

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

Replies by Mexico

**Civil and Administrative Procedures and Remedies**

(a) Civil judicial procedures and remedies

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

The judicial authorities competent to review the decisions of the competent administrative authorities in intellectual property cases are:

- the District Courts; and
- the Collegiate Circuit Courts.

It should be noted that intellectual property is a federal matter, so that the competent courts are those of the federal system.

Articles 33 to 39 and 42 to 55 of the Organization of Justice Act and Article 1 of the Industrial Property Law apply.

**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?**

A judicial proceeding may be instituted or joined only by persons with a legal interest, in whom the judicial authority declares or vests a right or against whom it makes an award; such persons may be represented by attorneys or agents.

During most of the proceeding, the person represented does not need to be physically present, unless the case expressly so requires.

Articles 1 to 6 of the Federal Code of Civil Procedure and Articles 181 and 182 of the Industrial Property Law apply.

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

**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 competent authorities can request the parties and third parties to produce evidence which lies within their control.

Articles 79, 90 and 91 of the Federal Code of Civil Procedure and Article 192 *bis* of the Industrial Property Law apply.

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

In any judicial or administrative proceeding in which a party or a third party is required to disclose confidential information, the authority which hears the case must take the action necessary to prevent the rights of the interested party from being infringed.

Article 80 of the Federal Code of Civil Procedure and Article 86 *bis* 1 of the Industrial Property Law apply.

**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.**

Injunctions

Injunctions may be decrees (*decretos*), orders (*autos*) or judgements (*sentencias*): decrees, if they relate to a simple procedural determination; orders, if they decide some point at issue; and judgements, if they decide the merits of the case. These injunctions may require a party or a third party to the proceeding to act or behave in a particular way.

Articles 220 and 379 to 399 of the Federal Code of Civil Procedure apply.

Damages, including recovery of profits, and expenses, including attorney's fees

If the court awards damages, it will fix the amount in money terms or at least establish the basis on which payment must be made. The judgement may include an order to pay costs and expenses.

Articles 7 to 11 of the Federal Code of Civil Procedure and Articles 226 and 221 *bis* of the Industrial Property Law apply.

Destruction or other disposal of infringing goods and materials/implements for their production

As part of its judgement the court may order the performance of an act which may consist, *inter alia*, in the destruction of goods and may specify a reasonable period for compliance.

Article 420 of the Federal Code of Civil Procedure applies, as does Article 228 which is related to Article 199 *bis* of the Industrial Property Law.

Any other remedies

Having taken into account the nature of the case, the competent court will pass judgement and may adopt, on its responsibility, any remedy it considers appropriate. Moreover, it may adopt, on its responsibility, any proposal made by the parties, provided it is consistent with the law.

Articles 345 to 353 of the Federal Code of Civil Procedure and Articles 199 *bis* and 228 of the Industrial Property Law apply.

**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?**

If a party asks to be allowed to inspect certain things, documents, books or papers, without which it would be unable to bring an action, the judicial authorities may order that they be made available, subject to proof of the right to request the measure and its necessity.

The judge may avail himself of any person, thing or document, whether belonging to the parties or to a third party, in order to determine their legal status in a dispute, with no limitation other than that the evidence be admissible and directly related with the facts at issue.

Articles 89, 90, 91 and 379 of the Federal Code of Civil Procedure apply.

**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?**

Parties which lose a case must pay the opposing party’s costs. A party is considered to have lost if the court accepts the claims of one of the parties, in whole or in part.

Moreover, the competent court may order the posting of security sufficient to cover any injury that might be caused to the other party.

Judges are not liable for the measures ordered.

If the court finds in favour of the defendant, he may bring an action for damages.

Articles 7 to 11, 90 and 91 of the Federal Code of Civil Procedure apply.

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

The length and cost of proceedings vary with the complexity of the case.

(b) Administrative procedures and remedies

**9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.**

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

The administrative authorities are:

- Mexican Industrial Property Institute;
- National Copyright Institute;
- Ministry of Finance and Public Credit through the Central Customs Administration; and
- Ministry of Agriculture, Livestock and Rural Development through the National Registry of Plant Varieties.

Articles 1 of the Industrial Property Law, 2 of the Federal Law on Copyright, 144 and 148 of the Customs Law, and 1 of the Federal Law on Plant Varieties apply.

**9.2 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?**

Applications and submissions must be signed by the interested party or his representative and be accompanied by proof of payment of the corresponding fees, if applicable. When applications and submissions are filed through an agent, the latter must establish his status:

- By a simple power of attorney signed before two witnesses if the principal is a natural person.
- By a simple power of attorney signed before two witnesses if, in the case of a legal person, it is a question of patent applications or registrations or of licence registrations or transfers.

In the latter case, the power of attorney must make it clear that the person granting it is empowered to do so.

- In cases not covered by the preceding subparagraph, by a public instrument or power of attorney with authentication of the signatures before a notary or other law officer where a Mexican legal person is involved, in which case the legal existence of the latter, together with the powers of the grantor, must also be verified.
- In cases not covered by the second subparagraph, by a power of attorney granted under the applicable legislation of the place in which it is granted, or in accordance with international treaties where the principal is a foreign legal person. When this power gives proof of the legal existence of the legal person in whose name the power is granted, and of the grantor's right to confer the said power, it is presumed to be valid, in the absence of proof to the contrary.

In each proceeding, proof is required of the legal status of the applicant or the party filing the submission. However, a simple copy of the register entry will suffice, if the power is registered in the General Register of Powers kept by the Institute.

Articles 180 and 181 of the Industrial Property Law and, in the case of the central administration, Articles 19 and 20 of the Federal Law of Administrative Procedure apply.

**9.3 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?**

Where the right holder concerned or the alleged infringer refuses access to evidence or fails to produce relevant evidence within his control in a reasonable period of time, or significantly obstructs the proceedings, the Institute may issue preliminary and final rulings, either favourable or adverse, on the basis of the evidence submitted, including the arguments put forward by the party adversely affected by the denial of access to evidence, provided that the interested parties are given the opportunity to be heard on the subject of the arguments and the evidence submitted.

Article 192 *bis* of the Industrial Property Law applies.

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

In any judicial or administrative proceeding in which one of the interested parties is required to reveal a trade secret, the authority hearing the case must take the necessary action to prevent it from being disclosed to third parties unconnected with the dispute.

In no circumstances may any interested party reveal or make use of the trade secret mentioned in the preceding paragraph (Article 86 *bis* 1 of the LPI).

In the case of patent, utility model and industrial design proceedings, the staff of the Institute involved in the various procedures carried out under the LPI and its Regulations must observe absolute secrecy with respect to the contents of the case files, failing which they will be liable to punishment under the Otherwise they will be sanctioned under the Federal Law on the Accountability of Public Servants, irrespective of any penalties which may apply in such cases. Members of the staff of public or private bodies who may become privy to the said contents in dealing with the Institute in the course of their duties are under a similar obligation.

Articles 86 *bis* 1 and 186 of the Industrial Property Law apply.

**9.5 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.**

Administrative orders

In administrative declaration proceedings relating to the infringement of any of the rights protected by the Industrial Property Law (LPI), the Mexican Industrial Property Institute may take the following measures:

- Order the withdrawal from circulation or ban the distribution of goods that infringe rights protected by the LPI.
- Order the withdrawal from circulation of:
  - objects manufactured or used illegally;
  - objects, wrappers, containers, packaging, paperwork, advertising material and the like that infringe any of the rights protected by the LPI;
  - signs, labels, tags, paperwork and the like that infringe any of the rights protected by the LPI; and
  - tools or implements intended or used for the manufacture or production of any of the items specified in the preceding subparagraphs.
- Prohibit, with immediate effect, the marketing or use of products that infringe a right protected by the LPI.
- Order the seizure of goods.
- Order the alleged infringer or third parties to suspend or discontinue activities that constitute an infringement of the provisions of the LPI.
- Order that the provision of services be suspended or that the establishment be closed, if the measures provided for in the preceding subparagraphs are insufficient to prevent or avoid the infringement of rights protected by the LPI.

If the product or service is on the market, traders and service providers must refrain from disposing of the product or providing the service from the date on which they are notified of the ruling.

Producers, manufacturers and importers are under the same obligation, as are their distributors, who are responsible for recovering forthwith any goods that are already on the market.

Article 199 *bis* of the Industrial Property Law applies.

In administrative proceedings for the imposition of sanctions for infringements under the Federal Law on Plant Varieties (LFVV), the Ministry of Agriculture, Livestock and Rural Development may take the following measures:

- Order the withdrawal from circulation or ban the distribution of plant varieties or propagation material that infringes rights protected by the LFVV.
- Order objects, wrappers, containers, packaging, paperwork, advertising material and the like to be withdrawn from circulation.

- Seize goods that infringe rights protected by the LFVV.
- Order the alleged infringer to suspend or discontinue activities that constitute an infringement of the provisions of the LFVV.

Article 42 of the Federal Law on Plant Varieties applies.

Damages, including recovery of profits, and expenses, including attorney's fees

Irrespective of any judicial or administrative action that may lie, a person whose intellectual property rights have been infringed may claim from the infringer or infringers compensation for material injury and the payment of damages, which in no case may be less than 40 per cent of the public selling price of each product or service.

Articles 221 *bis* and 226 of the Industrial Property Law and, where appropriate, Article 44 of the Federal Law on Plant Varieties apply.

Destruction or other disposal of infringing goods and materials/implements for their production

If in the final ruling on the merits of the case the authority finds that there has been an administrative infringement, it shall decide, after hearing the parties, on the disposal of the property confiscated.

Articles 45 of the Federal Law on Plant Varieties and 212 *bis* 2 of the Industrial Property Law apply.

Any other remedies

- Fines;
- closures;
- imprisonment, if a crime has been committed.

Articles 48 of the Federal Law on Plant Varieties and 214 and 218 of the Industrial Property Law apply.

**9.6 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?**

The administrative authorities may order that the provision of services be suspended or that the establishment be closed if the measures specified in the preceding reply are insufficient to prevent or avoid the infringement of rights protected by the Law.

If the product or service is on the market, traders or service providers must refrain from disposing of the product or providing the service from the date on which they are notified of the ruling.

Producers, nurserymen, manufacturers and importers are under the same obligation, as are their distributors, who are responsible for recovering forthwith any goods that are already on the market.

Articles 199 *bis* of the Industrial Property Law and 42 of the Federal Law on Plant Varieties apply.

**9.7 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?**

When the administrative declaration of infringement proceeding is decided, the administrative authority will place at the disposal of the person concerned any security or counter-security that may have been deposited (Article 199 *bis* 4 of the LPI).

Administrative authorities are not liable for the measures ordered.

Articles 199 *bis* 3 and 199 *bis* 4 of the Industrial Property Law and 43 of the Federal Law on Plant Varieties apply.

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

The length and cost of proceedings vary according to the complexity of the case.

**Provisional Measures**

(a) Judicial measures

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

During the proceeding or before it is initiated, the following provisional measures may be ordered, at the request of the aggrieved party:

- seizure of goods sufficient to secure the outcome of the proceeding;
- deposit or seizure of things, books, documents or papers relating to the dispute.

and any measure necessary to maintain the status quo.

Articles 384 and 389 of the Federal Code of Civil Procedure and Article 228 related with Article 199 *bis* of the Industrial Property Law apply.

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

Given the nature of these measures, they are ordered without hearing the other party.

At the same time, anyone who requests a provisional measure must meet the following requirements:

- prove that he is the right holder;



- post sufficient security to cover any damages;
- provide the information necessary to identify the goods or services.

Articles 384 and 389 of the Federal Code of Civil Procedure and Article 228 related with Article 199 *bis* of the Industrial Property Law apply.

**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.**

Anyone requesting a provisional measure must show that the measure is necessary and that he is the right holder. Moreover, he must post security sufficient to cover any damages that might arise.

Likewise, the party against whom the measure is directed may have the measure lifted or not enforced by posting counter-security to cover the outcome of the proceeding.

Articles 384 and 389 of the Federal Code of Civil Procedure and Article 228 related with Article 199 *bis* of the Industrial Property Law apply.

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

The length and cost of proceedings vary according to the complexity of the case.

(b) Administrative measures

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

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

In administrative declaration proceedings relating to the infringement of any of the rights protected by the Industrial Property Law (LPI), the Mexican Industrial Property Institute may take the following measures:

- Order the withdrawal from circulation or ban the distribution of goods that infringe rights protected by the LPI.
- Order the withdrawal from circulation of:
  - objects manufactured or used illegally;
  - objects, wrappers, containers, packaging, paperwork, advertising material and the like that infringe any of the rights protected by the LPI;
  - signs, labels, tags, paperwork and the like that infringe any of the rights protected by the LPI; and
  - tools or implements intended or used for the manufacture or production of any of the items specified in the preceding subparagraphs.

- Prohibit, with immediate effect, the marketing or use of products that infringe a right protected by the LPI.
- Order the seizure of goods.
- Order the alleged infringer or third parties to suspend or discontinue activities that constitute an infringement of the provisions of the LPI.
- Order that the provision of services be suspended or that the establishment be closed, if the measures provided for in the preceding subparagraphs are insufficient to prevent or avoid the infringement of rights protected by the LPI.

If the product or service is on the market, traders and service providers must refrain from disposing of the product or providing the service from the date on which they are notified of the ruling.

Producers, manufacturers and importers are under the same obligation, as are their distributors, who are responsible for recovering forthwith any goods that are already on the market.

Article 199 *bis* of the Industrial Property Law applies.

In administrative proceedings for the imposition of sanctions for infringements under the Federal Law on Plant Varieties (LFVV), the Ministry of Agriculture, Livestock and Rural Development may take the following measures:

- Order the withdrawal from circulation or ban the distribution of plant varieties or propagation material that infringes rights protected by the LFVV.
- Order objects, wrappers, containers, packaging, paperwork, advertising material and the like to be withdrawn from circulation.
- Seize goods that infringe rights protected by the LFVV.
- Order the alleged infringer to suspend or discontinue activities that constitute an infringement of the provisions of the LFVV.

Article 42 of the Federal Law on Plant Varieties applies.

#### **14.2 In what circumstances may such measures be ordered *inaudita altera parte*?**

Given the nature of these measures, they are ordered without hearing the other party.

At the same time, anyone who requests a provisional measure must meet the following requirements:

- prove that he is the right holder;
- post sufficient security to cover any damages;
- provide the information necessary to identify the goods and services.

Article 199 *bis* of the Industrial Property Law and Article 43 of the Federal Law on Plant Varieties apply.

**14.3 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.**

To initiate a provisional measure the applicant must:

- Prove that he is the right holder and any of the following:
  - the existence of an infringement of his right;
  - the imminence of an infringement of his right;
  - the existence of the possibility of irreparable damage being sustained;
  - the existence of a justified fear that evidence might be destroyed, concealed, lost or altered.
- Post sufficient security to cover any damage or injury that might be caused to the person against whom the measure is requested.
- Provide the information necessary to identify the goods, services or establishments with or in which industrial property rights are being infringed.

The person against whom the measure has been applied may post counter-security to cover any damage or injury caused to the applicant, in order to have the measure lifted.

In deciding whether to implement the measure and in determining the amount of the security and counter-security, the authority must take due account of the seriousness of the infringement and the nature of the measure requested.

Article 199 *bis* 1 of the Industrial Property Law applies.

**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?**

Any goods which infringe an intellectual property right can be detained at the border by the customs authorities, at the request of the competent administrative or judicial authority.

Border measures are only applicable to imports. Goods in transit are not liable to be detained by the customs authorities, since they do not pass through the random check system.

*De minimis* imports are considered to be personal and are not liable to be detained by the customs authorities.

Articles 144, 148 and 149 of the Customs Law apply.

**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?**

Anyone requesting border measures with respect to goods suspected of infringing an intellectual property right must submit a written application to the Mexican Industrial Property Institute or to the competent judicial authority showing that he is the holder of the right alleged to have been infringed, post security sufficient to cover any damages and provide information sufficient to identify the goods or services allegedly infringing an intellectual property right (Article 199 *bis* 1).

Once the above-mentioned requirements have been met, the Mexican Industrial Property Institute or the competent judicial authority will make an official request to the General Directorate of Customs to suspend the release into free circulation of the infringing goods. In its request the authority must furnish the following particulars:

- the name of the importer;
- a detailed description of the goods;
- the customs office through which, as far as they know, the goods are to enter;
- the estimated period during which the goods are to enter, which must not exceed 15 days;
- the warehouse in which the goods are to be deposited at the disposal of the competent authority, which must be located within the jurisdiction of the corresponding customs office; and
- the designation or express acceptance of the depositary (Article 149 of the Customs Law).

When the customs authority has carried out the order issued by the competent administrative or judicial authority, it will inform the latter that the goods have been detained and are being placed at its disposal in the designated warehouse. In so doing, the customs authority will make a detailed report which must include the following:

- the identity of the authority in charge of the proceeding;
- the order suspending release of the goods from abroad into free circulation and the notification thereof made to the interested party;
- the description, nature and other characteristics of the goods; and
- the place in which the goods will be held at the disposal of the competent authority (Article 148 of the Customs Law).

The person affected by these measures must reply within 10 days (during which he may submit evidence, pleas and arguments in support of his case) to the complaint against him and may

post counter-security sufficient to cover any damage or injury that might be caused by the lifting of the measure (Article 199 *bis* 1 and *bis* 2 of the LPI).

The competent authority must give a final ruling on the border measures proceeding and place the security or counter-security at the disposal of the party in whose favour it has ruled (Articles 199 *bis* and 199 *bis* 8 of the LPI).

Articles 192 *bis* 1 and 2, 199 *bis* 1 and 199 *bis* 3 to 8 of the Industrial Property Law and Articles 148 and 149 of the Customs Law apply.

**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?**

The length and cost of proceedings will depend on the complexity of the case in question.

The person affected by the suspension of release of the goods into free circulation may post a counter-security to have the measure lifted. Otherwise it will be lifted in the final ruling made by the authority which determines the disposal of the goods.

Articles 199 *bis* and 199 *bis* 1 to *bis* 8 of the Industrial Property Law apply.

**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?**

No. The customs authorities may order a border measure only at the request of an administrative or judicial authority.

Articles 144 and 148 of the Customs Law and Article 199 *bis* of the Industrial Property Law apply.

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

The customs authorities are not empowered to decide on the disposal of the goods detained and cannot take any decision with regard to the lifting of the measure.

The measures which may be ordered by the Mexican Industrial Property Institute, once its proceeding has been concluded, are:

- a fine of up to 20,000 times the minimum daily wage;
- an additional fine of up to 500 times the minimum daily wage for each day that the infringement continues (Article 212 *bis* 2 of the LPI);
- the destruction of the infringing goods, which may alternatively be donated to departments or agencies of the Federal Public Administration, provided the public interest is not affected (Article 214 of the LPI).

In judicial matters, the competent authority may, in passing judgement, adopt any of the proposals made by the parties, taking into account the persons, things, actions and pleas which have been the subject of the proceedings (Articles 346 and 349 of the Federal Code of Civil Procedure).

Articles 214 of the Industrial Property Law and 346 and 349 of the Federal Code of Civil Procedure apply.

### **Criminal procedures**

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

- District Courts;
- Collegiate Circuit Courts.

Articles 36 to 39 and 42 to 55 of the Organization of Justice Act and Article 1 of the Industrial Property Law apply.

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

Criminal procedures are available in respect of the rights protected by the Industrial Property Law and those protected by the Federal Law on Copyright.

- Industrial Property: patents, utility models, industrial designs, undisclosed information, trademarks and designations of origin.
- Copyright and Related Rights.

Article 223 of the Industrial Property Law and Articles 424, 424 *bis*, and 424 *ter*, 425 and 426 of the Federal Criminal Code apply.

**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 holder of an intellectual property right affected by the possible commission of an offence prejudicial to his interests must lodge a complaint with the Federal Attorney-General's Office, except in the case of speculation with free textbooks, which is prosecuted *ex officio*.

Articles 225 and 226 of the Industrial Property Law and Article 424 Federal Criminal Code apply.

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

No. Holders and licensees of an intellectual property right are the only ones who may lodge a complaint with the Federal Attorney-General's Office for the purpose of initiating criminal proceedings.

Article 226 of the Industrial Property Law applies.

**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.**

Imprisonment and monetary fines

- Industrial property

Article 223 of the Industrial Property Law characterizes the following as offences:

- Repetition of the behaviour described in subparagraphs II to XXII of Article 213 of the Industrial Property Law once the first administrative penalty imposed on that account has been enforced.
- Forging trademarks protected by the LPI with fraudulent intent and for purposes of commercial speculation.
- Producing, storing, transporting, introducing into the country, distributing or selling, with fraudulent intent and for purposes of commercial speculation, objects displaying forgeries of trademarks protected by the LPI, as well as knowingly contributing or providing, in any way, raw materials or inputs intended for producing objects displaying forgeries of trademarks protected by the LPI.
- Revealing to a third party a trade secret that is known by virtue of employment, position, responsibilities, the practice of a profession or business relations or as a result of the grant of a licence for its use, without the consent of the keeper of the trade secret, after having been advised of its confidentiality, for the purpose of procuring an economic benefit for oneself or for the said third party or for the purpose of injuring the keeper of the secret.
- Appropriating a trade secret without being entitled to do so and without the consent of the keeper of the secret or its authorized user, in order to use it or reveal it to a third party for the purpose of procuring an economic benefit for oneself or for the said third party, or for the purpose of injuring the keeper of the trade or the authorized user thereof.
- Using information constituting a trade secret that is known by virtue of employment, position, responsibilities, the practice of a profession or business relations, without the consent of the keeper of the secret or its authorized user, or that has been revealed to one by a third party, in the knowledge that the said third party was so acting without the consent of the keeper of the trade secret or the authorized user thereof, for the purpose of procuring an economic benefit or injuring the keeper of the trade secret or the authorized user thereof.

In addition, Article 223 *bis* stipulates that anyone who sells to an end-consumer on the street or in a public place, fraudulently and for purposes of commercial speculation, objects displaying forgeries of trademarks protected by the LPI shall be liable to 2 to 6 years imprisonment and a fine of 100 to 10,000 times the general minimum daily wage in force in the Federal District.

Anyone committing an offence mentioned in subparagraph I, IV, V or VI of Article 223 shall be liable to 2 to 6 years imprisonment and a fine of 100 to 10,000 times the general minimum daily wage in force in the Federal District or, in the case of subparagraph II or III of the same Article 223, to 3 to 10 years imprisonment and a fine of 2,000 to 20,000 times the general minimum daily wage in force in the Federal District (Article 224 of the Industrial Property Law).

The above-mentioned offences are prosecuted at the request of the aggrieved party.

- Intellectual property

In the area of copyright and related rights, offences are characterized and penalties established in Title 26 of the Federal Criminal Code.

Articles 424 to 427 of the Code apply.

Article 424: The following shall be liable to 6 years imprisonment and a 300 to 3,000 day fine:

- anyone who speculates in any way with the free textbooks distributed by the Ministry of Education;
- a publisher, producer or recording company that knowingly produces more copies of a work protected by the Federal Law on Copyright than authorized by the right holder; and
- anyone who, fraudulently, for financial gain and without appropriate authorization, uses works protected by the Federal Law on Copyright.

Article 424 bis: The following shall be liable to 3 to 10 years imprisonment and a 2,000 to 20,000 day fine:

- anyone who produces, reproduces, introduces into the country, stores, transports, distributes, sells or rents out copies of works, phonograms, videograms or books protected by the Federal Law on Copyright;
- similarly, those who knowingly contribute, or in any way provide, raw materials or inputs intended for the production or reproduction of the works, phonograms, videograms or books referred to in the preceding paragraph or fraudulently use, on a commercial scale and without the appropriate authorization, works protected by the above-mentioned Law; or
- anyone who manufactures, for financial gain, a device or system designed to deactivate the electronic protection devices of a computer programme.

Article 424 ter: Anyone fraudulently selling to an end-consumer, on the street or in a public place, for purposes of commercial speculation, copies of the works, phonograms, videograms or books mentioned in the first subparagraph of the preceding article shall be liable to 6 months to 6 years imprisonment and a 5,000 to 30,000 day fine.



If the copies are sold in commercial establishments or in an organized or continuing fashion, the sale shall be subject to the provisions of Article 424 *bis* of this Code.

Article 426: The following shall be liable to 6 months to 2 years imprisonment or a 300 to 3,000 day fine:

- anyone who manufactures, imports, sells or rents out a device or system for decoding an encoded programme-bearing satellite signal, without the authorization of the legitimate distributor of that signal; and
- anyone who, for financial gain, carries out any act for the purpose of decoding an encoded programme-bearing satellite signal, without the authorization of the legitimate distributor of the signal.

Article 427: Anyone who knowingly publishes a work with the name of the author replaced by another name shall be liable to 6 months to 2 years imprisonment or a 300 to 3,000 day fine.

It is important to note that the above-mentioned offences are prosecuted at the request of the aggrieved party, except for that specified in subparagraph I of Article 424 (Article 429 of the Criminal Code).

Seizure, forfeiture and destruction of infringing goods and materials and implements for their production

The competent criminal court which hears the case may order any appropriate measure to prevent the continuation of the offence and to punish those responsible

**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 criminal proceedings depend on the complexity of the case in question.

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