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**COMMISSION STAFF WORKING DOCUMENT**

**Report on the protection and enforcement of intellectual property rights in third countries**

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# 1. INTRODUCTION

## 1.1. Objective

Intangible assets such as inventions, artistic and cultural creations, brands, software, know-how, business processes and data are the cornerstones of today's economy. Intellectual property rights (IPR), i.e. patents, trademarks, designs, copyright and neighbouring rights, geographical indications (GIs) and plant variety rights, as well as trade secret protection rules, help entrepreneurs and companies to valorise their intangible assets. In today's economy, industrial products and processes increasingly rely on intangibles protected by IPR, and sound intellectual property (IP) management has become part and parcel of any successful business strategy. Companies, including SMEs and start-ups, rely on IPR to ensure external financing and to protect their assets vis-a-vis competitors in the global market. Industries that make intensive use of IPR play an essential role in the economy and offer valuable and sustainable jobs to society<sup>1</sup>.

This report is part of the efforts of the European Commission to strengthen the protection and enforcement of IPR in third countries. It has been published biennially since 2006, the last one dating from 27 April 2021.

The main objective of this report is to identify third countries in which the state of IPR protection and enforcement (both online and offline) gives rise to the greatest level of concern for the EU and thereby to establish an updated list of so called "priority countries". This is not an exhaustive analysis of IPR protection and enforcement around the world. "Priority countries" are not necessarily those where IPR protection and enforcement are the most problematic in absolute terms but rather those where such deficiencies are deemed to cause the greatest economic harm to EU interests.

This report will help focus efforts and resources of the European Commission on countries and on the specific areas of concern, with the aim of improving IPR protection and enforcement worldwide. It devotes special attention to new developments since the last report and until 5 September 2022.

This report also aims to inform rightholders, in particular small and medium-sized enterprises, about potential risks to their IPR when engaging in business activities in certain third countries and thus to allow them to design business strategies and operations to protect the value of their intangibles. The report should also be useful for authorities in third countries as a source of information.

## 1.2. Economic importance of IPR and negative effects of counterfeiting and piracy

Effective IPR protection and enforcement are crucial for economic growth and for the EU's ability to stimulate innovation and stay competitive globally. According to a joint study by the

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Making the most of the EU's innovative potential. An intellectual property action plan to support EU's recovery and resilience*, COM(2020) 760 final.

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020DC0760>

European Intellectual Property Office (EUIPO) and the European Patent Office (EPO) from October 2022<sup>2</sup>, IPR-intensive industries<sup>3</sup> generated around 81 million or 39.4% of all jobs in the EU during the period 2017-2019 (including indirect jobs<sup>4</sup>). Over the same period, IPR-intensive industries generated more than 47% of total economic activity (GDP) in the EU, worth € 6.4 trillion.

**Table 1: Contribution of IPR-intensive industries to EU employment and GDP (2017-2019 average, EU27)**

IPR-intensive industries	Direct employment	Share of total direct employment (%)	Direct & indirect employment	Share of total direct & indirect employment (%)	Value added / EU GDP (€ million)	Share of total EU GDP (%)
<b>All IPR-intensive</b>	<b>61,499,614</b>	<b>29.7%</b>	<b>81,592,215</b>	<b>39.4%</b>	<b>6,375,796</b>	<b>47.1%</b>
Copyright-intensive	12,924,552	6.2%	16,917,340	8.2%	934,176	6.9%
Patent-intensive	22,824,753	11.0%	36,076,680	17.4%	2,361,457	17.4%
Plant variety rights-intensive	1,933,519	0.9%	2,541,175	1.2%	187,774	1.4%
Trade mark-intensive	43,606,597	21.1%	59,705,627	28.9%	5,217,903	38.5%
GI-intensive*	n/a	n/a	n/a	n/a	15,011	0.1%
Design-intensive	26,768,543	12.9%	40,142,839	19.4%	2,101,305	15.5%
<b>Total EU employment</b>			<b>206,899,343</b>			

\* Not calculated due to gaps in employment statistics for agriculture (farm structure statistics).

Source: EPO/EUIPO (October 2022), *IPR-intensive industries and economic performance in the European Union. Industry-level analysis report, fourth edition.*

Note: due to overlapping use of IPR, the sum of the figures for the individual IPR exceeds the total figure for IPR-intensive industries.

The economic importance of IPR is also reflected in the contribution of IPR-intensive industries to the EU's external trade. In 2019, taking both goods and services into account, 80.5% of EU imports and 80.1% of EU exports were generated by the IPR-intensive industries.

**Table 2: EU external trade in IPR-intensive industries (2017-2019 average)**

IPR-intensive industries	Exports (€ million)	Imports (€ million)	Net exports (€ million)
<b>TOTAL EU TRADE</b>	<b>2,701,959</b>	<b>2,408,212</b>	<b>293,747</b>
<b>Total-IPR-intensive</b>	<b>2,163,517</b>	<b>1,939,655</b>	<b>223,862</b>

<sup>2</sup> EPO/EUIPO (October 2022), *IPR-intensive industries and economic performance in the European Union. Industry-level analysis report, fourth edition.*

[https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/IPR-intensive\\_industries\\_and\\_economic\\_in\\_EU\\_2022/2022\\_IPR\\_Intensive\\_Industries\\_FullIR\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/IPR-intensive_industries_and_economic_in_EU_2022/2022_IPR_Intensive_Industries_FullIR_en.pdf)

<sup>3</sup> Defined as those having an above-average use of IPR per employee, as compared with other IPR-using industries. As shown in the EPO-EUIPO Study, these industries are concentrated in manufacturing, technology and business services sectors.

<sup>4</sup> Jobs generated by IPR-intensives industries in sectors dependent on these industries.

<b>Copyright-intensive</b>	229,082	249,340	-20,258
<b>Patent-intensive</b>	1,559,811	1,341,864	217,947
<b>Plant variety-intensive</b>	43,248	50,743	-7,495
<b>Trade mark-intensive</b>	1,547,270	1,551,618	-4,348
<b>GI-intensive*</b>	13,126	1,769	11,357
<b>Design-intensive</b>	1,232,068	1,014,158	217,910

\* Goods only.

Source: EPO/EUIPO (October 2022), *IPR-intensive industries and economic performance in the European Union. Industry-level analysis report, fourth edition.*

Note: due to overlapping use of IPR, the sum of the figures for the individual IPR exceeds the total figure for IPR-intensive industries.

In practical terms, IPR is directly linked to the production and distribution of new and authentic goods and services from which all citizens benefit. This requires an optimal and economically efficient IPR "infrastructure" which covers the legal recognition, registration, utilisation, and effective and adequate enforcement of all forms of IPR in both physical and online marketplaces.

There are various practical challenges and limitations which have a negative impact on IPR protection for EU companies in third countries, such as forced technology transfer, procedural deficiencies, lack of effective enforcement policies, backlogs in rights registrations, non-registration of certain rights, non-deterrent level of sanctions, lack of expertise, corruption, lack of awareness and lack of transparency.

According to the OECD-EUIPO study on *Global Trade in Fakes* (June 2021)<sup>5</sup>, counterfeit and pirated goods accounted for up to 2.5% of world trade in 2019 and up to € 119 billion or 5.8% of EU imports. These amounts are similar to those of previous years, and illicit trade in fakes remains a serious risk to modern, open and globalised economies.

Although in 2020 the number of seized articles decreased by around 13% from 2019, it is worth mentioning the difficulties some countries experienced in providing data in the context of the COVID-19 pandemic. Indeed, according to the latest Europol/EUIPO joint study on *Intellectual Property Crime Threat Assessment* (March 2022)<sup>6</sup>, a reduced trade volume in the first months of the pandemic may have influenced the global results for 2020, in particular those referring to detentions in the internal market.

<sup>5</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

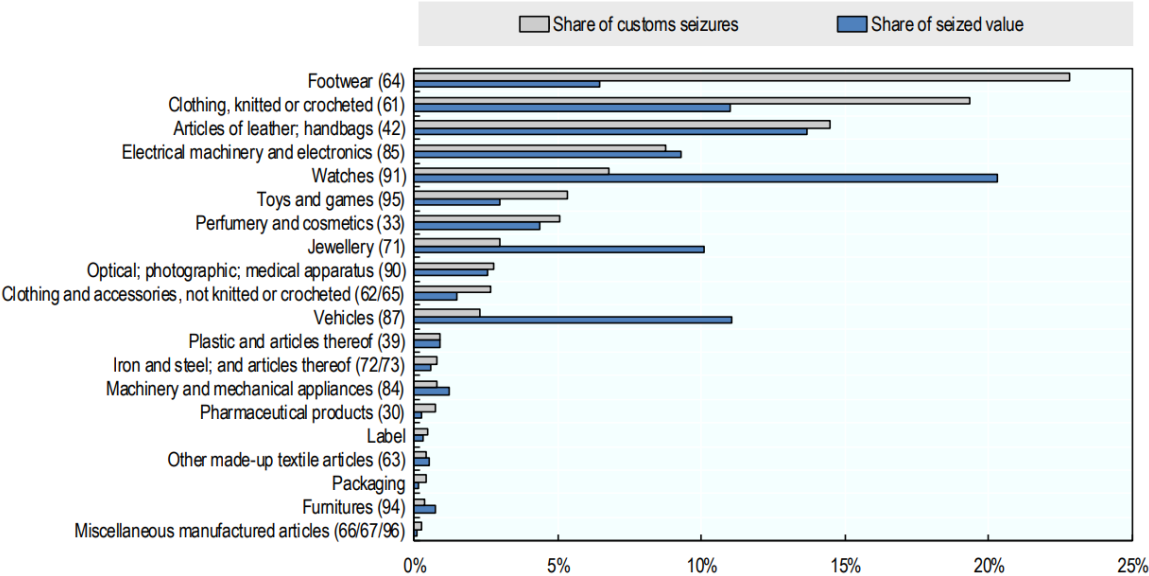
[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

<sup>6</sup> EUROPOL/EUIPO (March 2022), *Intellectual Property Crime Threat Assessment 2022*.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2022\\_IP\\_Crime\\_Threat\\_Assessment/IP\\_Crime\\_Threat\\_Assessment\\_2022\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_IP_Crime_Threat_Assessment/IP_Crime_Threat_Assessment_2022_FullR_en.pdf)

The OECD-EUIPO study *Global Trade in Fakes* (June 2021)<sup>7</sup>, also shows that the range of products that are counterfeited and pirated is very wide to the extent that almost any kind of products is targeted by counterfeiters and may be subject to IPR infringement. It is to be noted that interceptions of fake goods are not uniform, therefore some product categories are reported more often than others. As illustrated in Table 3 below, the most frequently seized products by customs authorities worldwide were footwear, clothing, leather goods, as well as electrical machinery and electronic equipment.

**Table 3: Top 20 product categories counterfeit and pirated (2017-2019)**



Source: OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

Counterfeiting and piracy are a complex and growing problem. Evidence shows that organised crime groups are involved in counterfeiting and piracy, and IP crime is linked to other types of crime (e.g. fraud, tax evasion, money laundering, narcotics, and human trafficking). This is also confirmed in the Europol-EUIPO report on the links between IP crime and other serious crime<sup>8</sup>, published in March 2022. Moreover, the COVID-19 pandemic has proved that criminals quickly adapt to the new trade environment and find their way to infiltrate the legitimate supply chain with their counterfeit and often dangerous products. Since the outbreak of the COVID-19 pandemic, counterfeit and falsified products, such as unproven treatments, test kits and medical equipment and supplies, e.g. masks, ventilators, or gloves, have flooded the European market both via online and offline channels. To tackle this issue, on 19 March 2020, the European Anti-Fraud Office (OLAF) opened an official inquiry into the illicit trade of face masks, medical devices, disinfectants, sanitisers, medicines and test kits linked to the COVID-19 pandemic and has teamed up with nearly all customs and enforcement authorities in Europe and many worldwide, as well as with Europol, Interpol and EUIPO. For example, during the

<sup>7</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris. [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

<sup>8</sup> EUROPOL/EUIPO (March 2022), *Intellectual Property Crime Threat Assessment 2022*. [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2022\\_IP\\_Crime\\_Threat\\_Assessment/IP\\_Crime\\_Threat\\_Assessment\\_2022\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_IP_Crime_Threat_Assessment/IP_Crime_Threat_Assessment_2022_FullR_en.pdf)

joint Interpol-Europol operation OPSON IX in 2021, law enforcement authorities seized almost 2,000 tonnes of IPR-infringing or substandard medical products.

As a part of operation SHIELD III<sup>9</sup>, in 2022, OLAF led a targeted action focused specifically on illicit and counterfeit hormonal substances, food supplements and medicines for erectile dysfunction. As a result of the action, national customs authorities found various irregularities and intercepted over 430,000 tablets and some 650 vials of various medicines. Also in 2022, OLAF and EUIPO organised a two-day conference to discuss current trends and challenges of fraud related to IPR and counterfeiting, focusing mainly on semiconductors<sup>10</sup>.

In recent years, a substantial shift towards further misuse of the online environment was observed. E-commerce has been expanding rapidly and the increase was fuelled by the COVID-19 pandemic. The online environment has become a more popular target for illicit trade. The growing popularity of e-commerce has been used by counterfeiters to sell fake items to consumers.

According to the OECD-EUIPO study *Misuse of E-Commerce for Trade in Counterfeits* (October 2021)<sup>11</sup>, the links between e-commerce and illicit trade in counterfeits are particularly sturdy, especially because illicit goods purchased via e-commerce are often shipped via small parcels using postal services. Postal authorities and customs have limited capacity to screen shipments of small parcels and letter packets for counterfeits as they are intermingled with billions of legitimately traded items. The proliferation of small shipments raises the cost of checks and detention for customs, and introduces additional significant challenges for enforcement authorities. The EU customs detentions of counterfeits linked to e-commerce include a broad range of products, led by footwear (34% of total detentions), clothing (17%), perfumes and cosmetics (10%), leather articles (9%), electrical machinery and equipment (7%), toys (6%) and watches (5%).

Counterfeit and pirated products continue to follow complex trading routes, exploiting a set of intermediary transit points. Many of these transit economies, for example Hong-Kong (China), Singapore or United Arab Emirates, are well developed, high-income economies and important hubs of international trade. According to the OECD-EUIPO study on *Global Trade in Fakes* (June 2021)<sup>12</sup>, fake goods tend to be shipped by every means of transport. In terms of the number of seizures, small parcels (in particular via postal services) is the most common. In terms of value, counterfeits transported by container ship clearly dominate, accounting for more than a half of the global value of counterfeit seizures in 2019.

Changes in transit points may occur as a result of the application of effective anti-counterfeiting policies by national enforcement authorities or due to other factors, such as the evolution of trades flow in general or the emergence of more convenient routes of trade in fakes, notably

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<sup>9</sup> [Illicit medicines intercepted under OLAF's lead \(europa.eu\)](#)

<sup>10</sup> [Combatting a growing global threat - Counterfeit Semiconductor Products \(europa.eu\)](#)

<sup>11</sup> OECD/EUIPO (October 2021), *Misuse of E-Commerce for Trade in Counterfeits*, Illicit Trade, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/misuse-e-commerce-trade-in-counterfeits/EUIPO\\_OECD\\_misuse-e-commerce-trade-in-counterfeits\\_study\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/misuse-e-commerce-trade-in-counterfeits/EUIPO_OECD_misuse-e-commerce-trade-in-counterfeits_study_en.pdf)

<sup>12</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

due to political changes. The recent study by OECD on *Illicit Trade in Conflict-affected Countries of the Middle East and North Africa* (May 2022)<sup>13</sup> highlights governance frameworks as an important enabler of illicit trade, especially when economies suffer from arms conflict. Indeed, parties engaged in disputes have an interest in driving illicit trade, or at least in ignoring it, as it can be an effective way of obtaining supplies of commodities (e.g. arms) or a source of revenue generation. Counterfeit and pirated goods can be found in all industries and affect all kinds of enterprises, including small and medium-sized enterprises (SMEs). According to the joint OECD-EUIPO study on *Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms* (January 2023)<sup>14</sup>, while 15% of SMEs who own IP have experienced an infringement, this rate grows to almost 20% for innovative firms. This rate might still be undervalued, as 40% of SMEs do not monitor markets for counterfeiting of their products. Important impacts of counterfeit goods on SMEs included a loss of turnover, reputational damage, the loss of their competitive edge and the risk of closing of business or even bankruptcy. Indeed, an SME whose IP has been infringed has 34% lower odds of survival than SMEs that did not experience infringement.

## 2. METHODOLOGY

### 2.1. Sources

The Commission services conducted a targeted consultation between 25 May and 5 September 2022. The results of this consultation form the basis of the present report. In addition, a number of other sources have been taken into account in the selection of the priority countries and in the information provided on the state of IPR protection and enforcement in these countries.

In the targeted consultation, the Commission services sought specific information on the state of IPR protection and enforcement in countries outside the EU, including:

- (a) legal provisions (with the title, number of the legal norm and the respective articles) which the respondent finds conflicting international norms and standards in the area of IPR,
- (b) legal provisions which create problem to the respondent with regards to its IPR,
- (c) practical challenges, limitations, restrictions or discrepancies (such as procedures, backlogs, deterrence of sanctions, lack of expertise, speed, corruption, lack of political will, lack of awareness, etc.) which have a negative impact on IPR protection and enforcement,
- (d) concrete examples of deficiencies, weaknesses and ineffectiveness of administrative and judicial mechanisms in the area of IPR (i.e. IP offices, customs, police and courts),

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<sup>13</sup> OECD (2022), *Illicit Trade in Conflict-affected Countries of the Middle East and North Africa: Focus on Yemen*, Illicit Trade, OECD Publishing, Paris.  
<https://www.oecd-ilibrary.org/docserver/f31fd13a-en.pdf?expires=1667218708&id=id&accname=oid031827&checksum=D2CF1798D44BF33B5F3DD86002417287>

<sup>14</sup> OECD/EUIPO (2023), *Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms*, Illicit Trade, OECD Publishing, Paris.  
[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/Risks\\_of\\_Illicit\\_Trade\\_in\\_Counterfeits\\_to\\_SMEs/Risks\\_of\\_Illicit\\_Trade\\_in\\_Counterfeits\\_to\\_SMEs\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Risks_of_Illicit_Trade_in_Counterfeits_to_SMEs/Risks_of_Illicit_Trade_in_Counterfeits_to_SMEs_FullR_en.pdf)



- (e) any other systemic problems in the area of IPR in the country concerned, including information on the nature, scope and economic dimension of counterfeiting and piracy as well as on the level of cooperation between enforcement authorities and rightholders,
- (f) any action or measure taken by the respondent to address the problems identified and the outcome of such efforts,
- (g) concrete suggestions on how the problems identified could be addressed by the EU and,
- (h) progress made by the countries listed over the last 2 years (i.e. new legislation, administrative decisions, reorganisation, institutional reforms, new IP strategies, establishment of specialised IP courts, training programmes, cooperation with rightholders and higher budget lines for IPR, etc.).

Invitations to take part in the targeted consultation were sent to rightholders, consumer groups, industry associations, universities, EU Delegations and EU Member States. Over 40 responses were received, covering more than 45 countries. The majority of the respondents were associations representing rightholders (e.g. industry federations) and undertakings, mainly but not exclusively from the creative and innovative industries.

As indicated in the targeted consultation, the Commission will publish all contributions.

Beyond the consultation, the following additional sources have been taken into account in the preparation of the report:

- information received from EU Delegations and commercial representations,
- information received from the Commission's Directorate-General for Taxation and Customs Union on customs enforcement of intellectual property rights by EU Member States,
- data on actions against IPR infringement published by various governments,
- reports and studies by the European Intellectual Property Office (EUIPO),
- reports and assessments made by other relevant bodies and organisations (e.g. the OECD),
- information made public through WTO's Trade Policy Reviews,
- assessments carried out by DG Trade's Market Access teams,
- assessments of IPR systems by the Commission services,
- judgments made by international bodies such as the WTO Dispute Settlement Body,
- the outcome of discussions Commission services have had with third countries in the context of IP Dialogues/Working Groups,
- findings in EU IP SME Helpdesk reports and reports made in the framework of the IP Key Programmes<sup>15</sup>,
- the 2022 Counterfeit and Piracy Watch List,
- World Intellectual Property Organisation's (WIPO) committee reports,
- results from operations carried out by OLAF and Europol.

## 2.2. Selection

The following indicators were used for the selection of the priority countries:

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<sup>15</sup> <https://ipkey.eu/en>

- level of importance for EU operators,
- level of counterfeiting and piracy,
- level/quality of IP legislation,
- level of effectiveness of the implementation of legislation,
- attitude in bilateral relations and level of respect for IPR in international fora,
- level of respect for legal decisions in international fora (WTO Dispute Settlement),
- level of economic development (e.g. Gross National Income per capita levels, World Bank index ranking).

### 3. UPDATED LIST OF PRIORITY COUNTRIES

As in previous Third Country Reports, the updated list of priority countries remains split into three categories:

**Priority 1:** China

**Priority 2:** India, Türkiye

**Priority 3:** Argentina, Brazil, Ecuador, Indonesia, Malaysia, Nigeria, Saudi Arabia and Thailand

Despite the important progress made by China in various areas of IPR, China continues to be a **Priority 1** country for the EU because of the scale and persistence of problems in the area of IPR protection and enforcement. China has amended its IPR legislation to strengthen the IPR protection but legal certainty and uneven or inconsistent application of the laws remain a major issue, coupled with high levels of piracy and counterfeiting that would require further measures, even though China has made progress here as well. The joint report by the Commission and EUIPO on the *EU enforcement of intellectual property rights* (December 2022)<sup>16</sup> and the OECD-EUIPO joint study *Misuse of E-Commerce for Trade in Counterfeits* (October 2021)<sup>17</sup> show that China is still at the origin of a dominant share of counterfeit and pirated goods arriving in the EU, with 70% of suspected IPR infringing goods and 76% of counterfeits linked to e-commerce coming from China.

India and Türkiye remain **Priority 2** countries. Serious systemic problems have been identified in the area of IPR protection and enforcement in these countries, causing significant harm to EU businesses. Compared to the previous report, India and Türkiye made only limited progress in addressing these concerns.

Russia was listed in the previous report as a Priority 2 country. On 24 February 2022, Russia launched an unprovoked and unjustified invasion of Ukraine in violation of rules-based

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<sup>16</sup> EU Commission/EUIPO (December 2022), *EU enforcement of intellectual property rights: results at the EU border and in the EU internal market 2021*.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2022\\_EU\\_enforcement\\_of\\_IPRs\\_2021/2022\\_EU\\_enforcement\\_of\\_IPRs\\_results\\_2021\\_FullIR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_EU_enforcement_of_IPRs_2021/2022_EU_enforcement_of_IPRs_results_2021_FullIR_en.pdf)

<sup>17</sup> OECD/EUIPO (October 2021), *Misuse of E-Commerce for Trade in Counterfeits*, Illicit Trade, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/misuse-e-commerce-trade-in-counterfeits/EUIPO\\_OECD\\_misuse-e-commerce-trade-in-counterfeits\\_study\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/misuse-e-commerce-trade-in-counterfeits/EUIPO_OECD_misuse-e-commerce-trade-in-counterfeits_study_en.pdf)

international order. In response, the EU and like-minded partners have adopted unprecedented restrictive measures with the aim of significantly weakening Russia's economic base and depriving it of critical technologies as well as markets in order to curtail Russia's ability to wage war. The EU has suspended a Most-Favoured-Nation within the WTO framework for Russia. In parallel, Russia has taken various measures aimed at negatively affecting the businesses from so-called “unfriendly nations”, including EU Member States, operating in Russia and beyond. These retaliatory measures have also negatively impacted IPR and their enforcement. At the same time, the gradual closure of the public space in Russia and the increasing lack of information and transparency have also made it difficult to evaluate properly both the legislative developments and the enforcement of IPR in Russia. In view of the above, this report refrains from evaluating Russia.

Argentina, Brazil, Ecuador, Indonesia, Malaysia, Nigeria, Saudi Arabia and Thailand remain **Priority 3** countries. Priority 3 countries show some serious problems in the area of IP, causing considerable harm to EU businesses. The gravity and the number of problems identified in these countries are lower than in Priority 2 countries.

In addition, this report includes information on countries with which the EU has already concluded or is about to conclude free trade agreements and where one or several concerns related to the IP provisions of the agreements remain and require further monitoring. Dedicated sections are provided below for Canada, Mexico and Vietnam.

Monitoring is also required in other EU's trading partners, where some specific issues are outstanding in relation to their commitments under the free trade agreements with the EU. This includes South Korea in the area of copyright and related rights where no major progress has been made on the problems related to the remuneration for the public performance of recorded music since the 2021 report.

The implementation of provisions on the protection of GIs contained in the EU-Colombia, Peru and Ecuador Trade Agreement and in the EU-Central America Association Agreement also requires continued close monitoring, in particular as regards effective implementation of the provisions for the protection of EU GIs and making sure that any observed infringements are addressed in an efficient and timely manner.

## **4. SUMMARY OF THE FINDINGS**

**Legal uncertainties and diverging applications of law, as well as forced technology transfer practices** continue to be a problem in China. These concerns discourage investment and put foreign operators – particularly in high-tech sectors – at risk of losing their competitive edge.

**A low level of protection for trade secrets or difficulties to enforce the trade secrets** in a number of countries, notably in China and India, also causes irreparable harm to European businesses.

**Weak IPR enforcement** continues to be an acute problem in all the priority countries listed in the report. The main problems with IPR enforcement are linked to the lack of political will or resources. This materialises in deficiencies in adequate technical infrastructure, capacities and resources, expertise of the judicial and enforcement authorities, weak coordination between enforcement authorities, non-deterrent sanctions against IPR infringements as well as insufficient public awareness of the value of IPR.

The **level of counterfeiting remains high** in many of the EU's trading partners, causing serious revenue losses for both the EU and local industry. The problem is particularly serious in China, which continues to be the main source country of counterfeit goods imported into the EU. India and Southeast Asian countries such as Indonesia, Malaysia, Thailand and Vietnam are also significant sources of counterfeits while regional transit hubs such as Hong Kong (China), Nigeria, Saudi Arabia, United Arab Emirates (UAE), Singapore and Türkiye as well as destination countries such as Colombia, in which counterfeited products are sold on a massive scale, also continue to play an important role in this context.

**Copyright piracy**, especially online and satellite piracy, remains a major issue for European creative sectors. The problem remains widespread and rampant in countries such as China, Indonesia, Mexico, Saudi Arabia, Thailand, Vietnam, as well as Brazil despite the positive developments set out in this report.

A serious problem in the area of enforcement is the **lack of authority for customs authorities to take *ex officio* actions** to detain, seize or destroy counterfeit and pirated goods at the border or to take action with respect to goods in transit. The empowerment of customs authorities to take action *ex officio* would be needed in Ecuador, Mexico and Saudi Arabia. In Türkiye, customs authorities would need to apply *ex officio* actions more frequently, and Argentina and Brazil would need to improve the consistency of *ex officio* customs actions. Improvements would be needed also in the border enforcement regimes of Canada, India, Indonesia and Thailand and in the free trade zones in UAE.

Stakeholders also report that **counterfeit and pirated goods are often not destroyed** by the enforcement authorities and find their way back to the market. On other occasions, **destruction procedures take too long or may be dissuasively expensive** for rightholders. Concerns related to the destruction of infringing or allegedly infringing goods were reported with respect to India, Indonesia, Malaysia, Mexico, Nigeria, Saudi Arabia and UAE.

As regards **sanctions and penalties imposed for IPR infringements**, stakeholders report they **are too low to have a deterrent effect** in countries such as Argentina, Brazil, India, Nigeria, Saudi Arabia, Thailand, Türkiye and Vietnam.

As regards the **registration of patents, trademarks and related procedures** (e.g. renewal or opposition), the IP Offices in Argentina, Brazil, India and Thailand have a considerable backlog. The duration of patent examination in some countries, such as Brazil and Thailand, is overly long and covers most of the patent term.

**Restrictive patentability criteria** applied in Argentina, India and Indonesia reduce or remove incentives to innovate, for instance in order to find more stable forms of compounds with longer shelf-lives, medicines which may be easier to store, dosages which are safer or reduce side-effects.

Another area of continued concern reported by rightholders is the **system for protecting undisclosed test and other data generated to obtain a marketing approval** for pharmaceuticals in Argentina, Brazil, China, India, Indonesia, Malaysia and Saudi Arabia, and for agrochemical products in Argentina, Malaysia and Türkiye.

In the area of copyright and related rights, problems with the functioning of the system of **collective management of rights** in Nigeria and Türkiye cause losses for rightholders and create mistrust amongst users, which ultimately has a negative effect on the creative industries in these countries.

As far as the **protection and enforcement of plant variety rights** are concerned, EU breeders face problems which can be grouped as follows: lack of effective legislation on plant variety rights in accordance with the 1991 Act of the International Convention for the Protection of New Varieties of Plants; absence of the International Union for the Protection of New Varieties of Plants (UPOV) membership; the non-availability of the UPOV PRISMA online application system for new plant varieties and the lack of an effective system for the collection and enforcement of royalties at administrative levels. With regards to the lack of effective legislation, the most relevant problems are the overly broad exceptions to the breeders' rights and the limited scope of protection. EU stakeholders have reported Argentina, Ecuador, UAE and Türkiye for deficiencies in their plant variety rights' regime.

**Various trading partners of the EU have not yet acceded to important international conventions.** Argentina, Brazil, China, Ecuador, India, Indonesia, Malaysia, Mexico, Nigeria, Saudi Arabia and Thailand, have not yet acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants. Argentina, Brazil, Ecuador, India, Indonesia, Malaysia, Nigeria, Saudi Arabia and Thailand, have not yet acceded to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs.

Argentina, Ecuador, Nigeria and Saudi Arabia have not yet acceded to the Madrid Agreement Concerning the International Registration of Marks and the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. Brazil, Saudi Arabia and Vietnam have not yet acceded to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Thailand has not acceded the WIPO Performances and Phonograms Treaty. Argentina has not yet acceded to the Patent Cooperation Treaty.

## 5. EU ACTIVITIES IN THE CONTEXT OF IPR

### 5.1. Bilateral and Regional Level

#### 5.1.1. Trade negotiations

The EU negotiates **bilateral and regional trade agreements**<sup>18</sup> that include comprehensive IPR chapters as well as negotiates stand-alone agreements on GIs. The IPR chapters aim at setting comparable levels of IPR protection to those existing in the EU, while taking into account the level of development of the trading partners. In doing so, the EU seeks to complement the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) by addressing new challenges, most notably the need to protect IPR in the digital environment. The EU also promotes adequate enforcement rules in its trade negotiations.

Since the last Third Country Report, the EU has concluded negotiations (including IPR chapters) with Chile and New Zealand. Negotiations are currently ongoing with Australia, Azerbaijan, Eastern and Southern African countries (ESA5: Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe), India, Indonesia and Uzbekistan.

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<sup>18</sup> [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region_en)

### 5.1.2. IP Dialogues and IP Working Groups

The Commission services engage in IP Dialogues, IP Working Groups with partner countries around the world, including those with which an agreement is in place covering IPR issues. In this context, since the last Third Country Report, the Commission has had such dialogues or working groups with countries of the Andean Community (Colombia, Peru and Ecuador), Central America, China, Japan, Mexico, Paraguay, South Korea, Taiwan, Thailand, Türkiye, Ukraine, United Kingdom, the United States, Uruguay and Vietnam.

Concerning GIs, continuous dialogue and the organisation of technical cooperation aim at improving the understanding of the trading partners in view of better addressing cases of insufficient or poor protection.

### 5.1.3. Technical cooperation programmes

The Commission operates various EU-funded technical cooperation programmes that aim to strengthen IPR protection and enforcement in third countries and/or to assist EU rightholders seeking IPR protection in those countries.

The Commission steers **three IP Key cooperation programmes**<sup>19</sup> for the period 2022-2024<sup>20</sup>: China (€ 4.67 million), Southeast Asia (€ 4.33 million) and Latin America (€ 4.33 million). These multi-annual IPR programmes, implemented and co-funded by the EUIPO, continue enhancing the EU's cooperation with the respective countries or regions through concrete activities in the area of IPR protection and enforcement. IP Keys continue providing relevant support to negotiations and implementation of EU trade agreements as well as IP Dialogues.

The Commission also steers the **AL-INVEST Verde Programme**, which has a component that seeks to achieve an enhanced use and effectiveness of IPR in Latin America, particularly in the MERCOSUR countries, for the period 2022-2024. It aims to expand and improve the use of IPR to boost opportunities for research cooperation and stimulate competitiveness and sustainable innovation in the region<sup>21</sup>.

The **Intellectual Property Rights and Innovation in Africa (or AfrIPI)** project launched by the Commission, implemented and co-funded by the EUIPO, became fully operational in 2021<sup>22</sup>. Its activities carried out on the African continent in the interest of intra-African trade as well as African and European investment aim to promote international IP agreements and to facilitate fact-based negotiations on the IP protocol of the African Continental Free Trade Area; to contribute to the strengthening of IP institutions, networks and tools; to strengthen the awareness of MSMEs/the productive sector on the importance and value of IPR in African society; and to support the implementation of priority actions identified by its work plan linked to the African Union Continental Strategy for GIs<sup>23</sup>. The Africa IP SME Helpdesk under the

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<sup>19</sup> <https://ipkey.eu/en>

<sup>20</sup> See Commission Implementing Decision of 1.12.2020 amending Commission Implementing Decision C(2020)2779 of 5.5.2020 on the financing of the 2020 Partnership Instrument Annual Action Programme for cooperation with third countries to be financed from the general budget of the European Union: [https://fpi.ec.europa.eu/system/files/2021-05/27\\_Partnership%20Instrument%202020.pdf](https://fpi.ec.europa.eu/system/files/2021-05/27_Partnership%20Instrument%202020.pdf)

<sup>21</sup> [https://alinvest-verde.eu/en\\_gb/component-3/](https://alinvest-verde.eu/en_gb/component-3/)

<sup>22</sup> [DG TRADE official website](#)

<sup>23</sup> [https://au.int/sites/default/files/documents/36127-doc-au\\_gis\\_continental\\_strategy\\_enng\\_with-cover-1.pdf](https://au.int/sites/default/files/documents/36127-doc-au_gis_continental_strategy_enng_with-cover-1.pdf)

auspice of the AfrIPI project also supports SMEs from the EU to both protect and enforce their IPR in/or relating to Africa by providing free information and services<sup>24</sup>.

The Commission launched in 2019 a cooperation project for CARIFORUM states<sup>25</sup> in furthering the implementation of the IPR component of the Economic Partnership Agreement (EPA) commitments with the EU. This **CARIPI** project lasting until April 2024 is implemented and co-funded by the EUIPO with an initial duration of 4 years<sup>26</sup>. Its specific objective is to further upgrade and harmonise the systems for IP creation, protection, administration and enforcement in line with the EPA provisions, and to contribute to regional integration in IPR.

The **ASEAN Regional Integration Support** from the EU (ARISE Plus) programme<sup>27</sup>, implemented and co-funded by the EUIPO, has continued with the aim of supporting greater economic integration in ASEAN countries inter alia by improving IPR protection and enforcement. Under the IPR component of ARISE Plus, the EU supports ASEAN regional integration and further upgrades and improves the systems for IP creation, protection, utilisation, administration and enforcement in the Southeast Asia, in line with international IPR best practice and standards and the ASEAN IPR Action Plan 2016-2025. The project, which started in 2018, will run until June 2023.

## 5.2. Multilateral Level

### 5.2.1. WTO

The Commission is an active contributor to IP protection and enforcement at multilateral level, in particular in the WTO TRIPS Council. The EU has been at the forefront of the work on the WTO response to the COVID-19 pandemic. Following a proposal of a group of WTO Members to waive certain parts of the TRIPS Agreement in response to the pandemic, the EU contributed with a Communication to the TRIPS Council on Urgent Trade Policy Responses to the COVID-19 Crisis: Intellectual Property<sup>28</sup>, and engaged in formal and informal discussions with the key partners on identifying a solution that led to a compromise outcome agreed by consensus at the WTO in June 2022<sup>29</sup>.

In 2021, the Commission co-sponsored discussions on “IP for investment, financing and funding” and “Women and intellectual property” and in 2022 on “IP and microfinance, IP licences as revenue, IP financing start-ups” with the so-called “Friends of IP and Innovation” (FOII) like-minded group, which includes countries such as Australia, Canada, Japan, Norway, Singapore, Switzerland and the United States. These discussions provide an overview of WTO Members’ national and international IP policies, initiatives and case studies, which is a useful reference for legal, regulatory and policy developments.

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<sup>24</sup> [Africa IP SME Helpdesk \(europa.eu\)](#)

<sup>25</sup> The CARIFORUM States, a subgroup of the African, Caribbean, and Pacific Group of States, serving as a base for economic dialogue with the EU, are: Antigua & Barbuda; the Bahamas; Barbados; Belize; Dominica; Dominican Republic; Grenada; Guyana; Haiti; Jamaica; Saint Lucia; St Vincent and the Grenadines; St Kitts and Nevis; Suriname; Trinidad & Tobago; and Cuba.

<sup>26</sup> [CarIPI | EU Funded IP Projects \(internationalipcooperation.eu\)](#)

<sup>27</sup> <http://ariseplus.asean.org/>

<sup>28</sup> WTO documents IP/C/W/680 and IP/C/W/681.

<sup>29</sup> Ministerial Decision on the TRIPS Agreement adopted on 17 June 2022

The EU has submitted annual reports<sup>30</sup> in 2021 and 2022 on actions taken or planned in pursuance of its commitments under Article 66.2 of the TRIPS Agreement (incentives provided to their enterprises or institutions for the purpose of promoting and encouraging technology transfer to least developed country Members). In addition, the EU has submitted annual reports<sup>31</sup> in 2021 and 2022 in accordance with Article 67 of the TRIPS Agreement on technical cooperation programmes provided by the EU and EU Member States in favour of developing and least developed country Members, with the objective to facilitate the implementation of the TRIPS Agreement.

### 5.2.2. WIPO

The Commission remains actively engaged in WIPO's work on the enforcement of IPR. This concerns in particular, but not exclusively, the Advisory Committee on Enforcement (ACE)<sup>32</sup>. The Commission also supports WIPO ALERT<sup>33</sup>, and ensures synergies between this initiative and the Memorandum of Understanding on online advertising and IPR<sup>34</sup>.

### 5.2.3. OECD

The European Commission has been actively involved in the implementation of the *OECD Recommendation on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones*<sup>35</sup>. This Recommendation, adopted on 21 October 2019, proposes measures to enhance transparency in free trade zones in order to prevent criminal organisations from taking advantage of them, and includes a Code of Conduct for Clean Free Trade Zones. As part of the implementation, the OECD Task Force on Countering Illicit Trade (OECD TF-CIT), which was responsible for the preparation of the Recommendation, has developed a Certification Scheme to assess and certify the compliance of free trade zones with the Code of Conduct.

Also in the framework of the OECD TF-CIT, the EUIPO contributed to the preparation of several OECD-EUIPO studies. In 2021, the EUIPO and the OECD released two studies on

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<sup>30</sup> IP/C/R/TTI/EU/2/Corr.1 in 2021.

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:IP/CRTTI/EU2C1.pdf&Open=True>  
IP/C/R/TTI/EU/3 in 2022.

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:IP/CRTTI/EU3.pdf&Open=True>

<sup>31</sup> IP/C/R/TC/EU/3 in 2022.

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:IP/CRTC/EU3.pdf&Open=True>  
IP/C/R/TC/EU/2 in 2021.

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:IP/CRTC/EU2.pdf&Open=True>

<sup>32</sup> The Advisory Committee on Enforcement (ACE) (<https://www.wipo.int/enforcement/en/ace/>) was established by the 2002 WIPO General Assemblies with a mandate to carry out technical assistance and coordination in the field of enforcement. The ACE focuses on coordinating with public and private organisations to combat counterfeiting and piracy, public education; assistance, coordination to undertake national and regional training programs for all relevant stakeholders, and exchange of information on enforcement issues.

<sup>33</sup> WIPO ALERT is a secure, online platform to which authorised bodies in WIPO member states can upload details of websites or apps which have been determined to infringe copyright according to national rules.

<https://www.wipo.int/wipo-alert/en/>

<sup>34</sup> The MoU on online advertising and IPR is a voluntary agreement facilitated by the European Commission to limit advertising on websites and mobile applications that infringe copyright or disseminate counterfeit goods.

[https://ec.europa.eu/growth/industry/policy/intellectual-property/enforcement/memorandum-of-understanding-online-advertising-ipr\\_en](https://ec.europa.eu/growth/industry/policy/intellectual-property/enforcement/memorandum-of-understanding-online-advertising-ipr_en)

<sup>35</sup> OECD Recommendation on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones (October 2019).

<http://www.oecd.org/gov/risk/recommendation-enhancing-transparency-free-trade-zones.htm>



*Global Trade in Fakes* (June)<sup>36</sup> and on the *Misuse of E-Commerce for Trade in Counterfeits* (October)<sup>37</sup>. In March 2022, the EUIPO and the OECD released a study on *Dangerous Fakes*<sup>38</sup> and in January 2023, a study on the *Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms*<sup>39</sup>.

The 12 studies jointly prepared by the OECD and the EUIPO so far provide essential evidence helping policy makers to better address the problem of illicit trade and raising awareness on the negative impact of counterfeit not only for the economy but also for the health and safety of consumers and the environment.

### 5.3. Other Activities

On 1 December 2022, DG Trade published the Counterfeit and Piracy Watch List<sup>40</sup>, which presents examples of reported marketplaces and service providers whose operators or owners are allegedly resident outside the EU and which reportedly engage in, facilitate or benefit from counterfeiting and piracy. The aim of the Watch List is to urge the operators and owners as well as the responsible local enforcement authorities to take the necessary actions and measures to reduce the availability of IPR infringing goods or services and to raise consumer awareness.

## 6. COUNTRY-SPECIFIC ANALYSIS

### 6.1. Priority 1

#### China

##### Progress

China has continued to strengthen its IPR protection through different measures, following the institutional and judicial reforms carried out in preceding years, as reported in 2021. This included the introduction of specialised IP courts or tribunals and the creation of a specialised

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<sup>36</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

<sup>37</sup> OECD/EUIPO (October 2021), *Misuse of E-Commerce for Trade in Counterfeits*, Illicit Trade, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/misuse-e-commerce-trade-in-counterfeits/EUIPO\\_OECD\\_misuse-e-commerce-trade-in-counterfeits\\_study\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/misuse-e-commerce-trade-in-counterfeits/EUIPO_OECD_misuse-e-commerce-trade-in-counterfeits_study_en.pdf)

<sup>38</sup> OECD/EUIPO (March 2022), *Dangerous Fakes: Trade in Counterfeit Goods that Pose Health, Safety and Environmental Risks*, Illicit Trade, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes\\_study\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes_study_en.pdf)

<sup>39</sup> OECD/EUIPO (January 2023), *Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms*, Illicit Trade, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/Risks\\_of\\_Illicit\\_Trade\\_in\\_Counterfeits\\_to\\_SMEs/Risks\\_of\\_Illicit\\_Trade\\_in\\_Counterfeits\\_to\\_SMEs\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Risks_of_Illicit_Trade_in_Counterfeits_to_SMEs/Risks_of_Illicit_Trade_in_Counterfeits_to_SMEs_FullR_en.pdf)

<sup>40</sup> Commission Staff Working Document, Counterfeit and Piracy Watch List, SWD(2022) 399 final.

<https://circabc.europa.eu/ui/group/d0803128-7d62-40ee-8349-c43ee92745aa/library/b36f701d-2850-4768-9b3e-e487140e11e5/details?download=true>

IP court as part of the Supreme People's Court (SPC). China has also continued to make substantial efforts to review and update its legislation to improve the IPR protection and enforcement, for example through the changes to its civil procedure law and criminal law, the copyright law, patent law, trademark law, unfair competition law and e-commerce law. Many new judicial interpretations have been issued as guidance for enforcement and litigation, for example judicial interpretation on punitive damages. Importantly, China has joined the Hague Agreement on the International Registration of Industrial Designs.

With regard to legislative changes, as outlined in the previous report, the new Patent Law of 2021 includes a number of positive elements, such as the patent right extension to compensate for the time needed for review and approval of the innovative drugs for marketing purposes, and an increase in the amount of damages that can be ordered by the court. China has also introduced measures to implement an early dispute resolution mechanism for drug patents, which allows the patentees and generics' companies to resolve their patent disputes during market approval process of generic drugs. The Implementing Regulations of the new Patent Law are still pending and the Patent Examination Guidelines are being revised<sup>41</sup>.

As reported previously, China has in recent years made significant progress in the area of copyright, with the revised Copyright Law of 2020, which entered into force in 2021. The amendments introduced rights of producers for the use of phonograms for broadcasting or communication to the public, added enforcement reforms, including a ten-fold increase in maximum "punitive" damages, shifted the burden of proof to the accused infringer and strengthened protections for technological protection measures. The new rules also codified elements of the three-step test for exceptions and limitations.

The amendments to the Criminal Law (that came into force on 1 March 2021) raised the protection of IPR, inter alia by increasing the maximum penalty for IPR crimes to 10 years, adapted the copyright and related rights' provisions and improved the scope of criminal liability for trademarks and trade secrets.

Following the Chinese government's 2020-2021 Plan for Implementing the "Opinions on Strengthening IP Protection", some important documents have been released or revised in 2020, including the *Interpretation of the Supreme People's Court and the Supreme People's Procuratorate of the Issues concerning the Specific Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights*<sup>42</sup>, the SPC's *Guiding Opinions on the Trial of Civil Cases of Intellectual Property Rights Involving E-Commerce Platforms*, the SPC's *Reply regarding Several Issues on Application of Internet Intellectual Property Infringement Disputes*, and the *Provisions on the Transfer of Suspectable Criminal Cases by Administrative Organs for Law Enforcement*, which provide for the forfeiture and destruction of counterfeit or pirated goods, improve notice and take down rules, clarify certain specific measures involving preliminary injunctions and require administrative authorities to transfer a case for criminal enforcement where there is a reasonable suspicion of infringement.

Stakeholders have also reported some positive developments regarding remedies for rightholders, where some legal documents have been issued in several regions with more advanced IPR protection in China, such as the *Guiding Opinions of the Beijing Higher People's Court on Determining Compensation in Cases of IPR Infringements and Unfair Competition*

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<sup>41</sup> The latest draft version was submitted for public consultation until mid-December 2022.

<sup>42</sup> The Interpretation is being amended in 2023, with call for public comments on the draft amendments open from 18 January to 5 March.

*and the Standards of Legal Compensation* from April 2020, which have granted rightholders certain discretion when calculating damages and settled the minimum amount of statutory compensation for different types of IPR infringements.

With regard to copyright enforcement, EU stakeholders report that there has been progress for several years through the establishment of IP Courts in several cities where some important decisions have been passed. They mention in particular as positive developments the *Interpretation of the draft Opinions of the Supreme People's Court on Strengthening the Protection of the Copyright and Copyright-Related Rights*, and the *Notice of the National Copyright Administration of China on Evidence Examination and Determination in Copyright Administrative Enforcement*. Additionally, they mention that decisions by the SPC and the National Copyright Administration of the People's Republic of China in 2020 have eased the burden of proof for copyright owners by considering the copyright statement on the works to be sufficient evidence of ownership, absent counterevidence.

With regard to trademarks, as already reported in 2021, the latest amendments to the Trademark Law aimed at addressing bad faith applications and introducing or strengthening provisions on the trademark agency's liability, the amount of damages and the destruction of counterfeit goods<sup>43</sup>. Following these changes, China has maintained and increased its efforts to combat bad-faith filings, for example through recognising more often bad-faith filings and sanctioning IP firms for participating in mass bad-faith trademark filings. In 2021, China undertook a targeted "action plan" directed at bad-faith trademark activity. The guidelines for trademark examination that became effective in January 2022 provide further guidance on bad faith applications.

China's State Administration for Market Regulation (SAMR) proposed in 2021 amendments to the E-commerce Law, which introduced some positive changes, such as a prolonged time of reaction for rightholders to counter-notices of online platform operators, and strengthened the sanctions against abusive counter-notices and e-commerce platforms that fail to take the necessary measures against IPR infringements. These changes have not however been finalised yet.

With regard to the protection of plant varieties, the amendment to the Chinese Seed Law, released on 24 December 2021, contains a number of improvements to plant breeders' rights, addressing some of the key requirements of the 1991 Act of the International Convention for the Protection of New Varieties of Plants for plant variety right protection. In particular, it extends the scope of protection to harvested materials obtained through the unauthorised use of propagating material of protected varieties, introduces the concept of essentially derived varieties and increases the amount of civil compensation for an infringement. The rights of breeders now extend to the offering for sale, import and export, and storage for these purposes. The Law also clarifies that the breeder may license its right to third parties and collect royalties.

With regard to enforcement of IPR, rightholders report that China's criminal enforcement authorities have shown willingness and interest in cooperation to conduct raids. Enforcement authorities are reported to have become more sophisticated and knowledgeable on IP-related cases, especially those in major cities.

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<sup>43</sup> New revision of the Trademark Law is pending, with public consultation that took place between January and end February 2023.

## Concerns and areas for improvement and action

Stakeholders continue to report a number of important concerns. Some of the concerns relate to the lack of clarity of legal provisions and the need for specific clarifications to increase legal certainty and reduce the margin of discretion of authorities in the practical implementation of laws and regulations. They continue to stress the importance of non-discriminatory implementation of the new rules in practice. Stakeholders also continue to raise concerns about transparency in court decisions and the inconsistency of the court decisions among different provinces across China. Whereas useful guidance has been provided in several cases, including by the SPC, more coherence is needed, in particular at local level where the courts are, for example, reported to provide for lower penalties or favour local stakeholders.

Concerns about the **discrimination** of foreign rightholders in comparison to local rightholders, both in court proceedings and by other enforcement authorities, remain for EU stakeholders, including as regards trade secrets. Lengthy legalisation and notarisation procedures have also been highlighted as putting the foreign companies at a disadvantage. With regard to patents and utility models, while China has moved from quantitative objectives to more qualitative objectives, to increase high value inventions and has reduced or is doing away with measures to support high numbers of filings<sup>44</sup>, the huge number of utility models granted in China remains a major challenge for EU stakeholders which continue to call on rationalising the registration of utility models, e.g. by imposing stricter enforcement requirements and by introducing a higher threshold as regards the inventive step.

EU companies hold a number of important **standard essential patents** (SEPs) for technologies such as the telecommunication standard “4G” and “5G”. EU stakeholders continued to report difficulties to obtain licences from some Chinese companies and consider that the Chinese rules do not adequately reflect the obligations on potential licensees to negotiate in good faith. The courts in China are reported to undervalue foreign patents and overvalue the Chinese ones, without legal certainty for EU stakeholders on applicable rules and guidelines.

Additionally, stakeholders have reported concerns about Chinese courts putting in place anti-suit injunctions of global effect that restrict the possibility for patent holders to protect and enforce their rights outside Chinese courts. The first decision came from the SPC in August 2020<sup>45</sup>, followed by other decisions by lower courts.

Enforcement of patent rights was reported as a challenge for EU stakeholders. They mention in particular the formality requirements for evidence produced outside China as being unreasonably strict, with unclear standards for acceptance of cases by courts and difficulties to obtain a preliminary injunction.

With respect to **trademarks**, the number of bad faith filings remains high and is still of a major concern. EU stakeholders report that a rising number of bad faith actors are targeting brands by submitting a small number of applications for specific marks. They consider that more should

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<sup>44</sup> In the *Notice of the State Intellectual Property Office on Continuing to Strictly Regulate Patent Applications*, issued on 25 January 2022, one of the measures mentioned to crack down abnormal patent applications is the reduction of various types of financial support for patent applications, in particular reducing the financial support at least 25 percent annually until full elimination of the support by 2025.

<sup>45</sup> Supreme People’s Court of the People’s Republic of China, Civil Ruling of 28 August 2020, in cases between Huawei Technology Co. LTD and Conversant Wireless Licensing S. à r. l. (2019) Zui Gao Fa Zhi Min Zhong No. 732, No. 733 and No. 734, Zhi yi.

be done to encourage trademark examiners to reject trademark applications made in bad faith and to apply standards for examination, opposition, and invalidation more consistently across the different examination centres.

EU stakeholders also report as a concern that the China National Intellectual Property Administration (CNIPA) does not suspend proceedings until a decision is taken on the validity of potentially fraudulent applications and this leads to rejections of new trademark applications made in good faith due to the prior trademark registrations, even if these are fraudulent and an opposition or invalidity procedure is ongoing.

With regard to plant protection, EU report as a concern that the breeders are required to disclose too much confidential information in their applications, which goes beyond what is needed for the purpose of granting plant breeder's rights.

In the area of **copyright and related rights**, the copyright-related regulations still need to be amended to ensure the proper implementation of the Copyright Law.

The patent owners in the pharma sector are seriously concerned about the lack of effective **regulatory data protection**. They report that no foreign drug products have effectively received data exclusivity in China. China's current system lacks definitions of some key concepts. The EU stakeholders report also a concern with the definition of a new product that needs to be "new" to the world and thereby reduces the scope of protection.

The pharmaceutical industry is also concerned with the human genetic resource review requirement for all clinical studies sponsored by foreign entities, which creates, in their view, unnecessary burdens on drug development and leads to forced IP sharing between foreign and Chinese parties.

As regards **trade secrets**, the Anti-Unfair Competition Law with its latest amendments in 2019<sup>46</sup>, as reported in the previous edition, continues to be the legal basis for Chinese authorities to address trade secrets theft, together with Criminal Law and some other laws, notably labour-related. However, EU stakeholders still report increased violations of their trade secrets and call for a specific law for trade secret protection. The burden of proof of trade secret violation remains high for them and the protection is ineffective in practice.

While the prohibition of forced technology transfer introduced by the Foreign Investment Law<sup>47</sup>, as well as of the removal of restrictions on the use of certain licence conditions from the Technology Import and Export Regulations<sup>48</sup> have been well noted in the previous report, the induced or **forced technology transfer** continues to be a problem in China<sup>49</sup>, which reflects China's objective to absorb foreign technology and obtain a technological edge and self-sufficiency in key areas, in line with the major political documents for the period until 2035,

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<sup>46</sup> In November 2022, China's State Administration for Market Regulation ("SAMR") published for comments draft amendments to the law.

<sup>47</sup> [http://www.fdi.gov.cn/1800000121\\_39\\_4872\\_0\\_7.html](http://www.fdi.gov.cn/1800000121_39_4872_0_7.html)

<sup>48</sup> State Council Decision no. 709, paragraph 38 of March 2019.

<sup>49</sup> The transfer of technology is a normal development in the economic process of a catch-up economy and unproblematic as long as it is voluntary and based on market terms and conditions. According to the 2022 Business Confidence Survey by the ECCC, compelled technology transfer is still taking place for 14% of respondents, with a third of those saying it took place within the past two years and just under a third reporting that it was still taking place in February 2022.

[Business Confidence Survey \(eurochamber.com.cn\)](https://www.eurochamber.com/en/business-confidence-survey)

such as *the Outline for Building a Powerful Country with Intellectual Property Rights (2021-2035)* and *the 14th Five-Year Plan for IP*.

As explained in the 2021 Report, forced technology transfer is a complex phenomenon, which includes a variety of practices carried out by the government or government-influenced private parties that require, pressure or induce foreign firms to transfer their technology to China in exchange for market access, investment access, administrative approvals or some support schemes. Such technology transfers are induced or forced through policy guidance, legal instruments and practices, including through joint venture requirements/equity caps, authorisation or licensing procedures in different sectors requiring extensive documentation and insufficient protection of IPR or trade secrets<sup>50</sup>. At the same time, China is making it more difficult to transfer technology from China to Europe<sup>51</sup>.

Despite the continued efforts by the Chinese government to fight **counterfeiting and piracy**, including through a number of targeted actions reported by the Chinese authorities<sup>52</sup>, these remain a major concern. According to the joint EUIPO and DG TAXUD report on the EU enforcement of IPR, from December 2022<sup>53</sup>, China is still the main country of provenance (70%) for suspected IPR infringing goods.

The OECD-EUIPO joint study *Misuse of E-Commerce for Trade in Counterfeits* (October 2021)<sup>54</sup> shows that China's share of the total for counterfeits linked to e-commerce was 76% (vs. 46% of the total number of detentions). The OECD-EUIPO report *Global Trade in Fakes* (June 2021)<sup>55</sup> confirms that the highest number of counterfeit shipments seized come from East Asia, with China and Hong Kong (China) at the top of the ranking. The Europol-EUIPO study

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<sup>50</sup> For an overview of technology transfer practices see:

[https://www.oecd-ilibrary.org/trade/international-technology-transfer-policies\\_7103eabf-en](https://www.oecd-ilibrary.org/trade/international-technology-transfer-policies_7103eabf-en)

<sup>51</sup> China's Ministry of Commerce and Ministry of Science and Technology jointly issued Announcement No. 38 to amend the Catalogue of Technologies Prohibited or Restricted from Export.

<sup>52</sup> Such as joint "Jianwang Action 2021" to combat online infringement and piracy 2021 by the National Copyright Administration, the Ministry of Industry and Information Technology, the Ministry of Public Security and the Cyberspace Administration of China which led to the deletion of 1,197 million infringing links and 1,031 online infringement cases; the "Iron Fist" campaign by the State Administration for Market Regulation (SAMR) dealt with more than 50,000 cases involving trademark infringement and counterfeit patents; or the 2021 "Longteng", "Blue Net" and "Clean Net" campaigns for IPR protection by the General Administration of Customs, which detained 79,000 batches of suspected infringing goods for import and export, up 27.9% year on year, and reviewed and approved 17,700 applications for IPR customs protection, up 17% year on year. According to Chinese authorities, in 2021, procuratorial organs across the country approved the arrest of 7,835 IPR infringement suspects, and prosecuted 14,020; approved the arrest of 6,631 suspects for producing and selling counterfeit and shoddy goods, and prosecuted 16,598. Source: *Report on the Latest Development of IPR Protection and Business Environment in China*.

[W020220526577581460662.pdf\(cta.org.cn\)](W020220526577581460662.pdf(cta.org.cn))

<sup>53</sup> European Commission/EUIPO (2022), *EU enforcement of intellectual property rights: results at the EU border and in the EU internal market 2021*.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2022\\_EU\\_enforcement\\_of\\_IPRs\\_2021/2022\\_EU\\_enforcement\\_of\\_IPRs\\_results\\_2021\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_EU_enforcement_of_IPRs_2021/2022_EU_enforcement_of_IPRs_results_2021_FullR_en.pdf)

<sup>54</sup> OECD/EUIPO (October 2021), *Misuse of E-Commerce for Trade in Counterfeits*, Illicit Trade, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/misuse-e-commerce-trade-in-counterfeits/EUIPO\\_OECD\\_misuse-e-commerce-trade-in-counterfeits\\_study\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/misuse-e-commerce-trade-in-counterfeits/EUIPO_OECD_misuse-e-commerce-trade-in-counterfeits_study_en.pdf)

<sup>55</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnelweb/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnelweb/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

*Intellectual Property Crime Threat Assessment* (March 2022)<sup>56</sup> shows that in 2019 and 2020, China (including Hong Kong (China)) was the main country of origin for IPR-infringing goods seized at the EU's external border (representing 61,81% in terms of number of articles and 68,75%, in terms of the value of the articles seized), as also shown by the OECD-EUIPO study on dangerous fakes<sup>57</sup> which states that from 2017 to 2019, the dangerous fakes seized mostly came from Asian countries, with eight of these countries accounting for around 84% of global seizures of dangerous fakes. These Asian countries were led by China (52%) and Hong Kong (China) (27%). The OECD-EUIPO report on the *Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms*<sup>58</sup> confirms that counterfeit goods infringing SMEs' IP mostly come by mail from China and Hong Kong (China).

While stakeholders acknowledge the efforts made by the Chinese authorities to improve the situation and the growing sophistication and knowledge of IP-related matters of **enforcement authorities**, they also underline that it remains very problematic and consider that the sanctions for IPR infringements remain insufficient to ensure a proper protection of IPR.

Among the main trends they mention that the manufacturing of counterfeits has been outsourced to countries outside China, notably to countries that fall under the Chinese Belt & Road Initiative (BRI) and are closer to key European markets – this allows to lower the costs associated with manufacturing and transporting of fake goods. They also report that the counterfeiters move away from the production and sale of direct counterfeit products to more 'lookalike' products, which are similar to legitimate products, without copying these. This makes the enforcement more complex. Overall, despite the growth in criminal proceedings, large-scale organised crime groups involved in counterfeiting remain largely unaffected by the measures taken by the authorities.

Stakeholders from the creative industries continue to report widespread copyright infringements, including unauthorised translations of books, the illegal sale of log-in details to subscription platforms providing lawful access to copyright content and websites offering pirated e-books. Stakeholders also report that circumvention devices designed to circumvent the TPMs on video game consoles and authentic games are widespread. China reportedly remains also the main source of illegal IPTV receivers and set-top boxes destined for the EU market.

Among specific difficulties that limit the means and efficiency of measures to combat illicit trade, the EU stakeholders report insufficient penalties to dissuade repeat offenders, stringent

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<sup>56</sup> EUROPOL/EUIPO (March 2022), *Intellectual Property Crime Threat Assessment 2022*.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2022\\_IP\\_Crime\\_Threat\\_Assessment/IP\\_Crime\\_Threat\\_Assessment\\_2022\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_IP_Crime_Threat_Assessment/IP_Crime_Threat_Assessment_2022_FullR_en.pdf)

<sup>57</sup> OECD/EUIPO (March 2022), *Dangerous Fakes: Trade in Counterfeit Goods that Pose Health, Safety and Environmental Risks*, Illicit Trade, OECD Publishing, Paris

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes\\_study\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes_study_en.pdf)

<sup>58</sup> OECD/EUIPO (2023), *Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms*, Illicit Trade, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/Risks\\_of\\_Illicit\\_Trade\\_in\\_Counterfeits\\_to\\_SMEs/Risks\\_of\\_Illicit\\_Trade\\_in\\_Counterfeits\\_to\\_SMEs\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Risks_of_Illicit_Trade_in_Counterfeits_to_SMEs/Risks_of_Illicit_Trade_in_Counterfeits_to_SMEs_FullR_en.pdf)

demands on detailed evidence on manufacturing and distributing networks, as well as difficulties with enforcing new damages.

With regard to **online environment**, some stakeholders report recent considerable successes in online takedowns, but online enforcement remains challenging, among other things due to complex and differing policies by online services. Another challenge that rightholders are facing is related to collecting evidence, as many procuratorates or courts may not accept digital evidence. Social media is mentioned as a growing area of concern. Stakeholders consider that the measures taken are insufficient and counterfeiters using online platforms sell and deliver small package items in huge volumes while avoiding enforcement measures. Stakeholders consider that China should improve criminal penalties for IPR infringements and foster better collaboration between the different enforcement authorities, as well as adopt enforcement measures to effectively discourage repeat infringers.

Moreover, with regard to means for **IPR enforcement** in China, differences and inconsistencies between various provinces and cities remain an issue. Stakeholders report that, in general, the standards of administration and courts in cities like Beijing, Shenzhen or Shanghai are more satisfactory and they expect them to improve further. However, lack of expertise continues to be a serious problem in the less developed provinces of China.

Stakeholders also report that different elements affect the efficiency of judicial enforcement, such as burdensome evidentiary requirements and the notarisation requirement. Overall, the stakeholders report that costly and burdensome civil litigation requirements contrasted with low damages awards make them rely on administrative and criminal enforcement routes instead of civil litigation. Increasing the range and scale of penalties available for criminal and administrative actions, accompanied by increased compensation in litigation would help to diminish infringements.

With regard to online enforcement, an additional difficulty is reported due to the high threshold of infringement required to trigger criminal enforcement for digital markets. Quantification of the financial gain made by the infringer, required by Chinese courts, is also a concern as it is often difficult to prove.

Another recurrent enforcement concern relates to the difficulty to obtain interim injunctions, despite their paramount importance for effective IPR protection and enforcement.

Stakeholders continue to point to the lack of sufficient cooperation between different administrative and law enforcement agencies competent to address IPR infringements, and to the difficulties for foreign rightholders to obtain coordinated enforcement action from those authorities. They report however that the 2020 Guidance Opinions of the Supreme People's Court on Increasing the Identity of Laws' Application and Strengthening the Search for Similar Cases (for Trial Implementation) are expected to improve the situation. Additional guidance from the SPC for the lower courts could help to achieve greater consistency in the application of the law across the country.

With regard to international treaties, China has not yet acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants.



## EU action

Different tools and mechanisms have been deployed to support China's efforts to improve IPR protection and enforcement.

The **EU-China Dialogue** has been in place since 2004. This mechanism has allowed both sides to exchange views on a wide range of IPR issues. It includes both policy discussions through the EU-China IP Dialogue at strategic level and more specific and technical discussions through the regular EU-China IP Working Group meetings. The last meeting of the EU-China IP Working Group took place in November 2022.

The technical cooperation programme **IP Key China**<sup>59</sup> provides for opportunities to strengthen cooperation on the ground and exchange best practices in priority areas, with a view to improving IPR protection and enforcement in China. The latest IP Key China programme started in October 2022 and will be running for three years.

The EU-China **Joint Customs Cooperation Committee** was established in 2009 and is in charge of the overall framework for customs cooperation and for the EU-China Customs IPR action plan. The current Action Plan in place covers the period 2021-2024. Since many goods suspected of infringing IPR come from Hong Kong (China), the Commission has also established an action plan on cooperation in customs enforcement of IPR directly with authorities in Hong Kong (China)<sup>60</sup>.

The Commission has also established an **IP SME Helpdesk** in China<sup>61</sup>, in support of the EU's small and medium sized enterprises which seek to protect and enforce their IPR in China. The services and information provided by the IP helpdesk, such as the helpline, trainings and web-based materials are free of charge. The term of the China IP SME Helpdesk has been extended until 2024.

On 27 January 2023, the WTO Dispute Settlement Body established a panel<sup>62</sup> at the request of the EU to assess the consistency with the TRIPS Agreement of the Chinese anti-suit injunctions, and the failure to publish certain judicial decisions.

## 6.2. Priority 2

### India

#### Progress

A number of improvements can be noted in India's IPR system. Stakeholders report positive efforts by CIPAM<sup>63</sup>, the Cell for IPR Promotion and Management of the Ministry of Commerce and Industry, which is active, amongst others, on issues related to copyright protection and enforcement coordination. CIPAM has also engaged with a number of foreign IPR offices on

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<sup>59</sup> <https://ipkey.eu/en/china>

<sup>60</sup> The Action Plan on Cooperation in Customs Enforcement of Intellectual Property Rights in the European Union and Hong Kong (China) is not public.

<sup>61</sup> <http://www.china-iprhelpdesk.eu/frontpage>

<sup>62</sup> DS611

<sup>63</sup> <http://cipam.gov.in/>

international best practices in various IPR fields. Recommendations from the Economic Advisory Council to the Prime Minister recognise IPR as a critical element for businesses.

There is an ongoing work to address India's patent examination backlog in order to reduce examination periods from seven years to 18 months from initial submission.

On enforcement, stakeholders report that, while is still challenging, there is an improvement as regards injunctions in copyright cases against infringing websites, particularly at the Delhi High Court. Stakeholders also indicate that India has developed a solid legal framework for combating counterfeiting and piracy, including at the border. However, this system only applies to imported goods.

### Concerns and areas for improvement and action

Several constraints on **patent protection** continue to be detrimental to EU companies. Restrictive patentability criteria are a source of concern and uncertainty and pre- and post- grant opposition proceedings are costly and time-consuming. Even if some positive measures have been undertaken by the Indian Patent Office to improve registration efficiency, there is still a worryingly large patent backlog. Patent holders have an obligation to issue an annual 'working statement', where they inform the Patent Office about the commercial exploitation of the patent. This obligation is a burdensome requirement, in particular for SMEs, and is subject to severe sanctions for non-compliance. Stakeholders also keep reporting difficulties in enforcing patents.

In 2022, the Economic Advisory Council to the Prime Minister issued a report<sup>64</sup> that highlights various issues that affect the Indian patent ecosystem negatively, e.g. lengthy procedures (58 months to dispose of a patent application), shortage of manpower in the patent office and several procedural issues in the patent application process (no fixed timeline for various steps, cumbersome compliance requirements like submitting information pertaining to processing of foreign patent applications).

The abovementioned report also refers to issues in the **trademark** system, such as delays of 5 to 10 years to process applications in opposition proceedings, shortage of manpower and procedural issues (e.g. lack of respect of deadlines). EU stakeholders report similar concerns. Issues with bad faith registrations are also reported.

As regards **copyright** and related rights, the Department for Promotion of Industry and Internal Trade's (DIPP) Memorandum of September 2016<sup>65</sup> still gives rise to serious concerns as it seems to suggest that all online transmissions, including on-demand online services such as music streaming, should be considered as "broadcasting" and fall under India's statutory licensing system for broadcasting organisations pursuant to Section 31D of the Indian Copyright Act<sup>66</sup>. In addition, stakeholders report that authors of musical works are not able to claim royalties for the broadcasting of their musical compositions embodied in sound recordings. Stakeholders also raise shortcomings regarding the necessary definitions regarding,

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<sup>64</sup> <https://www.ies.gov.in/pdfs/why-India-needs-to-urgently-invest-in-its-IPR-ecosystem-16th-Aug-2022.pdf>.

The report emphasises that "an evolved Intellectual Property Rights regime is the basic requirement for a knowledge-based economy. Technological innovation and scientific research require a robust patenting system". It also proposes appropriate solutions to address the identified issues.

for instance, technological protection measures or the unauthorised removal of rights management information.

Another area of concern reported by rightholders is related to the effectiveness of the system for protecting **undisclosed test and other data** generated to obtain marketing approvals for pharmaceutical products.

India does not have specific legislation protecting **trade secrets**. Therefore, trade secret holders can only rely on non-disclosure clauses for the protection of their confidential information. They can base their claims on India's common law in order to start court proceedings on the disclosure of trade secrets in breach of confidence or contractual obligations.

**IPR enforcement** remains a source of serious concern. EU stakeholders report improvements on judicial enforcement in the last two years, particularly blocking piracy sites. However, it is also noted that despite having a strong legal framework, enforcement is still not sufficiently effective to deal with the extent of counterfeiting in the country. Courts in India do not provide sufficiently deterrent penalties. In April 2021 India abolished the Intellectual Property Appellate Body Board (IPAB), which was established to hear appeals against the decisions of the Registrar on trademarks, patents, copyright and GIs. This means that appeals against the decisions of the Registrar will be filed before the competent court. The effect of this change on the efficiency of litigation is still to be assessed.

As regards **customs enforcement**, the India Customs Act in conjunction with the IPR (Imported Goods) Enforcement Rules allow rightholders to record their rights with Indian Customs Authorities to promote the seizure of imported counterfeit goods. However, rightholders report that customs' recording of trademarks is still slow, procedures lack transparency and are overly bureaucratic. The lack of prescribed timelines for adjudicating customs seizures has led to long delays in the destruction of seized goods, increasing the costs for brand owners. Currently, storage and destruction costs are borne by the brand owners. According to the OECD-EUIPO study, *Global Trade in Fakes* (June 2021)<sup>67</sup>, India appears on the list of the top 25 provenance economies for counterfeit between 2017 and 2019. India has also been identified by the Europol/EUIPO joint study, *Intellectual Property Crime Threat Assessment* (March 2022)<sup>68</sup>, as one of the countries of origin of counterfeit pharmaceutical products most commonly detected in 2019 and hosting servers containing websites illegally distributing audio-visual content.

India has not yet ratified the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

## EU action

The European Union Intellectual Property Office (EUIPO) and the Department for Promotion of Industry and Internal Trade (DPIIT) signed a Memorandum of Understanding (MoU) on 20

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<sup>67</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

<sup>68</sup> EUROPOL/EUIPO (March 2022), *Intellectual Property Crime Threat Assessment 2022*.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2022\\_IP\\_Crime\\_Threat\\_Assessment/IP\\_Crime\\_Threat\\_Assessment\\_2022\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_IP_Crime_Threat_Assessment/IP_Crime_Threat_Assessment_2022_FullR_en.pdf)

May 2022, which will set the ground for future relations and cooperation between the two organisations.

On 17 June 2022, the EU relaunched negotiations with India on a **Free Trade Agreement**, and launched separate negotiations on an Investment Protection Agreement and an Agreement on GIs.

The India **IP SME Helpdesk** supports SMEs from the EU and COSME associated countries to both protect and enforce their IPR in or relating to India by providing free information and services. These comprise jargon-free, first-line, confidential advice on IPR and related issues, as well as training, materials and online resources.

## Türkiye

### Progress

The Industrial Property Code<sup>69</sup>, which was adopted in January 2017, has brought positive developments, for example, with respect to the protection of well-known trademarks and the invalidation of bad faith registrations. The Code has also increased the level of protection of GIs. Stakeholders report that the enforcement of well-known trademarks has become faster and more effective in recent years. The Turkish Patent and Trademark Institute continued to expand the use of online applications and developed its call centre services, especially with regard to trademarks.

In the past, Türkiye had taken significant steps to improve its IPR system. However, no substantial progress has been made during the reporting period in the protection and enforcement of IPR.

Customs authorities have received an increased number of applications by rightholders and have slightly increased the number of seizures. During the reporting period, some trainings provided to customs officers and judges took place which could have contributed to the increase of actual seizures. However, the effect of these trainings still remains to be assessed. The establishment of specialised IPR courts has strengthened the quality of IPR enforcement in Türkiye by creating a framework in which consistent jurisprudence can be developed. Regrettably, despite the possibility to order higher sanctions, the criminal courts rarely order deterrent fines for commercial scale IPR infringements.

The Copyright Law was amended bringing changes to the collective management organisations (CMOs) and banderol regulation. The changes regarding the CMOs have introduced some novelties regarding establishment, membership and working principles of CMOs.

The regulation on the Intellectual Property Academy<sup>70</sup> entered into force on 14 November 2019. The Academy is responsible for organising various meetings and trainings on IPR; conducting research, internal coordination and cooperation activities as well as providing consultancy services for public and private sector employees in the field of IPR.

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<sup>69</sup> Act N° 6769 on Industrial Property.

<sup>70</sup> Presidential Decree No 4 of 15 July 2018 and the Regulation on the Intellectual Property Academy, Official Gazette of 14 November 2019.

## Concerns and areas for improvement and action

Türkiye introduced an international **exhaustion regime** with the Industrial Property Code in 2017<sup>71</sup>. EU stakeholders continue reporting that, since Türkiye is in a customs union with the EU, the application of a different exhaustion regime than that of the EU makes it difficult for rightholders to control the exploitation of goods put on the market.

Stakeholders continue reporting for the period of reference that revocation, opposition and invalidation procedures for **trademarks** are disproportionately expensive and overly long. Stakeholders also report that the trademark registration system is unpredictable and unclear. The lack of precise definition of bad faith applications renders the invalidation procedure concerning these applications ineffective.

As regards **copyright** and related rights, Türkiye does not provide adequate legal protection against the circumvention of technical protection measures for authors, performers and phonogram producers, nor protection for rights management information as required by the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The necessary reform and modernisation of the copyright regime to fully implement the obligations of these treaties is pending for over a decade. Stakeholders are still very concerned about a possible amendment of the provision on the distribution right which could result in the import of copies of literary works that would not require the authorisation of the rightholder.

Another area of continued concern reported by stakeholders is the absence of an effective system for protecting **undisclosed test and other data** generated to obtain marketing approval for pharmaceutical and agrochemical products. Despite the fact that Türkiye has in place a regulatory data protection regime since 2005, stakeholders are concerned about its limited scope (biologics and combination products are excluded) and length (the minimum six-year protection period starts running with the date of the first marketing authorisation in any country of the EU-Türkiye Customs Union, thus potentially reducing the effective protection period in Türkiye). On top of that, Turkish law links the length of the regulatory data protection with the duration of patent protection. Hence, once a product is considered off-patent, it automatically loses its regulatory data protection. Stakeholders continue raising also other shortcomings such as ineffective implementation and unreasonably slow procedures to process applications for a marketing authorisation.

**Piracy** issues continue to plague the Turkish marketplace, undermining economic opportunities for domestic and foreign rightholders. Stakeholders report that enforcement against online copyright piracy remains ineffective in Türkiye. Digital piracy, via cyberlockers, bit-torrent and other peer to peer linking sites remains widespread. The Law of July 2022<sup>72</sup> amending the Regulation on Electronic Commerce introduces some changes concerning removal of illegal content by intermediary service providers. Stakeholders raise that the new rules have still some shortcomings, especially as regards the management of complaints and objections of the users. When it comes to the physical piracy, the European book publishing industry reports that piracy of books is also a serious problem in Türkiye (e.g. pirated translations of books in English).

Türkiye is used as transit hub for **counterfeits** from China to Europe and recently, due to disruptions in supply chains from China during the pandemic, its role as a regional manufacturer

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<sup>71</sup> <https://wipolex.wipo.int/en/legislation/details/16609>

<sup>72</sup> <https://www.resmigazete.gov.tr/eskiler/2022/07/20220707-2.htm>

of counterfeit goods for Europe and other nearby countries, has become more pronounced leading to a growth in counterfeit production for both domestic and export markets.

According to the OECD-EUIPO report on *Global Trade in Fakes* (June 2021)<sup>73</sup>, Türkiye ranks third in the top provenance economies of counterfeit and pirated goods in terms of customs seizures between 2017 and 2019. Its share of global seizures at the EU borders tripled during the same period, rising from 4% to 12%.

According to the study of OECD/EUIPO on *Dangerous Fakes* (March 2022)<sup>74</sup>, Türkiye is one of the main provenance economies of dangerous fakes and one of the main provenance economies of dangerous counterfeit goods imported into the EU and seized destined to the EU.

Stakeholders report that Türkiye is a key **transit point** for labels, tags and packaging materials. They are reportedly exported to the EU, separately from the goods and used for completing the infringement within the EU (e.g. by affixing the counterfeit labels and tags to the goods or by packaging them with the counterfeit packaging materials). Article 30 of the Turkish IP Code refers only to import and export, which causes legal uncertainty for rightholders, because the empowerment of customs authorities to detain and seize goods in transit is not laid down explicitly. However, a Decision of the Criminal General Assembly of the Supreme Court issued on 2 June 2020 (Case 2017/67 E 2020/253) ruled that the transit trade of counterfeit products constitutes an offence under the Turkish IP Code. It remains to be seen whether this decision will be sufficient to clarify the situation and whether lower courts will follow it.

According to the joint report of the Commission and EUIPO on *EU enforcement of intellectual property rights* (December 2022)<sup>75</sup>, Türkiye is the second country of provenance (9,26 %) by number of articles in 2021 and the third country of provenance (17,67%) by value in 2021 as regards infringing goods detained in the EU Member States customs. Türkiye is the main source country of counterfeit clothing, perfumes and cosmetics, foodstuffs and other beverages destined for the EU. Türkiye also exports high volume of counterfeit sport shoes, bags, machines and tools, textiles, labels, tags, stickers, vehicles, including accessories and parts.

As regards **criminal enforcement** procedures, under Turkish law enforcement authorities are competent to *ex officio* confiscate pirated material and counterfeit goods in specific cases, notably for public health and consumer safety reasons or to fight organised crime. In practice, however, according to stakeholders, authorities rarely take *ex officio* actions.

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<sup>73</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.  
[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

<sup>74</sup> OECD/EUIPO (March 2022), *Dangerous Fakes: Trade in Counterfeit Goods that Pose Health, Safety and Environmental Risks*, Illicit Trade, OECD Publishing, Paris.  
[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes\\_study\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes_study_en.pdf)

<sup>75</sup> EU Commission/EUIPO (December 2022), *EU enforcement of intellectual property rights: results at the EU border and in the EU internal market 2021*.  
[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2022\\_EU\\_enforcement\\_of\\_IPRs\\_2021/2022\\_EU\\_enforcement\\_of\\_IPRs\\_results\\_2021\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_EU_enforcement_of_IPRs_2021/2022_EU_enforcement_of_IPRs_results_2021_FullR_en.pdf)

Despite a slight increase in number of seizures observed in the period of reference, EU stakeholders continue reporting that Turkish criminal judicial authorities, mainly the lower criminal courts, rarely order the search and seizure of counterfeit goods and reject these requests without any justification. EU stakeholders report that public prosecutors and judges do not issue search and seizure warrants concerning counterfeit goods even if the rightholder presents the reasonably available evidence to support their claims. Public prosecutors and judges require additional evidence, which is reportedly unreasonable to substantiate the claims of the rightholder. Obtaining preliminary injunctions also remains difficult and the level of deterrence of the penalties ordered by judicial authorities is reportedly low.

Stakeholders continue reporting that Turkish **customs** authorities grant only three days for trademark proprietors to verify the counterfeit nature of detained goods, which is an unreasonably short deadline compared to the 10-days-deadline under EU law. Despite the increased efforts by the customs authorities with regards to new plant varieties, stakeholders report that the customs authorities lack sufficient resources and training to take efficient action against these IPR infringements.

EU stakeholders also continue reporting that **enforcement authorities**, in particular the police and judges, lack sufficient resources to take efficient action against IPR infringements. The number of IP courts has decreased over the past years in Türkiye which reportedly has a negative effect on the quality and consistency of the court decisions.

## EU action

The EU and Türkiye continue to hold **IP working group** meetings on an annual basis. In this framework, the EU and Türkiye exchange information on IP legislation and practices, and identify shortcomings and proposals for improvement. IPR are also dealt with in the annual Custom Union Joint Committee and in the Internal Market Sub-Committees.

A TAIEX workshop on Intellectual and Industrial Property Crimes and Protection Measures on These Crimes was held in İzmir on 29-30 June 2022.

## 6.3. Priority 3

### Argentina

#### Progress

In Argentina, where IPR-intensive industries represent 41.9% of its GDP and 24.5% of its employment<sup>76</sup>, no significant progress has been noted over the reporting period in the area of IPR. Stakeholders acknowledge that measures taken in the past to reduce bureaucracy<sup>77</sup>, in particular the electronic filing for patent, trademark and industrial design applications put in

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<sup>76</sup> EUIPO (January 2022), *Intellectual property right-intensive industries and economic performance in Latin American countries*

[https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2022\\_IPR\\_Industries\\_LATAM/2022\\_IPR\\_Industries\\_LATAM\\_Study\\_FullR\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_IPR_Industries_LATAM/2022_IPR_Industries_LATAM_Study_FullR_en.pdf)

<sup>77</sup> Decreto 27/2018:

<https://www.argentina.gob.ar/normativa/nacional/decreto-27-2018-305736/actualizacion>

place by the IP Office (INPI) in 2018<sup>78</sup>, have accelerated administrative procedures, leading to a slight improvement of IPR protection. Some stakeholders report few anti-counterfeiting campaigns that included raids and criminal prosecution, leading to minor fluctuations in the otherwise growing level of counterfeiting and piracy in the country.

## Concerns and areas for improvement and action

The level of IPR protection and enforcement continues to be weak, which discourages investment in innovation and creativity.

Several constraints on **patent** protection remain detrimental to EU companies and, more broadly, to research and innovation. Stakeholders report restrictive patentability criteria, including in the field of biotechnology<sup>79</sup>. Moreover, the patent examination backlog remains a problem, exacerbated by the lack of provisions on provisional patent protection or patent term extension. This makes effective patent protection in Argentina very difficult, notably for pharmaceuticals, agro-chemicals and biotechnological innovations. It also results in a continuous decrease of the number of annual patent applications in the country, in particular by non-residents<sup>80</sup>.

As regards **copyright** and related rights, Argentina reportedly does not provide adequate legal protection of technological protection measures or of rights management information as required by the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. More generally, some stakeholders consider that the copyright law does not take sufficiently into account technological developments.

Stakeholders continue to report concerns about the system for protecting **undisclosed test and other data** submitted to obtain marketing approvals for pharmaceutical and agrochemical products. They claim that the Confidentiality Law<sup>81</sup> allows Argentinian authorities to rely on that data to approve requests by competitors to market similar products.

On **plant varieties**, stakeholders report difficulties in registering some hybrid varieties, as INASE does not have an appropriate reference database to check for their distinctiveness.

**IPR enforcement** remains a source of serious concern. Stakeholders report that IPR infringements are widespread and growing in Argentina, not only in street markets but also in shopping centres, due to the lack of dissuasive sanctions, including low compensation awarded for damages and the low number of seizures by customs authorities, both when acting on their own initiative and when using the Trademark Alert System. For instance, Argentina was the third provenance country of counterfeit toys and games, being the origin of 2.4% of the global seized value of this product category between 2017 and 2019<sup>82</sup>. Stakeholders request more

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<sup>78</sup> Resolución 250/2018:

<https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-250-2018-314786/actualizacion>

<sup>79</sup> Resolución Conjunta 118/2012, 546/2012 y 107/2012:

<https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-118-2012-196991/texto> and Resolución 283/2015

<https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-283-2015-252851/texto>

<sup>80</sup> <https://data.worldbank.org/indicator/IP.PAT.NRES?locations=AR>

<sup>81</sup> Ley de Confidencialidad sobre información y productos que estén legítimamente bajo control de una persona y se divulgue indebidamente de manera contraria a los usos comerciales honestos (Ley N° 24.766):

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/40000-44999/41094/norma.htm>

<sup>82</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.



resources for and action by law enforcement authorities, including the police and the customs authorities, in particular at the northern border.

In terms of judicial action, stakeholders report that proceedings are complex and often subject to long delays, sometimes caused by procedural requirements to award damages. Foreign plaintiffs are sometimes required to post a bond to guarantee the payment of legal costs if their lawsuit is dismissed. However, stakeholders claim that there is no uniform case law on the validity of this requirement. In addition, some patent holders report that courts rarely grant preliminary injunctions, even if they are provided for in the patent legislation. Finally, courts do not apply criminal sanctions against IPR infringements in a consistent manner. For instance, stakeholders report that some courts do not apply them unless there is consumer deception, a prerequisite that is not laid down in the law. The lack of courts specialised in IP and scarce human resources are reported by some stakeholders as the reason behind some of these issues.

Stakeholders report an increase of the level of **copyright piracy** during the reporting period, both online and as regards physical goods. Lack of awareness of the negative impact of piracy on the economy and the society is mentioned as one of the reasons. Some request that the Argentinian government set a strategic policy for enforcement and interagency cooperation, and suggest that the Coordination Center to Combat Cybercrime (Centro de Coordinación de Combate al Cibercrimen, known as 'C4') play a role in the fight against online piracy. Moreover, they expect the government to incentivise public-private cooperation and voluntary initiatives taken by private operators to act against direct download sites and illegal hyperlinking. Some stakeholders refer to the lack of effective measures at administrative or criminal level to block infringing sites and report that injunctions against intermediaries are not easily available.

Argentina has not yet ratified the Madrid Agreement Concerning the International Registration of Marks, the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, the Patent Cooperation Treaty and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

## EU action

The negotiations of the trade part of the Association Agreement between the EU and MERCOSUR reached political conclusion on 28 June 2019. The IP Chapter of the Association Agreement contains detailed rules on copyright, trademarks, designs, trade secrets, enforcement and border measures. Argentina committed to making best efforts to adhere to the Patent Cooperation Treaty and is encouraged to protect plant varieties in line with the standards in the 1991 Act of the International Convention for the Protection of New Varieties of Plants. The IP Sub-Committee set up in the framework of the Association Agreement will provide a regular forum for discussion on implementation and any issue related to IPR that the Parties wish to raise.

The Association Agreement also contains a comprehensive article on cooperation in the field of IPR. The EU technical cooperation programme, **IP Key Latin America**<sup>83</sup>, which started in September 2017, will continue to be a useful instrument to enhance the protection and

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[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

<sup>83</sup> <https://ipkey.eu/en/latin-america>

enforcement of IPR in Latin America, including Argentina, and to assist with implementation of trade agreements in particular. IP Key Latin America has provided a series of activities throughout the continent, including Argentina, to improve and modernise the technical capacity of IP Offices, to exchange best practices, contribute to achieving a high standard of protection and enforcement of IPR, provide a more level playing field for IP stakeholders and raise awareness of the contribution of industries that use IPR to the economy in Argentina<sup>84</sup>. In addition, the **AL-INVEST Verde Programme** will support the use of IPR to boost opportunities for research cooperation and stimulate competitiveness and sustainable innovation in MERCOSUR<sup>85</sup>.

The **IP SME Helpdesk** in Latin America continued over the last two years with the aim of supporting the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Argentina. The Helpdesk provides SMEs with free information, trainings and web-based materials.

## Brazil

### Progress

Positive developments have been noted over the reporting period. In 2021, the Brazilian IPR Office (INPI) published a study on the economic impact of Brazilian IP-intensive industries<sup>86</sup>. This study provides data that will contribute to raising awareness about the importance of the protection and enforcement of IPR for the country.

INPI has maintained efforts to address the patent and trademark backlogs<sup>87</sup>, e.g. via Patent Prosecution Highway (PPH) programmes with other IP Offices<sup>88</sup> and via accelerated and simpler procedures<sup>89</sup>. INPI has reported a substantial reduction of the backlog in patent examination, passing from 131,260 pending applications in January 2022 to only 15,134 in October 2022<sup>90</sup>. Since August 2021, pharmaceutical patent applications no longer need the prior approval of the health regulator Anvisa. The simpler procedure should help speed up the processing of applications. However, INPI continues to report more difficulties to reduce the backlog for trademarks, as the number of applications remains higher than the number of decisions<sup>91</sup>.

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<sup>84</sup> IP Key (2021), *The Economic Contribution of the IPR Intensive Industries in Argentina*.

[https://ipkey.eu/sites/default/files/ipkey-docs/2021/IPKey-LA\\_sep2021\\_Analytica\\_Argentina\\_Final\\_Report\\_en.pdf](https://ipkey.eu/sites/default/files/ipkey-docs/2021/IPKey-LA_sep2021_Analytica_Argentina_Final_Report_en.pdf)

<sup>85</sup> See Section 5.1.3.

<sup>86</sup> Setores Intensivos em Direitos de Propriedade Intelectual na Economia Brasileira.

<https://www.gov.br/inpi/pt-br/central-de-conteudo/estatisticas/arquivos/publicacoes/setores-intensivos-em-direitos-de-propriedade-intelectual.pdf>

<sup>87</sup> In June 2019, INPI announced a “Plan to Tackle Patent Backlog,” which aims to reduce the current backlog by 80 per cent within the next two years. The Plan also commits INPI to examine new patent applications within two years from the applicant’s examination request.

<sup>88</sup> INPI has concluded such agreements with the European Patent Office and the IP Offices of Portugal, Spain and France between 2019 and 2022.

<sup>89</sup> Use of prior art searches from other jurisdictions; normative instruction 70/2017 to expedite analysis of technology transfer and franchise agreements; normative instruction 232/2019 on industrial design guidelines.

<sup>90</sup> <https://www.gov.br/inpi/pt-br/servicos/patentes/plano-de-combate-ao-backlog/historico-do-plano-de-combate-ao-backlog-de-patentes>

<sup>91</sup> See Boletim Mensal de Propriedade Industrial (August 2022), p. 17.

In the area of designs, Brazil acceded to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs on 13 February 2023. It will enter into force for Brazil on 1 August 2023.

Stakeholders continue to report improvements on enforcement. On 30 November 2022, Brazil acceded to the Budapest Convention on Cybercrime. Various EU stakeholders have reported improved enforcement actions in São Paulo, where measures have been taken to prevent the sale of counterfeits in the city and to shut down more than 300 popular copyright-infringing websites. The role of the State Specialised Police Department (*Departamento Estadual de Investigações Criminais* or DEIC) in anti-counterfeiting measures has also been praised. Seizures of thousands of counterfeit products by the Federal Road Police have also been reported as remarkable progress. Courts such as those of Rio de Janeiro or São Paulo have improved their specialisation on IP cases.

On copyright enforcement, the actions taken in the context of *Operação 404* led to taking down online piracy platforms in various states through site-blocking injunctions, as well as to seizure raids against major pirate targets<sup>92</sup>. Actions taken at the border, in cooperation with the Regulatory Agency for Telecommunications (ANATEL) and the Audio-Visual Agency (ANCINE), resulted in the seizure of more than 1.5 million illicit streaming devices that were ready for importation. Enforcement of other IPR, such as plant varieties, has also reportedly improved.

The “National Strategy of Intellectual Property” (ENPI), published in 2020, was adopted by a presidential decree in December 2021<sup>93</sup>. The stated purpose of this strategy is “to conceive an intellectual property system balanced and effective, widely used and that incentivizes creativity, investment and innovation and access to knowledge, with a purpose to increase competitiveness and the social and economic development of Brazil”.

## Concerns and areas for improvement and action

As regards **patents**, despite the reduction of the backlog achieved by INPI, stakeholders still report that it takes 8 to 10 years for a patent application to be examined. The concerns about the backlog have been exacerbated by the declaration of unconstitutionality of the sole paragraph of Article 40 of Law 9.279/1996, which laid down rules on patent term extension in case of delay in the granting procedure, as well as by the cuts imposed on INPI’s budget in 2022<sup>94</sup>.

As regards **trademarks**, some stakeholders keep reporting long delays and inconsistent practices in the trademark examination, possibly due to insufficient budget and human resources and despite some efforts to reduce the backlog. Others, however, acknowledge the improvements in the trademark examination backlog and refer to deadlines of up to 10 months.

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<https://www.gov.br/inpi/pt-br/central-de-conteudo/estatisticas/arquivos/publicacoes/boletim-mensal-de-propriedade-industrial-agosto-de-2022.pdf/@@download/file/Boletim%20Mensal%20de%20Propriedade%20Industrial%20Agosto%20de%2022.pdf>

<sup>92</sup> <https://www.gov.br/mj/pt-br/assuntos/noticias/operacao-404-chega-a-4a-edicao-com-buscas-no-metaverso-suspensao-de-4-canais-e-90-videos-retirados-do-ar>

<sup>93</sup> Decreto nº 10.886, de 7 de dezembro de 2021.

<https://www.in.gov.br/en/web/dou/-/decreto-n-10.886-de-7-de-dezembro-de-2021-365433440>

<sup>94</sup> Additional funds were eventually allocated to INPI but these cutbacks have highlighted the need to ensure INPI’s financial autonomy, as envisaged by Law 9.279 of 14/05/1996.

[https://www.planalto.gov.br/ccivil\\_03/leis/19279.htm](https://www.planalto.gov.br/ccivil_03/leis/19279.htm)

On **copyright** and related rights, stakeholders continue to report about the lack of legal protection of technological protection measures.

Another area of continued concern reported by rightholders is the system for protecting **undisclosed test and other data** generated to obtain marketing approvals for pharmaceutical products. Stakeholders report that pharmaceutical products for human use do not benefit from the data exclusivity protection that Law No. 10603-2002<sup>95</sup> grants to pharmaceutical products for veterinary use.

**IPR enforcement** remains a source of serious concern. IPR infringements, e.g. local manufacture and imports of counterfeits, are still rampant in Brazil due to the lack of sufficient resources, technical expertise, including among judges, and dissuasive sanctions, in particular in criminal law. Moreover, actions against shopping malls selling counterfeits are inefficient, as they reopen a few months later after closing down, e.g. in São Paulo. IPR enforcement procedures are generally reported as long.

At the border, stakeholders report insufficient controls of imports by customs authorities. Customs procedures are reported as unclear or inconsistent, in particular regarding seizures *ex officio*. For instance, an assessment of the most intensive routes of fake clothing reveals that the largest share (almost 25%) of fake clothing in 2017-2019 came from China and was destined for Brazil<sup>96</sup>. Some stakeholders suggest amendments in legislation for the prompt destruction of suspected goods to avoid high storage costs. Finally, the lack of trademark recordation system makes enforcement more complex and costly for rightholders.

Brazil has not yet ratified or aligned its legislation with the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

## EU action

The negotiations of the trade part of the Association Agreement between the EU and MERCOSUR reached political conclusion on 28 June 2019. The IPR Chapter of the Association Agreement contains detailed rules on copyright, trademarks, designs, trade secrets, enforcement and border measures. Brazil committed to making best efforts to adhere to the Patent Cooperation Treaty and is encouraged to protect plant varieties in line with the 1991 Act of the International Convention for the Protection of New Varieties of Plants standards. The IP Sub-Committee that will be set up in the framework of the modernised Association Agreement will provide a regular forum for discussion on implementation and any issue related to IPR the Parties wish to raise.

The Association Agreement also contains a comprehensive article on cooperation in the field of IPR. The EU technical cooperation programme, **IP Key Latin America**<sup>97</sup>, which started in September 2017, will continue to be a useful instrument in general to enhance the protection

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<sup>95</sup> <https://www.gov.br/agricultura/pt-br/assuntos/insumos-agropecuarios/insumos-agricolas/agrotoxicos/legislacao/arquivos-de-legislacao/lei-10603-2002-dispoe-sobre-a-protecao-de-informacao-nao-divulgada-submetida-para-aprovacao-para-comercializacao-de-produtos/view>

<sup>96</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

<sup>97</sup> [Latin America | IPKEY](#)

and enforcement of IPR in Latin America, including Brazil, and to assist with implementation of trade agreements in particular. IP Key Latin America has provided a series of activities throughout the continent, including Brazil, to improve and modernise the technical capacity of IP Offices, to exchange best practices, contribute to achieving a high standard of protection and enforcement of IPR and provide a more level playing field for IP stakeholders. In addition, the **AL-INVEST Verde Programme** will support the use of IPR to boost opportunities for research cooperation and stimulate competitiveness and sustainable innovation in MERCOSUR<sup>98</sup>.

The **IP SME Helpdesk** in Latin America continued over the last two years with the aim of supporting the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Brazil. The Helpdesk provides SMEs with free information, trainings and web-based materials.

## Ecuador

### Progress

There has been only limited progress in Ecuador over the reporting period. On 9 September 2022, the National Intellectual Property Office (SENADI), on behalf of the Ecuadorian government, reached agreements with indigenous organisations with the objective to promote knowledge and use of plant variety rights by members of indigenous organisations. The agreements included: preparation of the technical standard that regulates the registration of licence contracts for plant varieties; development of an annual plan of IP workshops; trainings for indigenous organisations in IPR; proposal of a resolution of conflicts through mediation processes<sup>99</sup>.

### Concerns and areas for improvement and action

As regards **copyright** and related rights, the IP Code maintains overly broad exceptions and limitations to the public performance and broadcasting rights, which seem to be inconsistent with Ecuador's international obligations and with its commitments under the EU-Colombia, Peru and Ecuador Trade Agreement.

Regarding the protection of **plant varieties**, the IP Code contains a number of provisions that raise concerns of legal certainty in its implementation. The implementing regulation has not addressed the substantive problems regarding the scope of the breeder's right nor exceptions to it that appear inconsistent with Ecuador's international obligations as well as the Andean Decision<sup>100</sup> (Article 25 of Decision 345/1993 of the Andean Community) regulating the matter. More specifically, such provisions of the IP Code relate to an exception that allows for the exchange of propagating material between farmers and seem to violate Article 5(1) of 1978 Act of the International Convention for the Protection of New Varieties of Plants, to which Ecuador is a party.

**IPR enforcement** remains a source of serious concern. EU stakeholders report widespread availability of counterfeit and pirated goods across the country, including both online and in physical marketplaces. Despite the IP Office's broader responsibility and increased efforts

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<sup>98</sup> [AL-INVEST Verde IPR | EU Funded IP Projects \(internationalipcooperation.eu\)](https://internationalipcooperation.eu)

<sup>99</sup> <https://www.derechosintelectuales.gob.ec/el-senadi-cerro-acuerdos-en-mesas-de-dialogo-impulsadas-por-el-gobierno/>

<sup>100</sup> Decisión 345/1993 de Régimen Común de Protección a los derechos de los Obtentores de Variedades Vegetales. <http://www.comunidadandina.org/StaticFiles/DocOf/DEC345.pdf>

against IPR infringements, the enforcement regime remains weak. Furthermore, EU stakeholders continue reporting serious problems with effective enforcement of plant variety rights as the competent authorities do not impose or effectively collect financial penalties from farmers which are cultivating, selling and exporting protected plant varieties (roses) without paying due royalties to the rightholders. Some issues of usurpation of EU GIs protected under the EU-Colombia, Peru and Ecuador Trade Agreement have also been reported, mainly concerning protected EU cheeses from various Member States. It seems that the lack of effective collection of financial penalties is due to insufficient financial and human resources of the relevant authorities.

Another area of continued concern reported by rightholders is the absence of effective **customs** procedures for the detention and seizure of goods suspected of infringing an IPR at the border. EU stakeholders report that the main problem is that the IP Code provides only a limited scope of action for the customs authorities, which are not empowered to act *ex officio*. At the end of September 2022, an agreement was signed between SENADI and the customs authorities to better coordinate border enforcement measures. In practice, better customs management is still necessary in order to improve actions against IPR infringements.

Ecuador has not yet ratified the Madrid Agreement Concerning the International Registration of Marks, the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

## EU action

In the context of the implementation of IPR commitments under the **EU-Colombia, Peru and Ecuador Trade Agreement**, the EU continues monitoring developments as to the effective implementation of Ecuador's obligations. The Trade Agreement requires Ecuador to raise the level of IPR protection and enforcement. The EU has been urging Ecuador to address problematic issues in its IP Code, including via implementing regulations. At the IP Sub-Committee and at the Trade Committee, which took place in 2022, the EU urged Ecuador to effectively implement its commitments in particular in the area of protection and enforcement of plant variety rights.

The EU technical cooperation programme, **IP Key Latin America**<sup>101</sup>, which started in September 2017, will continue to be a useful instrument in general to enhance the protection and enforcement of IPR in Latin America, including Ecuador, and to assist with implementation of trade agreements in particular. IP Key Latin America has provided a series of activities throughout the continent, including Ecuador, to improve and modernise the technical capacity of IP Offices, to exchange best practices, contribute to achieving a high standard of protection and enforcement of IPR, including GIs, and provide a more level playing field for IP stakeholders.

In addition, the **IP SME Helpdesk** in Latin America continued over the last two years with the aim to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Ecuador, through the provision of free information and services. The rendered services include a free-of-charge helpline, trainings and web-based materials.

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<sup>101</sup> [Latin America | IPKEY](#)

## Indonesia

### Progress

Some improvements can be noted in Indonesia over the reporting period. In September 2021, Indonesia's Directorate General of Intellectual Property (DGIP) of the Ministry of Law and Human Rights launched an IPR Task Force to strengthen IPR protection and enforcement in the country, including curbing piracy and counterfeiting. Indonesian authorities have also been active in ordering internet providers to block pirate sites (more than 3,500 domain names since 2009).

On 20 December 2021, the DGIP issued Decision No. HKI-05.TI.03.02 on the Implementation of the Automatic Approval in Copyright Recordation System ("POP-HC System"). This system automatically accepts and processes requests for copyright recordal and will automatically approve copyright recordal applications if certain requirements are met.

In practice, although Indonesia is not a member of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration Marks, the DGIP is currently using the latest version of the Nice Classification in the classification of goods and services for purposes of trademarks registration.

The Indonesian House of Representatives put forward the draft Industrial Design law to the National Legislation Program ("Prolegnas"), which consists of various draft laws that are being prioritised by the House of Parliament. This shows Indonesia's efforts as regards the implementation of the Hague Agreement.

Indonesia has an observer status in the International Union for the Protection of New Varieties of Plants and is in contact with the organisation to develop the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV 91) compliant legislation on plant variety right. Cooperation in establishing an UPOV 91 oriented plant variety protection system in Indonesia is ongoing, under both IP Key South East Asia project and the East Asia Plant Variety Protection Forum.

### Concerns and areas for improvement and action

As reported previously, restrictive patentability criteria make effective **patent protection** in Indonesia difficult, notably for pharmaceuticals. Indonesia's Patent Law does not provide protection for new uses and applies an additional patentability criterion that requires 'increased meaningful benefit' for certain forms of innovation (e.g. salts and new dosage forms) as a precondition of patent protection. The "increased meaningful benefit" criterion seems to exclude from patentability inventions resulting in a compound having desirable and useful properties, for instance those that are cheaper to produce, easier to store, to transport or to administer, have a longer shelf life or cause fewer or less severe side effects. In addition, stakeholders report that despite the changes introduced in the legal framework, Indonesia's practice keeps requiring foreign patentees to transfer propriety technologies to local companies.

Regarding **copyright**, stakeholders claim that applicable rules on reversion of rights to authors and performers following the 25-years from the original transfer of rights make it difficult to exploit such rights during the entire term of protection. As regards the scope of the public

performance right, the Implementing Regulations of Government No 56 of 2021 limit the remuneration right to specific types of services. Stakeholders also raise that there is lack of clarity as to their licensing possibilities concerning the making available to the public of sound recordings. This is because Indonesian law provides performers and phonogram producers with not only an exclusive right but also an equitable remuneration right covering the act of making available to public.

As regards **trademarks**, EU stakeholders report that the Trademark Office in Indonesia continues to have a very narrow interpretation of trademark rights in opposition procedures, which is critical to keep bad faith actors from obtaining similar trademark registrations. In addition, stakeholders report lengthy and costly procedures in place to register a trademark or to obtain the invalidation, cancellation or opposition appeal process.

Another area of continued concern is the effectiveness of the system for protecting **undisclosed test and other data** generated to obtain marketing approval for pharmaceutical products.

As regards **plant varieties**, although stakeholders welcome the Indonesian efforts on establishing a UPOV 91 oriented system, they keep referring to the lack of an effective plant breeders' rights system in place. One critical point in the Indonesian legislation remains the novelty criteria. Under Indonesian law, the prior commercialisation of the variety (harvested or propagating material) seems to include acts done without the consent of the breeder. Other issues of concern relate to the exceptions and restrictions provided for in Indonesian legislation. EU stakeholders report that the high number of infringements of the plant breeders' rights is a barrier for highly innovative breeders to export their best technologies to Indonesia.

Despite the improvements made in Indonesia, **IPR enforcement** remains a source of serious concern. The high volume of counterfeiting and piracy in local marketplaces and in the online environment continues. Stakeholders report the lack of enforcement actions and a reluctance to raid retailers. In the area of e-commerce, the lack of legal framework to tackle the impact of the increasing offer of counterfeit products online and piracy remains of great concern. EU stakeholders from various sectors keep reporting the continued inaction of online intermediaries and e-commerce platforms, which offer a high volume of counterfeit goods, as regards the deterrence of infringers. Improvements of the law on civil proceedings continue to be necessary in order to ensure that competent judicial authorities may order the destruction or at least the definitive removal from the channels of commerce of goods that they have found to infringe IPR as well as the materials predominantly used for the manufacture of those goods. Effective remedies and closing existing gaps in protection are needed to combat online infringements. This in particular concerns site-blocking injunctions and measures to prevent "domain-hopping". Illegal camcording and streaming piracy, including live streaming, remains unsolved.

As far as **customs enforcement** is concerned, stakeholders report that the system lacks processes that allow for a systematic detaining of suspicious products and seizing of counterfeits. Although Indonesia established a customs recordation system few years ago, brand owners from various sectors keep reporting how complicated and costly the procedure is. Amongst others, reportedly a foreign company needs to have a legal entity established locally to be eligible for trademark recordation with customs and to detain a shipment suspected of infringing its IPR it needs to submit a bank guarantee to cover the customs' operational costs and to obtain a court order. As a result, only some rightholders manage to register their trademarks. In addition, the customs recordation system remains unavailable for copyright



holders. The police continues to require copyright recordation with the IPR Office as a precondition to conduct raids, which makes enforcement more complicated and less efficient.

According to the OECD-EUIPO joint study, *Global Trade in Fakes* (June 2021)<sup>102</sup>, Indonesia appears on the list of the top provenance economies for counterfeit clothing between 2017 and 2019. The OECD-EUIPO joint study on *Dangerous Fakes* (March 2022)<sup>103</sup> presents Indonesia as one of the main provenance economies of dangerous fake goods and counterfeit foodstuffs shipped by vessel between 2017 and 2019.

Indonesia has not yet ratified the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

## EU action

Negotiations on an **EU-Indonesia Free Trade Agreement** were launched in July 2016. The objective is to conclude a comprehensive economic and partnership agreement including on IPR.

Under the **IP Key Southeast Asia Programme**<sup>104</sup>, which started in September 2017, a series of activities have been organised in Indonesia in the course of the reporting period, to improve and modernise the technical capacity of IPR Offices and to exchange best practices.

The **ASEAN Regional Integration Support from the EU** (ARISE Plus) programme<sup>105</sup> has continued with the aim of supporting greater economic integration in ASEAN countries inter alia by improving IPR protection and enforcement. Under the IPR component of ARISE Plus, the EU supports ASEAN countries, such as Indonesia, to participate in global protection systems, to develop regional platforms and to strengthen the network of ASEAN IPR Offices. Activities include enhancing IPR awareness in society and the IPR capacity of the productive sector.

The **South-East Asia IP SME Helpdesk**<sup>106</sup> has continued to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Indonesia, through the provision of free information and other services. The rendered services include a free-of-charge helpline, trainings, and web-based materials.

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<sup>102</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

<sup>103</sup> OECD/EUIPO (March 2022), *Dangerous Fakes: Trade in Counterfeit Goods that Pose Health, Safety and Environmental Risks, Illicit Trade*, OECD Publishing, Paris

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes\\_study\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes_study_en.pdf)

<sup>104</sup> <https://ipkey.eu/en/south-east-asia>

<sup>105</sup> <http://ariseplus.asean.org/>

<sup>106</sup> [https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/south-east-asia-ip-sme-helpdesk\\_en](https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/south-east-asia-ip-sme-helpdesk_en)

## Malaysia

### Progress

Positive developments have been noted in the area of IPR over the reporting period. Stakeholders report improvements on trademarks protection and enforcement following the entry into force of the Trademarks Act 2019<sup>107</sup>.

In 2022, Malaysia issued a new GI Act<sup>108</sup> and amended the Trademark Regulation<sup>109</sup>, the Copyright Act<sup>110</sup> and the Patent Act<sup>111</sup>. The effects of these changes will be monitored by the EU.

### Concerns and areas for improvement and action

With respect to pharmaceutical and agrochemical products, there have been no changes as regards Malaysia's **regulatory data protection** system, which remains limited since the protection is not granted if a marketing authorisation is not applied for in Malaysia within eighteen months from the granting of the first marketing authorisation anywhere in the world.

Despite improvements on trademarks protection and enforcement following the entry into force of the Trademarks Act 2019, **IPR enforcement** remains a source of serious concern. IPR-infringing goods continue to be widely accessible both on physical and online markets. In the reporting period stakeholders have noticed that enforcement actions were put on hold due to COVID-19 pandemic but it seems that the authorities are willing to resume raids. Stakeholders claim that a stronger governmental action is needed in the fight against counterfeits, especially as regards cooperation with customs and sharing of information. In addition, rightholders report the lack of consistent enforcement approach across the country to protect their rights and ineffective enforcement actions against infringers. On **customs enforcement**, rightholders report the absence of an official customs recordal system for IPR, which significantly impairs the capacity of customs to carry out detailed risk analysis to identify and prevent suspect consignments from entering the country. The industry raises also that customs officers are usually not fully equipped or trained on IPR issues and on how to identify infringing goods, and will usually hesitate to detain the goods without receiving any complaint from the brand owners. Apart from that, stakeholders point to the fact that in free trade zones, the customs have no jurisdiction over goods in transit or which change vessels, and are only able to inspect goods coming to Malaysia directly for import purposes and goods exported from Malaysia.

According to the OECD-EUIPO study, *Global Trade in Fakes* (June 2021)<sup>112</sup>, Malaysia remains on the list of the top ten provenance economies of counterfeit and pirated goods in terms of customs seizures. In particular, Malaysia is identified as an important producer of counterfeit footwear and jewellery, which are exported mainly to the EU. The OECD-EUIPO study on

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<sup>107</sup> [ACT-815-TRADEMARKS-ACT-201.pdf \(myipo.gov.my\)](#)

<sup>108</sup> [Act 836.pdf \(myipo.gov.my\)](#)

<sup>109</sup> [P.U. \(A\) 67\\_2022 \(trademark\).pdf \(myipo.gov.my\)](#)

<sup>110</sup> [A1645 BI.pdf \(myipo.gov.my\)](#)

<sup>111</sup> [02 PATENTS \(AMENDMENT\) ACT 2022.pdf - Google Drive](#)

<sup>112</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

*Dangerous Fakes* (March 2022)<sup>113</sup>, indicates that Malaysia is among the top 10 provenance economies of dangerous fakes, including counterfeit foodstuffs, perfumery and cosmetics as well as small parcels of dangerous fakes.

Malaysia has not yet ratified the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

## EU action

A **Partnership and Cooperation Agreement** was concluded with Malaysia in 2016 and has been signed on 14 December 2022 in the margins of the EU-ASEAN Summit. The negotiations for a **EU-Malaysia Free Trade Agreement** were put on hold in 2012.

Under the **IP Key Southeast Asia** programme<sup>114</sup>, which started in September 2017, a series of activities were organised throughout the region, including Malaysia, to improve and modernise the technical capacity of IPR Offices, to exchange best practices, contribute to achieving a high standard of protection and enforcement of IPR and provide a more level playing field for IPR stakeholders.

Further technical assistance is granted to Malaysia under the **ASEAN Regional Integration Support from the EU** (ARISE Plus) programme<sup>115</sup> which aims to support greater economic integration in ASEAN countries inter alia by improving IPR protection and enforcement. Under the IPR component of ARISE Plus<sup>116</sup> the EU continues to support the legal and regulatory IPR frameworks to enable ASEAN countries like Malaysia to participate in global protection systems, to develop ASEAN regional platforms and to strengthen the network of ASEAN IPR Offices with a view to improving their capacity to deliver timely and quality services. Activities aimed at private stakeholders include enhancing IPR awareness in society and IPR capacity of the productive sector. The specific objective of this component is to support ASEAN regional integration and further upgrade and improve the systems for IPR creation, protection, utilisation, administration and enforcement in the ASEAN region.

In addition, the **South-East Asia IP SME Helpdesk**<sup>117</sup> continued over the last year with the aim to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Malaysia, through the provision of free information and services. The rendered services include a free-of-charge helpline, trainings, and web-based materials.

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<sup>113</sup> OECD/EUIPO (March 2022), *Dangerous Fakes: Trade in Counterfeit Goods that Pose Health, Safety and Environmental Risks, Illicit Trade*, OECD Publishing, Paris

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes\\_study\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes_study_en.pdf)

<sup>114</sup> OECD/EUIPO (March 2022), *Dangerous Fakes: Trade in Counterfeit Goods that Pose Health, Safety and Environmental Risks, Illicit Trade*, OECD Publishing, Paris

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes\\_study\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes_study_en.pdf)

<sup>115</sup> <http://ariseplus.asean.org/>

<sup>116</sup> <https://euiipoef.eu/en/ariseplusipr>

<sup>117</sup> [https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/south-east-asia-ip-sme-helpdesk\\_en](https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/south-east-asia-ip-sme-helpdesk_en)

## Nigeria

### Progress

The Nigerian IP legislation has advanced in the course of the reporting period.

The Trademark Act of Nigeria was amended by means of the Business Facilitation Bill 2022 to expressly permit the registration of a trademark in relation to services, rather than for goods only. Moreover, the new definition of trademarks expressly recognises the registrability of shape marks, packaging and combination of colour marks.

Nigeria has adopted a new Copyright Bill 2022, which has the potential to improve the protection of online content and to strengthen the enforcement of copyright in the digital environment. Copyright owners are empowered to issue infringement notices to internet service providers to take down copyright infringing content including the deactivation of links. Service providers are obliged to take effective steps to prevent any content taken down or removed from being reloaded. It also aims to further align Nigeria with international copyright treaties and conventions.

Nigeria has also enacted the Plant Variety Protection Act with the objective to encourage investment in plant breeding and crop variety development and to establish a plant variety protection office for the promotion of increased staple crop productivity for smallholder farmers in Nigeria<sup>118</sup>. It came into effect in May 2022 requiring, however, additional regulations for its full operability. The International Union for the Protection of New Varieties of Plants (UPOV) reaffirmed Nigeria's conformity with the 1991 Act of the International Convention for the Protection of New Varieties of Plants, allowing Nigeria also to become a UPOV member.

Moreover, Nigeria has adopted the National Intellectual Property Policy And Strategy in 2022, which seeks to promote a comprehensive IP ecosystem as a catalyst for harnessing the full potential of IPR for socio-cultural development and sustainable economic growth<sup>119</sup>.

### Concerns and areas for improvement and action

Under Nigeria's constitutional law, a domestication of international agreements, treaties and protocols is necessary to give effect to its international obligations to protect IPR on national level. This is relevant for instance in respect of well-known trademarks, as covered under the TRIPS Agreement but not expressly addressed under Nigerian trademark law. This raises doubts on their appropriate protection in Nigeria<sup>120</sup>.

Apart from this gap in the protection of **trademarks**, the basic legislative framework lacks some express rules relevant for the functioning of a modern trademark system. For instance, Nigerian trademark law does not provide for the protection of collective trademarks pursuant to Article 7<sup>bis</sup> of the Paris Convention for the Protection of Industrial Property (Paris Convention). Another example is the omission to specify convention countries to facilitate foreign trademark applicants to claim a right of priority for an application in Nigeria in

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<sup>118</sup> [https://www.upov.int/edocs/mdocs/upov/en/c\\_55/law\\_of\\_nigeria.pdf](https://www.upov.int/edocs/mdocs/upov/en/c_55/law_of_nigeria.pdf)

<sup>119</sup> [Nigeria Validates National IP Policy and Strategy \(NIPPS\) \(wipo.int\)](#)

<sup>120</sup> See also, *Fan Milk International A/S v Mandarin Oriental Services B.V* (Suit No FHC/ABJ/CS/791/2020) & *Fan Milk International A/S v Mandarin Oriental Services B.V* (Suit No FHC/ABJ/CS/792/2020), both before the Federal High Court of Nigeria (Abuja Judicial Division)

accordance with Article 4A(1) of the Paris Convention.

For **designs**, such a convention priority can be claimed for countries determined by a ministerial decree but the list of eligible countries is incomplete. Therefore, applicants with a right of priority from those countries not listed cannot claim this right for a design application in Nigeria, which is indispensable to safeguard the novelty of the design application in Nigeria vis-à-vis the former foreign application.

Regarding the **IP registries**, EU stakeholders report on the lack of use of modern technology and missing up-to-date registration details. Lengthy proceedings for the registration of trademarks concern also certifications marks, which are currently the only legal means to protect GIs in the absence of a separate GI registration system.

As regards **copyright** and related rights, stakeholders point to the fact that **online piracy** continues at a high level. Furthermore, according to stakeholders, collection and distribution of adequate royalties for rightholders constitutes a major area of concern. Stakeholders refer to a lack of certainty and transparency regarding collective management organisations and their accreditation. It remains to be seen whether the legislative changes brought by the Copyright Bill will address these concerns.

The lack of effective **IPR enforcement** on the ground results in rampant sales of counterfeits in Nigeria, the most populous country in Africa and a commercial hub with a significant entertainment and creative sector, including the sizeable Nigerian film industry.

Nigeria's large seaports serve as maritime gateways for importing fake products to West Africa, including falsified medical products. Nigeria is a transit point for fake electronics and electrical equipment produced in China for re-export to other Western African economies as well as the EU<sup>121</sup>. According to the OECD-EUIPO study on *Global Trade in Fakes* (June 2021)<sup>122</sup>, Nigeria is also exporting counterfeit goods including leather articles, handbags, clothing, footwear, perfumery and cosmetics.

EU stakeholders commend some efforts on local level and by the Nigerian government to improve the protection of IPR. A number of systemic issues remain, however. Protracted IP litigation spans several years preventing rightholders from obtaining effective remedies. Police and customs authorities reportedly suffer administrative bureaucracy which impacts IPR enforcement. Stakeholders also call for the further improvement of the IPR expertise amongst officials of IPR agencies. The general public purportedly lacks awareness of IP. The EU will monitor whether the improvements of the Nigerian IP legislation will result in a more efficient protection of IP rights and eventually reduce the negative effects of counterfeits and piracy.

Nigeria has not yet ratified the Madrid Agreement Concerning the International Registration of Marks, the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs.

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<sup>121</sup> OECD/EUIPO (2018), *Misuse of Small Parcels for Trade in Counterfeit Goods: Facts and Trends*, OECD Publishing, Paris. <https://doi.org/10.1787/9789264307858-en>

<sup>122</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris. [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

## EU action

The **AfrIPI project**<sup>123</sup> commissioned a gap analysis in the area of trademarks, designs and GIs by an independent expert for the Nigerian authorities. The analysis on GIs also feeds into the ongoing technical cooperation for a possible institution of a separate protection system. This cooperation was initiated at a capacity building workshop organised by AfrIPI with the collaboration of Nigerian authorities and stakeholders. As a result, a task force to further review existing laws and to make recommendations was established. The outcome of this process was presented at an AfrIPI conference on GIs held in Nigeria<sup>124</sup>. A technical working group continues to elaborate a legislative framework for the protection of GIs in Nigeria.

Furthermore, AfrIPI selected the Nigerian IP Office as a pilot office for supporting the digitalisation of paper-based trademark entries. This shall facilitate the use of modern IT tools and databases. This activity is complemented by the provision of IT equipment comprising laptops, monitors and desktops with the support of AfrIPI.

## Saudi Arabia

### Progress

Some positive developments have been noted in Saudi Arabia in recent years. The Ministry of Commerce and Investment established the Saudi Authority for Intellectual Property (SAIP) as an initiative within the government's National Transformation Program 2020, which aims to harmonise the jurisdiction of IPR under a single entity. SAIP has set up IP Support Centres to provide services and technical information supporting innovation; IP Advisory Clinics Program to advise on the use of IPR and an IP Academy which provides IPR educational support. SAIP also created the IP Respect Council, an IP Respect Officer and a Permanent IP Enforcement Committee further aims to improve IPR enforcement.

IPR protection and enforcement of brand protection in Saudi Arabia, including the *ex officio* enforcement of trademarks, has been shifted from the Ministry of Commerce to SAIP. In addition, as of June 2022, SAIP has started receiving applications for registration of works protected under copyright law. This reform resulted in an increase of enforcement cases and also, according to the stakeholders, in an increase of the number of seizures in the course of the reporting period.

For the year 2020, more than 2 million items infringing rules on trademarks and 3,5 million items infringing rules on copyright have been seized. Furthermore, in 2021, SAIP announced that there were 125 shops inspected and more than 95,000 items were seized during this inspection campaign, including copied books, satellite broadcasting devices, and computer program storage devices. Electronic inspection and monitoring were also carried out by blocking more than 2,000 websites that violated IPR. Stakeholders report that Saudi customs authorities are more cooperative with rightholders than previously.

Furthermore, SAIP reduced the official fees for the publication of trademarks in the national gazette, in line with its plan to promote innovation and make securing registered rights more

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<sup>123</sup> See section 5.1.3 on Technical cooperation programmes

<sup>124</sup> <https://internationalipcooperation.eu/en/afripi/activities/national-conference-creating-legal-and-institutional-framework-geographical>

accessible.

Another progress is the drafting of a National IP Strategy and a National IP Policy focusing on education, protection, enforcement and commercialisation of IPR.

Furthermore, Saudi Arabia acceded to several international IP agreements during the reporting period: the Madrid Agreement Concerning the International Registration of Marks and the Strasbourg Agreement Concerning the International Patent Classification. Saudi Arabia is preparing the accession to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

### Concerns and areas for improvement and action

As regards the **trademark** application and registration procedures, SAIP does not provide clear guidelines for the examination of absolute or relative grounds for refusal. Furthermore, the decisions taken by SAIP lack clear reasoning and consistency.

An area of continued concern reported by stakeholders is related to the inefficiency of the system for protecting **undisclosed test and other data**. Although Saudi Arabia's legal regime provides for protection of regulatory test data for five years following marketing approval of the product for which the data was submitted, since 2016 the Saudi Food and Drug Authority has repeatedly approved generic versions of innovative products before the expiry of the term of protection. Stakeholders also report concerns about draft regulations for the protection of **confidential business information** which would grant regulatory data protection from the first authorisation globally rather than nationally.

As regards **plant variety protection**, Saudi Arabia has the observer status in the International Union for the Protection of New Varieties of Plants (UPOV). The legislative framework has not evolved during the reported period, despite the apparent inclusion of plant variety rights under the regime of patents and the interest of the Saudi authorities in the development of laws in line with the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

Despite the progress mentioned above, **IPR enforcement** in Saudi Arabia features serious shortcomings. Notably, stakeholders continue to report that Saudi Arabia lacks effective protection and enforcement of IPR and has notably permitted copyright piracy in its territory and beyond. This is made clear by the fact that, despite the closure in 2019 of the "beoutQ" pirate TV channel (which was the subject of a WTO dispute<sup>125</sup>), the IPTV (Internet Protocol Television) application downloaded onto "beoutQ" boxes continues to offer thousands of pirated films, TV shows and TV channels across the world.

Another area of continued concern reported by stakeholders is **customs** enforcement reportedly due to the lack of sufficient resources and capacity to handle the ever-growing number of counterfeit goods transiting or destined for the country, inconsistent and non-deterrent sanctions, and the lack of *ex officio* actions by local customs authorities. The destruction of counterfeit and pirated goods is reportedly very rare in Saudi Arabia. Stakeholders report that Saudi customs authorities do not have a centralised system to report detentions of counterfeit and pirated goods and that seized goods are often re-exported. One of the major challenges is the lack of transparency. Customs cases are transferred to public prosecutors or settled between

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<sup>125</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds567\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds567_e.htm)  
WTO Dispute Settlement: One-Page Case Summaries – 1995–2016

customs and the importer. Brand owners have no standing in these proceedings and have no access to decisions on the seizures.

According to the EUIPO-OECD studies on *Global Trade in Fakes* (June 2021)<sup>126</sup>, Saudi Arabia is a regional transit country for counterfeit goods destined to Africa and to the EU, especially in product categories such as foodstuffs, perfumery and cosmetics, pharmaceuticals, watches, jewellery, toys, games and sport equipment. According to the OECD-EUIPO report on *Dangerous Fakes* (March 2022)<sup>127</sup>, Saudi Arabia is one of the top destination economies of dangerous fakes shipped by vessel, in the period 2017-19, in terms of customs seizures.

Saudi Arabia has not yet ratified the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Madrid Agreement Concerning the International Registration of Marks, the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

## EU action

An **IPR cooperation programme** was launched in 2019 focusing on IPR enforcement in the framework of the EU-Gulf Cooperation Council<sup>128</sup>. In parallel, and following the last report, the European Commission is in contact with SAIP. The EUIPO and SAIP signed in 2019 a Memorandum of Understanding which extends to Saudi Arabia the benefits generated by the European Union Intellectual Property Network (EUIPN).

## Thailand

### Progress

Some positive developments have been noted in the area of IPR in Thailand in the course of the reporting period. The Thai government, in particular the Department of Intellectual Property (DIP), is committed to improve IPR protection and enforcement. However, the pace of progress, in particular the legislative processes in the area of IPR, is slow. Revisions of acts on copyright and related rights, patents and industrial designs have been launched for a number of years, but have not been concluded yet. The revised customs regulations, including the Thai Customs IPR Recordation (TCIR) system, provides for new means for more effective enforcement of IPR at the border. The accession of Thailand to the WIPO Copyright Treaty (WCT) in October 2022 is a positive development. Thailand is also committed to accede to the WIPO Performances and Phonograms Treaty.

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<sup>126</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullIR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullIR_en.pdf)

<sup>127</sup> OECD/EUIPO (March 2022), *Dangerous Fakes: Trade in Counterfeit Goods that Pose Health, Safety and Environmental Risks, Illicit Trade*, OECD Publishing, Paris

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes\\_study\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/dangerous-fakes-study/dangerous-fakes_study_en.pdf)

<sup>128</sup> <https://ec.europa.eu/trade/policy/countries-and-regions/regions/gulf-region/>



The DIP in particular is very active in taking forward the IPR policy in Thailand with a number of non-legislative actions. The DIP continues to facilitate IPR applications by making available an electronic filing (e-filing) system as an alternative channel for submitting applications. Fast-track procedures for certain trademark and patent applications are now possible. Since the Code of Conduct for Collective Management Organisations was prepared by the DIP in 2020, eight organisations have committed to the standards of this Code of Conduct. In the area of trademarks, in 2022, the DIP published revised guidelines of trademark examination which seek to facilitate uniform application of the rules. The Thai authorities have been active in steering discussions between e-commerce and brand owners with the aim to reduce the availability of online counterfeit offers. Notably, the Thai authorities initiated and signed a Memorandum of Understanding on IPR Protection on the Internet as well as a Memorandum of Understanding on Online Advertising and IPR.

### Concerns and areas for improvement and action

EU stakeholders report that there are still significant challenges with the IPR protection and enforcement in Thailand.

As regards **patents**, EU stakeholders continue to report that the long-standing issue of the patent backlog remains unresolved, despite developments in the electronic management of patent applications and granted patents, new fast-track procedures as well as the revised guidelines on patent examination. The duration of the patent examination lasts on average 10-12 years, in particular in certain areas, such as biotechnology. Often the patent examinations cover a large part of the patent term provided in Thailand with no compensation provided. It remains very important to continue the efforts to reduce the backlog. The process of amending the Patent Act has not been completed, despite being in preparation for a number of years.

As regards **copyright** and related rights, EU stakeholders report that the situation with regard to the collective management of rights remains unsatisfactory. While the Code of Conduct of the Collective Management Organisations of 2020 seeks to address transparency, accountability and good governance standards, it remains to be seen whether non-legislative measures such as the Code of Conduct will sufficiently address this situation. EU stakeholders also report the lack of adequate legal framework on the liability of the internet service providers and protection against the circumvention of technical protection measures and against the unauthorised alteration or removal of rights management information. This issue is at least in part addressed with Thailand's accession to the WCT and the corresponding reform of the Copyright Act.

EU stakeholders report that **IPR enforcement** remains a serious concern due to the widespread availability of counterfeit and pirated goods.

As regards **online counterfeiting**, EU stakeholders report that the volume of online sales of counterfeit goods is significant. The Thai language e-commerce and social media platforms allegedly offer a wide variety of counterfeit goods and the cooperation between the platforms and the rightholders is not efficient. While the MoU on IPR protection on the Internet is in place as a tool to curb online counterfeiting, several major platforms remain outside the MoU. Despite the adoption of the amendments to the Computer Crime Act, which sought to improve the procedure for disabling access to **pirate content online**, EU stakeholders report that the procedure is not efficient, lengthy, complicated and costly.

As far as **border enforcement** is concerned, EU stakeholders report a lack of adequate and effective IPR border measures as a result of limited manpower, resources and, in some

instances, corruption. In practice copyright infringements at the border are not addressed. It remains to be seen whether the recently revised customs regulations will result in more efficient action at the border.

As regards **civil and administrative enforcement**, EU stakeholders face difficulties in enforcing their rights because judicial and administrative proceedings are slow and inefficient. Even in cases where the law enforcement agencies are engaged and take action against counterfeit and piracy networks, the judicial proceedings are particularly complex. Penalties, including fines, in particular for repeat infringers, are low and do not have any deterrent effect.

According to the OECD-EUIPO study on *Global Trade in Fakes* (June 2021)<sup>129</sup>, in the period of 2017-2019, Thailand consistently remained in the top ten of provenance economies of counterfeit and pirated goods in terms of customs seizures. As regards the types of counterfeited products, the study shows that Thailand is in the third place of the provenance economies for fake jewellery, fifth place for counterfeit leather articles and handbags and ninth place for counterfeit games and toys. Thailand is also identified as an important producer of counterfeit jewellery and clothing.

Although in preparation for many years now, Thailand has not yet ratified the the WIPO Performances and Phonograms Treaty, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

## EU action

On an annual basis, the EU and Thailand hold **IP Dialogues** which allow both sides to exchange information on the state of IPR protection and enforcement. These exchanges between the relevant authorities are open and constructive, and allow both sides to present the state of play, including ongoing legislative procedures, preparation of accessions to multilateral treaties and specific data on IPR enforcement activities.

Under the **IP Key Southeast Asia** Programme, which started in September 2017, a series of activities were organised throughout the region, including Thailand, to improve and modernise the technical capacity of IP Offices, to exchange best practices, to contribute to achieving a high standard of protection and enforcement of IPR, and to provide a more level playing field for IP stakeholders. Thai authorities are actively engaged in the various activities covering all types of IPR both as hosts and participants.

The **ASEAN Regional Integration Support** from the EU (ARISE Plus) programme has also continued with the aim to support greater economic integration in ASEAN countries inter alia by improving the systems for IP creation, protection, utilisation, administration and enforcement in the region. Under the IPR component of ARISE Plus, the EU continued supporting the legal and regulatory IP frameworks to enable ASEAN countries like Thailand to participate in global protection systems, to develop regional platforms and to strengthen the network of ASEAN IP Offices with a view to improving their capacity to deliver timely and quality services.

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<sup>129</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.  
[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

Finally, the **South-East Asia IP SME Helpdesk**<sup>130</sup> continued to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Thailand, through the provision of free information and other services. The rendered services include a free-of-charge helpline, trainings and web-based materials.

## 7. MONITORING THE IMPLEMENTATION OF FREE TRADE AGREEMENTS

### Canada

Canada proposed two bills in 2022 to amend the Copyright Act. Proposed amendments include the extension of the copyright term of protection to 70 years, regulation of artificial intelligence and the internet of things, and online intermediaries. EU stakeholders keep reporting concerns in the area of **copyright**, in particular on the scope of exceptions for teaching purposes.

Rightholders indicate that the Canadian Intellectual Property Office (CIPO) can take more than 3 years to process a **trademark**.

On **GIs**, rightholders are concerned by the lack of appropriate administrative procedure to enforce their rights. EU stakeholders claim that the Canadian Food Inspection Agency's (CFIA) route is very limited and does not cover most of the infringements. This means that *de facto* litigation is the only effective route at rightholders' disposal, with all the costs that this entails. Other problem relates to the absence of a list of grandfathered prior users of certain names protected under CETA. The lack of direct remedies for damage to the reputation/image of a GI is also a matter of concern for stakeholders, which makes it difficult for GI rightholders to enforce their rights.

Stakeholders report that **border enforcement** is not adequate – they point to a significant decrease in seizures as well as to costly and burdensome detentions. According to the OECD-EUIPO study, *Global Trade in Fakes* (June 2021)<sup>131</sup>, Canada appears on the list of the top 25 provenance economies for counterfeit and pirated goods (2017-2019). Data on global customs seizures indicate that Canada was, in the same period, one of the provenance countries of counterfeit toys and games.

The **EU-Canada Comprehensive Economic and Partnership Agreement (CETA)** entered into force provisionally on 21 September 2017. In July 2022, the **CETA Committee on GIs** discussed the implementation of CETA provisions related to the protection of GIs, particularly CETA commitments on administrative action, effective enforcement of GIs and the practical implementation of the grandfathering clause.

### Mexico

Following the significant legislative reforms carried out in 2020, i.e. new Federal Law of

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<sup>130</sup> [https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/south-east-asia-ip-sme-helpdesk\\_en](https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/south-east-asia-ip-sme-helpdesk_en)

<sup>131</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.  
[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

Protection of Industrial Property<sup>132</sup> and amendments to the Copyright Law<sup>133</sup> and the Criminal Code<sup>134</sup>, stakeholders report an increase in trademarks and industrial designs registrations. However, secondary legislation implementing the new Industrial Property Law is still pending.

Mexico ratified the Beijing Treaty on Audiovisual Performances on 7 July 2022.

**IPR enforcement** remains the main source of concern for stakeholders, who report that counterfeiting is a problem at all levels: manufacture of counterfeit products, e.g. apparel, textiles and footwear; widespread availability of counterfeits in street and local markets, where several stakeholders report the lack of action taken by the police in cases of flagrant infringements; and high number of counterfeits in shipments subject to customs control, including in small consignments, in contrast with a very low number of seizures. Breeders also report similar issues concerning plant variety rights.

Stakeholders regret that the fight against counterfeiting and piracy is not a priority for the competent authorities in Mexico, with lack of dissuasive sanctions and resources allocated to IPR enforcement authorities, which are also not sufficiently coordinated to act effectively. Some stakeholders request that the Attorney General's Office (AGO) and the police authorities exercise their competence proactively to ensure the enforcement of IPR. Stakeholders continue to call for a national anti-piracy plan to adopt a strategy against major targets and to coordinate federal, state and municipal enforcement actions, as well as the work of administrative, judicial and customs authorities.

Stakeholders report that **judicial and administrative proceedings** are costly, lengthy and subject to certain obligations (e.g. to file criminal complaints for all infringements, analysis of sample products by public prosecutors) that make enforcement of rights unnecessarily complex. On online piracy, some stakeholders regret the lack of clear rules on third-party liability for those inducing, promoting or contributing to copyright infringements.

As regards **customs enforcement**, EU stakeholders find the procedures cumbersome and costly, in particular regarding storage of suspected goods in private warehouses and destruction costs, which are very high. Stakeholders report that short deadlines and high costs deter rightholders from enforcing their rights on quantitatively small cases, including small consignments. According to the OECD-EUIPO study, *Global Trade in Fakes* (June 2021)<sup>135</sup>, Mexico appears on the list of the top 25 provenance economies for counterfeit and pirated goods (2017-2019).

Stakeholders continue to request that customs authorities be given broader competences to act on their own initiative to seize or destroy suspected goods, instead of only executing orders by the AGO or the Instituto Mexicano de Propiedad Intelectual (IMPI), which makes the enforcement procedures slow and ineffective.

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<sup>132</sup> Ley Federal de Protección a la Propiedad Industrial.

[http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPPI\\_010720.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPPI_010720.pdf)

<sup>133</sup> Decreto por el que se reforman y adicionan diversas disposiciones de la Ley Federal del Derecho de Autor.

[https://www.dof.gob.mx/nota\\_detalle.php?codigo=5596012&fecha=01/07/2020](https://www.dof.gob.mx/nota_detalle.php?codigo=5596012&fecha=01/07/2020)

<sup>134</sup> Decreto por el que se reforman y adicionan diversas disposiciones del Código Penal Federal

[https://www.dof.gob.mx/nota\\_detalle.php?codigo=5596005&fecha=01/07/2020#gsc.tab=0](https://www.dof.gob.mx/nota_detalle.php?codigo=5596005&fecha=01/07/2020#gsc.tab=0)

<sup>135</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

<https://euiipo.europa.eu/tunnel->

[web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

Mexico has not yet ratified or aligned its legislation with the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

The EU and Mexico completed negotiations for the modernisation of the **EU-Mexico Association Agreement** in 2018. When the Agreement enters into force, the EU and Mexico shall establish a Sub-Committee to hold annual bilateral discussions on IPR, including GIs. In the meantime, the EU and Mexico continue discussing IP matters in the context of the Special Committee on Intellectual Property Matters established pursuant to the 2000 Economic Partnership, Political Coordination and Cooperation Agreement. The latest meeting of this Special Committee took place in October 2022.

The EU technical cooperation programme, **IP Key Latin America**<sup>136</sup>, which started in September 2017, continues to be a useful instrument in general to enhance the protection and enforcement of IPR in Latin America, including Mexico, and to assist with implementation of trade agreements in particular. IP Key Latin America has provided a series of activities throughout the continent to improve and modernise the technical capacity of IP Offices, to exchange best practices, to contribute to achieving a high standard of protection and enforcement of IPR and to provide a more level playing field for IP stakeholders.

In addition, the **IP SME Helpdesk**<sup>137</sup> in Latin America continued over the last two years with the aim of supporting the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Mexico. The Helpdesk provides SMEs with free information, trainings and web-based materials.

## Vietnam

The EU welcomes the adoption in 2022 of amendments to the Intellectual Property Law, which enhance the IPR legal framework.

The amended Intellectual Property Law provides for, amongst others, bad faith as a ground for trademark opposition and cancellation, protection to sound marks, intermediary service providers' liability for copyright and related rights' online infringements, safe harbour for cases of mere conduit, caching, and hosting and introduces the concept of "secret prior art" as the prior art that was not discoverable by the new applicant or not publicly available at the time of filing of a new patent application.

The EU also welcomes Vietnam's accession to both, the WIPO Copyright Treaty on 17 November 2021 and the WIPO Performances and Phonograms Treaty on 1 April 2022.

On **copyright**, although Vietnam is a signatory to the Berne Convention for the Protection of Literary and Artistic Works and the Vietnamese IPR Law does not mandate the registration of copyright and related rights for the rights to be protected, rightholders report that in practice there is still a need to obtain a certificate of registration to enforce their rights.

As far as **trademarks** are concerned, EU stakeholders keep reporting an issue with counterfeiters registering trademarks in bad faith. This also affects GIs' holders in the sense that there is no legal ground for opposition action based on bad faith.

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<sup>136</sup> [Latin America | IPKEY](#)

<sup>137</sup> <https://www.latinamerica-ipr-helpdesk.eu/>

**Enforcement**, both as regards online and physical marketplaces, remains of the highest concern. EU stakeholders raise ineffective copyright enforcement as one of the main concerns, in particular in the online environment, including as regards site-blocking. IPR owners typically rely on administrative remedies (with fines often too low to act as a deterrent) to address IPR infringement cases in Vietnam because of difficulties in filing civil or criminal cases with overwhelmed courts. More generally, concerns have been raised that Vietnam's enforcement system has remained highly complex which makes it challenging for rightholders to take effective and efficient action against IPR infringements.

According to the OECD-EUIPO study, *Global Trade in Fakes* (June 2021)<sup>138</sup>, Vietnam appears on the list of the top ten provenance economies for counterfeit clothing between 2017 and 2019. Vietnam has also been identified by the Europol/EUIPO joint study, *Intellectual Property Crime Threat Assessment* (March 2022)<sup>139</sup>, as a country of origin of counterfeit pharmaceutical products.

Although rightholders recognise that Vietnam has stepped up its efforts in border enforcement (increased border actions and seizures and effective customs registration and recordal procedures), the level of customs detentions of infringing products remains relatively low.

The **EU-Vietnam Free Trade Agreement** was signed on 30 June 2019 and entered into force on 1 August 2020. The Free Trade Agreement includes a comprehensive IPR chapter. In the framework of the Free Trade Agreement and to monitor the implementation of the IPR Chapter, two Working Groups on IPR, including GIs, have been held in the reporting period (on 27 May 2021 and 18 May 2022).

Under the **IP Key Southeast Asia Programme**<sup>140</sup>, which started in September 2017, a series of activities were organised throughout the region, including Vietnam, to improve and modernise the technical capacity of IP Offices, to exchange best practices, to contribute to achieving a high standard of protection and enforcement of IPR and to provide a more level playing field for IP stakeholders.

Further technical assistance is granted to Vietnam under the **ASEAN Regional Integration Support from the EU** (ARISE Plus) programme<sup>141</sup>, which aims to support greater economic integration in ASEAN countries inter alia by improving IPR protection and enforcement. Under the IPR component of ARISE Plus<sup>142</sup>, the EU continues to support the legal and regulatory IP frameworks to enable ASEAN countries like Vietnam to participate in global protection systems, to develop ASEAN regional platforms and to strengthen the network of ASEAN IP Offices with a view to improving their capacity to deliver timely and quality services. Activities aimed at private stakeholders include enhancing IP awareness in society and IP capacity of the productive sector. The specific objective of this component is to support ASEAN regional

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<sup>138</sup> OECD/EUIPO (June 2021), *Global Trade in Fakes: A Worrying Threat*, OECD Publishing, Paris.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2021\\_EUIPO\\_OECD\\_Report\\_Fakes/2021\\_EUIPO\\_OECD\\_Trade\\_Fakes\\_Study\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2021_EUIPO_OECD_Report_Fakes/2021_EUIPO_OECD_Trade_Fakes_Study_FullR_en.pdf)

<sup>139</sup> EUROPOL/EUIPO (March 2022), *Intellectual Property Crime Threat Assessment 2022*.

[https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2022\\_IP\\_Crime\\_Threat\\_Assessment/IP\\_Crime\\_Threat\\_Assessment\\_2022\\_FullR\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_IP_Crime_Threat_Assessment/IP_Crime_Threat_Assessment_2022_FullR_en.pdf)

<sup>140</sup> [South-East Asia | IPKEY](http://ariseplus.asean.org/)

<sup>141</sup> <http://ariseplus.asean.org/>

<sup>142</sup> <https://euiipoef.eu/en/ariseplusipr>

integration and further upgrade and improve the systems for IP creation, protection, utilisation, administration and enforcement in the ASEAN region.

Finally, the **South-East Asia IP SME Helpdesk**<sup>143</sup> continued to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Vietnam, through the provision of free information and other services. The rendered services include a free-of-charge helpline, trainings and web-based materials.

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<sup>143</sup> [https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/south-east-asia-ip-sme-helpdesk\\_en](https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/south-east-asia-ip-sme-helpdesk_en)