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**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: Spanish

CHECK-LIST OF ISSUES ON ENFORCEMENT¹

RESPONSES FROM NICARAGUA²

Revision

Civil and administrative procedures and remedies

(a) Civil judicial procedures and remedies

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

- Civil District Courts;
- Appeal Courts;
- Supreme Court of Justice.

These decide complaints relating to infringements or violations of intellectual property rights.³

This is based on Article 103 of Law 312, Copyright and Related Rights; Article 28 of Law 322, Protection of Programme-Carrying Satellite Signals; Article 105 of Law 354, Patents, Utility Models and Industrial Designs; Article 96 of Law 380, Trademarks and Other Distinctive Signs; Article 24 of Law 324, Protection of Layout-Designs of Integrated Circuits; and Article 79 of Law 318, Protection of New Plant Varieties.

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?

Standing⁴

- Right holder;
- co-holders;
- successors in title;
- exclusive licensees;
- collective management bodies in the field of copyright and related rights.

¹ Document IP/C/5.

² Updated responses from Nicaragua to document IP/N/6/NIC/1 of 30 May 2001.

³ Articles 3 and 20 of Law 260, Law on the Administration of Justice.

⁴ Article 24 of Law 324, Layout-Designs; Articles 105, 105 *bis* and 108 of Law 354, Patents; Articles 97 and 103 of Law 380, Trademarks and Other Distinctive Signs; Article 97 of Law 312, Copyright and Related Rights; Article 29 of Law 322, Protection of Programme-Carrying Satellite Signals; and Articles 3 and 9 of the Regulations of Law 318, Protection of New Plant Varieties.

Representation

The above-mentioned persons may be represented by attorneys or agents, provided that they are lawyers.

Appearance

The person concerned is not obliged to appear personally in court and may be represented by a lawyer.⁵ The only case in which a personal appearance is mandatory is for discovery purposes (answering interrogatories), at the request of the other party.⁶

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?

Authority

The competent judicial authorities have the authority to order the production of documents and moveables within the control of the parties, in accordance with the Code of Civil Procedure.⁷

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

Protection of confidential information

In our legislation this type of information is protected by keeping it secret, outside the proceedings. Similarly, the evidence must remain under the responsibility of the court.⁸

Moreover, the special intellectual property laws stipulate that the judicial authorities may do whatever is necessary to protect confidential information, where appropriate.

Provisions contained in Law 354⁹, Patents, Utility Models and Industrial Designs; Law 380¹⁰, Trademarks and Other Distinctive Signs; and the Regulations of Law 312¹¹, Copyright and Related Rights.

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 withdrawal from commercial channels of infringing goods and materials/implements for their production;**
- **any other remedies.**

Remedies

- Sequestration;
- preventive seizure;
- disclosure of documents;
- inspection of equipment;
- other suitable measures to prevent infringement ordered by the court and enforced by the customs authorities.

⁵ Article 59 Pr.

⁶ Article 1207 Pr.

⁷ Articles 921 to 930 Pr. and Article 1166 Pr.

⁸ Article 97 Pr. and 1109 Pr.

⁹ Article 120 of Law 354.

¹⁰ Article 150 of Law 380.

¹¹ Article 102 of Law 312.

With respect to patents, utility models and industrial designs, the competent judicial authority may order one or more of the following measures¹²:

- Cessation of the acts that constitute the infringement;
- damages;
- withdrawal from commercial channels of products resulting from the infringement and materials and means used predominantly for committing the infringement;
- prohibition of the importation or exportation of products, materials or means;
- adjudication of the ownership of the above-mentioned products, materials or means, in which case the value of such goods shall be included in the damages;
- destruction of the products, materials or means used for committing the infringement and other measures necessary to prevent the continuation or repetition of the infringement;
- publication of the verdict and notification of interested parties at the infringer's expense.

The following criteria, among others, are used to calculate the amount of damages:

- The profits lost by the right holder as a consequence of the infringement;
- the profits earned by the infringer as a result of the infringing acts;
- on the basis of the commercial value of the infringed right and such contractual licences as the right holder may already have granted, the price that the infringer would have paid for a contractual licence.

In copyright and related rights cases¹³, measures may be adopted to ensure the cessation of the unlawful activity and indemnification for moral and material damage.

Cessation of the unlawful activity may include:

- Prohibition from engaging in the acts that constitute such activity;
- the withdrawal of unlawful copies from circulation and their destruction;
- the seizure of the equipment used and its handing over to charitable associations.

The moral right of the author is understood to have been infringed by the impairment of any of the powers it confers and by the violation of any right of exclusive exploitation in the works. In both cases, irrespective of material damage, the author is entitled to indemnification for moral damage, even if there is no proof of the existence of economic injury derived from material damage. For assessment purposes, the circumstances of the infringement, the seriousness of the injury and the extent of the unlawful dissemination of the work are taken into account.

In determining the material damage, the following, in particular, are taken into account:

- The profits which the injured party would presumably have earned if there had been no infringement;
- the remuneration he would have received if he had authorized the use; and
- in the case of malicious intent on the part of the infringer, all profits that he may have derived from the infringing activity.

The injured party may opt for compensation for infringement of economic rights for injury calculated in accordance with any of the above rules. If he opts for more than one, their application will be equitably adjusted by the court.

Whatever the nature of the damages, the compensation will include the costs of the proceedings and the fees of any lawyer representing the injured party, in accordance with the Schedule of Court Charges.

In the case of "programme-carrying signals"¹⁴, without prejudice to any criminal penalties, the holder, his successor in title or representative may request from the court:

¹² Articles 106, 106 bis, 107 and 107 bis of Law 354, Patents.

¹³ Articles 97, 97 bis 1, 97 bis 2, 98, 99, 100 and 101 of Law 312.

¹⁴ Article 28 of Law 322, Programme-Carrying Signals, and Article 25 of Decree 44-2000, Regulations of Law 322.

- The cessation of the unlawful activity;
- the prohibition of its resumption;
- the payment of compensation for damage and injury caused by the infringement of the right;
- the withdrawal from trade of unlawful copies and their handing over to the holder of the infringed rights, at his request, or their destruction;
- the rendering useless or disablement of the products resulting from the unlawful act, the equipment or systems used for committing it and the materials used for the infringement, if they cannot be used for lawful purposes, and, if necessary, their destruction;
- the payment of the costs of the proceedings by the infringer;
- the publication of the judgment in one or more newspapers specified by the court, without prejudice to its publication in the Official Journal, *La Gaceta*, all at the expense of the infringer.

Damages shall be fixed in accordance with the provisions for the determination of material damages in Law 312, Law on Copyright and Related Rights.

Law 318, Protection of New Plant Varieties¹⁵, refers to the provisions of Law 354, Patents, Utility Models and Industrial Designs.

In the case of trademarks and other distinctive signs¹⁶, the following measures may be adopted to ensure the cessation of the unlawful activity:

- Cessation of the acts that constitute the infringement;
- damages;
- seizure or sequestration of the products resulting from the infringement;
- prohibition of importation or exportation of the products or materials;
- destruction of the products used for committing the infringement;
- measures necessary to prevent the continuation or repetition of the infringement;
- publication of the verdict and notification of interested parties at the infringer's expense;
- donation to charity of the counterfeit trademark goods, contingent upon the consent of the affected right holder.

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 judicial authorities may order the infringer to provide information that he may have concerning persons who have participated in the production or marketing of the products or processes forming the subject of the infringement and the distribution channels for those products.¹⁷

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?

Indemnification of defendants wrongfully enjoined

The measure which the judicial authorities apply, whether ex officio or at the request of a party, is to require the plaintiff to provide security sufficient to cover and pay any costs or damages awarded against him.¹⁸

¹⁵ Article 79 of Law 318, New Plant Varieties.

¹⁶ Article 98 of Law 380, Trademarks and Other Distinctive Signs.

¹⁷ Article 98 of Law 380, Trademarks and Other Distinctive Signs; Article 106 and 106 *bis* of Law 354, Patents; Article 79 of Law 318, New Plant Varieties.

¹⁸ Articles 939 Pr. to 948 Pr.; Article 113(d) of Law 354, Patents; Article 103(4) of Law 312, Copyright and Related Rights; Article 81(f) and Article 82 of Law 318, New Plant Varieties; Article 144 of Law 380, Trademarks and Other Distinctive Signs; Article 34(1) of Law 322, Satellite Signals.

Liability of public officials

Under the Constitution, the State is materially liable for injury to the goods, rights and interests of individuals resulting from the actions or omissions of public officials in the exercise of their duties. The State, in its turn, may sue the official or civil servant responsible for the injury.

Officials and civil servants are personally liable for violations of the Constitution, for lack of administrative probity and for any other offence or misdemeanour committed in the performance of their duties. They are also liable to the State for damage caused by abuse, negligence or omissions in the exercise of their authority.¹⁹

With regard to the extent to which public authorities and/or officials are liable, the material liability of the State and the Government is established in respect of any damage and injury to the goods, rights and interests of individuals under Law 476, Law on Civil Service and Careers in Administration, duly published in Official Journal No. 235 of 11 December 2003, and Law 438, Probity of Public Officials, duly published in Official Journal No. 147 of 7 August 2012. Moreover, Law 260, Law on the Administration of Justice, establishes the liability, disciplinary, civil and criminal, of court officials.

Nicaraguan legislation includes remedial measures applicable to public officials which range from warnings to temporary or permanent suspension, as appropriate, and pecuniary penalties, without prejudice to the provisions of criminal law.

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

Length and cost of proceedings

Nicaraguan legislation provides for ordinary proceedings²⁰, which consist of the following: six days to contest the injunction after notification; 20 days for the taking of evidence, if the evidence has to be produced in the place where the proceedings are being held, otherwise the period may be increased but not by more than half the original period specified by law; 15 days after completion of the formalities for delivering a final judgment.

There are also the summary proceedings referred to in Law 312, Law on Copyright and Related Rights. In this case the court may be requested to conduct the proceedings on the merits in accordance with the summary civil procedure²¹, which should not take more than 14 days in first instance.

The civil proceedings applicable to acts of infringement and acts of unfair competition last approximately two (2) months.

In Nicaragua, the administration of justice is free of charge.²² Some costs for the provision of court services are regulated by the Schedule of Court Charges. Costs may also be incurred for the service of notice. As far as lawyers' fees are concerned, they are agreed between the parties (clients and lawyers) or the Schedule of Court Charges is applied. The approximate costs are usually US\$3,000 to US\$6,000 at first instance, US\$2,000 at second instance, and US\$3,000 in cassation.

(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.

¹⁹ Article 131 Cn.

²⁰ Article 5 Pr., 6 Pr., 934 Pr., 165 Pr., 416 Pr., 1038 Pr., and 1090 Pr.

²¹ Article 105 of Law 312, Copyright.

²² Article 165 Cn.

Competent authorities in the field of intellectual property

Under Nicaragua's legal system, administrative bodies are not empowered to impose enforcement measures. This is a matter exclusively for the courts.

Provisional measures*(a) Judicial measures***10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.**Industrial property

In accordance with the Law on Patents²³, the following provisional measures may, among others, be ordered²⁴:

- Immediate cessation of the acts that constitute the infringement;
- seizure or sequestration of the products resulting from the infringement and materials and means used predominantly for committing the infringement;
- suspension of importation or exportation of the products, materials and means mentioned in the preceding subparagraph;
- provision of security or other guarantee deemed sufficient by the competent judicial authority;
- disclosure of documents.

The Law also lays down border measures.²⁵

The Law on the Protection of Layout-Designs of Integrated Circuits also provides for the aforementioned types of measure.²⁶

The Law on Trademarks and Other Distinctive Signs.²⁷ contains provisional measures, including²⁸:

- Immediate cessation of the acts that constitute the infringement;
- seizure or sequestration of products, packaging, wrappings, labels, printed material or advertising and other materials displaying the allegedly infringing sign and materials and means used predominantly for committing the infringement;
- suspension of importation or exportation of the products, materials or means mentioned in the preceding subparagraph;
- border measures.²⁹

The Law on the Protection of New Plant Varieties³⁰ provides for the ordering of the following provisional measures, among others:

- Immediate cessation of the acts that constitute the infringement;
- withdrawal from or prevention of circulation in respect of the plant varieties or propagating material with which the rights protected by the Law are infringed;

²³ Article 113 of Law 354, Patents.

²⁴ Article 113(3) of Law 354, Patents: This mentions certain provisional measures by way of illustration, which allows the judicial authority to adopt other measures such as, for example, the inspection of equipment, installations and moveables or immoveables. It may also adopt other provisional measures mentioned in the Code of Civil Procedure (Article 2000 (5) Pr.).

²⁵ Articles 118 to 120 of Law 354, Patents.

²⁶ Article 24 of Law 324, Integrated Circuits.

²⁷ Article 143 of Law 380, Trademarks and Other Distinctive Signs.

²⁸ Article 143 of Law 380, Trademarks and Other Distinctive Signs. This legislation also lists certain provisional measures by way of illustration, thus allowing the competent judicial authority to adopt other measures, such as inspection of equipment, installations and goods (moveable and immovable). The judicial authority may also adopt other provisional measures for which the Code of Civil Procedure provides (Article 2000 (5) Pr.).

²⁹ Articles 147 to 151 of Law 380, Trademarks and Other Distinctive Signs.

³⁰ Article 81 of Law 318, New Plant Varieties.

- withdrawal from circulation of objects, packaging, wrappings, stationery, advertising and the like with which any of the rights protected by the Law are infringed;
- seizure or sequestration of the products resulting from the infringement and materials and means used predominately for committing the infringement;
- suspension of exploitation of the products, materials or means mentioned in the preceding subparagraphs;
- provision of security or other guarantee deemed sufficient by the competent judicial authority; and
- the production of documents or moveables.

Copyright and related rights

The Law on Copyright and Related Rights³¹ includes protective measures which, depending on the circumstances, may be necessary for the urgent protection of rights, in particular, the prohibition or suspension of the infringing activity, the sequestration of copies reproduced or used in that activity and the corresponding implements, together with deposits of income from the infringing activity. Similarly, under this legislation the parties may request judicial examination of the evidence.³²

The Law on the Protection of Programme-Carrying Satellite Signals³³ stipulates that, without prejudice to the provisional measures for which the ordinary legislation provides, the judicial authority may order, among other things, the following:

- Immediate suspension of the infringing activity;
- sequestration of everything that constitutes violation of the right or has been used for the infringement;
- seizure of revenue from the unlawful activity and, where appropriate, the amounts owed by way of remuneration;
- production and confiscation of documents and other moveables;
- inspection of equipment, installations and immoveables;
- adoption of other measures necessary to prevent infringement or safeguard evidence.

These proceedings are usually expeditious. Their duration is three to five months. In the case of patents, there are no remedies that may be ordered. It is only possible to accept or reject the comments on a patent application.³⁴

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

Circumstances in which measures may be ordered

The copyright and related rights legislation³⁵ establishes the following circumstances: when any delay might cause irreparable injury to the applicant or there is a demonstrable risk of evidence of the violation or revenue from the infringing activity, the depositing of which has been requested, being destroyed or caused to disappear.

In the field of industrial property, these measures may be adopted in the following circumstances:

- To prevent an infringement or avoid its consequences;
- to obtain and preserve evidence;
- to ensure the effectiveness of the action or the payment of damages.³⁶

³¹ Article 102 of Law 312, Copyright.

³² Article 103(3) of Law 312, Copyright.

³³ Articles 31 and 33 of Law 322, Programme-Carrying Satellite Signals.

³⁴ Article 98 of Law 354, Patents.

³⁵ Article 103(2), second paragraph, of Law 312, Copyright.

³⁶ Articles 113 and 115 of Law 354, Patents; Articles 143 and 145 of Law 380, Trademarks and Other Distinctive Signs; Article 24 of Law 324, Integrated Circuits; Articles 30 and 33 of Law 322, Satellite Signals; Articles 81 and 83 of Law 318, New Plant Varieties.

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.

Procedure for the adoption of provisional measures

Any party initiating or about to initiate an action for infringement of a right protected under the corresponding laws may request the competent judicial authority to order immediate provisional measures for the purpose of preventing an infringement from occurring, avoiding its consequences, obtaining or preserving evidence, or ensuring the effectiveness of the action or the payment of damages.

Provisional measures may be requested before starting the action for infringement, together with it, or after it has been initiated.

A provisional measure will be ordered only where the person requesting it can prove his lawful right of action and the existence of the infringed right. The competent judicial authority will require the person requesting the measure to provide sufficient assurance (security), in accordance with the Code of Civil Procedure. Once measures have been executed, to maintain them in effect a corresponding application must be made within the legal term, for example, in the case of patents³⁷, trademarks, integrated circuits and new plant varieties within fifteen (15) working days of the execution of the measure. The period applicable to copyright and related rights³⁸ is twenty (20) days from adoption. In the case of programme-carrying satellite signals³⁹ the period is thirty (30) consecutive days from implementation or execution.

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

The proceedings are expeditious and their duration depends on each particular case. The costs are determined by agreement.

(b) Administrative measures

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

Administrative measures

Under Nicaragua's legal system, administrative bodies are not empowered to impose enforcement measures. This is a matter exclusively for the courts.

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?

Suspension of release

In Nicaragua, the holder of an intellectual property right may request the competent judicial authority to suspend the customs clearance of any goods that infringe that right. These measures

³⁷ Article 116 of Law 354, Patents; Article 145 of Law 380, Trademarks; Article 84 of Law 318, New Plant Varieties; Article 24 of Law 324, Integrated Circuits; and Articles 102 and 103 of Law 312, Copyright.

³⁸ Article 104 of Law 312, Copyright.

³⁹ Article 34(2) of Law 322, Satellites.

will be ordered by the judicial authority once the applicant has shown that he is the holder of the right.

The Laws on Patents, Trademarks and Other Distinctive Signs, Layout-Designs of Integrated Circuits and New Plant Varieties⁴⁰ establish measures for suspending the importation or exportation of protected goods.

In the case of "pirated goods that infringe copyright and related rights", the competent judicial authority may also order the implementation of such measures, in accordance with Article 102 of Law 312 and Article 2000 of the Code of Civil Procedure.⁴¹

This provision is applicable both to the infringing products and to the materials or means used predominantly for committing the infringement, at the time of importation, exportation or transit.

Parallel imports

The Laws on Trademarks and Other Distinctive Signs⁴² and on Patents, Utility Models and Industrial Designs⁴³ follow the international system of exhaustion of rights, that is to say, it is sufficient for the right holder or a person or entity economically related with him and acting with his consent to put the lawful products into circulation in some country. In other words, border measures are not applied to parallel imports.

- 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 holder of an intellectual property right wishing to have measures taken at the border may apply directly to the judicial authority, which issues the corresponding order to the General Directorate of Customs Services. If the conditions have been met and the necessary assurances provided, the court will order or deny suspension and inform the applicant accordingly.

Once suspension has been executed, the General Directorate of Customs Services will immediately notify the parties (importer or exporter and applicant) of the execution of suspension.

In practice, the competent authority sends an official letter to the General Directorate of Customs Services; in its turn, the latter orders customs offices at airports, seaports and land borders to suspend release of the infringing goods.

These measures are executed at the request of the interested party, subject to the provision of security (deposit) as specified by the competent judicial authority.

- 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?**

With regard to the length of the proceedings and their cost, the proceedings are expeditious and their duration depends on each particular case. The costs are determined by agreement.

In Nicaragua, the period of validity is not more than ten (10) days, which may be extended by a period of the same length, where there is good cause.⁴⁴ Where suspension is ordered as a

⁴⁰ Articles 147 to 151 of Law 380, Trademarks and Other Distinctive Signs; Articles 117 to 120 of Law 354, Patents; and Articles 6 and 79 of Law 318, New Plant Varieties.

⁴¹ Article 102 of Law 312, Copyright and Related Rights, Article 2000 Pr.

⁴² Article 29 of Law 380, Trademarks and Other Distinctive Signs.

⁴³ Article 47 of Law 354, Patents.

⁴⁴ Article 149 of Law 380, Trademarks and Other Distinctive Signs; and Article 119 of Law 354, Patents.

provisional measure, its duration will be fifteen (15) working days from the date of execution of the measure.

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

Under Nicaragua's legislation these measures are applied at the request of a party.⁴⁵

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

Nicaragua's General Directorate of Customs Services does not have the authority to impose border measures by itself. It can only act under a court order.

These measures are described in the replies to question 10 above.

Criminal Procedures

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

- The District Criminal Courts;
- the Criminal Division of the Court of Appeals;
- the Criminal Division of the Supreme Court of Justice.

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

The Criminal Code of the Republic of Nicaragua and intellectual property legislation establish the penalties for infringement of intellectual property rights, together with the appropriate fines.

Chapter IX of the Criminal Code sets out the offences against copyright and related rights⁴⁶

Unauthorized exercise of copyright and related rights: Whoever, in breach of the relevant Law and with the intent of making a profit for himself or for a third party, engages in any of the following acts without the written authorization of the right holder, is liable to a 90 to 150-day fine or imprisonment for six months to two years and specific disqualification for the same period from any duties, profession, function, industry or business related to the offence:

- (a) Translating, arranging or otherwise transforming the work;
- (b) communicating to the public of all or part of a work or phonogram in any form, on any medium or by any process;
- (c) retransmitting a radio broadcast, by any wire or wireless means;
- (d) reproducing a greater number of copies than the contract permits;
- (e) distributing or communicating the work after the contract has expired;
- (f) falsely appropriating authorship in a work;
- (g) engaging in any act that circumvents or attempts to circumvent a technological measure implemented by the right holder so as to avoid unauthorized use of a work or phonogram;
- (h) manufacturing, importing, distributing and marketing, or providing mechanisms, devices, products or components, or installation services aimed at circumventing the aforementioned technological measures;
- (i) altering or eliminating rights-management information; and
- (j) importing, distributing, marketing, leasing or using any other means of distributing works or phonograms concerning which rights management information has been eliminated or altered.

⁴⁵ Idem.

⁴⁶ Articles 247, 248, 250 and 251 of the Criminal Code.

Unlawful reproduction: Whoever, in breach of the relevant Law and with the intent of making a profit for himself or a third party, engages in any of the following acts without the written authorization of the right holder, is liable to a 300 to 500-day fine or imprisonment for one to three years and specific disqualification for the same period from any duties, profession, function, industry or business related to the offence:

- (a) Reproducing all or part of a work or phonogram on any medium, in any form or by any process;
- (b) distributing copies of a work or phonogram by sale, rental, lending to the public, import, export or other means of distribution;
- (c) fixing a performer's performance; and
- (d) fixing a protected broadcast for subsequent reproduction or distribution.

Protection of computer programs: Whoever, in breach of the relevant Law, manufactures, distributes or sells mechanisms or systems allowing or facilitating the unauthorized removal of technical devices used to prevent the reproduction of computer programs is liable to a 300 to 500-day fine or imprisonment for one to three years and specific disqualification for the same period from any duties, profession, function, industry or business related to the offence.

Aggravating and mitigating circumstances: The minimum and maximum limits of the penalties specified in the foregoing Articles shall be increased by one third in the case of a work that is not intended for disclosure, or in the event of distortion, mutilation or other alteration which affects or prejudices a person's honour or reputation. The penalties specified in the foregoing Articles shall be reduced by one third if the infringement was committed without any intent of profit to oneself or a third party.

Programme-Carrying Satellite Signals⁴⁷

Offences relating to protected satellite signals: Whoever, in breach of the relevant Law and with the intent of making a profit for himself or for a third party, engages in any of the following acts without the written authorization of the right holder:

- (a) Retransmitting or distributing to the public a programme-carrying signal by wire or wireless means or any other similar means or process;
- (b) decoding an encoded programme-carrying signal;
- (c) fixing or reproducing broadcasts;
- (d) manufacturing, assembling, modifying, importing, exporting, selling, installing, maintaining, leasing, or in any other way distributing or marketing devices or systems which can be used for decoding an encoded programme-carrying signal;

is liable to one to three years' imprisonment or a 300 to 500-day fine and specific disqualification for the same period from any function, profession, position, industry or business related to the offence.

Chapter X of the Criminal Code sets out the offences against industrial property rights:

Patents⁴⁸

Fraudulent use of a patent, utility model or industrial design: Whoever, in breach of the relevant Law and without the written authorization of the right holder, engages in any of the following acts is liable to a 90 to 300-day fine or imprisonment for one to two years and specific disqualification for the same period from any duties, profession, function, industry or business related to the offence:

- (a) Falsely causing a product to appear to be protected by a patent, utility model or industrial design;
- (b) without being the holder of a patent, utility model or industrial design or while no longer enjoying those privileges, invoking it before a third party as if he were so entitled.

⁴⁷ Ibid., Article 249.

⁴⁸ Ibid., Articles 252 and 253.

Violation of rights conferred by a patent, utility model or industrial design: Whoever, in breach of the relevant Law and without the written authorization of the right holder, engages in any of the following acts is liable to a 300 to 500-day fine or imprisonment for one to three years and specific disqualification for the same period from any duties, profession, function, industry or business related to the violation:

- (a) Manufacturing a product protected by a patent or a utility model, or an industrial design;
- (b) using a patented process to manufacture products obtained directly by means of the patented process;
- (c) selling, distributing, importing, exporting, or stocking a product covered by a patent or obtained by means of a patented process, which has knowingly been manufactured or processed; and
- (d) selling, distributing, importing, exporting, or stocking a product covered by a utility model, or incorporating a protected industrial design, which has knowingly been manufactured or processed.

New Plant Varieties⁴⁹

Infringement of plant breeders' rights: Whoever, in breach of the relevant Law and without the written authorization of the right holder, produces, reproduces, prepares for the purposes of reproduction or propagation, markets, exports, imports or gives material for the reproduction or propagation of a protected plant variety is liable to a 300 to 500-day fine or imprisonment for one to three years and specific disqualification for the same period from any duties, profession, function, industry or business related to the infringement.

Trademarks and Other Distinctive Signs⁵⁰

Unlawful use of trademarks and other distinctive signs: Whoever, in breach of the relevant Law and without the written authorization of the right holder, engages in any of the following acts is liable to a 300 to 500-day fine or imprisonment for one to three years and specific disqualification for the same period from any duties, profession, function, industry or business related to the infringement:

- (a) Manufacturing, selling, stocking, distributing, importing, or exporting products or services bearing a registered trademark or distinctive sign or a direct copy or imitation or modification thereof, if the trademark or distinctive sign is used in connection with products or services distinguished by the protected sign;
- (b) manufacturing, reproducing, selling, stocking, or distributing labels, containers, wrappings, packaging or other similar materials that reproduce or contain a registered trademark or distinctive sign;
- (c) making commercial use of containers, wrappings or packaging bearing a registered trademark or distinctive sign in order to give the impression that they contain the original product; and
- (d) manufacturing, selling, stocking, or distributing a product bearing a false geographical indication or appellation of origin, even when the true origin of the product is indicated or is accompanied by expressions such as "type", "kind", "style", "imitation" or the like.

Layout-Designs of Integrated Circuits⁵¹

Violation of rights flowing from ownership of layout-designs (topographies) of integrated circuits: Whoever, in breach of the relevant Law and without the written authorization of the right holder, engages in any of the following acts is liable to a 300 to 500-day fine or imprisonment for one to three years and specific disqualification for the same period from any duties, profession, function, industry or business related to the violation:

- (a) Reproducing, by means of incorporation in an integrated circuit or otherwise, a protected layout-design in its entirety or any of its parts deemed to be original;

⁴⁹ Ibid., Article 254.

⁵⁰ Ibid., Article 255.

⁵¹ Ibid., Article 256.

- (b) importing, exporting, selling, distributing, or stocking a protected layout-design, an integrated circuit incorporating the layout-design, or an item containing an integrated circuit which, in its turn, incorporates the protected layout-design;

Without prejudice to the criminal penalty for which this chapter and the preceding chapter provide, the court shall order the publication of the conclusions of the sentence in one or more newspapers with a wide circulation or otherwise in any other form or format, at the request of a party and at the infringer's expense.⁵²

Law on Copyright and Related Rights (Articles 109 to 112)

Printers and other enterprises engaged in similar activities may not print or reproduce labels, covers and other materials necessary for the dissemination of works and phonograms, without the authorization of the right holder.

The following acts shall be considered unlawful and treated as an infringement of the rights of the authors and other copyright holders:

- The manufacture or importation, for sale or hire, of a device or means especially designed or adapted for rendering inoperative any device or means intended to prevent or restrict the reproduction of a work or degrade the quality of copies made;
- The manufacture or importation, for sale or hire, of a device or means that allows or facilitates the reception of an encoded programme, whether broadcast or communicated to the public by some other means, by persons not authorized to receive it;
- The unauthorized elimination or alteration of any rights management information presented in electronic form;
- The unauthorized distribution or importation for distribution, broadcasting, communication to the public or making available to the public of works, performances, phonograms or broadcasts, while aware that rights management information presented in electronic form has been eliminated or altered without authorization;
- For the purposes of this Article, "rights management information" shall mean information that makes it possible to identify the author, the work, the performer, the performance, the phonogram producer, the phonogram, the broadcasting organization, the broadcast and any holder of rights under this Law or any information concerning the terms and conditions for the use of the work and other productions envisaged by the Law and any number or code representing such information, when any such item of information has been added to a copy of a work, a fixed performance, a copy of a phonogram or a fixed broadcast or appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a phonogram or a broadcast.

The criminal proceedings for the prosecution of these offences are public, initiated ex officio by the Public Prosecutor's Office without the need for a formal complaint by a private person or right holder or by an interested party. They are subject to a period of limitation of six years from the time that the offence was last committed.

Law on the Protection of Programme-Carrying Satellite Signals (Articles 35 and 37)

Offences and penalties: Whoever, without the prior written consent of the holder of the right in the broadcast signal, commits any of the following acts is liable to three to four years' imprisonment:

- Retransmitting or distributing to the public a programme-carrying signal, whether by wireless means or via cable, optical fibre or other similar method;

⁵² Ibid., Article 257.

- decoding an encoded programme-carrying signal, whether transmitted by wire or by wireless means;
- fixing and producing a protected broadcast for distribution to the public of copies containing the reproduction;
- participating in or contributing to the manufacture, assembly, modification, sale, hire, installation, maintenance or otherwise placing in circulation of a device or system which can be used for decoding an encoded programme-carrying signal or for enabling or facilitating the reception of an encoded programme.

Provisional measures in criminal proceedings: The competent court is empowered to order and enforce the provisional measures provided for in civil proceedings.

Law on the Protection of New Plant Varieties (Article 80)

Criminal penalties: Any act leading to the improper use of a breeder's right and any infringement knowingly committed constitutes a punishable offence for the purposes of this Law. In this case, the arrangements, procedures and penalties laid down in the relevant legislation will be applicable.

Law on Trademarks and Other Distinctive Signs (Article 103)

Proceedings against the offences described: The offences specified in this Law may be prosecuted at the initiative of a competent authority or upon the filing of a complaint by an interested party, including any entity or organization representing a group of producers or consumers.

Criminal proceedings are subject to a period of limitation of four years from the time that the offence was last committed, whichever is the earlier.

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?

Competent authorities

Public prosecutors are empowered to initiate criminal action in respect of offences liable to ex officio prosecution, without the need for a formal complaint by a private person or right holder or by an interested party.⁵³

The Police may initiate criminal proceedings, particularly for the purposes of investigating this type of offence.

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

Standing

Any citizen may initiate criminal proceedings by filing a complaint or by bringing a charge as the victim of the offence.⁵⁴

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.**

⁵³ Article 77 of the Code of Criminal Procedure (CPP).

⁵⁴ Ibid., Article 78.

Trademarks and Other Distinctive Signs:

Unlawful commercial use of trademarks and other distinctive signs is punishable by one to three years' imprisonment, a 300 to 500-day monetary fine and specific disqualification for the same period from any duties, profession, function, industry or business related to the infringement.

Patents:

Fraudulent use of a patent, utility model or industrial design is punishable by one to two years' imprisonment, a 90 to 300-day monetary fine, and specific disqualification for the same period from any duties, profession, function, industry or business related to the offence.

Violation of rights conferred by a patent, utility model or industrial design is punishable by one to three years' imprisonment, a 300 to 500-day monetary fine, and specific disqualification for the same period from any duties, profession, function, industry or business related to the infringement.

New Plant Varieties:

Infringement of a breeder's right is punishable by one to three years' imprisonment, a 300 to 500-day monetary fine, and specific disqualification for the same period from any duties, profession, function, industry or business related to the infringement.

Copyright and Related Rights:

Unauthorized exercise of copyright and related rights is punishable by six months to two years' imprisonment, a 90 to 150-day fine, and specific disqualification for the same period from any duties, profession, function, industry or business related to the infringement.

Unlawful reproduction of a work is punishable by one to three years' imprisonment, a 300 to 500-day monetary fine, and specific disqualification for the same period from any duties, profession, function, industry or business related to the infringement.

The protection of computer programs is punishable by one to three years' imprisonment, a 300 to 500-day monetary fine, and specific disqualification for the same period from any duties, profession, function, industry or business related to the offence.

Programme-Carrying Satellite Signals:

Offences in respect of programme-carrying satellite signals are punishable by one to three years' imprisonment, a 300 to 500-day monetary fine, and specific disqualification for the same period from any duties, profession, function, industry or business related to the offence.

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.**Length and cost**

Criminal proceedings usually last from six months to a year in the first instance.

With respect to lawyers' fees, they are agreed with the client. Otherwise the Schedule of Court Charges applies. In practice, fees vary between US\$1,000 and US\$5,000 for first-instance proceedings.

In criminal proceedings there are no other expenses, except for the fees of experts if their testimony is required.
