

September, 12 2018

Mr. Paul Maier
Director
European Observatory on Infringements of Intellectual Property Rights
Avenida de Europa, 4
E-03008 Alicante, Spain

Via email: paul.maier@euipo.europa.eu; andrea.dicarlo@euipo.europa.eu;
observatory@euipo.europa.eu

**Re: European Observatory's 2019 Work Programme and Extension of Multiannual Plan–
INTA Comments**

Dear Director Maier,

On behalf of the International Trademark Association (INTA), we appreciate the opportunity to provide comments on the draft 2019 Work Programme and the draft Extension of Multiannual Plan of the European Observatory on Infringements of Intellectual Property Rights.

INTA is pleased to have participated as a stakeholder of the Observatory since its inception. Our Association benefits from being an active contributor in all five of the current Observatory's Working Groups. In that sense, we would like to reiterate, once again, our support to the Observatory's work as well as commend their interaction with key users, based on a pragmatic and business-oriented approach over the years. We really hope this work, interaction and approach will be pursued in 2019 and the years after.

While we will not comment on the relevance of the extension of the Multiannual Work Plan as such, we would like to stress the following 4 priorities for INTA to be taken into consideration by the Observatory:

1. **Preserving a balanced, efficient and inclusive approach regarding the new structure of the Working Groups (WGs).** While INTA understands the Observatory's willingness to improve its WG structure, INTA can only support a new structure of the WGs if several safeguards are put into place:
 - It is essential that INTA's participation in the new WGs is not limited to one WG. INTA has been part of all 5 WGs so far and would therefore aim at retaining as much participation as possible in the new structure.
 - The Observatory should reconsider the repartition of access to the WGs among the various stakeholders. Since access to the WGs is to be limited, the Observatory should seriously lower the number of civil society representatives, which is, in the proposed structure, strikingly disproportionate compared to representative of other private and public stakeholders. After all, the Observatory's mission revolves around infringements of IPRs, so participation in the WGs, since it is to be limited, should be provided in priority to public stakeholders and to private stakeholders, the latter representing the very businesses which are directly impacted by infringements of their rights. Brand-owners, practitioners and lawyers - all of which fall under the private stakeholders' category- bring the necessary expertise and undertake the substantial work of the WGs, both elements which are essential to maintain the WG's quality of work.

- We would like to thank the Observatory for taking into account in its note our preliminary comments on stakeholders' information with regards WGs in which they are not represented as well as ensuring that they can provide input "*in a timely and effective manner – to any ongoing and new project*". Timely information and possibility to provide input is essential if the Observatory is to retain its collegial approach, which has made it a success story so far.
2. **Clear the confusion between the role, competences and attributions of the EUIPO and the Observatory.** As mentioned in previous comments, INTA would like to stress that, oftentimes, there appears to be a blurred line between the EUIPO and the European Observatory in terms of role, responsibilities and tasks which creates confusion for our members and all stakeholders (e.g. the 'international cooperation' part seems to fall under both the EUIPO and the Observatory's remit with no clear distinction as to their respective roles and competences in the matter; a similar example can be found with regards the 'authentic cities' project). As the Observatory has its own Regulation (EU) No 386/2012, INTA would advocate for the Observatory to have also its own dedicated work plan, that would clearly indicate when some tasks are done with the EUIPO and how such tasks are performed; the work plan also does not necessarily have to be aligned to the EUIPO's own Strategic Plan. The EUIPO and the Observatory should make an effort to consistently and clearly distinguish between their respective role, competences, tasks and projects, including in all their communications and events, and not use reference to one as an alternative to reference to the other.
 3. **Focus on trademarks and designs-related infringements.** While we recognize that the Observatory focuses on IPR infringements, the Observatory is currently handling various and multiple activities in that matter, as attested by the Work Programme 2019. We notice that more and more is done on patents, copyrights and geographical indications, resulting in less activities on designs and trademarks. We urge the Observatory to do more on trademark and designs-related infringements, and to address all kinds of trademark and design infringements and not only counterfeiting.
 4. **Communication and Dissemination of the Observatory's work.** We have already stressed in previous comments that INTA's membership appreciates the extensive studies of the Observatory and has been suggesting in several instances that they receive greater promotion and publicity. We therefore would like to commend the Observatory for creating a new WG focused on outreach and dissemination of studies. Moreover, although the Observatory relies on its network to circulate the information, we believe that it should also allocate sufficient resources to the promotion its thought-leadership pieces. The Observatory Outreach Working Group should support the development and implementation of a comprehensive strategy for disseminating this information to a wider audience. The Outreach WG could also consider utilizing some further return on investment metrics to determine the influence of these studies. It could also be involved to consider the promotion and dissemination of a study before its publication.

We also express below some concerns regarding the Authenticity project, which we hope you can take into account. Finally, we support the trademark-related and anticounterfeiting projects planned for 2019 as many are a continuation or expansion of existing projects. We provide additional comments and recommendations below. Naturally, my colleagues H el ene Nicora (hnicora@inta.org) and Hadrien Valembos (hvalembos@inta.org) remain at your entire disposal to discuss further our comments.

Your Sincerely,

Etienne Sanz de Acedo, CEO

I. DRAFT OBSERVATORY WORK PROGRAMME 2019

1. Activities planned for 2019 in the Public Awareness area

PA1: Targeting youth. In order to attract youngsters and increase their involvement, INTA would suggest re-designing and updating the current version of the website (<https://ideaspowered.eu/en/youth-workshop-2018>) to better fit youngsters' tastes and needs. INTA would also welcome receiving updates on possible project and/or activities accordingly.

PA6: IP in Education. INTA would find it useful to receive more information about those IP Awareness raising initiatives in schools in Europe, as they run along INTA's own [UNREAL campaign](#). Possible synergies and support could be assessed and, where relevant, experiences could be shared and best practices provided. Moreover, INTA would like to have brand owners and IP experts (lawyers and trademark attorneys) included in the "specialized stakeholders".

2. Activities planned for 2019 in the Observatory Outreach area

First of all, INTA's membership appreciates the extensive studies of the Observatory and has been suggesting in several instances that they receive greater promotion and publicity. We therefore would like to commend the Observatory for creating a new WG focused on outreach and dissemination of studies.

Although the Observatory relies on its network to circulate the information, we believe that it should also allocate sufficient resources to the promotion its thought-leadership pieces. The Observatory Outreach Working Group should support the development and implementation of a comprehensive strategy for disseminating this information to a wider audience.

The Outreach WG could also consider utilizing some further return on investment metrics to determine the influence of these studies. It could also be involved to consider the promotion and dissemination of a study before its publication.

OUT1: Track the use of the work of the Observatory. INTA supports this initiative, which is important to determine the influence of the Observatory's studies at policy level. INTA would also like to suggest tracking the use of the work of the Observatory in policy-making at the Member State level, as referred in OUT2. We would like to suggest this level of tracking in 2020, if next year is not possible. This would help to better assess outreach at national level.

OUT2: Dissemination of the results. Once again, INTA would also like to stress the importance to appoint local Ambassadors, outside of the Member States' IP Offices, able to properly disseminate the activities of the Observatory, relying on local language, culture and experience, in order to better reach out to citizens of different Member States.

OUT4 (formerly PA4): INTA has been a regular supporter and participant of the International IP Enforcement Summit. We would like the Observatory, together with the European Commission and the OECD, to ensure that, thanks to the Observatory's network and expertise, this Summit delivers concrete recommendations, best-practices or follow-up actions, to help progressing on the fight against counterfeiting.

3. Activities planned for 2019 in the Enforcement area

ENF3: Data collection, analysis, reporting. INTA members would like to support the 2019 Situation Report by providing case studies from the private sector to capture the dangers of

counterfeit goods on the health and safety of consumers. The Association kindly asks that the EUIPO and Europol consult the private sector as part of their process to draft the Situation Report in 2019, as it did in the past.

ENF4: Special focus on online infringements and cooperation with law enforcement agencies. INTA supports the Observatory's intention to continue increase collaboration with the Commission, national IP offices and customs officials, as well as with WIPO, INTERPOL, Europol and Eurojust, to help harmonize and strengthen enforcement practices throughout the EU. In this regard, the Observatory could consider looking at the value of the convergence of decisions of trademark offices and judgments of courts, especially in how this relates to forum shopping by practitioners.

INTA would also ask that the Office considers including private sector representatives in such meetings. The rights holders and online intermediaries are key stakeholders in the enforcement of IP rights on the Internet.

On the EUR 950 000 grant to IPC3, INTA welcomes the fact that "a specific item will be included in the agenda of all Enforcement Working Group meetings so that Europol can report on progress and Observatory representatives can provide their feedback and input" as it was one of INTA's request in previous years. INTA would nonetheless welcome some clarity as to what process led to the determination of the grant and how the EUR 950,000 grant from EUIPO will be spent by the IPC3.

ENF7: Building Knowledge and Competences in IP Enforcement. INTA would like to support these meetings. The INTA Anticounterfeiting Committee recently drafted an Online Counterfeiting Guide for Enforcement Officials that we could share for the purposes of this training.

ENF10: Virtual IP Training Centre. INTA applauds the work of the Office in developing the Virtual IP Training Centre and would like to request that the private sector be able to contribute to the training resources. Resources developed by other organizations like INTERPOL's International IP Crime Investigator's College should also be linked to the Virtual IP Training Centre.

ENF11: Mapping of Market Surveillance Authorities (MSA). INTA would be interested in receiving the list of identified MSAs, if this is available for WG members.

ENF12: Collaboration with the Customs Cooperation Working Party (CCWP) in IPR enforcement. INTA would welcome that the "experts" to participate in CCWP project group meetings and JCO trainings include brand owners, IP lawyers and trademark attorneys, to ensure a holistic and pragmatic approach.

ENF13 (formerly DW3): Research on business models most commonly used to infringe IP online. INTA welcomes this initiative, as it has in previous years. Indeed, as stressed in previously, INTA believes the Observatory's research studies on the online business models that infringe IP rights are very useful for brand owners. These studies reveal that five out of twenty-five business models include use of trademarks in the domain name, cybersquatting, or domain name parking, and that many deceptive business models wrongfully give consumers the impression that they are affiliated with a legitimate brand. The domain name industry is working on industry sector led volunteer initiatives to combat the most obvious forms of piracy and infringement. The Observatory may wish to examine the volunteer led efforts of the Domain Name Association's Healthy Domains Initiative (HDI). In addition, INTA encourages the Observatory to continue its efforts to raise consumer awareness and education about these business models used to infringe IP online.

4. Activities planned for 2019 in the Legal area

LEG1: Case-law collection and analysis. INTA would welcome information on the entities/authorities (individuals and/or bodies) involved in the analysis of case-law. INTA would support involving brand owners, IP lawyers and trademark attorneys and experts at national level.

Moreover, INTA would suggest involving national Ministries of Justice and local network of judges, in order to benefit from their experience and perspective and fill the gap of the lack of this kind of information (in English) at EU level.

LEG3: Analysis of availability of blocking injunctions in the MS. This study is of great interest to our membership, and therefore, INTA has offered its members' support to the Observatory. INTA Enforcement committee is also focusing on preliminary injunctions across the world as a priority for the 2018-2019 term and is open to sharing its findings with the Observatory with a view to fostering cooperation on this important issue.

LEG4 (formerly ENF9): Judges Seminars and Training sessions. INTA has developed its own judges' workshops aiming at enhancing knowledge and handling of IP and TM cases in courts, and stands ready to share its expertise, experience and best practices with the Observatory and to explore possible partnership in the matter if relevant/possible.

The Observatory should also consider compiling arguments, examples and Best Practices to support and promote the creation of IP-specialized judiciaries across Europe.

We fail to understand why the seminars related to trademark infringements will not be also organized in close cooperation with the European Commission, especially in light of the Commission's Communication: Guidance on the Directive on the enforcement of intellectual property rights.

LEG5 (formerly DW5): Orphan Works Database and LEG6 (formerly DW8): out-of-commerce works. It would be useful to know more about Key Performance Indicators (KPIs) for these projects, i.e. if, with what frequency and to what extent this Orphan Works Database (and possible out-of-commerce works) are used and consulted.

Moreover, we question whether the EU online portal with information on out-of-commerce fits within the remit of the work of the Observatory. Should it fall within the tasks of the Office, as per the EU Commission's initial proposal, INTA strongly reiterates its previous comments regarding the need to find an alternative source of funding, so that trademark and designs users do not end up subsidizing activities regarding other IP rights. INTA would like to obtain information regarding the human and financial resources which are anticipated for implementing and managing the online portal.

5. Activities planned for 2019 in the Impact of Technology area

TECH1 (formerly DW9): Online IP Enforcement and New Technologies. INTA supports the Observatory's engagement on this topic. The creation of a think tank with external technology experts is welcome. INTA would welcome the identification and monitoring of legal models using these technologies.

In addition, INTA recommends the think tank to be interdisciplinary, i.e. combining experts from different areas (e.g. academic, legal, IT, entrepreneurs, policy makers, etc.). A mere focus on technology would limit the scope of recommendations to IT only. The Expert group should also

consider inviting entrepreneurs in high-tech areas, who may be advised on how/which emerging IP anticounterfeiting technologies may be introduced in the market. Finally, INTA would also encourage inviting academics (legal and economics/ business) as their input would be valuable in understanding and conceptualizing new business models in IPR infringements.

On the Blockathon, INTA would like to thank one more time the Observatory for the organization of the EU Blockathon on June 22-25, 2018, which allowed to connect counterfeiting and blockchain technology. The event helped raising awareness on both anticounterfeiting and blockchain technology while exploring ways to make blockchain an anticounterfeiting tool. The event was well-organized and well-received and communication around it was overall positive. It is essential for the Observatory to maximize the benefits of such event and to justify its creation by ensuring a concrete follow-up on the solutions proposed by the competing teams.

TECH2 (formerly E13): Expert Group on Anti-Counterfeiting technology. INTA welcomes the creation of this Expert Group; it has and will send representatives in the two meetings held in 2018 on March and November. On the “*permanent team (with participants from outside the Expert Group) and [the] consultancy*”, INTA would welcome information on the selection process as well as on the agenda of activities planned.

6. Activities planned for 2019 in the Cooperation with Intermediaries area

INTM1: categories of intermediaries. INTA welcomes this initiative and offer its support on carrying it on. In particular, INTA has developed its own [Best Practices to Address the Sale of Counterfeits on the Internet](#) (last updated in November 2017) which could provide valuable input for the Observatory in that regard. This could feed into the Observatory’s objective “to have a more systematic review of all these initiatives [by private stakeholders] to identify good practices and try to extend them as much as possible” (Draft Extension of the multi annual plan Note, page 10 paragraph 2).

INTM3 (formerly DW7): study examining cybersquatting of domain names, including, but not limited to, the new top-level domains (gTLDs). In 2018, INTA has proposed 4 members from its Internet Committee to be interviewed to provide input on this study. Moreover, INTA strongly encourages the Observatory to follow the work of ICANN and engage as much as possible with ICANN and its various groups to advocate for trademark rights and keep the membership of the Observatory as informed as possible. With regards the new gTLDs program, INTA has always been concerned that the release of hundreds of new gTLDs could adversely affect trademark owners. Prior to the rollout of new gTLDs, INTA members participated in ICANN’s IP rights protection Implementation Review Team to formulate rights protection mechanisms (“RPMs”) to protect trademark owners. Now that these new gTLDs are in the marketplace, ICANN has formed working groups to review the implementation of these RPMs. These groups include the New GNSO Policy Development Process Working Group to Review All Rights Protection Mechanisms in All gTLDs; the New gTLD Subsequent Procedures Working Group; and finally a committee to monitor the Health of the gTLD marketplace. These groups are evaluating the use and effectiveness of RPMs implemented by the registries and registrars as well as the health of the domain marketplace and the effect new gTLDs have had on consumer choice and competition. INTA has found that having members participate in a meaningful way in these working groups has been highly beneficial to intellectual property owners.

7. Activities planned for 2019 in the International Cooperation area

As a general point, INTA appreciates the work of the Commission in improving the protection of IP rights in third countries and often participate in the relevant preparatory meetings of the IP

Dialogues and Working Groups for these countries. The Association works with IP Key and ECAP III as well as the EU Delegations worldwide.

We noted and appreciate that the website for IP key projects has been improved significantly and provides more information than in the previous version. However, while we are quite familiar with DG TRADE's work outside of the EU, INTA would appreciate a more comprehensive report of the state of play of the EUIPO's work in these third countries. The current approach varies from region to region, and INTA membership does not see a sufficiently coordinated and transparent approach re. The EUIPO's work with DG TRADE outside of the member states. The IP stakeholders would benefit from a road map of the EUIPO's IPR strategy outside of the EU and information regarding a cost-based activity budget allocated to the work commissioned by DG TRADE, as well as some feedback as to the outcome of these efforts.

In general, our membership is growing confused on the entity entrusted with international cooperation and would request both clarity and consistency regarding whether it is the EUIPO or the Observatory, and which resources and funds are used for such programs.

INT1: the network of IP experts in EU Delegations. INTA fully supports this initiative and would find it helpful if a list of these "experts" could be made publicly available, so that brand owners have the possibility to reach out to them when experiencing issues in a specific jurisdiction.

INT3: Observatory's support to international EU-funded projects. INTA members regularly work with IP Key. Our Association invites IP Key representatives to our various events around the world and provided concrete ideas of potential activities that would be useful to brand owners in each region. Most notably, INTA partnered with ECAP-III in 2015 for a joint customs seminar in the ASEAN region. IP Key representatives have been invited to speak at several INTA events – most recently at an INTA policy dialogue in Buenos Aires in April 2018. The Association finds working together with IP Key is helpful in improving anticounterfeiting efforts worldwide.

INTA has always been a strong supporter of EUIPO's international activities focused on benchmarking its tools and practices with trademark offices and other institutions in an increasing number of countries, and to develop ties with other authorities. In this context, we would like to suggest that the European Commission and EUIPO consider exploring the possibility of an EU funded project in Africa.

In any case, we would caution that any international activity of EUIPO should focus in priority on trademarks and designs within the limits of EUIPO's financial means and in close coordination with the Commission.

INTA also strongly welcomes the active involvement of non-EU businesses, and consideration of their interests in international cooperation activities. EUIPO's funds derive from a global community of trademark and design owners from more than 170 countries. Therefore, EUIPO's funds and efforts under IP Key should be dedicated to supporting and promoting the interests of all businesses regardless of their provenance.

INTA would welcome increased transparency and accountability as regards the budget allocated and the results achieved with each IP Key programme. In particular, we would welcome detailed information on each country covered and the distribution of funds between the different recipients and the concrete activities undertaken (training, IT support, awareness, etc.) In this context, it would be useful if some KPIs were provided.

Moreover, The EUIPOs engagement in the TM5 and ID5 process and its sharing of TMView and TMClass is welcome and should be further expanded.

8. Activities planned for 2019 in the Economics and Statistics area

ES1: Quantification of infringement; ES3: The role of IP in the global value chain and ES4: The 2019 edition of the IP Contribution Study. In general, INTA would suggest that the Observatory attempts as much as possible to classify its data regarding infringements and its impacts as to the type of IPR concerned, i.e. trademark, patent, copyright, etc.

INTA would like to suggest that the studies go beyond the economic impact and look at more of the social harms of counterfeiting – like the physical harms to the public (e.g. safety) and the linkage with other criminal activities. These factors are more impactful when making a case for why counterfeiting is harmful.

ES13: Study on the role of social media in relation to IPR infringement. It is important that data related to trademark infringements can be separately identified, since they have specific characteristics, relevance and impact.

New Study: Study on brand restrictions. Trademark laws are consumer protection laws. Consumers rely on trademarks and trade dress in order to make well-informed decisions about their purchases. Brand restrictions, including but not limited to plain and standardized packaging, not only limit the trademark owners in using their rights, but limits the consumers' ability to make informed decisions about their purchases. More seriously, plain packaging allows counterfeits to easily copy genuine goods, creating an increase of potentially harmful counterfeit goods in the marketplace. INTA would like to respectfully reiterate its request that the Observatory examine all forms of brand restrictions, and their effects on brands, consumers and the counterfeit trade, as it is an important and growing issue for brand owners.

Although a very sensitive subject, we also believe that there would be much added value in having a study looking at the link between counterfeiting and other crimes. Perhaps the Observatory could at least start compiling existing information on this subject, and supporting and promoting the compilation of such information, especially at national level. We heard several anecdotal evidences from national enforcement authorities, which would be most helpful if compiled.

9. Activities planned for 2019 related to SMEs

From a general perspective, linked to the public awareness project, and as we mentioned in our comments in 2016, 2017 and 2018, INTA applauds the work of the Observatory in demonstrating how IP has a positive impact on the economy and employment through its IPR contribution study and the SME scoreboard. Now that the positive contribution of IP has been demonstrated, we believe the Observatory should take action in helping trademark owners (small, medium and large) develop those rights. The Observatory could consider developing a campaign targeting SMEs and focusing on effective IPR enforcement. This campaign should inform SMEs about the different types of IPRs they can use, and ways to develop a strategy to use various types of IPRs to effectively protect their products and services. The campaign should also touch upon ways to register and enforce their rights in other jurisdictions as SMEs expand to other markets.

Such projects should be developed in cooperation with existing EU initiatives such as the European IPR Helpdesk and the IPR SME Helpdesks for China, South East Asia and Latin America and in close cooperation with the Commission. Clarification on the role of the Commission in this project would be appreciated. INTA remains committed to provide support in this subject matter.

SME1: address SMEs' information needs. INTA believes it is important to promote programmes aimed at developing SMEs' awareness about the importance of a qualified legal

assistance in their activities of IP enforcement and litigation in non-EU countries. INTA itself has set-up a Presidential Task Force dedicated to SMEs in 2018 to assess these issues. INTA recommends that specific cost-effective “IP legal cost Reimbursement Schemes” focused on SMEs should be assessed and studied together with brand owners, IP lawyers and trademark attorneys that work with SMEs and are used to work with cost-effective budgets.

10. Activities planned for 2019 related to tools

T1: EU IPR Enforcement Platform Strategic Project. INTA welcomes the databases and online tools as they provide platforms to exchange information and therefore allow national authorities and brand-owners to fight and tackle IPR infringements more effectively and efficiently.

In that regard, INTA welcomes the new portal’s aim to provide “*a unique entry point for accessing the enforcement tools (the Enforcement Database – EDB, ACIST and ACRIS)*”. Nonetheless, we would maintain our concern raised in previous earlier submissions that the multiplication of databases could be confusing and counter-productive; it can also reduce the appeal, effectiveness and efficiency of each database. We thus strongly support the objective to seek greater integration and interoperability between existing databases so as to obtain consolidated enforcement information, which we hope the portal will contribute to. Indeed, INTA has long advocated for a one-stop shop mechanism which guarantees the interoperability of the databases.

Finally, INTA believes one of the highly appreciated features of the EDB is that much of the information is translated to allow enforcement authorities to access data in their own language. Therefore, we believe – as stressed in previous submissions- that an important improvement would be to have all the documents available in EDB also available in all official EU languages. Finally, we would recommend the Observatory to continue its effort of promoting the EDB towards brand owners, as it appears that it is not yet very popular in certain jurisdictions.

11. Synthesis report on infringement

INTA actively supports this initiative and has helped disseminate the study through its own communications tools (blog, twitter) in 2018.

12. 2019 Budget

INTA commends the ambitious work plan set forth for the Observatory for 2019 and looks forward to assisting with its development and implementation.

We welcome the budget repartition per “*activity areas*” as we have requested in previous submissions but we would also advocate for the repartition per activity themselves. We would welcome this becoming a standard practice when presenting stakeholders with annual or multi-annual strategic and work plans. The activities of the Observatory are funded by trademark and design registration fees, the expenditure of which is of great interest to INTA members.

We also recognize that several of the Observatory’s projects are non-trademark related, and we reiterate our request that consideration be given to establishing a mechanism that would aim towards equitable funding by non-trademark or design-related stakeholders.

II. DRAFT EXTENSION OF THE OBSERVATORY MULTIANNUAL PLAN AND ANNEX

As a preliminary remark, we will cover, in this section II, only the issues that have not yet been raised specifically in Section I.

1. The restructuring of the working Groups (pages 12-15)

First of all, INTA would like to thank the Observatory for taking into account its preliminary proposal on information with regards WGs where stakeholders are not represented, i.e.: *“A clear description of each WG, its remit, mandate, list of projects and composition will be provided to all stakeholders. All stakeholders will receive, at the same time as WG members, information regarding the dates and topics of the meetings, the working documents (including draft terms of reference for studies), and will have access to the agendas as well as to the summaries and action points. Moreover, all stakeholders, regardless of their participation to a WG, will have the opportunity to provide input – in a timely and effective manner – to any ongoing and new project”* (page 12, paragraph 5).

Indeed, while we agree on the necessity that *“the composition, role and frequency of the WG meetings should be adapted”*, INTA noted first with concern the extension of the number of Working Groups and the correlative limited access to each. Indeed, our main concern was that such changes should not be detrimental to the *“full participation of all stakeholders”* in each WG, no matter their thematic, as it is currently the case. While we agree that *“stakeholders who are interested and who have expertise in that particular matter should take part”* in the specific WGs, we would support a broad participation of private stakeholders with the capacity and willingness to contribute, as they have provided valuable expert input in the past, input which is substantial and at the core of the WGs' work.

Therefore, INTA acknowledges the increased number and limited access to the WGs as well as the necessity to improve them and is open to compromise if and only if the above-mentioned approach is set up and properly enforced and allows for each brand owners association – regardless of their participation to the WGs - to be informed of the work in all WGs, to provide input in a timely manner and to have a broad and holistic view of the Observatory work in order to provide better and informed input. This is a *sine qua non* condition and a safeguard mechanism to protect the collegial nature of the Observatory and ensure meaningful contribution of the very entities that suffer from infringements.

Secondly, INTA would support such restructuring if and only if its access to the new working groups is not limited to one Working Group. Indeed, INTA has been part of all 5 WGs so far and would therefore aim at retaining as much participation as possible in the new structure.

Finally, we are very concerned by the repartition of access between private, public stakeholders on one hand and civil society on the other hand. Indeed, we believe that the new structure utterly favours the latter: participation is guaranteed for 50% of civil society's representatives against 12% for private stakeholders and 28.5% for public stakeholders. Moreover, brand-owners, practitioners and lawyers - all of which fall under the private stakeholders' category- represent the 'experts' and therefore bring the expertise and undertake the substantial work of the WGs. They should therefore have increased access to the WGs if the latter's quality of work is to be maintained. After all, the Observatory is about IPR infringements: the ones suffering from IPR infringements should be highly involved in its core activities.

The ratio of the public and private sector should be dominantly trademark and design focused. We understand that the Observatory focuses on patents, copyrights, and trade secrets, but these representatives should not outnumber the trademark and design representatives, who fund the EUIPO.

2. Studies (pages 4-5)

On the specific projects, we would refer you to Section I – Draft Observatory Work Programme - above.

With regards the possibility “to carry out a new study on a specific matter”, one of the criteria listed is “EUIPO identification of subjects or submission by a group of stakeholders and discussion in the relevant working group and confirmation of its inclusion in the work programme of the following year by the Plenary meeting” (page 5, paragraph 2). In that regard, INTA would kindly request the Observatory to further specify the criterion, i.e. what precise number of stakeholders would be required to get the approval of the new study and/or if any other criteria related to substance or relevance are to be considered.

3. Authenticity project (page 6)

As expressed during the September 10 EUIPO’s meeting in Brussels on cooperation projects, INTA has some concerns with such project being transformed into a European cooperation project. Should the EUIPO MBBC decides to give its green light to such project, we would urge the Office to consider the following safeguards, to ensure that the project delivers measurable and concrete results on the fight against counterfeiting without unreasonable expenses:

- *Prior to the start of any work on this project*, it is essential to assess the success of the existing Authenticity project. Data to be considered could include: was there a decrease of counterfeiting sales in the streets of the city? An increase of raids? How many enforcement officials were educated about counterfeiting? Was there a survey done to assess the impact of the raising awareness campaigns? How many schools took part in an awareness campaign? How many students or schoolboys does that represent? Did the city’s mayor commit to concrete results? How many articles were in the press about the project? Has there been any follow-up action? Etc.
- Any project should include a *monitoring system of the volume of counterfeiting in neighbouring cities* to ensure that the project has no negative side-effects on a broader scale.
- A *set budget*, with clear estimation of financial and human resources, is necessary, to avoid an undefined or unreasonable allocation of the EUIPO’s budget to Member States.
- A list of “SMART” objectives (specific, measurable, attainable, realist, time-bound) is necessary so that cities participating, including all involved public stakeholders, are bound by a set of concrete deliverables. Grants should be conditioned to commitments and delivery on these objectives.
- The list of concrete actions to be undertaken should include a minimum number of raids against counterfeiting products.
- KPIs should also be considered, based on these SMART objectives, and a condition for any future allocations of grants to the same Member State.
- It is important to involve national IP Offices in the project, but also target commitments at the political level in each participating Member States, without which success cannot be guaranteed. The network of the Observatory should be fully used in that respect.
- A clear outline of both the interaction between the EUIPO and Observatory, and the interaction between the EUIPO Cooperation Project Working Group and the “external Expert Group” is needed upfront, with defined respective tasks and roles.
- It is important to ensure that the project involves user associations and local anticounterfeiting associations, without which success cannot be guaranteed.

- Member States should commit to provide regular updates on the progress and achievements of the project in their respective territory.