

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from Ukraine

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedures and remedies

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

Under the existing legislation of Ukraine, cases involving violation of intellectual property rights are tried by civil, commercial and administrative courts.

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?

Persons who have the right to carry out measures aimed to protect intellectual property rights, include, first of all, holders of these rights, their representatives, government authorities acting within the limits of their competence, as well as non-government bodies and organizations, whose activities concern the issue in question.

Under the existing legislation of Ukraine, representation may be carried out on the basis of the power of attorney issued by the holder of the rights.

Appearance of a right holder in court in case of the presence of his representative under the legislation of Ukraine is not mandatory.

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 that lies within its control?

Under Article 69 of the Code of Administrative Judicial Proceedings of Ukraine, a court may offer to provide additional evidence, or demand to produce additional proof, based on a plea of persons taking part in the case, or on one's own initiative. A person who submits a plea to a court to demand other persons to produce written evidence, shall be required to specify the following: what written proof is sought, an agency or person in possession of this proof, as well as circumstances which can be verified by this proof. Demands to produce material evidence shall be issued under procedures established for demands to present written evidence.

Under Article 137 of the Code of Civil Proceedings of Ukraine, in cases where collection of evidence from the parties and other persons taking part in the case is complicated, the court, based on the plea of these persons, will be required to demand submission of such evidence. A statement

¹ Document IP/C/5.

demanding a proof is to specify what evidence is needed, circumstances which make the person believe that the evidence is held by the other person, circumstances which can be confirmed by this evidence. Evidence demanded by a court shall be directly submitted to the court. A court may also authorize a person concerned, who takes part in the case, to obtain evidence and to present it to the court. Persons who are unable to submit evidence demanded by the court, in principle or within the period set by the court, shall be required to inform the court about it and specify the reasons within five days following the day of receipt of the ruling. For failing to notify a court of inability to produce evidence, as well as for failing to submit proof, in particular for reasons considered by the court unsubstantial, guilty persons shall be held responsible in accordance with legislation. Holding the guilty persons responsible does not relieve them from the duty to submit evidence to the court. Based on a request of a party, the court shall inform during the court session that its requirements to produce evidence have been met.

Under Article 38 of the Commercial procedural Code of Ukraine, if evidence submitted by the parties is insufficient, the commercial court is required to demand enterprises and organizations, regardless of their involvement in the case, documents and materials which are needed to settle the dispute. A commercial court has the right to look at the evidence directly at the place where it is located. A commercial court may also demand evidence prior to the filing of a claim as a preventative measure under procedure established by this Code. A party or a prosecutor who initiates a request for the commercial court to demand evidence, is required to specify in detail what proof is required, circumstances which lead them to believe that this evidence is held by the enterprise or organization, and circumstances which can be confirmed by the evidence in question.

A commercial court may authorize a concerned party to obtain such proofs. A person who has reasons to believe that the submission of the needed proof may later become difficult or impossible, as well as reasons to believe that his/her rights have been infringed or that there is a serious threat of such an infringement, has the right to address a commercial court with a statement requesting application of preventative measures prior to the filing of the claim. Preventative measures include, in particular, demands to produce evidence (Article 43 of this Code).

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

Under Article 505 of the Civil Code of Ukraine, commercial secret is information that is secret in a sense that as a whole or in a particular form and combination of its components it is unknown and is not easily accessible for people who normally deal with the kind of information to which it belongs, and therefore it has a commercial value and has been subject to adequate to the existing circumstances measures aimed at preserving its secrecy, which were implemented by a person who legitimately controls this information.

Under Article 44 of the Commercial Procedural Code of Ukraine, trial of cases in commercial courts is open, except for cases where it would contradict requirements concerning protection of the State, commercial or bank secrets, or when the parties or one of the parties justifiably demand a confidential trial of the case and have submitted a necessary plea prior to the beginning of the consideration of the case in principle. A special decision must be made granting a close trial, or rejecting a request to grant such a trial.

Under Article 12 of the Code of Administrative Judicial Proceedings of Ukraine every person has the right to have access, under a procedure established by the legislation, to judicial decisions concerning any case tried in an open court session, and provided such decisions have taken effect. This right may be limited in accordance with applicable legislation to ensure non-disclosure of confidential information concerning a person, State or other secret protected by law.

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.**

Under Article 432 of the Civil Code of Ukraine, a court in cases and in accordance with procedures established by law, may pass a decision, in particular, concerning:

- application of urgent measures to prevent violations of intellectual property rights and to preserve necessary evidence;
- termination of passage through the customs border of Ukraine of goods, importation or exportation of which is carried out in violation of intellectual property rights;
- seizing from the civil circulation of the goods produced or put into civil circulation in violation of the intellectual property right, and destruction of such goods;
- seizing from the civil circulation of materials and tools used predominantly for production of the goods in violation of the intellectual property right, or seizing and destroying such materials and tools;
- application of a one-time monetary fine instead of a compensation for losses due to unlawful use of an object of the intellectual property right. The amount of the fine shall be determined in accordance with applicable legislation and taking into account the responsibility of the person and other circumstances of principal significance;
- publication in mass media of the information and data relating to the violation of the intellectual property right and the substance of the judicial decision concerning this violation.

As regards compensations for damages and other ways of compensation for material injury, under Article 22 of this Code a person who has incurred damages as a result of a violation of civil rights of this person, has the right to compensation for these damages.

Damages are:

- losses incurred by a person in connection with destruction or damage of an item, as well as expenses that the person has incurred or has to make to restore one's violated right (actual losses);
- incomes that a person would have received under normal circumstances, were the rights of this person not violated (lost benefits).

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 of services found to be infringing and of their channels of distribution?

Under the Law of Ukraine "On the copyright and related rights", in case of violations by any person of a copyright and (or) related rights, right holders have the right to demand that persons violating the copyright and (or) related rights of the claimant provide information concerning third persons involved in production and distribution of counterfeit copies of the creations and objects of related rights, as well as information concerning means of bypassing the technical means of protection and concerning distribution channels.

Circumstances under which judicial bodies have the authority to order the offender to inform the right holder of the third parties, which are involved in production and distribution of goods or services, which are considered counterfeit, and of the channels of their distribution, are not separately specified by the legislation of Ukraine regulating judicial procedures.

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?

Under Article 1174 of the Civil Code of Ukraine an injury caused to a natural or legal person by unlawful decisions, actions or omissions of an official or a serviceman of a government authority, government bodies of the Autonomous Republic of Crimea or bodies of local self-government in the course of duty, shall be remedied by the State, the Autonomous Republic of Crimea or a body of local self-government regardless of the guilt of this person.

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

All procedural issues relating to their duration and costs are specified by applicable procedural Codes of Ukraine and other regulatory-legal acts.

(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.

- Consideration of issues involving offences of intellectual property rights (hereinafter referred to as IPRs) is the responsibility of the bodies of the Ministry of Internal Affairs, the State Security Service, the State Customs Service, tax bodies, State inspectors for issues of intellectual property of the State Department of Intellectual Property of the Ministry of Education and Science of Ukraine (hereinafter referred to as the State inspectors), etc. All these government bodies have their powers specified by laws within their competence. Protection of IPRs is also carried out by courts of general jurisdiction and by the commercial courts of Ukraine.

- Holders of a copyright and related rights, owners of patents and other objects of industrial property rights have the right to appeal, in person or through the authorized individuals and under the established procedure, to courts (other bodies) for protection of their rights.

- Law enforcement or controlling bodies within the limits of one's competence have the right to demand and receive from offenders of IPRs necessary evidence, documents, samples, etc.

- When conducting inspections the law enforcement and controlling bodies do not have the right to use the obtained confidential information for any purposes except those specified by law, in particular, to pass the obtained confidential information to other persons. These provisions are provided for by the legislation of Ukraine.

- The State department has the right to apply relevant prohibitive orders and impose on business entities financial sanctions in the form of fines for violation of requirements of applicable legislation.

Destruction of counterfeit disks, equipment and raw materials used for production of such disks is provided for under the Criminal Code of Ukraine.

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.**

Answers to questions 10 to 12 above:

The Code of Civil Proceedings of Ukraine and Commercial Procedure Code of Ukraine contain provisions that concern preventative measures, which may be implemented prior to the filing of a claim based on the court ruling.

Thus, provisions of the Code of Civil Proceedings of Ukraine specify grounds for securing of a claim. In particular, under Article 151 of this Code, a court, based on a request of the persons taking part in the case, may take measures securing a claim. An application for measures securing a claim must specify:

- reasons, in connection with it are necessary to secure a claim;
- type of security of a claim that needs be applied, fully justified;
- other information needed to secure a claim.

Securing a claim is allowed at any stage of consideration of a case, provided that non-application of claim security measures may complicate or make impossible to implement a decision of a court.

Based on request by a person concerned, a court may secure a claim prior to the submission of a claim application to prevent a violation of the intellectual property right. A request to secure a claim must be accompanied by documents and other evidence, which should verify that a particular person in question is the subject of the intellectual property right in question and that his/her rights may be infringed upon in the case of a failure to apply measures aimed to secure a claim. Along with the request, its copies must be submitted in accordance with the number of the persons with respect to which the measures to secure a claim are requested.

In the event of submission of a request/application to secure a claim prior to the submission of a claim application/statement, a claimant is required to submit a relevant claim application within ten days following the day of issuance of a ruling to secure the claim.

Article 152 of this Code specifies categories of securing a claim and a list of objects to which measures to ensure a claim may not be applied. A claim shall be secured:

- by levying on the property or monetary assets that belong to the respondent and are in possession of the respondent or other persons;
- by prohibition to carry out certain actions;
- by establishing an obligation to carry out particular actions;
- by prohibiting other persons to make payments or transfer property to the respondent or to fulfil other obligations relating to the property in question;
- by terminating the selling of the levied property, if a claim to the ownership right to this property or a request to exclude it from the levy was filed;
- by terminating the seizing on the basis of the executive document which is appealed by the debtor in court;
- by transferring an article which is an object of a dispute for safekeeping to other persons.

In the event of necessity the court may apply other types of securing a claim. A court may use several types of securing a claim at the same time.

It shall not be allowed to secure a claim by way of imposing a levy on wages, pensions or stipends, general government mandatory social security benefits, which are paid in connection with temporary disability (including care of a sick child), pregnancy and baby delivery, care for a child until the child is three years of age, benefits paid by mutual security associations, by charitable organizations, as well as to severance pay or unemployment benefits. This requirement does not apply to a claim to collect alimony, concerning compensation for a damage caused by disability, other injuries to health or death of a natural person, compensation of losses caused by a crime.

Article 153 of this Code sets forth a procedure for consideration of the application requesting to secure a claim, implementation of a ruling to secure a claim. An application requesting to secure a claim shall be considered by the court which administers the case, on the day of its receipt without notifying the respondent and other persons taking part in the case.

An application requesting to secure a claim, filed prior to the submission of a claim application/statement, shall be considered by the court not later than two days following the day of its submission. In the event of substantiated requirements of the claimant the application to secure a claim, filed prior to the submission of a claim statement, shall be considered only in his presence without notifying a person with respect to which measures to secure the claim are requested.

A court, considering an application requesting to secure a claim, filed prior to the submission of a claim statement, may demand from the claimant to submit additional documents and other evidence supporting the need to secure a claim.

A court, when allowing for securing a claim, may demand from the claimant to support the demands of the latter with a security deposit sufficient to prevent abuse of securing a claim, which must be transferred to a deposit account of the court. The amount of the security shall be specified by the court taking into account the circumstances of the case, but this amount may not be larger than the amount of the claim.

A court issues a ruling regarding application of measures to secure a claim, in which it shall specify the type of securing the claim and circumstances of the choice, a procedure for implementation, amount of the security deposit, if such a deposit was ordered. A copy of the ruling shall be sent to the claimant and interested persons immediately after its implementation.

Depending on the circumstances of the case, a court may secure a claim in full or in part.

In the event of issuance of a ruling without notifying a person concerning whom measures securing a claim are requested, a copy of the ruling shall be sent to the person with respect to whom measures securing a claim were taken, immediately after the implementation.

A court, having established that an application requesting to secure a claim was filed in violation of requirements of Article 151 of this Code, shall return it to the claimant, issuing a ruling to that effect.

A ruling to secure a claim shall be implemented immediately in accordance with procedures established for implementation of court decisions. In the event of supporting demands of the claimant with a security, the ruling to secure a claim shall be implemented immediately after the security deposit is provided in full.

Appealing of the ruling to secure a claim shall not terminate its implementation, and shall not prevent further consideration of the case.

Appealing the ruling to cancel securing a claim or to replace one type of security with another will lead to suspension of implementation of this ruling.

Individuals responsible for violation of measures to secure a claim shall be held responsible in accordance with legislation.

Article 154 of this Code sets forth a procedure for changing ways of securing a claim or cancelling measures to secure a claim. A court may, based on the request of one of the parties and taking into consideration explanations of another party, to change one method of securing a claim to another. An application requesting a change in the way of securing a claim shall be considered by the court within the period specified by Article 153 of this Code. To change the type of securing a claim based on the request of the respondent, consent of the claimant shall be required, except for the case specified in part two of this Article.

In the event a claim is secured to seize monetary assets, the respondent may, upon permission of the court, deposit the amount specified in the claim statement, instead of the allowed type of security, to a deposit account of the court.

Measures to secure a claim may be repealed by the court administering the case.

A person with respect to whom measures to secure a claim were applied without notification of this person, within ten days after the day of receipt of the copy of the ruling may submit to the court an application requesting their cancellation, which shall be considered by the court within two days.

The issue of termination of measures securing a claim shall be considered at a court session and with notification of the persons taking part in the case. Absence of such persons shall not prevent consideration of the issue of measures to secure a claim.

If a claim was rejected, proceedings in the case closed or the application left without further consideration, the measures applied to secure a claim shall be effective until the decision of the court takes effect. However, the court may simultaneously with passing the court decision or after it, issue a ruling concerning revocation of measures securing a claim.

Measures securing a claim, applied by the court prior to the submission of a claim statement, shall be also cancelled by the court in the event of:

- the claimant failing to submit a relevant claim application in accordance with requirements of Article 151 of this Code;
- returning of a claim statement;
- refusal to initiate proceedings in the case.

Article 155 of this Code sets forth a procedure for compensation for losses, caused by securing a claim, and for returning the item held as security. In the event of revocation of measures securing a claim, taking an effect of the decision to reject a claim or passage of a ruling to close proceedings in the case or to leave the application without consideration, a person with respect to whom measures securing a claim were taken, has the right to a compensation for losses caused by the securing of the claim.

In the case of the claimant's providing a security, the compensation for losses caused by the securing of the claim shall be covered, first of all, at the expense of the item provided as security.

An item provided as security shall be returned to the claimant if no claim to compensate for losses is filed within two months after occurrence of circumstances specified in part one of this Article. An item provided as security shall also be returned to the claimant if a decision of a court to satisfy a claim took effect, or if the parties have settled the case.

The Commercial Procedural Code of Ukraine contains the following provisions concerning application of preventative measures:

Article 43¹ - Grounds for application of preventative measures

A person who has reasons to be concerned that submission of necessary evidence may later become complicated or impossible, as well as reasons to believe that the rights of this person are infringed upon or that there is a real threat of such infringement, has the right to file with a commercial court an application requesting application of preventative measures prior to the submission of the claim.

Article 43² - Categories of preventative measures

Preventative measures include:

- demands to produce evidence;

- examination of premises in which activities relating to violation of the rights are taking place;
- levying on the property that belongs to a person with respect to whom preventative measures have been taken, and is in possession of that person or of other persons.

Article 43³ - An application requesting application of preventative measures

An application requesting application of preventative measures shall specify:

- the name of the commercial court to which the application has been filed;
- the name of the claimant and the person with respect to whom preventative measures are requested, their postal addresses; documents that verify that the claimant has the status of the small business person;
- type and substance of the preventative measure;
- circumstances which the claimant refers to when substantiating the need to apply preventative measures;
- a list of documents and other proofs attached to the application;
- signature of the claimant or his representative, if the application is submitted by the representative.

An application requesting application of preventative measures shall have attached to it the documents which verify payment of the state duty in the amounts specified by law and in accordance with the established procedure. Together with the application for preventative measures there shall be filed the copies of this application proportionate to the number of persons with respect to which preventative measures are requested.

A claimant is required to submit a relevant claim during ten days following the day of issue of the ruling concerning application of preventative measures. After the submission by the claimant of the claim statement, preventative measures shall apply as measures to secure the claim.

Article 43⁴ - Procedure for consideration of an application requesting application of preventative measures

An application requesting application of preventative measures shall be considered not later than two days following the day its submission by the commercial court in the area of jurisdiction of which necessary proceedings shall be carried out, with notification of interested persons. However, failure to appear in court does not prevent consideration of the application.

In the event of substantiated demands of a claimant, an application requesting application of preventative measures shall be considered only on the basis of his/her participation without notifying a person with respect to which application of preventative measures is requested.

A commercial court has the right to demand the claimant to add to the application any available proof of violation or threat of violation of his/her rights.

A commercial court may require a claimant to secure his claims by the collateral sufficient to prevent abuse of preventative measures, which need be deposited with the commercial court. The amount of the collateral shall be specified by the commercial court taking into account the circumstances of the case and may not be greater than the size of the claimed damage.

As regards application of preventative measures, the commercial court shall issue a ruling specifying selected preventative measures, grounds for choosing such measures, a procedure and ways of implementation, amount of the collateral, if such collateral was ordered. Copies of the ruling shall be sent to the claimant and to the person with respect to whom preventative measures have been applied, immediately after its issue. In the event of the issue of the ruling with participation of the claimant without notifying the person with respect to whom application of preventative measures is requested, a copy of the ruling shall be sent to the person with respect to whom preventative measures are taken, immediately after its implementation.

In the event of absence of the grounds specified by Article 43¹ of this Code, as well as a failure to meet requirements established by this Article, the commercial court shall issue a ruling denying satisfaction of the application requesting application of preventative measures.

Article 43⁵ - Effects of submission of a request concerning application of preventative measures which does not meet the requirements of the law

A judge, having established that the application requesting preventative measures has been submitted in violation of requirements specified in Article 43³ of this Code, or that the State duty has not been paid, shall issue a ruling to deny the application further consideration, which must be notified to the claimant, who is then also given a period of time to eliminate deficiencies.

When a claimant in accordance with instructions of the judge within the established period fails to meet all of the specified requirements in Article 43³ of this Code and fails to pay the State duty, the application shall be considered as if it had not been submitted, and then it shall be returned to the claimant, based on the justified ruling to that effect issued by the judge.

Article 43⁶ - Implementation of the ruling concerning application of preventative measures

The ruling concerning application of preventative measures shall be implemented immediately in accordance with procedures established for implementation of judicial decisions.

In the event of supporting demands of a claimant by the collateral, the ruling concerning application of preventative measures shall be implemented immediately after the collateral is submitted in full.

Article 43⁷ - Revocation of the ruling concerning application of preventative measures

Regarding a ruling concerning application of preventative measures, issued with participation of the claimant without notifying the person with respect to whom preventative measures are applied, the latter, within ten days following the day of the receipt of a copy of the ruling, may submit an application requesting its revocation.

Submission of an application concerning revocation of the ruling concerning application of preventative measures shall not lead to termination of implementation of the ruling concerning application of preventative measures.

An application concerning revocation of application of preventative measures shall be considered within three days by the commercial court which issued the ruling concerning their application. Failure of the interested persons to appear in court shall not prevent consideration of the application.

Based on the results of the consideration of an application, the commercial court shall issue a ruling to leave unchanged the ruling concerning application of preventative measures, or to change or repeal it.

Article 43⁸ - Appealing rulings concerning application of preventative measures

With respect to the ruling concerning application of preventative measures, a ruling to reject an application requesting preventative measures, as well as with respect to the ruling to leave unchanged the ruling concerning application of preventative measures or its change or cancellation, an appeal/complaint may be filed.

Submission of an appeal against a ruling on application of preventative measures shall not lead to termination of implementation of the ruling in question. Submission of an appeal complaint against a ruling concerning revocation of preventative measures or their change shall terminate implementation of the ruling in question.

Article 43⁹ - Termination of preventative measures

Preventative measures shall be terminated in the event of:

- claimant's failure to submit a relevant claim within the period specified in part three of Article 43³ of this Code;
- refusal of the commercial court to accept a claim application for reasons specified in part one of Article 62 of this Code;
- claimant's failure to meet the requirements specified by Article 63 of this Code;
- issuance by the commercial court of the ruling concerning revocation of the ruling concerning application of preventative measures.

Article 43¹⁰ - Compensation for the damage caused by the application of preventative measures

In the event of termination of preventative measures or in case of the claimant's withdrawing his claim, or if a decision concerning rejection of the claim takes effect, the person concerning whom preventative measures have been taken has the right to a compensation for the damage caused by the application of these measures.

In the event of claimant's submitting collateral, compensation for the damage caused by the application of preventative measures, first of all, shall be carried out at the expense of this pledge.

Collaterals shall be returned to a claimant in full if the commercial court satisfies a claim of the claimant, or if the respondent has admitted the claim, or if the commercial court has approved the settlement between the parties.

Besides, this Code contains provisions concerning the securing of a claim (Section X):

Article 66 - Grounds for securing a claim

A commercial court basing itself on the request of the parties, prosecutor or his deputy, who filed a claim, or on its own initiative, may take measures to secure a claim. Securing a claim shall be allowed at any stage of proceedings in the case where non-application of such measures may complicate or make impossible the implementation of a decision of a commercial court.

Article 67 - Measures aimed to secure a claim

A claim shall be secured by:

- levying on the property or monetary assets that belong to the respondent;
- a prohibition for the respondent to carry out particular actions;
- a prohibition to other persons to take steps relating to the subject of the dispute;
- termination of the seizing on the basis of the executive document or other document under which the seizing is to be carried out irrevocably.

To secure a claim, a ruling shall be issued.

Article 68 - Repealing security of a claim

The issue concerning revocation of the security of a claim shall be decided by the commercial court which considers the case, with this being indicated in the decision or ruling.

The Code of Administrative Judicial Proceedings of Ukraine contains the following provisions concerning measures to secure a claim:

Article 117 - Securing the administrative claim

A court, basing itself on the request of the claimant or acting on its own initiative, may pass a ruling concerning application of measures to secure the administrative claim, if there is an imminent threat of damage to the rights, freedom and interests of the claimant prior to the approval of a decision in the administrative case, or if protection of these rights, freedom and interests will become impossible unless such measures are applied, or if for restoring such rights and freedom extraordinary efforts and costs will be required, as well as if there are obvious signs of unlawfulness of the decision, action or omission of the authority.

A ruling concerning application of measures to secure the administrative claim may be passed by a court of first instance, and if appeal proceedings have been initiated, such ruling may be issued by a court of appeals.

Submission of an administrative claim, as well as initiation of proceedings in an administrative case shall not terminate application of the disputed decision of the authority. However, a court, in order to secure the administrative claim, may terminate, by issuing an applicable ruling, a decision of the authority or particular provisions of that decisions which are being appealed. The ruling shall be immediately sent to the authority in question which passed that decision and shall be mandatory for implementation.

It shall not be allowed to secure a claim by way of revocation of decisions of the National Bank of Ukraine which concern appointments and temporary administration or liquidation of a bank, prohibition for a temporary administrator to carry particular activities, a prohibition for a bank liquidator or the National Bank of Ukraine when carrying out provisional administration or liquidation of a bank.

Article 118 - Procedure for securing the administrative claim

A plea requesting to secure the administrative claim shall be considered not later than on the next day after its receipt and in well-grounded and urgent cases it shall be acted upon immediately by means of a ruling without notifying the respondent and other persons taking part in the case.

A respondent or other person taking part in the case may file at any time a plea requesting to replace one way of securing the administrative claim by another or requesting cancellation of measures taken to secure the administrative claim. Such a plea shall be considered not later than on the next day after its receipt and in well-grounded and urgent cases it shall be acted upon immediately by means of a ruling without notifying the respondent and other persons taking part in the case.

Issues concerning securing administrative claims, changing one method of securing an administrative claim with another, other issues concerning revocation of measures aimed to secure administrative claims, except for cases established in parts one and two of this Article, shall be decided in court session with notification of the persons taking part in the case. Failure to attend a court session of the persons who were properly notified, shall not prevent consideration of such issues.

If demands of the claimant were rejected, the measures applied to secure the administrative claim shall stay in effect until the decision of the court becomes effective. Notwithstanding this, a court may, simultaneously with the passage of the ruling or after such passage, issue a ruling concerning revocation of measures to secure the administrative claim or replacing one method of securing the administrative claim by another method.

Implementation of the rulings concerning issues relating to securing administrative claims shall be ensured immediately in accordance with procedures established by law for implementation of decisions passed by judicial bodies.

A ruling for issues to secure the administration of a claim may be appealed. Appeal of the ruling shall not lead to termination of implementation of the ruling; neither shall it prevent further consideration of the case.

Preventative measures include examination of premises in which activities relating to violations of the rights take place, and levying on the property that belongs to the person with respect to whom preventative measures have been applied.

A demand of a claimant concerning application of preventative measures may be secured by the collateral the amount of which shall be specified by the court.

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

All procedural issues relating to duration and costs are regulated under relevant procedural Codes of Ukraine and by other regulatory legal acts.

(b) *Administrative procedures*

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

The State department has the right to apply the following special measures under the Law of Ukraine "On particular aspects of government regulation of activities of business entities relating to production, exports and imports of disks for laser-reading systems" (hereinafter referred to as the Law):

- restrictions, temporary prohibition of activities of business entities in cases where such activities do not meet requirements of the Law;
- revocation of licenses to produce disks for laser-reading systems, and matrixes in case of repeated violation of the terms of licensing provided for by the Law;
- temporary suspension of the license to produce disks for laser-reading systems and matrixes;
- arresting and/or seizing disks for laser-reading systems and matrixes produced in violation of the requirements of the Law, as well as of equipment and raw materials, which are used for the production of such disks and matrixes and which do not meet the requirements of this 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?

Under Article 256 of the Customs Code a person who, in accordance with the legislation of Ukraine, holds property rights to an object of intellectual property rights and who has reasons to believe that during the movement of the goods across the customs border of Ukraine the rights of this person to an object of intellectual property rights are being violated or may be infringed upon, has the right to submit to the special designated central body of the executive government in the area of customs matters an application requesting to facilitate protection the this person's property rights to the object of intellectual property by way of entering relevant information to the customs registry of objects of intellectual property rights.

The special designated central body of the executive government in the area of customs matters maintains the customs registry of objects of intellectual property rights on the basis of

applications of holders of property rights to the objects of copyright and related rights, rights to trade marks, industrial designs and geographic indications.

Under Article 255 of the Customs Code the customs control and customs clearance of goods which include objects of intellectual property rights and are shipped into the customs territory of Ukraine or are shipped outside the customs territory of Ukraine, shall be carried out under generally applicable rules taking into account particular rules set forth by the Customs Code and by other laws of Ukraine.

Measures relating to suspension of customs clearance in accordance with provisions of the Customs Code, shall not be applied by the customs bodies to goods which include objects of intellectual property rights, are in transit via the territory of Ukraine or are brought into the customs territory of Ukraine or brought outside this territory by natural persons in cases specified by paragraph 1 of part two of Article 250 and by paragraph 1 of part two of Article 252 of the Customs Code, for purposes of personal use and are not intended for production or other entrepreneurial activities, or are being sent as international or express mail.

It shall not be permitted to move outside the customs territory in an unmodified form the goods of which customs clearance is suspended on the basis of allegations of violations of intellectual property rights.

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?

Under Article 256 of the Customs Code a procedure for registration of objects of intellectual property rights in the customs registry, including the form of the application, a list of information and documents which must be attached to the application, for submission and consideration of an application and maintaining the registry, shall be specified by the Procedure.

Under paragraph 5 of the Procedure, to include an object in the customs registry, the holder of the right or his representative shall submit to the State Customs Service an application asking to facilitate protection of property rights to the object mentioned on the form, in which the following information must be specified:

- general information about the right holder;
- general information about the representative of the right holder, if this representative has filed the application;
- documents that verify property rights to an object of intellectual property rights (hereinafter referred to as the object);
- information concerning the object;
- period of registration;
- available information about the goods that include the object;
- available information about counterfeit goods.

The following shall be attached to the application:

- a certificate from the relevant registry of the Ministry of Education and Science concerning registration in Ukraine of the intellectual property right, which verifies validity of the registration act at the time of submission of the application (for trademarks which have international registration, a certificate from the registry of the International Bureau of Intellectual Property, to which must be attached its translation into the Ukrainian language and information of the Ministry of Education and Science on the treatment in Ukraine of international registration. For objects such as objects of copyright and related rights, the information concerning documents that certify the declared rights);
- detailed description of an object and goods that contain the object, which would enable the customs body to identify the object and goods and to identify their code of goods in accordance with the Ukrainian goods and tariffs classification (UKTZED);
- samples of goods that contain the object, or their photographic pictures;
- a copy of the licensing agreement (certified by a notary) for the use of an object (in case of the submission of the application by a person to whom the right to use the object and authority, acting on behalf of the right holder, to prevent unlawful use of the object, as well as prohibit such a use in accordance with the legislation, were granted).

Under Article 256 of the Customs Code, to facilitate protection of intellectual property rights at the time of the customs control of goods that are moved across the customs border of Ukraine, information registered in the customs registry about objects of intellectual property right shall be communicated to all customs bodies of Ukraine.

After registration in the customs registry of an object of intellectual property right, the customs bodies shall take measures to prevent movement across the customs border of Ukraine of counterfeit goods that may contain objects of copyright and related rights, right to trade marks, industrial designs and geographic indications protected by the legislation of Ukraine on the basis of the data contained in this registry.

Under Article 257 of the Customs Code, if a customs body, on the basis of the data from the customs registry of objects of intellectual property rights, establishes indications of violation of intellectual property rights relating to the goods presented for customs control and customs clearance, the customs clearance of such goods shall be suspended and the goods shall be placed for temporary storage at the customs warehouses.

Under part two of Article 257 of the Customs Code, a decision to suspend customs clearance of goods for a period of up to fifteen (15) calendar days and in the case of the need to extend this period by no more than fifteen (15) calendar days, shall be passed by the head of the customs body or a person that is acting in his capacity.

If during the first fifteen (15) calendar days after the receipt of the notice of suspension of customs clearance of the goods a person, who, in accordance with the legislation of Ukraine holds property rights to the object of intellectual property rights, does not inform the customs body that suspended the customs clearance, in writing of its addressing a court to ensure protection of intellectual property rights, or does not address this customs body with a written substantiated request

to extend the period of customs clearance, the goods the customs clearance of which has been suspended, shall be subject to customs clearing under the established procedure (part five of Article 257).

If during the first fifteen (15) calendar days after the receipt of the notice of suspension of customs clearance of goods a person, who, in accordance with the legislation of Ukraine holds property rights to the object of intellectual property rights, informs in writing the customs body that suspended the customs clearance, of his appealing to the court for the purpose of ensuring protection of intellectual property rights, or applies to this customs body with a written substantiated request to extend the period of suspension of customs clearance of the goods, then the suspension of customs clearance may be extended by the customs body by no more than fifteen (15) calendar days (part six of Article 257).

In the event of suspension of the customs clearance of the goods specified in Article 257, the compensation to the customs bodies and owners of temporary storage customs warehouses for the expenses related to the storage of these goods, and in the case specified in part eight of this Article², also the compensation to the person who submitted the declaration and to other persons, for losses caused by such suspension, shall be provided at the expense of the person, who, in accordance with the legislation of Ukraine, holds property rights to the object of intellectual property rights. To ensure compensation of the specified expenses and losses a person, who, in accordance with the legislation of Ukraine, holds property rights to the object of intellectual property rights, shall provide to the special designate central body of the executive government in the area of customs matters a collateral or other equivalent guarantee which is sufficient for purposes of compensation for losses of customs bodies, owners of temporary storage customs warehouses, the declaration filer, consignee or consignor and the owner of the goods. The amount of, and a procedure for providing a security, types of security, as well as types of equivalent guarantees and a procedure for provision of such guarantees shall be set forth by the special designated central executive government authority in the area of customs matters in accordance with requirements of the Order.

Under part three of Article 257 of the Customs Code, not later than the following working day after a passage of a decision on suspension of customs clearance of the goods, the customs body shall notify the person who in accordance with the legislation of Ukraine holds property rights to the object of intellectual property rights, of the fact of the submission of the goods for customs clearance, and the declaration filer of the reasons for suspension of the customs clearance of the goods, and shall notify the declaration filer of the name and the address of the person who, in accordance with the legislation of Ukraine, holds property rights to the object of intellectual property rights. In the notification to the person who in accordance with the legislation of Ukraine holds property rights to the object of intellectual property rights, the following must be specified: customs clearance of what goods has been suspended, reasons and terms for this suspension, name and address of the owner of the goods, as well as other necessary information.

Under part nine of Article 257 of the Customs Code a person, who, in accordance with the legislation of Ukraine, holds property rights to the object of intellectual property rights, and the declaration filer, may, by permission of the customs body, take samples of the goods with respect to which the decision on suspension of the customs clearance was passed, and to submit them for examining. Copies of the experts' findings shall be provided to the customs body.

² If during the period specified in part two of Article 257, the customs body which suspended the customs clearance of the goods does not receive a ruling of a court concerning prohibition to carry out particular actions in the case concerning violation of intellectual property rights, then the goods with respect to which a decision on suspension of customs clearance was made, shall be subject to customs clearance under the established procedure.

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?

Under parts seven, eight and ten of Article 257 of the Customs Code, if during the period specified in part two of Article 257, a person, who, in accordance with the legislation of Ukraine holds property rights to an object of intellectual property rights, provides to the customs body which suspended the customs clearance of the goods, a ruling of a court prohibiting to carry out certain actions in the case involving violation of intellectual property rights or other decision on this issues passed by the designated State bodies, the customs body shall continue with the suspension of the customs clearance of the goods for a period established by these bodies.

If during the period specified in part two of Article 257 to the customs body which suspended the customs clearance of goods, no ruling of a court to prohibit certain actions in the case involving violation of intellectual property rights is provided, the goods with respect to which a decision on suspension of the customs clearance was passed, shall be subject to customs clearance under the established procedure.

If during the period specified in part two of Article 257, violation of intellectual property rights in the course of movement of the goods with respect to which a decision on suspension of customs clearance was passed, is confirmed by the findings of the expert examination carried out by the designated body, then the customs body under the procedure established by the Customs Code shall initiate a case involving violation of customs rules, and the goods - the direct objects of the offence - shall be seized in accordance with procedures established by this Code.

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?

Under parts one - five of Article 257¹ of the Customs Code, provided that there are sufficient reasons to believe that due to the movement across the customs border of Ukraine of the goods concerning which the person has not filed an application requesting facilitation of protection this person's property rights to an object of intellectual property rights in accordance with of Article 256 of the Customs Code, the rights to the objects of the copyright and related rights, the rights to trade marks, industrial designs and geographic indications may be infringed upon, the customs body may, acting on it's own initiative, suspend customs clearance of such goods.

A customs body takes measures concerning suspension, on its own initiative, of customs clearance of goods which include objects of intellectual property rights, only on the condition of availability of information about a person who, in accordance with the legislation of Ukraine, holds property rights to such objects of intellectual property.

In the event of the movement into the customs territory of Ukraine or movement outside this territory of the goods specified in part one of this Article, the customs body which performs customs clearance of such goods shall on the same day send to the person which in accordance with the legislation of Ukraine holds property rights to an object of the intellectual property rights, a notice specified in part three of Article 257 of the Customs Code, which may be sent by fax, by e-mail, etc. At the same time that person will be advised to provide, within a three-day period after the receipt of the notice, the customs body with a guarantee concerning compensation for expenses and losses related to suspension of customs clearance of the specified goods.

If a person, who, in accordance with the legislation of Ukraine holds property rights to an object of intellectual property rights, files, within the period specified by the customs body which

sent the notification, a written request to facilitate protection of intellectual property rights and provides a guarantee for compensation of expenses and losses in the case of suspension of customs clearance of the goods which include objects of intellectual property rights, then the customs clearance of such goods shall be suspended for a period specified in part two of Article 257 of the Customs Code, and the filer of the declaration shall be immediately informed of the reasons for suspension, after which measures shall be taken in accordance with provisions of parts five to ten of Article 257 of this Code.

If a person, who, in accordance with the legislation of Ukraine, holds property rights to an object of intellectual property rights, does not provide to the customs body a relevant request and does not provide a guarantee of compensation of expenses and losses in case of suspension of customs clearance of goods which include objects of the intellectual property rights, then such goods shall be subject to customs clearance under the established procedure.

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

Under part ten of Article 257 of the Customs Code, if during the period specified in part two of this Article, violation of intellectual property rights during the movement of the goods with respect to which a decision on suspension of customs clearance was made, was verified by the findings of the expert examination carried out by the designated body, then the customs body shall, acting under the procedure established by the Customs Code, initiate a case involving violation of customs rules, and the goods - direct objects of offence - shall be seized in accordance with procedures established by this Code.

The Customs Code does not provide for customs bodies' activities aimed to destroy counterfeit goods. A decision on destruction of counterfeit products shall be passed by a court and the responsibility for implementation of such decisions shall be assigned to the State executive service.

Criminal Procedures

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

Criminal cases involving crimes in the area of intellectual property shall be tried by courts of general jurisdiction. Under Article 33 of the Criminal Procedure Code of Ukraine, a district (municipal) court is authorized to try all criminal cases (including cases involving violation of intellectual property rights), except cases within the competence of the higher-level courts and military courts.

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

Responsibility for violation of intellectual property rights is regulated by Article 176 (Violations of the copyright and related rights), Article 177 (Violations of the rights to invention, useful model, industrial design, layout of integral microchip, plant variety, inventive proposal), and Article 229 (Unlawful use of a trade mark for goods or services, company name, qualified indication of origin of the goods) of the Criminal Code of Ukraine.

In accordance with notes to Article 176 of the Criminal Code of Ukraine in Articles 176 and 177 of this Code material damage shall be considered substantial if its amount exceeds twenty and more times the non-taxable minimum personal income, large - if its amount is two hundred and more times the non-taxable minimum personal income, and particularly large - if its size is a thousand and more times that of the non-taxable minimum personal income.

In the event that the amount of losses is less than the amount specified above, a person responsible for violation of the copyright and related rights, shall be held administratively responsible in accordance with Article 51² «Violations of the right to an object of the intellectual property rights» and Article 164⁹ «Unlawful distribution of copies of audio and visual works, phonograms, video recordings, computer programs and databases» of the Code of Ukraine on administrative offences.

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?

Under the Criminal Procedure Code of Ukraine uncovering of crimes in the area of intellectual property shall be carried out by bodies of the ministry of internal affairs, and pre-trial investigations of criminal cases of this category may be carried out by internal affairs bodies and by bodies of the public prosecution office.

Under provisions of part one of Article 112 of the Criminal Procedure Code of Ukraine, in cases involving crimes specified, in particular, in part three of Article 176, part three of Article 177 and in part three of Article 229 of the Criminal Code of Ukraine, pre-trial investigation shall be carried out by investigators of the public prosecution office.

Under part two of Article 112 of the Code of Criminal Procedure of Ukraine in cases involving crimes specified in parts one and two of Article 176, parts one and two of Article 177 and parts one and two of Article 229 of the Criminal Code of Ukraine, pre-trial investigation shall be carried out by investigators of bodies of the ministry of internal affairs.

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

Holders of intellectual property rights may apply to the bodies of the Ministry of Internal Affairs with statements and applications concerning violation of their rights. The Criminal Code of Ukraine provides that responsibility for committing crimes in the area of intellectual property arises in case of causing a holder of the rights a material damage, which is why a statement of the right holder concerning violation of his rights and infliction of respective material damage is the obligatory precondition for initiation of a criminal case.

As regards initiation of criminal cases it should be pointed out that in accordance with part one of Article 94 of the Code of Criminal Procedure of Ukraine, the grounds for initiation of a criminal case, in particular, include:

- a statement or a notice from enterprises, agencies, organizations, officials of the persons, representatives of government authorities, general public or individual citizens;
- notifications from representatives of government authorities, general public or individual citizens, who detained a suspected person at the place of committing a crime or red-handed;
- confession;
- notifications published in the press;
- direct identification by the body of investigation, an investigator, prosecutor or by the court, of the signs of a crime.

In accordance with part two of this Article, a case may be initiated only in cases where there is sufficient data indicating existence of signs of the crime.

24. Specify, by category of IOPR 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.**

Under provisions of the Code of Criminal Procedure of Ukraine and of the Criminal Code of Ukraine, a sentence must be determined by a court.

Thus, in accordance with Article 324 of the Code of Criminal Procedure of Ukraine, when deciding on a sentence, a court is to resolve issues concerning the degree of the punishment, which must be sentenced to the offender, and whether or not he is to serve this sentence, what need be done to the property levied to secure a civil claim and possible seizure of the property, what need be done to material evidence, in particular, with money, valuable and other items acquired in a criminal way.

Article 65 of the Criminal Code of Ukraine provides that a court may deliver a punishment within the limits established by the sanctions specified in the article of the Specific part of this Code, which establishes responsibility for a committed crime in accordance with provisions of the General part of this Code and taking into account the degree of gravity of the committed crime, personality of the individual who committed it and circumstances that alleviate or aggravate the punishment.

Under by Article 53 of this Code, the principal types of punishment include community service, corrective works, career restrictions for army servicemen, arrest, imprisonment, disciplinary regiment for army servicemen, imprisonment for specified and indefinite terms.

Additional punishments include depriving of military, special title, rank, position or qualification class and confiscation of property.

For one crime only one principal punishment may be delivered, as specified in sanction articles of the Specific part of this Code. A principal punishment may be accompanied by one or several additional punishments in cases and in conformity with procedures specified by this Code.

Articles 176, 177 and 229 of the Criminal Code of Ukraine set forth the following sanctions:

- a fine in the amount of up to 34,000 UAH;
- corrective work for a period of up to two years;
- imprisonment for a period from 2 to 5 years;
- confiscation and destruction of all counterfeit and falsified products, as well as equipment and materials which were specifically used for production of such products;
- prohibition to hold particular jobs or positions, or carry out particular activities for a specified period of time.

Article 51² and Article 164⁹ of the Code of Ukraine on administrative offences provide for an imposition of a fine and confiscation and destruction of respective copies of the objects of intellectual property rights.

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

The terms for carrying out expert examinations and preliminary trial are set by the Criminal procedure Code of Ukraine.

National legislation of Ukraine does not set a limit for consideration of a case in court and terms of such a consideration depend on specific circumstances of a particular case.

Issues that concern costs of judicial consideration of a case are regulated under Articles 91 - 93¹ of the Code of Criminal Procedure of Ukraine. Thus, Article 91 of this Code specifies that judicial costs consist of:

- amounts that were or have to be provided to witnesses, victims, experts, specialists and interpreters;
- amounts spent on storing, shipping and examining material evidence;
- other costs incurred by the investigative bodies, pre-trial investigation bodies or a court carrying out proceedings in the case in question.

Available data on the actual amount of cases and cost of proceedings during the years 2005-2007:

Available data on the actual amount of cases and cost of proceedings during the year 2005

Cases of the civil legal proceeding	Number of cases which were in realization	Number of cases of legal investigation	The number of cases with the decision		Sums, imposed as a penalty, UAH	Amount of judgment, UAH
			Total	With satisfaction of a claim		
Disputes on copyright	219	121	73	44	59829299	7855508
Disputes on invention law	33	18	11	6	4605746	-

Available data on the actual amount of cases and cost of proceedings during the years 2006 - 2007

Cases of the civil legal proceeding	Number of cases which were in realization		Number of cases of legal investigation		The number of cases with the decision				Sums, imposed as a penalty, UAH		Amount of judgment, UAH			
	2006	2007	2006	2007	Total		With satisfaction of a claim		2006	2007	Total		including moral damage	
					2006	2007	2006	2007			2006	2007	2006	2007
	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007
Disputes on intellectual property (total), of them	382	373	234	207	121	131	66	72	211330534	459136010	15050793	344163253	74700	385285
Disputes on copyright	242	239	149	123	77	80	39	42	193695854	86813922	14999609	15696609	69700	32500
Disputes on related rights	7	6	5	5	2	4	2	4	-	-	-	-	-	-
Disputes on invention right, utility model, industrial design	75	76	43	42	19	22	7	12	11353629	350934122	34623	327331783	-	-
Disputes on trade marks	23	47	11	33	5	24	3	14	828570	8116	11561	8116	-	-

**The information concerning court costs, imposed to collecting by local general courts of
Ukraine in cases of criminal and civil legal proceedings during 2005 - 2007**

Kind of judicial costs	Amount of judicial costs, UAH		
	2005	2006	2007
Court costs imposed in cases of criminal proceedings	10759387	16240997	25236988
Court costs imposed in cases of civil proceedings	10775885	57809677	79696463
Cost of technical & information support imposed in cases of civil proceedings	-	5368403	6723097
