

Brussels, 14 August 2012

Orgalime's views on the future tasks of the European Observatory on the Infringements of Intellectual Property Rights

1. INTRODUCTION

Orgalime is supportive of the EU Observatory on infringements of IPR and is committed to playing an active role in its further development. We therefore welcome the stakeholders' consultation on the tasks and activities of the European Observatory that has been launched in order to prepare the Observatory's working programme for 2013. We are happy to contribute to the consultation and to communicate the priorities of the engineering industry in the field of Intellectual Property Rights protection. In the coming years, our industry will face even more important challenges related to intellectual property rights. Currently, manufacturing capabilities are more accessible and easier to establish than ever before, and the new technologies bring not only benefits but also create piracy threats to legitimate producers.

2. FOCUS ON NON-CONSUMER (INDUSTRIAL) PRODUCTS

Although Orgalime and its members actively participated in the work of the Observatory so far, we always had the feeling that the primary focus of discussion was on consumer goods and services, such as software, media, medicines or textile and clothing. Also in the past months, especially in the context of ACTA debate, we have seen the discussion on IPR infringements focusing on the music and film industries, often leaving industrial products aside. Orgalime would like to raise a point that the problem of counterfeiting is not only affecting consumer products from the textile or entertainment industries, but also non-consumer goods and industrial goods, and is creating burdens for B2B business. We firmly believe that there is a clear **need for stronger political support and for more focus on non-consumer products** in the entire counterfeiting debate, especially when addressing the problem at European and International level. A study of one of Orgalime's members that was released in 2012 shows that losses caused by product piracy amount to an estimated 7.9 billion euro for the capital goods industry in one Member State alone and the number of machinery and plant manufacturers affected has risen steadily over the last few years.

3. ACTIONS TO BE TAKEN BY THE OBSERVATORY

We are glad to contribute to the consultation on the working programme of the redefined Observatory, and to suggest actions that it could take in the field of fight against IPR infringements, and counterfeiting of non-consumer goods.

Orgalime, the European Engineering Industries Association, speaks for 37 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 10.2 million people in the EU and in 2011 accounted for some €1,666 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

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- **Working group(s) on industrial goods/non-consumer products**

Orgalime would like to encourage the Observatory to initiate working groups gathering stakeholders from the **industrial/non-consumer goods industries** affected by the problem of counterfeiting. In our views this would encourage a more balanced debate on the counterfeiting problem, in terms of products and industries affected by the phenomenon and represented within the Observatory.

- **Measuring the problem**

We believe that a campaign and actions against counterfeiting will be more effective and better targeted if we get objective facts on the scale of the problem. An **objective methodology** that would present reliable statistics reflecting the scale/cost of the counterfeiting of products will serve engineering companies in their actions and policymakers in initiating efficient solutions. We support the working programme of the Observatory that aims at developing a methodology that would enable us to measure the scale of the counterfeiting problem and its impact on European companies.

- **Criminal sanctions for IPR infringements, and major gaps in the system**

In Orgalime's view the **system of criminal sanctions** and sharing information across borders on infringements of IPR should be improved. Counterfeiting of non-consumer goods should no longer be treated as a risk-free activity, and the producers of illegal goods should no longer be allowed to develop profits and take jobs at the expense of innovative companies. The Observatory should take actions to encourage Member States to counter the loopholes that exist within the legislative framework of EU Member States and are being exploited by criminal groups.

With respect to trans-border cooperation – we suggest a better **cooperation between market surveillance bodies** and customs authorities. Law enforcement bodies, both at EU level and beyond, should be encouraged to impose higher penalties that would serve as a real deterrent to both first-time and re-offenders. Those bodies should investigate, through all contact mediums (visits, telephone, or internet) on customers who actively seek counterfeit products.

We encourage the Observatory to continue its programme of **training for customs officials** to ensure that more effective action is taken to protect EU producers from counterfeit products entering the EU market.

- **Health and safety standards**

Today, a large responsibility to ensure high safety standards often lies on the manufacturers of industrial products. Manufacturers of machinery, equipment or appliances have extensive duties to ensure **safety and absence of risks to health**, but those high standards can only be guaranteed by products that come from the original producers. Our challenges and actions differ significantly from those of the consumer goods industries. For example, member companies have reported in the past finding “circuit breakers” which are in fact pushbutton switches, fuses which are solid copper links, and “kettle controls” which do not switch off the element when the water boils. The consequences of using these products could be catastrophic.

In Orgalime's view, health and safety issues could bring together a variety of stakeholders in a working group, which would allow discussion among participants on further actions. We also believe that one of the actions of the Observatory could be to assist the manufacturers of non-consumer goods in their anti-counterfeiting actions (such as raids). Raising of **public awareness** of the negative consequences of counterfeiting and in particular the threat that counterfeits of engineered products pose to health, safety and reliability of operation – should also be one of the future goals of the redefined Observatory.

- **Slavish imitations**

The issue of parasitic copies (slavish imitations) constitutes, for the engineering industry, a source of at least the same degree of damage as the infringement of trade secrets. For many years Orgalime has been advocating for an **activity against parasitic copies** and we welcome the studies on parasitic copying (look-alikes) and on trade secrets that were published by the Commission at the beginning of this year. Both studies showed that the nature and scope of trade secrets protection in the EU varies considerably, leading to fragmentation in their enforcement. We believe that it is a strong argument for the Observatory to take further actions in the field. In Orgalime's view an extended and harmonised legislation in the EU governing trade secrets and parasitic copying would benefit the companies from the engineering industry.

4. INDUSTRY ACTIONS

Orgalime is committed to playing an active role in further development of the EU Observatory. The feedback that we have received from our members suggests that many of them have already decided to take actions themselves against illegal behaviour of IPR infringers. These actions include:

- Some Orgalime members have decided to form working groups dealing with IPR infringement, and offering professional help to protect products and intellectual property.
- Orgalime members are many times using latest technologies in the fight against IPR infringement (protection offered to the customers covers everything from development to the complete machine, including spare parts)
- Some member associations, with experience in fight against counterfeiting, are ready to share with the Observatory knowledge on how they track counterfeiters, how they organise raids, how they analyse global shipping routes etc. They are also ready to provide the Observatory with approximate figure of loss of business/revenue to EU companies as a direct consequence of counterfeits, as well as approximate figures for loss of jobs to EU companies.



The European Engineering Industries Association