



# Civil, administrative, criminal liability & sanctions:

## Distinction in view of Lithuanian IP legislation & practice

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# Outline

- **The Baltics (Lithuania, Latvia & Estonia):**
  - Brief Historical Facts
  - General Info on Implementation of Enforcement Directive 2004/48/EC
- **IP Cases (Liability Criteria & Sanctions): Lithuanian Example**
  - Civil
  - Administrative
  - Criminal
- **Special Focus: “Commercial Scale” of Infringing Activities**
- **Conclusion**





# The Baltics: Brief Historical Facts

## Lithuania, Latvia & Estonia:

- independent from the Soviet Union since 1990/1991
- Contracting States to almost all IP international treaties
- Members of the WTO since 1999 (Latvia and Estonia) & since 2001 (Lithuania)
- Members of the EU since 1 May 2004  
→ EU directives on IP rights implemented (full or in part),  
Regulation 1383/2003/EC directly applicable





# 2004/48/EC Enforcement Directive

Implemented by the Baltics by the end of 2006/  
the beginning of 2007

Main outcomes re national IP legislation:

- Establishment of full-scale civil enforcement
- Approximation of the national IP laws
- Establishment of new civil enforcement measures
- Broadening *locus standi*
- Definition of “*commercial scale*”





# Remaining Enforcement Issues

- Almost literal transposition of the harmonizing provisions
- No extensive IP court practice
- Unenforceability of some new civil enforcement provisions
- Drawbacks in the national judicial systems
- High rate of IP piracy, the growth of internet piracy & piracy at the borders





# IP Civil Liability

## Lithuanian Copyright Law:

**for the acts which infringe any copyright, related rights and *sui generis* rights, protected by this Law and other laws**

## Lithuanian Industrial Property Laws:

**for acts which infringe industrial property rights as they are defined and protected under those laws**

## Notes:

- ✓ *no commercial scale* required
- ✓ in order to adjudicate civil damages, cumulative civil liability conditions against civil delicts are to be fulfilled





# IP Civil Remedies (1)

## Lithuanian Copyright Law:

(Lithuanian Industrial Property Laws: similar provisions)

- **Recognition of rights**
- **Injunctions**
- **Prevention from carrying out infringing acts**
- **Redress of the infringed moral rights**
- **Exaction of unpaid remuneration**
- **Right of information, measures for preserving evidence, publication of judicial decisions, etc.** (newly amended due to implementation of 2004/48/EC Directive)





# IP Civil Remedies (2)

- **Material damages**
- **Royalties or fees** (newly amended due to 2004/48/EC Directive)
- **Compensation in the amount of up to 1,000 minimum living standards (~37,650 Euro)** (only in Lithuanian Copyright Law)

## Notes:

- ✓ adjudication of a lump-sum compensation most applicable
- ✓ courts estimate infringer's culpability, property status, causes of unlawful actions, amount of illegal copies, other circumstances relevant to the case, as well as the criteria of good faith, reasonableness & justice







# IP Administrative Liability & Sanctions

Lithuanian Code of Administrative Offences, Art. 214(10):

for illegal public performance, reproduction, communication to the public, any other use in any way and with any means of literature, scientific or art works (including computer programs and databases), or of the subject of related rights or any part thereof for *non-commercial purposes* as well as distribution, carriage or storage of them for *commercial purposes*

Sanctions:

**administrative fines plus confiscation**

Notes:

- ✓ mostly cases re illegal reproduction or distribution
- ✓ imposed fines do not seem deterrent
- ✓ just recently amended by solving important legislative discrepancies





# IP Criminal Liability & Sanctions

## Lithuanian Criminal Code, Arts. 191-195:

- Appropriation of authorship
- Illegal reproduction of copyrightable work/the subject of related rights or part thereof, and distribution, carriage or storage of illegal copies
- Destruction or damage of DRMs
- Illegal removal of TPMs
- Infringement of industrial property rights

### Sanctions:

**community works or fine, or deprivation of liberty, or arrest, or imprisonment up to 2 years plus confiscation**

### Notes:

- ✓ illegal reproduction, distribution, also storage of illegal copies most common in practice
- ✓ only direct intent
- ✓ legal person is also liable





# Distinction: Administrative or Criminal

- **Amount of illegal copies (objective criteria)**  
more than 100 minimum living standards (~3,800 Euro)  
→ criminal liability, less amount → administrative liability
- **Illegal distribution**  
→ illegal public performance, communication to the public and making available to the public of illegal copies are not covered under Criminal Code  
→ administrative liability possible

## Notes:

- ✓ no criminal liability for IP crimes committed online
- ✓ “*commercial purposes*” (subjective criteria) interpreted by the courts





# Focus: “Commercial Scale”

- TRIPS, Art. 61 (not defined)
- Directive 2004/48/EC, Recital 14 (defined)
- Draft Criminal Enforcement Directive, Art. 3 (not defined)
- “*Commercial purposes*” in Lithuanian IP laws:
  - defined in Lithuanian Copyright Law (since June 2006) = Recital 14 of the Enforcement Directive 2004/48/EC
  - in the Code of Administrative Offences not defined
  - in the Criminal Code not defined

## Note:

- ✓ patchy court practice, different legal outcomes possible





# “Commercial Scale”: Case Practice

## Lithuanian IP case practice

- Civil cases:  
direct or indirect economic (commercial) purposes → **covering not only economic gain from directly using protected subject-matter, but also indirectly gaining economic benefit from such use**
- Criminal cases:  
**a mere fact of storage of illegal copies by the company without actual use does not qualify as storage for commercial purposes (narrow interpretation)**

## Notes:

- ✓ due collection of evidence in order to prove *commercial scale (commercial purposes)* necessary
- ✓ recently amended: *commercial purposes* also required for illegal reproduction





# Conclusion

- Recent Amendments in Lithuanian Code of Administrative Offences & Criminal Code
  - not all issues solved, esp. those related to criminal liability for IP crimes online
- Two types of liability (administrative or criminal)
  - necessity still debatable
- National IP criminal case practice
  - interpretation of *commercial purposes* too narrow





# Thank you!

