

CHECK-LIST OF ISSUES ON ENFORCEMENT

Replies from Spain

Civil and administrative procedures and remedies

(a) Civil judicial procedures and remedies

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

Copyright and related rights

As a general rule, the civil courts (ranging from the courts of first instance (*Juzgados de Primera Instancia*) to the Civil Division of the Supreme Court) have jurisdiction. With respect to the adoption of precautionary measures for the urgent protection of intellectual property rights, the venue is that of the court of first instance in whose jurisdiction the infringement takes place or there exists prima facie evidence that it will take place, or in which the specimens that are considered unlawful have been discovered, at the choice of the person applying for the measures.

Nevertheless, once the principal claim has been brought, the judge trying the case will alone have jurisdiction in relation to the measure adopted. When the measure is applied for at the same time as the claim is brought in the corresponding declaratory-judgement proceedings or during the handling of the proceedings, the judge or court with jurisdiction for hearing the case or the judge or court already trying the case, respectively, will have jurisdiction.

Such measures can also be decided by criminal courts in criminal cases concerning infringement of rights, without prejudice to the adoption of any other measures provided for in criminal procedural law.

Industrial property and unfair competition

In the case of infringement of industrial property rights, pursuant to Article 125 of the Patents Act 11/1986 of 20 March, jurisdiction rests with the courts of first instance of the city where the High Court of Justice (*Tribunal Superior de Justicia*) of the Autonomous Community corresponding to the domicile of the defendant has its seat (there are 17 High Courts of Justice in Spain). The Provincial High Courts (*Audiencias Provinciales*) of the city where the High Court of Justice has its seat have jurisdiction for appeals. The Supreme Court has jurisdiction in the case of applications for annulment (remedy of *casación*).

With respect to proceedings concerning unfair competition, pursuant to Article 23 of the Unfair Competition Act 3/1991 of 10 January, the court of first instance of the place where the defendant has his place of business or, failing such, the defendant's domicile, or, if the defendant has neither establishment nor domicile in Spain, of the defendant's customary place of residence, has jurisdiction. The action may also be brought in the place where the injury occurred.

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?

Copyright and related rights

The persons with standing to assert intellectual property rights are their holders (actors, phonogram producers, assignees, heirs, etc.). These persons shall be represented by a barrister (*procurador*) legally authorized to appear in court, and advised by a solicitor (*abogado*). Holders of rights may also entrust their management to so-called "management agencies" (*entidades de gestión*), legally constituted entities authorized by the Ministry of Culture to engage either on their own behalf or on behalf of others in the management of exploitation and other patrimonial rights, on behalf of and in the interest of various authors or other holders of intellectual property rights; once authorized, such entities may exercise the rights entrusted to their management and assert them in all types of administrative or legal proceedings. For the purposes of providing documentary credentials of their standing or representative status, at the time of presenting or challenging the application, the management entity must bring forward in the proceedings a copy of its by-laws and certification accrediting its authorization by the administration. The defendant may only oppose, with due substantiation, the lack of representative status of the entity bringing the action, the authorization of the holder of the exclusive right or the payment of the remuneration concerned.

The adoption of precautionary measures is applied for in writing, signed by the person concerned or his legal or voluntary representative, without need of intervention by a barrister or the assistance of a solicitor, unless the precautionary measure is applied for at the same time as the principal claim is brought in the declaratory-judgement proceedings concerned or during the handling of the said proceedings.

Industrial property and unfair competition

In the case of actions concerning industrial property, the holder of the infringed right and, as the case may be and subsidiarily, the exclusive licensee have standing (Article 124 of the Patents Act). A non-exclusive licensee may have standing if he makes an application before the right holder.

In the case of unfair competition, persons participating in the market whose economic interests are injured or threatened by the act of unfair competition have standing to bring actions (Article 19 of the Unfair Competition Act).

As a general rule, it is compulsory to be represented in proceedings by a solicitor (*abogado*) and barrister (*procurador*) (Article 3 of the Law of Civil Procedure of 3 February 1881 as last amended on 30 April 1992).

Lastly, as regards the personal appearance before the court by the right holder, under Spanish civil law there is no obligation to appear in person before the court.

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?

Copyright and related rights

The intellectual property legislation does not establish specific rules in this regard, and therefore the civil procedural rules apply.

Any party may propose evidence; it is for the judge to admit or refuse it, without possibility of appeal against court orders for the taking of evidence (it is only possible to appeal against court orders refusing evidence).

In the case of evidence provided by deposition during the trial, every litigant is obliged to depose under oath or promise when the opposing party so demands, but during the appearance the judge shall previously decide on the admissibility of questions. A litigant residing within the district served by the court may be obliged to appear before the judge to give evidence, unless prevented from doing so by reasonable cause in the opinion of the same judge. If the person who received the summons does not appear on the second citation without reasonable cause, refuses to give evidence or persists in not replying, despite having been warned, they may be considered self-confessed in the final decision.

In the case of private documents, correspondence and business books, persons who are not litigants and are their exclusive owners will be required to produce them only when, following the request by a party that they be produced, the judge considers that this is essential in order to deliver a decision. In such cases, the judge will order the personal appearance of the person who has them in his possession and, after hearing that person, decide as he sees fit.

Industrial property and unfair competition

With respect to industrial property, the Spanish legal system provides for the prior collection of evidence (Articles 129 to 132 of the Patents Act). This is a measure taken by the judge to collect evidence in the possession of the defendant.

With respect to unfair competition, Article 24 of the Unfair Competition Act likewise provides for the possibility of preliminary collection of evidence, while Article 26 adds the possibility that the judge may require a defendant to provide proof of the accuracy and truth of his statements or declarations.

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

Copyright and related rights

In accordance with Law of Civil Procedure, all taking of evidence, including from witnesses, must take place in open court. The only exception is where the judge may decide to take evidence in a private hearing on grounds of morals or decency. The only reference made by the Intellectual Property Act concerns the duty to respect the principles of confidentiality or business secrecy in the case of management entities or, as the case may be, management association or representation thereof, concerning information of which they have cognizance in the exercise of their powers (Article 25.22 of the revised text of the Intellectual Property Act approved by Royal Legislative Decree 1/1996 of 12 April).

Industrial property and unfair competition

With respect to industrial property, Article 130.4 Patents Act provides that, when ordering the taking of evidence, the judge shall in all cases ensure that this does not serve to violate industrial secrets or carry out acts constituting unfair competition.

As regards unfair competition, Article 24.2 of the Unfair Competition Act refers to the Patents Act.

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.**

Copyright and related rights

The cessation of the unlawful activity sought by the right holder may comprise:

- (a) Suspension of the infringing exploitation;
- (b) prohibiting the infringer from resuming such exploitation;
- (c) withdrawing the illegal specimens from trade and destroying them;
- (d) the non-use and, where necessary, destruction of the moulds, plates, matrices, negatives, and other elements intended exclusively for the purpose of the reproduction of illegal specimens and of the instruments whose sole use is to facilitate the unauthorized suppression or neutralization of any technical device used to protect a computer programme;
- (e) the removal or impounding of the equipment used for unauthorized public communication.

In addition, the infringer may request that the destruction or the non-use of the above-mentioned specimens and materials, when susceptible of other uses, be carried out only to the extent necessary to prevent the unlawful exploitation.

The holder of the infringed right may request that the above-mentioned specimens and materials be handed over at cost price and on account of the corresponding damages.

The foregoing does not apply to specimens acquired in good faith for personal use.

With respect to indemnification for material damage, the injured party may choose between the profit he would presumably have obtained in the absence of the unlawful utilization, or the remuneration he would have received if he had authorized the exploitation.

In the case of non-material damage, indemnification will be payable even if economic prejudice is not proved to exist. The evaluation of such indemnification will take account of the circumstances of the infringement, seriousness of the injury and degree of unlawful dissemination of the work.

The limitation period for actions for damages is five years from the date when they could be brought (Article 134 ff of the revised text of the Intellectual Property Act).

Industrial property and unfair competition

In accordance with Article 63 of the Patents Act, the measures that may be ordered by the judicial authorities with respect to industrial property, are as follows:

- (a) Cessation of the infringing acts;
- (b) damages, for which the quantification criteria are the consequential damage, loss of profit and unjust enrichment (Articles 65 and 66 of the Patents Act). The defendant's guilt is not a requirement;
- (c) seizure of the infringing objects produced or imported, and of the means used exclusively for the production of the infringing object;
- (d) attribution of ownership of the seized goods;
- (e) publication of the sentence.

In the case of unfair competition, the measures established by the Unfair Competition Act (Article 18) are equivalent to those described above.

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 parties involved in the production and distribution of goods or services found to be infringing and of their channels of distribution?

Copyright and related rights

The judge's authority in this respect is absolute, in order to arrive at a decision.

Industrial property and unfair competition

Generally speaking, the legal procedure for obtaining information on channels of distribution is that of deposition (Article 497.1 of the Law of Civil Procedure).

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?

Copyright and related rights

In the case of applications for the adoption of precautionary measures, the judge may require the applicant to provide a security sufficient to meet any injury and costs that may arise, as indicated in Article 137 of the revised text of the Intellectual Property Act.

Industrial property and unfair competition

With respect to industrial property rights, in the case of both preliminary proceedings and precautionary measures (Articles 132 and 137 of the Patents Act, respectively) the law provides for the fixing of a security for any injury caused to the defendant.

With respect to the liability of the judicial authorities, this is governed by Article 411 to 413 of the Organic Law of the Judicial Power and the remedy of civil liability against magistrates and judges (Article 903 ff of the Law of Civil Procedure).

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

Copyright and related rights

Actions for damages may be brought within a period of five years, as mentioned in the reply to question 5. With regard to the duration of proceedings, the law is silent except in the case of the adoption of precautionary measures, which must be handled on a priority basis.

The cost depends on many factors (the right being defended, professional fees, etc.) which vary from case to case.

Industrial property and unfair competition

In the case of industrial property, the limitation period for actions for damages is five years (Article 71 of the Patents Act).

In the case of unfair competition, the limitation period for actions for damages is one year (Article 21).

There are no provisions concerning the duration and costs of such procedures, which depend on the specific case.

(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.

Reply corresponding to question 1: Department of Customs and Special Taxes of the State Agency for Tax Administration, as the central service, and Customs Administrations as operational services.

With regard to industrial property, the Spanish Patent and Trademark Office is the body that handles and resolves procedures for the granting of rights. The handling of the various procedures is decentralized and delegated to Departmental Directors, whose decisions may be challenged through the ordinary channel of application to the Director of the Office. The latter's decisions may be appealed to the courts of the administrative-law jurisdiction.

Reply corresponding to question 2: Firstly, the right holder himself; secondly, the person authorized to use the right or, thirdly, a representative of the right holder. In the second of the above cases, representation must be accredited by a title (original or duly certified copy) by virtue of which the person is authorized to use the right. In the third case, in addition to the foregoing, a notarised authorization to exercise the function is required.

Reply corresponding to question 4: The decentralized Customs Services are given certified copies of the registry certifications of the trademarks as well as all information available to distinguish genuine from false goods. This information may only be used for the above-mentioned purposes.

Reply corresponding to question 5:

- Measures adopted by the customs authorities;
- detention of goods presumed to be counterfeit or pirated;
- destruction in the case of abandoned goods proved to be counterfeit;
- the right holder is required to provide a liability undertaking in which he recognizes liability to the importer, exporter or person engaged in a suspended operation who is injured by the interruption of the initiated procedure owing to an act or omission by the right holder or where the goods are found to be genuine. The right holder also guarantees payment of the costs incurred in keeping the goods under customs control.

Reply corresponding to question 7: The exercise by customs of its powers to combat counterfeit or pirated goods does not render it liable *vis-à-vis* importers/exporters or persons engaged in suspended operations for any injury caused by its intervention.

Provisional measures

(a) Judicial measures

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

Copyright and related rights

As stated in Article 136 of the revised text of the Intellectual Property Act, in the event of infringement or where there is a rational and well-founded fear that such infringement is imminent, the judicial authority may order, at the request of the right holders, such provisional (precautionary) measures as may be necessary, according to the circumstances, for the emergency protection of such rights, and in particular:

- (a) Audit and deposit of the income obtained from the unlawful activity in question, or, as the case may be, (court) deposit of the amounts owed by way of remuneration;
- (b) suspension of the activity of reproduction, distribution and publication, as appropriate;
- (c) seizure of the specimens produced or used and the materials employed exclusively for the production or public communication;
- (d) seizure of the equipment, apparatus and materials.

Industrial property and unfair competition

With regard to industrial property, Article 134 of the Patents Act provides an illustrative list of the following provisional or precautionary measures:

- (a) Cessation of the infringing acts;
- (b) detention and deposit of the objects produced and of the means used for the violation;

- (c) lodging of a security for indemnification;
- (d) filing in the register.

With respect to unfair competition, precautionary measures are provided for in Article 25 of the Unfair Competition Act without specifying them.

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

Copyright and related rights

In the same circumstances as those mentioned in the previous reply.

Industrial property and unfair competition

Precautionary measures *inaudita altera parte* may be adopted at the judge's discretion (Article 135.2 of the Patents Act).

With regard to unfair competition, Article 25.2 of the Unfair Competition Act requires the existence of serious and imminent danger to be able to adopt such precautionary measures, which must be ordered, where appropriate, within 24 hours of the submission of the application.

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.

Copyright and related rights

In accordance with Article 137 of the revised text of the Intellectual Property Act, such measures must be applied for in writing by the person concerned or his legal or voluntary representative, without need of intervention by a barrister or assistance of a solicitor, except where the measure is applied for at the moment when a claim was brought in the corresponding declaratory judgement proceedings or during the handling of the proceedings.

Within 10 days following the submission of the written application, which is transmitted to the parties, the judge hears the persons who come forward to appear and, in any case, issues a formal decision on the day following the end of the above-mentioned period. The decision shall be appealable without stay of execution.

Nevertheless, in the case of protection of computer programs and before the written application is transmitted to the parties, the judge may request reports and order investigations as he sees fit.

Any of the parties may request judicial examination of the evidence, which shall be carried out immediately if accepted.

Prior to the decision or in it, the judge may, if he sees fit, require the applicant to lodge a security, excluding personal security, sufficient to cover any injury and costs that may be caused.

If the measures were requested prior to bringing the action, the latter must be filed within eight days of the grant of the measures. In any case, the applicant may reapply for precautionary measures, provided new facts come to light concerning the infringement or the applicant has obtained evidence which was previously lacking.

Industrial property and unfair competition

The procedure begins with a written application by the applicant. The written application may be submitted before, after or together with the principal action. The written application must specify the measures requested with the corresponding offer of evidence. The procedure has short time-limits.

With respect to unfair competition, the Unfair Competition Act refers to the general procedure of the Law of Civil Procedure (Article 25.4).

13. Describe provisions governing the length and cost of the proceedings?

Same reply as to question No. 8 above.

(b) Administrative measures

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

Reply relating to question 10: The provisions of Regulation (EC) 3295/94 are fulfilled. Where there is no application for action the suspension of release or detention of the goods is maintained for three days. If action has been granted, a period of 10 days from the notification of the suspension of release or detention is granted for bringing an action before the competent judicial authority; this time-limit may be extended for a further period of up to 10 working days.

Reply relating to question 12: The right-holder, the person authorized to use the right or a representative thereof, suitably accredited (see second paragraph of the reply to question 9), submits an application for action to the Department of Customs and Special Taxes, accompanied by original or duly certified and valid copies of registry certifications of the trademarks or industrial or artistic designs for which protection is sought (books, films, phonographic productions and other manifestations of copyright, which will be covered by Spanish law even if they have not been filed in the corresponding Register, are also protected).

After the Department has examined the documentation and if it agrees, action is granted and the decision is transmitted to all regional customs departments for information and transmittal to the competent customs offices and to the applicant. At the same time the latter is given a liability undertaking to be returned duly signed within a short period.

When a customs office detects goods presumed to be counterfeit or pirated, for which action has been granted, it so informs the Department of Customs and Special Taxes. The latter informs the right holder of the detention/suspension for 10 days, providing information relating to the operation subject to action (importer, exporter, consignee, details of the merchandise). The right holder in question may be authorized to inspect the goods.

During the above-mentioned 10-day period, which may be extended for a further 10 days on request, an action must be brought before the competent judicial authority to decide on the merits.

Reply relating to question 13: The duration of the procedure is 20 days at most if an action is not brought. If it is, the duration cannot be determined (it depends on the duration of the judicial proceedings). The cost of the procedure is not evaluated.

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?

In addition to counterfeit or pirated goods, action may be requested, as mentioned above, in the case of books, films, phonographic productions and other manifestations of copyright even where they have not been filed in the corresponding Register. The sole exception to this provision is goods originating in a country of the European Union (EU) or which have been released for consumption in an EU member State. The procedure does not apply to imports of goods put on the market in another country by or with the consent of the right holder, but does apply to goods destined for exportation.

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 Article 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of goods) and 57 (right of inspection and information) been implemented?

Department of Customs and Special Taxes, Customs Import Services, Right Holder, Importer/Exporter and Court of First Instance/Magistrate's Court (Article 51).

The application must contain a sufficiently precise description of the goods to enable the customs authority to recognize them and a document accrediting the applicant as the right holder. The right holder must also furnish any useful information in his possession, so that the decision on the application may be taken in knowledge of the facts (Article 52).

The duration of the suspension will be 10 working days, which may be extended for a further 10 days, from the communication of the suspension (Article 55).

Up to this point, the applicant is only required to lodge a liability undertaking.

Pursuant to this undertaking, the right holder may be liable to an action by the importer or owner of the goods for recovery of expenses incurred (Article 53).

Once customs action has been granted, the right holder has the right of inspection and information concerning the goods presumed to be counterfeit or pirated (Article 57).

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 in to free circulation?

Neither the duration nor the cost are specified. The relevant provision is Law 30/92 of 26 November on the Legal Regime of the Public Administrations and Common Administrative Proceedings.

The maximum period of validity of the grant of customs action is one year, which may be extended at the request of the right holder.

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?

They are required to act ex officio if, during controls carried out in the course of customs procedures, and before an application by the right holder has been lodged or accepted, it is evident that the goods are counterfeit or pirated, and provided the right holder is identified.

In this case, the release of the good shall be suspended or the goods shall be detained for a period of three working days to enable the right holder to lodge an application for action. The applicable provision is Council Regulation (EC) No. 3295/94.

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

The Department of Customs and Special Taxes, as the coordinating agency between customs and right holders, and decision-making agency for receiving and granting applications for action.

The Customs Import Services for handling and communicating to the Department of Customs the detention of goods presumed to be counterfeit or pirated.

The Court of First Instance/Magistrate's Court is the competent authority to which the application must be made to decide on the merits of cases concerning goods deemed to be counterfeit/pirated.

Criminal procedures

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

The magistrate's courts (*Juzgados de Instrucción*) have jurisdiction for pre-trial proceedings (Article 87 of the Organic Law of the Judicial Power). The Provincial High Court (*Audiencia Provincial*) has jurisdiction for trial proceedings (Article 82 of the Organic Law of the Judiciary) and the Supreme Court for appeals for annulment (*casación*) (Article 57 of the Organic Law of the Judiciary).

21. In respect of which infringements of which Intellectual Property Rights are criminal procedures and penalties available?

Copyright and related rights

Under Article 270 of the Criminal Code a series of acts constitute intellectual property offences, specifically: a person who for profit and with injury to another person reproduces, copies, distributes or communicates publicly all or part of a literary, artistic or scientific work, or its artistic transformation, interpretation or performance fixed on any type of medium or communicated through any medium without the authorization of the holders of the corresponding intellectual property rights or their assignees.

Secondly, the behaviour of someone who wilfully imports, exports or stores copies of such works or productions or performances without due authorization.

Lastly, the making, putting into circulation and possession of any means specifically intended to facilitate the unauthorized suppression or neutralization of any technical device used to protect computer programmes.

Industrial property and unfair competition

Under the Criminal Code (Organic Law of 10/1995, of 23 November) the following industrial property rights are protected and the following infringements are punished:

- Patents and utility models: manufacturing, importing, possession, use, offering, introduction into trade, disclosure of secret patents (Articles 273 and 277 of the Penal Code);
- layout designs (topographies) of semiconductor products: same infringements punished as in the case of patents (Article 273.3 of the Criminal Code);
- trade marks, trade names and titles of establishments: reproduction, imitation, modification, use, possession for marketing and introduction into trade (Article 274 of the Criminal Code);
- designations of origin: same infringements punished as in the case of trade marks (Article 275 of the Criminal Code);
- protection of undisclosed information: appropriation (Article 278 of the Criminal Code).

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 public authority responsible for prosecuting offences is the public prosecutor (Ministerio Fiscal) Article 3 of Law 50/1981 of the Statute of the Public Prosecutor). The Public Prosecutor acts ex officio and also on complaint by the person concerned in connection with industrial property offences. Criminal actions are public (Article 103 of the Law of Criminal Procedure).

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

All private persons who are holders or assignees of an intellectual property right have standing; however, in accordance with the Law of Criminal Procedure (Article 103), criminal actions are public and therefore all citizens may bring them provided they do so in accordance with the legal requirements (with the exception of cases covered by Article 103 of the Law of Criminal Procedure).

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.**

Copyright and related rights

Article 270 of the Criminal Code provides for imprisonment for six months to two years or a fine of six to 24 months for anyone committing the offences described above in the reply to question 21.

In addition, Article 271 provides for imprisonment for one to four years, a fine of eight to 24 months and specific disqualification from exercising the profession related to the offence committed for a period of two to five years in any of the following circumstances:

- (a) The profit obtained is of particular economic importance;
- (b) the injury caused is particularly serious.

In such cases, the judge or court may also order the temporary or permanent closure of the convicted person's industry or establishment. Temporary closure may not exceed five years.

In the event of conviction, the judge or court may order that the sentence be published at the infringer's expense in an official periodical publication.

In addition, as mentioned above, there is also the possibility of adopting precautionary measures in criminal cases.

Industrial property and unfair competition

With respect to the various types of infringement mentioned in the reply to the question 21, the penalties are as follows:

- Patents, utility models and topographies of semiconductor products: imprisonment for six months to two years and fine of six to 24 months;
- trade marks, trade names and titles of establishments: same penalties as inventions;
- in the preceding two cases, if the infringement is particularly serious, the prison term runs from two to four years and the fine from 12 to 24 months with professional disqualification of the infringer;
- the judge may also order the temporary (not exceeding five years) or permanent closure of the enterprise;
- infringement of secrecy (protection of undisclosed information) is punishable by imprisonment for two to four years and a fine of 12 to 24 months.

Other measures are the general penalties applicable to all offences. In this connection, mention should be made of:

- Civil liability, as set forth in Articles 109 and following of the Criminal Code, including:
 - Restoration of the good;
 - reparation of the injury;

- indemnification of the damage.
- seizure of goods (Article 127 of the Criminal Code).

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.

There are no legal provisions in this respect: the content of the reply to question 8 above applies, with regard to the indeterminate nature of the duration and cost of proceedings.