

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?

The infringement of intellectual property rights seriously impacts not only the companies operating in the creative industry, but national economies as a whole. More precisely, according to recent studies the creative industry creates 6% of the European GNP and 14 million jobs. The impact of such infringement is significant: in Italy, 1.5 billion annual loss of turnover and 22.000 lost jobs. With specific reference to music piracy, the value of the losses suffered by the companies of the field amount to 300 million per year and a downturn of 15% in the legal market (<http://www.fimi.it/profilofpm.php>).

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?

Calculating the rate at which pirated content substitutes for licensed content sales is not straightforward, and in itself a substitution rate is not a complete indicator of the impact of piracy because it does not take into account the wider impact on the development of the legitimate market and investment in new content. The substitution rate used in the 2010 Tera Study was 10%, however it was acknowledged that this was a conservative estimate and the actual rate could be much higher. Other studies have confirmed the negative impact of piracy finding substitution rates between 10% and 20%. The substitution rate depends on the country's legal framework and piracy level and may therefore vary. For example, the Tera Study estimated an 8% substitution rate in the UK and a 23% substitution rate in Italy. In Spain recent GfK research used a substitution rate was of 8.2%. In a previous study carried out in Italy by KPMG for the Amcham in 2001 using KPMG forensic approach estimated an annual damage of 166 millions euro for music only plus 37 millions of VAT evasion with a substitution rate of 10 %

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)?

Record companies are the principal source of financial support for artists, annually investing US\$4.5 billion in new music on a global basis. Investment in individual artists covers a wide range of areas including the payment of an advance to enable them to give up their day job and concentrate on writing, rehearsing and performing; tour support, which enables them to perform their music live to fans; recording and video production costs, which enables them to work with the best producers, directors and support staff in the business; and marketing and promotional support, which enables consumers to discover their music. The costs of breaking an artist to the top of the charts in a major market can be up to US\$1.4 million. The recorded music market is fast-moving and highly competitive. IFPI estimates that one in five artists prove commercially successful, enabling record companies to recoup their upfront investment. In four of five cases, the record company does not receive a return on their investment, and the artist does not have to pay back the money invested in them. It is the revenue generated by successful campaigns that enables record companies to invest in the next generation of artistic talent. This ability to secure revenue is dependent on record companies' ability to generate sales, performance rights and synchronisation income from an album or track because they hold the copyright to it. The illegal distribution of unlicensed copies of music online has been a major factor behind the industry's 40% decline in

What is the relevance of the quality of civil enforcement system for intellectual property rights for your research, development and innovation investments?

Crucial

Please explain:

IP rights are the only form of remuneration for activities based on creativity. Therefore, it is fundamental to effectively protect such rights, so that it is possible to have the resources necessary to develop new ideas and to launch new artists. Quality civil enforcement is crucial for research, innovation and investment, as only prompt and effective measures can avoid abusive exploitation of the rights in such a way that remuneration is disrupted. It is crucial that the legal system foresees viable measures, that do not require a too high level of evidence relating to ownership of copyright; such measures should be granted ex parte whenever necessary, and in a very quick timeframe; damages should be calculated on real prejudice, taking into account that full evidence is often extremely difficult to attain, therefore allowing for sample evidence as well as measures aimed at overcoming obstacles such as the existence of faked entities as coverage and similar way to abscond from liability

and effectiveness of civil proceedings in cases concerning infringements of intellectual prop

Did you pursue alternative dispute resolution mechanisms before instituting court proceedings in the cases of intellectual property rights' infringements?	No
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 OPINION
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, 3
How many of these cases were subject to an appeal?	1
In which capacity?	PLAINTIFF OTHER
Please explain:	Victim of a crime and aggrieved party acting in a criminal proceedings to recover damages. FIMI and the antipiracy federation FPM usually activate cases on behalf or record companies and coordinate the proceeding
In which countries? Please indicate relevant Member States:	IT - Italia
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? 	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?	OTHER
Please explain:	uncertainty of case law on some key subjects (i.e. providers' liability) and the Italian data protection law. Following the Peppermint Decision of 2007 granting a right of disclosure against an ISP, the Data Protection Authority has prohibited rightholder to automatically monitor the internet and process IP addresses.
Did your decision on whether or not to litigate depend on the jurisdiction?	NO

<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>
<p>Please explain:</p>	<p>Copyright issues are assigned to courts specialized in IPR, which are, in most cases, more qualified than common courts. More than the type of courts, it is relevant where the court is located (i.e. Court of Florence or Court of Milan). Copyright matters tend in fact to be dealt with in a very limited number of the specialized court, in comparison with other IP matters. It follows that only few specialized court (Milan, Turin, Rome) are really comfortable with copyright issues.</p>
<p>For you, is it more important to stop infringements that are committed for profit than infringements committed not for profit?</p>	<p>IT IS NOT MORE IMPORTANT</p>
<p>What is your general intention in instituting civil law court proceedings concerning infringements of intellectual property rights?</p>	<p>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</p>
<p>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?</p>	<p>Italy. The most recent case involving FIMI (FIMI ./ Webmaster) was related to copyrights on phonograms and image rights. Standard court fees generally depend on the value in controversy. The above-mentioned case had a value of 1.150.000, and the amount of standard court fees was € 1.221, plus € 8 for a stamp duty. Please note that the amounts established were increased by law and, since September 2012, to cases referred to courts specialized in intellectual property standard court fees are doubled.</p>
<p>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?</p>	<p>NO</p>
<p>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?</p>	<p>The cases involving FIMI did not require court experts' contribution, since the controversies were settled at the very beginning. Please note, however, that experts' costs can be very different from case to case.</p>
<p>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?</p>	<p>E.g. Following a judgment reached in criminal proceedings, we commenced the civil action requesting an urgent order for seizure, paying 7000 euro to lawyers, plus a success fee on settlement reached with the various defendants. The relating success fee was around 15000 euro. As we did not settle with all defendants, we also commenced proceedings on the merits. We settled also these proceedings at an early stage. Costs for legal advice was around 5000 euro .</p>

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?	none
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:	Around € 15.000.
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?	With reference to preliminary proceedings, standard courts fees are halved. Generally, legal representation costs are also lower, since such proceedings are less long and imply less activities, but court experts' costs could be significant, since the Judge usually appoints an expert to carry out the execution.
Please explain how do these costs change for the preliminary proceedings:	With reference to preliminary proceedings, standard courts fees are halved. Generally, legal representation costs are also lower, since such proceedings are less long and imply less activities, but court experts' costs could be significant, since the Judge usually appoints an expert to carry out the execution.
Please explain how do these costs change for the appeal proceedings:	With reference to appeal proceedings, standard court fees are increased by half. Besides, since it is generally not possible to file new evidence or request technical consultancy to be carried out, court experts' costs are not to be considered.

Findings on the merits of the case at first instance were ordered by the court to be reimbursed

Copyright:	
Rights related to copyright:	COURT FEES FOR INSTITUTING PROCEEDINGS OTHER COURT FEES EXTERNAL EXPERT(S) COSTS IN-HOUSE COSTS ATTORNEY'S CHARGE ADDITIONAL ATTORNEY'S FEES
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?	NO

Please explain:

As indicated above, the Courts never award the actual amount paid for the legal fees, but only a percentage thereof, based on standard calculation that do not reflect the level of the profession. In such a way, the plaintiff (generally the copyright owner) has to take into account that - even in case of victory - he/she will never completely recover the expenses., something that constitutes a deterrent against acting, in many cases.

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:

In Milan the cases last around 3 years if there is no technical expertise involved. In case where there is technical expertise involved, the length could increase of around 1 or 1.5 years, depending on the situation.

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:

Some references to fast track proceedings can be found at EU level, namely, in IPRED, however some fine-tuning would be welcomed. The main difficulties in Italy relate the burden of formalities falling on the petitioner, who has only 8 days from the granting of the order (seizure, injunction) to serve it on the other party, under the many formalities provided by the law. It sometimes seems that the righ-holder is forced to respect a number of iper-formalistic rules in favor of the counterfeiter, forgetting the reality of the situation (i.e. there is an infringement going on). Also, the petitioner is under the burden of providing the Court with an extensive amount of evidence, that the other party often challenges on no grounds, only to create difficulties and drag on with the proceedings. The Court should have the power (that they do not possess as of today) and the will to apply sanctions in all cases in which it is evident that the alleged counterfeiter is taking advantage of the rule to carry on an unfair procedure. Another important issue would be the possibility to widely grant order ex parte, especially because many works of art are digital, and any kind of prior information to the defendant facilitates the deletion of the necessary evidence. Court should have wider powers in terms of acting expeditiously, in the framework of urgent measures, against defendants that were originally unknown. In other words, it is often the case that the petitioner does not know the identity of all the counterfeiters involved in the commercial chain; such identities become known only after first urgent

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?

There may be certain types of infringements that lend themselves to small claims proceedings. Such proceedings may be appropriate at the national level, however, they would be difficult to regulate at the EU level. In addition, such proceedings would not remedy the issues experienced in anti-piracy litigation in the online environment. See also our previous answer.

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

NO OPINION

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?	In Italy, although there is a right of information in principle, cases cannot be brought due to data protection issues. Following the Peppermint Decision of 2007 granting a right of disclosure against an ISP, the Data Protection Authority has prohibited rightholder to automatically monitor the internet and process IP addresses. In addition, in the 2010 movie industry's case against Telecom Italia (FAPAV case) it was stated that Telecom Italia is not allowed to monitor its users and report file-shares to the authorities. This means in practice rightholders are not allowed to monitor the internet and process IP addresses; and therefore cannot collect any evidence for infringements. In addition, ISPs are not allowed to disclose the identity of their subscribers to rightholders to enable them to bring a civil case.
Do you face problems identifying infringers/alleged infringers of your IPRs?	YES
Please explain what are the main difficulties:	In Italy, although there is a right of information in principle, cases cannot be brought due to data protection issues. Following the Peppermint Decision of 2007 granting a right of disclosure against an ISP, the Data Protection Authority has prohibited rightholder to automatically monitor the internet and process IP addresses. In addition, in the 2010 movie industry's case against Telecom Italia (FAPAV case) it was stated that Telecom Italia is not allowed to monitor its users and report file-
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:	It is not allowed under the law on privacy, as interpreted by recent case law (in a case decided by the IP specialized Court in Rome, brought by the company Peppermint, to obtain disclosure of data from intermediaries, the Court held the view that such measure could not be requested and ordered in the frame work of civil proceedings; moreover, the DPA held the view that right-holders or their association are not allowed to process IP addresses of physical persons, only criminal Courts can do
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?	LIMITS IMPOSED BY DATA PROTECTION RULES

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?

N/A

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

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:

Intermediary should be informed about any illicit activity carried out through their service, in order for them to take all necessary steps. If intermediary - albeit informed - do not take any step or insufficient steps, they should be considered as jointly liable.

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:

In our experience the mere fact that the infringer is notified of the situation results in decrease of illicit behaviors, as the infringer does not wish to be detected and fears that when his/her identity is discovered he/she can be brought to court or in any event suffer negative consequences from the illicit behavior.

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:

The sanction of suspending the infringer account is appropriate when the violation has a commercial scale and does not differ from already existing administrative sanctions provided for in our legal system (Italy). In case of commercial scale, whenever the infringement relates to a business (see corporate liability laws) the infringer can be prohibited from carrying on with his activities

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:	In this cases the particular consequences (including the suspension of the infringer's account) should be considered as necessary, to preserve the deterrent effect of the actions and the judiciary system as a whole. Moreover, it is common place in IP infringements (of the traditional kind) that the means to carry out the infringements are subject to possible seizure; the suspension of the account would respond to the same rationale.

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?	90
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?	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?	

Injunctions imposed on intermediaries	
Have you obtained a preliminary injunction imposed on an intermediary who was not a party to the proceedings?	YES
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:	There have been no cases on this issue so far.

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:	There have been no cases on this issue so far.
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?	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?	NO
Please explain on what grounds such a permanent injunction was not granted:	There have been no cases on this issue so far.

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?	RIGHT HOLDER
Please explain:	
Should the competent judicial authorities privilege one specific type of corrective measure?	NO OPINION
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:	It should be sufficient the ascertainment that the goods are infringing.
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:	They should be destroyed.

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:	The only instance we can imagine is when the corrective measure concerns the freezing of the goods and their custody by a third party. If the third party does not appropriately take care that the goods remain under custody (or, even worse, voluntarily return the goods to the channels of commerce), then appropriate sanctions are provided for by the legal environment (such as criminal sanctions).

Damages	
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?	Economic damage that normally include economic loss (reasonable royalty or profit of the infringer); or outstanding damages (i.e. the amount of money spent to combat the violation). It is also often at least theoretically possible to obtain additional, albeit limited amount of damages, for violation of moral rights, whenever the infringement also constitutes a crime.
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?	NO
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?	See under 1)
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?	YES
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?	NO
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?	YES

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:

Evidence has to be precisely filed and Court only award damages on the basis of a precise indication by the offended party/ and on the basis of concerning precise evidence.

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?

YES

Please explain:

The IPR have allowed the infringer to obtain its profit; the infringer would have not obtained such profit if not for the IPR that he/she has infringed; it follows that the copyright holder has a right to obtain all the advantages that the infringer has made out of the infringed IP asset.

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?