

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from Sweden

Civil and Administrative Procedures and Remedies

(a) *Civil judicial procedures and remedies*

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

The ordinary Courts (the District Courts, the Courts of Appeal and the Supreme Court) have jurisdiction over IPR infringement cases. The Stockholm District Court is the first instance in certain cases under the Copyright Act (mainly relating to broadcasting and to the determination of certain remunerations under compulsory licenses), under the Trademarks Act (concerning certain Community trademark matters) and under the Patents Act (concerning the proper title to an invention for which patent is sought, invalidation or transfer of a patent, granting of compulsory licenses, patent infringements, declaratory judgements, etc).

Decisions on registration of patents, trademarks, names and industrial designs may be appealed to the Court of Patent Appeals, from which decisions may be brought to the Supreme Administrative Court.

2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?

Basically, IPRs will have to be asserted by the right-owner or his successor in title. He may be represented by an attorney, who does not necessarily have to be a member of the Bar. Mandatory personal appearance in IPR cases is rare, at least in civil cases, where it may be called for when the party concerned is to be heard in the case or his personal appearance would otherwise be of importance. In criminal cases personal appearance may, however, be required. According to Chapter 21, Article 2 of the Code of Judicial Procedure, the suspect shall appear in person at the main hearing of the case in the District Court and in the Court of Appeal, unless the case may be decided even without him appearing personally and his presence can be assumed to be without importance for the inquiry in the case. In the proceedings in the Supreme Court the suspect has to appear personally in the main hearing only where his presence is necessary for the inquiry in the case.

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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?

Chapter 38, Article 2, of the Code of Judicial Procedure provides that anyone who possesses a document which can be assumed to be of importance as evidence has an obligation to produce that document. Such an obligation, however, does not extend to the person suspected in a criminal case or anyone related to him. Thus, where anyone has an obligation to produce a document, the Court may order him to do so. Before that order is issued, the person against whom the order will be directed, shall be given an opportunity to make any objections which he may have. The order may be issued under the penalty of a fine; if, however, this is found more feasible, the Court may order that the document should be obtained through an enforcement officer.

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

The general principle under procedural law is that proceedings in Courts and documents relating to court proceedings are open to the public/publicly available. Detailed provisions governing these matters are included principally in Chapter 5 of the Code of Judicial Procedure and Chapter 12 of the Secrecy Act (Swedish Statute Book 1980:100).

The general principle is that documents and information in Courts and public authorities are publicly available unless the Secrecy Act prescribes that, in specified and rather narrowly defined cases, the documents/information shall be kept secret. The Secrecy Act contains a great number of provisions in this respect. In this context, primarily the provisions in Chapter 9 of that Act is of interest; this Chapter contains provisions on "Secrecy with Regard to Private Persons' Economic Relations". Thus, for instance, Article 17 of that Chapter provides that secrecy applies in the proceedings in Courts as regards information concerning commercial or industrial relations of public authorities or private persons if it can be assumed that significant damage would follow for the authority/person concerned.

As regards the publicity of the hearings in Courts, the Court may in certain cases order the hearing to be held behind closed doors. This applies, for instance, when it can be assumed that matters may be presented at the hearing concerning which secrecy shall be applied at the Court under the Secrecy Act and there are extraordinary reasons for the matter not to be revealed (Chapter 5, Article 1, of the Code of Judicial Procedure). Furthermore, if secrecy shall be observed concerning information on private persons' personal and economic circumstances under the provisions in Chapter 9 of the Secrecy Act, this secrecy shall continue to be applied in the Court.

If a hearing has been held behind closed doors and if, at such a hearing, information has been revealed concerning which, under the Secrecy Act, secrecy shall be applied at the Court, the Court may order that that information shall continue to be kept secret (Chapter 12, Article 3 of the Secrecy Act). Secrecy for information in court cases consequently depends on whether the hearing has been public or not and, if it has been held behind closed doors, whether the Court has ordered continued secrecy to be applied.

As regards secrecy of information included in the judgement, an order to this effect may be issued only in special cases. One such case is if the information shall be kept secret according to an agreement with a foreign State which has been approved by the Parliament. Such secrecy may be applied to the verdict itself only in extraordinary cases when this is absolutely necessary with regard to the national security or to another interest of extraordinary character. (Chapter 12, Article 4, second paragraph, of the Secrecy Act).

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**

The remedies that may be ordered by the judicial authorities and the criteria for their use are prescribed in the various intellectual property laws, as follows.

- *Injunctions*

Article 53a of the Copyright Act
Article 37a of the Trademarks Act
Article 35a of the Design Protection Act
Article 57a of the Patents Act
Article 9a of the Semiconductor Act
Articles 11 to 13 of the Trade Secrets Act, and
Article 36a of the Plant Breeders' Protection Act

- *Damages (see also below)*

Article 54 of the Copyright Act
Articles 38 to 40 of the Trademarks Act
Article 36 of the Design Protection Act
Article 58 of the Patents Act
Article 11 of the Semiconductor Act
Articles 5 to 10 of the Trade Secrets Act, and
Article 37 of the Plant Breeders' Protection Act

- *Destruction, disposal, etc.*

Articles 55 and 56 of the Copyright Act
Article 41 of the Trademarks Act
Articles 37 to 39 of the Design Protection Act
Article 59 of the Patents Act
Article 12 to 14 of the Semiconductor Act
Article 14 of the Trade Secrets Act, and
Article 38 of the Plant Breeders' Protection Act

- *Other remedies*

For instance, Article 57a of the Copyright Act provides a criminal sanction for the removal or circumvention of devices aiming at protecting against unauthorized copying of computer programs.

Attorney's fees

The general rule in *civil cases* is, according to Chapter 18, Article 1 of the Code of Judicial Procedure, that the party losing the case shall reimburse his adversary litigation expenses, subject to provisions to the contrary. No such special "contrary" provisions exist in the field of intellectual property law. The Chapter mentioned contains a number of provisions relating to special cases, for instance in the situation when there are several parties or several claims and in the case of unnecessary litigation. The compensation for litigation expenses shall, under Article 8 of the same Chapter, fully cover the expenses for the preparation and presentation of the action, including attorney's fees, all to the extent that the expenses were reasonably incurred for the protection of the party's interest. Provisions on litigation costs in *criminal cases* are included in Chapter 31 of the Code of Judicial Procedure. The general rule is that the defendant shall, in case he is convicted, have to reimburse to the State the amount of public funds spent for his attendance at the hearing, for the preliminary investigation, for providing evidence in the case and for the defence attorney appointed by the State.

The remedies are essentially the same for all types of intellectual property laws. Therefore, only the provisions on this matter in the Copyright Act are mentioned here (with some emphasis added), on the understanding that they are basically the same for the other IPRs. The English translation of all those Acts has been notified to the World Trade Organization.

"Article 53a. At the request of the author or his successor in title or of a person who, on the basis of a license, has the right to use the work, the Court may issue an *injunction* prohibiting, under penalty of a fine, a person who commits an act implying an infringement of, or a violation referred to in, Article 53 to continue that act.

If the plaintiff shows a probable cause that an act implying an infringement or a violation as referred to in Article 53 takes place and if it can reasonably be expected that the defendant, through the continuation of the act, diminishes the value that the copyright confers, the Court may issue an injunction for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be issued before the defendant has been given an opportunity to respond, unless a delay would entail a risk for damage.

An injunction as mentioned in the second paragraph may be issued only if the plaintiff deposits a security with the Court for the damage which may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the Court may liberate him from making such a deposit. As regards the type of security, the provisions of Chapter 2, Article 25, of the Code on Enforcement shall apply. The security shall be examined by the Court unless the defendant has accepted it.

When the case is adjudicated, the Court shall decide whether a prohibition issued under the second paragraph shall continue to apply.

The provisions on appeal against decisions in Chapter 15 of the Code of Judicial Procedure shall apply as regards appeals against decisions under the second and third paragraphs and as regards the proceedings in higher Courts.

A request for the imposition of a fine may be made by the person who has requested the injunction. In connection with such an imposition, a request may be made for a new injunction to be issued under penalty of a fine.

As regards the contents of wireless broadcasts and broadcasts by wire, the provisions of the Radio Act (1966:755) apply.

Article 54. Anyone who exploits a work in violation of this Act or of directions given under Article 41, second paragraph, shall pay such a *compensation* to the author or copyright owner as will constitute a reasonable remuneration for the exploitation.

In the case of an exploitation carried out wilfully or with gross negligence, a compensation shall be paid also for losses other than lost remuneration as well as for mental suffering and for other injury.

Anyone who otherwise wilfully or with negligence commits an act involving an infringement or a violation under Article 53, shall pay to the author or his successor in title a compensation for losses, mental suffering or other injury caused by the act.

Article 55. Anyone who commits an act involving an infringement or a violation under Article 53 shall, if so is considered reasonable, *surrender to the author* or his successor in title, for a compensation, *the property involved in the infringement* or the violation. The same shall apply to type matter, printing blocks, moulds or other similar devices which can be used only for the production of property of the kind now mentioned.

Instead of issuing an order for surrender as prescribed in the first paragraph, the Court may, at the request of the author or his successor in title, in accordance with what is considered reasonable, order that such property shall be destroyed or altered in specific ways or that other measures shall be taken to prevent unauthorized use. Such a request may be made also by a public prosecutor, if so is considered desirable from the point of view of public interest. Orders as mentioned in this paragraph shall not be issued if surrender or measures for the prevention of unauthorized use are to be decided under the Criminal Code.

The provisions of the first and the third paragraphs shall not apply in respect of persons who have in good faith acquired the property or a right in it, nor in cases involving the construction of a work of architecture.

If property other than such mentioned in the first paragraph has been used for such manufacturing of copies of works which is a criminal violation under this Act, the property or its value may be ordered to be surrendered if such a measure is considered necessary to prevent criminal violations or there are otherwise special reasons for such an order. This shall apply also in relation to property which has been used in connection with attempts to commit violations as mentioned here or which form part of the planning of such violations.

Article 56. Notwithstanding the provisions of Article 55, the Court may, if it so considers reasonable in view of the artistic or economic value of the copies of a work or of other circumstances, upon a request to that effect, decide that the copies, against the payment of a specific remuneration to the author or his successor in title, be made available to the public or otherwise used for their intended purpose."

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

There are no legislative provisions aiming specifically at obliging an infringer to inform the right holder of the identity of persons involved in the production and distribution of infringing goods or services or their channels of distribution. Indirectly, however, such information may be obtained

through an order - as mentioned in relation to item 3 - to produce documents in the possession of the infringer.

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 Chapter 9, Article 1, of the Code of Judicial Procedure a party which, in bad faith, commences, or causes the commencement of, a civil action shall be punished by fines. In such a case also compensation for damages may be awarded. Furthermore, according to Chapter 3, Article 2, of the Act on Compensation of Damages, the State or any Municipality shall pay a compensation for injury to persons or objects, and pure economic injury, caused through wrongdoing or negligence in the carrying out of official duties in the course of activities for which the State or the Municipality is responsible.

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

In civil cases the proceedings in Court generally start with one or more preliminary hearings, at which also the case may be decided if the circumstances are clear enough. There is even a possibility that the preliminary hearing, under certain conditions, may be conducted over the telephone. If a civil case is not decided at the preliminary stage it shall be brought to a main hearing. The general rule under procedural law is (according to the "principle of concentration") that the main hearing in any criminal or civil case shall continue without interruption until the case is ready for final disposition by the Court. A continuation of the main hearing may take place within fifteen days; where this period is longer a full new main hearing must be held.

As mentioned above, the main rule as regards the costs in civil proceedings, according to Chapter 18, Article 1, of the Code of Judicial Procedure, is that the party who loses his case shall reimburse his adversary for litigation expenses subject to provisions to the contrary. No such special "contrary" provisions exist in the field of intellectual property law. The Chapter contains a number of provisions relating to special cases, for instance for the situation when there are several parties or several claims or in the case of unnecessary litigation. The compensation for litigation expenses shall, under Article 8 of the same Chapter, fully cover the expenses for the preparation and presentation of the action, including attorney's fees, all to the extent that the expenses were reasonably incurred for the protection of the party's interest.

It is not possible to indicate data concerning the actual duration of intellectual property cases as the circumstances differ considerably, nor is it possible for the Ministry of Justice to give any indications of the actual costs incurred.

(b) Administrative procedures and remedies

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

There are no administrative procedures applicable as to remedies in the case of intellectual property infringements. They are dealt with exclusively by the Courts of law.

Provisional Measures

(a) *Judicial measures*

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

Provisions on provisional measures in the form of *interlocutory injunctions* exist as regards infringements in copyright/neighbouring Rights (Article 53a, second and following paragraphs, of the Copyright Act), trademarks (Article 37a, second and following paragraphs of the Trademarks Act), patents (Article 58, second and following paragraphs, of the Patents Act), semiconductor integrated circuits (Article 11, second and following paragraphs, of the Semiconductor Act), trade secrets (Article 13 of the Trade Secrets Act) and the protection of plant varieties (Article 36a of the Plant Breeders' Protection Act). Those provisions have all the same main structure. As an example is shown here the relevant provision (Article 53a of the Copyright Act), which reads:

"If the plaintiff shows a probable cause that an act implying an infringement or a violation as referred to in Article 53 takes place and if it can reasonably be expected that the defendant, through the continuation of the act, diminishes the value that the copyright confers, the Court may issue an injunction for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be issued before the defendant has been given an opportunity to respond, unless a delay would entail a risk for damage.

An injunction as mentioned in the second paragraph may be issued only if the plaintiff deposits a security with the Court for the damage which may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the Court may liberate him from making such a deposit. As regards the type of security, the provisions of Chapter 2, Article 25, of the Code of Enforcement shall apply. The security shall be examined by the Court unless the defendant has accepted it.

When the case is adjudicated, the Court shall decide whether a prohibition issued under the second paragraph shall continue to apply.

The provisions on appeal against decisions in Chapter 15 of the Code of Judicial Procedure shall apply as regards appeals against decisions under the second and third paragraphs and as regards the proceedings in higher Courts."

In addition to those special provisional measures mentioned directly in the respective intellectual property codes, there are general provisions on provisional measures in the Code of Judicial Procedure which apply not only to intellectual property cases but more generally, some in civil cases and other in criminal cases.

As far as *general provisional measures in civil cases* are concerned, the provisions relevant in the present context are contained in Chapter 15 of the Code of Judicial Procedure.

Article 1 of this Chapter contains the general provision on provisional attachment of property. It reads: "Where someone shows a probable case that he has a claim which is, or may be assumed to be, the subject of a court trial or of an examination in another similar way, and it can reasonably be assumed that the adverse party will evade the payment of the debt through absconding, removal of property or otherwise, the Court may order a provisional attachment of the adverse party's property to such an extent that the claim can presumably be covered in an act of legal execution". Those provisions are complemented by the provisions of Article 3, the first paragraph, which states: "Where

someone shows a probable case that he, in situations other than those referred to in Article 1....., has a claim against someone else which is or may be assumed to be the subject of a court trial or of an examination in another similar way, and it can reasonably be assumed that the adverse party through the continuation of a certain activity, or the undertaking, or the refraining from, a certain act prevents or renders difficult the exercise of the applicant's right or substantially diminishes his right, the Court may order appropriate measures to safeguard the applicant's right". According to the second paragraph "(M)asures under the first paragraph may include a prohibition, on penalty of a fine, to exercise a certain activity or perform a certain act or another order, on penalty of a fine, to take into account the applicant's claim or the appointment of a custodian or the ordering of a measure which otherwise is of a nature as to prevent an infringement of the applicant's rights".

Measures indicated here are ordered by the Courts of law. In principle, such measures shall, according to Chapter 15, Article 5, third paragraph, be undertaken only after the adverse party has been given an opportunity to respond to the request. If, however, a delay would entail a risk, the Court may issue an order immediately to apply until otherwise ordered.

The issuing of an order presupposes, according to Chapter 15, Article 6, in principle, that the applicant deposits with the Court a security for the damage that may be caused to the adverse party. Where the applicant is not able to provide such a security and he has shown extraordinary merits for his claim, the Court may liberate him from making such a deposit. The State, municipalities, county municipalities and municipality associations do not have to make a deposit. Chapter 2, Article 25, of the Code of Enforcement, applies to the character of the security. The Court shall examine the security, unless it has been approved by the adverse party.

When a Court orders a measure mentioned above and the applicant has not instituted a proceeding, he shall, according to Chapter 15, Article 7, institute, within one month from the order, a proceeding in Court or, where the claim shall be examined in another way, apply what is provided in this respect. If a proceeding is not instituted according to these provisions, the measure shall immediately cease to apply.

Furthermore, according to Chapter 15, Article 8, the measure shall immediately be terminated where an adequate security has been deposited or there is otherwise no longer a reason for the measure. The measure shall also be invalidated where the action which has been instituted in the case is withdrawn or shall be considered as abandoned. When the case is under consideration by a Court and the case is adjudicated, the Court shall consider whether the measure shall continue to be valid. The Court may also, in connection with the judgement, order a measure as now indicated.

Provisions on *provisional measures and security measures in criminal cases* are contained in Chapters 24 (on detention and arrest), 25 (on travel prohibition and obligation to report to police authorities), 26 (on provisional attachment), 27 (on seizure and lawful interception of telecommunications), and 28 (on search of premises and search and examination of persons). It is not possible to indicate here the criteria for all the different situations when the application of those measures may be invoked. It should be mentioned, however, that detention under Chapter 24 may, on certain conditions, be ordered for offences for which the penalty may be imprisonment for one year or more. As IPR offences may result in imprisonment for up to two years, detention may be ordered in such cases.

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

As can be seen from the description above, certain measures may be taken without hearing the other party if a delay would entail a risk (for the other party's interests); in such a case the Court may issue an order immediately to apply until otherwise ordered.

- 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.**

The main procedures for the initiation, ordering and maintenance of the measures, and the safeguards, are indicated in connection with item 10 above. As mentioned there, a general condition for a provisional measure is that the applicant institutes a proceeding in Court within one month, failing which the measure will be terminated. As regards appropriate safeguards, reference is made to what is said in connection with item 10 on the contents of Chapter 15, Article 6, concerning the deposit of a security.

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

There are no specific provisions on the length and cost of proceedings in IPR cases; in this respect reference is made to what is said above in relation to item 8.

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

Reference is made to the reply to item 9. These matters are dealt with by the Courts of law.

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?**

Sweden applies the European Union Council Regulation No. 3295/94 of 22 December 1995, as further implemented by the Act on Customs Control of Trademark Infringements of 15 December 1994, as later amended. The suspension of the release, etc., by the customs authorities applies only to counterfeit trademark or pirated copyright goods, including goods protected under design law. It does not apply to other infringements of intellectual property law. The actions by the customs authorities apply also to the export or re-export of goods which have been imported into the European Community from third countries. From the application of these procedures are exempted goods which are imported from third countries within the limits established for duty-free import. Also, the procedures do not apply to, for instance, cases where goods bear the trademark with the consent of the trademark owner or which are protected under copyright, neighbouring rights or a design right but which have, without the consent of the right-owner, been included in a situation which would make them counterfeit or copyright pirated goods under the Regulation. The provisions on the actions to be taken by the customs authorities in relation to counterfeit and pirated goods apply only in the relations between the European Community and third countries and not in relations between Sweden and other members of the European Union or the European Economic Area.

- 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 essential elements of the provisions is that a right-owner may apply in writing to the customs authorities for an action against the import of counterfeit or pirated goods. The application shall contain a sufficiently detailed description of the goods and evidence that the applicant is actually the right-owner in relation to the goods. Following an examination of the application, the customs authority may suspend the release of the goods or retain them. Where the relevant customs authority has not within ten days from the application been informed about the fact that the matter has been referred to the competent authority, the goods shall be released; this period may, however, where necessary, be extended by not more than ten days. The customs authorities may request the applicant to provide a security in order to guarantee his obligations towards the persons affected by the action and the payment of the costs for the keeping of the goods by the customs authorities. The owner, importer or receiver may request the release of the goods, against providing a security in order to protect the interests of the right-owner. The customs authority shall, at the request of the right-owner, inform him about the person who has submitted the customs declaration and about the receiver, if he is known. Also, the authority shall give the right-owner and other persons who are affected by any of the actions taken, a possibility to inspect the goods.

- 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 provisions on the length of the proceedings, in particular the time-limit for suspension of the release or the retention (10 days with a possibility for an additional 10 days) have been indicated above. There is no data available as regards the costs of such proceedings. The Government has the authority to prescribe a fee for any application as referred to above.

- 18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?**

Where the customs authority, in the course of regular checks of imported goods, finds that goods, finds that goods are actually counterfeited or pirated, it may retain the goods for a period of three days and inform the right-owner in order to make it possible for him to file an application as mentioned above. Otherwise, the customs authorities may act only upon application and not *ex officio*.

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

The remedies available include, in particular, that counterfeit or pirated goods, without prejudice to other remedies available for the right-owners, be destroyed by the customs authorities or otherwise placed outside commercial channels without compensation and without any costs for the State and that, with regard to those goods, every other measure be undertaken to deprive effectively persons concerned of the economic benefits of their activities. As such measures shall not be considered re-export of the goods in unaltered condition, the removal of the trademark (except in extraordinary cases) and that the goods be transferred to another customs procedure.

Criminal Procedures

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

The ordinary courts have jurisdiction over criminal acts of infringement of intellectual property rights. In certain special cases under the Copyright Act and the Trademark Act the competence is concentrated to the Stockholm District Court (see above reply in relation to item 1).

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

Criminal procedures and remedies in IPR cases are generally available as regards infringements conducted wilfully or with gross negligence. Criminal liability may lie both with the main perpetrator of the act and with anyone who has contributed to the act. Also, attempts to commit such acts and the planning of them are, under certain conditions, punishable according to the provisions of Chapter 23 of the Criminal Code.

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?

Public prosecutors are responsible for initiating criminal procedures. A prerequisite is that there is a complaint from the injured party. As regards copyright/neighbouring rights infringements, the public prosecutors are entitled to bring a criminal action also without complaint, if this is called for in the public interest. As regards other intellectual property law infringements, actions may be taken by prosecutors only if there is a complaint from the injured party and an action is called for in the public interest. If the prerequisites are met, the prosecutors have a duty to bring an action (provided, of course, that they consider that there is a reasonable possibility for a conviction).

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

A private person has, according to Chapter 20, Article 8, of the Code of Judicial Procedure, a standing to initiate a criminal proceeding in the domain of public prosecution (that is, also in the case of infringements of intellectual property rights), if he has brought a complaint and the public prosecutor had decided not to bring any action. Furthermore, if a public prosecutor has initiated an action, the injured party has a right to join the criminal action and to appeal a lower court's decision to a higher court.

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.**

The criminal remedies available are basically the same in respect of all intellectual property rights and include fines or imprisonment for up to two years for acts committed wilfully or with gross negligence. As far as fines are concerned, those are usually determined in so-called "day-fines". This

means that the fine consists of a certain number of individual fines. The number of fines is between 30 and 150 Swedish Crowns and is determined by the severity of the offence. Then the size of each fine is determined to a certain amount, between 30 and 1,000 Swedish Crowns (one Swiss Franc corresponds presently to about 5.50 Swedish Crowns), depending on the economic circumstances of the convicted person.

Also the provisions on seizure, forfeiture or destruction of materials and implements for their production are basically the same as regards all intellectual property rights. They have been described in the context of item 5.

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.

Reference is made to the reply to item 13. Situations may differ widely between individual cases.