

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from Cyprus

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedure and remedies

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

The District Courts of Cyprus.

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?

Natural and legal persons who are right holders whose rights are infringed. They may be represented by lawyers. There are no mandatory personal appearances by the right holder. Agents representing the Performers Rights Society may also appear.

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 that lies within its control?

There is such authority under the Civil Procedure Rules for disclosure of the evidence of each party.

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

Under Cyprus Law there are no specific means to identify confidential information. Before presenting any information the holder shall apply for its confidentiality and present evidence in this regard, which may be contested by the other party. The judge will decide about the requested confidential nature of the information.

¹ Document IP/C/5.

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

Injunctions may be issued under the Trade Marks Law and the Copyright Law.

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

Damages may be ordered under the intellectual property right laws, most notably the Trade Marks Law and the Copyright Law.

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

This is available under the Cyprus Copyright Law.

Any other remedies

Forfeiture and surrender to the right holder under the Copyright Law.

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 of services found to be infringing and of their channels of distribution?

Cyprus does not have any such provision.

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?

Cyprus does not have any such provision.

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

The Civil Procedure Rules which relate to procedures before the District Courts define the length of an ordinary civil case. As it is the situation in Cyprus an average action may last up to two years or more until its final adjudication.

The costs are covered by the Regulations on Judicial Costs and also the other Regulation on Advocates Fees.

The judicial costs and advocates fees are determined according to graded thresholds and the height of the relevant claim.

There are no official date available in order to give to the questionnaire.

(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.

Administrative procedures exist in the nature of recourses to the Supreme Court (Article 146 of the Constitution) against the decision of the Registrar of Trade Marks and Patents. The relevant provisions are to be found in the Trade Marks and Patent Laws.

The Supreme Court annuls the relevant decision of the Registrar or allows his decision. The Supreme Court may also grant interim orders for imminent relief.

Again the parties may be represented by lawyers and the costs which are usually higher than those of the District Court are fixed by the Supreme Constitutional Court Rules.

Appeal before a revision panel of judges of the Supreme Court lies as a final remedy from the decision of a first instance before a single Supreme Court judge.

In relation to the Trade Marks Law in particular the Registrar of Trade Marks may decide as to the final registrability of a trademark, after hearing the parties involved, subject to recourse to the Supreme Court against his decision. The Registrar may also rectify the Trade Marks Register on application by a party concerned or order the expungement of a trademark again on the application of a party having a lawful interest.

Provisional Measures

(a) *Judicial measures*

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

There are interim orders before the adjudication of the substance of the case by the Court. These orders are granted by the District Courts on the basis of the relevant order of the Civil Procedure Rules.

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

Such measures, so-called *ex parte* orders, are granted in cases when something wrong must be prevented or in order to avoid a situation which the Court may not be able to remedy later with its final judgement.

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.

The initiation is through an application before a judge of the District Court. The plaintiff – applicant may give notice to the defendant – respondent or we may have an application *ex parte* by the plaintiff – applicant making his request for an order without giving notice to the defendant who will not appear.

There are time limits within which the defendant is given the opportunity to be heard as to why an order may not be granted.

In case of an *ex parte* application, the Court *ex officio* may refuse to grant an order unless the defendant – respondent is given the opportunity to be heard.

An order remains in force until the time of the adjudication of the substance of the case or until the defendant – respondent proves to the Court that his interest may be irrevocably prejudiced by the continuing enforcement of the order.

The length to obtain such relief is usually three weeks under a specific order of the Civil Procedure Rules. The cost is usually small, unless the Court orders the applicant to make a deposit of a sum of money to insure the defendant against a possible loss by the continuing enforcement of the interim order. In such a case this sum must be deposited before the Court grants an interim order.

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 time as we said above is usually small and the cost of proceedings less than the cost of the actual trial of the case. The cost is governed by the Courts Costs Regulation and the Advocates Fees Regulation. There is no data available.

(b) *Administrative measures*

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

There are no such measures under Cyprus Law.

Special Requirements Related to Border Measures

Questions 15 to 19

A draft law on border measures, for the suspension by the Customs Authorities of the release into free circulation (export, re-export, import, etc.) of counterfeit, pirated and goods infringing patents and supplementary protection certificates is before the Law Office for legal vetting and is expected to become law by the end of this year.

Criminal Procedures

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

These are the District Courts of the Republic.

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

In respect of the infringement of copyright, criminal procedures and penalties are available, more specifically, anyone who knowingly:

- produces for sale or leasing any pirated copy;
- sells, leases or advertises for sale of exhibits commercially or offers for sale a pirated copy;

- exports or imports to the Republic for sale or leases any such copy, etc.;
- manufactures or has in his possession any printing plate for the purpose of producing copies which are in infringement of the copyright which exists in a certain work;
- performs or allows the public performance of a scientific, literary, artistic or musical work which is in infringement of the copyright in such works.

Secondly, in respect of trademarks for the following instances, which are considered to constitute criminal offences:

- falsification of entries to the Register of Trade Marks;
- false representation of a trademark as registered.

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 police and Attorney-General. Initiation of criminal proceedings can be done on the above authorities' own initiative or as a result of complaints.

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

Under the Criminal Procedure Law of Cyprus, any private person may initiate criminal proceedings after he obtains the consent of the Attorney-General.

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.**

For the infringements of copyright as described in response to question 21 above, imprisonment and/or a monetary fine are the penalties prescribed.

Under the Copyright Law, pirated copies or infringing printing plates may be seized, forfeited or destroyed or forfeited/seized and surrendered to the right holder.

For the offences concerning trademarks as described above in response to question 21, the penalties available are imprisonment and/or a fine.

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.

Generally speaking the length of proceedings is less than in the case of the civil cases. It takes six months to one year. The cost of proceedings is defrayed by the person who is convicted of a particular offence.
