

**Universität Trier**

## The impact of the ECJ ruling C-367/15 (Olawska) on IP damages in Germany

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### | IP damages in a nutshell




NEUE SCHRIFTEN ZUM ZIVILRECHT Band 5  
Benjamin Raue  
**Die dreifache Schadensberechnung**  
Eine Untersuchung zum deutschen und europäischen Immaterialgüter-, Lauterkeits- und Bürgerlichen Recht  
Nomos

**600 pages**

**'10 Minutes**



= The calculation of IP damages in the EU, F, UK, D, CH and USA), 2017



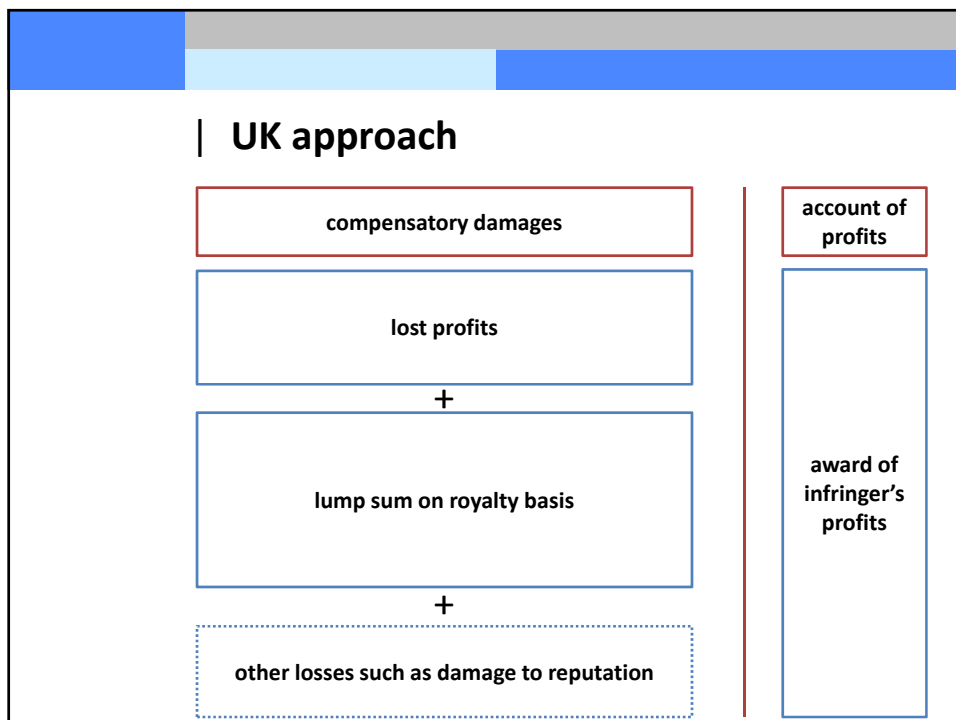
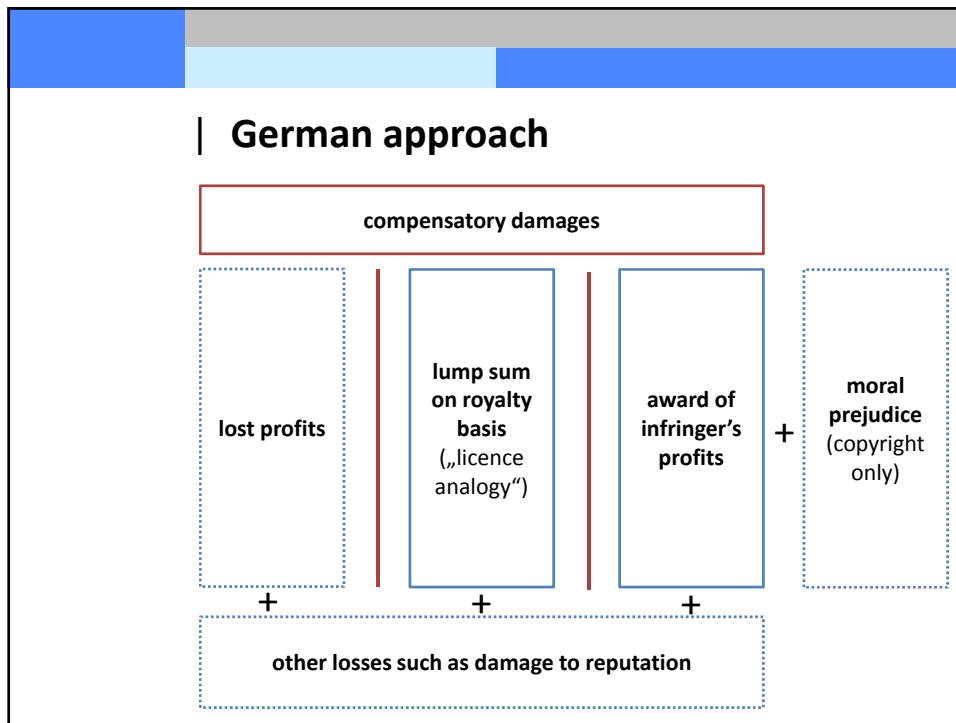
| **Art. 13 Enforcement Directive 2004/48/EC**

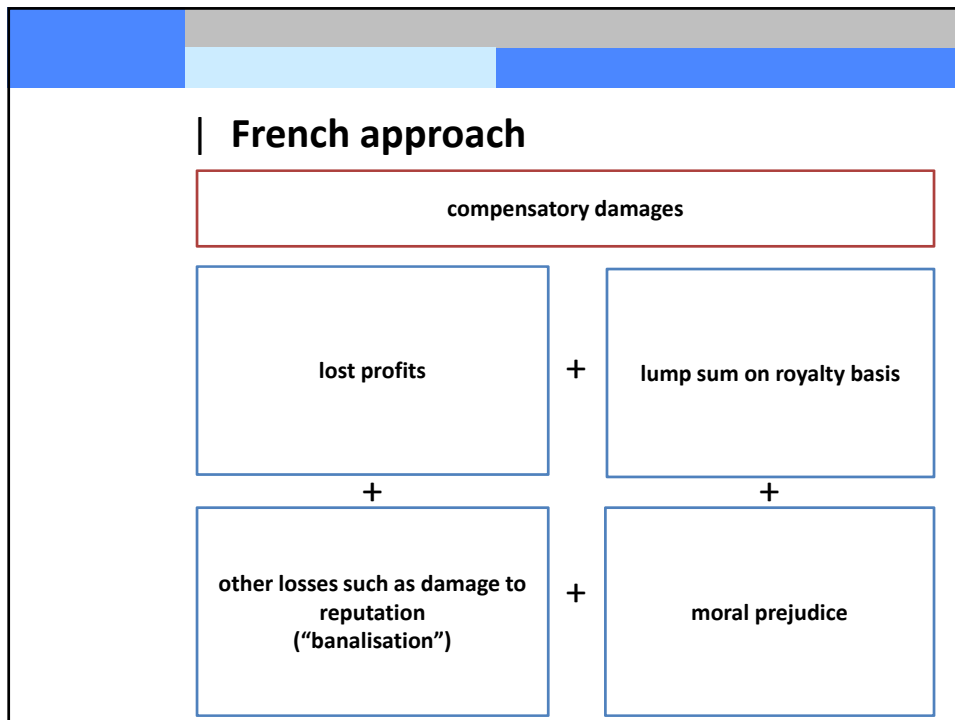
→ harmonisation of IP damages

“damages appropriate to the actual prejudice suffered “

(a) “all appropriate aspects”	(b) “lump sum”
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harmonising effect so far...?





harmonising effect so far...?  
**quite small !**

is that going to change...?

| ECJ rulings on IP damages



17.3.2016,  
C-99/15  
Liffers

9.6.2016,  
C-481/14  
Hansson

25.1.2017,  
C-367/15  
Oławska Telewizja  
Kabl.

22.6.2016,  
C-280/15  
Nikolajeva

28.6.2016, C-57/15 -  
United Video  
Properties

2004  
EnfDir

2016

2017





**JUDGMENT OF THE COURT**  
**(Fifth Chamber)**  
**25.1.2017,**  
**C-367/15**  
**Oławska Telewizja Kablowa’/**  
**Stowarzyszenie Filmowców Polskich**



v.

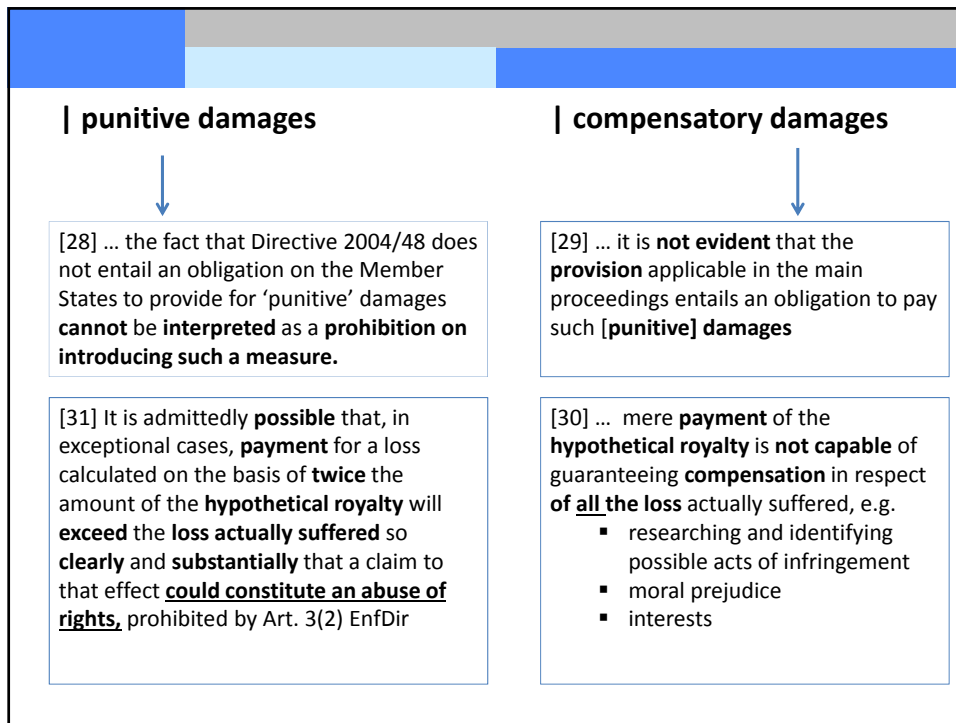


Stowarzyszenie  
Filmowców  
Polskich

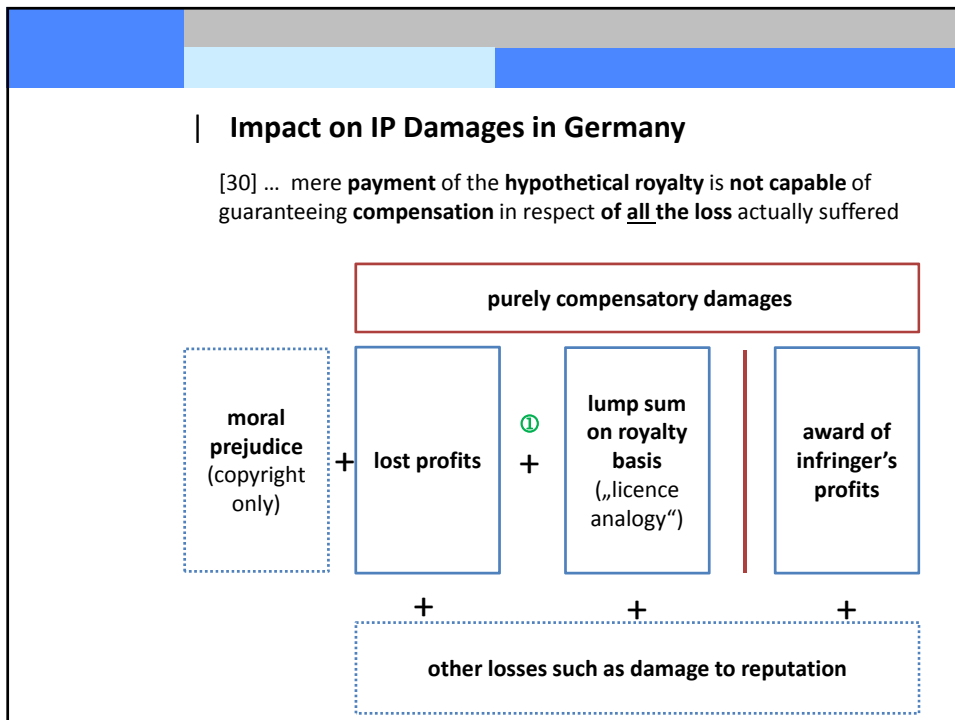
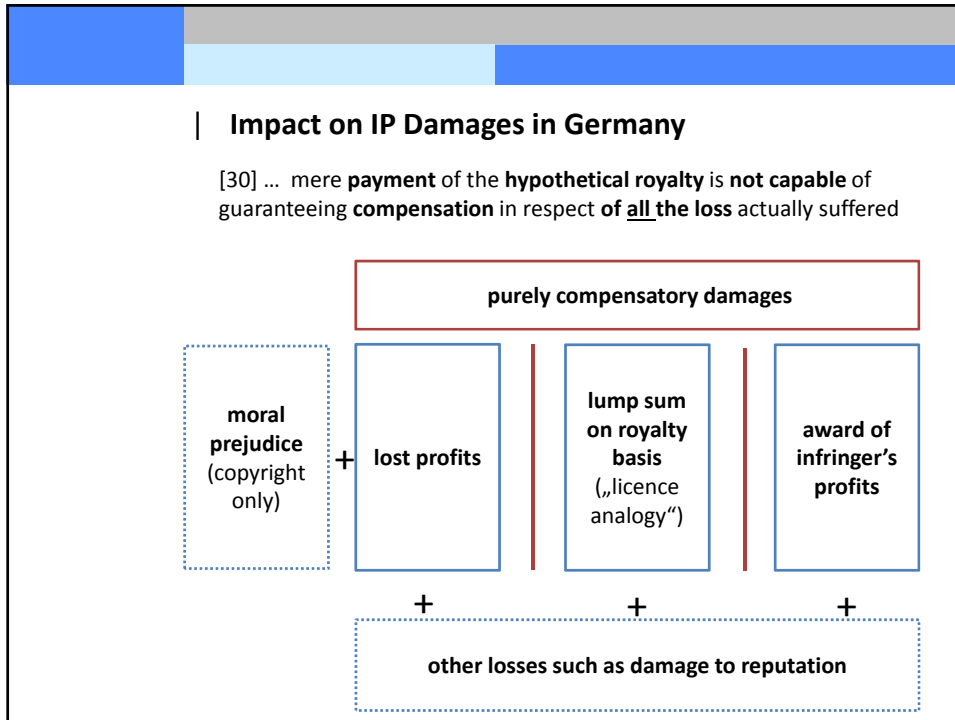
| **Question referred**

Whether Article 13 EnfDir precludes national legislation

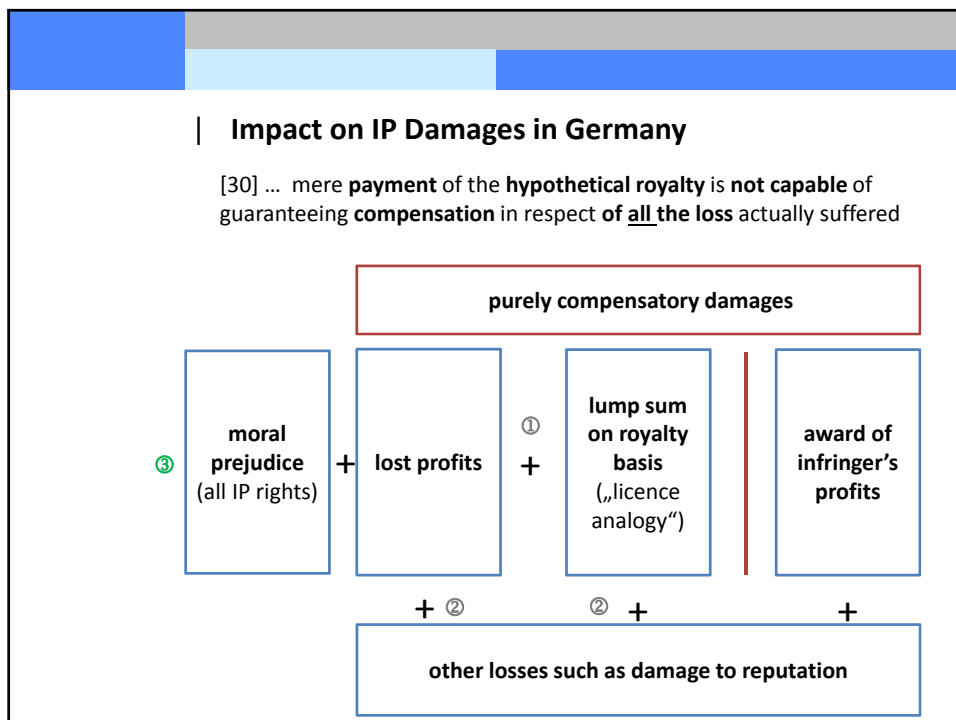
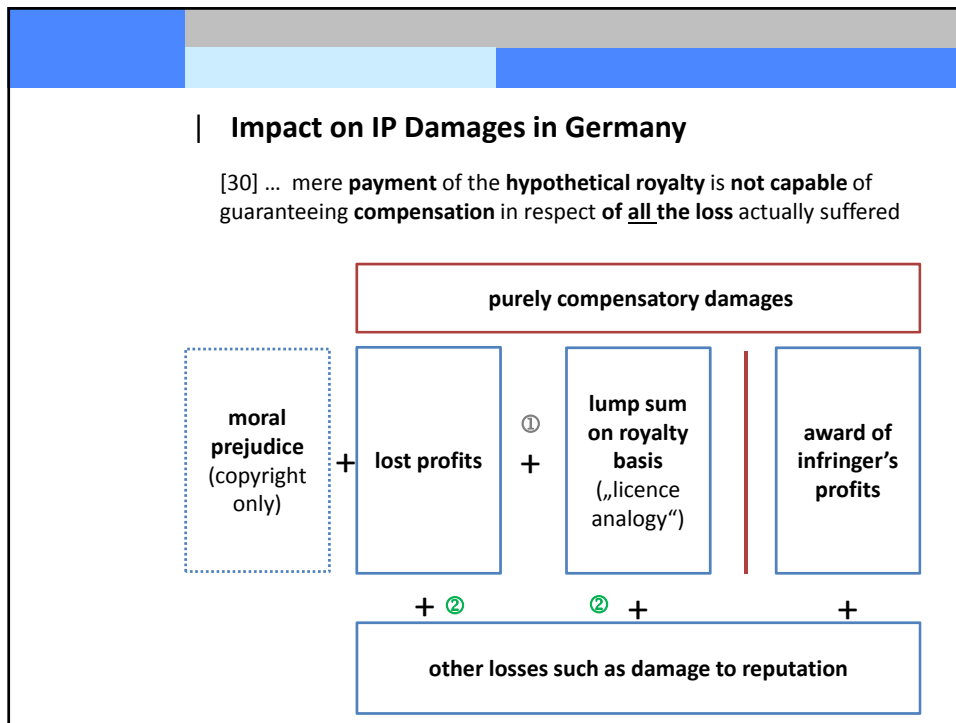
- » under which the holder of an intellectual property right that has been infringed
- » may demand the payment of a sum
- » corresponding to *twice the appropriate fee* which would have been due if permission had been granted?



Impact on IP Damages in Germany...

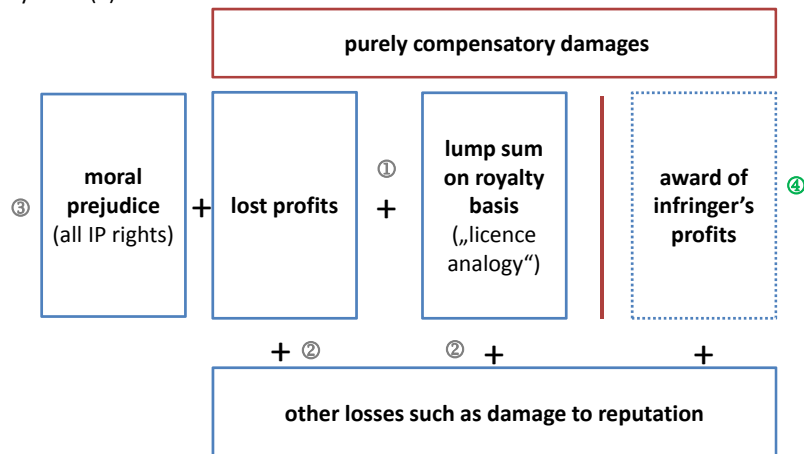






### | Impact on IP Damages in Germany

[31] It is admittedly **possible** that, in exceptional cases, **payment** for a loss calculated on the basis of **twice** the amount of the **hypothetical royalty** will **exceed** the **loss actually suffered** so **clearly** and **substantially** that a claim to that effect **could constitute an abuse of rights**, prohibited by Art. 3(2) EnDir



harmonising effect so far...?

**quite small !**

is that going to change...?

**quite likely !**