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

Original: English

CHECKLIST OF ISSUES ON ENFORCEMENT¹

RESPONSES FROM TAJIKISTAN

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedures and remedies

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

Courts of general jurisdiction and economic courts may have jurisdiction over IPR infringement cases, depending on the legal status of the parties.

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 person, natural or legal, whose intellectual property rights have been infringed upon, has the right to file a petition to the court and request protection of rights. Any party to the court proceedings, including those arising from IPR infringement, may choose to represent himself or to be represented by a lawyer. There are no requirements for mandatory personal appearances before the court by the right holder.

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 court has the authority to order a party to the proceedings to produce evidence that lies within its control, either on its own initiative or at the request of an opposing party.

Party who is not able to present the evidence requested by the court must notify the court within five days from receiving the request and substantiate the reasons. If the party fails to notify the court of its inability to provide the evidence or if the court finds that the reasons for not providing evidence are unsubstantiated, the court has the authority to fine such a party. However, imposition of a fine does not release the party to the proceedings from the obligation to present the evidence to the court.

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

Court proceedings are open to the public.

The proceedings may be closed to the public if information containing the state secret is involved, and also in the case where the party to the proceedings requests the court to close the proceedings for the public in order to safeguard commercial or official or other confidential information protected by law.

¹ Document IP/C/5.

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

In accordance with Article 1137 of the Civil Code of the Republic of Tajikistan, upon the request of the right holder the court is authorized to decide on the following:

- Recognition of the right;
- Preventing the actions infringing the right or creating a threat of its infringement;
- Reimbursement of damages;
- Confiscation of the material and equipment used to commit the infringement and material objects created as a result of such infringement;
- Publication of the judicial decision on the infringement committed.

In addition, in accordance with Article 48 of the Law on Copyright and Neighbouring Rights, the holder of the copyright and/or neighbouring right is entitled to:

- Recovery of the profit gained by the infringer as a result of infringement of copyright or neighbouring rights instead of compensation for damages;
- Payment of compensation in the amount determined by the court instead of recovery of profit or compensation for damages.

The counterfeited/pirated copies of a work or a phonogram can be given to the right holder at his/her request. Counterfeited/pirated copies of work or phonograms unclaimed by the right holder are destined to destruction.

The specific criteria for the use of remedies are not prescribed by the legislation. The implementation of remedies would be decided by the court depending on the circumstances of the case.

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?

There is no provision in the legislation that would expressly provide such authority to judicial authority.

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

In accordance with Article 123 of the Code of Criminal Procedure of the Republic of Tajikistan any person may file a complaint in respect of an activity, or the absence thereof, of an official. The complaint is to be lodged to the prosecutor overseeing legality of proceedings. The prosecutor must consider the complaint within three days from the day of submission. Where the circumstances of the case so warrant, the time limit may be extended to seven days. As a result, it can be decided to annul or alter the decision made during the proceedings that were subject to complaint. The complainant and any interested persons must be notified of the decision.

The complaint against the actions (or inactivity) of a prosecutor may be lodged the higher instance prosecutor.

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

There are no specific provisions that govern the length and the cost of the proceedings, which both may differ depending on the circumstances of each particular case. Intellectual property related cases are few and far between and the reliable data on their length and costs are not available.

(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.

There are no administrative procedures and/or remedies that would correspond to those discussed in the above questions.

Provisional Measures

(a) *Judicial measures*

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

Provisional measures are regulated by Articles 89-98 of the Economic Procedural Code of the Republic of Tajikistan.

In accordance with these provisions the economic court, at the request of the party to the proceeding or of another interested person, may order urgent provisional measures aimed at securing the claim or interest of the applicant.

The measures can be the following:

- Arrestment of monetary funds or other property belonging to the defendant and being in his/her possession or in possession of other persons;
- Prohibition to the defendant and other persons to effect certain actions concerning the matter of dispute;
- Assignment to the defendant the obligation to perform certain actions for prevention of spoilage, deterioration of the disputed property;
- Transfer of the disputed property to the plaintiff or other person for storage;
- Suspension of the enforcement based on the disputed judicial civil order or other - document;
- Suspension of the sale of confiscated property in case of filing a suit challenging the confiscation.

Several measures can be taken simultaneously. The measures must be commensurate to declared claims. Provisional measures are ordered for a period of time necessary to decide the merits of the case.

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

There is no provision that would expressly provide for such measures to be taken *inaudita altera parte*.

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

The request for provisional measure may be submitted to the court either simultaneously with the application initiating the proceedings or at any time in the course proceedings. The request for provisional measure must include *inter alia* the following:

- Proposed provisional measure;
- Rationale for the proposed provisional measure;
- Evidence supporting the request.

The court must consider the request not later than on the day following submission of the request. Based on the review of the request the court may decide to order the measure or to decline it. The decision on provisional measures must be communicated to the applicant, parties to the proceedings and other persons that may be affected by the measure, not later than on the day following the issuance of a decision. In case of a decision to decline the request for provisional

measure, such decision is communicated to the applicant only. The decision to order the provisional measure or to decline it may be appealed. However, the appeal lodged against the decision to grant the provisional measure does not stay the enforcement of such a provisional measure.

Upon the request of the applicant or the defendant the court may replace one provisional measure with another. Provisional measures remain in force for a period of time necessary to resolve the merits of the case. Upon the request of the applicant or the defendant the court may reconsider the decision to grant a provisional measure and decide to maintain it or cancel it. Any such decision is subject to appeal.

According to Article 98 of the Economic Procedural Code, the court is also authorised to order preliminary provisional measures, whose purpose is to protect interest of the applicant even before filing the claim. The decision of the court granting the preliminary provisional measure must contain the time period, not exceeding 20 days, for filing the claim by the applicant. If the applicant fails to file the claim within such a time limit, the court cancels the preliminary provisional measure.

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

There are no specific provisions that govern the length and the cost of the proceedings, which both may differ depending on the circumstances of each particular case. Intellectual property related cases are few and far between and the reliable data on their length and costs are not available.

(b) Administrative measures

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

There are no administrative procedures and/or remedies that would directly correspond to those discussed in the above questions.

However, there are provisions that more correspond in their nature to criminal provisions. Notably, Chapter 22 (Articles 375-381) of the Code of the Republic of Tajikistan on Administrative Offences provides for administrative offences related to violation of intellectual property rights. The cases under these provisions are decided by the courts of general jurisdiction and economic courts.

The administrative offences under Chapter 22 of the Code on Administrative Offences are the following:

- Violation of exclusive rights of a patent holder;
- Illegal production, importation, storage, sale, renting or other illegal use of the copies of an author's work or a phonogram;
- Illegal use of a trademark, service mark, appellation of origin and the firm name.

The punishment for all of the above is a fine and the confiscation of any objects of the administrative offence.

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?

In accordance with Article 437 of the Customs Code of the Republic of Tajikistan, the customs authorities are authorized to suspend the release of any goods subject to copyright and related rights, trademarks, service marks and the appellation of origin, whenever such goods are found to be moving across the customs border or involved in any procedure administered under the customs control.

Under Article 444 of the Customs Code the IPR border measures are not applicable to goods carried across the customs border by natural persons or sent by international mail in small amounts, if such goods are intended for personal, family, home and other non-entrepreneurial activities.

The procedure does not apply to imports of goods put on the market in another country by or with the consent of the right holder. The procedure is applicable to goods destined for exportation.

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?

According to article 441 of the Customs Code, if in the course of the customs clearance or the customs control procedure the customs authority identifies the goods indicated by the right holder as pirated/counterfeit, the customs authority is authorized to suspend the release of such goods for 10 working days. Upon the substantiated written request by the right holder or his representative this time limit may be extended by no more than a further 10 working days, if such person has applied to the competent authorities for protection of his rights.

The decision to suspend the release of goods and extend the suspension of the release of goods must be made in writing by the head of the customs authority or his deputy.

The customs authority, not later than the next day after the suspension of the release of goods, notifies the right holder (his/her representative) about the reason and term of such suspension, as well as notifies the declarant of the designation (name) and address of the right holder (his/her representative), and notifies the right holder (his/her representative) of the designation (name) and address of the declarant.

The right holder is responsible for the damages caused to the declarant, owner, recipient of goods as a result of the suspension of the release of goods, if it was found that the goods (including packaging and labelling) were not counterfeit.

Under Article 442 of the Customs Code the right holder and the declarant and their representatives may take samples and inspect the suspected goods (including examination and taking photographs) subject to the written approval by the customs authority and under the customs control. Upon the request of the right holder the customs authority may provide additional information necessary to prove infringement of rights.

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?

There are no specific provisions that govern the length and the cost of the proceedings, which both may differ depending on the circumstances of each particular case. There are no available reliable data on their length and costs.

In accordance with the Article 440 of the Customs Code, the validity of decision by the competent authority for the suspension of the release of goods into free circulation depends primarily on the right holder (or his representative), who can request the period of validity, however, not exceeding five years from the date of inscription of the intellectual property right into the register maintained by the customs authority. The validity of a decision cannot in any case exceed the period of protection of the intellectual property right concerned.

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 are authorized to act *ex officio* provided that the right holder has registered the intellectual property right with the customs authority and that such right has been inscribed in the appropriate register maintained by the customs authority.

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

The customs authorities have no authority to order any remedies. They have the authority to suspend the customs procedure only for the period not exceeding 20 working days. During that period the right holder may apply to competent authorities and/or courts and request IPR protection in the appropriate civil, criminal or administrative procedure, as described in answers to other questions in this questionnaire. The customs authority must follow the decision(s) of the court or other authority competent for protection of IPRs. If there is no decision/instruction by the court or other authority within the said time limit, the suspended procedure must continue and the goods eventually must be released, provided that other conditions for the release have been fulfilled.

Criminal Procedures

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

Courts of general have jurisdiction over criminal acts of infringement of IPRs.

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

Criminal procedures and penalties are available for infringement of the following intellectual property rights:

- Copyright and neighbouring rights;
- Inventions (patents), industrial designs and utility models;
- Trademarks.

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?

Public prosecutor's office is responsible for initiating criminal proceedings. Public prosecutor's office can initiate criminal proceedings on their own initiative or upon the complaint of the right holder whose right has been infringed.

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

Private persons do not have standing to initiate criminal proceedings; however private persons may file a complaint to the public prosecutor's office and request the prosecutor to initiate the case.

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

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

Infringement of any intellectual property rights provided for in the Penal Code of the Republic of Tajikistan (copyright and neighbouring rights, patents, industrial designs and utility models,

trademarks) is punishable by either monetary fine or imprisonment, depending on the circumstances of the case. In addition to fine and incarceration, confiscation of infringing goods and materials and implements for their production may be ordered.

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.

There are no specific provisions that govern the length and the cost of the proceedings, which both may differ depending on the circumstances of each particular case. Intellectual property related cases are few and far between and the reliable data on their length and costs are not available.
