

## THE SCOPE OF CRIMINAL LIABILITY FOR MISAPPROPRIATION OF AUTHORSHIP IN EU COUNTRIES: COMPARATIVE ANALYSIS

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**Abstract.** Intellectual property legal protection is undoubtedly one of the most important factors and conditions of effective economic, social and cultural development in modern society. According to researchers, absolute majority of countries in the world have set criminal liability for certain crimes against intellectual property rights, including all of the European Union (hereinafter – EU) countries. One of those crimes is misappropriation of authorship. Yet the criminal laws of EU countries criminalise misappropriation of authorship very differently - some protect not only author rights but also related rights, the conditions for criminal liability in the general *corpus delicti* are of a very different scope as well as the punishments for those crimes differ significantly. This analysis will present the scope of criminal liability in all the EU countries, including the reasons why, as well as will try to find the answer whether ways of coping with these difficulties exist.

**Keywords:** Misappropriation of authorship, Criminal law, Author law, Intellectual property.

### INTRODUCTION

Intellectual property legal protection is undoubtedly one of the most important factors and conditions of effective economic, social and cultural development in modern society, especially considering the ever growing need for international exploitation of intellectual assets (Maskus, 1998). According to researchers, absolute majority of countries in the world have set criminal liability for certain crimes against intellectual property rights (Kiškis and Šulija, 2003), including European Union (hereinafter – EU) countries. One of those crimes is misappropriation of authorship – a violation of one of author’s moral rights.

However, EU countries criminalise misappropriation of authorship very differently, regarding the object of protection, the scope of protected rights, the conditions for criminal liability in the general and qualified *corpus delicti* as well as punishments for those crimes. This analysis will present an overview of international and EU criminal legal regulation, as well as peculiarities of national EU Member States’ norms, the scope of criminal liability for misappropriation of authorship in all the EU countries, regarding the qualifying features and size of two punishments: fine and imprisonment. The results are presented graphically in charts and a table, hoping to fill in some of the gaps of criminal legal analysis of copyright law.

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## 1. INTERNATIONAL LEGAL PROTECTION OF INTELLECTUAL PROPERTY

Intellectual property refers to original creations of the mind. Standard list of intellectual property objects consists of invention patents, registered industrial design, trademarks, copyright and trade secrets. Intellectual property consists of two categories: Industrial Property, which includes patents for inventions, trademarks, industrial designs and geographical indications, and Copyright, which covers author rights to original literary, artistic and scientific works and related rights, that include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

Intellectual property rights allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work in a creation (World Intellectual Property Organization, 2016). Article 27(2) of the Universal Declaration of Human Rights (1948) states that “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” Therefore, copyright grants a bundle of moral and economic rights to the author of literary, artistic and scientific works: moral rights protect the author’s intellectual and personal relationship with the work (there are conventionally three of them – the right of attribution (authorship), the right to authors name (to choose a name, pseudonym or remain anonymous) and the right to integrity of the work). While economic rights (right to publish, adapt, translate and so on) guarantee author’s participation in the commercial exploitation of his/her creation.

There are more than a few international and EU legal acts, protecting the intellectual property. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO, No. 450(E), p. 3). After that, there were several more<sup>2</sup>. But regarding certain minimum standards of criminal legal protection of copyright on international level, there basically are only two international legal acts, forcing the countries parliaments to implement criminal liability for these crimes – the Convention of Cybercrime (2004) and The Agreement on Trade-Related Aspects of Intellectual Property Rights (1995)<sup>3</sup>:

1) Title 4 Article 10 of Cybercrime Convention (2004<sup>4</sup>) states that “Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, <...> *with the exception of any moral rights conferred by such*

2 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961), The Convention Establishing the World Intellectual Property Organization (1967), Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971), Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (1974), The WIPO Copyright Treaty (1996) and Performances and Phonograms Treaty (1996), Unesco Paris Convention (Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005).

3 *Agreement on Trade Related Aspects of Intellectual Property Rights* is not an independent international treaty, but is a component of a 1994 April 15 Establishment of the World Trade Organization Agreement (Attachment 1 C) (entered into force on 1 January 1995) and therefore applies to all WTO members. Lithuania joined the TRIPS Agreement in May 31, 2001.

4 Members of this Convention include almost all of EU Member States, except Ireland and Sweden, which are observer countries to the Budapest Convention. See the member states in the page of Council of Europe here: <https://www.coe.int/en/web/cybercrime/parties-observers>.

*conventions*, where such acts are committed wilfully, on a commercial scale and by means of a computer system.”

- 2) TRIPS is an international legal agreement between all the member nations of the World Trade Organization (WTO), connecting a vast majority of states in the world.<sup>5</sup> Its section 5.713 on Criminal Procedures states, that it “requires that Members provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. They also have to provide for remedies such as imprisonment, monetary fines and seizure, forfeiture and destruction of the infringing goods and of any materials and implements predominantly used for the commission of the offense.”

In both of these documents, standards of mandatory criminal liability are quite minimum if we speak about whole IP law, including not only copyright, but also industrial property law. Both of them do not protect moral rights of the author.

Regarding the current EU’s regulatory framework for copyright and neighbouring rights, it is a set of eleven directives and two regulations, including several special additional instruments<sup>6</sup>. European Commission states, that “[b]y setting harmonised standards, the EU law reduces national discrepancies, ensures the level of protection required to foster creativity and investment in creativity, promotes cultural diversity and ensures better access for consumers and business to digital content and services across Europe.”<sup>7</sup> In order to ensure the necessary level of copyright protection through these directives, European Parliamentary Research Service (2018) Comparative Law Library Unit conducted a research and prepared a study on copyright law in EU (June 2018 - PE 625.126): a research consisted of over 400 pages and covered salient features of copyright law across the EU Member States, regarding civil legal protection and transposition of one of the most important directives (the 2001 Copyright Directive)<sup>8</sup> into national law, including an analysis of current legal situation in the area of copyright protection. Despite the thoroughness, however, no attention was paid to criminal legal protection of author rights as there are no criminal legal measures regarding copyright protection on EU level, which is understandable, as EU hardly has a competence in this matter.

This means that there are no mandatory provisions on international and EU level to criminalise most of the acts which violate author rights, including misappropriation of authorship. The international law of copyright and related rights is still based on the principle of territoriality, according to which, the protective reach of national copyrights is limited by space to the territory of the state in

5 For example, in Europe only Belarus, Serbia, Bosnia and Herzegovina are not member states of this agreement (neither are they members of EU for that matter). More at WTO site: <[https://www.wto.org/english/thewto\\_e/countries\\_e/org6\\_map\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/org6_map_e.htm)>.

6 “Three additional instruments (Directive 87/54/EC, Council Decision 94/824/EC and Council Decision 96/644/EC) harmonise the legal protection of topographies of semiconductor products. Moreover, the E-commerce Directive and the Conditional Access Directive also contain provisions which are relevant to the exercise and the enforcement of copyright.” See more at European Commission website on EU copyright legislation.

7 See more at European Commission website on EU copyright legislation.

8 The main legal instrument governing copyright in the Union is the 2001 Copyright Directive, which aims to harmonise copyright rules within the Union and to adapt copyright legislation to new technological developments.

question, with the result that authors do not acquire uniform, globally valid copyright.<sup>9</sup> Therefore, protection of author rights (especially – moral author rights) to this day remain a national prerogative. And here things get interesting.

## 2. PECULIARITIES OF EU MEMBER STATES' NATIONAL CRIMINAL LEGAL PROTECTION OF AUTHORSHIP

The analysis of EU Member States' criminal laws shows that most of them seem to have set criminal liability for misappropriation of authorship among other crimes against intellectual property. Regarding a legal source of the criminal legal copyright protection of right to authorship, some countries criminalise misappropriation of authorship in their criminal codes<sup>10</sup>, others - in Laws on Copyright and Related Rights<sup>11</sup>. If it is set on a criminal code, it usually resides in a separate chapter called something like "Crimes against intellectual property", except several cases, where the crime is provided in another chapter<sup>12</sup>. Criminal liability is usually set either explicitly stating the crime of misappropriation of authorship, or providing a wide norm, meant to protect the author from any illegal and dangerous infringement of copyright (so at least through wider interpretation of the norm, without the necessity to adopt another norm, it is possible to protect both economic and moral rights).<sup>13</sup>

There is a third way to protect authorship – namely using other legal norms (i. e. other *corpora delicti*). Cyprus and Malta seem to protect only economic rights of author (but not authorship itself), thus without a violation of economic rights, there is no protection of authorship against usurpation: these countries do not have a specific *corpus delicti*, aimed at protecting moral interests of authors and the norm, aimed at criminalising "copyright infringement", seems to cover only economic rights. Of course, there is a possibility, that these countries use another law for prosecution of usurpation of authorship, for example, a fraud, like it seems is an Austrian case (misappropriation of authorship is considered to be a fraud under Austrian CC para 146). However, in this case it is safer to assume, that authorship is not protected, which can be a result of historical nuances: "[n]ational copyright

9 Rather, they can benefit from the copyright protection that applies in each country. Hence a whole bundle of territorially limited national copyrights are available to them. See more: <<https://open-access.net/en/information-on-open-access/legal-issues/legal-issues-in-austria/copyright.>>.

10 Austria, Bulgaria, Czech Republic, Croatia, Estonia, Finland, Hungary, Latvia, Lithuania, Slovakia, Slovenia, Spain, see the Annex.

11 Belgium, Denmark, France, Germany, Italy, Ireland, Luxembourg, Poland, Portugal, Romania, Sweden, The Netherlands, see the Annex.

12 Croatia - Criminal Offenses Against Property, Finland - Violation of certain incorporeal rights, Latvia – Against fundamental rights and freedoms of a person, Slovenia - Human rights and liberties.

13 However, even if we have a broad norm, that doesn't guarantee a success of its application as the flawed application can also prevent the protection of moral author rights. For example, Latvia's criminal legal regulation seems to be very broad - Latvian Criminal Code Section 148 criminalizes any infringement, which causes substantial harm, which would easily include misappropriation of authorship if it caused substantial harm. But the Highest Court of Latvia in a plagiarism case in 2014 concluded that this broad *corpus delicti* is not meant to protect moral author rights: according to the Court, misappropriation of authorship is not explicitly mentioned in Section 148 Criminal Law and not punishable under Criminal Law. By saying this the court did not interpret the meaning of "copyright infringement" as provided for in Section 148 (1) Criminal Law and did not try to find out whether misappropriation of authorship could be a form of copyright infringement.

systems follow two different legal traditions: civil law in continental Europe and common law in the United Kingdom, Ireland, Malta and Cyprus” (European Parliamentary Research Service, 2018, p. 3). “The continental model is based on an authors’ rights legislation. It mainly takes inspiration from the French *droit d’auteur*, which arose following the French Revolution, and is characterised by the moral and economic double nature of the rights granted to the author of a work. In the common law system, where the notion of “copyright” found its origin as a system for granting official exclusive licences to print and trade certain works for a limited period of time, economic rights prevail. A certain harmonisation of the two systems began by means of the Berne Convention which internationally recognises the right of identification and the right of integrity as the “right to claim authorship” and the “right to object to certain modifications and other derogatory actions”. Those two main moral rights have consequently been incorporated into British and Irish law. They are however incorporated as rights that are granted and can thus be waived” (European Parliamentary Research Service, 2018, p. 4). This would explain Maltese and Cypriot regulation and would prove that there is no reason to presume authorship being protected through other *corpora delicti*, like aforementioned fraud. Without a way to be absolutely sure, the author of this article further chooses to exclude these countries from further analysis and depiction in graphics.

Greece criminal legal regulation raises a similar question too, despite the fact that it does not represent the common law system. Greek Copyright Law Art. 66, apart from economic rights, explicitly protects other moral rights: if a person “<...> acts against the moral right of the author to decide freely on the publication and the presentation of his work to the public without additions or deletions, shall be liable to <...>”. This means, that Greece explicitly protects economic rights and two moral rights - a right to decide on the publication<sup>14</sup> as well as a right to integrity of a work, which are, so to say, derivative rights from the “crowning right” to authorship. Logic dictates, that if the norm was supposed to protect authorship, it would have been mentioned next to the others explicitly. Despite the fact that Greece belongs to continental legal system and it seems rather unlikely for it not to protect the authorship, the grammatical analysis of the norm’s questionable construction suggests,<sup>15</sup> that for the sake of honesty and integrity of the analysis, it is better to exclude Greece from further analysis and depiction in the graphics as well.

Ireland, however, despite being a representative of common law system, has a rather suitable *corpus delicti* for protection of moral author rights, as a norm is construed widely, like in many con-

14 It means a right to decide on the time, place and manner in which the work shall be made accessible to the public (publication) This moral right is one of the less widespread rights of author, therefore, not mentioned before, next to right to authorship, right to author’s name and right to integrity of the work. See each EU Member States regulation either in their respective Copyright Act or see European Parliamentary Research Service (2018).

15 One of the biggest tackles of a thorough research of this field is the language barrier and the translations of legal acts into English. English language represents common law tradition and their law is called “Copyright law”, which quite literally represents the content of the rights themselves – “the right to copy” with a big focus on economic author rights. If we use the same term, trying to represent continental tradition, the better term should be “Author law and related rights law”. However, almost none of the EU Member States translate the name of their corresponding laws in this manner and blatantly use “Copyright Law/Act” instead, which complicates the understanding of the content of the protected rights, as well as the extent of the protection (does the protection include only economic, only moral, or both of these rights).

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tinental countries: Irish Copyright Act, Art. 141 is called “False claims of copyright”: “A person who, for financial gain, makes a claim to enjoy a right under this Part which is, and which he or she knows or has reason to believe is, false, shall be guilty of an offence and shall be liable <...>”. Therefore, this country was designated to the group of countries, providing a wide norm for protection.

Some other EU Member States’ legal regulation stands out too.

Italian regulation is special in a way that it criminalises illegal use of economic rights, but not directly misappropriation of authorship (Art. 171). The latter is considered to be a qualifying feature of economic rights infringement. Therefore, there is a wide range of other highly qualifying features for committing misappropriation of authorship through illegal use of economic rights: by using (reproducing, duplicating, etc.) of over 50 copies, communicating to the public for profit by placing it in a system of telematic networks in any way, by exercising business activities or promotes or organizes the illegal activities (Art. 171-ter. 1 of Italian Copyright Act).

Hungary is also an interesting case. There are two similar *corpora delicti* in Hungarian Criminal Code: Article 384 “Plagiarism”, which describes a specific author’s right infringement by connoting as his own the intellectual works of another person (it is punished by imprisonment not exceeding three years), and Article 385 “Infringement of Copyright and Certain Rights Related to Copyright”, which describes a general copyright infringement (which is punished by imprisonment not exceeding two years). On one hand, it seems that Art. 384 is special to Art. 385, as Art. 384 seems to criminalise a more dangerous act than Art. 385 (Plagiarism is a felony while Copyright infringement under Art. 385 is a misdemeanour), but on the other hand, Art. 384 has no qualifying features, while Art. 385 has many, - with all the qualifying features, mentioned in part 3 and 4 of Art. 385 (causing considerable, substantial, particularly considerable or particularly substantial financial loss) makes it more dangerous than the general *corpus delicti* of Art. 384. So the question is, how to qualify plagiarism that causes substantial financial loss? According to Istvan Ambrus, Art. 384 “Plagiarism” is supposed to protect moral rights of the author, while Art. 385 – economic rights of the author. Thus if someone fulfils the statutory element of both criminal offences, this situation is considered as a real concurrence of crimes in Hungary (even if this happens with only one exact commitment), so the perpetrator can be punished for both.

Regarding the scope of protection by the object, it can be noted that not all EU Member States protect all of the copyright and related rights objects. Lithuanian example shows that it is more than possible. Lithuanian Criminal Code Chapter XXIX “Crimes Against Intellectual and Industrial Property” consists of 5 crimes, but only one of them protects the authorship of a creator, namely an author of a literary, scientific or art creation. No other article in this chapter (or in the rest of the Criminal Code for that matter) protects either authorship of performance, or authorship of industrial property objects (like invention, etc.). This creates a problem if the prosecution for these crimes, committed in other EU Member States, should be executed according to Lithuanian law (certain rules of double criminality may arise, depending on the type of sanction imposed, the way the crime was commit-

ted or other circumstances)<sup>16</sup>. However, the scope of this situation requires a thorough analysis, as many countries might protect these other objects (i.e. objects of related rights (including both artistic performances and sound or audio-visual records as well as radio or television broadcasts), or objects of industrial property (including industrial designs, patentable inventions, etc.) through different norms than the one, meant for protection of authorship of literary artistic scientific works and other objects of author law<sup>17</sup>.

But the biggest differences of the regulation start to occur in the scope of criminal liability, regarding the conditions for criminal liability to arise on the first place.

### 3. CONDITIONS FOR CRIMINAL LIABILITY FOR MISAPPROPRIATION OF AUTHORSHIP IN GENERAL *CORPUS DELICTI*.

If we look at the conditions for criminal liability to arise, provided in general *corpus delicti* of misappropriation of authorship, we see a wide range of possibilities: in more than half of EU countries (precisely – 15 of them) just the act of misappropriation of authorship is considered to be enough to qualify it as a crime. It is provided in general *corpus delicti*, which is formulated very broadly: Bulgaria, Croatia, Denmark, Estonia, France, Germany, Greece, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, and the Netherlands. It would seem, that the act of usurpation of authorship is considered to be detrimental by itself, disregarding the consequences of the crime.<sup>18</sup> The rest 12 Member States criminal laws require additional specific conditions to be met:

- 1) **Mens rea**, regarding the motive: the act is “malicious or fraudulent” (Belgium, Luxembourg); offender acts with intent to illegally enrich themselves or a third party, i. e. commits the crime for financial gain or profit (Austria, Finland, Ireland, Spain)<sup>19</sup>; the person acts knowingly that claim is false (Ireland); acts for personal use (Italy).<sup>20</sup>

In several countries’ regulation there is an additional rule that if the criminal offense is committed with the purpose of financial gain, either additionally a fine is imposed (for example, Art. 50, Hungarian CC), or, if the fine imposed is the main punishment, then the size of the fine is increased (for example, Slovenian CC, Art. 38(1)).

<sup>16</sup> See chapter 6 of this article.

<sup>17</sup> For example, Czech Republic Criminal Code Section 269 “Infringement of Protected Economical Rights”, that is constructed almost identically to the Section 270, criminalizing Infringement of Copyright, Rights Related to Copyright and Rights to Databases.

<sup>18</sup> Polish criminal legal regulation also reinforces this idea: Polish Copyright Act Art. 115.3 states that if a person violates specific author rights “<...>in order to gain material benefits in a manner other than specified in paragraph 1 or 2, shall be liable to <...>”. The sentence in this case is also smaller – imprisonment for up to one year instead of three, like in the 1<sup>st</sup> part, where misappropriation of authorship is criminalised. This indicates, that stealing one’s authorship is a more dangerous act than any other.

<sup>19</sup> The size of the profit is not usually explicitly named, it usually is a prerogative of the court to determine, except, for example, in Spain – systemic analysis of Spanish CC suggests, that it means more than 400 euros as it is the line of small amount of financial profit (Spanish CC, Art.270 (1)).

<sup>20</sup> Systemic analysis of Italian law suggests that if the act is committed not for personal use, than it is considered to be a qualifying feature (Art. 171-ter(1) of Italian Copyright Act).

2) **The objective elements of the crime:**

- a) **Actus Reus:** was committed not insignificantly (Czech Republic);
- b) **consequences of the crime:** causes damage (Austria), causes considerable detriment or damage to the person holding a right (Finland), causes financial loss to the right-holder (Hungary), causes substantial harm to rights and interests protected by law of a person (Latvia), the person acted to the detriment of a third party<sup>21</sup> (Spain).

Italian example is interesting in a way that usurpation of authorship itself is regarded as a qualifying feature to infringement of author's economic rights.

#### 4. QUALIFYING FEATURES OF THE CRIME

It should be noted, that, there are no qualifying features of the crime of Misappropriation of Authorship in criminal laws of 9 EU Member States: Belgium, Bulgaria, Estonia, Finland, Ireland, Poland, Slovenia, Sweden and the Netherlands.<sup>22</sup> If we analyse qualifying (including highly qualifying) features of the crime in the rest of the EU Member States, we will see that they are very variant:

- 1) **Mens rea**, regarding the motive or aim: offender acts on commercial basis/intent (Germany, Austria, Italy); for purposes other than personal use (Italy); by reason of specific motivation (Slovakia).

In three cases, misappropriation of authorship is considered to be a crime, if committed not only with intent, but also with gross negligence, which expands the application of the norm significantly (Denmark, Sweden and Portugal).

2) **The objective elements of the crime:**

- a) **Actus reus:** commits such an act in large or considerable extent (Czech Republic, Latvia) or in a more serious manner (Slovakia); the act has attributes of business activity or commerciality (Czech Republic, Italy, Austria, Denmark) or was committed by distributing a large number of infringing copies (Italy, Denmark, Latvia) as well as the value of the objects unlawfully produced is big (Spain), or by the person acted making them available to the public (Denmark, Italy, Slovakia). Another qualifying feature is if the act was committed by compelling the renouncing of authorship by means of violence, threats or blackmail (Latvia, Lithuania). Some other rather general qualifying features include acting as a member of a(n organised) group of persons (Latvia, Lithuania, Slovakia, France), or Repetition/Recidivism (Luxembourg, Portugal)<sup>23</sup>, or by promoting or organizing the illegal activities (Italy), as well

<sup>21</sup> Systemic analysis of the CC suggests that the value is not fixed in any way and in each case court decides (it is an evaluative feature). For example, Article 236: Whoever, being the owner of an item of moveable property or acting with the owner's consent, takes it from whoever lawfully has it in his possession, *to his detriment or that of a third party, when the value thereof exceeds four hundred euros*, shall be punished with a fine of three to twelve months.

<sup>22</sup> Considering the fact, that Bulgaria, Estonia, Poland, Slovenia, Sweden and the Netherlands have already very broad general *corpus delicti*, there is no disparity between a rather simple and more dangerous crime in criminal legal regulation, which leaves the court with a possibility to adapt to the situation only through the process and rules of imposition of the penalty.

<sup>23</sup> It should be noted, that this is likely only a specification of the structure of these countries' criminal codes and in every



as when persons under eighteen years of age are used to commit those offences (Spain).

- b) **The consequences of the crime:** the offender gains substantial or extensive profit (Czech Republic, Spain); the offender causes substantial or extensive damage (Czech Republic, Slovakia, Spain); the infringement results in considerable/substantial financial loss (Hungary).

There is only one country in EU that has provided privileged circumstances for misappropriation of authorship – Spain: in cases of retail distribution, in view of the circumstances of the offender and the small amount of financial profit, as long as the person doesn't intentionally export or import illegal copies of the work and when the profit does not exceed four hundred euros.

As you can see, some of the qualifying features coincide with the ones that are considered necessary for the qualification of the general *corpus delicti* of the crime in other countries. This will have an impact to the imposition of the crime, which is explained below.

## 5. PUNISHMENTS FOR MISAPPROPRIATION OF AUTHORSHIP

All of the EU countries have these two types of possible punishments for misappropriation of authorship: a fine and imprisonment (every country has imprisonment as a punishment either in the general *corpus delicti*, or in the *corpus delicti* with qualifying features, or in both of them). Of course, there are also many other possible punishments or other punitive measures, that the court can impose with or instead of imprisonment or a fine, but it is practically impossible to compare them all, as there are many rules of imposition of crimes, changing one punitive measure into another or imposing several of them at once (even fines in many EU countries can be either a main punishment, or an auxiliary measure next to imprisonment).<sup>24</sup> So only fines and imprisonment can be compared at least on some measurable level.

### 5.1 Fines

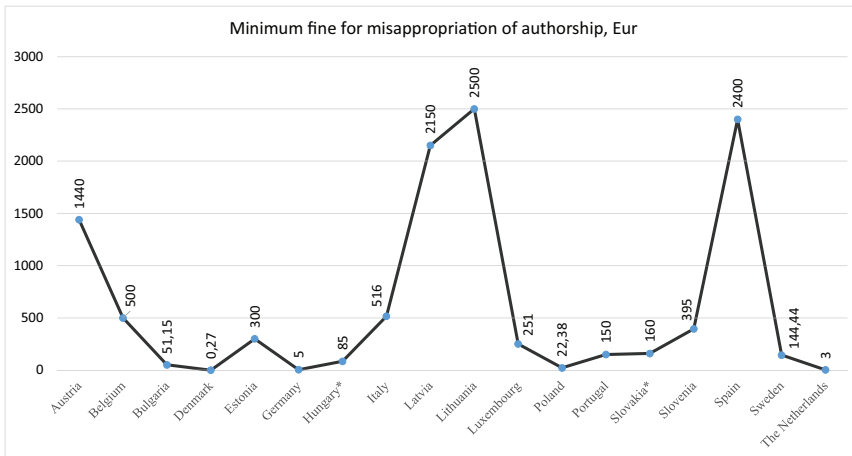
The graph below depicts a minimum fine, possible to impose for a person for the misappropriation of authorship crime (without qualifying features) in EU Member States.<sup>25</sup> It should be noted, that not all countries mention the size of a fine in the same norms as the crime itself, sometimes the minimum is only set in the general part of criminal code. Therefore, the graph depicts both: the

other country repeated crimes or crimes, committed by a group of persons are punished more severely, but the rules of imposition of the punishment are set in general part of the criminal codes instead of special part of the code. A(n organised) group in this case includes a group of accomplices, an organized group, including a criminal association, or any other form of complicity.

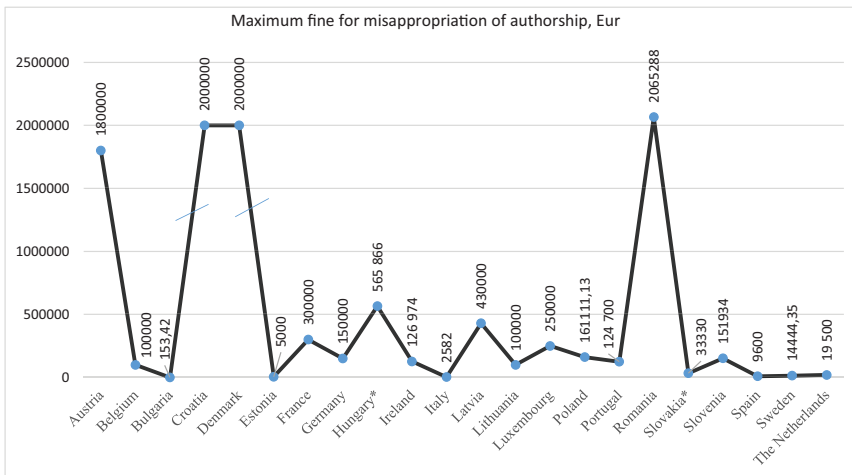
<sup>24</sup> It is interesting, that in Czech Republic confiscation is listed as one of the alternative punishments for the crime, while many other countries confiscate infringing goods as a mandatory provision with the punishment.

<sup>25</sup> Several countries were eliminated from these graphs for various reasons: in both of these graphs Croatia was eliminated, as there is no maximum or minimum limit to the fine; Finland was eliminated as well, as there is no threshold mentioned for the fine – it depends entirely on the income of the offender, in France and Ireland, there is no minimum limit, only maximum limit of a fine, and in Czech Republic there is no fine punishment in the general *corpus delicti*, it can only be imposed if certain qualifying features are stated.

one, specified in the norm criminalising the act and if the size is not specified – the size of the fine, stated in general part of country’s criminal code is used instead.<sup>26</sup>



As we can see, the minimum possible fines for misappropriation of authorship are extremely different and the gap can consist of several thousand euros. Same goes with maximum fines (see the graph below).<sup>27</sup>



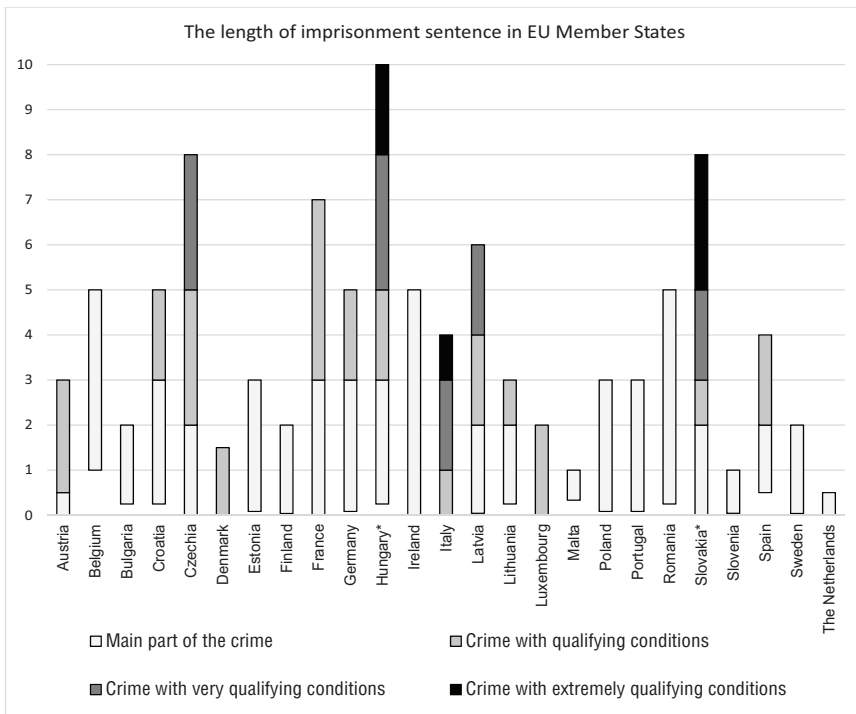
26 It should also be mentioned, that many states count fines by a range of days and one day also has a range of sum, so in several cases (see the Annex) the minimum and maximum size of the fine is an absolute minimum or maximum that can be possibly imposed for any other crime (minimum is counted by multiplying minimum number of days and minimum sum for one day, while the maximum sum is counted by maximum number of days and maximum sum for one day).

27 Maximum fines were counted in the same way – if they are explicitly provided in the norm, criminalizing misappropriation of authorship, then they are used, if not – the absolute maximum fine is counted using rules, provided in general part of Country’s criminal code. Croatia, Finland and Czech Republic were eliminated from the graph for the aforementioned reasons too.

There are four extreme spikes in this graph that make the rest of it rather flat: Denmark and Croatia provide minimum fines, but the maximum size is unlimited, so there is no way to actually depict it graphically and the court practice may fix it at any point of the graph. Austria and Romania, on the other hand, have a very high limit for a possible maximum fine. Austria is special in a way, because it considers misappropriation of authorship to be a variation of fraud and fraud is usually a very dangerous crime in all the EU as it can undoubtedly cause substantial damage to the victim. The rest of the countries' regulation visually seems less varying, but regarding the actual numbers, they are also drastically different and rather random: the size of the fines does not seem to correlate to the "wealth" of the country, nor does it seem to represent cultural or regional features of IP protection either. Of course, it is very unlikely for a person to be sentenced either with a minimum, or a maximum fine, so absolute majority of cases will be somewhere "in between" and legal practice can draw the lines anywhere.

### 5.2. Imprisonment

There is a very similar situation with imprisonment (see the chart below):



Not only the length of imprisonment is extremely different (including minimum and maximum terms), but several of the EU Member States – namely Czech Republic, Hungary, Italy, Latvia and Slovakia - stand out also in the quantity of levels, regarding qualifying features and sanctions for

them (See the Annex). Denmark, Italy and Luxembourg set the shortest terms for imprisonment, compared to other Member States, and this punishment can be imposed only for the *corpus delicti* with qualifying features, while for the general *corpus delicti*, it is possible to impose only a fine penalty.

As these two graphs show, the difference of both fines and imprisonment seems unjust. If we take, for example, Danish regulation and compare it with Hungarian, the extremities of the regulations become obvious: in case of a commercial misappropriation of authorship, that has caused substantial damage, the maximum term of imprisonment in Denmark would be one year and six months, while in Hungary the same act could be punished for up to 10 years of imprisonment.

## 6. CURRENT REGULATION AND POSSIBILITIES OF HARMONISATION

Obviously, this variant regulation can, does and will in the future create many legal and practical problems. For example, the incorporeal nature of copyright objects creates issues of dealing with crimes committed in virtual space (misappropriation of authorship is very easily committed online - i.e. regardless of national borders<sup>28</sup>), therefore, problems of applicable law will arise.<sup>29</sup> Furthermore, questions of international criminal legal cooperation and certain act's recognition as a crime will be problematic too: as mentioned before, in some countries only a certain form of misappropriation of authorship is a crime (if at all), while in others – all moral rights might be protected by criminal means. This raises questions of double criminality. It must be noted, that infringement of moral author rights *per se* is not mentioned in the list of 32 crimes, provided in framework decisions of the Council of the EU, which would have given rise to recognition of the decision without verification of the double criminality of the act (i.e. without proving that the act is criminalised in both Member States). Therefore, the verification of the double criminality of misappropriation of authorship would be necessary, unless this crime falls under one of other categories, mentioned in the list of those 32 crimes. For example, Framework Decision's of the Council of the EU (2002/584/JHA) Art. 2.2 includes a "computer-related crime" or "counterfeiting and piracy of products" in the list, therefore, if misappropriation of authorship is committed through committing these crimes, then the European arrest warrant would be issued without verification of the double criminality of the act<sup>30</sup> and misappropriation of authorship would be punished jointly in the executing state (this means that authorship will be protected through the protection of economic authors rights). Otherwise,

28 Cyberspace Convention does not protect moral rights, only economic rights, which in this case can be also violated, as the act of stealing someone's work almost inevitably constitutes a publication of some sort.

29 Another reason why this variant EU Member States' regulation is questionable is because without harmonisation of minimum standards of protection of moral rights, people, while enjoying their right to free movement, have certain expectations on the regulation to be at least similar throughout all the EU, while in fact it is not, as shown in the graphs above. Therefore, the ensurance of the principle of legal certainty can be in question.

30 Furthermore, the size of punishment plays a big role in this too: These offences have to be punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years in order to issue a European arrest warrant without verification of the double criminality. If the conditions are not met, then the European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

verification of the double criminality of the act is necessary, which will complicate legal cooperation between EU Member States. The same goes with other Framework Decisions of the EU Council, that provide an identical list of 32 mutually recognised crimes: 2008/947/JHA regarding the supervision of probation measures and alternative sanctions (Art. 10); 2008/909/JHA regarding imposition of custodial sentences or measures involving deprivation of liberty (Art. 7); 2009/829/JHA regarding supervision measures as an alternative to provisional detention (Art. 14).

However, Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to *financial penalties* provides additional 7 crimes to the aforementioned list of 32 crimes and the expanded list includes “infringements of intellectual property rights” and misappropriation of authorship falls under this group of crimes. Therefore, if a fine is imposed for misappropriation of authorship by a court of the issuing State, other States will not have to verify the double criminality of the act and will recognise and enforce the decision in accordance with the Framework Decision’s rules and their exceptions.

All of these problems suggest that we need a unanimous criminal legal regulation of certain crimes against intellectual property (at least for ones committed on a commercial scale) on EU level. But as TRIPS was so criticized for its unprecedented coercive nature (Rajan, 2001) and called “the most ambitious multilateral intellectual property (IP) treaty at that time” (Geiger, 2016, p. 4), any attempt to provide means of criminal legal regulation on EU level could also provoke similar reaction. It should be noted that there was one attempt to unify criminal legal protection of intellectual property on EU level as a way to solve namely these very different sanctions set on national criminal laws of EU Member States: in 2005 (July 12), European Commission submitted a Proposal for a European Parliament and the Council Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights<sup>31</sup>, which would have obliged the Member States to consider all intentional infringements of an intellectual property right on a commercial scale as a criminal offence, including attempting, aiding or abetting and inciting such offences (Article 3). The Directive even offered a certain range of possible penalties in Article 4: imprisonment, fines and the seizure (or in some cases - destruction) of goods belonging to the offender (including the infringing goods and the materials, implements or media used the infringement), etc., and offered the amount of the penalties (Article 2 of Explanatory memorandum). This Proposal has been repeatedly discussed and changed, but the consensus has not been reached: in 2010, the Commission finally withdrawn it. All other directives relevant to copyright protection, as mentioned before, are limited to civil legal regulation.

Therefore, an effective way to deal with this situation would be through judicial cooperation in criminal matters in the European Union, which is based on the principle of mutual recognition of judgments and judicial decisions, if all of the lists of mutually recognised crimes in the Framework Decisions of the EU Council would include intellectual property crimes. Otherwise, it is unlikely that the Member States are going to willingly transfer their competence to EU on such an important field as criminal law. Currently Article 83 of the Treaty on the Functioning of the European Union (2012)

<sup>31</sup> 2005 July 12 *Proposal for a European Parliament and Council Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights* {SEC(2005)848} /\* COM/2005/0276 final - COD 2005/0127 \*/.

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limit's EU competence to crimes that are extremely dangerous and cross border (like terrorism, trafficking in human beings, drugs or arms, money laundering, organised crime, etc.). It seems, there is no place for less serious crimes, therefore, the expansion of the list of 32 mutually recognised crimes in the Framework Decisions would be a much less painful and more effective procedure, than harmonisation of the national laws.

So it seems, that on one hand, there is a universally accepted reason to standardise the enforcement of intellectual property rights with criminal legal tools - the scope of copyrighted material in the world as well as correspondingly increasing spread of counterfeiting and piracy on a global scale, which is an ever-growing international phenomenon with major economic and social repercussions (Geiger, 2016, p. 5), while on the other hand, we have a need of diversity: choosing a 'one size fits all' approach tends to ignore the complexity of criminal law and the need to differentiate between the various intellectual property rights, the infringing situations and the sanctions involved (Geiger, p. 5), as well as raise old nationalist legal arguments, suggesting that harmonisation undermines a national culture (Michaels Halpern and Johnson, 2014, p. 17).

However, some authors think that this struggle between pro's and con's of international harmonisation of criminal legal protection of intellectual property rights might be of a temporary nature. As Rene David put it: "Let jurists continue in their routine opposition to international unification of law; nevertheless that unification will occur without and despite them, just as the *ius gentium* developed in Rome without the pontiffs, and as equity developer in England without the common-law lawyers" (David, 1968, from Halpern and Johnson, 2014).

## CONCLUSIONS

- 1) No international hard-law regulation requires countries to criminalise misappropriation of authorship, as well as any other moral author rights. All of the international and EU measures of copyright protection emphasize on establishing mandatory criminal responsibility for intentional copyright infringement on commercial scale, which means that these crimes regard the protection of only economic author rights.
- 2) Regarding national criminal legal regulation of EU Member States, considering criminalisation of misappropriation of authorship, few EU countries seem not to provide criminal liability for misappropriation of authorship: Cyprus and Malta with a certain reservation of adding Greece to the list. The rest criminalise misappropriation of authorship either in their criminal codes, or in laws on copyright and related rights. Most of the EU countries criminalise only intentional copyright infringement, while three countries provide a possibility to prosecute a person, who acted with gross negligence (Denmark, Sweden and Portugal).
- 3) More than half EU Member States criminalise misappropriation of authorship with very wide *corpora delicti* and don't require any additional criteria to be met for criminal liability to arise apart the commission of the act. The rest criminalise misappropriation of authorship only if it was somehow detrimental (causes damage, considerable harm, financial loss to the right holder,

etc.) or shows a specific *mens rea* of the offender (he acts fraudulently, with intent to gain profit, etc.). In one third of EU Member States criminal laws there are no qualifying features for the crime of Misappropriation of Authorship, only the general *corpus delicti* with the same features that are considered to be qualifying in other countries. This creates a situation where the same crime is being punished differently in each country, as norms with qualifying features contain harsher sanctions.

- 4) All EU Member States, that have criminalized misappropriation of authorship, have provided fines and imprisonment as possible sanctions for the crime.
  - a. The comparison of EU Member States' sanctions shows a wide range of possibilities to impose minimum and maximum fines. The minimum or maximum size of the fines do not seem to correlate to the "wealth" of the country, nor do they seem to represent cultural or regional features of intellectual property protection either. As both the very minimum or maximum fines are rarely imposed and absolute majority of cases will be imposed somewhere "in between", the size of actually imposed fines by the courts depend completely on the country's case law and are hardly comparable.
  - b. The length of imprisonment sentence varies radically throughout EU: the same crime could be punished by one and a half years of imprisonment in one country and by ten years in another. This contradicts to the expectation that similar situations will cause at least similar legal consequences throughout all EU Member States.
- 5) According to Framework Decision of the EU Council on mutual recognition of judgments and judicial decisions, if a penalty of imprisonment is imposed, the verification of the double criminality of misappropriation of authorship would be necessary, unless this crime falls under one of other categories, mentioned in the list of 32 mutually recognised crimes (namely, "computer-related crime" or "counterfeiting and piracy of products"). However, if a fine is imposed by a court of the issuing State, other States will not have to verify the double criminality of the act and will recognise and enforce the decision in accordance with the Framework Decision of the EU Council 2005/214/JHA "on the application of the principle of mutual recognition to financial penalties", as misappropriation of authorship falls into the category of "infringements of intellectual property rights" in the Framework Decision's list of mutually recognised crimes.

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## ANNEX: TABLE ON EU MEMBER STATES NATIONAL REGULATION

	EU Member State	The main composition of a crime	Sanction for the main composition of a crime	Qualifying circumstances	Sanction for the composition with qualifying circumstances
1.	<b>Austria</b> Criminal code, §146-148 (as fraud).	Intent to illegally enrich themselves or a third party; creates damage	Imprisonment for six months or with a fine of up to 360 daily rates (1 daily rate ranges from 4 to 5000 euros, depending on the income of the culprit).	Commits fraud commercially	Imprisonment for up to three years.
2.	<b>Belgium</b> The Code of Economic Law. Chapter 13, Art. XI.293.	Malicious of fraudulent	The level 6 sanction, which consists of a criminal fine of 500 to 100,000 euros and imprisonment of one year to five years or one of these penalties only	-	-
3.	<b>Bulgaria</b> Criminal Code, Section VII, Art. 173 and 174.	-	Imprisonment for (3 months <sup>1</sup> ) up to 2 years or by a fine from BGN 100 to 300 (=51,15 to 153,42 Eur)	-	-
4.	<b>Croatia</b> Criminal code Article 229 "Violation of Copyright or of the Rights of Performing Artists"	-	A fine or by imprisonment (from 3 months) <sup>2</sup> not exceeding three years A fine is 30-360 daily units. 1 daily unit is 20 KN-10 000 Kuna (2,66 Eur-1328,76). So the fine can range is between 79,8-478 353,6 Eur.	3) Offences are committed against a protected item of cultural heritage 7) considerable pecuniary gain is acquired, or considerable damage is caused, while the perpetrator acts with an aim to acquire such pecuniary gain or to cause such damage	3) Imprisonment for six months to three years. 7) Imprisonment for six months to five years.
5.	<b>Cyprus:</b> NOT PROTECTED (only through infringement of economic rights). Copyright Act. Moral rights are not treated in Law 59/1976. <sup>3</sup>				
6.	<b>Czech Republic</b> Criminal code Section 270 "Infringement of Copyright, Rights Related to Copyright and Rights to Databases"	Not insignificantly	Imprisonment for up to 2 years <sup>4</sup> or to prohibition of activity or confiscation of an item or other asset value.	(2) a) the act has attributes of business activity or another enterprising, b) gains substantial profit or causes substantial damage to another c) the act is committed in considerable extent.	2) An offender shall be sentenced to imprisonment for six months to five years, to a pecuniary penalty or to confiscation of a thing or other asset value

1 Art 39 of Bulgarian CC.

2 Croatian CC Art 44(1)

3 European Parliamentary Research Service (2018).

	EU Member State	The main composition of a crime	Sanction for the main composition of a crime	Qualifying circumstances	Sanction for the composition with qualifying circumstances
				(3) a) gains extensive profit or causes extensive damage to another b) commits such an act in large extent.	3) An offender shall be sentenced to imprisonment for three to eight years (Art. 68 of CC) A pecuniary penalty shall be imposed in daily rates in an amount of at least 20 and at most 730 whole daily rates. (2) A daily rate shall amount to at least 100 CZK (3,75 Eur) and at most 50000 CZK (1874,73 Eur)
7.	<b>Denmark</b> Act on Copyright (2014), Art. 76.	- (+By gross negligence)	A fine The size depends on income of the culprit. Minimum day fine is 2 Kr. (or 0,27 Eur), the fine is of 1-60 days, so minimum fine is between 2-120 Kr. (0,27-16 Eur). There are no limits of maximum fines.	Committed Intentionally by distributing copies among the general public and under particularly aggravating circumstances, which are deemed to exist especially where the offence is commercial, concerns production or distribution of a considerable number of copies, or where works, performances or productions are made available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them.	Imprisonment (from 7 days) <sup>5</sup> in one year and 6 months, unless CC 299b provides a more severe punishment <sup>6</sup>
8.	<b>Estonia</b> Criminal code Chapter 14 § 219. Violation of authorship	-	A pecuniary punishment or imprisonment (from 30 days) <sup>7</sup> up to 3 years'  A fine is of 30-500 daily rates. Daily rate depends on the income of the offender. Minimum daily rate is 10 eur./day = from 300-5000 Eur	-	-

4 Czech CC Section 55 does not provide minimum sentences.

5 Denmark CC, Para 33(1).

6 § 299 b Any person who, for the purpose of obtaining for himself or for others an unlawful gain or who otherwise under particularly aggravating circumstances commits copyright infringements of a particularly serious nature, cf. Section 76(2) of the Copyright Act, or unlawful import of a particularly serious nature, cf. Section 77(2) of the Copyright Act, shall be liable to imprisonment for any term not exceeding six years.

7 Estonian CC Para. 45 (1).

	EU Member State	The main composition of a crime	Sanction for the main composition of a crime	Qualifying circumstances	Sanction for the composition with qualifying circumstances
9.	<b>Finland</b> Criminal code Chapter 49. Violation of certain incorporeal rights. Sec 1 "Copyright offence"	For profit and in a manner conducive to causing considerable detriment or damage to the person holding a right	A fine or to imprisonment (from 14 days) <sup>8</sup> to at most two years.  Size of a fine depends entirely on the income of the fined person: a day is 1/60 of income and a fine can range from 1-120 days.	-	-
10.	<b>France</b> Intellectual property code. Articles L335-2 and L335-3.	- [+Gross negligence in some cases regarding use of databases]	Three years' imprisonment <sup>9</sup> and a fine of 300,000 euros.	The offenses have been committed by an organized gang	Seven years' imprisonment and to a fine of 750,000 euros.
11.	<b>Germany</b> Copyright Act. Article 106 "Unlawful exploitation of copyrighted works".	-	Imprisonment (from 1 month) <sup>10</sup> to not more than 3 years or a fine  [A fine of minimum 5 daily rates ranges from 5 to 150 000 Eur A fine of maximum 360 daily rates ranges from 360 Eur to 10 800 000 Eur].	Offender acts on commercial basis	Imprisonment for a term not exceeding five years or a fine
12.	<b>Greece.</b> - NOT PROTECTED (only through infringement of economic or other moral rights, see Copyright Act. Article 66 Criminal penalties).				
13.	<b>Hungary</b> Criminal code Chapter XXXVII Crimes Against Intellectual Property Rights, Section 384 "Plagiarism"	Causes financial loss to the right-holder  If the criminal offense committed with the purpose of financial gain, additionally a fine is imposed (Art. 50, CC)	Imprisonment (from 3 months) <sup>11</sup> not exceeding three years.  From 30 to 400 days (=84,89 Eur - 565866,4 Eur)	<i>On these circumstances – a real concurrence of Art. 384 and 385 Section 385.</i> (3) the infringement results in considerable financial loss. (4) If the infringement: <i>a)</i> results in substantial financial loss <i>b)</i> results in particularly considerable financial loss, <i>c)</i> results in particularly substantial financial loss,	<i>Section 385</i> (3) The penalty for a felony shall be imprisonment not exceeding three years (4) <i>a)</i> imprisonment between one to five years <i>b)</i> imprisonment between two to eight years; <i>c)</i> imprisonment between five to ten years.

8 Finnish CC Chapter 2(c), Section 2(2).

9 French CC Title III, Chapter I, Subsection 2 does not provide the length of minimum sentence.

10 German CC, Section 38.

11 Hungarian CC, Sec. 36.

	EU Member State	The main composition of a crime	Sanction for the main composition of a crime	Qualifying circumstances	Sanction for the composition with qualifying circumstances
14.	Ireland Copyright Act, 2000, Article 141.	For financial gain and knowingly that claim is false	A fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years <sup>12</sup> , or both.	-	-
15.	Italy Copyright Act. Section II "Defenses and criminal sanctions", Art. 171.	Infringement of economic rights (for personal use)	A fine from € 51 to € 2,065	Crimes are committed over a work of others not intended for publication, or with usurpation of the authorship of the work, or with deformation mutilation or other modification of the work itself, if it is offended by the author's honor or reputation.  (171-ter. 1.) if the offense is committed for purposes other than personal use and with gainful intent  (171-ter. 2.) the offense is committed by using (reproducing, duplicating, etc.) of over 50 copies, communicating to the public for profit by placing it in a system of telematic networks in any way, by exercising business activities or promotes or organizes the illegal activities	Imprisonment of up to one year or a fine of not less than € 516  (171-ter. 1.) imprisonment from six months to three years and with a fine from € 2,582 to € 15,493 (171-ter. 2.) imprisonment from one to four years and a fine from € 2,582 to € 15,493
16.	Latvia Criminal Code, Chapter XIV, Section 148 Infringement of Copyright and Neighbouring Rights	Such infringement has caused substantial harm to rights and interests protected by law of a person	Deprivation of liberty for a term (from 15 days) <sup>13</sup> not exceeding two years or temporary deprivation of liberty, or community service, or a fine (of 5-1000 minimum wages= from 2150 to 430 000 Eur as 1 month minimum wage is €430)	(2) The offence has been committed by a group of persons pursuant to prior agreement,	(2) Deprivation of liberty for a term not exceeding four years or temporary deprivation of liberty, or community service, or a fine.

<sup>12</sup> Irish CC does not provide minimum sentences.

<sup>13</sup> Latvian CC, Section 38(2).

<sup>14</sup> Lithuanian CC, Art. 50(2).

<sup>15</sup> In addition, the court may order the closure of the establishment operated by the convicted person for a period which will not exceed 5 years, as well as order, at the expense of the convicted person, the publication and display of the judgment pronouncing the conviction.

	EU Member State	The main composition of a crime	Sanction for the main composition of a crime	Qualifying circumstances	Sanction for the composition with qualifying circumstances
				(3) If it is committed in large scale or by an organised group, or by compelling, by means of violence, threats or blackmail, the renouncing of authorship, or commits compelling of joint authorship, if it is committed by means of violence, threats or blackmail	(3) The applicable punishment is deprivation of liberty for a term not exceeding six years, with deprivation of the right to engage in specific employment for a term not exceeding five years and with or without probationary supervision for a term not exceeding three years.
17.	<b>Lithuania</b> Criminal Code, Chapter XXIX Art. 191 “Misappropriation of authorship”.	- Use of economic rights	Community service or by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term (from 3 months <sup>14</sup> ) of up to two year. Fine from 50 to 2000 MGL (2500-100 000)	2. By taking advantage of his official position or by resorting to mental coercion, forces the author to acknowledge another person as the co-author or successor to author’s rights or to renounce the right of authorship	A fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to three years.
18.	<b>Luxembourg</b> Copyright Act. Art. 82-83.	Malicious or fraudulent	A fine of 251 to 250,000 euros (1 August, 2001, formerly “10.001 to 10 million francs”).	Art. 85. Repetition	Imprisonment for 3 months to 2 years and a fine of 500 to 500,000 euros (1 August 2001, formerly “20,000 to 20 million francs”), or one of these penalties only. <sup>15</sup>
19.	<b>Malta. Does</b> - NOT PROTECTED (only through economic rights or possibly <b>Art. 298 Commercial or Industrial Fraud:</b> “without the consent of the owner” (in this case - author) Imprisonment for a term from four months to one year. Use of economic rights should be qualified as another crime – 298B.				
20.	<b>Poland</b> Copyright Act Chapter 14, Article 115. 1.	-	A fine (100–720 000 Zł = 22,38-161111,13 Eur), restriction of liberty or deprivation of liberty, or imprisonment for (from 1 month) <sup>16</sup> up to 3 years	-	-
21.	<b>Portugal</b> Copyright Act. Title VII, Ch. I, Art. 197 and 198.	- Including negligence	1 - Imprisonment of (from 1 month) <sup>17</sup> up to three years and a fine of 150 to 250 days (=from 150 to 124700 Eur) <sup>18</sup> 2 - Negligence is punishable by a fine of 50 to 150 days.	recidivism	There is no suspension of the sentence in case of recidivism.

<sup>16</sup> Polish CC, Art. 37.

<sup>17</sup> CC of Portugal, Art. 41(1).

<sup>18</sup> Each day corresponds to a fine from €1 to €498.80, which the tribunal fixes in regard to the economic and financial conditions of the convict and his personal duties (Article 47 of Portuguese Criminal Code, part. 2). [https://www.legislationline.org/download/id/4288/file/Portugal\\_CC\\_2006\\_en.pdf](https://www.legislationline.org/download/id/4288/file/Portugal_CC_2006_en.pdf)



	EU Member State	The main composition of a crime	Sanction for the main composition of a crime	Qualifying circumstances	Sanction for the composition with qualifying circumstances
22.	<b>Romania</b> Art 141 Copyright Act. Ch. III, Art. 141	(Making publicly known)	Imprisonment from three months to five years, or with fine from Lei 500,000 (=103264,4 Eur) to Lei 10 million (=2065288,07 Eur) <sup>19</sup>	The competition of crimes – if the deed constitutes a more severe offence, then another article is applied.	
23.	<b>Slovakia</b> Criminal Code, Title 4. Section 283 Infringement of Copyright.	-	A term of imprisonment of up to two years. <sup>20</sup>	2) a) a person causes larger damage through its commission b) acting in a more serious manner, c) by reason of specific motivation, d) via computer system. 3) causes substantial damage through its commission. 4) a) and causes large-scale damage through its commission b) acts as a member of a dangerous grouping.	Imprisonment for a term between six months and three years  Imprisonment for a term of one to five years imprisonment of three to eight years
24.	<b>Slovenia</b> Criminal Code, Chapter 16, Art. 147 Violation of Moral Copyright	- Committed for one's own interest may increase the fine	A fine or sentenced to imprisonment from 15 days <sup>21</sup> not more than one year. A fine is 5-360 daily amounts = 395,66 - 151934,4 Eur <sup>22</sup> 1500 daily amounts = 118695-633060 Eur	-	-
25.	<b>Spain</b> Criminal Code, Chapter XI "On felonies against intellectual and industrial property, the market and consumers"	For profit (more than 400 euros) and to the detriment of a third party <sup>23</sup>	Imprisonment of six months to two years and a fine from twelve to twenty- four months (=2400– 9600 Eur). <sup>24</sup>	Privileged circumstance: In cases of retail distribution, in view of the circumstances of the offender and the small amount of financial profit, as long as the person doesn't intentionally export or import illegal copies of the work.	A reduced fine from 3 to 6 months, or community service of 31 to 60 days. Permanent traceability from 4 to 12 days, or a fine of 1 to 2 months (under Art. 623.5 as a misdemeanour).

19 1 Lei equals 0,21 EUR.

20 Neither Slovakian CC Section 46, nor any other article provides minimum duration of imprisonment sentence.

21 Slovenian CC, Art. 46(s).

22 See Slovenian CC, Art. 38 (1-4).

23 Systemic analysis of the CC suggests that the value is not fixed in any way and in each case court decides (it is an evaluative feature).

For example, Article 236: Whoever, being the owner of an item of moveable property or acting with the owner's consent,

	EU Member State	The main composition of a crime	Sanction for the main composition of a crime	Qualifying circumstances	Sanction for the composition with qualifying circumstances
	Subchapter 1. "On Felonies Related to Intellectual Property" Article 270			When the profit does not exceed four hundred euros Qualifying features (Article 276, a, b, d): When the profit obtained is of special economic importance; When the events are especially serious, in view of the value of the objects unlawfully produced or the special importance of the damage caused; When persons under eighteen years of age are used to commit those offences.	For qualifying features: imprisonment of 1 to 4 years, a fine from 12 to 24 months and special barring from practice of the profession related with the offence committed, for a term from 2 to 5 years.
26.	<b>Sweden</b> Copyright Act. CHAPTER 7. On Penal and Civil Liability. Article 53.	- [Including gross negligence]	Fines or imprisonment for (from 14 days) <sup>25</sup> not more than two years. Swedish Criminal Code, Ch. 25 defines the size of fines: Day-fines are of 30-150 days, one day costs 50-1000 kronor. So absolute minimum is 1500-150 000 Kr. Or 144,44-14444,35 Eur.	-	-
27.	<b>The Netherlands</b> The Dutch Copyright Act: Section 34.	- impairs such a work in any other way that could be harmful to the reputation or honour of the author or to his dignity as an author	Imprisonment for a term of (from 1 day) <sup>26</sup> not more than six months or with a fine of the fourth category (from 3 to €19,500).		

takes it from whoever lawfully has it in his possession, to his detriment or that of a third party, when the value thereof exceeds four hundred euros, shall be punished with a fine of three to twelve months.

24 Article 50 of Criminal Code: "4. The daily quota shall be a minimum of two and a maximum of four hundred euros, except in the case of fines imposed on legal persons, in which the daily quota shall have a minimum of 30 and a maximum of 5,000 euros. For the purposes of calculation, when the term is set by months or years, it shall be construed that months are of thirty days and years of three hundred and sixty days." So the possible absolute minimum fine is 2400 EUR (12\*200), and maximum – 9600 EUR (24\*400).

25 Swedish CC, Chapter 26, Section 1.

26 CC of the Netherlands, Section 10(2)