



2018 AIPPI World Congress - Cancún  
Adopted Resolution  
September 26, 2018

## Resolution

### 2018 – Study Question (General)

#### Joint liability for IPR infringement

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#### Background:

- 1) This Resolution concerns Joint Liability for infringement of patents, trademarks, designs and copyright.
- 2) In some cases, it is difficult, impractical or impossible for a single party to infringe intellectual property rights (*IPRs*) in protected subject matter. Alternatively, a party may not itself be infringing an IPR, but may contract with or employ or instruct others to perform some or all of the acts constituting infringement, thereby escaping liability for direct or indirect IPR infringement. It may therefore only be possible to find infringement by combining the actions of more than one party. This is commonly referred to as "Joint Infringement".
- 3) For the purpose of this Resolution:
  - a reference to ***Joint Infringement, Joint Liability*** or ***Joint Liability for IPR infringement*** means the defendant is jointly liable with one or more other parties, notwithstanding the defendant itself may not be liable for any act of direct Infringement, Indirect Infringement or Contributory Infringement under existing laws, and the term ***Jointly Liable*** should be understood accordingly;
  - ***Indirect Infringement*** means any infringement that is not direct infringement (but not including a Joint Infringement as such).
  - ***Contributory Infringement*** is defined as a species of Indirect Infringement, as follows:

*... [comprising] only the form of indirect infringement consisting in the offering or supply of means suitable for committing an act that is a direct infringement of an IPR; "contributory infringement" shall not include other acts known as indirect infringements, such as inducement or the provision of or other assistance than the offering or supply of means for committing a direct infringement.<sup>1</sup>*

- 4) This Resolution proposes harmonized rules for situations where acts of a party do not qualify as direct infringement or Contributory Infringement, but the party may nonetheless be held liable for such acts because those acts effectively endanger an IPR, if combined with the acts of others.
- 5) 43 Reports were received from AIPPI's National and Regional Groups and Independent Members providing detailed information and analysis regarding national and regional laws relating to this Resolution. These Reports were reviewed by the Reporter General Team of AIPPI and distilled into a Summary Report (see links below).
- 6) At the AIPPI World Congress in Cancun in September 2018, the subject matter of this Resolution was further discussed within a dedicated Study Committee, and again in a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

**AIPPI resolves that:**

- 1) A party who assists in or otherwise facilitates an IPR infringement taking place in a particular jurisdiction, should be held liable for Joint Infringement arising in that jurisdiction in case where:
  - the party has actively participated in or in a substantial manner facilitated the IPR infringement and
  - the party knows of, or should have known of, said IPR infringement; including when the said party did not take reasonable steps to avoid participating in or in a substantial manner facilitating the IPR infringement after being notified of the infringing activity.
- 2) If no IPR infringement can be established by the acts of a single person, but the IPR infringement only arises by the collective acts of two or more parties, any such party meeting the conditions of paragraph (1) should be considered Jointly Liable.

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<sup>1</sup> Resolution on Q204 – "Liability for contributory infringement of IPRs" (Boston, 2008)

- 3) Where only some of the activities that would constitute Joint Infringement by two or more parties occur within a given jurisdiction, the courts in the jurisdiction should be allowed to consider the activities of any of the parties which have taken place in another jurisdiction, subject to a sufficient objective connection with the jurisdiction.
- 4) The available remedies against acts constituting Joint Infringement should not differ from the remedies available in case of direct infringement and Indirect Infringement. The following remedies should inter alia be available in the ruling jurisdiction against acts constituting Joint Infringement: preliminary injunctions, permanent injunctions, and damages (and other forms of monetary compensation).
- 5) All the parties liable under Joint Liability should be jointly and severally liable in damages. Claims for contribution between those parties may reflect the extent of each party's role.

**Links:**

- [Study Guidelines](#)
- [Summary Report](#)
- [Reports of National and Regional Groups and Independent Members](#)