



**Agreement on Strategic Co-operation  
between the Office for Harmonisation in the Internal  
Market and the European Police Office**

The Office for Harmonisation in the Internal Market (hereafter referred to as "OHIM")

and

the European Police Office (hereafter referred to as "Europol")

Hereafter jointly referred to as the "Parties" or individually as the "Party"

Whereas Europol, as an entity responsible for the law enforcement cooperation at the European Union level that pursuant to the Europol Council Decision of 6 April 2009 aims to support and strengthen action by the competent authorities of the Member States in preventing and combating organized crime, terrorism and other forms of serious crime affecting two or more Member States;

Whereas the Regulation (EU) No 386/2012 of 19 April 2012 entrusts OHIM with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as the European Observatory on Infringements of Intellectual Property Rights;

Aware of the urgent problems arising from international organised crime, in particular with regard to the increasing phenomenon of counterfeiting and piracy regarding intellectual property rights;

Considering Article 22 of the Europol Council Decision, allowing for Europol to establish and maintain cooperative relations with the institutions, bodies, offices and agencies set up by, or on the basis of, the Treaty on European Union and the Treaties establishing the European Communities;

Considering that the Management Board of Europol on 4 October 2012 authorised the start of negotiations between OHIM and Europol;

Considering that the Management Board of Europol has on 22 May 2013 given Europol the authorisation to agree to the present Agreement;

Considering that the Administrative Board of OHIM has been duly informed about the negotiations of the present Agreement with Europol on 22 May 2013;

Considering that Article 1 of the Regulation (EU) No 386/2012 of 19 April 2012 entrusts OHIM with tasks aimed at facilitating and supporting the activities of the national authorities, the private sector and the European Union institutions in the fight against infringements of the intellectual property rights covered by the Directive 2004/48/EC of 29 April 2004;

Respectful of the obligations of the Parties under the Charter of Fundamental Rights of the European Union;

Have agreed as follows:

## **Article 1**

### **Definitions**

For the purpose of this Agreement:

- a) "Europol Council Decision" shall mean the Council Decision of 6 April 2009 establishing the European Police Office (Europol)<sup>1</sup>;
- b) "OHIM Regulation" shall mean the Council Regulation No 207/2009 of 26 February 2009 on the Community Trade Mark (codified version)<sup>2</sup>;
- c) "personal data" means any data relating to an identified or identifiable natural person: an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

## **Chapter I – Purpose and Scope**

### **Article 2**

#### **Purpose of the cooperation**

The purpose of this Agreement is to establish and maintain cooperative relations between Europol and OHIM in order to increase their support to the Member States of the European Union and its Institutions in preventing and combating crimes related to intellectual property rights. This Agreement does not cover the exchange of personal data. The cooperation will not extend or go beyond the Parties' respective mandates.

### **Article 3**

#### **Areas of cooperation**

1. The areas of cooperation shall cover tasks within Europol's mandate as provided for in Article 3 of the Europol Council Decision, and in its Annex. OHIM shall operate within its mandate provided for in the Regulation (EU) No 386/2012 of 19 April 2012.

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<sup>1</sup> OJ L 121, 15.5.2009

<sup>2</sup> OJ L 78, 24.3.2009

2. The co-operation may in particular include the exchange of expert contacts, specialist knowledge, general situation reports, results of strategic analysis and best practice as well as building capacity through training and awareness raising, tools and participation in meetings, conferences and other events.

## **Chapter II – Mode of Cooperation**

### **Article 4 Contact point**

The Parties shall, for the purpose of information exchange, designate contact points by means of an exchange of letters between the Director of Europol and the President of OHIM.

### **Article 5 Consultations and Closer Cooperation**

1. The Parties agree that to further enhance cooperation as well as monitor the development of the provisions of this Agreement, regular exchanges, as agreed and appropriate, are integral. Specifically:
  - a. High level meetings between Europol and OHIM shall take place regularly to discuss issues relating to this Agreement and the co-operation in general.
  - b. Representatives of OHIM and Europol shall consult each other regularly on policy issues and matters of common interest for the purpose of realising their objectives and coordinating their respective activities.
2. When appropriate, consultation shall be arranged at the required level between representatives of OHIM and Europol, to agree upon and periodically review the most effective way in which to organise their particular activities.

## **Chapter III - Information exchange**

### **Article 6**

#### **General Provisions**

1. Exchange of information between the Parties shall only take place for the purpose of and in accordance with the provisions of this Agreement.
2. The Parties shall only supply information to each other which was collected, stored and transmitted in accordance with their respective legal framework.
3. Requests for public access by individuals to information transmitted on the basis of the present Agreement shall be submitted to the transmitting Party for their advice as soon as possible. The concerned information shall not be disclosed should the transmitting Party object to it.
4. The Parties shall supply information to each other within a reasonable time following a request.

### **Article 7**

#### **Use of the information**

1. Information if transmitted with a purpose may be used only for the purpose for which it was transmitted and any restriction on its use, deletion or destruction, including possible access restrictions in general or specific terms must be respected by the Parties.
2. Use of information for a different purpose than the purpose for which the information was transmitted must be authorised by the transmitting Party.

### **Article 8**

#### **Onward transmission of the information received**

Any information received by either Party under this Agreement may only be transmitted onward to a third party with the prior consent of the transmitting Party and subject to any conditions or restrictions indicated by that Party. Such consent may only be given when allowed under the applicable legal framework of the transmitting Party.

## **Article 9**

### **Assessment of the source and of the information**

1. When information is supplied by the Parties on the basis of this Agreement, the source of the information shall be indicated as far as possible on the basis of the following criteria:
  - a. Where there is no doubt of the authenticity, trustworthiness and competence of the source, or if the information is supplied by a source who, in the past, has proved to be reliable in all instances;
  - b. Source from whom information received has in most instances proved to be reliable;
  - c. Source from whom information received has in most instances proved to be unreliable;
  - X. The reliability of the source cannot be assessed.
  
2. When information is supplied by the Parties on the basis of this Agreement, the reliability of the information shall be indicated as far as possible on the basis of the following criteria:
  1. Information whose accuracy is not in doubt;
  2. Information known personally to the source but not known personally to the official passing it on;
  3. Information not known personally to the source but corroborated by other information already recorded;
  4. Information which is not known personally to the source and cannot be corroborated.
  
3. If either of the Parties - on the basis of information already in its possession - comes to the conclusion that the assessment of information supplied by the other Party needs correction, it shall inform the other Party and attempt to agree on an amendment to the assessment. Neither of the Parties shall change the assessment of information received without such agreement.
  
4. If a Party receives information without an assessment, it shall attempt as far as possible and in agreement with the transmitting Party to assess the reliability of the source or the information on the basis of information already in its possession.

5. The Parties may agree in general terms on the assessment of specified types of information and specified sources, which shall be laid down in a Memorandum of Understanding between OHIM and Europol. If information has been supplied on the basis of such general agreements, this shall be noted with the information.
6. If no reliable assessment can be made, or no agreement in general terms exists, the information shall be evaluated as at paragraph 1 (X) and paragraph 2 (4) above.

**Article 10**  
**Confidentiality of information**

1. All information processed by or through Europol, except information which is expressly marked or is clearly recognisable as being public information, is subject to a basic protection level within the Europol organisation as well as in the Member States of the European Union. Information which is only subject to the basic protection level does not require a specific marking of a Europol classification level, but shall be designated as Europol information.
2. The Parties shall ensure the basic protection level mentioned in paragraph 1 for all information, with the exception of public information, exchanged under this Agreement, by all necessary measures, including the obligation of discretion and confidentiality, limiting access to information to authorised personnel, protection of personal data and general technical and procedural measures to safeguard the security of the information.
3. Information requiring additional security measures is subject to a classification level. The exchange of classified information between the Parties is subject to an agreement on confidentiality. Notwithstanding Article 23(8) of the Europol Council Decision, no exchange of classified information is permitted until such an agreement on confidentiality including a table of equivalence is established between the Parties. Such agreement must be established in accordance with Article 15 of this Agreement.

## **CHAPTER IV - Disputes and Liability**

### **Article 11**

#### **Liability**

1. The Parties shall be liable, in accordance with their respective legal frameworks, for any damage caused to an individual as a result of legal or factual errors in information exchanged. In order to avoid its liability under their respective legal frameworks vis-à-vis an injured party, neither Party may plead that the other had transmitted inaccurate information.
2. If these legal or factual errors occurred as a result of information erroneously communicated or of failure on the part of the other Party to comply with their obligations, the latter shall be bound to reimburse to the other Party, on request, any amounts paid to any third party as a consequence of a judgment which has the force of *res judicata*, unless the information was used by the other Party in breach of this Agreement.
3. The Parties shall not require each other to pay for punitive or non-compensatory damages under paragraphs 1 and 2 above.

### **Article 12**

#### **Settlement of Disputes**

1. All disputes which may emerge in connection with the interpretation or application of the present Agreement shall be settled by means of consultations and negotiations between representatives of the Parties with the view to finding an equitable solution.
2. In the event of serious failings of either Party to comply with the provisions of this Agreement, or a Party is of the view that such a failing may occur in the near future, either Party may suspend the application of this Agreement temporarily, pending the application of paragraph 1. Obligations inherent upon the Parties under the Agreement will nonetheless remain in force.



## **Chapter V - Final Provisions**

### **Article 13**

#### **Secure communication line**

1. The Parties may agree on the establishment of a secure communication line for the purpose of exchange of information between Europol and OHIM. The establishment, implementation and operation of this secure communication line shall be regulated in a Memorandum of Understanding agreed between the Parties.
2. The costs of the establishment of the secure communication line shall be paid by Europol whereas the monthly running costs shall be shared between the Parties in proportions specified in the Memorandum of Understanding.
3. Without prejudice to Article 11 a Party shall be liable for damage caused to the other Party as a result of wrongful actions relating to the establishment, the implementation or the operation of the secure communication line.
4. Any dispute between the Parties concerning the interpretation or application of provisions relating to the establishment, implementation and operation of a secure communication line shall be settled in accordance with Article 12.

### **Article 14**

#### **Expenses**

The Parties shall bear their own expenses which arise in the course of implementation of the present Agreement, unless otherwise stipulated in this Agreement.

### **Article 15**

#### **Amendments and Supplements**

1. This Agreement may be amended and supplemented in writing, at any time by mutual consent between the Parties. For Europol, any amendments must receive the approval of its Management Board. For OHIM, any amendments must be subject to the recommendation of the Administrative Board and signed by the President of OHIM.
2. The Parties shall enter into consultations with respect to any amendment and supplement of this Agreement at the request of either of them.



**Article 16**  
**Entry into force and validity**

This Agreement shall enter into force on the date of the last signature.

**Article 17**  
**Termination of the Agreement**

1. This Agreement may be terminated in writing by either of the Parties with three months' notice.
2. In case of termination, the Parties shall reach an agreement on the continued use and storage of the information that has already been communicated between them. If no agreement is reached, either of the two Parties is entitled to require that the information which it has communicated be destroyed or returned to the transmitting Party.
3. Without prejudice to paragraph 1, the legal effects of this Agreement remain in force.

Done at **Alicante**, on **4 November 2013** in duplicate in the English language.

For **OHIM**

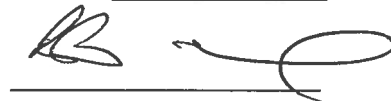
For **EUROPOL**

The President A. CAMPINOS

The Director R. WAINWRIGHT



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