

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Replies by Chile²

Civil and administrative procedures and remedies

- (a) Civil judicial procedures and remedies

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

The proceedings in the different courts which have jurisdiction over IPR infringement cases depend on the category of rights infringed and the nature of the action brought.

Civil actions arising from infringement of IPRs are normally brought before the civil courts of major jurisdiction, or arbitral tribunals if the matter at issue between the parties has been referred to that jurisdiction. In any case, in Chile IPR infringements are not subject to compulsory arbitration.

Criminal actions deriving from infringement of IPRs are brought before the criminal courts. The rulings of these courts are reviewed in accordance with various procedural remedies by the courts of appeal and/or the Supreme Court depending on the type of remedy. The Supreme Court is responsible for management, control and supervision of all of the courts in the country by constitutional mandate.

The Agriculture and Livestock Service also has jurisdiction over IPR infringement cases which concern plant varieties, and the Resolutive Commission, the Central Preventive Commission and the regional preventive commissions for cases involving anti-competitive practices.

Cases involving formal objections, annulment or transfer of an industrial property register come under the jurisdiction of the administrative authority. In such cases, the Head of the Industrial Property Department acts as a court of first instance, and his final rulings may be appealed before a special court, the Arbitral Tribunal for Industrial Property. The proceedings before the Head of the Industrial Property Department are conducted in accordance with the rules governing ordinary proceedings for a crime or an ordinary offence.

In actions brought for offences covered by Industrial Property Law, the Industrial Property Department must be heard before a judgement is passed.

¹ Document IP/C/5.

² These replies were prepared on the basis of the Government of Chile's best understanding of the questions raised in each case and in conformity with the laws in force in the country, without prejudice to the exclusive authority of the Chilean judicial and administrative authorities responsible for implementing and interpreting general or special provisions having an impact on issues on enforcement of intellectual property rights.

The Arbitral Tribunal for Industrial Property also handles appeals brought in cases involving the protection of plant varieties.

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

Which persons have standing to assert IPRs

As a rule IPRs must be exercised by their respective holders or their successors. There could be cases in which such rights are exercised by a third party acting as an informal agent of the right holder. Regarding offences set forth in the Industrial Property Law (patents, trademarks, utility models and industrial designs), as will be seen further on, the law provides for public right of action (Article 16 of Law No. 19.039) which may be exercised by the public prosecutor.

How may they be represented?

In order to appear before any court, whether on contentious or non-contentious matters, such persons must be represented by a lawyer entitled to exercise the profession in Chile, a judicial attorney, a law student enrolled in the third, fourth or fifth year of an authorized university law school or having graduated from such a school over the past three years.

Are there requirements for mandatory personal appearances before the court by the right holder?

There are certain cases in which personal appearances before the court by the right-holder may be mandatory, for example in order to make a deposition or for the purposes of a confrontation.

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?

The judicial authorities have the authority to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control, even as part of the preliminary process. For example, Article 349 of the Code of Civil Procedure stipulates that during the proceedings a party may be ordered, at the request of an other party, to display such documents as lie within its control or in the control of a third party insofar as they are directly related to the issue in dispute and are not of a secret or confidential nature.

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

Such information is protected by numerous provisions, particularly in the Codes of Civil and Criminal Procedure and the Code of Judicial Organization.

For example, the law punishes those who reveal secrets of the case or aid, abet or counsel any of the interested parties to the detriment of the opposing party (Article 224 No. 6 of the Penal Code). An attorney who wilfully abuses his position to disclose his client's secrets shall be subject to criminal liability (Article 231 of the Penal Code).

Any public employee who discloses secrets of which he has knowledge as a result of his position or who unduly supplies papers or copies thereof in his possession which should not be made public is liable for suspension from his employment and/or may be fined (Article 246 of the Penal Code). A public employee who by reason of his position has knowledge of the secrets of another person and discloses such secrets to the detriment of that person is also considered to have committed a crime (Article 247 of the Penal Code).

Article 756 of the Code of Civil Procedure expressly stipulates that during the proceedings the process may be declared restricted if the court so deems appropriate.

Under Article 61 of the Code of Criminal Procedure, in case of appeal the necessary steps must be taken to ensure that restricted information relating to the proceedings is kept secret. The contents of the record of criminal proceedings are secret (Article 78 of the Code of Criminal Procedure).

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.**

Injunctions

The judicial authorities have the authority to issue various types of judicial decisions. These decisions may be final judgements, interlocutory judgements, court orders or decrees.

The final judgement is the judgement that puts an end to the proceedings, settling the matter at issue.

The interlocutory judgement is the ruling on a case which establishes permanent rights on behalf of the parties or decides on a procedure to serve as the basis for the final judgement.

The court order is the decision concerning a matter which is not included in the interlocutory judgement.

The procedural order, without ruling on the matters or procedures forming the basis for the passing of a judgement, is intended to pass a procedural ruling on the case (Article 158 of the Code of Civil Procedure).

Judgements are made in accordance with the merits of the case and may not extend to points which were not expressly brought up for trial by the parties (Article 160 of the Code of Civil Procedure).

Damages, including recovery of profits, and expenses, including attorney's fees

According to the general rules, any offence gives rise to criminal proceedings to punish the guilty party and can give rise to civil proceedings to obtain such compensation as provided for under the law for the injured party; i.e. the person who has suffered damage as a result of the offence or quasi-delict. The offending party is liable for damages (Article 2314 of the Civil Code and Article 52 of Law No. 19.039).

The party guilty of the offence or quasi-delict causing damage to the other party is liable for damages (Article 2314 of the Civil Code). Thus, if the intellectual property right holder has suffered damage as a result of the infringement of his right, he may apply for damages under the general rules.

The judicial authorities may order costs from the offenders to cover the right holder's expenses in accordance with the general rules applicable to all proceedings. These costs are divided into procedural and personal costs. Procedural costs are those arising from the proceedings themselves in accordance with estimates contained in the schedule of court costs, while personal costs are those arising from attorney's fees and the fees of other persons involved in the proceedings (Article 139 of the Code of Civil Procedure).

The courts must assess the appropriate procedural costs and the personal costs (Article 140 of the Code of Civil Procedure).

The party which is totally unsuccessful in an action or plea will be ordered to pay costs unless exempted by the same court on the grounds that he had legitimate reasons to litigate (Article 144 of the Code of Civil Procedure).

With respect to violation of intellectual property rights, the convicted party is ordered to pay costs and damages to the trademark owner (Article 29 of Law No. 19.039).

Destruction or other disposal of infringing goods and materials/implements for their production

Under Law No. 19.039, persons convicted of offences against the owners of trademarks, patents, utility models and industrial designs are required to pay costs and damages to the right holder. This same law stipulates that tools and implements used for falsification or copying shall be destroyed and the objects produced illegally shall be seized on behalf of the right holder.

With respect to intellectual property the court, in ordering damages, may, at the request of the injured party, require the handing over, sale or destruction of the copies of the work manufactured or put into circulation in violation of the latter's rights and the materials which served exclusively for the unlawful manufacture of copies of the work. The court may also order the seizure of the product recited, represented, reproduced or performed.

In the course of the proceedings the court may order, at the request of the interested party, the immediate suspension of the sale, circulation, exhibition, performance or representation.

Any other remedies

With respect to offences against the various categories of industrial property rights, the judge may order the immediate seizure of the illegally produced goods without prejudice to his authority to adopt precautionary measures as appropriate.

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?

In accordance with the general rules of procedure, the judicial authorities have the authority to order the offender, on pain of legal action, to appear before the court and reveal 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.

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

There are any number of provisions establishing guarantees to avoid the wrongful enjoinder of right holders in general and property right holders (including IPR holders) in particular.

For example, Article 20 of the Political Constitution (remedy of protection) stipulates that he who should, due to arbitrary or illegal actions or omissions, suffer privation, disturbance or threat in the legitimate exercise of the rights and guarantees established in the Constitution (including those relating to intellectual property), may on his own, or through a third party, resort to the respective Court of Appeals which shall immediately take the steps that it should deem necessary to re-establish the rule of law and ensure due protection to the person affected, without prejudice to the other rights which he might assert before the authorities or the corresponding courts.

In addition to this extraordinary remedy, there are other procedural remedies applicable at different stages of the process in question, such as the remedy of appeal (*de facto* or *de jure*), the remedy of complaint and the appeal to vacate a judgment for error of law or form.

According to the Constitution itself (Article 76), judges are personally liable for bribery, failure to observe substantial matters of law governing procedure, denial and wrongful administration of justice, and in general, for any prevarication incurred in the performance of their functions. Judges remain in office only as long as they perform their duties properly, with the exception of lower-court judges, who remain in function in their respective jurisdictions for such time as the law stipulates.

The Supreme Court may, upon demand by the President of the Republic, upon request made by an interested party or *ex officio*, declare that judges have not performed their duties properly, and, subject to a statement by the defendant and to a report from the respective Court of Appeals, the majority of its members may agree to remove them from office.

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

The duration and cost of proceedings are not predetermined: but both depend on a series of factors such as the nature and complexity of each case, the attorney's fees, the attitude of each of the parties in the proceedings and the principles applied to the case.

Civil proceedings in Chile are essentially regulated by six principles: (1) the mechanism by which the initiation and development of proceedings is essentially the responsibility of the parties; (2) procedural preclusion, by virtue of which a stage of the proceeding may not begin until the preceding stage has ended; (3) the adversarial system, wherein both parties are at all times given an equal opportunity to express themselves or to be heard during the proceedings; (4) proximity, whereby the judge is in direct contact with the parties and must receive the evidence; (5) concentration, which aims to accelerate the process by eliminating unnecessary processing; and (6) contingency, whereby the parties must submit all of the arguments and evidence to substantiate their case at one and the same time.

As a rule, the proceedings before the Chilean courts are essentially written and applications and requests must contain the legal and factual basis on which the case has been brought. The evidence required, the way in which it must be submitted and put forward during the proceedings and the value of each item of evidence is established by law.

During the course of any procedure, each party is called upon to settle the costs occasioned thereby. Once this is done, however, the court is responsible for determining its judgment who is ultimately responsible for costs, even if the parties have not so requested. Normally, the party which has been entirely unsuccessful in a case is responsible for paying the costs, unless the court considers that it had valid reasons for litigating.

In the field of intellectual property, persons convicted for infringements of provisions concerning patents, utility models, trademarks and industrial designs are liable for payment of costs and damages to the trademark owner. Furthermore, the tools and implements used for the counterfeiting or copying the trademark must be destroyed and the objects bearing false trademarks seized on behalf of the trademark owner. In such proceedings, the judge may also order the immediate confiscation of the goods, without prejudice to such precautionary measures as may be appropriate.

With respect to copyright infringements, the court has the authority, in imposing damages in such proceedings, to order the handing over, sale or destruction of the copies of the work produced or brought into circulation in violation of a copyright or the materials used exclusively for the unlawful production of copies of the work. The court may also confiscate the earnings deriving from the recital, representation, reproduction or performance of the protected work and may order the immediate suspension of sales, circulation, exhibition, performance or representation.

A special provision of the copyright law even gives the court the authority to order the publication of the judgment in a journal chosen by the injured party and at the cost of the offender.

The law provides for public right of action to report copyright offences that are punishable by law and grants the reporting party the right to half of the fine imposed upon the offender.

(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.

In general, the administrative authorities do not have the authority to try cases involving offences against intellectual property rights.

However, with respect to industrial property, opposition trials, claims of invalidation of granted rights or transfers of rights, as well as any other claim relating to the validity or effects of such rights, are substantiated before the Head of the Industrial Property Department of the Ministry of the Economy, who acts as a court of first instance. The final decision of the Head of the Department of Industrial Property of the Ministry of the Economy may be appealed before a special court of second instance.

The cost and length of these procedures depends, *inter alia*, on the complexity of the case and the attitude of the parties thereto.

Provisional measures

(a) Judicial measures

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

As a form of protection in respect of such material and legal changes as may take place to the subject of the proceedings or the solvency of the defendant, during the period between the filing of the complaint and the judgment Chilean law provides for a series of safeguards, precautionary measures whose purpose is to prevent such changes from ultimately undermining the rights of the complainant. These precautionary measures include seizure of the goods, the appointment of interveners, attachment orders, prohibition from concluding contracts in respect of particular goods, and any other measure which, in the view of the complainant, could serve to properly safeguard the result of his action. Such precautionary measures may be requested at any stage of the proceedings.

Indeed, under the Code of Civil Procedure (Article 273), the preparations for ordinary proceedings may include a demand by the complainant that the opposing party:

- Produce a sworn declaration of a particular fact relating to his capacity to appear in court or his legal capacity or the name and address of his representatives;
- exhibit the thing to be challenged in the requested proceedings;
- exhibit decisions, wills, inventories, assessments, property deeds and other public or private instruments which by their nature could be of interest to certain persons;
- exhibit books of account relating to business in which the complainant is involved;
- provide a sworn acknowledgement of signature.

In addition, in order to safeguard the results of the proceedings, under Article 290 of the Code of Civil Procedure the complainant may, at any stage of the proceedings, request one or more of the following measures:

- Seizure of the object of the complaint;
- the appointment of one or more interveners;
- attachment of particular goods;
- prohibition from taking any action or concluding any contract in respect of particular goods.

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

Such measures are adopted without the knowledge of the other party whatever the circumstances, but must be notified to the other party.

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

Procedures in respect of preliminary measures are set forth in Articles 273 et seq. of the Code of Civil Procedure, while those relating to precautionary measures are contained in Articles 290 et seq.

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

By their nature, precautionary measures are adopted rapidly.

(b) Administrative measures

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

The administrative authorities do not have the authority to adopt provisional measures except as a special court, in which case the general rules apply.

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 the Customs Law, those carrying out or involved in the import or export of goods on the basis of false declarations concerning the products in question are considered to be guilty of fraud.

The courts of justice may order the customs services to prevent the entry into the country of goods which allegedly infringe intellectual property rights or order the seizure of such goods.

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?

These procedures are carried out immediately by the ordinary courts of justice in conformity with the mentioned rules.

17. Describe 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?

These procedures are carried out immediately by the ordinary courts of justice in conformity with the mentioned rules.

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?

See previous reply.

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

These procedures are conducted by the ordinary courts of justice in conformity with the rules mentioned above.

Criminal procedures

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

As already indicated, criminal jurisdiction is in the hands of the ordinary criminal courts, the courts of appeal and the Supreme Court of Justice.

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

Offences against industrial property in Chile basically consist in forgery and usurpation, and unauthorized commercial use or exploitation in the case of patents, utility models and industrial designs, and counterfeiting, copying and usurpation, or use of counterfeit or copied trademarks.

Offences against industrial property (patents, utility models, trademarks and industrial designs) are dealt with according to the rules of ordinary criminal procedure and the evidence is considered according to equity.

Before a judgment can be made in such cases, the Head of the Department of Industrial Property must be heard as a means of providing the technical information on the issue brought before the court.

Offences against industrial property are considered to be "crimes", and the period in which criminal action may be brought is limited to 10 years.

Offences and penalties in respect of patents

Article 52 of the Industrial Property Law defines offences in relation to patents.

Firstly, the law punishes anyone who misleads another person by invoking the benefits of a patent which does not exist or which has lapsed; in other words, who claims to have a right which he does not in fact have, either because he never did have it or because it has lapsed.

Secondly, the law punishes anyone who without due authorization manufactures, markets or imports for the purpose of sale a patented invention. This means that the law requires anyone manufacturing, marketing or importing a patented invention to obtain an authorization from the patent holder, failing which he is guilty of a criminal act.

In this connection, it should be borne in mind that the manufacture, marketing or import must be for the purposes of sale. If the purpose is other than sale, such as private use or experiment, then no offence has been committed.

It should also be pointed out that by penalizing imports, Chilean law is not applying the principle of national exhaustion of industrial property rights, but simply penalizing the imports insofar as they constitute use without the authorization of the right holder. In the case of imports from the place at which the invention was used with the authorization of the holder, there is no infringement.

Chilean law also penalizes those who mislead through the use of a patented process. However, the use of a patented process for exclusively experimental or educational purposes is not an offence, an exception which is more explicit than in the case of product patents.

The copying of a patented invention is also an offence; in other words it is an offence to put an invention similar to a protected invention to use without the authorization of the right holder.

Finally, the law penalizes those who copy or make use of an invention for which an application is pending, provided the patent is ultimately granted. This rule makes it possible to prosecute anyone who misleadingly copies or uses an invention for which there is a pending application either for a product patent or a process patent, provided the patent is ultimately granted. Thus, the right holder is protected from the moment the application is filed and not from the moment the patent is granted.

In all of the above cases, the penalty is a fine which ranges from about US\$4,822 to US\$24,109, an amount which may be doubled in cases of second offence.

The maximum penalty under Chilean law for infringement of industrial property rights is in fact the seizure of the tools and implements used to commit the offence and the illegally produced objects, since this is done on behalf of the patent holder. There is no prison sentence for the infringement of industrial property law.

As regards provisional measures, the judge may order the immediate seizure of such goods, without prejudice to his authority to order such precautionary measures as may be appropriate.

In addition to these pecuniary penalties, persons convicted for infringing the rights of a patent holder must pay costs and damages.

As a prerequisite for penal action, all patented objects must carry an indication of the patent number, either on the product itself or on its packaging, visibly preceded by the word "patent". This obligation does not apply to processes (patented).

Offences and penalties with respect to utility models and industrial designs

The offences and sanctions relating to infringement of utility models and industrial designs are essentially the same as for patents, with the exception of infringements relating to patent applications punishable after the patent has been granted.

Offences and penalties with respect to trademarks

Chilean law provides for five situations considered as infringements against trademark owners.

Firstly, the law penalizes those who misleadingly use a trademark identical or similar to another trademark already registered in the same class. This provision penalizes the unauthorized use of a trademark identical or similar to another already registered in the same class. The penalty is a broad one, in that it does not distinguish between equal or similar products and/or services as long as they are registered in the same class.

The law also penalizes those who use trademarks for deceptive purposes.

Thirdly, the law punishes those who use registered trademarks of the same class for any type of advertising. While this is a more specific type of delictual action, the idea is essentially the same as for the first case mentioned above.

The use of a trademark which is not registered, which has lapsed or which has been cancelled with the same indication that would be used for a registered trademark is also punished.

Finally, the law penalizes those who use packaging or wrapping displaying a registered trademark which does not belong to them and has not been deleted, except in cases where the marked packaging is used for product of a different class. This is a form of indirect protection for the packaging of products protected by a registered trademark.

In all of the above cases, and as in the case of patents, the penalty for infringement is a fine ranging from US\$4,822 to US\$24,109, which may be doubled in case of a second offence over the past five years.

The maximum penalty under Chilean law for trademark infringement is in fact the destruction of the tools and the implements used for counterfeiting or copying and the seizure of the illegally produced objects on behalf of the trademark holder. There is no prison sentence for the infringement of industrial property law.

As regards provisional measures, the judge may order the immediate seizure of the goods with a counterfeit or copied trademark, without prejudice to his authority to order such precautionary measures as may be appropriate.

In addition to these pecuniary penalties, persons convicted or infringing the rights of a trademark owner are liable for payment of costs and damages.

As a prerequisite for penal action, all registered trademarks used commercially must carry the symbol ® or the initials "M.R."

Offences and penalties with respect to copyright and related rights

Under Chilean law, offences with respect to copyright and related rights are punishable by a pecuniary penalty or a prison sentence. In fact, a bill has been submitted which calls for even greater penalties for this type of infringement.

There is a general penalty for infringements of copyright and related rights consisting of a fine ranging from US\$241 to US\$2,410 which is applicable in the absence of a specific penalty, as we shall see further on.

When a court orders the payment of damages for infringement of copyright and related rights it may order, at the request of the injured party, the handing over, sale or destruction of the copies of the work produced or put into circulation and the materials for their production, and the seizure of the product recited, represented, reproduced or performed.

The court may also order, during the proceedings, the immediate suspension of the sale, circulation, exhibition, performance or representation of the work.

The judges have the authority to order, at the request of the injured party, the publication of the judgement, with or without the grounds on which it is based, in a journal, at the cost of the offender.

Finally, it should be pointed out that such offences are actionable publicly and the complainant has a right to half of the fine imposed.

The first specific penalty under copyright law concerns those who, without the authority to do so, use works belonging to others which are protected, whether published or unpublished, by:

- Public recording, radio or television broadcasting, representation, performance, reading, reciting, exhibition or, in general, any other means known or that becomes known;
- reproduction of the work by any process;
- adaptation of the work to another genre, utilization in any other form involving a variation, adaptation or transformation of the original work, including translation; and

- public performance through radio or television broadcasting, phonographic records, cinematographic films, magnetic tapes or any other material support which could be used in sound or voice recorders, with or without images, or by any other means.

The law also penalizes those who, without the authority to do so, use protected interpretations, productions and broadcasts of holders of related rights.

It also punishes those who counterfeit copyright protected works, whether literally, artistic or scientific, or publish, reproduce or sell them falsely displaying the name of the authorized publisher, removing or changing the name of the author or the title of the work or misleadingly altering the text. It should be noted that in Chile, the title of a work is also protected.

Those who are liable for payment of copyright or related rights on the performance of musical works and fail to provide performance notifications or falsify or alter them are also guilty of a criminal act.

The law also penalizes the marketing of books fraudulently published or printed or without the authorization of the copyright holder.

The above infringements are punishable by 61 to 541 days' imprisonment or a fine ranging from US\$241 to US\$2,410.

Falsification of the number of copies sold in the accounts relating to the publishing contract is also punishable by 541 days to 5 years' imprisonment.

The law provides for 61 to 541 days' imprisonment for those who, with the motive of gain, intervene in the reproduction, public distribution or introduction into the country and those who acquire or hold for the purposes of sale phonograms, videograms, phonographic records, cassettes, video cassettes, cinematographic films or computer programs.

Penalty for infringement of other categories of rights

Chilean law also penalizes infringements of other intellectual property rights, such as those relating to geographical indications, undisclosed information and protection of plant varieties.

The Law on Alcoholic Beverages in Chile defines at least three geographical designations with respect to spirits, one of which protects Chilean Pisco. The law provides for a fine of US\$723 to US\$7,233 for those who use this designation in violation of its requirements. This fine can be increased to US\$14,400 in case of second offence. Similar penalties are applied to those who infringe the rules governing designation of origin with respect to wine.

There is no prison sentence for such offences.

Regarding undisclosed information, there is a series of imprisonment penalties for persons who disclose information that has been classified as confidential, especially information relating to industry or to business and commercial transactions.

Finally, Chilean law prescribes a fine ranging from US\$241 to US\$2,410 and prison sentences of 61 to 541 days for infringements of plant breeders' rights through the propagation or sale of reproductive material or the offering of such material for sale, or the distribution, importation or marketing thereof, a penalty which is doubled in case of second offence.

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?

Each crime which is brought before a court must go through pre-trial proceedings, i.e. a written, secret and non-adversary procedure, the purpose of which is to prepare the second part of the criminal proceedings, the trial itself, which, in addition to also being recorded in writing, is a public and adversary procedure. Although secret, in certain circumstances, the defendant may be granted access to the record of the pre-trial proceedings.

The pre-trial proceedings form a preparatory stage for the actual criminal proceedings: they are not limited in time and their purpose is to carry out all of the formalities required in preparation of the criminal trial by hearing the explanations of the guilty parties, ensuring their appearance and establishing their liability. They have three essential purposes: (1) to prove the existence of the deed and to determine the identity of the offender; (2) to ensure the appearance of the offender; and (3) to establish the financial liability of the offender.

The existence of the deed is proved through a court inspection, public and private documents, witnesses, reports of experts, and legal and judicial presumptions. The offender is determined in the same way with the addition of confession, which does not apply in the case of establishing the existence of the deed. The appearance of the offender is ensured through a writ of summons, detention or pre-trial custody. Finally, the financial liability of the offender is ensured through seizure or precautionary measures.

Every offence gives rise to criminal proceedings and could give rise to civil action for damages.

Public criminal proceedings may be initiated in four different ways: by the public prosecutor, by the plaintiff, by lodging a complaint or by a judicial inquiry.

A complaint is the act by which any person brings a matter which could constitute an offence before any criminal court, and may be filed either with the court or with the police.

An "action" may be brought by any person eligible to appear in court and exercise the public right of action, usually the aggrieved party interested in pursuing and punishing the commission of an offence. In this case, contrary to the previously mentioned complainant, the accuser is not part of the criminal process and must be presented before the competent judge.

Once the necessary steps have been taken to ensure the existence of a criminal act and its possible agents and accomplices or accessories, the judge orders the closure of the pre-trial proceedings and where appropriate, issues an accusation initiating the full trial stage, during which both the accuser and the accused may submit their evidence and arguments in full.

For offences involving the infringement of industrial property rights and copyright and related rights there is public right of action.

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

See reply to the previous question.

24. Specify by category or IPR 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.**

In Chile, infringement of intellectual property rights is punishable by criminal penalties (imprisonment or fines) and/or civil penalties (damages).

Apart from the confiscation and seizure of goods, the infringement of the provisions of the Industrial Property Law is punishable by fines ranging from US\$4,822 to US\$24,109, or in case of a second offence from US\$9,600 to US\$48,200.

With respect to the copyright infringements, the law provides for fines ranging from US\$213 to US\$2,135. However, a penalty of 61 to 541 days' imprisonment may be applied to persons who, without the express authority to do so, use works owned by others and protected by the law; to those who, without express authorization, use protected interpretations, productions and broadcasts of holders of related rights; to those guilty of counterfeiting works protected by the law, whether literary, artistic or scientific, or who publish, reproduce or sell such works falsely displaying the name of the authorized publisher, deleting or changing the name of the author or the title of the work or altering its text; and to those liable for payment of copyright or related rights for the performance of musical works who fail to provide performance notifications or who forge or alter a performance notification.

A prison sentence is also applied to those who falsify the number of copies effectively sold in the statements of account to the publisher, those who intervene in the reproduction, distribution to the public or introduction into the country and those who acquire or possess for purposes of sale phonograms, videograms, records, cassettes, video cassettes, and cinematographic or photographic films.

With respect to infringement of the rights of plant breeders, the law provides for fines ranging from US\$213 to US\$2,135. However, a prison sentence of 61 to 541 days may also be applied to those who propagate or perform any act with a view to selling as propagating material or who permanently use the genetic material of a protected variety to produce a new variety, in the knowledge that the variety is protected.

The same penalty is applied to those who offer, distribute, import, export, sell or otherwise provide for use as propagating material a plant variety which they know to be protected.

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

The provisions have already been indicated above, and no information is available concerning the actual duration of proceedings and their cost.
