

Trademark rights
Design rights
Patent rights
Geographical indications
Utility model rights
Plant variety rights
Trade names
What is the economic importance of licensing intellectual property rights from other entities for your undertaking?
What is the economic importance of licensing your intellectual property rights to other entities for your undertaking?
What is the value of your IPR portfolio?
How do infringements of your intellectual property rights impact the total value of your IPR portfolio (eg. estimated annual loss of turnover)? How do you calculate this impact?
What is the substitution rate between original goods and counterfeited/pirated goods in your sector according to your estimation? How do you measure this rate?
How do infringements of your intellectual property rights impact your investment in research, development and innovation (eg. estimated loss in investments/amount of investments not undertaken)?
What is the relevance of the quality of civil enforcement system for intellectual property rights for your research, development and innovation investments?

Efficiency and effectiveness of civil proceedings in cases concerning infringements of intellectual property rights

Did you pursue alternative dispute resolution mechanisms before instituting court proceedings in the cases of intellectual property rights' infringements?	Yes
What kind of alternative dispute resolution mechanisms did you undertake?	BILATERAL NEGOTIATIONS OTHER
What were the costs and the length of proceedings?	No formal ADR. We however often send infringers a cease and desist letter on behalf of our clients, before instituting formal court proceedings. Apart from domain name disputes, these letters rarely lead to a complete remedy of the situation. Court proceedings often need to be initiated to achieve the infringer's full compliance.

Were your rights sufficiently safeguarded (including right to privacy, right to be heard, and due process)? Please explain:	Yes. We usually commence litigation by requesting the court to grant a preliminary injunction (PI) as proceedings on the merits may be excessively long. In the PI stage, no hearings take place. The court decides within 30 days in Slovakia and within 7 days in the Czech Republic, solely on the basis of a written submission of the claimant. The courts are rather cautious when granting a PI. PI will not be issued by the judge unless there is sufficiently proven that a PI is necessary to temporarily regulate the relationship between the plaintiff and the defendant. The risk of imminent harm needs to be demonstrated to the court. If additional safeguards were to be introduced in the PI stage, such as right to be heard, the proceedings would lose their effectiveness and their purpose as they would no longer provide for a possibility to cease the infringing activity in a short time-frame.
Please explain:	
Do you consider that alternative dispute resolution mechanisms in cases of intellectual property rights' infringements are sufficiently accessible to parties affected by an infringement?	NO
Please explain:	No ADR is available for IP disputes in Slovakia and Czech Republic. The advantages of introducing such mechanism are questionable, because: (i) some IP rulings lead to de-registration of the IP title from the public register and granting such power to non-state tribunals would be legally problematic; and (ii) if the results of ADR are reviewable in court they may not speed up the process, but merely add another layer to the court litigation that will inevitably follow.
Did you take part in litigation of cases concerning the infringements of IPRs during the period under examination?	YES
In how many cases per year do you take part on average?	
How many of these cases were subject to an appeal?	
In which capacity?	OTHER
Please explain:	We acted as counsels to the clients enforcing their IP rights
In which countries? Please indicate relevant Member States:	CZ - Česká republika SK - Slovensko
Did you already launch proceedings concerning infringements of your IPRs that occurred in another Member State?	YES
Did you already launch proceedings concerning infringements of your IPRs that occurred in several Member States?	YES

<p>Were you able to consolidate all these claims in one jurisdiction or were you obliged to launch the proceedings in the jurisdiction of several Member States? Please explain:</p>	<p>No, consolidation of claims into one single jurisdiction is rather problematic. We are of an opinion that legally such consolidation of claims would theoretically be possible however, we consider it likely that the courts would be reluctant to deal with an infringement occurring in another member state. Apart from when the IP title in question is a Community IP title, such as CTM or a Community design we usually advise clients to launch separate proceedings in each concerned jurisdiction. This naturally results in higher costs incurred by our clients who need to launch similar proceedings in several member states in parallel. Due to similar laws and languages, infringers tend to move between Slovakia and the Czech Republic or simultaneously operate in both countries, yet separate proceedings often need to be launched in both countries. Specific problems arise in cases of online copyright infringement cases where Czech websites are used also by the Slovak audience and vice versa and infringers move between the two countries.</p>
<p>Have claims against the validity of infringed/allegedly infringed intellectual property rights been made in the context of the litigation you were a party to?</p>	<p>YES</p>
<p>Please explain what was the impact of these claims on the procedure concerning the infringement:</p>	<p>This is often part of patent infringement disputes.</p>
<p>In approximately what percentage of cases were these intellectual property rights found to be invalid as a result of these claims?</p>	
<p>For what reasons did you refrain from litigating?</p>	<p>PROCEDURES TOO COSTLY PROCEDURES TOO LONG</p>
<p>Did your decision on whether or not to litigate depend on the jurisdiction?</p>	<p>YES</p>
<p>Please explain:</p>	<p>Clients tend not to litigate in member states where the relevant national laws incorrectly implement the respective IP Directives. As an example, the provisions regarding injunctions against intermediaries have not been implemented in Slovakia for trademark and patent cases. As a result, there has been no litigation in this particular field in Slovakia as clients consider it too risky and want to avoid negative precedents.</p>
<p>Did your decision on whether or not to litigate depend on the type of court concerned (e.g. courts specialised in intellectual property as opposed to standard commercial courts)?</p>	<p>YES</p>

Please explain:	In Slovakia there are no specialised courts which would specifically deal with copyright disputes. These disputes are heard by general courts which often lack sufficient copyright expertise. For this reason (for example in cases related to online piracy), clients are sometimes reluctant to litigate.
For you, is it more important to stop infringements that are committed for profit than infringements committed not for profit?	
What is your general intention in instituting civil law court proceedings concerning infringements of intellectual property rights?	TO STOP THE INFRINGING ACTIVITY TO TAKE MEASURES TO PREVENT FURTHER INFRINGEMENTS OTHER
Please explain:	In general, clients seek to stop the infringing activity and to take measures to prevent further infringements. Litigation is usually used as a last resort, for example in case the infringers or intermediaries are not willing to cooperate.
What was the amount of a court fees that you had to pay for instituting first instance proceedings on the merits of the case concerning an infringement of your IP right?	
Did you have to pay any other court fees in relation to the first instance proceedings on the merits of the case concerning an infringement of your IP right?	
What was the amount of external experts' costs you had to pay in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right?	
What was the amount of in-house costs you had to bear in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right?	
What was the amount of legal representation costs you had to pay in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right?	The amount of legal representation costs depends on the complexity of the case.
Please indicate, if appropriate, other costs that you had to bear in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right:	
What was the total amount of costs you had to bear in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right?	
Please explain how do these costs change for the preliminary proceedings:	
Please explain how do these costs change for the appeal proceedings:	

Please indicate which of the various costs associated with the proceedings on the merits of the case at first instance were ordered by the court to be reimbursed to the winning party by the losing party following the final decision:

Copyright:

Rights related to copyright:

Sui generis right of a database maker:

Rights of the creator of the topographies of a semiconductor product:

Trademark rights:

Design rights:

Patent rights:

Geographical indications:

Utility model rights:

Plant variety rights

Trade names:

Do you consider that the general rule, according to which legal costs and other expenses incurred by the successful party shall be borne by the unsuccessful party, is effectively applied by the courts?

Please indicate the average time (months and days) between the lodging of a request before a court and the granting of a preliminary injunction (e.g. cease and desist orders against the infringer) in civil law cases concerning infringement of an IP right in your Member State/ in the Member States in which you have been a party to court proceedings:

Please indicate the average length (months and days) of court proceedings on the merits of the case (from lodging the claim to obtaining the final decision of the court at first instance) in civil law cases concerning infringement(s) of an IP right(s) in your Member State/ in the Member States in which you have been a party to court proceedings:

Please indicate the average length (months and days) of the appeal court proceedings (from lodging the appeal to obtaining the final decision of the court at appeal) in civil law cases concerning infringement(s) of an IP right(s) in your Member State/ in the Member States in which you have been a party to court proceedings:

Do you think it would be useful to establish, at EU level, model rules for fast track proceedings for civil law cases concerning infringements of IPRs? YES

Please explain, specifying in particular what types of infringements of IPRs could be covered, and what kind of measures should be granted, in the course of such fast track proceedings: Small claims proceedings could for example cover 'right of information' requests (identity disclosure claims) pursuant to Art. 8 of the Directive 2004/48/EC.

Do you think it would be useful to establish, at EU level, specific (in addition to Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure) model rules for small claims proceedings for civil law cases concerning infringements of IPRs? YES

Please explain, specifying in particular what types of infringements of IPRs could be covered by such small claims proceedings:

Do you think it would be useful to establish rules for fast track proceedings for litigation of infringements of community trademarks and community designs?

Do you think it would be useful to establish rules for small claims proceedings for litigation of infringements of community trademarks and community designs?

What safeguards of defendant's rights should be put in place in case of the EU-level fast track/small claims proceedings concerning infringements of IPRs?

Right of information

How do you identify infringers/alleged infringers of your IPRs?

Right of information claims have not been used often as part of litigation. This is partly because intermediaries (towards whom the disclosure requests are most often directed) are not obliged to carry out due diligence checks (KYC or AML) for onboarding customers. Such checks are currently obligatory for regulated professions, such as lawyers or accountants, financial institutions or sectors which require a license to operate. As a result, there is no guarantee that the information obtained from the intermediary, following a disclosure request, would be accurate. It would be useful to extend the requirement to carry out due diligence checks for companies such as webhosting providers, domain name registrars, payment gateways etc.

Do you face problems identifying infringers/alleged infringers of your IPRs?

YES

Please explain what are the main difficulties:

Domain name registrars, hosting providers, domain name privacy services etc. whose services are used to infringe intellectual property rights do not carry out due diligence checks to verify the identity of their customers. This results into them having false contact details regarding their customers. Such details are subsequently provided to rights holders following a 'right of information' request.

Has it been possible for you to obtain information allowing identification of infringers/alleged infringers directly from an intermediary?

Has it been possible for you to obtain a court order obliging an intermediary to disclose the identity of the infringer/alleged infringer?

Has it been possible for you to obtain a court order obliging an intermediary to disclose the identity of the infringer/alleged infringer of your IPRs in case where the intermediary and/or the infringer/alleged infringer of your IPRs were incorporated, or resident in a Member State other than the one in which you operate?

Mechanisms to inform about the alleged infringement and to impede access to goods and services allegedly infringing IPRs

Do you consider the possibility to use notification mechanisms to be a useful tool to inform the intermediary about the fact that his services are being (allegedly) used to infringe an intellectual property right and thus bring a stop to the infringing/allegedly infringing activity?

YES

Please explain:

We have used notice and action procedures for trademark infringement cases. The offers were removed. With respect to copyright cases, the effectiveness of notice and action procedures is more problematic. Even where, following our notification, titles were removed, they almost instantly re-appeared.

Do you consider the possibility to use notification mechanisms to be a useful tool also where the infringements/alleged infringements occurred in, or the intermediaries are incorporated in, a Member State other than the one in which you operate?

YES

Please explain:

Stay-down and repeat infringers are a constant problem. From the practical point of view, costs related to notice and action procedures in relation to locally established websites (which are in the local language), where clients need to seek the advice of a local counsel to send notifications, can be significant. This sometimes makes them unattractive for clients. Notifications sent in relation to infringement of copyright on the internet are a constant and recurring problem because the infringing offers, even if taken down after a notification is sent, re-appear almost instantly.

Do you consider the possibility to use notification mechanisms to be a useful tool to inform the infringer/alleged infringer about the infringing/allegedly infringing character of his activity?

YES

Please explain:

In cases of commercial scale infringements of intellectual property rights, do you consider that there should be particular consequences (i.e. including e.g. suspension of the infringer's/alleged infringer's account) resulting from a notification mechanism?

In cases of notorious infringers of intellectual property rights, do you consider that there should be particular consequences (i.e. including e.g. suspension of the infringer's/alleged infringer's account) resulting from a notification mechanism?

Requirements for granting injunctions

Have preliminary injunctions been sought in the context of the litigation you were party to? YES

In approximately what percentage of cases were these injunctions granted by the competent judicial authorities? 33

Have permanent injunctions been sought in the context of the litigation you were party to? YES

In approximately what percentage of cases were these injunctions granted by the competent judicial authorities? 33

Is the urgency of the case taken into account by the competent judicial authorities when granting a provisional injunction? YES

Is the potential harm of the measure for either of the parties taken into account by the competent judicial authorities when granting a provisional injunction? YES

Is the impact of the measure on the market, competition and consumers taken into account by the competent judicial authorities when granting a provisional injunction? YES

Are claims against the validity of IPRs taken into account by the competent judicial authorities when granting a provisional injunction?

What other circumstances are taken into account by the competent judicial authorities when granting a provisional injunction?

Injunctions imposed on intermediaries

Have you obtained a preliminary injunction imposed on an intermediary who was not a party to the proceedings? NO

Please explain on what grounds such a preliminary injunction was not granted:

Please note that in Slovakia, provisions regarding the possibility to issue an injunction against an intermediary have not been transposed for trademark and patent disputes.

Have you obtained a permanent injunction imposed on an intermediary who was not a party to the proceedings?

Have you obtained a permanent injunction imposed on an intermediary providing services necessary for the financing of the infringing activity (e.g. a payment service provider)?

Have you obtained a permanent injunction imposed on an intermediary providing services necessary to access the infringing services/goods?

Have you obtained a preliminary injunction imposed on an intermediary providing services necessary to access the infringing services/goods when the intermediary or the person infringing/allegedly infringing your IPRs were incorporated in a Member State other than the one in which you operate?

Have you obtained a permanent injunction imposed on an intermediary providing services necessary to access the infringing services/goods when the intermediary or the person infringing/allegedly infringing your IPRs were incorporated in a Member State other than the one in which you operate?

Third party facilitation of infringements of IPRs

Corrective measures

Have corrective measures been ordered in cases in which you have been a party?

Should the competent judicial authorities privilege one specific type of corrective measure?

Should the competent judicial authorities be able to order that the goods that were found to infringe an intellectual property right should be disposed of outside the channels of commerce?

Should the consent of the right holder constitute a *conditio sine qua non* for disposing of the goods that were found to infringe an intellectual property right outside the channels of commerce?

Please explain how in your opinion the infringing goods could be disposed of outside the channels of commerce:

Product recalls may be part of preliminary injunction claims (even in cases where the goods are no longer in the possession of the defendant). The imminent challenge is to provide sufficiently precise wording which would oblige the defendant to recall the products from all points of distribution incl. the internet, and yet be possible to execute. A solution could be to oblige the defendant to re-buy the infringing goods or to oblige him to recall them the same way as they have been distributed, within a deadline and under a daily penalty.

Would you be in favour of introducing sanctions for a party who, notwithstanding that the infringing goods were subject to corrective measures ordered by the competent judicial authorities, allowed these goods to subsequently return to the channels of commerce?

Damages

<p>How do you determine the amount of damages to be awarded for the purpose of filing a civil claim concerning an infringement of an IPR?</p>	<p>Exact determination of damages, which should be awarded, is often time-consuming as calculations need to be very precise. For this reason, we sometimes tend to claim compensation based on non-material harm in monetary terms, rather than damages. In the Czech Republic, if the intellectual property is of such type that it can be licenced, unjust enrichment may be set as a double amount of the license fees. In Slovakia, multiple amounts of the licence fees are not possible.</p>
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<p>Do you take into account the resources invested in research and development while determining the damages to be awarded for the purpose of filing a civil claim concerning an infringement of an IPR?</p>	<p>N/A</p>
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<p>On what basis do the competent judicial authorities establish the amount of damages awarded to the right holder in its final decision in a civil claim concerning an infringement of an IPR?</p>	<p>Establishment of the amount of damages is at a sole discretion of the judge deciding the case. The maximum amount of damages is not determined. All relevant factors are considered, including the financial position of the infringer. Under certain circumstances, the amount of damage can be decreased (the so-called "moderation"). From our experience, the costs of litigation usually exceed the amount of damages awarded to the plaintiff.</p>
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<p>Is the unjust enrichment of the infringer taken into account by the competent judicial authorities in the course of establishing the amount of damages to be awarded to the right holder in its final decision in a civil claim concerning infringement of an IPR?</p>	<p>YES</p>
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<p>Is due diligence of the right holder taken into account by the competent judicial authorities in the course of establishing the amount of damages to be awarded to the right holder in its final decision in a civil claim concerning infringement of an IPR?</p>	
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<p>Is it possible for the competent judicial authorities in civil law cases concerning an infringement of IPRs to award damages on the joint basis of provisions on compensation for lost profits and those on unjust enrichment?</p>	
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<p>Is it possible for the competent judicial authorities in civil law cases concerning an infringement of IPRs to award damages on the basis of the alleged infringement of a broader portfolio of intellectual property rights, despite the fact that normally only a very limited number of these rights are asserted during one particular court proceeding?</p>	
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<p>Would you agree that the level of damages awarded to the right holder in civil law cases concerning an infringement of IPRs should at least equal the profits made by the infringer?</p>	<p>YES</p>
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Please explain:

The position of both the right holder and the infringer should be restored to the point before the infringement. As regards IP rights that are subject to licencing, implementation of a deterrent tool should be considered as the current situation when damages equal the license fees that should have been paid does not constitute an effective incentive for licencing in the first place.

Do you consider the award of damages in cases of intellectual property rights' infringements is sufficient to compensate for the actual prejudice suffered by the parties affected by an infringement?

NO

Please explain:

Use of IPR enforcement measures for frivolous and/or anti-competitive purposes

In approximately what percentage of cases would you consider that a party used IPR enforcement measures frivolously and/or for anti-competitive purposes?

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