

Assessing Copyright and Related Rights Systems

# Application of Sanctions and Remedies for Copyright Infringement

Report on Piloting in Finland





cupore

**Assessing Copyright and Related Rights Systems: Application of Sanctions and Remedies for Copyright Infringement. Report on Piloting in Finland.**

This report is the result of the first pilot study implementing Methodology Card 7 – *Application of Sanctions and Remedies for Copyright Infringement*, one of the 37 indicators constituting a methodology framework for assessing the operation of national copyright and related rights systems. The methodology framework has been developed at the Foundation for cultural policy research (Cupore) in Finland as part of a project financed by the Finnish Ministry of Education and Culture. The pilot study was conducted by Jussi Ilvonen and Ville Toro, students at the Faculty of Law at the University of Helsinki, as part of an internship at the Foundation for Cultural Policy Research between February and June 2013. The work was supervised by Professor Rainer Oesch (University of Helsinki), the steering group of the project, as well as the core project team. The results were first published in December 2013 on the website of Cupore.

*A handbook presenting the methodology framework is available on the website of Cupore at [www.cupore.fi](http://www.cupore.fi).*

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## Executive summary

This document presents data collected in application of a methodology framework to assess the operation of copyright and related rights systems. More precisely, the information and analysis below correspond to the seventh methodology card presented in the methodology handbook, titled “Application of Sanctions and Remedies for Copyright Infringement”. The goal of this report is primarily to answer to the key question presented in the Methodology Card: how are legal sanctions and remedies applied in cases of copyright infringement?

When compared to the number of all civil cases in total in Finland, the *number of civil cases concerning copyright and related rights* is very small. A significant majority of the cases relate to the application of Section 60 a of the Copyright Act (disclosure of contact information). The number of such cases has increased rapidly over the last few years.

The report analyzes how the available civil sanctions and remedies for copyright infringement, such as restraints on the defendant from future infringements of copyright, are applied by the court.

In terms of *criminal enforcement of copyright and related rights*, there are not many court cases annually. Most criminal infringements are punished by a fine via penal order proceedings; all of those cases concern copyright violation under Section 56a of the Copyright Act. As for copyright offenses (Chapter 49, Section 1 of the Criminal Code), most cases end up punished with fines. There have been only a few cases resulting in suspended imprisonment penalties in recent years, and none of them have resulted in unconditional imprisonment. The use of other types of copyright-related criminal sanctions seems virtually non-existent. This is also reflected in statistics concerning the amount of crime known to the police and charges pressed by the prosecutor.

Overall, it seems that no significant obstacles prevent criminal sanctions and remedies: the criminal measures are relatively affordable to use; the number of investigations cleared by the police is somewhat in correlation with the number of crimes discovered; charges are being pressed somewhat correlatively to the amount of police-cleared cases submitted to the prosecutor; and penalties are imposed somewhat according to the earlier stages of criminal proceedings. However, as for the access to sanctions in higher courts, the average length of proceedings and the use of coercive measures, the results are so far inconclusive, as no sufficient statistical data regarding the different sanctions was available at the time of making this report.

Lastly, the report assesses the number of copyright infringements exposed and articles confiscated by customs on the basis of potential copyright infringement. These numbers are very small especially when compared to the size of the lawful markets. This indicates that physical piracy is relatively rare in Finland.

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## Introduction

### ***A. CONTEXT OF THE PILOT STUDY***

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A methodology framework for assessing the operation of national copyright and related rights systems has been developed at the Foundation for cultural policy research (Cupore) in Finland. It is a collection of tools for achieving a systematic assessment of the functioning, performance and balanced operation of national copyright and related rights systems.

In the methodology, the assessment of the copyright and related rights system is determined through a framework consisting of so-called description sheets and methodology cards. The description sheets constitute guidelines to produce a comprehensive presentation and description of a country's copyright and related rights system and its operating environment. The methodology cards propose the collection of specific sets of data, either quantitative, descriptive or qualitative, that will be used as indicators of the functioning, performance and balanced operation of the system. Description sheets and methodology cards are accompanied by detailed information on the data to be collected, as well as analysis guidelines that will help connect them to each other.

The methodology framework is envisaged to be continuously improved through application feedbacks. For more information, see the Cupore website, [www.cupore.fi/copyright.php](http://www.cupore.fi/copyright.php).

This report presents data collected in application of Methodology card 7 of the methodology framework, titled "Application of sanctions and remedies for copyright infringement". It is the result of the first pilot study applying this indicator in Finland<sup>1</sup>.

This study was conducted by Jussi Ilvonen and Ville Toro, students at the Faculty of Law at the University of Helsinki, as part of an internship at the Foundation for Cultural Policy Research between February and June 2013. The work was supervised by Professor Rainer Oesch, University of Helsinki, the steering group of the project, as well as the core project team.

### ***B. PRESENTATION OF THE INDICATOR***

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The indicator implemented here is intended to shed light on the enforcement of copyright laws and policies by private and public parties. It is part of the second pillar of the methodology framework, "Functioning and performance of the elements of the copyright system", and its second area, "Enforcement". It is an indicator which aims to assess the access to sanctions and remedies through the national court system, in order to support the analysis of the operation of the national copyright and related rights system.

As explained in the methodology handbook, enforcement is a key aspect to consider when measuring the efficiency of the copyright system as a whole; there is only little impact of copyright law if there is no enforcement. With growing possibilities for easy exchange of copyrighted works through digitalized forms, copyright infringement has increased in the past decennia, enforcement has become costly and the cases are increasingly difficult to prove.<sup>2</sup> In this context, evaluating the operation of official copyright enforcement procedures is a crucial step.

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<sup>1</sup> The study was conducted based on the draft version of the Methodology Handbook, dated 19.7.2012. This report is modified from the original report to better correspond to the version of the Methodology Handbook dated 20.12.2013.

<sup>2</sup> See Gowers Review of Intellectual Property conducted in the UK in 2005-2006: [http://www.hm-treasury.gov.uk/gowers\\_review\\_index.htm](http://www.hm-treasury.gov.uk/gowers_review_index.htm).

The act of enforcement covers three steps that follow a lack of compliance to regulations: first, the search for infractions and for information concerning them; second, the search for remedies through court or other methods of dispute resolution; and third, the carrying out of executive or judicial orders. Each step can involve both public authorities (police forces, custom officers, courts, etc.) and private parties (infringers and injured parties, private advisors or arbitrators). Each of these steps also includes costs incurred by the actors involved: public authorities will have to support costs related to the search for infractions and setting up and maintaining law courts while private parties will incur costs when pursuing remedies.

This indicator measures the average penalty given by judges, which directly tells about the application of sanctions in court; the relation of the number of requests for investigation; and the number of court cases, as part of both criminal and civil procedures. An additional set of data for studying the topic could be the number and proportion of court decisions resulting in legal sanctions.

The figures collected through this indicator can be interpreted through comparisons: a large number of requests for investigations leading to a significantly lower number of court cases might be a sign of malfunctioning of the enforcement system; the average level of penalties could be connected over time to the number of court cases and requests for investigation in order to assess the deterrent effect of these penalties; etc. Those figures analyzed side by side should point at anomalies in the use of sanctions and remedies for copyright infringement. In addition, when compared to penalties from other crimes (such as industrial rights offence), a certain level of understanding about the relative gravity of sanctions from copyright-related crimes can be built. However, these figures can also be further clarified by the information concerning out-of-court dispute resolution discussed in future reports.

A methodology card presenting the indicator can be found in Appendix 1 of this report.

### ***C. METHODS***

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This report was drafted together with the report on the implementation of Description sheet 9 – *Sanctions and remedies for copyright infringement*. These two reports cover the same topics from different perspectives: Description sheet 9 provides a description of sanctions and remedies available in cases of copyright infringement, and the methodology card applied here offers a statistical overview of their use. As a result, they cannot be considered separately; the same documentary sources were used and the same persons were interviewed. Information for understanding the legislation on sanctions and remedies for copyright infringement will be found in Description sheet 9.

The information collected for this indicator can be found through available national and international information sources. Therefore, the method chosen was desktop studies. The data was complemented by a series of expert interviews.

Lists of national and international information sources used for this report as well as a list of interviewees and commentators can be found in the Appendices.

## Results

### SECTION 1. CIVIL SANCTIONS AND REMEDIES

#### A. STATISTICAL DATA ON CIVIL CASES

In 2012, more than 400 000 civil disputes were concluded in the District Court. The number of civil disputes has increased quite significantly between 2008 and 2012. As may be concluded from the table below, in a large majority of cases, the decision of the District Court remained final. However, between the Court of Appeal and the Supreme Court, the difference in the number of concluded cases is much smaller. Thus, a decision of a Court of Appeal is appealed very often.<sup>3</sup> Appealing a decision of the Court of Appeal to the Supreme Court, however, generally requires a leave to appeal.<sup>4</sup>

	2008	2009	2010	2011	2012
District Court	230 148	304 928	316 126	347 997	422 727
Court of Appeal	2 028	1 997	2 102	2 054	n/a
Supreme Court	1 178	1 068	1 072	1 203	n/a
Total	233 354	307 993	319 300	349 404	n/a

Compared to the number of all civil disputes, the number of civil cases concerning copyright and related rights is very small. In 2012, 101 civil cases concerning the application of the Copyright Act were concluded in the District Court. It is important to note that the figures also include cases concerning the application of Section 60 a of the Copyright Act (disclosure of contact information). For example, in 2012, 85 of such cases were concluded in the District Court of Helsinki.<sup>6</sup> These are rather non-contentious civil cases (*hakemusasia*) than disputes (*riita-asia*). Therefore, the number of actual copyright disputes is much smaller than the figures would seem to indicate.<sup>7</sup> The drastic increase in the number of concluded cases between 2008 and 2012 is also explained by the increase in cases concerning the disclosure of contact information.<sup>8</sup>

Between 2008 and 2011, from one to eight civil cases concerning the application of the Copyright Act were concluded in the upper instances. Most, if not all of these cases are likely to be actual disputes. Between 2008 and 2011, the Supreme Court has rejected an application for leave to appeal from one to four times a year.<sup>9</sup> Thus, by a rough estimate a leave to appeal is granted in half of the civil cases concerning the application of the Copyright Act.

<sup>3</sup> And of course, a leave to appeal is requested even more often.

<sup>4</sup> Chapter 30, Section 2 of the Code of Judicial Procedure. For a detailed description on court proceedings, including appealing a decision, see the pilot report on Description Sheet 8.

<sup>5</sup> Statistics Finland.

<sup>6</sup> Henri Huhtinen of District Court of Helsinki. Most of the cases concerning the application of Section 60 a of the Copyright Act are handled by the District Court of Helsinki since the large telecommunications companies - namely Elisa, TeliaSonera and DNA - have a registered office in Helsinki (DNA since 2012).

<sup>7</sup> According to the interviews, many of the disputes concern the application of Section 57 of the Copyright Act (liability and compensation for damage).

<sup>8</sup> In the District Court of Helsinki, the number of concluded cases concerning the application of Copyright Act 60 a jumped from 27 in 2008 to 85 in 2012. (Henri Huhtinen of District Court of Helsinki).

<sup>9</sup> Statistics Finland.

<b>Table 2. Number of concluded civil cases concerning the application of the Copyright Act<sup>10</sup></b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>District Court</b>	37	62	76	105	101
<b>Court of Appeal</b>	1	4	4	8	n/a
<b>Supreme Court</b>	4	1	4	2	n/a
<b>Total</b>	42	67	84	115	-

Between 2008 and 2012, the average duration of process in all civil disputes in the District Court was approximately 2.4 months. The figure has remained relatively constant. The average duration of process in the upper instances was longer: 9.3 months in the Court of Appeal and 5.5 months in the Supreme Court between 2008 and 2011. All in all, the difference in average duration of process in civil disputes is quite notable between the three instances.

<b>Table 3. Average duration of process in all civil disputes in months<sup>11</sup></b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>District Court</b>	2.2	2.3	2.7	2.5	2.3
<b>Court of Appeal</b>	10.1	9.3	9.1	8.5	n/a
<b>Supreme Court</b>	5.2	5.3	5.6	5.7	n/a

Below are the figures concerning the average duration of process in civil cases concerning the application of the Copyright Act. The figures are, again, largely distorted by the fact that they also include data on cases concerning the application of Section 60 a of the Copyright Act. As stated earlier, these cases are rather non-contentious civil cases than disputes and thus, the process tends to be much shorter. Therefore, it is impossible to draw conclusions on the duration of process in actual copyright disputes from these figures, at least in the District Court.

The figures concerning the upper instances give a more truthful picture since most of the cases in the Court of Appeal and the Supreme Court are likely to be actual disputes. It is noticeable that the average duration of process in the Court of Appeal has increased significantly from 8.9 months in 2008 to 21.2 months in 2011. It is, however, important to remember that the number of cases concerning the application of the Copyright Act in the upper instances is very low and thus, a single case has a significant weight on the statistics. Nevertheless, it is possible to conclude that in the upper instances, especially in the Court of Appeal, the average duration of process in cases concerning the application of the Copyright Act is very long compared to many other civil cases, which concern a different subject matter.

<b>Table 4. Average duration of process in cases concerning the application of the Copyright Act in months<sup>12</sup></b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>District Court</b>	3.2	2.8	1.7	1.4	1.5
<b>Court of Appeal</b>	8.9	19.5	13.5	21.2	n/a
<b>Supreme Court</b>	12.1	3.4	6.3	13.6	n/a

<sup>10</sup> Statistics Finland. Statistics Finland place all civil cases concerning the application of Copyright Act under the category 'copyright disputes', which is rather misleading.

<sup>11</sup> Statistics Finland.

<sup>12</sup> Statistics Finland.

Below are the statistics about the number of cases concerning the application of the Copyright Act in the District Court by the type of conclusion. The statistics are, again, distorted by the inclusion of data on cases concerning the application of Section 60 a of the Copyright Act. This shows especially in the figures which indicate the number of cases in which the action (or application) has been allowed. To our knowledge, an application to disclose contact information has nearly always been allowed by the court.<sup>13</sup>

It is noteworthy that a rather large number of cases has been discontinued, either because of a settlement between the parties or for some other reason (a total of 30 cases between 2008 and 2012). Furthermore, the court has confirmed a settlement in six cases. According to Chapter 5, Section 26 of the Code of Judicial Procedure, “[i]n a case amenable to settlement the court shall endeavour to persuade the parties to settle the case”. Whether the relatively large number of settlements is a result from successful efforts by the judges or from some other reason is a question, however, which would require a separate study.

A case, which is amendable to settlement (e.g. all copyright disputes), is decided by default judgement in a situation where either party has 1) not submitted a requested written reply or statement or 2) has failed to appear at a hearing.<sup>14</sup> Between 2008 and 2012, 7 actions have been allowed and one action has been dismissed by default judgement. Without knowing the exact number of actual copyright disputes, it is, however, impossible to make any comparisons.

<b>Table 5. Number of concluded civil cases concerning the application of the Copyright Act in the District Court by the type of conclusion<sup>15</sup></b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Action (or application) allowed, total</b>	30	55	67	90	92
- Action allowed with a default judgement	1	4	-	1	1
<b>Action (or application) dismissed, total</b>	2	1	2	3	2
- Action dismissed with a default judgement	-	-	1	-	-
<b>Other conclusion, total</b>	5	6	7	12	7
- Action dismissed without considering merits	1	-	-	-	-
- Settlement confirmed	3	3	-	-	-
- Discontinued, settlement	1	1	3	8	2
- Discontinued, other reason	-	2	4	4	5
<b>Total</b>	<b>37</b>	<b>62</b>	<b>76</b>	<b>105</b>	<b>101</b>

All in all, it may be concluded that there are relatively few copyright disputes in Finland, at least when compared to the number of all civil disputes together. Most of the civil cases in the area of copyright and related rights concern the application of Section 60 a of the Copyright Act (disclosure of contact information). The duration of process in copyright civil cases is rather long in the upper instances, especially when compared to the duration of other civil cases.<sup>16</sup>

<sup>13</sup> In regard to the District Court of Helsinki, according to the interviews only once has the court denied such request.

<sup>14</sup> A default judgement may be given either in the preparation stage or in the main hearing. See Chapter 5, Section 13 and Chapter 12, Section 10 of the Code of Judicial Procedure.

<sup>15</sup> Statistics Finland.

<sup>16</sup> The centralisation of intellectual property matters to the Market Court will likely shorten the total duration of the process since the decision of the Market Court is appealed directly to the Supreme Court (subject to leave to appeal). For more information, see the pilot report on Description Sheet 8.

The fact that non-contentious civil cases are included in statistics which, by their title, should concern only disputes, is rather misleading.<sup>17</sup> Since data on these two separate case types, i.e. disputes and non-contentious civil cases, is presented together, it is somewhat challenging to make any precise conclusions from the figures.

## ***B. LIABILITY AND COMPENSATION FOR DAMAGE***

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Liability and compensation for damage caused by copyright infringement is regulated under Section 57 of the Copyright Act. The terminology here is twofold; Section 57(1) of the Act concerns a reasonable compensation (*hyvitys*) for unauthorised use and Section 57(2) concerns damages (*korvaus*) for any other loss, including mental suffering and other detriment. In addition, Section 57(3) includes a provision on damages caused by a punishable act. The provisions leave a lot of room for interpretation and the practice varies quite a lot.

## ***C. PROTECTION OF EVIDENCE***

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In civil cases concerning copyright the court has the power to confiscate material, which may have some significance as evidence in the trial. The requirements for such an order are defined under the Protection of Evidence in Industrial Property and Copyright Related Civil Cases Act. According to Section 3 of the Act, a confiscation may be ordered if the plaintiff proves the probability that he has a right, and that his right is being infringed or an infringement is about to happen immediately.

To our knowledge, the provision is rather rarely applied by the court. However, there are at least a few software-related cases where it has been successfully put into practice by the applicant. For example, in case 11/7472, the District Court of Helsinki ordered copies to be made of certain software, files and other material owned, possessed and used by the defendant.

## ***D. FORFEITURE***

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A court may declare illegal copies of a work and devices used in committing an unlawful act to be forfeited.<sup>18</sup> The purpose of forfeiture (*hävittämisestä*) is to prevent future infringements by the same person.<sup>19</sup> The rule is expressed in great detail under Section 58(1) of the Copyright Act.

The Supreme Court decision 1999:115 (*Electronic mailbox*) provides an example of the application of Section 58 of the Copyright Act. In the case unauthorised software on a hard drive of a computer and on a Digital Audio Tape was ordered to be destroyed (in addition to them being forfeited to the State as a means of commission of an offence under the Criminal Code). Earlier similar destruction orders have concerned video cassettes as well as rings, pendants, bracelets and their moulds.<sup>20</sup>

Section 59 of the Copyright Act represents an exception to the principles presented above. The court may, if deemed reasonable in view of the artistic or economic value of the copies or other circumstances, permit the copy to be made available to the public or otherwise to be used for the

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<sup>17</sup> In the statistics gathered by Statistics Finland all civil cases concerning the application of the Copyright Act are presented under the title “dispute over copyright”.

<sup>18</sup> This remedy is not to be confused with forfeiture (*menettämisestä*) as under Chapter 10 of the Criminal Code: See Sorvari 2007, p. 348–350.

<sup>19</sup> Harenko, Niiranen & Tarkela 2006, p. 531.

<sup>20</sup> Supreme Court decisions 1989:87 and 1980 II 3.

intended purpose in consideration of a specific remuneration to the plaintiff. However, to our knowledge the section has never been applied by the court, at least not by the upper instances.<sup>21</sup>

### ***E. PROHIBITION TO INFRINGE***

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According to Section 56 g of the Copyright Act “[i]f a person infringes the copyright, the Court of Justice may prohibit him to proceed with or repeat the act”. The prohibition may also be given as a temporary precautionary measure in accordance with Chapter 7, Section 3 of the Code of Judicial Procedure.<sup>22</sup>

The provision is not applicable against an intermediate, which has somewhat limited its practical significance. Thus, the Copyright Commission has proposed an addition of Subsection 2, which would allow courts to order an internet service provider to deny its clients access to a website whose purpose is to make available copyright protected content without the consent of the right holder.<sup>23</sup>

Currently, the court may give a blocking order against an internet service provider in accordance with Section 60 c of the Copyright Act. However, the plaintiff is then required to raise a claim for injunction against the actual infringer under Section 60 b of the Act. This has proved challenging or even impossible, since the identity of the website administrators often remains unknown.<sup>24</sup>

### ***F. GENERAL PRECAUTIONARY MEASURE***

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In general, the purpose of a precautionary measure is to ensure temporary legal protection via a court order in situations in which immediate legal protection is required. The court may issue a precautionary measure before the final decision, or even before parties have taken any other legal action. A precautionary measure prevents the adverse party from hindering or undermining the realisation of the right or decreasing its value or significance.<sup>25</sup> The requirements for ordering a temporary precautionary measure are defined under Chapter 7 of the Finnish Code of Judicial Procedure.

Judging from what we gathered from the interviews, Chapter 7, Section 3 of the Code of Judicial Procedure is rarely applied in copyright matters. As far as we know, none of the cases have reached the upper courts. As the provision is general in its application, it is very hard to infer any typical uses for it. However, below are two examples of the use of general precautionary measure in copyright matters.

In case 08/5859, the District Court of Helsinki prohibited the defendants, under a threat of a fine of 100 000 €, to publish, produce or make available to the public certain design and buying guides, and to use, repeat or continue certain procedures, which cause a misleading picture to the customers.

In case 03/5226, the District Court of Espoo prohibited the defendant, under a threat of a fine of 10 000 €, to perform music that was represented by a copyright organisation in a certain restaurant.

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<sup>21</sup> Sorvari 2007, p. 331.

<sup>22</sup> Government Proposal 26/2006, p. 20.

<sup>23</sup> Report of the Copyright Commission 2/2012, p. 49, 56. The Copyright Commission is... See...

<sup>24</sup> Report of the Copyright Commission 2/2012, p. 51.

<sup>25</sup> Havansi 2010, XI Erityiset prosessilajit ja vaihtoehtoinen riidanratkaisu > 1. Siviiliprosessin erityiset lajit ja vaihtoehtoinen riidanratkaisu > Summaariset prosessit siviiliasioissa > Turvaamistoimiprosessit.

▪ **OVERVIEW**

Article 8, Section 3 of Directive 2001/29/EC (generally referred to as the Information Society Directive) requires member states to “... ensure that right-holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right”. A similar provision is included in Article 11 of Directive 2004/48/EY (generally referred to as the Enforcement Directive).

In Finland, the requirement of the Information Society Directive was implemented by enacting Sections 60 a–d of the Copyright Act in 2005. Section 60 c was modified already in the following year to meet the requirements of the Enforcement Directive.<sup>26</sup>

▪ **DISCLOSURE OF CONTACT INFORMATION**

The court may order an Internet service provider to disclose contact information of a subscriber whose connection is used for making copyrighted material available to the public without the consent of the author.<sup>27</sup> Section 60 a (1) of the Copyright Act enables right holders to enforce rights against unknown infringers. Without the possibility to obtain contact information in civil proceedings, they would be forced to request a police investigation instead.<sup>28</sup> Finnish law does not allow for an Internet service provider to independently investigate the identification data of a subscriber who is suspected of making available infringing material; a court order is always required.<sup>29</sup>

<b>Table 6. Number of concluded cases concerning the application of Section 60 a of the Copyright Act in the District Court of Helsinki<sup>30</sup></b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Section 60 a of the Copyright Act</b>	27	38	62	87	85

The number of applications for disclosure of contact information have increased rapidly, at least in the District Court of Helsinki; in 2008 there were 27 concluded cases concerning the application of Section 60 a of the Copyright Act whereas in 2012, there were already 85 of such cases. As noted earlier, most of the cases concerning the application of Section 60 a of the Copyright Act are handled by the District Court of Helsinki. This is because the large telecommunications companies - namely Elisa, TeliaSonera and DNA - have a registered office in Helsinki (DNA since 2012). To our knowledge, only once has an application been dismissed.<sup>31</sup> Thus, the threshold for allowing an application cannot be very high. Most,

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<sup>26</sup> Sorvari 2007, p. 401–402.

<sup>27</sup> In *Promusicae v. Telefónica* (C-275/06), the European Court of Justice has stated that the TRIPS agreement does not contain provisions, which require the Electronic Commerce Directive, the Information Society Directive or the Enforcement Directive to be interpreted as compelling the Member States to lay down an obligation to communicate personal data in the context of civil proceedings (see paragraphs 60 and 70). Thus, it has been argued that, in Finland, copyright protection has been taken further than is required at the European Union level (Päivärinte 2012, p. 204).

<sup>28</sup> Comments by Kristiina Harenko, May 2013. According to Section 36(2) of the Police Act, the police have the right to obtain from a telecommunications operator and a corporate or association subscriber, or by using a technical device, the contact information about a subscription that is not listed in a public directory or the data specifying a telecommunications subscriber connection, an e-mail address or other telecommunications address, or telecommunications terminal equipment if, in individual cases, the information is needed to carry out police duties.

<sup>29</sup> Sorvari 2007, p. 403.

<sup>30</sup> Henri Huhtinen of District Court of Helsinki.

<sup>31</sup> Päivärinte 2013, p. 205.

if not all of the applications for disclosure of contact information are made by the Copyright Information and Anti-Piracy Centre (CIAPC) who estimates to leave approximately 100 applications per year.<sup>32</sup>

#### ▪ INJUNCTION

The author or his representative may take legal action against a person who makes copyright-infringing material available to the public by virtue of Section 60 b of the Copyright Act. In allowing the action, the court must at the same time order the activity to cease. The court may impose a conditional fine to reinforce its order. An injunction is a permanent order, not a precautionary measure.<sup>33</sup>

#### ▪ ORDER TO BLOCK ACCESS

The court may order an Internet service provider to block access to a site that makes copyright infringing material available to the public. Further, a blocking order must not prejudice the right of a third person to send and receive messages.<sup>34</sup> A prerequisite for a blocking order is a claim for injunction against the actual infringer under Section 60 b of the Act.<sup>35</sup> However, if it is apparent that the author's rights would otherwise be seriously prejudiced, the court may give a blocking order also before such claim is made.<sup>36</sup>

In Finland, there have been recently a few high-profile cases concerning the application of Section 60 c of the Copyright Act. On 11 June 2012, the Court of Appeal of Helsinki upheld the order for the telecommunications and ICT service provider Elisa to block access by its customers to the peer-to-peer file sharing website The Pirate Bay.<sup>37</sup> Elisa requested a leave of appeal from the Supreme Court, but was not granted one.<sup>38</sup> A similar blocking order has been given against two other internet service providers, TeliaSonera and DNA.<sup>39</sup>

### ***H. PUBLICATION OF JUDGEMENT***

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Article 15 of the Directive 2004/48/EC on the enforcement of intellectual property rights requires member states to "... ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part". The Article has been implemented in Finland by adding a new Section 59 a to the Copyright Act.

At least to our knowledge, the provision has never been applied by the court.

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<sup>32</sup> A-studio 30 November 2012.

<sup>33</sup> Harenko, Niiranen & Tarkela 2006, p. 545–546.

<sup>34</sup> Section 60 c (4) of the Copyright Act.

<sup>35</sup> Section 60 c (1) of the Copyright Act.

<sup>36</sup> Section 60 c (2) of the Copyright Act.

<sup>37</sup> The Court of Appeal of Helsinki, S 11/3097 Musiikkituottajat - IFPI Finland v. ElisaOyj.

<sup>38</sup> Saunalahti Press release, 29 October 2012, available at <http://saunalahti.fi/tiedote/tiedote.php?index=4565>. Last visited on 19 August 2013.

<sup>39</sup> The Court of Appeal of Helsinki, S 12/1850; the Court of Appeal of Helsinki, S 12/2223.

## ***I. NOTICE AND TAKE DOWN***

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Sections 20-25 of the Act on Provision of Information Society Services lay down a procedure in which an Internet service provider may be demanded to block access to copyright infringing material. Such a procedure is globally referred to as the 'notice and take-down' procedure. The remedy is available for authors and related rights owners alike, as well as their representatives.<sup>40</sup>

At the time of this research, neither studies nor statistics could be found to assess how common the procedure is in practice. This could be another interesting topic for research in the future.

## **SECTION 2. CRIMINAL SANCTIONS AND REMEDIES**

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### ***A. STATISTICAL DATA ON ENFORCEMENT BY THE POLICE AND PROSECUTORS***

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#### **▪ PARAMETERS AND SANCTIONS TO BE ASSESSED**

The sanctions assessed in this subsection are related to the following types of infringements: copyright offence (abbreviated on the tables as "49:1")<sup>41</sup>; circumvention of technical protection ("49:3"); circumvention of technical protection offence ("49:4"); offence violating electronic docket information on rights ("49:5"); copyright violation ("56a")<sup>42</sup>; breach of confidentiality ("56b"); illegal distribution of a device for removing a technological measure protecting a computer program ("56c"); breach of the obligation to provide information ("56d"); violation of a technological measure ("56e"); and violation of electronic rights management information ("56f").

The main goals in this subsection are, as required in the indicator, to present and assess the following parameters: the number of requests for crime investigation to the police and the number of pressed charges by the prosecutor. In addition, their possible connections to court cases and the connections between the mentioned parameters are analyzed on a general basis. The time-frame of the examination is 2007-2011 as only some criminal procedure related statistics were available from the year 2012 at the time of making this report (e.g. pressed charges by the prosecutor).

#### **▪ NUMBER OF REQUESTS FOR INVESTIGATION: LIMITATIONS**

Some statistical problems were raised when assessing this parameter. First of all, according to an information provider at Statistics Finland, neither the number of requests for investigation nor the parties/authorities responsible for those requests can be separated from the recorded data. Instead, the provided data in copyright-related crimes concerning this issue is recorded in form of 'offences known to the police'. Thus, the parameter examined here concerns 'the offences known to the police' as a whole.

Secondly, many different forms of violations are not separated in the statistics. This is especially problematic in terms of analyzing investigations concerning copyright offences, because separated

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<sup>40</sup> Section 20 of the Act on Provision of Information Society Services. The exemption from liability of intermediaries is regulated under Chapter 4 of the Act on Provision of Information Society Services (by which the Directive on electronic commerce 2000/31/EC was implemented).

<sup>41</sup> Abbreviations starting with '49' come from Chapter 49 of the Criminal Code, which is about copyright and industrial rights related sanction provisions.

<sup>42</sup> Abbreviations starting with '56' come from Sections 56a to 56f of the Copyright Act, which are about copyright related sanction provisions.

statistics exist only regarding subsections 1 ('normal' type of offence) and 2 (import-type of offence<sup>43</sup>). In other words, offences based on violations under Subsection 3, i.e. the 'digital' type of offences are, surprisingly, not recorded in the statistics. This means, that, e.g., the amount of so-called Internet piracy as well as all other 'digital forms' of copyright offences cannot be quantitatively evaluated at the crime investigation phase.

▪ **CRIMES KNOWN TO THE POLICE AND CLEARING RATES**

<b>Table 7. Number of copyright-related crimes known to the police<sup>44</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1<sup>45</sup></b>	53	44	38	18	44
<b>49:3</b>	-	1	-	-	-
<b>49:4</b>	-	1	-	-	-
<b>49:5</b>	-	-	-	-	-
<b>56 a</b>	74	77	54	49	46
<b>56 b</b>	-	-	-	-	-
<b>56 c</b>	-	-	1	-	-
<b>56 d</b>	-	-	-	-	-
<b>56 e</b>	-	-	-	-	-
<b>56 f</b>	-	-	-	-	-

*Observations and analysis:* According to the Police statistics provided by Statistics Finland, copyright offence and copyright violation are virtually the only types of copyright related crime known to the police. The small amount of crime known to the police limits the assessment of parameters related to the later phases of criminal procedure, especially the consideration of charges and court proceedings.

<b>Table 8. Number of cleared copyright related crimes known to the police<sup>46</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1</b>	29	51	37	19	22
<b>49:3</b>	-	-	-	-	-
<b>49:4</b>	-	-	-	-	-
<b>49:5</b>	-	-	-	-	-
<b>56 a</b>	95	63	50	37	29
<b>56 b</b>	-	-	-	-	-
<b>56 c</b>	-	-	-	-	-
<b>56 d</b>	-	-	-	-	-
<b>56 e</b>	-	-	-	-	-
<b>56 f</b>	-	-	-	-	-

<sup>43</sup> This type of offence was listed in the statistics, but no such offences were known to police; therefore it was left out of the table.

<sup>44</sup> Statistics Finland.

<sup>45</sup> More accurately, these are the number of copyright offences under Chapter 49, Section 1(1) alone, for the reasons mentioned above.

<sup>46</sup> Statistics Finland.

Table 9. Number of cases forwarded to the prosecutor (note: from here on, only the reported crimes are shown) <sup>47</sup>					
	2007	2008	2009	2010	2011
49:1	24	42	33	14	19
56 a	82	52	42	30	20

Table 10. Number of cases not forwarded to the prosecutor <sup>48</sup>					
	2007	2008	2009	2010	2011
49:1	5	9	4	5	3
56 a	13	11	8	7	9

*Observations and analysis, tables 8–10:* These tables show that most of the cases cleared by the police are forwarded to the prosecutor for consideration of charges.

#### ▪ CHARGES PRESSED BY PROSECUTORS

Table 11. Number of pressed charges					
	2007	2008	2009	2010	2011
49:1	9	14	17	13	4
56 a	4	5	3	2	2

Table 12. Number of prosecutor's decisions for not pressing charges <sup>49</sup>					
	2007	2008	2009	2010	2011
49:1	5	6	11	5	3
56 a	9	3	3	-	2

*Observations and analysis about tables 11–12:* According to the data provider at Statistics Finland, there were no other recorded crimes than copyright offence and copyright violation during this period. Furthermore, the information specialist reminded that the cases are always recorded based on the 'main sanction', that is, based on the primary crime that is under consideration of charges; the possible secondary crimes in the proceedings are left out of the statistics. Thus, it is possible that some cases remain hidden from this research, if their investigation has started prior to 2007, and/or if charges regarding such crimes had been pressed previous to 2007, and/or if such crimes are not presented as the primary demands in charges.

In addition, when comparing the relatively low number of pressed charges to the higher number of cases forwarded to the prosecutor, it seems at first that some cases disappear. However, it should be noted that most copyright violation cases are punished via penal order proceedings (see table 13 below). In cases of copyright offences, it is possible that cases which are shown in clearing rates of the

<sup>47</sup> Statistics Finland.

<sup>48</sup> Statistics Finland.

<sup>49</sup> Statistics Finland.

Police but missing in prosecutor statistics are in fact cases which are settled by the parties before a prosecutor makes a decision about pressing charges.

▪ **FINES IMPOSED IN PENAL ORDER PROCEEDINGS (AFFIRMED BY A PROSECUTOR)**

Table 13. Number of cases where a penal order fine has been imposed					
	2007	2008	2009	2010	2011
56 a	55	37	18	20	15

*Observations and analysis:* When comparing the small number of pressed charges in copyright violation cases and by the cases forwarded to the prosecutor from the police, it is evident that most cases concerning copyright violation are concluded via penal order proceedings, except for year 2009, where about one third of such cases forwarded to a prosecutor by the police were punished via penal order proceedings. When the numbers presented in tables 9 and 11–13 are put together, it can be concluded that prosecutors carry out enforcement actions (penal order proceedings, pressing charges) somewhat in relation with the amount of cases forwarded to prosecutors by the police.

▪ **COERCIVE MEASURES (SEIZURE, HOME SEARCH)**

The statistical data was not available<sup>50</sup> regarding all the sanctions for copyright-related crimes throughout the time frame (2007–2011). The number of coercive measures used in copyright-related criminal cases would likely be beneficial in order to, e.g. assess the extent of enforcement against the so-called digital piracy. According to the interviews it seems that coercive measures are considered a necessary part in gathering evidence in a case that concerns digital piracy.<sup>51</sup>

Moreover, the following observation should be made: as coercive measures are also used by, e.g., the Customs, they may be linked to copyright offence enforcement in this respect as well.<sup>52</sup> If the use of a coercive measure does not involve a home search, the coercive measures (i.e. seizure in this context) may be also used in copyright violation cases, where the sanction provision does not necessarily require the infringement act to be willful nor impose a threat of imprisonment.<sup>53</sup> In other words, this means that seizure alone may be used during the criminal proceedings, which concern crimes that are regulated under the Copyright Act. For example, seizure may be used when investigating a copyright violation (Section 56a), in a situation where a person has infringed copyright out of gross negligence and the infringing goods are not located at 'home'.<sup>54</sup>

The total number of home searches and seizures in cases linked to all offences under Chapter 49 of the Criminal Code is available from the online database of Statistics Finland.<sup>55</sup> However, as Chapter 49 also includes industrial rights offences (Section 2), the statistics are not accurate in terms of evaluating only copyright enforcement. The coercive measures may therefore be a part of the investigation of, e.g., counterfeiting cases, which to our understanding are usually mainly about trademark infringements. In addition, neither violations of the Copyright Act are separated in the statistics.

<sup>50</sup> Although the data can apparently be ordered as a special commission from Statistics Finland (costs approximately 550–800 €). More information: Kimmo Haapakangas, senior information specialist (crime-related data).

<sup>51</sup> Copyright interest organization interview, March 2013.

<sup>52</sup> However, this Section of the report does not focus on the measures carried out by the customs.

<sup>53</sup> See the requirements for home search in Chapter 5, Section 1 of the Coercive Measures Act (the penal scale must include at least a six months' imprisonment, or else home search cannot be used). Also, see Section 56a of the Copyright Act.

<sup>54</sup> For an accurate definition of these places (which may be also other places than 'home' in its basic sense), see Chapter 5, Section 1 of the Coercive Measures Act.

<sup>55</sup> Website: [pxweb2.stat.fi/database/StatFin/oik/pkei/pkei\\_fi.asp](http://pxweb2.stat.fi/database/StatFin/oik/pkei/pkei_fi.asp). Last visited on 19 August 2013.

Nevertheless, the statistics for crimes violating Chapter 49 of the Criminal Code, provided by the police (including the National Bureau of Investigation) are as follows:

<b>Table 14. Number of coercive measures (seizure; seizure and home search) used by the police, concerning all crimes violating Chapter 49 of the Criminal Code<sup>56</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Seizure</b>	2	15	15	4	14
<b>Home search and seizure<sup>57</sup></b>	1	22	23	7	9

## ***B. STATISTICAL DATA ON CRIMINAL CASES IN COURTS***

### **▪ OVERVIEW**

The following presentation focuses on the following issues: the number of court cases (consisting of the total numbers of convictions and different relevant sanctions), number of cases contested in higher courts and the average length of court proceedings.

### **▪ COURT CASES**

<b>Table 15. Total number of copyright related criminal cases</b>					
<i>Note: this table is made by combining the statistics provided by Statistics Finland as follows: dismissed charges + aborted cases + convictions. This table disregards cases handled via penal order proceedings (table 13), in which fines are imposed by the prosecutor.</i>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1</b>	15	15	22	14	23
<b>56 a</b>	13	24	26	34	20

<b>Table 16. Number of convictions by a court (district courts, courts of appeal as the first degree)<sup>58</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1</b>	9	7	13	6	9
<b>56 a</b>	5	10	2	4	1

<b>Table 17. Dismissed charges by the court (district courts and courts of appeals as the first instance)<sup>59</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1</b>	5	4	2	3	1
<b>56 a</b>	1	10	-	2	1

<sup>56</sup> Statistics Finland.

<sup>57</sup> Note: no data is recorded based on the use of home search alone.

<sup>58</sup> Statistics Finland.

<sup>59</sup> Statistics Finland.

*Observations and analysis, tables 15–17:* First of all, the overall number of criminal cases in copyright matters is very low in comparison to the overall number of all criminal cases pending in District Courts (annual amounts are between 72002–76750 cases in 2007–2011).<sup>60</sup> Secondly, around 15–50% of the cases do not end up in sanctions imposed upon the defendant (table 17). Thirdly, when the convictions are compared to arguably the most similar crime, industrial rights offence, the number of convictions on copyright offence cases is much higher (only 1 case in 2009, 2 cases in 2011, none in other years, all resulting in fine penalty).<sup>61</sup> The amount of dismissed charges is quite similar to copyright offences in cases of industrial rights offences.<sup>62</sup>

Moreover, table 16 shows that copyright offence (49:1) and copyright violation (56a) are virtually the only sanctions used in practice in terms of copyright-related sanctions. Although not shown in the tables above, as a curiosity it should be mentioned that there has also been one case about a violation of Section 56d (in 2007) and one case concerning Section 56e (in 2008), both resulting in a fine.

<b>Table 18. Number of cases resulting in (suspended) imprisonment<sup>63</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1</b>	2	-	-	2	4

*Observations and analysis:* This table clarifies the fact that also in cases of copyright offence, a fine is the most used penalty (compared to the number of convictions overall (above), and to the number of cases resulting in fines via court proceedings (below)). Furthermore, as previously stated, unconditional imprisonment has not been used at least during the past few years.

<b>Table 19. Number of cases resulting in fines (penal order fines not included)<sup>64</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1</b>	7	7	13	4	4
<b>56 a</b>	5	9	2	2	1

*Observations and analysis:* When this table is compared to the court cases and penal order fines, it is quite clear that copyright violations (56a) are mostly sanctioned via penal order proceedings.

#### ▪ **CRIMINAL CASES CONTESTED IN HIGHER COURTS**

First of all, it should be noted that the appeal route in criminal matters will stay the same after the Market Court reform: the procedural route consists of District Courts as the first degree, Courts of Appeal as the second degree, and the Supreme Court as the third and final degree. The handling of a case in the Supreme Court is dependent on a leave to appeal (*valituslupa*).<sup>65</sup>

The total number of criminal cases contested in Courts of Appeal in Finland, at least between 2007–2011, has been roughly 11000 cases annually, and roughly the same amount of cases are ended

<sup>60</sup> Statistics Finland website: [stat.fi/til/koikrr/2012/koikrr\\_2012\\_2013-05-29\\_tau\\_003\\_fi.html](http://stat.fi/til/koikrr/2012/koikrr_2012_2013-05-29_tau_003_fi.html). Last visited on 19 August 2013.

<sup>61</sup> See Appendix B: result tables, and Chapter 49, Section 2 of the Criminal Code.

<sup>62</sup> See Appendix B: results tables. These numbers are 2 (2007), 8 (2008), none (2009), 1 (2010) and 4 (2011).

<sup>63</sup> Statistics Finland.

<sup>64</sup> Statistics Finland.

<sup>65</sup> More closely, see the pilot report on Description Sheet 8, Section 1.

annually. In addition, the number of cases still pending each year is around 5000. In Supreme Court the annual numbers concerning all criminal cases during years 2007–2011 vary from 972 to 1224 cases.<sup>66</sup>

Concerning both the Courts of Appeal and the Supreme Court, there is no distinct statistical information available on the number of copyright-related criminal cases; the statistics of Statistics Finland only consider crimes against Chapter 49 of the Criminal Code, which also contains industrial rights offence (Section 2). A special commission should be ordered from Statistics Finland to clarify these issues.<sup>67</sup>

#### ▪ THE AVERAGE LENGTH OF CRIMINAL PROCEEDINGS IN COPYRIGHT MATTERS

As for all criminal cases handled in District Courts throughout the country, the average length of proceedings has been 3.0 months during 2007–2011. When it comes to copyright-related crimes and their procedural length, the only available information according to the Statistics Finland website concerns all crimes against Chapter 49 of the Criminal Code. In other words, the statistics are not accurate, as industrial rights offences are also included. The annual average lengths of procedure regarding all of these crimes are: 6.8 months (2007); 7.6 months (2008); 5.8 months (2009); 7.9 months (2010); 11.8 months (2011). As industrial rights cases, especially patent cases, are often very complicated, it is likely that their existence in the statistics will increase the average length of proceedings to some extent.<sup>68</sup> Further, no specifics on the crimes included in the Copyright Act (Sections 56a–56f) exist either, at least not in the public database of Statistics Finland.<sup>69</sup>

As for the Courts of Appeal throughout the country in 2009–2011, the average length of criminal proceedings in appeal cases (i.e. where a District Court has been the first degree to handle a case) is roughly 6.5 months. In case of all crimes against Chapter 49 of the Criminal Code, which is inaccurate for the reasons mentioned in the previous paragraph, the results are as follows: 11.1 months (2007); 13.8 months (2008); 11.7 months (2009); 14.8 months (2010); and 23.3 months (2011).<sup>70</sup> It is likely that possible industrial right offence cases (Chapter 49, Section 2) increase this average length to some extent.

In the Supreme Court, the situation is the same: the statistics are separated only as described with the lower court degrees. In 2007–2011, the average handling times in the Supreme Court were as follows: 16.5 months (2007); 8.1 months (2008); no data entry (2009); 20.6 months (2010); and 8.3 months (2011).<sup>71</sup>

## SECTION 3. CUSTOMS MEASURES

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### A. CONFISCATIONS

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The competence of the Customs to retain goods under the national law is based on Section 14(3) of the Customs Act, often referred to as ‘administrative retention’ (*hallinnollinen haltuunotto*). According to

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<sup>66</sup> See Statistics Finland website: [stat.fi/koikr/2011/koikr\\_2011\\_2012-11-26\\_tau\\_002\\_fi.html](http://stat.fi/koikr/2011/koikr_2011_2012-11-26_tau_002_fi.html). Last visited on 19 August 2013.

<sup>67</sup> See also Chapter 5 B ‘Limitations of the research’ in this report.

<sup>68</sup> A notion regarding the slowness of patent trials: see e.g. Norrgård 2004, p. 1064.

<sup>69</sup> See closer: [193.166.171.75/database/StatFin/oik/koikrr/koikrr\\_fi.asp](http://193.166.171.75/database/StatFin/oik/koikrr/koikrr_fi.asp). Last visited on 19 August 2013.

<sup>70</sup> [193.166.171.75/database/StatFin/oik/hovoikr/hovoikr\\_fi.asp](http://193.166.171.75/database/StatFin/oik/hovoikr/hovoikr_fi.asp). The classes are set as follows: Year: 2007–2011; Region: all; Case; 8359 Violations of certain immaterial rights> Details: Appeals authority District Court, handling time in Court of Appeal (in months). Last visited on 19 August 2013.

<sup>71</sup> StatFin website: [193.166.171.75/database/StatFin/oik/koikr/koikr\\_fi.asp](http://193.166.171.75/database/StatFin/oik/koikr/koikr_fi.asp). Last visited on 19 August 2013.

the Section, the Customs may 'retain goods exported from or imported to the country, if there is reasonable cause for this in order to prevent or investigate an offence'. The granting of seizure (*takavarikko*) is decided afterwards separately in another process.

In certain situations, the measures under Council Regulation (EC) No 1383/2003 may also be used. A right holder may apply for action by the customs authorities in cases where goods suspected of infringing intellectual property are found.<sup>72</sup>

Between 2009 and 2011, the Customs retained, under the national law, on average around 800 articles per year on basis of potential copyright infringement. The number of retained articles has increased steadily over the studied period.

On the other hand, interceptions under the Regulation were very few. We were unable to obtain statistics between 2008 and 2010, but according to the interviews, interventions on basis of potential copyright infringement have remained constantly rare. This is largely explained by the fact that the Regulation does not apply to private importation. Applications for action by customs authorities which concern copyright are also very few.<sup>73</sup>

	2008	2009	2010	2011	2012
<b>Retention under Section 14(3) of the Customs Act</b>	n/a	759	789	924	n/a
<b>Interception under Council Regulation (EC) No 1383/2003</b>	n/a	n/a	n/a	0	6

## ***B. EXPOSED COPYRIGHT OFFENCES AND VIOLATIONS BY THE CUSTOMS***

As may be noted from the table below, copyright offences exposed by the Customs are very few; at most there have been 3 cases per year. On the other hand, copyright violations are much more common. However, their number has decreased significantly during the studied time frame.

	2008	2009	2010	2011	2012
<b>Copyright offence</b>	3	0	1	0	0
<b>Copyright violation</b>	56	38	27	15	13
<b>Total</b>	59	38	28	15	13

Thus, a significant majority of the copyright infringements that have come to the knowledge of the Customs are copyright violations. Between 2008 and 2012 there were 150 violations and only 4 offences. On the other hand, during the same time frame, there were 215 industrial rights offences exposed.<sup>76</sup> In the interviews it was noted that most of the copyright violations (or offences) are exposed in conjunction with some more serious acts and, thus, rarely by themselves.

<sup>72</sup> Article 5(1) of the Council Regulation No 1383/2003.

<sup>73</sup> According to the interviews, there are currently less than five of such applications valid.

<sup>74</sup> Maria Damlin and Lasse Ryyttäri of the Finnish Customs.

<sup>75</sup> Saila Soini of the Finnish Customs.

<sup>76</sup> Saila Soini of the Finnish Customs.

### C. REFERENCE INFORMATION: IMPORTED COPYRIGHTED GOODS

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Below are the figures concerning the value and number of imported audiovisual recordings and software. The value has decreased steadily over the studied time frame most likely because of the gain in popularity of online market places and services, such as iTunes and Spotify.

<b>Table 22. Imported audio-visual recordings and software by customs value and number of custom clearances<sup>77</sup></b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Customs value, €</b>	n/a	14 058 854	12 235 897	11 815 427	n/a
<b>Number of customs clearances</b>	n/a	6 234	4 680	4 625	2 896

The number of confiscated articles is very small when compared to the number of imported copyrighted goods. There are no signs of malfunctioning of the system. The low number of confiscations and exposed copyright infringements is just likely to reflect that physical piracy is very rare in Finland.

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<sup>77</sup> Maria Damlin of the Finnish Customs. The figures are calculated by a summing up the corresponding data on CN codes 8523405100 and 8523493900. The original figures have not been cross-checked nor updated, but overall, the statistics should give a somewhat correct overview of the value and number of the imported audio-visual recordings and software.

## Conclusions

### A. ANALYSIS AND SUMMARY OF THE RESULTS

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#### ▪ CIVIL ENFORCEMENT

The number of civil cases concerning copyright and related rights is very small, especially when compared to the number of all civil cases in total. In 2012, there were 101 concluded civil cases concerning the application of the Copyright Act in the District Court. A significant majority of the cases relate to the application of Section 60 a of the Copyright Act (disclosure of contact information). The number of such cases has increased rapidly during the last few years.<sup>78</sup>

*Liability and compensation for damage* caused by copyright infringement is regulated under Section 57 of the Copyright Act. Section 57(1) of the Act concerns a reasonable compensation (*hyvitys*) for unauthorised use and Section 57(2) concerns damages (*korvaus*) for any other loss, including mental suffering and other detriment. In addition, Section 57(3) includes a provision on damages caused by a punishable act. The provisions leave a lot of room for interpretation and the practice varies a lot.

In civil cases concerning copyright the court has the power to *confiscate* material which may have significance as evidence in the trial. The requirements for such an order are defined under the Protection of Evidence in Industrial Property and Copyright Related Civil Cases Act. To our knowledge, the provision is quite rarely applied by the court. However, there are at least a few software-related cases where it has been successfully put into practice by the applicant.

The court may also declare illegal copies of a work and devices used in committing an unlawful act to be *forfeited* under Section 58 of the Copyright Act. The purpose of forfeiture (*hävittämisestä*) is to prevent future infringements by the same person. In caselaw, forfeiture has concerned, *inter alia*, unauthorised software on a hard drive of a computer, video cassettes, rings, pendants as well as bracelets and their moulds.

Temporal legal protection in cases concerning copyright and related rights may be obtained through the application of Chapter 7, Section 3 of the Code of Judicial Procedure. The provision is often referred to as a 'general precautionary measure' (*yleinen turvaamistoimi*). The court may issue a precautionary measure before the final decision, or even before the parties have taken any other legal action. The provision is rarely applied in copyright matters but there have been at least a few of such cases.

Sections 60 a–d of the Copyright Act include provisions on *prevention of access to copyright infringing material*. Under Section 60 a of the Act, the court may order an Internet service provider to *disclose the contact information* of a subscriber whose connection is used for making copyrighted material available to the public without the consent of the author. As stated earlier, this provision is applied increasingly often. Under Section 60 c of the Act, the court may *order an intermediary to discontinue the making of allegedly copyright-infringing material available to the public*. In a few recent high-profile cases, an ISP has been ordered to block access to the peer-to-peer file sharing website The Pirate Bay. None of the cases have ended up in the Supreme Court, which is rather unfortunate.

Sections 20–25 of the Act on Provision of Information Society Services lay down a procedure in which an Internet service provider may be demanded to block access to copyright infringing material. Such a

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<sup>78</sup> The evaluation of the statistics provided by Statistics Finland is rather challenging because they do not distinguish between disputes (*riita-asia*) and non-contentious civil cases (*hakemusasia*). Therefore, for the sake of clarity, they are not discussed here in more detail. Please see the previous chapter for information on average duration of the process etc.

procedure is globally referred to as the 'notice and take-down' procedure. The remedy is available for the authors and related rights owners as well as their representatives.

#### ▪ CRIMINAL ENFORCEMENT

Copyright-related crimes in Finland consist of the crimes under Chapter 49, Section 1 and 3–5 of the Criminal Code, and the crimes under Sections 56 a – 56 f of the Copyright Act. The available penalties for these crimes according to the sanction provisions are imprisonment (only applicable to crimes under the Criminal Code) and fine.

The maximum penalty for a copyright offence is 2 years in prison, whereas the maximum penalty for the other copyright-related crimes under the Criminal Code is one year in prison. The maximum penalty for all the other crimes is 1–120 day-fines. Other available penalties include e.g. community service, which may be imposed as a substitute for an imprisonment penalty under certain conditions. Other criminal sanctions (*rikosoikeudellinen seuraamus*) consist of, e.g., forfeiture (*menettämisseuraamus*) under Chapter 10 of the Criminal Code.

Copyright offence (Chapter 49, Section 1 of the Criminal Code) and copyright violation (Section 56 a of the Copyright Act) are clearly the most common types of copyright-related crimes in Finland. In fact, the other sanctions are virtually non-existent in the statistics. Out of these two, copyright violation is significantly more used in overall. The number of criminal proceedings is low in comparison to all crimes. Most copyright-related crimes are punished by fine, and most commonly a fine has been imposed via penal order proceedings (*rangaistusmääräysmenettely*) as a sanction for copyright violation. Imprisonment has been sentenced only a couple of times during 2007–2011, always in a suspended form, and always as a penalty for a copyright offence.

The available statistics do not show any significant signs which would indicate that access to sanctions is blocked in some respect. The problems that concern criminal enforcement of copyright are more explicitly shown in legal literature; perhaps the most important is the critique towards the wide and vaguely defined scope of copyright violation. This in turn may endanger the purpose of criminal justice; according to the legality principle all criminalization provisions should be clearly defined (*epätäsmällisyyskielto*).<sup>79</sup>

#### ▪ CUSTOMS MEASURES

The competence of the Customs to retain goods under the national law is based on Section 14(3) of the Customs Act, often referred to as 'administrative retention' (*hallinnollinen haltuunotto*). In certain situations, the measures under Council Regulation (EC) No 1383/2003 may also be used. Between 2009 and 2011 the Customs retained under the national law on average around 800 articles per year on the basis of potential copyright infringement. On the other hand, interceptions under the Regulation were very few. Compared to the number of imported copyrighted goods, the number of confiscated articles is very small. Copyright infringements exposed by the Customs were mostly copyright violations. Their number has, however, decreased significantly between 2008 and 2012. Exposed copyright offences were very few. There are no signs of malfunctioning of the system. The low number of confiscations and exposed copyright infringements is only likely to reflect the fact that physical piracy is very rare in Finland.

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<sup>79</sup> See, e.g., Sorvari 2007, p. 29–32.

### ▪ LIMITATIONS

First of all, there were some limitations concerning the statistical data:

- Receiving precise data concerning parameter 2 (requests for investigation) was not possible, because the Police do not keep (public) statistical records of requests for investigation: instead, the data received was in the form of 'crime known to the police'. This means that it cannot be precisely assessed whether the crimes had come to the knowledge of Police via a request for investigation or via their own initiative, i.e. *ex officio*. However, it is highly probable that most criminal cases are in fact reported to the police, because most copyright-related crimes are so-called complainant offences, which binds also the authority of the Police; if a complainant notifies that he/she does not pursue a punishment for the suspect, the investigation must be stopped (the same goes with a prosecutor's actions during the consideration of charges).
- The different forms of copyright offence (see Section 2 of this report), i.e. the so-called 'basic', 'import' and 'digital' forms were not separated in any statistics. This means that it is impossible to precisely present e.g. the amount of digital offences known to the Police. Thus the nature of digital piracy is hidden in certain respects.
- Moreover, the exact nature of convictions can be seen in the court decisions. However, those judgments are not recorded and kept in one place, except for the published Supreme Court Decisions; due to our limited timeframe it was too immense a task to go through all the District Courts, Courts of Appeal and the Supreme Court in order to receive all cases. Hence we only have gathered the cases from the District Court of Helsinki. When conducting further research, a complete collection of such cases would be very useful, because it would answer the question: what type of copyright cases are there in Finland, and what are their quantitative relations to each other?
- In criminal cases, the copyright-related cases handled in Courts of Appeal and the Supreme Court cannot be seen directly from the statistics. Instead, statistics show only 'all crimes against Chapter 49 of the Criminal Code', which means that industrial rights (Section 2) are also included in the data. Further separated data may be ordered via Statistics Finland, probably as a chargeable commission.
- Statistics on coercive measures are not separable without a special commission. Senior information specialist Kimmo Haapaniemi at Statistics Finland said that information on all copyright-related sanctions from years 2007-2011 would take about 5–7 hours to gather, and it would cost around 110 € per hour.
- If those cases would be gathered, a close attention should be paid on the nature of the cases: according to some interviewees, many cases where an infringement of a copyright is involved are not necessarily cases based primarily on copyrights; e.g. contractual issues or other IPR infringements may play a relatively large part in a particular case. In fact, according to some of our interviewees working in large law firms specializing in business-to-business relations, this type of case structure is quite common.<sup>80</sup> Therefore in a single criminal case this may mean that the primary crime on which the prosecutor has pressed charges may not concern copyrights at all.<sup>81</sup>

Secondly, there were also some limitations concerning the interviews:

- We could not manage to contact a prosecutor for an interview. This was partly due to the late cancellation of our primary candidate at the Office of the State Prosecutor, partly our own fault,

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<sup>80</sup> Interviews of two attorneys in two different major law firms, April 2013.

<sup>81</sup> This was specifically reminded by an information specialist at Statistics Finland, who said, regarding statistical data on pressed charges by the prosecutor, that the statistics show only a primary crime.

since this could have been probably avoided by doing the interviews earlier. However, we did not want to do it too early, as we did not have enough detailed questions for the prosecutor (nor many others) before late spring. We contacted altogether two prosecutors during April and May 2013, and unfortunately neither of them could assist us at this time.

- The same goes with the Police: we contacted altogether three selected Police officials. Only one of them replied and agreed to give an interview, which was in fact very informative. We believe that interviews of computer or network-oriented police experts especially at the Helsinki Police Department, the National Bureau of Investigation and probably also the National Police Board would provide great practical views concerning, e.g., criminal enforcement against digital piracy.

#### ▪ GUIDELINES FOR FUTURE RESEARCH

We would like to raise the following suggestions concerning future research of copyright enforcement:

- We have also received information regarding the issue that enforcement actions are not always a reaction for an obvious infringement; enforcement can be also used as a tool to test the range of copyright protection, e.g. in cases where it is highly unclear whether a certain type of use of copyright is licensable or not.
- To better understand the depth of, e.g., the digital piracy phenomenon as well as to better understand what copyright cases are about on a more specific level<sup>82</sup>, it would be useful to conduct more interviews, perhaps a survey as well.
- A thorough gathering of court cases from each individual court will also be important; quantitative data does not tell a lot about the qualitative side of cases.

It is important to remember that this report was drafted together with the report on the implementation of Description sheet 9 – *Sanctions and remedies for copyright infringement*. It is therefore impossible to determine a separate timeframe for each of these two reports. The time necessary for the research for these two reports combined will highly depend on the availability of the interviewees. Taking into account only the actual time needed for research, interviews and drafting of the two reports, the work would take approximately two months.

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<sup>82</sup> Including the 'hidden' part of cases, which are primarily about some other crimes or disputes than copyright related ones and thus do not show in most statistics; or copyright offences based on infringement in digital environment, which is not separately shown in statistics, although it is presumably substantial in terms of criminal enforcement of copyrights

## Appendices

### A. METHODOLOGY CARD

Methodology card as presented in the Methodology Handbook, version 20.12.2013.

Element: Enforcement procedures, sanctions and remedies	Methodology card 7. Application of sanctions and remedies for copyright infringement	
Key question	How are legal sanctions and remedies applied in cases of copyright infringement?	
Type of data	<i>objective data</i>	
Description	Level of enforcement of copyright law by courts. By analyzing the average penalties given in cases of copyright infringement and comparing data on the number of requests for investigation and court cases, this indicator should offer a meaningful overview of the efficiency of copyright enforcement by public procedures.	
Parameters to measure	<ol style="list-style-type: none"> <li><b>1. Penalties for copyright infringement</b> <ul style="list-style-type: none"> <li>- The average penalty given by judges</li> </ul> </li> <li><b>2. Requests for investigation</b> <ul style="list-style-type: none"> <li>- Number of requests for investigation</li> <li>- Parties to the request and subject matter in question</li> <li>- The number of pressed charges / investigations</li> </ul> </li> <li><b>3. Court cases, criminal procedure</b> <ul style="list-style-type: none"> <li>- Number of court cases, criminal procedure</li> <li>- Proportion of court decisions contested in higher level courts</li> <li>- Average length of procedure</li> </ul> </li> <li><b>4. Court cases, civil procedure</b> <ul style="list-style-type: none"> <li>- Number of court cases, civil procedure</li> <li>- Proportion of court decisions contested in higher level courts</li> <li>- Average length of procedure</li> </ul> </li> </ol>	
Definitions	<i>Request for investigation</i>	Steps that will induce an official investigation in a supposed breach of copyright law
	<i>Copyright infringement</i>	Infringement of the law concerning copyright and related rights. The analysis should distinguish between commercial violation of copyright, infringement facilitation and individual consumer infringement.
Guidelines for data collection	<p>The information can be collected as a desktop study through available statistics and other national and international information sources. It can be complemented by expert interviews.</p> <p>The data should be collected over a period allowing meaningful analysis and calculation of averages, for example: 5 years.</p> <p>Comparisons of data over time can also be meaningful.</p> <p>The time needed for making the study is two months at minimum, requiring that interviews can be conducted without much delay and that the researcher has an understanding about the enforcement system and its legal specifics (sanctions, remedies, procedures and regulation concerning enforcement officials).</p>	
Limitations of the indicator	<ul style="list-style-type: none"> <li>- The absolute number of court cases might as well tell about the general level of litigiousness of the society, or be a sign of abuse of copyright law.</li> <li>- The results could be proportioned with other measures, such as the number of cases that lead to prosecution or conviction.</li> <li>- The costs of procedure incurred by the parties are likely to affect the willingness</li> </ul>	

	<p>to go to court but it is difficult to measure and can be influenced by several factors unrelated to copyright enforcement.</p> <ul style="list-style-type: none"> <li>- Receiving precise data concerning parameter 2 (requests for investigation) is not possible if the Police do not keep (public) statistical records of requests for investigation. Alternatively, data could be available on the crime known to the police.</li> <li>- Many cases where an infringement of a copyright is involved are not necessarily cases based primarily on copyrights. Statistical data (on pressed charges by the prosecutor) might however be based on the primary crime only.</li> <li>- Statistical data might not be separately available for commercial violations, infringement facilitation and individual consumer infringement.</li> </ul>
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## B. RESULT TABLES

Table A1. Number of all concluded civil disputes <sup>83</sup>					
	2008	2009	2010	2011	2012
District Court	230 148	304 928	316 126	347 997	422 727
Court of Appeal	2 028	1 997	2 102	2 054	n/a
Supreme Court	1 178	1 068	1 072	1 203	n/a
<b>Total</b>	<b>233 354</b>	<b>307 993</b>	<b>319 300</b>	<b>349 404</b>	<b>n/a</b>

Table A2. Number of concluded civil cases concerning the application of the Copyright Act <sup>84</sup>					
	2008	2009	2010	2011	2012
District Court	37	62	76	105	101
Court of Appeal	1	4	4	8	n/a
Supreme Court	4	1	4	2	n/a
<b>Total</b>	<b>42</b>	<b>67</b>	<b>84</b>	<b>115</b>	<b>-</b>

Table A3. Average duration of process in all civil disputes in months <sup>85</sup>					
	2008	2009	2010	2011	2012
District Court	2.2	2.3	2.7	2.5	2.3
Court of Appeal	10.1	9.3	9.1	8.5	n/a
Supreme Court	5.2	5.3	5.6	5.7	n/a

<sup>83</sup> Statistics Finland.

<sup>84</sup> Statistics Finland. Statistics Finland place all civil cases concerning the application of Copyright Act under the category 'copyright disputes', which is rather misleading.

<sup>85</sup> Statistics Finland.

Table A4. Average duration of process in cases concerning the application of the Copyright Act in months <sup>86</sup>					
	2008	2009	2010	2011	2012
District Court	3.2	2.8	1.7	1.4	1.5
Court of Appeal	8.9	19.5	13.5	21.2	n/a
Supreme Court	12.1	3.4	6.3	13.6	n/a

Table A5. Number of concluded civil cases concerning the application of the Copyright Act in the District Court by the type of conclusion <sup>87</sup>					
	2008	2009	2010	2011	2012
<b>Action (or application) allowed, total</b>	30	55	67	90	92
- Action allowed with a default judgement	1	4	-	1	1
<b>Action (or application) dismissed, total</b>	2	1	2	3	2
- Action dismissed with a default judgement	-	-	1	-	-
<b>Other conclusion, total</b>	5	6	7	12	7
- Action dismissed without considering merits	1	-	-	-	-
- Settlement confirmed	3	3	-	-	-
- Discontinued, settlement	1	1	3	8	2
- Discontinued, other reason	-	2	4	4	5
<b>Total</b>	<b>37</b>	<b>62</b>	<b>76</b>	<b>105</b>	<b>101</b>

Table A6. Number of concluded cases concerning the application of Section 60 a of the Copyright Act in the District Court of Helsinki <sup>88</sup>					
	2008	2009	2010	2011	2012
Section 60 a of the Copyright Act	27	38	62	87	85

Table A7. Number of copyright-related crimes known to the police <sup>89</sup>					
	2007	2008	2009	2010	2011
49:1 <sup>90</sup>	53	44	38	18	44
49:3	-	1	-	-	-
49:4	-	1	-	-	-
49:5	-	-	-	-	-
56 a	74	77	54	49	46
56 b	-	-	-	-	-
56 c	-	-	1	-	-
56 d	-	-	-	-	-
56 e	-	-	-	-	-
56 f	-	-	-	-	-

<sup>86</sup> Statistics Finland.

<sup>87</sup> Statistics Finland.

<sup>88</sup> Henri Huhtinen of District Court of Helsinki.

<sup>89</sup> Statistics Finland.

<sup>90</sup> More accurately, these are the number of copyright offences under Chapter 49, Section 1(1) alone, for the reasons mentioned above.

Table A8. Number of cleared copyright related crimes known to the police <sup>91</sup>					
	2007	2008	2009	2010	2011
49:1	29	51	37	19	22
49:3	-	-	-	-	-
49:4	-	-	-	-	-
49:5	-	-	-	-	-
56 a	95	63	50	37	29
56 b	-	-	-	-	-
56 c	-	-	-	-	-
56 d	-	-	-	-	-
56 e	-	-	-	-	-
56 f	-	-	-	-	-

Table A9. Number of cases forwarded to the prosecutor (note: from here on, only the reported crimes are shown) <sup>92</sup>					
	2007	2008	2009	2010	2011
49:1	24	42	33	14	19
56 a	82	52	42	30	20

Table A10. Number of cases not forwarded to the prosecutor <sup>93</sup>					
	2007	2008	2009	2010	2011
49:1	5	9	4	5	3
56 a	13	11	8	7	9

Table A11. Number of pressed charges					
	2007	2008	2009	2010	2011
49:1	9	14	17	13	4
56 a	4	5	3	2	2

Table A12. Number of prosecutor's decisions for not pressing charges <sup>94</sup>					
	2007	2008	2009	2010	2011
49:1	5	6	11	5	3
56 a	9	3	3	-	2

Table A13. Number of cases where a penal order fine has been imposed					
	2007	2008	2009	2010	2011
56 a	55	37	18	20	15

<sup>91</sup> Statistics Finland.

<sup>92</sup> Statistics Finland.

<sup>93</sup> Statistics Finland.

<sup>94</sup> Statistics Finland.

<b>Table A14. Number of coercive measures (seizure; seizure and home search) used by the police, concerning all crimes violating Chapter 49 of the Criminal Code<sup>95</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Seizure</b>	2	15	15	4	14
<b>Home search and seizure<sup>96</sup></b>	1	22	23	7	9

<b>Table A15. Total number of copyright related criminal cases</b>					
<i>Note: this table is made by combining the statistics provided by Statistics Finland as follows: dismissed charges + aborted cases + convictions. This table disregards cases handled via penal order proceedings (table 13), in which fines are imposed by the prosecutor.</i>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1</b>	15	15	22	14	23
<b>56 a</b>	13	24	26	34	20

<b>Table A16. Number of convictions by a court (district courts, courts of appeal as the first degree)<sup>97</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1</b>	9	7	13	6	9
<b>56 a</b>	5	10	2	4	1

<b>Table A17. Dismissed charges by the court (district courts and courts of appeals as the first instance)<sup>98</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1</b>	5	4	2	3	1
<b>56 a</b>	1	10	-	2	1

<b>Table A18. Number of cases resulting in (suspended) imprisonment<sup>99</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1</b>	2	-	-	2	4

<b>Table A19. Number of cases resulting in fines (penal order fines not included)<sup>100</sup></b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>49:1</b>	7	7	13	4	4
<b>56 a</b>	5	9	2	2	1

<sup>95</sup> Statistics Finland.

<sup>96</sup> Note: no data is recorded based on the use of home search alone.

<sup>97</sup> Statistics Finland.

<sup>98</sup> Statistics Finland.

<sup>99</sup> Statistics Finland.

<sup>100</sup> Statistics Finland.

Table A20. Number of articles retained by the Customs on basis of potential copyright infringement <sup>101</sup>					
	2008	2009	2010	2011	2012
Retention under Section 14(3) of the Customs Act	n/a	759	789	924	n/a
Interception under Council Regulation (EC) No 1383/2003	n/a	n/a	n/a	0	6

Table A21. Number of copyright offences and violations that have come to knowledge of the Customs <sup>102</sup>					
	2008	2009	2010	2011	2012
Copyright offence	3	0	1	0	0
Copyright violation	56	38	27	15	13
Total	59	38	28	15	13

Table A22. Imported audio-visual recordings and software by customs value and number of custom clearances <sup>103</sup>					
	2008	2009	2010	2011	2012
Customs value, €	n/a	14 058 854	12 235 897	11 815 427	n/a
Number of customs clearances	n/a	6 234	4 680	4 625	2 896

### C. INFORMATION SOURCES

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<sup>101</sup> Maria Damlin and Lasse Ryyttäri of the Finnish Customs.

<sup>102</sup> Saila Soini of the Finnish Customs.

<sup>103</sup> Maria Damlin of the Finnish Customs. The figures are calculated by a summing up the corresponding data on CN codes 8523405100 and 8523493900. The original figures have not been cross-checked nor updated, but overall, the statistics should give a somewhat correct overview of the value and number of the imported audio-visual recordings and software.

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#### ***D. CONSULTED PARTIES***

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- Rainer Oesch, Professor of Commercial Law at the University of Helsinki, Faculty of Law; Expert Instructor in piloting of this indicator (February – June 2013)
- Maria Damlin, Senior Inspector at the Finnish Customs, National Risk Analysis Centre / IPR (30 April 2013)
- Kristiina Harenko, Referendary Counsellor of the Supreme Court (29 May 2013)
- Anniina Huttunen, Senior Advisor, Legal Affairs at the Ministry of Education and Culture (22 April 2013)
- Jari Javanainen, Detective Sergeant at the Eastern Uusimaa police department (23 April 2013)
- Ismo Kallioniemi, Specialist Counsel at Attorneys-at-Law Juridia Ltd. (17 April 2013)
- Martti Kivistö, Director, Regulatory and Policy Affairs at Teosto (8 April 2013)
- Antti Kotilainen, Managing Director at the Copyright Information and Anti-Piracy Centre (CIAPC) (14 March 2013)
- Teemu Laakkonen, Lawyer at the Copyright Information and Anti-Piracy Centre (CIAPC) (14 March 2013)
- Asko Metsola, Assisting lawyer at the Copyright Information and Anti-Piracy Centre (CIAPC) (14 March 2013)
- Antti Miettinen, Senior Judge of the Court of Appeal of Helsinki (9 April 2013)
- Jaana Pihkala, Deputy Director, Senior legal adviser at the Copyright Information and Anti-Piracy Centre (CIAPC) (14 March 2013)
- Lasse Ryyttäri, Senior Inspector at Finnish Customs (2 April 2013)
- Sakari Salonen, Senior Associate at Attorneys-at-Law Juridia Ltd. (17 April 2013)
- Sami Sunila, Senior Associate at Roschier, Attorneys Ltd. (22 April 2013)
- Pekka Tarkela, Partner at Attorneys at law Borenus Ltd. (11 April 2013)
- Anna Vuopala, Senior Advisor, Legal Affairs at the Ministry of Education and Culture (8 May 2013)
- Ari Wiren, District Judge at the District Court of Helsinki (2 May 2013)

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