

Conclusions of the second study commission 2012 on Aspects of intellectual property disputes

a) Protection of artistic or literary reputation

b) The court's use of experts or assessors

a) Protection of artistic or literary reputation

There was substantial harmonization of substantive law on protection of literary and artistic reputation because many countries are signatories to the Bern Convention for the Protection of Literary and Artistic Works and other treaties. For countries that are not signatories to the convention, the laws did not appear to be very different but it is more difficult for a person whose rights have been infringed to sue in a foreign country because they must enliven the Court's jurisdiction. Few countries award punitive damages. A few countries have fixed lump sum awards for infringement but most countries require proof of damage. Remedies may also include injunctive relief and destruction of the infringing works.

b) The court's use of experts or assessors

Most courts rely heavily on experts or assessors to assist them in deciding intellectual property disputes because of specialist technical nature of such disputes. Common issues about the use of experts include that:

- Judges need to be educated about the technical issues and often find that experts do not explain the technical issues in a way that judges can understand. To overcome this problem, some courts appoint assessors whose role specifically is to educate the judge on the technical issues.
- Experts engaged by a party can lack objectivity and neutrality and so do not provide the assistance that Courts need to decide cases. To overcome this problem, some courts appoint independent experts paid for by the court or use assessors. Other courts rely upon their own court processes to direct how experts should fulfill their tasks.
- The lack of available experts to assist the court, causing delays in determining cases.

There was discussion on practical tips for dealing with these problems and on better use of court processes to control how parties present expert evidence.

The topic for next year is:

Aspects of civil procedure:

- (a) Access to justice for self represented litigants;
- (b) Civil process reforms