

## Our position

# Public consultation on the protection and enforcement of intellectual property rights in third countries



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2018, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

The American Chamber of Commerce to the EU (AmCham EU) welcomes the European Commission's ongoing efforts to advance strong intellectual property rights (IPR) globally. Together with the EU Counterfeit and Piracy Watch List, its Biannual Report on the Protection and Enforcement of IPR in Third Countries is an important tool in assessing the scale and scope of challenges faced, and in determining where to focus the EU's efforts.

US business invested in and committed to Europe strongly rely with their business models on IPR. These provide the basis for innovation in a range of critical sectors, including life sciences, digital, audiovisual and consumer goods. Such innovations bring benefits to citizens, patients and consumers, as well as the broader economy - not just in Europe or the US, but across the globe. As a reflection of our stake in this, European affiliates of US companies invested \$31.3 billion in R&D in Europe; while ten of the top twenty export platform countries for US companies are in Europe, including Belgium, Germany and Ireland. In the latter case, Irish affiliates of US companies export five times more globally than they do from China, and almost four times more than from Mexico.<sup>1</sup>

IP violations manifest themselves in multiple ways, reflecting the diverse range of intellectual property rules and incentives. This includes the realms of patents, trademarks and copyright, as well as sector-specific mechanisms, such as regulatory data protection (RDP). Research consistently shows that weak rules, commercial scale infringements and poor enforcement cause significantly adverse impacts on right holders and legitimate business. They also undermine competitive advantages in innovation, while posing threats to consumer health and safety, as well as to jobs and growth.

In the currently challenging global environment, AmCham EU's member companies continue to face a diverse range of significant IPR problems in countries and regions around the world, including in Asia, the Middle-East and Latin America, as well as in the EU's nearer 'neighbourhood'. To underline the potential impact of this on Europe's economy, the European Union Intellectual Property Office (EU-IPO) notes that IPR-intensive industries account for about 90 % of EU trade with the rest of the world<sup>2</sup>. Furthermore, the latest report published jointly by the EU-IPO and the Organisation for Economic Co-operation and Development (OECD) shows that the US is the most affected country in the world in regard to counterfeiting and piracy, and that out of the 15 most affected countries, 11 are European.<sup>3</sup> This makes the case for strong transatlantic cooperation.

Among the range of countries and types of challenges faced by industry, China remains the leading source of counterfeit and pirated goods, despite some improvements. Recent reforms have contributed towards a more transparent and effective system regarding the protection and enforcement of IP in China. The government has introduced broad changes to its agencies responsible for IP-related matters. In particular, China re-organised its State Intellectual Property Office, which has moved under newly established State Administration for Market Regulation and is now known as the China National Intellectual Property Administration. China has also embarked on judicial system reforms and created a new appellate tribunal within the Supreme People's Court that specialises in deciding on complex IP cases. It has finally reviewed and amended its IP legislations including patent and e-commerce laws and is due to publish a draft on copyrights law.

However, as evidenced by the joint EU-IPO/OECD report, 80% of counterfeit and pirated goods worldwide are seized in China and Hong Kong.<sup>4</sup> While latest government statistics indicate a large number of arrests related to piracy of audiovisual materials<sup>5</sup> criminal enforcement efforts remain hampered by thresholds which are high enough to exclude 'copyright piracy on a commercial scale' as required by the WTO TRIPS Agreement. Civil

<sup>1</sup> Transatlantic Economy 2019: <https://www.amchameu.eu/publications/transatlantic-economy-2019>

<sup>2</sup> EUIPO (2016), *Intellectual property rights intensive industries and economic performance in the European Union*, European Union Intellectual Property Office. <https://euiipo.europa.eu/ohimportal/en/web/observatory/ip-contribution>

<sup>3</sup> OECD/EUIPO (2019), *Trends in Trade in Counterfeit and Pirated Goods, Illicit Trade*, OECD Publishing, Paris/European Union Intellectual Property Office. <https://doi.org/10.1787/g2g9f533-en>

<sup>4</sup> *Ibid.*

<sup>5</sup> For example, in advance of US-China trade talks in April 2019, the government reported the arrest of 251 suspects, the shutting down of 361 websites, the closure of 57 apps, and the seizure of seven servers related to high definition audiovisual piracy. See Orange Wang, China Arrests 251 for 251 for Film Piracy on Eve on New Trade Talks with U.S., South China Morning Post, April 29, 2019 at <https://www.scmp.com/news/china/diplomacy/article/3008195/china-arrests-251-film-piracy-eve-new-trade-talks-us>

litigation efforts, while successfully brought by the industries against blatant piracy services result in only fines, and rarely result in the shuttering of the entire business. Despite a good cooperation with the National Copyright Administration of China (NCAC), the impact on the availability of infringing content has been limited.

Continuous efforts by China towards decreasing the counterfeit market are essential. In July 2017, at the National Financial Work Conference, Chinese President Xi Jinping pronounced that China ‘must step up efforts to punish illegal infringement of intellectual property rights and force infringers to pay a heavy price’. This should include further facilitating IP holders to bring cases against counterfeiters before Chinese courts, improving criminal penalties for IP infringements and adopting measures to effectively discourage repeat infringers.

We call upon the European Commission to strengthen its focus on securing sustainable improvements to the IP environment in third countries. Work to do this may include engagement of third country governments and other stakeholders through dialogue, technical programmes, and through EU Free Trade Agreements (FTAs). In addition, we would also encourage work to reinforce existing collaboration with governments, including the US. Finally, AmCham EU stands ready to discuss further with the European Commission, including providing more insight on other countries and IPR challenges faced globally.