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Protecting intellectual property rights in the EU

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Intellectual property rights (IPRs) are the rights of creators to derive benefit from their intangible works. By providing certainty to creators that their work can be compensated, IPRs provide an incentive for innovation and technological development. They are also important in protecting products from unauthorised copying: in other words, for preventing counterfeiting.

The EU economy relies heavily on IPRs, and the EU has put a regulatory framework in place to harmonise them across the EU.

We are conducting an audit to assess how effective this EU framework has been in protecting IPRs, and how well it has been enforced. We will look at the work done by the Commission, the European Union Intellectual Property Office, Europol and public authorities in selected Member States (France, Greece, Lithuania, Hungary and Romania).

If you wish to contact the audit team, you may do so at the following email address:

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Intellectual property

Intellectual property refers to creations of the mind, such as inventions, artistic works, symbols, names and images used in commerce.

Because it is intangible, unlike traditional goods, intellectual property can usually be reproduced easily and used by an unlimited number of people without being depleted. This is problematic for creators: they invest time and resources in developing their creations, but they cannot easily prevent people from reproducing them and using them without payment.

As well as being unfair on the creators themselves, it is damaging to society and the economy as a whole, if creators' rights to benefit from the intellectual property they produce are not protected. If creators cannot expect to be compensated for the time and resources they invest in creating a work, solving a technological problem, or designing something new, this reduces their incentive to produce innovative new work.

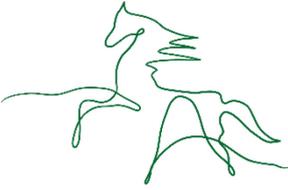
To fix this problem, the right of intellectual property creators to derive benefit from their works is protected in law.

In line with the international treaties, IPRs are traditionally divided into two categories:

- copyright covering literary works, films and music; and
- industrial property rights covering patents (inventions), trademarks, designs and geographical indications (GIs).

Table 1 shows some of the differences between the different types of IPRs for the latter.

Table 1: Some types of industrial property rights

	 Trademarks	 Industrial designs	 Geographical indications
Subject	Distinctive signs	Appearance of products	Product from a particular location whose quality or reputation is linked to its geographical origin
Rights acquired	Individual exclusive rights	Individual exclusive rights	Collective exclusive rights, belong to all producers
Control	Individual control by the owner of a trade mark	Individual control by the owner of an industrial design	Collective control by producers or independent agencies/NCA
Duration of protection	10 years, renewable indefinitely	5 years, renewable for a maximum of 25 years	Indefinitely

Source: ECA.

IPRs are not a new concept: many provisions governing IPRs are set out in the Paris Convention for the protection of industrial property (1883) and the Berne Convention for the protection of literary and artistic works (1886), both of which are now administered by the World Intellectual Property Organization (WIPO). Another key instrument that strengthened the international protection of IPRs is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). IPRs are also recognised in Article 27(2) of the Universal Declaration of Human Rights and in Article 17(2) of the EU Charter of Fundamental Rights.

Intellectual property in the EU economy

Intellectual property is crucially important to the EU economy. Industries which rely heavily on intellectual property generate almost 45 % of the EU's total economic activity (GDP). They are worth €6.6 trillion to the EU economy, and provide almost 30 % of total EU employment.

This means that protecting IPRs is essential to the success of the EU's single market. This is especially true in a number of sectors where EU businesses are world leaders: in areas such as clothing, luxury goods and pharmaceuticals.

It is also important for promoting innovation and creativity, and for developing employment and improving competitiveness, key elements needed for the European Union to compete in a global economy.

However, without effective means of enforcing IPRs, innovation and creativity are discouraged and investment diminished. In this respect, the means of enforcing IPRs are of paramount importance for the success of the internal market.

In November 2020, the Commission published a new intellectual property [action plan](#)¹ to support the EU's recovery and resilience initiative. The five key focus areas of this action plan are:

- improving the protection of IP;
- boosting the uptake of IP by small and medium-sized companies (SMEs);
- facilitating the sharing of IP;
- fighting counterfeiting and improving enforcement of IP rights; and
- promoting a global level playing field.

Counterfeiting – a special case of intellectual property rights infringement

IPR violations include the production of poor-quality imitations of legitimate products; in other words, counterfeiting. Counterfeiting and piracy are a complex and growing problem.

The internet has brought innovative goods, technology and creative content to a much wider consumer base, enabling innovators and creators to reach new markets and audiences. However, this exposes the EU's IPR system to greater risks. The online environment allows IPR-infringing goods and content to proliferate much more widely and quickly, often making it more difficult for consumers to distinguish fake goods from genuine and legal ones. IPR infringers can hide behind fake identities. They are often located outside the EU, in jurisdictions with weak enforcement regimes. The result is an increasing trend of IPR infringements across the globe. Today, counterfeit and pirated goods account for 3.3 % of world trade, representing a value of €460 billion².

Besides being economically damaging, counterfeiting can also be a public safety issue. The COVID-19 pandemic illustrated this clearly: during the pandemic, various categories of counterfeit products began to turn up in Europe, including medical equipment like face masks, sanitisers and disinfectants, and pharmaceuticals. Counterfeit copies of goods are unlikely to meet the required quality standards.

The Commission has taken initiatives to combat counterfeiting and other IPR infringements at the EU's external border. One of those initiatives is the EU Customs Action Plan to combat IPR infringements for the years 2018 to 2022³. The plan contains four strategic objectives (see *Figure 1*).

Figure 1: EU Customs Action Plan - four strategic objectives



Source: Icon made by Pixel perfect from www.flaticon.com

Intellectual property rights in EU law

The Treaty on the Functioning of the European Union empowers the European Parliament and the Council to establish measures for harmonising certain aspects of IPRs and creating a single European system providing a uniform protection of IPRs in all EU Member States.

The EU has various specific legal instruments in place, shown in [Table 2](#), for protecting the IPRs associated with trademarks, designs and geographical indications. The EU legal framework for trademarks and designs is currently under evaluation.

Table 1 – Summary of the main EU legal instruments

	Trademarks	<ul style="list-style-type: none"> • European Union Trademark Regulation (EUTMR) • Directive approximating the laws of the Member States relating to trade marks
	Industrial Designs	<ul style="list-style-type: none"> • Community Designs Regulation (CDR) • Directive on the legal protection of designs
	Geographical indications	<ul style="list-style-type: none"> • Agricultural products and foodstuffs Regulation • Wines Regulation • Spirits drinks Regulation • Aromatised wines Regulation

Source: ECA.

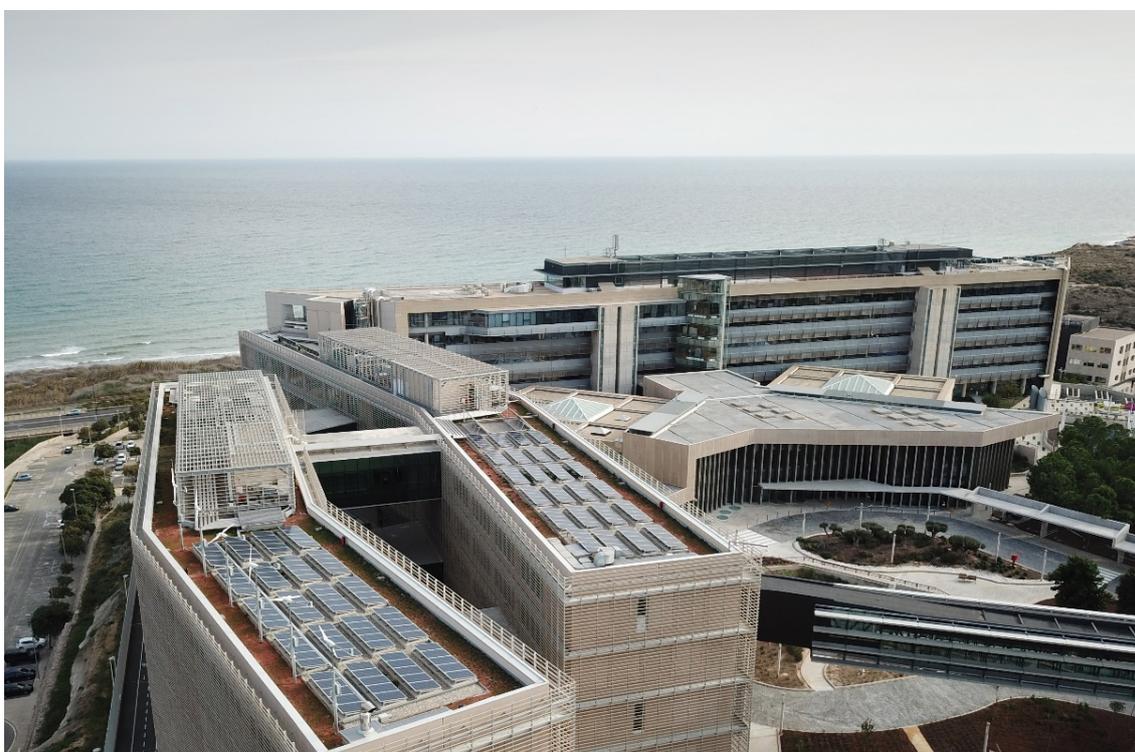
Roles and responsibilities

The European Commission and other EU bodies cooperate with public authorities in Member States to ensure that IPRs are properly protected in the EU. The **Commission** is responsible, in particular, for:

- developing legislative proposals to harmonise IPRs in the EU;
- verifying whether national authorities have implemented EU IPR legislation correctly;

- monitoring and preventing IPR infringements in the single market; and
- identifying failures in the EU regulatory framework so that they can be resolved.

The **EU Intellectual Property Office (EUIPO)** also plays an important role. It is responsible for managing the registration of EU trademarks and registered Community designs; it also carries out cooperation activities with the national and regional IP offices of the EU. The EUIPO has a budget of €465 million in 2020.



Source: <https://euipo.europa.eu/ohimportal/en/our-history> – an aerial view of the EUIPO campus, showing solar panels and wind turbines on the roof of the main structure.

In addition, the **European Observatory on infringements of IPR**, which is hosted by the EUIPO, has a wide range of tasks relating to research, communication, dissemination of best practices, and support for enforcement of all types of IPRs. To support the fight against counterfeiting and piracy, Europol, the European Union Agency for Law Enforcement Cooperation and the EUIPO joined forces in 2016 to create the Intellectual Property Crime Coordinated Coalition (IPC3), which operates within Europol.

Member States also play an essential role, jointly with the Commission, in enforcing IPRs, especially in the area of counterfeiting. Member States are responsible for carrying out enforcement checks. Their customs authorities carry out checks to uncover IPR infringements at the border, while other law enforcement services, in particular the police, are responsible for detecting and responding to domestic IPR infringements.

Focus of the audit

The purpose of the audit is to assess whether IPRs associated with EU trademarks, Community designs and EU geographical indications are well protected within the single market.

We will assess whether the EU's regulatory framework works properly to protect IPRs. With regard to the enforcement of IPRs, we will benchmark the performance of the Commission and the EUIPO Observatory against international practices. Our auditors will also review enforcement practices in selected Member States (France, Greece, Lithuania, Hungary and Romania).

The audit will focus on EU trademarks, Community designs and EU geographical indications. The audited period will run from the beginning of 2017 until the end of the fieldwork in 2021.

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The ECA's special reports set out the results of its audits of EU policies and programmes or management topics related to specific budgetary areas.

Our audit previews provide information in relation to an ongoing audit task. They are based on preparatory work undertaken before the start of the audit and are intended as a source of information for those interested in the policy and/or programme being audited. Since we identified the issues underlying these areas of enquiry before the audit work commenced, they should not be regarded as audit observations, conclusions or recommendations.

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- ¹ COM(2020) 760 final; 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 the EU's recovery and resilience.
 - ² OECD/EUIPO (2019), Trends in Trade in Counterfeit and Pirated Goods.
 - ³ Council Conclusions on the EU Customs Action Plan to combat IPR infringements for the years 2018 to 2022, (OJ C 24, 21.1.2019, p. 3).

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