

Work Programme of the Observatory 2015



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1. Introduction

1.1 Structure of the Observatory

The European Observatory on Infringements of Intellectual Property Rights was established in 2009 by the European Commission as a centre of excellence on information and data relating to the value of Intellectual Property rights (IPR) and the negative consequences of IPR infringements.

The Observatory was entrusted to OHIM in June 2012 by Regulation (EU) No 386/2012.

The Regulation transferring the Observatory to OHIM covers responsibility for a wide range of tasks relating to research, communication, spread of best practice, and support for enforcement of all types of intellectual property rights.

The tasks listed in the Regulation include:

- Improving the understanding of the scope and impact of infringements of intellectual property rights, including industrial property rights, copyright, and rights related to copyright;
- Improving the understanding of the value of intellectual property;
- Enhancing the knowledge of best public and private sector practices to protect intellectual property rights;
- Raising citizens' awareness of the impact of infringements of intellectual property rights;
- Enhancing the expertise of persons involved in the enforcement of intellectual property rights;
- Enhancing the knowledge of technical tools to prevent and combat counterfeiting and piracy, including tracking and tracing systems;
- Improving the online exchange between Member States' authorities and fostering co-operation with and between the central industrial property offices of the Member States, including the Benelux Office for Intellectual Property;
- Fostering international cooperation with intellectual property offices in third countries to build strategies and develop techniques for the protection of intellectual property rights, skills, and tools.

In order to carry out the assigned tasks, an Observatory Department was formed in late 2012, consisting of three main areas: the Observatory Operations and Projects, the Academy, and the Chief Economist. Thus, in 2013, the Observatory became fully integrated into OHIM, and benefits from all the capabilities and resources of the Office. In October 2014, as part of a reorganisation of the Office, the Academy became a separate department. However, the Observatory and the Academy continue to collaborate closely on externally-focused activities, and this Work Programme includes the activities of the Academy that are relevant to the external dimension of the Observatory.

1.2 Activities in 2014

During 2014, the second full year of operation of the Observatory within OHIM, a number of important activities came to fruition; in particular:

- A number of studies and reports were published, including: the second phase of the IP Contribution Study which analyses the relationship between the use of IPR and economic performance at the level of individual companies; a study of the impact of IPR infringement in the perfumes and toilet preparations sector; a research report on IP and education; a report on Inter-Agency Cooperation at National and International Level in IPR enforcement; updates on earlier reports on Storage and Destruction and Costs and Damages; and guides to protection of Intellectual Property Rights in Brazil, China, India, Russia and Turkey.



- The Observatory also carried out a survey, on behalf of the EU Commission (DG Trade) of EU entities with an interest in the enforcement of Intellectual Property Rights (IPR) in third countries.
- The Observatory network was strengthened and made more representative by the addition of a number of new associations, including several civil society organisations. In addition to the representatives of the 28 Member States, the Observatory now includes 57 organisations representing the private sector, 6 organisations representing civil society and consumers, 10 MEPs and 10 international organisations that act as observers.
- The five working groups – Legal, Enforcement, Public Awareness, Statistics and Economics, IP in the Digital World – met twice during 2014 in regular February/September sessions. In order to make the work more effective and to enable more participation when available, some working groups have been divided into smaller subgroups of around eight representatives in order to follow specific projects.
- A number of projects have now entered operation, for example the Enforcement Database which was in a pilot phase until April 2014 and now contains approximately 100 companies, with more being added every month.
- Three major conferences were held during 2014, a conference on IP crimes in sports in March, a high level IP Enforcement Summit in June, and one on the internet as a facilitator of IP crime in November.

Many of these activities are carried out in cooperation with other European institutions, including the European Commission, Eurojust, Europol, the European Police College (CEPOL), the European Patent Office (EPO), with EU Member States, and with international organisations such as the World Customs Organization (WCO), the World Intellectual Property Organization (WIPO), Interpol and the Organization for Economic Cooperation and Development (OECD).

1.3 The Multiannual Plan

In early 2013, work began on a five-year Multiannual Plan spanning 2014 to 2018. This plan was presented to the Plenary meeting of the Observatory in late October 2013 and was adopted by OHIM's President in November 2013.

Aligned with the OHIM Strategic Plan, the Observatory Multiannual Plan identifies several Key Initiatives designed to enable the Observatory to become a centre of excellence and a central resource for gathering information that will facilitate and support the activities of national authorities, EU institutions, private sector and civil society organisations.

The present Work Programme outlines the activities to be undertaken by the Observatory during 2015 in the framework of the Multiannual Plan. It includes projects that continue work begun in 2013, as well as new projects and activities that were initiated during 2014, some of which will deliver their final results in subsequent years.



1.4 Structure of this document

The remainder of this document consists of three parts:

- Section 2 provides a brief description of the working groups that comprise the Observatory. These working groups are organised along the lines of five main subjects.
- Section 3 describes the activities the Office will undertake to implement the Multiannual Plan in 2015. Specifically, for each of the five working group subjects, the projects to be executed to support the corresponding activity during the year are briefly described.
- Finally, Section 4 outlines the meetings and conferences planned for 2015.

2. Working Groups of the Observatory

The Observatory is made up of a network of public and private sector representatives which are concerned by and/or experienced in the fight against infringements of IP rights. These stakeholders represent a wide range of areas and interests, including enforcement authorities, industry, small and medium-sized enterprises, consumer organisations, civil society, authors and creators.

The Observatory representatives collaborate in working groups that have been created according to a number of different subjects:

- Enforcement
- IP in the Digital World
- Legal and International
- Public Awareness
- Statistics and Economics

The members of these working groups provide valuable feedback and support for the Observatory's projects, so that expert advice from all involved sectors can be taken on board. In order to make the work more effective and to enable more intense participation by stakeholders, working groups have been divided into smaller groups of around eight representatives which follow specific projects. The specific subgroups that currently exist are as follows:

- Enforcement working group
 - Knowledge building and training subgroup
 - Operational best practices subgroup
- IP in the Digital World working group
 - Online copyright infringements and legal offers subgroup
 - Online sales of counterfeited goods subgroup
- Legal working group
 - Cost and damages subgroup
 - Storage and destruction subgroup
- Public Awareness working group
 - Website and online services subgroup
 - Observatory public relations and external communications subgroup
 - Consumer awareness projects subgroup



3. Execution of the Multiannual Plan in 2015

As mentioned above, the Observatory has developed its own Multiannual Plan for 2014-2018, which includes projects which already had started in 2012, 2013 and 2014. The two sets of projects and activities are divided between the Academy, the Operations & Projects and the Chief Economist areas.

In order to carry out the activities outlined in this Work Programme, the Observatory will ensure that its resources are used in the most efficient and effective manner. OHIM's framework contracts such as those with PAU for public awareness campaigns and communication, and with Deloitte for consulting services, as well as the list of experts established in 2013 will be used to supplement in-house resources with external expertise as appropriate. Should the need arise, specific calls for tender may be launched to secure access to specialised services and resources to fulfil requirements that cannot be covered with available internal and external resources.

The activities described below will be carried out in coordination with other agencies and international organisations in order to avoid duplication of effort and use the limited resources in the most effective manner. Members of the Working Groups will be consulted when appropriate.

3.1 Academy Projects

Externally, the Academy and its accumulated Knowledge Repository are among the primary vehicles for OHIM to reach out to the broader IP community in Europe and around the world. In this area, there is a great deal of collaboration between the Observatory and the Academy.

In order to fulfil these goals, in 2015 the IP Academy will work on a set of key projects which are the natural continuation of the work started in 2012-2013 and further developed in 2014. The projects cover two major streams of work: development of knowledge management and building state-of-the-art training and learning facilities.

Many of these activities will continue to be carried out in collaboration with other IP organisations such as EPO and WIPO, as well as with academia and other public and private organisations.

The Academy projects are covered in full detail in the OHIM Work Programme.

3.2 Observatory / Chief Economist Projects

The projects and activities for 2015 are set out below according to the working group with which they are associated.

3.2.1 Projects planned for 2015 in the area of Public Awareness

- Targeting youth: the **youth action plan** will see its full deployment during the first half of 2015. Work started in 2014 will be further developed to build communities, notably on social media, and seek the involvement of opinion leaders, "multipliers" and personalities of reference from areas of interest for younger generations, with a view to engaging them further and identifying leverage and partnership possibilities for awareness campaigns targeting youngsters. Activities will be complemented by and assessed through an IP Youth Scoreboard report which on an annual basis will monitor youngsters' attitudes, perceptions and behaviours linked to IP.



- **New narrative to sustain awareness campaigns:** after the results of the IP Contribution Study and the IP Perception Study, the impact of IPR infringements notably in terms of lost jobs and GDP is currently being analysed. These three studies on IP contribution, IP perception and the quantification of IP infringements form a “trilogy”, consisting of the positive side which shows the importance of IP rights to employment, jobs and trade and the “dark side” analysed in the infringement studies. In the middle of this “trilogy” is the third element: the assessment of how citizens of different nationalities, ages, genders and professions perceive IP rights and the extent to which they understand the issues, value the rights, and see them as being relevant to their lives. Once the trilogy is completed with the quantification of IPR infringement and its impact on employment and economic activity, a new and compelling narrative will be developed at the end of 2015 to serve as the basis to design awareness campaigns to be implemented during 2016. Existing initiatives will be taken into account to take advantage of the experience of public and private stakeholders in carrying out awareness campaigns and to avoid duplication.
- **Helping SMEs protect their IP rights:** IPRs are essential business assets for SMEs. However, SMEs can be severely harmed by IPR infringement, as they often lack the appropriate resources and knowledge to protect and enforce their rights. In 2014, the Office and the European Commission (DG Enterprise) set up and started to implement an action plan to better understand and address the specific SMEs needs. The different actions included in the plan will be fully deployed in the course of 2015 with a dedicated IP SMEs Scoreboard report (to be published during the first half of 2015), which will monitor SMEs problems and needs regarding IP protection.
- Since the publication of Regulation 386/2012, entrusting the Office with the EU Observatory, the Office has received a number of enquiries regarding potential **funding for existing or developing national awareness raising initiatives**, which are being put at risk as a result of shortages of national funds. Some of these initiatives are fully aligned with the positioning promoted by the Office through the Observatory and thus could help to address some of the findings of the IP Perception Study and its follow up studies (IP Youth Scoreboard). Moreover, according to article 1 of Regulation 386/2012, the Office should support the activities of national authorities, the private sector and the Union institutions in the fight against infringements of the intellectual property rights covered by Directive 2004/48/EC. Accordingly, in the first quarter of 2015 the Office will launch an annual fund to support existing or developing awareness-raising initiatives carried out by public and private organisations in Member States. It is proposed to reserve €500 000 for this annual fund to be operated via an open and competitive call for proposals. This support scheme will be based on co-financing principle, with a maximum level of co-financing set at 80% of eligible costs. At the end of 2015 an evaluation of this initiative will be carried out and, if needed, adjustments will be made for the launch of the annual fund 2016.
- **Improved Communication of the Observatory’s work:** during the course of 2015 outreach activities will be developed with the help of relevant stakeholders to disseminate the results of the studies issued by the Office through the Observatory and to present and promote tools and/or databases and events with a particular emphasis on policymakers, businesses and media.

3.2.2 *Projects planned for 2015 in the area of Enforcement*

- **IP Enforcement Database (EDB):** As a continuation of work carried out in 2014, integration with the COPIS system of DG Taxation and Customs Union will be completed in the first half of 2015, thus enabling EDB users to file electronic Applications for Action. Moreover, work will be completed to ensure interoperability between EDB and the WCO/IPM system and to federate EDB with the Europol Operation Network.



- **Data collection, analysis, reporting:** During the course of 2015, the Office will continue to integrate data obtained from Member States' police authorities and the Commission (DG TAXUD) in the Anti-Counterfeiting Intelligence Support Tool (ACIST). In addition, analysis will be carried out to produce fact-based, updated information for enforcement authorities and policy makers at EU and national level. The activity will basically consist of gathering data from selected sources (ACIST, reports provided by Europol and Eurojust, specific information received from Member States and international organisations such as WCO and Interpol, commercial and open source software), analysing this data to identify relevant characteristics and trends and produce a report on these trends.
- **Special focus on online infringements:** An action plan has been drawn up covering joint activities with Europol to be carried out in 2015. This covers knowledge building, production of reports and analyses, and joint training events. A joint project was started in 2014 to combine advice from industry experts, customs and police and other enforcement actors to develop a "first-time" situational analysis on counterfeiting, providing information on routes, entry points, and modus operandi of criminal organisations involved in counterfeiting. The report will also examine links between counterfeiting and other types of crime, using various case studies provided by EU Member States and private stakeholders. The results of this work will be available during the first quarter of 2015 and will enhance current understanding of the phenomenon of counterfeiting, including online infringements. Meanwhile, considering the alarming increase in online IP crime, Europol and the Office have decided to expand the scope of their collaboration to include a special focus on tackling this problem. In particular, in 2015 the Office hopes to begin financing Europol initiatives meant to increase information gathering and monitor trends in the field of online IP crime and related areas, and regularly report on such developments.
- **Reinforced cooperation:** Due to the higher profile of IP activities and the large number of institutions and agencies with a common interest, an inter-agency Coordination Group on Infringements of IP Rights was set up in 2014 with representatives of other EU agencies, the Commission and international organisations such as WIPO and Interpol. In March 2015 WIPO will host a meeting of the group in which ongoing activities, projects and issues among those agencies that deal with IPR infringements will be discussed to avoid duplication of efforts and seize new opportunities for collaboration.
- **Building Knowledge and Competences in IP Enforcement:** Building on the successful events organised in 2013 and 2014, two knowledge-building events in specific sectors will be developed in collaboration with Europol and Eurojust. The events will target enforcement authorities and involve relevant private stakeholders. A hands-on training on techniques to investigate IP crimes, both offline and online (including digital infringement), will be organised for the first time in collaboration with CEPOL and Europol during the second half of 2015. Finally, two regionally based workshops (one in spring and the other in autumn 2015) throughout the EU will be developed, targeting local judges, prosecutors, customs and police. As part of the work of the Coordination Group, the Office will further broaden its cooperation in the area of knowledge building with the European Commission, the European Anti-Fraud Office (OLAF), Europol, CEPOL, Eurojust, Interpol, WIPO and WCO.

3.2.3 *Projects planned for 2015 in the area Legal and International*

- **Identifying and Reporting on Best Practices in Enforcement:** The aim is to assist enforcement bodies by carrying out necessary research to identify the most effective practices to help fight against IP infringements. In 2014 the Working Group agreed to create specific subgroups to carry out two studies: one examining the methods of calculation of costs and damages in IP infringement cases, and the second to quantify the cost of storage and destruction of counterfeit



goods to Member States and to rights holders. The subgroups are expected to conclude their work and issue the final results of their studies during the first half of 2015.

- **Case-law collection and analysis:** One of the main tasks entrusted to the Office by Regulation 386/2012 is to improve knowledge on IP rights infringements in Member States. Article 5.1 of the Regulation on information obligations sets out that “[...] Member States shall, at the request of the Office or on their own initiative: [...] (c) inform the Office of important case-law”. As a continuation of the work begun in 2014, the Office will collect relevant jurisprudence related to enforcement of IP rights rendered at national level in the EU Member States. The activity will be implemented in collaboration with the national IP offices and BOIP, building on the results of the pilot run at the end of 2014.
- **Report on trade secret litigation trends:** A proposal for a Directive on the protection of undisclosed know-how and business information (trade secrets) against unlawful acquisition, use and disclosure foresees a role for the Office, through the Observatory, in monitoring of the application of the legal text. Under Article 17(1) of the draft Directive, the Office is to prepare a report on litigation trends regarding the unlawful acquisition, use or disclosure of trade secrets pursuant to the application of the Directive. The report will be due by the end of the third year following the end of the transposition period. In order to better measure the impact of the Directive on trade secret litigation, in 2015 the Office will start gathering data on trade secret litigation before the adoption of the Directive. For this purpose the Observatory will start collecting data with a view to producing a report in 2016 on the volume of legal actions and damages awarded, identifying trends in trade secret litigation before the adoption of the Directive. The elements to be analysed include levels of trade secret litigation in EU Member States, profiles of the parties involved in litigation, courts dealing with trade secret matters and duration of proceedings.
- **Support the protection of IP rights outside the EU:** The aim of this work stream is to cooperate with the European Commission’s DG TRADE on improving the protection of IP rights in third countries. The main activities include the development of an “Anti-counterfeiting Rapid Intelligence System – ACRIS”, an intelligence database that allows EU companies to report, in a structured format, information about IPR infringements they believe they were victims of and respective follow-up by local authorities in the countries outside of the European Union. This data will be used to:
 - Produce statistical information to assess the level of potential violations in each country and measure the efficiency of actions against taken by enforcement authorities. This will allow EU companies to make informed business decisions.
 - Update information on the IPR landscapes for use by DG Trade.
 - Feed into the bilateral dialogues of DG Trade with non-EU countries of interest.

The completion of ACRIS development is planned for the end of 2015.

A network of IP experts in EU delegations that deal with intellectual property matters was created in 2014. In 2015, the Office will cooperate with DG TRADE to consolidate the network mainly by providing technical support to improve IP knowledge and exchange of information among its members.



3.2.4 Projects planned for 2015 in the area IP in the Digital World

- **Help consumers to better differentiate legitimate from infringing websites:** According to the IP Perception Study, 6% of interviewed citizens have purchased counterfeit goods as a result of being misled over the last 12 months. Extrapolating to the EU population, this would mean that in just one year around 25 million citizens were misled while buying products online. In 2015 a new work stream will be launched to develop initiatives to be implemented in 2015 and 2016 and intended to assist consumers to better differentiate legitimate from infringing sites, both for physical goods and digital products. Such initiatives will include, among others, the creation of an online European aggregator of legal offers, the support for private sector initiatives intended to help consumers identify legitimate sites as well as consumer-friendly guides.
- **Analysis of new business models in copyright-based creative industries:** Article 2.1(g) of the Regulation 386/2012 establishes that the Office shall “monitor the development of new competitive business models which enlarge the legal offer of cultural and creative content, and encourage the exchange of information and raise consumer awareness in this respect”. New business models in copyright-based creative industries is one of the areas that require further study through objective and independent research. Following up on the initial analyses concluded in 2014, the Office intends to launch during the first part of 2015 an independent study to provide an assessment of the availability, characteristics and quality of new business models in relation to copyright-based creative industries in EU Member States. This study will be closely associated with the European aggregator of legal offers.
- **Research on business models most commonly used to infringe IP online:** An independent data-driven study will be completed in 2015 to assess and analyse specific techniques used for facilitating online IP rights infringements on a commercial scale. This independent research will provide an overview of the different infringing models assessing how they function, how they are financed, how they generate profits for their operators, what kinds of content they disseminate and how large their user bases are. The results of this research will provide enhanced understanding to policymakers, civil society and private businesses. At the same time it will help to identify and better understand the range of responses necessary to tackle the challenge of large scale online IP infringements.
- **Study on legislative measures related to online sales of counterfeits:** The purpose of this fact-based, descriptive study, which will be initiated in 2015, will be to identify the available legislative measures to tackle online sales of counterfeit goods, and to understand the benefits and shortcomings in the implementation and applications of these measures.
- **Orphan Works Registry:** After becoming fully operational and publicly accessible in the end of October 2014, in 2015 the single online Orphan works database will be promoted in order to raise awareness and increase the use of the tool. The work will focus on the implementation of the roll-out plan aimed at progressively introducing the database to its final users, such as libraries, museums, archives, film or audio heritage institutions and public service broadcasting organisations. The objective is to promote the use of the tool and to create an Orphan works database network consisting of key beneficiary organisations and competent national authorities from all Member States. To that end, training sessions will be organised to beneficiary organisations and competent national authorities to explain the functionalities of the database and to provide information about their correct use. Two new releases of the database are foreseen in 2015 to accommodate new requirements requested by the users.



3.2.5 Projects planned for 2015 in the area Economics and Statistics

- **Quantification of infringement:** This is a continuation of a pilot study begun in 2013, whose aim was to define a method to measure the economic impact of IP infringement (counterfeiting and piracy). In 2014, the methodology was successfully tested with the chemical industry, specifically the perfumes and toilet preparations sub-sector. In 2015, the methodology will be refined and 10-15 additional industries will be analysed using this method. At the same time, following the signing of a MoU with the OECD, OHIM will collaborate with OECD to carry out a study designed to estimate the total value of counterfeit goods traded in the EU, using a methodology developed by OECD and employed in their 2008 study “The Economic Impact of Counterfeiting and Piracy.” This work started in late 2014 and will be ongoing during 2015, with a view to publishing the final report in 2016. These two studies will reinforce and supplement each other. In addition, OHIM will, in collaboration with the European Commission’s Joint Research Centre (JRC), carry out studies of the extent and impact of infringement of digital content, such as music, film, TV programmes, streaming of events and e-books, with the first results to be published in the second half of 2015. The ultimate goal of this work stream is to develop an objective assessment of the extent and impact of infringement across the EU, including not only the loss of sales and employment suffered by the affected industries, but also broader societal impacts such as the loss of tax revenue, enforcement costs borne by the public and private sectors, and other quantifiable effects.
- **Other types of infringement:** Infringements such as those made possible by easily accessible 3D printing, may become increasingly important as the technology develops. The Observatory will monitor development in such area with a view of conducting possible studies of the economic effects of such new types of infringement in the future.
- **Study of open licensing and the public domain:** in addition to copyright, increasingly creative works are made available under alternative types of licensing, including open source in the case of software or Creative Commons in the case of other types of works. Works can be in the public domain either because they have been placed there by their creators or because copyright has expired. The Observatory will analyse the economic impact of such alternative types of licensing, as well as their interaction with traditional IP rights and the way open licenses are enforced. The report will be delivered in the second half of 2015.
- Detailed Study on **Geographical Indications**, including their economic contribution and infringement: Due to their special nature, and the concentration of Geographical Indications (GI) on a limited group of products made in specific regions, it is of interest to examine the economic impact of this particular IP right on a more granular geographical level than was possible in the IP Contribution study. In addition, like other IP rights, GIs are subject to infringement, the extent of which and the resulting consequences for consumers will be analysed, with first results expected in the first half of 2015.
- Research on **trade secrets and their function in the economy:** As mentioned above, the proposed Directive on the protection of undisclosed know-how and business information (trade secrets) foresees a role for the Office in terms of monitoring the impact of the directive. In addition, trade secrets are of significant interest to the stakeholders of the Observatory, as they often complement other IP rights and are particularly important in certain sectors and to certain business segments, particularly SMEs. The Observatory has therefore already begun work on quantifying the importance of trade secrets to the EU economy, analogously to what was done in the IP Contribution Study. Due to the particular nature of trade secrets, the study will have to partially rely on survey evidence, for example the periodic Community Innovation Surveys carried out by national statistical offices in EU Member States, under coordination by Eurostat. Further research will also examine the extent and consequences of misappropriation of trade



secrets. Initial results on the quantification of the importance of trade secrets will be published in the first half of 2015.

4. Observatory Meetings and Conferences in 2015

4.1 Conferences

In 2015, the Observatory will continue to organise high-level events to ensure policymakers, communicators and decision takers are fully aware of relevant issues surrounding IP.

The main events planned for 2015 include:

- Two seminars organised jointly with Europol and Eurojust: one to be held during the spring and one to be held during the autumn.
- Conference co-organised with DG TAXUD to identify opportunities to intensify the collaboration between enforcement authorities (customs, police, prosecutors, judges).

4.2 Observatory Meetings

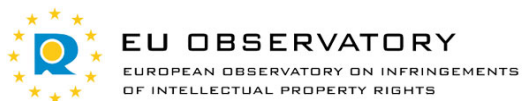
According to Regulation (EC) 386/2012, the Observatory Plenary, public stakeholders and private representatives meet at least once a year. The dates for the Observatory meetings in 2015 are as follows:

Meeting	Place	Date
Plenary meeting	Alicante	28-29 October 2015
Public sector stakeholders	Riga	21-23 April 2015
Private sector stakeholders	Brussels	29 April 2015

4.3 Advisory Board Meetings

The President of OHIM is assisted by an Advisory Board, which provides recommendations in relation to specific Observatory issues to ensure and guarantee progress and where appropriate, to suggest necessary improvements. Two meetings are foreseen for 2015:

Meeting	Place	Date
Advisory Board	Brussels	17 March 2015
Advisory Board	Brussels	6 October 2015



4.4 Working Group Meetings

The working groups meet twice per year. The dates for the working group meetings in 2015 are shown below. Additional meetings can be convened if needed.

Working Group	First meeting (Alicante)	Second meeting (Brussels)
Enforcement	24-26 February 2015	29 September – 1 October 2015
IP in a Digital World	24-26 February 2015	29 September – 1 October 2015
Legal and International	24-26 February 2015	29 September – 1 October 2015
Public Awareness	24-26 February 2015	29 September – 1 October 2015
Statistics and Economics	24-26 February 2015	29 September – 1 October 2015