

Report on the protection and enforcement of intellectual property rights (IPR) in third countries

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.

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 European Intellectual Property Office (EUIPO) and the European Patent Office (EPO) from October 2022, IPR-intensive industries generated around 81 million or 39.4% of all jobs in the EU during the period 2017-2019 (including indirect jobs). 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 (%)
All IPR-intensive	61,499,614	29.7%	81,592,215	39.4%	6,375,796	47.1%
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%
Total EU employment			206,899,343			

* 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. Industrylevel 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.

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

Copyright-intensive	229,082	249,340	-20,258
Patent-intensive	1,559,811	1,341,864	217,947
Plant variety-intensive	43,248	50,743	-7,495
Trade mark-intensive	1,547,270	1,551,618	-4,348
GI-intensive*	13,126	1,769	11,357
Design-intensive	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. Industrylevel 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.

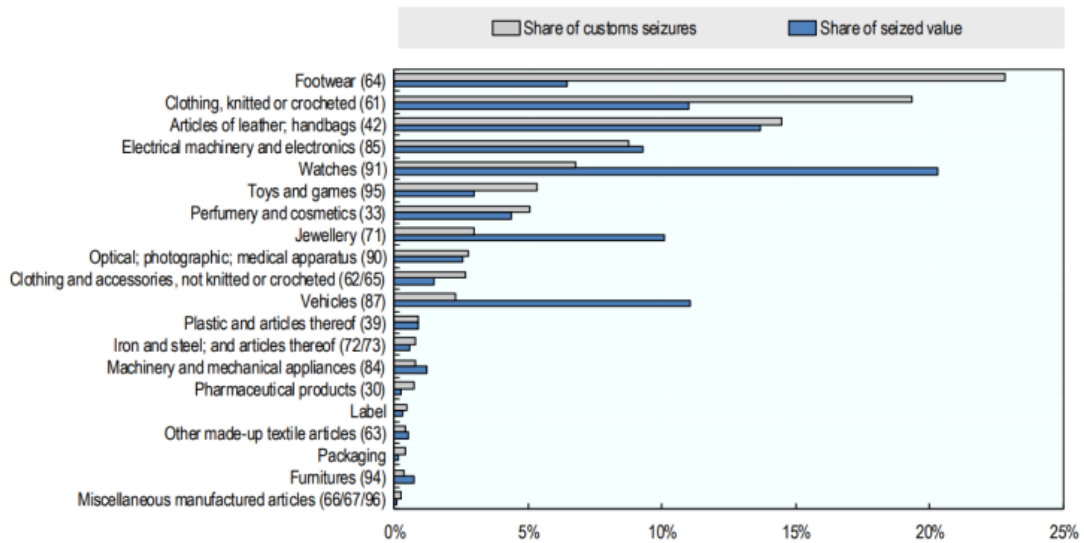
There are various practical challenges and limitations which have a negative impact on IPR protection for EU companies in third countries, such as forced technology transfer, procedural deficiencies, lack of effective enforcement policies, backlogs in rights registrations, non-registration of certain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

The OECD-EUIPO study Global Trade in Fakes (June 2021), 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, 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.

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.

COUNTRY-SPECIFIC ANALYSIS (BRAZIL)

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. 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**, e.g. via **Patent Prosecution Highway (PPH) programmes** with other IP Offices and via accelerated and simpler procedures⁸. 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. 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.

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. 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. 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.

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.

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. 10603-200295 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 g 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. 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.