

Report Q204

in the name of the Greek Group
by Helen PAPACONSTANTINO

Liability for Contributory Infringement of IPRs

Questions

1) Analysis of current legislation and case law

- 1) *Does your national law provide for liability for contributory infringement of IPRs, in respect of the offering or supply of means for working an invention, for enabling illicit commercial use of a trademark, for making a copyrighted or design protected product, etc.?*

Greek IPR laws do not provide for contributory infringement of IPRs. However, generally applicable legal principles are available to protect IP holders against contributory infringers. One of the difficulties in establishing liability of the supplier with means or material part of the invention for exploiting the invention is in determining whether the supplier knows or whether it is obvious from the circumstances that the means are suitable and intended for exploiting the invention.

- 2) *If so, is it a condition for such liability that the means supplied are actually used by another (the person supplied) for committing acts that amount to direct infringement of the IPR in the same country (or in another country where there is a corresponding IPR)? Are there any additional conditions that apply in such cases?*

The above-mentioned general legal principles would be mainly applicable if the means supplied are actually used by the person supplied to infringe the IPR in Greece.

- 3) *If it is not a condition for liability for contributory infringement that the means supplied are actually used by another (the person supplied) for committing acts that amount to direct infringement in the same country (or in another country where there is a corresponding IPR), is it then, on the other hand, a condition for such liability, for example*
- that the means offered and/or supplied were suitable to be put into an infringing use;*
 - that the means relate to an essential, valuable or central element in the invention or product or service that constitutes direct infringement;*
 - that the means offered and/or supplied were actually intended for such use on the part of the person supplied;*
 - that the means offered and/or supplied were intended to be put to that use in the country in which they were offered or supplied;*
 - that, at the time of offering and/or supply of the means, the suitability and intended use were known to the supplier or were obvious under the circumstances; or*
 - that, to the extent the means are staple commercial products, the supplier induces the person supplied to infringe directly?*

Are there other conditions? Please respond separately for patents, trademarks, designs, copyright etc., if the rules differ from each area of IPR to the other.

In addition to the conditions that the means supplied are actually used by another (the person supplied). The conditions under b, c, d and e could be the basis of establishing liability for contributory infringement.

With regard to sub-paragraph (f) we cannot indicate any other conditions.

- 4) *Are the rules concerning contributory infringement set out in the laws protecting IPR?*
No.
- 5) *If such protection is not set out in the laws protecting IPR, does it follow from generally applicable principles of e.g. tort law?*
Yes.
- 6) *What are the legal consequences of holding an act to be a contributory infringement of an IPR, in particular:*
- can the IPR owner obtain injunctive relief to the same extent as in case of direct infringement?*
 - can the IPR owner obtain damages and other compensation to the same extent as in case of direct infringement, or only relative to the contributory infringer's contribution?*

Under the general legal rules, the IPR owner can obtain injunctive relief acting against the "supplier" to the same extent as in case of the supplied, because it is accepted that the defendants committed joint tort. If joint tort is found and their acts are deemed integral, they will have to pay damages jointly.

II) Proposals for substantive harmonisation

- 7) *Should measures generally be available against acts that qualify as contributory infringement of IPRs, as defined in these Working Guidelines?*

Measures generally should be available against acts that qualify as contributory infringement of IPRs as defined in these Working Guidelines. However, we believe that in addition to the traditional contributory infringement doctrine, there are concerns, which should be taken into consideration regarding liability for contributory Trademark and Copyright Infringement. Such Contributory Trademark or Copyright Infringement can occur, for instance, if the proprietor of a flea market provides a marketplace for the sale of counterfeit goods.

Rules might be issued which address landlord liability and mandate fines for failure to maintain market order. The traditional contributory infringement doctrine should be applied also on online cases, such as online auctions, websites, etc.

- 8) *If so, what should be the conditions for holding an act to be a contributory infringement of an IPR?*

The conditions should be the same, namely contributory infringer will be the one who brings about to happen the direct infringement which probably could not have taken place without the support service the contributory infringer provided.

- 9) *Should the conditions be different for different kinds of IPRs? Why?*

No.

10) *What should be the legal consequences of holding an act to amount to contributory infringement of an IPR, in particular?*

- *Should the IPR owner be able to obtain injunctive relief to the same extent as in case of direct infringement?*

Yes.

- *Should the IPR owner be able to obtain damages and other compensation to the same extent as in case of direct infringement, or only relative to the contributory infringer's contribution?*

Yes. The IPR owner should be able to obtain damages and other compensations only relative to the contributory infringer's contribution.

11) *Should the legal consequences be different for different kinds of IPR? Why?*

No.

12) *Does your Group have any other views or proposals for harmonisation in this area?*

No.

Summary

In Greece, general applicable legal principles are available to protect IP holders against contributory infringers.

It is in fact a condition for the liability of the supplier that the means supplied are actually used for committing acts that amount to direct infringement of the IPR in the same country. Nevertheless, the conditions enumerated in para 3 might constitute also basis for said liability.

It is desirable that measures generally be available against acts that qualify as contributory infringement of IPRs.

The traditional contributory doctrine should be extended to include landlord liability, online cases, etc. and, in any case, the IPR owner should be able to obtain injunctive relief to the same extent as in case of direct infringement.

The Greek Group of AIPPI is in favour of a harmonization of rules to combat the contributory infringer's activities.

Résumé

En Grèce, des principes de droits généralement applicables sont disponibles afin de protéger les titulaires des droits de propriété intellectuelle contre la violation indirecte de ces droits.

En vérité, une condition pour établir la responsabilité du fournisseur soit que les moyens fournis sont, en fait, utilisés pour commettre une acte qui mène à une violation directe des droits de propriété industrielle dans le pays même. Toutefois, les conditions énumérées au paragraphe 3 du questionnaire, pourraient constituer une base pour établir cette responsabilité.

Il serait souhaitable d'avoir des mesures généralement disponibles contre des actes qui sont caractérisées comme une violation indirecte des droits de propriété intellectuelle.

La doctrine traditionnelle de contribution devrait être élargie afin d'inclure la responsabilité du bailleur, les affaires en ligne etc. et, en tout cas, les titulaires des droits de propriété intellectuelle

devraient être capables d'obtenir une action en cessation au même étendue qu'au cas de violation directe de droits.

Le groupe grec de AIPPI est favorable à l'harmonisation de règles combattant les activités qui concernent la violation indirecte de droits.

Zusammenfassung

In Griechenland sind generell anwendbare Rechtsprinzipien zum Schutz von Inhabern von geistigem Eigentum gegen die Beihilfe zu Rechtsverletzungen vorhanden.

Es ist in der Tat eine Voraussetzung für die Haftbarkeit des Lieferanten, dass die gelieferten Mittel wirklich genutzt werden um Handlungen zu begehen, welche sich auf eine direkte Rechtsverletzung von geistigem Eigentum in dem selben Land beziehen. Nichtsdestotrotz können auch die Voraussetzungen des Paragraph 3 eine Grundlage für eine derartige Haftung darstellen.

Es ist wünschenswert, wenn generelle Massnahmen gegen Handlungen, welche eine mitwirkende Rechtsverletzung von geistigem Eigentum darstellen, vorhanden sind.

Die herkömmliche Beihilfe- Lehrmeinung sollte erweitert werden, um auch Grundbesitzerhaftung, online- Fälle, usw., einzubeziehen, und, in jedem Fall, sollte der Inhabern von geistigem Eigentum in der Lage sein, im selbem Umfang wie auch in Fällen der direkten Rechtsverletzung eine Unterlassungsklage anzustrengen.

Die griechische AIPPI-Gruppe spricht sich für eine Harmonisierung der Vorschriften zur Bekämpfung von beihilfeleistenden Rechtsverletzern aus.