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## COVER NOTE

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EUROPEAN  
COMMISSION

Brussels, 19.3.2024

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## **COMMISSION RECOMMENDATION**

**of 19.3.2024**

**on measures to combat counterfeiting and enhance the enforcement of intellectual  
property rights**

## COMMISSION RECOMMENDATION

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### on measures to combat counterfeiting and enhance the enforcement of intellectual property rights

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) An efficient intellectual property (IP) rights system is a staple of any solid industrial strategy. Industries that make intensive use of IP play a prominent role in supporting a resilient, green, and competitive economy in the EU, contributing 47% to total GDP and almost 40% to total employment. European creative and innovative industries are frontrunners in green technologies and sustainable products. Globally, they hold a major share of green patents and have strong IP portfolios in technologies such as climate-change adaptation, carbon capture and storage, and waste treatment<sup>1</sup>. At the same time, the EU has seen a significant increase in the registration of green trade marks in the past decade<sup>2</sup>. Protecting IP rights equitably translates into increased economic activity, investment, employment, and productivity, including for small and medium sized enterprises ('SMEs')<sup>3</sup>.
- (2) The considerable market value of IP-protected products has attracted criminal networks, leading to a rise in counterfeit goods and piracy. Counterfeiting is identified as a high impact crime in the Strategy to Tackle Organised Crime 2021-2025, which aims at dismantling criminal networks and their business models<sup>4</sup>. This criminal activity not only leads to losses of revenue for IP rightsholders ('rightsholders'), but also poses significant risks to consumer safety, public health, and the environment. The COVID-19 pandemic created new opportunities for counterfeit and pirated goods to infiltrate markets due to the surge in online sales and shortages of essential products during that time. That has led to life-threatening incidents, including e.g. pirated semiconductor components in automated external defibrillators<sup>5</sup>. Additionally, counterfeit bearings have infiltrated various sectors, threatening e.g. the energy sector and the well-functioning of wind turbines. A robust policy to fight counterfeiting and piracy is therefore necessary to ensure that IP rights achieve their full potential to support innovation, competitiveness, and a greener and more sustainable economy.

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<sup>1</sup> Science, Research and Innovation Performance of the EU 2020: A fair, green and digital Europe.

<sup>2</sup> EUIPO (2021): Green EU trade marks: Analysis of goods and services specifications, 1996-2021.

<sup>3</sup> EUIPO/EPO (2021): Intellectual property rights and firm performance in the European Union.

<sup>4</sup> COM (2021) 170 final.

<sup>5</sup> OECD/EUIPO (2022): Dangerous Fakes: Trade in counterfeit goods that pose health, safety and environmental risks.

- (3) Despite efforts to curb them, IP-infringing activities in relation to counterfeit goods and piracy remain a growing phenomenon that have severe economic and social impacts on jobs and growth in the EU<sup>6</sup>. IP-infringing activities pose threats to various industries and different types of goods, including common consumer and business-to-business products. Most importantly, these activities may be closely linked to criminal behaviour<sup>7</sup>. Criminal networks involved in IP crime are infiltrating every step of the supply chain, and the crimes are difficult to investigate, as most of the counterfeited goods traded within the EU originate from abroad, making detection of key stakeholders more difficult. Accordingly, IP-infringing activities undermine the EU single market and the EU's rules on environmental, safety and ethics standards for consumer goods. Furthermore, they significantly impact European companies, in particular SMEs which have a 34% lower chance of survival if their IP is violated.
- (4) In its 2020 IP action plan<sup>8</sup>, the Commission committed to improve IP enforcement, by first adopting Regulation (EU) 2022/2065 of the European Parliament and of the Council<sup>9</sup>, which is a major leap forward in fighting illegal content online, and second, by establishing an EU toolbox against counterfeiting, which will be adopted with this Recommendation. The toolbox should promote and facilitate effective cooperation between rightsholders, providers of intermediary services, and competent authorities, and seeks to promote good practice and use of appropriate tools and new technologies. The European Parliament<sup>10</sup> and the Council<sup>11</sup> welcomed this initiative.
- (5) This Recommendation builds on the results of a broad consultation that has been carried out since 2021. This includes, in particular, stakeholders' workshops organised during 2021 and 2022, contributions to the Call for Evidence of 2022<sup>12</sup>, a high-level roundtable hosted by Commissioner Thierry Breton in June 2022, expert group meetings, and the International IP Enforcement Summit held in June 2023. This broad consultation uncovered the importance of increasing cooperation and sharing of information among all relevant stakeholders, in particular public authorities, rightsholders, and providers of intermediary services. The consultation also recognised the importance of building the future policy on the enforcement of IP rights on existing tools and existing EU legislation, notably: (i) Regulation (EU) 2022/2065 on the Digital Services Act; (ii) Directive (EU) 2022/2555<sup>13</sup> on measures for a high

<sup>6</sup> In 2019, imports of counterfeit and pirated products into the EU amounted to EUR 119 billion, which represents up to 5.8 % of EU imports. OECD/EUIPO (2021): Global Trade in Fakes: A Worrying Threat, OECD Publishing.

<sup>7</sup> Europol/EUIPO (March 2022), *Intellectual Property Crime Threat Assessment 2022*.

<sup>8</sup> COM(2020) 760.

<sup>9</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1, ELI: <http://data.europa.eu/eli/reg/2022/2065/oj>).

<sup>10</sup> European Parliament: Report "An intellectual property action plan to support the EU's recovery and resilience", 2021/2007(INI).

<sup>11</sup> Council Conclusions 12750/20 of 10 November 2020, and 9932/21 of June 2021.

<sup>12</sup> EU toolbox against counterfeiting call for evidence ([https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12915-EU-toolbox-against-counterfeiting\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12915-EU-toolbox-against-counterfeiting_en)).

<sup>13</sup> Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive) (OJ L 333, 27.12.2022, p. 80, ELI: <http://data.europa.eu/eli/dir/2022/2555/oj>).

common level of cybersecurity across the EU; (iii) Directive 2004/48/EC<sup>14</sup> on the enforcement of intellectual property rights, and (iv) Regulation (EU) 608/2013 on customs enforcement of IP rights<sup>15</sup>, as well as Regulation (EU) 952/2013 laying down the Union Customs Code<sup>16</sup>.

- (6) Directive 2004/48/EC applies to all IP rights covered by Union law and/or by the national law of the Member State concerned as set out in Article 2. It seeks to ensure a high, equal, and uniform level of protection in the single market, reflecting the need for common IP enforcement practices. Following this coherent approach to IP enforcement, this Recommendation covers all IP-infringing activities carried out on a commercial scale, which are acts for direct or indirect economic or commercial advantage. For the purposes of this Recommendation, IP-infringing activities on a commercial scale concern both counterfeit and pirated goods and content, which have been subject to infringement of a trade mark, geographical indication, patent, design or copyright. Without interfering with aspects addressed by Recommendation 2023/1018 on combating online piracy of sports and other live events<sup>17</sup>, most guiding principles, good practices and tools developed under this Recommendation, can also be relevant to countering infringing activities that concern IP protected online content, for example in the areas of voluntary actions taken by online intermediaries, enhanced cooperation among competent national authorities and the sharing of information and data.
- (7) Regulation (EU) 2022/2065 provides harmonised rules for a safe, predictable, and trusted online environment. In that context, Regulation (EU) 2022/2065 refers to information concerning illegal activities such as the sale of counterfeit products as an example of illegal content and imposes specific obligations on certain specific categories of providers of intermediary online services. Some of these obligations are instrumental in improving the fight against counterfeiting and piracy. This is, for instance, the case with: (i) the designation of points of contact and legal representatives; (ii) the requirements on terms and conditions; (iii) the transparency reporting obligations; (iv) the notice and action mechanisms; (v) the complaint and redress mechanism; (vi) the trusted flagger mechanism; (vii) measures and protection against misuse; (viii) measures to require the traceability of traders – known as know-your-business-customer obligations; and (ix) measures to both assess and mitigate risks.
- (8) The Commission supports the implementation of the Memorandum of Understanding on the sale of counterfeit goods on the internet ('MoU on counterfeiting') and the Memorandum of Understanding on online advertising and IP rights ('MoU on advertising'). Both are voluntary instruments open to rightsholders, online platforms

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<sup>14</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45, ELI: <http://data.europa.eu/eli/dir/2004/48/oj>).

<sup>15</sup> Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29.6.2013, p. 15–34, ELI: <http://data.europa.eu/eli/reg/2013/608/oj>).

<sup>16</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (OJ L 269, 10.10.2013, p. 1–101, ELI: <http://data.europa.eu/eli/reg/2013/952/oj>).

<sup>17</sup> Commission Recommendation on combating online piracy of sports and other live events, C/2023/2853 final.

and business associations. Participants in these MoUs commit to follow the principles and undertake the actions set by the MoUs, including bilateral cooperation and the exchange of information. The MoUs have proven to be successful industry-led initiatives. However, the entry into force of Regulation (EU) 2022/2065 provides an opportunity to reflect on the future of the MoUs to ensure they remain fit for purpose. It is therefore necessary to launch a modernisation process of the MoUs and encourage all signatories and other interested parties to actively engage in this process. Of relevance is Article 45 of Regulation (EU) 2022/2065, which provides for the possibility of drawing up voluntary codes of conduct at EU level to contribute to the proper application of Regulation (EU) 2022/2065. Article 46 also foresees codes of conduct for online advertising to contribute to further transparency for actors in the online advertising value chain. Finally, article 17 of Directive 2004/48/EC also encourages the development of codes of conduct to enhance the enforcement of IP rights as a supplementary means of bolstering the regulatory framework.

- (9) Rightsholders are uniquely positioned to detect, identify, and notify IP-infringing activities concerning counterfeit or pirated goods. Signatories of the industry-led MoU on counterfeiting, have gained significant competence and experience over the years as they regularly submit notifications that according to the MoU's principles, should be processed without undue delay. Moreover, signatories of the MoU have committed to take commercially reasonable and available steps to notify in a responsible and accurate way and with necessary precision to identify counterfeit goods and to avoid unjustified, unfounded, and abusive notifications. Hence, rightsholders who are signatories of the MoU could consider applying for the status of trusted flagger in order to benefit from the specific treatment laid out in Article 22 of the Regulation (EU) 2022/2065. In this regard the Digital Services Coordinators are to assess whether the applicant meets the criteria foreseen in Article 22(2), namely i) if it has particular expertise and competence for the purposes of detecting, identifying and notifying illegal content, ii) if it is independent from any provider of online platforms, and iii) if it carries out its activities for the purposes of submitting notices diligently, accurately and objectively. The Commission, after consulting the Board of Digital Services, may issue guidelines on the application of the trusted flagger mechanism under Article 22 of the Regulation (EU) 2022/2065.
- (10) Cooperation and increased information sharing are essential and should be further promoted, at all levels, in accordance with Union law, the protection of personal data and the freedom to conduct business under Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter'). Good practices should be identified, and recommended to all actors, including e-commerce marketplaces, transport and logistic service providers, payment services providers, social media providers, providers of domain name services, etc. Secondly, further cooperation and information sharing should be encouraged. This relates to all competent authorities, including market surveillance authorities that currently may not have competences for IP-infringing activities, and promoting further the use of dedicated tools such as the IP Enforcement Portal ('IPEP'), the Information and Communication System of Market Surveillance ('ICSMS'), and the Safety Gate for dangerous products that may be counterfeits.
- (11) Transport and logistic service providers play a key role in the sale and distribution of goods and are essential for the preservation of reliable supply chains. However, transport and logistics services can be misused by infringers.



- (12) Similarly, although payment services may be central to rightsholders' activities, they may also be used to support IP-infringing activities. In certain instances, uses of different payment services may allow practices to develop which: (i) make it more complicated to trace the flow of funds; and (ii) make the detection of any possible use of payment services for IP-infringing activities more difficult.
- (13) With the growing popularity of social media, new strategies are being developed which may further enable the misuse of social media to carry out IP-infringing activities. This raises new challenges for social media providers, rightsholders and competent authorities, and highlights the need for collaborative efforts. In this context, promoting good practices among key providers of intermediary services can help to support a coherent policy against IP-infringing activities.
- (14) Although domain names are of paramount importance in the online environment, they can be used to support IP-infringing activities online. This is the case when IP rights are misused in the name of the domain itself (i.e. cybersquatting or typo-squatting) or when the domain name leads to a website that supports IP infringements. Domain name registration data (WHOIS data) is critical to the security, stability, and resilience of the domain name system. For this reason, Directive (EU) 2022/2555 obliges Member States to require top-level-domain ('TLD') name registries and entities that provide domain name registration services to collect and maintain accurate and complete domain name registration data in a dedicated database that enables the holders of the domain names to be identified and contacted. Access to specific domain name registration data must be provided upon lawful and duly substantiated requests by legitimate access seekers. A reply should be sent without undue delay and in any event within 72 hours of receipt of any requests for access. Under Directive (EU) 2022/2555, legitimate access seekers are to be understood as any natural or legal person making a request pursuant to Union or national law. The accuracy and completeness of domain name registration data can also play a central role in the enforcement of IP rights. Only where the identity of an alleged infringer and their contact details may be disclosed in compliance with Union law, and in particular in compliance with protection of personal data, the fundamental right to privacy and right to conduct business, can there be accountability for infringements and any relevant damage. This is without prejudice to the rights of the defence, taking into account the circumstances of the case in question and the guarantees needed to cover the costs and the injury caused to the defendant, in compliance with Article 9(7) of Directive 2004/48.
- (15) Monitoring the online market for IP-infringing activities can be a costly and resource-intensive task for rightsholders. Therefore, voluntary good practices such as the current domain name information and alert system for the .eu top-level domain operated by the European Registry for Internet Domains ('EURid') and the European Union Intellectual Property Office ('EUIPO') should be expanded. The purpose of this collaboration is to facilitate awareness in order to safeguard the IP rights of EU trade marks owners and provide reliable information about the .eu domain names and their availability.
- (16) Cooperation between public and private operators is essential in the fight against IP-infringing activities. One of the first obstacle to establishing cooperation is the lack of identified contact point to address topics related to IP rights and IP-infringing activities either in a Member State or cross border. This lack of a contact point

prevents quick and agile enforcement of IP rights and affects cooperation between stakeholders. However, as highlighted by the replies to the call for evidence, this problem could be easily remedied by designating a single point of contact for IP enforcement.

- (17) Coordination and information exchanges could be substantially improved if existing tools such as ICSMS, the Safety Gate and IPEP were more widely used by concerned economic operators and competent authorities to fight IP-infringing activities. IPEP is developed by the EUIPO and enables secure communication between rightsholders and competent authorities, e.g. with the electronic management of customs applications for actions ('AFAs') with regard to goods suspected of infringing IP rights. Some Member States have also developed their own trader portal for the same purpose. Such tools ease the work of both rightsholders and customs authorities by providing central entry points for rightsholders concerning IP protection in all Member States. The EUIPO has launched an extension of the IPEP platform and made it accessible to intermediaries, starting with e-commerce marketplaces. This means that e-commerce marketplaces are now able to easily verify IP rights and initiate communication with relevant rightsholders when needed. For this tool to reach its full potential, it needs to be further embraced by rightsholders and competent national authorities.
- (18) Many market surveillance authorities do not take action if they find evidence of alleged counterfeit or pirated goods e.g. by (i) reporting the findings in the ICSMS; (ii) cooperating with rightsholders or competent authorities through the IPEP, or (iii) sending alerts on dangerous products via the Safety Gate which is the EU rapid alert system for dangerous non-food products, including counterfeits. This results in a lost opportunity to further contribute to the fight against IP-infringing activities. Additionally, many market surveillance authorities do not have the power to enforce IP rights, even though they can play a key role in fighting counterfeit<sup>18</sup>. Counterfeits are often seized at the borders, but can also be detected along the supply chain, e.g. during quality control inspections. Member States should therefore promote the role of market surveillance authorities in the fight against counterfeits. To reinforce market surveillance or other enforcement authorities' capacity, and upon request from a Member State, technical support may be provided according to Regulation (EU) 2021/240 establishing a Technical Support Instrument.
- (19) The EUIPO is collaborating with several participating national IP offices in Member States to create a collection of key national IP enforcement judgments. Since 2014, the participating offices, along with the EU's Community Plant Variety Office, have been involved in the systematic collection of key enforcement judgments which are made available in the eSearch Case Law Database. This collection includes key judgments on all types of IP rights from all the Member States and covers both civil and criminal cases. The judgments are considered 'key' as they provide a new trend or development in jurisprudence. Criminal cases are also being monitored under the European Intellectual Property Prosecutors Network. Promoting awareness, regular contributions

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<sup>18</sup> See recital 17 of Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1, ELI: <http://data.europa.eu/eli/reg/2019/1020/oj>).



by IP offices, and the wider use of such databases, could greatly improve IP enforcement.

- (20) Continued cooperation between the EUIPO and EU enforcement bodies is important to streamline efforts against IP infringements. This includes supporting cooperation efforts like The European Multidisciplinary Platform Against Criminal Threats ('EMPACT'), which is a cooperation platform driven by Member States to identify, prioritise, and address threats posed by organised and serious international crime, such as IP crime. The IP-enforcement community should embrace this multidisciplinary cooperation platform.
- (21) Alternative dispute resolution ('ADR') procedures offer a cost-effective, quicker, and more efficient alternative to traditional legal proceedings, especially for cross-border disputes and for SMEs. Access to ADR proceedings should therefore be broadened to all types of IP disputes, including in the context of domain name disputes.
- (22) Directive 2001/29/EC<sup>19</sup> and Directive 2004/48/EC grant rightsholders the possibility to seek an injunction against a provider of intermediary service whose services are being used by a third party to infringe their IP rights. Directive 2004/48/EC also provides for provisional or interlocutory infringement proceedings for imminent infringements. It provides that where a judicial decision finding an IP infringement is handed down, the judicial authorities may issue an injunction against the infringer aimed at prohibiting the continuation of the infringement. Dynamic injunctions have so far been available only in a few Member States. The scope and requirements of these injunctions vary among jurisdictions, including as to the extent to which a court order may set specific technical measures to implement the injunction<sup>20</sup>. In 2017, the communication of the Commission of 29 November 2017 '*Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights*'<sup>21</sup> indicated that in certain cases the effectiveness of injunctions may be reduced because of changes in the subject matter in respect of which the injunction was ordered. This could be the case for example where 'mirror' websites appear under other domain names and thus remain unaffected by the injunction. Accordingly, subject to certain safeguards, dynamic injunctions can be an effective means to prevent the continuation of an IP infringement both online and offline. In line with the case law of the Court of Justice<sup>22</sup>, when granting dynamic injunctions, fundamental rights should be taken into account, notably the right to freedom of expression and information under to Article 11 and the freedom to conduct business under Article 16 of the Charter.
- (23) IP-infringing activities are often multi-jurisdictional and cover different types of intermediary services, both online and offline. In that context, facilitating access to

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<sup>19</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10–19, ELI: <http://data.europa.eu/eli/dir/2001/29/oj>).

<sup>20</sup> Cf. Decision of the Company and IP Specialised Division of the Court of Bologna of 7 January 2020, 'Coop Italia', extending the scope of the injunction to the use of any distinctive sign including the dominant element of the infringed trade mark.

<sup>21</sup> COM (2017) 708 final.

<sup>22</sup> See in particular judgement of the Court of Justice of 27 March 2014, *UPC Telekabel Wien*, C-314/12 ECLI:EU:C:2014:192 and judgment of the Court of Justice of 15 September 2016, *Tobias Mc Fadden* C- 484/14 ECLI:EU:C:2016:689.

information – and sharing this information – among all relevant stakeholders throughout the IP enforcement cycle is essential to identify, investigate, and pursue IP-infringing activities, provided that any such access and sharing is carried out in full compliance with Union law, including the protection of personal data and the right to privacy. Article 8 of Directive 2004/48/EC already provides for a right to information on the origin and distribution networks of the infringing goods or services in cases which concern IP-infringing activities on a commercial scale. This right applies only in the context of proceedings concerning an infringement of an IP right on a commercial scale and in response to a justified and proportionate request of the claimant. The importance of the right to information should not be underestimated. As recently recalled by the Court of Justice<sup>23</sup>, the right to information plays a role in upholding the right to an effective remedy and, ultimately, guarantees the effective exercise of the fundamental right to property under Article 17 of the Charter, which includes IP rights.

- (24) However, during the stakeholder consultation, stakeholders pointed to uncertainty in the area of the right to information and asked for further guidance as to the conditions, the type of information, the relationship with data protection, under which the right to information could be improved between rightsholders and intermediaries.
- (25) The Court has held in case C-597/19 that the right to information in Article 8(1) of Directive 2004/48/EC in favour of the rightsholder, constitutes a procedure separate to the infringement proceedings. It may be raised in separate proceedings as it is not always possible to request all the relevant information in the context of proceedings at the end of which an IP right is found to have been infringed. In particular, the holder of an IP right may only become aware of the extent of the infringement of that right only after the final termination of those proceedings<sup>24</sup>. The exercise of the right of information provided for in Article 8(1) of Directive 2004/48 is not limited to proceedings seeking a finding of an infringement of an IP right. The request for information provided for in Article 8 of the Directive has a different purpose than the request for an action seeking a finding that there has been an infringement of an IP right. In C-628/21 the Court held that if this request for information were subject to the same standard of proof as legal proceedings seeking a finding that there has been an infringement of an IP right, the separate procedure established by Article 8 of the Directive, which is a specific feature of Union law, would lose much of its practical use. It is therefore necessary to distinguish the function of a request for information pursuant to Article 8 of Directive 2004/48/EC from that of legal proceedings seeking a finding that there has been an infringement of an IP right.
- (26) Payment of appropriate damages in the event of a judicial finding of an infringement of an IP right is another key element of IP enforcement policy, as provided for by Article 13 of Directive 2004/48/EC. During the stakeholder consultation, stakeholders stated that damages are often not appropriate to remedy the actual prejudice suffered by the rightsholder. As stated by the Court of Justice in case C-99/15, moral prejudice, such as damage to the reputation of the author of a work, constitutes, provided that it is

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<sup>23</sup> Judgment of the Court of Justice of 27 April 2023, *Castorama Polska and Knor*, C-628/21, ECLI:EU:C:2023:342, paragraph 43.

<sup>24</sup> Judgment of the Court (Fifth Chamber) of 17 June 2021, *M.I.C.M.*, C-597/19, ECLI:EU:C:2021:492

proven, a component of the prejudice actually suffered by the rightsholder.”<sup>25</sup>. Directive 2004/48/EC applies notwithstanding the means provided for, in particular, by national legislation, in so far as those means may be more favourable for rightsholders. Directive 2004/48/EC lays down a minimum standard for the enforcement of IP rights and does not prevent the Member States from laying down measures that are more protective, provided they are in compliance with Union law. Therefore, the fact that Directive 2004/48/EC does not oblige Member States to provide for ‘punitive’ damages should not prevent the introduction of such a measure at national level.

- (27) Regulation (EU) 608/2013, together with the general rules established under Regulation (EU) 952/2013, currently under revision, allow customs authorities to detain or seize goods suspected of infringing IP rights. Directive 2004/48/EC allows the seizure of goods by other competent authorities as a measure to preserve evidence and the court may order destruction of those goods as a result from a decision on the merits of the case. For goods detained by the customs authorities, if the holder of the goods contests the destruction and the rightsholder initiates a court proceeding, the goods are to remain in storage during the entire proceedings. During the stakeholder consultation, rightsholders shared concerns over the costs related to the storage and destruction of goods seized or detained by customs and other competent authorities. These costs are not limited to storage and destruction but also include other related costs such as handling, verification, and transport costs. In some instances, these costs are considered too high by rightsholders and thus the rightsholders may decide not to enforce their IP rights<sup>26</sup>.
- (28) An important aspect of the destruction of IP-infringing goods relate to the environmental cost of this destruction. It is important that the storage and destruction of IP-infringing goods are carried out in a way that avoids endangering human health and harming the environment. The environmentally safe disposal of IP-infringing goods remains high on the agenda of the World Intellectual Property Organisation. In addition, the World Customs Organization has developed guidelines on the eco-friendly disposal of detained IP-infringing goods. In the EU, the recycling or disposal of IP-infringing goods detained by customs authorities are subject to a decision of the customs authorities and the completion of the related customs formalities. They also require the agreement of the rightsholder. There is a need for the relevant stakeholders to make their best efforts to ensure the environmentally safe and sound disposal of IP-infringing goods.
- (29) IP-infringing activities are a lucrative business, because of the high value that may be associated with IP and because of the relatively low level of risk in terms of likelihood of detection and enforcement. This may result in IP-infringing activities being carried out by criminal organisations along with crimes such as money laundering, tax evasion, human trafficking, and forced labour.
- (30) The Court has held in Case C-655/21<sup>27</sup> that when Member States are discharging their obligations under the World Trade Organization TRIPS Agreement on Trade-Related

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<sup>25</sup> Judgment of the Court of Justice of 17 March 2016, *Liffers*, C-99/15, ECLI:EU:C:2016:173, paragraph 17.

<sup>26</sup> EUIPO (2023): Storage and destruction of seized counterfeit goods in the EU.

<sup>27</sup> Judgment of the Court of Justice of 19 October 2023, C-655/21 (*G. ST. T.*), ECLI:EU:C:2023:356.

Aspects of Intellectual Property Rights ('TRIPS Agreement'), including those arising from Article 61, they must be considered to be implementing Union law, within the meaning of Article 51(1) of the Charter. Differences exist in the Member States as regards criminal penalties in Article 61 of the TRIPS Agreement for wilful trade mark counterfeiting or copyright piracy on a commercial scale. The maximum term of imprisonment varies in the EU for the most serious forms of such criminal offences, i.e. those that are committed by criminal organisations as defined in Article 1 of the Council Framework Decision 2008/841/JHA. Member States are encouraged to reassess whether the available criminal penalties for such criminal offences in their national law, are sufficient to provide a deterrent, consistent with the level of penalties applied to crimes of a corresponding gravity to ensure effective enforcement and respect the principle of proportionality, taking into account the case law of the Court of Justice of the EU, including Case C- 655/21. They should also be asked to assess whether the criminal penalties for such criminal offences duly correspond to the harm caused, whilst ensuring compliance with the applicable rules of Union and international law, including as regards the protection of fundamental rights of all parties affected.

- (31) In addition, some Member States do not have specialised units in law enforcement or public prosecution that deal with criminal offences related to IP rights. This hinders effective cross-border cooperation in enforcement and makes it difficult for competent authorities to retain knowledge. The use of covert investigation methods (e.g. through phone and data interceptions and undercover operations), whilst ensuring compliance with the applicable Union rules and international law, including as regards the protection of fundamental rights of all parties affected, can make cross-border investigations against criminal offences committed by criminal organisations more effective. Similarly, financial investigations, including investigations into practices in online advertising and the use of cryptocurrency<sup>28</sup>, and sufficient specialisation of competent investigative units and prosecutors, are of great importance. Specialisation of the relevant investigative units in Member States would also make it easier to set up EU-wide focus groups of police, customs, and prosecutors in cooperation with the European Union Agency for Law Enforcement Cooperation ('Europol'), the European Anti-Fraud Office ('OLAF'), and Eurojust. Therefore, the use of specialised investigation units with the appropriate resources should be strongly encouraged, whilst ensuring compliance with the applicable rules of Union and international law, including for the protection of the fundamental rights of all parties affected.
- (32) Emerging and rapidly developing technologies can pose challenges and present new opportunities to enforce IP rights. AI systems such as automated content-recognition systems and machine-learning algorithms may be used to recognise counterfeit or pirated products, or patterns associated with the promotion or distribution of such products and have the potential to become key technologies in the fight against IP-infringing activities. Economic operators are encouraged to exercise caution when using AI systems and avoid providing undisclosed confidential information, know-how or trade secrets as input to the system, as this may potentially prevent them from obtaining IP protection for such information at a later stage. Navigating the challenges and opportunities that AI present can be difficult, especially for SMEs. Member States and industry stakeholders are therefore encouraged to participate in the development

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<sup>28</sup> Any form of currency that exists digitally or virtually and uses cryptography to secure transactions.

of a comprehensive checklist that should equip SMEs with valuable insights, guidance, and practical strategies, promoting innovation, protecting IP, and ensuring the responsible adoption of AI technologies within the EU business landscape.

- (33) The market for anti-counterfeiting and anti-piracy technologies is complex and fast-evolving. Rightsholders may face challenges in navigating this market and finding appropriate technical solutions or technology providers. Nevertheless, resources such as the EUIPO Anti-Counterfeiting and Anti-Piracy Technology Guide can support rightsholders willing to use anti-counterfeiting technologies. Distributed ledger technology (including but not limited to blockchain-based technologies) are well suited to increase supply-chain traceability and transparency, in line with the digital product passport<sup>29</sup>, which can help to identify and stop IP-infringing activities. Tokenised records of a good's supply-chain path recorded on a blockchain are unchangeable and transparent and document every transaction and movement of the product and may be adduced as forms of evidence in compliance with national procedural law.
- (34) The European Blockchain Service Infrastructure ('EBSI') consists of a public peer-to-peer network of interconnected nodes running a blockchain-based services infrastructure. The EBSI is designed in an iterative manner, focusing on a small number of specific use cases (applications), which will then be expanded over time. Eventually, private companies and organisations will be able to join and use the EBSI as a service.
- (35) The EUIPO European product and Logistic Service Authenticator ('EBSI-ELSA') is a pilot programme for a blockchain-based system that would interconnect all the interested parties and their systems to ensure product authenticity throughout the whole supply chain, and eventually beyond. When goods are linked to the blockchain infrastructure, a digital twin is created, storing the information that proves its authenticity. This will provide stakeholders with the means to transfer a good alongside its virtual equivalent, with the latter being stamped with an immutable digital signature from the brand owner. The system also provides the possibility to share digital information with involved parties in the logistic chain, including intermediaries and competent authorities.
- (36) The recent *Communication on Web 4.0 and virtual worlds*<sup>30</sup> sets out the EU's strategy on Web 4.0, a ground-breaking technological transition towards a world where everything is seamlessly interconnected. As the development of virtual worlds progresses, new challenges are expected to arise in terms of enforcement of IP rights and identification of alleged infringers e.g. the enforcement of IP connected to non-fungible token ('NFT'). These challenges will require further monitoring and a stakeholders' dialogue.
- (37) An NFT is a digital asset that represents the uniqueness and authenticity of a specific digital item or content using blockchain technology. Each NFT has a unique cryptographic identifier that sets it apart from others, making it scarce and verifiable. Among other uses, NFTs can enable creators to tokenise and sell their (digital or

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<sup>29</sup> COM(2022) 140 final 30.3.2022, Communication on making sustainable products the norm.

<sup>30</sup> The communication of the Commission of 11 July 2023 on An EU initiative on Web 4.0 and virtual worlds: a head start in the next technological transition COM(2023) 442.



physical) creations while providing buyers with proof of the item's uniqueness and the ability to trade or showcase these assets in online platforms in a secure and decentralised way. However, ownership of an NFT does not amount to the ownership of the underlying asset contained or referenced within it. While owning an NFT generally grants the owner exclusive rights over the NFT itself (thereby providing a right to transfer, sell, or display the tokenised representation of the asset), it does not necessarily confer any rights with respect to the original physical or digital asset, as these remain distinct legal concepts.

- (38) On 1 January 2021, the Commission and the EUIPO launched the SME Fund<sup>31</sup>, which offers financial support for SMEs impacted by COVID-19 and Russia's war of aggression against Ukraine, with the objective of helping SMEs to manage their IP portfolios. In 2024, to further support SMEs in enforcing their IP rights, the SME Fund also reimburses the costs of initial advice provided by an IP Scan Enforcement expert<sup>32</sup> designated by a national IP office (the IP Scan Enforcement voucher). This advice or guidance includes recommended actions to resolve existing IP infringements and prevent potential future infringements. The IP Scan Enforcement voucher does not include formal enforcement activities, such as drafting 'cease and desist' letters or filing litigation actions. With this additional tool, SMEs benefit from advice or guidance in situations: (i) when an SME becomes aware of an infringement of its IP right by a third party; (ii) when an SME is at risk of being accused by a third party of allegedly infringing the third party's IP assets; or (iii) when the SME has to take preventive actions related to IP enforcement.
- (39) As the global economy has become increasingly digitalised, the risk has grown of unlawful acquisition, use and disclosure of undisclosed know-how and business information (trade secrets) through cyber-attacks. Such cyber-attacks include carrying out economic activity aimed at acquiring trade secrets, which could be later eligible for IP protection. SMEs are more exposed to cyber-attacks than larger companies due to their lack of cyber-security awareness and the insufficient robustness of their cyber-security measures. Cyber-attacks also cause SMEs serious economic harm and undermine their overall competitiveness. As announced in the 2020 IP action plan, the Commission is preparing an awareness-raising toolkit for SMEs to help them prevent or react to cyber-attacks against trade secrets.
- (40) Most European citizens say they have a good understanding of the notion of IP rights and an even larger majority (93%) considers it important to protect IP rights. There is also widespread awareness among the European public of the negative effects of counterfeiting, with a large majority (around 80%) of Europeans considering that IP-infringing activities: (i) support unethical behaviour and criminal organisations; (ii) impact businesses and threaten jobs; and (iii) are a threat to health, safety, and the environment. Despite this, more than a quarter of young Europeans (aged 15 to 24) have intentionally bought at least one counterfeited product online<sup>33</sup>, showing a need for targeted actions to curve down this trend and to further enhance the evidence

<sup>31</sup> Annex II to the Commission Implementing Decision C(2023) 1119 - Improving the competitiveness of enterprises, particularly SMEs, and supporting their access to markets.

<sup>32</sup> IP scan enforcement experts are experts appointed by the IP offices of the Member States to provide an initial advice to SMEs on how to enforce IP rights in case of an IP infringement or how to avoid infringing others' IP rights.

<sup>33</sup> EUIPO: European citizens and intellectual property: Perception, awareness, and behaviour (2023).



gathering and awareness about the health and safety risks when buying counterfeit products. In that context, the EUIPO has set up a network of experts from the education ministries of Member States and representatives from national IP offices, with the aim of bringing together the relevant decision makers and formulating a common approach to IP in education. One of the most visible results of this network is the ‘Ideas Powered @ School’ project, which produces and collects educational and training materials on IP.

- (41) In order for competent authorities, such as customs authorities, police, and public prosecution services, to be efficient and effective in their operations, they need to have the necessary in-depth knowledge on IP protection and enforcement, and always be up to date on the latest trends and technological developments in this area. In that respect, the EUIPO and the EU Agency for Law Enforcement Training (‘CEPOL’) have already set up the Virtual Training Centre on IP rights for customs authorities, police services, public prosecution services, and market surveillance authorities. The EUIPO and CEPOL have also created tailor-made training resources and materials for these groups. In addition, and upon request from a Member State, technical support may be provided to competent national authorities, according to Regulation (EU) 2021/240.
- (42) Trade in counterfeit pharmaceutical products in the EU has been increasing in recent years<sup>34</sup>, with medicines being the seventh most-seized product category at the EU’s external border in 2020. Counterfeit pharmaceutical products are also widely advertised and offered for sale online. They often contain toxic ingredients, ingredients of bad quality, or ingredients with the wrong dosage and thus they are also considered falsified medicines under Directive 2001/83/EC of the European Parliament and of the Council<sup>35</sup>. Consumers need to be assisted in identifying websites selling counterfeit pharmaceutical products online. Despite the fact that rules on a common logo allowing consumers to identify lawful online pharmacies are laid down in Directive 2001/83/EC since 2011, consumer awareness remains very low in this field.
- (43) The Commission’s report on the protection and enforcement of IP rights in third countries<sup>36</sup> aims to inform rightsholders, in particular SMEs, about potential risks to their IP rights when engaging in business activities in certain non-EU countries. It thus seeks to allow them to design business strategies and operations to protect the value of their intangible assets such as IP. The Commission has established IPR SME Helpdesks in China, Latin America, Southeast Asia, India, and Africa to support EU companies that seek to protect and enforce their IP rights in these regions. These services help EU economic operators to familiarise themselves with the legal environment before starting a business activity in these regions.
- (44) The Commission’s regular Counterfeit and Piracy Watch List contains examples of reported marketplaces or service providers whose operators or owners are located outside the EU, and which allegedly engage in, facilitate, or benefit from counterfeiting and piracy. The aim of this watch list is to encourage the operators and

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<sup>34</sup> EUIPO-OECD study on Trade in counterfeit pharmaceutical products.

<sup>35</sup> Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67, ELI: <http://data.europa.eu/eli/dir/2001/83/oj>).

<sup>36</sup> SWD(2023) 153 final: Report on the protection and enforcement of intellectual property rights in third countries.

owners, as well as the competent national authorities and governments to take the necessary actions and measures to reduce the availability of IP-infringing goods or services on these markets. The watch list also seeks to raise consumer awareness about the environmental, product-safety and other risks of purchasing from potentially problematic marketplaces. The Watch List is prepared in cooperation with Europol and EUIPO, whose expertise, in particular on social media and online platforms, contributes to creating a more in-depth analysis of trends and challenges regarding piracy and counterfeiting on third country online services and the measures taken.

- (45) The growth of the number of free-trade zones ('FTZs') outside the EU may facilitate the sales of alleged counterfeit and pirated goods, because FTZs: (i) provide exemptions from duty and taxes; (ii) have simpler administrative procedures; and (iii) allow the duty-free import of raw materials, machinery, parts and equipment. Some economic operators may take advantage of the perceived inadequate oversight, inadequate checks, and lack of transparency in FTZs to carry out IP-infringing activities. To improve the situation, the Organisation for Economic Co-operation and Development (OECD) Council adopted in 2019 its *Recommendation on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones*. That Recommendation includes an Annex on a Code of Conduct for Clean Free Trade Zones that contains recommendations for the operators of FTZs on how to reduce the availability of illicit goods in their FTZs. A Council Decision subsequently endorsed the OECD Recommendation<sup>37</sup>. It is in the interest of both rightsholders and consumers in the EU that the operators of FTZs in the EU: (i) adhere to the Code of Conduct for Clean Free Trade Zones; (ii) improve the transparency of their FTZs; and thus (iii) help to reduce the availability of suspected IPR-infringing goods in their FTZs.
- (46) It is essential that Member States and stakeholders share relevant information about the follow-up given to this Recommendation and its implementation. The EUIPO, which plays a central role in the EU's efforts to fight counterfeiting and to enhance enforcement of IP rights, should support the dissemination, implementation, and monitoring of this Recommendation. With its broad expertise and network of public- and private sector representatives, the EUIPO should be encouraged to help gather information, monitor good practices, and liaise with its network to increase cross-border enforcement cooperation between all relevant stakeholders. Considering that ADR offers a simple, fast, and low-cost out-of-court solution to IP disputes, its use needs to be expanded and promoted. The EUIPO Mediation Centre could undertake such tasks effectively.
- (47) To ensure respect for the fundamental right to the protection of natural persons in relation to the processing of personal data, as well as the free movement of personal data, the processing of personal data in the context of any measures taken to give effect to this Recommendation should be in full compliance with the rules on data protection. In particular, it should fully comply with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>38</sup> and Directive (EU) 2016/680 of the

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<sup>37</sup> COM(2019) 294 final.

<sup>38</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/679/oj>).

European Parliament and of the Council<sup>39</sup> and should be monitored by the competent supervisory authorities.

- (48) This Recommendation upholds the fundamental rights and observes the principles recognised in the Charter. In particular, this Recommendation seeks to ensure full compliance with Articles 8, 11, 16, 17, 47 and 49 of the Charter.
- (49) By reason of the complementarity between this Recommendation, Regulation (EU) 2022/2065 and Recommendation 2023/1018, the effects of this Recommendation should be assessed, taking due account of the findings of the EUIPO, by no later than three years after the adoption of this Recommendation.

HAS ADOPTED THIS RECOMMENDATION:

## Chapter 1 GENERAL PROVISIONS

### PURPOSE

- (1) This Recommendation encourages Member States, including competent national authorities, rightsholders, and other economic operators, including providers of intermediary services, to take effective, appropriate, and proportionate measures to combat IP-infringing activities both in the online and offline environments in accordance with this Recommendation. When implementing any recommended action under this Recommendation, Member States should ensure that the rights and obligations under Union law, in particular Article 52 of the Charter, are complied with.
- (2) This Recommendation recalls the obligations of Member States, rightsholders, providers of intermediary services, and recipients of those services under Union law, in particular Directives 98/44/EC<sup>40</sup>, 98/71/EC<sup>41</sup>, 2000/31/EC<sup>42</sup>, 2001/29, 2002/58/EC<sup>43</sup>, 2004/48/EC, 2015/2436/EU<sup>44</sup>, and 2019/790<sup>45</sup>, Regulations (EU)

<sup>39</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89, ELI: <http://data.europa.eu/eli/dir/2016/680/oj>).

<sup>40</sup> Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (OJ L 213, 30.7.1998, p. 13, ELI: <http://data.europa.eu/eli/dir/1998/44/oj>).

<sup>41</sup> Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (OJ L 289, 28.10.1998, p. 28–35, ELI: <http://data.europa.eu/eli/dir/1998/71/oj>).

<sup>42</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1–16, ELI: <http://data.europa.eu/eli/dir/2000/31/oj>).

<sup>43</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37–47, ELI: <http://data.europa.eu/eli/dir/2002/58/oj>).

1610/96/EC<sup>46</sup>, (EU) 469/2009/EC<sup>47</sup>, (EU) 608/2013, (EU) 2017/1001<sup>48</sup>, and (EU) 2022/2065 of the European Parliament and of the Council.

- (3) This Recommendation does not recommend any action within the scope of binding provisions of Union law, nor does it seek to interpret those binding provisions. Where there appears to be a conflict or overlap between a recommendation and any binding provision of Union law, then the binding provision of Union law applies.
- (4) The Recommendation does not apply to any legitimate trade including:
  - (a) when relevant rights are exhausted within the meaning of Article 15 of Directive 2015/2436/EU, Article 15 of Regulation (EU) 2017/1001/EU, Article 15 of Directive 98/71/EC, Article 21 of Regulation (EU) 6/2002/EC, and Directive 2001/29/EC, Directive (EU) 2019/790 and Directive 2004/48/EC;
  - (b) any legitimate use of content, such as use of copyright-protected content under limitations and exceptions.

## DEFINITIONS

- (5) For the purposes of this Recommendation, the following definitions apply:
  - (a) ‘IP-infringing activities’ means activities such as the manufacture, promotion, sale, or distribution of counterfeit goods, which are the subject of an act infringing a trade mark, patent, or a geographical indication, and pirated goods or content, which are the subject of an act infringing a design or copyright, including services related thereto, where those acts are carried out on a commercial scale which are for direct or indirect economic or commercial advantage;
  - (b) ‘Economic operators’ means manufacturers, authorised representatives, importers, distributors, fulfilment service providers or any other natural or legal person, including rightsholders and providers of intermediary services;
  - (c) ‘Provider of intermediary services’ means an economic operator that provides a service which may be used by one or more person for the purpose of IP-infringing activities and that does not necessarily have a specific relationship,

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<sup>44</sup> Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (recast) (*OJ L 336*, 23.12.2015, p. 1–26, ELI: <http://data.europa.eu/eli/dir/2015/2436/oj>).

<sup>45</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (*OJ L 130*, 17.5.2019, p. 92–125, ELI: <http://data.europa.eu/eli/dir/2019/790/oj>).

<sup>46</sup> Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products (*OJ L 198*, 8.8.1996, p. 30–35, ELI: <http://data.europa.eu/eli/reg/1996/1610/oj>).

<sup>47</sup> Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (Codified version) (*OJ L 152*, 16.6.2009, p. 1–10, ELI: <http://data.europa.eu/eli/reg/2009/469/oj>).

<sup>48</sup> Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (codification) (*OJ L 154*, 16.6.2017, p. 1–99, ELI: <http://data.europa.eu/eli/reg/2017/1001/oj>).

for instance through a contractual link, with those other persons and may include, where appropriate, services provided by transport and logistics service providers, payment service providers, social media providers, and domain name providers<sup>49</sup>;

- (d) ‘Social media providers’ means a provider of intermediary services that allow users to create, share, or interact with content, information or communication online;
- (e) ‘Transport and logistic service providers’ mean an intermediary that organises and/or carries out the transportation of goods from a point of origin, e.g., shipper, to a point of destination, e.g., consignee, by means of ship, barge, road, rail or air freight or other means of transport;
- (f) ‘Competent authorities’ means public authorities with competences related to investigation and/or enforcement of IP rights at national and EU levels.

## **Chapter 2: Fostering cooperation, coordination and information sharing to protect innovation and investments**

### *Fostering cooperation through voluntary instruments*

- (6) Rightsholders and providers of intermediary services are encouraged:
  - (a) to participate in EU or national voluntary cooperation instruments such as the the MoU on counterfeiting and the MoU on advertising;
  - (b) to participate in the modernisation process of the MoUs on counterfeiting and the MoU on advertising and adhere to the modernised MoUs once set-up.
- (7) Member States are encouraged to promote the participation of economic operators, such as providers of intermediary services, including e-commerce marketplaces, transport and logistics service providers, payment service providers, social media providers, domain name service providers and online advertising industry stakeholders, in these voluntary cooperation instruments, and in the modernisation of the MoU on counterfeiting and MoU on advertising, including their possible transformation into codes of conduct pursuant to Articles 45 and 46 of Regulation (EU) 2022/2065.

### *Boosting the role of signatories of the MoU on counterfeiting as ‘trusted flaggers’*

- (8) Rightsholders and their representatives who are signatories of the MoU on counterfeiting are encouraged to apply for the status of trusted flaggers in order to benefit from the specific treatment in Regulation (EU) 2022/2065 as regards notices

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<sup>49</sup> See judgment of the Court of Justice of 27 March 2014, *UPC Telekabel*, C-314/12, ECLI:EU:C:2014:192, paragraphs 32 and 35 judgment of the Court (Third Chamber) of 24 November 2011 and judgment of the Court of Justice of 7 July 2016, *Tommy Hilfiger Licencing and Others*, C-494/15, EU:C:2016:528, paragraph 23.



submitted by trusted flaggers to the extent that they comply with the requirements set out in Article 22(2) of Regulation (EU) 2022/2065.

*Transport and logistic service providers: Preventing the misuse of their services for IP-infringing activities*

- (9) To prevent the misuse of their services for IP-infringing activities – either for goods entering the EU or in respect of intra-EU trade – transport and logistics service providers that have direct contractual relationships with the shipper or consignee are encouraged to implement the following good practices in full compliance with Union law, including for the processing of personal data:
- (a) to clearly state in their terms and conditions:
    - (1) under which circumstances in compliance with applicable laws and regulations they have a right to open and inspect a shipment for assessment as to whether that shipment contains IP-infringing goods;
    - (2) the procedure for informing the consignee or owner of the goods of the outcome of that assessment in all circumstances irrespective of whether evidence of IP-infringing goods is found;
    - (3) the means of redress and compensation available to the consignee or owner of the shipment where shipments are opened and there is no evidence of IP-infringing goods.
  - (b) to have in place a system to verify shipment-related data, with the aim of sending reliable pre-arrival data to the customs authorities at their request, contributing to an effective customs' risk assessment against IP-infringing activities. Such verification would include, to the degree practical, the following elements:
    - (1) checking the provided company data, as far as it is publicly available and free of charge;
    - (2) checking the shipper's and consignee's information against data that is publicly available and free of charge and that supports detection of illicit goods and possible IP infringements.

*Payment service providers: Preventing the misuse of their service for IP-infringing activities*

- (10) To prevent the misuse of their services for IP-infringing activities, payment service providers are encouraged to implement the following good practices:
- (a) to clearly state in their terms and conditions, as a ground for suspension or termination of their contract with sellers, any finding, including by the competent authority, of the use of their payment services for IP-infringing activities;
  - (b) to set up notification mechanisms allowing rightsholders using their payment services to notify any IP-infringing activity;



- (c) where technically and economically feasible, to have an information system in place to enable the identification of operators engaging in IP-infringing activities, across different payment services, when one payment service provider has terminated its services with such operators on the grounds of IP-infringing activities;
  - (d) to exchange information with other payment service providers on trends regarding IP-infringing activities and to put in place specific measures against repeated misuse of their services, particularly where there has been a finding by a competent authority that their services have been used for IP-infringing activities.
- (11) Any processing of personal data should be carried out in full compliance with Union law. This Recommendation should not lead to any requirement on the part of payment service providers to install a system for filtering any or all payments passing via their services for all their customers.

*Social media providers: Preventing the misuse of their services for IP-infringing activities*

- (12) To prevent the misuse of their services for IP-infringing activities, social media providers are encouraged to implement the following good practices:
- (a) to support rightsholders, particularly trade mark holders, and competent authorities, in fighting illegal use of their trade marks in social media account names, notably in private communications or closed groups, including by providing trade mark holders with verified accounts;
  - (b) to have appropriate systems in place to identify and act upon identification of natural or legal persons allegedly misusing their services to carry out IP-infringing activities;
  - (c) to have policies in place that make administrators of social media groups aware of the risk of IP-infringing activities by social media users in private communication or in closed groups.
- (13) Any processing of personal data should be carried out in full compliance with Union law. This Recommendation shall in no way affect legitimate use of the service and should not lead to social media providers taking measures which would affect the freedom of expression and information of users of their services.

*Domain names providers: Ensuring the protection of IP rights in the Domain Name System*

- (14) Top Level Domain ('TLD') name registries and entities providing domain name registration services established in the EU and/or offering services in the EU are encouraged to implement the following good practices:
- (a) to provide in their terms and conditions that a finding of IP-infringing activities by the competent authority in relation to a domain name or its usage, may lead to the termination of the registration and/or suspension and deletion of the delegation of the domain name;

- (b) to provide registrants during the registration process with links to relevant publicly available and online searchable IP registers to enable registrants to check the domain name for possible conflicts with registered IP rights. In this regard, TLD-name registries established in the EU and/or offering services in the EU are encouraged to cooperate and work with the EUIPO on the basis of voluntary agreements to replicate for the TLDs under their administration the existing information and alert system currently operated by the EUIPO and EURid for EU trade marks and the TLD '.eu' and extending them to also cover registered geographical indications;
  - (c) to provide for verification procedures for domain name registration data, by using, e.g. electronic identification solutions and/or publicly accessible registers such as civil and commercial registers to verify the identity of the registrant in full compliance with the right to data protection;
  - (d) to take voluntary measures to detect incorrect registration data for existing domain names, and to give registrants a reasonable time period to correct or complete such data, after which a notice of suspension of the delegation of their domain name may be given.
- (15) When access to domain name registration data that is personal data is sought, TLD-name registries and entities providing domain name registration services established in the EU and/or offering services in the EU are encouraged to recognise as legitimate access seekers any natural or legal persons who make a request for a right to information pursuant to Directive 2004/48/EC.
- (16) In view of the revision of the agricultural geographical indications scheme and the new geographical-indications scheme for craft and industrial products that will be fully applicable as of December 2025<sup>50</sup>, the EUIPO is encouraged to extend the current information and alert system to also cover geographical indications.
- (17) Registrants should have the right to appeal against any suspension or deletion of the domain name they registered.
- (18) Any processing of personal data should be carried out in full compliance with Union law.

*Designating a single contact point for IP enforcement*

- (19) Competent authorities, rightsholders, and providers of intermediary services are encouraged to designate a contact point for IP enforcement and to clearly indicate it on their website and other relevant channels of communication. They are further encouraged to use IPEP to share their designated contact point for IP enforcement.

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<sup>50</sup> Regulation (EU) 2023/2411 of the European Parliament and of the Council of 18 October 2023 on the protection of geographical indications for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 (OJ L, 2023/2411, 27.10.2023, ELI: <http://data.europa.eu/eli/reg/2023/2411/oj>).

*Promoting existing tools to facilitate cooperation and information sharing*

- (20) Member States are encouraged to promote the use of technical tools to facilitate coordination, information sharing, and communication between rightsholders and competent authorities by:
- (a) fostering the use of IPEP for secure information sharing, including by rightsholders for the submission of electronic Application for Actions (e-AFAs) through a trader portal, which can be either the IPEP trader portal for COPIS<sup>51</sup> or one of the national portals developed by the Member States;
  - (b) encouraging market surveillance authorities to use the ICSMS and all competent authorities to use the EU Safety Gate to flag and communicate products which may be counterfeited or pirated;
  - (c) encouraging national judiciaries to consult the collection of key enforcement judgements set up by the EUIPO.
- (21) Where there is an insufficient use of these tools by the relevant competent authorities, including market surveillance authorities, Member States are encouraged to dedicate the necessary human and technical resources to increase the use of the above-mentioned tools.
- (22) The EUIPO is encouraged to seek further collaboration of additional partners in the exchanges in IPEP, including intermediaries such as payment service providers.

*Promoting effective information sharing among all actors in the value chain*

- (23) Member States are encouraged to share intelligence and data on new counterfeiting and piracy trends, seizures, risk assessments, lists of websites that have been held by competent authorities to have carried out IP-infringing activities (infringing websites), and good practices to tackle IP-infringing activities, as foreseen by Union law. They should share these with EU bodies working in the area such as OLAF, Europol, the EUIPO, and the Commission, making the best use of the available legal and technical tools.
- (24) Economic operators are encouraged to share information with competent authorities in accordance with Union law, including on the origin and channels of distribution of IP-infringing activities, as well as on the tactics and behaviours of alleged infringers. They are also encouraged to explore new ways to share information on persons who repeatedly engage in IP-infringing activities online or offline.
- (25) The relevant competent authorities are encouraged to exchange or share, either spontaneously or on specific request, any strategic or technical information at

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<sup>51</sup> COPIS (Anti-Counterfeit and Anti-Piracy System) is an EU database set up by the Commission in accordance with Regulation (EU) 608/2013 and enabling customs authorities to fulfil their legal obligations stemming from the Regulation, through the processing, storage, and management of applications for action and infringement records containing relevant information on goods of which the release is suspended, or goods which are detained.

national and EU level, contributing to their risk analysis and other intelligence information through tools made available to them<sup>52</sup>.

- (26) The relevant EU bodies and competent authorities are encouraged to analyse the possibility of making their risk analysis and other intelligence systems publicly available and interoperable in order to enable the search of possible commonalities with previous IP-infringements and IP crimes. In this regard, the EUIPO is encouraged to support data collection, data searches, and the creation and use of data ‘dashboards’ through the work of the Technical Group on IP Enforcement and Data Exchange.
- (27) Cooperation between the EUIPO and different EU-enforcement related bodies, including Europol, OLAF, the European Union Agency for Criminal Justice Cooperation (‘Eurojust’), the European Border and Coast Guard Agency (‘FRONTEX’) and CEPOL, should continue to support and streamline the fight against IP-infringing activities. The EUIPO should contribute to and support the strengthening of the network. Information sharing between all actors affected by IP-infringing activities should be in compliance with Union law, including competition rules, and in line with the principles set out in the guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements, notably the principles concerning information exchange, and the processing of personal data, the right to privacy and to conduct business and the right to an effective remedy<sup>53</sup>.

*Improve the involvement of market surveillance authorities in the fight against counterfeiting*

- (28) Member States are encouraged to entrust market surveillance authorities with the skills and resources to monitor IP-infringing activities in their investigations.
- (29) Member States are encouraged to promote better coordination and cooperation between market surveillance authorities and other authorities in charge of IP enforcement, in particular by requiring increased information sharing and increased coordination when taking measures to fight IP-infringing activities. The EUIPO is encouraged to support this cooperation, through trainings, including for information sharing tools, and joint actions to detect counterfeits, and gather further evidence on the health and safety risks caused by counterfeit products.

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<sup>52</sup> E.g. COPIS as laid down in Regulation (EU) 608/2013 on IPR border measures; Customs Information System as laid down in Regulation (EC) 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters; Customs Information System Plus as laid down in Council Framework Decision 2009/917/JHA on the use of information technology for customs purposes; Europol Information System and Data Analysis Portal as laid down in Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol), etc.

<sup>53</sup> Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, C/2023/4752, OJ C 259, 21.7.2023, p. 1.

## Chapter 3: Advancing IP enforcement procedures

### *Fostering Alternative Dispute Resolution procedures*

- (30) National IP offices, when offering mediation, and other alternative dispute resolutions (ADR) providers are encouraged to provide mediation services for IP-related disputes other than registration and opposition proceedings.
- (31) TLD name registries established in the EU and/or offering services in the EU are encouraged to provide for an ADR procedure in which IP rights can be invoked by:
  - (a) taking into account the international good practices in this area and in particular the relevant recommendations of the World Intellectual Property Organization to ensure that speculative and abusive registrations are avoided as far as possible;
  - (b) complying with uniform procedural rules in line with those set out in ICANN's Uniform Domain Name Dispute Resolution Policy.
- (32) Following an ADR procedure in which the rightsholder has prevailed, and which can be considered as final or to which no appeal is available, the registry is encouraged to either revoke the domain name or transfer it to the prevailing party upon request.
- (33) Any ADR procedure should be in compliance with applicable Union or national law, including in relation to the processing of personal data, the right to privacy and to conduct business and the right to an effective remedy.

### *Fostering the use of dynamic injunctions*

- (34) Member States are encouraged to provide for the possibility to seek an injunction against an infringer or a given intermediary service provider, that can be extended to IP-infringing activities not yet identified at the time of the application for an injunction, but concerning very similar factual circumstances which give rise to the alleged breach of the relevant IP right.
- (35) Economic operators are invited to further develop and use technical solutions identifying repeat infringements of the same IP right by the same natural or legal person and by similar means, for example by mirroring websites, by the use of a dominant element of a trade mark online or offline or by the repeated storage of counterfeit goods in the same storage facility.
- (36) When introducing or applying rules on injunctions, Member States are encouraged to take into consideration that the measures set out in the injunction should not be unreasonably burdensome for the addressees.
- (37) Member States are encouraged to provide that the duration of the injunction should not go beyond what is necessary to ensure the effective protection of rightsholders.
- (38) Any injunction procedure should be in compliance with applicable Union or national law, including in relation to the processing of personal data, the right to privacy and to conduct business and the right to an effective remedy.

### *Ensuring the right of information for IP enforcement*

- (39) Member States are encouraged to provide for the possibility for the competent judicial authorities to order disclosure of the relevant information to effectively fight IP infringements which are not on a commercial scale, in response to a justified and proportionate request of the claimant in proceedings. For these purposes, the relevant information could consist of the same information which may be requested in accordance with Article 8(2) of Directive 2004/48/EC, including the email address, telephone number and IP addresses relating to alleged infringers or participants to alleged infringing activities.
- (40) Member States are encouraged to ensure that, for a request for information under Article 8 of Directive 2004/48/EC, it is sufficient to provide any reasonably available evidence to the competent court that would show with a sufficient degree of certainty that the applicant is the rightsholder.
- (41) The sharing of information, which may include personal data, is of paramount importance to enable the efficient and effective fight against IP-infringing activities. To enable rightsholders to initiate fair and equitable civil enforcement procedures against infringers of IP rights, economic operators should be encouraged to share relevant information and evidence with rightsholders for civil enforcement. In addition, economic operators are encouraged to take into consideration:
- (a) that the interest of the data controller or a third party to obtain the personal information of a person that allegedly damaged their property in order to bring an action against that person for damages or the recovery of claims may constitute a legitimate interest under Article 6(1), point (f), of Regulation (EU) 2016/679;
  - (b) the decisional practice of national data-protection authorities and any relevant guidance of the European Data Protection Board.

### *Ensuring the granting of appropriate damages*

- (42) Member States are encouraged to ensure that, in the context of proceedings on IP enforcement, the rightsholders can receive damages appropriate to compensate for the actual prejudice caused, using a method of calculating damages that addresses all aspects of the suffered prejudice, including:
- (a) damages covering the moral damage suffered by the rightsholder;
  - (b) damages covering costs that are linked to researching and identifying possible acts of infringement;
  - (c) damages covering payment of interest on the sums due.
- (43) Member States are reminded that, according to the case law of the Court of Justice<sup>54</sup>, the fact that Directive 2004/48/EC does not oblige the Member States to provide for 'punitive' damages cannot be interpreted as a prohibition on introducing such a

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<sup>54</sup> Judgment of 25 January 2017, C-367/15, *Stowarzyszenie 'Oławska Telewizja Kablowa*, paragraph 28.



measure in appropriate cases. Member States are therefore encouraged to consider, in line with their constitutional and legal traditions and in full compliance with the Charter, the award of punitive damages as a remedy in the most harmful cases of IP-infringing activities.

*Faster, cheaper and more ecological storage and disposal of IP-infringing goods*

- (44) Member States and economic operators are encouraged to support the Commission and the EUIPO in:
- (a) assessing ways in which the time and costs of storage and destruction of IP-infringing goods detained at the EU border or seized in the internal market and which are ordered for destruction could be decreased;
  - (b) collecting and sharing good practices about environmentally safe storage and disposal methods and practices of IP-infringing goods which are ordered for destruction with a view to building knowledge, aligning national practices and raising the awareness of relevant actors in charge of storage and disposal of IP-infringing goods, including on good practices about the environmentally safe storage.
- (45) Member States and economic operators are encouraged to ensure that IP-infringing goods that are ordered for destruction undergo a preparation for re-use, recycling or other recovery operations and are incinerated or disposed in landfills only as a last resort, when such solutions deliver the best environmental and human-health outcome. In such cases, special attention should be given to goods that contain hazardous substances or mixtures.
- (46) Member States are encouraged to provide information to the Commission and the EUIPO on the costs and on the available economic operators that offer storage and/or environmentally safe disposal services, including in case of recycling.

*Increasing the effectiveness of criminal penalties and investigations*

- (47) Member States are encouraged to re-assess, and where appropriate, raise the available maximum custodial sentence for the most serious forms of wilful counterfeiting and piracy committed on a commercial scale by criminal organisations.
- (48) Member States are encouraged to ensure that the amount of illegal benefits generated or expected – and the amount of the damage caused – may be taken into account when determining the appropriate level of the penalty in individual cases. Member States are encouraged to ensure that the global group turnover of a legal person can be taken into account when determining appropriate financial penalties in an individual case.
- (49) Member States are encouraged to re-assess the necessity to provide for or allow, subject to compliance with the necessary safeguards in Union or national law, the application of covert investigative methods, in investigations of the most serious forms of wilful trade mark counterfeiting and piracy committed on commercial scale by criminal organisations.

- (50) Member States are encouraged to carry out, in accordance with the applicable rules, investigations into the financial consequences of criminal offences relating to IP rights and to apply the ‘follow the money’ investigative strategy, whenever possible and appropriate.
- (51) Member States are encouraged to ensure full or partial specialisation of units responsible for investigating and prosecuting crime relating to IP rights in their competent authorities and public prosecution services.
- (52) Member States are encouraged to ensure that their competent authorities systematically exploit the cross-border aspects of their investigations and coordinate with the relevant counterparts through appropriate EU bodies and agencies, such as Eurojust, OLAF, and Europol.
- (53) Any measures which Member States are encouraged to provide in this Chapter should be in compliance with the applicable rules of Union, national and international law, including as regards the protection of fundamental rights of all parties affected.

## **Chapter 4: Adapting IP practices to AI and virtual worlds**

### *Making the most of new technologies to fight IP-infringing activities*

- (54) Rightsholders and providers of intermediary services are encouraged to adopt EU-wide solutions for advanced tracing systems (such as the digital product passport and tokenisation solutions – either blockchain-based or other) that will assist economic operators and customs authorities, by tracking packages through the value chain but also facilitate data sharing in compliance with Union law.
- (55) Economic operators, in particular providers of intermediary services as well as rightsholders, are encouraged to make use of advanced methodologies and technologies like data-analysis methods, automated content-recognition systems, and machine-learning (including deep learning) algorithms to detect counterfeit, including design-infringing, goods online.
- (56) Member States are encouraged to use AI systems to combat counterfeiting, enhance enforcement measures, and improve the services for applicants of IP rights. In this context Member States are encouraged to:
  - (a) implement AI systems to effectively simplify and improve the IP application process, providing applicants with a more seamless and user-friendly experience;
  - (b) encourage competent authorities to use AI systems to streamline and enhance the process of identifying and combating counterfeit and pirated goods and online content.
- (57) Any use of technology should be in compliance with applicable Union or national law, including in relation to the processing of personal data, the right to privacy and to conduct business and the right to an effective remedy.

### *Raising awareness of new technologies and empower SMEs to use these technologies*

- (58) Member States are encouraged to raise public awareness on the technologies and solutions to be used in the context of the fight against counterfeiting and piracy, such as those mentioned in the EUIPO Anti-Counterfeiting and Anti-Piracy Technology Guide. In this context the EBSI governance is encouraged to accept anti-counterfeiting and piracy as a new EBSI user case, which could encourage other early adopters to devise novel anti-counterfeiting solutions based on distributed ledger technologies.
- (59) Member States and industry stakeholders are encouraged to collaborate closely with the Commission in the development of a comprehensive checklist tailored for SMEs. This checklist aims to assist SMEs in navigating the challenges and opportunities presented by AI technologies. In particular, the checklist will focus on empowering SMEs to effectively protect their IP rights and trade secrets when using AI systems and provide practical insights to help SMEs navigate contractual clauses, ensuring a thorough understanding of AI and its implications on IP.

### *Protecting and respecting IP rights in virtual worlds and other online environments*

- (60) Member States are encouraged to raise the awareness of economic operators for the currently applicable IP rules (e.g. secure authorisation from the rightsholders when introducing IP-protected subject matter into virtual worlds) and the IP implications of the use of NFTs in virtual worlds.
- (61) Rightsholders, IP offices, and other stakeholders are encouraged to engage in dialogue with the Commission on the protection of IP rights, in particular trade marks and designs, including NTFs, in such new environments. To explore the full potential of new technologies and promote the uptake thereof, the Commission will encourage an industry dialogue to act as a sounding board and to accompany the many ongoing initiatives in this area, in line with the 2020 IP Action Plan.

## **Chapter 5: Providing small and medium-sized enterprises with tools to better protect their intangible assets**

### *SME Fund: New SME support services on IP enforcement (IP scan enforcement voucher)*

- (62) In the context of the SME Fund initial advice by an IP Scan Enforcement expert will be provided for SMEs:
  - (a) Member States are encouraged to participate through their IP offices in the IP Scan Enforcement service and raise awareness for the SME Fund and its enforcement voucher;
  - (b) Economic operators that are SMEs are invited to make use of the IP Scan Enforcement service to improve their IP enforcement strategy;
  - (c) SME associations are invited to raise awareness for the SME Fund and its enforcement voucher among their respective memberships.

- (63) Member States and the EUIPO are encouraged to raise awareness of their innovative SMEs for the importance of cyber-security related to their undisclosed information, trade secrets and know-how used in business activities. To that end, Member States and the EUIPO are encouraged to:
- (a) promote the awareness-raising toolkit under development by the Commission for the prevention of illegal acquisition of trade secrets of SMEs by breaches of cyber-security, hacking and other cyber-attacks;
  - (b) disseminate the tools in the toolkit (in particular the sectoral business guides, frequently asked questions, case studies and good practices on cyber-security applied by businesses) and reach out to business chambers and business associations to encourage SMEs to participate in free online courses and webinars on cyber-security;
  - (c) promote the other awareness-raising tools made available on the cyber-security information portal to help SMEs better protect their IP and trade secrets and to help them more effectively prevent cyber-attacks.
- (64) Economic operators are encouraged to:
- (a) upgrade their protection against cyberattacks using, among other things, tools provided by public authorities, including the Commission's toolkit designed to prevent or to react to cyber-attacks aiming to appropriate trade secrets;
  - (b) train their personnel on how to prevent, manage and react to cyber-attacks targeting their trade secrets by using the free training courses and other training and information materials developed by the Commission for this purpose in the context of the Cyber-theft prevention Toolkit.

## **Chapter 6: Fostering IP awareness, training, and education among all relevant stakeholders**

### *Fostering knowledge and training on IP in the national education curricula*

- (65) Member States are encouraged to introduce in their national education curricula and in vocational training, especially for business studies in the higher education curricula, the core concepts of IP rights, the ethical use of IP-protected materials, and IP infringements. They are also encouraged to promote creativity, innovation, entrepreneurship, and responsible digital engagement.
- (66) Member States are encouraged to promote IP awareness in educational textbooks and the dissemination of training materials on IP rights to relevant teacher-training institutions. To this end, Member States are encouraged to promote in their education institutions, including universities and scientific research organisations, the educational and training materials produced and collected through the 'Ideas Powered @ School' project managed by the EUIPO, which should also include evidence on the health and safety risks posed by counterfeit products.

### *Encouraging training on IP enforcement for law-enforcement agents*

- (67) Member States are encouraged to include tailor-made content on IP protection and enforcement prepared by the EUIPO and CEPOL in the following realms inter alia:
- (a) in the mandatory national training curriculum designed for competent authorities, including police, customs services, and public prosecution services;
  - (b) in the national training curriculum designed for market surveillance and border and coast guard authorities.
- (68) Competent authorities, including market surveillance authorities and border and coastguard authorities, are encouraged to: (i) promote the participation of their personnel in regular training sessions organised by the EUIPO and CEPOL on IP enforcement; and (ii) share with their staff the training materials prepared by these EU agencies.

### *Online pharmacies*

- (69) Member States, in cooperation with consumer organisations, are encouraged to help consumers avoid illicit online pharmacies by raising awareness for the common logo displayed on websites offering medicinal products for sale at a distance to the public.

### *Counterfeit and piracy watch list*

- (70) As part of their anti-counterfeiting activities, Member States are encouraged to consider, where appropriate, the information provided in the Counterfeit and Piracy Watch List, taking into account the fact that the Watch List does not contain findings of legal violations.

### *Protecting and enforcing IP rights on markets outside the EU*

- (71) Before engaging in a new business activity in a country outside the EU, economic operators in the EU are encouraged to familiarise themselves with the business and legal environment of that country by consulting the information made available by the IPR Helpdesks and published in the Commission report on the protection and enforcement of IP rights in third countries. This biennial report identifies third countries in which the state of IP rights protection and enforcement (both online and offline) gives rise to the greatest level of concern for the EU. This will help the economic operators to take business decisions on an informed basis. They are also encouraged to use the existing technical tools (e.g. EUIPO TMview and DesignView) or to report issues related to IP which could have an impact on their future business activities outside the EU (e.g. using the Access2Markets Portal<sup>55</sup>).

### *Free trade zones*

- (72) Operators of free-trade zones located in the EU are encouraged to adhere to the Code of Conduct for Clean Free Trade Zones annexed to the OECD Recommendation on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones.

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<sup>55</sup> [Welcome home page | Access2Markets \(europa.eu\)](#)

## Chapter 7: Follow-up and monitoring

- (73) Upon request, Member States should report to the Commission on the actions taken to address the Recommendations that are addressed to Member States.
- (74) The Commission invites the EUIPO to raise awareness for and carry out communication and outreach activities related to this Recommendation. It also invites the EUIPO to support the Commission in monitoring the implementation and effects of this Recommendation.
- (75) The EUIPO Observatory on Infringements of Intellectual Property Rights is encouraged to:
- disseminate the recommendations within its network of stakeholders, including its network of judges;
  - gather information and relevant case-law on the application of Directive 2004/48/EC;
  - ensure that all the relevant stakeholders within its network make their designated contact for IP enforcement available through IPEP;
  - continue developing IPEP, including new functionalities, and extending existing functionalities to new stakeholders, and continue to monitor the use of IPEP;
  - monitor and share good practices implemented by competent authorities and intermediary services and monitor, to the extent possible, the implementation of the good practices covered by this Recommendation;
  - support the Commission in its dialogue with stakeholders, notably in the context of the modernisation of the MoUs;
  - support the Commission in its dialogues with stakeholders on the new technologies aiming at adapting IP practices and strategies to virtual worlds and AI, in particular to promote research, good practices and dialogue between all interested parties, including SMEs, to address challenges in the area of AI;
  - support the Commission to collect and share good practices about storage and destruction of IP-infringing goods, including on environmentally safe storage and disposal methods;
  - support analysis and discussions on information sharing systems through the Technical Group on IP enforcement and Data Exchange;
  - cooperate with EU enforcement-related bodies, market surveillance authorities, and other competent national authorities and strengthen their networks;
  - support the Commission regarding counterfeiting and piracy related trends on third country online platforms and social media services;

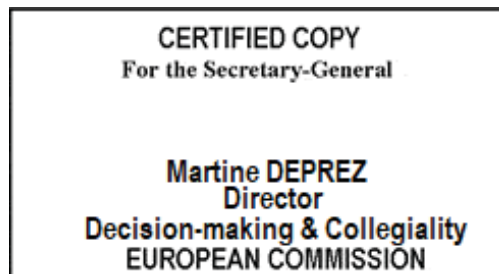


- monitor the impact that specific IP training courses have on law enforcers and monitor Member States' possible inclusion of IP courses in their national training curriculum designed for competent authorities;
  - encourage operators of FTZs in the EU to comply with the OECD Recommendation on Enhancing Transparency in Free Trade Zones.
- (76) The EUIPO is invited to track the success of the IP Scan Enforcement, based on the number of national IP offices which provide the service as well as the number of SMEs which use it.
- (77) The EUIPO is invited to expand cooperation with EURid and other registries on domain names, in particular on the information and alert system, geographical indications and other TLDs.
- (78) The EUIPO is invited to raise awareness of cyber-security and contribute to the dissemination and promotion of the Cyber-Theft Prevention Toolkit, including its awareness-raising and training materials.
- (79) The EUIPO Mediation Centre is encouraged to: (i) build and maintain the relevant networks for promoting and expanding the use of ADR in IP-related disputes, including with respect to infringements, for a more efficient fight against counterfeiting; and (ii) monitor the implementation of measures related to ADR.

- (80) The Commission will assess the effects of this Recommendation, taking due account of the findings of the EUIPO, no later than three years after adoption of the Recommendation. On this basis, the Commission will assess whether additional measures are needed at EU level, taking account of: (i) technological developments; (ii) the outcome of the follow-up study on the application of the Directive 2004/48/EC; and (iii) any impact that the implementation of Regulation (EU) 2022/2065 and Recommendation 2023/1018<sup>56</sup> may have had on the enforcement of IP rights and the fight against counterfeiting and piracy.

Done at Brussels, 19.3.2024

*For the Commission*  
*Thierry Breton*  
*Member of the Commission*



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<sup>56</sup> Commission Recommendation (EU) 2023/1018 of 4 May 2023 on combating online piracy of sports and other live events (OJ L 136, 24.5.2023, p. 83–94, ELI: <http://data.europa.eu/eli/reco/2023/1018/oj>)