Intellectual Property Crime Case-Law of National Courts (4th edition)

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Empact (European Multidisciplinary Platform Against Criminal Threats) is a security initiative within the EU Policy Cycle driven by EU Member States to identify, prioritise and address threats posed by serious and organised international crime.

This summary of national judicial decisions is created within the Empact framework for criminal law professionals dedicated to the fight against intellectual property crime in the EU. IPC is one of the crime areas addressed within the Empact priorities of the 2022–2025 EU Policy Cycle. It falls under the priority 'Fraud, economic and financial crimes' aimed 'to combat and disrupt criminal networks and criminal individual entrepreneurs involved in IP crime and in the production, sale or distribution (physical and online) of counterfeit goods or currencies, with a specific focus on goods harmful to consumers' health and safety, to the environment and to the EU economy.'

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Executive summary

This document, which is updated on an annual basis, provides an overview of the case-law of national courts with regard to the application of national legislation regulating intellectual property crime (IPC).

An IPC is an infringement of intellectual property (IP) rights, such as counterfeiting commodities or pirating content. Counterfeiting involves the manufacturing, sale or distribution of goods without the IP right owner's authorisation. The criminal offence of counterfeiting goods infringes IP rights such as trademarks, designs, patents or geographical indications. Piracy, on the other hand, concerns the unauthorised use and exploitation of a copyright-protected work or copies thereof without the authorisation of the rights holder.

The case-law overview contains summaries of national judgments, categorised in accordance with the main legal issues they address. Each summary includes a set of keywords reflecting the main issues of the case and references to the relevant legal provisions. Each summary also includes a list of the applicable legislation. The full text of each article in the original language, along with its English translation, can be accessed by clicking on the hyperlink provided.

This compilation of national judgment summaries aims to highlight the most common issues dealt with by national courts in the area of IPC. In so doing, it helps to identify common practices and assist practitioners in applying relevant legal provisions during IPC investigations and prosecutions and making optimal use of existing resources and best practices stemming from existing IPC cases.

The summaries of the provided judgments are not exhaustive. They should be used only as a reference and a supplementary tool for practitioners. Links to the full texts of the judgments are provided in the summaries and are also annexed to this document.

This document is the third version of the analysis of case-law of national courts prepared within the framework of the IPC Project. The first and second versions can be accessed here.

The IPC Project was launched in 2021 as a coordinated effort between the European Union Intellectual Property Office (EUIPO) and the European Union Agency for Criminal Justice Cooperation (Eurojust) to enhance cooperation and deliver an efficient and coherent response to IP crimes at the EU level. The project aims to provide comparative analyses of national jurisdictions, promote uniform practices and raise awareness of IPC across the EU.

Have an interesting case on intellectual property crime that you think should be included in this document?

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The Netherlands – Case No 05-861788-13

In this case, the court considered whether the evidence provided by the rights holders regarding the goods in question was sufficient and impartial. The court determined that the rights holder possessed sufficient experience and therefore an independent expert was unnecessary.

Country	Netherlands
Case No	05-861788-13
Keywords	trademark, expert's opinion, participation of rights holders, damages
Parties	*The accused* v *Prosecutor General's Office*
Date	18 December 2013
Court name	District Court of Gelderland
Instance	Second instance
EU norms	-
Other norms	Article 337 of the criminal code
Fine/damages	**Sentence/fine** Both accused were sentenced to a prison sentence of 15 months, of which 5 months were suspended. The main accused was also ordered to pay a fine of EUR 10 000 and do community service of 240 hours. The co-perpetrator was ordered to pay a fine of EUR 5 000.
Reference	ECLI:NL:RBGEL:2013:5827, Rechtbank Gelderland, 05-861788-13 (rechtspraak.nl)

Facts of the case

In 2013, the Dutch television show *Undercover* aired an episode depicting an undercover investigation into the trading of counterfeit products. The TV episode de picts two people selling counterfeit items to the show's undercover employees in two distinct situations. Following the show, a criminal investigation into the sale of counterfeit products was initiated. Investigators searched the houses of the two suspects, along with the warehouse where the counterfeit items were stored. During the searches, substantial amounts of counterfeit designer clothing, cigarettes, soft and hard substances were discovered and seized.

The two accused were prosecuted and convicted of trademark violation under Article 337(3) of the criminal code, possession of narcotic substances under the Opium Act, and money laundering under Article 420b of the criminal code.

The accused appealed the first instance ruling, saying that the court failed to establish that the goods in question were counterfeit. The court did not seek an independent expert opinion on the products. The injured parties collected a few samples of the goods and provided the court with an assessment, which the accused claims is insufficient. The court also failed to establish that there was a considerable number of the products, implying that the transaction was done on a

commercial scale. Finally, the accused claimed that the court failed to prove that the money recovered in the warehouse was obtained through the sale of counterfeit goods.

Substance

- **Assessment of the elements of crime**

The appellate court determined that there was sufficient footage from the TV show *Undercover* to establish that the two accused were running an illegal business of selling counterfeit goods. This footage, along with the searches of the accused's homes and warehouse and the seizure of vast quantities of items, demonstrate the elements of crime outlined in Article 337 of the criminal code.

Furthermore, the commercial aspect of the sales was demonstrated by the fact that one area of the warehouse was converted into a shop. In addition, the defendants ran advertising on www.Martkplaats.nl, a Dutch platform for selling items, offering designer clothes and shoes for sale.

The court also disagreed with the accused's claim that an expert opinion must be obtained to determine that the goods taken from the warehouse were counterfeit. The goods were evaluated by three injured parties. The injured parties alleged that the products were neither sold nor stored with their permission. The court ruled that there was no reason to think that the injured parties lacked the knowledge to evaluate the authenticity of the goods, and therefore, there was no need to employ an additional expert to evaluate them. Furthermore, the court noted that the accused admitted to selling counterfeit goods from China on the TV show *Undercover*. These elements were sufficient to establish that the goods offered for sale were counterfeit.

- **Claims for damages**

During the proceedings, one injured party filed a claim for damages in the sum of EUR 11 915, plus statutory interest. The court, however, found the injured party's claim inadmissible and directed it to the civil court.

The court indicated that the claim for damages in this case is very complex and the court would need to further assess the following elements.

- How to evaluate the counterfeit goods which were not placed on the market.
- Whether the targeted consumer who buys counterfeit clothes would also – in the absence of that – buy expensive original designer clothes.

The court determined that answering these questions would place an undue burden on the criminal case; thus, the civil claim should be evaluated in separate proceedings by the civil court.

Comment

In this case, the court addressed two crucial issues. First, the court dismissed the claim that the injured parties' expertise was not sufficient. The court stated that the injured parties' knowledge in identifying counterfeit goods was sufficient and that engaging an independent expert was unnecessary. Second, the court stated that in order to evaluate damages in IP matters, it is necessary to assess whether the items were actually placed on the market and whether consumers who purchase counterfeit goods would also purchase the original goods. This is an advanced assessment that is beyond the scope of the criminal case.

Lithuania – Case No 1A-143-309/2015

In this case, the court analysed the elements of the criminal offence of counterfeiting – whether the sign used has to be identical to the original sign, whether the damage of the crime is a mandatory element of the criminal offence set in Article 204 of the criminal code, and how this damage is calculated.

Country	Lithuania
Case No	1A-143-309/2015
Keywords	trademark, pesticides, test-buy, damages
Parties	*The accused* v *Prosecutor General's Office*
Date	9 April 2015
Court name	Šiauliai Regional Court
Instance	Second instance
EU norms	-
Other norms	Article 204 of the criminal code
Fine/damages	**Sentence/fine** The first instance court found the elements of the criminal offence set in Article 204 of the criminal code; however, the accused was exempt from criminal liability under surety without bail. He was ordered to pay material damages of EUR 3 109.44 and moral damages of EUR 289.62 to the civil parties. The second instance court acquitted the accused and referred the civil claim to the civil courts.
Reference	liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=2a6dff27-6f3f-4b49-a39e-9095d3d5ddd0

Facts of the case

The accused sold 9 kg of counterfeit pesticides labelled with the trademarks of three pesticide firms without their knowledge or authorisation. The pesticides were sold to an undercover Lithuanian plant protection agent working with the Lithuanian Police.

The first instance court determined the elements of counterfeiting as outlined in Article 204(1) of the criminal code; nonetheless, the accused was excluded from criminal liability under surety. Despite of this, the first instance court upheld the injured parties' civil claims and ordered the accused to pay a total of EUR 3 109.44 in material damages and EUR 289.62 in moral damages.

The accused appealed the first instance court's decision, demanding that the appellate court acquit him. First, the accused contended that his actions did not constitute a criminal offence under Article 204(1) of the criminal code. The products he was selling had similar signs to the trademarked goods; nevertheless, because these signs were not identical, they did not fall under the provisions of Article 204(1) of the criminal code. Second, the accused alleged that the court calculated the damages incorrectly since it merely took the market value of the genuine goods

and added the VAT to it. Instead, factors such as the value of the products the accused was selling, the fact that the goods were never placed on the market, the cost of transportation, and other associated costs should have been omitted. Finally, the accused claims that the undercover agent's test-buy was a provocation and that he would not have committed the crime otherwise.

Substance

- **Whether test-buy is considered as a provocation**

In this case, the undercover agent called the accused twice and asked to buy the pesticides. While the accused originally stated that he did not have these products, he then called the undercover agent to inform them that he had found the required products and to arrange a date and time for the sale.

According to the Court of Justice of the European Union (CJEU), provocation is considered when undercover operatives intentionally encourage the criminal offence that would not have been committed otherwise. Following this practice, the court determined that in this case, the agent did not take very active steps to persuade the accused to sell them counterfeit pesticide. On the contrary, the accused himself sought out the pesticides and contacted the undercover agent after obtaining them. This definitely demonstrates active conduct on the part of the accused, which cannot be interpreted as provocation.

- **Elements of the crime of counterfeiting (Article 204 of the criminal code)**

Article 204 of the criminal code defines several alternative criminal offenses, including: marking a large number of goods with a trademark without prior authorisation; and using the trademark without permission. Furthermore, Article 204 of the criminal code requires evidence of not just these alternative activities, but also the detrimental consequences of such unlawful conduct. The negative consequences must be of significant value.

The subject matter of this criminal offense is a trademark that belongs to another person and is protected by national law. The court further indicated that only trademarks registered in Lithuania can be protected under Article 204 of the criminal code. Finally, the court stated that only identical signs to those protected by trademarks can be the subject of this criminal offence.

In this case, the accused was selling pesticides produced by three different companies. The court recognised that two of these products were labelled with signs that were similar to the protected trademark but not identical. As a result, Article 204 of the criminal code does not apply to them. The accused's signs are similar to those protected by trademarks and may cause confusion; nonetheless, this is not the subject of criminal proceedings.

As a result, the court determined that only one out of three products was labelled with signs identical to the trademarked signs. Furthermore, this product was meant for use with the same category of items, confusing the customer as to the origin of the pesticides. The pesticides sold by the accused contained untested chemicals, the effects of which on people and the environment have not been studied, and their safety cannot be assured. As a result, the court determined that the use of trademark protected indications constituted a criminal violation under Article 204 of the criminal code.

- **Elements of significant damage (Article 204 of the criminal code)**

The court underlined that for an offense to be classified as Article 204 of the criminal code, it must cause significant damage. In this case, after eliminating the value of the products that do not fall under the protection of Article 204 of the criminal code, the value of remaining goods is around

EUR 2 300, which does not fulfil the criterion for significant damage. The court added that in this case, both material and moral damage must be considered; but, because the parties did not file a claim for moral damages, it cannot be considered.

The court denied the argument of the accused that the value of the goods was incorrectly established. The past court practice generally agrees that the damage is calculated by determining the retail value of the goods, which the expert did in this case. Furthermore, it is widely accepted that value added tax (VAT) should be factored into the assessment of damages.

The court also rejected the claim that because the goods never reached the market, the damage was never caused. On the contrary, the court concluded that the pesticides did not reach the market due to circumstances beyond the accused's control.

Despite this, the court acquitted the accused because the items he was selling did not meet the threshold of significant damage established by Article 204 of the criminal code.

Comment

In this case, the court considered whether the accused's activities fell under the criteria of the criminal offense of counterfeiting as defined in Article 204 of the criminal code. To begin, the court stated that only signs that are identical to trademark protected marks can be recognised as the subject of this criminal offense. While similar signs may be considered misleading to customers, this issue comes under civil jurisdiction. The court also discussed in great depth the element of significant damages outlined in Article 204 of the criminal code. This is a mandatory element that must be proven in each counterfeiting prosecution. The damage should be determined using the retail value of the original items plus VAT, and it is irrelevant if the goods never reached the market if this was due to circumstances beyond the accused's control.

Bulgaria – Case No 246/2023

In this case, the court analysed whether the prosecutor has proven the qualifying element of 'significant harmful consequences' as set in Article 172b of the criminal code. The court indicated that, to calculate the damages, the courts should rely on the principles set in the enforcement directive and take all circumstances into consideration to determine whether the injured parties actually suffered the damage.

Country	Bulgaria
Case No	246/2023
Keywords	trademark, significant damages, enforcement directive
Parties	*The accused* v *Prosecutor General's Office*
Date	26 September 2023
Court name	Nessebar District Court
Instance	First instance
EU norms	Article 13 of the enforcement directive
Other norms	Article 172 and Article 172b of the Criminal Code
Fine/damages	**Sentence/fine** The accused was found guilty of the crime of counterfeiting and imposed 6 months under probation. The court found that the prosecution did not prove that the accused's action had caused damages to the injured parties.
Reference	Присъда по дело №246/2023 на Районен съд - Несебър - Dela.bg
Related judgments	Supreme Court of Cassation of the Republic of Bulgaria, 31 May 2013 (https://www.vks.bg/talkuvatelni-dela-osnk/vks-osnk-tdelo-2013-1-reshenie.pdf)

Facts of the case

The accused ran a company that sold counterfeit watches and fragrances at a seaside resort. Following a complaint from trademark owners, an inspection was conducted at the place where the counterfeit goods were sold. During the inspection, a large quantity of watches and fragrances on display and stored for sale were discovered. The goods were displayed on the stand, along with their respective prices.

Expert's analysis later found that the retail value of the equivalent original goods was BGN 2 608 478 (approximately EUR 1.3 million), while the value of the imitations was BGN 49 760 (approximately EUR 25 500).

The prosecution charged the accused with trademark violation, which caused significant harmful consequences as it is set in Article 172b of the Criminal Code. The court reclassified the accused's activities as a criminal offence of trademark violation under Article 172 of the Criminal Code, finding that the condition of significant harmful consequences was not reached. The accused was placed on probation for 6 months. The court also determined that there was no reason to impose a fine on the accused.

Substance

- **Assessing elements of crime**

As a first step, the court evaluated whether the actions of the accused fulfilled the elements of the crime outlined in Article 172 of the Criminal Code. The court relied on an expert opinion, which concluded that the counterfeit goods were identical to trademark-protected products, potentially leading to consumer confusion. Furthermore, the accused admitted he had never verified the authenticity of the goods or whether they were sold under a licensing agreement. He merely purchased the goods from unidentified individuals who delivered them to the resort by car.

Based on these facts, the court determined that the accused's actions satisfied the elements of the crime under Article 172 of the Criminal Code.

- **Whether the aggravating element of significant harmful consequences is met**

The court then analyzed whether the accused's actions caused significant harmful consequences, which constitute an aggravating element under Article 172b of the Criminal Code.

The prosecution argued that significant harm existed due to the accused trading a large number of counterfeit watches and perfumes, with the estimated value of the original goods amounting to BGN 2 608 478 (approximately EUR 1.3 million). To assess damages, the court referred to Article 13 of the Enforcement Directive, which guides judicial authorities in determining compensation. Relevant considerations include:

- Lost profits suffered by the rights holders;
- Unfair profits gained by the accused;
- Where applicable, moral damages caused to the rights holders;
- Alternatively, a lump sum based on royalties that would have been due if the infringer had sought permission to use the protected rights.

The court acknowledged the Interpretation Decision of the Supreme Court of Cassation No. 1/2013, which highlights the difficulty in quantifying negative economic consequences. It noted that Article 76b(1)(2) of the Trademark Act permits using the retail price of lawful products as a presumptive mechanism for assessing damages. However, the court in this case emphasized that the Enforcement Directive does not mandate such presumptions. Instead, its criteria are intended to guide courts in calculating precise damages, not in applying broad assumptions.

In this case, the prosecution presented only the estimated value of the original goods as evidence. The court noted that other critical factors—such as the accused's profits, lost royalties, or moral damages—were neither addressed nor analyzed. Without these elements, the actual loss could not be accurately determined.

For instance, the accused was found with 55 counterfeit Rolex watches, sold for approximately BGN 300 (EUR 150) each, while their original retail value was BGN 45 000 (EUR 23,000) per watch. The court observed that the substantial price disparity between the counterfeit and genuine products made it highly unlikely that consumers believed they were purchasing authentic goods. Consequently, the court concluded that the injured parties could not have suffered damages amounting to BGN 2 475 000 (EUR 1.2 million), as claimed by the prosecution.

In the absence of evidence supporting significant harmful damages, the court found that the prosecution's claimed losses did not reflect the actual damages incurred.

Comment

In this case, the court examined the qualifying factors of significant harmful consequences as outlined in Article 172b of the Criminal Code. In general, the crime of counterfeiting is considered complete when the accused possesses counterfeit products, without the requirement to prove that the goods were intended for sale or that the rights holders suffered damage. However, significant harmful consequences must be proven in order to charge counterfeiting as an aggravated criminal offence.

To do so, the court must consider a variety of factors, including lost profit for the rights holders, potential royalties, profit made by the accused, and moral damages. In this case, the prosecution relied solely on the price of the genuine goods, which was significantly higher than the price of the counterfeit goods. The court decided that the significant difference between the retail price of the original goods and the retail price of the counterfeit goods demonstrated that the rights holders could not objectively have experienced damage equal to the retail price of the original goods.

Spain – Case No 611/2023

In this case, the court recognised that the very exhibition for sale of counterfeit goods results in non-material damage that does not require further proof. The court recognised that the moral damage was harmful to the company's reputation and could compromise the element of trust of consumers.

Country	Spain
Case No	611/2023
Keywords	trademark, moral damages, enforcement directive
Parties	*The accused* v *Prosecutor General's Office*
Date	13 July 2023
Court name	Supreme Court
Instance	Third instance
EU norms	
Other norms	Article 274 of the Criminal Code
Fine/damages	**Sentence/fine** The accused was found guilty of the crime of counterfeiting and sentenced to 3 years of prison and a fine of 20 months of a daily fee of EUR 15. The accused was ordered to pay the following damages: - Bimba y Lola – EUR 13 935, - Chanel – EUR 159 000, - Carolina Herrera – EUR 139 650, - Michael Kors – EUR 108 326, - Yves Saint Laurent – EUR 11 773.42.
Reference	STS 611/2023, 13 de Julio de 2023 – Jurisprudencia – VLEX 939916136

Facts of the case

The accused was selling counterfeit luxury bags in his shop. In June 2018, the Guardia Civil inspected the premises and found various products displayed on the shelves, ready for sale. These goods were marked with trademarks from several luxury brands, including Carolina Herrera, Yves Saint Laurent, Bimba y Lola, Tous, Disney and Emporio Armani. In addition, a significant quantity of bags was found in storage, along with labels bearing luxury brand trademarks. In total, 10 580 items were identified.

Police officers collected samples of the bags and transferred them to the police station for expert analysis.

The court of first instance found the accused guilty of counterfeiting under Article 274(1) of the Criminal Code and sentenced him to 3 years in prison, along with a fine amounting to 20 months' daily fees of EUR 15. The court also ordered the accused to pay damages to the rights holders as

follows: Bimba y Lola – EUR 13 935; Chanel – EUR 159 000; Carolina Herrera – EUR 139 650; Michael Kors – EUR 108 326; and Yves Saint Laurent – EUR 11 773.72.

The accused appealed the decision, arguing that the first instance court made both factual and legal errors. Specifically, he claimed the court failed to verify that all the goods were counterfeit and that it had incorrectly calculated the damages.

Substance

- **Determining whether the goods in questions are counterfeit**

The Supreme Court acknowledged that the police had seized a substantial volume of goods, making it impractical to conduct an individual analysis of each item. As in cases involving drugs or other consumable goods, the courts usually rely on a sampling technique. Based on this approach, police officers collected samples of the seized goods and submitted them for expert analysis. After the expert confirmed that the samples were counterfeit, the court concluded that all the goods stored in the shop were counterfeit.

The Supreme Court further clarified that Article 274(1) of the Criminal Code does not require determining the specific number of counterfeit products, nor does it mandate consideration of the goods' value. The key element of this article is the use of trademarks for commercial purposes, which infringes on the rights of the trademark holders.

Additionally, the Supreme Court emphasised that the lower court had thoroughly examined a wide range of evidence, including expert testimony, photographs, certifications from trademark owners, and investigator statements. This body of evidence led the court to reasonably conclude that all the items in question were counterfeit.

- **Awarding moral damages in criminal IP cases**

The accused further argued that simply identifying culpable conduct does not automatically lead to the presumption that damages were caused to the rights holders. He contended that the rights holders must prove the specific damages they claim to have suffered. In this case, despite the absence of evidence submitted by the injured parties, damages were awarded based solely on the accused's possession of counterfeit goods.

At the outset, the Supreme Court clarified that the mere display of goods for sale that infringe trademark rights results in implicit non-material damages, which do not require additional proof. Trademark infringement not only involves seeking an unfair advantage from the distinctive character or reputation of a trademark, which holds economic value, but it also compromises the element of trust that trademarks convey to consumers. This trust includes guarantees of high quality, an image associated with a particular lifestyle, and the exclusivity of the brand's use. According to the CJEU, the more prestigious the trademark, the higher the level of protection it is entitled to receive from the courts.

The CJEU's case-law further establishes that Article 13(1) of the enforcement directive must be interpreted to uphold the principle that damages awarded to rights holders must fully compensate for the actual harm, including moral damage where appropriate.

In this case, the accused stored thousands of counterfeit designer bags bearing well-known trademarks. These bags were sold at much lower prices than the originals, undermining their exclusivity and the quality assurance that trademarks are meant to represent to consumers. In such instances, calculating direct pecuniary damage, such as lost profits, is difficult, if not impossible. Thus, the lower court's decision to award moral damages aligns with the principle of full reparation of damages, as outlined in EU legislation.

The accused also challenged the method used to calculate moral damages, specifically questioning how the court arrived at the figure of 25 % of the potential profit.

Due to the difficulty in quantifying moral damages in economic terms, the lower court adopted an ad hoc method for calculating the damages. This approach respects the principles of proportionality and avoids unjust enrichment. As a result, the Supreme Court found that awarding non-material damages based on 25 % of the potential profit of the rights holders was fully justified.

Comment

In this case, the court acknowledged that when a large quantity of counterfeit goods is seized, it is impractical to assess each individual item. Therefore, the court appropriately applied the sampling technique commonly used in cases involving drugs and other consumable goods. Furthermore, the Spanish Criminal Code does not require a specific number of goods to be established in criminal counterfeiting cases.

The court also examined whether moral damages can be awarded in criminal IP cases. Relying on CJEU case-law and Article 13(1) of the enforcement directive, the court concluded that the mere sale of counterfeit goods causes reputational harm to rights holders. As such, further proof of this damage is not necessary.

Spain – Case No 309/2023

This case deals with the sale of illegal IPTV subscriptions in Spain. In the judgment, the Provincial Court of Vigo assessed the conduct of the accused (most of whom were employees of a company selling electronic and IT equipment) and their respective criminal liability for the sale of decoders to facilitate customers' illegal access to IP-protected audiovisual content.

Country	Spain
Case No	309/2023
Keywords	IPTV, card sharing, audiovisual content, decoders, legal entity
Parties	*Prosecutor, EGEDA and Mediapro* v *The accused*
Date	2 November 2023
Court name	Provincial Court of Vigo (Audiencia Provincial de Vigo)
Instance	Second instance
EU norms	
Other norms	Article 88, Article 270(1), Article 271(a) and (b), Article 286(1), Article 288 and Article 570bis of the Criminal Code
Fine/damages	**Sentence/fine** The accused were ordered to pay EUR 673 000 in damages and received various daily fines.
Reference	Sentencia Penal 309/2023 AP Pontevedra, Rec. 69/2022 de 02 de noviembre del 2023 – Iberley

Facts of the case

Between 2010 and 2016, the accused sold decoders throughout Spain that allowed users to illegally access audiovisual content, including series, documentaries, films and football matches, along with foreign and national public and pay-TV channels.

The accused in this case included a number of people, such as directors of a company (general director, technical director, marketing director and director of the commercial department), the manager of the company's branch in Madrid, a distributor responsible for the Andalusian region and the owner of an online forum.

To reproduce the content, the accused used a network of servers, initially located in Lithuania and Germany, and later in their company's headquarters in Barcelona, in its warehouse in Madrid and in a data centre in Málaga.

The accused operated across the entire national territory through a network of authorised distributors, area sales representatives and specialised internet fora.

Their modus operandi for distributing illegal content evolved over the years. Initially, it relied on card sharing – a method of decrypting television signals of pay-TV content through the use of a

legitimate subscription card. At a later stage, the accused moved to the provision of unauthorised content through IPTV, whereby unauthorised access took place by way of streaming via decoders offered through a subscription. The decoders included a pre-installed firmware developed by the accused, which allowed them to connect to the servers.

In order to generate more profit, the accused periodically carried out server blackouts to force users to buy another decoder from their brand, which, upon installation of the firmware, allowed users free access to the protected content.

The infringing activities caused the three victims damages of at least EUR 700 000.

Substance

The prosecution informed the court that the parties had reached an agreement and asked that it hand down a sentence in conformity with that agreement.

The court assessed the conduct of the accused of manufacturing and selling decoders that provided third parties unauthorised access to IP content. It determined that their actions constituted a crime against the market and consumers under Article 286(1) of the Penal Code. Furthermore, the accused were liable for an aggravated crime against IP, pursuant to Article 270(1) and Article 271(a) and (b) of the Code, owing to the high amount of profit generated and the gravity of the conduct. Accordingly, six accused (the employees of the company) were found guilty of both crimes, with the company's criminal responsibility established under Article 288 of the Code.

Furthermore, the enduring and systematic nature of the criminal activity, along with its hierarchical structure and the distinct roles and responsibilities of the accused, led the court to conclude that they had run and participated in a criminal organisation, in line with Article 570bis of the Penal Code.

The seventh accused – the owner of an online forum who distributed manuals, channel lists, programmes and the firmware among online users – was also found guilty of a crime against the market and consumers under Article 286(1) of the Penal Code.

In view of their distinct roles, the accused were given slightly different sentences. The two main directors of the company were each sentenced to 1 year of imprisonment for directing a criminal organisation, and to an additional 6 months imprisonment for a crime against the market and consumers and an aggravated crime against IP. In addition to prison sentences, they were ordered to pay a daily fine of EUR 6 for a period of 4 months and 15 days (EUR 810).

The other four accused (employees of the company) were each sentenced to 6 months imprisonment for participation in a criminal organisation, and another 6 months of imprisonment for a crime against the market and consumers and an aggravated crime against IP. Each of the accused was also ordered to pay a daily fine of EUR 6 for a period of 4 months and 15 days (EUR 810).

The seventh accused – the manager of the Internet forum – was sentenced to a 1 month and 15 day imprisonment for a crime against the market and consumers. The prison sentence was, however, replaced by a daily fine of EUR 6 for a period of 3 months (EUR 540).

Lastly, the company was ordered to pay a fine of EUR 20 650 in view of the benefit it derived from the offences committed – a crime against the market and consumers and an aggravated crime against IP.

By request of the defence, agreed by the Public Prosecutor and the private parties, the court replaced the prison sentences of the accused with a fine, in accordance with Article 88 of the Penal Code (in force at the time the offences were committed, and later revoked by the 2015 reform of the Penal Code). The court's decision was influenced by factors such as the duration of the sentences handed down (less than 1 year) and the efforts by the accused to repair some of the damage inflicted.

Thus, in addition to the initial fine of EUR 810, the two directors of the company (the main accused) were ordered to pay two additional fines. These included a daily fine of EUR 6 for 2 years (EUR 4 320) for directing a criminal organisation, and a daily fine of EUR 6 for 1 year for a crime against the market and consumers and an aggravated crime against IP.

Likewise, three of the other accused (employees of the company) were ordered to pay two daily fines of EUR 6 for 1 year each (EUR 4 320) as a substitute for each of the prison sentences. This fine was in addition to a fine of EUR 810 previously imposed by the court. The fourth accused – also an employee of the company – received one daily fine of EUR 6 for 10 months (EUR 1 800) and another daily fine of EUR 6 for 1 year (EUR 2 160), to be added to the fine of EUR 810 initially set by the court. His slightly reduced fine stemmed from the fact that this accused had spent a month in prison, which was deducted from his first 6-month prison sentence.

In total, the company and the six accused who were employed by it, were ordered to pay the victims damages exceeding EUR 670 000. These were to be split by the accused based on the damages they each caused to the victims. Accordingly, one of the accused was ordered to pay damages of EUR 52 352 and USD 397, whereas another accused was to pay damages of EUR 805. The payment of the remaining EUR 620 000 was to be borne by the company and its two main directors (the two main accused), as the court was unable to ascertain the individual amount of damages caused by each of the other two accused in this case.

Finally, the court ordered the confiscation and destruction of the decoders, along with the destruction of all the items and equipment seized during the police searches, if the defendants do not claim their return within 1 month.

Comment

This case provides an important reminder of how criminals exploit legal business structures to commit extensive and serious IP infringements, and highlights key aspects of their modus operandi, including its evolution (from card sharing to IPTV – a more effective and popular model for content consumption). It also shows that infringers can go to great lengths to further their criminal gains – in this case, the accused carried out periodic server blackouts to force customers to buy a decoder of their brand and developed specific firmware for their own decoders.

On the other hand, the case also serves as an important example of the value of cross-border judicial cooperation, which in the present case allowed the Spanish authorities to take down the servers the accused used in Lithuania and Germany.

The case is also significant due to the amount of damages awarded to the victims (close to EUR 700 000).

Germany – 2Ss 93/16

In this case, the court considers the actions of an individual who helped third parties illegally access pay-TV programmes through the use of a card-sharing server and decoders. It provides a detailed assessment of the offences of computer fraud, infringement of a technical measure and data espionage, with which the accused is charged and convicted for in the lower court.

Country	Germany
Case No	2Ss 93/16
Keywords	computer fraud, card-sharing, pay-TV, decryption of broadcast signals, decoder
Parties	*The accused* v *Prosecutor*
Date	31 August 2016
Court name	Higher Regional Court of Celle (Oberlandesgericht Celle)
Instance	Second and third instance
EU norms	
Other norms	Section 27, Section 263a(1) and Section 202a(1) of the German Criminal Code; Section 108b(1) of the Act on Copyright and Related Rights
Fine/damages	**Sentence/fine** -
Reference	OLG Celle, 31.08.2016 – 2 Ss 93/16

Facts of the case

Since March 2009, the accused operated a card-sharing server, through which, in return for the payment of a fee, he enabled unauthorised third-party access to company S' decrypted television programmes without the need to subscribe to its pay-TV services.

The accused took out legitimate subscriptions with company S, whose terms and conditions required subscribers to use the smartcard provided exclusively for personal use.

To facilitate access to the protected content, the accused supplied his customers (whom he found via German websites) with receivers required to decode the broadcast signal and a link with instructions on how to manipulate them.

The receivers, which were not authorised by company S, split the broadcast signal into an encrypted television programme and an encrypted control word. The latter was transmitted via the internet (to which the receivers were connected) to the accused's server via a proxy server located abroad. The server, which was connected to the smartcards legally acquired by the accused from company S, decrypted the control words. Once decrypted, the control words were sent back to the customers' receivers via the internet to decode the television programmes, allowing customers to access them.

To evade fraud, the accused highlighted in his offer that the decrypted access credentials could only be used outside the European Union, where company S had no broadcasting licence. Nevertheless, all his customers were based in Germany. The subscriptions he offered were of varied lengths and prices, but the amounts requested remained below the price of a regular subscription with company S.

The Regional Court of Verden sentenced the accused to 1-year imprisonment, suspended on probation, for the offence of computer fraud, in conjunction with data espionage and infringement of a technical measure, in 65 cases.

Unhappy with the outcome, the accused appealed the decision, arguing that the court had violated substantive law.

Substance

The Higher Regional Court of Celle began by reviewing the accused's conviction for computer fraud. Under Section 263a(1) of the German Criminal Code, a computer fraud offence is committed by anyone who, having an intention to obtain an unlawful pecuniary benefit for themselves or a third party, damages the property of another by influencing the result of a data-processing operation through the unauthorised use of data.

The court clarified the meaning of data and data processing. Accordingly, data represents any coded information in a format that can be used by means of data processing. In turn, data processing encompasses all automated processes in which a result is achieved by recording data and linking them according to programmes.

In the present case, the court explained, the actual encrypted pay-TV programmes of company S and the respective encrypted control words constitute data within the meaning of Section 263a(1) of the criminal code. Data processing occurred when the control words were decrypted by the accused's card-sharing server using the keys stored in his smartcards and, subsequently, when the pay-TV programmes were decoded using the decrypted control words shared by the accused's server with the customers.

The court also ruled that the data processing operation was carried out through the unauthorised use of data. In particular, it noted that the decrypted control words shared by the accused were used by his customers without authorisation, since they were not subscribers of company S. Furthermore, the accused acted without authorisation when he shared the decrypted control words with his customers because his contractual agreement with company S only allowed him to use the smartcards for his own personal use, not to transmit the decrypted control words to third parties via the internet.

In order for the offence of computer fraud to materialise, the injured party must suffer direct financial loss resulting from the data-processing operation. The court agreed with the reasoning of the lower instance court that the unauthorised use of the decrypted control words by the customers gave them an opportunity to watch company S' pay-TV programmes without payment. Furthermore, it recognised that in the present case the offence did not lead to a direct reduction in the assets of company S, since the direct result of the accused's actions consisted solely in the decryption and subsequent visualisation of the pay-TV programmes. Nevertheless, the court of appeal was of the view that direct financial loss had occurred because the pay-TV programmes should be regarded as part of the company's assets. The larger the circle of viewers who watch its programmes without authorisation, the less the monetary value of the company's right of use to its content. Accordingly, for the court, the unauthorised decryption of the pay-TV programmes by the accused's customers caused direct financial loss to company S.

As regards *mens rea*, the court noted that by providing his customers with unauthorised access to the pay-TV programmes in return for a fee, the accused had acted with the intent to give third parties an unlawful pecuniary advantage. The accused's intent was also proven by the fact that all his customers were based in Germany (a market covered by the broadcasting licence of company S), and not outside the EU, as his offers suggested.

In the end, the court of appeal was satisfied that the lower instance court had rightly convicted the accused as an accomplice to computer fraud in the 65 instances of unauthorised card sharing of pay-TV services. Of relevance for this finding, was the substantial involvement of the accused in the offence – supplying customers with receivers and instructions for their modification, decrypting and sharing the (decrypted) control words without authorisation – along with his personal (financial) interest in the success of the operation.

The court of appeal also agreed with the lower instance court's finding that the accused had infringed a technical measure, in line with Section 108b(1) of the Act on Copyright and Related Rights. It noted that the encryption technology used by company S to encrypt its pay-TV programmes is a technical measure – a technology intended to protect the television programmes from unauthorised access and decryption. By operating a card-sharing server that enabled the decryption of control words, and in turn allowed customers' unauthorised access to pay-TV programmes that contained films and motion pictures protected under Sections 88–95 of the Act on Copyright and Related Rights (provisions on cinematographic works), the accused had circumvented a technical measure. Here, the court clarified that the concept of circumvention should be interpreted broadly to encompass any behaviour that facilitates use, which would otherwise not be possible due to the existence of the technical measure.

The fact that the accused offered card-sharing services via the internet to an undefined circle of persons unknown to him in return for a fee, confirmed that he had acted with the requisite intent to infringe the technical measure.

Lastly, the court of appeal considered the accused's conviction for data espionage under Section 202a(1) of the criminal code. It disagreed with the lower instance court's ruling and argued that the findings made by the latter did not support a conviction for data espionage.

The court explained that the object of the offence of data espionage under Section 202a(1) concerns data not intended for the offender. In the present case, however, the accused had concluded contracts with company S and received smartcards in line with those agreements. This case therefore concerned improper use of data by an authorised user, which was not covered by Section 202a(1) of the criminal code. In the court's view, the accused acted in breach of contract vis-à-vis company S when he used the smartcards to decrypt the control words sent by the customers to his server.

Nevertheless, the court found the accused liable for aiding and abetting data espionage by his customers. It argued that the customers were able to obtain access to company S' data and to overcome the measures taken by it to prevent unauthorised access to its programmes through the assistance provided by the accused. By supplying his customers with receivers required to split the broadcast signal and the instructions for modifying them, and by using his card-sharing server to decrypt the control words and transmitting them back to customers decrypted, the accused aided and abetted the unlawful behaviour of his customers, in line with the provisions of Section 27 of the German Criminal Code.

In its decision, the court dismissed the accused's appeal against the lower instance court with regard to his conviction for computer fraud and referred the case back to the Regional Court of Verden for sentencing.

Comment

This judgment provides an important assessment of the elements of the offence of computer fraud under German criminal law and makes a contribution for a better understanding of key concepts such as data and data processing.

Importantly, the case helps to demonstrate how courts approach the element of financial loss in cases involving unauthorised access to copyright-protected content, highlighting that the unauthorised decryption and visualisation of pay-TV programmes may cause direct financial loss, as this type of protected content is considered to form part of the injured party's assets.

The relevance of this case also lies in the contribution it makes for a better understanding of the offence of infringement of a technical measure relating to copyright-protected works, and in particular the concept of circumvention, along with data espionage. As regards the latter, the court advances a distinction between cases that involve the access to data by an unauthorised individual – which could constitute data espionage – and those relating to the improper use of data by an authorised person, which may instead involve a breach of contract.

Germany – 11 KLs 390 Js 9/15

This case addresses the criminal liability of an offender who supported the actions of the main operators of an illegal streaming portal, and who subsequently built a successor platform that provided free access to copyright-protected content. The Regional Court of Leipzig assessed the actions of the accused in both situations and considered his role in committing acts of computer sabotage against the portals' main competitors.

Country	Germany
Case No	11 KLs 390 Js 9/15
Keywords	streaming, commercial unauthorised exploitation of copyrights, computer sabotage
Parties	*Prosecutor* v *The accused*
Date	14 December 2015
Court name	Regional Court of Leipzig (Landgericht Leipzig)
Instance	First instance
EU norms	
Other norms	Section 27, Section 52, Section 202a(2), Section 303a(1), Section 303b(1) and Section 303b(2) of the German Criminal Code; Section 106 and Section 108a of the Act on Copyright and Related Rights
Fine/damages	**Sentence/fine** The accused was convicted to a prison term of 3 years and 4 months and ordered to pay a daily fine of EUR 1 for a period of 200 days.
Reference	LG Leipzig, Urteil vom 14.12.2015 – 11 KLs 390 Js 9/15 – openJur

Facts of the case

The accused was involved with two of the largest illegal streaming portals in Germany – kino.to and kinox.to. These offered a large number of links to pirated copies of movies, documentaries and TV series (often comprising the latest productions), which were obtained by users on the internet and uploaded to various file-hosting services.

The portal kino.to was created by B and operated by him and a core team of employees who carried out different tasks related to the operation of the portal. The platform offered more than 1 million links to copyrighted works and was among the 50 most visited websites in Germany, at times registering over 4 million hits a day. The operators of the portal generated income by means of advertising and by offering goods and services.

The accused first became involved with kino.to after rumours began circulating that the portal had been hacked. Applying his extensive IT knowledge, he was able to detect existing security gaps within the platform and identify the operators behind the portal. The accused presented his findings to B and P (the portal's main administrator and technical manager) and offered to help them deal with any future security issues on the platform. Subsequently, he closed the portal's security gaps to help protect the identity of the operators and began to support them with

different requests. In particular, he answered questions related to the security of the portal, made updates on two image servers, obtained and shared with B background information on his business partner, and developed a concept for backup servers, which he looked after for a period of time.

The accused was paid EUR 20 420 for the work done and EUR 9 000 for the information he extracted on B's business partner. He refused to enter into a formal employment relationship with B for fear of being exposed and prosecuted as part of future investigative measures that were expected to ensue.

Following the shutdown of kino.to and the arrest of its operators in June 2011, the accused set up a new portal – kinox.to – in collaboration with two brothers (K and K2). The new portal was modelled on its predecessor and the accused made a conscious effort to align it with the previous kino.to portal, including by choosing an identical domain name and registering it in the Kingdom of Tonga, in the Pacific region. He also improved the structure of the kinox.to portal by adding further information on the works offered. Kinox.to became available less than 2 days after kino.to's shutdown by law enforcement. Besides acting as the chief technical officer, the accused was also in charge of procuring the servers and the domain name for the new portal. In total, 2 284 links to pirated copies of films and TV series were made available through the new kinox.to portal.

During his time at both kino.to and kinox.to, the accused also engaged in the manipulation of data and cyberattacks (distributed reflection denial of service attack – DrDoS) against main rivals, which helped to guarantee kino's and kinox's economic and market advantage, causing economic damage to their main competitors and inhibiting their development. This left rival portals inaccessible for a considerable time, raising doubts among users about their reliability.

As a result of his actions, the accused was charged with aiding and abetting the commercial unauthorised exploitation of copyrighted works in 606 separate instances (at kino.to), along with the commercial unauthorised exploitation of copyright-protected words in another 2 284 cases (at kinox.to). The prosecution also charged him with computer sabotage, aiding and abetting computer sabotage, and coercion in two cases.

Substance

The regional court began with an assessment of the accused's conduct in relation to the operation of the kino.to portal. It noted that the concrete actions of the accused – uncovering and fixing the portal's security gaps, carrying out server updates and developing a concept for backup servers – promoted and contributed to the success of the main offence of the unauthorised exploitation of copyrighted works perpetrated by B and his associates (including other operators, uploaders and file hosts). For the court, it was irrelevant that the accused's actions only began after the main offence had started. As the court pointed out, the accused's actions started well before the crime ended, and they facilitated the continuation of the crime, ensuring that the kino.to portal ran smoothly and end users could access the platform without restrictions.

The court was left with no doubts regarding the commercial nature of the accused's conduct. It noted that the main intention behind the portal was for the operators and associates to benefit financially through continuous and large-scale infringements of copyright-protected works. The fact that the accused received multiple payments for his support activities and his involvement with the portal spanned a period of several years spoke to the commercial nature of his actions. Furthermore, the level of assistance provided by the accused, along with his knowledge of the purpose of the platform and the illegality in the upload and conversion of pirated copies of

protected works, were proof of his intent. As a result, the court found the accused guilty of aiding and abetting the unauthorised commercial exploitation of copyright-protected works pursuant to Section 27 of the criminal code. Importantly, the court clarified that this offence is fulfilled either through a promise of support to an offence or the provision of direct support in its execution.

The court continued with an assessment of the accused's conduct of providing B and his associates with the password, and consequent access, to kino's main competitor – movie2k.to. This allowed the operators of kino.to to change the IP address of movie2k.to, leaving the portal inaccessible for 2 days during the Christmas of 2010. In the court's view, the accused's actions constituted aiding and abetting computer sabotage in line with Section 303b(1) of the criminal code.

The court clarified that the concept of data within Section 303a(1), in conjunction with Section 202a(2) of the criminal code, is to be understood as all information represented by characters or continuous functions that is stored electronically, magnetically or otherwise not immediately perceptible and can be represented in a computer-specific form. This should also include input and output data. Thus, in the court's opinion, an IP address falls under the term 'data', as it is stored in an electronic form on computers and is not immediately perceptible.

The court further addressed the concept of data alteration envisaged in Section 303a(1) of the criminal code. Specifically, it explained that data alteration within the meaning of this provision occurs if the data receives a different information content that impairs its original intended use, or if a different informative value can be assumed. By manipulating the IP address of movie2k.to, which redirected users to other domains, its intended use had been significantly affected, and the data processing related to movie2k.to was significantly disrupted since its operators and users could not access the domain's servers.

The court thus concluded that the protection against data modification afforded to the operators of movie2k's portal had been violated and their right to data processing significantly disrupted, in line with Section 303a and Section 303b(1) of the criminal code, respectively. The fact that movie2k was also an illegal streaming portal seemed to be irrelevant for the court's determination. The accused's awareness that his act would help B and his associates change movie2k's IP address and make the portal inaccessible, coupled with his wish to help B, were proof of the accused's intent to aid and abet the computer sabotage offence.

Next, the court considered the accused's actions linked to the setting up of the kinox.to portal – kino's successor. Kinox.to provided access to 2 284 works. The court began by establishing that the materials reproduced with the support of the accused's portal constituted works within the meaning of copyright and were protected under Section 106 of the Act on Copyright and Related Rights, since the applicable 70-year protection period remained in force.

The significant role of the accused in establishing the portal and ensuring its smooth functioning for a period of time led the court to the conclusion that he was an accomplice to the crime of unauthorised exploitation of copyrights, which he committed jointly with the K brothers (his main partners), E (a programmer), the uploaders and the file hosts. Their contributions, reflected in a division of labour, complemented each other seamlessly, since each was essential to the overall process and the resulting free supply of material and profit generated. The court further took the view that since the accused built the environment that enabled all the 2 284 offences to be committed, all the individual acts of infringement should be attributed to him as a single act, in line with Section 52 of the criminal code.

The accused's knowledge that uploading pirate copies to file hosts and converting them violated copyrights provided an indication of his intent. This intent was further reinforced by the accused's awareness of the criminal prosecution of kino's operators and the portal's shutdown, and by his decision to rent servers in Russia, not in Germany.

The court also ruled that the accused acted commercially. The kinox.to portal was intended to facilitate repeated infringements to enable the perpetrators to generate a significant amount of advertising revenue. In virtue of his experience with the kino.to portal and the payments he received, the accused was aware of the high-income potential that pirate portals represent. The fact that the accused did not earn any income with the infringements did not contradict the commercial nature of his actions. Here, the court clarified that the qualifying offence does not presuppose that the expectation of profit materialises and that the offender receives a financial advantage. Instead, the decisive factor lies in the offender's expectations (subjective factor). In the present case, the 60/40 split discussed by the accused and the K brothers in a chat manifested his expectation of profit. In view of his actions and their commercial nature, the court found the accused guilty of a crime of commercial unlawful exploitation of copyrighted works, pursuant to Section 108a of the Act on Copyright and Related Rights.

Lastly, the court considered the accused's act of launching a distributed reflected denial of service attack (a special form of denial-of-service attack – DDoS) against the video2k.tv portal – kinox.to's main rival. The cyberattack, which manifested in the transmission of massive amounts of data to video2k, resulted in an overload of the latter's page, making it inaccessible.

According to the court, the DDoS attack fulfilled the objective criteria of a crime of computer sabotage pursuant to Section 303b(2) of the criminal code, and significantly affected video2k's data processing. For the court however, the offence did not have a commercial character. Instead, the accused's intention was to bring the domain down so that their users would turn to the kinox portal. As a result, the court found the accused jointly liable for computer sabotage, in line with Section 303b(1)(2) of the criminal code, since he intentionally collaborated with his associate K and based his actions on their joint decision.

When deciding on the applicable penalty for the crimes committed by the accused, the court took into account several mitigating factors. Favourable mitigating factors included the accused's lack of a criminal record and pretrial detention, which lasted over a year, along with his confession in the main hearing. The fact that the accused did not derive any monetary benefits from his actions at the kinox.to portal and that the victims of his computer sabotage were also suspected of copyright piracy were also key considerations for mitigating the accused's penalty. On the other hand, several circumstances aggravated the accused's liability. These included the measures taken to avoid law enforcement detection, the significant number of infringements carried out, the extended duration of the assistance provided to the kino.to portal and the overall sense of impunity the two portals created, especially among young sections of the German population, for violating the rights of copyright holders.

On account of the facts proven and the applicable mitigating circumstances, the court sentenced the accused to a prison sentence of 3 years and 4 months and a 200-day fine at an amount of EUR 1 per day. The court further ordered the confiscation of the accused's laptop, which he used to commit the crimes, and the forfeiture of EUR 20 420, corresponding to the amount the accused was paid by B for the assistance provided to the kino.to portal.

Comment

The present case makes an important contribution to a better understanding of several offences and legal concepts in German legislation. The judgment provides a detailed assessment of the different actions taken by the accused, and explains how these conducts meet the various objective and subjective elements of the offences of commercial unauthorised exploitation of copyrighted works and computer sabotage. The court also provides further insights into the commercial element, highlighting that the crime of unauthorised exploitation of copyrights does not require that the profit element materialises in order to be fulfilled. Instead, the decisive factor lies with the perpetrator's expectation to make a profit.

Furthermore, the judgment provides important details about the factors courts have to consider when deciding on the penalty to impose, highlighting a number of mitigating factors that the Regional Court of Leipzig considered for and against the accused.

Lastly, this case is a good reminder of the diverse criminality IP offenders engage in while committing IP infringements, and of how swiftly these criminals act to fill in gaps in the criminal supply (one website is shut down and another one appears in its place) and respond to law enforcement measures.

Finland – KKO:2020:72

This case from Finland's Supreme Court addresses the liability of a private individual who acted as an intermediary for the importation of counterfeit goods from China to Finland. The Supreme Court ruled that the conduct of an intermediary with respect to the importation of counterfeit goods intended for commercial use constitutes use of a trademark in the course of trade and infringes the trademark owner's exclusive right.

Country	Finland
Case No	KKO:2020:72
Keywords	counterfeit bearings, international trademark, use of a trademark in the course of trade
Parties	*Prosecutor* v *The accused*
Date	28 September 2020
Court name	Supreme Court (Korkein Oikeus)
Instance	Third instance
EU norms	Article 5(1) of Directive 2008/95/EC (replaced by Directive 2015/2436)
Other norms	Section 4(1) of the Trademarks Act 56/2000 (replaced by Section 5, Trade Marks Act 544/2019)
Fine/damages	**Sentence/fine** -
Reference	KKO:2020:72 – Korkein oikeus

Facts of the case

The victim company was the holder of an international trademark registered in Finland for different types of bearings under class 7. The accused (A) had given his name and address to be used as consignee for a batch of 150 counterfeit bearings labelled with the company's logo that were shipped from China to Finland. The bearings weighed a total of 710 kg and were intended for industrial use.

Once the customs authorities cleared the goods, the accused collected and stored them in his home, from where they were picked up and exported to Russia. The accused received a carton of cigarettes and a bottle of cognac as reward for his work.

Substance

The prosecution claimed that the accused had infringed the company's exclusive right to the trademark by importing the counterfeit bearings and that he should be punished for an industrial property offence. The injured company further claimed compensation for the unauthorised use of its trademark and the damage caused by the infringement.

On the other hand, the accused argued that he was unaware that the bearings were counterfeit and that he had not ordered, purchased, imported or distributed the bearings, or in any way benefited from his actions.

The District Court acquitted the accused on the grounds that the intent required for criminal liability had not been fulfilled, since the accused had only become aware that the bearings were counterfeit after their arrival in Finland. Nevertheless, it ruled that the victim company's trademark had been infringed when the accused became aware that the products were counterfeit. As a result, the court ordered the accused to pay the company EUR 3 875 as compensation for the unauthorised use of the trademark and EUR 9 445 as damages for the harm caused to the company.

On appeal, the Court of Appeal held that the accused had not infringed the company's trademark because he did not use it in the course of trade. In its reasoning, the conduct of the accused was analogous to that of warehousing and forwarding companies, as he stored the goods temporarily without an intention to use them in his business. Furthermore, the reward he received did not stem from the economic use of the goods in trade activities but from the storage of the goods on behalf of another. The Court of Appeal therefore released the accused from the payment of compensation to the victim company.

The case reached the Supreme Court, where the central question was whether the accused had infringed the victim company's exclusive right to the trademark, and in particular, whether the act of importation constituted use of the trademark in the course of trade.

The Supreme Court referred the case to the CJEU for a preliminary ruling and asked for clarification regarding the importation of goods and the use of a trademark in the course of trade, pursuant to Article 5(1) of the trademark directive, in force at the time of the alleged infringement.

In its decision (C-772/18), the CJEU ruled that a trademark owner may, in principle, only rely on their trademark exclusive rights towards traders, meaning in the course of a commercial activity. Nevertheless, the Court also noted that a person whose transaction exceeds in scale, frequency or other characteristics the limits of a private activity, carries out a commercial activity.

The CJEU further clarified that a person who has provided his address as the place of destination for the goods, cleared the goods through customs and released them for free circulation, is deemed to have imported those goods, in line with Article 5(3)(c) of the trademark directive. Lastly, the Court confirmed that the fact that a person handled goods not intended for private use is sufficient to establish use of a trademark in the course of trade, even if that person does not engage in a commercial activity. Ownership of the goods or the financial benefit derived in return for the importation of the goods are irrelevant for this determination.

Based on the CJEU's ruling, the Supreme Court in Finland concluded that the importation of the counterfeit bearings by A constituted the use of a trademark within the course of trade, in line with Article 5(3)(c) of the trademark directive. The Court based its decision on the nature and quantity of the goods, and the fact that the accused did not claim that the bearings were intended for private use. In importing the bearings without the consent of the victim company, the accused infringed the company's exclusive right to its trademark under Section 4(1) of the Trademarks Act.

As a result, the Supreme Court set the Court of Appeal's judgment aside and referred the case for a new decision based on its guidance.

Comment

With this case, the courts provided an important interpretation of the concept of importation of trademark goods in EU law. The case clarifies that the handling of goods not intended for personal use by individuals who themselves do not engage in commercial activity may still make them liable to trademark infringement, regardless of whether they received any reward for their actions.

With this decision, the courts provided further protection for trademark owners against those who use their trademarks without authorisation.

This case further demonstrates that actions that appear innocuous from the outset can have consequences for those who carry them out, giving trademark owners the right to seek redress.

Poland – Case No II Ka 52/16

The court examined the elements of counterfeiting as defined in Article 305 of the Industrial Property Act in this case. The court considered whether an expert's comparison of genuine and counterfeit handbags was sufficient. It went on to define the concept of 'making available to the public'.

Country	Poland
Case No	II Ka 52/16
Keywords	counterfeiting, expert's opinion, making available to public
Parties	*The accused* v *Prosecutor of the District Prosecutor's Office*
Date	4 March 2016
Court name	District Court in Siedlce
Instance	Second instance
EU norms	—
Other norms	Article 305(1) of the Industrial Property Act
Fine/damages	The accused was given a suspended prison sentence of 6 months and a fine of PLN 20 (around EUR 4.5) for 50 days.
Reference	Content of the ruling II Ka 52/16 – Portal of Decisions of the Regional Court in Siedlce

Facts of the case

The accused was selling counterfeit handbags with logos of two luxury brands. The accused had a total of 3 406 pieces of counterfeit handbags in her shop. The accused was selling the counterfeit bags in her shop and this was her primary source of income. The accused was acquitted of all charges by the first instance court; however, the prosecution appealed this decision, and the appellate court reversed the first instance court's ruling and returned the case for retrial.

The first instance court found the accused guilty of counterfeiting under Article 305 of the Industrial Property Law at the retrial. The accused was sentenced to 6 months suspended prison sentence and a fine of PLN 20 (around EUR 4.50) for 50 days.

The accused filed an appeal against the first instance court's decision, claiming that the court made a factual error in establishing that the accused was selling counterfeit goods. The court failed to evaluate the technical characteristics of the handbags available on the original bag manufacturer's website. The accused further alleged that the court reached the conclusion that the handbags were counterfeit based only on the expert's opinion, which was vague and incomprehensible. She went on to assert that she was just an intermediary in the trade, and that under Article 305 of the Industrial Property Act, only the counterfeit handbag manufacturer should be held liable.

Substance

- **Whether the first instance court correctly determined that the handbags in question were counterfeit**

According to the accused, the first instance court neglected to analyse the allegedly counterfeit products. Based on the specifications and characteristics publicly available on the original handbag manufacturer's website, it was evident that the handbags the accused was selling did not match the original bags' characteristics and so could not be considered counterfeit.

The court dismissed this allegation, stating that a simple image comparison of the handbags demonstrates the similarities between genuine and counterfeit handbags. Furthermore, the court-appointed expert compared the signature check patterns of the original handbags to the handbags sold by the accused and concluded that the two are indistinguishable. Because this pattern is a recognised trademark, it cannot be used without the permission of the handbag manufacturer.

The court also dismissed the challenge to the expert's credibility. The appointed expert is a counterfeit product expert who was appointed in accordance with criminal procedure standards, and his opinion was thorough, complete and detailed. Contrary to the accused's assertions, the expert's opinion included a description of the characteristics of the registered trademark, along with a detailed and rather exhaustive reference and comparison of the accused's handbags with the original handbags. This opinion is filled with multiple appropriate pictures, illustrations, and preview drawings that demonstrate in a legible and clear manner the particular differences between the genuine product and the counterfeit version. The expert examined the lines of individual cuts, hems, fasteners, colours, materials, and materials used in production, along with individual parts of the basic design preserved in the counterfeit product. These characteristics demonstrated that the distinctions between genuine and counterfeit handbags were not recognisable and visible to the average customer.

For these reasons, the court decided that the first instance court did not make a factual error and appropriately assessed the evidence provided to it. The evidence offered was adequate to establish that the accused was selling counterfeit handbags.

- **The meaning of phrase 'placing goods on the market' of Article 305(1) of the Industrial Property Act**

The court then turned to the question of whether the term 'placing goods on the market' provided in Article 305(1) of the Industrial Property Act encompasses just manufacture of the counterfeit goods. The court rejected the accused's contention, stating that Article 305(1) of the Industrial Property Code should be interpreted broadly.

According to Article 305(1) of the Industrial Property Law, whoever marks goods with a counterfeit trademark for the purpose of placing on the market, which he has no right to use, or trades in goods bearing such marks, faces a fine, restriction of liberty or deprivation of liberty for up to 2 years. This criminal offense is interpreted broadly as consisting of two types of conduct. The first is putting counterfeit trademarked items on the market, and the second is trading in goods bearing such trademarks. As the first instance court correctly pointed out in its justification, trading in goods marked with a counterfeit trademark that a person has no right to use should be interpreted to include all types of legal transactions, including the manufacturing

of goods and their subsequent distribution. As a result, any conduct consisting in making the goods available to customers and any stage of the trade in goods displaying a counterfeit trademark meets the elements of this offence.

This position has been confirmed by the Supreme Court ruling in its judgment of 19 April 2012, ref. no. III KK 53/12, indicating that the phrase 'trades in goods' clearly indicates the penalisation of each stage of trade in goods with counterfeit trademarks.

The court also noted that the accused was referring to an earlier version of Article 305(1) of the Industrial Property Act, which was in effect until 2007. However, the accused proceeded to sell the counterfeit bags after this clause was changed by broadening the definition of the phrase 'placing the goods on market'. The broader definition of 'putting the goods on the market' includes both the production of counterfeit goods and their sale.

Even though the accused was not a manufacturer in this case, her conduct of importing handbags marked with counterfeit trademarks and providing them for further sale and distribution satisfies the elements of an offense outlined in Article 305(1) of the Industrial Property Act.

Comment

In this case, the court addressed whether an expert's opinion was adequate to determine if the goods in question were counterfeit. The following criteria were evaluated by the court: whether the expert was appointed in accordance with all procedural requirements, whether the expert has experience evaluating counterfeit goods, and whether the submitted opinion is detailed, comprehensive and complete. After considering these factors, the court determined that the expert's opinion was adequate to conclude that the accused traded in counterfeit handbags.

The court went on to examine the meaning of the word 'putting products on market' as defined in Article 305(1) of the Industrial Property Act. The court determined that the concept is broad and encompasses all stages of trade, including counterfeit goods manufacturing, distribution, and sale.

Sweden – Case No B 6871-14

In this case, the court analysed whether the Swedish courts could hear a case when the counterfeit goods were sold in the jurisdiction where the copyright protection had already expired. The court further analysed the damages suffered by the injured parties and which method to use to calculate them.

Country	Sweden
Case No	B 6871-14
Keywords	trademark, copyright, damage calculation
Parties	*The accused* v *Prosecutor General's Office*
Date	13 October 2016
Court name	Competition and Market Court
Instance	First instance
EU norms	-
Other norms	Chapter 8, Section 1 of the Trademarks Act; Section 53 of the Copyrights Act
Fine/damages	**Sentence/fine** All five accused were found guilty of violating the Copyrights Act and the Trademarks Act and sentenced to imprisonment from 2 years to 1 year and 6 months, or a suspended prison sentence and a fine. The first instance court also awarded the damage to the injured parties: - Fredericia – SEK 18 225 (around EUR 1 600), - F. H. – SEK 8 559 921 (around EUR 750 000), - E. J. – SEK 156 711 (around EUR 14 000), - Flos – SEK 1 191 780 (around EUR 100 000), - Rosendahl – SEK 83 162 (around EUR 7 500), - L. P. – SEK 10 875 700 (around EUR 960 000), - Cassina – SEK 1 662 773 (around EUR 147 000), - C. H. – SEK 3 313 796 (around EUR 290 000). The appellate court reduced these damages to the following: - Fredericia – SEK 1 089 (around EUR 96), - F. H. – SEK 511 313 (around EUR 45 000), - E. J. – SEK 9 361 (around EUR 827), - Flos – SEK 71 189 (around EUR 6 300), - Rosendahl – SEK 4 968 (around EUR 440), - L. P. – SEK 649 642 (around EUR 57 000), - Cassina – SEK 99 323 (around EUR 8 700), - C.H. – SEK 197 944 (around EUR 17 500).
Reference	PMÖD 2018:7 – lagen.nu

Facts of the case

A company called Designers Revolt was selling copies of designer furniture and lamps at prices lower than the originals. The replicas were manufactured in China and shipped to the United Kingdom, from where they were distributed to EU Member States, primarily Sweden. Despite several notifications from the rights holders, informing Designers Revolt that they were selling unauthorised replicas, the company continued its activities. Eventually, the police raided the company's warehouse in Sweden and discovered 105 different products. The value of the seized goods was estimated at SEK 6 614 969 (approximately EUR 580 000).

As a result, five individuals were charged with trademark and copyright violations, and eight designer companies filed claims for damages. The court of first instance found all the defendants guilty, handing down various sentences, ranging from 1 year and 6 months in prison for the company's founders to a 3-month suspended sentence for aiding and abetting. In addition, the court awarded nearly SEK 26 million (approximately EUR 2.3 million) in damages to the affected companies.

On appeal, the appellate court upheld the convictions but revised the method used to calculate the damages, ultimately reducing the compensation to SEK 1.5 million (approximately EUR 132 000).

Substance

- **Whether copyright and trademark protection is applicable in Sweden**

To establish copyright infringement in Sweden, several key elements must be met:

- the design must be protected under Swedish law;
- the replicas must be sufficiently similar to the original designs;
- there must be a violation of Swedish copyright or trademark acts;
- the perpetrators must have acted with intent or gross negligence.

In this case, the accused sold counterfeit furniture from the United Kingdom, where copyright protection had already expired. According to the CJEU, the expiration of copyright protection in one country does not entitle a person to sell and deliver copies of that product to a country where copyright protection remains in place. Thus, the unauthorised distribution of copyright-protected goods can occur when a product is sold and delivered to a country where copyright is still valid. This can also happen by advertising the product directly to individuals in that country and providing a delivery and payment system for their purchase. Importantly, the actual sale does not need to take place in the protected country for infringement to occur.

Based on these principles, the court concluded that all 105 designs were the expression of the authors' individuality and intellectual creativity. The designers made specific creative choices that resulted in the final design, meeting the requirements for copyright protection. Additionally, since fewer than 70 years had passed since the designers' deaths, the designs continued to enjoy copyright protection in Sweden.

The court further determined that offering goods for sale in the course of business or marketing products marked with a trademark constitutes trademark use. This includes advertising such goods. The accused's website offered goods marked with trademarks that were otherwise reserved for the rights holders. As a result, the court concluded that the accused's actions amounted to trademark infringement.

In summary, the court found both copyright and trademark violations present. Furthermore, the court ruled that Swedish law should apply, given that the primary target market was in Sweden. This was demonstrated by the following elements: advertising directed at Swedish customers, establishing delivery services and storage in Sweden and making the website available in Swedish, with prices listed in Swedish currency.

- **Calculation of damages**

The court concluded that reasonable compensation must be paid for the unauthorised use of copyrighted material under Section 54 of the Copyrights Act. This applies even in cases where the rights holder has not suffered actual damage and does not require intent or negligence from the infringer.

In markets where licencing is common, reasonable compensation is typically based on the royalty or licence fee that the infringer would have been required to pay. In markets where no licencing occurs, the court may determine the compensation using alternative methods. For instance, if no evidence is presented, damages may be calculated based on the infringer's profits or the profit the rights holder would have made from the sale of the same number of goods. However, the court must take care to avoid excessive compensation.

In this case, the rights holders submitted several calculations to demonstrate their damages. However, these calculations corresponded to the entire profit the rights holders would have made from selling the equivalent number of goods. The rights holders also claimed a licencing fee of 32 % of the consumer price, including VAT. Such a high compensation could represent approximately 50 % of the retail price.

The court was not persuaded that this high licencing fee would be applicable in practice. Taking into account the nature of the goods, the court determined that a more reasonable licencing fee would be 15 % of the consumer price plus VAT. This figure also reflected a relatively large portion of the rights holders' profit margin when selling to retailers. Using this method, the court initially calculated the total damages to be awarded to the rights holders as SEK 26 million (approximately EUR 2.2 million).

However, this calculation was later revised by the appellate court. While the appellate court upheld the methodology for determining damages, it reduced the potential licencing fee from 15 % to 2 % of the retail price, excluding VAT. This adjustment lowered the total compensation awarded to SEK 1.5 million (approximately EUR 135 000).

Comment

In this case, the court considered whether criminal liability for copyright violations could arise in Sweden when goods were sold from another country where copyright protection had already expired. Relying on CJEU case-law, the court concluded that if there are sufficient elements to demonstrate that the primary customer base is in Sweden, Swedish law should apply, regardless of the country from which the goods were sold.

The court also stated that damages should be calculated based on a hypothetical licencing fee that the accused would have had to pay to the rights holders. Other methods of calculation – such as those based on the accused's profits or the potential profits the rights holders could have earned – should only be used when there are no applicable licencing fees in that particular sector, or when no other evidence has been submitted in the case.

Sweden – Case NoB 4920-19 and B 283-22

In this case, the Patent and Market Court and the Patent and Market Court of Appeal consider whether two persons who imported a large quantity of empty cartons with a counterfeit trademark were liable for a complete trademark infringement offence or for preparation for trademark infringement.

Country	Sweden
Case No	B 4920-19 and B 283-22
Keywords	counterfeit detergent, aiding and abetting, trademark infringement, Ariel, counterfeit cartons, preparation for trademark infringement
Parties	*The accused (M. B. A. A. and A. E.)* v *BlueSun Consumer Brands, SL and the Procter & Gamble Company*
Date	9 December 2021 and 21 June 2023
Court name	Patent and Market Court (Patent- och marknadsdomstolen) and Patent and Market Court of Appeal (Patent- och marknadsdomstolens)
Instance	First and second instances
EU norms	Article 9(2)(c) of the EU trademark regulation
Other norms	Chapter 1, Section 10(3) of the Swedish Trademarks Act
Fine/damages	**Sentence/fine** *M. B. A. A.* was ordered to pay a daily fine of SEK 50 (EUR 4) for a period of 160 days and A. E. was ordered to pay a daily fine of SEK 50 (EUR 4) for a period of 80 days.
Reference	Mål: B 283-22 – Patent- och marknadsöverdomstolen vid Svea hovrätt

Facts of the case

The main accused in this case (M. B. A. A.) ordered and received 32 920 counterfeit cartons from China, on which the trademark sign of the Ariel detergent brand was affixed. The accused intended to fill the cartons with another detergent and sell them as the original Ariel detergent. To that end, he ordered large quantities of detergent, and ordered and (partially) paid for a packaging machine.

The second accused (A. E.) used his footwear company to import the container with the cartons, and other packaging materials such as glue sticks and glue guns, from China to Sweden. During the import, he served as a contact point for communication with the customs authorities.

Substance

Judgment of the Patent and Market Court (first instance)

The Patent and Market Court began by assessing whether the trademark Ariel enjoyed extended protection under Chapter 1, Section 10(3) of the Swedish Trademarks Act and Article 9(2)(c) of the EU trademark regulation, as argued by the prosecution. The court explained that, in order to enjoy extended protection, a trademark must be known to a significant section of the relevant

public in Sweden, or known in the EU. In its view, the prosecution and the injured parties had failed to prove the extent to which the trademark Ariel is known in Sweden or in the EU. Consequently, it ruled that the trademark did not enjoy extended protection.

Secondly, the court considered whether the Ariel trademark (registered for detergent preparations under class 3) had been used in the course of trade for goods of the same or a similar type. The court clarified that the import of a product constitutes use in the course of trade. However, in the present case only empty cartons with a false trademark sign were imported, not the detergent preparations themselves, and the injured parties only had protection for the detergent preparations, not for the cartons and packaging. As a result, the import of empty cartons could not be regarded as use of the trademark for goods of the same or a similar type. This led the court to conclude that none of the injured parties' signs had been used in the course of trade for goods of the same or a similar type, and consequently, no trademark infringement had occurred.

The court then looked at the conduct of the two accused. As regards the main accused (M. B. A. A.), the court argued that by receiving a container with the counterfeit cartons, the accused took possession of something suitable for use as an instrument of crime. Filling the cartons with detergent and selling them to the public, as M. B. A. A. had planned, would have constituted fully-fledged trademark infringement. Even though M. B. A. A.'s actions did not amount to a completed act of trademark infringement, since the point of commission of the offence had not been reached, they nevertheless constituted preparation for trademark infringement.

The court further found that M. B. A. A. had acted with intent. Its decision rested on the fact that the accused had discussed with the manufacturer in China how the boxes should look and how they would be assembled. Furthermore, evidence that the accused had tried to buy large quantities of detergent, and ordered and paid in instalments for a packing machine, pointed to M. B. A. A.'s intention to fill the counterfeit cartoons with detergent to sell them as original Ariel products. Accordingly, the court convicted the accused of preparation for trademark infringement.

A. E. had sought to evade liability on the grounds that he contacted Swedish customs and was informed that the import of cartons bearing another company's sign was allowed provided that they were to be recycled and not placed on the market. A. E. argued that he believed that the cartons would be used as raw material for egg cartons, as claimed by M. B. A. A.

The court argued that A. E. should have suspected that the main accused would not recycle the cartons, but instead fill them with detergent and sell them as an original product, and, as a result, should have taken reasonable steps to verify the cartons' real intended purpose. For the court, merely checking with customs that the recycling of cartons was authorised was insufficient. The court thus noted that A. E. acted with gross negligence in arranging the transport of the counterfeit cartons from China to Sweden, but added that even though his actions were a prerequisite for preparation for trademark infringement, they did not constitute complicity. The court sentenced A. E. for aiding and abetting an act of preparation for trademark infringement.

Lastly, the court considered whether the conduct of the main accused constituted preparation for aggravated fraud. It clarified that this offence requires that the accused be in possession of something particularly likely to be used as an instrument of crime. Here, the court took the view that renting a room or attempting to obtain laundry detergent does not meet the prerequisite for liability. Moreover, the prosecution had failed to prove that the accused had taken possession of the packing machine, since it had only been established that the accused had ordered the packing

machine and paid for part of it. For their part, the glue sticks and glue guns that the accused had in his possession were not suitable for use as an instrument of crime.

On the other hand, the court found that the approximately 32 900 counterfeit cartons that the accused had ordered and received were specifically designed to be used as an instrument of crime, making him liable for preparation for fraud. Since M. B. A. A. had ordered and received the cartons with the aim to fill them with detergent and sell them as original products, he had acted with the required intent. Consequently, the court convicted M. B. A. A. of preparation to commit gross fraud. The court's decision was informed by the high number of cartons and the significant economic value that the accused would have derived had the offence been completed and all the cartons sold.

The Patent and Market Court thus sentenced M. B. A. A. to a suspended prison sentence for preparation for gross fraud and preparation for trademark infringement, and a daily fine from which 20 daily fines were to be deducted in view of the lengthy duration of the investigation.

The second accused was also sentenced to the payment of a fine for preparation for trademark infringement, from which 20 daily fines were also to be deducted due to the length of the investigation.

The court further ordered the confiscation of the seized cartons, packaging accessories, glue sticks and glue guns.

The injured companies had based their claim for damages solely on trademark law. However, since the Swedish Trademarks Act does not recognise the right to damages in instances of preparation for trademark infringement, the claim was rejected by the court.

Judgment of the Patent and Market Court of Appeal (second instance)

On appeal, the prosecution asked that the two accused be sentenced for a complete offence of trademark infringement and that A. E. be, furthermore, sentenced for aiding and abetting trademark infringement. The prosecution also requested that the court of appeal hand down a custodial sentence to M. B. A. A. and a penalty of deprivation of liberty to A. E.

One of the injured parties further requested that the court of appeal order M. B. A. A. to pay it compensation for SEK 170 000 (EUR 14 612) and reimburse its legal costs.

When assessing the quality of extended protection under national and EU law, the court of appeal turned to the jurisprudence of the CJEU. According to the CJEU, the concept of reputation presupposes a certain degree of knowledge in the relevant public, which is considered achieved when the EU trademark is known by a significant part of the public for the goods and services covered by the trademark. To assess the level of knowledge of a trademark, national courts must consider factors including the market share of the trademark, the extent, duration and geographical area of use of the trademark and the amount of investment made in promoting it. The condition of reputation in the context of a geographical area is deemed fulfilled if the EU trademark has a reputation in a substantial part of the EU, such as, for example, an entire Member State.

Despite the prosecution adducing new evidence to support Ariel's reputation in a substantial part of the EU (i.e. statistics on the volume of detergents sold in certain Member States and examples of marketing carried out), the court of appeal considered that it had not been proven that the sign enjoyed extended protection at the time of the infringement. In its view, the evidence presented was of low value and was insufficient to show that the mark was known to a substantial part of the EU public.

The court of appeal then turned to the question of import of the cartons by the two accused. It considered that M. B. A. A. was responsible for the import of the cartons, as he tasked another person with their transport from China to Sweden.

The court of appeal argued that A. E.'s contact with the Swedish customs following their decision to postpone the release of the cartons – during which he asked questions and provided explanations about the import of his company's goods – pointed to his involvement in the import. The court argued that A. E. should have realised the obvious risk that the cartons would be used by M. B. A. A. in an unauthorised manner. In its view, A. E.'s involvement in the transport went beyond that of a carrier and extended to the import of goods, including cartons, glue guns and glue sticks, for which he was himself responsible. The court of appeal thus concluded that A. E. played a prominent role and assumed responsibility for the import of cartons alongside the main accused. As a result, it ruled that the two accused imported the cartons in collaboration with one another.

The court of appeal also assessed whether the conduct of the accused amounted to use of the Ariel trademark. It argued that, at the time of the alleged infringement, no direct link was established between the signs affixed to the cartons and a product. Hence, the actions of the accused did not constitute a completed offence of trademark infringement, and the import of the cartons could not be regarded as an attempt. Instead, the actions of the two accused constituted an act of preparation for trademark infringement, as established by the lower court.

The court of appeal further took the view that, by stating in his communication with the supplier in China that the cartons would bear Ariel's trademark sign, M. B. A. A. could not be considered to have used the sign within the meaning of trademark law. It agreed with the first instance court that this conduct did not constitute an attempt or preparation for trademark infringement.

On the question of intent, the court shared the view of the lower instance that M. B. A. A. acted with the requisite intent to import the cartons and use them later in an unlawful manner. As regards A. E., it was the court's view that he should have realised the risk of unlawful use by the main accused. By acting indifferently, A. E. helped to promote the infringement. As a result, the court found that he had acted with the requisite intent.

Subsequently, the Patent and Market Court of Appeal considered M. B. A. A.'s conviction of preparation for serious fraud. The court emphasised that the complete offence requires deception and profit for the offender, along with damage to consumers. The use of a false trademark in a product constitutes a misrepresentation that, if relied on by consumers, is misleading as regards the origin and quality of the product. Thus, had M. B. A. A. filled and sold the cartons with unknown detergent, consumers would have been misled in relation to the detergent's origin and quality. The court also noted that a product sold under a false trademark must be considered to represent a lower market value than the original product guaranteed by the trademark. M. B. A. A.'s intention to sell the cartons with another unknown detergent would have caused damage to buyers and profit for himself. The court thus agreed with the lower court that M. B. A. A.'s conduct would have amounted to a serious fraud offence if it had been completed. It therefore upheld the decision of the lower court to convict the accused of preparation for serious fraud.

The court of appeal set aside the judgment of the lower court with respect to the penalties and convicted M. B. A. A. to a 1-year (suspended) prison sentence for preparation for trademark infringement and preparation for serious fraud, to be reduced to 10 months on account of the time that had elapsed since the acts were committed. Even though the crime only reached the preparatory stage, the court took into account the extensive work that had been done to fulfil the

crime, along with the intentional and profit-oriented nature of the offences. The penalty was combined with a daily fine of SEK 50 (EUR 4) for 180 days, from which 20 daily fines were to be deducted in view of the time that MBA had been deprived of liberty during the criminal proceedings.

As regards the second accused, the court of appeal was of the opinion that his participation in the import of the cartons should be equivalent to that of M. B. A. A.. As a result, the court of appeal amended the lower court's decision and sentenced A. E. to an 8-month (suspended) prison sentence, reduced to 6 months in the view of the long time that had passed since the offence was committed. The sentence was further combined with a daily fine of SEK 50 (EUR 4) for a period of 100 days, with the deduction of 20 days on account of the time A. E. was deprived of liberty during the proceedings.

The Patent and Market Court of Appeal upheld the decision of the lower court with respect to the dismissal of the injured party's claim for compensation, as a completed infringement had not occurred. The lower court's decision on seizures was also upheld.

Comment

This interesting case helps to clarify the concept of extended protection under EU and national law, highlighting the factors that courts take into consideration to decide whether a certain trademark-protected good enjoys extended protection.

The judgment further touches on the concept of importation and provides an explanation of the offence of serious fraud and the conditions necessary for its fulfilment. Importantly, the case helps to put in evidence the extent of the IP crime threat, which encompasses everyday products used by consumers.

Sweden – Case No 19394-20 and 13963-23

This case before Sweden's Patent and Market Court and Patent and Market Court of Appeal concerns an illegal IPTV service that facilitated customers' access to protected cinematographic works by providing links to external websites from where the works could be streamed. The two courts assessed the extent of the involvement of the accused in the illegal service and respective criminal liability. The case also delves into an important discussion on the types of damages that the victim companies are entitled to for the violation of their exclusive right to dispose of the works.

Country	Sweden
Case No	19394-20 and 13963-23
Keywords	illegal streaming of films, IPTV, making available, communication to the public, damages
Parties	*The accused (H. F.)* v *Prosecutor*
Date	4 October 2023 and 4 April 2024
Court name	Patent and Market Court (Patent- och marknadsdomstolen) and Patent and Market Court of Appeal (Patent- och marknadsdomstolens)
Instance	First and second instances
EU norms	Article 3(1) of Directive 2001/29/EC
Other norms	Section 2, Section 53a and Section 54 of the Act on Copyright in Literary and Artistic Works
Fine/damages	**Sentence/fine** The accused was ordered to pay a daily fine for a period of 90 days and damages of SEK 840 500 (EUR 73 658) and SEK 850 000 (EUR 74 472) to the victim companies.
Reference	Mål: PMB 13963-23 – Patent- och marknadsöverdomstolen vid Svea hovrätt

Facts of the case

This case concerns a pirate IPTV service – Dreamhost – that helped to make copyright-protected films illegally available to the public. Paying customers were given links to websites from where they could stream the films. Of the 22 films that were made available during the period of the offence, 9 were made available on a single day (8 August 2019) and the remaining 13 were made available between for a 15-month period, from 8 August 2019 until 30 November 2020.

The accused, H. F., was suspected to be behind the service. H. F. argued that he was not Dreamhost's administrator and did not know who was behind the service. However, he admitted to helping those behind Dreamhost with technical issues and allowing them to remotely control his computer out of fear.

Substance

The Patent and Market Court first sought to establish the accused's involvement in administering the Dreamhost illegal service. The accused had claimed that he had not registered the service's

domain name and had not received any payments from customers. Conversely, he admitted to answering questions from customers through Dreamhost's support email addresses and acting as a moderator in the Dreamhost forum. On occasion, the accused shipped empty IPTV boxes to customers and supported Dreamhost with search term optimisation for internet marketing.

Based on the evidence presented by the prosecution, the court considered that the accused had been more involved with the Dreamhost service than he had admitted. Its conclusion relied on evidence that showed links between the accused and the email address used to register the Dreamhost domain, on transactions between the accused's and Dreamhost's bitcoin wallets, and on the fact that logins to the accused's and Dreamhost's bitcoin and PayPal accounts were made from the same IP address just moments apart. The investigation had also revealed that the same password was used for the accused's Gmail and acebook accounts and for logins to webpages linked to Dreamhost. During searches to the accused's home, the authorities had found customer lists pertaining to subscription sales made between 2019 and 2020, and material related to Dreamhost on his mobile phone.

The amount of evidence available thus left the court with no doubts as to the accused's involvement in the administration of the Dreamhost service, customer support and handling of payments. Although the investigation conducted had not proven that the accused had acted alone, the court considered that the prosecution had proven beyond reasonable doubt that H. F. had been involved in running Dreamhost to such an extent that he should be deemed a main perpetrator in the offence.

In light of the commercial and extensive nature of the infringing activity, the accused was given a 6-month suspended prison sentence and ordered to pay a daily fine for a period of 100 days, of which 10 days should be deducted on account of the time the accused was deprived of liberty.

The court further ordered the accused to pay the victims (the film companies) reasonable compensation for the unlawful exploitation of the works, in line with Section 54 of the Act on Copyright in Literary and Artistic Works. The court clarified that this type of compensation aims to provide the rights holder with the amount that should have been paid in the event of a voluntary authorisation to use the works. Furthermore, it explained that compensation for exploitation of works should be understood as a reasonable price for granting a right of exploitation, and that it must always be paid in order to prevent those who break the law from being in a better position that those who comply with it.

According to the court, the onus of what constitutes a reasonable price rests with the rights holder. In the absence of a reasonable price, the rights holder should highlight the circumstances that are decisive for the court's assessment of what constitutes fair remuneration. The court further clarified that the compensation should be paid regardless of whether the exploitation was made in good or bad faith, and irrespective of whether the rights holder suffered loss. The only necessary requirement is for the practice to be objectively unlawful.

As regards the method of calculation, the court explained that the compensation should be based on a market licence or other existing principles for the industry. In their absence, the rights holder may choose to calculate the claim on a fictitious licence agreement between the rights holder and a third party wishing to acquire the right to dispose of the work. Since this case concerned the making available of films through a pirate IPTV service, the court recognised the impossibility to determine reasonable compensation based on an established remuneration model or fictitious licence agreement, and noted that the remuneration could instead be determined based on the circumstances of the case and the evidence put forward by the parties.

The film companies relied on an expert report to support their claims. The expert's opinion focused, among others, on information about production costs and film licencing, revenue from cinema sales and viewing windows, giving each film a residual value. In the court's view, the method used by the expert and the ensuing results were in line with the Supreme Court's calculations in previous case-law concerning similar cases, and could be used as a basis for calculating the reasonable compensation to be paid to the film companies.

The court also approved the film companies' claim for compensation for the damage caused to the reputation of films. The companies argued that the mere fact that a film is unlawfully made available through an illegal pirate service causes significant damage to the film's reputation – a view that the court agreed with. Likewise, the expert noted that when a film is displayed without the quality expected, consumers perceive it as an inferior product. In the court's view, the fact that the Dreamhost website had a very simple design and periodically experienced technical problems was sufficient to have a negative impact on the reputation of the companies' films.

The film companies had also claimed compensation for non-pecuniary damage, arguing that when a film is made available against the rights holder's will, the latter loses control over the work, suffering serious non-material damage. The court acknowledged that compensation for non-pecuniary damage is generally paid for the personal discomfort experienced by an individual author. However, it also noted that, depending on the circumstances of the case, the law allows legal persons, such as the film companies in the present case, to receive compensation for non-pecuniary damage. For the court, the fact that the movies were unlawfully made available through a pirate service resulted in non-pecuniary damage to the companies, since it caused them to lose control over their protected works.

As a result, the accused was ordered to pay the film companies damages of SEK 923 000 (EUR 80 871) and SEK 964 000 (EUR 83 554). In addition, he was also ordered to pay each film company SEK 54 825 (EUR 4 845) as compensation for the legal costs incurred.

The court further ordered the confiscation of the IPTV boxes seized from the accused, pursuant to Section 53a of the Act on Copyright in Literary and Artistic Works, due to their use as instruments of crime.

On appeal, the Patent and Market Court of Appeal largely agreed with the decision of the lower-instance court.

On the question of whether the accused should be liable for the offence as a main perpetrator or an accomplice, the court of appeal referred to the CJEU ruling in Svensson (C-466/12), which addressed the concept of communication of copyright-protected works to the public, enshrined in Article 3(1) of Directive 2001/29/EC. In that ruling, the CJEU clarified that the administration of an intermediary service (comparable to that run by H. F.), and the provision of hyperlinks to protected content illegally hosted in external websites, constitutes 'making available' and, consequently, communication within the meaning of Directive 2001/29/EC.

In line with the reasoning of the CJEU in Svensson, the second-instance court concluded that the administration of the intermediary service Dreamhost amounted to a communication of the movies to the public, therefore the accused should be convicted as a main perpetrator.

As regards the claims for compensation made by the film companies, the second-instance court agreed with the reasoning and the amounts set by the lower court with regard to the compensation for unlawful exploitation of the films and for the damage caused to the reputation of the films.

On the other hand, the second-instance court disagreed with the lower court's decision to award the film companies compensation for non-pecuniary damage. Here, the court recognised that although this type of compensation is generally paid to the author for the personal discomfort and inconvenience caused, it may also be paid to legal persons. Nevertheless, in its view, personal discomfort or infringement of a compensable nature does not arise in cases related to the infringement of the right of disposal (set out in Section 2 of the copyright act), but rather of the moral right. Thus, for the court it seemed far-fetched that a legal entity is deemed to suffer discomfort from the infringement of a right of disposal held, and as a rule, non-pecuniary damages should not be awarded in such situations.

The second-instance court therefore lowered the amount of damages awarded to the film companies by the lower court to SEK 840 500 (EUR 73 658) and SEK 850 000 (EUR 74 472). It also reduced the amount of compensation for legal costs awarded to SEK 44 000 (EUR 3 860).

Comment

With this case, the Patent and Market Court and Patent and Market Court of Appeal provide important guidance concerning the calculation of damages regarding the infringement of the right of disposal of copyright-protected works.

In it, the first- and second-instance courts engage in an in-depth discussion on the types of compensation owed to rights holders for the unlawful exploitation of their works, the damage caused to the reputation of the works and the non-pecuniary damage suffered by both natural (authors) and legal persons (film companies). The interpretation of the latter is particularly enlightening, as the Patent and Market Court of Appeal clarifies that legal entities may also be entitled to compensation for non-pecuniary damage, but only in instances of infringement of the moral right, not of the right to dispose of a copyright-protected work.

Also relevant, from a legal point of view, is the courts' assessment that the administration of the Dreamhost service, an intermediary service, amounted to an act of communication to the public – a decision anchored in long-standing CJEU case-law.

Relevant legislation

Bugarian Criminal Code (*НАКАЗАТЕЛЕН КОДЕКС*)

Access the full text

Bulgarian:
Lex.bg - Закони, правилници, конституция, кодекси, държавен вестник, правилници по прилагане

English (unofficial translation, consolidated until 2022):
https://www.wipo.int/wipolex/en/legislation/details/21816

	Original language	English
Article 172	Чл. 172. (Изм. - ДВ, бр. 28 от 1982 г., в сила от 01.07.1982 г., изм. - ДВ, бр. 1 от 1991 г.) (1) (Изм. - ДВ, бр. 10 от 1993 г., изм. и доп. - ДВ, бр. 92 от 2002 г., изм. - ДВ, бр. 67 от 2023 г.) Който съзнателно попречи на някого да постъпи на работа или го принуди да напусне работа поради неговата народност или етническа принадлежност, раса, цвят на кожата, религия, социален произход, сексуална ориентация, членуване или нечленуване в синдикална или друга организация, политическа партия, организация, движение или коалиция с политическа цел или поради неговите или на ближните му политически или други убеждения, се наказва с лишаване от свобода до три години или с глоба до пет хиляди лева. (2) Длъжностно лице, което не изпълни заповед или влязло в сила решение за възстановяване на неправилно уволнен работник или служител, се наказва с лишаване от свобода до три години.	Art. 172. (Amended, SG No. 28/1982, effective 01.07.1982, amended, SG No. 1/1991) (1) (Amended, SG No. 10/1993, amended and supplemented, SG No. 92/2002, amended, SG No. 67/2023) Whoever knowingly prevents someone from entering employment or forces him or her to leave work because of his nationality or ethnicity, race, skin color, religion, social origin, sexual orientation, membership or non-membership in a trade union or other organization, A political party, organization, movement or coalition with a political goal or because of his or her or his relatives' political or other beliefs shall be punished by imprisonment for up to three years or by a fine of up to BGN 5,000. (2) An official who fails to execute an order or an enforceable decision for reinstatement of an improperly dismissed worker or employee shall be punished with imprisonment of up to three years.
Article 172b	Чл. 172б. (Нов - ДВ, бр. 75 от 2006 г., в сила от 13.10.2006 г.) (1) (Изм. и доп. - ДВ, бр. 53 от 2022 г.) Който без съгласието на притежателя на изключителното право използва в търговската дейност марка, изобретение, полезен модел, промишлен дизайн, сорт растение или порода животно,	Art. 172b. (New, SG No. 75/2006, in force from 13.10.2006) (1) (Amended, SG No. 53/2022) Whoever, without the consent of the holder of the exclusive right, uses in the commercial activity a trademark, invention, utility model, industrial design, plant variety or breed of animal subject to this exclusive right, or uses a geographical

	обект на това изключително право, или използва географско означение или негова имитация без правно основание, се наказва с лишаване от свобода от една до шест години и с глоба до десет хиляди лева. (2) (Изм. - ДВ, бр. 53 от 2022 г., изм. - ДВ, бр. 39 от 2024 г.) Ако деянието по ал. 1 е извършено повторно или са причинени значителни вредни последици, наказанието е лишаване от свобода от две до осем години и глоба от десет хиляди до петнадесет хиляди лева. (3) (Изм. - ДВ, бр. 67 от 2023 г., изм. - ДВ, бр. 39 от 2024 г.) Предметът на престъплението се отнема в полза на държавата, независимо чия собственост е, и се унищожава.	indication or its imitation without legal grounds, shall be punished with imprisonment from one to six years and with a fine of up to ten thousand leva. (2) (Amended, SG No. 53/2022, amended, SG No. 39/2024) If the act under Para. 1 has been committed repeatedly or significant harmful consequences have been caused, the punishment shall be imprisonment from two to eight years and a fine of ten thousand to fifteen thousand leva. (3) (Amended, SG No. 67/2023, amended, SG No. 39/2024) The object of the crime shall be confiscated in favor of the State, regardless of whose property it is, and shall be destroyed.

FINLAND

Finnish Trademark Act (Tavaramerkkilaki)

Access the full text

Finnish:
https://www.finlex.fi/fi/laki/ajantasa/2019/20190544 (current version)

https://www.finlex.fi/fi/laki/alkup/2000/20000056 (earlier version)

English:

https://www.finlex.fi/en/laki/kaannokset/2019/en20190544

	Original language	English
Section 4(1) of the Trademarks Act 56/2000 (expired)	Tämän lain 1—3 §:n mukainen oikeus tavaran tunnusmerkkiin sisältää sen, että elinkeinotoiminnassa kukaan muu kuin merkin haltija ei saa tavaroittensa tunnuksena käyttää siihen sekoitettavissa olevaa merkkiä tavarassa tai sen päällyksessä, mainonnassa tai liikeasiakirjassa tai muulla tavalla, siihen luettuna myös suullinen käyttäminen. Mitä tässä on sanottu, on voimassa riippumatta siitä, lasketaanko tavara tai aiotaanko se laskea liikkeeseen tässä maassa vai ulkomailla vai tuodaanko se Suomen alueelle elinkeinotoiminnassa käytettäväksi, säilytettäväksi, varastoitavaksi tai edelleen kolmanteen maahan kuljetettavaksi	The right to a distinguishing mark of goods under Sections 1 to 3 of this Act includes that, in the course of trade, no person other than the proprietor of the mark may use a sign which can be confused with it on the goods or on their packaging, advertising or business document or in any other way, including oral use, as an identifier for their goods. What has been said here shall apply regardless of whether the goods are or are intended to be put into circulation in this country or abroad or whether they are imported into the territory of Finland for business use, storage, storage or further transport to a third country.
Section 5 of the Trade Mark Act 544/2019 (current)	Yksinoikeuden sisältö: Elinkeinotoiminnassa ei ilman tavaramerkin haltijan suostumusta saa käyttää tavaroiden tai palvelujen tunnuksena: 1) merkkiä, joka on sama kuin samoja tavaroita tai palveluja varten rekisteröity tai vakiintunut tavaramerkki; 2) merkkiä, joka aiheuttaa yleisön keskuudessa sekaannusvaaran sen vuoksi, että se on sama tai samankaltainen kuin tavaramerkki, joka on rekisteröity tai	Without the consent of the trade mark proprietor, the following may not be used as a symbol of goods and services in trade: 1) a sign that is identical with a trade mark that has been registered or become established for the identical goods or services; 2) a sign that causes a likelihood of confusion among the public because it is identical with or similar to a trade mark that has been registered or become established for identical or similar goods or services; 3) a sign that is identical with or similar to a trade mark that has a reputation in Finland

	vakiintunut samoja tai samankaltaisia tavaroita tai palveluja varten; 3) merkkiä, joka on sama tai samankaltainen kuin Suomessa laajalti tunnettu tavaramerkki, riippumatta siitä käytetäänkö sitä samoja tai samankaltaisia tavaroita tai palveluja varten, jos: a) merkin aiheeton käyttö merkitsee epäoikeudenmukaisen edun saamista laajalti tunnetun tavaramerkin erottamiskyvystä tai maineesta; tai b) merkin aiheeton käyttö on haitaksi laajalti tunnetun tavaramerkin erottamiskyvylle tai maineelle.	regardless of whether it is used for identical or similar goods or services when: a) the use of the sign without due cause would take unfair advantage of the distinctive character or repute of the trade mark that has a reputation in Finland; or b) the use of the sign without due cause would be detrimental to the distinctive character or the repute of the trade mark that has a reputation in Finland.

GERMANY

German CriminalCode (Strafgesetzbuch)

Access the full text

German:
https://www.gesetze-im-internet.de/stgb/

English:

https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html

	Original language	English
§ 27	Beihilfe (1) Als Gehilfe wird bestraft, wer vorsätzlich einem anderen zu dessen vorsätzlich begangener rechtswidriger Tat Hilfe geleistet hat. (2) Die Strafe für den Gehilfen richtet sich nach der Strafdrohung für den Täter. Sie ist nach § 49 Abs. 1 zu mildern.	Aiding (1) Whoever intentionally assists in the intentional commission of an unlawful act incurs a penalty as an aider. (2) The penalty for the aider is determined in accordance with the penalty threatened for the offender. It must be mitigated pursuant to section 49(1).
§ 52	Tateinheit (1) Verletzt dieselbe Handlung mehrere Strafgesetze oder dasselbe Strafgesetz mehrmals, so wird nur auf eine Strafe erkannt. (2) Sind mehrere Strafgesetze verletzt, so wird die Strafe nach dem Gesetz bestimmt, das die schwerste Strafe androht. Sie darf nicht milder sein, als die anderen anwendbaren Gesetze es zulassen. (3) Geldstrafe kann das Gericht unter den Voraussetzungen des § 41 neben Freiheitsstrafe gesondert verhängen. (4) Auf Nebenstrafen, Nebenfolgen und Maßnahmen (§ 11 Absatz 1 Nummer 8) muss oder kann erkannt werden, wenn eines der anwendbaren Gesetze dies vorschreibt oder zulässt.	Several offences committed by one act (1) If the same act violates more than one criminal statute or the same criminal statute more than once, only one penalty is imposed. (2) If more than one criminal statute has been violated, the penalty is determined according to the statute which provides for the most severe penalty. The penalty may not be more lenient than the other applicable statutes permit. (3) Under the conditions of section 41, the court may separately impose a fine in addition to a sentence of imprisonment. (4) Additional penalties, incidental legal consequences and measures (section 11 (1) no. 8) must or may be imposed if one of the applicable statutes so requires or allows.

§ 202a	Ausspähen von Daten (1) Wer unbefugt sich oder einem anderen Zugang zu Daten, die nicht für ihn bestimmt und die gegen unberechtigten Zugang besonders gesichert sind, unter Überwindung der Zugangssicherung verschafft, wird mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft. (2) Daten im Sinne des Absatzes 1 sind nur solche, die elektronisch, magnetisch oder sonst nicht unmittelbar wahrnehmbar gespeichert sind oder übermittelt werden.	Data espionage (1) Whoever, without being authorised to do so, obtains access, by circumventing the access protection, for themselves or another, to data which were not intended for them and were specially protected against unauthorised access incurs a penalty of imprisonment for a term not exceeding three years or a fine. (2) For the purposes of subsection (1), data are only those which are stored or transmitted electronically, magnetically or otherwise in a manner which is not immediately perceptible.
§ 263	Computerbetrug (1) Wer in der Absicht, sich oder einem Dritten einen rechtswidrigen Vermögensvorteil zu verschaffen, das Vermögen eines anderen dadurch beschädigt, daß er das Ergebnis eines Datenverarbeitungsvorgangs durch unrichtige Gestaltung des Programms, durch Verwendung unrichtiger oder unvollständiger Daten, durch unbefugte Verwendung von Daten oder sonst durch unbefugte Einwirkung auf den Ablauf beeinflußt, wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft. (2) § 263 Abs. 2 bis 6 gilt entsprechend. (3) Wer eine Straftat nach Absatz 1 vorbereitet, indem er 1. Computerprogramme, deren Zweck die Begehung einer solchen Tat ist, herstellt, sich oder einem anderen verschafft, feilhält, verwahrt oder einem anderen überlässt oder 2. Passwörter oder sonstige Sicherungscodes, die zur Begehung einer solchen Tat geeignet sind, herstellt, sich oder einem anderen verschafft, feilhält, verwahrt oder einem anderen überlässt, wird mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft.	Computer fraud 1) Whoever, with the intention of obtaining an unlawful pecuniary benefit for themselves or a third party, damages the property of another by influencing the result of a data processing operation by incorrectly configuring the computer program, using incorrect or incomplete data, making unauthorised use of data or taking other unauthorised influence on the processing operation incurs a penalty of imprisonment for a term not exceeding five years or a fine. (2) Section 263 (2) to (6) applies accordingly. (3) Whoever prepares an offence under subsection (1) by 1. producing computer programs the purpose of which is to commit such an act or procures such programs for themselves or another, or 2. producing, procuring for themselves or another, offering for sale, storing or supplying to another passwords or other security codes suited to committing such an act incurs a penalty of imprisonment for a term not exceeding three years or a fine. (4) In the cases under subsection (3), section 149 (2) and (3) applies accordingly.
§ 303a	Datenveränderung (1) Wer rechtswidrig Daten (§ 202a Abs. 2) löscht, unterdrückt, unbrauchbar macht oder verändert, wird mit Freiheitsstrafe bis zu zwei Jahren oder mit Geldstrafe bestraft. (2) Der Versuch ist strafbar. (3) Für die Vorbereitung einer Straftat nach Absatz 1 gilt § 202c entsprechend.	Data manipulation (1) Whoever unlawfully deletes, suppresses, renders unusable or alters data (section 202a (2)) incurs a penalty of imprisonment for a term not exceeding two years or a fine. (2) The attempt is punishable.
§ 303	Computersabotage	Computer sabotage

	(1) Wer eine Datenverarbeitung, die für einen anderen von wesentlicher Bedeutung ist, dadurch erheblich stört, dass er 1. eine Tat nach § 303a Abs. 1 begeht, 2. Daten (§ 202a Abs. 2) in der Absicht, einem anderen Nachteil zuzufügen, eingibt oder übermittelt oder 3. eine Datenverarbeitungsanlage oder einen Datenträger zerstört, beschädigt, unbrauchbar macht, beseitigt oder verändert, wird mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft. (2) Handelt es sich um eine Datenverarbeitung, die für einen fremden Betrieb, ein fremdes Unternehmen oder eine Behörde von wesentlicher Bedeutung ist, ist die Strafe Freiheitsstrafe bis zu fünf Jahren oder Geldstrafe. (3) Der Versuch ist strafbar. (4) In besonders schweren Fällen des Absatzes 2 ist die Strafe Freiheitsstrafe von sechs Monaten bis zu zehn Jahren. Ein besonders schwerer Fall liegt in der Regel vor, wenn der Täter 1. einen Vermögensverlust großen Ausmaßes herbeiführt, 2. gewerbsmäßig oder als Mitglied einer Bande handelt, die sich zur fortgesetzten Begehung von Computersabotage verbunden hat, 3. durch die Tat die Versorgung der Bevölkerung mit lebenswichtigen Gütern oder Dienstleistungen oder die Sicherheit der Bundesrepublik Deutschland beeinträchtigt. (5) Für die Vorbereitung einer Straftat nach Absatz 1 gilt § 202c entsprechend.	(1) Whoever interferes with data processing operations which are of substantial importance to another by 1. committing an offence under section 303a (1), 2. entering or transmitting data (section 202a (2)) with the intention of adversely affecting another or 3. destroying, damaging, rendering unusable, removing or altering a data processing system or a data carrier incurs a penalty of imprisonment for a term not exceeding three years or a fine. (2) If the data processing operation is of substantial importance for another's business, enterprise or an authority, the penalty is imprisonment for a term not exceeding five years or a fine. (3) The attempt is punishable. (4) In especially serious cases under subsection (2), the penalty is imprisonment for a term of between six months and 10 years. An especially serious case typically occurs where the offender 1. causes major financial loss, 2. acts on a commercial basis or as a member of a gang whose purpose is the continued commission of computer sabotage or 3. by committing the offence jeopardises the population's supply with vital goods or services or the security of the Federal Republic of Germany. (5) Section 202c applies accordingly to acts preparatory to an offence under subsection (1).

Act on Copyright and Related Rights (Gesetz über Urheberrecht und verwandte Schutzrechte)

Access the full text

German:
https://www.gesetze-im-internet.de/urhg/

English:
https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html

	Original language	English
§ 106	Unerlaubte Verwertung urheberrechtlich geschützter Werke (1) Wer in anderen als den gesetzlich zugelassenen Fällen ohne Einwilligung des Berechtigten ein Werk oder eine Bearbeitung oder Umgestaltung eines Werkes vervielfältigt, verbreitet oder öffentlich wiedergibt, wird mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft. (2) Der Versuch ist strafbar.	(1) Any person who, without the rightholder's consent, reproduces, distributes or communicates to the public a work or an adaptation or transformation of a work in manners other than those permitted by law incurs a penalty of imprisonment for a term not exceeding three years or a fine. (2) The attempt is punishable.
§ 108	108a Gewerbsmäßige unerlaubte Verwertung (1) Handelt der Täter in den Fällen der §§ 106 bis 108 gewerbsmäßig, so ist die Strafe Freiheitsstrafe bis zu fünf Jahren oder Geldstrafe. (2) Der Versuch ist strafbar.	(1) Where the offender in the cases referred to in sections 106 to 108 acts on a commercial basis, the penalty is imprisonment for a term not exceeding five years or a fine. (2) The attempt is punishable.

LITHUANIA

Lithuanian Criminal Code (*Lietuvos baudžiamasis kodeksas*)

Access the full text

Lithuanian:
https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555/asr

English:
https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=rivwzvpvg&documentId=a84fa232877611e5bca4ce385a9b7048&category=TAD

	Original language	English
Article 204	**204 straipsnis. Svetimo prekių ar paslaugų ženklo naudojimas**	**Article 204. Use of Another's Trademark or Service Mark**
	1. Tas, kas neturėdamas leidimo svetimu prekių ženklu pažymėjo didelį prekių kiekį ar pateikė jas realizuoti arba pasinaudojo svetimu paslaugų ženklu ir dėl to padarė didelės žalos,	1. A person who, without holding an authorisation, identifies a large quantity of goods with another's trademark or presents them for handling or makes use of another's service mark and thereby incurs major damage
	baudžiamas bauda arba laisvės apribojimu, arba laisvės atėmimu iki dvejų metų.	shall be punished by a fine or by restriction of liberty or by a custodial sentence for a term of up to two years.
	2. Tas, kas neturėdamas leidimo svetimu prekių ženklu pažymėjo nedidelį prekių kiekį ar pateikė jas realizuoti arba pasinaudojo svetimu paslaugų ženklu ir dėl to padarė žalos, padarė baudžiamąjį nusižengimą ir	2. A person who, without holding an authorisation, identifies a small quantity of goods with another's trademark or presents them for handling or makes use of another's service mark and thereby incurs damage shall be considered to have committed a misdemeanour and
	baudžiamas viešaisiais darbais arba bauda, arba laisvės apribojimu.	shall be punished by community service or by a fine or by restriction of liberty.

	3. Už šiame straipsnyje numatytas veikas atsako ir juridinis asmuo.	3. A legal entity shall also be held liable for the acts provided for in this Article.

The Netherlands

Dutch Criminal Code (*Wetboek van Strafrecht*)

Access the full text

Dutch:

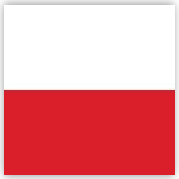
wetten.nl - Regeling - Wetboek van Strafrecht - BWBR0001854 (overheid.nl)

English (unofficial translation, consolidated only till 2012)

https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Netherlands-Criminal-Code.pdf

	Original language	English
Article 337	1Hij die opzettelijk:	1He who willfully:
	a.valse, vervalste of wederrechtelijk vervaardigde merken,	a.counterfeit, falsified or unlawfully manufactured trademarks,
	b.waren, die zelf of op hun verpakking valselijk zijn voorzien van de handelsnaam van een ander of van het merk waarop een ander recht heeft,	b.goods, which themselves or on their packaging are falsely bearing the trade name of the another person or of the trade mark to which another is entitled,
	c.waren, die ter aanduiding van herkomst, valselijk van de naam van een bepaalde plaats, met bijvoeging van een verdichte handelsnaam, zijn voorzien,	c.which, in order to indicate origin, falsely mentions the name of a particular place, with the addition of a condensed trade name, shall be provided,
	d.waren, waarop of op de verpakking waarvan een handelsnaam van een ander of een merk waarop een ander recht heeft, zij het dan ook met een geringe afwijking, is nagebootst of	d.goods on which or on the packaging of which a trade name of another person or a trade mark to which another person is entitled, albeit with a slight deviation, has been imitated or
	e.waren of onderdelen daarvan die valselijk hetzelfde uiterlijk vertonen als een tekening of model waarop een ander recht heeft, dan wel	e.goods or parts thereof which falsely have the same appearance as a drawing design to which another person is entitled, or only minor differences therewith show

	daarmede slechts ondergeschikte verschillen vertonen, invoert, doorvoert of uitvoert, verkoopt, te koop aanbiedt, aflevert, uitdeelt of in voorraad heeft, wordt gestraft met gevangenisstraf van ten hoogste één jaar of geldboete van de vijfde categorie. 2Niet strafbaar is hij die enkele waren, onderdelen daarvan of merken als omschreven in het eerste lid in voorraad heeft uitsluitend voor eigen gebruik. 3Indien de schuldige van het plegen van het misdrijf, genoemd in het eerste lid, zijn beroep maakt of het plegen van dit misdrijf als bedrijf uitoefent, wordt hij gestraft met gevangenisstraf van ten hoogste vier jaren of geldboete van de vijfde categorie. 4Indien door het plegen van het misdrijf, genoemd in het eerste lid, gemeen gevaar voor personen of goederen te duchten is, wordt de schuldige gestraft met gevangenisstraf van ten hoogste vier jaren of geldboete van de vijfde categorie.	imports, transits or exports, sells, offers for sale, delivers, distributes or shall be punished by imprisonment for a term not exceeding one year or fine in the fifth category. 2A person who has a number of goods, parts thereof or trademarks as described in the in the first paragraph for your own use only. 3If the person guilty of committing the crime referred to in the first paragraph or carries out the commission of this offence as a business, he shall be punished by the imprisonment for a term not exceeding four years or a fine of the fifth category. 4If, as a result of the commission of the offence referred to in the first paragraph, there is a common danger persons or property, the guilty party shall be punished by imprisonment. not more than four years or a fine of the fifth category.
420b	1Hij die van het plegen van witwassen een gewoonte maakt, wordt gestraft met gevangenisstraf van ten hoogste acht jaren of geldboete van de vijfde categorie. 2Met dezelfde straf wordt gestraft hij die zich schuldig maakt aan witwassen in de uitoefening van zijn beroep of bedrijf.	1He who makes a habit of committing money laundering will be punished with imprisonment not more than eight years or a fine of the fifth category. 2The same penalty shall be imposed on any person who is guilty of money laundering in the exercise of his profession or business.



POLAND

Polish Industrial Property Law
(Prawo własności przemysłowej)
Dz.U. 2001 nr 49 poz. 508

Access the full text

Polish:
https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf

English (unofficial translation):
https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/pl/pl076en.pdf

	Original language	English
Article 305	1. Kto, w celu wprowadzenia do obrotu, oznacza towary podrobionym znakiem towarowym, w tym podrobionym znakiem towarowym Unii Europejskiej, zarejestrowanym znakiem towarowym lub znakiem towarowym Unii Europejskiej, którego nie ma prawa używać lub dokonuje obrotu towarami oznaczonymi takimi znakami, podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.	1. Anyone marking goods with a counterfeit trademark or a registered trademark while not being entitled to use it in order to place the goods on the market or to trade in goods bearing such a trademark shall be liable to a fine, limitation of freedom or imprisonment for a period of up to two years.
	2. W wypadku mniejszej wagi, sprawca przestępstwa określonego w ust. 1 podlega grzywnie.	2. In case of an act of minor gravity, a person committing the offence referred to in paragraph (1) shall be liable to a fine.
	3. Jeżeli sprawca uczynił sobie z popełnienia przestępstwa określonego w ust. 1 stałe źródło dochodu albo dopuszcza się tego przestępstwa w stosunku do towaru o znacznej wartości, podlega karze pozbawienia wolności od 6 miesięcy do lat 5.	3. A person who regularly derives income from the offence referred to in paragraph (1), or commits that offence involving goods of significant value, shall be liable to imprisonment for a period from six months to five years.

SPAIN

Penal Code
(Código Penal)
Law 10/1995 of 23 November

Access the full text

Spanish:
https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444

English (unofficial translation):

https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf
(earlier version, as of 2016)

	Original language	English
Article 88 (now repealed)	En los supuestos previstos en los artículos anteriores se dispondrá la publicación de la sentencia en los periódicos oficiales y, si lo solicitara el perjudicado, el juez o tribunal podrá ordenar su reproducción total o parcial en cualquier otro medio informativo, a costa del condenado. Cuando de acuerdo con lo establecido en el artículo 31 bis una persona jurídica sea responsable de los delitos recogidos en este Capítulo, se le impondrán las siguientes penas: 1.º En el caso de los delitos previstos en los artículos 270, 271, 273, 274, 275, 276, 283 y 286: a) Multa del doble al cuádruple del beneficio obtenido, o que se hubiera podido obtener, si el delito cometido por la persona física tiene prevista una pena de prisión de más de dos años. b) Multa del doble al triple del beneficio obtenido, favorecido o que se hubiera podido obtener, en el resto de los casos. 2.º En el caso de los delitos previstos en los artículos 277, 278, 279, 280, 281, 282, 282 bis,	In the cases foreseen in the preceding articles, publication of the judgment in the official journals shall be provided and, if requested by the offended, the Judge or Court of Law may order full or partial reproduction thereof in any other informative medium, at the expense of the convict. If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences defined in this Chapter, it shall have the following penalties imposed thereon: 1. In the case of the criminal offences foreseen in Articles 270, 271, 273, 274, 275, 276, 283, 285 and 286: a) Fine of two to four times the profit obtained, or that could have been obtained, if the punishment foreseen for the criminal offence committed by a natural person is a prison sentence exceeding two years; b) Fine of two to three times the profit obtained or favoured, or that could have been obtained, in the rest of the cases.

	284, 285, 285 bis, 285 quater y 286 bis al 286 quater: a) Multa de dos a cinco años, o del triple al quíntuple del beneficio obtenido o que se hubiere podido obtener si la cantidad resultante fuese más elevada, cuando el delito cometido por la persona física tiene prevista una pena de más de dos años de privación de libertad. b) Multa de seis meses a dos años, o del tanto al duplo del beneficio obtenido o que se hubiere podido obtener si la cantidad resultante fuese más elevada, en el resto de los casos. 3.º Atendidas las reglas establecidas en el artículo 66 bis, los jueces y tribunales podrán asimismo imponer las penas recogidas en las letras b) a g) del apartado 7 del artículo 33.	2. In the case of the criminal offences foreseen in Articles 277, 278, 279, 280, 281, 282, 282 bis, 284 and 286 bis to 286 quinquies: a) Fine of two to five years, or three to five times the profit obtained, or that could have been obtained if this amount is higher, if the punishment foreseen for the criminal offence committed by a natural person is a prison sentence exceeding two years; b) Fine of six months to two years, or one to two times the profit obtained, or that could have been obtained if this amount is higher, in the rest of the cases. 3. Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.
Article 270	1. Será castigado con la pena de prisión de seis meses a cuatro años y multa de doce a veinticuatro meses el que, con ánimo de obtener un beneficio económico directo o indirecto y en perjuicio de tercero, reproduzca, plagie, distribuya, comunique públicamente o de cualquier otro modo explote económicamente, en todo o en parte, una obra o prestación literaria, artística o científica, o su transformación, interpretación o ejecución artística fijada en cualquier tipo de soporte o comunicada a través de cualquier medio, sin la autorización de los titulares de los correspondientes derechos de propiedad intelectual o de sus cesionarios. 2. La misma pena se impondrá a quien, en la prestación de servicios de la sociedad de la información, con ánimo de obtener un beneficio económico directo o indirecto, y en perjuicio de tercero, facilite de modo activo y no neutral y sin limitarse a un tratamiento meramente técnico, el acceso o la localización en internet de obras o prestaciones objeto de propiedad intelectual sin la autorización de los titulares de los correspondientes derechos o de sus cesionarios, en particular ofreciendo listados ordenados y clasificados de enlaces a las obras y contenidos referidos anteriormente, aunque dichos enlaces hubieran sido facilitados inicialmente por los destinatarios de sus servicios.	1. Whoever, in order to obtain direct or indirect economic gain and to the detriment of a third party, reproduces, plagiarises, distributes, publicly discloses or in any other manner financially exploits all or part of a literary, artistic or scientific work or performance, or transforms, interprets or performs it in any kind of medium, or broadcasts it by any medium, without authorisation by the holders of the relevant intellectual property rights or their assignees, shall be punished with a prison sentence of six months to four years and a fine of twelve to twenty-four months. 2. The same punishment shall be incurred by those who, while providing media services, in order to obtain direct or indirect economic gain and to the detriment of a third party, actively and in a non-neutral manner, not limited to merely technical processing, provide access or enable the identification on the Internet of works or performances subject to intellectual property without authorisation of the holders of the corresponding rights or their assignees, in particular by providing ordered and classified lists of links to the aforementioned works and content, even in the event that said links were originally provided by the service recipients.

	3. En estos casos, el juez o tribunal ordenará la retirada de las obras o prestaciones objeto de la infracción. Cuando a través de un portal de acceso a internet o servicio de la sociedad de la información, se difundan exclusiva o preponderantemente los contenidos objeto de la propiedad intelectual a que se refieren los apartados anteriores, se ordenará la interrupción de la prestación del mismo, y el juez podrá acordar cualquier medida cautelar que tenga por objeto la protección de los derechos de propiedad intelectual. Excepcionalmente, cuando exista reiteración de las conductas y cuando resulte una medida proporcionada, eficiente y eficaz, se podrá ordenar el bloqueo del acceso correspondiente. 4. En los supuestos a que se refiere el apartado 1, la distribución o comercialización ambulante o meramente ocasional se castigará con una pena de prisión de seis meses a dos años. No obstante, atendidas las características del culpable y la reducida cuantía del beneficio económico obtenido o que se hubiera podido obtener, siempre que no concurra ninguna de las circunstancias del artículo 271, el Juez podrá imponer la pena de multa de uno a seis meses o trabajos en beneficio de la comunidad de treinta y uno a sesenta días. 5. Serán castigados con las penas previstas en los apartados anteriores, en sus respectivos casos, quienes: a) Exporten o almacenen intencionadamente ejemplares de las obras, producciones o ejecuciones a que se refieren los dos primeros apartados de este artículo, incluyendo copias digitales de las mismas, sin la referida autorización, cuando estuvieran destinadas a ser reproducidas, distribuidas o comunicadas públicamente. b) Importen intencionadamente estos productos sin dicha autorización, cuando estuvieran destinados a ser reproducidos, distribuidos o comunicados públicamente, tanto si éstos tienen un origen lícito como ilícito en su país de procedencia; no obstante, la importación de los referidos productos de un Estado perteneciente a la Unión Europea no será punible cuando aquellos se hayan adquirido directamente del titular de los	3. In these cases, the Judge or Court of Law shall order the withdrawal of the works or performances the object of the criminal offence. When, through an Internet access portal or media service, the content subject to intellectual property outlined in the preceding Sections is distributed exclusively or predominantly, the interruption of such distribution shall be ordered and the Judge may adopt any precautionary measure established for the purpose of protecting intellectual property rights. Exceptionally, when such conduct is reiterated and when it is considered as a proportionate, efficient and effective measure, the corresponding access may be blocked. 4. In the cases outlined in Section 1, the itinerant or merely occasional distribution or commercialisation shall be punished with a prison sentence of six months to two years. However, in view of the circumstances of the offender and the small amount of financial profit obtained or that could have been obtained, as long as none of the circumstances of Article 271 concurs, the Judge may hand down a fine of one to six months, or community service of thirty-one to sixty days. 5. The penalties foreseen in the preceding Sections, in the respective cases, shall be imposed on those who: a) Intentionally export or store copies of the works, productions or performances outlined in the first two Sections of this Article, including digital copies thereof, without due authorisation, with the intention of reproducing, distributing or publically disclosing them; b) Intentionally import these products without said authorisation, with the intention of reproducing, distributing or publically disclosing them, regardless of whether these have a lawful or unlawful origin in their country of origin. However, importing those products from a State pertaining to the European Union shall not be punishable when these have been acquired directly from the holder of the rights in that State, or with his consent;

	derechos en dicho Estado, o con su consentimiento. c) Favorezcan o faciliten la realización de las conductas a que se refieren los apartados 1 y 2 de este artículo eliminando o modificando, sin autorización de los titulares de los derechos de propiedad intelectual o de sus cesionarios, las medidas tecnológicas eficaces incorporadas por éstos con la finalidad de impedir o restringir su realización. d) Con ánimo de obtener un beneficio económico directo o indirecto, con la finalidad de facilitar a terceros el acceso a un ejemplar de una obra literaria, artística o científica, o a su transformación, interpretación o ejecución artística, fijada en cualquier tipo de soporte o comunicado a través de cualquier medio, y sin autorización de los titulares de los derechos de propiedad intelectual o de sus cesionarios, eluda o facilite la elusión de las medidas tecnológicas eficaces dispuestas para evitarlo. 6. Será castigado también con una pena de prisión de seis meses a tres años quien fabrique, importe, ponga en circulación o posea con una finalidad comercial cualquier medio principalmente concebido, producido, adaptado o realizado para facilitar la supresión no autorizada o la neutralización de cualquier dispositivo técnico que se haya utilizado para proteger programas de ordenador o cualquiera de las otras obras, interpretaciones o ejecuciones en los términos previstos en los dos primeros apartados de este artículo.	c) Promote or facilitate the conducts outlined in Sections 1 and 2 of this Article by eliminating or modifying, without authorisation by the holders of the intellectual property rights or their assignees, the effective technological measures put in place in order to prevent or restrict such conduct; d) In order to obtain direct or indirect economic gain, with the purpose of providing third parties with access to a copy of a literary, artistic or scientific work, or to transform, interpret or perform it in any kind of medium, or broadcast by any medium, without authorisation by the holders of the relevant intellectual property rights or their assignees, evade or facilitate evasion of the effective technological measures in place to prevent this from happening. 6. Whoever manufactures, imports, puts into circulation or possesses for commercial purposes any means specifically designed, produced, adapted or intended to facilitate unauthorised suppression or neutralisation of any technical device that has been used to protect computer programs or any of the other works, interpretations or performances under the terms foreseen in the first two Sections of this Article, shall be punished with a prison sentence of six months to three years.
Article 271	Se impondrá la pena de prisión de dos a seis años, multa de dieciocho a treinta y seis meses e inhabilitación especial para el ejercicio de la profesión relacionada con el delito cometido, por un período de dos a cinco años, cuando se cometa el delito del artículo anterior concurriendo alguna de las siguientes circunstancias: a) Que el beneficio obtenido o que se hubiera podido obtener posea especial trascendencia económica. b) Que los hechos revistan especial gravedad, atendiendo el valor de los objetos producidos ilícitamente, el número de obras, o de la transformación, ejecución o interpretación de las mismas, ilícitamente reproducidas, distribuidas, comunicadas al público o puestas	A prison sentence of two to six years, a fine of eighteen to thirty-six months and special barring from practice of the profession related with the criminal offence committed, for a term of two to five years shall be imposed if any of the following circumstances concurs upon committing the criminal offence foreseen in the preceding Article: a) If the profit obtained, or that could have been obtained, is of special economic importance; b) If the deeds are especially serious, in view of the value of the objects produced unlawfully, the number of works, or of their transformation, performance or interpretation, unlawfully reproduced, distributed, publicly disclosed or made

	a su disposición, o a la especial importancia de los perjuicios ocasionados. c) Que el culpable perteneciere a una organización o asociación, incluso de carácter transitorio, que tuviese como finalidad la realización de actividades infractoras de derechos de propiedad intelectual. d) Que se utilice a menores de 18 años para cometer estos delitos.	available, or the special importance of the damage caused; c) If the offender belongs to an organisation or association, even if transitory in nature, whose purpose is to perpetrate activities that infringe intellectual property rights; d) If persons under eighteen years of age are used to commit those criminal offences.
Article 274	1. Será castigado con las penas de uno a cuatro años de prisión y multa de doce a veinticuatro meses el que, con fines industriales o comerciales, sin consentimiento del titular de un derecho de propiedad industrial registrado conforme a la legislación de marcas y con conocimiento del registro, a) fabrique, produzca o importe productos que incorporen un signo distintivo idéntico o confundible con aquel, u b) ofrezca, distribuya, o comercialice al por mayor productos que incorporen un signo distintivo idéntico o confundible con aquel, o los almacene con esa finalidad, cuando se trate de los mismos o similares productos, servicios o actividades para los que el derecho de propiedad industrial se encuentre registrado. 2. Será castigado con las penas de seis meses a tres años de prisión el que, con fines industriales o comerciales, sin consentimiento del titular de un derecho de propiedad industrial registrado conforme a la legislación de marcas y con conocimiento del registro, ofrezca, distribuya o comercialice al por menor, o preste servicios o desarrolle actividades, que incorporen un signo distintivo idéntico o confundible con aquél, cuando se trate de los mismos o similares productos, servicios o actividades para los que el derecho de propiedad industrial se encuentre registrado. La misma pena se impondrá a quien reproduzca o imite un signo distintivo idéntico o confundible con aquél para su utilización para la comisión de las conductas sancionadas en este artículo. 3. La venta ambulante u ocasional de los productos a que se refieren los apartados	1. Any person who, for industrial or commercial purposes, without the consent of the owner of an industrial property right registered in accordance with trademark legislation and with knowledge of the registration, shall be punished by one to four years' imprisonment and a fine of twelve to twenty-four months (a) manufactures, produces or imports goods incorporating a distinctive sign which is identical or confusingly similar to that sign; or (b) offers, distributes or markets wholesale goods bearing a distinctive sign identical or confusingly similar to it, or stores them for that purpose, where the goods, services or activities for which the industrial property right is registered are the same or similar. 2. A penalty of six months' to three years' imprisonment shall be imposed on anyone who, for industrial or commercial purposes, without the consent of the owner of an industrial property right registered under trademark legislation and with knowledge of the registration, offers, distributes or markets at the retail level, or provides services or carries out activities, that incorporate a distinctive sign identical or confusingly similar to that right, where the same or similar goods, services or activities for which the industrial property right is registered are concerned. The same penalty shall be imposed on anyone who reproduces or imitates a distinctive sign identical or confusingly similar to the former for use in the commission of the conduct punishable under this Article. 3. The itinerant or occasional sale of the products referred to in the previous paragraphs

	anteriores será castigada con la pena de prisión de seis meses a dos años. No obstante, atendidas las características del culpable y la reducida cuantía del beneficio económico obtenido o que se hubiera podido obtener, siempre que no concurra ninguna de las circunstancias del artículo 276, el Juez podrá imponer la pena de multa de uno a seis meses o trabajos en beneficio de la comunidad de treinta y uno a sesenta días. 4. Será castigado con las penas de uno a tres años de prisión el que, con fines agrarios o comerciales, sin consentimiento del titular de un título de obtención vegetal y con conocimiento de su registro, produzca o reproduzca, acondicione con vistas a la producción o reproducción, ofrezca en venta, venda o comercialice de otra forma, exporte o importe, o posea para cualquiera de los fines mencionados, material vegetal de reproducción o multiplicación de una variedad vegetal protegida conforme a la legislación nacional o de la Unión Europea sobre protección de obtenciones vegetales. Será castigado con la misma pena quien realice cualesquiera de los actos descritos en el párrafo anterior utilizando, bajo la denominación de una variedad vegetal protegida, material vegetal de reproducción o multiplicación que no pertenezca a tal variedad.	shall be punishable by a prison sentence of between six months and two years. However, in view of the characteristics of the offender and the small amount of the economic benefit obtained or that could have been obtained, provided that none of the circumstances of Article 276 apply, the judge may impose a fine of one to six months or community service of thirty-one to sixty days. 4. Any person who, for agricultural or commercial purposes, without the consent of the holder of a plant variety right and with knowledge of its registration, produces or reproduces, prepares with a view to production or reproduction, offers for sale, sells or otherwise markets, exports or imports, or possesses for any of the aforementioned purposes, plant propagating material of a plant variety protected under national or European Union legislation on plant variety protection, shall be liable to imprisonment for a term of one to three years. The same penalty shall apply to anyone who carries out any of the acts described in the preceding paragraph by using, under the denomination of a protected plant variety, propagating plant material which does not belong to that variety.
Article 286	1. Será castigado con las penas de prisión de seis meses a dos años y multa de seis a 24 meses el que, sin consentimiento del prestador de servicios y con fines comerciales, facilite el acceso inteligible a un servicio de radiodifusión sonora o televisiva, a servicios interactivos prestados a distancia por vía electrónica, o suministre el acceso condicional a los mismos, considerado como servicio independiente, mediante: 1.º La fabricación, importación, distribución, puesta a disposición por vía electrónica, venta, alquiler, o posesión de cualquier equipo o programa informático, no autorizado en otro Estado miembro de la Unión Europea, diseñado o adaptado para hacer posible dicho acceso. 2.º La instalación, mantenimiento o sustitución de los equipos o programas informáticos mencionados en el párrafo 1.º	1. Punishment by imprisonment of six months to two years and a fine from six to twenty- four months shall be handed down to whoever, without the consent of the service provider and for commercial purposes, provides intelligible access to a radio or television broadcasting sound or image service, to interactive services provided remotely by electronic means, or who provides conditional access to these, considered as an independent service, by means of: 1. Manufacturing, importation, distribution, making available by electronic means, sale, rental, or possession of any computer equipment or program that is unauthorised in another member State of the European Union, designed or adapted to make such access possible; 2. Installation, maintenance or replacement of the equipment or computer programs mentioned in Section 1.

	2. Con idéntica pena será castigado quien, con ánimo de lucro, altere o duplique el número identificativo de equipos de telecomunicaciones, o comercialice equipos que hayan sufrido alteración fraudulenta. 3. A quien, sin ánimo de lucro, facilite a terceros el acceso descrito en el apartado 1, o por medio de una comunicación pública, comercial o no, suministre información a una pluralidad de personas sobre el modo de conseguir el acceso no autorizado a un servicio o el uso de un dispositivo o programa, de los expresados en ese mismo apartado 1, incitando a lograrlos, se le impondrá la pena de multa en él prevista. 4. A quien utilice los equipos o programas que permitan el acceso no autorizado a servicios de acceso condicional o equipos de telecomunicación, se le impondrá la pena prevista en el artículo 255 de este Código con independencia de la cuantía de la defraudación.	2. An identical punishment shall be applied to whoever, for profit, were to alter or duplicate the identifying number of telecommunications equipment or sell equipment that has undergone fraudulent manipulation. 3. Whoever, for non-profit purposes, provides third parties the access described in Section 1, or through public communication, whether for commercial purposes or not, provides information to multiple persons on the way to obtain unauthorised access to a service or use of a device or program, of those stated in that same Section 1, inciting them to attain this, shall have the punishment of the fine foreseen therein imposed. 4. Whoever uses equipment or programs that allow unauthorised access to conditional access services or telecommunications equipment shall have the punishment foreseen in Article 255 of this Code imposed, regardless of the amount obtained by such fraud.
Article 288	En los supuestos previstos en los artículos anteriores se dispondrá la publicación de la sentencia en los periódicos oficiales y, si lo solicitara el perjudicado, el juez o tribunal podrá ordenar su reproducción total o parcial en cualquier otro medio informativo, a costa del condenado. Cuando de acuerdo con lo establecido en el artículo 31 bis una persona jurídica sea responsable de los delitos recogidos en este Capítulo, se le impondrán las siguientes penas: 1.º En el caso de los delitos previstos en los artículos 270, 271, 273, 274, 275, 276, 283 y 286: a) Multa del doble al cuádruple del beneficio obtenido, o que se hubiera podido obtener, si el delito cometido por la persona física tiene prevista una pena de prisión de más de dos años. b) Multa del doble al triple del beneficio obtenido, favorecido o que se hubiera podido obtener, en el resto de los casos. 2.º En el caso de los delitos previstos en los artículos 277, 278, 279, 280, 281, 282, 282 bis, 284, 285, 285 bis, 285 quater y 286 bis al 286 quater: a) Multa de dos a cinco años, o del triple al quíntuple del beneficio obtenido o que se hubiere podido obtener si la cantidad resultante fuese más elevada, cuando el delito cometido por la persona física tiene	In the cases foreseen in the preceding Articles, publication of the judgment in the official journals shall be provided and, if requested by the offended, the Judge or Court of Law may order full or partial reproduction thereof in any other informative medium, at the expense of the convict. If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences defined in this Chapter, it shall have the following penalties imposed thereon: 1. In the case of the criminal offences foreseen in Articles 270, 271, 273, 274, 275, 276, 283, 285 and 286: a) Fine of two to four times the profit obtained, or that could have been obtained, if the punishment foreseen for the criminal offence committed by a natural person is a prison sentence exceeding two years; b) Fine of two to three times the profit obtained or favoured, or that could have been obtained, in the rest of the cases. 2. In the case of the criminal offences foreseen in Articles 277, 278, 279, 280, 281, 282, 282 bis, 284 and 286 bis to 286 quinquies: a) Fine of two to five years, or three to five times the profit obtained, or that could have been obtained if this amount is higher, if the punishment foreseen for the criminal offence

	prevista una pena de más de dos años de privación de libertad. b) Multa de seis meses a dos años, o del tanto al duplo del beneficio obtenido o que se hubiere podido obtener si la cantidad resultante fuese más elevada, en el resto de los casos. 3.º Atendidas las reglas establecidas en el artículo 66 bis, los jueces y tribunales podrán asimismo imponer las penas recogidas en las letras b) a g) del apartado 7 del artículo 33.	committed by a natural person is a prison sentence exceeding two years; b) Fine of six months to two years, or one to two times the profit obtained, or that could have been obtained if this amount is higher, in the rest of the cases. 3. Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.
Article 570 bis	1. Quienes promovieren, constituyeren, organizaren, coordinaren o dirigieren una organización criminal serán castigados con la pena de prisión de cuatro a ocho años si aquélla tuviere por finalidad u objeto la comisión de delitos graves, y con la pena de prisión de tres a seis años en los demás casos; y quienes participaren activamente en la organización, formaren parte de ella o cooperaren económicamente o de cualquier otro modo con la misma serán castigados con las penas de prisión de dos a cinco años si tuviere como fin la comisión de delitos graves, y con la pena de prisión de uno a tres años en los demás casos. A los efectos de este Código se entiende por organización criminal la agrupación formada por más de dos personas con carácter estable o por tiempo indefinido, que de manera concertada y coordinada se repartan diversas tareas o funciones con el fin de cometer delitos. 2. Las penas previstas en el número anterior se impondrán en su mitad superior cuando la organización: a) esté formada por un elevado número de personas. b) disponga de armas o instrumentos peligrosos. c) disponga de medios tecnológicos avanzados de comunicación o transporte que por sus características resulten especialmente aptos para facilitar la ejecución de los delitos o la impunidad de los culpables. Si concurrieran dos o más de dichas circunstancias se impondrán las penas superiores en grado. 3. Se impondrán en su mitad superior las penas respectivamente previstas en este artículo si los delitos fueren contra la vida o la integridad de las personas, la libertad, la libertad e indemnidad sexuales o la trata de seres humanos.	1. Whoever promotes, constitutes, organises, co-ordinates or directs a criminal organisation shall be punished with a prison sentence of four to eight years, if it has the purpose or object of committing serious criminal offences, and with a prison sentence of three to six years in other cases; and whoever actively participates in the organisation, forms part thereof or co-operates financially or in any other way therein, shall be punished with a prison sentence of two to five years if its purpose is to commit serious criminal offences, and with a prison sentence of one to three years in other cases. For the purposes of this Code, a criminal organisation is construed to be a group formed by more than two persons, on a stable basis or for an indefinite term, in collusion and co-ordination to distribute diverse tasks or duties in order to commit criminal offences. 2. The penalties foreseen in the preceding Section shall be imposed in the upper half if the organisation: a) is formed by a large number of persons; b) possesses weapons or dangerous instruments; c) has advanced technological resources for communication or transport that, due to the characteristics thereof, are especially fit to facilitate commission of the criminal offences or the impunity of the offenders. Should two or more of those circumstances concur, the higher degree penalties shall be imposed. 3. The upper half of the penalties respectively foreseen in this Article shall be imposed if the criminal offences are against the life or integrity of persons, liberty, sexual freedom and indemnity, or involve trafficking in human beings.

SWEDEN

Copyright Act
(Lag om upphovsrätt till litterära och konstnärliga verk)
Law 1960:729

Access the full text

Swedish:
https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-1960729-om-upphovsratt-till-litterara-och_sfs-1960-729/#K7

English (unofficial translation):
https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/se/se225en.html

	Original language	English
2§	Upphovsrätt innefattar, med de inskränkningar som föreskrivs i det följande, uteslutande rätt att förfoga över verket genom att framställa exemplar av det och genom att göra det tillgängligt för allmänheten, i ursprungligt eller ändrat skick, i översättning eller bearbetning, i annan litteratur- eller konstart eller i annan teknik. Framställning av exemplar innefattar varje direkt eller indirekt samt tillfällig eller permanent framställning av exemplar av verket, oavsett i vilken form eller med vilken metod den sker och oavsett om den sker helt eller delvis. Verket görs tillgängligt för allmänheten i följande fall: 1. När verket överförs till allmänheten. Detta sker när verket på trådbunden eller trådlös väg görs tillgängligt för allmänheten från en annan plats än den där allmänheten kan ta del av verket. Överföring till allmänheten innefattar överföring som sker på ett sådant sätt att enskilda kan få tillgång till verket från en plats och vid en tidpunkt som de själva väljer. 2. När verket framförs offentligt. Offentligt framförande innefattar endast sådana fall då verket görs	Copyright includes, subject to the limitations set out below, the exclusive right to dispose of the work by making copies of it and by making it available to the public, in its original or altered form, in translation or adaptation, in other literary and literary matters. or in other technology. The production of copies includes any direct or indirect, temporary or permanent production of copies of the work, regardless of the form or method by which it is made, whether in whole or in part. The work is made available to the public in the following cases: 1. When the work is communicated to the public. This occurs when the work is made available to the public by wired or wireless means from a place other than the one where the public can access the work. Communication to the public includes communication that takes place in such a way that individuals can access the work from a place and at a time of their choosing. 2. When the work is performed in public. Public performance only includes cases where the work is made available to the public, with or without the use of a technical aid, in the same place as the place where the public can access the

	tillgängligt för allmänheten med eller utan användning av ett tekniskt hjälpmedel på samma plats som den där allmänheten kan ta del av verket. 3. När exemplar av verket visas offentligt. Offentlig visning innefattar endast sådana fall då ett exemplar av ett verk görs tillgängligt för allmänheten utan användning av ett tekniskt hjälpmedel på samma plats som den där allmänheten kan ta del av exemplaret. Om ett tekniskt hjälpmedel används är det i stället ett offentligt framförande. 4. När exemplar av verket bjuds ut till försäljning, uthyrning eller utlåning eller annars sprids till allmänheten. Med överföring till allmänheten och offentligt framförande jämställs överföringar och framföranden som i förvärvsverksamhet anordnas till eller inför en större sluten krets. *Lag (2005:359)*.	work. 3. When copies of the work are displayed publicly. Public display only covers cases where a copy of a work is made available to the public without the use of a technical device in the same place as the one where the public can access the copy. If a technical aid is used, it is instead a public performance. 4. When copies of the work are offered for sale, rental or loan, or otherwise distributed to the public. Communications to the public and public performance are treated in the same way as communications and performances that are arranged in the course of commercial activities to or in front of a larger closed circle. Law (2005:359)
53§	Den som beträffande ett litterärt eller konstnärligt verk vidtar en åtgärd, som innebär intrång i den till verket enligt 1 och 2 kap. knutna upphovsrätten eller som strider mot föreskrift enligt 41 § andra stycket eller mot 50 §, döms, om det sker uppsåtligen eller av grov oaktsamhet, för upphovsrättsbrott till böter eller fängelse i högst två år. Detta gäller också om någon för in ett exemplar av ett verk till Sverige i syfte att sprida det till allmänheten, om exemplaret har framställts utomlands och motsvarande framställning här skulle ha varit straffbar enligt första meningen. Om brottet begåtts uppsåtligen och är att anse som grovt, döms för grovt upphovsrättsbrott till fängelse i lägst sex månader och högst sex år. Vid bedömningen av om brottet är grovt ska det särskilt beaktas om gärningen 1. har föregåtts av särskild planering, 2. har utgjort ett led i en brottslighet som utövats i organiserad form, 3. har varit av större omfattning, eller 4. annars har varit av särskilt farlig art. Den som för sitt enskilda bruk kopierar ett datorprogram som är utgivet eller av vilket exemplar har överlåtits med upphovsmannens samtycke, ska inte dömas till ansvar, om förlagan för kopieringen inte används i	Anyone who, in respect of a literary or artistic work, commits an act which infringes the copyright enjoyed in the work under the provisions of Chapters 1 and 2 or which violates directions given under Article 41, second Paragraph, or Article 50, if the act is committed intentionally or by gross negligence, is punishable for copyright violation with a fine or imprisonment for up to two years. This also apply if someone brings in a copy of a work into Sweden with the aim to distribute it to the public, if the copy has been produced abroad and the corresponding production here would have been punishable under the first sentence. If the violation was committed intentionally and is considered serious, the person is punishable for serious copyright violation with imprisonment for a minimum of six months up to a maximum of six years. When assessing whether the violation is serious, particular consideration has to be given to whether the act concerned 1. has been preceded by particular planning, 2. was part of criminal activities conducted in an organised form, 3. was conducted on a large scale, or

	näringsverksamhet eller offentlig verksamhet och han eller hon inte utnyttjar framställda exemplar av datorprogrammet för annat ändamål än sitt enskilda bruk. Den som för sitt enskilda bruk framställer exemplar i digital form av en offentliggjord sammanställning i digital form ska under de förutsättningar som nyss nämnts inte dömas till ansvar. Den som har överträtt ett vitesförbud enligt 53 b § får inte dömas till ansvar för intrång som omfattas av förbudet. För försök eller förberedelse till upphovsrättsbrott eller grovt upphovsrättsbrott döms det till ansvar enligt 23 kap. brottsbalken. *Lag (2020:540)*.	4. was otherwise of a particularly dangerous nature. Anyone who for his personal use reproduces a computer program which has been published or of which a copy has been transferred with the consent of the author shall not be subject to criminal liability, if the master copy for the reproduction is not being used in commercial or public activities and he or she does not use the copies produced of the computer program for any purposes other than his or her personal use. Anyone who for his or her personal use has made a copy in digital form of a compilation in digital form which has been made the public shall, under the same conditions, not be subject to criminal liability for the act. Anyone who has violated an injunction issued with a penalty of a fine pursuant to Article 53 b, must not be held liable for infringements covered by the injunction. Responsibility is assigned under Chapter 23 of the Criminal Code for attempting to commit or preparation of copyright violation or serious copyright violation. (Act 2020:540)
53 a§	Egendom med avseende på vilken brott föreligger enligt denna lag skall förklaras förverkad, om det inte är uppenbart oskäligt. I stället för egendomen får dess värde förklaras förverkat. Även utbyte av sådant brott skall förklaras förverkat, om det inte är uppenbart oskäligt. Detsamma gäller vad någon har tagit emot som ersättning för kostnader i samband med ett sådant brott, eller värdet av det mottagna, om mottagandet utgör brott enligt denna lag.	Property in respect of which a violation has occurred pursuant to this Act shall be declared forfeited, if this is not considered obviously unreasonable. Instead of the property itself, its value may be declared forfeited. Also profits from such a violation shall be declared forfeited, if this is not obviously unreasonable. The same applies to what someone has received in compensation for costs related to such a violation, or the value of what has been received, where the act of receiving constitutes a violation pursuant to this Act.
54	54 § Den som i strid mot denna lag eller mot föreskrift enligt 41 § andra stycket utnyttjar ett verk ska betala skälig ersättning för utnyttjandet till upphovsmannen eller hans eller hennes rättsinnehavare. Sker det uppsåtligen eller av oaktsamhet, ska ersättning även betalas för den ytterligare skada som intrånget eller överträdelsen har medfört. När ersättningens storlek bestäms ska hänsyn särskilt tas till 1. utebliven vinst, 2. vinst som den som har begått intrånget eller överträdelsen har gjort, 3. skada på verkets anseende, 4. ideell skada, och	A person who uses a work in contravention of this Act or a regulation pursuant to Section 41, second paragraph, shall pay reasonable compensation for the use to the author or his or her rightholder. If this is done intentionally or negligently, compensation must also be paid for the additional damage caused by the infringement or violation. When determining the amount of compensation, special consideration shall be given to 1. Lack of profit, 2. profit as the person who has committed the infringement or the

	5. upphovsmannens eller rättsinnehavarens intresse av att intrång inte begås. Andra stycket gäller även den som annars uppsåtligen eller av oaktsamhet vidtar en åtgärd, som innebär intrång eller överträdelse enligt 53 §. Ersättningsskyldighet enligt första eller andra stycket gäller inte den som i samband med framställning av exemplar för privat bruk enbart överträder 12 § fjärde stycket, om inte denna överträdelse sker uppsåtligen eller av grov oaktsamhet.	transgression has done, 3. damage to the reputation of the Authority, 4. non-material damage, and 5. the author's or rightholder's interest in not infringing. The second paragraph also applies to a person who otherwise intentionally or negligently takes an action that constitutes an infringement or violation pursuant to Section 53. The obligation to pay compensation pursuant to the first or second paragraph does not apply to a person who, in connection with the production of copies for private use, only violates Section 12, fourth paragraph, unless this violation is committed intentionally or through gross negligence.

Trademark Act (Varumärkeslag (2010:1877))

Access the full text

Swedish:
https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/varumarkeslag-20101877_sfs-2010-1877/

English (unofficial translation):
https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/se/se221en.pdf

	Original language	English
Section 8 **1§**	1 § Den som gör intrång i rätten till ett varukännetecken (varumärkesintrång) döms, om det sker uppsåtligen eller av grov oaktsamhet, för varumärkesbrott till böter eller fängelse i högst två år. Om brottet begåtts uppsåtligen och är att anse som grovt, döms för grovt varumärkesbrott till fängelse i lägst sex månader och högst sex år. Vid bedömningen av om brottet är grovt ska det särskilt beaktas om gärningen 1. har föregåtts av särskild planering, 2. har utgjort ett led i en brottslighet som utövats i organiserad form, 3. har varit av större omfattning, eller 4. annars har varit av särskilt farlig art. Första och andra styckena gäller inte vid intrång i den rätt till ett varukännetecken som avses i 1 kap. 10 § tredje stycket. Den som har överträtt ett vitesförbud enligt 3 § får inte dömas till ansvar för intrång som omfattas av förbudet. För försök eller förberedelse till varumärkesbrott eller grovt varumärkesbrott döms det till ansvar enligt 23 kap. brottsbalken. Åklagaren får väcka åtal för brott endast om åtal är motiverat från allmän synpunkt. Lag (2020:545).	Section 1 A person who infringes the right to a trade sign (trademark infringement) is sentenced to a fine or imprisonment for a maximum of two years, if it occurs intentionally or through gross negligence. If the offence was committed intentionally and is to be regarded as serious, the offence is punishable by imprisonment for a minimum of six months and a maximum of six years. When assessing whether the offence is serious, particular consideration shall be given to whether the act 1. has been preceded by special planning, 2. has been part of a crime that has been carried out in an organised form, 3. has been of greater magnitude, or 4. has otherwise been of a particularly dangerous nature. The first and second paragraphs do not apply in the event of infringement of the right to a trade sign referred to in Chapter 1. Section 10, third paragraph. A person who has violated a prohibition on fines pursuant to Section 3 may not be held liable for infringements covered by the prohibition. For attempted or preparation for trademark infringement or aggravated trademark infringement, a person is sentenced to liability in accordance with Chapter 23. Penal code. The prosecutor may bring charges for a crime only if the prosecution is justified from a general point of view. Law (2020:545).

Section 10	Ensamrätten till ett varukännetecken enligt 6-8 §§ innebär att ingen annan än innehavaren, utan dennes tillstånd, i näringsverksamhet får använda ett tecken för varor eller tjänster, om tecknet är 1. identiskt med varukännetecknet och används för varor eller tjänster av samma slag, 2. identiskt med eller liknar varukännetecknet och används för varor eller tjänster av samma eller liknande slag, om det finns en risk för förväxling, inbegripet risken för att användningen av tecknet leder till uppfattningen att det finns ett samband mellan den som använder tecknet och innehavaren av varukännetecknet, eller 3. identiskt med eller liknar ett varukännetecken som här i landet är känt inom en betydande del av omsättningskretsen, om användningen utan skälig anledning drar otillbörlig fördel av eller är till skada för varukännetecknets särskiljningsförmåga eller anseende, oavsett om användningen avser varor eller tjänster av samma, liknande eller annat slag. Som användning anses särskilt att 1. förse varor eller deras förpackningar med tecknet, 2. bjuda ut varor till försäljning, föra ut dem på marknaden, lagra dem för dessa ändamål eller bjuda ut eller tillhandahålla tjänster under tecknet, 3. importera eller exportera varor under tecknet, 4. använda tecknet som ett företagsnamn eller ett annat näringskännetecken eller som en del av ett företagsnamn eller ett annat näringskännetecken, och 5. använda tecknet i affärshandlingar och reklam. Ensamrätten till ett varukännetecken innebär också att ingen annan än innehavaren, utan dennes tillstånd, i näringsverksamhet får transitera eller vidta liknande tullåtgärd med varor av samma slag under ett tecken som är identiskt med eller som i väsentliga drag inte kan särskiljas från varukännetecknet. Detta gäller dock inte om innehavaren av varukännetecknet saknar rätt enligt lagen i destinationslandet att hindra att varorna släpps ut på marknaden där. Lag (2018:1652).	The exclusive right to a trade sign under Sections 6-8 means that no one other than the holder, without his permission, may use a sign for goods or services in the course of trade, if the sign is 1. identical to the trade mark and is used for goods or services of the same kind, 2. identical with or similar to the sign and is used for identical or similar goods or services, where there is a likelihood of confusion, including the likelihood that the use of the sign will lead to the perception that there is a link between the user of the sign and the proprietor of the sign, or 3. identical with or similar to a sign which is known in this country to a significant part of the relevant public, if the use without reasonable cause takes unfair advantage of or is detrimental to the distinctive character or reputation of the sign, whether the use relates to goods or services of the same, similar or different kind. It is considered as a use in particular that 1. affix the sign to goods or their packaging, 2. offer goods for sale, place them on the market, store them for these purposes or offer or provide services under the sign; 3. import or export goods under the sign, 4. use the sign as a business name or other trade mark or as part of a company name or other trade mark, and 5. use the sign in business documents and advertising. The exclusive right to a sign also means that no one other than the proprietor, without his permission, may transit or take similar customs action with goods of the same kind under a sign which is identical or substantially indistinguishable from the sign in the course of trade. However, this does not apply if the proprietor of the trade sign does not have the right under the law of the country of destination to prevent the goods from being placed on the market there. Law (2018:1652).

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights

Access the full text

English:

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0048R%2801%29

Article 13 - Damages

1. Member States shall ensure that the competent judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the rightholder damages appropriate to the actual prejudice suffered by him/her as a result of the infringement.

When the judicial authorities set the damages:

(a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement;

or

(b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

2. Where the infringer did not knowingly, or with reasonable grounds know, engage in infringing activity, Member States may lay down that the judicial authorities may order the recovery of profits or the payment of damages, which may be pre-established.

Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks

(Replaced by Directive 2015/2436)

Access the full text

English:

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008L0095 (earlier version)

Article 5 – Rights conferred by a trade mark

1. The registered trade mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

(a) any sign which is identical with the trade mark in relation to goods or services which are identical with those for which the trade mark is registered;

(b) any sign where, because of its identity with, or similarity to, the trade mark and the identity or similarity of the goods or services covered by the trade mark and the sign, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark.

2. Any Member State may also provide that the proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade any sign which is identical with, or similar to, the trade mark in relation to goods or services which are not similar to those for which the trade mark is registered, where the latter has a reputation in the Member State and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.

3. The following, inter alia, may be prohibited under paragraphs 1 and 2:

(a) affixing the sign to the goods or to the packaging thereof;

(b) offering the goods, or putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder;

(c) importing or exporting the goods under the sign;

(d) using the sign on business papers and in advertising.

4. Where, under the law of the Member State, the use of a sign under the conditions referred to in paragraph 1(b) or paragraph 2 could not be prohibited before the date of entry into force of the provisions necessary to comply with Directive 89/104/EEC in the Member State concerned, the rights conferred by the trade mark may not be relied on to prevent the continued use of the sign.

5. Paragraphs 1 to 4 shall not affect provisions in any Member State relating to the protection against the use of a sign other than for the purposes of distinguishing goods or services, where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.

Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark

Access the full text

English:

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1001

Article 9 - Rights conferred by an EU trade mark

1. The registration of an EU trade mark shall confer on the proprietor exclusive rights therein.

2. Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the EU trade mark, the proprietor of that EU trade mark shall be entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services, any sign where:

(a) the sign is identical with the EU trade mark and is used in relation to goods or services which are identical with those for which the EU trade mark is registered;

(b) the sign is identical with, or similar to, the EU trade mark and is used in relation to goods or services which are identical with, or similar to, the goods or services for which the EU trade mark is registered, if there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;

(c) the sign is identical with, or similar to, the EU trade mark irrespective of whether it is used in relation to goods or services which are identical with, similar to or not similar to those for which the EU trade mark is registered, where the latter has a reputation in the Union and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the EU trade mark.

3. The following, in particular, may be prohibited under paragraph 2:

(a) affixing the sign to the goods or to the packaging of those goods;

(b) offering he goods, putting them on the market, or stocking them for those purposes under the sign, or offering or supplying services thereunder;

(c) importing or exporting the goods under the sign;

(d) using the sign as a trade or company name or part of a trade or company name;

(e) using the sign on business papers and in advertising;

(f) using the sign in comparative advertising in a manner that is contrary to Directive 2006/114/EC.

4. Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the EU trade mark, the proprietor of that EU trade mark shall also be entitled to prevent all third parties from bringing goods, in the course of trade, into the Union without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorisation a trade mark which is identical with the EU trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark.

The entitlement of the proprietor of an EU trade mark pursuant to the first subparagraph shall lapse if, during the proceedings to determine whether the EU trade mark has been infringed, initiated in accordance with Regulation (EU) No 608/2013, evidence is provided by the declarant or the holder of the goods that the proprietor of the EU trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

Access the full text

English:

https://eur-lex.europa.eu/eli/dir/2001/29/oj

Article 3 – Right of communication to the public of works and right of making available to the public other subject-matter

1. Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. Member States shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:

(a) for performers, of fixations of their performances;

(b) for phonogram producers, of their phonograms;

(c) for the producers of the first fixations of films, of the original and copies of their films;

(d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. The rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.

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