

CHECK-LIST OF ISSUES ON ENFORCEMENT¹

Replies from Romania

Civil and administrative procedures and remedies

(a) Civil judicial procedures and remedies

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

A. General rules

(i) Jurisdiction *ratione materiae*:

- The magistrates' courts hear, in first instance, all actions and petitions other than those given to the jurisdiction of other courts by the law. (Code of Civil Procedure, Article 1, first paragraph).

The magistrates' courts hear actions and petitions on all other subjects given to their jurisdiction by the law. (Code of Civil Procedure, Article 1, third paragraph).

- The courts of law hear, in first instance, actions and petitions relating to intellectual creation and industrial property. (Code of Civil Procedure, Article 2, first paragraph, subparagraph (d).

As second instances, the courts of law hear appeals against the rulings in first instance of the magistrates' courts (Code of Civil Procedure, Article 2, second paragraph).

- The Courts of Appeal hear, as second instances, appeals against the rulings in the first instance of the courts of law. (Code of Civil Procedure, Article 3, second paragraph).

The Courts of Appeal hear, as appeal instances, applications for review of the rulings given by the courts of law on appeal. (Code of Civil Procedure, Article 3, third paragraph).

- The Supreme Court of Justice hears applications for review of the rulings of the Courts of Appeal and other rulings, in the cases provided for by the law. (Code of Civil Procedure, Article 4, first paragraph).

¹Document IP/C/5.

(ii) Jurisdiction *ratione loci*:

The petition is submitted to the court having jurisdiction over the defendant's domicile. If the defendant is domiciled abroad or has no known domicile, the petition is submitted to the court having jurisdiction over the area of his residence and, if he has no known residence, to the court having jurisdiction over the plaintiff's domicile or residence. (Code of Civil Procedure, Article 5).

A petition against several defendants can be submitted to the court having jurisdiction over any one of them. (Code of Civil Procedure, Article 9).

B. Special rules

(i) Patents

The magistrates' courts hear, in first instance:

- Actions concerning the status of inventor, of patent owner or other rights stemming from the patent as well as the inventor's patrimonial rights from assignment and licensing contracts;
- actions concerning the establishment of the contract price in cases of transfer by an employee-inventor of the right to the issue of a patent to the employer with whose help the invention in question was made. (Law No. 64/1991, Article 5, sixth paragraph);
- actions concerning the award of damages to the patent owner, as a result of injury caused by a third person who had violated his patent rights by infringement or any other act. (Law No. 64/1991, Article 59).

The Bucharest Municipal Court has the jurisdiction *ratione materiae* to hear:

- Petitions submitted by the interested party against decisions by the Re-Examination Board of the State Office for Inventions and Trademarks (OSIM) rejecting applications for patents or revoking decisions to grant patents. (Law No. 64/1991, Article 57, first paragraph);
- the issue or, as the case may be, revocation of a compulsory licence in the circumstances provided for in Article 49 of Law No. 64/1991;
- the issue of an ex officio licence in the circumstances provided for in Law No. 64/1991, Article 50, first paragraph;
- the establishment of the fees to which the patent owner is entitled, in the event of the issue of ex officio licences, when the parties concerned do not reach a contractual agreement (Law No. 64/1991, Article 54);
- applications to declare patents null and void (Law No. 64/1991, Article 42).

(ii) Industrial designs

The magistrates' courts hear, in first instance:

- Actions concerning the status of creator of the industrial design or of holder of the registration certificate as well as those concerning the patrimonial rights from assignment or licensing contracts (Law No. 129/1992, Article 38);
- actions concerning the establishment of the contract price in cases of transfer by an employee-creator of the right to register the industrial design to the employer with whose help the design in question was made (Law No. 129/1992, Article 5, first paragraph, subparagraph b);
- actions concerning the award of damages to the owner of a protected industrial design, in accordance with Law No. 129/1992, Article 30.

The Bucharest Municipal Court hears:

- Petitions submitted by the interested party against decisions by the Re-Examination Board of the State Office for Inventions and Trademarks (OSIM) concerning the registration of industrial designs (Law No. 129/1992, Article 25, first paragraph);
- applications to declare null and void registration certificates for industrial designs (Law No. 129/1992, Article 37).

(iii) Topographies of integrated circuits

The magistrates' courts hear, in first instance:

- Petitions for the award of damages as a result of injuries that the owner has suffered following a violation of his rights, in accordance with Article 40 of Law No. 16/1995;
- actions concerning the status of author or owner of the topography and those concerning rights stemming from the registration of topographies, including creators' patrimonial rights or those arising from assignment and licensing contracts. (Law No. 16/1995, Article 41).

The Bucharest Municipal Court hears:

- Appeals against decisions by the State Office for Inventions and Trademarks (OSIM) refusing registration of a topography. (Law No. 16/1995, Article 16);
- applications for the issue or, as the case may be, revocation of a compulsory licence. (Law No. 16/1995, Articles 33 and 34);
- applications for the cancellation of the registration of a topography. (Law No. 16/1995, Article 38).

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. General rules

Any person enjoying civil rights may take legal action (Code of Civil Procedure, Articles 41, 42 and 111).

The parties can exercise their procedural rights personally or through a representative (Code of Civil Procedure, Article 67, paragraph 1). To submit pleadings to the courts, the representative must be an attorney. (Code of Civil Procedure, Article 68, fourth paragraph).

There are no requirements for mandatory personal appearances, provided a party is represented.

B. Special rules

Copyright and related rights

Law No. 8/1996 favours the right holder as regards the evidence required to prove his quality as author. According to Article 4, first paragraph, "the person under whose name the work first became known is presumed to be its author, unless and until it is proved otherwise". In the case of sound recordings, Article 104 provides that "the producer has the right to inscribe on their carriers, including covers, boxes and other packing materials, in addition to references to the author and performer, the titles of the works and the date of manufacture, together with the producer's name and registered title".

Organizations for the collective administration of copyright or/and related rights, established exclusively for the purpose of managing and protecting patrimonial rights (Law No. 8/1996, Articles 123-129), are also entitled to take legal or extralegal action either on their own behalf or, as agents, on behalf of their members, with whom they have signed an agency contract to enable such organizations to exercise all the legal rights conferred upon them.

Under Romanian law, a collective administration organization is a non-profit-making association considered to be competent to manage and protect the copyright and related rights of all right holders, for which purpose an agency contract has been concluded, with the collective administration organization as agent and the right holders as principals.

(i) Patents

- Under Articles 34 and 59 of Law No. 64/1991, the person entitled to bring an infringement action and an action for the granting of civil damages is the owner of the violated right;
- in the event of the grant of a compulsory licence, when the licensee does not exploit the invention on the terms laid down, the person entitled to request the court to revoke the licence is the owner of the patent. (Law No. 64/1991, Article 49, fifth paragraph);
- in the interests of public health, the Bucharest Municipal Court can issue, on the conditions laid down in Law No. 64/1991, Article 50, first paragraph, an ex officio licence, but only at the express request of the Ministry of Health;
- an application to the courts for the annulment of a patent can be made, under Law No. 64/1991, Article 42, first paragraph, by any interested party.

(ii) Industrial designs

- Under Articles 29 and 30 of Law No. 129/1992, the person entitled to bring an infringement action and an action for the granting of civil damages is the owner of the violated right;
- an application for annulment of a registration certificate for an industrial design may be submitted to the court by any interested party.

(iii) Topographies of integrated circuits

- Under Article 40 of Law No. 16/1995, the owner of the violated right is entitled to bring an infringement action and, at the same time, request that the injury caused be remedied;
- the owner of a registered topography is the person entitled to request the Bucharest Municipal Court, under Article 34 of Law No. 16/1995, to revoke a non-voluntary licence;
- an application for the cancellation of the registration of a topography can be submitted to the court, under Article 38 of Law No. 38/1995, by any interested party.

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?

Articles 172-174 of the Code of Civil Procedure govern situations in which the plaintiff is not in possession of the documentary evidence. Consequently, if one of the parties maintains that the opposing party has a document relevant to the case, the court may order that this document be produced in the course of the proceedings.

The court is obliged to order the production of the documentary evidence in the following situations:

- The document is common to the parties;
- the opposing party has referred to the document in question during the proceedings;
- the opposing party is obliged by law to produce the document.

The court must reject the request by a party for the production of certain documents by the opposing party in the following situations:

- The document concerns strictly personal problems;
- production of the document would mean a violation of the obligation to maintain its confidentiality;
- production of the document would result in a criminal charge against the party presenting the document or against another person, or the person in question would be held up to public contempt if the document in question were produced.

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

The confidentiality of information provided to the proceedings as evidence is guaranteed by civil and criminal law.

Under Article 121 of the Code of Civil Procedure, the court can decide that the proceedings shall take place in chambers if public hearings could impair public order and morality or damage the parties.

Article 93, paragraph (e), of Law No. 92/1992, on the Organization of the Judiciary, prescribes that judges and magistrates are obliged, under penalty of law, to preserve the confidentiality of their work.

Article 7 of Law No. 51/1995, on the Organization and Exercise of the Profession of Attorney, prescribes that the attorney is obliged to maintain professional secrecy regarding every aspect of a case which has been submitted to him, with the exceptions expressly provided for by the law.

Under Article 191 of the Code of Civil Procedure, the following persons are exempted from being called as witnesses: attorneys, public notaries, all other persons obliged by law to respect the confidentiality of facts confided to them in the exercise of their profession, and civil servants and former civil servants in respect of confidential matters which came to their attention in that capacity.

The Code of Penal Law punishes the unlawful disclosure of non-public information by a person to whom it has been confided in the course of his profession, if such disclosure is likely to cause injury. (Code of Penal Law, Articles 196 and 298).

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.**

(a) Injunctions

A. General rules

Anyone who perpetrates a deed or action contrary to honest commercial or industrial practices shall be enjoined, by the court, to desist or refrain from the action in question. (Law No. 11/191 on the Repression of Unfair Competition, Articles 2 and 6.)

B. Special rules

(i) Copyright and related rights

Under Article 139, paragraph 2, of Law No. 8/1996, "the owners of the violated rights may request the courts or other competent organizations, as the case may be, to recognize their rights and establish that they have been violated, and may require that the injury be remedied".

The court may decide, for instance, that a party has no right to introduce into the channels of commerce imported goods which imply a violation of copyright or related rights.

(ii) Patents

Under Article 34 of Law No. 64/1991, the owner of the patent has the right to request the court to prohibit any third party from performing, without his authorization, actions which, according to the law, are regarded as constituting an infringement of the patent.

(iii) Industrial designs

Under Article 29 of Law No. 129/1992, the owner of the registration of an industrial design is entitled to request the court to prohibit third parties from performing, without his authorization, actions which, according to the law, are regarded as constituting an infringement.

(iv) Topographies of integrated circuits

According to Article 20 of Law No. 16/1995, the owner of a registered topography has the right to forbid other persons to exploit the topography and, consequently, the court may rule that such exploitation is prohibited.

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

A. General rules

Article 998 of the Civil Code provides that any human action that causes injury to others obliges the person responsible to remedy the injury.

A person is responsible not only for injury caused by his action but also for injury caused by his negligence or imprudence (Civil Code, Article 998).

Under Article 6 of Law No. 11/1991, a person in trade who has committed an act of unfair competition shall be obliged by the court to pay damages for the injury caused.

Procedural expenses (stamp duty, procedural tax, attorney's fees, etc.) are payable by the offender, at the request of the party which has won the case (Code of Civil Procedure, Article 274, first paragraph).

When the claims of each party have been approved in part only, the court shall assess to what extent each of them may be obliged to pay the cost of the proceedings, and may stipulate their compensation. (Code of Civil Procedure, Article 276.)

B. Special rules

(i) Copyright and related rights

Damages can be awarded for a violation of copyright or related rights in accordance with Law No. 8/1996, Article 139, fourth paragraph, subparagraph (a).

Under Article 139, third paragraph and fourth paragraph, subparagraph (a), of Law No. 8/1996, "in the case of violation of certain rights recognized and protected by the present law, their owners may request the court ... to order immediately measures to prevent imminent injury or to remedy such injury, as the case may be".

The owners of the violated rights may also request the court to order the application of the following measures, in accordance with the provisions of Article 139, fourth paragraph, subparagraph (a), of Law No. 8/1996: "to seize, with a view to remedying the injury suffered, the sums gained by the unlawful action or, if the injury cannot be remedied in this way, to seize the goods that have resulted from the unlawful action, with a view to their sale, to the extent of integral remedy for the injury caused".

(ii) Patents

In cases of infringement, the owner is entitled to damages for the injury he has suffered (Law No. 64/1991, Article 59).

(iii) Industrial designs

In case of an infringement, the registered owner of an industrial design is entitled to damages for the injury he has suffered (Law No. 129/1992, Article 42).

(iv) Topographies of integrated circuits

In case of a violation of the owner's rights by the exploitation, without his authorization, of a registered topography, he is entitled to damages for the injury he has suffered. (Law No. 16/1995, Article 40.)

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

A. General rules

Under Article 10 of Law 11/1991, the court may provide, in the case of an act of unfair competition, by the substantive order, that the goods seized shall be sold after removal of the false markings.

The Code of Penal Law provides, among the provisional measure that the court can adopt, for "special confiscation" mentioning, in its Article 118, paragraph (b), that goods which have served or had been intended to serve for the commission of an offence, if they belong to the offender, are subject to special confiscation.

B. Special rules

(i) Copyright and related rights

Provisions concerning the destruction or other disposal of goods infringing copyright or related rights are contained in Law No. 8/1996, Article 139, fourth paragraph, subparagraphs (b) and (c), according to which the court can order "the destruction of the equipment and media belonging to the defendants, whose sole or main purpose has been to produce the unlawful action", or to "withdraw, by confiscation and destruction, unlawful copies from the channels of commerce".

(ii) Patents

Law No. 64/1991, Article 59, third paragraph, provides that, in case of an infringement, the infringing products may be confiscated in accordance with the criminal law.

(iii) Topographies of integrated circuits

Law No. 16/1995, Article 40, second paragraph, provides that, in case of an infringement, the counterfeit products may be confiscated in accordance with the criminal law.

(d) Any other remedies

Publication

- Under Article 11 of Law No. 11/1991, in case of an act of unfair competition, the court may order that the judgement be published in the press at the offender's expense.
- Under Article 139, paragraph (d), of Law No. 8/1996, the court may also order that "the court's decision shall appear in the press, at the expense of the defendant".

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?

General rules

Under the principle of the judge's active role, judges are required to make every endeavour, by all legal means, to discover the truth and obtain an accurate knowledge of the facts.

The judge has the right to put questions to the parties and to present to the hearings all circumstances in fact or in law which lead to a solution of the case, even if they have not been included in the petition or the defence.

The judge may call for all evidence that he deems fit, even if the parties are opposed thereto. (Code of Civil Procedure, Article 129).

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?

Procedural rights must be exercised in good faith and in accordance with the purpose for which they have been recognized by the law.

The party which abuses such rights must be responsible for the injury caused.
(Code of Civil Procedure, Article 723).

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

A. Length of proceedings

(i) Judicial time-limits, fixed by the court during the proceedings:

- Time-limit for the appearance in court of witnesses;
- time-limit for the filing of the expert report; and
- time-limit for carrying out an *in situ* inquiry, etc.

(ii) Legal time-limits, expressly established by the law, namely, the following provisions of the Code of Civil Procedure:

- The body competent to settle a conflict of jurisdiction between two magistrates' courts shall decide, in chambers and without summoning the parties, with a right of appeal within five days of the decision. (Code of Civil Procedure, Article 22, first paragraph);
- the party shall be summoned, on pain of nullity, at least five days before the date set for the proceedings. (Code of Civil Procedure, Article 89, first paragraph);
- if a local inquiry, expert examination or calling of witnesses has been approved, the party which proposed this must, within five days of the approval, lodge the sum fixed by the court for the cost of the inquiry, the travel and compensation of the witnesses or the expert's fees. (Code of Civil Procedure, Article 170, first paragraph);
- the expert appointed must file his report at least five days before the date set for the proceedings. (Code of Civil Procedure, Article 209, first paragraph);
- an application for review must be lodged within 15 days of the announcement of the judgement (Code of Civil Procedure, Article 301), etc.

The duration of these procedures will vary according to the complexity of the case and according to whether the interested party applies or does not apply for a prolongation of the procedural time-limits, where the law provides for this possibility.

In the case of provisional measures, Article 582 of the Code of Civil Procedure specifies some very rapid proceedings. Thus, the court may order provisional measures without summoning the parties. The time-limit for submitting an appeal is five days from the issue of the order and the time-limit for an application for review is five days after the corresponding decision. Both the appeal and the review are regarded as urgent.

B. Cost of proceedings

Under Article 274 of the Code of Civil Procedure, the party which loses the case will be obliged, if so requested, to pay the cost of the proceedings.

The cost of the proceedings may comprise:

- Judicial stamp duty (Law No. 146/1997, Article 5, paragraphs (a) and (b));
- attorney's fees; and
- the cost of procuring evidence (witnesses' travel costs, expert examinations, etc.).

Free legal aid, by an attorney appointed by the Bar Association, can be granted during the proceedings, with due regard for the material circumstances of the party, in accordance with Article 75-77 of the Code of Civil Procedure.

The attorneys, known as *ex officio* defendants, are entitled to request the court that their fees be defrayed by the opposing party, if it loses the case. (Code of Civil Procedure, Article 81, second paragraph).

(b) Administrative procedures and remedies

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

There are no provisions for administrative procedures that may be taken on the merits of the case with regard to the violation of intellectual property rights.

Provisional measures

(a) Judicial measures

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

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

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.

A. Provisional seizure

The application for provisional seizure is submitted to the court having jurisdiction over the debtor's domicile, and the creditor may be required to lodge a security. (Code of Civil Procedure, Article 595).

Under Article 331 of the Code of Civil Procedure, the institution of a seizure is a non-contentious procedure and, consequently, the decision is taken without hearing the parties.

The seizure renders the debtor's goods unavailable throughout the period of the proceedings, but the debtor may be freed from the seizure if he offers a security to be fixed by the court. (Code of Civil Procedure, Article 598).

B. Judicial seizure

Under Article 596, first paragraph, of the Code of Civil Procedure, whenever there is an action concerning the ownership or possession of an item of movable or immovable property, or concerning the administration or use of a joint item of property, the court, at the request of the person concerned and having heard the parties, can approve the seizure of the item forming the subject of the dispute.

As a general rule, seizure ends once a final judgement has been given on the merits of the case, the item of property being delivered to the party which has won the case.

The circumstances in which provisional measures may be ordered by the court are regulated by Article 581 of the Code of Civil Procedure:

- To preserve a right which would be damaged by delay;
- to prevent an imminent danger of irreparable harm; and
- to remove the obstacles encountered during execution of a distraint.

The court orders provisional measures by an order which is subject to appeal and review under Article 582 of the Code of Civil Procedure.

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

A. Duration

Articles 581 and 582 of the Code of Civil Procedure govern rapid procedures in cases where the court orders provisional measures (the order may be given without summoning the parties; the court may decide that the order shall be executed without notice being served or without the expiration of a time-limit; the time-limits for challenging the order are five days from the issue of the order in the case of both appeal and application for review; both the appeal and the review are regarded as urgent).

B. Cost

See the reply to question No. 8 concerning the cost of proceedings.

(b) Administrative measures

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

There are no administrative provisional measures to ensure that the rights of intellectual property are respected.

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

The following reply relates to questions No. 15 to 19.

A bill regarding areas of competence related to border measures is in the final stages of completion. This bill contains provisions that are in keeping with the TRIPS Agreement and Regulation 3295/1994 of the Council of the European Communities.

Criminal procedures

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

The courts with jurisdiction over acts of infringement of international property rights are as follows:

- The magistrates' courts, in first instance; and
- the courts of law, as instances of appeal and review. (Code of Criminal Procedure, Article 25 and Article 27, second and third paragraphs).

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

Anyone who has committed one of the following offences is liable to imprisonment or to a monetary fine:

A. Copyright and related rights

The offences provided for in Articles 140, 141, 142 and 143 of Law No. 8/1996:

"Article 140. The following acts by a person without the authorization or, as the case may be, the consent of the owner of the rights recognized by the present law shall constitute an offence and, unless a more serious offence is involved, shall be punished by a term of imprisonment of from one month to two years or by a fine of from lei 200,000 to lei 3 million:

- Disclosure of a work;
- representation of a work on the stage, or its recitation, performance or direct presentation in any other public way;
- facilitating public access to computer databases containing or constituting protected works;
- translation, publication in anthologies, adaptation or transformation of a work, so as to obtain a derived work;
- fixation of a performer's work;
- broadcasting of a performance, whether fixed or unfixed, by radio or television or its rebroadcasting by wireless or wired means, by cable, or by any other similar process or by any other means of communication to the public;
- presentation in a public place of a producer's sound recordings;
- broadcasting of a producer's sound recordings by radio or television or their rebroadcasting by wireless or wired means, by cable, by satellite or by any other similar process or by any other means of communication to the public;
- fixation of radio or television programmes or their rebroadcasting by wireless or wired means, by cable, by satellite or by any other similar process or by any other means of communication to the public; or
- communication of radio or television programmes in a place accessible to the public against payment of an entrance fee.

Article 141. The fact of appropriating, without having the right, the status of author of a work or the fact of bringing a work to public attention under a name other than that decided upon by the author shall constitute an offence and, unless it constitutes a more serious offence, shall be punished by a term of imprisonment of from three months to five years or by a fine of from lei 500,000 to lei 10 million.

Article 142. The following acts shall constitute an offence and, in the absence of consent by the owner of the rights recognized by the present law and unless they constitute a more serious offence, shall be punished by a term of imprisonment of from three months to three years or by a fine of from lei 700,000 to lei 7 million:

- Full or partial reproduction of a work;
- distribution of a work;
- importation of copies of a work with a view to their sale on Romanian territory;
- public exhibition of a plastic, photographic or architectural work of art or of a work of applied art;
- public projection of a cinematographic work or other audiovisual work;
- broadcasting a work to the public by any means serving for the wireless propagation of signs, sounds and images, including by satellite;
- broadcasting a work to the public by wire, cable, optical fibre or any other similar process;
- rebroadcasting a work by any means serving for the wireless propagation of signs, sounds or images, including by satellite, or rebroadcasting a work by wire, cable, optical fibre or any other similar process;
- transmitting a radio or television work in a place accessible to the public;
- reproducing a performing artist's performance;
- distributing a performing artist's performance;
- reproducing a producer's sound recordings;
- distributing, including by rental, a producer's sound recordings;
- importing a producer's sound recordings, with a view to their sale in Romania;
- reproducing radio or television programmes, however fixed;
- distributing, including by rental, fixed radio or television programmes;
- importing radio or television programmes, however fixed, with a view to their sale in Romania.

Article 143. The following acts shall constitute an offence punishable by a term of from three months to two years imprisonment or by a fine of from lei 500,000 to lei 5 million, unless they constitute a more serious offence:

- Making available to the public by sale or by any other means of transmission, with or without charge, technical means intended for the unauthorized removal or neutralization of the technical devices protecting software;
- refusal to declare to the competent authorities the origin of copies of a work or that of the carriers on which is recorded a performance or a radio or television programme, protected by the present law, in the possession of a person for purposes of distribution."

B. Patents

- Unlawful assumption, in any way whatsoever, of the status of inventor (Act No. 64/1991, Article 58).

Penalty: term of imprisonment of from six months to two years or monetary fine.

- The offence of infringement (Law No. 64/1991, Article 59).

Penalty: term of imprisonment of from three months to two years or monetary fine.

- Circulation of counterfeit products (Article 300 of the Penal Code).

Penalty: term of imprisonment of from three months to three years.

- Disclosure, by OSIM personnel and other persons doing work in connection with inventions, of information contained in patent applications prior to their publication (Law No. 64/1991, Article 60).

Penalty: term of imprisonment of from three months to two years or monetary fine.

- Unfair competition (Law No. 11/1991, Article 5, paragraph (b), and Code of Penal Law, Article 301).

Penalty: term of imprisonment of from one month to two years or monetary fine.

C. Industrial designs

- Unlawful assumption, in any way whatsoever, of the status of creator of the industrial design (Law No. 129/1992, Article 41).

Penalty: term of imprisonment of from six months to two years or monetary fine.

- Unlawful reproduction of the industrial design with a view to the manufacture of products of identical appearance or the manufacture, offer for sale, sale, importation, use or storage of such products for the purpose of their sale or use, without the authorization of the owner (Law No. 129/1992, Article 42).

Penalty: term of imprisonment of from six months to two years or monetary fine.

- Disclosure, by OSIM personnel and other persons doing work in connection with industrial designs, of information contained in applications for registration prior to their publication (Law No. 129/1992, Article 43).

Penalty: term of imprisonment of from three months to two years or a monetary fine.

D. Topographies of integrated circuits

- The offence of infringement (Law No. 16/1995, Article 40).

Penalty: term of imprisonment of from three months to three years or monetary fine.

E. Geographical indications

- The manufacture or circulation of products bearing false designations or indications of origin (Code of Penal Law, Article 301).

Penalty: term of imprisonment of from one month to two years or monetary fine.

- Unfair competition (Law No. 11/1991, Article 5, paragraph (b)).

Penalty: term of imprisonment of from one month to two years or monetary fine.

F. Protection of unrestricted information

- The unlawful disclosure of information by a person to whom it had been confided or who had become aware of it in the course of his profession or duties, if the act is likely to cause injury to a person (Code of Penal Law, Article 196).

Penalty: term of imprisonment of from three months to two years or monetary fine.

- The disclosure of information not intended for publicity by a person who possesses such information because of his employment, if the act is likely to cause injury (Penal Code, Article 298).

Penalty: term of imprisonment of from two to seven years.

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?

Criminal investigation is carried out by the police investigating bodies; the course of the investigation is supervised by the Government procurator. In the areas of his supervision, the procurator can carry out any act of criminal investigation (Code of Penal Procedure, Articles 207 and 209, first and second paragraphs).

The criminal investigation body acts on complaints or accusations, or it takes action on its own initiative if it discovers, by any other means, that an offence has been committed.

When, according to the law, criminal proceedings can be initiated only on a prior complaint, the investigation cannot begin in its absence (Code of Penal Procedure, Article 221, first and second paragraphs and Article 279, first paragraph).

In the following cases, criminal proceedings can be initiated only in response to a complaint by the injured party:

A. Copyright and related rights

- The offences provided for in Articles 140, 141, 142, paragraphs (a), (c), (j), (l), (n) and (o) of Law No. 8/1996 (the contents of which have been reproduced in the reply to question No. 21).

B. Patents

- The offence of infringement (Law No. 64/1991, Article 59).

C. Industrial designs

- Unlawful reproduction of the industrial design with a view to the manufacture of products of identical appearance or the manufacture, offer for sale, sale, importation, use or storage of such products for the purposes of their sale or use, without the authorization of the owner (Law No. 129/1992, Article 42).

D. Topographies of integrated circuits

- The offence of infringement (Law No. 16/1995, Article 40).

E. Protection of undisclosed information

- The unlawful disclosure of information by a person to whom it had been confided or who had become aware of it in the course of his profession or duties, if the act is likely to cause injury to a person (Code of Penal Law, Article 196).

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

Anyone may lodge a complaint against criminal proceedings, if his legitimate interests have been injured thereby (Code of Criminal Procedure, Article 275, first paragraph).

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.**

A. Copyright and related rights

A fine of from lei 200,000 to lei 10 million or a term of imprisonment that can run from one month to five years may be imposed on any person found guilty of violating the rights of another person under "Law No. 8/1996 on Copyright and Related Rights" (Articles 140 to 143, the contents of which have been reproduced above in the reply to question No. 21).

For the rules concerning the seizure, forfeiture and destruction of infringing goods and materials and implements for their production, see the reply to question No. 5 on copyright.

B. Patents

Penalties:

- Imprisonment or monetary fine for the offences provided for in Articles 58, 59 and 60 of Law No. 64/1991;
- confiscation of the infringing products (Article 59, third paragraph of Law No. 64/1991).

C. Industrial designs

Penalties:

- Imprisonment or monetary fine for the offences provided for in Articles 41, 42 and 43 of Law No. 129/1992.

D. Topographies of integrated circuits

Penalties:

- Imprisonment or monetary fine for the offences provided for in Article 40 of Law No. 16/1995;
- confiscation of the counterfeit products (Article 40, second paragraph, of Law No. 16/1995).

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 cost of the preparation of procedural documents, examination of evidence, preservation of material pieces of evidence, attorney's fees, and all other costs arising during criminal proceedings are covered by sums advanced by the State or paid by the parties (Code of Criminal Procedure, Article 189).

In the event of a conviction, the accused is responsible for paying the judicial costs advanced by the State or by the injured party (Code of Criminal Procedure, Article 191 and Article 193, first paragraph).

The actual duration and cost of the proceedings will depend on the complexity of the case, the attitude of the parties during the investigation and the criminal proceedings.

ANNEX

List of Laws and Regulations Referred to in the Replies of
Romania to the Check-List of Issues on Enforcement

1. Law No. 8 of 14 March 1996 on Copyright and Related Rights, published in the Official Gazette of Romania (*Monitorul Oficial al României*), No. 60, of 26 March 1996.²
2. Patent Law No. 64 of 11 October 1991, published in the Official Gazette of Romania (*Monitorul Oficial al României*), No. 212, of 21 October 1991, entered into force on 21 January 1992.³
3. Industrial Designs Law, published in the Official Gazette of Romania (*Monitorul Oficial al României*), No. 1, of 8 January 1993.⁴
4. Law No. 16 of 6 March 1995 on the Protection of Topographies of Integrated Circuits, published in the Official Gazette of Romania (*Monitorul Oficial al României*), No. 45, of 9 March 1995.⁵
5. Civil Code (Article 998).⁶
6. Code of Civil Procedure⁷ - the following Articles:
 - Article 1, first and third paragraphs;
 - Article 2, first paragraph, subparagraph (d), and second paragraph;
 - Article 3, second and third paragraphs;
 - Article 4, first paragraph;
 - Article 5;
 - Article 9;
 - Article 22, first paragraph;
 - Article 41;
 - Article 42;

²The text of this law will be circulated in document IP/N/1/ROM/C/1. The text has also been notified to the World Intellectual Property Organization and can be found in its collection of laws.

³The text of this Law has been circulated in document IP/N/1/ROM/P/1.

⁴The text of this Law has been circulated in document IP/N/1/ROM/D/1.

⁵The text of this Law has been circulated in document IP/N/1/ROM/L/1.

⁶The integral text of this Law, in the Romanian language, and the texts of the Articles mentioned can be consulted in the WTO Secretariat.

⁷See footnote 6.

- Article 67, first paragraph;
- Article 68, fourth paragraph;
- Article 75, first paragraph, subparagraph 2, and second paragraph;
- Article 76;
- Article 77;
- Article 81, second paragraph;
- Article 89, first paragraph;
- Article 111;
- Article 121;
- Article 129;
- Article 170, first paragraph;
- Article 172;
- Article 173;
- Article 174;
- Article 209, first paragraph;
- Article 274, first paragraph;
- Article 276;
- Article 301
- Article 331;
- Article 581;
- Article 582, first to fourth paragraphs;
- Article 598;
- Article 595;
- Article 596, first paragraph;
- Article 723.

7. The Code of Penal Law, republished in the Official Gazette of Romania (*Monitorul Oficial al României*), No. 65, of 16 April 1997 - the following Articles:⁸

- Article 118;
- Article 196;
- Article 298;
- Article 299;
- Article 300;
- Article 301.

8. Code of Criminal Procedure, republished in the Official Gazette of Romania (*Monitorul Oficial al României*), No. 78, of 30 April 1997 - the following Articles:⁹

- Article 25;
- Article 27, second and third paragraphs;
- Article 189;
- Article 191;
- Article 193, first paragraph;
- Article 207;
- Article 209, first and second paragraphs;
- Article 221, first and second paragraphs;
- Article 275, first paragraph;
- Article 279, first paragraph.

9. Law No. 11 on the Repression of Unfair Competition, published in the Official Gazette of Romania (*Monitorul Oficial al României*), No. 24, of 30 January 1991 - the following Articles:¹⁰

- Article 2;
- Article 5, first paragraph, subparagraph (b), second paragraph and third paragraph;

⁸The integral text of this Law, in the Romanian language, and the texts of the Articles mentioned, with an unofficial translation into French, can be consulted in the WTO Secretariat.

⁹See footnote 6.

¹⁰See footnote 6.

- Article 6;
- Article 10;
- Article 11.

10. Act No. 51 of 7 June 1995 on the Organization and Exercise of the Profession of Attorney, published in the Official Gazette of Romania (*Monitorul Oficial al României*), No. 116, of 9 June 1995:¹¹

- Article 7.

11. Law No. 92 of 4 August 1992 on the Organization of the Judiciary, published in the Official Gazette of Romania (*Monitorul Oficial al României*), No. 197, of 13 August 1992:¹²

- Article 93.

12. Law No. 146 of 24 July 1997 on Judicial Stamp Duty, published in the Official Gazette of Romania (*Monitorul Oficial al României*), No. 173, of 29 July 1997:¹³

- Article 1;
- Article 5;
- Article 30, second paragraph.

¹¹See footnote 6.

¹²See footnote 6.

¹³See footnote 6.