

CHECKLIST OF ISSUES ON ENFORCEMENT<sup>1</sup>

Responses from Greece

**Copyright and Related Rights**

The copyright legislation in Greece has been fully adapted to the EC and international regulations concerning copyright protection as well as civil and criminal procedures. Articles 59 to 66 of Law 2121/1993 on copyright and related rights contains specific provisions containing provisional measures and remedies. Moreover general provisions of the Greek Code of Civil Procedure or the Greek Code of Criminal Procedure are applicable.

**Civil and Administrative Judicial Procedures and Remedies**

Greek Law 2121/1993 is among the most progressive in Europe on damages. Under Article 65 par.2 of Law 2121/1993, the author or the rightholder of related rights are entitled to recover damages in an amount not less than twice the legally required or normally payable remuneration for the form of exploitation which the infringing party has effected without licence. Instead of seeking damages the rightholder may claim the profit the infringer made from the unauthorized use.

In all cases of infringement the rightholder is entitled to demand recognition of his right, suppression of the infringement and omission of the infringement in the future. For each act or omission contributing to an infringement the court may impose a fine ranging from three hundred to one million drachmas payable to the rightholder and imprisonment of up to one year.

Decisions are always in writing. According to Greek Copyright law both individual copyright owners or rightholders of related rights and collecting societies are allowed to initiate civil and criminal cases.

Greek Law 2121/1993 is favourable towards copyright owners in relation to the evidence required to prove their ownership over the work. Article 10 introduces a presumption providing that the person whose name appears on the physical carrier of a work in the manner usually used to indicate authorship shall be presumed to be the author of that work. In the cases of computer programs and audiovisual works, the natural or legal person whose name or title appears on the physical carrier of the work in the manner usually used to indicate the rightholder is presumed to be the rightholder of the copyright.

Collecting societies established exclusively to engage in the functions of administering or/and protecting the economic right (Articles 54 to 58 of Law 2121/1993) are entitled to initiate judicial or extrajudicial action in their own name and to exercise in full legitimacy all rights transferred to them

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or for which they hold power of attorney. Greek Law introduces a presumption providing that a collecting society is entitled to have the competence for the administration and/or protection of the right in respect of all the works or in respect of all the rightholders concerning which or whom a declaration of transfer to the society has been effected in writing or for which it has been granted power of attorney (Article 55 par.2 of Law 2121/1993).

The state imposed costs are not high. A successful plaintiff is entitled to an award of court costs but in practice such awards are low. Greek law does not allow for recovery of investigational costs such as search costs or expert's fees.

Administrative procedures may be initiated before the National Radio/Television Council (NRTC). Under the new Broadcast Law (Law 2328/1995 FEK A'/3-8-1995) any act of infringement by private TV stations of Law 2121/1993 entails the imposition of penalties of Article 4 par.1(c) of the new Broadcast Law (fines, revocation of the licence). Moreover, Article 1 par.24 of the new Broadcast Law provides that all private TV channels must, prior to any broadcasting, submit to the Ministry of Press and Mass Media a declaration of the author or the rightholder of the respective society stating that the TV channel has undertaken to pay the TV rights for the broadcasting of each program. The TV channel may, instead of the declaration, deposit a contract of TV rights' assignment. In case the TV channel fails to comply within thirty days with this request, it is subject to all penalties of Article 4 of the new Broadcast Law. These penalties are additional to and independent from any other civil penal liability of the TV channel for any act of copyright infringement.

### **Provisional Judiciary Measures**

Article 63 par.1 provides that whenever an unauthorised public performance of a dramatic, cinematographic or musical work is scheduled to take place, the competent local police authority must prohibit this performance upon application of the author or rightholder. The Public Prosecutor, when requested, must grant the police authority an order to this effect. The same is applied when the public performance of a work has been in progress for more than two days without payment of due remuneration.

According to Article 63 par.3 of Law 2121/1993, whenever a copyright or related rights' violation is likely to take place, the single-member court of the first instance may issue a prohibition order without the necessity of specifically designating the works thereby protected.

Moreover, under Article 64 of Law 2121/1993 if there is a possibility that an infringement of copyright or related rights is occurring or may occur, the single-member court of the first instance can order as an interim measure the conservatory seizure of any item in the possession of the defendant which is manifestly a means to the effecting of the infringement or a product or evidence of the infringement. Alternatively, the court can order the drawing up of an inventory and the photographic record of these items. According to the specific provision of Article 64 of Law 2121/1993 combined with Article 687 par.1 of the Greek Code of Civil Procedure the court may, in very urgent cases, order the provisional measures of conservatory seizure or inventory or photographic record *in audita altera parte* (without prior summoning of the alleged infringer). In these cases the court is alleged to give a provisional order pursuant to Article 691 par.2 of the Code of Civil Procedure until the hearing of the application in order to preserve the rights at risk.

The single-member court of the first instance may give a provisional order pursuant to the provisions of the Greek Code of Civil Procedure in very urgent cases or in cases of a direct and imminent risk. Injunctions may be ordered according to the general provisions of the Greek Code of Civil Procedure.

### **Special Requirements Related to Border Measures**

In relation with border measures, EC Regulations No. 3295/94 and 1367/95 have been implemented in Greece by virtue of Ministry of Finance circular letter No. T. 10231/1781/A 0019/12-12-1995 which incorporated them into the Greek legal system.

### **Criminal Procedures**

Law 2121/1993 introduces a criminal law system by virtue of which criminal proceedings can be applied against all acts which constitute copyright/related rights' infringement (Article 66 par.1 and 2 of Law 2121/1993). According to Article 66 of Law 2121/1993, the penalties against copyright/related rights' infringement are imprisonment from one up to five years and a pecuniary penalty of one up to five million drachmas. If the profit which the infringer was aiming to make or the damages incurred by the rightholders are particularly high, the penalties are increased to at least two up to five years of imprisonment and to a pecuniary penalty of at least two up to ten million drachmas.

If the infringer is a person who commits the infringement by way of standard practice or if the circumstances surrounding the perpetration of the act indicate that the guilty party poses a serious threat to the protection of copyright or related rights the penalty shall be imprisonment of up to ten years and a pecuniary penalty of five up to twenty million drachmas together with withdrawal of the infringer's protectional operation licence (Article 66 par.3 of Law 2121/1993).

The penalties provided by Law 2121/1993 are very severe and can act as deterrent to copyright and related right infringement.

According to the Greek Code of Criminal Procedure, search orders and seizures of pirated material can be ordered by the Prosecutor during penal proceedings. Prosecutors have the authority to order searches in order to preserve evidence of copyright infringement. Business material can be seized if considered as crucial evidence of the infringement.