



21 December 2022

(22-9629)

Page: 1/29

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

Original: Spanish

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

REPLIES BY EL SALVADOR

**Civil and administrative procedures and remedies**

*(a) Civil judicial procedures and remedies*

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

IPR infringement cases fall within the jurisdiction of the commercial courts, pursuant to Article 184 of the *Ley de Propiedad Intelectual*, LPI (Intellectual Property Law) and Article 113 of the *Ley de Marcas y Otros Signos Distintivos*, LMOSD (Law on Trademarks and Other Distinctive Signs), assuming no special courts are created with jurisdiction over intellectual property matters.

Cases are brought before the following judicial bodies:

- Civil and trade courts of first instance, which hear at first instance any court cases brought within the territory corresponding to their jurisdiction, and at second instance, in cases and concepts determined by the law (see Articles 30, 239 and 240 of the Code of Civil and Commercial Procedure and 59 and 60 of the Organic Judicial Law).
- Chambers of second instance, which have jurisdiction as follows:
  - On appeal, cases corresponding to the territory assigned to them, heard at first instance by the respective courts;
  - In complaints that are against the State, where the State is a contracting party; and
  - Other cases as determined by the law.

The above is based on Article 29 of the Code of Civil and Commercial Procedure.

- Civil Division of the Supreme Court of Justice (see Article 28 of the Code of Civil and Commercial Procedure), which handles:
  - Judicial review;
  - The appeal when the chambers of second instance have heard the case in first instance; and
  - Review of final judgments.

**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?**

Standing

Any natural or legal person who is an IPR right holder or licensee has standing to assert the right in question, in accordance with Articles 88 and 89 of the Law on Trademarks and Other Distinctive

---

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

Signs and Articles 169 and 170 of the Intellectual Property Law. In addition, Article 94 of the Law on Trademarks and Other Distinctive Signs grants legal standing to any competent authority or interested person in the case of geographical indications.

#### Representation

Before the administrative authorities, natural persons may appear in person or be represented by a third party who need not necessarily be an attorney in accordance with Article 67 of the Law on Administrative Procedures. Before the judicial authorities, it is mandatory for the right holder or licensee to be represented by an official attorney of the Republic in conformity with Article 67 of the Code of Civil and Commercial Procedure; in an individual case, the right holder or licensee may appear in person.

Right holders who are legal persons may act through their legal representatives before the administrative authorities, and before the judicial authorities through a solicitor, who must be an official attorney, in accordance with Article 67 of the Law on Administrative Procedures and Article 67 of the Code of Civil and Commercial Procedure mentioned in the preceding paragraph.

#### Mandatory personal appearance

In proceedings before the courts, appearance in person by the right holder is not mandatory, except in cases where one of the parties has requested that the opposing party provide testimony from the other party on facts that are of particular concern to the right holder.

In this regard, Articles 345 to 347 of the Code of Civil and Commercial Procedure provide that a party may request the judge or court to hear the opposing party's testimony, which may be given by a legal representative, concerning acts carried out in the discharge of this function, or on acts prior to that, when the persons represented were abroad, on the condition that he or she is expressly authorized to do so and the opposing party so consents. It is mandatory for the parties to appear; failure to appear shall result in the opposing party's personal facts being upheld, unless there is evidence to the contrary. In the case of legal persons, their representatives must appear and answer the questions posed by the opposing party and the judge.

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

Under Article 312 of the Code of Civil and Commercial Procedure, the obligation to produce evidence lies with the party making the allegation, being the claimant or the counterclaimant in the case of a counterclaim. However, Articles 256 and 257 establish the right of all persons to request that the other party produce, before the competent judge, the public or private documents, or moveable goods required for the preparation of an action or to defend itself against the action brought against it.

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

Confidential information brought forward as evidence in administrative proceedings is protected under Article 177(2) of the Intellectual Property Law, which stipulates that information supplied to any authority by a person holding it as an industrial or trade secret shall not be considered as coming under the public domain or disclosed by operation of the law when it is supplied for the purposes of obtaining licences, permits, authorizations, registration or any other official documents.

Similarly, Article 165 of the Code of Civil and Commercial Procedure stipulates that only the parties and their representatives, and any other person with a legitimate interest, shall be granted access to the files, and that for this purpose a documentary record should be kept of who has had access to those files. In this regard, it is also stipulated that the files shall be kept under the custody of the court and that they must not leave the court premises, thus protecting confidential information.

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

- **Injunctions;**
- **Damages, including recovery of profits, and expenses, including attorneys' fees;**
- **Destruction or other disposal of infringing goods and materials/implements for their production;**
- **Any other remedies.**

Industrial property

The remedies or decisions that may be applied by the judicial authorities at the request of the holder in respect of industrial property rights are as follows:

Patents, utility models and industrial designs

- Claiming of the right when a patent or industrial design registration has been requested or obtained by a person who does not have a right thereto or to the detriment of another person who does have a right to obtain the patent or registration (Article 168 of the Intellectual Property Law);
- Cessation of the act or acts which infringe the right conferred by a patent or industrial design registration (Article 172 of the Intellectual Property Law);
- Compensation for damages suffered as a result of the infringement of a right conferred by a patent or industrial design registration (Article 172 of the Intellectual Property Law). With respect to loss of earnings and actual loss, damages are calculated on the basis of one of the following criteria, at the discretion of the injured party (Article 173 of the Intellectual Property Law):
  - The damage caused to the right holder as a result of the infringement;
  - The profits that the right holder would presumably have earned if the infringement had not occurred;
  - The profits actually earned by the infringer as a result of the infringing acts;
  - The price or royalty that the infringer would have paid to the right holder if a contractual licence had been agreed upon, due regard being had to the commercial value of the subject matter of the right infringed and the contractual licences already granted; or,
  - Any other criteria that the court deems appropriate.
- Seizure of the objects resulting from the infringement and the means used predominantly to commit the infringement of a right conferred by a patent or registration of an industrial design (Article 172 of the Intellectual Property Law);
- Transfer of ownership of the above-mentioned objects or means, in which case the value of the goods shall be deducted from the amount of the damages (Article 172 of the Intellectual Property Law);
- The measures necessary to prevent the continuation or repetition of the infringement, including the destruction of the means seized by virtue of the above-mentioned seizure of the objects resulting from the infringement and their means, if indispensable (Article 172 of the Intellectual Property Law);
- As a precautionary measure, the immediate cessation of the infringing acts may be ordered (Article 174 of the Intellectual Property Law);

- 
- As a precautionary measure, the preventive seizure, withholding or deposit of the infringing goods and the means predominantly intended for use to commit the infringement may be ordered (Article 174 of the Intellectual Property Law);
  - As a precautionary measure, the prohibition of the import, export or of allowing the in-transit movement in the national territory of the unlawfully reproduced copies may be ordered, by corresponding order to the Directorate-General of Customs (Article 174 of the Intellectual Property Law).

#### Industrial or trade secrets

- Compensation for damages through the use for own or third-party commercial purposes or disclosure without justification and without the consent of the holder or authorized user of the secret (Article 180 of the Intellectual Property Law);
- Compensation for damages jointly and severally with the person disclosing the information, where that person has been hired to obtain the information (Article 181 of the Intellectual Property Law);
- Compensation for damages resulting from the unlawful procurement of information containing an industrial or trade secret (Article 181 of the Intellectual Property Law).

#### Distinctive signs (distinctive commercial signs, geographical indications and appellations of origin)

- Seizure of the infringing goods, including packaging, wrapping, labelling, printed or advertising materials or other materials resulting from, or used to commit, the infringement, and of the means, instruments and materials used to commit the infringement, as well as documentary evidence relevant to the infringement (Article 90 of the Law on Trademarks and Other Distinctive Signs);
- Prohibition of the import, export or transit of the above-mentioned goods, materials or means (Article 90 Law on Trademarks and Other Distinctive Signs);
- Destruction of the infringing goods (Article 90 of the Law on Trademarks and Other Distinctive Signs);
- Destruction of materials and implements that have been used in the manufacture or creation of the infringing goods, without any compensation to the infringer or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements (Article 90 of the Law on Trademarks and Other Distinctive Signs);
- Cessation of the infringing acts (Article 90 of the Law on Trademarks and Other Distinctive Signs);
- Compensation for damages suffered (Article 90 of the Law on Trademarks and Other Distinctive Signs), to be calculated on the basis of the following:
  - (a) The damage caused to the right holder as a result of the infringement;
  - (b) The profits that the right holder would presumably have earned if the infringement had not occurred; and
  - (c) The price or royalty that the infringer would have paid to the right holder if a contractual licence had been agreed upon, due regard being had to the commercial value of the subject matter of the right infringed and the contractual licences (Article 91 of the Law on Trademarks and Other Distinctive Signs).
- Payment of profits attributable to the infringement and not taken into account when calculating the amount of damages (Article 91 of the Law on Trademarks and Other Distinctive Signs).
- In the event litigation costs are awarded, attorneys' fees must be included (Article 91 of the Law on Trademarks and Other Distinctive Signs).

- Publication of the verdict and notification of interested parties at the infringer's expense (Article 90 of the Law on Trademarks and Other Distinctive Signs).
- As a precautionary measure, the immediate cessation of the infringing acts (Article 92 of the Law on Trademarks and Other Distinctive Signs).
- As a precautionary measure, the seizure with inventory, description or deposit of the goods, packaging, labels or other materials displaying the infringing mark or sign and the instruments or materials intended for the infringement (Article 92 of the Law on Trademarks and Other Distinctive Signs).
- As a precautionary measure, the suspension of the import, export or in-transit movement of the goods, instruments or materials or means referred to in the preceding subparagraph (Article 92 of the Law on Trademarks and Other Distinctive Signs).

**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?**

Article 92 of the Law on Trademarks and Other Distinctive Signs gives the competent courts the power to request the alleged infringer to provide any information in his or her possession concerning persons involved in the production or marketing of the alleged infringing goods or services and on their means of production and channels of distribution, as well as to provide the identity of third persons involved in their production and distribution and their channels of distribution.

**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

Under Article 272 of the Code of Civil and Commercial Procedure, any party whose claims have been rejected shall be ordered to pay costs. Furthermore, Article 92 of the Law on Trademarks and Other Distinctive Signs provides that anyone requesting precautionary measures in connection with infringements of the rights conferred by the registration of trademarks and other distinctive signs must file a corresponding claim within 15 days following the date on which the measures were ordered, and may be requested to provide a surety, bond or guarantee for such purposes.

In the same vein, Article 174 of the Intellectual Property Law relating to the defence of industrial property rights provides that immediate precautionary measures may be requested, with the possibility of making such measures contingent on the provision of sufficient security. It is also stipulated that if the action for infringement is not brought within 15 days following the imposition of the measure, it shall cease to have effect and the complainant shall be liable for any damages.

Article 258 of the Code of Civil and Commercial Procedure, for its part, stipulates that the request for preliminary proceedings must contain an offer of security for the potential damages resulting from the proceedings, such as from the display in court of the goods proving unfair competition referred to in Article 493(1) of the Commercial Code, which covers the misuse of distinctive commercial signs. If the legal action is not brought within one month of the conclusion of the proceedings, the security shall be forfeited in favour of the parties concerned. Similarly, under Article 434 of the Code of Civil and Commercial Procedure, where a precautionary measure has been issued pursuant to the preliminary proceedings, if a complaint is not lodged within the time limit, the parties shall be ordered to pay all the costs of the proceedings and any damages.

Pursuant to Article 239 of the Constitution, both judges and public officials are responsible for official offences committed by them in the exercise of their functions and shall be tried for official offences committed by them by the ordinary courts.

Similarly, Article 245 stipulates that public officials and employees shall be personally liable and the State subsidiarily liable for material or moral damages caused as a result of a violation of the rights enshrined in the Constitution. In addition, Article 60 of the Law on Administrative Procedures

provides that, in cases where any damages by public officials are caused by the violation of constitutional rights, the liability shall be personal, subjective and shall fall directly on the public official, and shall not be nullified by the fact that he or she is no longer in office.

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

Article 182(5) of the Constitution of the Republic stipulates that the Supreme Court of Justice shall ensure that justice is administered rapidly and completely, to which end it shall adopt such measures as it deems necessary. In accordance with the above and with Article 184 of the Intellectual Property Law and Article 113 of the Law on Trademarks and Other Distinctive Signs, the competent courts shall be those with commercial jurisdiction, which shall hear cases pursuant to Articles 239 and 240 of the Code of Civil and Commercial Procedure in ordinary declaratory proceedings.

In this respect, Articles 276 to 282 of the Code of Civil and Commercial Procedure refer to complaints in ordinary declaratory proceedings, and subsequently provision is made in Articles 283 to 287 of the Code for the rules to be followed regarding summoning the defendant, answering the complaint and possible counterclaim. The provisions relating to evidence can be found in Chapter Three of the Code, stipulating in Article 324 the facts that do not need to be proven.

The actual duration of ordinary declaratory proceedings will depend on the type of claim that is brought before the competent courts. The duration may also vary taking account of the motions filed during the course of the proceedings and the lodging of appeals.

Article 181 of the Constitution stipulates that the administration of justice shall be free of charge.

On the other hand, the right holder shall be responsible for paying the fees of the attorney he or she appoints. Since El Salvador has an outdated system of fees, these are normally determined by agreement. It is therefore extremely difficult to establish the costs of such proceedings, as they vary from case to case.

*(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.**

Administrative procedures are governed by the Law on Administrative Procedures, which provides, *inter alia*, for:

- The maximum duration of proceedings of nine months (Article 89 of the Law on Administrative Procedures);
- The rules for calculating the time limits and deadlines to be met by the authorities and administrators (Articles 80–88 of the Law on Administrative Procedures);
- The effects of administrative silence (Articles 113 and 114 of the Law on Administrative Procedures); and
- Administrative appeals, which may be for reconsideration, review and appeal, the latter having the potential for subsequent access to the administrative courts (Article 124 of the Law on Administrative Procedures).

The administrative courts are governed by the provisions of the Law on Administrative Litigation and subsidiarily by the Code of Civil and Commercial Procedure. They deal with claims arising from government actions or failure to act. For these purposes, it has a network of administrative dispute courts (Article 12 of the Law on Administrative Litigation), administrative dispute chambers (Article 13 of the Law on Administrative Litigation), and an administrative dispute chamber (Article 14 of the Law on Administrative Litigation) that is part of the Supreme Court of Justice.

Article 10 of the Law on Administrative Litigation provides a list of the claims that may be pursued in this way, including the following:

- 
- Declaration of the illegality of the act being challenged and, consequently, its nullification;
  - Recognition of an individual legal situation and the adoption of the measures necessary for its full restoration;
  - Declaration of the illegality of the material action constituting a *de facto* action, in other words that it does not have an administrative act to support it, the cessation of the action in question and, where appropriate, the provisions of the preceding subparagraph;
  - Disputes arising in connection with administrative contracts;
  - Order for the Government to comply with its obligations in the precise terms set out in the administrative act or general provision, where it is determined that it has failed to take action; and
  - Order for the payment of patrimonial liability claims, for which the corresponding amount must be stated in the claim and evidence for such provided in the proceedings.

Under Article 25 of the Law on Administrative Litigation, in order to have access to the administrative courts, as mentioned above, all administrative remedies must first be exhausted, and a period of 70 days granted for the filing of the complaint from the time those remedies have been exhausted. The Law on Administrative Litigation also provides for the possibility of filing a notice of complaint prior to the complaint and within the aforementioned period, the formal requirements of which will be lower than those for the complaint and which will be useful for requesting the adoption of precautionary measures even when proceedings have not been formally initiated. Once the complaint has been filed in due time, it will be declared receivable or rejected within 15 days, in accordance with Article 35 of the Law on Administrative Litigation, so that it can be remedied by the interested party within a single and non-renewable period of five working days.

The defendant authority shall, in accordance with the provisions of Article 41 of the Law on Administrative Litigation, answer the complaint within 10 days from the day following notification of receivability. It is important to mention that in the main evidence in this type of proceedings is the administrative file, which must be submitted in its entirety by the administrative authority, as stipulated in Articles 29, 30 and 37 of the Law on Administrative Litigation, within five days following the judicial authority's notice of request.

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

With regard to the judicial authorities, IPR infringement cases fall within the jurisdiction of the commercial courts, pursuant to Article 184 of the Intellectual Property Law and Article 113 of the Law on Trademarks and Other Distinctive Signs, assuming no special courts are created with jurisdiction over intellectual property matters.

Cases are brought before the following judicial bodies:

- Civil and trade courts of first instance, which hear at first instance any court cases brought within the territory corresponding to their jurisdiction, and at second instance, in cases and concepts determined by the law (see Articles 30, 239 and 240 of the Code of Civil and Commercial Procedure and Articles 59 and 60 of the Organic Judicial Law).
- Chambers of Second Instance, which have jurisdiction over:
  - On appeal, cases corresponding to the territory assigned to them, heard at first instance by the respective courts;
  - In complaints that are against the State, where the State is a contracting party; and
  - Other cases as determined by the law.

The above is based on Article 29 of the Code of Civil and Commercial Procedure.

- Civil Division of the Supreme Court of Justice (see Article 28 of the Code of Civil and Commercial Procedure), which handles:
  - Judicial review;
  - The appeal when the chambers of second instance have heard the case in first instance; and
  - Review of final judgments.

In addition, it is worth mentioning that the administrative authority in charge of processing all intellectual property rights is the Intellectual Property Registry of El Salvador's National Registry Centre.

With respect to copyright and neighbouring rights, Article 98(b) of the Intellectual Property Law states that the Intellectual Property Registry shall serve as an arbitrator, when the interested parties so request, in disputes that arise between right holders; between collective management entities; between the latter and their partners or representatives; and between management entities or right holders and users of the works, performances or productions protected under Title I of the said law related to artistic, literary or scientific property. The exhaustion of this mechanism is mandatory in order to institute court proceedings, in accordance with Article 100-H of the Intellectual Property Law.

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

Any natural or legal person who is a copyright holder or licensee has standing to assert his or her right in accordance with Articles 90, 91-A and 92-A of the Intellectual Property Law. It should also be mentioned that Articles 100, 100-A and 100-B of the Intellectual Property Law stipulate that collective management entities shall have standing, unless their partners wish to exercise their rights themselves, to exercise the rights they are called upon to administer and to assert them as legal representatives in any type of administrative or judicial proceedings.

*Representation before administrative and judicial authorities, and mandatory appearance of the holder*

### Standing

Any natural or legal person who is an IPR holder or licensee has standing to assert the right in question, in accordance with Articles 88 and 89 of the Law on Trademarks and Other Distinctive Signs and Articles 169 and 170 of the Intellectual Property Law. In addition, Article 94 of the Law on Trademarks and Other Distinctive Signs grants legal standing to any competent authority or interested person in the case of geographical indications.

### Representation

Before the administrative authorities, natural persons may appear in person or be represented by a third party who need not necessarily be an attorney in accordance with Article 67 of the Law on Administrative Procedures. Before the judicial authorities, it is mandatory for the right holder or licensee to be represented by an official attorney of the Republic in conformity with Article 67 of the Code of Civil and Commercial Procedure; in individual cases, the right holder or licensee may appear in person.

Right holders who are legal persons may act through their legal representatives before the administrative authorities, and before the judicial authorities through a solicitor, who must be an official attorney, in accordance with Article 67 of the Law on Administrative Procedures and Article 67 of the Code of Civil and Commercial Procedure mentioned in the preceding paragraph.

### Mandatory personal appearance

In proceedings before the courts, appearance in person by the right holder is not mandatory, except in cases where one of the parties has requested that the opposing party provide testimony from the other party on facts that are of particular concern to the right holder.



In this regard, Articles 345 to 347 of the Code of Civil and Commercial Procedure provide that a party may request the judge or court to hear the opposing party's testimony, which may be given by a legal representative, concerning acts carried out in the discharge of this function, or on acts prior to that, when the persons represented were abroad, on the condition that he or she is expressly authorized to do so and the opposing party so consents. It is mandatory for the parties to appear; failure to appear shall result in the opposing party's personal facts being upheld, unless there is evidence to the contrary. In the case of legal persons, their representatives must appear and answer the questions posed by the opposing party and the judge.

Based on the reply to the previous question, which reads as follows: "*With respect to copyright and neighbouring rights, Article 98(b) of the Intellectual Property Law states that the Intellectual Property Registry shall serve as an arbitrator, when the interested parties so request, in disputes that arise between right holders; between collective management entities; between the latter and their partners or representatives; and between management entities or right holders and users of the works, performances or productions protected under Title I of the said law related to artistic, literary or scientific property. The exhaustion of this mechanism is mandatory in order to institute court proceedings, in accordance with Article 100-H of the Intellectual Property Law*", and in accordance with the aforementioned Article 98 of the Intellectual Property Law, the persons who have standing to assert their rights in a mediation before the Intellectual Property Registry are:

- The holders of such rights;
- Collective management entities;
- Partners or representatives of the management entities; and
- Users of the works, performances or productions protected under Title I of the said law, which refers to artistic, literary or scientific property.

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

The administrative authorities have no authority to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control. Nevertheless, Article 106 of the Law on Administrative Procedures provides that all relevant and useful evidence shall be used to determine the truth of the facts, even if it has not been brought forward by the interested parties and may even be against their wishes.

With regard to the judicial authorities, under Article 312 of the Code of Civil and Commercial Procedure, the obligation to produce evidence lies with the party making the allegation, being the claimant or the counterclaimant in the case of a counterclaim. However, Articles 256 and 257 establish the right of all persons to request that the other party produce, before the competent judge, the public or private documents, or moveable goods required for the preparation of an action or to defend itself against the action brought against it.

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

Confidential information brought forward as evidence in proceedings is protected under Article 177(2) of the Intellectual Property Law, which stipulates that information supplied to any authority by a person holding it as an industrial or trade secret shall not be considered as coming under the public domain or disclosed by operation of the law when it is supplied for the purposes of obtaining licences, permits, authorizations, registration or any other official documents.

In judicial matters, confidential information brought forward as evidence in administrative proceedings is protected under Article 177(2) of the Intellectual Property Law, which stipulates that information supplied to any authority by a person holding it as an industrial or trade secret shall not be considered as coming under the public domain or disclosed by operation of the law when it is supplied for the purposes of obtaining licences, permits, authorizations, registration or any other official documents.

Similarly, Article 165 of the Code of Civil and Commercial Procedure stipulates that only the parties and their representatives, and any other person with a legitimate interest, shall be granted access to the files, and that for this purpose a documentary record should be kept of who has had access to those files. In this regard, it is also stipulated that the files shall be kept under the custody of the court and that they must not leave the court premises, thus protecting confidential information.

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

As far as the judicial branch is concerned, for the defence of copyright, the following remedies can be used to defend copyright:

- Immediate suspension of the unlawful activity (Article 90 of the Intellectual Property Law).
- Prohibiting the infringer from resuming the unlawful activity (Article 90 of the Intellectual Property Law).
- Confiscation of the unlawful copies and documentary evidence relevant to the infringement (Article 90 of the Intellectual Property Law).
- Destruction of the infringing goods (Article 90 of the Intellectual Property Law).
- Confiscation of moulds, plates, matrices, negatives, devices and related products, whether fixed or not, and other objects used for illegal reproduction (Article 90 of the Intellectual Property Law).
- Destruction of materials and implements that have been used in the manufacture or creation of infringing goods without any compensation to the infringer or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of future infringements (Article 90 of the Intellectual Property Law).
- The charitable donation of goods that infringe copyright and neighbouring rights, only with the authorization of the right holder (Article 90 of the Intellectual Property Law).
- Removal or keeping under lock and seal of the equipment used for unauthorized public communication (Article 90 of the Intellectual Property Law).
- Publication of the ruling and its notification to interested parties at the expense of the infringer (Article 90 of the Intellectual Property Law).
- Compensation for damages and injury suffered as a result of the infringement (Article 90 of the Intellectual Property Law), which will be calculated on the basis of one of the following criteria, at the discretion of the injured party:
  - The damage caused to the right holder as a result of the infringement;
  - The profits that the right holder would presumably have earned if the infringement had not occurred;
  - The profits actually earned by the infringer as a result of the infringing acts;
  - The price or royalty that the infringer would have paid to the right holder if a contractual licence had been agreed upon, due regard being had to the commercial value of the subject matter of the rights infringed and the contractual licences already granted.
- As a precautionary measure, the preventive seizure of the liquid revenue obtained through the unlawful use (Article 91 of the Intellectual Property Law).

- As a precautionary measure, the preventive seizure of the unlawfully reproduced copies, packaging, labels and the instruments or materials intended for the infringement with inventory, description or deposit thereof (Article 91 of the Intellectual Property Law).
- As a precautionary measure, the suspension of unauthorized reproduction, communication or distribution activities, as appropriate (Article 91 of the Intellectual Property Law).
- As a precautionary measure, the prohibition of the import, export or of allowing the in-transit movement in the national territory of the unlawfully reproduced copies, by order to the Directorate-General of Customs (Article 91 of the Intellectual Property Law).

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

In copyright matters, the judicial authorities have the authority to exercise this power under Article 91 of the Intellectual Property Law.

The administrative authorities do not have such authority.

**9.7 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 respondents wrongfully enjoined

In accordance with the provisions of Article 272 of the Code of Civil and Commercial Procedure, any party whose claims have been rejected shall be ordered to pay costs. At the same time, Article 92 of the Law on Trademarks and Other Distinctive Signs stipulates that anyone requesting precautionary measures in connection with infringements of the rights conferred by the registration of trademarks and other distinctive signs, must file a corresponding claim within 15 days following the date on which such measures were ordered, and may be requested to provide a surety, bond or guarantee for such purposes.

In the same vein, Article 174 of the Intellectual Property Law relating to the defence of industrial property rights provides that immediate precautionary measures may be requested, with the possibility of making such measures contingent on the provision of sufficient security. It is also stipulated that if the action for infringement is not brought within 15 days following the imposition of the measure, it shall cease to have effect and the complainant shall be liable for any damages.

Article 258 of the Code of Civil and Commercial Procedure, for its part, stipulates that the request for preliminary proceedings must contain an offer of security for the potential damages resulting from the proceedings, such as from the display in court of the goods proving unfair competition referred to in Article 493(1) of the Commercial Code, which covers the misuse of distinctive commercial signs. If the legal action is not brought within one month of the conclusion of the proceedings, the security shall be forfeited in favour of the parties concerned. Similarly, under Article 434 of the Code of Civil and Commercial Procedure, where a precautionary measure has been issued pursuant to the preliminary proceedings, if a complaint is not lodged within the time limit, the parties shall be ordered to pay all the costs of the proceedings and any damages.

Pursuant to Article 239 of the Constitution, both judges and public officials are responsible for official offences committed by them in the exercise of their functions and shall be tried for official offences committed by them by the ordinary courts.

Similarly, Article 245 stipulates that public officials and employees shall be personally liable and the State subsidiarily liable for material or moral damages caused as a result of a violation of the rights enshrined in the Constitution. In addition, Article 60 of the Law on Administrative Procedures provides that, in cases where any damages by public officials are caused by the violation of constitutional rights, the liability shall be personal, subjective and shall fall directly on the public official, and shall not be nullified by the fact that he or she is no longer in office.

With regard to copyright, when a precautionary measure is requested in accordance with Article 91 of the Intellectual Property Law and the corresponding claim is not filed within 15 days following the date on which any such measures were ordered, the damages caused will become liable and the measures shall cease to have effect.

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

Article 182(5) of the Constitution of the Republic stipulates that the Supreme Court of Justice shall ensure that justice is administered rapidly and completely, to which end it shall adopt such measures as it deems necessary. In accordance with the above and with Article 184 of the Intellectual Property Law and Article 113 of the Law on Trademarks and Other Distinctive Signs, the competent courts shall be those with commercial jurisdiction, which shall hear cases pursuant to Articles 239 and 240 of the Code of Civil and Commercial Procedure in ordinary declaratory proceedings.

In this respect, Articles 276 to 282 of the Code of Civil and Commercial Procedure refer to complaints in ordinary declaratory proceedings, and subsequently provision is made in Articles 283 to 287 of the Code for the rules to be followed regarding summoning the defendant, answering the complaint and possible counterclaim. The provisions relating to evidence can be found in Chapter Three of the Code, stipulating in Article 324 the facts that do not need to be proven.

The actual duration of ordinary declaratory proceedings will depend on the type of claim that is brought before the competent courts. The duration may also vary taking account of the motions filed during the course of the proceedings and the lodging of appeals.

Article 181 of the Constitution stipulates that the administration of justice shall be free of charge.

On the other hand, the right holder shall be responsible for paying the fees of the attorney he or she appoints. Since El Salvador has an outdated system of fees, these are normally determined by agreement. It is therefore extremely difficult to establish the costs of such proceedings, as they vary from case to case.

**Provisional measures**

*(a) Judicial measures*

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

Copyright and neighbouring rights

The provisional measures that may be applied by the judicial authorities in the area of copyright and neighbouring rights are as follows:

- Preventive seizure of the liquid revenue obtained through the unlawful use (Article 91 of the Intellectual Property Law);
- Preventive seizure of the unlawfully reproduced copies, packaging, labels and the instruments or materials intended for the infringement with inventory, description or deposit thereof (Article 91 of the Intellectual Property Law);
- Suspension of unauthorized reproduction, communication or distribution activities, as appropriate (Article 91 of the Intellectual Property Law);
- Prohibition of the import, export or of allowing the in-transit movement in the national territory of the unlawfully reproduced copies, by corresponding order to the Directorate-General of Customs (Article 91 of the Intellectual Property Law).

Industrial property

The provisional measures that may be applied by the judicial authorities in respect of industrial property rights are as follows:

Patents, utility models and industrial designs

- Immediate cessation of the infringing acts (Article 174 of the Intellectual Property Law).
- Preventive seizure, withholding or deposit of the infringing goods and the means intended for the infringement (Article 174 of the Intellectual Property Law).
- Prohibition of the import, export or of allowing the in-transit movement in the national territory of the unlawfully reproduced copies, by corresponding order to the Directorate-General of Customs (Article 174 of the Intellectual Property Law).

Distinctive signs (distinctive commercial signs, geographical indications and appellations of origin)

- Immediate cessation of the infringing acts (Article 92 of the Law on Trademarks and Other Distinctive Signs).
- Seizure with inventory, description or deposit of the goods, packaging, labels or other materials displaying the infringing mark or sign and the instruments or materials intended for the infringement, as well as documentary evidence relevant to the infringement (Article 92 of the Law on Trademarks and Other Distinctive Signs).
- Suspension of the import, export or in-transit movement of the goods, instruments or materials referred to in the preceding subparagraph.

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

With respect to copyright, Article 91 of the Intellectual Property Law stipulates that the judge may order, at the request of the holder of the infringed rights and subject to the provision of a security, such precautionary measures as are necessary for the urgent protection of such rights, to be imposed without notice to the infringer.

Similarly, Article 174 of the said law stipulates that in cases of infringement of industrial property rights protected thereunder, the judge may order, with immediate effect, such precautionary measures as are necessary to ensure the effectiveness of the infringement proceedings or the recovery of damages.

In the same vein, Article 92 of the Law on Trademarks and Other Distinctive Signs provides that in cases of infringement of rights arising from the registration of a trademark or distinctive sign, and where a right holder requests the application of a precautionary measure, it must be enforced within a non-extendable period of 48 hours from the filing of the application.

**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.**Copyright and neighbouring rights

Under Article 91 of the Intellectual Property Law, any right holder who considers that his or her copyright has been, or fears that it may be, infringed may ask the judge to order such precautionary measures as necessary to protect that right.

In such cases, the judge shall demonstrate, with the available evidence, the circumstances preceding the violation of the rights and the validity of the complainant's claims, following which, and subject to the provision of a security, the judge shall order such precautionary measures as the circumstances require.

This procedure is initiated through a written application by the complainant. The application may be submitted before or together with the main complaint. If the measures have been requested prior to the complaint, the latter must be filed within 15 days following the granting of the measures, failing which the complainant shall be liable for the damages caused.

### Industrial property

#### Patents, utility models and industrial designs

Article 174 of the Intellectual Property Law stipulates that an industrial property right holder protected thereunder may ask the judge to order immediate precautionary measures to ensure the effectiveness of the proceedings or the recovery of damages. Such precautionary measures may be made contingent on the provision of sufficient security.

If the infringement action is not initiated within 15 working days of the imposition of a precautionary measure, the measure will cease to have effect and the complainant shall be liable for any damages.

#### Distinctive signs (distinctive commercial signs, geographical indications and appellations of origin)

Article 92 of the Law on Trademarks and Other Distinctive Signs provides that precautionary measures may be requested for the purpose of preventing an infringement from occurring, avoiding its consequences, obtaining or preserving evidence, or ensuring the effectiveness of the action or compensation for damages. If the action is not initiated within 15 working days of the enforcement of the measure, it will cease to have effect. In addition, the competent court may require that the party requesting the precautionary measures provide sufficient security to protect the defendant and prevent abuse.

### **13. Describe the provisions governing the length and cost of proceedings.**

Salvadoran legislation provides for the period within which the precautionary measure is ordered, as follows:

- A copyright measure must be ordered immediately (Article 91 of the Intellectual Property Law).
- For patents, utility models and industrial designs, immediate precautionary measures will be requested (Article 174 of the Intellectual Property Law).
- With regard to precautionary measures on distinctive signs (distinctive commercial signs, geographical indications and appellations of origin), a period of 48 hours is granted to the courts to order and enforce such measures (Article 92 of the Law on Trademarks and Other Distinctive Signs).

As regards the cost of the proceedings, the right holder must pay the fees of the prosecutor he or she appoints. Since El Salvador has an outdated system of fees, these are normally determined by agreement.

It is therefore extremely difficult to establish the costs of such proceedings, as they vary from case to case.

#### *(b) Administrative measures*

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

Administrative authorities do not have the authority to order provisional measures, which are handled by the judicial authorities.

### **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?**

### **Trademarks**

#### **Border Measures**

Article 96 of the Law on Trademarks and Other Distinctive Signs stipulates that the right holder may apply to the competent court to suspend the import, export or in-transit movement of suspected counterfeit or confusingly similar trademark goods by providing adequate evidence to satisfy the competent court that there is *prima facie* an infringement of the right holder's intellectual property right and by supplying sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods readily recognizable. The requirement to provide sufficient information shall not deter recourse to these procedures.

The competent court may require the right holder initiating proceedings for suspension to provide reasonable security sufficient to protect the defendant and the competent authorities and to prevent abuse. The amount of the security shall not deter recourse to these proceedings. Such a security may take the form of an instrument issued by a financial services provider to protect the importer or owner of the imported goods from any loss or damage resulting from the suspension of the release of goods, in the event that the competent court determines that the article is not an infringing good.

Once the suspension is enforced, the customs authority shall immediately notify the importer or exporter of the goods and the person requesting the measure.

Border measures may be ordered *ex officio* with respect to imported, exported or in-transit goods suspected of infringing an intellectual property right, without the need for a formal complaint from the right holder or a private individual.

Where an application or storage charge is made for goods in connection with border measures to enforce an intellectual property right, the fee shall not be set at an amount that deters recourse to such measures.

### **Copyright**

Article 91(6) of the Law on Intellectual Property provides that the right holder may also apply to the competent court for border measures to order the suspension of the import, export or in-transit movement of unlawfully reproduced copies by providing adequate evidence to satisfy the competent court that there is *prima facie* an infringement of the right holder's intellectual property right and by supplying sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods readily recognizable. The requirement to provide sufficient information shall not deter recourse to these procedures.

The competent court may require the right holder initiating proceedings for suspension to provide reasonable security sufficient to protect the defendant and the competent authorities and to prevent abuse. The amount of the security shall not deter recourse to these proceedings. Such a security may take the form of an instrument issued by a financial services provider to protect the importer or owner of the imported goods from any loss or damage resulting from the suspension of the release of goods, in the event that the competent court determines that the article is not an infringing good.

Once the suspension is enforced, the customs authority shall immediately notify the importer or exporter of the goods and the person requesting the measure.

Where the competent court finds that the copies have been unlawfully reproduced, it will inform the right holder of the names and addresses of the consignor, importer and consignee and of the quantity of the goods in question.

Border measures may be ordered *ex officio* with respect to imported, exported or in-transit goods suspected of infringing an intellectual property right, without the need for a formal complaint from the right holder or a private individual.

Where an application or storage charge is made for goods in connection with border measures to enforce an intellectual property right, the fee shall not be set at an amount that deters recourse to such measures.

Precautionary measures and border measures may be sought prior to, in conjunction with or subsequent to the initiation of the legal action for infringement.

**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?**

### **Trademarks**

#### **Length of suspension of goods at borders**

With regard to the procedure for and duration of border measures, Article 97 of the Law on Trademarks and Other Distinctive Signs stipulates that if the action is not brought within 10 working days following the imposition of the measure, the measure shall cease to have effect and the complainant shall be subject to the provisions of the last paragraph of this Article. In properly justified cases, this time limit may be extended for a further 10 working days.

Where the suspension was ordered as a provisional measure, the time limit provided for such measures shall apply.

Once the legal proceedings on the merits have been initiated, the party affected by the suspension may appeal to the judge for consideration of the suspension ordered and shall be given a hearing for this purpose. The competent judge may amend, revoke or confirm the suspension.

The party requesting border measures shall be liable for damages resulting from their enforcement if the measures are lifted or revoked through the action or omission of the requesting party, or if subsequently it is determined that no infringement of an industrial property right had occurred or was imminent.

#### **Right of inspection and information in border measure cases**

Regarding the right of inspection, Article 98 of the Law on Trademarks and Other Distinctive Signs stipulates that, without prejudice to the protection of confidential information, the competent judge ordering the border measure may authorize the applicant free access to the detained goods or products, in order to inspect them and obtain additional evidence in support of his or her claim. The same right applies to the importer or exporter. This measure shall be carried out in the presence of the respective competent judge, citing the opposing party.

Once the existence of an infringement is verified, the applicant shall be advised of the names and addresses of the consignor, importer or exporter and consignee of the goods, and the quantity of goods subject to suspension shall be communicated to the applicant, as well as the quantity of goods suspended.

### **Copyright**

Article 91(5) of the Law on Intellectual Property stipulates that persons requesting precautionary measures, which may include border measures, must file the corresponding complaint within 15 days following the date on which the measures were ordered, failing which he or she shall be liable for the damages caused and the measures shall cease to have effect.



With regard to the right of inspection, Article 91-B provides that, without prejudice to the protection of confidential information, the competent court ordering the precautionary measure may authorize the applicant free access to the detained goods or products, in order to inspect them and obtain additional evidence in support of his or her claim. The same right applies to the importer or exporter. This measure shall be carried out in the presence of the respective competent court, citing the opposing party.

Once the existence of an infringement is verified, the applicant shall be advised of the names and addresses of the consignor, importer or exporter and consignee of the goods, and the quantity of goods subject to suspension shall be communicated to the applicant, as well as the quantity of goods suspended.

**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?**

As already mentioned in the replies concerning precautionary or prudential measures, border measures are one of the various precautionary measures that a competent court may impose in response to infringements of intellectual property rights when the right holder has so requested.

Salvadoran legislation provides for the period within which the precautionary measure is ordered, as follows:

- A copyright measure must be ordered immediately (Article 91 of the Intellectual Property Law).
- For patents, utility models and industrial designs, immediate precautionary measures will be requested (Article 174 of the Intellectual Property Law).
- With regard to precautionary measures on distinctive signs (distinctive commercial signs, geographical indications and appellations of origin), a period of 48 hours is granted to the courts to order and enforce such measures (Article 92 of the Law on Trademarks and Other Distinctive Signs).

As regards the cost of the proceedings, the right holder must pay the fees of the prosecutor he or she appoints. Since El Salvador has an outdated system of fees, these are normally determined by agreement.

It is therefore extremely difficult to establish the costs of such proceedings, as they vary from case to case.

**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?**

The customs authorities have the authority to act *ex officio*.

## **Trademarks**

### **Border Measures**

Article 96 of the Law on Trademarks and Other Distinctive Signs stipulates that the right holder may apply to the competent court to suspend the import, export or in-transit movement of suspected counterfeit or confusingly similar trademark goods by providing adequate evidence to satisfy the competent court that there is *prima facie* an infringement of the right holder's intellectual property right and by supplying sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods readily recognizable. The requirement to provide sufficient information shall not deter recourse to these procedures.

The competent court may require the right holder initiating proceedings for suspension to provide reasonable security sufficient to protect the defendant and the competent authorities and to prevent abuse. The amount of the security shall not deter recourse to these proceedings. Such a security

may take the form of an instrument issued by a financial services provider to protect the importer or owner of the imported goods from any loss or damage resulting from the suspension of the release of goods, in the event that the competent court determines that the article is not an infringing good.

Once the suspension is enforced, the customs authority shall immediately notify the importer or exporter of the goods and the person requesting the measure.

Border measures may be ordered *ex officio* with respect to imported, exported or in-transit goods suspected of infringing an intellectual property right, without the need for a formal complaint from the right holder or a private individual.

Where an application or storage charge is made for goods in connection with border measures to enforce an intellectual property right, the fee shall not be set at an amount that deters recourse to such measures.

### **Copyright**

Article 91(6) of the Law on Intellectual Property provides that the right holder may also apply to the competent court for border measures to order the suspension of the import, export or in-transit movement of unlawfully reproduced copies by providing adequate evidence to satisfy the competent court that there is *prima facie* an infringement of the right holder's intellectual property right and by supplying sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods readily recognizable. The requirement to provide sufficient information shall not deter recourse to these procedures.

The competent court may require the right holder initiating proceedings for suspension to provide reasonable security sufficient to protect the defendant and the competent authorities and to prevent abuse. The amount of the security shall not deter recourse to these proceedings. Such a security may take the form of an instrument issued by a financial services provider to protect the importer or owner of the imported goods from any loss or damage resulting from the suspension of the release of goods, in the event that the competent court determines that the article is not an infringing good.

Once the suspension is enforced, the customs authority shall immediately notify the importer or exporter of the goods and the person requesting the measure.

Where the competent court finds that the copies have been unlawfully reproduced, it will inform the right holder of the names and addresses of the consignor, importer and consignee and of the quantity of the goods in question.

Border measures may be ordered *ex officio* with respect to imported, exported or in-transit goods suspected of infringing an intellectual property right, without the need for a formal complaint from the right holder or a private individual.

Where an application or storage charge is made for goods in connection with border measures to enforce an intellectual property right, the fee shall not be set at an amount that deters recourse to such measures.

Precautionary measures and border measures may be sought prior to, in conjunction with or subsequent to the initiation of the legal action for infringement.

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

The following measures relate to provisional or precautionary measures that may be ordered by a competent court at the request of an interested party, including border measures that may be taken *ex officio* by the customs authorities.

#### **Copyright and neighbouring rights**

The provisional measures that may be applied by the judicial authorities with respect to copyright and neighbouring rights are as follows:

- Preventive seizure of the liquid revenue obtained through the unlawful use (Article 91 of the Intellectual Property Law).
- Preventive seizure of the unlawfully reproduced copies, packaging, labels and of the instruments or materials intended for the infringement with inventory, description or deposit thereof (Article 91 of the Intellectual Property Law).
- Suspension of unauthorized reproduction, communication or distribution activities, as appropriate (Article 91 of the Intellectual Property Law).
- Prohibition to import, export or of allowing the in-transit movement in the national territory of the unlawfully reproduced copies may be ordered, by corresponding order to the Directorate-General of Customs (Article 91 of the Intellectual Property Law).

#### Industrial property

The provisional measures that may be applied by the judicial authorities in respect of industrial property rights are as follows:

##### Patents, utility models and industrial designs

- Immediate cessation of the infringing acts (Article 174 of the Intellectual Property Law).
- Preventive seizure, withholding or deposit of the infringing goods and the means for the infringement (Article 174 of the Intellectual Property Law).
- Prohibition of the import, export or of allowing the in-transit movement in the national territory of the unlawfully reproduced copies, by corresponding order to the Directorate-General of Customs (Article 174 of the Intellectual Property Law).

##### Distinctive signs (distinctive commercial signs, geographical indications and appellations of origin)

- Immediate cessation of the infringing acts (Article 92 of the Law on Trademarks and Other Distinctive Signs).
- Seizure with inventory, description or deposit of the goods, packaging, labels or other materials displaying the infringing mark or sign and the instruments or materials intended for the infringement, as well as documentary evidence relevant to the infringement (Article 92 of the Law on Trademarks and Other Distinctive Signs).
- The suspension of the import, export or in-transit movement of the products, instruments or materials referred to in the preceding subparagraph.

#### **Trademarks**

##### **Border Measures**

Article 96 of the Law on Trademarks and Other Distinctive Signs stipulates that the right holder may apply to the competent court to suspend the import, export or in-transit movement of suspected counterfeit or confusingly similar trademark goods by providing adequate evidence to satisfy the competent court that there is *prima facie* an infringement of the right holder's intellectual property right and by supplying sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods readily recognizable. The requirement to provide sufficient information shall not deter recourse to these procedures.

The competent court may require the right holder initiating proceedings for suspension to provide reasonable security sufficient to protect the defendant and the competent authorities and to prevent abuse. The amount of the security shall not deter recourse to these proceedings. Such a security may take the form of an instrument issued by a financial services provider to protect the importer or owner of the imported goods from any loss or damage resulting from the suspension of the release of goods, in the event that the competent court determines that the article is not an infringing good.

Once the suspension is enforced, the customs authority shall immediately notify the importer or exporter of the goods and the person requesting the measure.

Border measures may be ordered *ex officio* with respect to imported, exported or in-transit goods suspected of infringing an intellectual property right, without the need for a formal complaint from the right holder or a private individual.

Where an application or storage charge is made for goods in connection with border measures to enforce an intellectual property right, the fee shall not be set at an amount that deters recourse to such measures.

### **Copyright**

Article 91(6) of the Law on Intellectual Property provides that the right holder may also apply to the competent court for border measures to order the suspension of the import, export or in-transit movement of unlawfully reproduced copies by providing adequate evidence to satisfy the competent court that there is *prima facie* an infringement of the right holder's intellectual property right and by supplying sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods readily recognizable. The requirement to provide sufficient information shall not deter recourse to these procedures.

The competent court may require the right holder initiating proceedings for suspension to provide reasonable security sufficient to protect the defendant and the competent authorities and to prevent abuse. The amount of the security shall not deter recourse to these proceedings. Such a security may take the form of an instrument issued by a financial services provider to protect the importer or owner of the imported goods from any loss or damage resulting from the suspension of the release of goods, in the event that the competent court determines that the article is not an infringing good.

Once the suspension is enforced, the customs authority shall immediately notify the importer or exporter of the goods and the person requesting the measure.

Where the competent court finds that the copies have been unlawfully reproduced, it will inform the right holder of the names and addresses of the consignor, importer and consignee and of the quantity of the goods in question.

Border measures may be ordered *ex officio* with respect to imported, exported or in-transit goods suspected of infringing an intellectual property right, without the need for a formal complaint from the right holder or a private individual.

Where an application or storage charge is made for goods in connection with border measures to enforce an intellectual property right, the fee shall not be set at an amount that deters recourse to such measures.

Precautionary measures and border measures may be sought prior to, in conjunction with or subsequent to the initiation of the legal action for infringement.

### **Trademarks**

#### **Length of suspension of goods at borders**

With regard to the procedure for and duration of border measures, Article 97 of the Law on Trademarks and Other Distinctive Signs stipulates that if the action is not brought within 10 working days following the imposition of the measure, the measure shall cease to have effect and the complainant shall be subject to the provisions of the last paragraph of this Article. In properly justified cases, this time limit may be extended for a further 10 working days.

Where the suspension was ordered as a provisional measure, the time limit provided for such measures shall apply.

Once the legal proceedings on the merits have been initiated, the party affected by the suspension may appeal to the judge for consideration of the suspension ordered, and shall be given a hearing for this purpose. The competent judge may amend, revoke or confirm the suspension.

The party requesting border measures shall be liable for damages resulting from their enforcement if the measures are lifted or revoked through the action or omission of the requesting party, or if subsequently it is determined that no infringement of an industrial property right had occurred or was imminent.

### **Right of Inspection and Information in Border Measures Cases**

Regarding the right of inspection, Article 98 of the Law on Trademarks and Other Distinctive Signs stipulates that, without prejudice to the protection of confidential information, the competent judge ordering the border measure may authorize the applicant free access to the detained goods or products, in order to inspect them and obtain additional evidence in support of his or her claim. The same right applies to the importer or exporter. This measure shall be carried out in the presence of the respective competent judge, citing the opposing party.

Once the existence of an infringement is verified, the applicant shall be advised of the names and addresses of the consignor, importer or exporter and consignee of the goods, and the quantity of goods subject to suspension shall be communicated to the applicant, as well as the quantity of goods suspended.

### **Copyright**

Article 91(5) of the Law on Intellectual Property stipulates that persons requesting precautionary measures, which may include border measures, must file the corresponding complaint within 15 days following the date on which the measures were ordered, failing which he or she shall be liable for the damages caused and the measures shall cease to have effect.

With regard to the right of inspection, Article 91-B provides that, without prejudice to the protection of confidential information, the competent court ordering the precautionary measure may authorize the applicant free access to the detained goods or products, in order to inspect them and obtain additional evidence in support of his or her claim. The same right applies to the importer or exporter. This measure shall be carried out in the presence of the respective competent court, citing the opposing party.

Once the existence of an infringement is verified, the applicant shall be advised of the names and addresses of the consignor, importer or exporter and consignee of the goods, and the quantity of goods subject to suspension shall be communicated to the applicant, as well as the quantity of goods suspended.

### **Criminal proceedings**

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

Where the infringements constitute a criminal offence, the corresponding investigations may be initiated through an allegation, complaint or notice pursuant to Article 260 of the Code of Criminal Procedure. Criminal proceedings are no different for offences infringing intellectual property rights than for other offences infringing other legal rights, and the following judicial authorities shall be competent to hear the proceedings according to their level of competence:

- The first instance generally involves three phases, as follows:
  - ✓ The magistrates' courts have jurisdiction in respect of the initial investigation proceedings and the initial hearing, which addresses the application by the public prosecutor to determine whether there is sufficient evidence to initiate the proceedings (Article 56 of the Code of Criminal Procedure).
  - ✓ The examining courts handle the formal pretrial hearings for publicly actionable offences, in conformity with Article 54 of the Code of Criminal Procedure.

- ✓ The courts of judgment handle the full court stage for all offences in accordance with Article 53 of the Code of Criminal Procedure.
- The second instance generally involves the chambers with criminal jurisdiction, according to the provisions of Article 51 of the Code of Criminal Procedure, which have jurisdiction over:
  - Appeals;
  - Appeals for review of judgments handed down by them;
  - In special cases where they act as courts of first instance; and
  - In other matters determined by law.
- The Criminal Chamber of the Supreme Court of Justice, in accordance with the provisions of Article 50 of the Code of Criminal Procedure, shall have jurisdiction over:
  - Appeals in criminal matters;
  - Appeals in cases heard at first instance by the chambers of second instance;
  - Reviewing the judgments it hands down; and
  - Other cases provided for by law.

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

Title VIII (Offences relating to Property), Chapter VII (Offences relating to Intellectual Property), of the Criminal Code provides as follows:

- Infringement of copyright or neighbouring rights

Article 226: Anyone who on a commercial scale engages in the reproduction, plagiarization, wholesale distribution or public communication, in part or in full, of a literary or artistic work, or its artistic transformation or performance, fixed on any type of medium or communicated through any medium, without the authorization of the holders of the corresponding intellectual property rights or their assignees, shall be punished by two to four years' imprisonment.

The same penalty shall apply to anyone who imports, exports or stores copies of such works or productions or performances on a commercial scale without the aforementioned authorization.

Commercial scale includes significant wilful infringements of copyright and neighbouring rights, for purposes of commercial advantage or private financial gain, as well as wilful infringements that have no direct or indirect motivation of financial gain, provided that there is more than a *de minimis* financial harm.

- Aggravated infringement of copyright and neighbouring rights

Article 227: A penalty of four to six years' imprisonment shall be applied to anyone who commits any of the acts described in Article 226 above in conjunction with any of the following circumstances:

- (1) The status of author of a work or part thereof or the name of an artist in a performance has been usurped;
- (2) The work's integrity has been significantly altered without the author's authorization; and
- (3) The quantity or the value of the unlawful copy is of special economic importance.

- Violation of effective technological measures

Article 227-A: A penalty of two to four years' imprisonment shall be applied to any person who, for the purposes of commercial advantage or private financial gain:

- a. circumvents, without authorization of the right holder, any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter;
- b. manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products or components, or offers to the public or provides services, provided that the devices, products or components, or the services:
  - (1) are promoted, advertised, or marketed for the purpose of circumventing any effective technological measure;
  - (2) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or
  - (3) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure.

Any person carrying out the exempted activities stipulated in Article 85-d of the Intellectual Property Law is excluded from criminal liability.

- Violation of rights management information

Article 227-B: A penalty of two to four years' imprisonment shall be applied to any person who, for the purposes of commercial advantage or private financial gain and knowing that this act could induce, enable, facilitate or conceal an infringement of any copyright or neighbouring right:

- a. knowingly removes or alters any rights management information;
- b. distributes or imports for distribution rights management information, knowing that such information has been removed or altered without the right holder's authorization; or
- c. distributes, imports for distribution, broadcast, communication or makes available to the public copies of works, performances or phonograms, knowing that rights management information has been removed or altered without the right holder's authorization.

Any person carrying out the exempted activities stipulated in Article 85-e of the Intellectual Property Law is excluded from criminal liability.

- Infringement of satellite signal rights

Article 227-C: A penalty of two to four years' imprisonment shall be applied to any person who:

- a. manufactures, assembles, modifies, imports, exports, sells, leases, or otherwise distributes, by any means, a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; or
- b. receives and subsequently distributes a program-carrying signal that originated as an encrypted satellite signal, knowing that it has been decoded without the authorization of the lawful distributor of the signal.

Similarly, Title IX, (Offences relating to the Socioeconomic Order), Chapter I (Offences relating to Industrial Property), stipulates the following:

- Violation of privileges of invention

Article 228: The manufacture, import, possession, offer or introduction into the market for industrial or commercial purposes and without the consent of the owner of the patent or utility model of the subject-matter thereof shall be punished by one to three years' imprisonment.

The same penalty shall apply to anyone who for the same purposes uses an industrial process or design that is protected by registration, without the authorization of the holder or without the necessary licence, or offers or introduces into the market or uses the product obtained directly by the registered process.

- Violation of distinctive commercial signs

Article 229: The reproduction, imitation, modification or use of any kind of a trademark, trade name, expression, advertising sign or any other distinctive commercial sign for industrial or commercial purposes and without the consent of the holder, in violation of the rights appertaining to the industrial property registered in conformity with the law, shall be punished with two to four years' imprisonment.

The same penalty shall apply to anyone who knowingly exports, imports or possesses for the purposes of sale or placing on the market, products or services bearing trademarks or distinctive commercial signs which, in accordance with the preceding paragraph, constitute an infringement of the exclusive rights of the holder.

- Breach of trust

Article 230: Anyone who takes possession of documents, carrier media or other items with a view to discovering or revealing an economically assessable secret belonging to an enterprise and involving economic advantages shall be punished by six months' to two years' imprisonment.

- Exposure or disclosure of an industrial secret

Article 231: Anyone who, while legally or contractually bound to maintain confidentiality, exposes or discloses an invention for which a patent application has been filed, or an industrial or trade secret, shall be punished by six months' to two years' imprisonment.

If the secret is used to the perpetrator's own advantage, the penalty shall be increased by up to one third of the maximum.

If the perpetrator is a public official or employee and the act is perpetrated in the course of his or her duties, he or she shall, in addition, be disqualified from such duties or employment for six months to two years.

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

Under Article 193(4) of the Constitution, responsibility for initiating criminal proceedings, *ex officio* or at the request of a party, lies with the Attorney-General of the Republic, and the Office of the Attorney-General of the Republic is therefore responsible for monitoring the investigation of the offence.

In this connection, Article 17 of the Code of Criminal Procedure stipulates that the Office of the Attorney-General of the Republic must initiate public criminal proceedings for the *ex officio* prosecution of offences in the cases identified by this Code, unless otherwise provided for in the law, and, likewise, where the case is prosecuted upon prior request by a private person.

Offences relating to intellectual property and industrial property are public criminal offences.

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

As mentioned in the previous reply, which reads as follows:

*"Under Article 193(4) of the Constitution, responsibility for initiating criminal proceedings, ex officio or at the request of a party, lies with the Attorney-General of the Republic, and the Office of the Attorney-General of the Republic is therefore responsible for monitoring the investigation of the offence."*



*In this connection, Article 17 of the Code of Criminal Procedure stipulates that the Office of the Attorney-General of the Republic must initiate public criminal proceedings for the ex officio prosecution of offences in the cases identified by this Code, unless otherwise provided for in the law, and, likewise, where the case is prosecuted upon prior request by a private person.*

*Offences relating to intellectual property and industrial property are public criminal offences"*

offences relating to intellectual property and industrial property are public criminal offences under the responsibility of the Office of the Attorney-General of the Republic.

However, pursuant to Article 17 of the Code of Criminal Procedure, there will be cases where the public prosecutor receiving the notice, allegation or complaint does not initiate the corresponding criminal proceedings, which will lead to the conversion of public criminal proceedings into private criminal proceedings.

Based on the provisions of Article 28, such cases of the conversion of an offence into private criminal proceedings can only take place when a charge is brought by the victim, in accordance with the special procedure provided for in the Code of Criminal Procedure.

**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 used for their production;**
- **other.**

Title VIII (Crimes relating to Property), Chapter VII (Crimes relating to Intellectual Property), of the Criminal Code provides for the following offences:

- Infringement of copyright and neighbouring rights

Article 226: Anyone who on a commercial scale engages in the reproduction, plagiarization, wholesale distribution or public communication, in part or in full, of a literary or artistic work, or its artistic transformation or performance, fixed on any type of medium or communicated through any medium without the authorization of the holders of the corresponding intellectual property rights or their assignees, shall be punished by two to four years' imprisonment.

The same penalty shall apply to anyone who imports, exports or stores copies of such works or productions or performances on a commercial scale without the aforementioned authorization.

Commercial scale includes significant wilful infringements of copyright or neighbouring rights, for purposes of commercial advantage or private financial gain, as well as wilful infringements that have no direct or indirect motivation of financial gain, provided that there is more than a *de minimis* financial harm.

- Aggravated infringement of copyright and neighbouring rights

Article 227: A penalty of four to six years' imprisonment shall be applied to anyone who commits any of the acts described in Article 226 above in conjunction with any of the following circumstances:

- (1) The status of author of a work or part thereof or the name of an artist in a performance has been usurped;
- (2) The work's integrity has been significantly altered without the author's authorization; and
- (3) The quantity or the value of the unlawful copy is of special economic importance.

- Violation of effective technological measures

Article 227-A: A penalty of two to four years' imprisonment shall be applied to anyone who, for the purpose of commercial advantage or private financial gain:

- a. circumvents, without authorization of the right holder, any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter;
- b. manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products or components, or offers to the public or provides services, provided that the devices, products or components, or the services:
  - (1) are promoted, advertised or marketed for the purpose of circumventing an effective technological measure;
  - (2) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or
  - (3) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure.

Any person carrying out the exempted activities stipulated in Article 85-d of the Intellectual Property Law is excluded from criminal liability.

- Violation of rights management information

Article 227-B: A penalty of two to four years' imprisonment shall be applied to any person who, for the purposes of commercial advantage or private financial gain and knowing that this act could induce, enable, facilitate or conceal an infringement of any copyright or neighbouring right:

- a. knowingly removes or alters any rights management information;
- b. distributes or imports for distribution rights management information, knowing that such information has been removed or altered without the right holder's authorization; or
- c. distributes, imports for distribution, broadcast, communication or makes available to the public copies of works, performances or phonograms, knowing that rights management information has been removed or altered without the right holder's authorization.

Any person carrying out the exempted activities according to Article 85-e of the Intellectual Property Law is excluded from criminal liability.

- Infringement of satellite signal rights

Article 227-C: A penalty of two to four years' imprisonment shall be applied to any person who:

- a. manufactures, assembles, modifies, imports, exports, sells, leases, or otherwise distributes, by any means, a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; or
- b. receives and subsequently distributes a program-carrying signal that originated as an encrypted satellite signal, knowing that it has been decoded without the authorization of the lawful distributor of the signal.

Similarly, Title IX, (Offences relating to the Socioeconomic Order), Chapter I (Offences relating to Industrial Property), stipulates the following:

- Violation of privileges of invention

Article 228: The manufacture, import, possession, offer or introduction into the market for industrial or commercial purposes and without the consent of the owner of the patent or utility model of the subject-matter thereof shall be punished by one to three years' imprisonment.

The same penalty shall apply to anyone who for the same purposes uses an industrial process or design that is protected by registration, without the authorization of the holder or without the necessary licence, or offers or introduces into the market or uses the product obtained directly by the registered process.

- Violation of distinctive commercial signs

Article 229: The reproduction, imitation, modification or use of any kind of a trademark, trade name, expression, advertising sign or any other distinctive commercial sign for industrial or commercial purposes and without the consent of the holder, in violation of the rights appertaining to the industrial property registered in conformity with the law, shall be punished with two to four years' imprisonment.

The same penalty shall apply to anyone who knowingly exports, imports or possesses for the purposes of sale or placing on the market, products or services bearing trademarks or distinctive commercial signs which, in accordance with the preceding paragraph, constitute an infringement of the exclusive rights of the holder.

- Breach of trust

Article 230: Anyone who takes possession of documents, carrier media or other items with a view to discovering or revealing an economically assessable secret belonging to an enterprise and involving economic advantages shall be punished by six months' to two years' imprisonment.

- Exposure or disclosure of an industrial secret

Article 231: Anyone who, while legally or contractually bound to maintain confidentiality, exposes or discloses an invention for which a patent application has been filed, or an industrial or trade secret, shall be punished by six months' to two years' imprisonment.

If the secret is used to the perpetrator's own advantage, the penalty shall be increased by up to one third of the maximum.

If the perpetrator is a public official or employee and the act is perpetrated in the course of his or her duties, he or she shall, in addition, be disqualified from such duties or employment for six months to two years.

Under Salvadoran legislation, in addition to the prison sentences indicated above, the following measures are found in the Criminal Code:

### **Civil liability**

Article 114 stipulates that the commission of an act described by the law as an offence or misdemeanour gives rise to civil liability under the terms provided for in this Code.

### **Civil liability consequences**

Article 115 stipulates that the civil liability consequences of the offence, which shall be set forth in the judgment, include:

- (1) Restitution of the goods obtained as a result of the commission of the punishable offence or, failing that, payment of the value thereof;
- (2) Reparation for the damage caused;

- (3) Compensation for the material or moral damages caused to the victim or the victim's family; and
- (4) The costs of the proceedings.

Restitution shall be of the same goods, whenever possible, with payment for any damage or injury, at the discretion of the judge or court. This shall be so even if the object is in the possession of a third party and the latter has acquired it by legal means, except for his or her right of repetition against the person concerned and, if applicable, the right to receive civil damages from the person responsible for the offence or misdemeanour.

Reparation for damage shall be made by the judge or court assessing the extent of the damage caused, taking into consideration the price of the object and the impact on the injured party.

Compensation for damages includes not only the damages caused to the injured party, but also those caused to his or her relatives or to a third party. The amount shall be adjusted taking account of the extent of the damage and the needs of the victim, in accordance with his or her age, status and fitness for employment and, in addition, any profit obtained from the commission of the offence.

### **Forfeiture of the product and profits deriving from the act**

Article 126 provides that, without prejudice to such repayments and compensation as are due for the damages resulting from the act, the judge or court shall order the forfeiture, on behalf of the State, of the product, profits and advantages obtained by the convicted party as a result of the act.

This forfeiture shall include assets, rights and goods obtained by any means for the purpose or as a result of the offence, by the convicted party or any other person, natural or legal, on whose behalf the convicted party has acted. The forfeiture of the assets, rights or goods shall also apply to third parties who have acquired them, even free of charge, in the knowledge that they are derived from criminal activity, for the purpose of concealing the unlawful origin of such assets, rights or goods or of assisting the person involved in such activity.

### **Seizure**

Article 127 stipulates that, without prejudice to the rights of purchasers in good faith and for valuable consideration or to such improvements or expenditures as have been made by acquirers free of charge, the judge or the court shall order the confiscation or forfeiture on behalf of the State of the objects or instruments used by the convicted party to prepare or facilitate the act. Seizure is not applicable in the case of culpable acts.

Seizure shall only take place when the objects or instruments are the property of the convicted party or are in his or her possession with no claim by third parties. Where the forfeiture is disproportionate to the seriousness of the act for which the infringer was convicted, the judge or court may refrain from enforcing it, restrict it to a part of the goods or order a reasonable alternative payment to the State.

### **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.**

#### **Cost of the proceedings**

Under Articles 172 and 181 of the Constitution, the judicial body has the exclusive authority to judge and to enforce judgments, *inter alia* in criminal cases, guaranteeing that the administration of justice remains free of charge.

Similarly, criminal proceedings in respect of intellectual property and industrial property offences are actionable publicly, and the Office of the Attorney-General of the Republic is the institution responsible for conducting the proceedings, so that no cost is in fact involved.

However, Article 95 of the Code of Criminal Procedure stipulates that the victim may participate in the proceedings through his representative, who, under Article 98 of the Code, must be an official

attorney of the Republic. In cases where the holder of the infringed intellectual property right chooses to participate in the proceedings, he or she must pay the fees of his or her representative.

### **Duration of the proceedings**

Criminal proceedings are provided for in Book Two of the Code of Criminal Procedure.

In particular, Article 274 of the Code of Criminal Procedure stipulates that the duration of the investigation stage shall not exceed a maximum of six months following the initiating order. The purpose of this stage is to prepare the public hearing by gathering together all of the elements on which to base the accusation of the prosecutor or the complainant and to prepare the defence of the accused.

Article 417 of the Code of Criminal Procedure stipulates that from the initiation of proceedings until the public hearing phase, it is possible to request application of the accelerated procedure provided for in Book Three of the Special Procedures, Title I, when the following conditions are met:

- The prosecutor requests a custodial or prison sentence of up to three years;
- The accused admits the act and agrees to the application of such procedure, without prejudice to the inclusion in his or her pleading of such other facts or circumstances as he or she may consider appropriate;
- The counsel for the defence certifies that the accused has freely given his or her consent;
- The victim or complainant has given his or her consent. If not, the judge shall examine the reasons put forward and may proceed with the accelerated procedure even without the consent of the victim or complainant.

Similarly, in the Code of Criminal Procedure, specifically in Book Two, Title II (The Trial), no maximum time limits are set for this stage.

In addition, Book IV (Procedural Acts), Chapter VI regulates matters concerning the duration of procedural acts and deadlines for settlement.

---