

Did you already launch proceedings concerning infringements of your IPRs that occurred in another Member State?	N/A
Did you already launch proceedings concerning infringements of your IPRs that occurred in several Member States?	N/A
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?	YES
Please explain what was the impact of these claims on the procedure concerning the infringement:	Very substantial indeed.
In approximately what percentage of cases were these intellectual property rights found to be invalid as a result of these claims?	35
For you, is it more important to stop infringements that are committed for profit than infringements committed not for profit?	IT IS MORE IMPORTANT
What is your general intention in instituting civil law court proceedings concerning infringements of intellectual property rights?	N/A
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?	I had to pay nothing. But UK court fees are low - of the order of £5000 including an appeal - and irrespective of how many IP rights are in issue in the claim
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?	n/a
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?	n/a
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?	n/a
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:	n/a
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?	n/a
Please explain how do these costs change for the preliminary proceedings:	n/a
Please explain how do these costs change for the appeal proceedings:	n/a

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:	COURT FEES FOR INSTITUTING PROCEEDINGS OTHER COURT FEES EXTERNAL EXPERT(S) COSTS ATTORNEY'S CHARGE
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Sui generis right of a database maker:	COURT FEES FOR INSTITUTING PROCEEDINGS OTHER COURT FEES ATTORNEY'S CHARGE
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Rights of the creator of the topographies of a semiconductor product:

Trademark rights:	COURT FEES FOR INSTITUTING PROCEEDINGS OTHER COURT FEES EXTERNAL EXPERT(S) COSTS ATTORNEY'S CHARGE
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Design rights:	COURT FEES FOR INSTITUTING PROCEEDINGS OTHER COURT FEES EXTERNAL EXPERT(S) COSTS ATTORNEY'S CHARGE
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Patent rights:	COURT FEES FOR INSTITUTING PROCEEDINGS OTHER COURT FEES ATTORNEY'S CHARGE
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Geographical indications:

Utility model rights:

Plant variety rights

Trade names:	COURT FEES FOR INSTITUTING PROCEEDINGS OTHER COURT FEES ATTORNEY'S CHARGE
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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?	YES
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Please explain:	The "loser pays" rule is very important. It prevents blackmailing litigation of the kind common in the USA (and I am afraid before OHIM and the EPO). It means that people think hard before deciding to sue - or to defend.
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<p>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:</p>	<p>Varies. In trade marks, passing off, a few weeks. In patents one or two months - though very often an early trial on the merits is ordered instead.</p>
<p>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:</p>	<p>Varies depending on complexity. for patents just over a year though this can be reduced in urgent cases. For other rights also a year on average</p>
<p>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:</p>	<p>1/2 years - but again proceedings can be expedited, e.g. Samsung v Apple appeal heard in under 3 months</p>
<p>In your Member State, which courts are competent to hear civil law cases concerning infringements of IPRs in first instance and how many of these courts exist?</p>	<p>Varies. for patents and registered designs in England and Wales, just the Patents Court (5 judges plus deputies) and, for smaller cases, the Intellectual Property County court (one judge plus deputies) For other IP rights, the larger, Chancery Division of the High Court (18 judges) and the IP county Court for smaller cases. Scotland and Northern Ireland have their own, little-used, arrangements</p>
<p>In your Member State, which courts are competent to hear civil law cases concerning infringements of IPRs at appeal and how many of these courts exist?</p>	<p>In England and Wales, the Court of Appeal Civil Division (38 judges sitting in changing groups of 3 but at least one of whom will be an IP specialist</p>
<p>Are there courts specialised in litigation of intellectual property related cases in your Member State?</p>	<p>YES</p>
<p>Please give more details:</p>	<p>The Patents Court and the Patents County Court consist largely of experienced IP (including patent) judges appointed from the Bar after years of experience in that field. They all have science degrees. The Court of Appeal has at least one former Patents Court judge</p>
<p>In your Member State, are fast track proceedings accessible in civil law cases concerning infringements of IPRs?</p>	<p>YES</p>
<p>Are these fast track proceedings specifically established for civil law cases concerning infringements of IPRs?</p>	
<p>In your Member State, are there maximum amounts for damages awarded through such fast track proceedings?</p>	<p>NO</p>

In your Member State, are small claims proceedings accessible in civil law cases concerning infringements of IPRs?	YES
Please give more details specifying in particular which criteria are applied to define a "small" claim:	Claims worth £50,000 or less.
Are there maximum amounts for damages that can be awarded as a result of these 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?	
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?	NO
Please explain, what would be, in your opinion, the drawbacks of this system?	Small claims are almost always local. They do not need the inevitable cost and complexity of an EU system
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?	NO
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?	Above all the right to be heard. Ex parte injunctions should only be granted in cases of urgency and where there is no opportunity of giving the defendant notice (or good reason not to - e.g. where there is evidence he may destroy evidence). Any such injunction should last only as long as it takes to let the defendant be heard. And the defendant must be entitled to challenge the existence or validity of the right in those proceedings

Right of information

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:	The only answer to this leading question can be yes. But in any event it makes sense.

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:	same again.
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:	
Are notification mechanisms being used by the rights holders in your Member State?	YES
Please provide us with more specific information about these mechanisms indicating in particular whether it is mandatory for the intermediaries to establish them:	I dont know more
Does the infringer/alleged infringer have a possibility to contest a notification sent by the right holder?	YES
Please explain:	
Is it possible for a right holder to use the notification to ask an intermediary to impede access to goods or services that he considers to be infringing his IPRs and that are offered through the services of this intermediary?	YES
Please explain:	Actually the common law has long recognised a "right" against a non-infringing intermediary e.g. a carrier of goods, You can get an injunction freezing the goods and requiring the intermediary to name the consignor/consignee who will be actual infringers. The are joined to the case. Normally the innocent intermediary's legal costs are paid by the infringer.
Is the right holder obliged to obtain an order from the competent judicial authorities if he wants to oblige the intermediary to impede access to goods or services that he considers to be infringing his IPRs?	YES
Is it possible to ask for such a measure already at the preliminary proceedings stage?	
Is a review of the measure resulting from the use of this mechanism (e.g.when access to an offer displayed on a website was impeded) provided for?	YES
Are judicial authorities involved in this review?	YES
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?	YES

Please explain:	This is actually more complicated than yes/no. yes for clearly persistent infringers, but there are other sorts of case where the answer might be no (e.g. an innocent infringer)
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?	YES
Please explain:	Obvious

Requirements for granting injunctions

Have preliminary injunctions been sought in the context of the litigation you were party to?	NO
Have permanent injunctions been sought in the context of the litigation you were party to?	NO
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?	YES
What other circumstances are taken into account by the competent judicial authorities when granting a provisional injunction?	All the relevant circumstances are taken into account. Also it is possible for third parties who may be affected by a preliminary injunction (e.g. the National health Service who may have to pay higher prices for a medicine the subject of a patent claim) to be heard and if necessary given the right to claim compensation should the injunction be granted but the claim ultimately fail on the merits.
Is it possible in your Member State to file a 'protective letter' with the competent judicial authorities in case a person considers it likely that an application for ex parte provisional measures against him/her as a defendant may be lodged in the near future?	NO

Injunctions imposed on intermediaries

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

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

Third party facilitation of infringements of IPRs

Is it possible in your Member State to launch legal proceedings against a third party who, even if not directly liable for an infringement of IPR under current rules, is engaged in an activity that actively and knowingly facilitates infringements of IPRs on the commercial scale by others?	YES
Please explain:	It varies depending on the right. But there is also a general law about joint tortfeasorship which may come into play
Is it possible in your Member State for the right holder to claim damages from a third party who actively and knowingly facilitates infringements of IPRs?	YES
Please explain:	See previous answer. Generally such a person will be a joint tortfeasor

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?	YES
Please explain under which conditions should the competent judicial authorities be able to order disposal outside the channels of commerce:	This is a very minor point. Perhaps pirate clothes to Africa. But in reality it would be difficult to ensure that pirate goods do not get back on the market

Should the consent of the right holder constitute a <i>conditio sine qua non</i> for disposing of the goods that were found to infringe an intellectual property right outside the channels of commerce?	YES
Please explain how in your opinion the infringing goods could be disposed of outside the channels of commerce:	because only the right holder has the real means to decide whether there is a risk of re-entry into channels of commerce
Are there accredited recycling schemes for the goods that were found to be infringing intellectual property rights in your Member State?	NO
Are there schemes for donating the goods that were found to be infringing intellectual property rights to accredited charity organisations in your Member State?	
Are there specific modalities of destruction of goods that were found to be infringing intellectual property rights in your Member State?	YES
Please explain:	The court can decided these - normally delivery up for destruction or destruction upon oath. The order can be tailored for the case
Are there sanctions for parties who, notwithstanding that the infringing goods were subject to corrective measures, allowed these goods to subsequently return to the channels of commerce?	YES
Please explain:	If the defendant did this, he will be liable for contempt of court (imprisonment and/or a fine and ordered to pay the legal costs).
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?	NO
Please explain:	Not necessary in UK. The sanctions exist already

Damages

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?	The word "damages" is used confusingly in the Directive to mean 2 different things, the damage suffered by the right holder (lost sales, etc) and the unjust profits made by the infringer. The UK rule is that the right holder can have one or the other but not both. Before he decides he is entitled to know the extent of sales and the broad level of profits of the infringer. Compensation includes all losses naturally and foreseeably flowing from the infringement. I have made proposals to the Commission about amending the Directive on this point.
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?	DON'T KNOW

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?	YES
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?	
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?	NO
Please explain:	This is irrelevant and does not matter where the UK rules for compensation are properly applied. The courts of other MS have not got such a fully developed concept of compensation
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?	NO
Please explain:	English experience using proper levels of compensation and the procedure I have outline makes this unnecessary. If there had to be a detailed inquiry into both
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?	YES
Please explain:	yes under the English rules
Is it possible in your Member States to award punitive damages in a case of IPRs infringements?	YES
Please explain:	Only in the case of flagrant breaches of copyright.
Is it possible in your Member State for a relevant third party to claim compensation for damages arising out of an infringement?	YES
Please explain:	yes in the case of an exclusive licensee. not in the case of a mere licensee
Is it possible in your Member State for a relevant third party to claim compensation for damages arising out of measures taken to enforce IPRs which are subsequently held unfounded?	YES
Please explain:	Only if they have asked for this at the time when the injunction is granted or have applied for it after it was granted where it would only apply for the future.

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?	15
Are there provisions on frivolous and/or anti-competitive use of the enforcement measures established in your Member State?	NO
Are there sanctions for frivolous and/or anti-competitive use of the enforcement measures established in your Member State?	NO
How does the legislation in your Member State safeguard your rights as a defendant, in particular in terms of (1) right to privacy, (2) due process requirements? Please explain:	The court controls both of these. Injunctions will not be granted ex parte save in cases of urgency or where the defendant is likely to be dishonest. Access by the plaintiff to any of the defendant's documents or inspection of his premises is controlled by the court so as to protect his trade secrets and the like.