

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

Responses from Latvia

**Civil and Administrative Procedures and Remedies**

(a) *Civil judicial procedures and remedies*

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

District (City) courts have jurisdiction over all cases except cases which are within the competence of regional courts in accordance with the Law. Regional courts have jurisdiction over cases on Patent Law and Trademark Law infringements.

**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?**

There are no requirements for mandatory personal appearances before the court by the right holder. Natural persons have standing to assert IPRs themselves or by an authorised representative. Legal entities are represented in the court by officials acting within the limits of their power as provided by Law, statutes or regulation or by other authorised representatives.

**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?**

Each Party shall prove the facts to which reference is made as a basis of its own claim and objection. Claimant shall prove its claim. Defendant shall prove foundation of its own objections. Evidence shall be submitted by the Parties or by other participants in the case. If it is not possible for the Parties to obtain necessary evidence, the court shall demand it itself at a Party's request. If the court adjudges that there is not sufficient evidence with respect to facts indicated by some of the Parties, it shall inform the Parties about it and fix a time period for submitting evidence, if necessary.

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

It is possible in accordance with motivated court decision to hear a case in closed session in order not to disclose confidential information of case participants as well as to protect State, adoption, duty, professional, manufacturing and commercial secrets. The case shall be heard in closed session taking into account all regulations of proceedings.

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

**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.**

Participants of a case shall be ordered to the court by subpoena. Also witnesses, experts and interpreters shall be ordered to the court by subpoena. The court shall be entitled to use such procedural sanctions as warning, banishment from court room, fining, bringing to the court under constraint in cases specified in Law. Participants of case and other persons which with their action or inaction are disturbing work of the court can be put on administrative and criminal trial in cases specified in Law in addition to Law's procedural sanctions.

The court shall specify the amount of damages in making a judgement (including recovery of profits and expenses, including attorney's fees). The court shall award to the Party in favour of which the court judgement is made all the costs paid by the other Party. Claimants are exempted from covering the costs to State incomes in the following cases – claim on losses arisen as a result of criminal dealing and claims on compensating moral prejudice.

The court shall determinate who shall perform what actions and in what time period (including destruction or other disposal of infringing goods and materials for their productions) in judgement which binds to perform certain actions. In making a judgement which binds a defendant to perform certain actions which are not related to transmitting money or things, the court can indicate in judgement that in case if defendant fails to serve a writ in specified time period claimant shall be entitled to perform these actions on defendant's count surcharging after all the necessary costs.

**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 such provisions in Latvia.

**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 defendant shall be entitled to claim repayment of costs arisen from provisional measures if the claim is rejected. If there is a basis to consider that the performance of judgement can be troubled or impossible, the court or a judge can take a decision about provisional measures after receiving motivated notification from claimant. Provisional measures are allowed only in cases the object of which is property. Approving a notification on provisional measures prior to initiation, a judge can enjoin a possible claimant to provide costs that can arise to defendant due to provisional measures charging him to deposit a certain amount of money on the account of a bailiwick.

A sentence can be appealed against in appellant instance court as well as in cassation order. If the court satisfies partly or completely a claim on reversing judgement of first instance, the court shall

indicate in a judgement how defendant's losses will be indemnified. Special Law regulates the indemnification of losses arisen as a result of illegal action carried out by investigator, judge or public prosecutor, but it refers only to cases of depriving oneself's freedom.

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

Proceedings are carried out in time periods specified in Law. If the time periods of proceedings are not specified in Law, these are fixed by court or judge. The time period fixed by court or judge shall be possible to perform.

Judicature costs are costs of court and costs related to bringing a case. Costs of court are State duty, chancellery duty and costs related to hear a case. Costs related to hearing a case are costs for sworn solicitor, costs related to attending court's meetings, costs related to collection of evidence. State duty is from 5 to 2.440 LVL<sup>2</sup> plus 0.05 % from amount of claim not exceeding 500.000 LVL depending on estimation of claim. Chancellery duty is from 0.5 to 5 LVL for each action depending on type of performed action.

There are no statistics in Latvia about the costs of court proceedings, especially in the area of intellectual property rights. The length of proceedings is usually six months depending on court and other circumstances, but the maximum length is not limited. If one of the Parties is a foreign resident, then hearing a case is appointed only after four months.

*(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.**

If the Competition Board establishes unfair competition practices having expression as violation of intellectual property rights, it binds with its decision the respective market participant to discontinue the violation. Simultaneously, it can take decision regarding surcharging money to the State budget from the respective market participant to the extent of 5% from financial turnover of last year. It can take decision on bringing on administrative trial guilty natural persons (officials).

**Provisional Measures**

*(a) Judicial measures*

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

If there is basis to believe that execution of court's judgement in a case could become troubled or impossible, the court or judge after receiving claimant's motivated notification can take decision on provisional measures. Provisional measures are allowed only in cases object of which is property. Means for provisional measures are the following:

- seizure of funds or personal belongings of defendant;
- enrolment of proscription mark in the Register of personal things;
- enrolment of claim's provision mark in the Land Register or in the Pledge Register;

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<sup>2</sup> Exchange rate – 1 LVL – 1.7 USD

- arrest of a vessel;
- proscription for defendant to perform certain activities;
- proscription for other persons to transfer defendant's funds or other property to defendant or to any other person (seizure of defendant's funds or personalty being in possession of third persons);
- arrest of executive correspondence or selling of property.

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

The court or judge shall take decision on provisional measures no later than the next day after receiving notification without prior notifying defendant and other case participants. If the decision about provisional measures has been taken without presence of a case participant, the time period starts running from the day when he has received this decision.

**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.**

Decision on provisional measures shall be executed immediately after its adoption. Court's judgement on provisional measures shall be communicated to defendant or to respective third person against signature or sending by registered mail. The court or judge after receiving claim participant's notification can replace the provisional measures with another kind of provisional measure. It is decided in the court on this notification or reversal of notification of provisional measures, given the prior notification of participants of a case. The court or judge can allow defendant instead of provisional measures to deposit the amount of the claim on the account of a bailiwick.

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

If the claim is rejected, the provisional measures are maintained until the day when the judgement comes into legitimate force. If decision on provisional measures is has taken prior to initiating of claim and the claim has not initiated within time period specified by court, judge after receiving defendant's notification takes decision on deposition of provision. State duty for claim on provisional measures is 10 LVL. The amount necessary for covering costs of provisional measures shall be deposited until the case is brought on trial by the Party making such a request.

(b) *Administrative measures*

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

In accordance with Article 204 (6) of the Code of Administrative Offences the use of copyright objects without a licence shall be penalised by fining up to 250 LVL.

In accordance with Article 204 (4) of the Code of Administrative Offences the violation of registration regulations of films as well as distribution (selling or renting for public exhibition) of unregistered films shall be penalised by fining up to 150 LVL with or without confiscation of unregistered films. Repeated violation of these regulations within one year after administrative penalising shall be penalised by fining up to 250 LVL with or without confiscation of unregistered films.

These administrative violation cases are under jurisdiction of District (City) courts (see above the section on Civil judicial procedures and remedies).

The court sentences on confiscation of unregistered films shall be served in a writ by District (City) Marshals.

### **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?**

Customs authorities shall suspend the release of all kind of goods in free circulation if these goods correspond with description of counterfeit or pirated goods submitted in Customs Board of State Revenue Service by right owner according to the procedure specified in normative acts.

The Republic of Latvia is not committed by international laws or otherwise not to inspect goods of a Customs Union member state origin, being in transit or in other cases if these goods are subject to general inspection procedure.

Goods which are exported shall be also subject to the procedure.

- 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 owner of copyrights, neighbouring rights, trademarks, industrial design, indications of geographical origin protected in Latvia or its authorised person shall submit to the Customs Board of the State Revenue Service a written application if he believes that his rights are infringed by release of counterfeit or pirated goods in free circulation.

The Customs Board shall carry out such measures providing security or other equivalent assurance as provided by the Customs Law.

- 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?**

If the Customs Board acknowledges an application of right owner as legitimate, it shall fix the time period for performing necessary customs measures. This time period may be extended. If application has not been submitted or has been recognised as not legitimate, but Customs authority have legitimate suspects, release of goods in free circulation can be suspended until ten working days in order to give possibility for owner of rights to prepare an application. If the owner of rights after receiving

announcement from Customs authority about detentions of goods does not submit claim to the court and does not inform Customs authority about that within three working days, the goods shall be released in free circulation when all custom formalities are completed. If owner of rights prepares an legitimate application, the three working day time period can be prolonged up to ten working days.

**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?**

Responsible officials currently are not entitled to have rights of initiation due to lack of classification and experience of customs officials in dealing with intellectual property rights protection issues.

There is a special provision in case when owner of rights fails to submit an application in the specified time period. The State Revenue Service shall be entitled to act according to normative act's requirements and to take decision regarding goods being under legitimate suspects when accommodating criteria specified in the Instruction of State Revenue Service as for counterfeit or pirated goods.

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

Customs authorities or other competent authorities in accordance with power assigned to them by normative acts regarding actions in respect to counterfeit or pirated goods, shall not be responsible for any losses or damages arising from these actions. Owner of rights shall cover such costs himself, if he fails to verify that goods are counterfeit or pirated. If the goods are counterfeit or pirated, the owner of them shall cover the costs.

If Customs authority starts suffering losses, these shall be surcharged in accordance with general order specified in Civil Procedure Law. In order to ensure repayment of losses, the goods can be suspended.

For the time being, the proposal on detaining vehicles transporting such goods is under consideration. Vehicles shall be detained so far as necessary for secure storage of goods and reducing costs as a result of factual situation of the concrete case. Goods shall be written down in accordance with Article 10 of the Law "On State Revenue Service". The Chief of State Revenue Service shall take decision by virtue of special act about selling the goods in accordance with the procedure specified in normative acts.

**Criminal Procedures**

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

According to Criminal Procedure Code (article 31) jurisdiction over criminal acts of infringement of intellectual property rights is exercised by district and city courts.

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

Criminal Law provides criminal liability for such acts:

- Violation of invention rights (article 147):
  - intentional disclosing of invention without the consent of its inventor and before the filing of a patent, as well as appropriation of or authorship of invention or coercing to concede joint authorship (sentences shall be incarceration for a period not to exceed three years of arrest, or monetary fine not to exceed fifty minimum monthly wages);
  - coercing an individual to disclaim his invention rights through the use of violence or threat of violence or blackmail or coercing to concede joint authorship (sentences shall be incarceration not to exceed five years or monetary fine not to exceed hundred minimum monthly wages).
- Violation of copyright and related rights (article 148):
  - intentional violation of another individual's copyright or his associated rights, when said act has occurred through violating the author's rights of publication or announcement and use, and violation of the rights of owners of associated rights (sentences shall be compulsory labour or monetary fine not to exceed sixty minimum monthly wages, with or without the confiscation of property);
  - appropriation of authors rights, coercing an individual to disclaim his invention rights through the use of violence or threat of violence or blackmail or coercing to concede joint authorship (sentences shall be incarceration not to exceed five years or monetary fine not to exceed hundred minimum monthly wages, with or without the confiscation of property).
- Unlawful actions with the objects of copyright and related rights:
  - obtaining material goods by using objects of copyright and related rights, which are published, announced, performed in a public way or used in another way when said act violates copyright and related rights (sentences shall be incarceration not to exceed two years or arrest or monetary fine not to exceed eighty minimum monthly wages, with or without the confiscation of property).
  - obtaining, realisation, storage or hiding of the objects of copyright and related rights, which are published, announced, performed in a public way or used in another way (sentences shall be compulsory labour or monetary fine not to exceed forty minimum monthly wages, with or without the confiscation of property).

**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?**

According to the Criminal Procedure Code (articles 3 and 107) the court, public prosecutor and investigative body (Police) are responsible for the initiating criminal proceedings. Reasons for initiating criminal case are:

- a complaint from physical persons;
- complaints or submitted material from legal persons and officials;
- admission of guilt;
- information published in the press;
- information on criminal act obtained by investigative body, prosecutor, court or judge.

A basis for initiating a criminal case is sufficient information that a criminal act has been committed.

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

According to the Criminal Procedure Code (article 107) private persons cannot initiate criminal proceedings themselves; they can submit complaint to the above-mentioned authorities.

**24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:**

- **imprisonment**
  - intentional disclosing of invention without the consent of its inventor and before the filing of a patent, as well as appropriation of or authorship of invention or coercing to concede joint authorship;
  - appropriation of authors rights, coercing an individual to disclaim his invention rights through the use of violence or threat of violence or blackmail or coercing to concede joint authorship;
  - appropriation of authors rights, coercing an individual to disclaim his invention rights through the use of violence or threat of violence or blackmail or coercing to concede joint authorship;
  - obtaining material goods by using objects of copyright and related rights, which are published, announced, performed in a public way or used in another way when said act violates copyright and related rights.
- **monetary fines**
  - intentional disclosing of invention without the consent of its inventor and before the filing of a patent, as well as appropriation of or authorship of invention or coercing to concede joint authorship;
  - coercing an individual to disclaim his invention rights through the use of violence or threat of violence or blackmail or coercing to concede joint authorship;
  - intentional violation of another individual's copyright or his related rights, when said act has occurred through violating the author's rights of publication or announcement and use, and violation of the rights of owners of related rights;



- appropriation of authors rights, coercing an individual to disclaim his invention rights through the use of violence or threat of violence or blackmail or coercing to concede joint authorship;
  - obtaining material goods by using objects of copyright and related rights, which are published, announced, performed in a public way or used in another way when said act violates copyright and related rights;
  - obtaining, realisation, storage or hiding of the objects of copyright and related rights, which are published, announced, performed in a public way or used in another way.
- seizure, forfeiture and destruction of infringing goods and materials and implements for their production**
- according to the Criminal Law it is possible to confiscate property for such criminal acts:
    - coercing an individual to disclaim his invention rights through the use of violence or threat of violence or blackmail or coercing to concede joint authorship (sentences shall be incarceration not to exceed five years or monetary fine not to exceed hundred minimum monthly wages);
    - intentional violation of another individual's copyright or his related rights, when said act has occurred through violating the author's rights of publication or announcement and use, and violation of the rights of owners of related rights;
    - appropriation of authors rights, coercing an individual to disclaim his invention rights through the use of violence or threat of violence or blackmail or coercing to concede joint authorship;
    - obtaining material goods by using objects of copyright and related rights, which are published, announced, performed in a public way or used in another way when said act violates copyright and related rights;
    - obtaining, realisation, storage or hiding of the objects of copyright and related rights, which are published, announced, performed in a public way or used in another way (sentences shall be compulsory labour or monetary fine not to exceed forty minimum monthly wages, with or without the confiscation of property).
- other**
- Compulsory labour for:
    - intentional violation of another individual's copyright or his related rights, when said act has occurred through violating the author's rights of publication or announcement and use, and violation of the rights of owners of related rights;

- obtaining, realisation, storage or hiding of the objects of copyright and related rights, which are published, announced, performed in a public way or used in another way.
- arrest (incarceration from three days to six months) for:
  - intentional disclosing of invention without the consent of its inventor and before the filing of a patent, as well as appropriation of or authorship of invention or coercing to concede joint authorship;
  - obtaining material goods by using objects of copyright and related rights, which are published, announced, performed in a public way or used in another way when said act violates copyright and related rights.

**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 such statistics in Latvia about the costs and length of criminal court proceedings, especially in the area of intellectual property rights.

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