

# 2020 STATUS REPORT ON IPR INFRINGEMENT

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

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.



Christian Archambeau

Executive Director, EUIPO

## Executive summary

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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.

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.

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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).

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.



## Introduction

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This third edition of the Status Report on IPR Infringement brings together the findings of the research carried out by the European Union Intellectual Property Office (EUIPO), through the European Observatory on the Infringement of Intellectual Property Rights (Observatory). It is intended to tie together the various studies on the value of IP, the public's perception of it, the mechanisms used to infringe IP rights and the economic, environmental and health and safety consequences of infringement in order to provide a coherent picture of the state of IPR and IPR infringement in the EU. It also includes a section on the actions being taken to combat infringement.

This 2020 edition of the report is updated with the results of new studies. In particular, the EPO-EUIPO IP Contribution study, first published in 2013 and updated in 2016, quantifying the 'weight' of IPR-intensive industries in the EU economy was updated again in 2019; the IP SME Scoreboard was also updated in 2019, as was the IP and Youth Scoreboard (both of these studies were first published in 2016). These 'baseline' studies of the Observatory are generally updated every 3 years.

In the area of IPR infringement, a new joint OECD-EUIPO study on counterfeit medicines was published in 2020. The sectorial studies estimating the impact of the presence of counterfeits in the EU marketplace have all been updated to reflect the most recent data available. A report analysing detentions during 2013-2017 was published in September 2019. It is the first joint analysis of detentions at the EU borders and within national markets reported on the IP Enforcement Portal by the Directorate-General for Taxation and Customs Union (DG TAXUD) of the EU Commission and by the national enforcement authorities, respectively. Finally, two studies dealing with the infringement of digital content were published in 2019, one quantifying the consumption of pirated content in all Member States, and the other on the use of illegal IPTV across the EU. The results of those studies are also included.

In addition to the economic quantification of IPR infringement, the research carried out in the Observatory increasingly focuses on the harm to consumers' health and safety and to the environment that results from IPR-infringing goods, as well as on the relationship between IP crime and other types of crime. Two new reports on these issues have been published in recent months, including a qualitative study of dangerous counterfeits and, most recently, the report on the linkages between IP crime and the other activities of OCGs, published in June 2020.

In addition to research findings, the report has been updated with new actions undertaken by the EUIPO and others to help combat IPR infringement. Some of the activities outlined in last year's report have been continued (for example, the annual grant to Europol to help finance its IP crime unit), and there are also new workstreams in areas such as intermediaries or the role of technology in IP infringement.

Finally, in addition to supporting enforcement, the EUIPO cooperates with public and private actors in the Member States on awareness-raising among citizens, with a particular focus on young people through programmes such as IP in Education. Those activities are described more fully in the final section of the report.

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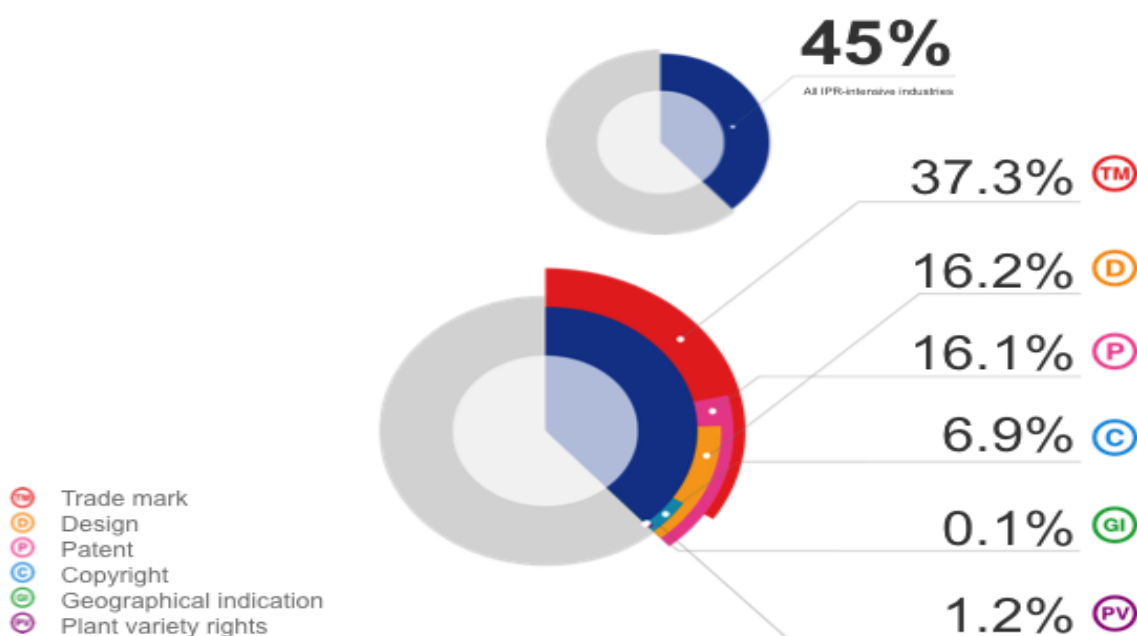


## 1. Economic contribution and the value of IPR

The economic value of European IPR-intensive industries has grown during the financial crisis that began in 2008 <sup>(2)</sup>. In 2019, the EUIPO, together with the EPO, estimated that in 2014-2016 these industries accounted for 45 % of the EU's economic output (EUR 6.6 trillion annually) and 29 % of employment <sup>(3)</sup>. Both figures are higher than those in the earlier IP Contribution study published in 2016 and indicate that IPR-intensive industries are more resilient during adverse economic conditions than other sectors.

Figure 1 illustrates the importance of IPRs by defining the proportion of EU GDP generated by IPR-intensive industries for each of the six IPRs included in the study. Trade marks represent the highest share of the total EU GDP as most businesses that sell products and services need to identify their offerings and distinguish them from those of competitors. Trade marks are therefore an essential feature of a market economy. In terms of contribution to GDP, trade marks are followed by designs, patents and copyright. The other IPRs included in the study are Geographical Indications (GI) and Plant Variety Rights (PVR).

Figure 1 – Contribution of IPR-intensive industries to EU GDP, 2014-2016 average



<sup>(2)</sup> IPR-intensive industries are defined as sectors that make above-average use of registered IP rights, measured on a per-employee basis.

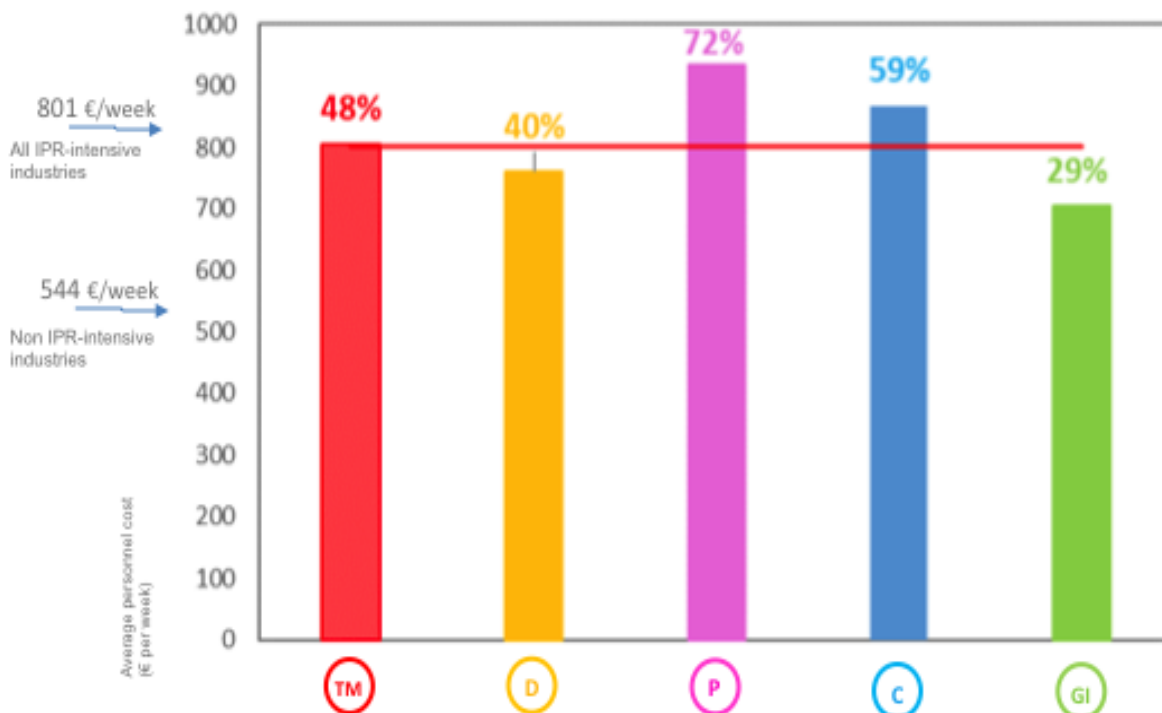
<sup>(3)</sup> EPO/EUIPO, *IPR-intensive industries and economic performance in the European Union*, third edition, September 2019. Available at: <https://euipo.europa.eu/ohimportal/en/web/observatory/ip-contribution>.

Source: EPO/EUIPO (2019) – IPR-intensive industries and economic performance in the European Union

Sectors which make above-average use of IPR exhibit a collective trade surplus with countries outside of the EU. This surplus of EUR 182 billion counterbalanced a small deficit in non-IPR-intensive trade, resulting in an overall trade surplus for the EU of EUR 166 billion.

With 45 % of EU GDP (value added) and 29 % of employment being generated by IPR-intensive industries, the implication is that value added per employee in IPR-intensive industries must be higher than in the rest of the economy. This, in turn, enables companies in those sectors to offer their workers higher remuneration than the non-IPR-intensive sectors, as shown in Figure 2. Overall, remuneration in IPR-intensive industries was 47 % higher than in other sectors. This positive differential holds across all five IPRs for which the calculation was made.

Figure 2: Average remuneration in IPR-intensive industries compared to non-IPR-intensive industries, 2016



\*Data for wages in agriculture are not available in sufficient detail to be able to calculate the wage premium for PVR-intensive industries.

Source: EPO/EUIPO (2019) – IPR-intensive industries and economic performance in the European Union.

To gain a greater understanding of the microeconomic dynamics underpinning these aggregates, the EUIPO examined the relationship between IPR ownership and company performance, and published in June 2015 the resulting report, *Intellectual property rights and firm performance in Europe: an economic analysis* (4). By combining financial performance data with data from the EUIPO’s and EPO’s registers, a

(4) *Intellectual property rights and firm performance in Europe: an economic analysis* (June 2015), available at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IPContributionStudy/phase2/OHIM\\_study\\_report\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/phase2/OHIM_study_report_en.pdf).

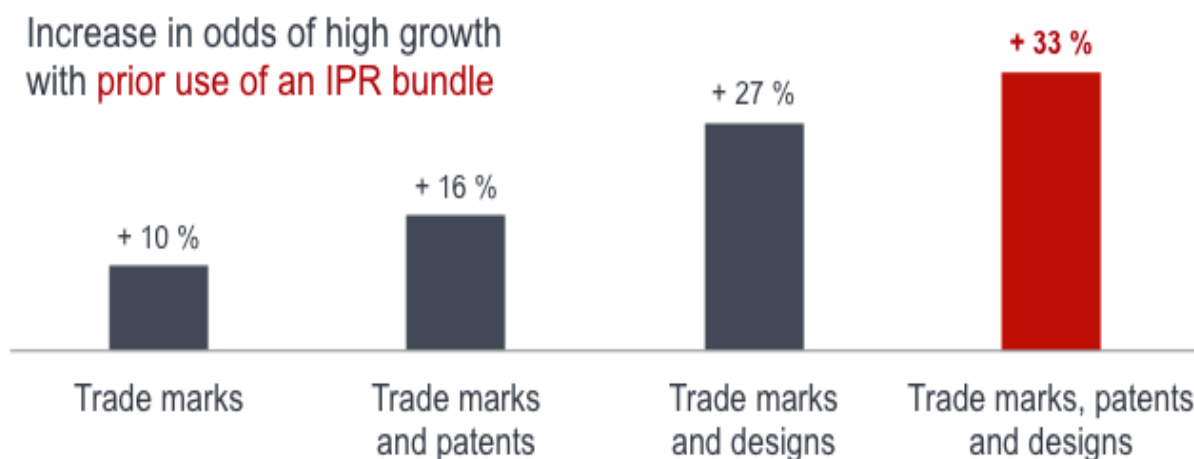
comparison was made between companies owning IPRs and those without. That study found that IPR-owning companies tended to employ more workers and generated on average 29 % higher revenue per employee than firms without IPRs.

The analysis of company size, business performance and IPRs revealed that this relationship was particularly pronounced for SMEs. These companies generated almost 32 % higher revenue per employee than SMEs that did not own IPRs.

The studies described above are static in nature: they investigate the relationship between IP rights and economic performance (whether at the level of industry or individual companies) at a given point in time. To address this, a new study carried out by the EUIPO and the EPO in 2019 <sup>(5)</sup> looked at the relationship between SMEs' IPR activity and their growth in subsequent years.

This study showed that SMEs that apply for patents, trade marks or designs have a higher probability than other SMEs of achieving high-growth status during the subsequent 3 years <sup>(6)</sup>. Furthermore, this effect was strongest for the SMEs that had applied for European rather than only national IP rights, indicating the importance of international activities for the high growth of the firm. Also, firms that used more than one type of IPR had a greater likelihood of achieving high growth, as shown in Figure 3. SMEs that apply for trade marks only have a 10 % greater likelihood of subsequent high growth than SMEs that are not IPR active. However, if patents are also used, the likelihood of high growth is 16 % higher than for non-users; combinations of trade marks and designs increase the likelihood of high growth by 27 %, and combinations of all three IP rights, by 33 %.

Figure 3: Prior use of IP rights and the probability of subsequent high growth



Source: EPO/EUIPO (2019) – High-growth firms and intellectual property rights.

The finding that IPR-owning SMEs perform well and yet only a small minority of SMEs register IPRs led the EUIPO to examine in more detail the use of IPRs by European SMEs: why do they register those rights (or refrain from doing so), what kind of problems do they face when trying to protect their rights, and what

<sup>(5)</sup> *High-growth firms and intellectual property rights* (May 2019). Available at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2019\\_High-growth\\_firms\\_and\\_intellectual\\_property\\_rights/2019\\_High-growth\\_firms\\_and\\_intellectual\\_property\\_rights.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_High-growth_firms_and_intellectual_property_rights/2019_High-growth_firms_and_intellectual_property_rights.pdf)

<sup>(6)</sup> A high-growth firm has been defined in accordance with the OECD and Eurostat definitions as a firm with an average annualised growth rate of turnover in excess of 20 % per annum, over a 3-year period.

kind of impact did IPRs have on their business. The results were released through the EUIPO's 2019 IP SME Scoreboard <sup>(7)</sup>, an update of the earlier study from 2016.

The main reasons that IPR-owning SMEs gave for registering IPRs were: to prevent copying (59 %), to increase legal certainty (58 %) and to improve the image and value of the company (36 %). After registration, 54 % of owners claimed a positive impact. The main impacts identified were an increase in reputation (52 %), turnover (39 %) and ability to access new markets (37 %).

For those without registered IPRs, the main reason for not registering was a lack of knowledge about what IP is and its benefits. The percentage giving this reason has increased from 25 % in 2016 to 38 % in 2019.

Despite this positive impact on commercial performance, many SMEs still believe that they lack sufficient knowledge about IPRs and their impact and that registration and enforcement is too lengthy and too costly. About 24 % of the respondents reported having suffered from IPR infringement, down from 31 % 3 years earlier.

### Summary of section 1 – Value and economic importance of IPR

1. IPR-intensive industries account for 45 % of the EU's GDP, 29 % of employment, and 96 % of the EU's goods exports to the rest of the world. These sectors also pay salaries that are on average 47 % higher than those in the rest of the economy.
2. On the level of individual firms, IPR owners perform better than non-owners (29 % higher revenue per employee than firms without IPRs); increases in European and national IPR stocks are associated with improved performance. The effect is particularly strong for SMEs, where the revenue per employee is 32 % higher for IPR owners compared to non-owners.
3. SMEs that use trade marks, patents and designs have a higher likelihood of achieving high growth in subsequent years than those that do not use IPRs.
4. The IP SME Scoreboard shows that the accumulation of IPR assets has a positive impact on business indicators such as turnover, employment, profitability and access to finance.
5. Only 9 % of European SMEs own registered IP rights, but there are strong indications that firms that rely on IPR are more profitable and grow faster than other firms.

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<sup>(7)</sup> EUIPO (2019), Intellectual Property (IP) SME Scoreboard, available at <https://euipo.europa.eu/ohimportal/en/web/observatory/sme-scoreboard#2019>.

## 2. Why and how are IP rights infringed?

Counterfeiting and piracy are a complex and growing problem. Not only luxury goods but also everyday products are faked. The use of complex trade routes and the growth in e-commerce make the job of customs and other enforcers more difficult.

There is evidence of involvement of OCGs in counterfeiting and piracy, and IP crime can be linked to other types of crime. These groups are attracted to IP crime because of the high returns that can be earned, coupled with a low risk of detection and relatively lenient penalties if caught. IP infringers are prepared to take advantage of new opportunities such as the current COVID-19 pandemic.

The first section of this report has shown the importance of IPRs to the EU economy and their value to the individual businesses themselves. However, sometimes this value is exploited by other economic actors who are, in effect, ‘free riding’ on the efforts of the original innovators. These perpetrators seek to illegally benefit from this IPR value through a number of different channels, including the production and distribution of counterfeit and pirated products (including digital content) in both domestic and export markets.

This section examines the supply and demand side of the market for infringing goods. On the supply side, the methods used to bring the counterfeit goods to the consumer are discussed, drawing on a variety of sources and reports, such as the EUIPO-Europol *IP Crime Threat Assessment*, published in June 2019 <sup>(8)</sup>, the OECD-EUIPO study on counterfeit pharmaceutical products, published in March 2020 <sup>(9)</sup>, the Europol report on IP crime in the context of the COVID-19 pandemic (April 2020) <sup>(10)</sup>, and the Europol-EUIPO report on the links between IP crime and other serious crime, published in June 2020.

The final subsection looks at the demand side: what motivates consumers to infringe IPR, drawing mainly on the 2017 IP Perception study <sup>(11)</sup> and the updated 2019 IP and Youth Scoreboard <sup>(12)</sup>.

<sup>(8)</sup> Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2019\\_IP\\_Crime\\_Threat\\_Assessment\\_Report/2019\\_IP\\_Crime\\_Threat\\_Assessment\\_Report.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_IP_Crime_Threat_Assessment_Report/2019_IP_Crime_Threat_Assessment_Report.pdf).

<sup>(9)</sup> OECD/EUIPO (2020), *Trade in Counterfeit Pharmaceutical Products*. Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/Trade\\_in\\_Counterfeit\\_Pharmaceutical\\_Products/Trade\\_in\\_Counterfeit\\_Pharmaceutical\\_Products\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Trade_in_Counterfeit_Pharmaceutical_Products/Trade_in_Counterfeit_Pharmaceutical_Products_en.pdf).

<sup>(10)</sup> Europol (2020), *Counterfeits, substandard goods and intellectual property crime in the COVID-19 pandemic*. 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).

<sup>(11)</sup> EUIPO (2017) *European Citizens and Intellectual Property: Perception, Awareness, and Behaviour*. Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IPContributionStudy/2017/european\\_public\\_opinion\\_study\\_web.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/2017/european_public_opinion_study_web.pdf).

<sup>(12)</sup> Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IP\\_youth\\_scoreboard\\_study\\_2019/IP\\_youth\\_scoreboard\\_study\\_2019\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IP_youth_scoreboard_study_2019/IP_youth_scoreboard_study_2019_en.pdf).

Counterfeiting is a global phenomenon that has evolved significantly with the advent of better technology. Online marketplaces and social media are increasingly becoming an important source of income for criminal groups engaged in the sale of both counterfeit products and pirated digital content, such as films, TV, music, live sporting events, e-books and games.

Counterfeiting has diversified from traditional activities centred on luxury and branded goods, towards pharmaceutical products, electronic goods, household and cosmetic products, automotive spare parts, pesticides, toys, food and drinks, and technical products, such as bearings and electronic components. Customs seizures at the EU borders indicate that the seized counterfeits are increasingly in the form of small shipments and include greater proportions of spare parts, including replacement car parts and components for mobile phones, such as screens or batteries.

Detentions happen not only at the EU borders, but also within the internal market. Recently, the Observatory has analysed both types of detentions during 2013-2017, using data reported by customs and police in the IP Enforcement Portal Report Detentions Area <sup>(13)</sup>. The findings are contained in the *Report on the EU enforcement of intellectual property rights: results at the EU borders and in Member States 2013-2017* (September 2019) <sup>(14)</sup>.

The objective of the report is to inform EU enforcers and policymakers of trends, comparisons and estimations for counterfeit and pirated goods detained, and provide an evidence base for developing future policies and priorities.

Some of the key findings of the analysis include:

- The volume of fake items detained in the EU amounts to approximately 438 million items. About 30-40 % of these were detained at the EU borders, and 60-70 % in the internal market.
- The estimated value of fake items detained in the EU amounts to some EUR 12 billion. About 15-30 % of the total value of detained items reported is accounted for by detentions at the EU borders and 70-85 % by detentions in the internal market.
- The four most common subcategories of products were clothing accessories, toys, recorded music, film, software and game software, and cigarettes. These four subcategories account for more than 33 % of the products reported.
- In terms of estimated value of the items reported, the top four subcategories of products identified were clothing accessories, watches, recorded music, film, software and game software, and bags including wallets, etc. carried in the pocket/bag. These four subcategories represent almost 50 % of the estimated value of detentions during the period 2013-2017.
- The distribution of IP rights allegedly infringed at the moment of detention shows that trade marks predominate. Such products account for almost 70 % by volume and 54 % by estimated value of detentions at the EU borders and in the internal market.

The economic incentives driving counterfeiting are significant. In June 2019, the EUIPO and Europol published the *Intellectual Property Crime Threat Assessment 2019* <sup>(8)</sup>, following on the earlier 2015 and 2017 joint situation reports. The new report provides an assessment of the threat posed by counterfeiting and piracy in several product sectors, as well as cross-cutting factors that influence or impact the criminal area. Besides the traditional luxury items, a wide range of everyday goods are increasingly targeted by counterfeiters. This includes cosmetics, electronic components, food and drinks, pesticides, pharmaceuticals, tobacco products, toys and vehicle parts.

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<sup>(13)</sup> The report is based on data on customs seizures reported by the EU Commission's DG TAXUD, and data on detentions in the Internal Market, reported by enforcement authorities from 24 Member States.

<sup>(14)</sup> Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2019\\_Report\\_on\\_Enforcement\\_of\\_IPR\\_at\\_EU\\_borders\\_and\\_in\\_MS\\_2013\\_2017/2019\\_Report\\_on\\_enforcement\\_of\\_IPR\\_at\\_EU\\_borders\\_and\\_in\\_MS\\_2013\\_2017\\_Full\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_Report_on_Enforcement_of_IPR_at_EU_borders_and_in_MS_2013_2017/2019_Report_on_enforcement_of_IPR_at_EU_borders_and_in_MS_2013_2017_Full_en.pdf).



During the period 2014-2017, the total number of seizures of counterfeit items by customs authorities in the EU gradually decreased. At the same time, the number of articles seized and the total estimated value of these seizures increased in 2015 and 2016, and only decreased in 2017. The number of articles per seizure and the average value per seizure increased considerably, the latter going up from EUR 6 482 in 2014 to EUR 10 141 in 2017.

Notwithstanding the significance of counterfeit imports, the importance of domestic production has increased, driven by lower production and distribution costs, and a lower risk of detection. For instance, counterfeiters employ a range of practices to evade the seizure of goods, including the use of a high volume of small packages rather than bulk transportation, and the movement of non-labelled products across borders, with the fake authenticity measures being applied at a later stage, prior to distribution.

These are but a few examples of a large number of practices engaged in by counterfeiters to avoid detection of their products. A further noteworthy current practice is to change the mode of transportation. Traditionally counterfeit goods were transported by sea, as this approach is cost-effective when moving large quantities. New transport links, such as the growing rail network between the EU and China, may provide counterfeiters with an opportunity to diversify their approach to transporting products. Nevertheless, it is important to note that, despite this change in focus, bulk shipments of counterfeit goods continue to be the most significant delivery mode for counterfeiters from third countries. To reach 6.8 % of EU imports using small postal consignments would be impossible.

With cheaper production methods and improved technology, counterfeiters have moved into the production of everyday goods including, for example, medicines, shampoo, toothpaste, cosmetics and batteries for laptops and mobile phones. In essence, every product with a brand that has value can be and is counterfeited, even mundane, low-cost items such as laundry detergents. This illicit production carries negative consequences for the economy and also for consumer health and safety, as discussed in section 3 below.

The production and distribution of counterfeit products are often associated with criminal gangs and wider criminal acts, including fraud, tax evasion, money laundering, narcotics, and human trafficking. Many of these gangs are set up across borders (intra and extra EU) and seek to take advantage of weaknesses in supply chains, corruption of brokers and falsification of documents, re-labelling of items and factory overruns, for example, to cover their tracks and to decrease the probability of detection. Another method that is gaining increased prominence is the smuggling of labels and other packaging separately from the goods themselves, with the final assembly and other production activities taking place inside the EU.

There are a number of different incentives for criminal gangs to engage in counterfeiting activities. First and foremost is the potential return on investment, which, as has been suggested, can be greater than the returns on any other illegal activity, including the sale of illicit drugs.

Furthermore, once these attractive returns are risk adjusted for the counterfeiter (significantly lower prison sentences and fines for IPR infringement compared to illicit drugs trafficking, police and prosecutors more likely to focus on higher profile crimes, such as terrorism, the arms trade and human trafficking than IPR crime), the risk/reward relationship is heavily weighted in favour of counterfeiting.

In the Europol-EUIPO polycriminality report, the involvement of OCGs and the links between IP crime and other types of crime are examined in detail through a series of case studies.

There are two ways IP crime can be linked to other criminal activities: with one criminal activity supporting the other, or as parallel activities. In the case of supporting criminal activities, the relationship can have two different formats. First, other forms of criminal behaviour can be used to facilitate IP crime. For example, an OCG produces fraudulent documents in order to sell their counterfeit goods as legitimate ones. In this case, IP crime is the supported criminal activity. Alternatively, criminals might engage in counterfeiting to



generate profit that is used for other types of serious and organised crime, such as narcotics or human trafficking <sup>(15)</sup>. In that case, IP crime is the supporting criminal activity.

In the case of parallel criminal activities, OCGs engage in different forms of criminal behaviour that are relatively independent of each other. They can be either entirely unconnected or interlinked but without one activity clearly facilitating the other. An example of the latter is an OCG that uses the same route or transportation method for the trafficking of counterfeit goods and other illicit products.

The counterfeit products detected in the cases studied include fake pharmaceuticals of various types, performance-enhancing drugs, clothing, footwear and accessories, tobacco products, electronics, fake food, wine and spirits, fake pesticides and even counterfeit luxury cars. Furthermore, cases involving illegal IPTV devices and the illegal streaming of copyright-protected content were also included.

The IP crime activities uncovered by the investigations were linked to a wide range of other crimes, including money laundering, document fraud, cybercrime, fraud, drug production and trafficking, forced labour and even terrorism.

These cases show that the idea of IP crime as a victimless crime is misguided. Awareness of the links between IP crime and other areas of crime can help law enforcement officials to better recognise them in future cases, and support decision makers in addressing them at a policy level.

Many of the features of modern economies, for example good transport infrastructure, the internet, a well-functioning financial system, are fundamental for the functioning of the legitimate economy, but they are also useful for organised crime to conduct industrial-scale IPR infringement.

Counterfeiters are also enabled by the growth in Free Trade Zones (FTZs), which provide exemptions from duty and taxes, simpler administrative procedures and duty-free import of raw materials, machinery, parts and equipment. In a study published in 2018, the OECD and the EUIPO quantified the importance of FTZs on trade in counterfeit goods. This study confirms the links between FTZs and trade in counterfeit products <sup>(16)</sup>. While FTZs provide useful services to the legitimate economy, they are being misused by industrial-scale IPR infringers to produce and distribute counterfeit and pirated goods. The challenge for society is to ensure that the FTZ's positive contributions to the economy are fulfilled while limiting the potential for abuse.

The OCGs engaged in the manufacturing and distribution of counterfeit goods react very quickly to take advantage of new opportunities. The COVID-19 pandemic, which struck most of the world in early 2020, has provided them with one such opportunity. Europol is monitoring the situation and published a report entitled *Counterfeits, substandard goods and intellectual property crime in the COVID-19 pandemic* <sup>(10)</sup> in April 2020. The counterfeiters are taking advantage of shortages of products such as personal protection equipment, testing kits, and of citizens' fear and anxiety.

In doing so, they are using more or less the same production facilities and trade routes as for other types of counterfeits, demonstrating once again their adaptability to new conditions. The products seized by the authorities so far include medical equipment (face masks, fake test kits, counterfeit latex gloves, etc.), sanitisers and disinfectants, and despite the fact that, to date, no treatments have been shown to be effective, fake pharmaceuticals. As soon as a pharmaceutical product is mentioned in the media as a potential treatment, counterfeit versions of the product are offered for sale. The sources of these products

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<sup>(15)</sup> Even terrorist organisations can use IP crime as a source of profit. INTERPOL reported in 2018 that Islamic terrorist organisations had sourced funds from many different criminal activities including the counterfeiting of tobacco. Similarly, the Europol-EUIPO polycriminality report contains a case linking Northern Ireland paramilitary groups with sales of counterfeit goods.

<sup>(16)</sup> OECD/EUIPO (2018), *Trade in Counterfeit Goods and Free Trade Zones*. Available at: <https://euiipo.europa.eu/ohimportal/en/web/observatory/trade-in-counterfeit-goods-and-free-trade-zones>.

are predominantly the same as for other counterfeit pharmaceutical products, that is, India and China, although production in several EU Member States has also been detected.

Online channels, including social media, are increasingly used for marketing these products to consumers.

## 2.1 COPYRIGHT INFRINGEMENT

The supply and consumption of counterfeit goods represents only part of today's IP infringement picture. The supply and consumption of copyright-infringing digital content across media such as television, films, live sports events, music, games and books via the internet represents a lucrative market for infringers and consumers alike.

In order to map the evolving business models used by suppliers of illicit digital content and by sellers of counterfeit goods, the EUIPO carried out a study, resulting in the *Research on Online Business Models Infringing Intellectual Property Rights* report published in July 2016 <sup>(17)</sup>.

The report identified and examined the techniques used to facilitate online IPR infringements and the associated business models employed. In addition, the analysis examined how the structures and approaches functioned, how they were financed, the revenue streams generated, the content being distributed and the associated customer bases.

The analysis found that there were at least 25 online business models that either directly infringed IPR in the sale of counterfeit goods or used the same websites, either on the internet or the darknet, to engage in illegal activity such as phishing, dissemination of malware and the sharing of pirated digital content. In many of these models the infringement of trade marks and copyright was most common, although there were instances of multiple infringements, including cases where IPR was misused in the domain name.

The EUIPO has recently carried out two studies of the consumption of copyright-infringing content in the EU.

In November 2019 the *Online Copyright Infringement in the European Union* report was published <sup>(18)</sup>. This report examines the consumption of copyright-infringing content, in all the EU Member States, related to TV programmes, music and films, using a variety of desktop and mobile access methods, including streaming, downloading, torrents and ripping software. The analysis is based on a rich set of data on the access to pirated music, films and TV programmes in all 28 Member States from January 2017 to September 2018.

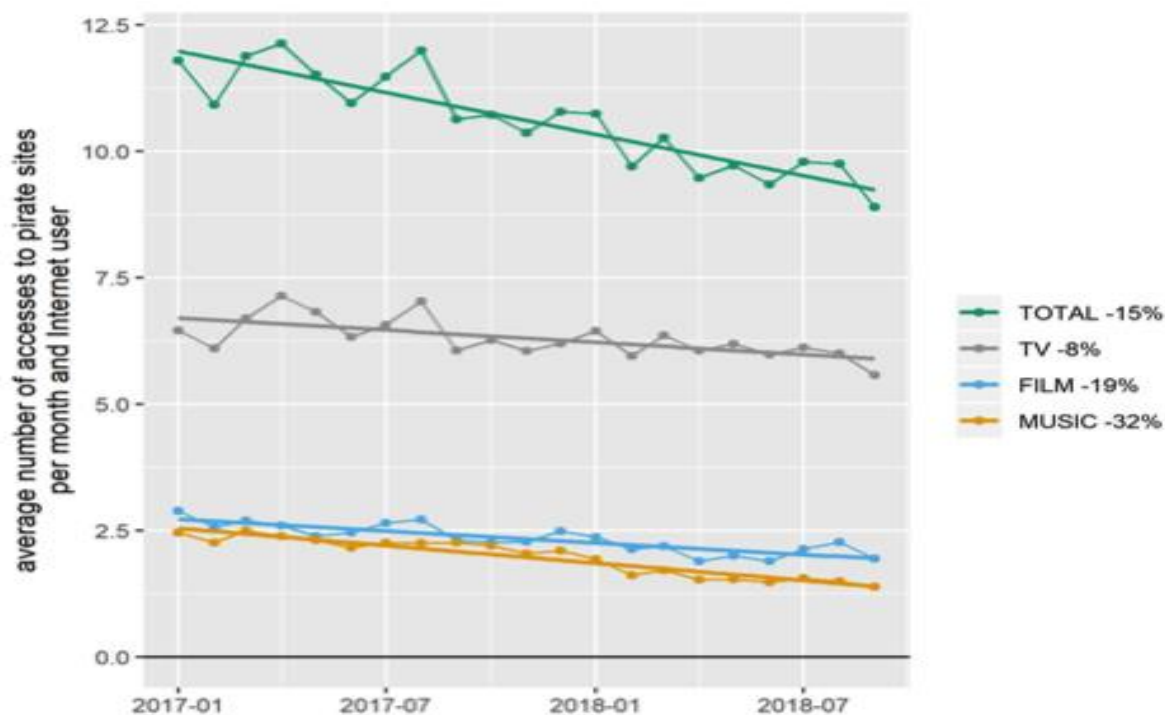
The good news in this report is that digital piracy is on the decline, as shown in Figure 4 below. Between 2017 and 2018, overall access to pirated content decreased by 15 %. The decrease was most pronounced in music, at 32 %, followed by films (19 %) and TV (8 %).

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<sup>(17)</sup> Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/resources/Research\\_on\\_Online\\_Business\\_Models\\_IBM/Research\\_on\\_Online\\_Business\\_Models\\_IBM\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/Research_on_Online_Business_Models_IBM/Research_on_Online_Business_Models_IBM_en.pdf).

<sup>(18)</sup> Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/quantification-of-ipr-infringement/online-copyright-infringement-in-eu/online\\_copyright\\_infringement\\_in\\_eu\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/quantification-of-ipr-infringement/online-copyright-infringement-in-eu/online_copyright_infringement_in_eu_en.pdf).

Figure 4: Trends in consumption of pirated content, EU, 2017-2018.



However, piracy remains a significant problem, more so in some Member States than in others. The average internet user in the EU accessed pirated content 9.7 times per month in 2018, ranging from almost 26 times per month in Latvia and Lithuania to less than 4 times per month in Finland.

The report also examines the socio-economic and demographic factors that might explain these differences. The level of income per capita and the extent of inequality seem to have the greatest impact on the consumption of pirated content: high per capita income and low degree of income inequality are associated with lower levels of illicit consumption. The overall size of the market, as measured by the number of internet users in a country, also matters: the average consumption of pirated content is lower, all other things being equal, in larger Member States. A higher acceptance of digital piracy, as evidenced in the 2017 IP Perception study, is also associated with a higher level of consumption of pirated content.

A study on illegal Internet Protocol Television (IPTV) was also published in November 2019<sup>(19)</sup>. IPTV technology features advantages for both broadcasters and viewers, including flexible online access, time-shifted media and video-on-demand streaming. At the same time, the technology poses a challenge to broadcasters and legitimate providers, as internet-based interactivity also facilitates the unauthorised delivery of IPTV content and makes it easily accessible from anywhere in the world.

The providers of unauthorised IPTV use three different business models. The first is based on the sale of unauthorised IPTV subscriptions to consumers. The second business model is oriented towards the resale of packages of IPTV channels and facilities to set up an illegal IPTV resale. Finally, the third business model offers IPTV streaming free of charge. As users are not charged an access fee, the revenue is most commonly generated from advertising or malware dissemination.

<sup>(19)</sup> *Illegal IPTV in the European Union*. Available at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2019\\_Illegal\\_IPTV\\_in\\_the\\_European\\_Union/2019\\_Illegal\\_IPTV\\_in\\_the\\_European\\_Union\\_Full\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_Illegal_IPTV_in_the_European_Union/2019_Illegal_IPTV_in_the_European_Union_Full_en.pdf).

The study found that 3.6 % of the EU population consumes such illicit IPTV, generating almost EUR 1 billion in unlawful revenue annually for the providers of these services. As is the case with the consumption of pirated content in general, there is a considerable variation among the Member States.

Europol's COVID-19 report notes that, during the spring of 2020, with millions of EU citizens confined to their homes due to the pandemic, the use of both IPTV services in general and illicit IPTV has increased. Most recently, in France, Hadopi (the High Authority for the dissemination of works and the protection of rights on the internet) found that the consumption of illicit IPTV had increased significantly during the period of confinement <sup>(20)</sup>.

## 2.2 DEMAND FOR IPR-INFRINGING GOODS AND SERVICES

European consumers recognise the importance of protecting IP rights so that innovators and creators can earn a living but, at the same time, a significant proportion of them purchase counterfeit goods or consume pirated digital content. Usually price and the easy availability of IPR-infringing goods and services are the main reasons given.

The preceding subsections have looked at the economic incentives that motivate infringers, and the modus operandi of those infringers. However, whenever goods or services are sold, whether counterfeit or genuine, there is always both a supply and a demand. The demand for counterfeit goods and for illicit digital content is the subject of this subsection.

The main incentives for consumers include lower prices, easy accessibility to counterfeit products and, in some countries, a high degree of social acceptability. On the other side, however, there are also risks for the consumers, including health and safety consequences, inferior quality or performance, the potential for being subject to legal action by the owner of the IP rights infringed or by the authorities, and the realisation that one is supporting organised crime. In order to understand why consumers engage in IPR infringement by purchasing counterfeits or accessing illegal contents online, the EUIPO has carried out two IP Perception studies, one in 2013 and the other in 2017, that surveyed a large, representative sample of citizens in all EU Member States.

EU citizens continue to purchase counterfeit goods despite their recognition of the value of intellectual property (as shown in the 2017 IP Perception study <sup>(11)</sup>) and the reported awareness of the damage to businesses and jobs caused by buying counterfeit goods.

The study revealed that, while 97 % of Europeans surveyed believe that it is important that inventors, creators and performing artists can protect their rights and be paid for their work, 10 % had purchased counterfeit goods, and a similar proportion admitted to having intentionally downloaded or streamed content from illegal online sources during the last 12 months.

The survey results identified a number of drivers behind this illicit activity. Both the price and the availability of these goods play a part. 27 % of those surveyed and 41 % of those between 15 to 24 years old agreed that 'it is acceptable to purchase counterfeit products when the price for the original and authentic product is too high'. This view is not only driven by income issues, but also forms part of a protest and presents an opportunity for consumers to be 'resourceful'. This perspective was most prevalent amongst young people and manual workers.

<sup>(20)</sup> [https://hadopi.fr/sites/default/files/sites/default/files/ckeditor\\_files/CP\\_barometre\\_conso\\_culturelle\\_confinement\\_2020\\_04\\_30.pdf](https://hadopi.fr/sites/default/files/sites/default/files/ckeditor_files/CP_barometre_conso_culturelle_confinement_2020_04_30.pdf)

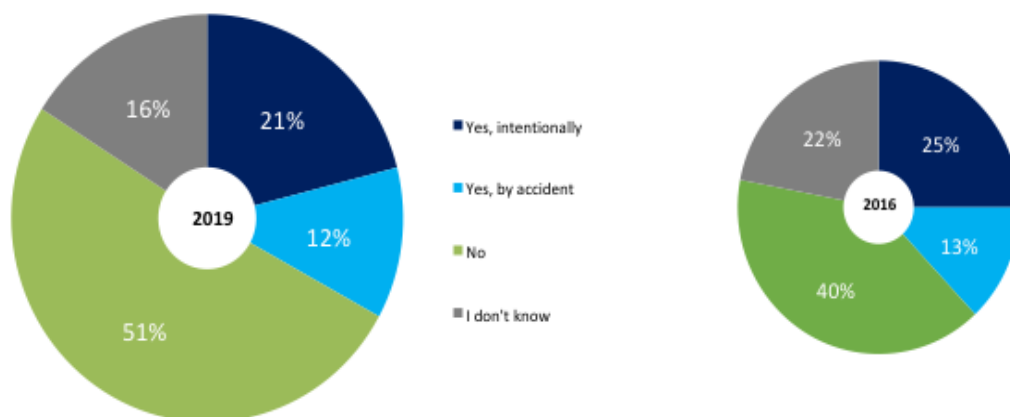
While 10 % of those surveyed indicated that they had intentionally accessed, downloaded or streamed content from illegal sources during the last 12 months, a slight increase from the 2013 survey, 24 % of those questioned indicated that they had wondered whether or not the source was legal.

The 2017 survey also revealed that 52 % of those using illegal sources also reported using lawful services to access content, highlighting that one of the most significant issues for those involved in downloading illicit content, was availability and not just price. This view was particularly common amongst 15- to 24-year-olds, with 43 % agreeing that it was acceptable to obtain content illegally from the internet when there was no immediately available legal alternative. These issues were also identified in the analysis of the 2013 survey results.

In addition to the general studies of opinion among EU citizens, the EUIPO has also carried out surveys focused on the younger generation, those between 15 and 24 years old. The first such IP and Youth Scoreboard was published in 2016 and updated in 2019 <sup>(12)</sup>.

The updated report found that young people were less likely to access pirated content in 2019 than in 2016, confirming the trend identified in the online infringement report discussed above. In particular, the proportion of respondents who indicated that they did not access such content increased by 11 percentage points.

Figure 5: The use of pirated digital content, 2016 and 2019.



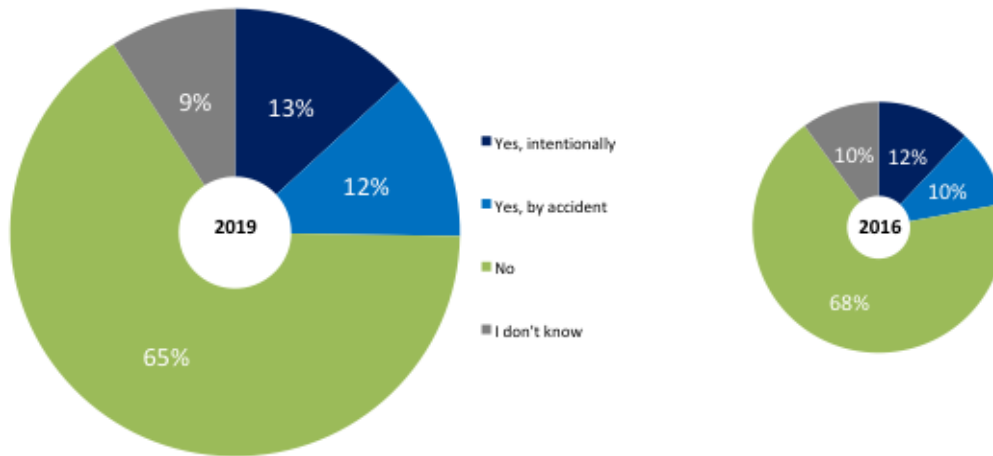
Source: 2019 IP and Youth Scoreboard.

Films and TV series were by far the most popular type of pirated content among young people, followed by music and games. The main reasons given for consuming such content were price, availability and choice.

When it came to purchasing counterfeit goods, the picture was unclear, with little change between 2016 and 2019. The counterfeit goods most commonly purchased by young people were clothing, footwear and small electronic items, and price was the main motivating factor behind such purchases.



Figure 6: Purchases of counterfeit goods, 2016 and 2019.



Source: 2019 IP and Youth Scoreboard.

**Summary of section 2: Why and how are IP rights infringed?**

1. The profile of counterfeit products and distribution channels continues to evolve.
2. The nature of transportation is changing and diversifying (rail, FTZs, use of small packages as a reflection of increased e-commerce).
3. Health and safety concerns are increasing as the counterfeiting of everyday consumables such as cosmetics or medicines becomes more prevalent.
4. The incentives to counterfeit are favourable (high profits, relatively light punishment).
5. There is increasing evidence of the involvement of organised crime in IPR infringement and of the link between IP crime and other types of crime such as drug and human trafficking, fraud, tax evasion and money laundering.
6. There is clear evidence that young Europeans are comfortable purchasing counterfeit goods and downloading illegal content if the price is right and there is a perceived lack of available legal content.
7. Counterfeiters use a range of different business models both to sell counterfeit goods and to share illegal digital content, and they generate additional revenues (for example, through advertising) linked to these activities.
8. Counterfeiters are taking advantage of the business opportunities provided by the COVID-19 pandemic to sell fake protective equipment and pharmaceutical products in the EU.





## 3. Quantification and consequences of IPR infringement

IPR infringement is big business. The annual value of imports of counterfeit goods into the EU was estimated at EUR 121 billion, representing 6.8 % of the EU's imports from the rest of the world. The presence of counterfeits in the EU marketplace results in over 400 000 lost jobs, EUR 83 billion in lost sales in the legitimate economy, and EUR 15 billion in lost tax revenue.

In addition to economic losses, IPR-infringing products such as fake medicines or counterfeit children's toys can cause environmental damage and present significant risks to the health and safety of consumers.

The analysis in the previous section examined the incentives on both the supply and demand sides of the infringement 'market'. This section turns to the economic impact of infringement on both the private and public sectors of the economy, and the harm caused by counterfeits to the health and safety of citizens. It draws on the joint EUIPO-OECD studies of counterfeit trade, in particular the updated 2019 study of the volume of world-wide and EU-bound trade in counterfeits, and the 2020 study on counterfeit medicines.

The sectorial studies published by the EUIPO since 2015 provide estimates of the economic costs resulting from the presence of counterfeit goods in the EU. The impact both on private sector sales and employment, and the derived impact on public finances are included.

Taken together, these two sets of studies provide a comprehensive picture of the global trade in counterfeit goods, the sectors most affected, the provenance of the counterfeits, and the resulting impact on the European economy.

Finally, in addition to the economic consequences of infringement, impacts on health, safety and the environment are an increasingly important area of focus for the EUIPO and for authorities at both EU and Member State levels.

### 3.1 JOINT EUIPO-OECD STUDIES ON COUNTERFEIT TRADE

In April 2016, working jointly with the OECD, the EUIPO published a report entitled *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact*. The report contained estimates of the total value of trade in counterfeit goods based on seizure data from the World Customs Organization, DG TAXUD and the US Customs and Border Protection. The analysis revealed the extent of counterfeit goods in global trade, which is estimated to have reached as much as USD 461 billion (EUR 338 billion) in 2013.

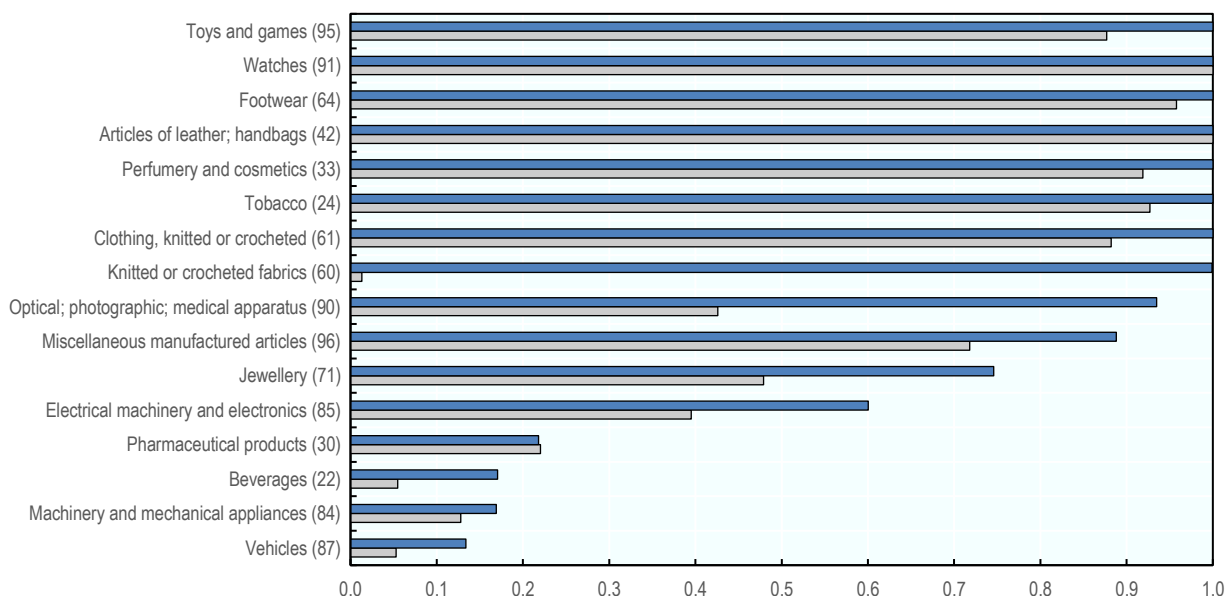


The ground-breaking 2016 study was updated in early 2019, with the resulting report published in March 2019 <sup>(21)</sup>. The new study, based on more recent data from 2016, shows that the problem of counterfeit trade has become more serious. The world-wide volume of trade in counterfeit goods is estimated at USD 509 billion, amounting to 3.3 % of world trade (up from 2.5 % of world trade in 2013). Imports of counterfeits into the EU from the rest of the world are now estimated at EUR 121 billion, or 6.8 % of total EU imports. Both figures are significantly higher than three years earlier (EUR 85 billion, or 5 % of total EU imports).

Using economy-specific trade and product indices, which account for customs seizure percentages and trade flows, the most prevalent provenance economies of counterfeit goods entering the EU were identified. The top of the list includes countries and territories such as Benin, China, Gambia, Hong Kong, India, Malaysia, Morocco, Panama, Turkey and the United Arab Emirates (UAE).

In terms of composition of the inbound counterfeit trade, imports of fake goods to the European Union appear to be most intensive for luxury and fashion products such as leather articles and handbags, watches, perfumes and cosmetics, footwear, jewellery, and sunglasses. However, counterfeiters also tend to target common consumer products imported into the EU. These include toys and games, footwear and clothing. In addition, counterfeit or pirated intermediary products, such as electronics goods and ICT devices or spare parts, are also frequently imported into the EU. The EU industries affected by counterfeit imports are shown in Figure 7. The dark bars denote the most recent period, 2014-2016, while the lighter bars show the earlier period, 2011-2013. The figures on the horizontal axis are related to the relative frequency of counterfeits in the different product categories <sup>(22)</sup>.

Figure 7: Industries affected by counterfeit imports into the EU



The companies suffering from the counterfeiting and piracy of their brands continue to be primarily registered in OECD countries such as France, Germany, Italy, Japan, Korea, Switzerland, the United

<sup>(21)</sup> OECD/EUIPO (2019), *Trends in Trade in Counterfeit and Pirated Goods*. Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/trends\\_in\\_trade\\_in\\_counterfeit\\_and\\_pirated\\_goods/trends\\_in\\_trade\\_in\\_counterfeit\\_and\\_pirated\\_goods\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/trends_in_trade_in_counterfeit_and_pirated_goods/trends_in_trade_in_counterfeit_and_pirated_goods_en.pdf)

<sup>(22)</sup> This is the so-called GTRIC-*p*. The methodology is fully explained in the Annex to the OECD/EUIPO report.



Kingdom and the United States. Overall, more than half of the companies whose IP is infringed in this way are based in the EU.

An earlier study by the OECD and the EUIPO examined the **trade routes** used for counterfeit goods with the aim of distinguishing between provenance economies that are producers of counterfeits and those that act as transit points. China, India, Thailand, Turkey, Malaysia and Pakistan were identified as major producers of counterfeits, while Albania, Hong Kong, Morocco, Singapore, the Ukraine and the UAE were important transit points <sup>(23)</sup>.

The role of **small parcels** was the subject of a report published in December 2018 <sup>(24)</sup>. The detailed analysis of the 2011-2013 customs seizures and trade data shows that, although fakes shipped in containers clearly dominate in terms of value of seized goods and number of items, small parcels are important in terms of number of seizures. Nearly 63 % of customs seizures of counterfeit and pirated goods involve small parcels. The size of these mail or express courier shipments tends to be very small. Packages with 10 items or less account for the majority of all seizures.

In terms of industry-specific patterns, virtually all industry sectors prone to counterfeiting are concerned, albeit to different degrees. For example, 84 % of customs seizures of counterfeit footwear, 77 % of fake optical, photographic and medical equipment (mostly sunglasses), and 66 % of information and communications technology (ICT) devices involved postal parcels or express shipments. This is also the case for more than 63 % of customs seizures of counterfeit watches, leather articles and handbags, and jewellery.

The most recent study carried out by the OECD and the EUIPO examined the global trade in **counterfeit medicines** <sup>(9)</sup>. Illicit markets for counterfeit pharmaceuticals are attractive for counterfeiters, given their high profit margins, low risks of detection and prosecution, weak penalties, and the ease with which consumers can be deceived into believing that the counterfeit products are genuine. In 2016, international trade in counterfeit pharmaceuticals reached EUR 4 billion, threatening public health and safety, while enriching criminals and organised crime. This figure does not include a very large volume of domestically produced and consumed illicit pharmaceuticals.

China, Hong Kong, India and Singapore are the main provenance economies for counterfeit medicines. While China and India are the primary producers of fake medicines, Hong Kong, Singapore and the UAE serve as transit economies. Other relevant transit points for fake pharmaceuticals include Iran and Yemen. From these locations, fake pharmaceutical products may be shipped anywhere in the world, although African economies, Europe and the United States appear to be the main targets.

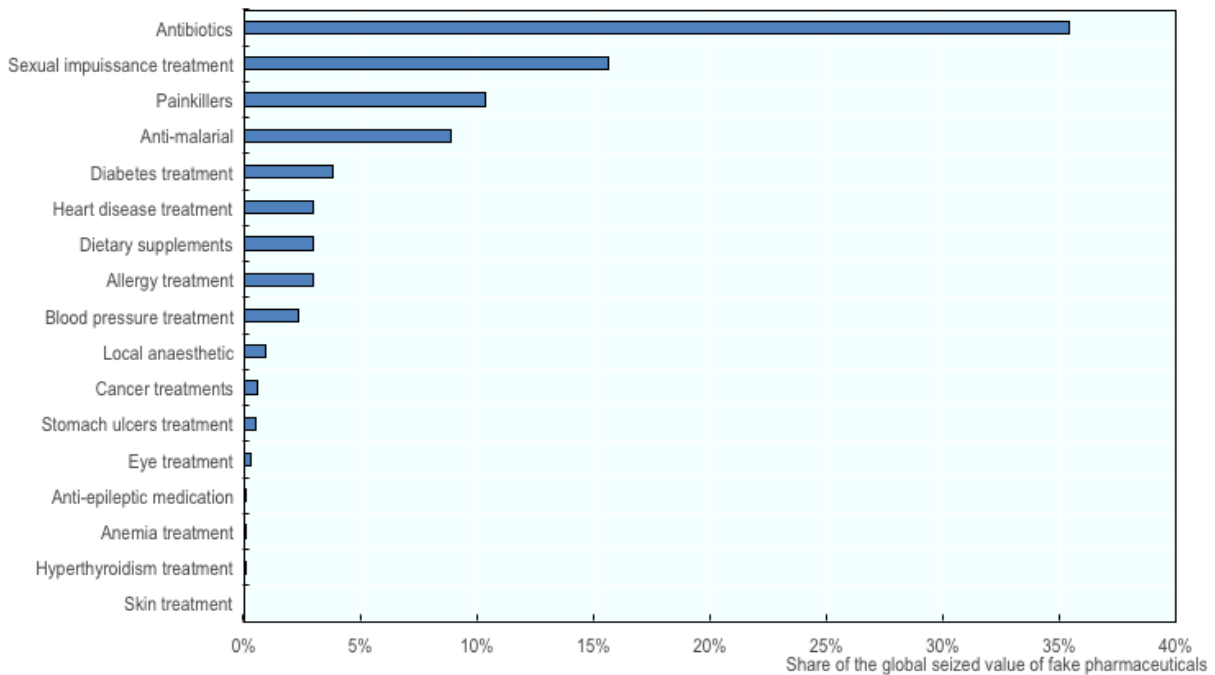
Counterfeit medicines not only cause economic damage to the sector, but are also a significant threat to public health, since they are often not properly formulated and may contain dangerous ingredients. During the period 2014-2016, seized counterfeits included medicines for serious diseases, including malaria, HIV/AIDS and cancer. They also included antibiotics, lifestyle treatments, pain killers, diabetes treatments and central nervous system medicines. Figure 8 shows the seizures of fake medicines by type.

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<sup>(23)</sup> OECD/EUIPO (2017), *Mapping the Real Routes of Trade in Fake Goods*. Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/Mapping\\_the\\_Real\\_Routes\\_of\\_Trade\\_in\\_Fake\\_Goods\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Mapping_the_Real_Routes_of_Trade_in_Fake_Goods_en.pdf).

<sup>(24)</sup> OECD/EUIPO (2018), *Misuse of Small Parcels for Trade in Counterfeit Goods: Facts and Trends*. Available at: <https://euiipo.europa.eu/ohimportal/en/web/observatory/trade-in-fakes-in-small-parcels>.

Figure 8: Counterfeit types of pharmaceuticals seized by customs, 2014-2016



Challenges exist in all countries, but are particularly large in developing countries, where informal distribution is more widespread and less secure. In Europe and the USA, challenges have increased with the development of rogue online pharmacies, which often dispense counterfeit products cheaply. Consumers have shown a willingness to take the risk of buying products online, sometimes disregarding the consequences of purchasing and using products that may not be properly formulated.

Trade in counterfeit medicines has also been facilitated by the explosive growth in the use of small parcels. More than 95 % of customs seizures of pharmaceutical products in 2014-2016 involved postal and express mail services, which was well above the average for other products. Such shipments also accounted for the largest share of the total value of seizures, at 51 %. Pharmaceuticals are the only category of counterfeits for which small parcels account for the majority both of seizures and of seized value.



### 3.2 SECTORIAL STUDIES: ESTIMATES OF ECONOMIC COSTS ARISING FROM THE PRESENCE OF COUNTERFEIT GOODS IN THE EU

Even though it cannot always be assumed that the purchase of a counterfeit good displaces the sale of the corresponding genuine product, the figures from the OECD-EUIPO studies nevertheless give an indication of the magnitude of business being lost by rights holders in the EU as a result of counterfeit trade. Furthermore, it should be borne in mind that these figures only include internationally traded goods and so most likely underestimate the true extent of the problem. Therefore, a number of sectorial studies seek to complete the picture by focusing directly on the damage to the legitimate industries resulting from the presence of counterfeit goods in the EU marketplace, regardless of the provenance of those goods.

The analysis in the sectorial studies focuses on the extent to which lost sales in the selected sectors <sup>(25)</sup> were due to economic factors and factors related to counterfeiting. Economic factors include income measures such as GDP per capita, while the variables related to counterfeiting include population at risk of poverty or social exclusion as a share of total population, the Corruption Perception Index, governance indicators from the World Bank and selected information from the IP Perception studies related to the purchase of counterfeit products and the consumption of illegal digital content. For each Member State, where data is available, comparable infringement rates are estimated from which the direct economic costs are calculated <sup>(26)</sup>.

The reports issued to date focus on the following IPR-intensive sectors: Smartphones (in cooperation with the International Telecommunications Union); Pesticides and Agrochemicals; Pharmaceutical products; Spirits and Wine; Recorded Music; Jewellery and Watches; Handbags and Luggage; Toys and Games; Sports Goods; Clothing, Footwear and Accessories; and Cosmetics and Personal Care.

Having established the direct losses, including sales and employment, as a result of infringement, the sectorial studies examine indirect costs, focusing on wider supply chain employment issues and government revenue. This report includes updated figures for the period 2013-2017.

As shown in Table 1, the legitimate sectors' sales decreased by an average of 6.4 % across the EU due to the presence of counterfeits. This average reflects a range from 1.6 % for recorded music to 14 % for cosmetics and personal care products. These direct lost sales amount to EUR 50 billion per year, corresponding to an employment loss of 416 000 jobs. Adding in knock-on effects on other sectors, total sales losses amount to EUR 83 billion. Finally, governments across the EU lose EUR 15 billion in taxes and social security contributions.

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<sup>(25)</sup> The sectors analysed in the sectorial studies show a high degree of overlap with the sectors shown to suffer most from counterfeit trade in the joint studies with the OECD.

<sup>(26)</sup> The methodology is described in detail in every sectorial report. See, for example, the report on *The economic cost of IPR infringement in the pesticides sector*, available at: <https://euiipo.europa.eu/ohimportal/en/web/observatory/ipr-infringement-pesticides-sector>.

**Table 1 – Estimated direct and indirect economic costs of infringement in selected IPR-intensive industries in the EU (average annual figures, 2013-2017) <sup>(27)</sup>**

Sector	Direct Lost Sales (EUR billion)	% of Sales	Total Lost Sales (EUR billion)	Direct Employment Loss	Total Employment Loss	Government Revenue Loss (EUR billion)
Smartphones*	4.2	8.3%	4.2	Not calculated	Not calculated	Not calculated
Pesticides & Agrochemicals	0.5	4.2%	1.0	767	3 854	0.1
Pharmaceuticals	6.0	2.4%	10.0	20 040	48 253	1.0
Spirits & Wine	2.3	5.3%	5.2	5 681	31 858	2.1
Recorded Music	0.1	1.6%	0.1	280	644	0.0
Jewellery & Watches	1.6	11.5%	3.0	12 146	22 908	0.5
Handbags & Luggage	0.9	6.4%	1.9	6 715	13 691	0.3
Toys & Games	1.0	7.8%	1.7	3 930	8 380	0.3
Sports Goods	0.6	7.7%	1.1	3 286	6 579	0.2
Clothing, Footwear and Accessories	23.3	7.8%	37.0	263 196	373 476	7.0
Cosmetics & Personal care	9.6	14.0%	17.9	99 963	161 792	3.5
<b>Total all sectors</b>	<b>50.0</b>	<b>6.4% (avg.)</b>	<b>83.2</b>	<b>416 004</b>	<b>671 435</b>	<b>15.0</b>

*Note: sales figures and percentages rounded to one decimal place. Cosmetics & Personal Care, Clothing, Footwear & Accessories, and Smartphones are shown at consumer prices. Pharmaceuticals are shown at wholesale prices. Other sectors are shown at producer prices.*

*\*Figures for this sector refer to 2015 only.*

Aside from the direct economic consequences estimated in these reports, IPR infringement could also have dynamic, long-term effects. If infringement reduces companies' returns on innovative assets, then investment in innovation may be lower than socially optimal.

There is another intellectual property right which can be infringed, leading to losses for both EU citizens and producers. In the European Union, Geographical Indications (GIs) for wine, spirits, agricultural products and foodstuffs are protected intellectual property rights that act as certification that certain products possess particular qualities, characteristics or reputation attributable to their geographical origin and method of production. Consumers are often willing to pay a higher price for such products, compared with non-GI corresponding products. Therefore, if the product in question does not comply with the GI specifications, the consumer is deceived.

In a 2016 study <sup>(28)</sup>, the EUIPO estimated that the consumer loss (excess price paid for infringing GI products) arising from GI infringement totalled approximately EUR 2.3 billion in 2014, representing approximately 4.8 % of total GI product purchases in the same year.

<sup>(27)</sup> The figures in the table do not correspond to those shown in the reports previously published on the Observatory website, as those reports were based on data for earlier periods. The figures shown here have been updated to use the same period ending in 2017 (except for smartphones), and to use the latest sources of explanatory variables.

<sup>(28)</sup> EUIPO (2016), *Infringement of Protected Geographical Indications for Wine, Spirits, Agricultural Products and foodstuffs in the European Union*. Available at [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/Geographical\\_indications\\_report/geographical\\_indications\\_report\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Geographical_indications_report/geographical_indications_report_en.pdf)

### 3.3 COSTS OF COMBATING IPR INFRINGEMENT

IPR infringement affects the private sectors in two main ways: the loss of sales discussed above, and the need to invest resources in detecting and dealing with infringement. A study published by the EUIPO in 2017 <sup>(29)</sup> seeks to supplement the analysis of the impact of counterfeiting and piracy by quantifying the costs borne by companies in dealing with infringement of their IP rights.

The study is based on a survey of 1 291 companies in 14 EU Member States that provided a detailed picture of the resources used to detect and combat infringement by both small and large companies. The costs included in the survey were:

- cost of employee time dedicated to IPR enforcement;
- cost of external legal assistance;
- court fees for infringement-related litigation;
- costs of storage and destruction of seized goods;
- other infringement-related costs.

Overall, the average company in the sample spent EUR 115 317 per year on enforcement-related activities. However, there was a wide variation depending on the company size. In the case of small companies (i.e. those with fewer than 50 employees), the average outlay was EUR 83 653 per year. For medium-sized companies (50-250 employees), the figure was EUR 103 166. Finally, for large companies (more than 250 employees), the enforcement costs amounted to EUR 159 132 per year.

In terms of cost categories, the annual employee cost was the largest component overall, accounting for 32 % of the total costs. This was followed by the cost of storage and destruction of seized goods, which accounted for 21 %, and external legal assistance costs, 17 %. This ranking of cost categories was consistent across the three size classes of companies. However, there was some variation in the figures. For example, the cost of internal employees accounted for 41 % of the total enforcement costs for large companies but was only 22 % for small firms. Conversely, storage and destruction costs were 24 % of the total for small firms, but only 17 % for large companies.

It is apparent from these figures that the costs of dealing with IPR infringement are particularly burdensome for small firms, that is those with 50 or fewer employees. These estimates further corroborate the findings in the 2016 IP SME Scoreboard, which indicated that the cost of protection and enforcement of IP rights was a significant barrier to SMEs' use of those rights.

Given that IPR ownership is essential for SMEs to grow (as shown in the firm-level IP Contribution study discussed above), this is particularly worrying. IPR infringement is a major threat to the development of innovative SMEs.

### 3.4 HEALTH AND SAFETY CONSEQUENCES OF IPR INFRINGEMENT

In addition to the economic damage they cause, counterfeit goods often include products that threaten the health and safety of citizens, such as counterfeit cosmetics, pharmaceuticals, spare parts, tools and machinery, chemicals and household products. The health and safety consequences both for end consumers and for those using these products in production (e.g. farmers using fake pesticides), are wide-

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<sup>(29)</sup> EUIPO (2017), *Private costs of enforcement of IPR*. Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/div/Private%20Costs%20of%20Enforcement%20of%20IPR%20-%20FORMATTED.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/div/Private%20Costs%20of%20Enforcement%20of%20IPR%20-%20FORMATTED.pdf).



ranging and in some circumstances can be life-threatening. Furthermore, environmental damage can result from the production, use and disposal of counterfeit products, with fake pesticides and other chemical products as the most obvious examples.

Quantification of such damages is, due to their nature, extremely difficult. In the case of counterfeit medicines, some estimates from organisations such as the Pharmaceutical Security Institute, INTERPOL and the World Health Organization (WHO) are available and are included in the OECD-EUIPO 2020 study of trade in counterfeit pharmaceutical products. The WHO estimates that the share of counterfeits (including those of bad quality) on the market ranges from over 10 % of total sales in low- and middle-income countries to 1 % in developed countries<sup>(30)</sup>. INTERPOL reports estimate that falsified medical products could account for as much as 30 % of the market in some countries in Asia, Africa and Latin America, and more than 20 % in economies of the former Soviet Union<sup>(31)</sup>. A major pharmaceutical company tested a sample of counterfeit medicines and found that 90 % of them could cause harm to the patient<sup>(9)</sup>.

According to industry studies, the vast majority of counterfeit drugs do not contain the correct active ingredients in the correct proportions. In addition, many of these counterfeit drugs contain undeclared active ingredients that might have serious unwanted health consequences. These can pose a very serious threat to consumer health, ranging from mild to life-threatening (Error! Bookmark not defined.). According to the WHO, the possible impacts on individuals and public health systems include:

- adverse effects (for example toxicity) from incorrect active ingredients;
- failure to cure or prevent future disease, thereby increasing mortality, morbidity and the prevalence of disease;
- contributing to the progression of antimicrobial resistance and drug-resistant infections;
- a loss of confidence in health care professionals, health programmes and health systems;
- an increase in the out-of-pocket and health system spending on health care;
- lost income due to prolonged illness or death;
- lost productivity costs to patients and households when seeking additional medical care, the effects of which are felt by businesses and the wider economy.

Again, exact quantification is almost impossible, but the WHO estimates show that, globally, between 72 000 and 169 000 children may die from pneumonia every year after receiving counterfeit drugs, and that fake antimalarial medication might be responsible for a further 116 000 deaths<sup>(30)</sup>.

For products other than medicines, quantitative estimates of the health, safety and environmental damage are practically non-existent. However, in June 2019, the EUIPO published a *Qualitative Study on Risks Posed by Counterfeits to Consumers*<sup>(32)</sup>. This qualitative study shows the extent of the dangers to health posed by counterfeit goods, as evidenced by the alerts submitted by EU MSAs in the European Commission's 'Rapid Alert System for dangerous non-food products' (RAPEX system), the only system available to report measures taken by authorities against unsafe products found on the markets in the EU/EEA countries. The study analyses 191 RAPEX alerts from the period 2010-2017 that relate to products that are both counterfeit and dangerous.

The report concentrates on the seven most common risks reported in the alerts analysed. These are: chemical, injuries, strangulation, choking, electric shock, damage to hearing and fire risks. These seven

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<sup>(30)</sup> WHO (2017), *A study on the public health and socioeconomic impact of substandard and falsified medical products*. Available at: [https://www.who.int/medicines/regulation/ssffc/publications/SE-Study\\_EN\\_web.pdf?ua=1](https://www.who.int/medicines/regulation/ssffc/publications/SE-Study_EN_web.pdf?ua=1).

<sup>(31)</sup> INTERPOL (2014), *Pharmaceutical Crime and Organized Criminal Groups: An analysis of the involvement of organized criminal groups in pharmaceutical crime since 2008*.

<sup>(32)</sup> Available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2019\\_Risks\\_Posed\\_by\\_Counterfeits\\_to\\_Consumers\\_Study/2019\\_Risks\\_Posed\\_by\\_Counterfeits\\_to\\_Consumers\\_Study.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_Risks_Posed_by_Counterfeits_to_Consumers_Study/2019_Risks_Posed_by_Counterfeits_to_Consumers_Study.pdf).



risk types represent nearly 92 % of all the risks identified through those alerts. The analysis of RAPEX alerts from 2010 to 2017 shows that:

- 97% of recorded dangerous counterfeit goods were assessed as posing a serious risk.
- toys are the most frequent type of product followed by clothing, textiles and fashion items. In fact, the end users of 80 % of the goods reported to be dangerous and counterfeit were children (toys, childcare items and children's clothing).
- the most common danger reported (32 %) was related to exposure to hazardous chemicals and toxins that could cause acute or long-term health issues from immediate or long-term exposure. A typical example is a toy that contains prohibited substances.
- 24 % of the dangerous products recorded as counterfeit posed more than one danger to users.
- The causes of the risks identified ranged from poorly constructed products, use of inferior supplies and components to the lack of understanding of regulations or safety mechanisms.
- China was recorded as the largest source of dangerous counterfeit products within the EU with 73 % originating from the country between 2010 and 2017, while the European Union accounts for 13 % of products.

Among its conclusions, the report highlights a general lack of data and contrasting information at EU level which makes it difficult to reach robust evidence-based conclusions about the quantitative relationship between counterfeits and dangerous goods. Evidence of the real risks posed by dangerous counterfeit products is not obtained when such products are identified. This is because assessments are rarely conducted to analyse the potential danger of the products if they were to enter the market and, in accordance with the EU provisions for customs enforcement of IP <sup>(33)</sup>, IPR-infringing goods are destroyed shortly after their illegal nature has been confirmed by the relevant rights holders.

It must also be emphasised that, besides the direct damage to health, safety and the environment discussed in this subsection, the involvement of organised crime groups in IPR-infringing activities and the associated links between IP crime and other types of crime discussed in section 2 imply that considerable indirect damage associated with IPR infringement is caused to individuals and to society.

### Summary of section 3: Consequences of IPR infringement

1. The volume of counterfeits in trade could be as much as 6.8 % of total EU imports, or EUR 121 billion.
2. The main producer of counterfeit goods is China, followed by India and Turkey.
3. A number of important transit countries have been identified, including Hong Kong, Panama, Singapore and the UAE.
4. The direct economic costs to legitimate industries in the EU arising from the presence of counterfeits in the EU marketplace amount to EUR 50 billion per year in lost sales, corresponding to 416 000 jobs. Adding on the knock-on effects on other sectors yields a total sales loss of EUR 83 billion.
5. The health and safety consequences of counterfeit goods are considerable, particularly in the case of counterfeit medicines, cosmetics and other everyday products.
6. European consumers are exposed to a range of hazards from counterfeit goods, ranging from exposure to harmful chemicals to choking, electric shock and a range of injuries.

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<sup>(33)</sup> Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of IPR and repealing Council Regulation (EC) No 1383/2003, OJ L 181, 29.6.2013, p. 15.

## 4. Actions to combat IPR infringement

The EUIPO has created tools and resources to help enforcers do their job and to help rights holders protect their IPR. This work is often carried out in cooperation with partners such as Europol, Eurojust, OLAF, the OECD and others.

Every year EU and international crime-fighting agencies carry out coordinated operations targeting specific types of IP crime, for example fake pesticides and medicines, and websites selling counterfeit goods or pirated digital content.

A number of issues relating to the production, distribution and consumption of counterfeit goods and illicit digital content have been discussed in this report. In this final section, a review of the actions being taken by various actors in response to these issues is presented, with particular emphasis on the activities of the EUIPO. While the EUIPO has no operational role, Article 2 of Regulation (EU) 386/2012 sets out a number of tasks related to support for enforcement through a variety of activities. Accordingly, the Observatory supports enforcement by developing tools and databases, by providing funding to enforcement initiatives, by providing knowledge-sharing for enforcers and by playing a coordinating role between organisations and agencies involved in IPR enforcement.

### 4.1 TOOLS AND SUPPORT FOR ENFORCEMENT

With the launch of the IP Enforcement Portal in 2019, the EUIPO has concentrated its enforcement tools under one portal with one sole access. The Portal encompasses the functionalities of the former Enforcement Database (EDB), as well as the ACIST (Anti-Counterfeiting Intelligence Support Tool) and ACRIS (Anti-Counterfeiting Rapid Intelligence System) databases.

The 'Exchange of information' function (former EDB) allows rights holders to establish a secure line of communication with customs officials and police to protect products against counterfeits. The function allows rights holders to upload data on their IPRs along with contact information and product details, making it easier for authorities to identify counterfeits and to take action. The tool offers an online solution that helps the rights holder to file and extend the customs applications for action (AFA). It also offers the possibility for rights holders to send alerts and for enforcers to report detentions online, allowing the rights holder to react quickly to the notification.

Complementary support is offered through the ACRIS database, which provides European companies with information from the European Commission on IPR activities and the enforcement landscape in third countries. The 'Report detentions' function (former ACIST) provides data on the detentions, at the EU borders and in the internal market, of articles that are suspected of infringing IP rights, permitting the creation of analysis and trend reports.

Furthermore, the EUIPO, together with other EU bodies in a so-called Technical Group, has begun assessing the possibilities to improve the reuse of information available in the various databases at EU level to make enforcement more effective.

Both the 2019 Europol-EUIPO IP Crime Threat Assessment and the EUIPO's research with the OECD on counterfeits lead to calls for a coordinated response to the activities of criminal gangs, and to reduce the ease with which counterfeit goods are produced and distributed across the EU.

In response to these threats, the EUIPO supports Europol's Intellectual Property Crime Coordinated Coalition (IPC3), which provides a robust and multi-pronged response to the issue of IP crime. The unit aims to stem the tide of IP crime within and outside the EU by:

- facilitating and coordinating cross-border investigations;
- monitoring and reporting online crime trends and emerging modi operandi;
- raising public awareness about IP crime;
- providing training to law enforcement on combating IP crime.

The Virtual Training Centre on IPR, a joint project with CEPOL, is dedicated to building a training centre as the main source of reference for IP educational modules and training courses for EU law enforcement authorities.

The OECD has set up a Task Force on Countering Illicit Trade (TF-CIT), gathering together public and private stakeholders from OECD member countries, including the EU and several EU Member States, with the EUIPO playing an active role in its leadership. In 2019, the Task Force became an official body within the OECD structure. The joint OECD-EUIPO studies on counterfeit trade referenced above are carried out in the framework of this Task Force and financed by the EUIPO. Furthermore, TF-CIT facilitates research into other kinds of illicit trade (such as drugs smuggling, human trafficking and trade in endangered species), occasionally initiates policy recommendations, and promotes best practices to combat trade in counterfeit goods and other types of illicit trade. A concrete example of this is the *Recommendation on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones* which was adopted by the OECD Council on 21 October 2019. The Recommendation aims to assist governments and policymakers in reducing and deterring illicit trade conducted through and inside FTZs, and is a direct result of the joint OECD-EUIPO study on the role of FTZs in the counterfeit goods trade.

## 4.2 EUROPEAN AND INTERNATIONAL OPERATIONS

A series of coordinated, global-scale operations are carried out periodically by law enforcement authorities around the EU and across the world, coordinated by Europol and INTERPOL. Recent examples include:

- **Operation Silver Axe IV.** Operation Silver Axe is an annual operation targeting illegal pesticides. It is coordinated by Europol with the support of the OLAF. Now in its fourth year, Operation Silver Axe IV, carried out in the spring of 2019, saw law enforcement officers carry out checks at major seaports, airports and land borders. Production and repackaging facilities were also checked in the 29 participating countries<sup>(34)</sup>. A total of 550 tonnes of counterfeit pesticides were seized in Europe, enough to spray 49 000 km<sup>2</sup>, and three individuals were arrested.
- **Operation In Our Sites (IOS) X,** a joint EU-US operation carried out in November 2019, resulted in the seizure of 30 506 domain names that distributed counterfeit and pirated items over the internet. These items included counterfeit pharmaceuticals and pirated movies, illegal television streaming, music, software, electronics and other bogus products. IOS X was coordinated by law enforcement authorities from 18 EU Member States and third parties in a joint investigation with Europol and the US National Intellectual Property Rights Coordination Center, facilitated by

<sup>(34)</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Switzerland, Ukraine and the United Kingdom.

Eurojust and INTERPOL. During the investigation, officials arrested 3 suspects, seized 26 000 luxury products (clothes, perfumes), 363 litres of alcoholic beverages, and many hardware devices. They also identified and froze more than EUR 150 000 in various bank accounts and online payment platforms.

- **Operation Aphrodite II**, a joint investigation carried out in 2019 by law enforcement authorities from 18 countries and supported by Europol, resulted in the seizure of 4.7 million counterfeit products. During the operation, 16 470 social media accounts and 3 400 websites selling counterfeit products were closed. The online fake goods marketers were selling a large variety of counterfeit items including clothes and accessories, sports equipment, illegal IPTV set-top boxes, medicines, spare car parts, mobile phones, miscellaneous electronic devices and components, perfumes and cosmetics. The operation led to the arrest of more than 30 suspects and reported 110 others to respective judicial authorities. A select number of suspects were part of two distinct criminal networks responsible for producing and trafficking counterfeit products online. Europol's IPC3 and the Italian Finance Corps (Guardia di Finanza) coordinated the joint investigation, with cooperation from the private sector.
- **Operation Postbox II**, a joint operation headed by OLAF and the Belgium Customs service with customs services from 22 other Member States and Europol in March 2019, focussed on illegal goods traded online, including counterfeits. The operation was rolled out in two phases. In the initial phase, customs authorities checked mail and courier service packages for illegal goods, resulting in more than 500 packages seized in Belgium, 460 in Italy and 304 in Ireland, as well as smaller quantities in other countries. The detentions were followed by the creation of a specialised 'cyber patrol' to raid the open web and the dark net, as well as social media, and identify the infringers based on profiles of sellers and shippers. The main findings reveal that Asian e-commerce platforms are still responsible for the majority of counterfeit sales, while drug trafficking takes place mainly through the dark web, which provides anonymity for buyers and sellers.

### 4.3 OTHER ACTIONS

In response to the wide use of different business models, the European Commission has adopted the 'follow the money approach' to combating counterfeiting. This Commission-brokered initiative seeks to establish voluntary agreements between rights holders and other actors. These agreements all aim at disrupting the revenue streams to the counterfeiters and hampering their ability to deliver the fakes to the end consumer.

Until now, two such agreements have come into effect: a Memorandum of Understanding (MoU) signed in 2016 between rights holders and internet sales platforms, and a second MoU on internet advertising, signed in 2018 and designed to reduce advertising by legitimate brands on IPR-infringing websites. The EUIPO supports the European Commission by receiving, aggregating and analysing the data provided by the signatories to the MoU.

Furthermore, the Observatory has initiated a new workstream on intermediaries, to develop initiatives intended to reduce counterfeiting and piracy. Specifically, the EUIPO will develop a secured and trusted system to provide EUTM and RCD owners with information on the IP protection programmes of various e-commerce platforms, facilitate access to such programmes and enhance the exchange of information between the rights holders and the platforms to support the removal of IPR-infringing listings.

## 5. Awareness-raising and outreach

Working together with the EU Member States, the EUIPO seeks to reduce demand for counterfeit goods and pirated digital content by making citizens and especially young people aware of the need to respect IP rights.

In cooperation with stakeholders, the Observatory is also providing information to policymakers in order to raise the priority of the fight against IP crime.

While enforcement of IPR mainly addresses the supply side of the market for counterfeit goods and illicit digital content, awareness-raising activities aim at reducing the demand for IPR-infringing goods and services. The EUIPO supports these activities by funding relevant initiatives and by working with the Member States to raise citizens' awareness of the importance of IP and the need to respect it.

The EUIPO seeks to address the demand for counterfeits and pirated digital content highlighted in the IP Perception and Youth Scoreboard studies. In particular, the EUIPO focuses on the attitudes and perceptions of younger people, who have indicated a significant propensity to intentionally purchase counterfeit products or access digital content through unauthorised services. However, studies have also shown that there is a significant percentage of citizens, in particular young people, who are uncertain as to whether a source from which they access digital content is authorised or not. In response to this challenge, the EUIPO has launched a European online content portal, [agorateka](#), which offers individuals a way to identify legal online content in participating EU Member States. Other activities include holding periodic workshops to bring together young European influencers and multipliers to actively discuss ways to generate interest and engagement on creativity, innovation and entrepreneurship, and to further probe the issues raised in the EUIPO's IP Perception studies. The *Ideas Powered* initiative aims to bring IP closer to the younger generations, both online and also in places where young people gather.

Finally, through its grant scheme, the EUIPO supports awareness-raising efforts in the Member States. Each year, a call for proposals is addressed to all interested parties. The selected projects receive financial support from the EUIPO to develop tailor-made awareness-raising activities that can be carried out in one or more Member States.

Approximately every two years, the EUIPO, in cooperation with the European Commission and the host country, holds a major international summit on IPR enforcement, bringing together high-level figures from the public and private sectors to discuss effective policies to combat infringement. Following the successful events in London (2014) and Berlin (2017), the International Forum on IP Enforcement 2019 was organised by the EUIPO, the Commission and the OECD, and hosted at the OECD's headquarters in Paris in June. The next edition of this event is planned to be held in Stockholm in June 2021.

## 5.1 IP IN EDUCATION

The initial impetus for the 'IP in Education' project came from a 2015 report showing the need for greater coherence in the inclusion of intellectual property in education at all levels <sup>(35)</sup>.

One finding of the IP Perception study was that between 35 % and 50 % of young Europeans displayed tolerant attitudes towards counterfeiting or illegal downloading. At the same time, education has been identified as an appropriate channel to raise awareness about the importance of respecting IP. Therefore, raising pupils' awareness in schools, showing how they could reap the benefits of IP knowledge in their private and future professional lives, has become a priority.

Following these two studies, 'Ideas Powered @ School' was launched as a part of the EUIPO's wider IP in Education project, run and managed by the IP in Education network composed of ministries of education, IP offices and other education stakeholders.

The network was endorsed in May 2018 by the Council of the European Union <sup>(36)</sup> as a valuable contribution that stimulates education to foster creativity and entrepreneurship. It also supported the EU in adopting IP notions in recommendations on Key Competences for Lifelong Learning <sup>(37)</sup>, which is a set of educational guidelines that include the knowledge, skills and attitudes needed by all for personal fulfilment and development, employability, social inclusion and active citizenship.

The IP in Education Best Practice Report was published in April 2019 <sup>(38)</sup>. It presents best practice case studies from Bulgaria, Finland, Malta, Romania and Sweden, as well as the European Digital Competence Framework, DigComp2.0, and the Entrepreneurship Competence Framework, Entreprcomp, which were developed by the Joint Research Centre of the European Commission. Under the IP in Education project, a dedicated web page with resources for schools and teachers went live in September 2019. The IP in Education network of teachers and other professionals met twice in 2019 to discuss the dissemination of best practices, sharing of materials and promotion of the project.

## 5.2 AUTHENTICITY PROGRAMME

Numerous awareness-raising actions are carried out by Member States <sup>(39)</sup> and by private stakeholders <sup>(40)</sup> at national, European and global levels. One notable project is AUTHENTICITY, pioneered by rights holder organisations in France, Italy and Spain, and covering a series of activities

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<sup>(35)</sup> EUIPO, *Intellectual Property and Education in Europe*, September 2015. Available at:

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/publications/IP+and+Education+final+report+September+2015.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/publications/IP+and+Education+final+report+September+2015.pdf).

<sup>(36)</sup> *Council conclusions on moving towards a vision of a European Education Area*. Available at:

<https://www.consilium.europa.eu/en/meetings/eycs/2018/05/22-23/>.

<sup>(37)</sup> Available at: <http://data.consilium.europa.eu/doc/document/ST-8299-2018-INIT/en/pdf>.

<sup>(38)</sup> Available at: [https://euiipo.europa.eu/tunnel-](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/IP_in_Education_Best_Practice_Report/KIVINEN_IP_in_Education_Best_practice_report.pdf)

[web/secure/webdav/guest/document\\_library/observatory/documents/reports/IP\\_in\\_Education\\_Best\\_Practice\\_Report/KIVINEN\\_IP\\_in\\_Education\\_Best\\_practice\\_report.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/IP_in_Education_Best_Practice_Report/KIVINEN_IP_in_Education_Best_practice_report.pdf).

<sup>(39)</sup> See, for example, <http://www.stoppiratkopiering.dk/>, a Danish campaign against purchasing counterfeit goods and accessing illicit content, a joint effort by 12 ministries and agencies, ranging from the Ministry of Culture to the national police.

<sup>(40)</sup> An example is the International Chamber of Commerce, <https://iccwbo.org/global-issues-trends/innovation-ip/counterfeiting-piracy/>, or Legalna Kultura, <http://www.legalnakultura.pl/pl>, a Polish database of legally available films, music, books, journals, photographs, games and other types of digital content, created by a public-private partnership.



designed to ‘increase anti-counterfeiting culture and increase awareness of illegal market’s implications’. The project was born with the aim of creating a network of European cities that resolve to be engaged in the protection and awareness of intellectual property rights, and commit to implement awareness initiatives and training of enforcers at the local level.

With the EUIPO’s support, AUTHENTICITY is now being expanded to other EU Member States.

### 5.3 MEDIA OUTREACH

Communication is crucial to the Observatory’s ability to fulfil the role assigned to it by the legislator. Specific channels are used to address the different target audiences, including policymakers, public and private stakeholders and other official and private actors, enforcers and the general public. Under the [Ideas Powered](#) initiative, social media channels are targeting youngsters in particular.

Media activities are also regularly carried out, principally in a few selected Member States, to increase public awareness of the importance of IPR protection and of the damage caused by IPR infringement. The release of the EUIPO studies and other authoritative evidence-based research provides key opportunities to remind the general public and policy makers that counterfeiting and piracy are not victimless crimes, and to call all the relevant actors to take tough action.

## Conclusion

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In light of the volume of evidence demonstrating the scale and impact of IP crime on the EU economy and society, and notwithstanding the actions already being taken to tackle this threat, the fight against IPR infringement needs to be strengthened. Those at the forefront of the fight against IPR crime face a number of constraints and challenges, such as the need to coordinate cross-border investigations and tackle the new technologies that criminals use to hide their locations and activities. This is all the more urgent considering the increase in the transnational OCGs' exploitation of the weak points in international trade chains in addition to the possibilities offered locally by the internal market.

The EUIPO acknowledges that the support it offers to European companies must be reviewed and adapted to the complex and changing IPR infringement landscape. For instance, technological developments continue to offer new opportunities for criminals to infringe IPRs and to distribute their goods more widely, using new routes and shipping methods.

This illicit production has negative consequences, not only for the economy, as shown in the various studies, but also for the health and safety of consumers and the environment. The evolution of IP infringements in recent years from high-end goods towards everyday products has resulted in increasingly serious hazards for vulnerable consumers, such as children exposed to unsafe toys or patients whose lives are put at risk by fake medicines. This aspect of IPR infringement is becoming increasingly important in policy formulation and enforcement actions.

The Observatory will continue to improve the efficiency of its databases and tools (for example, the new electronic AFA management system), moving towards interlinking the tools and making them available to more stakeholders in enforcement, such as market surveillance authorities and intermediaries. This will help keep pace with this evolving landscape and ensure that, in the future, both EU companies and citizens continue to benefit from the economic value, employment and innovation associated with intellectual property.

The rapid growth in e-commerce and the improvements in the speed and availability of high-bandwidth connections mean that intermediaries such as online marketplaces and video-sharing sites are increasingly misused by infringers to market and distribute both counterfeit goods and copyright-infringing digital content. Those and other intermediaries, including providers of payment and logistics services, need to collaborate in the efforts to curb the infringement of IP rights.

The Observatory follows a policy of updating its flagship studies (IP Contribution Study, IP Perception Study, IP and Youth Scoreboard and IP SME Scoreboard) every 3 years. The monitoring of the main developments will therefore continue in the coming years and will be reported upon. This will offer decision makers a continued and dynamic view of the importance of IPRs for the EU economy and the consequences of their violations.

Finally, the Observatory and its stakeholders are working to raise the priority accorded to IP crime by including it in the EU Policy Cycle for organised and serious international crime (EMPACT) <sup>(41)</sup> priority areas in 2021. Given the involvement of transnational crime groups in IP infringements and the links with other serious crime areas (some of which are addressed in the current EMPACT, such as cybercrime and human trafficking), the seriousness of IP crime must not be underestimated, and the Observatory will continue to work in this direction with a view to including IP crime in the next multiannual Cycle.

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<sup>(41)</sup> For more information, see: <https://www.europol.europa.eu/empact>



## 2020 STATUS REPORT ON IPR INFRINGEMENT

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

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