

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Replies by Cuba

Civil and administrative procedures and remedies

(a) Civil judicial procedures and remedies

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

In cases of infringement of rights in marks and other distinctive signs, pursuant to the provisions of Legislative Decree No. 203 of 24 December 1999 (Title X, Actions and Remedies for Infringement of Rights, Chapter I, Judicial Action, Article 125), a claim may be lodged against anyone who infringes such rights with the competent people's provincial court, in accordance with the rules on jurisdiction and the provisions governing ordinary proceedings laid down in Law No. 7 of 19 August 1977, i.e. the Law on Civil, Administrative and Labour-Related Procedure (LPCAL).

Actions for infringement of a right conferred by the above-mentioned Legislative Decree No. 203 shall be barred after five years following the last recorded infringement, pursuant to the provisions of Article 129.

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 was indicated in the preceding paragraph, in cases of infringement of rights in marks and other distinctive signs, the right holder, and the licensee, in accordance with the conditions agreed in the licence, and pursuant to Title X, Actions and Remedies for Infringement of Rights, Chapter I, Judicial Action, Article 125 of Legislative Decree No. 203 of 24 December 1999, may lodge a claim with the competent people's provincial court against anyone who infringes those rights, in accordance with the rules on jurisdiction and the provisions governing ordinary proceedings laid down in the Law on Civil, Administrative and Labour-Related Procedure.

In the event of joint ownership of a right, any of the joint owners may initiate the action without the consent of the others being necessary, unless otherwise agreed.

Moreover, Article 87 of the same Legislative Decree provides that the owner of an exclusive licence may initiate action in defence of a mark, in the event that the owner of the mark has failed, upon request, to bring such action himself within the time-limit laid down in Article 128 of the legislative decree.

¹ Document IP/C/5.

Action may also be initiated by an association, federation, trade union or other entity representing the interested parties, provided that it is authorized for that purpose.

The public prosecutor may institute proceedings where the interests of society or the State are affected.

How may they be represented?

The persons concerned may be represented by themselves or through a lawyer. When they represent themselves, they must act under the direction of a lawyer. These requirements are set out in Article 66 of the Law on Civil, Administrative and Labour-Related Procedure.

The representatives of legal persons shall act in accordance with the legal, regulatory or statutory provisions governing such persons under the provisions of Article 64 of the Law on Civil, Administrative and Labour-Related Procedure.

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

Article 42 of the Law on Civil, Administrative and Labour-Related Procedure provides that the court may summon the parties to appear at any stage of the proceedings in order to question them in connection with the facts of the dispute, or it may order an inspection of the articles that are the subject-matter of the dispute and of any books or documents relevant to the case, where necessary in order to ascertain the facts.

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?

Article 248 of the Law on Civil, Administrative and Labour-Related Procedure provides that, at any level of proceedings the court, prior to issuing a ruling and pending the production of further evidence, shall order ex officio or at the request of one of the parties the taking of evidence that it considers essential for a precise understanding of the truth in relation to the questions raised.

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

Although this issue is not referred to explicitly in the legislation in force, the Law on Civil, Administrative and Labour-Related Procedure, it is proposed for inclusion in the draft legislative decree on protection against unfair competition.

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 are authorized to issue different types of judicial decision, which shall take the form of rulings, directions or orders, in accordance with the provisions of Chapter VI of the Law on Civil, Administrative, and Labour-Related Procedure.

Directions are decisions designed to expedite proceedings, which do not need to be issued in reasoned form.

Orders are decisions by which a court may rule on pleas or essential points directly affecting legal capacity or appearance in court, reject the claim outright or rule on its admissibility or inadmissibility, refuse the discovery of evidence or the admission of any particular evidence, rule on appeals against direction or orders, or take other decisions which, in accordance with the law or their specific nature, are to be issued in reasoned form.

Rulings are decisions which put an end to the proceedings at the lower court level or at the appellate level, as appropriate, or which deal with issues or pleas constituting a barrier to consideration of the merits.

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

In proceedings concerned with an action for infringement, pursuant to the provisions of Article 126 of Legislative Decree No. 203 on Marks and Other Distinctive Signs, one or more of the following measures may be ordered by the court at the request of the claimant:

- Compensation for material injury.
- Damages, calculated in the light of the following criteria:
 - The loss of revenue suffered by the right holder as a result of the infringement;
 - the amount of the profits earned by the infringer as a result of the infringing acts;
 - the price that the infringer would have paid for a contractual licence, taking into account the market value of the infringed right and the contractual licences that have already been granted.

At the same time, Articles 82 to 88 of Law No. 59 of 16 July 1987, on the Civil Code, deal with all aspects of civil liability for unlawful acts, including compensation for material damage, indemnification for prejudice and compensation for non-pecuniary damage.

Attorneys' fees are covered by regulations on the subject adopted by the National Organization of Collective Law Practices.

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

Article 126 of Legislative Decree No. 203 on Marks and Other Distinctive Signs lays down the measures necessary for preventing the continuation or recurrence of the offence, and provides for the destruction of the goods, materials or means used to commit the offence, including containers, packaging, labels, printed matter or advertising material and other materials resulting from the offence.

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?

Article 126.4 of Legislative Decree No. 203 on Marks and Other Distinctive Signs provides that the court, at any stage of the proceedings, may order the defendant to provide any information in his possession concerning persons involved in the production or marketing of the infringing goods or services.

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?

Describe provisions relating to the indemnification of defendants wrongfully enjoined.

Article 132.3 of Legislative Decree No. 203 on Marks and Other Distinctive Signs provides that the person applying for provisional measures shall be liable for any injury or prejudice resulting from their implementation if those measures lapse, cease to have effect, or are rescinded as a result of action or omission by the applicant, or if it is determined subsequently that no infringement of an industrial property right occurred or was imminent.

To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

With regard to the liability of public authorities and officials, Title I, Chapter X of the Law on Civil, Administrative and Labour-Related Procedure provides for the civil liability of judges, prosecutors and court officers.

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

With regard to the length of proceedings, reference may be made to the provisions of the Law on Civil, Administrative and Labour-Related Procedure, in connection with the stages in each individual proceeding, which will depend on the proceeding in question.

As far as costs are concerned, Chapter XII of the above-mentioned Law on Civil, Administrative and Labour-Related Procedure deals with matters relating to court costs, which are the costs that have to be defrayed by the parties during the proceedings, for the direct and immediate purpose of facilitating the conduct of the proceedings in accordance with the formalities authorized by law in each case.

All matters relating to court costs are regulated by Articles 198 to 212 of the Law on Civil, Administrative and Labour-Related Procedure.

(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 the area of industrial property, the administrative authorities are not authorized to hear cases of infringement of rights; such authority is vested in the courts. However, in proceedings to set

aside a judgement against which an appeal lies, and in proceedings concerning the invalidity, cancellation or lapse of registrations, which are heard at first instance by the administrative authority within the Cuban Industrial Property Office, the ruling given may be the subject of a complaint to the civil and administrative division of the people's provincial court in the city of Havana. This regulation is contained in Title IX, Actions against Decisions of the Office, Article 124 of Legislative Decree No. 203.

Administrative procedure is governed by Book II, "Administrative Procedure", Titles I to V of the Law on Civil, Administrative and Labour-Related Procedure.

Provisional Measures

(a) Judicial measures

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

Article 131 of Legislative Decree No. 203 on Marks and Other Distinctive Signs provides that the following provisional measures may be ordered by the court:

- (a) The immediate cessation of the acts constituting the infringement;
- (b) the seizure or detention of goods, packaging, labels and other materials the main use of which was for the commission of the offence;
- (c) suspension of the import or export of the goods, materials or means referred to in subparagraph (b).

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

The applicant may request, before the court hearing the application, that immediate provisional measures be ordered for the purpose of preventing the continuation of the offence, avoiding its consequences, obtaining or preserving evidence or ensuring the effectiveness of the action. This request may be made before the initiation of proceedings, in conjunction therewith, or after their initiation, pursuant to the provisions of Article 130 of Legislative Decree No. 203 on Marks and Other Distinctive Signs.

Article 133 of the above-mentioned Legislative Decree provides that, where necessary in order to ensure compliance with its purpose, the measure may be implemented without giving a prior hearing to the other party. In that exceptional event, the measure shall be notified to the party affected no later than immediately after it has been implemented.

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.

As stated in reply to the previous question, the applicant may request, before the court hearing the application, that immediate provisional measures be ordered for the purpose of preventing the continuation of the offence, avoiding its consequences, obtaining or preserving evidence, or ensuring the effectiveness of the action. This request may be made before the initiation of proceedings, in conjunction therewith, or after their initiation.

A provisional measure may be ordered only where the applicant proves his entitlement to act and the existence of the infringed right, and submits evidence that allows it to be reasonably assumed that the infringement has been committed or is imminent, and that any delay in applying the measure would cause irreparable or greater injury. The measure shall not be ordered if the person requesting it does not provide sufficient security in the court's estimation.

Any provisional measure implemented before the initiation of civil proceedings on the merits shall cease to have effect after 20 working days have elapsed from the date of imposition of the measure if no action has been initiated within that period. All these matters are governed by Title X, Actions and Remedies for Infringement of Rights, Chapter II, Provisional Measures.

Title VII of the Law on Civil, Administrative and Labour-Related Procedure deals with all matters relating to the seizure or attachment of goods.

As far as safeguard measures are concerned, Articles 463, 465, 466, 467 and 468 of the Law on Civil, Administrative and Labour-Related Procedure provide that:

"Any class of goods and rights may be the subject of seizure or attachment or of a precautionary or preventive measure, with the exception of those listed below:

- (a) Goods owned by the socialist State;
- (b) immovable property constituting the permanent abode of the debtor;
- (c) personal property intended to serve the essential needs of the debtor;
- (d) instruments or means of work necessary for the exercise of a profession, art or trade;
- (e) vehicles constituting personal instruments or means of work;
- (f) maintenance payments;
- (g) Land forming part of the basic subsistence area for self-consumption belonging to small-scale farmers, and other assets inherent therein, including farming implements, animals and animal breeding establishments.

The exemption from seizure or attachment also applies to two thirds of wages, salaries and social security benefits.

Cash, jewellery or precious stones shall be deposited in the corresponding banking establishment or the attachment shall be applied to that establishment if they are already deposited there, for the purpose, in both cases, of ensuring that they cannot be withdrawn without prior authorization from the court hearing the case.

With regard to works of art and other valuables, the court shall adopt the necessary measures for their safe keeping.

Other movable property and livestock shall be left, subject to review, in the possession of the debtor or of the third person holding them, pending the results of the proceedings, with the requirement that they be kept in an unaltered state and that disposal of them is strictly prohibited, subject in every case to the possibility of criminal liability.

In the case of immovable property, the attachment shall be confined to notifying the responsible official in the Office and the agency where ownership of the property is registered, in order for the necessary entry to be made in the register."

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

The length of proceedings depends on the time-limits laid down in the Law on Civil, Administrative and Labour-Related Procedure. As far as the cost of proceedings is concerned, reference may be made to the regulations under Articles 198 to 212, referred to above, which deal with court costs. There is an additional tax on documents, where applicable.

(b) Administrative measures

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

The courts have exclusive jurisdiction over administrative provisional measures, which are not regulated by industrial property laws.

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?

Resolution No. 25 of 24 September 2001, by the Director of the Customs General of the Republic, amends the provisions of Resolution No. 21 of 14 July 1997 issued by the same authority, and gives effect to the "Regulations on the detention of merchandise for infringement of intellectual property rights", Article 1 of which provides that "these regulations govern the procedure for the border protection of intellectual property rights and the formalities applicable to applications for the detention of merchandise which infringes those rights".

Article 2 provides that "the Customs shall suspend the clearance of pirated or other merchandise, imported or exported under any customs regime, which infringes intellectual property rights".

Article 3 provides that "in order to ensure the border enforcement of intellectual property rights, the Customs shall act at the request of one of the parties, at the request of the competent authority and ex officio, provided that detection by the customs authority concerned is possible".

Article 24 provides that "the provisions of this regulation shall not be applied where the goods allegedly infringing intellectual property rights:

- (a) Constitute merchandise in international transit;
- (b) constitute consignments that have no commercial character;

(c) form part of the personal effects of travellers."

Article 141 of Legislative Decree No. 203 on Marks and Other Distinctive Signs provides specifically in relation to these procedures that small quantities of merchandise that have no commercial character and form part of the personal baggage of travellers or are sent in small quantities shall be excluded from the special provisions relating to border measures.

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?

Legislative Decree No. 203, Title X, Chapter III, Special Border Measures, provides that the owner of a right protected by this regulation who has reasonable grounds for suspecting that merchandise infringing that right is to be imported or exported, may request the competent People's Provincial Court to order that the Customs detain the imported or exported merchandise at the time of its consignment. The conditions and guarantees applicable to provisional measures shall apply to that request and to the order that is issued.

When ordering a border measure, the court shall require the person applying therefor to provide sufficient security to meet the outcome of the proceedings.

When the applicable conditions and guarantees have been fulfilled, the court shall order or refuse the detention and notify the requesting party accordingly.

Anyone requesting detention shall, subject to appropriate identification, provide the court with the necessary information and a description of the goods that is sufficiently detailed and accurate for them to be easily identified and recognized by the Customs. Upon ordering the detention, the court shall require the requesting party to provide security to meet the outcome of the proceedings.

Once the detention has been effected, the Customs shall immediately provide notification thereof to the importer or exporter of the goods, the party requesting the measure and the corresponding court.

If the Customs, after ten working days have elapsed from the date of notification of the detention to the requesting party, has not been informed that judicial proceedings on the merits have been instituted or that the court has ordered provisional measures to prolong the detention, the detention shall be lifted and the detained goods shall be released. In duly justified cases, that time-limit may be extended by ten working days.

Where the detention was ordered as a provisional measure, the time-limit provided for such measures shall apply.

Once the judicial proceedings on the merits have been initiated, the party affected by the detention may appeal to the court for a review of the detention ordered, and a reply shall be issued for that purpose. The measure in question may be modified, revoked or confirmed.

The party requesting border measures shall be liable for injury and prejudice resulting from their enforcement if the measures are lifted or revoked through the action or omission of the requesting party, or if subsequently it is determined that no infringement of an industrial property right had occurred or was imminent.

A regulation to the same effect is provided for in Chapter III of Resolution No. 25 of 24 September 2001, by the Director of the Customs General of the Republic (Regulations on the detention of merchandise for infringement of intellectual property rights), in connection with other intellectual property procedures.

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?

Matters relating to the length of proceedings are governed by Title X, Actions and Remedies for Infringement of Rights, Chapter III, Special Border Measures, of Legislative Decree No. 203, and the relevant procedure is described in the reply to the previous question and in Resolution No. 25 of 20 September 2001 by the Director of the Customs General of the Republic.

Regarding the period of validity of decisions by the competent authorities, Article 137.1 of Legislative Decree No. 203 provides that "if the Customs, after ten working days have elapsed from the date of notification of the detention to the requesting party, has not been informed that judicial proceedings on the merits have been instituted or that the court has ordered provisional measures to prolong the detention, the detention shall be lifted and the detained goods shall be released. In duly justified cases, that time-limit may be extended by ten working days". Article 17 of Resolution No. 25 contains a similar rule.

As far as costs are concerned, Article 138 of the above-mentioned Legislative Decree No. 203 provides that "the party requesting border measures shall be liable for any injury and prejudice resulting from their enforcement if the measures are lifted or revoked through the action or omission of the requesting party, or if subsequently it is determined that no infringement of an industrial property right had occurred or was imminent. Article 18 of Resolution No. 25 of 20 September 2001 by the Director of the Customs General of the Republic contains a similar regulation.

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?

Article 3 of Resolution No. 25 of 20 September 2001 by the Director of the Customs General of the Republic provides that "in order to ensure the border enforcement of intellectual property rights, the Customs shall act at the request of one of the parties, at the request of the competent administrative or judicial authority and *ex officio*, provided that detection by the customs authority concerned is possible".

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

The remedies that may be implemented by the competent authorities are set forth in Article 131 of Legislative Decree No. 203 and consist of the following:

- (a) Immediate cessation of the acts constituting the infringement;
- (b) seizure or detention of the goods, packaging, labels and other materials the main use of which was for the commission of the infringement;
- (c) suspension of the importation or exportation of the goods, materials or means referred to in subparagraph (b).

Article 22 of Resolution No. 25 of 20 September 2001 by the Director of the Customs General of the Republic provides that "in cases where, by virtue of judicial or administrative proceedings, it is determined that the goods in dispute are infringing goods, the Customs shall be authorized to adopt the following measures, unless otherwise directed by the competent administrative or judicial authority:

- (a) Destruction of the goods; or
- (b) their assignment to a socially worthwhile purpose designed to prevent the acquisition of unlawful financial profits, provided that the goods circulate outside the normal channels of trade and without detriment to the right holder".

Criminal procedures

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

Article 4 of Law No. 5 of 15 August 1977, Law on Criminal Procedure (LPP), provides that "the criminal people's courts shall have jurisdiction over cases based on the commission of punishable ordinary law offences and offences against State security, and shall also be competent to declare states of danger".

Title II of the Law on Criminal Procedure contains provisions on the jurisdiction and competence of the criminal people's courts.

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

The Criminal Code in force, Law No. 62 of 27 September 1987, as amended by Legislative Decree No. 140 of 13 August 1993, by Legislative Decree No. 150 of 6 June 1994, by Legislative Decree No. 175 of 17 June 1997, and by Law No. 87 of 26 February 1999, includes the definition of an offence related to the infringement of industrial property rights, namely Article 226 which provides that:

"A custodial penalty of six months to two years or a fine of 200 to 500 quotas, or both, shall be incurred by:

- (a) An inventor who, without authorization from the competent body or official, registers, facilitates disclosure or authorizes another person to use abroad an invention made by him in Cuba;
- (b) any other person who registers, discloses or uses abroad, without proper authorization, an invention made in Cuba, irrespective of the reason for his having knowledge of that invention."

Similarly, Law No. 87 of 26 February 1999 amending the Criminal Code, under Chapter III on Transmission, Illegal Possession of Cultural Assets and Counterfeiting of Works of Art, Article 246, provides as follows:

"A custodial sentence of one to three years or a fine of 300 to 1,000 "cuotas" (units of account), or both, shall be imposed on anyone who, to the detriment of its creator or of the cultural heritage, counterfeits or traffics a work of art" and goes on to state that "if serious injury is caused as a result of the offences provided for in the preceding subparagraph, the penalty shall be a custodial sentence of two to five years".

However, it should be emphasized that a draft legislative decree on industrial property offences is currently under consideration, as is a draft legislative decree on copyright, and that both include provisions complementary to Cuba's obligations in this field.

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?

Article 127 of the Constitution of the Republic provides that the Office of the Attorney General of the Republic is the State organ which, for essential purposes, is responsible for monitoring and safeguarding legality on the basis of strict compliance with the Constitution, the laws and other legal provisions by the organs of the State, economic and social entities and by citizens, and for promoting and implementing public criminal prosecutions on behalf of the State.

Article 116 of the Law on Criminal Procedure provides that "anyone who witnesses the perpetration of an offence liable to ex officio prosecution, or by any other means acquires the certainty that such an act has been committed, is obliged to report the matter to a court, a prosecutor, an investigating judge or a police unit, or failing that to the military unit nearest the place where he is located".

Article 118 provides that persons who, by reason of their post, profession or trade, obtain information concerning the commission of an offence liable to ex officio prosecution, shall be under the same obligation.

The Law on Criminal Procedure, under Book III, Criminal Proceedings and the Definition of Offences, Title I, Criminal Proceedings, Article 272, provides that "criminal proceedings shall be brought before the judicial body with jurisdiction to hear charges against an accused person alleged to have committed punishable offences".

Article 273 of the same law provides that criminal proceedings shall be instituted by the public prosecutor in respect of offences liable to ex officio prosecution.

With regard to action initiated on a party's own initiative or on the basis of complaints, Article 273 provides that criminal proceedings in respect of offences liable to ex officio prosecution shall be instituted by the public prosecutor or, exceptionally, by the party injured by the offence in cases where the prosecutor requests the discontinuance or the general or partial dismissal of proceedings. Article 274 of the Law on Criminal Procedure provides that criminal action in respect of private offences shall be instituted exclusively by means of a complaint by the injured party. This provision applies to cases involving offences against honour, particularly the offences of defamation and slander, which are prosecutable on the basis of a complaint by the injured party.

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

It has already been stated in reply to the previous question that anyone who witnesses the perpetration of an offence liable to ex officio prosecution, or by any other means acquires the certainty that such an offence has been committed, is obliged to report the matter to a court, public prosecutor, investigating judge or police unit, or failing that, to the military unit nearest the place where he is located. Any persons who, by reason of their post, profession or trade, obtain information concerning the commission of an offence liable to ex officio prosecution, are under the same obligation.

Article 274 of the Law on Criminal Proceedings provides that criminal proceedings in respect of private offences shall be instituted exclusively by means of a complaint by the injured party. This

provision is designed to cover cases of offences against honour, in particular the offences of defamation and slander, which are prosecutable by virtue of a complaint by the injured party.

24. Specify, by category of 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 accordance with the reply to question 21, it is observed that the Criminal Code in force, Law No. 62, provides that a custodial sentence of six months to two years or a fine of 200 to 500 "*cuotas*" (units of account), or both, shall be applicable to:

- An inventor who, without authorization from the competent body or official, registers, facilitates disclosure or authorizes another person to use abroad an invention made by him in Cuba;
- any other person who registers, discloses or uses abroad, without proper authorization, an invention made in Cuba, irrespective of the reason for his having knowledge of that invention.

Similarly, Law No. 87 of 26 February 1999 amending the Criminal Code, under Chapter III on Transmission, Illegal Possession of Cultural Assets and Counterfeiting of Works of Art, Article 246, provides as follows:

- "A custodial sentence of one to three years or a fine of 300 to 1000 "*cuotas*" (units of account), or both, shall be imposed on anyone who, to the detriment of its creator or of the cultural heritage, counterfeits or traffics a work of art", and goes on to state that "if serious injury is caused as a result of the offences provided for in the preceding subparagraph, the penalty shall be a custodial sentence of two to five years".

Legislative Decree No. 175 of 17 June 1997 amending the Criminal Code provides in Article 4 amending Article 28.1 of Law No. 62 that sanctions may be of two kinds, primary and secondary. Primary sanctions, which may be applicable to natural persons, are provided for in Article 28.2, under subparagraphs (b) imprisonment; (c) custodial corrective labour; (ch) non-custodial corrective labour; (d) limited freedom; and (e) a fine.

The following secondary sanctions may be applicable to natural persons under Article 28.3: (a) deprivation of rights in cases where imprisonment is the primary sanction; (c) prohibition on the exercise of a profession, post or trade; (f) seizure of the effects or instruments of the offence; (g) confiscation of goods.

Article 28.4 of Legislative Decree No. 175 provides that "the primary sanctions applicable to legal persons are the following: (a) dissolution, which consists in the liquidation of the legal person; (b) temporary closure; (c) temporary or permanent suspension of the licence to engage in specific activities and transactions; (ch) a fine. Article 28.6 provides for the following secondary sanctions: (a) seizure; (b) confiscation of goods.

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.

As far as the length of proceedings is concerned, Articles 107, 122, 123, 261 and 262 of the Law on Criminal Procedure provide for terms for the different stages in criminal proceedings, from the investigative stage, through the preparatory stage until the oral hearing.

The Law on Criminal Procedure contains no provisions governing the cost of proceedings, but the existing regulations on the services provided by lawyers employed by collective law practices lay down the form and the amount of the fees to be paid in this connection. It is also provided that every accused person has the right to due process and that, if he is insolvent or unable to appoint a lawyer to defend him, one shall be assigned to him ex officio, at no cost.
