



## CHECKLIST OF ISSUES ON ENFORCEMENT<sup>1</sup>

### RESPONSES FROM FINLAND

The present document provides an updated checklist of issues on enforcement since Finland's previous checklist (IP/N/6/FIN/1/Add.1) submitted on 6 February 2007.

#### **Introductory Remarks**

As of September 2013, the Market Court became a specialized IPR court having exclusive jurisdiction over all civil (contentious and non-contentious) intellectual property matters. Provisional measures related to IPRs are also handled by the Market Court as well as appeals over domain name registrations and decisions of the Finnish Patent and Registration Office. In addition to IPR matters, the Market Court decides cases relating to i.e. competition law, public procurement and unfair business practices.

Decisions of the Market Court may be appealed to:

- (a) the Supreme Court in civil cases;
- (b) the Supreme Administrative Court in matters concerning the registration of industrial property rights.

In both cases, appeals are subject to a leave to appeal.

In Finland, there are separate courts for the adjudication of civil and criminal IPR matters. Criminal proceedings involving industrial property rights fall within the exclusive competence of the District Court of Helsinki. However, criminal proceedings related to copyright are heard in local district courts.

#### **Civil and Administrative Procedures and Remedies**

- (a) *Civil judicial procedures and remedies*

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

The Market Court has jurisdiction over civil IPR infringement cases and matters that according to the Unfair Business Practices Act, including cases involving slavish imitation and protection of undisclosed information, belong to its competence. As a main rule the Market Court is competent in a composition consisting of three legally qualified judges but there are certain exceptions to this rule (see Chapter 1A of the Act on the Proceedings before the Market Court). For instance in cases concerning patents, utility models and integrated circuits, the Court is generally competent in a composition of three qualified judges and one technically qualified judge (Market Court Engineer). The Court's composition may in some circumstances also include secondary specialized members (please see Sections 9-10 of the Act on the Proceedings before the Market Court concerning i.e. assignment of secondary specialized members). Decisions of the Market Court may be appealed to the Supreme Court if the petition for leave of appeal is granted by the Supreme Court. The provisions on extraordinary appeal in Chapter 31 of the Code of Judicial Procedure are applied where appropriate.

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<sup>1</sup> Document [IP/C/5](#)

**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?**

Proceedings instituted on the grounds that the right has been granted to a person other than entitled to it may only be instituted by the person claiming to have a better right therein. In other cases proceedings for declaration of invalidity may be instituted by any person who suffers damage as a result of the grant of the right or by a prosecutor for reasons of public interest. The right holder or any person who may exploit the protected right under a licence may bring an action for declaratory judgment to establish whether he enjoys protection against other parties where uncertainty exists. It is also possible to bring an action to obtain a declaratory judgment to establish whether the particular registration prevents one's commercial activity. Proceedings may also be initiated by a person claiming for a compulsory licence or for determination of new conditions for a compulsory licence. In IPR infringement cases, the registered right holder and the licensee have standing to assert intellectual property rights.

First of all it should be noted that in Finland there is no general requirement to have a legal representative in order to represent oneself in court proceedings. The parties may in civil cases be represented before the court personally or by an attorney or licensed legal counsel on their behalf. The court may, however, order a party or his representative to appear personally before the court where it deems it necessary for the inquiry of the case.

**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?**

General provisions concerning a party's obligation to produce written evidence on demand (*editio*) are given in Chapter 17 of the Code of Judicial Procedure. In addition, there is an Act on Safeguarding the Evidence in Civil Actions concerning Intellectual Property Rights, which has entered into force in 2000. Chapter 17, Section 9 of the Code of Judicial Procedure states that anyone in possession of a document assumed to have evidentiary value in the case has an obligation to produce such evidence. The obligation does not, however, extend to a person suspected in a criminal case or anyone related to him. In criminal cases the provisions of the Coercive Measures Act on seizure and house search are applied. According to Chapter 7, Section 1 of the Coercive Measures Act, a product may be seized if it is assumed to have evidentiary value in a criminal case. According to Chapter 8, Section 1 of the said Act, a house may under certain conditions be searched for example to find a product to be seized.

Where a party has an obligation to produce a document, the court may, under the penalty of a fine, issue him an order to do so. The court may also order the document to be produced by a distrainer. The obligation may be imposed at the request of the opposing party. There are also rules on a procedure where the counterparty has to announce, at the request of the other party, whether he is in possession of a certain document.

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

A witness or a party to a case may refuse to give a statement which would reveal a business or professional secret unless very important reasons, or when the case concerns a severe crime, require the information be disclosed (Code of Judicial Procedure, Chapter 17, Section 19). If confidential information concerning other party's business or know-how is submitted before the court, the said party may demand that this information should be declared confidential. According to the Act on Proceedings before the Market Court which refers to provisions of the Act on the Publicity of Court Proceedings in General Courts, the court may in certain cases order the hearings to be held behind closed doors. If in such hearings information has been revealed concerning which secrecy is applied at the court, the court may order that the information shall continue to be kept secret for a certain period of time (Chapter 6, Section 5 of the Act on the Proceedings before the Market Court as well as Chapters 3 and 4 of the Act on the Publicity of Court Proceedings in General Courts, and Section 24(20) of the Act on the Openness of Government Activities).

The Act on the Openness of Government Activities (Chapter 6) provides rules on document secrecy and prohibition of use of secret information in the case of an expert referred to in the Act to Safeguard the Evidence in Civil Actions concerning Intellectual Property Rights (Section 6) or an applicant who due to his position as a party has acquired information covered by the secrecy obligation.

**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

According to the relevant IPR legislation, the court may make an order forbidding the person infringing the IPR to continue or repeat the infringement. It is possible to bring an independent action for injunction.

Damages

Any person who intentionally or by negligence infringes an industrial property right is liable to pay reasonable compensation for the damage caused by the infringement. In case of slight negligence, the compensation may be adjusted accordingly. In cases where the infringement is neither intentional nor negligent, the infringer shall pay compensation for the exploitation of the invention if and to the extent considered reasonable.

In copyright cases, the defendant cannot exculpate himself out of compensation to the rights holder for the infringing use (strict liability). In the case of wilful or negligent conduct, in addition to fair compensation, the infringer is to pay damages even for any other loss, for possible mental suffering and for other injury caused by the infringement.

General provisions on damages deriving from non-contractual liability are included in the Tort Liability Act. Coverable loss extends to all kinds of appraisable property damages, including litigation expenses. The amount of compensation is based on the court's assessment, where both the objective of material compensation as well as the specific circumstances are taken into account. Rules for the determination of the damages have been established in court practice in all IPR fields. Claims can be presented both in civil and criminal proceedings.

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

In IPR infringement cases, the court may prescribe, upon the demand of the injured party, that the infringing material (produced copies, manufacturing material or devices, etc.) shall be destroyed or altered or that such property be conveyed to the injured party against compensation covering manufacturing expenses, unless the acquirer of the infringing property in question has acted in good faith. Claims based on an infringement can be presented both in civil and criminal proceedings.

The Act to Safeguard the Evidence in Civil Actions concerning Intellectual Property Rights (Section 2) provides that a competent court may decide that material that is assumed to have significance as evidence may be subjected to seizure in order to safeguard the presentation of evidence.

Other remedies

Please see answer to question 10 (provisional measures) below.

**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**

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**production and distribution of the goods or services found to be infringing and of their channels of distribution?**

According to the Section 7a of the Act to Safeguard the Evidence in Civil Actions Concerning Intellectual Property Rights, court can, on the request of the plaintiff, in a civil proceedings concerning infringement of an industrial property right or copyright order the defendant, who has been found to infringe such right in commercial extent, to give necessary information on the origin of the goods and services and on the distribution network. Order can not be given if it causes to the defendant unreasonable harm compared to the significance of the access to information. Information on the origin of the goods and on distribution network includes the names and addresses of the producers, manufacturers, distributors, suppliers, holders and wholesalers and retailers. It also includes the information on quantity of goods and services produced, manufactured, supplied, received or ordered and the price received from them.

In a civil case, a party may be heard for evidentiary purposes. A party shall keep the truth when making statements on the circumstances invoked by him/her in the case, when commenting on the circumstances invoked by the opposing party, and when replying to the questions put to him (Chapter 17, Section 26 of the Code of Judicial Procedure).

In a criminal case any person, whom is assumed to possess information of the offence, may be obliged to appear at a pre-trial investigation in accordance with Chapter 6, Section 1 of the Criminal Investigations Act. According to Chapter 6 Section 2 of the said Act, if that person fails to appear at a pre-trial investigation without an acceptable reason, he may be brought thereto. The suspect of an offence may also be arrested or taken into custody under conditions set forth in Chapter 2 of the Coercive Measures 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?**

General provisions on the indemnification liability of the authorities (administrative authorities and public corporations) are provided in the Tort Liability Act. The authorities are liable for damages resulting from wilful or negligent erroneous exercise of the authority. In general, the liability may extend wholly or partially even to individual functionaries on the basis of vicarious liability, except for the cases of only slight negligence. Administrative actions taken in good faith do not cause liability.

Chapter 10 of the Criminal Code provides rules for forfeiture. The proceeds of crime shall be ordered forfeit to the State. The forfeiture shall be ordered on the offender, a participant or a person on whose behalf or to whose advantage the offence has been committed, where these have benefited from the offence (Chapter 10, section 2). The Chapter also provides rules for extended forfeiture of the proceeds of crime and forfeiture of certain other property. If an object or property cannot be ordered forfeit because, e.g., the object or property has been hidden or it is otherwise inaccessible, a full or partial forfeiture of the value of the object or property may be ordered on the offender, a participant or a person on whose behalf or to whose advantage the offence has been committed.

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

There are no specific provisions governing the length of proceedings in the Finnish law. Chapters 4 and 6 of the Act on Proceedings before the Market Court contain rules of procedure for intellectual property matters, which are applied together with the general provisions on civil procedure laid down in the Code of Judicial Procedure. In civil cases, court proceedings start by an application for summons. After that the defendant is asked to give a written response to the application for summons. Preliminary hearings start after written procedure. The preliminary hearings should be concluded without delay; if possible, in one session. The parties should prepare themselves for the hearing adequately, so that there would be no need to postpone the proceedings due to the party's negligence. Sometimes a case may be decided already at the preliminary stage. In other cases, the case shall be brought to a main hearing. The main hearing shall, as a general rule, continue without interruption until the case is ready for the decision of the court. The length of proceedings

is under the control of the court and therefore varies from case to case. In 2016 the average length of proceedings at the Market Court was about 6.6 months.

However, the Act on Compensation for the Excessive Length of Judicial Proceedings lays down provisions on the right of a party to receive compensation out of State funds for the excessive length of judicial proceedings. According to Section 3 of the said Act, a private party is entitled to receive reasonable compensation if the excessive length of judicial proceedings is considered to violate the right of a party to a trial within a reasonable time. In the assessment of whether the length of the judicial proceedings has been excessive, the following circumstances, in particular, are taken into account in addition to the length of the proceedings: (a) the nature and extent of the matter; (b) the actions of the parties, authorities and courts during the judicial proceedings; (c) the significance of the matter to the party.

The general rule concerning the costs in civil proceedings, according to Chapter 21, Section 1 of the Code of Judicial Procedure, is that the party who loses the case shall be liable for all reasonable costs incurred by the necessary measures of the opposing party, unless otherwise provided by an Act. The compensation shall, under Chapter 21, Section 8, fully cover the costs of the preparation for the trial and the participation in the proceedings, as well as the fees of the attorney or counsel, to the extent that the expenses can reasonably be justified for the protection of the party's interest.

There are provisions governing the court fees in the Finnish legislation. Other legal costs result from possible attorney fees as agreed between a party and an attorney.

The Legal Aid Act provides rules for the determination of attorney fees and expenses when the legal aid is given at the expense of the State to a person who needs legal assistance and who for lack of means cannot himself pay the expenses (Chapter 3 of the Legal Aid Act).

*(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.**

Except for some limited provisional measures, there are no administrative judicial procedures applicable as to remedies in this context. As regards administrative procedures in the field of executive authority, the means are limited to the specific provisional measures discussed below.

**Provisional Measures**

*(a) Judicial measures*

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

According to the relevant industrial property laws, if an infringement may be presumed to have taken place, the infringing goods may, to prevent continuation of the infringement, be ordered to be seized or taken into safekeeping.

General provisions concerning judicial precautionary measures in civil matters are contained in Chapter 7 of the Code of Judicial Procedure and in the Act to Safeguard the Evidence in Civil Actions concerning Intellectual Property Rights.

If the petitioner can establish a probability that he/she holds a debt that may be rendered payable as prescribed in the Enforcement Code, and that there is a danger that the opposing party hides, destroys or conveys his property or takes other action endangering the payment of the debt, the court may order the attachment of the real or movable property of the opposing party to an amount securing the debt.

The court may also, under similar preconditions, prohibit the opposing party from exercising a certain activity, order him to perform a certain act, empower the petitioner to perform certain act,

order the property of the opposing party to be placed under the administration or care of a trustee, or order other measures necessary for securing the right of the petitioner.

Provisions on seizure in criminal proceedings are contained in Chapters 6 and 7 of the Act on Coercive Measures. An object or a specific good, including documentary material, may be confiscated or seized if there is reason to presume that the goods in question may serve as evidence or that the court shall later order them forfeit. At the request of the plaintiff, the court may also grant an interlocutory injunction on use of the goods claimed to be infringing. The prohibition will remain in force until final judgment in the matter of substance has been reached, if not otherwise decided. Interlocutory injunctions may also be imposed in cases of disclosure of trade secrets.

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

The decision to undertake precautionary measures under Chapter 7 of the Code of Judicial Procedure may be made, on petition to the Market Court in civil IPR related matters. According to Chapter 7, Section 5 of the Code of Judicial Procedure and Section 4 of the Act to Safeguard the Evidence in Civil Actions concerning Intellectual Property Rights, precautionary measures shall not be granted without reserving the opposing party an opportunity to be heard. However, if the purpose of the precautionary measures can otherwise be compromised, the court may on the request of the petitioner give an interim order on precautionary measures without reserving the opposing party the said opportunity. In such case the order shall remain in force until further notice.

In criminal cases, a seizure may be ordered by the authority entitled to make an arrest, or by the court in the course of proceedings. If the person on whose premises the good is seized is not present, he shall immediately be informed about the seizure (Coercive Measures Act, Chapter 7, Section 9).

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

The court may, on petition, impose precautionary measures in civil matters under Chapter 7 of the Code of Judicial Procedure and Sections 2 and 3 of the Act to Safeguard the Evidence in Civil Actions concerning Intellectual Property Rights. Precautionary measures shall not be granted without reserving the opposing party an opportunity to be heard. However, if the purpose of the precautionary measures can otherwise be compromised, the court may on the request of the petitioner give an interim order on precautionary measures without reserving the opposing party the said opportunity. In such case the order shall remain in force until further notice.

An action on the main issue has to be brought within one month from the decision on the precautionary measures. When the court decides on the main issue, it shall at the same time determine how long the precautionary measures remain in force. If the action is dismissed or ruled inadmissible, the court may at the same time order that the precautionary measures remain in force until the main decision becomes final. If the action is abandoned, the precautionary measures are cancelled. A petitioner who has unnecessarily resorted to precautionary measures must cover the costs incurred. A court order on precautionary measures may be appealed separately.

For initiation in criminal cases, see answer to question 11 above. The seizure may be cancelled by the same authority that imposed it. Cancellation has to take place as soon as the seizure no longer is necessary or if a charge for the crime causing it is not brought within four months. At the request of the relevant authority, the court may extend this time limit. At the request of a person involved, the court has to decide on validity of the seizure. If the request is made before the court has started to handle the charge, it has to be taken under consideration within a week. The court has to give the parties involved an opportunity to be heard, but an absence of a party does not preclude a decision in the matter. An appeal against a decision concerning seizure, as well as against a decision prohibiting the person infringing the IPR to continue or repeat the infringement, may be lodged separately. The appeal does not, however, prevent the measure. The appellant may in some cases be obliged to give a security for the damage and disadvantage that may be caused by the measure.

Chapter 8 of the Enforcement Code contains provisions on enforcement of the precautionary measures. A measure may not be put into effect, and the enforcement has to be discontinued, if the opposing party gives the executor a security which has been approved by the party requesting the measure, or which is considered to be proportional to the need for protection of the rights of the requesting party. The general rule is that a decision on a precautionary measure may not be put into force unless the petitioner provides a security for the damages that may be caused by the measure. The court may, on petition, release the applicant from providing the security referred to in Chapter 8, section 2 of the Enforcement Code, if the petitioner is found unable to do so and if his right is deemed manifestly well-founded.

**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 costs of proceedings vary case by case. Precautionary measures shall be granted expeditiously. The issue of the final liability to cover the expenses incurred by the application and enforcement of precautionary measures shall be decided when the main issue is being dealt with.

*(b) Administrative procedures*

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

According to Chapter 8, Section 13 of the Enforcement Code, in case that the purpose of the precautionary measures prescribed in Chapter 7, Sections 1-3 of the Code of Judicial Procedure would otherwise be endangered, the said measures may be granted by the public executor, if the requesting party has legal grounds for his application and the application cannot immediately be granted by the court. The maximum period of validity for such decision and measure is six months, unless renewed by the executor on special grounds. As regards provisional measures by administrative authorities in the course of criminal investigations, please see answers to questions 11 and 12 above.

**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?**

As a Member State of the European Union, Finland applies the Regulation (EU) No 608/2013 of the European Parliament and of the Council concerning customs enforcement of IPRs, which entered into force on 1 January 2014. This new Regulation repeals the Council Regulation (EC) 1383/2003 and sets out procedural rules for customs authorities to enforce IPRs with regard to goods liable to customs supervision or customs control i.e. the Regulation lays down conditions for customs action where goods are suspected of infringing IPRs. Moreover, the new Regulation extends the range of IPR infringements covered by the previous EU regulation 1383/2003, which applied to counterfeit goods, pirated goods, patents and SPCs, designs and models, copyright and related rights, trademarks, designations of origin, plant variety rights and geographical indications as well as to any mould or matrix designed or adapted for the manufacture of goods infringing an intellectual property right. The new Regulation now covers also:

- trade names insofar as they are protected as exclusive property rights under national law;
- topographies of semiconductor products;
- utility models;

- devices, which are primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of technological measures.

However, the Regulation No 608/2013 does not apply to goods carried by passengers in their personal luggage provided that those goods are for their own personal use and there are no indications that commercial traffic is involved. Also infringements resulting from (a) illegal parallel trade (concerning original goods, which have not been imported through a right holder's own distribution channels) and (b) overruns (concerning excess quantities of goods manufactured by a person duly authorized by a right holder to manufacture a certain quantity of goods) are excluded from the scope of the Regulation.

**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?**

***Application for customs action and competent customs authorities***

The holder of a right may lodge an application for the suspension of the release of goods with the Enforcement Department of Finnish Customs. Applications shall be completed using the form referred to in Article 6 of the Regulation No 608/2013 and shall contain the information required therein. An application shall for instance include:

- details concerning the applicant e.g. a proof that the applicant is the holder of the right for the goods in question;
- IPRs to be enforced;
- description of the goods and information needed to enable the customs authorities to readily identify them e.g. specific and technical data on the authentic goods, including markings such as bar-coding and images where appropriate;
- request for the application of small consignments procedure provided an applicant wants it to be applied.

Where the competent customs department considers that the application does not contain all the information required it shall request the applicant to supply the missing information within 10 working days of notification of the request.

The customs department shall notify the applicant of its decision granting or rejecting the application within 30 working days of the receipt of the application. In the event of rejection, the customs department shall provide reasons for its decision and include information on the appeal procedure. If the applicant has been notified of the suspension of the release or the detention of the goods by the customs authorities before the submission of an application, the customs department shall notify the applicant of its decision granting or rejecting the application within two (2) working days of the receipt of the application. In Finland, the decision on the initiation of the suspension procedure is made by the Enforcement Department of Finnish Customs.

***Suspension procedures***

The new Regulation (EU) 608/2013 provides for the following procedures:

**(a) Simplified destruction procedure**

The new Regulation makes the so-called simplified destruction procedure compulsory with regards to all infringements of IPRs. The simplified procedure is applied when the right holder has confirmed the infringement and has accepted the destruction of goods within ten (10) working days from the notification of suspension and: (a) the declarant or the holder of the goods agrees to destruction; or (b) even without his/her express consent in case the declarant or the holder of the goods has not explicitly opposed destruction within the prescribed time period of ten (10) working days of the notification of suspension (see Article 23 of the Regulation).



Due to the mandatory nature of the simplified destruction procedure, it is no longer required that the right holder seeks a judgment by default in order to get the goods destructed in case the declarant or the holder of the goods remains passive. If the declarant or the holder of goods instead opposes the destruction of goods, the right holder can either try to negotiate with him/her or ultimately take legal action against him/her at the Market Court.

**(b) Procedure related to small consignments**

As for small consignments of counterfeit and pirated goods, a specific procedure is introduced by the new Regulation 608/2013. This procedure regarding small consignment goods allows for such goods to be destroyed without the explicit agreement of the applicant i.e. the customs authority does not verify from the right holder that the goods in question infringe his/her IPRs. Instead, the customs authority only informs the declarant or the holder of the goods about the intention to destruct such goods. Small consignments goods can be destructed without the consent of the declarant or the holder of the goods if he/she has not notified his opposition thereto within ten (10) working days of notification of the suspension. In order for this procedure to be applied, it is required that the holder of the suspension decision has requested the use of this procedure in the suspension application (Article 26). A definition of small consignment goods can be found from Article 2(19) of the Regulation.

**Right of inspection and information**

The customs authorities shall give the holder of the decision and the declarant or the holder of the goods the opportunity to inspect the goods whose release has been suspended or which have been detained (Article 19). Under Articles 17(4) and 18(5) of the Regulation, the customs authorities shall, upon request and where available to them, inform the holder of the decision of the names and addresses of the consignee, the consignor and the declarant or the holder of the goods, of the customs procedure and of the origin, provenance and destination of the goods whose release has been suspended or which have been detained.

**Requirements related to the duration of suspension**

The customs authorities shall grant the release of the goods or put an end to their detention, immediately after completion of all customs formalities, where they have not received within ten (10) working days both the written confirmation from the holder of the decision that, in his conviction, an intellectual property right has been infringed and his agreement to destruction, unless those authorities have been duly informed about the initiation of proceedings to determine whether an intellectual property right has been infringed. Except in the case of perishable goods the customs authorities may extend the period by a maximum of 10 working days upon a duly justified request by the holder of the decision in appropriate cases (Articles 23(1) and 23(4)).

Where the customs authorities have been notified of the initiation of proceedings to determine whether a design, patent, utility model, topography of semiconductor product or plant variety has been infringed, the declarant or the holder of the goods may request the customs authorities to release the goods or put an end to their detention before the completion of those proceedings. The customs authorities shall release the goods or put an end to their detention only if the declarant or the holder of the goods has provided a guarantee that is of an amount sufficient to protect the interests of the holder of the decision, the authority competent to determine whether an intellectual property right has been infringed has not authorized precautionary measures and all customs formalities have been completed (Article 24 that corresponds to Article 53.2 of the TRIPS Agreement).

**Security or equivalent assurance**

No security or administrative payments are requested from the applicant.

**Indemnification of the importer and the owner of the goods**

The owner of the goods may bring an action for recovery of damages resulting from the unfounded detention of the goods.

**17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?**

***Duration of proceedings***

The application procedure is normally taken care of at the Enforcement Department of Finnish Customs within one working day. The matters have, with few exceptions, been brought before the court within ten (10) working days. When extending the period, the Enforcement Department of Finnish Customs has carefully considered the grounds for the application. The given extension has been ten (10) working days.

***Validity of decisions concerning suspension application***

When granting an application for action, the competent customs department shall specify the period during which the customs authorities are to take action. That period shall not exceed one year (Article 11 of the Regulation 608/2013).

***Costs incurred from customs control***

Under the new Regulation 608/2013, the right holder bears any costs incurred from customs control such as costs from destruction, disposal or storage of the infringing goods. However, the right holder can afterwards claim damages from the infringer so as to cover these customs control costs (see Article 29).

**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?**

Competent customs authorities are allowed to act *ex officio* when they identify goods suspected of infringing an IPR, which are not covered by a decision granting an application. In this case they may, except for in the case of perishable goods, suspend the release of those goods or detain them (Article 18).

Under Article 18(3) of the EU Regulation, the customs authorities shall notify the declarant or the holder of the goods of the suspension of the release of the goods or their detention within one (1) working day of that suspension or detention. Provided a suspension application is subsequently submitted by the right holder after an *ex officio* suspension notification delivered by the customs authorities, that suspension application must be submitted to the competent customs department within four (4) working days of the notification of the suspension of the release or detention of the goods (Article 5(3)).

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

Decisions of the customs authorities can be appealed to the Administrative Court of Helsinki. The appeal period in a matter relating to the levying, repayment or remission of a duty is three years from the receipt of notice of the customs debt, however, always at least 60 days from the date of receipt of notice of the decision on the claim for adjustment. In other matters an appeal must be lodged within 30 days counted from the date the appellant was notified of the decision. Decisions of the Administrative Court of Helsinki may be appealed to the Supreme Administrative Court in case leave to appeal is granted by the Supreme Administrative Court.

## **Criminal Procedures**

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

**(a) Industrial property**

The District Court of Helsinki has exclusive jurisdiction in criminal matters relating to industrial property rights. Market Court Engineers and secondary specialized members of the Market Court may assist the District Court of Helsinki in criminal matters upon the District Court's request. The District Court of Helsinki may also hear civil claims for damages arising from the offence if such claims are presented during the criminal proceedings. An appeal is submitted the ordinary way

comprising two appellate instances; the Helsinki Court of Appeal and the Supreme Court. In the latter, a leave to appeal is however required as a prerequisite.

**(b) Copyright and related rights**

The court of first instance in criminal matters is the district court of the place where the crime was committed (*forum delicti*) or the district court of habitual residence of the person who is charged (*forum domicilii*). In case of several related crimes or if one person is accused of several crimes, it is nevertheless possible that all these related cases are heard in one court (*forum connexitatis*). The legal venue is thus determined according to general provisions of the Criminal Procedure Act (Chapter 4: Jurisdiction in criminal matters). A civil claim (damages and compensation) arising from the offence for which a charge has been brought may be heard in connection with the charge. Local district courts may request assistance from the Market Court's specialized members. Decisions of the local district courts can be appealed to the competent Court of Appeal and ultimately to the Supreme Court. As for appeals to the Supreme Court, a leave to appeal is required.

**(c) Unfair Business Practices**

Under Section 11 of the Unfair Business Practices Act jurisdiction in cases of violation of the competition rules relating to business practices or abuse of a technical model or technical directions as described in the Unfair Business Practices Act belongs to the District Court of Helsinki.

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

Criminal procedures and penalties with ordinary channels of appeal are available in respect of intentional infringements of all intellectual property rights contained in the TRIPS Agreement. In certain copyright cases, even gross negligence may constitute an infringement (copyright offence) punishable under the Copyright Act (Sections 56 to 56f of the Copyright Act).

**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?**

In Finland, the police and the Customs are investigators responsible for initiating criminal proceedings. Infringements of industrial property rights and copyright are so-called complainant offences, which mean that the "victim or injured party" shall report the crime before proceedings can be initiated. In exceptional cases, proceedings may be initiated without a crime report from the holder of the right/complainant. According to Chapter 1, Section 14 of the Criminal Procedure Act, the complainant has the possibility of bringing charges in respect of an offence only in case the prosecutor decides not to prosecute or the investigator or the prosecutor decides not to execute investigation or decides that an ongoing investigation will be suspended or concluded.

In cases of crimes defined in Chapters 49 and 30 of the Criminal Code the prosecutor may initiate criminal proceedings if the injured party reports an intellectual property crime for prosecution, or for reasons of important public interest, on his own initiative (Chapter 49, Section 6 and Chapter 30, Section 12 of the Criminal Code).

In cases of offences of intellectual property rights defined in the relevant substance laws, the prosecutor shall not bring charges for offences of an intellectual property right, unless the injured party reports it for the bringing of charges or unless a very important public interest requires that charges be brought. (Provisions: please see answer to question 21 above as well as Unfair Business Practices Act, Section 11.) Minor exceptions to the general rule of complainant action are prescribed in the Copyright Act, regulating violations of the moral rights of the author and the safeguard of the public interest in certain specific cases as well as violation of a technological measure (Copyright Act, Section 62).

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

According to Chapter 1, Section 14 of the Criminal Procedure Act, the complainant/injured party has the possibility of bringing charges in respect of an offence only in case the prosecutor decides not to prosecute or the investigator or the prosecutor decides not to execute investigation or decides that an ongoing investigation will be suspended or concluded.

Prosecutor is obliged to prosecute, unless owing to the lack of sufficient evidence the prosecution would be of no actual cause. If a prosecutor has initiated an action, the injured party has a right to join the criminal action.

According to Chapter 49, Section 6 of the Criminal Code, the prosecutor may initiate criminal proceedings if the injured party reports an intellectual property crime for prosecution, or for reasons of important public interest, on his own initiative.

**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.**

*Imprisonment and monetary fines*

For intellectual property crimes contained in Chapters 49 and 30 of the Criminal Code may as a penalty be inflicted fines or imprisonment of a maximum of two years. For intellectual property offences according to the provisions of the relevant substance laws, as well as provisions of the Unfair Business Practices Act concerning disclosure of trade secrets, may as a penalty be inflicted fines (Provisions: please see answer to question 21 above).

*Seizure, forfeiture and destruction of infringing goods and materials and implements for their production*

The infringing goods may be ordered to be seized, destroyed, altered, handed over to the right holder against redemption or taken into safekeeping. Provisional seizure may also be ordered for the time of the proceedings (please see answers to questions 5 and 10 above). In criminal cases, seizure follows the provisions of Chapter 7 of the Coercive Measures Act.

**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 length and costs of proceedings vary from case to case. There is no first instance court fee in criminal cases instituted by the prosecutor. According to statistics in 2013, 50 percent of criminal cases dealt with in district courts were concluded in less than 2 months. The proceedings last over 6 months in only 13 percent of the cases. Criminal proceedings lasted on average 3.5 months at the Finnish district courts.

Provisions of the Act on Compensation for the Excessive Length of Judicial Proceedings apply also to criminal cases, which are tried at the general courts of law.

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