



**ALAI International Congress 2018  
Questionnaire**

**ITALY**

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1. *Are statutory damages available? If so please indicate the criteria for awarding them and the amount of such damages*

Yes, Article 158 of the Italian Copyright Law no. 633 of 22 April 1941 lays down some criteria to apply when awarding damages for copyright infringements.

There is no fixed amount indicated by the Law but, depending on the specificities of the infringement, damages can be determined by the Court as a lump sum on the basis of equitable criteria or calculating the royalties that the copyright holder would have earned if the infringer had asked for the licence or had obtained the permission to use the work (the so called “price of the consent”) before the exploitation; to this amount, interests and legal expenses can be added by the judge.

In criminal proceedings, the Court often remits the decision on damages to a separate judgment before the Civil Court.

2. *If punitive damages are available, indicate the criteria for awarding them.*

Punitive damages are not provided for in the Copyright Law. On 5 July 2017, the Italian Supreme Court issued the judgment no, 16601 whereby, for the first time, based on the multi-functional nature of civil liability, the Court ruled in favour of the possibility to recognize and enforce in Italy foreign judgments awarding compensation in the form of punitive damages. In the exemplification of *ultra-compensatory damages* already present in the Italian legal system, the Court mentions Article 158 of the Copyright Law, both taking into consideration the profits earned by the infringer, consistently with the recent case law of the EU Court of Justice on Article 13 of Directive 2004/48/EC.



3. *Are class action or class remedies available in copyright matters?*

Yes, it could be possible to file a class action lawsuit in case of copyright infringement on a massive scale. In fact, however, we are not aware of legal cases on copyright based on class actions in Italy.

4. *If seizures before judgment are available, indicate what gives rise to such procedures and the criteria for granting them*

In criminal proceedings, the Police or other Law Enforcement authorities can seize the pirated or the counterfeited goods (i.e. the carriers embodying works without authorization of the rightowners) by an order of the Public Prosecutor during the investigations and in the pre-trial phase. Such seizure is aimed at providing evidence of the crime and it regards only the so-called *corpus delicti*.

The Italian Criminal Code provides also a “preventive” seizure against future occurrence of the same type of illicit conducts, especially when financial crimes are concerned. In this case the seizure order must be validated by a decree of the Pre-trial Judge (giudice delle indagini preliminari).

The Italian Copyright Law regulates expressly the civil remedy of seizure (Article 156 and following articles). In particular, upon assessment of the existence of an infringement, the rights holder can obtain the preventive measures (seizures and/or injunctions), in the course of a summary judgment, for the purpose of preventing the commencement or continuation of the unlawful conduct. The preventive measure is decided when the damage for rights holder could be extremely serious or irreparable, in case he had to wait for the conclusion of the proceedings on the merits.

5. *Are there in your country 1) criminal remedies 2) custom measures in connection with copyright?*

Yes. The Italian Copyright Law provides also criminal remedies in case of copyright infringement in articles from 171 to 171 nonies of the Italian Copyright Law.



The illicit conducts shall be punished by imprisonment or by a fine, depending on the gravity of the offense (e.g. if the illegal reproduction, communication to the public, commercialization etc. of the works is whether or not with lucrative purposes).

When the act is a more serious offense, the sanctions provided for by the Penal Code or other laws apply as well, such in the case, for instance, of fraud or organized crime (quite frequent when piracy activities are involved).

Customs enforcement measures are available to halt the import or export of pirated goods. Customs actions are either *ex officio* or they can follow an application of the interested party (ordinary procedure), with the customs authority; at the end of the procedure the authority can either clear the suspect pirated goods or detain them. Moreover, the rights holder is entitled to inspect the works subjected to the customs measure. By contrast, the *ex-officio* procedure implies the autonomous intervention of the customs authority in presence of sufficient grounds showing that the works or goods under investigation infringe IP rights.

Some years ago, SIAE, the Italian Collective rights Management Organization, entered into a cooperation agreement with the Italian Customs Agency, which is still in force.

8) *Does the notion of secondary copyright infringement in the digital world exist in your country? If so, describe briefly*

In Italy the notion of a specifically regulated secondary or contributory infringement in the digital world does not exist as such. Nevertheless, Article 156 of the Copyright Law specifically provides for the liability of intermediaries (i.e. internet service providers) whose services are used for the purposes of infringing copyright. Therefore, the right holder who has reasons to fear the infringement of his/her rights or wish to prevent the continuation or repetition of an infringement that has already occurred, can sue the online intermediaries. Moreover, the legislative decree 70/2003 has transposed the regime of the e-Commerce directive and establishes specific forms of liability for the various intermediaries. Under certain conditions, the Italian Courts have repeatedly acknowledged the joint liability of internet service providers for infringements committed directly by users of their services.



11) *Indicate whether copyright remedies are within the power of specialized courts or common law courts.*

In Italy since 2003, Copyright proceedings are in the competence of specialized sections/chambers of the civil Courts, located in the main cities of each region, having exclusive jurisdiction - both at first and second instance (appeal) - over all IP disputes (see article 134 of the Industrial Property Code).

Such specialized Sections were initially named “Intellectual and Industrial Property Rights Specialized Courts”; their jurisdictional competence has been extended to company law cases in 2012.