

2025 AIPPI World Congress – Yokohama  
Adopted Resolution  
16 September 2025

## **Resolution**

### **2025 – Study Question – General**

#### **Preliminary Injunctions: Requirements for compensating damage suffered by Defendant**

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#### **Background:**

- 1) This Resolution concerns the existence, nature, and extent of the applicant's (usually the plaintiff's) liability for compensating damages suffered by an enjoined party (usually the defendant) in the case where a Preliminary Injunction ("PI") requested by the applicant is granted but the PI is ultimately determined to have been wrongfully granted.
- 2) The resolution also addresses the standards and requirements for a court or other relevant authority to set a sufficient bond, security, or undertaking (a "guarantee" in whatever form would be generally acceptable in the relevant jurisdiction) to compensate a defendant, if needed.
- 3) The Resolution only addresses compensation related to civil (private) law issues and does not concern compensation and liability associated with criminal law issues. The Resolution does not address ethical issues or remedies/consequences that may follow from the submission of, for example, knowingly false testimony or evidence. This Resolution does not address any possible liability relating to third parties to a dispute.
- 4) 43 Reports were received from AIPPI's National and Regional Groups and Independent Members providing detailed information and analysis regarding national and regional laws relating to this Resolution. These

Reports were reviewed by the Reporter General Team of AIPPI and distilled into a Summary Report (which can be found at [www.aippi.org](http://www.aippi.org)).

- 5) At the AIPPI World Congress in Yokohama in 2025, the subject matter of this Resolution was further discussed within a dedicated Study Committee, and again in a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

**AIPPI resolves that:**

- 1) The applicant for a PI should be held liable for the enjoined party's damages if a PI is later determined to have been wrongfully granted, irrespective of proof of negligence, recklessness, or intent to harm.
- 2) The award of damages should not be automatic, but the wrongfully enjoined party must actively request the court or relevant authority to address the question of the applicant's monetary liability.
- 3) The monetary liability of the applicant should arise from the wrongful issuance and, where applicable, enforcement of a PI, irrespective of whether the wrongful grant is due to non-infringement, invalidity, or another basis rendering the PI wrongful.
- 4) Holding a valid IP right and reasonably exercising it should not provide an exemption or safe harbour from liability if a PI is later lifted or reversed.
- 5) The damage suffered by the enjoined party should be the predominant factor in determining the amount of applicant's monetary liability. Courts or relevant authorities should take into account all of the relevant circumstances of the case when determining the amount of monetary liability.
- 6) The damages awarded by the court or relevant authority should be causally related to the wrongful issuance of the PI.
- 7) However, in the calculation of damages, the court or relevant authority should take into account the enjoined party's conduct, such as the enjoined party's failure to mitigate avoidable damages.

- 8) The damage award should be based upon the actual damages, including lost profits sustained by the enjoined party, and legal costs if legal costs generally are compensated in the relevant jurisdiction.
- 9) Applicant may be required at the discretion of the court or relevant authority to provide an adequate guarantee at the time of issuance or enforcement of a PI.
- 10) When determining the amount of the guarantee, the key consideration for the court or relevant authority should be the potential harm likely to be suffered by the enjoined party if the PI is later determined to have been wrongfully granted.
- 11) The amount of the guarantee should be determined by the court or relevant authority on a case-by-case basis.