

WIPO Regional Workshop Building Respect for IPRs

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Topic 8 damages

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various types of financial relief

- damages
 - compensates for the loss and damage
- account of profits
 - deprives the wrong-doer of its unjustified enrichment
- costs / expenses

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types of damages

- statutory fixed damages
- additional damages
 - additional fine for nefarious behaviour
- innocent infringement
 - no damages / injunction in certain cases
- delict / tort
 - foreseeable, causative, not excluded

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delict / tort damages

- compensatory not penal
- burden of proof upon the wronged party to prove its loss and damage, *e.g.* lost sales
- irrelevant that wrong-doer could have competed lawfully
- rough and ready approach
- often results in under compensation

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collateral loss and damage

- convoyed goods and services
- spring-board / bridgehead losses
- loss to a subsidiary, claimed by parent
- reputational loss and damage

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special case of licensed products

- financial loss equivalent to lost royalties
- maybe other heads of loss and damage
 - exclusivity / aura
 - collapse of price
- hypothetical royalty – user principle
- wrong-doer might make a profit overall

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account of profits

- to deprive the wrong-doer of its unjustified enrichment
- causation
 - which profits attributable to the IPR?
- what can be set-off?
 - fixed / variable overheads

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costs / expenses

■ attorney's costs

- none
- fixed: Case C-57/15 *United Video Properties*
- scale
- actual

■ experts' costs and other disbursements

■ official costs, e.g. court fees

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