

## Peer Assessment Mission to Montenegro on Intellectual property rights

(Reference code: JHA IND/EXP 67437)

**Mission timeframe: from 29<sup>th</sup> October 2018 to 2<sup>nd</sup> November 2018**

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#### **Disclaimer**

*The views articulated and expressed in this report are purely those of the author and may not in any circumstances be regarded as stating an official position of the European Commission.*

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## 1. Background

In the framework of Montenegro's EU accession negotiations the following closing benchmark has been set for Chapter 7 – Intellectual property rights:

- Montenegro ensures a sufficient administrative capacity to register intellectual property rights and provides a track record of investigation by customs and effective enforcement through civil and, where appropriate, criminal justice.

## 2. Introduction

### 2.1. Mission's Objective

The Mission's Objective was to:

- Provide a comprehensive overview of the administrative capacity of Montenegro to register intellectual property rights (IPR);
- Assess the effectiveness and efficiency of investigation and prosecution through the customs authority, the commercial court and the state prosecutor's office;
- Ascertain whether cooperation and exchange of information between the different IPR enforcement institutions is formalised and occurs on systematic basis; and

- Recommend how Montenegro can enhance its capacity and performance to protect and enforce IPR.

In order to achieve the Mission's Objective, the experts were asked to consider the following questions:

- Has the administrative capacity sufficiently improved to demonstrate its capacity to register IPR?
- How is Montenegro addressing the shortcomings to its administrative capacities in the Intellectual Property Office, the market inspection and the customs administration?
- Does the provided track record of investigation by customs and effective enforcement through civil and, where appropriate, criminal justice tally with the frequency and intensity of infringement to be expected in a country of the size and exposition of Montenegro?
- Are there records on fines from commercial court, state prosecutor's office and market inspection procedures and on follow-up to demonstrate effective enforcement? and
- How is the work of the new IPR Coordination team advancing and do its decisions and the special working team installed by it effectively contribute to IPR enforcement?

## 2.2. Methodology of the Evaluation

Prior to the initiation of the Mission, the experts were provided with extensive background literature on the protection and enforcement of IPR in Montenegro, including legislation. They were then given the opportunity to meet with the main Government institutions responsible for the protection and enforcement of IPR, during the Mission. In addition, they also had the opportunity to discuss the National Intellectual Property System with multiple right holder representatives, including Collective Management Organisations, whilst in Podgorica.

## 3. Executive Summary

There is no doubt that the Intellectual Property Office of Montenegro (IPOM) has enhanced its capacity to register Intellectual Property (IP) objects in recent years. Not only do IPOM staff receive frequent training but they have managed to leverage the support of international organisations such as World Intellectual Property Organisation (WIPO), European Patent Office (EPO) and European Union Intellectual Property Office (EUIPO) to develop their IT systems. As a result, there is only a small backlog in the registration of IP objects and the corresponding industrial property databases can be accessed online. In addition, IPOM is reaching out to creators and inventors to encourage them to utilise their services. Furthermore, it was reported by the right holder representatives that consumers and businesses are now aware that IPR should be respected, as a result of IPOM's outreach activities.

The majority of IPR enforcement institutions are also aware of the importance of IP as they have been the recipients of frequent capacity building events in both Montenegro and overseas, in recent years. However, they are also keen to receive additional support in this area.

Inter-institutional cooperation has been enhanced substantially by the introduction of the **Coordination Team** in March 2017 and, subsequently, the **Enforcement Working Group** and **Medicines Working Group**. The Coordination Team and its Working Groups currently prioritise awareness, enforcement and statistics but their responsibilities

should be expanded to include such activities as the strategic concerns of right holders and the systematic sharing of intelligence.

In respect of IPR enforcement, the Customs Administration has aligned both its legislation and practices with the European Union (EU). Consequently, IPR enforcement at the border is becoming more effective. Furthermore, the Market Inspectorate are impacting the volume of counterfeit and pirate goods sold and/or used in Montenegro by increasing the number of market controls whilst right holders appear satisfied with the civil tools they have available to enforce their IPR through the Commercial Court. However, the IPR enforcement institutions do not report the sanctions, including fines, imposed by either the Market Inspectorate or Courts in their official statistics.

The criminal enforcement of IPR is negligible in Montenegro. The official statistics reveal only a few cases, since 2014, and no record of deterrent sentencing. In addition, there is no enforcement of IPR on the internet. The institutions indicate that this situation is a result of right holder apathy but, conversely, they do not use their ex-officio powers to protect Montenegrin society from the impact of IP crime and cannot rely on right holders to protect society from the sale of potentially dangerous goods, such as falsified medicines or counterfeit toys, either from terrestrial or online retail outlets.

With the exception of the Market Inspectorate, all the institutions indicated they had sufficient resources to protect and enforce IPR. However, it is noted that the Ministry of Economy, IPOM and the Customs Administration are 25%, 15% and 25%, respectively, below their recommended establishments.

A complete list of recommendations to enhance the protection and enforcement of IPR in Montenegro can be located in Section 5 of this Report but the recommendations to be prioritised are:

### **Legislation**

- Article 271 the Criminal Code (Abuse of Trade Name) should be amended to remove the need to deceive, which is inconsistent with a Court of Justice of the European Union (CJEU) decision (C-206/01 Arsenal Football Club Plc v Matthew Reed);
- The National Legislation should be aligned with EU Directive 26/2014 on collective management of copyright and related rights;
- The National Legislation should be aligned with EU Directive 2436/2015 to approximate the laws of the member states relating to trademarks (as it contains provisions concerning goods in transit); and
- The National Legislation should be aligned with a decision by the CJEU concerning landlord liability (C-494/15 Tommy Hilfiger Licensing LLC and others v Delta Centre).

### **Capacity Building**

- The IPR enforcement institutions, including IPOM, should endeavour to secure additional IPR enforcement capacity building, specifically for the Market Inspectorate, Police Directorate and the State Prosecutor's Office, through contact with foreign organisations, such as Interpol, Europol, EUIPO's Observatory on the Infringements

of IPR and right holders. The IPR enforcement institutions, including IPOM, should also consider asking for additional support from the EU through their TAIEX and Twinning instruments.

### **Enforcement**

- The Customs Administration should implement the small consignment procedure contained in the National Legislation and requested by right holders;
- The Market Inspectorate should develop a procedure similar to the simplified procedure used by the Customs Administration to facilitate the efficient disposal of seized goods; and
- Deterrent sentencing should be adopted, at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale, to discourage the infringement of IPR.

### **Cooperation**

- The Coordination Team's responsibilities should be expanded to include such activities as the strategic concerns of right holders and the systematic sharing of intelligence. This could be achieved by establishing additional Working Groups; and
- The Market Inspectorate, Police Directorate and State Prosecutor's Office are currently not working with Interpol, Europol and EUIPO's Observatory on the Infringement of IPR and this should be rectified. In addition, all the IPR enforcement institutions need to get involved in multi-national operations such as "Pangea" and "In Our Sites".<sup>1</sup>

### **Statistics**

The Customs Administration has partially adopted DGTAXUD's statistics methodology but should aim to replicate the methodology exactly.<sup>2</sup> In addition, the other IPR enforcement institutions should adopt the Anti-Counterfeiting Intelligence Support Tool (ACIST) methodology used by the EUIPO's Observatory on Infringements of IPR.<sup>3</sup> Furthermore, the Market Inspectorate, Police Directorate, State Prosecutor's Office and Courts should report case results e.g. guilty or not guilty, fine or imprisonment.

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<sup>1</sup> It appears, with the exception of the Customs Administration, the IPR enforcement institutions have not been involved in multi-national operations since 2015.

<sup>2</sup> IPR Infringements: Facts and Figures

[https://ec.europa.eu/taxation\\_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/ipr-infringements-facts-figures\\_en](https://ec.europa.eu/taxation_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/ipr-infringements-facts-figures_en)

<sup>3</sup> Anti-Counterfeiting Intelligence Support Tool

<https://euipo.europa.eu/ohimportal/en/web/observatory/anti-counterfeiting-intelligence-support-tool>

## Awareness

- Awareness is at least as important as enforcement. If you can decrease the demand for counterfeit and pirate goods then the availability of such products will reduce. Consequently, it is imperative that Montenegro develop effective IPR awareness campaigns targeting different segments of society and adopts success indicators, as described in the WIPO Outreach Guide.<sup>4</sup>

## Right Holders

- The IPR enforcement institutions, including IPOM, have to encourage right holders to support the enforcement of IPR in Montenegro. This could be done through an awareness campaign highlighting the similarity of the IPR enforcement system in Montenegro to the IPR enforcement system in EU member states; and
- Right holders and their representatives should establish an Association, such as the Anti-Counterfeiting Group in the United Kingdom, to lobby Government with one voice on the protection and Enforcement of IPR.

## 4. Findings

### **Institutional Capacities of Main Institutions**

#### Recruitment

At the start of the Mission, the experts were informed by the Delegation of the EU to Montenegro that all Government recruitment had been frozen until 1<sup>st</sup> July 2019, in an attempt to reduce the size of the civil service. However, in exceptional circumstances, new staff can be recruited with the permission of the Government (Narrow Council) and it is possible to transfer staff between institutions.

The Government institutions briefed the experts that, prior to the moratorium on recruitment, when they wished to recruit additional staff the human resource section in each Government institution adopted traditional methods to identify suitable candidates for vacancies, specifically advertising the vacancy, assessing paper applications and then short-listing candidates for interview.

#### Ministry of Economy - Department for Intellectual Property

Within the Ministry of Economy's Directorate for Internal Market and Competition is a **Department for IP**. This Department is responsible for:

- Preparing draft IP legislation;

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<sup>4</sup> WIPO: IP Outreach Campaigns  
<http://www.wipo.int/ip-outreach/en/tools/>

- Monitoring and coordinating the work of IPOM; and
- Participating in the Coordination Team.

The Department for IP has an establishment of four but currently only employs two individuals. An additional staff member has been temporarily seconded to the Department from another position in the Ministry but one vacancy still remains. Regardless, the Department is of the opinion that it is capable of managing its current workload.

There are no formalized training programs for new staff members but they do receive “on the job training” from senior employees and the staff regularly attend IP related seminars in both Montenegro and overseas. In addition, staff members have participated in multiple study visits to other IP offices in Europe.

All staff in the Department have access to computers and the internet.

#### Intellectual Property Office of Montenegro

The **Intellectual Property Office of Montenegro** (IPOM) is an administrative authority within the Ministry of Economy. The statutory tasks of the office include:

- Issuing patents<sup>5</sup>
- Registering other industrial property;
- Registering copyright and related rights; and
- IPOM is a contact point for international cooperation.

IPOM has an establishment of 27 staff but currently only employs 19 permanent staff and four staff on temporary contracts<sup>6</sup>.

The 23 IPOM staff are distributed as follows:

- Director and Deputy Director - 2 employees;
- Division for Patents and Topographies of Semiconductor Products - 4 employees;
- Division for Acquisition of Trademarks, Industrial Designs and Geographical Indications - 6 employees;
- Division for Registers and Maintenance of Industrial Property Rights - 3 employees;
- Division for Copyright and Related Rights and International Cooperation - 4 employees; and
- Division for IT services - 4 employees.

IPOM is of the opinion they have sufficient manpower to deal with their current workload but hope to fill their remaining vacancies in 2019.<sup>7</sup>

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<sup>5</sup> Patents in Montenegro are granted if formal requirements are met and are not subject to examination.

<sup>6</sup> One IPOM staff member is seconded to the European Union Intellectual Property Office (EUIPO).

<sup>7</sup> Provided the moratorium on recruitment is lifted.

There is no formal training for new staff members but they do receive “on the job training” from senior employees and selected staff members attend seminars in both Montenegro and overseas. In addition, IPOM has participated in multiple study visits to other IP offices in Europe.

IPOM’s industrial property databases can be accessed through their website and can be searched for:

- Trademark applications based on the application number, registration number, trademark name, the Applicant (Holder), a search based on filing date, validity date and trademark status;
- The patent application based on the application number, the accepted date of submission (from-to), the registration number, the Patent Cooperation Treaty (PCT) application number, the PCT publication number, the European Patent (EP) application number, the EP publication number, the Applicant (Holder), Inventor, International Patent Classification, name of invention and abstract; and
- Design applications based on the application number, registration number, title, right holder, attorney / representative and Locarno Classification.

With the support of WIPO, EPO and EUIPO, IPOM has improved its IP infrastructure significantly over the past few years. In May 2018, IPOM, with the assistance of temporary staff sponsored by the EPO, finalized the digitalization of all their historical patent scripts. In addition, the EPO recently donated IT equipment worth € 10,000 Euro to IPOM. Furthermore, with WIPO assistance, IPOM is now in the process of installing IPAS (Industrial Property Automation System), which facilitates the registration of Trademarks, Designs and Patents. Once installed, the IPAS system will facilitate access to the related Montenegrin databases for the other 50+ countries who also use the IPAS system.<sup>8</sup> The Montenegrin Trademark and Design databases have already been incorporated into the EUIPO’s TMView and DesignView systems.

On 5<sup>th</sup> November 2018, IPOM implemented the EUIPO’s User Satisfaction Survey (USS) tool and intends to introduce the following additional EUIPO tools in 2019:

- Design class;
- CESTO (Common Examiners Support Tool); and
- HDB - Harmonized Database for Trademarks (51,000 terms need to be translated from Montenegrin to English).

### Customs Administration

The Customs Administration is part of the Ministry of Finance. Their Headquarters is situated in Podgorica and they have Regional Offices (Customs Houses) in Podgorica, Bar, Kotor and Bijelo Polje. The Customs Administration has an establishment of 615 officers but currently only employs 504 officers. Within the Sector for Customs and Legal Affairs, the Customs Administration has a **Department for Protection of IPR and Monitoring Prohibitions and Restrictions**. This Department is based at Headquarters and has an establishment of four officers but currently only employs three

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<sup>8</sup> The WIPO Madrid module will also be installed.

officers. In addition, each of the four Custom Houses contain an officer who is nominated to be the IPR enforcement contact point.

There are no specialised IP courses for new Customs officers but within one year of joining the Customs Administration an officer must pass an exam which includes IP questions. In addition, Customs officers receive “on the job training” and are given the opportunity to attend IP seminars organised by the Department and/or right holders. Furthermore, officers from the Department are given the opportunity to attend seminars in other countries.

The Customs Administration has a dedicated IT system (INES) to manage the detention of goods suspected of infringing an IPR and collect IPR enforcement statistics. This system is maintained by the Department. In addition, all officers can access an intranet which contains Guides on how to enforce IPR and how to tell the difference between genuine and fake goods. The intranet also contains all valid Applications for Action (AfAs). Furthermore, authorised officers can access the World Customs Organisations (WCO) Interface Public Members (IPM) system to assist in the identification of counterfeit goods.<sup>9</sup>

The Customs Administration have access to sufficient storage space for detained goods and do not encounter any problems relating to the destruction of seized goods as waste companies exist to dispose of seizures without harming the environment. Furthermore, as in EU member states, the right holder is initially responsible to cover all storage and destruction costs.

### Market Inspectorate

The Market Inspectorate is part of the Administration for Inspection Affairs. Their Headquarters is situated in Podgorica and they are split into three Regions (North, South and Central) with offices in 16 municipalities. The Market Inspectorate has an establishment of 54 inspectors (of which 4 for performing technical surveillance) and 3 advisers. At the time of the visit, there were 11 open positions for inspectors (of which 9 for performing technical surveillance).

In addition to IP legislation, the Market Inspectorate is responsible for the enforcement of many different laws including those relating to internal trade, consumer protection, consumer loans, product safety, market surveillance, tobacco, metrology, medicinal products, energy etc.

None of the inspectors are dedicated to the enforcement of IPR and there are no specialised IP courses for new inspectors but they do receive “on the job training” and are frequently given the opportunity to attend IP seminars in Montenegro organised by Headquarters and/or right holders (e.g. Microsoft).

The Market Inspectorate has a generic IT case management system but it is dated and needs upgrading. They also possess the INES system but need to develop a risk management system to increase their efficiency. However, all inspectors have computers, including laptops, and can access the internet. In addition, the Market Inspectorate have access to 25 company vehicles.

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<sup>9</sup> World Customs Organisation Interface Public Members (IPM) System  
<http://www.wcoipm.org> (Post review note – WCO terminated IPM in December 2018).

The Market Inspectorate's website contains information on how rights holders can protect their IPR and templates for complaints. Furthermore, the website also highlights the responsibility of business entities concerning the sale of goods infringing IPR.

The Market Inspectorate do not have any storage space for seized goods. The Courts are obligated by law to store seized goods but in reality this does not happen. Consequently, the Market Inspectorate has to use any suitable location they can identify, including office space and/or Custom Administration warehouses, to store seized goods. They also have an issue with destruction. Frequently, a right holder does not respond to a detention as the number of articles is too small and/or the seller disappears. In this situation, the Market Inspectorate is still obligated to seek a court order to destroy the seized goods, which consumes scarce resources. Furthermore, the Market Inspectorate has encountered problems on how to dispose of goods which are potentially dangerous to the environment (e.g. optical discs).

### Police Directorate

The Headquarters of the Police Directorate is situated in Podgorica and, within the Criminal Police Division, the **Department for Combating Economic Crime** is charged with investigating IPR infringements, in addition to other offences. The **Department for Combating Economic Crime** has an establishment of 48 officers but none of these officers are dedicated to investigating IPR infringements only.

It is also noted that there are two officers within the **Department for Combating Organised Crime and Corruption**, which is also in the Criminal Police Division, which are responsible for investigating all cybercrime offences, including IPR infringements.

There are no specialised IP courses for new officers but they do receive "on the job training" and are frequently given the opportunity to attend IP seminars in Montenegro. The Police Directorate are open to additional capacity building opportunities.

The Police Directorate has a generic IT case management system which it uses for all investigations, not just IP related cases. All officers have access to computers and the internet.

Any goods that are seized are stored by the Customs Administration and, to date, destruction of seized goods has not been an issue.

### State Prosecutor's Office

The State Prosecutor's Office is responsible for the prosecution of criminal offences, other punishable offences prosecuted *ex officio*, filing legal remedies falling within its jurisdiction and the performance of other affairs, as prescribed by law.

The State Prosecutor's Office does not have an IPR unit but there is one dedicated IP prosecutor for Podgorica.

There are no specialised IP courses for new prosecutors but they do receive “on the job training” and select prosecutors are given the opportunity to attend IP seminars in both Montenegro and overseas.

The State Prosecutor’s Office has a generic IT case management system which it uses for all investigations, not just IP related cases. All prosecutors have access to computers and the internet.

### The Commercial Court

The Commercial Court is based in Podgorica and is responsible to hear all civil cases, including those involving IP.

The Commercial Court has an establishment of 16 Judges, 14 advisers and 65 administrative employees. There are no vacancies. Five of the 16 Judges have been nominated to hear IP cases.

There are no specialised IP courses for new Judges but they do receive “on the job training” and are frequently given the opportunity to attend IP seminars in both Montenegro and overseas. The Judges want additional capacity building opportunities.

The Commercial Court has a Case Law database and all Judges have access to computers and the internet. However, the Judges opine their IT system needs to be updated.

The Commercial Court stated the operator of a physical market cannot be held liable for the infringement of an IPR by sellers in their market.

Prior to hearing a case, the Commercial Court encourages both parties to consider Alternative Dispute Resolution and highlights the services of the Mediation Centre.

### **Inter-institutional Cooperation**

On 29<sup>th</sup> March 2017, the Ministry of Economy established the **Coordination Team**. The objective of the Coordination Team is to enhance cooperation between the IPR enforcement institutions. The members of the Coordination Team include the Ministry of Economy, IPOM, Customs Administration, Market Inspectorate, Police Directorate, State Prosecutor’s Office and the Commercial Court. Since its establishment, the Coordination Team has met eight times and retains minutes of all their meetings.

In October 2017, the Coordination Team established an **Enforcement Working Group** and the Ministry of Health established a Medicines Working Group. The Customs Administration, Market Inspectorate, Police Directorate and IPOM are members of the Enforcement Working Group whilst the Customs Administration, Market Inspectorate, Police Directorate, Agency for Medicines and Medical Devices and IPOM are members of the Medicines Working Group.

It is noted that the Enforcement Working Group has an Action Plan for 2018, which includes the following:

- Design a Website;
- Implement Joint Actions (Days of Action);
- Launch education programs for secondary school and university students; and
- Improve cooperation with right holders.

Prior to this Mission, the Enforcement Working Group had initiated three Days of Action in 2018 and a fourth is planned for November 2018. The Days of Action are a combination of awareness raising and enforcement. They are implemented throughout the country. The Days of Action have resulted in 20 controls of businesses by the Market Inspectorate and Police Directorate. In addition, the Customs Administration have detained 189 goods suspected of infringing an IPR, during the Days of Action.

The Medicines Working Group was established to monitor the market for falsified medicines, to enhance cooperation with international organizations and to raise public awareness about the dangers of falsified medicines.

## **Relations with Stakeholders**

### Intellectual Property Office of Montenegro

IPOM cooperates with the Ministry of Science and is planning to issue a scientific periodical on IP related matters, together with the Ministry. IPOM has also participated in a “Young Inventors” event, which is organized by the Ministry of Science.

IPOM has introduced an “Open Door Day” (Otvorena Vrata) initiative, where each month the office arranges a roundtable for specific target groups (inventors, lawyers, students, scientists, SME’s et al) to engage in dialogue on issues related to IP.

Lectures have also been delivered, by IPOM, at secondary schools in an attempt to raise awareness of the importance of IP among the younger segment of the population.

According to IPOM, their relationship with right holders and patent attorneys is good. This was confirmed by the Chamber of Commerce and right holder representatives (law firms) the experts met, during their mission to Podgorica. However, one of the Collective Management Organisations (CMOs) recently had its operating license revoked by IPOM and this has resulted in an appeal, by the CMO, to the Ministry of Economy. The experts are not in a position to assess the dispute, however, it appears the dialogue between IPOM and the two existing CMOs can be improved.

IPOM has a Memorandum of Understanding with the Chamber of Commerce concerning awareness raising and capacity building.

## IPR Enforcement Institutions

The Chamber of Commerce and right holder representatives stated their relations with the both the Customs Administration and Market Inspectorate were good and both institutions were responsive to their needs. However, certain members of the Chamber of Commerce, namely freight forwarders, were upset at potentially being held jointly liable for the import of infringing goods by the Customs Administration and the Commercial Court.

Conversely, both the Customs Administration and Market Inspectorate claimed to have good relations with the right holders and their representatives but complained about the reluctance of these entities to respond to detentions. The reason for the reluctance was believed to be the comparatively small size of some detentions and the perceived lack of interest in the Montenegrin market.

Neither the Chamber of Commerce or right holder representatives, met by the experts, had any relations with either the Police Directorate or State Prosecutor's Office.

## **D. Overview on international co-operation (incl. neighbouring countries)**

### Ministry of Economy

The Ministry of Economy is in close contact with WIPO and receives regular updates on legislative developments. In addition, WIPO, the World Trade Organisation (WTO) and TAIEX have provided extensive capacity building assistance to the Ministry of Economy.

### Intellectual Property Office of Montenegro

As highlighted above, IPOM works closely with WIPO, EPO and EUIPO. This has resulted in the provision of support for capacity building, including the development of IPOM's IT infrastructure. Furthermore, the Government of Montenegro has signed a Memorandum of Understanding with WIPO and IPOM has agreed a Work Plan (2017 to 2018) with WIPO, a Bilateral Cooperation Plan (2018 to 2019) with EPO and has signed a Memorandum of Understanding with EUIPO.

Since 2008, Montenegro has had an extension agreement with EPO and in October 2018 it was invited to join the European Patent Convention. It is now scheduled to become the next full member of the EPO and the EPO has highlighted Montenegro's strong commitment to harmonizing its National Legislation and modernizing its patent system.

IPOM also claims to be in regular contact with IP offices in neighboring countries and has benefitted from ongoing dialogue (and a Study Visit) with/to the Croatian IPO. In addition, IPOM has signed Memorandum of Understanding with seven countries, specifically Iceland, Moldova, Serbia, Hungary, Slovenia, Ukraine and Bosnia and Herzegovina".

It is noted that, in 2019, WIPO intends to assist IPOM develop a National IP Strategy to cover the period from 2020 to 2023.

### IPR Enforcement Institutions

The Customs Administration has good relations with EUIPO, WCO, Interpol and Europol. It attends capacity building events organised by these institutions and participates in some of their multi-national operations. Furthermore, the Customs Administration is a member of the WCO's Interface Public-Members (IPM) System. The Customs Administration also has Memorandum of Understanding with tobacco companies, including British American Tobacco, Japanese Tobacco International and Philip Morris.

The Market Inspectorate, State Prosecutor's Office and Commercial Courts have also benefited from WIPO, EPO and EUIPO capacity building events (the State Prosecutor's Office is a member of the EUIPO's European Prosecutor's Network). Furthermore, the Market Inspectorate and Police Directorate have previously participated in multi-national operations organised by Europol and Interpol.

Unfortunately, the Police Directorate has yet to get involved in the capacity building events organised by Europol and EUIPO.

All IPR enforcement institutions claim to have good relations with their neighbouring countries and exchange intelligence on suspected IPR infringements.

## **E. Performance in different areas of activities**

### **a) Statistical report on the enforcement of intellectual property rights in Montenegro**

Prior to the Mission, the Montenegrins provided the experts with IPR enforcement statistics covering the period between January 2014 and June 2018.

The following institutions currently report their IPR related statistics every quarter:

- IPOM;
- Customs Administration;
- Market Inspectorate;
- Police Directorate,
- State Prosecutor's Office; and
- Commercial Court.

## Intellectual Property Office of Montenegro

IPOM reports statistics relating to patents, trademarks, industrial designs and copyright and related rights. On patents, trademarks and industrial designs the statistics reflect the number of applications and the number of granted rights as well as a breakdown between national and international applications. In Montenegro copyright and related rights can also be registered and certificates issued.

According to IPOM, the average time taken to register a patent, trademark and industrial design is currently:

- Trademarks - 9 to 12 months in the absence of any opposition, appeal or lawsuit;
- Industrial Designs - 9 to 12 months; and
- Patent - up to 22 months.

## Customs Administration

The Customs Administration report their IPR enforcement statistics in a similar, but not exact, format to that mandated by DGTAXUD. Their statistical headings include:

- Number of procedures taken by type of procedure (e.g. ex-officio or AfA);
- Number of articles detained (Number of pieces of goods detained by the individual suspension of the customs procedure; per month, number of suspension of customs procedures and number of pieces);
- Results of detention (categories: Continued customs procedure - Release of goods, Awaiting destruction, Goods destroyed, Awaiting the outcome of judicial proceedings, In process);
- Product categories by number of procedures and number of articles;
- Results of detention by product categories and number of articles (Data on the number of suspected goods according to the type and the result of proceedings); and
- Value of destroyed articles (The retail value of destroyed counterfeited products in Euro as specified by the right holder).

The statistics reveal the Customs Administration are active and use both ex-officio and on complaint procedures.<sup>10</sup> In addition, the statistics also show the Customs Administration are detaining multiple types of articles suspected of infringing an IPR, including clothing, clothing accessories, footwear, watches, cigarettes and potentially dangerous goods such as toys, perfumes, cosmetics, batteries and mobile phone parts.

Although some of the goods detained by the Customs Administration are released, others are destroyed using either the simplified procedure or as a result of a court order.

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<sup>10</sup> In 2017, the Customs Administration reported 51 cases. Malta, population 460,000, reported 64 cases. In 2017, the Customs Administration detained 22.5 million articles. Malta detained 1.5 million articles.

## Market Inspectorate

The Market Inspectorate report IPR enforcement statistics under the headings “Copyrights and Related Rights” and “Industrial Property Rights”. The “Copyrights and Related Rights” heading is further broken down into two sub-headings, specifically “Optical Discs” and “Software Piracy”.

Under these headings, the Market Inspectorate report multiple criteria, including:

- Type of procedure (e.g. ex-officio or on complaint);
- Number of controls;
- Number of subjects with irregularities;
- Number of irregularities;
- Number of indications;
- Number of decisions;
- Number of cases with seized goods;
- Number of articles detained;
- Types of articles detained;
- Value of articles detained; and
- Result of detention (e.g. misdemeanour proceedings, criminal charges etc).

The statistics reveal the Market Inspectorate are active and use both ex-officio and on complaint procedures. In addition, the statistics also show that the Market Inspectorate are locating multiple types of articles, during their controls, including optical discs, computers, clothing, clothing accessories and potentially dangerous goods, such as alcohol, cosmetics, toys and sweets.

Furthermore, it is noted that out of the 1,262 controls conducted by the Market Inspectorate between 1<sup>st</sup> January 2014 and 30<sup>th</sup> June 2018, the following results were reported:

- 1 request to initiate misdemeanour proceedings in 2014 for optical discs;
- 1 criminal charge in 2014 for optical discs;
- 1 criminal charge in 2014 for software piracy;
- 5 requests to initiate misdemeanour proceedings in 2017 for industrial property; and
- 2 requests to initiate misdemeanour proceedings in 2018 for industrial property.<sup>11</sup>

Although not in the statistic reports provided to the experts in advance of their Mission, the Market Inspectorate informed the experts that, in 2017, they referred three cases to the Misdemeanour Court. All three related to the unauthorised advertising of a trademark and resulted in the following fines:

- Case 1 - Legal entity fined 500 Euros and responsible person fined 100 Euros;

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<sup>11</sup> The Market Inspectorate state that multiple suspected infringements of IPR are dealt with under the umbrella of different legislation, including the Law on Internal Trade.

- Case 2 - Legal entity fined 3,500 Euros and responsible person fined 700 Euros; and
- Case 3 - Legal entity fined 900 Euros and responsible person fined 300 Euro.

In comparison to the number of controls, the number of misdemeanour proceedings and criminal charges is extremely low.

### Police Directorate

The Police Directorate report IPR enforcement statistics by IP object, specifically “Trademark”, “Patent”, “Industrial Design”, “Geographical Indications”, “Copyright” and “Other”. Under these headings, the Police Directorate report multiple criteria, including:

- Number of criminal charges, broken down into ex-officio or on complaint;
- Number of criminal charges referred to State Prosecutor’s Office, broken down into natural entity, legal entity and rejected charges;
- Type of confiscated articles;
- Quantity of confiscated articles;
- Value of confiscated articles; and
- Number of pending cases.

The statistics reveal the Police Directorate investigated five IPR related cases in 2014. All five cases concerned the unauthorised use of a copyright work or object of a related right (Criminal Code Article 234). There are no recorded investigations since 2014.

### State Prosecutor’s Office

The State Prosecutor’s Office report IPR enforcement statistics by IP object, specifically “Trademark”, “Patent”, “Industrial Design”, “Geographical Indications”, “Copyright” and “Other”. Under these headings, the State Prosecutor’s Office report multiple criteria, including:

- Number of pending complaints from previous reporting period;
- Number of criminal complaints broken down into ex-officio, legal entity, natural person and other;
- Number of criminal complaints rejected;
- Number of prosecutions taken over by the Injured party;
- Number of criminal complaints finalised; and
- Number of criminal complaints still pending.

The statistics reveal that between 1<sup>st</sup> January 2014 and 31<sup>st</sup> December 2017<sup>12</sup>, the State Prosecutor’s Office received the following IPR related complaints:

- 7 copyright related complaints in 2014 (4 indictments, 2 rejected and 1 pending);
- 3 copyright related complaints in 2015 (3 rejected);
- 2 copyright related complaints in 2016 (2 rejected); and
- 1 copyright related complaint in 2017 (1 investigation ongoing).

### Commercial Court

The Commercial Court reports IPR enforcement statistics by IP object, specifically “Trademark”, “Patent”, “Industrial Design”, “Geographical Indications”, “Copyright” and “Other”. Under these headings, the Commercial Court report multiple criteria, including:

- Number of pending cases from previous reporting period;
- Number of received cases;
- Claim - broken down into adopted, rejected and partially adopted;
- Way of Dealing with the subject - broken down into judgement, settlement, rejected, another way and transferred to another court;
- Total closed; and
- Number of pending cases at the end of the reporting period.

The statistics reveal that between 1<sup>st</sup> January 2014 and 30<sup>th</sup> June 2018, the Commercial Court received 497 cases. In 2017, 96% of the cases related to copyright and between 1<sup>st</sup> January 2018 and 30<sup>th</sup> June 2018, 80% of the cases related to copyright.<sup>13</sup>

The Commercial Court also maintain statistics on the average duration of each case. These statistics reveal that between 1<sup>st</sup> January 2014 and 30<sup>th</sup> June 2018, the average duration of each court case was six months.

The Commercial Court states that between 1<sup>st</sup> January 2014 and 31<sup>st</sup> December 2017, the violation of an IPR was confirmed in 95% of cases.

### Falsified Medicines

In 2017 and 2018, the Customs Administration seized 1,809 and 3,798 articles of various suspected falsified medicines. It is not known if the medicines were actually falsified as they were never examined by the right holder. Instead, the suspected falsified medicines were destroyed on the basis they were smuggled as they were not declared

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<sup>12</sup> State Prosecutor’s Statistics not available for 2018.

<sup>13</sup> The IP Object statistics for 2014 to 2016 are not included in the documents provided for the peer review.

at the time of importation into Montenegro (Both these cases were classified by the Customs Administration as attempted smuggling / non declaration of goods as opposed to suspected falsified medicines).

No other IPR enforcement institution has reported seizing suspected falsified medicines.

## **b) Investigation and Prosecution**

### Customs Administration

The Customs Administration can act ex-officio or on complaint. Right holders can file a complaint (Application for Action - AfA) with the Department for Protection of IPR and Monitoring Prohibitions and Restrictions, which can be valid for up to 12 months. However, right holders cannot submit an electronic version of the AfA.

The number of AfAs received by the Department has increased every year since the system was established and they now possess 160 valid AfAs. The Customs Administration's website contains information on how to submit an AfA and press releases on recent detentions.

The Port of Bar receives approximately 13,000 containers and 4,500 customs procedures a year. The Customs Administration receive a ship's manifest 24 hours in advance of its arrival at the port of Bar and utilise a risk analysis IT system to identify suspicious shipments. The Department is responsible for preparing and submitting IP risk profiles to the risk analysis IT system.

When the Customs Administration detect suspected infringing goods, but the right holder fails to submit an AfA, the officers try to use alternative customs legislation (e.g. health and safety) to stop the import or export of the suspected goods. However, the lack of right holder interest is a problem for the Customs Administration.

The Custom Administration briefed the experts that they had aligned their National Legislation with EU Regulation 608/2013 (Customs Enforcement of IPR) and frequently use the simplified procedure to destroy goods suspected of infringing an IPR. However, the Customs Administration has yet to implement the small consignment procedure contained in both their National Legislation and EU Regulation 608/2013, despite the fact that right holders have requested this service in their AfAs.

### Market Inspectorate

The Market Inspectorate can act ex-officio or on compliant. Right holders can file a general or specific complaint with the Market Inspectorate. General complaints are valid for up to 12 months whilst the specific complaints refer to actual cases (detentions). All complaints are distributed to inspectors through their IT system. A right holder can submit an electronic version of the complaint through the Market Inspectorate's website.<sup>14</sup>

In a recent amendment to the Law on Copyright and Related Rights, the misdemeanour offence of infringing a copyright was removed from the text. As a result, the Market Inspectorate can only use the Criminal Code to

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<sup>14</sup> In 2017, the Market Inspectorate received 25 complaints from right holders (8 general and 17 specific).

prosecute copyright infringements. The Market Inspectorate and the Courts consider the criminal prosecution of the seller of small quantities of goods, which are suspected of infringing a copyright or related right, inappropriate.

The Market Inspectorate employ a stepped approach to the use of pirate software by companies. They initially send informative letters to companies, then dispatch warning letters if a company does not respond and finally adopt enforcement (court) action against companies which refuse to stop using pirate software.

When the Market Inspectorate detect suspected infringing goods, but the right holder fails to submit a complaint, the inspectors try to use alternative legislation (e.g. Law on Trade) to stop the return of the infringing goods to the seller/owner.

The Market Inspectorate briefed the experts that the National Legislation is in the process of being aligned with EU Directive 83/2011 on consumer rights.

### Police Directorate

The Police Directorate can act either ex-officio or on complaint. However, in practice the Police Directorate need a complaint to initiate an IP related investigation and right holders rarely complain.

### State Prosecutor's Office

The State Prosecutor's Office can act ex-officio but in practice the vast majority of investigations are the result of a complaint. There is no need to prove damages before initiating a criminal IP investigation.

The State Prosecutor's Office confirmed that in respect of the Criminal Code, Article 271 (Abuse of Trade Name) the prosecution needs to prove "an intent to deceive" to secure a conviction.

## **5. Recommendations**

### **Legislation**

#### Criminal Code

The Criminal Code, Article 271 (Abuse of Trade Name) should be amended to remove the need to prove an intention to deceive, which is inconsistent with a CJEU decision (C-206/01 Arsenal Football Club Plc v Matthew Reed). The experts believe the need to prove an intention to deceive is one of the reasons why the number of IP criminal investigations in Montenegro is extremely low.

### Collective Rights Management Directive

Montenegro is in the process of aligning its National Legislation with EU Directive 26/2014 on collective management of copyright and related rights. Alignment with this EU Directive should be pursued.

### Trademark Directive

The EU Directive 2436/2015 to approximate the laws of the member states relating to trademarks contains provisions concerning goods in transit. Consequently, the Montenegrin National Legislation should be aligned with this Directive.

### Landlord Liability

The Commercial Court stated the operator of a physical market cannot be held liable for the infringement of trademarks by sellers in their market. This is inconsistent with a CJEU decision (C-494/15 Tommy Hilfiger Licensing LLC and others v Delta Centre) and should be resolved.

### Deterrent Sentencing

Article 61 of the Agreement on Trade-Related Aspects of IPR (TRIPS) states members shall provide for criminal procedures and penalties to be applied, at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity.

Members may provide for criminal procedures and penalties to be applied in other cases of infringement of IPR, in particular, where they are committed willfully and on a commercial scale.

In law, Montenegro has the ability to impose deterrent sentencing but in practice it appears deterrent sentencing is not used. In fact, the statistics reveal the courts have failed to impose a single custodial sentence, since 2014. This may be due to the small scale of infringements appearing before judges but, if this is the case, the question has to be asked why no commercial scale prosecutions have reached the courts? Montenegro, like other countries in Europe, is impacted by commercial scale trademark counterfeiting and copyright piracy. Retail outlets, including shops and markets, are full of counterfeit and pirate goods, some of which are potentially dangerous to the consumer.

### **Capacity Building**

#### Training

All institutions should develop specialised courses to assist new staff enhance their knowledge of IPR protection and enforcement.

All Montenegrin institutions indicated they were eager to receive additional IPR enforcement capacity building from both foreign stakeholders and right holders. They should endeavour to secure this capacity building, specifically for the Market Inspectorate, Police Directorate and the State Prosecutor's Office, through contact with foreign organisations, such as Interpol, Europol, EUIPO's Observatory on the Infringements of IPR and right holders. The institution, should also consider asking for additional support from the EU through their TAIEX and Twinning instruments.

### IPR Enforcement Guides

With the exception of the Customs Administration, IPR enforcement Guides should be prepared for the IPR enforcement institutions. These must be distributed widely to relevant officers and used. The net result will be higher quality investigations, prosecutions and trials.<sup>15</sup>

### Annual IPR Enforcement Conference

The organisation of an annual IPR enforcement conference, involving IPR enforcement institutions, judges and right holders, is an excellent opportunity to gather all stakeholders together to be briefed on recent developments, exchange best practice and establish contacts. Such an event should be organised in Montenegro.

## **Enforcement**

### Dedicated IPR Units

Without the allocation of sufficient resources the impact on IPR infringements will be minimal. Dedicated IPR units ensure that the members of these units are focused on IPR enforcement and are not distracted or reassigned to other tasks. In addition, the IPR units will become centres of excellence that other members of their respective institutions can consult for advice. With the exception of the Customs Administration, none of the IPR enforcement institutions have dedicated IPR units. However, even the officers in the Customs Administration's **Department for Protection of IPR and Monitoring Prohibitions and Restrictions** have responsibilities in addition to IPR enforcement.

### Electronic Submission of Applications for Action

The Customs Administration state they have aligned their legislation with EU Regulation 608/2013. However, to ensure full compliance in practice they must develop the capacity to allow right holders to submit their AfA's electronically.

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<sup>15</sup> The Police Directorate have a Guide but it was prepared in 2009 and needs updated.

### Small Consignment Procedure

The Customs Administration should implement the small consignment procedure. If capacity building is required to give the Customs Administration confidence, they should consider applying for TAIEX funding for a study visit to an EU member state and/or the organisation of a workshop in Montenegro.

### Voluntary Surrender Procedure

Both the Market Inspectorate and right holders complained that the only way to destroy goods seized by the Inspectorate was with a court order, even if the volume of goods detained was extremely small. This is not cost effective and is a waste of resources. Consequently, it is recommended a procedure similar to the simplified procedure used by the Customs Administration is developed. A voluntary surrender procedure has already been adopted by the Market Inspectorate in the Republic of Serbia.

The development of such a procedure will also compensate for the removal of a misdemeanour offence from the Law on Copyright and Related Rights.

### Storage and Destruction

The Market Inspectorate do not have any storage space for seized goods. The Courts are obligated to store seized goods but in reality this does not happen. Consequently, the Market Inspectorate have to use any suitable location they can identify, including office space and the warehouses of the Customs Administration, to store seized goods. Furthermore, the Market Inspectorate has encountered problems on how to dispose of goods which are potentially dangerous to the environment (e.g. optical discs).

The Market Inspectorate should ascertain whether it is possible to utilise the warehouses of other institutions on a formal basis to store seized goods. If this is not feasible, the Government should be approached to provide additional funding for storage. In respect of environmental friendly destruction, the Market Inspectorate should attempt to use the same waste companies as the Customs Administration.

### Intelligence Database

IPR enforcement institutions should exchange intelligence in a systematic and structured manner to avoid duplication and ensure efficient IPR enforcement. Such exchanges of intelligence can take place at regular face-to-face meetings or through the exchange of intelligence templates. However, to maximize the value of available intelligence, a secure database that can be accessed through the Internet, should be developed. All IPR enforcement institutions should be given the right to enter intelligence and interrogate the database.

### Intelligence Analysts

Analysts should be employed to add value to intelligence by highlighting trends, locations and individuals. The analysts could also ensure that appropriate IPR data is fed into the national criminal intelligence model, maximizing the chance of linking IPR offences to organized crime.

### Targeting Group

The IPR enforcement institutions should form a Targeting Group to identify and neutralise financiers, manufacturers, importers and distributors. The Targeting Group should meet on a regular basis to exchange intelligence, agree a list of priority targets and develop strategies to ensure the criminals controlling IPR crime, in Montenegro, are brought to justice.

### Asset Recovery

In 2016, a report by the Organization for Economic Co-operation and Development (OECD), called *The Trade in Counterfeit and Pirate Goods*,<sup>16</sup> concluded that international trade in counterfeit and pirate products was at least \$461 billion USD in 2013. Internationally, it is acknowledged that depriving criminals of assets can have a greater punitive effect than fines or prison sentences. It reduces the profitability of crime and prevents the reinvestment of criminal proceeds in other criminal activities. Furthermore, recovered criminal assets can be used to compensate society for the harm caused by crime.

The criminals behind the counterfeit and pirate trade are motivated by profit. Consequently, IPR enforcement institutions should move to recover their assets and deter future offenders.

### Notice and Take Down System

IPR enforcement institutions and right holders should work with Internet Service Providers (ISPs) to develop an effective notice and take down system, which can reduce online counterfeiting and piracy, in accordance with Articles 12 to 15 of Directive 2000/31/EC on certain aspects of information society services, in particular electronic commerce, in the Internal Market (Montenegrin Law on Electronic Commerce Articles 18 to 20 and 22).

### Domain Names

IPR enforcement institutions and right holders should have the ability to seize the domain names of websites that facilitate the infringement of IPR. In some EU member states this has been developed through negotiations with domain name providers without the need of a court order.

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<sup>16</sup> OECD/EUIPO (2016), *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact*, OECD Publishing, Paris.  
<http://dx.doi.org/10.1787/9789264252653-en>

### Blocking of Websites

Montenegro has legislation in place to block access to foreign websites that facilitate the infringement of an IPR. The IPR enforcement institutions and right holders have yet to use this power but must do so in appropriate cases.

### Monetary Payments to Websites

IPR enforcement institutions and right holders should develop relationships with payment providers, such as Visa, Mastercard and Paypal, that facilitate the transfer of funds to websites that infringe IPR. Through these relationships, the IPR enforcement institutions and right holders can gather historical financial information and prevent further payment to the website. This can be achieved through formal agreements with the payment providers and/or a court order.

### Advertising Revenues

IPR enforcement institutions and right holders should develop relationships with the providers of ad services, such as Google, that facilitate the transfer of funds to websites that infringe IPR. Through these relationships, the IPR enforcement institutions and right holders can gather historical financial information and prevent further payment to the website. This can be achieved through formal agreement with the ad services provider and/or a court order.

## **Cooperation**

### National Cooperation - Right Holders

The Coordination Team and its two Working Groups are an excellent initiative that will serve to enhance the relationship between the IPR enforcement institutions. However, The Coordination Team's responsibilities should be expanded to include such activities as the strategic concerns of right holders and the systematic sharing of intelligence. This could be achieved by establishing additional Working Groups.

### National Cooperation - Collective Management Organisations

Monitor the case before the Ministry of economy relating to the revocation of the Collective Management Organisation's (PAM) licence.

## Regional and International Cooperation

IPR criminals do not stop at the border, so it is essential that IPR enforcement institutions develop operational cooperation with international IPR enforcement institutions.

EU Communication 467 (2009) states that “due to the international nature of IPR infringements, improving internal cross-frontier cooperation is not only a legislative obligation, it is a clear necessity. To this end, an efficient network of contact points across the EU is essential to promote rapid exchanges of information on suspect products, manufacturing sites, distribution routes and key sales points. This will generate synergy, which in turn will help to coordinate national policies and to provide mutual assistance.”

International cooperation can include bilateral relations but must also include relations with international IPR enforcement units in organisations such as Interpol, Europol, WCO and EUIPO’s Observatory on the Infringement of IPR. The Market Inspectorate and Police Directorate are currently not working with these organisations and this should be rectified. In addition, all the IPR enforcement institutions need to get involved in multi-national operations such as “Pangea” and “In Our Sites”.<sup>17</sup>

## Statistics

IPOM and the IPR enforcement institutions already prepare statistics on a quarterly basis but they can be improved. The Customs Administration has partially adopted DG TAXUD’s methodology but should aim to replicate the methodology exactly.<sup>18</sup> In addition, the other IPR enforcement institutions should adopt the Anti-Counterfeiting Intelligence Support Tool (ACIST) methodology used by the EUIPO’s Observatory on Infringements of IPR.<sup>19</sup>

Furthermore, the Market Inspectorate, Police Directorate, State Prosecutor’s Office and Courts should report case results e.g. guilty or not guilty, fine or imprisonment.

Montenegro should also endeavour to replicate the methodology adopted by EUIPO and the EPO to calculate the contribution of IPR to economic performance and employment in Montenegro.<sup>20</sup> This would highlight the value of IP to the Montenegrin economy. Furthermore, it would also be advantageous to adopt the methodology developed by EUIPO to calculate the level of counterfeiting and piracy in Montenegro.<sup>21</sup> These statistics are key to understanding the scale of the problem and allocating resources accordingly.

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<sup>17</sup> It appears, with the exception of the Customs Administration, the IPR enforcement institutions have not been involved in multi-national operations since 2015.

<sup>18</sup> IPR Infringements: Facts and Figures

[https://ec.europa.eu/taxation\\_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/ipr-infringements-facts-figures\\_en](https://ec.europa.eu/taxation_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/ipr-infringements-facts-figures_en)

<sup>19</sup> Anti-Counterfeiting Intelligence Support Tool

<https://euipo.europa.eu/ohimportal/en/web/observatory/anti-counterfeiting-intelligence-support-tool>

<sup>20</sup> IPR Intensive Industries and Economic Performance in the EU

<https://euipo.europa.eu/ohimportal/en/web/observatory/ip-contribution>

<sup>21</sup> The Economic Cost of IPR Infringement in the Cosmetics and Personal Care Sector

<https://oami.europa.eu/ohimportal/documents/11370/2167741/Quantification+of++IPR+infringement+%28cosmetics%29>

## **Awareness**

Awareness is at least as important as enforcement. If you can decrease the demand for counterfeit and pirate goods then the availability of such products will reduce. Consequently, it is imperative that Montenegro develop effective IPR awareness campaigns targeting different segments of society and adopts success indicators, as described in the WIPO Outreach Guide.<sup>22</sup>

## **Right Holders**

The absence of key right holders and/or their lack of commitment to protect IPR, in Montenegro, have inhibited enforcement. The IPR enforcement institutions, including IPOM, have to encourage right holders to support the enforcement of IPR in Montenegro. This could be done through an awareness campaign highlighting the similarity of the IPR enforcement system in Montenegro to the IPR enforcement system in EU member states.

It is also recommended that right holders and their representatives establish an Association, such as the Anti-Counterfeiting Group in the United Kingdom, to lobby Government with one voice on IPR Enforcement.

In respect of the collective management of copyright and related rights, it is noted that CMOs have yet to be established for all rights. IPOM should encourage the formation of additional CMOs to cover the rights that have yet to be represented. This will both serve to protect the interests of right holders and facilitate the authorisation of users to exploit the rights.

## **National IP Strategy**

In 2019, Montenegro intends to work with WIPO to develop a National IP Strategy to cover the period between 2020 and 2023. It may be prudent to either include a dedicated section on IPR enforcement or develop a separate IPR enforcement strategy to address the recommendations listed above.

The IPR enforcement strategy (section) should include a vision such as “Montenegro is a safe place to do business” and/or “The .me domain is fake free”. It must also contain a plan for dealing with notorious markets using a stepped approach e.g. awareness raising, reminding market operators of their responsibility, identifying wholesale distributors and, finally, enforcement.

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*The present report has been written and submitted by  
to the EU Commission on the 19<sup>th</sup> November 2018.*  
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<sup>22</sup> WIPO: IP Outreach Campaigns  
<http://www.wipo.int/ip-outreach/en/tools/>