

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Reponses from Ecuador

Civil and administrative procedures and remedies

(a) Civil and judicial procedures and remedies

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

Under Article 294 of the Intellectual Property Law, the district intellectual property magistrates have jurisdiction for the hearing of disputes concerning intellectual property rights in the first instance, and the district intellectual property courts in the second instance.

Cassation appeals lodged in this field are heard by the Special Intellectual Property Chamber of the Supreme Court of Justice.

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

As a general rule, natural or legal persons with a legitimate interest may apply to the competent authorities either personally or through an authorized agent or legal representative. An intellectual property right holder may appear personally or through his judicial attorney. There is no obligation for the right holder to appear personally before the court.

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 Intellectual Property Law stipulates in Article 302 that in this type of proceeding the judge shall have the right to order the opposing party to produce evidence which either lies within its control or is in its possession, to which end he shall specify the day, place and time of such submission.

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

Article 316 of the Intellectual Property Law stipulates that in order to protect trade secrets or confidential information, in the course of the implementation of the precautionary measures provided for therein only the judge or the expert or experts appointed by the judge shall have access to the information, codes or other material to the extent absolutely necessary for the implementation of the measure. Those persons may be present on the defendant's side whom he has delegated, while the

¹ Document IP/C/5.

plaintiff may be assisted by his judicial attorney. All those who thus have access to such information are under the obligation to observe absolute discretion and are liable to such action as the Intellectual Property Law or other laws specify for the protection of trade secrets and 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.**

Article 289 of the Intellectual Property Law stipulates that in the event of infringement, the following may be sought:

- Cessation of the infringing acts;
- the permanent confiscation of the goods or other objects resulting from the infringement, the definitive withdrawal of the merchandise constituting the infringement from commercial channels, and also its destruction;
- the definitive confiscation of the apparatus and other means used to commit the infringement;
- the definitive confiscation of the apparatus and other means used to store copies;
- indemnification for damages and prejudice;
- reparation in any other form for the effects brought about by the violation of the rights;
- the total value of procedural costs.

The rights laid down in international treaties in force in Ecuador may also be demanded, especially those specified in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization.

Article 308 of the Intellectual Property Law states that in order to prevent the infringement of any of the rights provided for therein from occurring or continuing, the courts are entitled to order, at the request of a party, such provisional or precautionary measures as may be necessary for the protection of such rights, in particular those described in Article 309 of the Intellectual Property Law.

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?

In circumstances deriving from the application of the provisions of Articles 843 to 862 of the Code of Civil Procedure concerning oral summary procedures. Through the procedural enquiry, the

judicial authorities may be able to determine the identity of third persons presumed to have been involved in the unlawful act.

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?

Article 307 of the Intellectual Property Law stipulates that in such cases, the judge shall demand of the plaintiff that he deposit a bond or sufficient security to protect the defendant and prevent abuse. Similarly, Article 200 of the Code of Criminal Procedure states that in order to guarantee civil indemnifications, pecuniary penalties and court costs, the judge may order the seizure or withholding, or prohibit the alienation of goods that are the property of the accused.

The courts are also called upon to observe, where applicable, the provisions of the relevant international agreements in force, but are exempt from liability under the terms of Article 48.2 of the TRIPS Agreement.

Regarding the liability of public authorities and officials, Article 20 of the Political Constitution of Ecuador provides that State institutions and their representatives and authorized agents are required to indemnify private individuals for any damage caused to them as a result of any inadequate provision of public services or wrongful acts by their officials and employees in the performance of their duties. The above-mentioned State institutions have a right of repetition and may invoke the liability of their officials or employees who, through adjudicated gross misconduct or negligence, have caused the damage. Section 32 of the Code of Civil Procedure contains provisions concerning the procedures for indemnification of damages against magistrates, judges, officials and employees in judicial offices. The criminal liability of these officials or employees is established by the competent courts.

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

Paragraph 27 of the Political Constitution of Ecuador guarantees the right of "due process" without delay. Under this provision and under Article 297 of the Intellectual Property Law, intellectual property actions are prosecuted in the oral summary procedures referred to in Articles 843 to 862 of the Code of Civil Procedure and described below.

When a complaint is lodged, the court asks that a copy thereof be transmitted to the defendant. As soon as the summons has been served, the judge sets the date and time for the conciliation hearing, which takes place within a period not less than two days and not more than eight days following the date on which the summons is sent. This hearing cannot be postponed except at the express and joint request of the parties, and where the defendant does not appear the case shall proceed by default.

The conciliation hearing begins with the reply to the statement of claims containing the exceptions to which the defendant considers himself to be entitled. If there is no agreement and if facts are claimed that require justification, the court shall initiate the consideration of the evidence for a period of six days, following which it has five days to issue its judgement. Such procedural issues as may arise may in no case cause the proceedings to be suspended, and must be resolved in time for the judgement to be issued.

The proceedings are free of charge.

(b) Administrative procedures and remedies

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

9.1 Specify the authorities which have jurisdiction over IPR infringement cases.

Article 332 of the Intellectual Property Law stipulates that the administrative protection of intellectual property rights shall be exercised by the State, acting essentially through the Ecuadorian Institute of Intellectual Property, which has the authority to prevent and repress violations of intellectual property rights.

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

As a general rule, natural or legal persons with a legitimate interest may apply to the competent authorities either personally or through an authorized agent or legal representative. The intellectual property right holder may appear personally or through his judicial attorney.

9.3 What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control?

The competent authority for administrative procedures pertaining to intellectual property has the authority to investigate conferred upon it under Title I, Book V, in which context, pursuant to the second paragraph of Article 289, such authority may apply Article 43.1 of the TRIPS Agreement, which has been ratified under Ecuadorian law.

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

Those mentioned in Article 335, paragraph 2 of the Intellectual Property Law.

9.5 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.**

Any person affected by the violation or possible violation of intellectual property rights may request the Authority to adopt the following measures:

- Inspection (Article 335 of the Intellectual Property Law);
- request for information (Article 337 of the Intellectual Property Law);
- punishment of the violation (Article 339 of the Intellectual Property Law).

Under Article 336 of the said Law, the authority may take any precautionary measure for the urgent protection of the rights referred to in that law.

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

The administrative authority is not empowered to exercise the authority provided for in Article 47 of the TRIPS Agreement, since that authority applies to criminal offences. However, the third sentence of Article 339 of the Intellectual Property Law states that if there is presumption of an offence having been committed, a copy of the administrative proceedings shall be sent to the competent criminal court and to the Public Prosecutor.

9.7 Describe provisions relating to the indemnification of defendants wrongly enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

The Intellectual Property Law does not contain any provisions empowering the administrative authority to indemnify the defendant. As regards the liability of the authorities, Article 20 of the Political Constitution of Ecuador provides that the State institutions and their representatives and authorized agents are required to indemnify private individuals for any damage caused to them as a result of any inadequate provision of public services or wrongful acts by their officials and employees in the performance of their duties. The above-mentioned State institutions have a right of repetition and may invoke the liability of their officials or employees who, through adjudicated gross misconduct or negligence, have caused the damage. The criminal liability of these officials or employees is established by the competent courts.

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

The provisions are those set forth in Book V, Articles 335 to 344 of the Intellectual Property Law, and in the Regulations thereto. The actual length of the proceedings cannot be determined with any precision, since it depends on the case. As regards costs, under Article 368 of the Intellectual Property Law, these are established according to the proceedings listed therein. For the moment, the fees applied are those applicable to services as indicated in Ministerial Agreement 0106 of 18 April 1997, published in Official Register No. 48 of 21 April 1997.

Provisional measures

(a) Judicial measures

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

Preventive and precautionary measures are described in Book IV, Title I, Chapter II, Section II, Article 305 of the Intellectual Property Law, which stipulates that preventive and precautionary measures relating to intellectual property shall be processed according to Section XXVII, Title II, Book II, of the Code of Civil Procedure, subject to the modifications provided for in that Section.

According to Article 912 of the Code of Civil Procedure, a person may, before presenting his application and at any stage during the proceedings, request the seizure or withholding of the object under dispute or of goods as a security against the claim.

Moreover, Article 308 of the Intellectual Property Law states that in order to prevent the infringement of any rights provided for in that Law from occurring or continuing, it is possible to prevent the merchandise, including imported merchandise, from entering commercial channels; or to preserve relevant proof relating to the alleged infringement, the courts are entitled to order, at the request of a party, such provisional or precautionary measures as may be necessary, according to the circumstances, for the urgent protection of the said rights, in particular:

- Immediate cessation of the unlawful activity (Article 309 of the Intellectual Property Law);
- suspension of the activity consisting in use, exploitation, sale, offering for sale, importation or exportation, reproduction, communication or distribution, as appropriate;
- any other measure that would prevent the continued violation of rights.

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

According to Article 306, the judge shall order the measure when he receives a complaint, provided that evidence is given of specific, concordant indications that would lead to the reasonable presumption of actual or imminent violation of intellectual property rights recognized under the Law, or information leading to a reasonable and well-founded fear of their actual or imminent violation, given the preventive or precautionary nature of the measure and the infringement that may be involved.

The judge determines whether the requesting party is a right holder, to which end account is taken of the presumptions provided for in the Intellectual Property Law. In the absence of information supplied with the request that is sufficient to presume that the person in question is a right holder, a sworn statement enclosed with the request for the purpose will suffice.

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.

Such measures are adopted as a result of an intellectual property infringement and are described in Section XXVII of Book II, Title II of the Code of Civil Procedure. The judge orders the measure when he receives a complaint, provided that evidence is given of specific indications that would lead to the presumption of actual or imminent violation of rights recognized under the Law, or in information leading to a reasonable and well-founded fear of their violation, given the preventive or precautionary nature of the measure and the infringement that may be involved. The measures are applied in the presence of the judge if the plaintiff so wishes, and with the advice of such experts as may be necessary, whose opinion on the matter is entered in the record of the case and is used for enforcement. The order issued by the judge under the mentioned Article provides the possibility to adopt, without any further formalities or instructions from the court, such practical measure as may be necessary to ensure the full enforcement of the precautionary measure, without prejudice to the authority of the judge, at the moment of the judicial enquiry, to order any other precautionary measure that may be necessary for the urgent protection of the said rights, either *ex officio* or at the oral request of a party. Once the precautionary measure has been carried out, the defendant is notified of the claim and the court rules that the time-limit for presenting evidence stipulated in Article 917 of the

Code of Civil Procedure has begun to run. The precautionary measures lapse if within a period of fifteen days following their enforcement, the full claim is not submitted. The court requires the plaintiff, according to the circumstances, to present a security or sufficient guarantee to protect the defendant and prevent abuse.

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

The duration of the proceedings is determined for each individual case. The cost of the proceedings varies: while there are no official rates for the filing of claims, other elements - such as the participation of experts - affect the final amount. It should also be noted that lawyers' fees differ according to the case.

(b) Administrative measures

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

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

The third paragraph of Article 336 of the Intellectual Property Law states that the authorities may take "any precautionary measure for the urgent protection of the rights referred to in this Law if the application for the measure is accompanied by the evidence referred to in Article 306." Such measures are provisional in character and subject to revocation or confirmation as provided in Article 339.

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

According to Article 334 of the Intellectual Property Law, the authorities may order ex officio the application of the preventive and precautionary measures set forth in the reply to question 9.5 of this questionnaire.

14.3 Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.

The procedure may be initiated at the request of a party, through a substantiated complaint filed by the author or right holder, or ex officio, with a view to applying the measures set forth in Article 334 of the Intellectual Property Law. A legitimate inspection may be carried out subject to the submission of a copy of the administrative file in which such inspection was ordered and, where applicable, the request of the affected party. Once the inspection has taken place, if there is proof or even presumption of the violation of an intellectual property right or if facts are revealed which show beyond doubt that there is an imminent possibility of such violation, a detailed list of the goods related to such act is drawn up, whatever their nature. The authorities then assess the evidence and may order any precautionary measure for the urgent protection of the rights referred to in the Intellectual Property Law.

The measures are provisional and are subject to confirmation or revocation in accordance with Article 339. Except in the case of precautionary measures adopted under Article 336, prior to the adoption of any resolution the party against whom the procedure has been initiated is heard. If deemed appropriate, a hearing may be held in which the interested parties are given the opportunity to express their positions.

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

The duration of the proceedings depends on the specific case. The same applies to the cost.

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?

Article 342 of the Intellectual Property Law stipulates that customs officials and all those who control the entry and exit of merchandise to and from Ecuador are under the obligation to prevent the import or export of products which in any way violate intellectual property rights. This implies, in accordance with Article 343, that there are no exceptions as to goods that may be suspended.

If at the request of an interested party the responsible officials fail to prevent the import or export of such goods, they are considered as accessories to the offence committed, without prejudice to the applicable administrative penalty.

No special exemptions or exclusions are provided for in respect of imports of goods from members of a customs union.

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 procedures may be initiated in three ways: at the order of the competent authority, in response to an individual complaint or ex officio. In the first case, a document is drawn up with all of the data pertaining to the proceedings, including the date, description of the goods, particulars of the consignee, etc. It is essential to include the identity of the authority ordering the precautionary measure. In the second case, the right holder or his legal representative submits a detailed and substantiated application to secure the retention of the goods. In the third case, the Intellectual Property Law stipulates that the customs officials and all those who control the entry and exit of merchandise are under the obligation to prevent the import or export of products which in any way violate intellectual property rights. In such cases, the matter is brought before the competent administrative authority which, within the period of five days, confirms or revokes the measure in question. When the measure is confirmed, the goods are placed at the disposal of a criminal court. If the customs official or any other competent official has refused to take the required measure or to decide within three days, the interested party may, within the next three days, apply to the administrative authority directly for a decision. The decision is issued within three days following the request. The person ordering the measure may require a sufficient security to be provided within a period of five days, failing which the measure will lapse. At the request of the party affected by the

suspension, a meeting may be held to examine the goods and, where appropriate, revoke the measure. If the measure is not revoked, the case is transferred to a criminal court.

If at the request of an interested party the customs officials and other competent officials fail to prevent the import or export of the goods, they shall be considered accessories to the offence committed, without prejudice to the applicable administrative penalty.

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 length of the proceedings is essentially indicated in Book V of the Intellectual Property Law, the provisions of which are referred to in the preceding reply. As regards the second part of the question, no costs are specified for the proceedings.

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?

Article 332 of the Intellectual Property Law stipulates that the enforcement and observance of intellectual property rights are in the public interest, and are thus ensured by the State which, ex officio or at the request of a party, exercises inspection, supervisory and punitive functions to prevent and repress violations of intellectual property rights.

Article 328 of the Intellectual Property Law states that infringements provided for in Chapter III of the Intellectual Property Law concerning "offences and sanctions", applicable to border measures, shall be punishable and investigable ex officio.

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

Consistent with Article 332 of the Intellectual property Law, Article 343 provides for the suspension of the import or export of any product which any way violates intellectual property rights. See the replies to questions 15 and 16.

Criminal procedures

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

Where an infringement of intellectual property constitutes an offence, the following courts are competent in their respective instances: the criminal courts, the superior courts and the Criminal Chamber of the Supreme Court of Justice.

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

Article 288 of the Intellectual Property Law stipulates that the violation of any of the intellectual property rights established therein shall give rise to the institution of civil and administrative proceedings, without prejudice to any criminal action that may be initiated if the act has been categorized as an offence.

Chapter III of the Intellectual Property Law concerns "offences and sanctions" and Article 319 states that any person shall be punished with imprisonment for three months to three years

and a fine of 500 to 5,000 constant value units (UVCs) who, in violation of intellectual property rights, stocks, manufactures, uses for commercial purposes, offers for sale, sells, imports or exports:

- (a) A product covered by an invention or utility model patent obtained within the country;
- (b) a product manufactured by means of a process covered by a patent obtained within the country;
- (c) a product embodying an industrial design registered within the country;
- (d) a new plant variety registered within the country, and also its reproductive or vegetative propagating material;
- (e) a layout design (topography) registered within the country, a semi-conductor unit incorporating such a layout design (topography) or an article incorporating such a semi-conductor unit;
- (f) a product or service that uses an unregistered mark identical or similar to a well-known mark or mark of high renown that is registered within or outside the country;
- (g) a product or service that uses an unregistered mark identical or similar to a mark registered within the country;
- (h) a product or service that uses an unregistered mark or geographical indication identical or similar to a geographical indication registered within the country.

Article 320 provides that those persons shall be subject to the same sanction as that specified in the preceding Article who, in violation of intellectual property rights:

- (a) Disclose, acquire or use trade or industrial secrets or confidential information;
- (b) use, in connection with goods or services or business transactions, marks or geographical indications that are not registered within the country and constitute an imitation of well-known distinctive signs or distinctive signs of high renown that are registered within the country or abroad and might reasonably be confused with the original;
- (c) use, in connection with goods or services or business transactions, marks or geographical indications constituting an imitation of distinctive signs registered within the country that might reasonably be confused with the original to distinguish goods or services that could be substituted for the protected ones.

Article 321 provides for the punishment with imprisonment for a month to two years and a fine of 250,000 UVCs, due account being taken of the degree of financial prejudice caused, of persons who, in violation of intellectual property rights, use trade names in which they have not acquired rights that are identical to trade names well-known to the public within the country or marks registered within the country, or to well-known marks or marks of high renown registered within the country or abroad.

The sanction specified in the foregoing paragraph is likewise imposed on persons who, in violation of intellectual property rights, use distinctive appearances identical or similar to distinctive appearances that are well-known to the public within the country.

Article 322 provides for the punishment with imprisonment for a month to two years and a fine of 250 to 2,500 UVCs, due account being taken of the degree of financial prejudice caused, of persons who, in violation of intellectual property rights:

- (a) Manufacture, market or stock labels, seals or packages that feature marks of high renown or well-known marks registered within the country or abroad;
- (b) manufacture, market or stock labels, seals or packages that contain marks or appellations of origin registered within the country;
- (c) separate, remove, replace or appropriate labels, seals or packages that contain lawful marks with a view to using them for products of different origin.

The same sanction is imposed on those who stock, manufacture, use for commercial purposes, offer for sale, sell, import or export articles that contain false information on the nature, origin, method of manufacture, quality, characteristics or suitability for use of the goods or services in question, or contain false information concerning awards or other distinctions.

Article 323 provides for the punishment with imprisonment for three months to three years and a fine of 500 to 5,000 UVCs, due account being taken of the degree of financial prejudice caused, of those who stock, manufacture, use for commercial purposes, offer for sale, sell, import or export counterfeit products identified by marks of high renown or well-known marks registered within or outside the country, or with marks registered within the country.

The sanction specified in the foregoing paragraph is likewise imposed on those who fill containers identified by the mark of another person with spurious goods.

Article 324 provides for the punishment with imprisonment for three months to three years and a fine of 500 to 5,000 UVCs, due account being taken of the degree of financial prejudice caused, of persons who, in violation of copyright or related rights:

- (a) Alter or mutilate a work, including by the removal or alteration of electronic right management information;
- (b) register, publish, distribute, communicate or reproduce another's work, wholly or in part, as being their own;
- (c) reproduce a work;
- (d) communicate works, videograms or phonograms to the public, either wholly or in part;
- (e) bring into the country, stock, offer for sale, sell or hire, or in any other way bring into circulation or make available to third parties, unlawful reproductions of works;
- (f) reproduce a phonogram or videogram and generally any protected work, and also the performances of performers, either wholly or in part, and with or without imitation of the outward features of the original, or bring into the country, stock, distribute, offer for sale, sell, hire or in any other way bring such unlawful reproductions into circulation or make them available to third parties;

- (g) bring into the country, stock, offer for sale, sell or hire, or in any other way bring into circulation or make available to third parties, reproductions of works, phonograms or videograms in which rights management information has been altered or removed.

Article 325 adds a provision for the punishment with imprisonment for a month to two years and fine of 250 to 2,500 UVCs, due account being taken of the degree of financial prejudice caused, of those who, in violation of copyright or related rights:

- (a) Reproduce a number of copies of a work greater than that authorized by the holder;
- (b) bring into the country, stock, offer for sale, sell or hire, or in any other way bring into circulation or make available to third parties, reproductions of works in numbers exceeding those authorized by the holder;
- (c) retransmit by any means the broadcasts of broadcasting organizations;
- (d) bring into the country, store, offer for sale, sell or hire, or in any other way bring into circulation or make available to third parties, apparatus or other devices intended for deciphering or decoding coded signals or in any other way circumventing or disabling technological protection measures applied by the right holder.

Article 326 provides for the punishment with imprisonment for a month to two years and a fine of 250 to 2,500 UVCs of those who obstruct, fail to heed or prevent the implementation of a preventive or precautionary measure.

Article 327 stipulates that the following shall be aggravating circumstances in addition to those provided for in the Criminal Code:

- (a) The fact of the infringer having been warned of the violation of rights;
- (b) the fact of the infringing goods being a potential health hazard;
- (c) the fact of the infringements being committed in respect of unpublished works.

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?

While Article 294 of the Intellectual Property Law states that the authorities responsible for the hearing of disputes on intellectual property are the district intellectual property courts, responsibility for initiating criminal proceedings belongs to the criminal courts. Proceedings may be initiated on the authorities' own initiative, i.e. ex officio, in accordance with the spirit and letter of Articles 328, 332 and 333 of the Intellectual Property Law, or in response to complaints.

It should be noted that according to Article 332 of the Intellectual Property Law, the administrative authorities, exercising the administrative protection of intellectual property rights, may conduct investigations when they presume that there has been a violation of intellectual property rights, on completion of which - according to the second paragraph of Article 339 of the Intellectual Property Law - if there is presumption of an offence having been committed, a copy of the administrative proceedings is sent to the competent criminal court and to the Public Prosecutor.

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

Intellectual property right holders are entitled to initiate criminal proceedings either personally or through their judicial attorney. Furthermore, under Article 328 of the Intellectual Property Law, the infringements set forth in Book IV, Title I, Chapter III, ("Offences and Sanctions") are also punishable and investigable ex officio. Article 169 of the Code of Criminal Procedure also states that: "Criminal proceedings shall be initiated by the judge without prejudice to the intervention of a party".

24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:

- **Imprisonment;**
- **monetary fines;**
- **seizure, forfeiture and destruction of infringing goods and materials and implements for their production;**
- **other.**

The Intellectual Property Law provides in Chapter III for civil and criminal sanctions ranging from monetary fines to imprisonment. The reply to question 21 provides a comprehensive description, by category of intellectual property rights and type of infringement, of the prison sentences (from one month to three years depending on the infringement) and fines (from 500 to 5,000 UVC depending on the infringement) that can be imposed.

Furthermore, according to Article 330 of the Intellectual Property Law, in all of the cases provided for in Chapter III, "seizure shall be ordered in respect of all material that has directly or indirectly served for the commission of the offence, the confiscation of which may be ordered by the criminal judge at any time during the preliminary investigation and shall be ordered in the decree opening the plenary proceedings."

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

Under Chapter II, Article 23, §26 and §27 of the Constitution, the State recognizes and guarantees legal security and the right to due process, and justice without delay. The Code of Criminal Procedure regulates the length of the procedure in Article 166. As a rule, the criminal process must be conducted in the following stages: the preliminary investigation (which must take place within a period of 15 days, but may be extended to make room for certain procedural acts), the intermediate stage, the plenary stage and the challenge stage. Articles 235, 236, 237, 238 and 239 state that once the preliminary investigation has been conducted, the judge declares that stage to have been completed and instructs ex officio the private prosecutor, where applicable, to submit the accusation in writing within a period of three days. Whether or not this is done, the judge instructs the public prosecutor to rule within a period of six days from the date of the corresponding notification. Once the accusation has been formally submitted or a ruling made, or both where applicable, they are transmitted to the representative of the defence who has six days in which to reply, after which time, if he fails to do so, the proceedings continue by default. Whether following the reply of the representative of the defence or by default, the judge orders a stay of proceedings or the opening of the plenary stage, as appropriate. If certain essential procedural acts are seen to have been omitted, the judge orders the opening of the investigation for a period of ten days. Such opening may also be requested by the plaintiff, the public prosecutor or the representative of the defence. Article 253 mentions that the plenary stage is initiated upon a reasoned order, and under Article 261, the plenary stage comprises the procedural acts required to prove the responsibility or innocence of the defendant

with a view either to conviction or acquittal. Once the evidence has been submitted, it is discussed and evaluated in view of a judgement in accordance with Articles 316, 324 and 326 of the said Code. Notification of the judgement takes place within three days following the court ruling. In accordance with Article 350, appeals must be decided within a period of 15 days.

As can be seen, each one of these stages is clearly defined; however, owing to the particular features of each individual case it is very difficult to indicate the actual length of the proceedings which depends, *inter alia*, on the complexity of the case, the evidence required and the appeals lodged.

Article 463 adds that penalties are imposed in cases in which the deadlines laid down by the law are not respected.

As regards costs, as a rule the proceedings are free of charge. Thus, Article 456 of the Code of Criminal Procedure specifically stipulates that "criminal procedures are recorded on blank paper, and the defendant is not required to pay any fees, legal costs or charges". However, if the defendant is convicted, he must pay the court costs in accordance with the law, without prejudice to the payment of civil compensation where applicable.
