

Intellectual Property Priorities for the new European Commission to protect consumers & boost the EU economy

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The International Trademark Association (INTA) would like to offer concrete recommendations for the 2019-2024 political cycle. These recommendations are aimed at promoting and fully reaping the benefits of intellectual property (IP) as a tool to protect consumers, foster innovation and support EU businesses of all sizes.

WHY IS IP IMPORTANT?

IP protects EU consumers, fosters EU Competitiveness and helps tackling climate change, thereby contributing to a better society.

1. IP protects consumers by allowing them to take informed purchasing decisions.

Trademarks, designs, geographical indications help consumers identify who is the producer of the products and/or the provider of the services they buy and use on a regular basis. Without trademarks, designs or geographical indications consumers would neither know what they are buying nor who has produced it.

Fake products are proliferating at a frightening pace: international trade in counterfeit and pirated products, including online, is estimated to skyrocket to as high as \$2.81 trillion by 2020¹. Counterfeiting represents more than a financial loss and a market issue for businesses; it represents a health and safety danger for consumers of all ages. Contrary to the common belief that counterfeiting only occurs in the luxury industry, products in every industry—from automotive to health care to electronics—are now being counterfeited². A staggering 97% of dangerous counterfeit goods recorded by the RAPEX alert system in 2010-2017 were assessed as posing a serious risk to health and safety, with toys topping the list³. Given the scale of the issue, efforts to reduce the supply of counterfeits need to be coupled with efforts to reduce the demand for such products.

2. IP fosters EU Competitiveness. According to the Intellectual Property Office of the European Union (EUIPO)'s recent IP contribution study, IPR-intensive industries⁴ :

- Generate 42% of EU GDP
- Account for about 90% of EU trade, generating a trade surplus for the EU of EUR96 Billion
- Contribute directly to 28% and indirectly to 38% of all jobs in the EU
- Pay 46% higher wages than other industries.

¹ “[The Economic Impacts of Counterfeiting and Piracy](#)” impact study, 2017, by Frontier, commissioned by INTA and the International Chamber of Commerce –BASCAP. See also “[Status Report on IP Infringements](#)” done by the European Union Intellectual Property Office.

² See the European Observatory for Infringements of IPRs [sectorial studies](#) for statistics of counterfeiting per sector.

³ June 2019 [Qualitative Study](#) on Risks posed by Counterfeits to Consumers, by the European Union Intellectual Property Office

⁴ 2016 [IP Contribution study](#), by the European Union Intellectual Property Office and the European Patent Office.

- Trademarks play the biggest role in these numbers, they deserve a strong protection. Yet, their value and potential are not always fully understood by decision-makers.

- 3. IP contributes to Small and Medium-sized Enterprises' (SMEs) growth.** Building a name and a reputation is essential for all size businesses to sustain themselves as well as to grow: brands provide that company's business card.

SMEs are the backbone of the EU economy but unfortunately lack awareness on IP⁵, including trademarks, designs, geographical indications and copyrights. The EU needs to ensure the education of SMEs on how IPRs are necessary to help them come to existence, subsist and thrive by marketing their products and services efficiently in a highly competitive environment.

In an increasingly complex and globalized competitive world, the EU needs to foster the emergence of European SMEs and economic champions.

- 4. IP is part of the answer to youth's aspirations.** EU youth's aspirations and expectations should be a key concern for the EU decision-makers during the next mandate. Generation Z (18-23 years old) is the largest group of consumers worldwide by 2020 and is known to be concerned by climate change and jobs. Apart from IP's contribution to jobs and to the fight against climate change, INTA's recent study⁶ on Gen Z has demonstrated that 93% of these young people have a strong respect for the value of people's ideas and creations, and that 74% think that it is important to buy genuine products.

- 5. IP is part of the equation to fight climate change.** IP has a role to play in protecting our environment and tackling climate change. IP has the capacity to recognize and reward innovative and eco-friendly initiatives and solutions and to allow transfer of technology that could contribute to a better environment. Trademarks play an important role in that they help innovative businesses to develop and incentivize companies to adapt sustainable models to which consumers can relate. The potential of IP in fighting climate change is increasingly considered at national and international levels. For instance, the World Intellectual Property Organization (WIPO) has developed the WIPO GREEN project, a database matchmaking investors and innovators of climate-friendly technologies.

Climate change also represents a challenge for the EU IP users and businesses. For instance, EU geographical indication producers are bound to produce within a limited geographical area, which characteristics may no longer be optimal due to climate change. Climate change might put at risk the ability of local producers to continue complying with the geographical indication standards.

WHAT DOES IT MEAN FOR THE FUTURE?

In order to respond to the above challenges and opportunities from an EU perspective, INTA proposes the following high-level recommendations:

1. Create a high-level IP Coordinator's position at the EC

An IP Coordinator would put IP as a political priority and would allow the Commission to speak with one voice. In addition, the IP Coordinator would help pressing the fight against counterfeiting at the highest political level. The Commission has done a lot at technical level but more needs to be done,

⁵ Cf. the European Union Intellectual Property Office 2016 "[SMEs scoreboard](#)".

⁶ INTA's study "[Gen Z Insights: Brands and Counterfeit Products](#)", May 2019.

given counterfeiting's scale, growing trend and impact on both consumers and businesses. It has become clear that without a "Political Champion" at the EC, the fight against counterfeiting will not receive the attention and thus the allocation of resources, both human and financial, that it deserves. Having an IP Coordinator could thus not only contribute to a more unified and streamlined approach on IP in general by the Commission but also help in the fight against counterfeiting. It is worth noting that a similar role has already been successfully introduced in other countries.

2. Position the EU as an IP champion on the international scene

On the multilateral level, the European Commission should consider pushing for IP enforcement to be addressed at the World Trade Organization (WTO) and WIPO. Only a coordinated and global approach can be efficient in addressing IPR infringements, especially since the Internet has allowed infringements to happen on a global and faster scale.

The EU Commission should continue to advocate for a balanced and reasonable approach to access to domain name registration data for IP enforcement. Such approach should take into account the importance of data privacy weighed against the importance of protecting consumers against the misuse of domain names for distributing harmful counterfeit products, phishing, malware and online fraud and abuse.

On a bilateral level, the EU should continue pushing for strong IP protection, whether through its trade agreements or dialogues with third countries. The EU should in particular require that third countries adhere to international IP treaties such as the Madrid System for trademarks or the Hague System for designs, which ensure more harmonization and easier access to IPRs. The EU should also encourage third countries to disregard initiatives that introduce brand restrictions, an increasingly worrying trend for brand owners from all sectors, which goes beyond plain packaging for tobacco products.

The EU's [proposal](#) for future international rules on e-commerce in the framework of the WTO refers to IP only once and only to the protection of source-code. We recommend covering trademark-related rules on anticounterfeiting, given this issue's relevance and negative impact on e-commerce. Further, trademark counterfeiting may be less controversial and probably easier to negotiate with third countries than provisions on other IPRs.

Finally, the European Commission should ensure that IP projects in third countries implemented by the EUIPO, including new projects in Africa, Caribbean states and Georgia, receive users' input from the outset, and allow further interactions and coordination with user associations with local or EU ties.

3. Launch and support an EU-wide IP education campaign targeting consumers, university students, SMEs and policy makers

Both the positive impact of IPRs, including trademarks and designs, and the negative impact of counterfeiting and other IP infringements need to be communicated separately to consumers, decision-makers and SMEs, if the EU wants to fully reap the benefits of IP while protecting its citizens from the danger of counterfeits. A significant investment has to be made. Education on IPRs and the danger of counterfeits should be part of all Member States' education curriculums, especially now that there are facts and figures available on these subjects.

This could be coordinated by the European Observatory for Intellectual Property Rights Infringements. The EU Observatory has played an instrumental role in raising awareness of the value of IPRs and the impact of their infringements through its studies and network. It is crucial that the Observatory is supported in further spreading and adapting these facts and figures to reach broader audiences, especially consumers.

4. On the legislative front: initiate an EU legislative reform on designs and work on the implementation of the EU trademark system

There is not enough awareness on design rights and their benefits, whereas designs can be the basis of successful business models. As mentioned before, education on the benefits of designs, especially of SMEs is key. The legislative framework should also be updated, to provide more harmonized, clear, efficient and user-friendly procedures taking into account new technologies⁷. We encourage the Commission to initiate legislation in that context, following the 2018-2019 public consultation on the matter.

The review of the EU Designs legislation, given its potential benefits, should not be stopped nor delayed by the political and controversial issue of harmonizing the legal framework of spare parts.

INTA also encourages the Commission to finalize the separate study on 3D printing and to carefully assess its impact for businesses and consumers before legislating on this new and sensitive subject, with mostly unforeseen consequences on the protection and infringement of design rights.

The EU trade mark reform has been adopted but remains to be fully implemented in Member States. This is important for businesses, especially SMEs, who wish to seize the benefits of more harmonized, simpler and less costly procedures, no matter where they operate in the EU. The experience of businesses across the EU should be as similar as possible for the sake of the single market. The EU should continue monitoring the reform implementation, ensuring it does not lead to a lack of harmonization and thus forum shopping and higher costs for businesses. The Commission should also support national IP Offices in being well-equipped to handle new practices, including registration of new types of trademarks which are important for businesses to fully reap the benefits of new technologies.

5. Ensure that the EU Intellectual Property Office (EUIPO) continues providing a high quality and efficient public service to its users

The EUIPO is a successful and unique EU agency, self-financed by fees paid by its trademark and design users. We believe that the Office's close interaction with user associations on its strategy, projects and services has played a relevant role in ensuring the Office's success story. User associations are being consulted at all levels, including at the Management Board and Budget Committee, and as such, have been acting as a sounding board on the users' interests and needs for the services the Office provides. This is in line with Trade Mark Regulation (EC) 2017/1001.

It is key to ensure continuity of user associations involvement at all levels, so that each of the Office's numerous projects can be analyzed in terms of their benefits for users.

We recommend to reinvest the EUIPO's budget surplus as well as any future surplus in IP-related projects, under the supervision of the EU Commission. Still much needs to be accomplished to improve IPRs protection, enforcement and awareness in the EU, for the sake of EU businesses and the society. One option could be to use this surplus to finance the EU-wide IP education campaign mentioned above.

The Office has been created to grant trademarks and design rights to businesses. Any expansion beyond these tasks should be carefully considered to ensure that the quality of services currently rendered on trademarks and designs by the EUIPO is always at its best and at the heart of the EUIPO's strategy. This should be made clear in the EUIPO draft Strategic Plan 2021-2025, which

⁷ See INTA's [contribution](#) to the EC Consultation on Designs protection in the EU, April 2019.

currently places cooperation with national offices and international organizations on an equal footing to registration of trademarks and designs. This is particularly important since the Office has cautioned that a possibly lower EU budget may have a negative impact on the services it provides to users.

6. Promote the creation of national IPR Enforcement Centers and specialized IP Units within Police

Cybercrime and counterfeiting will grow exponentially unless a solution is created. IPR Enforcement Centers in Member States would aim to establish a national central coordination unit to fight against counterfeits, piracy and other IPR crimes. It would involve governmental offices, enforcement authorities, industries and the targeted public with three primary functions: seizing goods, investigating crimes and prosecuting alleged criminals. It would also facilitate coordination with national officials, the IP Crime Coordinated Coalition (IPC3) created by Europol and the EUIPO, and other jurisdictions globally.

The IPC3 provides operational and technical support to law enforcement agencies by coordinating cross-border investigations, reporting online crime trends, enhancing harmonization of operating procedures and training law enforcement. More should be done at the national level, where further coordination is needed.

This would have the benefit of having all entities working on IPRs enforcement under one roof, thereby increasing cooperation and efficiency, while triggering savings in terms of financial and human resources. This has already been implemented in several countries with success. INTA has produced a [guide](#) on how to set up an IPR Enforcement Center.

In addition, INTA notes that criminal investigation against counterfeiters is limited by the insufficiency of resources available to the police, other investigating authorities and prosecutors. Resources are also lacking for these officials' training on counterfeiting, while public recognition for pursuing trademark counterfeiting is insufficient compared to other offenses. Therefore, INTA recommends that EU Member States be encouraged to establish specialized IP crimes investigation and prosecution units within their law enforcement and prosecution structures respectively. This has already been implemented successfully in Italy, Spain and the United Kingdom.

About INTA: The International Trademark Association is a global association of brand owners and professionals dedicated to supporting trademarks and related intellectual property to foster consumer trust, economic growth, and innovation. INTA's members are more than 7,200 organizations from 191 countries, including 1,583 from the EU28. The Association's member organizations represent some 31,000 trademark professionals and include brand owners from major corporations as well as SMEs, law firms, and nonprofits. There are also government agency members, as well as individual professor and student members. See INTA's [2018–2021 Strategic Plan](#). Headquartered in New York City, INTA also has offices in Brussels, Santiago, Shanghai, Singapore, and Washington D.C. and representatives in Geneva and New Delhi. For more info, please contact H  l  ne Nicora, INTA Chief Representative Officer –Europe at hnicora@inta.org.