

**Council for Trade-Related Aspects  
of Intellectual Property Rights**

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

Responses from Israel

**Civil and Administrative Procedures and Remedies**

*(a) Civil judicial procedures and remedies*

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

The ordinary courts (the Magistrate's Courts, the District Courts and the Supreme Court) have jurisdiction over IPR infringement cases. The court of first instance for design and patent infringement is the District Court (see section 51(1) of the Patents and Designs Ordinance and section 188(b) of the Patents Law, respectively). The District Court also has jurisdiction over applications for preliminary remedies with respect to all fields of intellectual property (see Courts Law, section 40). The court of first instance with regard to infringement of copyright and related rights, registered and unregistered trademarks, appellations of origin, geographical indications, copyright and related rights, confidential information and integrated circuits will be the Magistrates Court where the amount claimed is less than one million New Shekels (approximately US\$250,000) and the District Court where the amount claimed exceeds one million new shekels (see section 51 of the Courts Law). Appeals from the Magistrates courts lie to the District Court with further appeals to the Supreme Court. Appeals from the District court lie to 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?**

Intellectual property rights may be asserted in all cases at least by the right holder or his successor in title (see, Copyright Law, section 5; Performers' and Broadcasters' Rights Law, sections 4D and 5; Trademarks Ordinance, sections 57 and Commercial Torts Law, sections 1, 4, 5 and 6; Appellations of Origin and Geographical Indications Law, sections 21A-23; Designs Ordinance, section 37; Patents Law, section 178; Integrated Circuits Law, section 10).

Additionally, in the case of patents, IPRs may also be asserted by the exclusive licensee or a joint owner of a patent (see section 178 of the Patents Law); in the case of copyright, IPRs may also be asserted by successors in title in whole or in part to the copyright (see Copyright Law, section 5(c)); in the case of unregistered trademarks IPRs may also be asserted by businesses entitled to use the mark, (see Commercial Torts Law, sections 1, 4 and 119; in the case of appellations of origin and geographical indications, IPRs may also be asserted by any person entitled to use the appellation or indication, (sections 21A-23); and, in the case of trade secrets, IPRs may also be

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<sup>1</sup> Document IP/C/5.

asserted by persons lawfully in possession of the trade secret, (see Commercial Torts Law sections 5, 6 and 11). IPR holders may represent themselves or be represented by lawyers licensed to practise law in Israel. Plaintiffs themselves are not required to personally appear before the court, however parties giving evidence may be required to appear for cross examination (see section 522 of the Civil Procedure Rules).

**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?**

The judicial authorities may, at the request of an opposing party, order a party to the proceedings to disclose and produce written evidence which lies within that party's control, as well as to respond to requests for admissions and interrogatories, all subject to certain defences (e.g. "privilege", "relevance", etc.), (see, primarily, Chapter 9 of the Civil Procedure Rules). Failure to comply with such an order may result in the preclusion from admissibility of particular items.

Additionally, the courts have authority to order witnesses to appear (see section 1 of the Evidence Ordinance and section 73 of the Courts Law). In limited circumstances the court may authorize *ex parte* searches and seizures against parties and non parties in order to obtain evidence relative to civil or criminal enforcement of IPRs (see, for example, sections 5-9 of the Performers' and Broadcasters' Rights Law; the Court's inherent powers pursuant to section 75 of the Courts Law and common law; e.g. *Rotem Insurance Co. v. Nahum Rowdner, et. al.*, Docket T.A. 798/91, motion number 5530/91, District Court Reports, volume 3, 1992 and, with respect to unregistered marks and trade secrets, see sections 16-17 of the new Commercial Torts Law which codifies existing case law). Additionally, it is expected that the search and seizure provisions contained in the Commercial Torts Law will shortly form the model for the codification of similar existing case law with respect to other IPRs. Additional search and seizure authority is set forth at chapter 4 of the Criminal Procedures Law.

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

Where confidential information of a commercial nature has been presented before any judicial or quasi-judicial body in a civil proceeding, such body may, of its own initiative or upon application, issue an order to ensure that confidential information is not disclosed and issue orders in respect of the manner of adducing evidence constituting a commercial secret (see section 23 of the Commercial Torts Law).

**5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudentially, for their use:**

- **injunctions;**
  - **damages, including recovery of profits, and expenses, including attorney's fees;**
  - **destruction or other disposal of infringing goods and materials/implements for their production;**
  - **any other remedies.**
- Injunctions

The courts may grant interim and permanent injunctions in all proceedings involving IPRs on either an *ex parte* or *inter partes* basis pursuant to the court's inherent jurisdiction (see, section 75 of

the Courts Law) and from specific provisions contained in the individual intellectual property laws (see, for example, section 183 of the Patents Law; section 37(b)(2) of the Patent and Designs Ordinance; section 59 of the Trademarks Ordinance; section 6 of the Copyright Law and section 3A of the Copyright Ordinance; section 5 of the Performers' and Broadcasters' Rights Law; and Chapter 3 of the Commercial Torts Law). Interim injunctions remain in force until a final decision is given by the court or, alternatively, until the court decides to set aside the interim injunction due to change of circumstances. Shortly after the issuance of *ex parte* orders the respondent will be given an opportunity to be heard by the court with regard to the continued maintenance of such order. Some types of injunctions, which may be granted with respect to IPRs, include:

(1) **The Anton Pillar Order** - Israeli courts may order, upon the application of the plaintiff, that the plaintiff be allowed to enter the premises of defendants and non-parties in order to and search and seize documents and evidence. Authority for the Anton Pillar Order is based in common law (the leading case is *Rotem Insurance Co. v. Nahum Rowdner, et. al.*, Docket T.A. 798/91, motion 5530/91, District Court Reports, volume 3, 1992). With regard to unregistered marks and trade secrets the Anton Pillar case law has been codified pursuant to sections 16-17 of the Commercial Torts Law;

(2) **The Mareva Injunction** - The Mareva injunction is an interim injunction aimed at "freezing" the defendant's assets until the conclusion of the hearing or alternatively to require him to post a security bond. The purpose of such injunction is to ensure that if a plaintiff succeeds in a case, all property in the jurisdiction will remain intact so that the plaintiff would be able to execute the judgment. The Mareva injunction was first introduced into Israeli common law based upon its English counterpart pursuant to which the courts have the authority to enjoin a defendant from parting with any assets and also to appoint a receiver whose functions are, *inter alia*, to gather up the defendant's assets and protect them either post judgment or as an interlocutory measure (see e.g. *Orkon v. Zaks*, T.A. 2233/90, District Court Reports 1992, volume 1, page 184; see also chapters 10 and 28 of the Civil Procedure Rules and Rules 385-386 in particular). Additionally, Israeli courts have determined that this order shall apply to property situated outside the jurisdiction of Israel as well. An application for a Mareva injunction is filed in an identical manner to that used for filing an *ex parte* application for interlocutory injunction. Usually there is no hearing and the court's decision is based solely on the application itself and its supporting affidavit. A decision is granted usually no later than one or two days from filing of the application;

(3) **Attachment Order** - Also pursuant to Chapter 28 of the Civil Procedure laws and in particular Rule 360 *et seq.*, in an action for a sum of money or an action for a specific object is supported by document or by other *prima facie* evidence, then the court may grant a temporary attachment order over the assets in the defendant's possession and also over the defendant's assets in the possession of any other person, until the judgment is realized. Such an order is granted where the court is convinced that if the order is not granted, the execution of any judgment may be impaired. An application for an attachment order shall be made in writing and is usually heard *ex parte*. No attachment order may be issued unless the plaintiff has provided a guarantee at the instructions of the court, usually an undertaking and a third party security, to compensate the defendant for any damage caused by the order;

(4) **Account of Profits** - A plaintiff may also apply to the Court for an order of an account of profits (see, section 223 *et seq.* of the Civil Procedure Rules). Once the order is granted, the Defendant will be required to report on all sales of the infringing items, consideration received, expenses incurred in manufacturing and marketing. A chartered public accountant will usually certify this report;

(5) **Stay of Exit** - Israeli civil procedure (at sections 376 *et seq.* of the Rules of Civil Procedure) provides for the possibility to request a stay of exit from the territory of a defendant. If it

can be proven that a defendant is about to leave Israel permanently or for a prolonged period and that his absence might impede the hearing of the case or the execution of the judgment, then the court may, by order, prohibit the defendant from leaving the country and also demand that his passport be handed over. An application for a stay of exit is heard *inter partes*, unless it can be proven that such hearing might cause irreparable harm. The applicant must provide a bond for any damages. In general, where the defendant is a foreigner, such an order may be granted only in extremely rare circumstances (for example, if he intends taking his assets out of Israel).

Mention should also be made of the extensive authority of the Customs officials, detailed *infra*, to take immediate action against imports suspected of being infringing goods pursuant to section 200A of the Customs Ordinance.

- Final remedies

(1) **Money Damages** - A party claiming injury by reason of violations of intellectual property rights may apply to the Courts for a judgment of financial compensation from the infringer. The compensation may be with regard either to the owner's loss (damages) or to the infringer's profits. With respect to damages, the basic rule is that damages are aimed at putting the injured party, namely, the owner of the right, in the position he would have been had the infringement not occurred (see, for example, section 183 of the Patents Law; section 37(b)(2) of the Patent and Designs Ordinance; section 59 of the Trademarks Ordinance; section 6 of the Copyright Law and section 3A of the Copyright Ordinance; section 5 of the Performers' and Broadcasters' Rights Law; and, chapter 3 of the Commercial Torts Law. It should be noted that the aforementioned sections also provide a statutory basis for a variety of non-monetary final and interim remedies, such as those detailed below.)

(2) **Statutory Damages** - Pursuant to section 3A of the Copyright Ordinance and section 5 of the Performers' and Broadcasters' Rights Law where there has been an infringement of rights in a copyright, performance or broadcast and specific damages have not been proven, the court may award compensation in respect of each infringement without proof of damage. Similarly, pursuant to section 13 of the Commercial Torts Law statutory damages may be awarded in respect of infringed confidential information and unregistered trademarks;

(3) **Account of Profits** - A plaintiff may also apply to the Court for an order of an account of profits (see, section 223 *et seq.* of the Civil Procedure Rules). Once the order is granted, the Defendant will be required to report on all sales of the infringing items, consideration received, expenses incurred in manufacturing and marketing. A chartered public accountant will usually certify this report;

(4) **Permanent Injunctions** - If plaintiff succeeds in the case, the Court usually grants a restraining order, permanently enjoining the infringer from continuing activities deemed infringing (see, Courts Law, section 75; *Yotabin v. Mai*, Docket no. 144/79, 34 Supreme Court Reports (2), p.344). As a rule, this order continues in effect until the plaintiff's right expires;

(5) **Delivery up of infringing material** - The remedy of delivery up is provided by case law or by specific statutes; see *Yotabin v. Mai*, *id.* For example, section 7 of the Copyright Law specifically states that all infringing copies and all plates used or intended to be used for production of such infringing copies, shall be deemed to be the property of the owner of the copyright who may take proceedings for recovery of their possession. Section 59A of the Trademarks Ordinance provides for similar relief with regard to trademarks. Importantly, the remedy of delivery up exists also with respect to infringement of performer's rights;

(6) **Destruction of infringing goods** - In certain circumstances the court may order the destruction of infringing goods (see for example, sections 7C of the Copyright Ordinance and 59A of

the Trademarks Ordinance). With respect to counterfeit trademarked goods, new section 59A of the Trademarks Ordinance provides that the courts may not allow the defendant to possess the goods even if the defendant has removed the infringing marks, other than in exceptional circumstances.

- Other remedies

**Punitive damages** - Although punitive damages are generally not consistent with Israeli legal norms, in the case of patent infringement committed after the infringer had been warned against committing such an act of infringement, the Court may order the infringer to pay punitive damages (see, Patents Law, section 183c).

**Costs** - In addition to the aforementioned remedies a successful plaintiff in an intellectual property related litigation may apply to the courts for the costs of the legal action itself. In making an order for costs, the court takes into account, *inter alia*, the value of the relief actually in dispute between the parties and the value of the relief awarded at the conclusion of the trial. The Court may also take into account the manner in which the parties conducted the trial. Where the court deems that a party unnecessarily prolonged the trial, it may, without relating to the outcome of the case, impose on that party the costs of the proceedings, in favor of the other party or the Israeli Treasury or both.

**6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?**

There are no general legislative provisions aiming specifically at obliging an infringer to inform the right holder of the identity of third parties involved in the production and distribution of infringing goods or services or their channels of distribution. Nevertheless, with regard to criminal prosecutions in the context of counterfeit trademarks, in order to set forth a defense the defendant is required to give information regarding the circumstances of the alleged offence. Pursuant to section 3(2)(b) of the Merchandise Marks Ordinance, a defense to criminal trademark counterfeiting offence requires the defendant to prove the following three elements:

- (1) that he had taken all reasonable precautions against committing such an offence; and
- (2) *that upon demand of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things; and*
- (3) that he had otherwise acted innocently.

Similarly, pursuant to the Consumer Protection Law, sections 17, 18 & 23, businesses must maintain stringent labeling requirements (including, *inter alia*, names and addresses of manufacturers and importers) on all consumer products manufactured in, or imported to, Israel. Failure to maintain such labeling requirements constitutes both civil and criminal offences to sell, or to possess for purpose of sale, such goods. Moreover, it is a criminal offence for a business to refuse, without reasonable cause, to inform the Commissioner of Consumer Protection of the name and address of the entity from which he acquired the offending goods.

**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?**

A party, whether a private entity or public authority, who has abused enforcement proceedings by requesting measures to be taken to wrongfully enjoin or restrain another party, may be

ordered to by the judicial authorities to indemnify and compensate him for the injuries suffered because of such abuse. In addition, most preliminary remedies will only be given upon the provision of a security bond by the party requesting the preliminary remedy. (See, for example, chapter 28 of the Civil Procedure Rules; chapter 3 of the Commercial Torts Law; and, section 200A *et seq.* of the Customs Ordinance.)

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

As a general matter civil and criminal cases are heard in Israel in the general court system pursuant to detailed rules of procedure and evidence. Criminal proceedings are generally instituted by the State, and in limited circumstances may also be initiated by individual complainants pursuant to a private criminal complaint. In either instance, detailed rules of procedure and evidence exist which safeguard the integrity of the process and the rights of the litigants. The civil system provides for various options for filing and handling cases, and the regulations provide for processes such as pre trial procedures, discovery, preliminary relief, hearings, motions, interlocutory appeals, trials, final appeals, and the like. Length and cost of proceedings will vary depending on the complexity of the matter and professional counsel.

Proceedings take place in many different court locations and no two circumstances are identical. No data is maintained concerning the actual duration of intellectual property cases as the individual circumstances differ considerably, nor is any data maintained regarding the actual costs incurred.

*(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.**

There are no administrative procedures applicable as to remedies in the case of intellectual property infringements. All such enforcement remedies are dealt with exclusively by the courts of law.

**Provisional Measures**

*(a) Judicial measures*

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

In respect of proceedings involving the infringement of any IPRs, Israeli courts have authority to issue a wide variety of interim relief including: injunctions; "Anton Pillar" search and seizure orders; "Mareva" orders aimed at freezing a defendant's assets until the conclusion of the matter; Attachment orders over assets in the defendant's possession and also over the defendant's assets which are in the possession of any other person, until the judgment is realized; Stay of exit from the country where the court is persuaded that defendant is about to leave the country for a prolonged period and such absence might impede resolution of the matter or execution of a judgment; and the Customs Authorities can detain the release of any goods suspected of infringing IPRs pending court action. Further details regarding provisional measures appear in the responses to questions 5 and 15.

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

All of the aforementioned interim relief can be ordered by the court upon an *ex parte* 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.**

Provisional measures in the form of interlocutory injunctions, search, seizure and attachment orders, as more fully detailed in the responses to questions 5, 10 and 15, apply with regard to infringement of all IPRs. Provisional measures are governed by the inherent jurisdiction of the Courts pursuant to section 75 of the Courts Law as well as in accordance with Rules of Civil Procedure and case law. Provisional relief can be granted *ex parte* and prior to the commencement of the action, provided that the complaint is filed within seven days thereafter. In addition respondents, upon becoming aware of the *ex parte* order, may request an opportunity to challenge the continued enforcement of the provisional relief. In addition, in actions pursuant to the new Commercial Torts Law (such as trade secret and passing off actions), provisional remedies already extant in Israeli common law have been codified at sections 11-21 thereof. In either situation, the provisional remedies are available on an *ex parte* basis and generally require the posting of a security bond to protect the rights of defendants. In addition, where an order has been given *ex parte*, the party against whom such order has been made can seek a hearing in which to challenge the continued validity of that order.

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

There are no specific provisions on the length and cost of proceedings in IPR cases and no such data is maintained by the Ministry of Justice; in this respect reference is made to the response to question 8 above.

(b) *Administrative measures*

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

In general provisional measures with regard to IPRs are dealt with exclusively by the law Courts. However, as more fully set forth in the response to question 15 below, the Customs Authorities have authority to delay the release into free circulation goods which *prima facie* infringe copyright and trademark rights or which are likely to cause consumer deception in a material way.

**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?**

Under new sections 7D(c) of the Copyright Ordinance, section 69A(c) of the Trademarks Ordinance and section 200A of the Customs Ordinance it is possible to apply for the suspension by the customs authorities of the release into free circulation in respect of goods which involve infringements of copyrights or trademarks. Pursuant to the above noted statute sections, the Director of Customs has statutory authority to delay the release of goods which are *prima facie* infringing either up his own initiative or upon the request of the copyright or trademark right holder.

Similarly, pursuant to sections 2, 17 and 35 of the Consumer Protection Law and section 204 of the Customs Ordinance, customs officials have broad authority to seize any good which, *inter alia*, contains a false trade description or which may otherwise cause consumer deception in any material way

The Customs Authorities, in reliance upon section 204 of the Customs Ordinance and section 35 of the Consumer Protection Law, exercise their authority over infringing goods which are in transit through Israel to a destination outside of Israel and to exports from Israel. Nevertheless, it should be noted that a footnote to Article 51 of the TRIPS Agreement provides that there is no obligation to apply customs suspension of release procedures to imports of goods put on the market in another by or with the consent of the right holder, or to goods in transit.

The customs regulations do not apply to *de minimis* goods of a non-commercial nature contained in a traveller's personal luggage.

**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 main elements of the procedures relating to the suspension of the release of goods by customs authorities, as set forth primarily at section 200A *et seq.* of the Customs Ordinance, are as follows: right holders who have valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, may request that the Director of Customs suspend the release by the customs authorities of such goods. The application shall include a sufficiently detailed description of the goods and information which shows a *prima facie* suspicion that the goods are infringing and that the information is credible.

Importers whose goods have been detained by customs, and right holders whose rights may be infringed by the release into circulation of such detained goods, will be promptly notified of any detention of suspect goods including notification of the name and address of the importer.

The initial detention of suspected goods is for a period of three (3) working days which can be extended by the Director of Customs for an additional period of three (3) working days. Right holders who seek to maintain the detention of suspected goods must file with the Director of Customs a security bond sufficient to protect the interests of the importer during the initial detention period (three days) and commence an infringement action in the courts within ten (10) days of the initial detention.

If within ten (10) days of notification of suspension of release or of detention the Customs Office has not been informed that the matter has been referred to the court, the goods shall be released. This period may be extended by a period of another ten days for special reasons which the Director of Customs must record in writing.



- 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 specific provisions governing the length and cost of suspension proceedings and there are currently no filing fees for making an application to detain the release of goods into free circulation. In addition, no such data is maintained by the Ministry of Justice; in this respect reference is made to the response to question 8 above. With regard to the length of the validity of suspension decision, please see the response to question 16 above.

- 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?**

The Customs Authorities may suspend the release of goods suspected of infringing trademark or copyright pursuant to complaints or other information supplied to the Customs Authorities or pursuant to examinations undertaken at the customs official's own initiative. However, in the event that the Customs Authorities detain goods at their own initiative the detention may not exceed a period of up to six (6) days during which the right holder is provided an opportunity to lodge an application to have the detention continued or for other appropriate measures.

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

The Customs Authorities may order the detention of goods for the periods and subject to the conditions referred to in the answer to question 16 above. Only the courts may make a final determination as to whether the goods are infringing. In addition, and without prejudice to the other rights of action open to the right holders, under new section 7C of the Copyright Ordinance and new section 59A of the Trademarks Ordinance, where a final judgment of infringement has been made the courts have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46 of the TRIPS Agreement. With respect to counterfeit trademarked goods, new section 59A of the Trademarks Ordinance provides that the courts may not allow the defendant to possess the goods even if the defendant has removed the infringing marks, other than in exceptional circumstances.

### **Criminal Procedures**

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

The Magistrate's Courts of Israel have jurisdiction over criminal activity in the field of intellectual property.

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

- **Copyright**

Pursuant to section 3 of the Copyright Ordinance it is a criminal offence for a person or entity to knowingly:

- (a) reproduce an infringing copy for purposes of sale or rental;
- (b) sell, rent or display for sale or rental, for commercial purposes, an infringing copy;

- (c) distribute infringing copies for commercial purposes or in quantities that may harm the rights holder;
- (d) display in public, for commercial purposes, an infringing copy;
- (e) import an infringing copy into Israel for sale or rental;
- (f) make or possess a device for making infringing copies, or to display a work for his own benefit without the rights holder's consent.

The penalty for such criminal violations is up to three years imprisonment and fines of up to one million New Shekels (approximately US\$250,000.00).

- Related Rights

Pursuant to chapter three of the Performers' and Broadcasters' Rights Law it is a criminal offence to knowingly violate a performer's or broadcaster's rights which offence is punishable by up to six months imprisonment and fines of up to 150,000 New Shekels (approximately US\$38,000.00).

- Trademarks

Pursuant to section 60 of the Trademarks Ordinance and section 3 of the Merchandise Marks Ordinance it is a criminal offence, punishable by up to one years imprisonment and fines of up to 19,300 New Shekels (approximately US\$4,800.00, see section 61 of the Penal Law) where a person or entity, with intent to deceive, commits or attempts to commit or aids or abets any other person in committing any of the following acts:

- (a) not being the proprietor thereof makes use of a registered trade mark or an imitation of such a mark upon the same class of goods as that in respect of which the mark is registered;
- (b) sells, stores for the purposes of sale, or exposes for sale, goods bearing a mark the use of which is an offence under section (a) above;
- (c) uses for the purpose of advertising goods, in the press or in some other manner, a mark duly registered by another person in respect of goods of the same class;
- (d) makes, engraves, prints or sells any plate, die, block or other representation of a duly registered mark or any other imitation thereof for the purpose of enabling any person other than the registered proprietor of such mark to make use of such mark or an imitation thereof in connection with goods of the same class as those for which it is registered;
- (e) makes or cause to be made a false entry in the Register, or a writing falsely purporting to be a copy of an entry in the Register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false. Similarly, the wilful infringement with intent to deceive of an appellation of origin or an unregistered trademark are punishable by up to one year imprisonment and fines of up to New Shekel 19,300.00 (see section 24 of the Appellations of Origin Law and section 3 of the Merchandise Marks Ordinance).

- Intellectual property rights generally

While other intellectual property rights may effectively be protected by general criminal law provisions, (for example section 496 of the Penal Law in appropriate circumstance the publication of a trade secret may be a criminal offence) or by provision in the Consumer Protection Law prohibiting misleading or deceptive acts or practices, there is no direct criminal liability for infringing such intellectual property rights as patents, designs and confidential information.

**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 the initiation of criminal proceedings in the intellectual property field, like in other areas of criminal activity, is that of the police. Cases that raise suspicion of criminal activity, either on the basis of a complaint or information supplied by private sources, or on the basis of the polices' own initiative, are investigated by police personnel. In addition, in cases of consumer deception the Commissioner of Consumer Protection has authority to commence a criminal investigation (Consumer Protection Law, section 19 *et seq.*).

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

Pursuant to the Criminal Procedure Law, section 68 and Schedule 2 thereto, any affected party may file a private criminal complaint with respect to infringement of a copyright or trademark, as well as infringement of certain provisions of the Merchandise Marks Ordinance and the Consumer Protection Law. Such complaints may be accompanied by an application for an *ex parte* search and seizure order. The Public Prosecutor, who is provided with a copy of every private criminal complaint, may decide to take over the prosecution of the case.

**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

Section 3 of the Copyright Ordinance provides that offences are punishable by up to three years imprisonment and fines of up to one million New Shekels (approximately US\$250,000.00). Additionally, pursuant to section 7 of the Copyright Law and section 7C of the Copyright Ordinance the Court may also order the seizure and destruction of infringing copies and the instruments used to make such infringing copies, or order that such materials be transferred to the ownership of the copyright owner.

- Related rights

Pursuant to chapter three of the Performers' and Broadcasters' Rights Law it is a criminal offence to knowingly violate a performers' or broadcasters' rights. The offence is punishable by up to six months imprisonment and fines of up to 150,000 New Shekels (approximately US\$38,000.00). Additionally, in accordance with section 5 of the Performers and Broadcasters' Rights Law, any civil remedy available pursuant to copyright law is *mutatis mutandis* applicable to performers and broadcasters. Hence the provisions for the seizure, destruction and or transfer of ownership of

infringing goods or equipment used to make such infringing goods will be available to performers and broadcasters as well. In addition, pursuant to sections 8-9 infringing goods held by third parties may also be seized.

- Trademarks

Pursuant to section 60 of the Trademarks Ordinance and section 3 of the Merchandise Marks Ordinance it is a criminal offence punishable by up to one year imprisonment and fines of up to 19,300 New Shekels (see section 61 of the Penal Law), where a person or entity, with intent to deceive, commits or attempts to commit or aids or abets any other person in committing any of the following acts:

- (a) not being the proprietor thereof makes use of a registered trade mark or an imitation of such a mark upon the same class of goods as that in respect of which the mark is registered;
- (b) sells, stores for the purposes of sale, or exposes for sale, goods bearing a mark the use of which is an offence under section (a) above;
- (c) uses for the purpose of advertising goods, in the press or in some other manner, a mark duly registered by another person in respect of goods of the same class;
- (d) makes, engraves, prints or sells any plate, die, block or other representation of a duly registered mark or any other imitation thereof for the purpose of enabling any person other than the registered proprietor of such mark to make use of such mark or an imitation thereof in connection with goods of the same class as those for which it is registered;
- (e) makes or cause to be made a false entry in the Register, or a writing falsely purporting to be a copy of an entry in the Register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false. Similarly, the wilful infringement with intent to deceive of an appellation of origin or an unregistered trademark are punishable by up to one year imprisonment and fines of up to New Shekel 19,300 (see section 24 of the Appellations of Origin Law, section 3 of the Merchandise Marks Ordinance and section 61 of the Penal Law). In addition, sections 62 and 69A of the Trademarks Ordinance provide the courts with the authority to issue permanent injunctions and order the forfeiture or destruction of any goods, wrapping, packing or advertising material, or blocks, dies or other apparatus for printing the mark or other material in respect of which the offence was committed. It should be noted that pursuant to section 59A of the civil remedies for trademark infringement, the court shall not allow the defendant to possess the goods, even if the defendant has removed the infringing marks, except in extraordinary circumstances.

- Intellectual property rights generally

While other intellectual property rights may effectively be protected by general criminal law provisions, (for example section 496 of the Penal Law in appropriate circumstance the publication of a trade secret may be a criminal offence) or by provision in the Consumer Protection Law prohibiting misleading or deceptive acts or practices, there is no direct criminal liability for infringing such intellectual property rights as patents, designs and confidential information..

**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 provisions particularly governing the length or cost of criminal proceedings; and there is no available data on the actual duration of such proceedings, nor their cost. Reference is also made to the reply to questions 8 and 13.

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