

## **Terms of Reference for Observatory Expert Groups**

### **1. Background**

The extension of the Observatory Multiannual Plan, spanning 2019 and 2020, set out a number of changes to the configuration and working methods of the Observatory Working Groups (WG). Four of the five WGs that had existed up until 2018 continue to exist, namely Public Awareness, Enforcement, Economics and Statistics, and IP in the Digital World.

In addition to the four WGs, Expert Groups (EG) will be created. The EGs will be arranged into more focused areas and only stakeholders who are interested and have expertise will take part. While experts can be added at any time to the EGs, these shall remain as small as possible (in principle no more than 30 participants). The experts will be proposed by the stakeholders or by EUIPO and the final selection will be made by the EUIPO further to the below procedure.

The Expert Groups do not constitute another level in the Working Group (WG) structure. However, participants in EGs can present findings to the WGs and vice versa.

The process described in these terms of reference is compliant with the EU General Data Protection Regulation (GDPR).

### **2. Expert Groups: definition, mandate, objectives and general conditions**

The Observatory is a network of stakeholders from the public sector, the private sector and civil society. Its WGs were set up on the basis of proposals by stakeholders and are used extensively by the Observatory for guiding the implementation of projects that are part of its work programme.

The Expert Groups will also further help guide this implementation of projects in more focused and specialised areas, and will be made up of experts proposed by the stakeholders or by EUIPO (refer to the procedure to be part of an EG, below). Experts will be called upon to provide expert support to Observatory's agreed projects and activities.

Insofar as possible, EGs will be balanced as regards geographical coverage and gender of the experts, as well as the sector they belong to or have experience in. Balance will also be sought to cover both counterfeiting and piracy issues.

Summaries of Expert Group meetings, including the list of participants to the meeting, will be shared with all Observatory stakeholders and will be published on the Observatory website.

A particular EG will exist only as long as its work is still required; on the other hand, new EGs can be created as needed, notably following proposals from the stakeholders.

The EG will meet if such a meeting is justified by the state of the work to be done. In principle, EGs will meet once a year, during the same week as the Working Groups.

However, as the groups are specialised and small, written exchanges on the work being carried out are encouraged. Working documents will be drafted in English and meetings will be conducted in English.

### **3. Experts: appointment, mandate and general conditions**

Experts will represent themselves and not a particular organisation nor institution. If an expert is not able to attend an EG meeting, there will be no replacement. Experts will be appointed for the lifetime of the EG, unless the expert no longer wishes to participate in the EG or the expertise is no longer required (e.g. somebody with expertise that is no longer relevant in the EG). If an expert no longer wishes to be part of an EG, there will be no substitution sought unless necessary. If however there is a need for such an absence to be covered, or if an additional expert is required in an EG, EUIPO will seek an expert, if available, among the pool of experts that have applied according to the below procedure.

Experts will not be remunerated by EUIPO for the services they offer. However, travel and accommodation will be covered and arranged for by EUIPO for experts when attending Expert Group meetings and for members of the screening committee when attending the screening committee meetings. Moreover, a daily subsistence allowance will be provided in either case for the days of the meeting.

Experts should be prepared to attend meetings systematically, contribute actively to discussions in the group, be involved in preparatory work ahead of meetings, and examine and provide comments on documents under discussion. Experts who do not provide input to the work of the Groups could be requested to no longer be part of them.

Experts have to communicate to EUIPO any potential conflicts of interest that could arise during their involvement in the EGs.

### **4. Procedure to be part of an Expert Group**

Expert Groups will be formed when necessary with the following procedure.

**4.1. Application procedure:** EUIPO will communicate to Observatory stakeholders the conditions and criteria (profiles and type of expertise) to become part of an Expert Group. Stakeholders will be asked to identify experts and contact them to encourage them to apply within the deadline fixed by EUIPO via an online form, the link to which EUIPO will distribute. It should be clear which Expert Group the experts would like to join and their experience in the subject matter covered by the group.

**4.2. Screening committee:** When EGs are to be set up, EUIPO will invite each stakeholder group (public, private, civil society) to designate one person for participation in the initial screening of experts. DG GROW will also be invited to designate one person. The EUIPO will provide support. In the absence of an agreement within the sector to choose one person, EUIPO will choose the person with the most support within his/her sector. Persons designated as screening committee members cannot be proposed as experts. When necessary, the members of the screening committee and the EUIPO representatives will meet at

the beginning of the timeframe allotted for the screening procedure in order to clarify any doubts, and at the end of the procedure in order to finalise and present the results of the screening exercise.

- 4.3. Selection process:** EUIPO will select the Expert Group members on the basis of the proven experience of the proposed experts, taking into account the results of the screening committee, and will inform all applicants of the outcome.

## **Annex I – Creation of six Expert Groups**

### **1. List of Expert Groups**

The below table illustrates the six Expert Groups that will be created in 2019 and the main subjects they will be dealing with.

<b>Expert Group</b>	<b>Main subjects</b>
<b>Observatory Outreach</b>	<ul style="list-style-type: none"> <li>- Pan-European campaigns based on results of Observatory studies (e.g. Xmas campaign, spring campaign) in cooperation with National Offices and stakeholders</li> <li>- Design of (and follow-up on) activities intended to maximise knowledge and impact of OBS work among national and EU relevant stakeholders (e.g. policy makers and policy influencers – think tanks, media etc.)</li> <li>- International IP Enforcement Summit</li> </ul>
<b>Legal</b>	<ul style="list-style-type: none"> <li>- Case law</li> <li>- Studies related to legal matters (e.g. trade secrets, blocking orders, cost of legal actions, specialised jurisdictions)</li> <li>- Support European Commission action plan for a more harmonised IPRED implementation</li> </ul>
<b>Impact of Technology</b>	<ul style="list-style-type: none"> <li>- Identify new technologies with potential to impact and help IPR protection</li> <li>- Define possible use cases</li> <li>- Carry out studies or launch initiatives to better understand impact</li> <li>- Raise stakeholders' knowledge about technological developments with potential to impact IPR protection, positively or negatively</li> </ul>
<b>Cooperation with Intermediaries</b>	<ul style="list-style-type: none"> <li>- Collaboration with all relevant intermediaries</li> <li>- Support to European Commission</li> <li>- Voluntary Collaboration Practices</li> <li>- Studies (e.g. IPR infringements in social media)</li> </ul>
<b>International Cooperation</b>	<ul style="list-style-type: none"> <li>- Enforcement related activities in IP Key programmes</li> <li>- Support to European Commission (e.g. IPR protection in 3rd countries and market watch list)</li> <li>- EU Delegations Network</li> </ul>
<b>SMEs</b>	<ul style="list-style-type: none"> <li>- SME scoreboard and other SME related studies (e.g. valuation of IP assets)</li> <li>- Support to European Commission programmes</li> <li>- Contribution to IP Pre-Diagnostic programme</li> </ul>

## 2. Calendar

The following calendar shows the timeframe for the creation of the six Expert Groups.

November 2018		December 2018		January 2019		February 2019		March 2019		April 2019	
1		1		1		1	SC meeting	1		1	
2		2		2		2		2		2	
3		3	Final version of note	3		3		3		3	
4		4		4		4	EUIPO decides	4		4	
5		5		5		5		5	Private Sector BxI	5	
6		6		6		6		6		6	
7		7		7	Proposal of SC	7		7		7	
8		8		8		8		8		8	WGs, Alicante
9		9		9	Designation of SC	9		9		9	WGs, Alicante
10		10		10		10		10		10	WGs, Alicante
11		11		11		11		11		11	WGs, Alicante
12		12		12		12	Public sector RO	12		12	WGs, Alicante
13		13		13		13	Public sector RO	13		13	
14		14		14		14	Public sector RO	14		14	
15		15		15		15		15		15	
16		16		16		16		16		16	
17		17		17		17		17		17	
18		18		18	Deadline for experts	18	Invitation WG/EG	18		18	
19		19		19		19		19		19	Good Friday
20	MBBC	20		20		20		20		20	
21	MBBC	21		21	SC meeting	21		21		21	
22	MBBC	22		22		22		22		22	Easter Monday
23	Send note/profiles	23		23		23		23		23	
24		24		24		24		24		24	
25		25		25		25		25		25	
26		26		26		26		26		26	
27	WGs, Warsaw	27		27		27		27		27	
28	Common Session	28		28		28		28		28	
29	WGs, Warsaw	29		29				29		29	
30	WGs, Warsaw	30		30	SC meeting			30		30	
		31		31	SC meeting			31			

- **23 November:** Directly after the EUIPO Management Board and Budget Committee meetings EUIPO sends terms of reference to stakeholders explaining conditions and criteria, with profiles and type of expertise to become an Expert Group member.
  - Asks stakeholders to encourage experts they would like to see in the EGs to apply via the online form that EUIPO will provide (deadline 18 January).
  - Asks for screening committee members from each sector (deadline 7 January)
- **28 November:** conditions/criteria further explained during Common Session of WGs.
- **Week of 3 December:** the terms of reference are resent (only if there are any changes further to the discussion in the WGs).
- **7 January:** deadline for each sector (public, private, civil society) and the European Commission to designate their chosen member for the screening committee.
- **9 January:** EUIPO to inform stakeholders of the designated screening committee.
- **18 January:** deadline to receive applications from experts.
- **21 January:** meeting at EUIPO (either in Alicante or in Brussels), with the four members of the screening committee and the EUIPO representatives. The aim of the meeting is for EUIPO to further explain the screening procedure and rating system and to answer any questions.

- **30 January to 1 February:** the screening committee members and the EUIPO representatives to meet again at EUIPO (Alicante or Brussels) in order to finalise and present the results of the screening exercise.
- **Week of 4 February:** EUIPO to decide on the final designation of experts, on the basis of the proven experience of the proposed experts and with the help of the screening results.
- **Week of 18 February:** EUIPO to send the invitations to the April WGs/EGs.

### 3. Profiles of experts

As indicated in point 2 of the terms of reference, there are a number of general considerations that will be in place when selecting experts. For all groups, care will be taken to ensure that there is, insofar as possible, balance as concerns geographical coverage and gender of the experts, as well as the sector they belong to or have experience in. Balance will also be sought to cover both counterfeiting and piracy issues.

In addition, as regards the SME group, other general aspects will be considered to provide perspective, namely a mixture of experienced and new entrepreneurs, a range that spans from start-ups to mature businesses, and a variety of sizes.

The abovementioned form that experts will have to complete to apply will contain a first part for personal details (name, date of birth, nationality, gender), relevant education, professional experience and the Observatory stakeholder(s) which has proposed the expert.

A second part will be to indicate the group and the expertise, by way of a list of proposed profiles/areas of expertise that are contained in the below table. Applicants could have expertise in all the areas or in just one. When applicants indicate in the form that, “yes”, they have expertise in a certain area, a text box will open for them to provide further information as to their relevant experience.

Expert Group	Profile/Area of expertise
<b>Observatory Outreach</b>	<ul style="list-style-type: none"> <li>– Experience in PR and advocacy, especially at national level, and/or</li> <li>– Proven capacity to reach out to specific targets (consumer associations, think tanks, etc.) , and/or</li> <li>– Capabilities to act as or involve multipliers to leverage outreach capacities, and/or</li> <li>– Experience in communication campaigns, notably institutional communication and its implementation at national and/or European level.</li> </ul>
<b>Legal</b>	Experience in: <ul style="list-style-type: none"> <li>– Judicial cooperation in the field of IPR enforcement within the EU (and internationally), and/or</li> <li>– Enforcing cross border IPR infringements within the EU, and/or</li> <li>– The collection and analysis of enforcement-related case-law to monitor trends and identify new developments in intellectual property</li> </ul>

	<p>rights infringements, and/or</p> <ul style="list-style-type: none"> <li>– The analysis and assessment of legislative measures and procedures, as well as best practices, concerning enforcement of intellectual property rights, and/or</li> <li>– Dealing with IP enforcement matters before the GC, CJEU, national courts in EU Member States and/or courts established in third countries, and/or</li> <li>– Providing legal advice and/or representation on IPR enforcement to rights holders, users or civil society organisations in EU member States and/or third countries.</li> </ul>
<b>Impact of Technology</b>	<ul style="list-style-type: none"> <li>– Experience in monitoring/watching new technologies and their impact on IPR protection/enforcement, and/or</li> <li>– Experience in utilising technologies assisting in monitoring/watching IP relevant technical developments, and/or</li> <li>– High tech investigation experience (e.g. private investigations, OSINT, law enforcement, cross border collection of evidence), and/or</li> <li>– Technical expertise within: <ul style="list-style-type: none"> <li>○ alternative or enhanced realities (e.g. mixed reality, gaming, e-sport, virtual reality, augmented reality), and/or</li> <li>○ database technologies, advanced data collection and analytics (e.g. algorithms, API, distributed ledger, private and public administration, machine learning, big data, cloud), and/or</li> <li>○ online payments (e.g. payment settlements, online banking, virtual currencies), and/or</li> <li>○ malicious online activities (e.g. malware, phishing), and/or</li> <li>○ advanced industrial production and tracing technologies (e.g. RFID, standardisation technologies, 3D printing, robotics, autonomous products, IOT, drones, energy efficiency).</li> </ul> </li> </ul>
<b>Cooperation with Intermediaries</b>	<p>Experience in:</p> <ul style="list-style-type: none"> <li>– Identifying, analysing, and/or addressing vulnerabilities to IP infringement in offline and/or online supply chains, and/or</li> <li>– Analysing, developing or using proactive or reactive measures to prevent intermediaries services from being used for IP infringing activities, and/or</li> <li>– Analysing, developing or participating in best practises fostering cooperation between intermediaries, right owners and/or public authorities to prevent IP infringing activities and/or promote legal offers, and/or</li> <li>– Analysing or addressing the challenges arising from the exchange of data on IP infringing activities or access to data on IP infringers</li> <li>– Working with intermediaries, right owners or public authorities in addressing IP infringing activities.</li> </ul>

<b>International Cooperation</b>	<p>Experience in:</p> <ul style="list-style-type: none"> <li>– Advising and representing right holders as regards to IPR enforcement in 3rd countries (external as well as internal counsellors), and/or</li> <li>– Enforcing cross border IPR infringements involving 3rd countries, and/or</li> <li>– Judicial cooperation in the field of IPR enforcement in 3rd countries, and/or</li> <li>– Interagency and cooperation practices relating to IPR enforcement in 3rd countries, and/or</li> <li>– The use of ACRIS.</li> </ul>
<b>SMEs</b>	<ul style="list-style-type: none"> <li>– Exporting is a key driver for growth and brings different problems and strategies, so the EG should have mixture of SMEs that export, that do not, and that are considering it.</li> <li>– SMEs and innovators with various background stories.</li> <li>– Supply chain location: the EG should contain not only SMEs that retail or wholesale to mass markets but also those which are solely involved in the supply chain to larger manufacturers (e.g. produce seatbelts for cars).</li> <li>– IP knowledge/experience: the EG should contain SME and innovators which preferably span various kinds of IP rights (trade marks, patents, copyrights, designs and trade secrets), as well as some SMEs which have not registered any IPR, preferably both due to lack of knowledge and also due to implementation of a non IPR strategy.</li> <li>– Potential industries for EG members (including SMEs, but also experts who do not necessarily belong to an SME): tech/software/app; software as service; fashion; manufacturing; medical/bio; creative/design; retail; food &amp; drink; business services; supply chain manufacturer.</li> </ul>