



## **Study Questions for Sydney 2017**

### **Quantification of monetary relief**

In litigation concerning infringement of IP rights, monetary relief is commonly requested by the IP rights holder. It is generally accepted that this relief should at a minimum be adequate to compensate for the loss suffered by the rights holder and to deter further infringement. When determining damages, it may be difficult to obtain economic evidence regarding infringement, and to estimate the appropriate quantum of damages to be awarded within the factual matrix of the dispute before the court. For example, where permanent price erosion has occurred, an injunction restraining future infringement together with compensation for past losses might not fully compensate the right holder. Predictable and logical rules for quantification are desirable as this allows the parties to have a reasonably clear idea of the likely quantum of damage, which may in turn encourage early settlement.

TRIPs provides, very generally, that the right holder should obtain damages adequate to compensate the injury suffered. However, rules for quantification of monetary relief vary considerably between jurisdictions. In some jurisdictions, quantification is based on general concepts of non-contractual liability (torts), or general common law principles relevant to damages. In other jurisdictions, there are specific provisions relating to damages for IP infringement. For example, European Directive 2004/48/EC of 29 April 2004 on the Enforcement of Intellectual Property Rights provides rules indicating various aspects of damages and loss to be taken into account when assessing monetary relief. Further, the amount of any damages award may vary significantly from one country to another, irrespective of the size of the market.

Given the cost of litigation and the need for business and legal certainty, it is timely for AIPPI to compare the various systems of quantification of monetary relief. This includes the consequences of the Enforcement Directive, particularly as to whether it has resulted in harmonised practices. The aim is to search for further international harmonisation and to formalise any general rules for the quantification of damages that can be applied in different factual situations, thus promoting legal certainty.