

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Replies by Bolivia

Civil and administrative procedures and remedies

(a) *Civil judicial procedures and remedies*

1. Specify the courts which have jurisdiction over IPR infringement cases.

The courts with jurisdiction over civil IPR cases, depending on the amount in litigation, are:

- The civil examining courts (first instance);
- the civil regional courts (first and second instance);
- the higher district courts, civil chambers (second instance and appeal);
- the Supreme Court of Justice, Civil Chamber (court of cassation).

The courts with jurisdiction over criminal IPR offences are:

- The criminal judges and courts, depending on whether or not the maximum penalty exceeds four years' imprisonment (first instance);
- the higher district courts, criminal chambers (second instance);
- the Supreme Court of Justice, Criminal Chamber, (Court of Cassation).

Courts of first and second instance exist throughout Bolivian territory, covering not only the departmental capitals (cities), but also the provinces and cantons of the whole of the Republic. They are the judicial authorities that have jurisdiction over intellectual property cases in order to solve disputes for right holders.

As an alternative dispute settlement method, the National Chamber of Commerce has Arbitration and Conciliation Centres in the main cities, in other towns, action can be brought by the conciliation procedure before civil examining or regional courts as a step before or during the proceeding.

In the administrative sphere: the National Intellectual Property Service, established by Law No. 25159 of 4 September 1998.

¹ Document IP/C/5.

The Vice-Ministry of Industry and Internal Trade.

2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements from mandatory personal appearances before the court by the right holder?

The right holders have standing.

Public legal entities and individuals and collective persons may be right holders.

Such right holders may take part in the various legal acts through their legal representatives (Code of Criminal Procedure, Article 56).

Under authorized representation, persons appearing in the proceeding on behalf of or representing someone else must attach to the first submission the documents proving their status (Code of Criminal Procedure, Article 58).

When this status has been accepted, the agent assumes all liability under the law and his acts are as binding on the principal as if the principal were carrying them out in person (Code of Civil Procedure, Article 60).

Powers of attorney granted abroad must be registered with the Public Notary's Office after authentication by the Ministry of Foreign Affairs and Worship, in accordance with the Law on Notarial Deeds.

Without prejudice to civil or criminal liability, the agent shall be accountable to his principal for costs incurred as a result of his exclusive fault or negligence. The court may, depending on the circumstances, establish the joint liability of the principal and the lawyer (Code of Civil Procedure, Article 64).

There are provisions governing cases of contempt of court, dispossession and the cases in which it is appropriate to award costs.

3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control?

Under the Code of Civil Procedure, whenever acts must be proven, the court may, even without the agreement of the parties and although they do not so request, initiate a period of evidence that may not be less than ten days or more than 50, depending on the proceeding involved. Appeal against the court's lies with a higher court (Code of Civil Procedure, Article 370).

In requiring evidence, the court shall, in an express order, specify the matters to be proven. The parties may object to the order within the third day of the proceeding and the order shall then require immediate resolution. It shall be open to appeal by transfer to a higher court (Code of Civil Procedure, Article 371).

All methods of submitting legal evidence, as provided for in the Code of Civil Procedure, are accepted (Code of Civil Procedure, Article 373, in conjunction with the Civil Code, Article 1285). Legal evidence includes: documents, confession, judicial inspection, expertise, deposition, presumption (Code of Civil Procedure, Article 374).

The burden of proof lies with the claimant in regard to the act constituting his right, and with the defendant in regard to the existence of the act impeding, modifying or extinguishing the claimant's rights (Code of Civil Procedure, Article 375).

The period for the submission of evidence for the parties to the proceeding shall be within the period established by the court and, outside that period, shall be ex officio rejected, except in the case of evidence that is pre-established or covered by Article 331, which relates to unknown earlier or later documents. In this regard, it is established that, after the complaint has been made, only documents of a later date will be accepted or, if they are earlier, when it is stated under oath that they had been unknown. In such cases, the opposing party will be notified for the purposes of Article 46, paragraph 2, which means that a decision shall be taken on the accompanying documents or those cited in the complaint.

General silence, evasion or negation may be regarded as acknowledgement of the truth of the facts referred to in those documents (Code of Civil Procedure, Articles 377, 331 and 346.2).

If evidence is to be produced outside the Republic, the court shall commission the corresponding judicial authority, provided any of the following circumstances applies:

- The fact to be proven has occurred outside the Republic;
- the archives or offices containing the documents are abroad;
- the person required to make a statement lives abroad (Code of Civil Procedure, Article 385).

For the purpose of receiving such evidence, a special period shall be established in the light of the distance and the means of transport and it shall not exceed 60 to 120 days, depending on whether or not a neighbouring country is involved. The decision on the special period shall not be open to appeal; a decision refusing such period shall be open to appeal by transfer of jurisdiction, without subsequent recourse to a remedy (Code of Civil Procedure, Article 386 in conjunction with Articles 370 and 383).

In the case of evidence for criminal proceedings, the established principle is freedom to submit evidence and it is specified that the court shall admit all legal evidence that may lead to discovery of the historical truth of the fact, the responsibility and the identity of the accused persons.

Other means may be used in addition to those provided for in this section of the Code. Their incorporation in the proceeding shall be subject to a similar method of evidence.

Legal evidence consists, *inter alia*, of: testimony. In this case, if the witness does not answer the first summons, a warrant will be issued to apprehend him, without prejudice to further indictment. If, after appearing, he refuses to make a statement, an order shall be issued for him to be arrested for up to 24 hours, after which, if he continues to refuse, criminal proceedings shall be brought against him (New Code of Criminal Procedure, Article 198).

In the case of defiance of authority and resistance to authority, the penalties are a fine and one month to one year's imprisonment (Penal Code, Articles 159 and 160).

A statement by letters rogatory is possible when the witness does not live in the judicial area where he is to make his statement and he cannot be present, in which case a letter of request is issued to the judicial authority of his place of residence (New Code of Criminal Procedure, Article 199).

An expert examination is another means used to discover or assess evidence where specialized knowledge is required of any science, art or technique. Convincing evidence and documents may be produced, and persons may be identified.

Law No. 2175, on the Department of Public Prosecutions, establishes that, for the purpose of fulfilling its functions (bringing public criminal proceedings, functional administration of the police in the investigation of offences and monitoring the lawfulness of such investigations), any person, institution or office, public or private, is required to provide the information demanded by the Department of Public Prosecutions and is liable as established in the Penal Code (defiance of authority and resistance to authority, carrying a penalty of a fine and one month to one year's imprisonment, Penal Code, Articles 159 and 160).

4. What means exist to identify and protect confidential information brought forward as evidence?

Under Article 265 of Decision 486, such information must not be divulged.

Furthermore, the nature of the evidence is recorded in the courts of justice in order to take the requisite measures, specifying at the express request of the court that the evidence brought forward is admissible and must be kept confidential. Under the procedure for preserving evidence in the courts, the relevant steps are taken, in accordance with the evidence brought forward as such. In any event, the court is entitled to take protective measures for procedural acts, under its own responsibility and that of the court officers.

5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use:

- **Injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

The New Code of Criminal Procedure establishes the various kinds of injunctions:

- A summons for the defendant to make a statement, as well as witnesses and experts. A warning is given that an arrest warrant will be issued in the event of defiance;
- apprehension in the event of defiance of or resistance to judicial orders;
- pre-trial detention;
- conviction;
- arrest;
- pre-trial release;
- release for the person against whom the case is dismissed or declared innocent or has served the penalty;

- seizure;
- embargo; and
- search and requisition (New Code of Criminal Procedure, Article 129).

Civil cases also include a writ of embargo and a search order (Code of Civil Procedure, Articles 501 and 635).

The Code of Civil Procedure establishes precautionary measures. Before the complaint is submitted or in the course of substantiation of the proceeding, the following precautionary measures may be requested:

- Preventive filing of the application (judicial order);
- preventive embargo (writ of embargo);
- seizure (writ of seizure);
- intervention (judicial order);
- prohibition on entering into contracts concerning specified goods (judicial order) (in accordance with the Civil Code, Article 1444) (Code of Criminal Procedure, Article 156).

Other precautionary measures exist if, other than in the cases mentioned above, someone has good grounds for believing that, in the time preceding official acknowledgement of his right, he may suffer imminent or irreparable damage. He may request any urgent measures which, depending on the circumstances, are best suited to ensuring provisional compliance with the judgement (Code of Civil Procedure, Article 169).

To avoid unnecessary injury or harm to the right holder, the court may limit the precautionary measure requested or apply another one, depending on the importance of the right that is being protected.

In the event of danger of loss or decrease in the value of the moveable goods concerned or if it is costly or difficult to preserve them, at the request of one of the parties and after informing the other party the court may, within a period established in accordance with the urgency of the case, order that the goods be sold in the most appropriate manner and it shall expedite the formalities and set the dates and times (Articles 170 and 171).

In order for the precautionary measure to apply, the applicant is required to post a bond for any costs or damages as a result of wrongly requesting the measure.

Provisional measures are temporary and last as long as do the circumstances that gave rise to them, whenever the circumstances end, an order is issued to lift the measures.

Provisional measures shall also lapse automatically if, in the case of demand liabilities, the complaint is not filed within five days following the date of enforcement (Code of Civil Procedure, Article 177).

Preparatory measures

Enumeration: Any proceedings may be prepared by anyone who seeks to make a complaint or anyone who, on good grounds, believes that he will be a defendant. The requirements are:

- The person against whom it is proposed to make a complaint shall submit a sworn statement on any matter relating to his legal personality, without which the case cannot proceed further;
- recognition, in the competent court, of the signature of documents and private papers. The following cases may also arise:
 - in the case of a legal person and when the person signing is no longer a representative of that legal person or is absent, a request may be made for his alternate to acknowledge the document;
 - in the case of obligations contracted by illiterates or the disabled, the terms of Articles 1299 and 300 of the Civil Code shall apply;
 - if, on being summonsed, the person fails to appear, the signature and effectiveness of the document shall be recognized unless there is any impediment on account of *force majeure*, in which case the court shall set a new date and time or the judge shall proceed to the domicile of the person summonsed;
 - the moveable goods that will be the subject of the court action are to be produced;
 - wills or codicils are to be produced if the applicant believes he is the heir or legatee;
 - in the event of dispossession, the titles of ownership or any other document relating to the thing sold shall be produced;
 - the partner or anyone in possession of the company documents shall produce them, so that the applicant may base his case thereon or defend a case brought by a third party if the company has or has not been lawfully dissolved;
 - defence counsel shall be appointed for the presumed absent person who is to be the defendant, after justification of the absence within a reasonable time established by the court, which shall also appoint defence counsel for abandoned goods;
 - a statement must be made in advance about witnesses who are seriously ill or soon to leave the country or elderly;
 - a court inspection shall be made, with or without expert participation, of the immoveables or moveables that will be the subject of the case, in order to verify their condition;
 - if the presumed defendant is about to leave the Republic he shall establish legal domicile at the place at which the proceeding is to be initiated, within

three days of being summonsed, with a warning that domicile may be established at the door of the court at which he is to appear;

- anyone who is to be a defendant as a result of a claim or any other action necessary to determine his status in regard to the thing that will be the subject of the case shall specify by what title he holds it;
- measurements shall be taken by the court (Code of Civil Procedure, Article 319).

A request may be made as a preparatory measure for the moveable to be produced or to be stored in its current state, if it is the one that the applicant proposes to claim. A claim shall be filed within the next twenty days; otherwise the measure shall be without effect (Code of Civil Procedure, Article 322).

Arrangements can also be made for advance statements by witnesses after the case is initiated and before the period for the submission of evidence starts.

In ordinary proceedings, the case shall be heard by the ordinary civil courts of justice.

For the purpose of awarding damages and costs the court authorities may compensate for injury sustained by the right holder, provided he or his representative or agent states in the civil complaint and demonstrates the injury sustained as a result of the infringement of his intellectual property right. The statement of the injury and the consequent payment order will be set out in the judgement. An enforceable judgement in ordinary proceedings gives entitlement to rights and obligations and payments.

When rights are infringed and offences are committed, the court shall issue a conviction when the evidence is sufficient to convince the court of the accused's criminal responsibility. The conviction shall specify the appropriate penalties, the form and place of performance and, where appropriate, specify a judicial pardon, conditional suspension of sentence or any obligations to be met by the convicted persons.

The conviction shall also decide on costs and on the delivery of confiscated goods to the person that the court deems is best entitled to own them. It shall contain the decision on seizure, confiscation and destruction, as provided for in law.

Criminal procedures provide for compensation. Once the conviction or a safety measure on account of non-imputability or semi-imputability has been enforced, the applicant or prosecutor may ask the court to order compensation for injury.

6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?

This can be done in the relevant administrative or court proceeding, in every case.

7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

The Penal Code establishes indemnification for innocent persons and stipulates that anyone who has been declared innocent after criminal proceedings shall be entitled to indemnification of any injury sustained in connection with the proceedings.

The accuser or complainant shall make indemnification, or the judge if, by fraud or ignorance or negligence, he has cooperated in the injustice of the proceedings.

If proceedings are brought ex officio or by a prosecutor or by any other public servant, indemnification shall be made by the judge, prosecutor or officials who have caused or cooperated by fraud or by fault in the proceedings.

Anyone who has been wrongfully penalized can bring a civil action for indemnification of injury and a criminal action against the authority hearing the case or the person who has made a wrongful complaint.

8. Describe the provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

In civil, criminal and administrative procedural law, while periods do exist for the various procedural acts, they are not always complied with. Proceedings may end within the time stipulated by law for each proceeding and the reasons are:

- Failure to act by the parties involved in the proceeding;
- indiscriminate use by the parties in litigation of justified and unjustified appeals;
- absence of ex officio procedural impetus on the part of the court.

(b) *Administrative procedures and remedies*

9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.

This question will be answered later.

Provisional measures

(a) *Judicial measures*

10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.

This question will be answered later.

11. In what circumstances may such measures be ordered *inaudita altera parte*?

Precautionary measures, and when they are ordered

Before the complaint is submitted or in the course of substantiation of the proceeding, the following precautionary measures may be requested:

- Preventive filing of the application;

- preventive embargo;
- seizure;
- intervention;
- prohibition on entering into contracts concerning specified goods (in accordance with the Civil Code, Article 1444) (Code of Criminal Procedure, Article 156).

Other precautionary measures exist if, other than in the cases mentioned above, someone has good grounds to believe that, in the time preceding official acknowledgement of his right, he may suffer imminent or irreparable damage. He may request any urgent measures which, depending on the circumstances, are best suited to ensuring provisional compliance with the judgement (Code of Civil Procedure, Article 169).

To avoid unnecessary injury or harm to the right holder, the court may limit the precautionary measure requested or apply another one, depending on the importance of the right that is being protected.

In the event of danger of loss or decrease in the value of the moveable goods concerned or if it is costly or difficult to preserve them, at the request of one of the parties and after informing the other party the court may, within a period established in accordance with the urgency of the case, order that the goods be sold in the most appropriate manner and expediting the formalities and setting the dates and times (Articles 170 and 171).

In order for the precautionary measure to apply, the applicant is required to post a bond for any costs or damages as a result of wrongly requesting the measure.

Provisional measures are temporary and last as long as do the circumstances that gave rise to them, whenever the circumstances end, an order is issued to lift the measures.

Provisional measures shall also lapse automatically if, in the case of demand liabilities, the complaint is not filed within 5 days following the date of enforcement (Code of Civil Procedure, Article 177).

In criminal cases there are two types of precautionary measures:

- Precautionary measures in personam: these are applied restrictively and in such a way that they harm as little as possible the person and the reputation of those concerned.

Types

- Spontaneous appearance: The person against whom a proceeding has been initiated or is about to be initiated may appear before the prosecuting official in charge of the investigation and request that his statement be taken down, that he remain free or that he appear in connection with the application of a precautionary measure.
- Arrest: When it is impossible to individualize the authors, participants and witnesses at the start of the investigation and matters must move urgently so as not to prejudice the investigation, the prosecutor or the police may order that persons present shall not move away from the place, shall not

communicate with each other before making statements or alter the state of things and places and, if necessary, shall order the arrest of all persons for a period of not more than eight hours (New Code of Criminal Procedure, Article 225).

- Apprehension by the Prosecutor's Office: The prosecutor shall order that the accused person be apprehended when his presence is necessary and there is sufficient circumstantial evidence that he is the author of or participant in a publicly actionable offence carrying a penalty of imprisonment, with a legal minimum of two years or more, and that he may hide, flee or absent himself from the place or impede the ascertainment of the truth.

The person apprehended shall be made available at the court within 24 hours for the court to decide within the same period on the application of any of the precautionary measures provided for in this Code or to order his release in the absence of evidence.

In the case of a publicly actionable offence dependent on an application by a party, the party able to submit the application shall be so informed and the court shall lift the precautionary measures if, within 48 hours following the apprehension, the application has not been filed (New Code of Criminal Procedure, Article 226).

- Apprehension by the police: The National Police may apprehend anyone in the following instances:
 - When he has been caught *in flagrante delicto*;
 - further to a writ of apprehension issued by the competent court or judge;
 - further to an order by the prosecutor; and
 - if he has fled when in lawful detention.
- The police authority that has apprehended anyone shall inform the Prosecutor's Office and make the person available to the Office within a maximum period of eight hours (New Code of Criminal Procedure, Article 227).
- Pre-trial detention: Once the person is formally charged, the court may order pre-trial detention on a substantiated request by the prosecutor or the applicant in the following cases:
 - Where there is sufficient evidence to contend that the accused person is in all likelihood the author of or participant in a punishable act; and
 - where there is sufficient evidence that the accused person will not attend the proceedings and will impede ascertainment of the truth.

Precautionary measures in rem: These are stipulated in the Code of Civil Procedure. They apply without prejudice to the statutory amount established in Article 90 of the Criminal Code;

precautionary measures in rem shall be granted by the court, on application by a party, in order to guarantee compensation for injury and payment of costs and fines, for which purpose an embargo on the bond may be requested provided property belonging to the accused person is involved. The procedure shall be governed by the Code of Civil Procedure.

12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.

Procedure

- An application to the competent court, attaching the documents in support of the request and announcing that the proceeding (civil or criminal) will be initiated;
- an express indication of the measure requested;
- the security or bond required;
- the court evaluates and orders the measure, where appropriate.

Please refer to the previous question.

13. Describe the provisions governing the length and cost of proceedings. Provide any available date on the actual duration of proceedings and their cost.

This question will be answered later.

(b) *Administrative measures*

14. Reply to the above questions in relation to any administrative provisional measures.

This question will be answered later.

Special requirements related to border measures

15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights, other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?

Under Article 120 of Supreme Decree 25870 of 11 August 2000 – the Regulations to the General Customs Law – the competent national body may file with the customs administration an application to suspend customs clearance when industrial property rights, copyright or intellectual property rights, trade marks, industrial designs or patents protected by the World Trade Organization are affected.

In principle and in keeping with international rules, when goods are in transit through our territory, release cannot be withheld. However, information may be conveyed to the customs authorities of the territory of final destination.

16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?

The procedures relating to suspension of customs clearance in the case of intellectual property infringements are set out in Article 120 of Supreme Decree 25870 – the Regulations to the General Customs Law – and in Title XV, Chapter III, of Decision 486 of the Andean Community.

The competent authorities to suspend customs clearance in cases of intellectual property infringements are the National Intellectual Property Service and the National Customs.

The suspension of customs clearance may last a maximum of ten days, after which time, if no intellectual property infringement is proved, the customs administration may continue with clearance.

Article 120 of the Regulations to the General Customs Law (customs protection of copyright and intellectual property rights) states: "(...) Where the competent body files an application with the customs administration to suspend customs clearance, reliable evidence must be submitted within a period of ten (10) days to demonstrate that industrial property rights, copyright and intellectual property rights, trade marks, industrial designs or patents protected by the World Trade Organization are affected. If, on expiry of this period, evidence of an intellectual property infringement is not submitted, the customs authority shall continue with customs clearance.

Once intellectual property infringements have been shown, the customs authority shall seize the goods and, in coordination with the competent body, order their destination or destruction".

Andean Community Decision 486, Title XV, Chapter III (Border Measures) states:

"Article 250. The owner of a registered trademark who has valid grounds for suspecting that the importation or exportation of counterfeit trademark goods will take place may request the competent national authority to suspend this customs operation. The conditions and guarantees established by the domestic rules of the Member country shall apply to the request and to the order.

The party requesting border measures shall be required to supply the competent national authority with the necessary information and a sufficiently detailed and precise description of the goods subject to the alleged infringement so that they can be identified.

Where the Member country's domestic legislation so permits, the competent national authority may order the application of border measures ex officio.

Article 251. In order to substantiate their claims, the competent national authorities shall allow trademark holders to take part in the inspection of the goods.

In conducting the inspection, the competent national authority shall make the necessary arrangements to protect confidential information, where relevant.

Article 252. Where the applicable conditions and guarantees are fulfilled, the competent national authority shall order or deny suspension of the customs operation and shall notify the applicant.

Where suspension is ordered, the notification shall include the name and address of the consignor, importer, exporter and consignee of the goods, as well as the quantity of goods suspended. It shall likewise notify the importer or exporter of suspension of the products.

Article 253. If, within 10 working days following the date of notification of suspension of the customs operation the applicant fails to initiate infringement proceedings or the competent national authority has not prolonged the suspension, the measure shall be revoked and the detained goods shall be released.

Article 254. Where infringement proceedings have been initiated, the defendant may appeal to the competent national authority. The competent national authority may modify, revoke or confirm the suspension.

Article 255. Once the existence of the infringement has been determined, such counterfeit trademark goods as the competent national authority has seized may not be reexported or subject to a different customs procedure, except in cases duly authorized by the competent national authority or where the right holder gives express authorization.

Without prejudice to other rights of action available to the right holder and subject to the right of the defendant to appeal to a judicial authority, the competent national authority may order the destruction or seizure of infringing goods.

Article 256. Small quantities of goods of a non-commercial nature forming part of travellers' personal effects or sent in small consignments shall be excluded from the application of the provisions of this Chapter".

17. Describe the provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?

At the present time there are no regulations on the financial costs for this type of proceeding.

Customs clearance may be suspended for a maximum of ten days, after which time the customs authority may proceed to release the goods if no evidence is submitted.

18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to ex officio action?

The competent authorities entitled to take ex officio action are:

- The National Intellectual Property Service, which may take ex officio action on intellectual property matters through the administrative channel.
- In the case of intellectual property offences, if the offences are matters of public order, the National Customs may take ex officio action and, if it has suspicions, may act immediately and report to the competent national body.

19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.

The competent authority may request the National Customs to proceed to suspend customs clearance when there is circumstantial evidence that intellectual property offences will be committed.

Once this kind of offence is proven, the customs authority, in coordination with the competent authority, may order seizure of the goods or proceed to destroy them.

Criminal procedures

20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.

The following have jurisdiction over criminal cases for offences against intellectual property rights:

- The criminal judges and courts, depending on whether or not the maximum penalty is more than four years' imprisonment (first instance);
- the higher district courts, criminal chamber (second instance);
- the Supreme Court of Justice, Criminal Chamber (Court of Cassation).

Courts of first and second instance exist throughout Bolivian territory, covering not only the departmental capitals (cities), but also the provinces and cantons of the whole of the Republic. They are judicial authorities which have jurisdiction over intellectual property cases in order to solve disputes for right holders.

21. In respect of which infringements of intellectual property rights are criminal procedures and penalties available?

The offence is classified in Article 68 of Law 1322, on Copyright, and stipulates what is regarded as a violation of copyright, which falls within the jurisdiction of the regular criminal courts. The criminal penalty established in Article 362 of the Penal Code consists of three months to two years' imprisonment and a 60 days' fine.

Other criminal penalties are stipulated in Articles 235 and 236 of the Penal Code.

Article 68 of Law 1322 specifies that a violation of copyright is committed by anyone who:

- In connection with an unpublished literary or artistic work or production and without the authorization of the author, artist or producer or his successors registers it or publishes it by any means of reproduction, multiplication or dissemination, as if it were his own or of a person other than the true author, or with the title changed or deleted or with the text wilfully altered.
- In connection with a published and protected work or production commits any of the acts set out in the previous paragraph or, without the permission of the copyright holder, reproduces, adapts, changes, modifies, recasts or abridges or publishes any of the work by any method of reproduction, multiplication or communication to the public.

- Reproduces a published work, wilfully altering in the fraudulent edition the name of the authorized publisher.
- Reproduces a greater number of copies than those authorized by the copyright owner or his successors in the respective contract.
- Reproduces a phonogram or videogram for marketing or renting it without the written authorization of the producer or his representative, as well as anyone who imports, stores, distributes or sells illegal copies of a phonogram or videogram. An illegal copy of a phonogram or videogram is taken to mean one which imitates or not the external characteristics of the legitimate copy and incorporates the phonogram or videogram or substantial part of it without the authorization of the owner.
- Publishes, sells, reproduces or disseminates the published work or a phonogram falsely mentioning the name of the author, the authorized publisher, the performers or the producer.
- Reproduces, disseminates, carries out, represents or distributes one or more works after expiry of the period of authorization granted for that purpose.
- Makes false statements intended, directly or indirectly, to harm the author's economic rights, altering the data relating to the economic proceeds of a show, the number of copies of a work produced, sold or distributed or by any other means.
- Without the authorization of the copyright owner is responsible for the performance of theatre, musical or cinematographic works.
- Without being the author, publisher, successor or representative of one or more of them, falsely attributes any such status to himself and secures suspension of the public performance of a work by the authorities.
- Improperly appropriates the right to use the names of newspapers, magazines, sections and columns therein, radio and television programmes, cinema newsreels, other mass media, fictitious or symbolic characters in literary works, graphic representations and other periodical publications or typical characters used in artistic performances or the names of groups, choirs, orchestras, bands or other casts of artists.
- Transmits, retransmits or disseminates by any means cinematographic works, without the authorization of the producer.

Article 69: The owner, partner, manager, director or person responsible for the activities of establishments which give theatrical or musical performances shall be jointly liable with the organizer of the performance for violations of copyright in such premises, without prejudice to any criminal responsibility.

Article 52 of Law No. 1322, on Copyright, stipulates in Title XX, relating to neighbouring rights, protection for the rights of performers, phonogram producers and broadcasting organizations.

Law No. 1302, on the Cinema, of 20 December 1991, establishes the scope of protection for natural or legal persons engaged in one or more motion picture activities or connected with films, and cinematographic intellectual property and co-production, exhibition and distribution contracts must be registered with the National Cinema Council (CONACINE).

Videotapes to be marketed in Bolivian territory must bear a branded seal issued by CONACINE.

Trademarks, etc.

The Commercial Code regulates the right to trade names (Articles 470 et seq.) their formation, use and transmittal. Similarly, the Penal Code (Article 236) penalizes a violation of such rights by anyone who imitates or counterfeits the trade name of someone else and shall be responsible for the damage and injury caused, without prejudice to the corresponding penal sanction.

Article 457 et seq. of the Commercial Code also establishes the right to use registered marks, distinctive signs, marks for concurrent use, transmittal, cancellation of the registration of a mark, (when it has not been used without interruption for more than five years), except as agreed in international treaties and on the basis of reciprocity. The procedure is subject to the provisions currently applicable in Bolivia, more specifically Decision 486 of the Andean Community.

In Article 236 the Penal Code establishes that it is an offence to deceive in connection with industrial products when anyone places on sale industrial products with names and signs that are misleading as to their origin, quantity and quality and the penalty is imprisonment for six months to three years.

Also, Article 363 establishes that it is an offence to violate the privilege of invention and specifies a penalty of three months to two years' imprisonment and 30 to 60 days' fine for anyone who violates the right to privilege of invention or discovery, in the following instances:

- By manufacturing without the authorization of the licensee objects or products that are covered by the privilege;
- by using means or procedures that are covered by a privilege.

With reference to computer offences, the Penal Code establishes in Article 363 *bis* that anyone who wilfully obtains improper benefit for himself or a third party by manipulating a computer data procedure or transfer producing an improper result or preventing such result from being correct, thereby causing a transfer of assets to the detriment of a third party, shall be liable to one to five years' imprisonment and a 60 to 200 days' fine.

Article 363 *ter* relates to the alteration, access and misuse of computer data and stipulates that anyone who takes possession of, accedes to, uses, modifies, deletes or renders useless data stored in a computer or on any carrier base, thereby causing injury to the owner of the information, shall be liable to compulsory work for up to one year or a fine of up to 200 days.

The possible judicial proceedings in the case of a copyright violation are held in the ordinary criminal courts in Bolivia.

Action may also be taken in the civil courts, depending on the particular case.

The arbitration and conciliation procedure may also apply where a right is involved, for Bolivia has various centres related to the National Chamber of Commerce that attend to the requests of parties interested in using alternative dispute settlement methods.

SENAPI, the National Intellectual Property Service, has special regulations on conciliation cases for copyright violations. Where appropriate, conciliation is used with parties that agree to these remedies. Law No. 1770, on Arbitration and Conciliation, applies.

22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?

The Code of Criminal Procedure establishes, by exclusion, that intellectual property offences are matters of public order.

The judicial authorities, the Department of Public Prosecutions, the police and right holders or their agents or representatives are entitled to initiate proceedings.

23. Do private persons have standing to initiate criminal proceedings and, if so, who?

The Code of Civil Procedure considers that a victim (someone with standing to initiate proceedings) is one of the following:

- A person directly wronged by the offence;
- the spouse or survivor, a blood relative up to the fourth degree or a relative by marriage up to the second degree, a son or adoptive father or legatee, for offences where the result has been the death of the wronged person;
- a legal person in the case of offences affecting it; and
- a legally constituted foundation or association, for offences affecting collective interests, provided the aim of the foundation or association is directly bound up with those interests.

A victim may initiate criminal proceedings by means of a complaint, whether in public or private actions, in accordance with the procedures established in the Code of Criminal Procedure.

Minors and persons who are declared disbarred may bring a complaint through their legal representatives.

In the case of temporary incapacity on the part of the victim, his rights shall be exercised by his relatives in accordance with the rules of non-mandated representation.

Legal persons may submit complaints through their representatives.

24. Specify, by category of IPRs and type of infringement, where necessary, the penalties and other remedies that may be imposed:

- **Imprisonment;**
- **monetary fines;**
- **seizure, forfeiture and destruction of infringing goods and materials and implements for their production;**
- **other.**

This question will be answered later.

25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.

This question will be answered later.
