

Rights related to copyright	CRUCIAL
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	
What is the value of your IPR portfolio?	The 2012 Film Report based on Statistik Austria data cites a total film industry turnover of € 796 million in 2010. www.fama.or.at/fileadmin/dateien/Statistik/Filmwirtschaftsbericht-Facts11.pdf
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?	This question cannot be answered precisely. We estimate damages from piracy in B2C at about € 42 Million per year, ie. 20% of cinema and video rental turnover = € 214 million in 2010. (see explanation below on substitution rate) For purposes of transparency our calculation is only based on cinema and videothek turnover. The actual loss for the entire film industry is certainly higher, as our calculation does not include losses in cinema admissions, film distribution, online, TV, and DVD rights.
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?	We estimate damages from piracy in B2C at about € 42 Million per year, ie. 20% of cinema and video rental turnover (€ 214 million in 2010). The Dutch Considerati metastudy found the level of substitution (legal purchase replaced by download from an illegal source) for music is about 20% on average; studies suggest it should be higher than 20% for film due to the 'one-time consumption factor' (which could also apply to games and ebooks). http://www.considerati.com/uploads/media/Feiten_om_te_Delen.pdf

<p>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)?</p>	<p>The significant monetary losses as a consequence of massive IPR infringements have a massive negative impact on investments, which lead to reduced risk appetite in the media industry, making projects more difficult or impossible, and leads to overall budget constraints. Moreover, the willingness by investors, distributors, or banks to invest private equity in film production (for example with minimum guarantees) is already quite weak in Austria with its smaller market and players. Income from online exploitation for films is weak and in no way able to compensate the drop-off in the “traditional” chain of exploitation. In any event, online platforms never invest in production. Though smaller markets eg. in the art-house sector are less impacted, it is important to keep in mind that due to its market size, Austria is extremely dependent on exports and also these exploitation possibilities are weakened.</p>
---	--

<p>What is the relevance of the quality of civil enforcement system for intellectual property rights for your research, development and innovation investments?</p>	<p>Crucial</p>
---	----------------

<p>Please explain:</p>	<p>As private criminal proceedings frequently are impossible because right holders may not initiate investigations in the online environment, civil litigation and enforcement are particularly important. Yet significant deficits exist in Austria. §§90-102b TKG(telecommunication statute) prevent the storage of traffic data for copyright enforcement, making the identification of online infringers based on their IP address impossible. The Austrian Supreme Court has repeatedly criticized this lack of storage obligation, yet here has been no reaction by Austrian lawmakers to amend the copyright law and to establish the required storage obligations in the telecommunications law.</p>
------------------------	--

<p>Efficiency and effectiveness of civil proceedings in cases concerning infringements of intellectual property rights</p>	
<p>Did you pursue alternative dispute resolution mechanisms before instituting court proceedings in the cases of intellectual property rights' infringements?</p>	<p>Yes</p>
<p>What kind of alternative dispute resolution mechanisms did you undertake?</p>	<p>BILATERAL NEGOTIATIONS OTHER</p>

What were the costs and the length of proceedings?

In civil law, proceedings against intermediaries based on Article 8.3 of the Information Directive have been tried out. The site-blocking case of kino.to against the internet service provider UPC in the name of two right holders and managed by VAP. The proceedings concerning an interim injunction were introduced in October 2010 and are still ongoing as the Austrian Supreme Court (ASC) referred the case to the ECJ in July 2012, C-314/12). Therefore, the main proceedings have not yet started. In the preliminary proceedings only, costs have amounted to approximately EUR 80,000 to date, the costs of the proceedings at the ECJ are not included. It is worth noting that the plaintiffs were ordered to hand in a security deposit of € 50.000,- by the court of first instance. The court of second instance annulled this obligation, but the ASC has not yet decided on this issue. Therefore, the security payment has not yet been paid back to the plaintiffs.

Were your rights sufficiently safeguarded (including right to privacy, right to be heard, and due process)? Please explain:

Principally, the rights of the plaintiffs were safeguarded within the framework of the Austrian code of civil procedure and fundamental rights were weighed. Nevertheless, considering the blatancy and massive scale of the infringement in the kino.to case, the length of the proceedings, which were solely for an injunction against the intermediary, were unacceptably long. The current status of the proceedings: in July 2012 the highest instance (Austrian Supreme Court) referred the case to the ECJ after nearly two years of preliminary proceedings in Austria. A decision in the near future cannot be expected. (Status March 2013).

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?

YES

Please explain:

In many cases, the VAP sends notices in the name of the right holders; this alternative dispute resolution mechanism works to the extent that proceedings are usually not initiated without prior notification. Automated notice and action mechanisms (eg. Hadopi) do not exist in Austria - this is a deficit. Certain web 2.0 platforms react promptly to takedown notices, although the effectiveness and facticity are insufficient, as the files are often made available again under a new link.

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? 2

How many of these cases were subject to an appeal?	2
In which capacity?	THIRD PARTY
Please explain:	As statutory interest representative of the Austrian film industry, FAMA naturally represents the interests of plaintiffs who are involved in the litigation of cases concerning IPR infringements. Additionally FAMA is member of the Austrian Anti-Piracy Association (VAP) which coordinates content protection measures and legal action against IPR infringement in Austria.
In which countries? Please indicate relevant Member States:	AT - Österreich
Did you already launch proceedings concerning infringements of your IPRs that occurred in another Member State?	NO
Please explain why:	
Did you already launch proceedings concerning infringements of your IPRs that occurred in several Member States?	NO
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?	NO
In approximately what percentage of cases were these intellectual property rights found to be invalid as a result of these claims?	
For what reasons did you refrain from litigating?	PROCEDURES TOO COSTLY PROCEDURES TOO LONG LOW LIKELIHOOD OF SUCCESSFULLY PROVING THE INFRINGEMENT TO THE REQUIRED STANDARD LOW LIKELIHOOD OF BEING COMPENSATED AT THE END OF THE PROCEEDINGS
Did your decision on whether or not to litigate depend on the jurisdiction?	YES
Please explain:	In our experience, courts and authorities are reluctant to follow up on copyright infringements of platforms which are officially based in exotic jurisdictions such as UAE, despite strong indications of an Austrian base, as they were qualified as international and beyond the competence of Austrian authorities. The limitations of Austrian criminal procedural law for private right holders to investigate make things even more difficult. This influences the decision whether or not to litigate.
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)?	NO

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?	TO STOP THE INFRINGING ACTIVITY TO TAKE MEASURES TO PREVENT FURTHER INFRINGEMENTS TO BE COMPENSATED FOR THE INFRINGEMENT TO DISSUADE INFRINGING BEHAVIOUR IN THE FUTURE OTHER
Please explain:	Other: test case to focus on provider liability to impede access to illegal sites. In the kino.to case, the proceedings were seen as necessary in order to establish legal precedence and create legal certainty for right holders, providers and consumers alike. Intentions with commercial scale sites: 1. limit the financial basis of professional illegal webportals 2. make the sites unattractive to advertising clients (ethics in advertising) 3. receive compensation /damages.
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?	Differs case by case, on average approx EUR 1.500
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?	NO
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?	In the kino.to case, the costs for the preparation of the case with court experts amounted to EUR 5.000 for one technical expert in the case against UPC . Also UPC made use of a technical expert in the preliminary proceedings, although the court did not rely on its results. It is to be expected that in the main proceedings, the court will appoint an expert of its own whose costs have to be borne by the losing party in the end. One expert is standard.
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?	EUR 40.000, approximately 90% of which are salary costs for 3 persons. The proceedings took place in Austria and have been referred to the ECJ before the ASC takes a decision in the preliminary proceedings regarding Article 8.3 of the Information Directive and then, if the case continues, in the main proceedings.
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?	EUR 19.000 for legal fees for legal action in the first instance in Austria, of which 65% are additional attorney's fees. Costs for subsequent instances amount to EUR 15.600 attorney's charge in the preliminary proceedings so far (not including fees for the ECJ referral which amount to approx € 100.000,-). The proceedings have been referred to the ECJ before the ASC can take a decision in the preliminary proceedings regarding Article 8.3 of the Information Directive.

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:	In the first instance the court ordered a security of EUR 50.000. The court in the second instance overturned this order, but the security is still being held by the court at least until the ASC will have taken a definite decision in the preliminary proceedings.
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?	In the above-named case in total EUR 114,000
Please explain how do these costs change for the preliminary proceedings:	All costs mentioned are for the interim injunction. Costs for subsequent instances in preliminary proceedings amount to EUR 15.600 attorney's charge so far (not including fees for the ECJ referral). Additional in house costs of EUR 20.000 are estimated.
Please explain how do these costs change for the appeal proceedings:	Cost risk.

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?	YES
Please explain:	
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:	Varies between two weeks and six months or more in Austria, depending on the complexity of the case.

<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>1,5 years in Austria. However, the average length depends on the complexity of the facts. If the facts are clear and the legal questions have already been solved by the Austrian Supreme Court in the preliminary proceedings and this is still relevant, the proceedings can also be significantly shorter (about 6 months).</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>6 months to 1,5 years in Austria</p>
--	---

<p>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?</p>	<p>YES</p>
--	------------

<p>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:</p>	<p>Fast track procedures should only be available for non-commercial infringement, ie. illegal private copy, illegal download (not making available) The implementation of a multi-step warning mechanism for this purpose would be necessary. We do not see drawbacks to fast track procedures since it will help create legal certainty and serve an educational purpose for users within a context of an independent judicial process.</p>
--	---

<p>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?</p>	<p>NO OPINION</p>
---	-------------------

<p>Do you think it would be useful to establish rules for fast track proceedings for litigation of infringements of community trademarks and community designs?</p>	<p>NO OPINION</p>
---	-------------------

<p>Do you think it would be useful to establish rules for small claims proceedings for litigation of infringements of community trademarks and community designs?</p>	<p>NO OPINION</p>
---	-------------------

<p>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?</p>

Right of information

How do you identify infringers/alleged infringers of your IPRs?	Given the high levels of online infringement VAP prioritises the most damaging forms of infringement and as a result focuses on large scale pirate websites. These websites tend to operate anonymously, i.e. they register fake WHOIS data and operate their business through empty shell companies in for instance the UAE (Firstload). The problem is compounded by a lack of cooperation from intermediaries which offer anonymizer services facilitating anonymous registration of domain names, hide actual IP address of the infringing website and generally provide services such as hosting without any interest in ensuring that contact details are accurate and/or up to date, etc. High profile websites use several layers of anonymization. In such cases it is very difficult for civil parties to enforce their rights and in many case there is no means of redress.
Do you face problems identifying infringers/alleged infringers of your IPRs?	YES
Please explain what are the main difficulties:	1. No preliminary investigation is possible in private criminal copyright cases 2. In civil copyright law, effectively no right of information is available for online infringement because of exclusive data retention regulations in the telecommunications law. The Austrian Supreme Court requires a defining legislative regulation that personal data may be accessed for the enforcement of copyright infringement. Such a regulation is missing.
Has it been possible for you to obtain information allowing identification of infringers/alleged infringers directly from an intermediary?	NO
What was the justification when the request was denied?	OTHER
Please explain:	The reasons have been outlined above in detail. The Austrian Supreme Court requires a defining legislative regulation that personal data may be accessed for the enforcement of copyright infringement. Such a regulation is missing. As long as it does not exist, no information must be disclosed. Therefore any right of information in this respect is worthless.
Has it been possible for you to obtain a court order obliging an intermediary to disclose the identity of the infringer/alleged infringer?	NO
What was the court's particular justification for a denial?	OTHER

Please explain:

Internet service providers have standard terms and conditions in their contracts with clients providing for identification mechanisms, but without legal obligations to disclose information and retain data (§99 ff Telekommunikationsgesetz) it is not possible for aggrieved parties to obtain information from intermediaries despite existence of such data. Furthermore in our experience, hosting providers in Austria are also unwilling to disclose information on commercial-scale infringers.

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?

NO

Please explain:

No obligation to retain data (§99 ff Telekommunikationsgesetz) Austrian Supreme Court decision in the case LSG vs Tele2. In fact this has not been possible following a landmark ruling of the ASC in the famous LSG/Tele 2 case, which was also brought in front of the ECJ (C-557/07). Due to the fact that the Austrian legislator has not provided for an explicit provision entitling intermediaries to provide such information for copyright enforcement purposes, since then due to data protection rules no such information can be obtained in civil or private criminal proceedings. New legislation designed to annul these deficiencies is discussed, but unlikely to be passed soon. The Austrian Supreme Courts decision in the LSG vs Tele 2, which followed the ECJ's decision C-557/07, has to be cited: As no explicit provision exists which requires the storing of traffic data to disclose identities and information to prosecute copyright infringers, the current right to information is worthless as the data which would be required are not entitled to be stored in the first place. It must be noted that even the Austrian Federal Chancellery is of the opinion that even a statutory provision providing for such an obligation to provide information for copyright enforcement purposes contradicts the right of protection of personal data as laid down in the EC Charta on Human Rights, Article 8.

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:

§81 Abs 1a UrhG (ie. the very provision of the Austrian copyright statute implementing Art 8 Par 3 of the InfoSoc Dir) demands an obligatory cease and desist notice which has to be sent to each intermediary, informing such about the copyright infringement taking place and having the goal to trigger an obligation of the intermediary to act by stopping the providing of its services in this respect. It should be noted that notice and action procedures are only effective and useful if platforms/intermediaries respect them. In Austria, so far the provider industry has taken the position that access providers are not bound by this provision. Their standard terms and conditions in their contracts with clients provide for identification mechanisms, but without legal obligations. This stand has led to the current precedent case kino.to, in which also this argument is subject to an analysis by the courts.

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:

Still, notice and action procedures are only effective and useful if platforms/intermediaries respect them. Notification mechanisms are useful in alerting infringers of their infringing activity, yet platforms intentionally offering infringing content or intermediaries that service them and intentionally prevent the enforcement of laws by not complying with right holder requests tend to ignore notifications and the rule of law. The schemes such platforms offer, if any, to combat copyright infringement are in general wholly inadequate to prevent large scale, widespread copyright infringement on which the business concept especially of rogue sites is based. Without a formalized notification mechanism system a notification is not possible (see answers regarding deficits in legislation regarding right to information and data retention). VAP is supporting a test case against the access provider UPC based on §81, Abs. 1a Copyright law(Article 8.3 Info-Directive), which is now in its third instance at the Austrian Supreme Court and has been referred to the ECJ.

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?	YES
Please explain:	
	Blocking orders in case of commercial scale and notorious infringers should be particularly easy and quick to obtain. IP-and DNS blocking were explicitly recognized by the courts in the first two instances case against UPC regarding kino.to. It should also be possible to quickly obtain a court order to learn the identity of notorious and commercial-scale infringers (bank account details, contact information which helps to identify infringers and their helpers) from relevant intermediaries.
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:	
	Beside existing civil and criminal consequences (injunction, damages, criminal consequences up to imprisonment), the implementation of a quick out-of-court procedure for notorious or commercial-scale infringers is urgent and necessary. Blocking orders directed at end users who are not active in the spreading of infringing content, have not been sought. European Notice & Takedown procedures with various stages and the right to contest bring fair and proportionate results without criminalizing.

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?	50
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?	90
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?	NO
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?	Potential damage, costs of sought measures and their effectiveness, scale of infringement and danger of blocking of legal content.

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:	
Have you obtained a permanent injunction imposed on an intermediary who was not a party to the proceedings?	NO
Please explain on what grounds such a permanent injunction was not granted:	
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)?	NO
Please explain on what grounds such a permanent injunction was not granted:	
Have you obtained a permanent injunction imposed on an intermediary providing services necessary to access the infringing services/goods?	NO
Please explain on what grounds such a permanent injunction was not granted:	
	Permanent proceedings have been initiated, yet they have been halted until the proceedings concerning the preliminary injunction are finished. In the first two instances, the preliminary injunction against the intermediary was granted. The Austrian Supreme Court as third instance has initiated a preliminary proceeding at the ECJ on this matter (C314/12 kino.to). This proceeding is pending.
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?	YES

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?

YES

Third party facilitation of infringements of IPRs

Corrective measures

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

YES

Who paid for the execution of the corrective measures?

OTHER

Please explain:

Rightholder AND Infringer Costs were directly imposed on the infringer. We often negotiate out of court settlements, which at least cover the costs for legal action. Often the infringer is not in a financial position to pay for the costs upfront and pays in instalments.

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

NO

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:

Everything should be done to prevent infringing goods from circulating as they represent a threat to legal commerce and have a negative effect on legitimate markets.

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?

YES

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

Principally, infringing goods should be destroyed, yet the right holder must be asked in case they are needed as court evidence.

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?

YES

Please explain:

Such a practice is unacceptable. Rechanneling infringing goods is an infringing activity in itself.

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>Damages are calculated on the basis of lost revenue in connection with licence fees based on the number of infringements, the damage inflicted to the value of the IPR rights is at least the hypothetical double of the licence fees, legal costs, costs incurred re experts and investigations. Damages can also be determined on the basis of profits made by the infringer. In our experience, damage claims are rarely deterrent in cases of structurally infringing sites since the profits are very substantial and the abilities to hide assets due to the aforementioned problem of being able to do business anonymously.</p>
<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>NO</p>
<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>Reduced consumption of audiovisual works as a consequence of piracy leads to lost revenue, therefore damages are calculated as of the B2C level, plus applicable costs for legal action, investigation, etc. Calculation basis for damages is the license fee based on the number of infringements. Damages in case of intentional infringement is twice the amount of the hypothetical license fee.</p>
<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>NO</p>
<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>	<p>NO</p>
<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>	<p>NO</p>
<p>Please explain:</p>	<p>It is established jurisprudence of the ASC that the damage provisions laid down in the Austrian copyright code (Urheberrechtsgesetz) are <i>leges speciales</i> in relation to the general civil law provisions dealing with unjust enrichment. As a consequence, the latter are not applicable if it is held that no copyright infringement has taken place.</p>

<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>	<p>YES</p>
<p>Please explain:</p>	<p>The possibility to calculate damages on a broader portfolio would lead to more just outcomes. This especially in light of the very substantial profits these sites make. A second equally important point is the possibility to apply for catalogue wide injunctions. Illegal online platforms offer their audiences download libraries covering thousands of titles. The possibility for rightholders to apply for catalogue wide injunctions (as is the norm in the offline environment) against structurally infringing sites is necessary for effective civil enforcement.</p>
<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>
<p>Please explain:</p>	<p>The infringer should at least be placed back into the position he was before infringing. He should not be better off. At least in the case of intentional infringement, the level of damages should have a discouraging impact not only on the infringer and as a general preventive measure, but also on other potential intentional infringers.</p>
<p>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?</p>	<p>NO</p>
<p>Please explain:</p>	<p>There must be allowance for a wider definition of damages.</p>

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

<p>In approximately what percentage of cases would you consider that a party used IPR enforcement measures frivolously and/or for anti-competitive purposes?</p>	<p>0</p>
--	----------