

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from the Republic of Korea

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedure and remedies

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

The jurisdiction of the court is prescribed in Articles 1-2 to 36 of the Code of Civil Procedure (hereinafter referred to as CCP) and the Court Organization Act.

The District Court has original jurisdiction over cases in the first instance. The jurisdiction varies not only by territory but by subject matter. According to the subject-matter jurisdiction, a single judge generally presides over the cases. But some cases such as a civil case in which the amount in dispute exceeds 30,000,000 won must be adjudicated by the collegiate division (three-judge court). The collegiate divisions of the District Court also have jurisdiction over appeals against the decisions of a single judge of the District Court, branch courts and municipal courts.

The High Court, as an appellate court, has jurisdiction over the cases appealed from judgements or rulings rendered by collegiate divisions of the District Courts.

The Supreme Court has the jurisdiction over the cases that are appealed against the judgements or the rulings rendered by High Courts or appellate divisions of District Courts.

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?

- The right holders of IPRs have the standing to assert IPRs. An independent legal counsel may represent them. However, in a case which is to be decided by a single judge, if any person who is a relative, employee or has other special relationship with the right holder, obtains the court's permission, he or she may represent the right holder in the case (CCP Article 80).

There is no requirement for mandatory personal appearances by the right holders. It is not necessary for the party himself to appear before the court when he makes his representative appear. When the court decides to examine the party in the process of examining evidence, he may be summoned to the court. When the person summoned does not appear before the court without legitimate reason, assertion made by the opposing party may be considered to be true (CCP Article 341).

¹ Document IP/C/5.

Under the Copyright Act of Korea, the Copyright Management Services shall have the authority to assert IPRs and appear in court on behalf of copyright holders (Copyright Act Articles 78 to 80).

- There are no special provisions for foreigners. The same rules mentioned above apply to foreigners also.

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 that lies within its control?

In accordance with the CCP Article 315, a party can request the court to order the other party to present the document within its control. The specific procedure, the elements for application and ruling, and the effects of default are prescribed in Articles 315 to 326 of the CCP.

CCP Article 316 (Obligation to Produce Document):

The holder of a document shall not refuse to produce it in the following cases:

- when the party himself possesses the document which he has referred to in the suit;
- when the applicant is entitled to demand the holder of the document the delivery or the perusal thereof; and
- when the document has been made out for the benefit of the applicant, or concerning a legal relation between the applicant and the holder thereof.

In cases where a party does not comply with an order for the production of a document, the court may deem that the allegations of the other party relating to such document are true (CCP Article 320 (Effect of Nonproduction of Document)). And, in cases where a party, with the object of preventing the use by the other party of a document which he is ordered to produce, destroys the same or otherwise renders it unfit for use, the court may deem that the allegations of the other party relating to such document are true (CCP Article 321 (Effect of Prevention of Use by Party)).

Further, Article 132 of the Patent Act prescribes that in a case of infringement of patent rights or an exclusive licence, the court may, upon the request of the plaintiff, order the other party to submit documents necessary for calculating the loss incurred by the infringement, unless the holder of the documents has any justifiable reason to refuse the submission thereof. That provision applies *mutatis mutandis* to Design Act Article 67 and Trademark Act Article 70.

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

The circumstances under which a person may be required, against his will, to produce evidence which he holds are limited only to Question 3 case above, and in such a case, it is not supposed that such evidence contains confidential information. Therefore, there are no circumstances under which confidential information may be required to be produced as evidence against the holder's will, and protection of confidential information is ensured.

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

- **injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

Injunctions

There are two kinds of injunctions: the preliminary injunction and the permanent injunction. The preliminary injunction is a provisional measure, the detailed explanation of which is provided later in responses to Questions 10 to 13 (please refer to those sections for details).

The court can prohibit the IPR infringers from infringing the right holder's right by ordering the infringers to stop the infringement, take preventive measures or to provide a security for compensation for damages if requested by the right holder.

Copyright Act Article 91.1:

Any person who has the copyright or other rights protected under this Act (excluding the rights to be compensated under Articles 65 and 68, hereinafter the same shall apply to this Article) may demand a person infringing his rights to suspend such act or demand a person likely to infringe his rights to take preventive measures or to provide a security for compensation for damages.

(Computer Program Protection Act Article 25.1, Patent Act Article 126.1, Design Act Article 62.1, Trademark Act Article 65.1, Unfair Competition Prevention Act Articles 4.1 and 10.1, Seed Industry Act Article 84.1, Act on the Layout-Designs of Semiconductor Integrated Circuits Article 35.1, etc.).

Compensation of damages

Judges have the authority to order the infringer to pay the right holder damages to compensate for the damages suffered by the right holder because of the infringement. In calculating the damages, any profit gained by the infringer is presumed to be included in the amount of damages. The right holder may claim the amount equivalent to that which he could have earned by the ordinary exercise of his rights.

Copyright Act Article 93:

Paragraph (1): The owner of authors' economic right or other rights protected under this Act (excluding authors' moral rights), (hereinafter referred to as "owner of authors' economic rights, etc.") may claim compensation for damages from a person who has infringed his rights intentionally or negligently.

Paragraph (2): If the owner of authors' economic rights, etc. claims compensation under Paragraph (1), the amount of profits obtained by the infringer from his infringement shall be presumed to be the amount of damages suffered by the owner of authors' economic rights, etc.

Paragraph (3): The owner of authors' property rights, etc. may claim an amount of compensation for damages as referred to in Paragraph (2), or an amount of compensation for damages corresponding to the ordinary amount of money which would be received through the exercise of these rights.

(Computer Program Protection Act Article 27, Patent Act Article 128, Design Act Article 64, Trademark Act Article 67, Unfair Competition Prevention Act Articles 5 and 11, Seed Industry Act Article 86, Act on the Layout-Designs of Semiconductor Integrated Circuits Article 36, etc.).

Expenses

In the CCP, there are several provisions regulating the burden of expenses (Articles 89 to 106).

CCP Article 89 (Principle of Imposition of Costs of Suit). The costs of a suit shall be borne by the defeated party.

Destruction or other disposal of infringing goods and materials/implements for their production and any other remedies necessary to prevent the infringement

Upon the request of the right holder, a judge can order the destruction of the articles made by the infringement, the removal of the equipment used for the infringement, and any other measures necessary for the prevention of further infringement.

Copyright Act Article 91.3:

In the cases of Paragraphs (1) and (2), or in the case where a criminal indictment under this Act has been filed, on request of a plaintiff or accuser, the court may, with or without imposing a security, issue an order to temporarily suspend the act of infringement, or seize the objects made by the act of infringement, or to take other necessary measures.

(Computer Program Protection Act Article 25.2, Patent Act Article 126.2, Design Act Article 62.2, Trademark Act Article 65.2, Unfair Competition Prevention Act Articles 4.2 and 10.2, Seed Industry Act Article 84.2, Act on the Layout-Designs of Semiconductor Integrated Circuits Article 35.2, etc.).

Proper measures to restore the credit and reputation of the right holder

Under the Patent Act, the patent holder can require the infringer to take proper measures to restore the credit and reputation lost or damaged because of the infringer (Patent Act Article 131). And there are similar provisions in other IPR related Acts.

Patent Act Article 131:

Upon the request of a patentee or exclusive licensee, the court may, in lieu of damages or in addition thereto, order the person who has injured the business reputation of the patentee or exclusive licensee by intentionally or negligently infringing the patent right or exclusive license to take necessary measures to restore the business reputation of the said patentee or exclusive licensee.

(Copyright Act Article 95, Design Act Article 66, Trademark Act Article 69, Unfair Competition Prevention Act Articles 6 and 12, Seed Industry Act Article 88).

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?**

Judicial authorities do not have such authority. There are no laws or regulations which authorize the judicial authority to order the infringer to produce such information.

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

The indemnification of a defendant wrongfully enjoined is regulated under the general provisions for torts in Articles 750 to 766 in the Civil Code. According to those provisions, any person who causes damage to or inflicts injuries on another person by an unlawful act intentionally or negligently is bound to make compensation for damages arising therefrom (Article 750).

In particular, the Copyright Act has a special provision to regulate the indemnification of a defendant (Article 91.4). The provision reconfirms the general principle prescribed in the Civil Code.

Copyright Act Article 91.4:

In the case of Paragraph (3) where a judicial decision was made that no infringement of copyright and other rights protected under this Act has been made, the applicant shall pay compensation for the damages caused by his request.

Liability of the public authority

With regard to the liability of public officials, the National Compensation Act, Article 2 prescribes that "When public officials inflict damages on other persons intentionally or negligently in the course of performing their official duties, in violation of the provisions of laws and regulations, the State or Local Government shall redress the damages. If such damage has been caused by bad faith or gross negligence of the public official concerned, the State or Local Government may demand from the public official reimbursement".

All of the remedial measures are rendered as monetary compensation.

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

Provisions governing the length of proceedings: Constitution Article 27(3) prescribes "All citizens shall have the right to a speedy trial". Apart from this Constitutional mandate, there is no special provision limiting the length and cost of proceedings.

The length and cost of proceedings in Korea varies in relation to the complexity and nature of the proceeding. No data are available on the actual duration of proceedings and their cost.

(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.

No administrative procedure on the merits and remedies exists in Korea.

Provisional Measures

(a) *Judicial measures*

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

A court issues an order as a precautionary measure to prevent substantial or permanent damages, and to avoid an imminent violation of civil rights. The Code on Civil Procedure provides two provisional measures: Provisional Attachment and Provisional Disposition (CCP Articles 696 to 723).

Provisional Attachment

For the purpose of securing the execution against movables or immovables, an arrest may be effected by sequestering the properties belonging to the debtor, even if the lawsuit on the merits of the case is still pending or yet to be instituted. Such an arrest, or provisional attachment, will be allowed for a monetary claim or a claim which can be converted into money. Also, provisional attachment will be allowed only where the future execution would be impossible or considerably difficult without it, especially where the future execution has to be effected in a foreign country.

Provisional Disposition

A person who has a claim other than a monetary claim (e.g. a claim for delivery of movables or immovables) may apply for a provisional disposition with respect to his claim, even if the suit on the merits of the case is still pending or yet to be instituted. A provisional disposition is granted to maintain the present status of the subject matter of the claim, or to confer temporary authority upon a person who is a party to a legal dispute. Therefore, provisional disposition will take various forms, depending upon the nature of the claim sought to be secured. The most typical form of provisional disposition is an injunction, which prohibits an owner or holder of personal or real property from delivering possession of the property to any third party, or from disposing of the property by assignment, creating any security interest in it, or otherwise.

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

Provisional Attachment

CCP Article 700 (Order of Provisional Attachment), Paragraph (1): Decision in regard to application for provisional attachment may be rendered without pleadings.

Provisional Disposition

CCP Article 717 (Competent Court), Paragraph (2): The decision mentioned in Paragraph (1) may be rendered without pleadings in case of emergency.

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 main procedures for the provisional measures are prescribed in CCP Articles 696 to 723. The following briefly explains the procedures.

Provisional Attachment

Provisional attachment is accomplished under the jurisdiction of a district court which exercises jurisdiction over the place where the object of the attachment is located, or of a court which exercises jurisdiction over the principal case.

A written application, stating the gist and grounds of the application, must be filed with the court. The court fees for the application are nominal. The applicant must provide security by depositing with the court either cash or negotiable instruments acceptable by the court, by submitting to the court a document evidencing that the applicant has obtained a payment guarantee, or by any other method agreed upon between the applicant and the debtor. The required amount of the security differs from court to court.

The decision on an application for arrest may be rendered *ex parte*. Given light of the need for promptness in the arrest procedure, it does not require conclusive evidence, and the applicant has only to show minimally the grounds for his application. Even if the applicant fails to show grounds to support his application, the court may render an arrest order upon the applicant's depositing certain security.

An arrest order takes effect when it is rendered, and must be executed within 14 days from the date the order is rendered.

If the main suit concerning the claim sought to be secured by the arrest is not pending, upon an application from the debtor, the court which rendered the arrest order shall also order the applicant to institute the main suit within a reasonable period of time. If the creditor fails to institute the main suit within such a period, upon an application from the debtor, the court must cancel the arrest order by a final judgment. If, after issuance of the arrest order, any change in circumstances occurs, rendering the arrest unnecessary, or if the debtor deposits the security (release money) specified in the arrest order, the debtor may also apply for the cancellation of the arrest order. Furthermore, if the applicant does not institute the main suit until 10 years after the arrest has been executed, the debtor or any other party whose interest is affected by the continuance of the arrest may likewise apply for the cancellation of the arrest order.

Provisional Deposition

Provisional disposition is accomplished under the jurisdiction of a district court which exercises jurisdiction over the principal case.

Most of the procedures explained above with respect to provisional attachment will also apply to provisional disposition.

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

Provisions governing the cost of proceedings

The cost of the proceedings is governed by the general rule mentioned in response to Questions 5 and 8.

CCP Article 89 (Principle of Imposition of Costs of Suit): The costs of a suit shall be borne by the defeated party.

Provisions governing the length of proceedings

There are some provisions in regard to the length of the proceedings. In cases where a suit on the principle case is not yet pending, the court of provisional attachment/disposition shall, upon the application of the debtor, order the creditor, without resorting to official hearings, to institute a suit within an appropriate period. After the lapse of the period, upon the request of the debtor, it shall be revoked (CCP Articles 705 and 715). If no action of merits is instituted for 10 years after the execution of a provisional attachment/disposition, the debtor or any other interested person may request the revocation thereof (CCP Articles 706.2 and 715).

The length and cost of proceedings in Korea varies in relation to the complexity and nature of the proceeding. No data are available on the actual duration of proceedings and their cost.

(b) Administrative measures

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

Please refer to Question 9.

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?

The release of counterfeit trademark or pirated copyright goods will be suspended by the customs authorities, according to paragraphs 3 through 7 of Article 146-2 of the Customs Act and Articles 127-6 through 127-9 of the Enforcement Decree of the Customs Act.

Infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods can be subject to investigation and control, under Article 14 of the Act on Judicial Police and Their Rights.

Under Articles 127-11 and 127-12 of the Enforcement Decree of the Customs Act, goods that are imported or exported in a small quantity for personal use with no commercial purpose such as traveller's personal belongings and mail, will be exempted from the application of such procedure.

According to Article 127-7 of the Enforcement Decree of the Customs Act, if the right holder agrees to permit the release of the suspended goods, the procedures prescribed by Article 51 of the TRIPS Agreement will not be applied. In addition, the procedures, pursuant to Article 146-2 of the Customs Act, equally apply to exported goods.

- 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?**

Right holders can request the suspension of the release of goods from the Korea Customs Service and a court of law.

When requesting suspension of the release of goods, the applicant needs to file the application form and the evidence verifying his or her right pursuant to Article 146-2 of the Customs Act and Article 127-6 of the Enforcement Decree of the Customs Act.

Under Article 127-7 of the Enforcement Decree of the Customs Act, the period of suspension can be extended if the applicant proves that he/she has instituted a lawsuit, within 10 days (excluding holidays and Sundays) from the day receiving the notice of suspension of release. Extension of 10 days will be granted in exceptional cases.

A person requesting the suspension of the release of goods, under Article 146-2 of the Customs Act and Article 127-9 of the Enforcement Decree of the Customs Act needs to provide collateral, the value of which is 120% of the dutiable value of the goods in question.

If an importer's right is infringed due to an illegitimate request of suspension of release, his/her loss will be addressed by the court on the basis of the compensation principle according to the Code of Civil Procedure.

In addition, Korea Customs Service grants to the right holder and traders the right to examine and take any sample of the suspended goods pursuant to Article 127-10 of the Enforcement Decree of the Customs Act.

- 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?**

Pursuant to Article 127-7 of the Enforcement Decree of the Customs Act, the period of suspension is 10 days from the day the applicant receives the notice, in principle, excluding holidays and weekends. The applicant needs to initiate legal actions within this period.

There is no specific regulation concerning cost stipulated in the Customs Act other than that regarding collateral, and the matter of cost is resolved afterwards according to the principle of compensation in the Code of Civil Procedure.

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

Under Paragraph 1 of Article 146-2 of the Customs Act, customs authorities can suspend the release of goods with its discretion if such goods are found to be clearly infringing copyright or trademark rights, even without a request from the right holder.

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

Goods which infringe a trademark right or copy right shall be confiscated according to Article 97-2 of the Trademark Right Act or Article 101 of the Copyright Act.

Right holders may file a request to a court of law for disposal of infringing goods and the court may order the confiscation of infringing goods or any other necessary measures according to Article 65 of the Trademark Right Act and Article 91 of the Copyright Act.

Criminal Procedures

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

The jurisdiction of the court in criminal procedures is prescribed in the provisions of Articles 1 to 16 of the Code of Penal Procedure (hereinafter referred to as CPP) and the Court Organization Act.

The District Court has original jurisdiction over cases in the first instance. The jurisdiction varies not only by territory but by subject matter. According to the jurisdiction by subject matter, a single judge generally presides over the cases. But since some criminal cases where minimum punishment is over 1 year of imprisonment are regarded too important to be handled by a single judge, they must be adjudicated by the collegiate division. The District Court also has jurisdiction over appeals against the decisions of a single judge of District Court, branch courts and municipal courts.

The High Court, as an appellate court, has jurisdiction over the cases appealed from the judgments or rulings rendered by collegiate divisions of the District Courts.

The Supreme Court has jurisdiction over the appeals from the judgments or rulings rendered by High Courts or appellate divisions of District Courts.

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

Copyright Act:

- infringement by means of reproduction, public performance, broadcast, display, etc.;
- defamation of the dignity of the author;
- illegal publication;
- noncompliance with specification of source.

Patent Act, Design Act, Trademark Act, Seed Industry Act, Act on the Layout-Designs of Semiconductor Integrated Circuits:

- infringement of IPR rights or an exclusive licence;
- perjury;
- false indication;
- deceit;
- disclosure of the secret.

Computer Program Protection Act:

- infringement by means of public announcement, adaptation, translation, distribution, publication etc.

For details, please refer to Question 24 and individual provisions.

(Copyright Act Articles 98, 99, 100 and 101, Patent Act Articles 225, 227 and 231, Trademark Act Articles 93, 95 and 96-2, Utility Model Act Articles 48, 50 and 54, Design Act Articles 82 and 84, Computer Program Protection Act Articles 26 and 34, Unfair Competition Prevention Act Article 16, Seed Industry Act Articles 169, 171 and 172, Act on the Layout-Designs of Semiconductor Integrated Circuits Articles 45, 46, 47 and 48).

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

In Korea, Public Prosecutors have the authority to investigate any alleged criminal violation of unlawful infringement on its own initiative or on complaints of private persons. (CPP Article 195). The police investigate the cases under the direction and supervision of Public Prosecutors (CPP Article 196). Public Prosecutors have the discretionary power to prosecute the case (CPP Articles 246 and 247).

In some IPR infringement cases, complaints from the right holders are preconditions to the prosecution (Copyright Act Article 102, Computer Program Protection Act Article 36, Patent Act Article 225.2 Design Act Article 82.2, etc) That is, in those cases the prosecutors may not prosecute without the complaints of the right holders.

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

Private persons do not have standing to initiate criminal proceedings. Private prosecution is not permitted in Korea (CPP Article 246). But a person who has been injured as consequence of an offense may file a complaint (CPP Article 223). And in some infringement cases mentioned above in Question 22, complaints from the right holders are preconditions to the prosecution.

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.**

As mentioned in Question 21, criminal procedures and penalties are available in almost all kinds of IPR infringements in Korea. Imprisonment, monetary fines and seizures are imposed on all types of behaviour which are regarded as infringement in the IPR related acts. And with regard to forfeiture and destruction of infringing goods and materials and implements for their productions, there are special provisions in each IPR related Act.

Copyright Act:

- Article 98 (Infringement of Rights)

The following shall be punishable by imprisonment for not more than three years or a fine not more than thirty million won, or shall be punishable by both imprisonment and a fine (Amended by Act No. 4717, 7 January 1994):

- any person who has infringed an author's property rights or other property rights protected under this Act by means of reproduction, performance, broadcasting or exhibition, etc.;
- any person who has infringed an author's moral rights and defamed the honour of an author;
- any person who has made registration by fraudulent means (including the case where these provisions are applied *mutatis mutandis* under Paragraph (3) of Article 60 or Paragraph (3) of Article 7.

- Article 99 (Illegal Publications, etc.)

The following shall be punishable by imprisonment for not more than one year or a fine not more than ten million won (Amended by Act No. 4717, 7 January 1994):

- any person who has made a work public under the real name or pseudonym of a person other than the author;
- any person who violates the provision of Paragraph (2) of Article 14;
- any person who operates copyright management services without obtaining a license as prescribed under Paragraph (1) of Article 78 (except the case where the copyright management service provider is an agent or intermediary);
- any person who commits an act considered to be an infringement under the provisions of Article 92.

- Article 100 (Failure to Indicate Sources)

The following shall be punishable by a fine not more than five million won:

- any person who does not indicate the sources under Article 34 (including the case where the provisions of Article 71 apply *mutatis mutandis*);
- any person who does not indicate the notice of the owner of the right of reproduction in violation of the provisions of Paragraph (3) of Article 55;
- any person who engages in copyright management services as an agent or intermediary without reporting as prescribed under the proviso of Paragraph (1) of Article 78, or who continues the services after being ordered to close the services under the provision of Paragraph (2) of Article 80 (Amended by Act No. 4717, 7 January 1994).

- Article 101 (Confiscation)

Reproductions made in violation of copyright or other rights protected under this Act which are owned by the infringing person, printer, distributor or performer shall be confiscated.

(Patent Act Articles 225, 227 and 231, Trademark Act Articles 93, 95 and 96-2, Design Act Articles 82 and 84, Computer Program Protection Act Articles 26 and 34, Seed Industry Act Articles 169, 171, 172 and 175, Unfair Competition Prevention Act Article 18. Act on the Layout-Designs of Semiconductor Integrated Circuits Articles 45, 46, 47, 48 and 50).

Even without those provisions, the court may order the seizure, forfeiture and destruction of infringing goods and materials and implements for their production in accordance with Penal Code Article 48.

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.

Provisions governing the length of proceedings

Constitution Article 27.3 prescribes "All citizens shall have the right to a speedy trial. The accused shall have the right to a public trial without delay in the absence of justifiable reasons to the contrary".

Apart from this Constitutional mandate, there is no special provision limiting the length and cost of the IPR related criminal procedures. But in case of complaints, the prosecutors should make a decision on the cases within 3 months (CPP Article 257).

Provisions governing the cost of proceedings

- CPP Article 186 (Costs of Trial by the Accused) Paragraph (1): When a penalty has been pronounced, the whole or part of the trial costs shall be charged to the accused.

Paragraph (2): Even where no penalty has been pronounced, any costs which have arisen from a cause imputable to the accused may be charged to him.

- CPP Article 187 (Costs of Trial by Co-Offender): The costs of trial against co-defendants may be charged to them jointly.
- CPP Article 188 (Costs of Trial by Complaint, etc.): If a decision of innocence or acquittal pronounced in respect to a case in which public prosecution has been brought upon complaint or accusation, the complainant or accuser may be charged in whole or in part with the costs of trial if he acted in bad faith or as a result of gross negligence.
- CPP Article 189 (Withdrawal of Appeal by Public Prosecutor and Costs of Trial): In case only a public prosecutor has taken an appeal or requested a retrial, and the appeal taken or retrial requested has dismissed or withdrawn, the costs connected with the appeal or retrial shall not be charged to the accused.
- CPP Article 190 (Costs of Trial by the Third Party) Paragraph (1): If an appeal or retrial instituted by a person other than a public prosecutor is dismissed or withdrawn, the costs connected with the appeal or retrial shall be charged to such person.

Paragraph (2): The provision of the preceding Paragraph shall apply to an appeal or a retrial lodged by the accused if it is withdrawn by a person other than the accused.

No data are available on the actual duration of proceedings and their cost.
