

Intellectual Property**Damages compensation across various jurisdictions**By **Emanuela Truffo**

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(April 16, 2021, 11:40 AM EDT) -- When a claimant brings a case to court, he or she is hoping that someone appointed by the state and administering justice on behalf of his or her fellow citizens makes things right.

The claimant alleges that a third party — the defendant — conducted themselves in a way that led to a claimant's detriment, and in contravention of rights granted by the law. The damages should be repaired somehow by the defendant.

In a nutshell, this is a tort action, no matter what kind of legal framework you are working in.

Basically, a tort is a tort, but the way a case should be built to get to court is substantially different from one country to another. And the primary difference between common law and civil is not the only question that arises.

Continental Europe represents the quintessence of civil law; it actually has its roots in the legal tradition of ancient Rome, developed centuries before Christ. Yet the dispute resolution is not as harmonized as one might expect, especially considering that almost all continental Europe is part of the European Union. This chart gives a quick overview:

Cases focused on one jurisdiction are relatively easy to cope with. The scenario is completely different when you have to manage multijurisdictional actions.

More often than not, procedural rules raise strategic conundrums. For instance, pursuant to article 125 of the *Italian Intellectual Property Code*, as well as article 2043 of the *Italian Civil Code*, a claimant is not required to choose between the legal criteria that determine damages compensation. Actually, the damages claim should not be determined economically. The claimant is allowed a precise amount of money after the discovery phase and depends on the outcome of the discovery itself. In other countries, it is exactly the opposite.

Furthermore, in continental Europe the order of disclosure is not as broad as it is in common law systems. This might (badly) impact civil law strategy since you would not be in the position to choose whether or not to disclose a document. Although a document or information disclosed in a foreign trial is not automatically deployable in an Italian case, it can limit your chance of building and presenting your case to an Italian — and in a way of speaking, European — court.

That is the reason why multijurisdictional litigation can be so complex and expensive. And only relatively advantageous and enforceable.

No matter the legal system you are dealing with, torts (including IP cases) have basically the same target but different paths to be taken to reach it.

These issues and more will be discussed in a Tuesday April 20 webinar called Product liability, IP infringement and torts: damages compensation across jurisdictions.

Emanuela Truffo is a partner at Studio Legale Jacobacci e Associati in Milan, Italy. She specializes in

contentious and non-contentious intellectual property matters and commercial litigation across a wide range of local and international practices. She has developed expertise in negotiation and drafting of agreements such as licence, non-disclosure, non-compete and coexistence agreements concerning IP rights and copyright as well as for commercial transactions. The title of her presentation at the webinar is Product liability, IP infringements and torts: the basics of damages compensation pursuant Italian Law.

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