



Memorandum of Understanding

BETWEEN:

**THE OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)**

AND

**THE WORLD CUSTOMS ORGANIZATION
(WCO)**

WHEREAS:

(1) The World Customs Organization (WCO), established in 1952 as the Customs Co-operation Council (CCC), is an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of Customs administrations. One of the WCO's missions is to help Customs administrations to combat counterfeiting and illicit trade;

(2) The Office for Harmonization in the Internal Market (OHIM) is the agency of the European Union (EU) responsible for administering the Community Trade Marks and Community Designs registration procedures and for tasks related to the enforcement of intellectual property rights (IPR), including the creation of tools and the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property;

(3) Both OHIM and the WCO are committed, within their respective competences, to promote and support the protection of intellectual property (IP), thus supporting innovation and creativity in Europe and worldwide;

(4) The WCO and OHIM intend to strengthen their cooperation;

CONSIDERING:

That, in 2010, the WCO developed the Interface Public-Members (IPM) system, a permanent training tool between Customs administrations and Right Holders. IPM allows Right Holders to exchange information with field Customs officers to facilitate enforcement missions relating to illicit trade, counterfeiting and piracy. IPM integrates data and information provided by Right Holders and is connected to external secure databases to track and trace relevant products. IPM falls under various Customs capacity



building actions taken by the WCO in terms of fighting illicit trade, counterfeiting and piracy, such as regional interception operations and putting Right Holders and field Customs officers in contact.

That OHIM has developed the Enforcement Database (ED) to allow EU enforcement agencies and private sector businesses to provide, receive and exchange information on registered IP rights and supplementary product information, including logistical data to assist EU enforcers in the detection of suspicious products and consignments. ED also connects with key IPR databases (such as TM-View and Design-View) which will offer ED users the assurance of the validity of the relevant rights;

The willingness of the WCO and OHIM to cooperate in the area of counterfeiting and piracy, and the sharing of know-how and electronic tools to increase efficiency and eliminate unnecessary duplication of efforts and resources in pursuit of more efficient protection of IPR and to the benefit of users;

The fact that the implementation of each activity falling under this Memorandum of Understanding shall be subject to the availability of the funds required to finance such cooperation activities in the annual budgets of the WCO and OHIM, as well as to the availability of the other necessary means and resources.

HAVE AGREED AS FOLLOWS:

Article 1 Object

1. The present Memorandum of Understanding (MoU) sets out the terms and conditions under which the WCO and OHIM, jointly referred to as the "Parties", intend to develop a range of activities in the field of combating counterfeiting and piracy, within their respective areas of responsibility.
2. Any activity conducted under this MoU is subject to its prior inclusion in the Parties' respective work programmes and to the budgetary capacity of the two Parties. The Parties undertake to implement any such activity in full observance of their respective rules and practices.

Article 2 Cooperation scope

1. Cooperation activities within the scope of the present MoU shall relate to activities aimed at assisting enforcement authorities in their fight against counterfeiting and piracy. They shall focus on the following areas:



- a) Information Technology systems;
 - b) Exchange of statistical data; and
 - c) Exchange of expertise.
2. Notwithstanding the areas mentioned in paragraph 1, the Parties may establish other forms of cooperation, either through a specific addendum to this MoU or through *ad hoc* agreements.
 3. The present MoU does not cover the exchange of personal data.

Article 3 **Information Technology systems**

1. The envisaged activities should primarily focus on the electronic systems developed by OHIM (ED) and the WCO (IPM), with the aim of ensuring that users deciding to use both systems will have no need to input the same data or information in each of the tools.
2. The Parties shall jointly conduct a feasibility study regarding the possibility of allowing electronic transfer of information available in ED to IPM and vice versa, subject to the consent of owners of the information and ensuring that all proprietary information is protected.
3. The Parties shall agree to update their respective tools as proposed by the feasibility study, mentioned in paragraph 2 of this Article. This update shall take place during the course of 2014.
4. Thereafter, the Parties shall ensure the maintenance and updating of their respective tools to ensure that all data and information, transferred by users from one system to the other, would continue to be available in both systems.
5. The Parties agree to consider common actions to promote the use of IPM and ED by Right Holders and enforcement authorities within and outside the EU.
6. Envisaged activities shall also include the participation of both the WCO and OHIM as observers in their respective technical working groups, to facilitate the take-up of more efficient solutions in the area of data dissemination, exchange and analysis.
7. The WCO and OHIM shall share experiences of using IPM and ED to enhance both tools.



Article 4

Exchange and sharing of statistical data

1. The Parties shall cooperate through the exchange of data and technical information, including:
 - Methodologies, information and data related to the estimation of the extent of counterfeiting and piracy;
 - IPR enforcement-related statistics.
2. The exchange of data shall be for the sole purpose of running specific studies and shall in no instance duplicate any already established exchange of statistics between the WCO and the European Commission.

Article 5

Exchange of expertise

1. The scope of cooperation activities, with respect to exchange of expertise, shall be to explore synergies between the WCO, OHIM and other agencies and organizations and to pursue opportunities for jointly providing high-quality training for the staff of enforcement-related authorities operating in the field of IPR enforcement.
2. The actions developed within this scope shall take the form of activities deemed most suited to the objectives defined by the Parties.

Article 6

Exchange of information and consultations

1. The Parties shall maintain mutual and regular exchange of information and consultation on the cooperation activities undertaken and on the modernization, harmonization and development of tools and practices of common interest.
2. Every year, the Parties shall hold a high-level annual meeting. The meeting shall follow up the implementation of the present MoU and shall be scheduled and held upon the agreement of both Parties.
3. The WCO and OHIM may respectively invite each other to participate as an observer in any relevant experts' meetings.



Article 7 Collaboration

Whenever deemed appropriate to the execution of their joint projects, the Parties may request the participation of other public or private institutions or regional and international organizations in relevant programmes, projects and other activities.

Article 8 Protection of information

Each Party guarantees that documents, information and any other knowledge of a confidential nature shall not be disclosed or transmitted to third parties without the prior consent of the other Party.

Article 9 Financing

1. The present Agreement does not involve the transfer of financial resources between the Parties.
2. Each Party shall bear its own costs for the actions to be implemented under the MoU unless otherwise agreed in the specific agreements indicated in Article 2.2.

Article 10 Follow-up and assessment

1. The implementation, organization and functioning of the actions undertaken within the scope of the present MoU shall be the subject of ongoing follow-up and assessment, whereby the Parties shall:
 - (a) Assess the results of executed actions;
 - (b) Identify areas in which cooperation should be strengthened and improved;
 - (c) Determine new areas where joint actions may be envisaged and where projects, programmes and specific activities may be proposed.
2. Such follow-up will be conducted during each high-level annual meeting between the WCO and OHCHR and in other ad hoc meetings agreed by both Parties.



Article 11 Duration

1. The present MoU will enter into force on the date of its signature by both Parties and for an indeterminate period of time. It may, however, be terminated through mutual agreement or by one Party giving the other six months' prior written notice.
2. Should there be any substantial alteration to the conditions that existed at the time of signature of the present MoU which may endanger the continuity of the cooperation actions provided for herein, the Parties shall reserve the right to suspend or terminate the MoU's execution, in whole or in part, by serving two months' written notice.

Article 12 Final provisions

1. The provisions of the present MoU may be amended in writing by both Parties, either in the form of an amendment to the MoU or by an exchange of letters between the Parties.
2. The Parties shall endeavour to settle, in an amicable manner, any dispute or complaint relating to the interpretation, application or fulfilment of this MoU, including its existence, validity or termination. Failing an agreement on a solution, either Party may terminate this MoU by serving two months' written notice.

Signed in duplicate in English on 11 June 2014 in London.

For the World Customs Organization
(WCO)

Kunio Mikuriya
Secretary General, WCO

For the Office for Harmonization in the
Internal Market (Trade Marks and Designs)
(OHIM)

António Campinos
President, OHIM

