

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from India

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedures and remedies

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

The District Courts within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons, any of them, actually and voluntarily resides or carries on business or personally works for gain, have jurisdiction over infringement cases under the Trade Marks Act, 1999, the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the Indian Copyright Act, 1957. In the case of the Protection of Plant Varieties and Farmers' Rights Act, 2001, the proceedings for infringement cases could be initiated in the District Court within the local limits of whose jurisdiction the cause of action arises. In the case of the Patents Act, 1970, and the Designs Act, 2000, the proceedings for infringement cases could be initiated in the District Court within the local limits of whose jurisdiction the defendant resides, or the cause of action, wholly or in part, arises. The appeal to the orders of District Court would be in High Court and thereafter in the Supreme Court.

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?

The registered proprietor of a trademark may institute proceedings for infringement of a trademark in the manner provided by the Trade Marks Act, 1999. Subject to any agreement subsisting between the parties, the registered user may institute proceeding for infringement in his own name as if he were the registered proprietor, making the registered proprietor a defendant and the rights and obligations of such registered user in such case would be concurrent with those of the registered proprietor.

The registered proprietor of a design may bring a suit or any other proceedings for relief under the Designs Act, 2000.

The registered proprietor of a geographical indication and the authorized user or users thereof shall have the right to obtain relief in respect of infringements under the Geographical Indications of Goods (Registration and Protection) Act, 1999.

¹ Document IP/C/5.

Under the Indian Copyright Act, 1957, the following persons can sue for infringement of copyright:

- the copyright owner or the assignee of the copyright;
- an exclusive licensee;
- in the case of an anonymous or pseudonymous work, the publisher of the work until the identity of the author is disclosed publicly;
- a co-owner can alone sue for copyright infringement

The right holder or his exclusive licensee has the authority to assert intellectual property rights under the Patents Act, 1970.

The breeder of a plant variety may institute proceedings for infringement under the Protection of Plant Varieties and Farmers' Rights Act, 2001. The registered agent or registered licensee of a variety registered under this Act may institute appropriate proceedings in the court under this Act on behalf of the breeder of such variety, if such agent or licensee has been authorised in the prescribed manner by such breeder for doing so. Subject to any agreement subsisting between the parties, an agent or licensee of a right to a registered variety shall be entitled to call upon the breeder to take proceedings to prevent infringement thereof, and if the breeder refuses or neglects to do so within three months after being so called upon, such registered agent or licensee may institute proceedings for infringement in his own name as if he were the breeder, making the breeder a defendant.

The procedure regarding appearances, etc. in court are governed by the provisions of the Code of Civil Procedure, 1908. The Code of Civil Procedure, 1908, provides that any appearance, application or act in or to any court, required or authorized by law to be made or done by a party in such court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf, provided that any such appearance shall, if the court so directs, be made by the party in person.

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?

The Code of Civil Procedure, 1908, and the Indian Evidence Act, 1872, give authority to Civil Courts, at any time during the pendency of the suit, to order the production by any party, upon oath of such of the documents in his possession or power, relating to any matter in question in the suit. The Code of Civil Procedure, 1908, provides that the court may, at any time, either of its own motion or on the application of any party:

- make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- order any fact to be proved by affidavit.

Any party may, without filing an affidavit, apply to the court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the court may, if satisfied, make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit.

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

Under the Code of Civil Procedure, 1908, courts have discretionary power to deal with the evidence produced before the court as it feels just. This enables the court to protect the confidential information if the parties so desire. The courts have inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

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.**

The Specific Relief Act, 1963, provides that a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication. The plaintiff in a suit for perpetual injunction under of the Specific Relief Act, 1963, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, provide such damages.

The Code of Civil Procedure, 1908, provides that in any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right. The court may by order to grant such injunction, on such terms as to the duration of the injunction, keeping in account, giving security, or otherwise, as the court thinks fit. The grant of injunction is a discretionary relief and the court has to take into account *prima facie* case, balance of convenience and likelihood of irreparable injury.

The power of the courts is not limited to the grant of injunction or damages stated above. Subject to such terms, the courts have inherent power to pass any order having regard to the circumstances and nature of the case to render justice and ultimately to protect public interest.

The Code of Civil Procedure, 1908, provides that the costs of, and incident to, all suits shall be in the discretion of the court, and the court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the aforesaid purposes.

In addition to the provisions in the Code of Civil Procedure, 1908, the Trade Marks Act, 1999, the Designs Act, 2000, the Geographical Indications of Goods (Registration and Protection) Act, 1999, the Indian Copyright Act, 1957, and the Protection of Plant Varieties and Farmers' Rights Act, 2001, also specifically provide for the remedies that may be ordered by the judicial authorities.

The Trade Marks Act, 1999, provides for relief in suits for infringement or for passing off. It states that an order passed by the District Court or any Superior Court on appeal, may include an *ex parte* injunction or any interlocutory order for any of the following matters:

- for discovery of documents;
- preserving of infringing goods, documents or other evidence which are related to the subject matter of the suit;
- restraining the defendant from disposing of or dealing with the assets in a manner which may adversely affect the plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

The law thus explicitly recognizes the powers of the courts to pass orders of the nature of the Anton Pillar Order or Mareva injunction of the United Kingdom in trademark proceedings. The relief which a court may grant in any suit for infringement or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery up of the infringing labels and marks for destruction or erasure.

Under the Designs Act, 2000, remedies for infringement are provided by way of monetary fines, permanent injunction and damages. Recovery of profit is granted as an alternative remedy to damages and not as an additional remedy.

Under the Geographical Indications of Goods (Registration and Protection) Act, 1999, an order passed by the District Court or any Superior Court on appeal, may include an *ex parte* injunction or any interlocutory order for any of the following matters:

- for discovery of documents;
- preserving of infringing goods, documents or other evidence which are related to the subject matter of the suit.
- restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

Under the Geographical Indications of Goods (Registration & Protection) Act, 1999, the relief which a court may grant in any suit for infringement or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery of the infringing labels and marks for destruction or erasure.

Under the Indian Copyright Act, 1957, in a civil suit, the owner of the copyright is entitled to remedies by way of injunctions, damages, accounts and otherwise, as are or may be conferred by law for infringement of a right. The copyright owner can also claim costs including compensatory costs and attorneys' fees. In the case of copyright infringement the right holder also has the right to infringing copies or any conversion of the infringing copies.

Under the Patents Act, 1970, the relief which a court may grant in any suit for infringement includes an injunction and, at the option of plaintiff, either damages or an account of profits.

Under the Protection of Plant Varieties and Farmers' Rights Act, 2001, the relief which a court may grant in any suit for infringement includes an injunction and, at the option of the plaintiff, either damages or a share of the profits. The order of injunction may include an *ex parte* injunction or any interlocutory order for any of the following matters, namely :

- for discovery of documents;
- preserving of infringing variety or documents or other evidence which are related to the subject matter of the suit;
- attachment of such property of the defendant which the court deems necessary to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

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?

In the Trade Marks Act, 1999, the Protection of Plant Varieties and Farmers' Rights Act, 2001, the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the Semiconductor Integrated Circuit Layout-Design Act, 2000, there are specific provisions which provide that if the offender voluntarily discloses, on demand by or on behalf of the prosecutor, all the information in his power with respect to the person from whom he obtained such goods or things or services, he would get exemption from punishment.

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?

The Trade Marks Act, 1999, the Indian Copyright Act, 1957, the Geographical Indications of Goods (Registration and Protection) Act, 1999, the Protection of Plant Varieties and Farmers' Rights Act, 2001, the Patents Act, 1970, and the Designs Act, 2000, afford protection to public authorities. No suit or other legal proceedings shall lay against any person in respect of anything which is in good faith done or intended to be done in pursuance of these Acts.

If in any suit or other proceeding, any party objects to the claim on the ground that the claim, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, such claim is disallowed, abandoned or withdrawn in whole or in part, the court, if it so thinks fit, may order further payment of the objector by the party by whom such claim has been put forward of costs by way of compensation, subject to certain pecuniary limits. The courts have inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

The Copyright Act, 1957, provides that where any person claiming to be the owner of copyright of any work, by circular, advertisements or otherwise, threatens any other person with legal proceedings or liability in respect of an alleged infringement of copyright, any person aggrieved thereby may institute a declaratory suit that the alleged infringement to which the threats relate was not in fact an infringement of any legal rights of the person making such threats and may in any such suit obtain an injunction against the continuance of such threats and recover such damages, if any, as he has sustained by reasons of such threats. These remedies are not available if the person making such threats with due diligence commences and prosecutes an action for infringement. This provision provides a person recourse against even threat of wrongful enjoinder.

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

Courts hear cases based on rules of procedure and evidence as per the provisions of the Code of Civil Procedure, 1908, and the Indian Evidence Act, 1872. The length and cost of proceedings will depend on the complexity of the case before the concerned court. Actual data on the duration of proceedings and cost is not available.

(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.

No administrative procedures exist in respect of the issues raised in questions 2 to 8.

Provisional Measures

(a) *Judicial measures*

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

Please see also the reply to question 5 above.

The Code of Civil Procedure, 1908, provides for interim relief in favor of the parties. Interim relief is provided to meet the end of justice in the interim after a civil action is instituted. During the process of adjudication judicial authorities have powers to grant interim relief to the parties in the form of ad interim, interim, or temporary injunction. Such orders may also be passed to protect public interest. Injunctions may be granted interlocutory, granted before trial, or permanent, granted after trial. Interim injunctions are granted if the court is satisfied that there is a *prima facie* case for the relief sought, that the balance of convenience is in the plaintiff's favor and that if interim injunction is not granted it will cause irreparable injury to the plaintiff. Interim injunctions may be in force till the court takes a decision on that matter or finally decides the case. If the plaintiff succeeds at the trial he will be entitled to a permanent injunction.

The court may, upon the application of the plaintiff, allow a representative of the court, usually a Court Commissioner (an independent advocate of the court) to enter the premises of defendants in order to search and seize documents and evidence. The order can be *ex parte* (*inaudita altera parte*). This is similar to the Anton Pillar Order of the United Kingdom. The court may issue a direction restraining the defendants from disposing of their assets within the jurisdiction until the trial or judgment in the action. This order can be *ex parte*. This is similar to the Mareva Injunctions in the United Kingdom.

In addition to the provisions in the Code of Civil Procedure, 1908, the Trade Marks Act, 1999, the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the Protection of Plant Varieties and Farmers' Right Act, 2001, have specific provisions to enable courts to grant *ex parte* injunction and in particular Anton Pillar type of orders. These are *ex parte* orders for search and seizure (in urgent cases where evidence is vulnerable to tampering) and orders in the nature of Mareva injunctions intended to preserve evidence or documents relating to the subject matter of the suit so that the defendant is restrained from dealing with the assets in a manner to defeat the plaintiff's ability to recover damages or other pecuniary remedies after final order. This is envisaged with a view to deter infringement activities.

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

The Code of Civil Procedure, 1908, provides that if it appears to the court that the object of granting a temporary injunction or any other temporary order will be defeated by the delay in giving notice to the other party it may pass such orders *ex parte* (*inaudita altera parte*), after recording the reasons for its opinion that the objective granting the injunction would be defeated by delay.

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 Code of Civil Procedure, 1908, provides that the temporary remedy can be sought by the plaintiff at the time after filing the suit through an interlocutory application and affidavit. An *ex parte* order is passed with an immediate notice to the defendant. The defendant is given the opportunity to apply for the revocation of an *ex parte* order based on the interlocutory petition even before filing the counter to the main suit. The courts have the power to cancel the *ex parte* interlocutory order if the defendant can produce *prima facie* proof that the allegation of the plaintiff is not true.

Where injunction is granted without giving notice to the opposite party, the court shall make endeavor to finally dispose of the application within thirty (30) days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.

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

Normally provisional measures are granted expeditiously depending upon the complexity of the case. Actual data on the duration of proceedings and cost is not available

(b) *Administrative measures*

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

The administrative authorities do not have the power to grant provisional measures.

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?

The proprietor or a licensee of a registered trademark may give notice in writing to the Commissioner of Customs to prohibit the importation of goods if the import of such goods constitutes infringement under the Trade Marks Act, 1999, to enable appropriate action by the Customs Authorities. The owner of the copyright in any work or his duly authorised agent can apply to the Registrar of Copyright to prohibit the import of copies that would infringe copyright within the meaning of the Indian Copyright Act, 1957.

Border measures are applicable to both imports and exports. Goods in transit are not liable to be detained by the Customs Authorities, since they do not pass through normal customs clearance procedures.

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?

The Indian Copyright Act, 1957, provides that the Registrar of Copyright, on application by the owner of the copyright in any work or by his duly authorised agent and on payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies which would infringe copyright within the meaning of the Indian Copyright Act, 1957, shall not be imported. The Registrar of Copyright or any person authorised by him in his behalf may enter any ship, dock or premises where any such copies may be found and may examine such copies. All copies to which any such order made by the Registrar of Copyright applies shall be deemed to be goods of which the import has been prohibited or restricted under section 11 of the Customs Act, 1962, and all the provisions of the Customs Act, 1962, shall have effect accordingly, provided that all such copies confiscated under the provisions of the Customs Act, 1962, shall not vest in the Government but shall be delivered to the owner of the copyright in the work.

The proprietor or a licensee of a registered trademark may give notice in writing to the Commissioner of Customs to prohibit the importation of goods if the import of such goods constitutes infringement under the Trade Marks Act, 1999. Importation of goods which falsely apply a trademark within the meaning of the Trade Marks Act, 1999, is prohibited in India and such goods are liable to confiscation on importation under the Customs Act, 1962. Where such goods are imported into India, the Commissioner of Customs if, upon representation made to him, he has reason to believe that the trademark complained of is used as a false trademark, may require the importer of the goods, or his agent, to produce any documents in his possession relating to the goods and to furnish information as to the name and address of the person by whom the goods were consigned to India and the name and address of the person to whom the goods were sent to India. The importer or his agent shall, within fourteen days, comply with the requirement. Any information obtained from the importer of the goods or his agent may be communicated by the Commissioner of Customs to the registered proprietor or registered user of the trademark which is alleged to have been used as a false trademark.

Under section 11(2)(n) of the Customs Act, 1962, the Central Government is empowered to prohibit absolutely or subject to such condition as may be specified, the import or export of goods for the purpose of the protection of patent, trademarks and copyright by issuing notifications. In the exercise of this power, the Government has issued a notification prohibiting the import of goods which cause infringement of intellectual property rights relating to trademarks and industrial designs. Similarly, the Government has issued a notification prohibiting the export of goods which cause infringement of trademarks.

Section 111(d) of the Customs Act, 1962, provides for confiscation of the goods, which are imported or attempt to be imported or brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under the Customs Act, 1962, or any other law for the time being in force and a penalty is imposable on the person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation.

Under the Customs Act, 1962, the customs officers are fully empowered to seize the goods, which they have reasons to believe, are liable to confiscation under this Act by giving a notice to the owner of the goods. Before confiscating the infringing goods, a notice is required to be served to the importer informing him the ground on which the goods are proposed to be confiscated or a penalty is to be imposed. Further, the importer is also given a reasonable opportunity of making a representation in writing or being heard in the matter.

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?

There are no provisions governing time limits. It will depend on the facts and circumstances of the case.

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?

Under the Customs Act, 1962, the Customs Authorities may take action with respect to import of goods which would cause infringement as provided in the Trade Marks Act and the Indian Copyright Act on a request as stated in the reply to question 16 above.

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

In cases of import of goods infringing copyright, once the order for confiscation is made by the Registrar of Copyright under section 53 of the Indian Copyright Act, 1957, then the infringing copies are treated as prohibited goods under section 11 of the Customs Act, 1962. The import of goods causing infringement of intellectual property rights of trademarks and industrial designs is prohibited. In all such cases, the provisions of the Customs Act, 1962, apply. As per the Customs Act, 1962, a penalty can be imposed and it is five times the value of the goods or one thousand rupees whichever is higher. In addition to this penalty the act of importation is also treated as a criminal offence punishable with a maximum of three years of imprisonment or with a fine or both. These actions are taken by the Commissioner of Customs following the procedure laid down under the Customs Act, 1962. Such goods infringing trademark and design are liable for confiscation also. However, all copies causing infringement of copyright and confiscated under the Customs Act, 1962, shall not vest in the Government but shall have to be returned to the owners of the copyright in the work.

Criminal Procedures

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

As per the provisions of the Code of Criminal Procedure, 1973, the offences punishable with imprisonment for three years and upwards but not more than seven years are triable by a Magistrate of the First Class. Offences punishable with imprisonment for less than three years or with a fine only are triable by any Magistrate. The offences under the Semiconductor Integrated Circuits Layout-Design Act, 2000, and the Protection of Plant Varieties and Farmers' Rights Act, 2001, would be triable either in the court of Magistrate of the First Class or the Magistrate of the Second Class, depending upon the maximum punishment provided for that offence.

No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class is empowered to try an offence under the Trade Marks Act, 1999, the Indian Copyright Act, 1957, and the Geographical Indications of Goods (Registration and Protection) Act, 1999.

Criminal remedies are not available under the Designs Act, 2000, and the Patents Act, 1970.

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

The criminal procedures and penalties and other remedies for infringement of various intellectual property rights under the relevant Acts are as follows:

- The Indian Copyright Act, 1957

As per section 63 of the Indian Copyright Act, 1957, any person who knowingly infringes or abets the infringement of:

- the copyright in a work, or
- any other right conferred by this Act, except the right conferred by section 53A,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with a fine which shall not be less than fifty thousand rupees but which may extend to two hundred thousand rupees; provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Whoever having already been convicted of an offence under section 63 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with a fine which shall not be less than one hundred thousand rupees but which may extend to two hundred thousand rupees; provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than one year or a fine of less than one hundred thousand rupees.

Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with a fine which shall not be less than fifty thousand rupees but which may extend to two hundred thousand rupees. But if the programme is not used for gain or in the course of trade or business, the court may not impose imprisonment and may impose a fine which may extend to fifty thousand rupees.

Any person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to two years and shall also be liable to a fine.

Any person who publishes a sound recording or a video film in contravention of the provisions of section 52A of the Indian Copyright Act, 1957, shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine.

Any police officer not below the rank of a sub-inspector has the power of search and seizure of the materials used for infringement of copyright. They must be produced before the Magistrate. The owner can take possession of the goods. In case of failure to take possession, the court at the end of the trial disposes the property following the procedure prescribed in the Code of Criminal Procedure, 1973.

- The Protection of Plant Varieties and Farmers' Rights Act, 2001

Section 68(1) of the Protection of Plant Varieties and Farmers' Rights Act, 2001, provides that no person other than the breeder of a variety registered under this Act or a registered licensee or a registered agent thereof shall use the denomination of that variety in the manner as may be prescribed.

Section 69 (1) of the Protection of Plant Varieties and Farmers' Rights Act, 2001, provides that a person shall be deemed to falsely apply the denomination of a variety registered under this Act who, without the assent of the breeder of such variety applies such denomination or a deceptively similar denomination to any variety or any package containing such variety or uses any package bearing a denomination which is identical with or deceptively similar to the denomination of such variety registered under this Act, for the purpose of packing, filling or wrapping therein any variety other than such variety registered under this Act.

Section 69(2) of the Protection of Plant Varieties and Farmers' Rights Act, 2001, provides that any denomination of a variety registered under this Act falsely applied as mentioned in sub-section (1), is in this Act referred to as a false denomination.

Under section 70 of the Protection of Plant Varieties and Farmers' Rights Act, 2001, any person who applies any false denomination to a variety; or indicates the false name of a country or place or false name and address of the breeder of a variety registered under this Act in course of trading such variety; shall unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years or a fine which shall not be less than fifty thousand rupees but which may extend to five hundred thousand rupees or both.

Under section 71 of the Protection of Plant Varieties and Farmers' Rights Act, 2001, any person who sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or production any variety to which any false denomination is applied or to which an indication of the country or place in which such variety was made or produced or the name and address of the breeder of such variety registered under this Act has been falsely made, shall unless he proves;

- that having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the denomination of such variety or that any offence had been committed in respect of indication of the country or place in which such variety registered under this Act, was made or produced or the name and address of the breeder of such variety;

- that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such variety; or
- that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years; or with a fine which shall not be less than fifty thousand rupees but which may extend to five hundred thousand rupees or both.

Under Section 73 of the Protection of Plant Varieties and Farmers' Rights Act, 2001, whoever, having already been convicted of an offence under this Act is again convicted of such offence shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to three years; or with a fine which shall not be less than two hundred thousand rupees but which may extend to two million rupees or both.

- The Trade Marks Act, 1999

As per Section 103 of the Trade Marks Act, 1999, any person who:

- falsifies any trade mark; or
- falsely applies to goods or services any trade mark; or
- makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a trade mark; or
- applies any false trade description to goods or services; or
- applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address; or
- tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139; or
- causes any of the things above-mentioned in this section to be done,

shall, unless he proves that he acted without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with a fine which shall not be less than fifty thousand rupees but which may extend to two hundred thousand rupees; provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

As per the provisions of section 104, any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things, or provides or hires services, to which any false trademark or false trade description is applied or which, being required under section 139 to have applied to them an indication of the country

or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or services provided, as the case may be, are without the indications so required, shall, unless he proves:

- that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the trademark or trade description or that any offence had been committed in respect of the goods or services; or
- that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things or services; or
- that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with a fine which shall not be less than fifty thousand rupees but which may extend to two hundred thousand rupees; provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

As per Section 105 of the Trade Marks Act, 1999, whoever having already been convicted of an offence under section 103 or section 104 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with a fine which shall not be less than one hundred thousand rupees but which may extend to two hundred thousand rupees; provided that the court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one hundred thousand rupees.

Section 111 provides that where a person is convicted under Section 103, 104 or 105 or is acquitted, the court convicting or acquitting may direct the forfeiture to the Government of all goods and things by means of or in relation to which the offence has been committed. The Court may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

- The Geographical Indications of Goods (Registration and Protection) Act, 1999

As per section 39 of the Geographical Indications of Goods (Registration and Protection) Act, 1999, any person who:

- falsifies any geographical indication; or
- falsely applies to goods any geographical indication; or
- makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication; or
- applies to any goods to which an indication of the country or place in which they were made or produced or the name and the address of the manufacturer

or person for whom the goods are manufactured is required to be applied under section 71, a false indication of such country, place, name or address; or

- tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 71; or
- causes any of the things above-mentioned in this section to be done,

shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with a fine which shall not be less than fifty thousand rupees but which may extend to two hundred thousand rupees; provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Section 40 of the Geographical Indications of Goods (Registration and Protection) Act, 1999, provides that any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things to which any false geographical indication is applied or which, being required under section 71 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or without the indications so required, shall, unless he proves:

- that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the geographical indication or that any offence had been committed in respect of the goods; or
- that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things; or
- that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with a fine which shall not be less than fifty thousand rupees but which may extend to two hundred thousand rupees; provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Section 41 of the Geographical Indications of Goods (Registration and Protection) Act, 1999, provides that whoever having already been convicted of an offence under section 39 or section 40 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with a fine which shall not be less than one hundred thousand rupees but which may extend to two hundred thousand rupees; provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than one year or a fine of less than one hundred thousand rupees.

Where a person is convicted of an offence under section 39 or section 40 or section 41 or is acquitted of an offence under section 39 or section 40 on proof that he acted without intent to defraud, or under section 40 on proof of the matters specified in clause (a) or clause (b) or clause (c) of that section, the court convicting or acquitting him may direct the forfeiture to the Government of all goods and things by means of, or in relation to, which the offence has been committed, or but for such proof as aforesaid would have been committed.

When a forfeiture is directed on a conviction, the court, before whom the person is convicted, may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

Where a person accused of an offence under section 39 proves:

- that in the ordinary course of his business he is employed on behalf of other persons to apply geographical indications, or as the case may be, to make dies, blocks, machines, plates, or other instruments for making, or being used in making, geographical indications;
- that in the case which is the subject of the charge he was so employed, and was not interested in the goods or other thing by way of profit or commission depend on the sale of such goods;
- that, having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the geographical indication; and
- that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the geographical indication was applied,

he shall be acquitted.

- The Semiconductor Integrated Circuits Layout-Design Act, 2000

As per section 18 of the Semiconductor Integrated Circuits Layout-Design Act, 2000, a registered layout-design is infringed by a person who, not being the registered proprietor of the layout-design or a registered user thereof:

- does any act of reproducing, whether by incorporating in a semiconductor integrated circuit or otherwise, a registered layout-design in its entirety or any part thereof, except such act of reproducing any part thereof which is not original;
- does any act of importing or selling or otherwise distributing for commercial purposes a registered layout-design or a semiconductor integrated circuit incorporating such registered layout-design or an article incorporating such a semiconductor integrated circuit containing such registered layout-design for the use of which such person is not entitled under this Act.

Section 56 of the Semiconductor Integrated Circuits Layout-Design Act, 2000, provides that any person who contravenes knowingly or wilfully any of the

provisions of Section 18, as described above, shall be punishable with imprisonment for a term which may extend to three years, or with a fine which shall not be less than fifty thousand rupees but which may extend to one million rupees, or with both.

Where a person is convicted of an offence under Section 56, the court convicting him may direct the forfeiture to the Government of all goods and things by means of, or in relation to, which the offence has been committed.

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 Code of Criminal Procedures, 1973, First Schedule, provides that in case of offences punishable under special statute if it is not expressly stated whether the offence is cognisable or not in that statute, the offences, if punishable with imprisonment for three years or more are treated as cognisable and offences punishable with imprisonment with less than 3 or with fine only are non-cognisable offences. In the case of the offences under sections 103, 104 and 105 of the Trade Marks Act, 1999, sections 39, 40 and 41 of the Geographical Indications of Goods (Registration and Protection) Act, 1999, and offences under the Indian Copyright Act, 1957, the concerned Acts expressly provide that these offences shall be cognisable. A police officer-in-charge of a police station shall investigate the case on his own when the commission of a cognisable offence is brought to his knowledge. In case of non-cognisable offences, the police can investigate only on order of a Magistrate having power to try such case.

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

As per the Code of Criminal Procedure, 1973, it is the duty of the police officer-in-charge of the police station to take action in a cognisable offence. A private person may provide information relating to the commission of a cognisable offence and it is the duty of the Police Officer to take action in such cases. A private complaint can also be filed to initiate prosecution. Any person interested can file a complaint under section 200 of the Code of Criminal Procedure, 1973, to a Magistrate to take cognisance of the offence. In the case of non-cognisable offences, action could be initiated only on an order by a Magistrate based on a complaint filed to the Magistrate having power to try such cases.

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.**

Please see the reply to the question 21 above.

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.

The length and cost of proceedings will depend on the complexity of the case before the concerned court. Actual data on the duration of proceedings and cost is not available.
