

# BASIC CRITERIA FOR DAMAGE COMPENSATION

Sandro Hassan

## 1) PROFITS LOST BY THE RIGHT OWNER

Italian Industrial Property Code	European Directive 2004/48
<p>Courts have to set damage compensation “<i>by taking into account all appropriate aspects, ... including the <b>profits lost</b> by the holder of the infringed right ...</i>” (art. 125.1)</p>	<p>When setting damages, judicial authorities “<i>shall take into account all appropriate aspects, ... including <b>lost profits</b> ...</i>” (art. 13.a)</p>

## 2) ROYALTIES

### Italian Industrial Property Code

Courts “*may set the damages as a lump sum based on the documents on file and on the presumptions resulting therefrom. In this case the amount of the lost profits is anyway not lower than that of the **royalties** which the infringer should have paid if he had obtained a license from the owner of the infringed right*”  
(art. 125.2)

### European Directive 2004/48

Judicial authorities “*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 authorization to use the intellectual property right in question*”  
(art. 13.b)

### 3) PROFITS MADE BY THE INFRINGER

#### Italian Industrial Property Code

*“The holder of the infringed right may request the recovery of the **profits obtained by the infringer**, either as an alternative to the compensation for lost profits, or to the extent the infringer’s profits exceed such compensation”*  
(art. 125.3)

#### European Directive 2004/48

Among the aspects to be taken into account when setting damages, there are “*any **unfair profits made by the infringer**”*  
(art. 13.a)