

The background features a light blue-to-purple gradient. Scattered across the surface are numerous water droplets of various sizes, some with highlights and shadows, giving them a 3D appearance. In the center, a faint, semi-transparent globe is visible, showing the outlines of continents.

# COMPENSATION FOR INFRINGEMENT: ADMISSIBILITY OF PUNITIVE DAMAGES AND COMPENSATION OR MORAL PREJUDICE

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# ARTICLE 45 TRIPS AGREEMENT

- **DAMAGES**

- 1. THE JUDICIAL AUTHORITIES SHALL HAVE THE AUTHORITY TO ORDER THE INFRINGER TO PAY THE RIGHT HOLDER DAMAGES ADEQUATE TO COMPENSATE FOR THE INJURY THE RIGHT HOLDER HAS SUFFERED BECAUSE OF AN INFRINGEMENT OF THAT PERSON'S INTELLECTUAL PROPERTY RIGHT BY AN INFRINGER WHO KNOWINGLY, OR WITH REASONABLE GROUNDS TO KNOW, ENGAGED IN INFRINGING ACTIVITY.
- 2. THE JUDICIAL AUTHORITIES SHALL ALSO HAVE THE AUTHORITY TO ORDER THE INFRINGER TO PAY THE RIGHT HOLDER EXPENSES, WHICH MAY INCLUDE APPROPRIATE ATTORNEY'S FEES. IN APPROPRIATE CASES, MEMBERS MAY AUTHORIZE THE JUDICIAL AUTHORITIES TO ORDER RECOVERY OF PROFITS AND/OR PAYMENT OF PRE-ESTABLISHED DAMAGES EVEN WHERE THE INFRINGER DID NOT KNOWINGLY, OR WITH REASONABLE GROUNDS TO KNOW, ENGAGE IN INFRINGING ACTIVITY.

# ARTICLE 13 ENFORCEMENT DIRECTIVE (1)

1. MEMBER STATES SHALL ENSURE THAT THE COMPETENT JUDICIAL AUTHORITIES, ON APPLICATION OF THE INJURED PARTY, ORDER THE INFRINGER WHO KNOWINGLY, OR WITH REASONABLE GROUNDS TO KNOW, ENGAGED IN AN INFRINGING ACTIVITY, TO PAY THE RIGHTHOLDER DAMAGES APPROPRIATE TO THE ACTUAL PREJUDICE SUFFERED BY HIM/HER AS A RESULT OF THE INFRINGEMENT.

WHEN THE JUDICIAL AUTHORITIES SET THE DAMAGES:

(A) THEY SHALL TAKE INTO ACCOUNT ALL APPROPRIATE ASPECTS, SUCH AS THE NEGATIVE ECONOMIC CONSEQUENCES, INCLUDING LOST PROFITS, WHICH THE INJURED PARTY HAS SUFFERED, ANY UNFAIR PROFITS MADE BY THE INFRINGER AND, IN APPROPRIATE CASES, ELEMENTS OTHER THAN ECONOMIC FACTORS, SUCH AS THE MORAL PREJUDICE CAUSED TO THE RIGHTHOLDER BY THE INFRINGEMENT; OR

## ARTICLE 13 ENFORCEMENT DIRECTIVE (2)

- (B) AS AN ALTERNATIVE TO (A), THEY MAY, IN APPROPRIATE CASES, SET THE DAMAGES AS A LUMP SUM ON THE BASIS OF ELEMENTS SUCH AS AT LEAST THE AMOUNT OF ROYALTIES OR FEES WHICH WOULD HAVE BEEN DUE IF THE INFRINGER HAD REQUESTED AUTHORISATION TO USE THE INTELLECTUAL PROPERTY RIGHT IN QUESTION.
- 2. WHERE THE INFRINGER DID NOT KNOWINGLY, OR WITH REASONABLE GROUNDS KNOW, ENGAGE IN INFRINGING ACTIVITY, MEMBER STATES MAY LAY DOWN THAT THE JUDICIAL AUTHORITIES MAY ORDER THE RECOVERY OF PROFITS OR THE PAYMENT OF DAMAGES, WHICH MAY BE PRE-ESTABLISHED.

# ARTICLE 13 ENFORCEMENT DIRECTIVE (3)

- UNDO THE EFFECTS OF THE INFRINGER'S ACTIVITY
- MORAL PREJUDICE
- REASONABLE ROYALTY

# LIFFERS V PRODUCCIONES MANDARINA

- CASE C-99/15 ECLI:EU:C:2016:173
- COMPENSATION AT ROYALTY RATE IS BOTTOM LINE
- OTHER ELEMENTS CAN BE ADDED
- INCLUDES COMPENSATION FOR MORAL PREJUDICE

# STOWARZYSZENIE “OŁAWSKA TELEWIZJA KABLOWA” W OŁAWIE V STOWARZYSZENIE FILMOWCÓW POLSKICH W WARSZAWIE

- C-367/15      ECLI:EU:C:2017:36
- DOUBLE ROYALTIES
- WAY TO CALCULATE ADDITIONAL HEADS OF COMPENSATION
- NO PUNITIVE DAMAGES (?)

# CONCLUSION

- ADDITIONAL CLARIFICATIONS
- UNDO NEGATIVE EFFECTS OF INFRINGER'S ACTIVITY
- MORAL DAMAGES / DOUBLE ROYALTIES
- PUNITIVE DAMAGES AS HOT A POTATO AS EVER
- ISSUES TO BE ADDRESSED IN REVIEW OF THE ENFORCEMENT DIRECTIVE