source of information on IP in the EU and globally.

Its influence is present wherever there is debate about the contribution or importance of IP to society or the economy, and also about the need for innovation and creativity to be encouraged and protected.

In 2020, the European Commission adopted an Action Plan⁴ on intellectual property to strengthen the EU's economic resilience and recovery. The work of the Observatory has fed into the IP Action Plan which sets out to help companies, especially SMEs, to make the most of their inventions and creations and ensure they benefit the economy and society.



IP crime cases pose various challenges for a public prosecutor. We need to understand the scope of protection of the different types of rights, find the best way of collecting evidences and how to present them in court. The EUIPO provides unique support for public prosecutors by facilitating the sharing of good investigative and prosecutorial practices as well as networking amongst prosecutors from many different countries and regions.

Jan Østergaard
Special Prosecutor, Danish Police



International Forum on IP Enforcement, 2019, Paris

⁴ COM(2020) 760 - Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience, November 2020.

The Action Plan lays out key steps to improve the protection of IP, boost the uptake of IP by SMEs, facilitate the sharing of IP to increase the technological uptake in industry and fight counterfeiting and improve the enforcement of IP rights.

In particular, the Commission's plans for establishing an EU anti-counterfeiting toolbox draw from and complement the Observatory's work to promote and facilitate effective cooperation between IP rights holders, intermediaries and law enforcement authorities, as well as to develop and use suitable tools and new technologies.

The connections created by the Observatory network and other partnerships and collaborations that have been forged are playing an important role in ensuring that as technology and global markets continue to develop, the IP system also becomes more 'joined up' in response.



The EUIPO Observatory has become the hub of excellence on monitoring IP infringements across the whole spectrum of IP rights. Annual loss of direct sales in the Single Market due to counterfeiting stands at whopping EUR 50 billion. This roughly corresponds to the 2020 GDP of Lithuania. A strong IP enforcement contributes to the valorisation of companies' intangible assets, which are an important collateral for access to scale up finance and – ultimately – investment. This in turn paves the way for long-term resilient and green growth in the EU. Let's continue working together to ensure optimal IP protection across all industrial ecosystems!

Kerstin Jorna

Director-General for Internal Market, Industry, Entrepreneurship and SMEs, European Commission

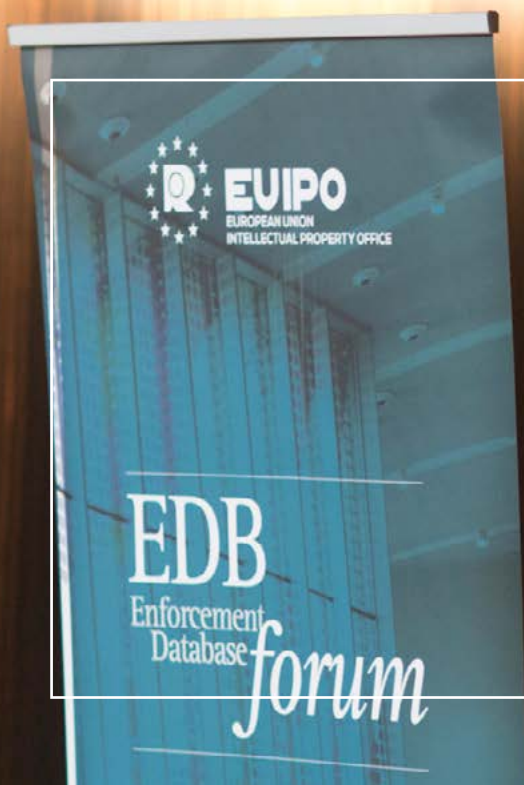




Protect

05





Enforcement Database Forum, now part of IP Enforcement Portal, 2016, Alicante

Greater understanding and recognition of the economic contribution of IP rights has encouraged higher interest in the impact of infringing these rights and the need to protect them.

I'm proud to have seen the Observatory grow over these past 10 years into an important actor within the world of IP enforcement. It has, in many ways, upheld its mandate to serve the European public interest by informing, training and bringing together enforcement authorities and administrations, as well as private sector stakeholders.

Andrea Di Carlo
Deputy Executive Director, EUIPO

Infringement is measured both in terms of economic damage and the negative consequence for society and individuals. The Observatory's work in this field has resulted in greater understanding, more tools and a more unified and data-based response from the many partners needed to create a secure environment in which IP rights are enjoyed as intended.

Assessing the threat

In conjunction with the seminal studies on the economic contribution of IP rights and people's perception, determining the impact of IPR infringement with greater accuracy was one of the Observatory's early priorities. In its sectorial economic studies, the Observatory calculated the direct and indirect industry, job and tax revenue losses due to the presence of counterfeit products in 11 different product sectors.

Regarding IP crime, studies drafted together with Europol on the situation of counterfeiting and piracy in the EU, the so-called Situation Reports, followed by more forward-looking IP Crime Threat Assessment Reports, feed into the enforcement system to support the information and modus operandi awareness among the enforcement community. They also provide the rationale and impetus for providing support to those who fight against infringement. The results and reports prove that organised crime groups are often behind IP crimes and included evidence of how IP crime is often linked to other types of crime, such as fraud and money laundering, and even more serious crimes such as drug trafficking and forced labour.

In addition, greater awareness of fakes with a demonstrable risk to health such as counterfeit toys, spare parts for vehicles, pesticides and medicines, helped focus attention on the risks to the public.

The reintegration of IP crime among the enforcement priorities of the EU for 2022-25 is a key milestone which provides new momentum for cooperation between EU agencies and national authorities on IP enforcement. The EUIPO plays a central role in fostering and supporting cooperation with relevant EU agencies such as Europol, Eurojust and CEPOL to effectively tackle IP crime.

Axel Voss
Member of the European Parliament



Exhibition of fake goods, Enforcement Database Forum, 2015, Alicante

This underscores the point made by IP and enforcement professionals: that IP crimes have victims and negative consequences for society like all other forms of illegal activity.

This issue of IP crime became even more public during the Covid-19 pandemic, which put a spotlight on workers fighting on the frontlines and on health-related fakes, involving dangerous or sub-standard personal protective equipment, among other items.

During a period when access to reliable healthcare was at the forefront of public attention, there was an increasing amount of calls from industry for government action to solve this problem and tackle the issue of counterfeits more generally.

In May 2021, after several years of advocacy by IP stakeholders, frequently drawing from the results of Observatory studies, the Council of Ministers decided to include IP crime among the top 10 priorities for the European multidisciplinary platform against criminal threats (EMPACT), which sets the priorities of law enforcement in the EU in the field of organised crime for 2022-2025.

This represents an important step for fighting IP crime more intensively and effectively. It was included in the priority on economic crime, which covers IP crime and the counterfeiting of goods and currencies, among other items.

Europol is one of the Observatory's main cooperation partners, through the work of the Intellectual Property Crime Coordinated Coalition (IPC3), which the EUIPO supports financially. The IPC3, located at Europol, is central to the EU's response to this field of crime. This cooperation ensures increased support for IP crime investigations through analysis, support for cooperation and raising awareness on IP crime.

Counterfeiting and piracy are not victimless crimes. Organised crime groups who produce and sell these goods have no respect for the quality of products which very often pose health and safety risks. Europol is dedicated to continuing its efforts, together with EU Member States and partners, to stop the criminal networks behind this dangerous and illegal trade. The health and safety of European consumers is of the utmost importance to us!

Catherine De Bolle
Executive Director, European Union Agency for Law Enforcement Cooperation (Europol)

Connecting key enforcement actors

As well as publishing reports on IP crime, the Observatory works together with national enforcement authorities, other EU agencies, EU institutions and international organisations which are also involved in the fight against IP crime.

The EUIPO also cooperates closely with different Directorate Generals of the EU Commission, and in particular, the European Anti-Fraud Office (OLAF). Together with Europol and OLAF, EUIPO supports pre-operational information sharing activities for rights holders and enforcers. One of these types of events were the series of training activities for enforcers related to vaccines and Covid-19-related products.

To tackle the health and safety angle, the Observatory cooperated further with the DG for Justice and Consumers (DG JUST) and the DG for

Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) on the issue of unsafe goods. Pilot joint actions with market surveillance authorities bring cooperation between customs and these authorities to the front line.

Working with the Observatory is one of the biggest strategic assets in our fight to stop counterfeit goods from flooding the EU single market. Building and sharing knowledge on counterfeiting is the cornerstone of any action to combat counterfeiting and we owe much of this knowledge to the Observatory, also on 'hot' topics such as Covid-19-related fraud.

Ernesto Bianchi

Acting Deputy Director-General, European Anti-Fraud Office (OLAF)

IPR enforcement is, and will remain, a priority to Malta Customs. Malta's geographical position in the Mediterranean Sea shoulders us with huge responsibility, which we will never shirk. In this vein, Malta welcomes the EUIPO Observatory's support to law enforcers by providing networking, best practices and knowledge sharing.

Joseph Chetcuti
Director General, Malta Customs



Collaboration with Eurojust was brought to a higher level through a new agreement in 2021. This collaboration will expand, in particular, the support from the prosecution side to operations, including those supported by Europol.

“CEPOL’s IP Rights training portfolio is formed both by onsite and online learning, including self-paced learning products. The joint efforts with EUIPO are concluded each year in a considerable number of training events, including an onsite course, live webinars and a wide range of materials offered through the Virtual Training Centre (VTC) on IP Crime.”

Monserat Marín
Executive Director, European Union Agency
for Law Enforcement Training (CEPOL)

Once a year, the EUIPO hosts a high-level meeting on a joint strategy on IP crime, which brings all these actors together.

Collaboration not only entails exchanging best practices and intelligence among enforcers. It also tackles training in physical and online meetings. With the development of the Virtual Training Centre, the EUIPO has put IP crime on the agenda of CEPOL.

IP Enforcement Portal and information exchange

The enforcement environment is complex: it is cross-border, online and increasingly digital. This continually moving target requires accurate data, intelligence and a swift coordinated response from enforcers. To assist the relevant authorities, the Observatory has developed a sophisticated tool called the IP Enforcement Portal (IPEP), which facilitates the



“For an effective response to increasingly serious and organised IP crime, international judicial cooperation is often required with the aim of collecting and sharing evidence, extraditing defendants and enforcing national judicial decisions. Eurojust has an invaluable partner in the EUIPO and together, we are fully committed to facilitating stronger international cooperation.”

Ladislav Hamran
President, European Union Agency for Criminal Justice
Cooperation (Eurojust)

information exchange between relevant parties, in particular IP rights holders and enforcement authorities.

In the context of the developments of IPEP, the Observatory and DG for Taxation and Customs Union ensure their respective tools are working together. As technology and global markets continue to develop, the IP enforcement system needs to be more joined up in response.

In 2021, IPEP became the single electronic access point deployed at the EU level for submitting customs applications to any of the 27 Member States' competent customs authorities. It is currently used by around 1 000 rights holders, many of whom use it actively for filing Applications for Action (AFAs) that are needed to trigger customs actions in the case of IP infringements. The tool is also used to share product information with a steadily increasing number of

enforcement authorities across the EU which, beyond customs, include the police and anti-fraud and market surveillance authorities.

The Observatory is working on bringing interoperability and more simplicity to the systems, in particular in the collection and exchange of data as well as data analysis. This goal is being pursued in the specifically created Technical Group on IP Enforcement and Data Exchange. The work of this group is under the authority of the high-level meeting on a joint strategy related to IP crime, which groups all major European Commission DGs and EU agencies concerned.

Under this workstream, a new agreement has been signed with OLAF in 2022 to ensure the development of collection mechanisms. The goal is to bring complete customs data in a simplified way into a single database at OLAF, thus increasing the dataset for intelligence gathering and risk analysis at the EU level.



IP Enforcement Forum, 2018, Alicante

The Spanish Guardia Civil started its collaboration in the development of the IP Enforcement Portal (IPEP) to help adapt the tool to police needs and optimise the exchange of information with rights holders. Over the years, we have seen the number of police forces using IPEP grow beyond EU customs and police forces to other parties such as market surveillance authorities or prosecutors.

Miguel Fayos
Major, Guardia Civil, Spain

The World Customs Organization (WCO) spares no effort to support Customs administrations in the implementation of an inclusive action plan for the fight against counterfeit products, fake medicines and others that can harm human life. The Observatory sets an international benchmark with regard to data and information sharing on IPR related matters. Coordinating the efforts of all stakeholders through simultaneous enhanced border controls, enhancing cooperation with rights holders, and learning more about the phenomenon of counterfeiting flows are some of the key elements for an effective IPR practice

Stefan Kirsch
Deputy Director for Compliance and Enforcement, World Customs Organization (WCO)

The IP Enforcement Portal

The IPEP is an interactive, reliable and user-friendly tool, allowing secure communication between rights holders, their legal representatives, EU enforcement authorities, the EU Commission and EU delegations around the world.

STIHL was amongst the very first rights holders to join the idea of a European anti-piracy database. It has developed into an indispensable tool to support our common and relentless fight against theft of our IPRs as our most valuable resource.

Rüdiger Stihl
Former president of the German action circle against Product and Trademark Counterfeiting (APM)

Over the years, DG TAXUD and the EUIPO have accomplished substantial results in our joint efforts to enhance customs enforcement of IPRs at EU external borders. The EUIPO's support has been particularly crucial in linking their key IT tools (the IP Enforcement Portal) with TAXUD's database on IPRs (COPIS) which facilitates communication between rights holders and customs, and the brand new E-AFA electronic request form through which rights holders can request customs to act. Looking forward to many more years of close collaboration!

Gerassimos Thomas
Director-General for Taxation and Customs Union, European Commission

Intermediaries

The issue of IP protection internationally and in third countries has become even more important due to the pandemic-induced rise in influence of e-commerce and its misuse for the online sale of counterfeits. Many more companies – in particular SMEs – are going online and can struggle with IP infringement issues.

This has led to increased urgency in exploring partnerships with intermediaries in the broadest sense, including online platforms, payment providers, logistics operators, etc. since the online world not only brings new opportunities, but also exposes companies to international commerce and the potential risk of counterfeiting.

The Observatory Expert Group on Cooperation with Intermediaries has been analysing the challenges raised by the misuse of intermediary services to infringe IPRs, as well as good practices to address these challenges. Having worked on domain names, social media and payments, this year, the expert group is looking at transport and logistics services, as well as information exchange. This work is closely coordinated with the European Commission, as it will help prepare the upcoming EU Toolbox against counterfeiting. In addition, the Observatory supports the Commission regarding the Memorandum of Understanding on internet sales and the Memorandum of Understanding on internet advertising, voluntary agreements facilitated by the Commission.

Businesses have evolved over the past decade, taking advantage of the digital revolution, internet marketing and the globalisation of markets. In parallel, criminals who seek to profit from the IP rights owned by others have been taking advantage of the complexities posed by multiple jurisdictions as well as new methods and new technologies to stay ahead of the enforcers.

It's time to take bold action to work more closely together across private and public sectors to stop counterfeiters. I am privileged to have been involved with the Observatory from its inception and to see the important role it plays in enabling and supporting these collaborations and in improving understanding and enforcement.

Chris Oldknow

Senior Public Policy Manager, IP & Customer Trust, EMEA, Amazon

Combating IP infringements is a common goal of e-commerce platforms, rights owners and governmental agencies. Formulating the best and the most effective strategies requires all actors to be involved. Such partnerships enable us to better understand trends and expectations, exchange knowledge and experience, and facilitate cooperation on an operational level. It works best with all stakeholders being engaged into the process.

Joana Gega

Intellectual Property Team Manager, Allegro

This constant evolution, with increasing reliance on the digital world and the rapid emergence of new technologies, brings a significant challenge for all IP stakeholders, requiring new ways of thinking and even more joined-up action.

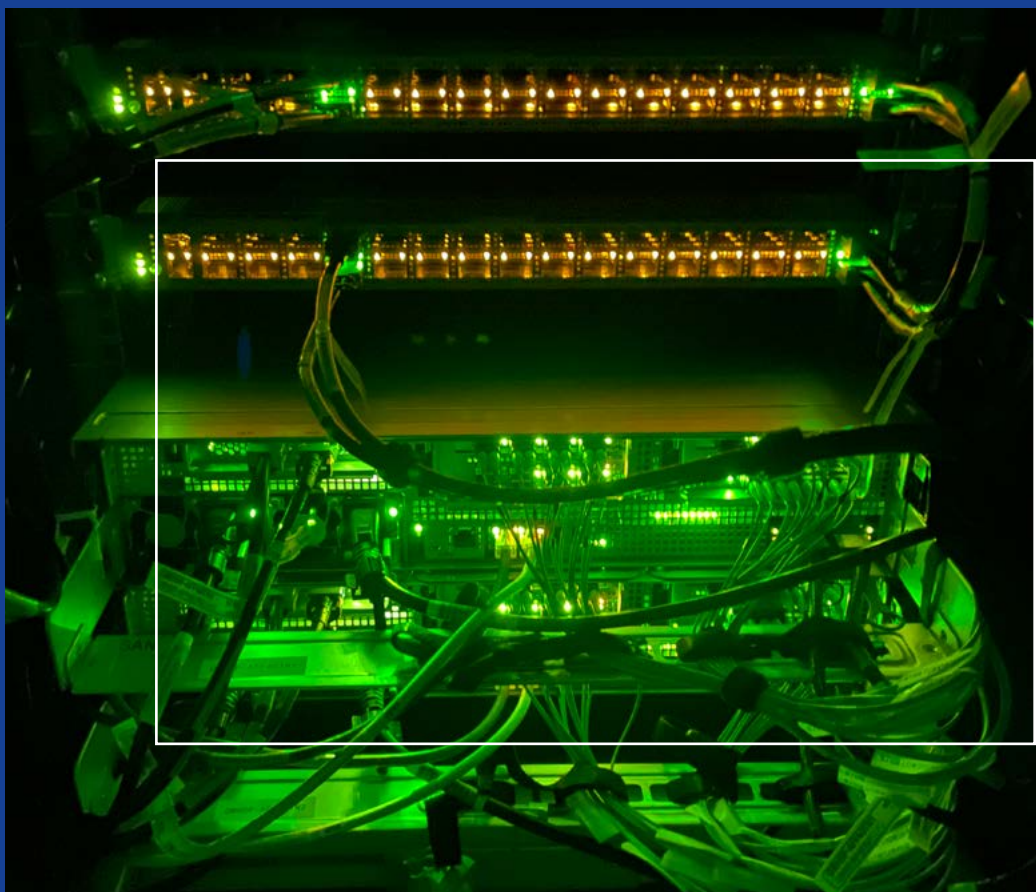


Visit of the Port of Rotterdam, 2016



Evolve

06





EMPACT meeting, 2022, Alicante

In 2008, a model for an EU Observatory against counterfeiting and piracy was conceived to address universal concern that the problem needed to be tackled. At the time we had little more than our belief, but in 2012, the arrival of the EUIPO changed all that, turning an idea into reality. Ten years on and the Observatory is a global success. What a story!

Phil Lewis
Director General, Anti-Counterfeiting Group (ACG)

The Observatory now touches on every aspect of the IP system in the EU, from research to communication and support for enforcement bodies. Its work also has a global influence on IP policy, contributing to the 'soft power' of the EU and helping increase efforts for 'clean' trade.

From a think tank of a few IP enthusiasts meeting at the EU Commission to a full-fledged organisation under the umbrella of the EUIPO, the Observatory has accomplished a lot for the protection and enforcement of IP rights in Europe and beyond.

Marius Schneider
European Communities Trademark Association (ECTA)

In November 2020, the European Commission published a report evaluating the Observatory. The report found that thanks to the work carried out by the EUIPO from 2012 to 2019, with its Observatory team, network of stakeholders and the departments of the Commission, the work of EU bodies, national authorities and rights holders in IP enforcement has been made easier.

The report concludes that 'the EUIPO has become a hub of excellence on IP infringements, a central

source of knowledge, development and sharing of best practice in the EU and internationally. The EUIPO acts as a facilitator and driver for cooperation between national authorities and rights holders across the EU and is an important contributor to the Commission's initiatives on IP within the EU and further afield'.

The handful of experts and committed staff who helped launch the Observatory in 2009 was swiftly increased from 2012 onwards, in line with the Observatory's growing contribution to the IP system. By 2022, the Observatory team had grown to over 60.

This contribution has only been possible as a result of the staff and financial resources provided as a department of the EUIPO.

The challenge of digitisation

The Observatory is doing its part in rising to the challenge of the digital world, notably through studies related to this subject, networks and dedicated projects and initiatives.

Intellectual property rights make a considerable contribution to the European economy but are also essential to Europe's culture. We need to make sure that we protect and enforce IPRs more efficiently. With the upheavals of the digital age, new balances need to be found between the different actors. The Observatory has a key role to play in bringing together all relevant stakeholders. It is a true source of intelligence and a European beacon in the fight against counterfeiting and piracy.

Jean-Marie Cavada

Member of the European Parliament (2004-2019)



EU Blockathon, 2018, Brussels

As part of the strategic project on IP protection on e-commerce marketplaces, online information resources on the IP protection tools and resources of the main e-commerce marketplaces' IP protection measures have been compiled.

Work is ongoing on connecting e-commerce marketplaces to the IPEP, and the Observatory is exploring, with relevant stakeholders, ways to facilitate the exchange of contact points and information between e-commerce marketplaces and enforcement authorities.

Observatory initiatives related to providing advanced tools to help with enforcement are also being followed through. Tools and the way the exchange of information is coordinated will continue to evolve, and the idea is that IPEP will become the central platform for exchanging information.

Another strategic project is connected to the creation of an anti-counterfeiting blockchain-based infrastructure. This initiative builds on the success of the 2018 'Blockathon'. This ground-breaking event brought together some of the best coders and creative minds to unlock the potential of blockchain, for the creation of integrated solutions to combat counterfeiting.

In 2021, a design competition was held to select the best proposals for a high-level architectural design for an authentication platform built on

blockchain that will interconnect products' 'track and trace' solutions with the risk analysis systems of participating enforcement authorities and existing EUIPO tools such as IPEP and the IP Register on Blockchain.

Looking forward, emerging technologies such as 5G/6G networks and the applications based on them, Internet of Things, decentralised internet, blockchain based applications, virtual and augmented reality and the metaverse, have the potential to disrupt the way we communicate and interact by blurring the boundaries between the physical and digital worlds.

These technologies will bring opportunities for established businesses, new entrepreneurs, and creators, but also threats like new infringing business models and new forms of serious and organised intellectual property crime which will represent challenges to the enforcement of IP rights and to the way legitimate stakeholders cooperate.

The next 10 years

The Observatory's network works in tandem with collaborators and partners, and the rest of the EU family of agencies and Directorates-General as well as international bodies with an interest in innovation, creativity, IP rights and their enforcement. This helps understand the shape of the IP world and how it needs to develop, paving the way for positive action.

In the last decade, the European Observatory on Infringements of Intellectual Property Rights has become an important asset for Europe, drawing together an extensive network of experts. The EPO is one of those stakeholders, and is proud to cooperate with the Observatory, especially in conducting ground-breaking IP studies. The findings only serve to highlight just how important the work of the Observatory is in helping to protect and enforce IP rights.

António Campinos
President, European Patent Office (EPO)

The need to support the relevant enforcement authorities and bodies at the national and EU level has become increasingly clear over the past decade. This is not just reflected in the enforcement-related studies, but also in the growth of the specialised networks, training for enforcers and the development of advanced online tools such as IPEP.

Looking forward, in addition to tackling the challenge of digitisation and new technologies, international cooperation will become even more important. It will allow us to build on the work of EU-funded projects in third countries in cooperation with the European Commission and on the work with partners such as the OECD. The possibility of extending IPEP to trusted third-country partners should be explored.

Both within the EU and in the wider world, the Observatory must continue to be a trusted reference

for understanding IP rights in all their facets, a facilitator and driver for cooperation between national authorities and the private sector as well as civil society, and a contributor to the Commission's initiatives on IP within the EU and internationally.

Every child, young person and entrepreneur of the future needs to be knowledgeable and engaged in protecting the innovation and creativity that will drive their future prospects. New fields of study will be explored and communication of the results will be intensified. Cooperation with academia will be fostered and the Ideas Powered@School programme will be enhanced to ensure that IP is in the curriculum everywhere and that teachers are trained on IP.

The Observatory's future direction will, as always, rely on a process of detailed consultation of stakeholders, combined with concrete objectives guiding activities and outcomes. The networks of the Observatory will be invited to actively contribute to the programmes in the future.

These activities will fully be part of the EU policies, and cooperation with the various competent Directorates-General of the Commission will be key. The relations and work with the designated members of the European Parliament and Council working groups will be maintained and intensified on request.

It seems clear that over the next decade, IP rights and their protection will play an even larger role in the success of economies and businesses and the well-being of the public. New questions and new challenges will arise, and the Observatory and its stakeholders and partners will be ready to respond.



EU Blockathon, 2018, Brussels

