

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

Responses from Peru

Civil and administrative procedures and remedies

(a) Civil judicial procedures and remedies

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

Pursuant to Article 17 of Legislative Decree No. 807 – Law on the Functions, Regulations and Organization of the National Institute for the Defence of Competition and Intellectual Property Protection (INDECOPI) – decisions taken at the final administrative level may be contested through judicial channels. At the first level, this is the Civil Chamber of the Supreme Court of Justice. At the next level, appeals may be made against the aforementioned Chamber's decisions, before the Constitutional and Social Law Chamber of the Supreme Court of Justice.

**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?**

Once the administrative channels have been exhausted, the owner of an intellectual property right may bring action for recovery of possession or for compensation through civil law proceedings.

As far as representation is concerned, natural persons may appear in person or appoint an attorney. Legal persons must be represented by an attorney, who requires the relevant powers in order to act.

There are no provisions prescribing the mandatory personal appearance of the right holder before the Tribunal.

**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?**

According to Article 189 of the Code of Civil Procedure, the parties must provide evidence in their pleadings. The parties are empowered to request the presentation of documents under the control of the other party as evidence. The judge may order such a presentation. Failure by a party to present the documents ordered is taken into account by the judge when making his ruling, without prejudice to imposition of a penalty.

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

Article 194 of the Code of Civil Procedure provides that, if the evidence furnished by the parties is not sufficient to form an opinion, the judge may order the presentation of the additional evidence he deems necessary.

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

In accordance with the constitutional principle of the right of defence, all evidence and information in proceedings must be made available to the other party and may be contested using any of the means allowed. Proceedings are public, therefore, the information furnished during the proceedings is not confidential, except as regards the privacy and honour of persons, which applies in general both during and outside the proceedings.

Nevertheless, pursuant to Article 6 of Legislative Decree No. 807, information on industrial or trade secrets given to INDECOPI must be declared restricted information. In such cases, all necessary measures are taken to ensure that the information remains restricted and confidential, on pain of liability.

During the civil proceedings, INDECOPI, (as co-defendant) maintains the restriction on confidential information and does not furnish it to the judges. If the judges request INDECOPI to provide this information, it must do so. Thereafter, the civil judges assume direct liability for the restriction and confidentiality of the information.

**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 are contained in decisions. Pursuant to Article 121 of the Code of Civil Procedure, there are three types of decision: decrees, orders and judgements. Decrees initiate the proceedings and are straightforward procedural acts; orders contain decisions for which the judge must give grounds, for example, admissibility or rejection of a claim or counterclaim, acceptance or rejection of the steps taken to challenge the claims, admissibility, inadmissibility or modification of precautionary measures or other decisions; lastly, in a judgement, the judge definitively brings to an end the level of judicial procedure or the proceedings, taking a specific, precise and substantiated decision on the matter at issue.

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

After the administrative channels have been exhausted, a claimant may turn to civil proceedings under which the judicial authority determines the compensation for damages caused by the infringement of intellectual property rights, duly established at the administrative level, so as to obtain compensation for the losses suffered and the loss of profits caused by the infringement. The payment of court costs and litigation expenses may also be ordered. Pursuant to Article 246 of

Legislative Decree No. 823 – Industrial Property Law – the amount of unrealized profits is determined taking into account *inter alia* the following criteria:

- The profits that the owner would have realized through use or exploitation of the right had the violation not occurred;
- the profits actually realized by the infringer as a result of the violation;
- the price that the infringer would have had to pay the owner for the grant of the licence that would have enabled him to engage in rightful use.

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

See the reply to question 10 - provisional judicial measures.

Any other remedies

In cases of administrative litigation, the civil courts may overturn decisions taken at the administrative level.

Administrative litigation proceedings and compensation for injury are mutually exclusive and the two actions cannot be combined.

**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?**

According to Article 213 of the Code of Civil Procedure, the parties may both request such information. The procedure is initiated with the replies to interrogatories, bearing in mind the interrogatory attached to the application in a sealed envelope. After the replies have been given, the parties may put further questions and request clarification. During this procedure, the judge may put to the parties any questions he deems necessary.

In addition, a civil judge may order the presentation of evidence in addition to that furnished by the parties, if he deems necessary. On the basis of this evidence, he may request the defendant to provide information on third parties that participated in the production and/or distribution of the infringing goods or services. Article 218 of the Code of Civil Procedure stipulates that the replies must be unequivocal. If the person questioned refuses to reply or responds evasively, the judge requests him to fulfil his obligation. If he persists in this behaviour, the judge takes this into account when ruling on the defendant's action.

**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?**

According to Article 412 of the Code of Civil Procedure, the reimbursement of court costs and litigation expenses does not have to be requested and is the responsibility of the losing party. Court costs are composed of judicial fees, fees for auxiliary judicial bodies and other judicial costs incurred during the proceedings. Litigation expenses comprise the fees of the attorney of the successful party, together with a percentage for the College of Lawyers of the relevant judicial district. According to Article 4 of the aforementioned legal text and without prejudice to payment of

court costs, litigation expenses and fines by a malicious claimant, when a case concludes with a ruling that rejects the complaint made and the defendant considers that the right to bring the action was exercised unlawfully or arbitrarily, he may request compensation for the injury suffered.

It should be added that Article 110 of the Code of Civil Procedure indicates that the parties, their attorneys, their representatives and lawful third parties must respond for any injury caused by bringing proceedings recklessly and unscrupulously.

Regarding the responsibility of judges, Article 509 of the Code of Civil Procedure states that a judge exercising his jurisdictional functions is civilly liable if he causes injury to the parties or to third parties, by acting with malevolent intent or with gross negligence, without prejudice to any applicable administrative or criminal penalties.

The obligation to pay compensation for damages is solidary between the State and the judge who issued a ruling which improperly imposed an obligation on the defendant.

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

Civil litigation is governed by the Code of Civil Procedure and comprises the following: summary proceedings, expedited proceedings, cognizance, preventive action and action to vindicate a right. Depending on the subject and the amount sought, a complaint may be dealt with under any of the aforementioned procedures.

The cost and length of proceedings varies according to the case and its complexities.

(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.**

INDECOPI is an autonomous body responsible for monitoring fair competition, protection of intellectual property and defence of consumers' rights.

For the purpose of defending intellectual property rights, INDECOPI has three Offices: the Distinctive Signs Office, the Copyright Office, and the Inventions and New Technologies Office. At the first level, each of these Offices deals with cases within its competence. At the second (and last) administrative level, there is a Tribunal for the Defence of Competition and Intellectual Property Protection, which deals with cases related to the defence of competition, consumers' rights and intellectual property. The Tribunal is composed of Chambers for the defence of competition and for intellectual property protection, the latter being responsible for intellectual property cases.

**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?**

The holder of an intellectual property right is empowered to initiate action through administrative channels, for example, regarding the granting of a right, proceedings for infringement, observations, nullity, annulment of trademark registrations, *inter alia*.

Regarding representation, natural persons may appear in person or appoint an attorney. Legal persons must be represented by an attorney, who requires the relevant powers in order to act.

There are no provisions prescribing the mandatory personal appearance of the right holder before the INDECOPI Offices or the Tribunal.

**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?**

Pursuant to Article 76 of Supreme Decree No. 02-94-JUS – Single Harmonized Text of the Law on General Regulations for Administrative Procedures – if the evidence furnished by the parties is not sufficient to form an opinion, the administrative authority may order the presentation of the additional evidence it deems necessary.

Furthermore, Article 2 of Legislative Decree No. 807 – Law on the Functions, Regulations and Organization of the INDECOPI – states that the INDECOPI may require natural or legal persons to present any type of document. Any person who provides false or misleading information, destroys or alters any book, register or document requested shall be punishable by a fine, which shall be doubled if the offence is repeated.

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

According to Article 6 of Legislative Decree No. 807, any information received by an Office or the Tribunal for the Defence of Competition and Intellectual Property Protection that is an industrial or trade secret must be declared restricted information by the relevant Office or Tribunal. In such cases, the Office or Tribunal takes all measures necessary to guarantee the restriction and confidentiality of the information, on pain of liability.

The only persons who have access to documents and information declared to be restricted are officials of the relevant Office or Tribunal, officials of INDECOPI assigned to the case and, where appropriate, members and staff of the Tribunal for the Defence of Competition and Intellectual Property Protection. Officials who violate the restriction placed on the information shall be dismissed and barred from exercising any public function for up to 10 years, without prejudice to any criminal liability.

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

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

Injunctions

There are two types of administrative injunction: decisions, which resolve the substance of the matter and bring the proceedings to an end; and interlocutory resolutions, which prescribe administrative acts to be carried out.

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.

According to Article 242 of Legislative Decree No. 823 – Industrial Property Law – infringements of industrial property rights give rise to the imposition of the penalty of a warning or a fine, without prejudice to any measures that may be ordered to effect the cessation of the infringing acts or to prevent them taking place. The range of fines is determined by the competent Office. Recidivism is considered an aggravating circumstance, with the result that the sanction applied may not be less severe than the previous sanction.

According to Article 177 of Legislative Decree No. 822 – Copyright Law – the administrative authority may order *inter alia* the cessation of the unlawful act; the imposition of a warning or fine; the attachment or destruction of products, labels, packaging, and advertising materials; the temporary closure of the infringing establishment; publication of the judgement in a national newspaper.

Pursuant to Article 47 of Decision 391 of the Andean Community – Common Regime on Access to Genetic Resources – the administrative authority may apply administrative sanctions, such as fines, preventive or definitive confiscation, temporary or definitive closing down of establishments and disqualification of the violator from applying for new accesses in cases of violation of the aforementioned Decision.

Action for damages can only be brought through judicial channels (see the reply to question 5). The administrative body is the only body empowered to impose fines on infringers.

**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 distributors?**

Pursuant to Article 2 of Legislative Decree No. 807, INDECOPI may convene and question persons concerned by the investigation or their representatives, employees, officials, advisers and third parties, using the technical means it deems necessary in order to compile a complete and faithful record of their declarations, and may use sound or video recordings for this purpose. It is also empowered to order the infringer to reveal the identity of third parties involved in the infringement. If the persons concerned by the investigation furnish false or misleading information, INDECOPI may impose a sanction in the form of a fine.

**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?**

According to Article 28 of Supreme Decree No. 02-94-JUS – Single Harmonized Text of the Law on General Regulations for Administrative Procedures – officials and employees who do not satisfy the provisions of the aforementioned Law are guilty of misconduct that is punishable in accordance with Article 26 of Legislative Decree No. 276 – Basic Law on Administrative Functions. The sanctions for misconduct prescribed in Article 26 of the Basic Law on Administrative Functions are a verbal or written warning, suspension without pay for up to 30 days, temporary cessation of work without pay for up to 12 months, and dismissal.

**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 requirements, the cost and the duration of proceedings vary depending on the matter to be dealt with by each of the Offices or the INDECOPI Tribunal.

On average, copyright infringement proceedings take three to five months and the approximate cost of bringing a case is US\$42.00 for each complaint. If precautionary measures are sought, the approximate cost is US\$42.00 for each measure requested.

The procedure for any action for infringement of distinctive signs is laid down in Legislative Decree No. 823, Articles 240-246. The proceedings last for around four-six months and the approximate cost of bringing a case is US\$42.00. If precautionary measures are sought, the approximate cost is US\$42.00 for each measure requested.

The average time required for settling a case through administrative channels, if an appeal is lodged at both the first and second levels, is approximately one year.

Provisional measures

(a) Judicial measures

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

Pursuant to Article 608 of the Code of Civil Procedure, a judge may, at the request of a party, order precautionary measures (provisional measures) before proceedings are initiated or in the course of proceedings, in order to ensure compliance with the final ruling.

Likewise, Article 198 of Legislative Decree No. 822 – Copyright Law – states that, at the request of the owner of the rights concerned, his representative or the corresponding management society, a judge may order the immediate institution of the necessary precautionary measures to avoid the perpetration of the infringement or the continuation or repetition of a violation already committed, including the following measures in particular:

- Seizure of the income realized through the unlawful activity or, where appropriate, of the amounts owed in remuneration;
- immediate suspension of the unlawful manufacture, reproduction, distribution, communication or importation, as the case may be;
- sequestration of the copies produced or used and of the material or equipment used for the infringing activity.

In addition, an unforeseen precautionary measure that satisfactorily ensures compliance with the final decision may also be requested and granted.

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

The adoption of such measures *inaudita altera parte* is one of the features of precautionary measures (provisional measures) and the purpose is to ensure compliance with the final ruling. According to Article 611 of the Code of Civil Procedure, if a judge considers, in the light of the explanations and the evidence furnished, that the right claimed is justified and that a preventive

decision is necessary because any delay in the proceedings would be dangerous or for any other justifiable reason, he may order a precautionary measure in the form requested or as he deems appropriate taking into account the nature of the principal claim.

**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.**

Article 610 of the Code of Civil Procedure states that any person requesting a precautionary measure (provisional measure) must explain to the judge the grounds for his claim for preventive measures (he must prove title to the right claimed and the risk of delay); indicate the form of the precautionary measure; where appropriate, state the goods to which the measures should apply and the amount to be set aside; offer counter-security and nominate the competent legal body.

For the precautionary measure to remain in effect, at the request of the person possessing the right to the measure and at any stage of the proceedings, the measure may be changed, either by altering its form or modifying the goods which it affects or its amount.

The purpose of the counter-security is to ensure that a person on whom a precautionary measure has been imposed is compensated for any damages caused by its imposition. The acceptance of counter-security, its type and amount, is determined by the judge, who may accept the security offered by the complainant, adjust it, modify it, or, even, change it as he deems necessary.

Lastly, it should be noted that any precautionary measure involves a prejudgement and is provisional, set down in writing and variable.

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

The cost and length of preventive proceedings varies according to the complexity of the precautionary measure requested.

(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.**

Article 27 of Legislative Decree No. 807 provides that, at any stage of the procedure, either ex officio or at the request of a party, INDECOPI may order one or more of the following precautionary measures:

- The cessation of the acts that are the subject of the complaint;
- the seizure, deposit or arrestment of the products, labels, packaging and advertising material that are the subject of the complaint;
- preventive cessation of advertising that is the subject of the complaint;
- the adoption of the necessary measures to allow the customs authorities to prevent the entry into Peru of the products concerned;



- temporary closure of the establishment of the person that is the subject of the complaint;
- any other measure to prevent any prejudice occurring.

Article 177 of the Copyright Law also indicates some of the provisional measures that may be requested by owners of copyright, namely:

- Immediate suspension or cessation of the unlawful activity;
- attachment or confiscation, and withdrawal from commercial distribution circuits, of any copies produced or used and of the material or equipment used for the infringing activity;
- the conduct of inspections, attachments or confiscations without prior notice.

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

The adoption of such measures *inaudita altera parte* is one of the features of precautionary measures (provisional measures) and the purpose is to ensure compliance with the final ruling. Article 27 of Legislative Decree No. 807 indicates that such measures may be ordered at any stage of infringement proceedings, either *ex officio* or at the request of a party. They may be ordered to ensure compliance with the final ruling, in other words to prevent any prejudice arising from the alleged act or for the purpose of ending it.

#### **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.**

There is no special procedure at the administrative level for the adoption of provisional measures. They must be requested in the context of proceedings for infringement of an intellectual property right (it should be noted that infringement proceedings can also be initiated when there is an imminent danger that the rights of the holder might be violated).

Article 241 of Legislative Decree No. 823 states that precautionary measures are ordered on behalf of and under the responsibility of the complainant.

In addition, Article 181 of Legislative Decree No. 822 states that the Copyright Office is entitled to order preventive or precautionary measures at the request of a single party, without having to give prior notice to the other party, especially where any delay might cause irreparable harm to the owner of the right or where there is an imminent risk of evidence being destroyed.

Article 244 of Legislative Decree No. 823 and Article 175 of Legislative Decree No. 822 state that administrative actions for infringement shall be statute-barred after two years, calculated from the date on which the infringing act ceased.

#### **14.4 What are normally the duration and cost of proceedings?**

The duration of proceedings for infringement of an intellectual property right ranges from five months to one year, and the administrative fee for initiating the proceedings is approximately US\$42.00.

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?**

Pursuant to Article 240 of Legislative Decree No. 823, actions for infringement are subject to the procedure laid down in Title V of Legislative Decree No. 807. Article 27(d) of the latter Decree states that, at any stage of the proceedings, either *ex officio* or at the request of a party, INDECOPI may order the adoption of the measures necessary for the customs authorities to prevent the entry into Peru of the products that are the subject of the complaint.<sup>2</sup>

Article 40 of Legislative Decree No. 822 provides that the Copyright Office may apply to the customs authority for confiscation at the border of pirated merchandise that violates copyright, with a view to suspending the free circulation of the said merchandise where attempts are made to import it into Peruvian territory. The measures to secure confiscation do not apply to copies that form part of household goods, or those that are in transit.

Article 27(d) of Supreme Decree No. 008-96-ITINCI – Regulations for the Protection of Plant Breeders' Rights – states that the holder of a new plant variety certificate whose right has been infringed may request the adoption of the measures necessary for the customs authorities to prevent the entry of the infringing products into Peru.

The aforementioned provisions on border measures do not apply to imports of goods placed on the market of another country by the owner of the right or with his consent.

**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 procedure is initiated before INDECOPI by bringing an action for infringement, requesting as a precautionary measure the suspension of the customs clearance of goods infringing an intellectual property right. After the measure has been requested, INDECOPI sends an official communication to the customs authorities requesting the suspension of the customs clearance of the infringing products.

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<sup>2</sup> In Chapter III – Border Measures – of Title XV – Action for Infringement of Rights – of the draft revision of Decision 344 of the Andean Community – Common Regime on Industrial Property – there is provision for the protection of the holder of a trademark registration against import or export of products infringing the registration. According to the draft, small quantities of goods that are not of a commercial nature and are included in the personal luggage of visitors or are sent in small amounts are excluded from application of border measures. It should be noted that the section on border measures in this draft has met with the consensus of the five Andean countries.

The Customs Taxation Department of the customs authority halts containers with allegedly infringing products at the customs posts before clearance. INDECOPI is informed accordingly and its participation is sought in order to determine whether they are in fact infringing products.

INDECOPI has signed an information exchange agreement with the customs authorities and this is used in order to obtain information on goods which arrive in ports and which might breach copyright legislation.

The Copyright Office of INDECOPI has often taken action, either ex officio or at the request of a party, inside customs terminals and has confiscated illegal copies.

**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?**

Decisions by the competent authorities suspending the clearance of goods are valid until the procedure has been terminated. The duration of the procedure ranges from five months to one year and the administrative fee for initiating it is approximately US\$42.00.

**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?**

In principle, the procedure is initiated at the request of a party. Nevertheless, if the customs authorities detect any irregularities or possible infringement of an intellectual property right, they send an official letter to INDECOPI. As the body responsible for protecting intellectual property rights, INDECOPI must authorize the seizure of goods.

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

INDECOPI may order the customs authorities to prevent the clearance of goods that are the subject of a complaint throughout the period of the administrative procedure in an infringement action.

Criminal procedures

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

The Judge of First Instance in the Criminal Courts is empowered to hear cases concerning intellectual property rights. In the second instance, the Criminal Chamber of the High Court has jurisdiction.

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

In respect of offences against copyright and related rights and industrial property rights.

Articles 216-221 of the Criminal Code state with regard to copyright that penal sanctions may be applied for unlawful use of intellectual property, plagiarism, publishing too many copies or exceeding the authorized circulation, as well as for the sale or distribution of illegally-produced copies.

According to Articles 222-225 of the Criminal Code on industrial property rights, penal sanctions apply to unauthorized use of a patent, unauthorized use or sale of an industrial design, improper use of an expression accrediting a person as the owner of an industrial design, and unlawful use of mark.

**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 initiating criminal proceedings is the Public Prosecutor's Office, which is the autonomous State body whose main functions include the protection of the Law, citizen's rights and the public interest, *inter alia*. In the case of intellectual property rights, the Nineteenth Criminal Provincial Prosecutor's Office in Lima and Ad Hoc Office for Intellectual Offences is the competent authority. INDECOPI, through the aforementioned Prosecutor's Office, is also responsible for initiating criminal proceedings.

The Public Prosecutor's Office may initiate proceedings *ex officio* (on its own initiative) when there are reasonable indications that an offence has been committed; or at the request of the injured party (following complaints).

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

Private persons are not authorized to initiate criminal proceedings directly for offences against intellectual property rights, but must do so through the competent Public Prosecutor's Office.

**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.**

Offences against copyright and related rights:

- Unlawful use of an intellectual creation – Articles 216 and 217 of the Criminal Code;
- plagiarism – Article 218 of the Criminal Code;
- publication of an excessive number of copies or exceeding authorized circulation – Article 219 of the Criminal Code; and
- sale or distribution of illegally-produced copies – Article 220 of the Criminal Code.

OFFENCE	SANCTION
Unlawful use of an intellectual creation	1-3 years' imprisonment and a fine of 10-60 days * In aggravated cases: 2-6 years' imprisonment and a fine of 30-90 days
Plagiarism	2-8 years' imprisonment and a fine of 60-120 days
Publication of an excessive number of copies or exceeding authorized circulation	2-8 years' imprisonment and a fine of 60-180 days
Sale or distribution of illegally-produced copies	4-8 years of imprisonment and a fine of 90-365 days

\* A fine equivalent to a day is a minor sanction determined by the judge. It represents a percentage of the earnings of the person accused.

In such cases, there is provision for the prior attachment of the illegal copies and of the equipment or means used to commit the offence. There is also provision for the search or opening up of the place in which the criminal offence was committed.

Offences against industrial property:

- Unauthorized use of a patent – Article 222 of the Criminal Code;
- unauthorized use or sale of an industrial design – Article 223 of the Criminal Code;
- improper use of an expression accrediting a person as the owner of an industrial design – Article 224 of the Criminal Code; and
- unlawful use of a mark – Article 225 of the Criminal Code.

OFFENCE	SANCTION
Unauthorized use of a patent	2-4 years' imprisonment and a fine of 60-365 days, as well as disqualification **
Unauthorized use or sale of an industrial design	1-4 years' imprisonment and a fine of 60-365 days, as well as disqualification
Improper use of an expression accrediting a person as the owner of an industrial design	1-4 years' imprisonment and a fine of 60-365 days, as well as disqualification
Unlawful use of a mark	1-4 years' imprisonment and a fine of 60-365 days, as well as disqualification

\*\* Disqualification means the incapacity to exercise on one's own behalf or through a third party the profession, trade, art or industry specified in the sentence.

**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.**

Ordinary criminal justice is the responsibility of the Supreme Court of the Republic, the Magistrates' Courts, Judges of First Instance in Criminal Matters and Justices of the Peace. The duration and cost of the proceedings depends on the offence. Article 24 of the Basic Justice Law states that criminal proceedings are exempt from payment of judicial fees.