



Council of the
European Union

Brussels, 3 July 2014
(OR. en)

11533/14

PI 91
JUSTCIV 197
UD 178

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	2 July 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2014) 392 final
Subject:	Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan

Delegations will find attached document COM(2014) 392 final.

Encl.: COM(2014) 392 final



Strasbourg, 1.7.2014
COM(2014) 392 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

**Towards a renewed consensus on the enforcement of Intellectual Property Rights:
An EU Action Plan**

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

**Towards a renewed consensus on the enforcement of Intellectual Property Rights:
An EU Action Plan**

1. INTRODUCTION

The March 2014 European Council reaffirmed the importance of intellectual property as a key driver for growth and innovation and highlighted the need to fight against counterfeiting to enhance the EU's industrial competitiveness globally¹. Intellectual Property Rights (IPR) are one of the principal means through which companies, creators and inventors generate returns on their investment in knowledge.

A recent study has estimated that IPR-intensive sectors account for around 39% of EU GDP (worth some EUR 4.7 trillion annually) and, taking indirect jobs into account, up to 35% of all jobs². In practical terms, through the granting of temporary exclusive rights, IP is directly linked to the production and distribution of new and authentic goods and services, from which all citizens benefit. The key to achieving these goals is an optimal and economically efficient IP "infrastructure" which spans the legal recognition, registration, utilisation and balanced enforcement of all forms of IP rights³.

The EU needs innovation and creativity to stay competitive relative to countries with lower labour, energy and raw materials costs, and must create the conditions that stimulate innovation so that European businesses can help us trade our way out of the crisis. This is why knowledge-based industries play a core role in the 'Global Europe' and 'Europe 2020' strategies.

This Communication focuses on the enforcement of IPRs. It seeks to build upon the consensus that IP enforcement policy ought to be focussed on the fight against commercial scale IP infringing activity which is the most harmful. It aims to propose new enforcement policy tools, such as a so-called "follow the money" approach seeking to deprive commercial scale infringers of the revenue flows that draw them into such activities.

Marketed products, meant as goods and services, that do not respect the intellectual property created by others concern us all as citizens, consumers, businesses and taxpayers.

¹ European Council Conclusions 20-21.03.2014, p.5. and p. 6.

² *Intellectual Property Rights intensive industries: contribution to economic performance and employment in Europe*. See: oami.europa.eu.

³ See: ec.europa.eu/internal_market/intellectual-property.

Commercial scale IP-infringing activities dissuade investment in innovation and creativity and thus undermine job creation.

Estimating the size of this commercial scale IP infringement problem is difficult, but its economic impact has been widely discussed⁴. A recent global fraud report surveying over 800 senior executives reported that 11% of their companies in 2013 were victims of IP infringements⁵. At EU level, statistics on customs detentions for suspected violations of IPR at its external border recorded more than 90,000 cases in 2012⁶. Around 70% of these cases related to postal and courier traffic, a reflection of the growth of e-commerce. In total, almost 40 million articles were detained, with an estimated value - in terms of equivalent genuine products - of just below 1 billion euro. One Member State has estimated that 81% of IP-infringing products are associated with organised crime⁷. It calculates that while the illicit revenue generated by organised crime in these activities was over €100 million, the cost to its economy as a whole - in terms of direct lost revenue to legitimate businesses, lost revenue to the exchequer, lost jobs and high enforcement costs - came to almost five times that amount (€470 million).

Commercial-scale IP infringements are both insidious and a moving target. However much is done to dissuade such infringements, including through increasing the online legal offer of competitive goods and services, the economic returns on the distribution and sale of IP-infringing products are such that there will always remain an incentive to engage in such activities. Given the speed with which these activities can be developed and exploited, precise detection systems and rapidly implemented preventive measures are essential.

At the same time, such measures must be proportionate and minimise any risk that they be abused for anti-competitive practices that could undermine the emergence of new innovative products and business models and unduly restrict fundamental freedoms. The required detection necessitates the sharing of intelligence between stakeholders, and above all between national enforcement authorities. It follows that in seeking to dissuade commercial scale infringements, the Commission must apply a holistic, balanced and flexible system that can react rapidly to the evolving challenges that face the EU knowledge economy in the 21st century.

In line with the Europe 2020 Strategy and without prejudice to ongoing legislative reviews, this Communication sets down a ten point action plan.⁸ A number of the actions will be

⁴ In 2012, RAND Europe, completed a report: Measuring IPR infringements in the internal market. This report discusses industry financed studies evaluating this issue and their associated limitations: http://ec.europa.eu/internal_market/iprenforcement/docs/ipr_infringement-report_en.pdf

⁵ See: kroll.com.

⁶ See: ec.europa.eu/taxation_customs.

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246390/horr73.pdf. Cybercrime is excluded from the estimate.

⁸ The proposed actions do not have any budgetary impact over and above of what is already foreseen for the years to come in the official programming of the Commission.

implemented by the Commission where appropriate in partnership with the Office for Harmonization in the Internal Market (OHIM), which since June 2012 houses the European Observatory on Infringements of Intellectual Property Rights⁹ (hereinafter referred to as the "Observatory"). These actions together with the associated flanking activities and studies listed, constitute a decisive first step in building an effective IP enforcement policy targeted at commercial scale infringements at EU and national levels. The objective should be to arrive at a renewed consensus on how Intellectual Property Rights are exercised, and in a manner which fully involves all relevant stakeholders. The Commission will monitor the delivery of this Action Plan, and invites the European Parliament, the Council, the Member States, the European Economic and Social Committee, the Observatory and stakeholders to contribute actively to the work ahead.

The Communication is complemented by a Strategy for the protection and enforcement of intellectual property rights in third countries and the development of deeper cooperation between customs authorities in the EU and in third countries with respect to trade of IP-infringing goods, as foreseen in the EU Customs Action Plan.

All these actions seek to ensure that the EU's existing acquis in terms of IP rules, including those on civil enforcement, are applied and promoted in an effective manner. Their common objective is to (i) use all means to effectively dissuade and impede the entry and diffusion of IP infringing products on markets (both those of the EU and those with which its markets is increasingly linked) so as to (ii) stimulate investment, growth and employment in IP reliant sectors that are so key to our respective economies. Stronger enforcement alone will not solve this problem, which must be addressed through debate and awareness-raising on the wider consequences of IPR infringement, targeting consumers and producers.

2. A ROLE FOR ALL ACTORS ALONG THE IP VALUE-CHAIN

2.1. Fake or not?: raising awareness of consumers, employees and clients

Consumers, employees and businesses are not always aware of the scale and economic harm caused by commercial scale IP-infringing activity. This harm includes the substantial negative effects of such activities on fiscal revenues, the related costs for taxpayers, the competitiveness of legitimate businesses and the links to large-scale criminality. At the same time, consumers are not always aware of the detriment they could personally suffer by purchasing IPR-infringing products, particularly with regard to potential risks to their health and safety.

⁹ Regulation (EU) No 386/2012 of 19.4.2012 entrusts OHIM with various tasks aimed at facilitating and supporting the activities of national authorities, the private sector and EU institutions in the fight against IPR infringements. These tasks do not extend to participation in individual operations or investigations carried out by national authorities, nor to matters covered by Title V of Part III of the Treaty on the Functioning of the European Union (e.g. criminal and police cooperation).

The Observatory published on 25 November 2013 the results of an IP perception study that summarised citizens' awareness levels of the issue¹⁰. This was based on a literature review, a qualitative investigation with 250 Europeans aged between 15 and 65 years and a quantitative stage in which over 26,000 Europeans expressed their views through telephone interviews. Though a first step, the study nonetheless showed a lack of sensitivity, in particular among younger respondents, of the scale of the impact of IP infringements in safeguarding and contributing to IP-based jobs. It also indicated that younger Europeans felt that the IP infrastructure largely benefited big companies. In view of this, the Commission considers that there is a need for a more pronounced and co-ordinated consultation on awareness actions and overarching, easy-to-access information tools across the EU.¹¹

Future action should involve a multi-targeted approach and an analysis of why IP-infringing products are increasingly sought after by the digital generation. This should include continued efforts to address remaining obstacles to the development and dissemination of IP respecting products in the Single Market in a way that meets consumers needs in the digital age. It should also build on evidence of blind spots in consumer awareness and the effectiveness of past awareness campaigns within Member States. The Observatory's report on IP perception gives useful pointers in this regard.

The Observatory has put together a web-based repository of best practice from past national awareness campaigns. IP infringements could be considerably reduced by better informing all actors in the Single Market (citizens, consumers, employees, businesses and public authorities) of the availability of attractive, accessible and affordable IP products across the Single Market. In 2014, drawing on the growing knowledge-base stemming from the studies it has been undertaking, the Observatory will assist Member States in the development and launch of communication campaigns to raise awareness amongst Union citizens on the impact of infringements of IP notably on jobs and the economy. Such campaigns should also be aimed at facilitating access to IP respecting products throughout the Single Market and highlighting the benefits for consumers from choosing IP respecting products, in terms of ensuring compliance with health and safety standards and consumer protection legislation.

Action 1: The Commission intends to promote the Observatory's and national authorities' efforts to launch and monitor a new generation of targeted communication campaigns. This should include campaigns to raise awareness amongst citizens, especially young people on the economic harm caused by commercial scale IP infringements and on the potential health and safety risks associated with IPR-infringing products, as well as campaigns to highlight

¹⁰ See: oami.europa.eu.

¹¹ It recently took an initiative drawing attention to the negative economic effects on citizens of both the lost jobs and the lost public revenue that result from IPR infringements against legal products, especially in certain sectors: 'Too good to be true: The real price of fake goods', for more information: http://ec.europa.eu/commission_2010-2014/tajani/stop-fakes/index_en.htm

the benefits for consumers from choosing IP respecting products and to facilitate access to such products.

2.2. Rightholder responsibility to ensure the integrity of supply chains

The diffusion of Information and Communications Technology (ICT) has facilitated the development of ever longer - and frequently global - supply chains. It has also allowed for the reduction of inventory costs as operators have moved to just in time delivery. Furthermore, ICT has allowed for an increase in direct delivery to the final consumer. While these developments are positive, they have also been applied by IP-infringing commercial operators. This manifests itself by the increasing importance of small consignments of IP-infringing goods, the rapid entry into and exit from a myriad of product markets by infringers and infiltration into the weakest parts of supply chains which themselves span many countries. Related to this, given that final consumers are increasingly conscious of the ethical performance of companies, supply chain auditing that reduces the risk of IP infringements also offers marketing and reputational value for IPR-intensive companies trading in or to the Single Market¹².

The Commission will initially explore the possibility for a European voluntarily applied scheme on this issue, and encourage the take up of such due diligence best practice across IPR-intensive sectors by promoting and informing on the costs and benefits of systematically applying qualitative auditing schemes that are already subject to standards established by recognised international bodies. Specifically, by the end of 2014, the Commission will organise a stakeholder workshop on applying due diligence in supply chains as a means to prevent commercial-scale IP infringements. This will include suppliers, rightholders, intermediaries (including on-line platforms, search engines, shippers, etc.) Member States, academics and NGOs.

ICT also plays an essential role in securing retail distribution and logistics systems and thus helps detect and exclude IP-infringing products from entering them. In order to ensure that the distribution chains of products are secure and not infiltrated by IP-infringing products, inventory management technologies are being applied such as the combination of single product identifiers (2D bar codes) and the application of Radio Frequency Identification (RFID). Through its Joint Research Centre's work in this field, the Commission will subsequently issue a report on how new technological solutions empowering consumers will help to fight against counterfeiting and piracy. To help discover the origin of transported goods and assist the risk assessment process, security research - funded through the EU Framework Programme on R&D - is addressing container goods supply chains. The Joint Research Centre has also developed an IT tool (Contraffice) that allows customs to analyse

¹² Regulation (EU) No 995/2010 of 20.10.2010 lays down due diligence obligations on operators who place timber products on the market.

routes and movements of cargo containers imported into the EU¹³. The proposed workshop will assess the applicability of track and trace technologies to the differing distribution and retail business models relied on by IPR-intensive sectors and inform firms about best practice.

Action 2: The Commission will launch a series of consultation actions with all relevant stakeholders including civil society on applying due diligence throughout supply chains as a means to prevent commercial scale IP infringements. On the basis of the collected information it intends to develop an EU due-diligence scheme for this purpose. It will, in the first instance, seek to encourage the voluntary take-up of the scheme that it will monitor closely to determine if further initiatives are required.

2.3. "Follow the money": industry Stakeholder Dialogues to keep infringing products off the internet

Agreements between rights-holders and the business partners on whom they rely to source, promote, distribute and sell their products are important to meet the dual goals of rapid detection and interruption of commercial scale IP-infringing activities. Any such memorandum should have well-embedded mechanisms for the protection of fundamental rights and a competitive environment, focusing in particular on preventing potential abuses. Such agreements when applied are a rapid response mechanism to the IP infringement problem. Stakeholder Dialogues leading to such agreements involve meetings between a representative group of relevant stakeholders focusing on concrete problems and seeking practical solutions that are realistic, balanced, proportionate and fair for all concerned. They have been initiated by the Commission and seek to facilitate the development of Memoranda of Understanding (MoUs) that establish the principles that signatories can apply in bilateral contractual agreements. The goal is to deprive IP infringers of their revenue streams. The first dialogue, on limiting the sale of counterfeit items via online platforms, resulted in a MoU in 2011¹⁴. An evaluation report in April 2013¹⁵ concluded that it could usefully be extended to include new parties. Taking account of all relevant developments, the Commission will establish new Stakeholder Dialogues in 2014 and 2015, comprising advertising service providers, payment services and shippers, with the objective of achieving in the course of 2015 further Memoranda of Understanding that will help keep IP-infringing products off the Internet. In parallel, the Observatory will carry out a comparative analysis on existing collaborative practices between right holders and business partners established in Member States and third countries.

¹³ See: ec.europa.eu/dgs/jrc.

¹⁴ See: ec.europa.eu/internal_market/iprenforcement.

¹⁵ COM(2013)209 of 18.4.2013.

Action 3: The Commission will facilitate the development of further voluntary Memoranda of Understanding to reduce the profits of commercial scale IP infringements in the online environment, following Stakeholder Dialogues involving advertising service providers, payment services and shippers.

2.4. Assisting SMEs to enforce their IP rights

The EU provides for harmonised rules on civil IP redress systems through the 2004 Directive on the enforcement of intellectual property rights¹⁶. Following a Communication in 2010¹⁷, an extensive public consultation process has been undertaken by the Commission to assess whether this text is fit for purpose for the numerous challenges facing IP enforcement. In late 2012, the Commission issued a questionnaire to stakeholders to gather information on whether existing cross-border IP civil redress for infringements was accessible to all rightholders, notably SMEs. It also explored whether the courts system in Member States was fast enough and endowed with sufficient specialisation. The results of this survey were published in July 2013¹⁸. Building on this, the Commission will consider whether further action is needed to improve civil redress procedures, such as low value claims, for SMEs. The high costs and complexity of litigation often dissuade innovative SMEs from enforcing their IP rights, including those stemming from standard essential patents (SEPs), and may lead to market abuse by larger competitors. At Union level, several instruments in the area of civil procedure already exist. Most recently, the Commission proposed¹⁹ to strengthen and improve the current European small claims procedure, which is a uniform procedure available across Member States (Regulation (EC) No 861/2007). This action adds to the initiatives by the Commission to assist Member States in improving the effectiveness of their national justice systems such as the EU Justice Scoreboard²⁰.

Action 4: The Commission intends to analyse and report on existing national initiatives seeking to improve IP civil enforcement procedures for SMEs, in particular in respect of low value claims and consider possible action in this field.

The high costs and complexity of litigation can often dissuade innovative SMEs from enforcing their IP rights. As a consequence, SMEs' returns on innovative investments are not optimised and they fail to expand their research and development activities. In some Member States, national schemes and funds seek to redress this situation, e.g. through improved litigation insurance possibilities. In 2015, with the assistance of the Observatory, the Commission will, if appropriate, review the effectiveness of such national schemes, as well as

¹⁶ Directive 2004/48/EC of 29.4.2004.

¹⁷ COM (2010)779 of 22.12.2010.

¹⁸ See: ec.europa.eu/internal_market/consultations.

¹⁹ COM(2013)794 final

²⁰ http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_communication_en.pdf

schemes of third countries. On this basis, the Commission will consult on the results of this review by means of a Green Paper, and leading, if appropriate, to a policy initiative.

Action 5: The Commission will issue a Green Paper to consult stakeholders on the need for future EU action based on the best practice found in nationally financed schemes assisting SMEs to enforce their IP rights.

The Observatory could usefully take into account in its various activities the specificities of SMEs, including their resource constraints, when it comes to SMEs enforcing their IP rights. As rightholders, SMEs often need information to adjust their marketing or distribution strategies and they may also lack skills and expertise to effectively protect their intellectual property. Thus, the Commission puts efforts in developing a system of support²¹ that includes enforcement issues: by strengthening and coordinating national support through the IPorta project; and by advice on IP in transnational business activities through the European IPR helpdesk and the IPR SME Helpdesks in third countries²². This system cooperates closely with general business support, with national IP support and with the Observatory's actions.

2.5. Chargeback systems: a tool for consumers

Certain credit and debit card providers offer chargeback schemes where, up to a certain value, consumers can contest and not pay for a service or product that they would not have wished to purchase had they already known it was not genuine. In certain Member States these schemes are required by law. Such schemes obviously mitigate against fraud but can also help ensure that those consumers who unwittingly receive IP-infringing goods and services either do not end up having to pay for them or can subsequently seek compensation. These schemes can play a role in limiting IP-infringing operators of their ill-gotten gains. In 2014, the Commission will launch a consultation exercise on chargeback schemes and other payment confirmation schemes that would reduce the flow of money going into commercial scale IP-infringing activities. This public consultation exercise will explore the scope for taking action in this field.

Action 6: The Commission will issue a Green paper to consult stakeholders on the impact of chargeback and related schemes to tackle commercial scale IP infringements. On this basis, it will explore the need and scope for taking concrete action in this field.

²¹ http://ec.europa.eu/enterprise/initiatives/ipr/what-are-iprs/index_en.htm

²² [For more details, see the Commission's Communication "Trade, growth and intellectual property - for the protection and enforcement of intellectual property rights in third countries COM (2014) [...],]

3. PUBLIC AUTHORITIES WORKING TOGETHER

3.1. Cooperation between national authorities

In a Europe without internal frontiers, given the transnational nature of organised crime's involvement in IP-infringing activities, there is a need to enhance cooperation between national authorities, EU institutions, the EU Justice and Home Affairs agencies, relevant third countries and other partners. In this context, the Justice and Home Affairs Council²³ - notably based on Europol's Serious and Organised Crime Threat Assessment - decided in June 2013 that disruption of organised crime groups involved in the production and distribution of counterfeit goods violating health, safety and food regulations and those producing sub-standard goods should be a priority for the period 2014-2017.

To deliver on the various priorities of these Council Conclusions on the fight against serious and organised crime, annual operational action plans are developed by Member States with the support of the Council Secretariat, the Commission, Eurojust, Europol and other relevant EU agencies²⁴. The implementation of these actions will be monitored regularly. The Commission is willing to support Member States through possible co-financing of such actions.

The EU Customs Action Plan to combat IP infringements for the years 2013-2017²⁵ sets out the framework for joint action by the 28 customs administrations in order to better fight IP infringements at the EU external borders. It foresees the development of tailor-made approaches to address the delivery of IP-infringing goods bought on the internet via courier and postal parcels. Further cross-border and cross-authority cooperation is required. The Commission will hold a conference in 2015 with customs, police and judicial authorities' representatives to determine how such enhanced cooperation can be achieved.

The challenge of how to monitor better the evolving trends in IP enforcement outside the EU is being addressed in parallel in a Commission Communication updating the 2004 "Strategy for the enforcement of intellectual property rights in third countries"²⁶. In the context of negotiations on free trade agreements, the EU aims to obtain substantial commitments from third country governments to reach a high level of IPR enforcement to thereby facilitate trade in IPR-intensive products. Deeper cooperation should also be developed between customs authorities in the EU and in third countries with respect to trade of IP-infringing goods, as foreseen in the EU Customs Action Plan²⁷.

²³ Council Conclusions of 7.6.2013 setting priorities for the fight against serious and organised crime.

²⁴ These actions aim notably to improve information and intelligence for the purposes of strategic and operational analysis, prioritise and target prominent organised crime groups, develop financial investigation and asset recovery tools, promote multidisciplinary cooperation within the EU and improve cooperation with key source and transit countries and relevant partners.

²⁵ Council Resolution of 10.12.2012.

²⁶ OJ, C 129 of 26.5.2005, p. 3.

²⁷ *Ibid*

Some Member States have established within their jurisdictions IP crime units to avoid duplication in IP enforcement strategies across the relevant authorities within these Member States. There are shortcoming and similar risks of duplication in cooperation between Member States. Authorities often have difficulty in tracking IP-infringing activities across borders within the Union, and they can thus rarely plan and execute cross-border investigations and operations within the Single Market.

Without prejudice to the activities underway²⁸, the Commission considers that co-operation between all national authorities having a role in protecting IP could be enhanced through the setting up of an Expert Group for all relevant Member State authorities²⁹. This forum, which would allow for both the sharing of best practice and discussions on IP policy orientations, could thereby contribute to increasing the efficiency of IP enforcement by the EU³⁰.

Action 7: The Commission will establish a Member State Expert Group on IP Enforcement, where Member States could share best practice on the work within the EU of all their concerned authorities and be informed on the delivery of this Action Plan.

3.2. Training for national authorities in the Single Market

Training of national authorities to address trends and business models associated with IP-infringing activities and also to share best practice on identification techniques largely takes place at national level. Moreover, where cross-border training and knowledge building exists, it is often by type of enforcement authority and not across authorities. In the context of the Single Market, there is therefore a need to develop cross-border IP enforcement authority training programmes. In 2012 and 2013, the Observatory held knowledge building seminars for enforcement officers on counterfeit pesticides and pharma crime. Building on this, training sessions should now be envisaged for national officials involved on the ground in IP enforcement. Meanwhile, the Community Plant Variety Office (CPVO) held an enforcement seminar in May 2013 on plant variety rights for all categories of IP practitioners specialised in this field. In 2014, the Observatory will continue to develop a comprehensive set of sectoral IP enforcement training programmes for Member State authorities. These programmes are coordinated with Europol, Eurojust, the European Police College (CEPOL) and the CPVO.

Meanwhile, the development of training for legal practitioners on EU IP legislation can also lead to improvements in effective enforcement of IPRs and award of redress.

²⁸ Notably in the framework of the Customs Action Plan or the EU's fight against serious and organised crime, see OJ, C 80 of 19.3.2013, p. 1.

²⁹ This could also oversee the use of common tools such as the Enforcement Database and ACIST developed by the Observatory.

³⁰ The scope and mandate of this Expert Group will be set out in a Commission Decision in 2014.

To this end, the Commission will promote training of legal practitioners on EU IP legislation, notably by making full use of the European e-Justice Portal³¹ via the dissemination of existing training material.

Action 8: The Commission will support the Observatory in the development of a comprehensive set of sectoral IP enforcement related training programmes for Member State authorities in the context of the Single Market.

3.3. Public contractors' responsibility to screen public procurement for IP-infringing products

Public procurement contracts within the Union can result in public sector services being infiltrated with IP-infringing products. In a first step, in 2014, the Commission shall foster better exchange between Member State public authorities on these issues, and will organise a consultation to this end in the Member State Expert Group on Public Procurement. Thematic workshops, organised by the Observatory, will also allow public authorities from different Member States to discuss the problems they have encountered and to exchange best practice. In addition, the Commission will undertake a first sectoral pilot exercise by screening public purchases in the medical sector to assess the scale of the problem in that field. On the basis of these activities the Commission shall publish and promote a guide on methodologies to assist public authorities in detecting and preventing counterfeit products from entering into public services.

Action 9: The Commission intends to develop, promote and publish a guide on best practice for public authorities to avoid purchasing counterfeit products.

4. BETTER MONITORING AND TARGETTING OF IP ENFORCEMENT POLICY

4.1. Analysing trends in IP and in IP-infringing activities

From a public interest perspective, IP enforcement policies should be targeted at those IP-commercial scale infringing activities that are most likely to harm investment in innovation and creativity and do greatest damage to consumer welfare and economic growth. In this context, those IPR-intensive sectors that suffer most significant harm from IP-infringing activities need to be identified objectively and then systematically monitored to ensure that the policy tools set out in this Communication as well as legislative redress systems work. In September 2013, the European Patent Office (EPO) and the OHIM published a study to

³¹ See: e-justice.europa.eu.

provide an initial assessment of IPR-intensive sectors within the EU³². A second phase of the OHIM/EPO report of the IP intensive sectors will be published in Autumn 2014³³.

Once IPR-intensive sectors are identified, the application of reliable estimation methodologies to gauge the scale of commercial scale IP infringements in these sectors is required³⁴. Together with the Observatory, the Commission will come forward by 2015 with transparent and pragmatic models to estimate the trends of IP-infringing activities in IPR-intensive sectors.

For IPR-intensive sectors that supply their products online and face the offer of "free" illicit IP-infringing products, the Commission is undertaking a study to evaluate the displacement effects of infringing products on licit products. This will be completed by the end of 2014. With the Observatory, the Commission will also launch a study on infringements of creative commons licences by infringers seeking to appropriate public domain works. In addition, the Observatory will undertake research into the behaviour and attitudes of the younger generation in respect of consumption patterns of products to which IP rights apply.

In the context of its work in the field of customs policy, the Commission will continue to collect and make available data on customs detentions at the EU external borders. This information will be completed by the information on IP infringements registered on the Single Market³⁵. In parallel, the Observatory, with the support of the relevant national authorities, is working on the development of a case law database for IP infringements.

To ensure that these data sets are used to good effect in ensuring that IP enforcement policy is based on transparent economic foundations, starting in 2014, the Commission intends to provide economic reports in this field. These will serve as the monitoring tool for the Commission's policies against commercial scale IP infringement activities.

Action 10: The Commission shall publish a biennial report on the economic impact of the EU's IP policy that could serve as a more effective monitoring tool for the EU's new IP enforcement policy as set out in this Communication.

³² *Intellectual Property Rights intensive industries, op. cit.*

³³ By mining company level data, this will identify IPR-intensive sectors at national level and quantify their contribution to the economy of each Member State, as well as assess the reliance of SMEs on IPR.

³⁴ In 2012, RAND Europe completed a report for the Commission (*Measuring IPR infringements in the internal market*, cited above.) which reviewed some 200 existing studies and highlighted their methodological/data strengths and weaknesses. On this basis, it proposed a peer-reviewed methodology which could be used to estimate the levels of IP-infringing activity in the economy.

³⁵ The data will be stored in the Anti-Counterfeiting Intelligence Support Tool (ACIST) developed by the OHIM with Europol: <https://www.tmdn.org/enforcementintelligence-webapp/>