

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from the United States

Civil and Administrative Procedures and Remedies

(a) *Civil judicial procedures and remedies*

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

US Federal district courts have original jurisdiction over cases based upon infringement of rights based on Federal patent, trademark, plant variety protection, copyright, or semiconductor chip mask work laws (*see*, 28 U.S.C. 1338). The Federal district courts also have original jurisdiction over claims of unfair competition that are coupled with a substantial and related claim under any of those laws. In the interests of judicial efficiency, a claim of infringement can be heard in a state court if it is only incidental to allegations of another kind, such as breach of contract, that is primarily based on state law.

State courts have jurisdiction over claims of trademark infringement, misappropriation of trade secrets, or unfair competition based on state laws but, depending on the nature of the claims and the parties involved, Federal district courts may also have jurisdiction.

The US International Trade Commission (USITC) has jurisdiction in administrative actions under Section 337 of the Tariff Act of 1930.

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

The owners of intellectual property rights have standing to enforce their rights in court and before the USITC. In some instances (e.g., copyright) beneficial owners also can assert rights in an action in court or before the USITC.

Parties may be represented by counsel admitted to practise before that court, or given special permission to do so, in any court in the United States. In the USITC, parties may be represented by a lawyer licensed to practise anywhere in the United States.

Federal court judges have the authority to order the appearance of an individual who is within the court's jurisdiction, if that person's testimony is essential to the case. Judges can also authorize testimony to be provided by written or videotaped deposition in specific cases if a personal appearance would impose an extreme hardship.

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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?

The Federal Rules of Civil Procedure provide that parties involved in litigation may request answers to written questions and the production of documents, and may depose individuals whose testimony is required for the litigation. If any party declines to respond to requests for information, documents, or deposition, the requesting party may apply to the court to require compliance. During such a proceeding, the party of whom the request was made may present evidence showing why the request is in error or other reasons why no response should be given to the request. The judge will decide in such circumstances whether a response is required and whether the request should be limited in any way. Procedures in state courts are generally similar to the procedures defined by the Federal Rules of Civil Procedure. The procedural regulations of the USITC are also similar to the Federal Rules.

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

The Federal Rules of Civil Procedure authorize judges to limit who may be present when evidence of a confidential nature is presented in court or during depositions and to whom confidential documents may be shown. Judges also are authorized to issue protective orders prohibiting those with access to confidential information from revealing it, whether during or after the conclusion of litigation. In extreme cases, judges may review confidential information *in camera*, and keep such information under seal. State courts and the USITC regulations provide similar procedures for protection for confidential information.

5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use;

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

Injunctions

Actions that violate legal rights of intellectual property owners or beneficial owners may be enjoined, temporarily or permanently, by courts and such injunctions can be enforced by Federal marshals if violated.

Damages

Damages can be recovered by an aggrieved intellectual property owner for the infringement of an intellectual property right. The specific nature and form of damages that can be recovered varies with the nature of the intellectual property right that has been infringed, and depending on the circumstances of the case and the nature of the intellectual property right involved. For example, with respect to infringement of a patent, the court must award damages of an amount as to compensate the patent owner for the infringement, and rely on such factors as lost profits, reasonable royalty for use of the invention, interest, and other costs as determined. The court may also award attorneys fees and court costs to the successful litigant. In certain actions, such as actions for wilful infringement of a patent, treble damages can be awarded by the court. Specific considerations with respect to the determination of damages depend on the type of the intellectual property right in question.

Destruction or Disposal of Infringing Articles or Related Equipment

A court may order the destruction or other disposal of infringing goods and material/implements for their production in appropriate situations. Specific authority for such actions can be found in the sections of the United States Code pertaining to the specific type of intellectual property right (e.g., copyright, mask work, trademark), or under general authority provided under the Federal Rules of Civil Procedure to courts or to the USITC.

Other Remedies

The USITC may order the US Customs Service to exclude from entry goods that are found to infringe intellectual property rights and can order parties to cease and desist activities that violate Section 337.

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

The Federal Rules of Civil Procedure authorize courts to order the production of requested information or documents during the discovery process if that information is relevant to the litigation. Pursuant to this authority, a court may order an 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.

Administrative law judges of the USITC have similar authority.

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?

The Federal Rules of Civil Procedure authorize judges to provide for indemnification in appropriate cases (*see*, F.R.C.P. Rule 65(b)). Federal Courts must require parties seeking an injunction to post an adequate security with the court to ensure that indemnification will be possible (*see*, F.R.C.P. Rule 65(c)).

The USITC can also require a complainant to post a bond that would be payable to the respondent if a temporary exclusion order is later determined to be unwarranted. Public authorities and officials cannot be held personally liable in situations in which their actions were within the scope of their duties and responsibilities and in which they were acting in good faith.

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

The length and cost of proceedings in the United States, whether before a court or before the USITC, varies in relation to the complexity and nature of the legal or administrative proceeding. Data concerning proceedings are not maintained in a form or character relevant to the question being proposed. It is noted that enforcement proceedings are in most instances matters within the jurisdiction of private litigants; such proceedings vary tremendously depending on the factual and legal circumstances of the action; and data concerning such proceedings is often confidential between the parties to the litigation. As such, the United States Government is not in a position to provide data on the actual duration or cost of proceedings concerned with the enforcement of intellectual property rights.

(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.

Answers with respect to administrative procedures in the United States concerning the subject matter of questions 1 to 8 are addressed in the answers provided above to these questions.

Provisional Measures

(a) *Judicial measures*

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

Courts may issue injunctions prior to the conclusion of the legal action by the parties if sufficient standards for proof and need are met by the party seeking such provisional relief. Provisional relief thus can take one of two forms; namely a *preliminary injunction*, which is an *inter partes* proceeding, and a *temporary restraining order*, which is an *ex parte* proceeding. Both forms of provisional measures are governed by Rule 65 of the Federal Rules of Civil Procedure.

The USITC may also issue preliminary injunctions or temporary restraining orders consistent with the conditions specified in the Federal Rules of Civil Procedure.

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

Rule 65(b) of the Federal Rules of Civil Procedure permits a court to issue a temporary restraining order without notice to the adverse party when the following conditions are established by the party seeking the order:

- (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition; and
- (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

The USITC is subject to these restraints in issuing a temporary restraining order.

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.

Rule 65 of the Federal Rules of Civil Procedure prescribe the conditions that apply to the court and a party seeking a preliminary injunction or a temporary restraining order.

A preliminary injunction may be issued by a court after consideration of arguments from both the party seeking the preliminary injunction and the party sought to be enjoined. Preliminary injunctions cannot be issued without notice to the party sought to be enjoined.

A temporary restraining order may be imposed by a court prior to the conclusion of a judicial proceeding if a sufficient basis is established by the aggrieved party; such orders can be issued without prior notice to the opposing party, but only on conditions specified in Rule 65(b) of the Federal Rules of Civil Procedure.

In all situations where a party has sought a preliminary injunction or a temporary restraining order, the court:

- must require the party seeking the injunction to post security, in an amount the court deems proper, to cover the payment of costs and damages suffered by a party who has been found to have been wrongfully enjoined;
- must define the reasons for the issuance of the injunction prior to conclusion of the trial on its merits; and
- must define the terms of the injunction in precise terms, including, for example, the specific acts to be restrained, the parties who are to be restrained, and the duration of the injunction.

The court issuing a temporary restraining order must also observe certain additional formalities. A court imposing a temporary restraining order must note on the order the date and time of its issuance, must file the notice immediately with the clerk's office and must enter the order in the record of the proceeding. The court must also, in the order, define the injury and state why it is irreparable and why the order was granted without notice. The court must also define the duration of the order; temporary restraining orders are to last no longer than ten days, absent a showing of good cause to have the order remain in force for a longer period. If a temporary restraining order is granted without notice, the party seeking the temporary restraining order must proceed with an application to the court for a preliminary injunction. If such an application is not made, the court must dissolve the temporary restraining order. The application for a preliminary injunction must be acted on by the court at the earliest possible time. Finally, the party to whom the temporary restraining order is directed may move to dissolve or modify the order on an expedited basis (i.e., two days notice or less).

The USITC can provide provisional relief in the form of injunctions or temporary restraining orders consistent with the rules governing such provisional relief in the Federal Rules of Civil Procedure.

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

The length and cost of proceedings in the United States, whether before a court or before the USITC, varies in relation to the complexity and nature of the legal or administrative proceeding. Data concerning proceedings are not maintained in a form or character relevant to the question being proposed. It is noted that enforcement proceedings are in most instances matters within the jurisdiction of private litigants; such proceedings vary tremendously depending on the factual and legal circumstances of the action; and data concerning such proceedings is often confidential between the parties to the litigation. As such, the United States Government is not in a position to provide data on the actual duration or cost of proceedings concerned with the enforcement of intellectual property rights.

(b) *Administrative measures*

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

Answers with respect to administrative procedures in the United States concerning the subject matter of questions 1 to 8 are addressed in the answers provided above to these questions.

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?

Customs border enforcement procedures apply primarily to goods bearing infringing trademarks and copyrights. However, such procedures are not limited to "counterfeit" or "pirated" products. They can be invoked with regard to any form of infringement of copyright or trademark rights, whether such infringement is literal or results from a finding that the products bear a mark that is "confusingly similar" to a registered trademark or are "possibly piratical" in the context of copyrighted works. As a result, Customs border enforcement authorities can take action against products that are not only outright "knock-offs" but also products that are close enough in appearance to generally raise the question of whether a product may infringe an intellectual property right. US Customs border procedures also apply to goods bearing trade names and genuine trademarks (i.e., so-called "grey market" goods) in cases where no corporate relationship exists between the United States' and foreign trademark owner.

US Customs does not have specific legal authority to protect intellectual property rights in patents, industrial designs, mask works or undisclosed information *ab initio*. Rather, US Customs can enforce orders issued by a US court or the USITC in these types of intellectual property rights, as well as with respect to issues concerning trade dress or contributory copyright infringement. The court or the ITC, rather than US Customs, is responsible for the determination of infringement and the decision to preclude importation.

The statutory and regulatory basis for the above two answers are:

Statutory: 15 U.S.C. 1124, 19 U.S.C. 1526, 19 U.S.C. 1595a(c); 17 U.S.C. 603; 18 U.S.C. 2320; 18 U.S.C. 2318; 19 U.S.C. 1337.

Regulatory: 19 C.F.R. 133.21 to 133.23, 133.23a (Trademarks and Trade Names); 19 C.F.R. 133.42 and 133.43 (Copyrights); 19 C.F.R. 12.39 (Patents and Unfair Competition).

Customs border procedures are applicable to goods shipped in-transit. The legal authority is the same as that for domestic shipments.

Customs enforcement procedures to date may, but are rarely applied to exported goods. Under 22 U.S.C. 401, the US Customs authorities may seize and forfeit arms or munitions of war or other articles exported in violation of the law. Exported goods which infringe an intellectual property right (e.g., by bearing an infringing trademark or by infringing a copyright) violate US law, and thus fall within the scope of section 401.

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 United States Customs Agency is the administrative agency with whom an intellectual property right holder may deposit its trademark or copyrighted work for the purposes of border enforcement. US Customs has established procedures by which intellectual property right holders may obtain protection by filing a "record" that serves as the basis for US Customs taking action. US Customs regulations have been amended to provide "*ad-hoc*" application contemplated in Article 51 of the TRIPS Agreement. US Customs treats the term "suspension of release" in this section and throughout Section 4 of the TRIPS Agreement to include both "detention" and "seizure" of infringing goods.

As the competent administrative authority, US Customs will make, within 10 days, a decision to release or detain imported goods if the goods are suspected of being infringing goods. The intellectual property right holder will be notified if such steps are taken. Customs regulations have been modified recently to provide for disclosure to the intellectual property right holder in the form of sample merchandise and specific information when goods are seized or detained.

Customs procedures have also been modified to address the issue of indemnification of the importer in cases where the imported good is suspected of being "possibly piratical" or bears a mark that is "confusingly similar" to a recorded trademark. In such cases, the intellectual property right holder is contacted and required to post a bond that can be used to indemnify the importer if no infringement is found of the detained or seized goods.

The statutory and regulatory basis for the above two answers are:

Statutory: 15 U.S.C. 1124; 17 U.S.C. 603; 19 U.S.C. 1526, 19 U.S.C. 1595a(c), 19 U.S.C. 1623.

Regulatory: 19 C.F.R. Part 133 (Sub-parts A, B and D), 19 C.F.R. 133.43(b) and (d).

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 time for obtaining a decision from the US Customs agency with respect to detention or seizure of imported goods is 10 days. Where adversarial proceedings are initiated, the duration of such proceedings does not exceed 90 days. US Customs will charge the intellectual property right holder a fee of \$190.00 to record a trademark or copyright; this record guarantees border protection for the term of the registration issued by the United States Patent and Trademark Office or the term of the copyright protection. Data concerning costs to rights holders or importers other than those defined by the US Customs Agency is not available.

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?

US Customs enforcement procedures focus primarily on *ex officio* intervention. Once an intellectual property right has been recorded, field officers, without the assistance of the intellectual property right holder, take actions to prevent the importation of goods that infringe the recorded intellectual property right on an on-going basis. Procedures are also available for providing *ad-hoc* applications and measures based on such applications.

The statutory bases for this answer is: 15 U.S.C. 1124; 17 U.S.C. 603; 18 U.S.C. 2318; 18 U.S.C. 2320.

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

Under US Customs procedures, shipments bearing marks that are "confusingly similar" to a recorded trademark, or which are "possibly piratical" in a copyright context, are detained for 30 days. This period gives the importer an opportunity to show that certain circumstances exist that could warrant release of the merchandise. An example of such a condition would be that the intellectual property right holder consents to the importation or there is an agreement to obliterate the mark.

For "possibly piratical" goods, the procedures include an adversarial proceeding which allows the importer and the intellectual property right holder to present arguments concerning the issue of infringement of the copyright. Customs regulations have been recently amended to make these procedures available for situations involving goods bearing marks that are "confusingly similar" to recorded trademarks.

Seized and forfeited goods that are found to infringe recorded copyrights or trademarks are usually destroyed. Articles which infringe another form of intellectual property right are typically disposed of through government use, donation to charities, or sale after obliteration of the infringing mark. Articles detained or seized for copyright violations may also be returned to the country of export if it is shown that the importer had no reasonable grounds for believing his actions constituted an infringement.

The statutory and regulatory basis for the above answers are:

Statutory: 17 U.S.C. 603; 19 U.S.C. 1526(b) and (e); 19 U.S.C. 1595a(c).

Regulatory: 19 C.F.R. 133.22, 133.23a, 133.42, 133.43, 133.47 and 133.52.

Criminal Procedures

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

The Federal district courts of the United States have jurisdiction of all criminal violations of Federal laws. In copyright infringement cases, Federal courts have exclusive jurisdiction. However, in trademark infringement cases, the jurisdiction of state and Federal courts is concurrent.

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

Criminal procedures and penalties are available to remedy infringement of copyright and trademark rights.

22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?

The United States Department of Justice has the authority to investigate any alleged criminal violations of unlawful infringement on its own initiative or on complaint of private persons. At the state level, the Office of the Attorney General has the authority to initiate criminal violations either on its own or on complaint of private persons.

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

Private persons do not have standing to initiate criminal proceedings.

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.**

Copyright

The principal criminal copyright law provision is Section 506 of the Copyright Act which makes any person who infringes a copyright wilfully and for purposes of commercial advantage or private gain liable to both imprisonment and fines (17 U.S.C. 506(a) (1988)). The maximum criminal penalties vary depending on the type of work involved and the quantity of infringing copies or phonorecords made. The maximum penalty for criminal copyright infringement, unless the criminal infringement qualifies for a more severe maximum penalty, is a fine of not more than \$25,000, imprisonment for not more than one year or both (18 U.S.C. 2319(b) (1988 & Supp. V 1993)). The maximum penalty is increased to a fine of not more than \$25,000, imprisonment for not more than two years, or both, if the offence involves (1) the reproduction or disposition of more than 100 but less than 1,000 phonorecords or copies infringing the copyright in one or more sound recordings during any 180-day period, or (2) the reproduction or distribution of more than seven but less than sixty-five copies of one or more motion pictures or other audiovisual works during any 180-day period (18 U.S.C. 2319(b) (1988 & Supp. V 1993)). The maximum penalty is increased to a fine of not more than \$250,000, imprisonment for not more than five years, or both, if the offence involves (1) the reproduction or distribution of at least 1,000 phonorecords or copies infringing the copyright in one or more sound recordings during any 180-day period, (2) the reproduction or distribution of at least sixty-five copies infringing the copyright in one or more motion pictures or other audiovisual works during any 180-day period, or (3) if (a) the conviction is a second or subsequent conviction of the same defendant, (b) the conviction involves the reproduction or distribution of more than 100 phonorecords or copies of a sound recording or more than seven motion pictures or other audiovisual works, and (c) at least one prior conviction involves the criminal infringement of the copyright in a sound recording, motion picture, or other audiovisual work (19 U.S.C. 2319(b) (1988 & Supp. V 1993)).

Upon conviction of criminal copyright infringement, the court shall order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords. This order is mandatory and not discretionary (17 U.S.C. 506(b) & 509(a) (1988)).

Trademarks

The intentional trafficking in counterfeit goods or services is a Federal crime subject to maximum penalties against a person of \$2,000,000 in fines, 10 years imprisonment, or both, and a maximum fine of \$5,000,000 as against a corporation (18 U.S.C. 2320 (b) (1988)). For persons already convicted once of a trafficking offence, the maximum penalties against a person are fines up to \$5,000,000, 20 years imprisonment, or both, and a maximum fine of \$15,000,000 (18 U.S.C. 2320 (b) (1988)). For criminal prosecution purposes, a counterfeit mark is a spurious mark used in connection with goods or services that is identical with or substantially indistinguishable from a mark registered for those

goods or services on the Federal Register, whether or not the defendant knew such mark was registered, when the defendant's use is likely to cause confusion, mistake, or to deceive (18 U.S.C. 2320 (d) (1988)).

Since state trademark statutes are not pre-empted by Federal law, state courts have the authority to impose penal sanctions to individuals trafficking in counterfeit goods or services. A majority of states impose criminal penalties for individuals distributing articles on which a trademark is reproduced knowing that the trademark was used without the owner's consent. The following list sets forth the criminal penalties imposed by various jurisdictions:

Alabama:

Maximum fine of \$5,000 and a term of imprisonment of not more than 10 years (Ala. Code 13-A-8-10.4).

Arizona:

Maximum fine of \$750 and a term of imprisonment of not more than four months. Fines against a corporation may be levied in an amount not to exceed \$20,000 (Ariz. Rev. Stat. 13-707 & 13-803).

California and Oregon:

Maximum fine of \$5,000 or a term of imprisonment not to exceed one year. Fines against a corporation may be levied in an amount not to exceed \$10,000 (Cal. Penal Code 350 and Or. Rev. Stat. 647.125 to 647.991).

Connecticut, District of Columbia, Michigan, Mississippi, and Tennessee:

Maximum fine of \$500 or a term of imprisonment not to exceed one year (Conn. Gen. Stat. 53-347; D.C. Code Ann. 22-1402; Mich. Comp. Laws Ann. 750.263; Miss. Code Ann. 97-21-53 to 97-21-57; and Tenn. Code Ann. 47-25-405).

Florida:

Maximum fine of \$500 and a term of imprisonment not to exceed 60 days (Fla. Stat. ch. 506.06 to 506.13).

Illinois, Maine, North Dakota and South Dakota:

Maximum fine of \$1000 and a term of imprisonment not to exceed one year (Ill. Rev. Stat. ch. 5, pare. 5-8-3 and 5-91; Me. Rev. Stat. Ann. tit. 10, 4699; N.D. Cent. Code 51-0704; and S.D. Codified Laws 37-6-2 & 37-6-3).

Iowa:

Maximum fine of \$10,000 and a term of imprisonment not to exceed 10 years (Iowa Code 903.1 & 902.9).

Louisiana:

Maximum fine of \$10,000 and a term of imprisonment not to exceed five years (La. Rev. Stat. Ann. 14:229).

Minnesota:

Maximum fine of \$100 and a term of imprisonment not to exceed three months (Minn. Stat. Ann. 333.42).

Nevada:

Maximum fine of \$1,000 and a term of imprisonment not to exceed six months (Nev. Rev. Stat. 205.205 to 205.215).

South Carolina:

Maximum fine of \$5000 and a term of imprisonment not to exceed one year. A maximum fine of \$20,000 may be levied against a corporation (S.C. Code Ann. 39-15-1190).

Utah:

Maximum fine of \$299 and a term of imprisonment not to exceed six months. A maximum fine of \$2,000 may be levied against a corporation (Utah Code Ann. 76-10-1001).

West Virginia:

Maximum fine of \$500 and a term of imprisonment not to exceed three months (W. Va. Code 47-2-3).

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 United States Constitution provides that the accused in all criminal prosecutions shall enjoy the right to a speedy and public trial (US Const. amend. VI). Apart from this Constitutional mandate, there are no specific provisions governing the length of criminal proceedings. However, in light of and depending upon the complexity of criminal copyright and trademark infringement cases, the length of the proceedings may vary from one to several years.

Federal and state governments bear the burden of financing criminal investigations and prosecutions. Defendants are generally responsible for all costs relating to their defence. However, an accused has the right to an attorney in all criminal prosecutions. Therefore, in the event that an accused is not financially capable of retaining the services of counsel, counsel will be appointed to aid in the defence of the accused. All costs vary depending on the nature and complexity of each case.