CONTENTS

Executive Summary ............................................................................................................................ 2
Contributors ...................................................................................................................................... 3
Australia ........................................................................................................................................... 4
Brazil ................................................................................................................................................ 7
Canada ............................................................................................................................................ 10
Colombia .......................................................................................................................................... 20
Dominican Republic .......................................................................................................................... 23
France ................................................................................................................................................. 26
Germany ........................................................................................................................................... 30
Hong Kong ........................................................................................................................................ 33
India .................................................................................................................................................. 36
Luxembourg ...................................................................................................................................... 40
New Zealand .................................................................................................................................... 43
Pakistan ............................................................................................................................................ 46
Peru .................................................................................................................................................... 51
Poland ............................................................................................................................................... 56
South Africa ...................................................................................................................................... 60
Spain .................................................................................................................................................. 63
Switzerland ....................................................................................................................................... 67
Ukraine .............................................................................................................................................. 71
United Kingdom ............................................................................................................................... 74
United States of America .................................................................................................................. 80
Executive Summary

In order to enable IP law practitioners to gather a quick understanding of common as well as diverse themes as to criminal enforcement thresholds as to copyrights around the world, the Enforcement Sub-Committee of the Copyright Committee has assembled this anthology, as the sub-committee work product.

As this anthology gathers the distinctive elements as to criminal procedure schemes of select jurisdictions for copyrights enforcement, therefore, IP law practitioners should read then contents hereto as introductory soundbites (and not a substitute of local legal advice).

Pragmatic observers will immediately note some interesting facts highlights from this anthology.
Contributors

1- Richard Watts, *Simpson Grierson* (Australia)
2- Tânia Aoki Carneiro, *Marinangelo & Aoki Advogados* (Brazil)
3- Lorne Lipkus, *Kestenberg Siegal Lipkus LLP* (Canada)
4- María Fernanda Castellanos, *Brigard Castro* (Colombia)
5- Jaime R. Angeles, *Angeles Pons* (Dominican Republic)
6- Jehan-Philippe Jacquey, *Gilbey Legal* (France)
7- Astrid Gérard, *Preu Bohlig & Partners* (Germany)
8- Micaela Schork, *Tigges Rechtsanwalte* (Germany)
9- Steven Birt, *Reed Smith* (Hong Kong)
10- Xerxes Ranina, *Neolegal Associates* (India)
11- Vincent Wellens, *NautaDutilh* (Luxembourg)
12- Richard Watts, *Simpson Grierson* (New Zealand)
13- Faisal Daudpota, *Daudpota International* (Pakistan)
14- Juan Carlos Durhand Grahammer, *Durand Abogados* (Peru)
15- Michal Siciarek, *Lazewski, Depo & Partners* (Poland)
16- Christine Strutt, *Von Seidels* (South Africa)
17- Ignacio Temiño, *Abril Abogados* (Spain)
18- Eva-Maria Strobel, *Baker McKenzie* (Switzerland)
19- Viktoriia Ostapchuk, *Synergy IP Law Agency* (Ukraine)
20- Shireen Peermohamed, *Harbottle & Lewis, LLP* (United Kingdom)
21- Alastair Shaw, *Hogan Lovells Intl. LLP* (United Kingdom)
22- Elizabeth Han, *Chanel* (United States of America)
1. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.

There is no minimum term, but the maximum term is five years imprisonment.

2. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

Sentencing tends to be at the lower end of the available range but this could vary depending on the severity of harm caused as sentencing is largely discretionary. There are few reported decisions dealing with sentences for criminal copyright.

3. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law?

There are no minimum monetary penalties, the maximum penalty is a fine not exceeding $117,000. A corporation may be fined up to $585,000.

4. What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?

As above at question 3, sentencing is largely discretionary and each case is decided on its facts. The fines tend to be on the lower end of the available range but this can vary depending on the severity of harm caused.

5. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

(If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature)are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

Registration is not necessary for copyright to exist. It arises upon the making of the work – there is no formal system for registration of copyright in Australia.

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?
There is nothing to preclude criminal prosecution for copyright infringement that happens only through digital mediums. Subject to the establishment of the necessary elements of the offence the fact that the copyright infringement occurred only through digital medium would not affect a criminal prosecution.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

Division 14 of the Criminal Code Act 1995 requires that the conduct constituting an offence must occur either wholly or partly in Australia or that the result of the conduct occurs wholly or partly in Australia.

Jurisdiction will also be exercised over foreign indictable offences. This means any offence against a law of a foreign country that, if it had occurred in Australia, would have constituted an offence against the law of Australia.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

Yes, the Copyright Act 1968 allows for an application to be made that infringing copies be forfeited to the copyright owner or destroyed.

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

Criminal copyright infringement is a predicate offence for money laundering. Part 10.2 of the Federal Criminal Code Act 1995 states that any indictable offence even if it may in some circumstances be dealt with as a summary offence is sufficient to be a predicate offence.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

The Extradition Act 1998 sets out that an extradition offence is one for which the maximum penalty is deprivation of liberty for a period of not less than 12 months in the country of extradition. As such it will depend on the penalty for copyright infringement in the country which makes the extradition request.

For the purposes of extradition to Australia the criminal copyright offences for which the maximum sentence is more than 12 months will be extraditable offences.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.
Australia does not have a specialized law enforcement department dedicated to intellectual property crimes. Intellectual property crimes are investigated by the Australian Federal Police. Prosecutions are brought by the Australian Commonwealth Director of Public Prosecution

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

Australia does not have a specialized court or tribunal for criminal prosecutions of copyright infringement cases they are dealt with by the Federal, State or Territory court depending on whether the offence is indictable or summary.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

Proceedings may be instituted at any time within, but not later than, six years after the time when the offence was committed.
1. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.

The Brazilian Criminal Code provides for a minimum penalty of three (3) months of detention and a maximum sanction of four (4) years of imprisonment.

2. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

Considering that most of the cases are of unauthorized reproduction of an intellectual work (art. 184, §2º), on average, the courts award from two (2) to three (3) years and two (2) months of imprisonment. In most cases, the imprisonment has been replaced by services to the community and a pecuniary penalty, which is authorized by the Brazilian Criminal Code in case of crimes committed without violence, when the criminal sanction does not exceed four (4) years and if the criminal fulfills some other personal legal requirements.

3. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law.

The Brazilian Criminal Code does not specify the amount of the pecuniary penalty provided for copyright infringement.

4. What are the minimum and maximum monetary penalties usually awarded by the courts in the jurisdiction for criminal copyright infringement?

On average, the minimum monetary penalty awarded by Brazilian courts is of a ten (10) day-fine and the maximum of a fifty-four (54) day-fine. In general, each day is equal to 1/30 of the Brazilian minimum monthly wage.

5. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

(If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

In Brazil, the copyright protection does not depend on registration. Therefore, a copyright registration certificate is not required to initiate a criminal case. Any kind of evidence that demonstrates the authorship of the intellectual work that is being infringed is admitted by courts.
6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

The Brazilian jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

According to the Brazilian Criminal Code, the Brazilian courts have jurisdiction over a nonresident defendant who commits a crime within the national territory or whose crime results within the territory.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

There isn’t a specific provision that enables confiscation and forfeiture of the property of the person convicted of copyright infringement in Brazil. Despite of it, there are criminal procedure rules that address the forfeiture of assets acquired with the proceeds of the crime. However, the copyright owners usually claim damages in a separate civil suit.

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

Pursuant to Law nº 9.613/88, whoever hides or conceals the nature, origin, location, disposition, movement or ownership of assets, rights or values that, directly or indirectly, comes from a criminal offense commits money laundering. There is not an exhaustive list of crimes that are considered predicate offenses. Since the copyright infringement is a criminal offense, it could be considered a predicate crime to money-laundering in theory. Such analysis depends on the circumstances of the case under discussion.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

Brazilian citizens can’t be extradited, except the naturalized, who are subject to extradition in case of common crimes committed prior to naturalization or drug traffic. Concerning aliens, the Brazilian Federal Constitution only explicitly forbids their extradition in case of conviction for political or opinion crimes.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

Nowadays, there are 5 (five) police stations specialized in crimes of piracy and against intellectual property rights.
12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

No. Such crimes are judged by regular courts.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

Under article 109 of the Brazilian Criminal Code, the time limit for the commencement of legal proceedings varies according to the maximum sanction applied for each crime. In case of crimes prescribed by article 184, *caput*, considering the maximum penalty of 1 (one) year of detention, the time limit for prosecuting a crime is of 4 (four) years. In case of crimes prescribed by §§ 1º, 2º and 3º of the article 184, considering the maximum penalty of 4 (four) years of imprisonment, the time limit for prosecuting a crime is of 8 (eight) years.

Note that, in case of private criminal complaint or public criminal prosecution conditional on the victim’s representation, the victim has 6 (six) months from the date the offender is known to present the criminal complaint or the representation.
1. **What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law?**

There are no minimum terms only maximum terms. Amongst other things, upon conviction post indictment an offender can be: imprisoned for a duration up to 5 years.

Amongst other things, upon summary conviction an offender can be: imprisoned for a duration up to 6 months.

**Copyright Act (R.S.C., 1985, c. C-42)**

**Punishment**

(2.1) Every person who commits an offence under subsection (1) or (2) is liable

(a) on conviction on indictment, to a fine of not more than $1,000,000 or to imprisonment for a term of not more than five years or to both; or

(b) on summary conviction, to a fine of not more than $25,000 or to imprisonment for a term of not more than six months or to both.

2. **What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

There are few reported decisions dealing with sentences imposed under section 42 of the Copyright Act.

One case of interest is: *R. v. Hirani and Hirani*, 2010 BCPC 205 (CanLII), a case in which the accused is charged with offence contrary to section 42(1)(b) of the Copyright Act and the principles/case law on sentencing is discussed.

[19] The court is aware there are relatively few reported cases that have considered this section. Defence counsel cited the case of *R. v. Borg*, [2007] O.J. No. 3287. That case involved a company which was convicted at trial of eight offences under the Copyright Act, and its principal, who was convicted of two offences under the same Act. All of the charges in that case proceeded summarily. The company was given fines of $15,000 on each count for a total of $75,000, and the individual was fined $30,000, with 60 days in custody to be served intermittently. Victim fine surcharges were imposed on both accused.

[20] The case involved the importation and sale of forged copies of computer operating systems and security software. The Appeal Court found that the trial judge erred in principle, including factors such as a threatened or actual civil proceeding, as an aggravating factor. The judge below was also found to have erred in imposing victim fine surcharges on offences under the Copyright Act. In addition, the trial court failed to take into account the lack of the appellant's criminal record, the personal circumstances of the appellant, and the
lack of evidence establishing the volume of commerce or profit involved in the offences. The jail time was deleted from the sentence for the individual accused and the fine for that individual reduced to $10,000. The corporate fine was reduced to $5,000.

[21]  *R. v. Borg* is not a case where either the trial court or the Appeal Court considered the appropriateness of a conditional discharge as part of a fit and just sentence. It is a case of little assistance in the case at bar. The case of *R. v. Borg* is distinguishable on a number of bases, not the least of which is that the Crown proceeded summarily in that case and a conviction followed a trial, unlike the present case where the Crown proceeded by indictment and the accused pled guilty in the circumstances noted above. Otherwise, the matters apparently ignored by the trial judge are those matters mandated by Section 718 and following of the Criminal Code which will not be ignored in this case.

**CROWN’S SUBMISSION ON SENTENCE**

[22]  Crown is seeking a substantial fine and a jail sentence to be served in the community, a conditional sentence under Section 742.1 of the Criminal Code. Crown counsel submitted that given the immense damage done to commercial interests of legitimate copyright holders, Parliament has mandated the imposition of serious penalties for those who would contravene Section 42(1) of the Copyright Act. Crown counsel submitted that this was a substantial business which had offered for sale a considerable number of forged items, otherwise entitled to copyright. The actions of the accused were deliberate and planned and in no way accidental.


[24]  I have reviewed each of these cases with care in the preparation of these Reasons for Sentence. A number of the cases dealt with individuals about the same age as the accused, who had young families and modest incomes. The illegal trade in copyrighted items reported in those cases was motivated by a profit motive, as was that of Ms. Hirani. In most of the cases cited the accused did not have a prior criminal record, and where such a record was present it was taken as a significant aggravating factor. No such factor is present in the case at bar.

[25]  In each case cited the penalty included a significant fine on formulas varying from twice the estimated profit to a percentage of that profit. In every case where forged goods were in the possession of the accused those items were ordered forfeited. Most of the cases included a jail sentence to be served in the community as a conditional sentence order.

[26]  In the case before this Court, a business, where most of the goods for sale were forgeries and an abuse of copyright, was organized in the store in Langley, B.C.. The store contained a large number of such items with more similarly illicit items to arrive but for the detection and seizure thereof by the Canadian Border Services Agency. While the value thereof was not proven to a mathematical certainty, the value of the goods was significant.
[27] Of the cases cited, the case of *R. v. Chen*, a decision of the Honourable Madam Justice Bruce, then sitting in this Court, provides some considerable assistance as it has a fact pattern which, although not identical, bears more than a passing resemblance to the case at bar. One of the differences is that in *R. v. Chen* the trial judge found that customers, including the undercover officer, were well aware that they were purchasing counterfeit clothing rather than brand name products. In the case at bar there was some evidence that representations as noted above were made that the goods, particularly brand name purses, were genuine. No evidence was led concerning other customers at all.

**CONCLUSIONS**

[36] Consistent with reasons given in the cases cited for the imposition of jail sentences, I am also satisfied that a jail sentence is necessary in order that the fine not be considered as a cost of a licence to conduct such illegal businesses, and that there is both a punitive and rehabilitative aspect to this sentence. As this accused represents no threat to her community and is a caregiver for her children, that jail sentence will be served in the community as a conditional sentence for a term of six months, following *R. v. Proulx*, 2000 SCC 5 (CanLII), [2000] S.C.J. No. 6, particularly as set forth in Section 742.1 of the *Criminal Code*, and paragraphs 63 to 65 of that decision. I intend to rely on the terms set out in *R. v. Chen*, cited above, paragraph 22, with some things changed for the terms of the conditional sentence order.


In *R. v. Chen*, 2004 CarswellBC 2199 (BC Prov. Ct) the court imposed a 12 month conditional sentence Order which the court noted was, ‘at the higher end of the range…”

In *R. v. Strowbridge*, 2014 NLCA 4 (CanLII), the accused was convicted of two counts of fraud, selling copyrighted products in violation of section 42(1)(b) of the *Copyright Act*, R.S.C. 1985 and selling trademark goods (“passing off”) without authority in violation of section 408(b)-412(1) of the *Criminal Code*. The trial judge imposed a period of six months imprisonment and a $5,000.00 fine for the *Copyright Act* offence and ninety days imprisonment followed by three years of probation for each of the fraud offences.

The accused appealed from sentence. He argued, amongst other things, that the fine imposed for the *Copyright Act* offence should be set aside based upon his inability to pay.

The appeal was allowed, in part. The Court of Appeal set aside the fine imposed by the trial judge for the *Copyright Act* offence. The Court of Appeal noted that section 734(2) of the *Criminal Code* “makes clear that in fining an offender, a judge is required to be satisfied that the offender has the ability to pay the fine before imposing it.”

The Court of Appeal concluded that the trial judge had failed to do so. The Court of Appeal suggested that in “Mr. Strowbridge’s case his financial situation, especially his financial obligations which now include a new restitution order, would make the imposition of a fine very burdensome to him.”
3. **What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law.**

There are no minimum monetary penalties only maximum fines. Amongst other things, upon conviction post indictment an offender can be: fined for an amount up to $1,000,000

Amongst other things, upon summary conviction an offender can be: (1) fined for an amount up to $25,000

See answer to question number 2 above.

4. **What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

Sentencing is largely an individual and discretionary act. *R. v. Borge, 2007 CanLII 36083 (ON SC)* - Each case/fine is decided based upon principles of general and specific deterrence. Regard to sentencing principles can be found in the Criminal Code, reproduced below:

**Fundamental principle**

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

- R.S., 1985, c. 27 (1st Supp.), s. 156;
- 1995, c. 22, s. 6.

**Other sentencing principles**

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,

(ii) evidence that the offender, in committing the offence, abused the offender’s spouse or common-law partner,

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,

(v) evidence that the offence was a terrorism offence, or
(vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the Corrections and Conditional Release Act

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

5. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

(If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

Registration is not necessary for copyright to exist. It arises upon the making of the work. Registration provides \textit{prima facie} evidence of ownership and subsistence of copyright but is not required to initiate/commence a criminal case. Evidence will need to be adduced to establish: subsistence of copyright, infringement of the copyright, and knowledge that the copyright has been infringed.

To establish subsistence, Section 5 of the Copyright Act sets out requirements:

\textbf{Conditions for subsistence of copyright}

\textbf{5 (1)} Subject to this Act, copyright shall subsist in Canada, for the term hereinafter mentioned, in every original literary, dramatic, musical and artistic work if any one of the following conditions is met:

(a) in the case of any work, whether published or unpublished, including a cinematographic work, the author was, at the date of the making of the work, a citizen or subject of, or a person ordinarily resident in, a treaty country;

(b) in the case of a cinematographic work, whether published or unpublished, the maker, at the date of the making of the cinematographic work,

(i) if a corporation, had its headquarters in a treaty country, or

(ii) if a natural person, was a citizen or subject of, or a person ordinarily resident in, a treaty country; or

(c) in the case of a published work, including a cinematographic work,
(i) in relation to subparagraph 2.2(1)(a)(i), the first publication in such a quantity as to satisfy the reasonable demands of the public, having regard to the nature of the work, occurred in a treaty country, or

(ii) in relation to subparagraph 2.2(1)(a)(ii) or (iii), the first publication occurred in a treaty country.

Evidence can be adduced in a criminal case via testimony.

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

While not express, there is nothing to preclude criminal prosecution for copyright infringement that happens only through digital mediums, subject to establishment of the necessary elements of the office.

There is express prohibition against knowingly and for commercial purposes contravening section 41.1 of the Act, which relates to circumvention of technological protection measures.

Circumvention of technological protection measure

(3.1) Every person, except a person who is acting on behalf of a library, archive or museum or an educational institution, is guilty of an offence who knowingly and for commercial purposes contravenes section 41.1 and is liable

- (a) on conviction on indictment, to a fine not exceeding $1,000,000 or to imprisonment for a term not exceeding five years or to both; or

- (b) on summary conviction, to a fine not exceeding $25,000 or to imprisonment for a term not exceeding six months or to both.

Prohibition

41.1 (1) No person shall

(a) circumvent a technological protection measure within the meaning of paragraph (a) of the definition technological protection measure in section 41;

(b) offer services to the public or provide services if

(i) the services are offered or provided primarily for the purposes of circumventing a technological protection measure,

(ii) the uses or purposes of those services are not commercially significant other than when they are offered or provided for the purposes of circumventing a technological protection measure, or

(iii) the person markets those services as being for the purposes of circumventing a technological protection measure or acts in concert with another person in order to market those services as being for those purposes; or
(c) manufacture, import, distribute, offer for sale or rental or provide — including by selling or renting — any technology, device or component if

(i) the technology, device or component is designed or produced primarily for the purposes of circumventing a technological protection measure,

(ii) the uses or purposes of the technology, device or component are not commercially significant other than when it is used for the purposes of circumventing a technological protection measure, or

(iii) the person markets the technology, device or component as being for the purposes of circumventing a technological protection measure or acts in concert with another person in order to market the technology, device or component as being for those purposes.

Circumvention of technological protection measure

(2) The owner of the copyright in a work, a performer’s performance fixed in a sound recording or a sound recording in respect of which paragraph (1)(a) has been contravened is, subject to this Act and any regulations made under section 41.21, entitled to all remedies — by way of injunction, damages, accounts, delivery up and otherwise — that are or may be conferred by law for the infringement of copyright against the person who contravened that paragraph.

No statutory damages

(3) The owner of the copyright in a work, a performer’s performance fixed in a sound recording or a sound recording in respect of which paragraph (1)(a) has been contravened may not elect under section 38.1 to recover statutory damages from an individual who contravened that paragraph only for his or her own private purposes.

Services, technology, device or component

(4) Every owner of the copyright in a work, a performer’s performance fixed in a sound recording or a sound recording in respect of which a technological protection measure has been or could be circumvented as a result of the contravention of paragraph (1)(b) or (c) is, subject to this Act and any regulations made under section 41.21, entitled to all remedies — by way of injunction, damages, accounts, delivery up and otherwise — that are or may be conferred by law for the infringement of copyright against the person who contravened paragraph (1)(b) or (c).

Law enforcement and national security

41.11 (1) Paragraph 41.1(1)(a) does not apply if a technological protection measure is circumvented for the purposes of an investigation related to the enforcement of any Act of Parliament or any Act of the legislature of a province, or for the purposes of activities related to the protection of national security.

Marginal note: Services

(2) Paragraph 41.1(1)(b) does not apply if the services are provided by or for the persons responsible for carrying out such an investigation or such activities.

Marginal note: Technology, device or component (3) Paragraph 41.1(1)(c) does not apply if the technology, device or component is manufactured, imported or provided by the persons
responsible for carrying out such an investigation or such activities, or is manufactured, imported, provided or offered for sale or rental as a service provided to those persons.

2012, c. 20, s. 47.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

The territorial principle of jurisdiction is the rule and extraterritorial jurisdiction is the exception.

Section 6(2) of the Canadian Criminal Code provides that, subject to the Code or other federal legislation to the contrary, no person may be convicted of an offence committed outside Canada. However, even for states such as Canada, which favour the territorial principle, there has been a progressive increase in assertions of extraterritorial criminal jurisdiction to deal with international and trans-national crime, often pursuant to international treaty commitments.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

The Copyright Act provides that:

42(3) The court before which any proceedings under this section are taken may, on conviction, order that all copies of the work or other subject-matter that appear to it to be infringing copies, or all plates in the possession of the offender predominantly used for making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

In addition, if there additional charges related to fraud etc upon conviction the following are available (non-exhaustive list)

- Forfeiture or return of property obtained by crime (491.1)
- Forfeiture of Proceeds of crime (462.37)
- Fine in lieu of forfeiture 462.37

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

Yes as The copyright Act can be prosecuted as an indicatable offence.

Under Part XII.2 of the Code entitled Proceeds of Crime, s. 462.3 states:

462.3 (1) In this Part (designated offence” means

(a) any offence that may be prosecuted as an indictable offence under this or any other Act of
Parliament, other than an indictable offence prescribed by regulation, or

(b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a);

R.S., 1985, c. 42 (4th Supp.), s. 2; 1993, c. 25, c. 37, s. 32, c. 46, s. 5; 1994, c. 44, s. 29; 1995, c. 39, s. 151; 1996, c. 19, ss. 68, 70; 1997, c. 18, s. 27, c. 23, s. 9; 1998, c. 34, ss. 9, 11; 1999, c. 5, ss. 13, 52; 2001, c. 32, s. 12, c. 41, ss. 14, 33; 2005, c. 44, s. 1; 2010, c. 14, s. 7.

Punishment

(2.1) Every person who commits an offence under subsection (1) or (2) is liable

(a) on conviction on indictment, to a fine of not more than $1,000,000 or to imprisonment for a term of not more than five years or to both; or

(b) on summary conviction, to a fine of not more than $25,000 or to imprisonment for a term of not more than six months or to both.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

Yes, if approved by the Minister of Justice.

The *Extradition Act* provides Canada with the legal basis on which to extradite persons located in Canada, who are sought for extradition by one of Canada’s "extradition partners". Extradition partners are:

- Countries with which Canada has an extradition agreement (bilateral treaties or multilateral conventions);
- Countries with which Canada has entered into a case-specific agreement; or
- Countries or international courts whose names appear in the schedule to the *Extradition Act*.

There are three key stages to the Canadian extradition process:

1. The Minister of Justice must determine whether to authorize the commencement of extradition proceedings in the Canadian courts by issuing an “Authority to Proceed”;
2. Where an Authority to Proceed has been issued, the Canadian courts must determine whether there is sufficient evidence to justify the person’s committal for extradition; and
3. Where the person is committed for extradition, the Minister of Justice must personally decide whether to order the person’s surrender to the foreign state.

A person sought for extradition may appeal their committal and seek judicial review of the Minister’s surrender order.

In all cases, the conduct for which extradition is sought must be considered criminal in both the requesting country and in Canada. This is known as “dual criminality”.

Central Authorities from outside Canada are encouraged to contact the IAG to determine what is required to make an extradition request to Canada, including the evidentiary requirements, and whether provisional arrest is appropriate in a given situation.
11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

No.

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

No.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

Proceedings by summary conviction in respect of an offence under this section [Copyright] may be instituted at any time within, but not later than, two years after the time when the offence was committed.
1. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law?

According to Title VIII of the Colombian criminal code, the minimum prison term is up to two (2) years and eight (8) months, and the maximum is eleven (11) years and three (3) months.

2. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

In Colombia, courts have imposed imprisonment term up to two (2) years minimum\(^1\), and maximum four (4) years\(^2\).

3. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law?

According to Title VIII of the Colombian criminal code, the minimum monetary penalties are fines of up to minimum twenty-six point sixty-six (26.66) times the statutory monthly minimum wage, and maximum a thousand (1.000) times the statutory monthly minimum wage.

4. What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?

In Colombia, courts have imposed fines up to five (5) minimum\(^3\) and maximum twenty-six point sixty-six (26.66)\(^4\) times the statutory monthly minimum wage.

5. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

(If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

---

\(^1\) Supreme Court of Justice. Process 31403 against Luz Mary Giraldo. Decision issued on May 28\(^{th}\), 2010.

\(^2\) Circuit Criminal Court of Zipaquirá. Process against Jairo Ramón Jurado Mesa.

\(^3\) Supreme Court of Justice. Process 31403 against Luz Mary Giraldo. Decision issued on May 28\(^{th}\), 2010.

\(^4\) Circuit Criminal Court of Zipaquirá. Process against Jairo Ramón Jurado Mesa.
First, according to the Colombian copyright legislation the registration of a copyrighted work is not a prerequisite to obtaining copyright protection.

Nevertheless, initiating a criminal prosecution under the Colombian criminal code, requires proof that the accused infringed a valid copyright. A proof of such copyright may be the registration of the work before the Colombian Copyright Office, since said registration provides publicity, eases the enforceability of copyrights vis-à-vis third parties and represents evidence of its ownership, originality and creation date.

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

The Colombian criminal code allows criminal prosecution for copyright infringement that happens by any means. This includes also actions that happened through digital medium, internet, and other technologies.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

According to the Colombian criminal code, actions that happened outside the territorial jurisdiction of the court, may be prosecuted if the infringement has consequences in Colombia.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

According to article 100 of the Colombian criminal code, the goods and materials which were used to commit a crime, will be forfeiture by the Office of the District Attorney, or the entity designated by it, with the exceptions determined by the law.

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

According to Colombian legislation, racketeering/ money-laundering are independent criminal offenses. Therefore, if one person incurs in one of those, and also in copyright infringement behavior then the three offenses are to be tried as independent offenses.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

According to article 493 of the Colombian criminal code, the cross-border extradition is enabled for a person who committed a crime which penalty is not less than four (4) years of imprisonment. Since copyright infringement is sanctioned with a minimum prison term of
two (2) years and eight (8) months, a person who was convicted of copyright infringement cannot be extradited.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

In Colombia there is not a specialized investigation procedure for copyright infringement cases.

The Team of Intellectual Property of the Technical Investigation Division (CTI), works together with the Direction of Criminal Investigation and INTERPOL of the National Police (DIJIN), and the District Attorney’s Office, in the investigation and prosecution of IP crimes.

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

In Colombia there is not a specialized court for the prosecution of copyright infringement cases.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

The statute of limitations applicable to criminal actions regarding copyright infringement, according to article 83 of the Colombian criminal code, is a time equal to the maximum of the imprisonment penalty established by the law. Nevertheless, under any circumstance this time will be less than five (5) years or more than twenty (20).
1. **What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.**

   In the Dominican Republic, the minimum prison term is 30 days. The maximum term is 30 years.

2. **What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   In Criminal procedures the judges usually order terms less than 6 months.

3. **What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law.**

   The minimum monetary penalty is RD$10.00 Dominican pesos (US$0.20)

   The maximum is 1,000 minimum wages. Some legislations indicate what type of wages (Private sector or Government). Also in the private sector there are several minimum wages, depending on the industry or commerce.

4. **What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   The courts usually award 50 Minimum wages

5. **Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.**

   (If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

   In the Dominican Republic, the copyright protection does not depend on registration, neither it is a requisite to initiate an enforcement action or a criminal case. Any kind of evidence that demonstrates the authorship of the intellectual work that is being infringed is admitted by courts.
6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

The Copyright Law authorizes the prosecution of copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet. Also there is Digital Crimes Law that also refers specifically to digital networks and internet.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

The Digital Crimes Law (Law No. 53-07 on Crimes and High Tech Crime) on Article 2 indicates:
Scope of the law in the territory of the Dominican Republic to any individual or corporation, domestic or foreign person who commits an offense under said Law:
a) When the active subject conducts or orders the commission of criminal activity within national territory
b) When the active subject conducts or orders the commission of criminal activity from abroad, producing effects in national territory;
c) When the origin and effects of the activity occur abroad, using means located in national territory; and
d) When any type of complicity takes place from national territory.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

The only property that the Copyright Law enables to confiscate is all materials and equipment used in the unlawful acts.

The claimant is entitled to use the civil procedure to recover the damages with the embargo (seizure) of all or part of the property of the defendant. The seizure could be ordered provisionally during the court proceedings, but it is very unlikely that the courts order this provisional measures.

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

The Money Laundering law in the Dominican Republic (155-17) was enacted in July 2017. This Law contains all the recommendations of the Financial Action Task Force on Money Laundering (FATF) of February 2012.

This legislation in the Dominican Republic brings the concept of serious offences, (crimes) that generally produce money laundry assets. Besides the usual crimes (drug trafficking, terrorism, etc.) in the list of this type of offences is included: Counterfeiting and piracy of products and also Intellectual Property violations.
10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

The legislation does not prohibit the extradition but with the “short length” of the prison time, it would be difficult to obtain a successful extradition process.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

The District Attorney Offices in the capital of the Dominican Republic (Distrito Nacional and Santo Domingo) have specialized departments to handle IP matters. The investigation used is not specialized, as it is the same general procedure.

When there is violation on digital media or through telecommunications means (for example, digital medium / electronic medium / mobile network / Internet) the special investigation agency for computer crime, DICAT, has the authority to investigate illicit conduct in violation of the High Technology Crimes Law.

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

In the Dominican Republic there no specialized court / tribunal for criminal prosecution for Intellectual Property matters.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

There are rules for statute of limitations. In Copyright infringements is 3 years.
1. **What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.**

   No minimum. Max.: seven-year imprisonment when offence made by an organized criminal group.

2. **What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   First, it is uncommon to direct copyright infringement case before the criminal court in France (from my experience, I would say that about 90% of the matters are indeed brought before the civil courts). As a result, there is only a very few decisions. I can only state that the maximum prison terms are rarely ordered, and indeed most of the prison terms orders are provisional, unless in case of reoffending.

3. **What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law.**

   No minimum. Max.: fine of € 750.000 when offence made by an organized criminal group.

4. **What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   Thousands of Euros, and rarely on the high end of the maximum fine.

5. **Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.**

   There is no registration required in France to claim author right. You only need to evidence of the date of the creation of the work on which author rights is claimed, or its date of disclosure to the public under the name of the author claiming rights:

   It can be evidenced through bailiff report, invoices, certification from your providers, envelope Soleau: i.e. any document having a certain date (in summary, any serious and objective documents, ideally not originating from the author himself; if so, the documents would need to be supported by additional documents).

6. **Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?**
The French criminal courts authorize criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

The French criminal court have no jurisdiction over a criminal offense committed outside the French national territory.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

Yes (in particular, articles 131 and following of the French criminal code).

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

Yes (in particular, articles 131 and following of the French criminal code).

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

According to article 696 of the French code of criminal procedure:
“In the absence an international convention stipulating otherwise, the conditions, procedure and effects of extradition are determined by the provisions of the present chapter. These provisions also apply to points which have not have been regulated by international conventions”.

The below is a summary of the French applicable provisions:

- No surrender to a foreign government may be made of any person who is not the object of a prosecution or a conviction for an offence provided for by the present section;
- The French government may hand over any person who does not have French nationality and who is the subject of a prosecution initiated in the name of the requesting state or of a conviction imposed by its courts, to foreign governments, at their request, where this person is found on French national territory;
- However, extradition is only granted if the offence for which the application has been made was committed:
  - either on the territory of the requesting state by a national of this state or by a foreigner;
  - or outside the territory of the requesting state by a national from that state;
  - or outside the territory of the requesting state by a foreigner, where the offence features among those for which
- French law authorizes prosecution in France, even if they are committed by a foreigner abroad;
- The offences which may result in extradition, whether this is the application for or the granting of extradition, are the following:
  - all offences punished as felonies by the law of the requesting state;
• offences punished as misdemeanours by the law of the requesting state, where the maximum prison sentence incurred, under that law, is two years or more, or, in the case of a convicted person, where the sentence imposed by the court of the requesting state is at least two years' imprisonment.
• In no case is extradition granted by the French government if the offence does not incur a punishment for felony or misdemeanor under French law.
• Facts constituting attempt or complicity are subject to the above rules, on condition that they are punishable under laws of both the requesting and the requested state.
• If the application concerns a number of offences committed by the requested person and these have not yet been tried, extradition is only granted if the maximum sentence incurred under the law of the requesting state, for all of the offences together, is not less than two years' imprisonment.
• Extradition is not granted:
  • where the requested person is of French nationality, as determined at the date of the offence for which extradition is requested;
  • where the felony or misdemeanor has a political flavour, or where the circumstances reveal that the extradition is requested for political reasons;
  • where the felonies or misdemeanours were committed on French national territory;
  • where the felonies and misdemeanours, while they were committed outside French national territory, were prosecuted and finally disposed of in France;
  • where, under the law of the requesting state or French law, the limitation period for the prosecution has expired prior to the request for extradition, or the limitation period for the penalty has expired prior to the requested person's arrest, and in general whenever the right to prosecute in the requesting state is extinguished;
  • where the offence for which the extradition has been requested is punished by the law of the requesting state which imposes a penalty or a safety measure contrary to French public policy;
  • where the requested person would be tried in the requesting state by a court which does not provide fundamental procedural guarantees and protection for the rights of the defence;
  • where the felony or misdemeanor constitutes a military offence under Book III of the Military Justice Code.
• Where a requested person is being prosecuted or has been convicted in France, and the French government is requested to extradite him for another offence, surrender is only carried out after the prosecution is over and, in the case of a conviction, after the sentence has been executed. However, this provision does not prevent the requested person from being temporarily sent to appear before the courts of the requesting state, on the express condition that he will be sent back as soon as the foreign courts have ruled.
• The provisions of the present article also apply where the requested person is subject to imprisonment in default under the provisions of Title VI of Book V of the present Code.
• Except in cases where the provisions of the present title relating to the European Arrest Warrant apply if an application for temporary custody for the purpose of extradition is made by a state that is party to the convention of 10 March 1995 relating to a simplified extradition procedure between the member states of the European Union, this is carried out in accordance with the provisions of articles 696-10 and 696-11. However, as an exception to the provisions of the second paragraph of article 696-10, the time limit for the appearance of the requested person is fixed at three days. In addition, this person is informed that he may consent to his extradition in accordance with the simplified proceedings provided for by the present section.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.
Yes (police, customs etc…).

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

Whilst we have French civil courts specialized in IP, we unfortunately do not have any IP specialized criminal courts. There is no exclusive jurisdiction for criminal court aware of IP, and the mere criminal procedure provisions apply.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

The criminal statute of limitations is 6 years (5 years in the frame of infringement action brought before the civil court).
1. **What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.**

   According to Section 38 (2) of the German Criminal Code the minimum prison term is one month.

   The maximum prison term is a lifelong imprisonment – the maximum of limited prison term is, however, fifteen years, Section 38 (2) of German Criminal Code.

2. **What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   In case of violation of a copyright there is a maximum prison term of five years, if the copyright infringement was made in a commercial professional means (Sec. 108a of the Act on Copyright and Related Rights). If not, the maximum prison term is three years (Sec. 106 (1) of the Act on Copyright and Related Rights).

   Short prison terms usually are not awarded by the courts. According to Sec. 47 (2) of German Criminal Code short prison terms are supposed to be the exception: prison terms less than six months shall not be awarded by courts unless special circumstances exist, either in the infringement or the infringer, that strictly require the imposition of imprisonment either for the purpose of amelioration of the infringer or for reasons of general deterrence.

   The prison term depends on the guilt of the infringer, also the effects which the sentence can be expected to have on the infringer’s future life in society shall be taken into account (Sec. 46 (1) of German Criminal Code). Furthermore, the term depends on the type of copyright infringement, the damage of the author, the motivation of the infringer and other reasons for award of punishment which are listed in Sec. 46 (2) of German Criminal Code.

3. **What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law.**

   The minimum monetary penalty is five daily rates – the maximum monetary penalty is three hundred sixty daily rates (Sec. 40 (1) of the German Criminal Code).

   The amount of daily rates depends on the personal and financial circumstances of the infringer, Section 40 (2): the daily rate shall typically base on the actual average one-day net income of the infringer (or the average income he could achieve in one day).
4. **What are the minimum and maximum monetary penalties usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

The minimum and maximum monetary penalties for criminal copyright infringements accord to the general ones indicated in the response to Q4.

The awarded monetary penalty depends on the guilt of the infringer, also the effects which the sentence can be expected to have on the infringer’s further life in society shall be taken into account (Sec. 46 (1) of German Criminal Code). There is no basic or general awarded monetary penalty. The term depends on the type of copyright infringement, the damage of the author, the motivation of the infringer and other reasons for the punishment award, which are listed in Section 46 (2) of German Criminal Code.

In case of a punishment award demanding a monetary penalty of more than 120 - 150 daily rates, the judge will consider a prison term instead.

5. **Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.**

(If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

The German law does not provide for a registration of copyrights. According to Sec. 7 and 1 of the Act on Copyright and Related Rights the owner of the copyright of a work is the author of the work regardless of any registration or recordal.

According to Sec. 10 (1) of the Act on Copyright and Related Rights the person indicated to be the author on copies of a released work or on the original of an artistic work shall be regarded as the author of the work in the absence of proof to the contrary. According to subsection (2) it shall be presumed that the person indicated as the editor on the copies of the work is entitled to assert the right of the author, where the author has not been indicated according to Subsec. (1). Where no editor has been indicated, it shall be presumed that the publisher is entitled to assert such rights.

In a criminal proceeding, however, because of the principle ‘in dubio pro reo’ the presumptions do not apply for the sentencing of the infringer in a criminal case – if there are doubts about the ownership of copyright (especially authorship), the presumptions of Section 10 of the Act on Copyright and Related Rights cannot be used at the expense of the accused.

As a common means of evidence of copyright ownership it is possible to deposit the first specimen of the work by the notary, who will confirm the date of deposit.

6. **Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium /**
mobile network / Internet?

Yes, the legal basis makes no distinction between digital and analogue or online and offline copyright infringements.

7. Based on your responses to the previous question – please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

The court will exercise jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court, if this accords to another applicable territorial jurisdiction described in Sections 7 – 21 of the German Code of Criminal Procedure, for example, jurisdiction of the place of criminal offence, Section 7.

The place of criminal offence according to Section 9 (1) of German Criminal Code is the place, where the infringer has been acting /infringing, but also where the result (infringement, damage etc.) has taken place. This means for copyright infringements in the internet that every court has the jurisdiction, if the work is publicly accessible.
**Hong Kong**

Contributors: Steven Birt

1. **What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.**

   The Copyright Ordinance provides for a maximum penalty of eight (8) years of imprisonment.

2. **What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   The usual range of sentence for an offence contrary to section 118 of the Copyright Ordinance is between 6 and 18 months’ imprisonment. If manufacturing is involved, the sentence will be markedly greater, as it will also be if the masterminds responsible for copyright piracy are convicted. (Sentencing in Hong Kong, 7th Edition, by Grenville Cross & Patrick WS Cheung)

3. **What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law?**

   The Copyright Ordinance provides for a maximum monetary penalty of HK$500,000. There is no minimum.

4. **What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   Unless there are truly exceptional circumstances, imprisonment is almost inevitable in Hong Kong. The court may impose a fine in addition to or in lieu of imprisonment. The usual amount of monetary penalties imposed is over HK$10,000. (Sentencing in Hong Kong, 7th Edition, by Grenville Cross & Patrick WS Cheung)

5. **Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.**

   In Hong Kong, copyright subsists automatically as soon as the copyright work is reduced to a material form. There is no need to make an application for copyright, and there are no formalities such as registration, publication, or examination, nor are fees payable for the protection.

6. **Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?**
The Copyright Ordinance authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

Section 120 of the Copyright Ordinance authorizes a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

The Copyright Ordinance provides for forfeiture.

Section 122(1)(b) of the Copyright Ordinance provides that an authorized officer may seize, remove or detain-

i. any article which appears to him to be an infringing copy of a copyright work or an article specifically designed or adapted for making copies of a particular copyright work which appears to him to be intended for use for making infringing copies of any such work;

ii. anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Part; and

iii. any vessel, aircraft or vehicle (other than a ship of war or a military aircraft or vehicle) which he reasonably suspects to be or, has been used in connection with an offence under this Part.

Section 132 of the Copyright Ordinance provides that where a person is charged with an offence under section 118, 119A, 119B or 120 the court may, if it is satisfied that any article, vessel, aircraft, vehicle or thing seized or detained by an authorized officer under section 122 in connection with the offence-

(a) is an infringing copy of a copyright work;
(b) is an article specifically designed or adapted for making copies of a particular copyright work which article has been used, or is intended to be used, for making infringing copies of any such work; or
(c) has been used in connection with any offence under this Ordinance,

order that the article, vessel, aircraft, vehicle or thing be-

i. forfeited to the Government; (Amended 22 of 1999 s 3)

ii. delivered up to the person who appears to the court to be the owner of the copyright concerned; or

iii. disposed of in such other way as the court may think fit,

whether or not the person charged is convicted of the offence with which he was charged.
9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

Section 25 of the Organized and Serious Crimes Ordinance (Cap. 455 of Hong Kong) provides for criminal sanction when a person deals with property known or believed to represent the proceeds of an indictable offence. Copyright infringement is an indictable offence under the Copyright Ordinance.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

The Fugitive Offenders Ordinance (Cap. 503 of Hong Kong) and the Mutual Legal Assistance Agreements Hong Kong signed with a list of countries may provide for such cross border extradition in sufficiently serious cases. In general, these provisions are not implemented for copyright infringement cases.

However, there was one instance where a Singaporean national was arrested in Hong Kong at the request of the United States Customs Services for shipping counterfeit computer software to the US. (*Lay Eng Teo v Superintendent of Tai Lam Centre for Women & Another* [2002] 4 HKC 384)

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

The Customs and Excise Department (“C&E”) of Hong Kong is a department that takes criminal sanctions against copyright infringements. The Intellectual Property Investigation Bureau (“Bureau”) is a dedicated division of the C&E for IP crimes. There are two sub-groups under the Bureau, namely the Intellectual Property Investigation (Administration and Support) Group and the Intellectual Property Investigation (Operations) Group.

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

Criminal prosecution of copyright infringement cases are heard in the regular criminal courts of Hong Kong.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

Under Section 120A of the Copyright Ordinance, prosecution for an offence under the Ordinance must be commenced within 3 years from the date of commission of the offence.
1. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.

The minimum and maximum prison term is provided under section 63 of The Copyright Act, 1957.

The minimum punishment is imprisonment for a period of six months and in the case of a second and subsequent conviction the minimum punishment is imprisonment for a period of one year.

The maximum punishment for infringement of copyright is imprisonment which may extend up to a period of three years.

However, under section 63-B, if anyone commits an offence under this section then he shall be punishable with imprisonment for a period of not less than seven days but which may extend to a period of three years.

2. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

The Courts adopt varying standards in terms of terms of imprisonment. Further, criminal actions are not very often adopted. Typically if the infringing material is seized and is no longer available for commercial exploitation the matter is put to rest. Copyright infringement is not a high priority item in criminal jurisprudence and typically an infringer can avoid imprisonment if he/she complies with the orders of the court.

3. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law,

Section 63 to 70 of The Copyright Act, 1957 deals with the offences, relating to infringement of Copyright and provides for a fine which shall not be less than Rupees fifty thousand (Approx USD 700/-) but which may extend to rupees two lakh (Approx USD 2800/-).

The court has discretion to reduce the imprisonment and fine as well, in special cases.

In case of second and subsequent convictions the minimum fine is Rupees one lakh (Approx USD 1400/-) but which may extend to Rupees two lakh (Approx USD 2800/-).

Under computer programmes- (section 63-B):

Any person who knowingly makes use on a computer of an infringing copy of a computer program shall be punishable with a fine which will not be less than Rupees Fifty thousand (Approx USD 700/-), but which may extend to Rupees two lakh (Approx USD 2800/-).

Please note that all USD rates have been calculated @ Rupees 72 per 1 USD and has been rounded off to the nearest tenth.
4. What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?

These can vary on a case to case basis and fall within the range set out in the answer above.

5. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

(If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

This requirement does not exist in India. Copyright registration is not contingent precedent for the ability to enforce copyright and initiate a suit for infringement and damages. An unregistered work can be enforced to copyright infringement proceedings.

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

Yes, the Indian Law authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet. Under Indian Law all form of literary and artistic work are protected under The Copyright Act, 1957.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

It is unlikely for courts in India to extend jurisdiction outside the territorial jurisdiction of the court. Please see answer three above which deals with the manner in which courts in India approach criminal actions regarding copyright infringement.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

Yes, the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

Section 64. Power of police to seize infringing copies.—

(1) Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.

(2) Any person having an interest in any copies of a work or plates seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies or plates being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.
9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

Under PMLA (Prevention of Money Laundering Act), committing any offenses as specified in Part A and Part C of the Schedule of PMLA, will invoke the provisions of PMLA. This act’s object is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and to punish those who commit the offence of money laundering.

Offences under The Copyright Act, 1957, including

- Offence of infringement of copyright or other rights conferred by Copyright Act.
- Knowing use of infringing copy of computer programme; may also attract the provisions of PMLA.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

The Copyright Act is silent on the extra-territorial jurisdiction exercisable by courts over infringement of copyright, but judicial precedents have established that it is available to Indian courts.

A claimant can establish that the infringer, though situated in a foreign country, has sufficient contact with India.

Sufficient contact rests on three factors (India TC Independent News Service Pvt Ltd v India Broadcast Live LLC &Ors 2007 (35) PTC 177 (Del)):

- The defendant must deliberately be acting in India or having an effect there.
- The cause of action in India must arise as a result of the defendant's outside activities.
- The consequences of the defendant's activities must have a substantial connection with India to make exercise of jurisdiction reasonable.

In addition, sections 1(2) and 75 of the Information Technology Act read together, they provide for extra-territorial application of copyright law.

Therefore, if a foreign national infringes copyright using a computer or computer network located in India, that person will be held liable.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

Only Government Authorities including the police are bound to execute and enforce the orders of court, and as such the courts are empowered to direct any government authority to do or not to do or prevent / compel any person to comply with the orders of the court.

Central police authorities fall under the aegis of the Ministry of Home Affairs. Specialized federal agency the Economic Offence Wing (EOW) under the Central Bureau of Investigation deals with specific areas of intellectual property such as counterfeiting, piracy and cybercrimes, and handles the investigation and prosecution of IP rights infringements at
federal level. It deals with the offences and statutes listed in Section 3 of the Delhi Special Police Establishment Act 1946, which include intellectual property as well.

12. **Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.**

   No, the Country does not provide for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

   Under The Copyright Act,1957 (section 62) Infringement of copyright proceedings can be instituted before a district court, within whose jurisdiction, the claimant either:

   - Resides;
   - Carries on business;
   - Personally works for gain.

13. **Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?**

   The Limitation Act 1963 sets out the statute of limitations for filing infringement actions. The usual time limit for bringing an action is three years from the date the cause of action arises.
1. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.

In the event of a repeated infringement, article 85 of the Law of 2001 provides that the penalty is increased to an imprisonment. The prison term ranges from three months to two years.

2. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

In practice, criminal proceedings in relation to author’s rights infringements are uncommon in Luxembourg. The majority of the disputes are resolved by civil means.

3. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law?

A fine of up to 251 euros is the minimum if a monetary penalty is imposed and no more than 250,000 euros is the maximum (article 83 of the Law of 2001).

Those monetary penalties are doubled in the event of a repeated infringement (500 euros to 500,000 euros).

4. What are the minimum and maximum monetary penalties usually awarded by the courts in the jurisdiction for criminal copyright infringement?

In practice, criminal proceedings in relation to copyright infringements are uncommon in Luxembourg. The majority of the disputes are resolved by civil means.

5. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

(If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

Registration is not necessary for copyright to exist. It arises upon the making of a work presenting a form and showing originality. A registration certificate is thus not required under Luxembourg law. The Luxembourg judge appreciates the originality of the work on a case by case basis.

It is usually market practice to request an expert opinion in order to appreciate the originality of the work, to the extent that the judge neither has the necessary skills nor the habits and customs relating to the work in question. It is also possible to send oneself a sealed registered letter in order to use the postmark as a proof of the date of creation. A copy of the work can
also be deposited with a neutral person. The Benelux Office for Intellectual Property ("BOIP") provides a deposit service known as "i-DEPOT".

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

In principle, criminal prosecutions for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet are possible in Luxembourg.

The Law of 2001 indeed authorizes criminal prosecution for copyright infringement that happens in or through any type of medium. The infringement indeed consists in "any malicious or fraudulent infringement of the rights of the author, holders of related rights and database producers protected under this law", regardless of the type of medium used to commit this infringement (article 82).

Article 82 of the Law of 2001 is also extremely large since it criminalizes making works available to the public, without the authorization of the copyright- and related rights-holders or databases producers, in order to digitalize, memorize, store, distribute, inject, and, in general, make it possible for the public to access them, or enable their communication to the public.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

Article 4 of the Luxembourg Criminal Code provides that: “The offense committed outside the territory of the Grand Duchy by either Luxembourgers or foreigners is only punishable in the Grand Duchy in the cases determined by law”.

Concerning copyright, the European principle of “Lex loci protectionis” also applies in Luxembourg. Indeed, under article 8 of Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), “the law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed”.

As a result, the Luxembourg magistrate can exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of Luxembourg, if the work in question is protected by copyright in Luxembourg.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

Yes. Under article 83 of the Law of 2001, the Luxembourg judge can order "The confiscation of counterfeit works and goods or supports/media containing the counterfeits, as well as boards, molds or dies and other utensils directly used to carry out the offences referred to in the preceding article, and this irrespective of ownership, (...), as well as the confiscation of their copying, digitization or network feeding materials". The judge can also request the destruction of the confiscated things.
9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

In theory, since the copyright infringement is a criminal offense, it could be considered a predicate crime to money-laundering. This analysis will be carried out by the Luxembourg judge on a case by case basis depending on the specific circumstances of the case.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

The amended Luxembourg law of 20 June 2001 on extradition, governs the conditions, procedure and effects of extradition in the absence of an international treaty and without prejudice to particular legal provisions applicable to certain offenses.

In a nutshell, under certain conditions, the Minister of Justice can, on a reciprocal basis, grant to another State’s government, the extradition of a person who is prosecuted for an offence punishable by Luxembourg law and the law of the requesting State by deprivation of liberty for a maximum of at least one year or a more severe penalty.

When the request for extradition concerns a person convicted of such an offense and sought for the enforcement of a custodial sentence, extradition may only be granted if: (i) a sentence of at least one year has been handed down and (ii) a period of at least six months of the sentence remains to be served.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

No, such a specialized investigation procedure does not exist in Luxembourg.

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

No, there is no specialized court or tribunal for criminal prosecution of copyright infringement cases. Such cases are judged by regular courts.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

There is no specific statute of limitations applicable to copyright infringement. Under article 638 of the Luxembourg Criminal Procedure Code, five-year statute of limitation applies to criminal offences.
1. **What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law?**

   There are no minimum terms only maximum terms. The maximum penalty for an offence is imprisonment for a term not exceeding 5 years as per section 131(5) of the Copyright Act 1994.

2. **What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   Sentencing tends to be at the lower end of the available range but this could vary depending on the severity of harm caused. There are few reported decisions dealing with sentences imposed under section 131 of the Copyright Act 1994. Sentencing is largely an individual and discretionary act.

   **Police v Adams [waiting to get citation from DC]**
   The defendant was convicted and sentenced to 4 months in prison and a repairation payment of $784, for copying and selling hard drives of karaoke music.

   **Police v Vile [2007] DCR 24**
   Defendant was convicted of copying and selling Pacific Island music in south Auckland, sentenced to 12 months imprisonment but reduced to 9 months in light of an offer to pay reparation. The defendant was ordered to pay a total of $8,500 in reparations. The Judge also made an order for disposal of all counterfeit CDs and the means of making infringing copies.

3. **What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law?**

   There are no minimum monetary penalties only maximum fines. The maximum penalty for an offence is a fine not exceeding $150,000. A court may also impose a sentence of reparation.

4. **What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   As above at question 3, sentencing is largely an individual and discretionary act and each case is decided on its facts. The fines and reparations reported tend to be on the lower end of the available range but this can vary depending on the severity of harm caused.

5. **Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.**
(If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

Registration is not necessary for copyright to exist. It arises upon the making of the work – there is no formal system for registration of copyright in New Zealand.

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

While not express, there is nothing to preclude criminal prosecution for copyright infringement that happens only through digital mediums. Subject to the establishment of the necessary elements of the offence the fact that the copyright infringement occurred only through digital medium would not affect a criminal prosecution.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

Sections 6 and 7 of the Crimes Act 1961 limit the jurisdiction of the New Zealand court in respect of criminal offences to conduct that occurs within New Zealand. Where any act or omission forming part of any offence, or any event necessary to the completion of any offence occurs in New Zealand this will be sufficient for the court to have jurisdiction.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

Yes, section 134 of the Copyright Act 1994 allows for an application to be made to the court that infringing copies be forfeited to the copyright owner or destroyed.

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

Criminal copyright infringement is a predicate offence for money laundering. Money laundering legislation in New Zealand permits that any offence punishable in New Zealand (including acts committed overseas that would be an offence if committed in New Zealand) can be the basis of a money laundering charge including whether the person has been charged or convicted of the predicate offence.

Currently a new Crime and Anti-Corruption Legislation Bill is before Parliament in New Zealand, which is likely to come into force in the next 12 months. The Bill amends legislation to target and further disrupt the activities of organized criminal groups.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.
New Zealand’s criminal procedure allows for cross-border extradition of a person convicted of copyright infringement. To be an extradition offence the maximum penalty for imprisonment must not be less than 12 months in both New Zealand and the extradition country. Under s 131, the maximum imprisonment is 5 years and is therefore an extradition offence, if the penalty in the extradition country is also not less than 12 months.

The Court of Appeal decision in *Ortmann v United States of America* [2018] NZCA 333 asserts that criminal copyright infringement under s 131 of the Copyright Act 1994 constitutes an extradition offence. The appellants are seeking a further appeal to the Supreme Court.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

New Zealand does not have a specialized law enforcement department dedicated to Intellectual Property crimes. The Ministry of Business, Innovation and Employment (MBIE) conduct criminal investigations under the Copyright Act 1994.

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

New Zealand does not have a specialized court or tribunal for criminal prosecutions of copyright infringement cases. There is a New Zealand Copyrights Tribunal but it only hears disputes and applications about copyright licencing schemes, individuals (current owner, licensees and prospective licensees) and file sharing infringements.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

Proceedings by may be instituted at any time within, but not later than, six years after the time when the offence was committed.
Pakistan

Contributors: Faisal Daudpota (Daudpota International)

1. **What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.**

   Per the CO’62, there is no minimum prison term for copyright infringement offenses covered under the scope of CO’62. However, the maximum prison term for the said offenses is up to three (3) years.

2. **What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   Case law in this area has not been developed to determine the usual prison term awarded. However, in *State v Muneeb Iqbal* [2017 CLD Intellectual Property Tribunal Sindh and Balochistan] the court sentenced the offender ‘till the rising of the court’ only. However, the case was limited to its own facts, the offender did not have knowledge of the offence i.e. he was unaware that he was selling counterfeit products.

3. **What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law?**

   Per the CO’62, there is no minimum monetary penalties for copyright infringement offenses covered under the scope of CO’62. However, the maximum monetary penalty for the said offenses is up to one hundred thousand rupees (PKR 100,000 / US$ 812 approximately).

   Please note that per Section 70B CO’62, where a person is convicted again of the same offenses covered under Sections 66, 66A, 66B, 66C, 66D, or 70A, the maximum penalty may be extended up to two hundred thousand rupees (PKR 200,000 / US$ 1624 approximately).

4. **What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   Same as question 2.

5. **Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.**

   (If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

   There is no provision under CO’62 that specifically require copyright registration certificate to initiate criminal action against an infringer. However, it is good practice to have a
registration certificate for evidentiary purposes as it eases the burden of proving the owner of the work. Per Section 42 CO’62, a registration certificate is prima facie evidence that copyright subsists in a work and that the person shown in the certificate is the owner of such copyright.

In case the owner has not registered the copyright, evidence as to use or reproduction/distribution or making available to the general public of the copyrighted material by the owner such as in the use in course of trade, exhibitions for artistic works, evidence of stage performances, commercials, publications of literary works etc may be required to prove ownership and initiate criminal proceedings.

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

The CO’62 provides for criminal prosecution for copyright infringement as demonstrated above. It does not limit the activity of infringement to the physical world as the way the CO’62 is drafted, it allows room for a broad interpretation as to the medium where the infringement takes place. Section 56 CO’62 stipulates actions that constitute copyright infringement, as reproduced below:

56. When copyright infringed. -- Copyright in a work shall be deemed to be infringed:

(a) when any person without the consent of the owner of the copyright or without a license granted by such owner or the Registrar under this Ordinance or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority under this Ordinance;-

(i) does anything the exclusive right to do which is by this Ordinance conferred upon the owner of the copyright; or

(ii) permits for profit any place to be used for the performance of the work in public where such performance constitutes an infringement of the copyright in the work unless he was not aware and had no reasonable ground for suspecting, that such performance would be an infringement of copyright, or

(b) when any person:-

(i) makes for sale or hire or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports into Pakistan any infringing copies of the work.

Explanation. For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematographic work shall be deemed to be an "infringing copy"

Therefore, criminal prosecution would be allowed for infringement occurring through any medium including the internet / digital medium / electronic medium / mobile network.
7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

Per Section 72 CO’62, the Magistrate of First Class has jurisdiction to try criminal offenses related to copyright infringement. However, after the establishment of the Intellectual Property Tribunal (‘IPT’) in 2012, the jurisdiction has transferred to the IPT.

The IPT does not exercise long-arm jurisdiction for criminal prosecution of an accused outside its territorial jurisdiction and the Code of Criminal Procedure 1898 (‘CrPC’) does not provide for the exercise of long-arm jurisdiction either. Where the offender is outside the territorial limits of the Magistrate/IPT and it has to issue summon or a warrant to that offender, usually the procedure under the CrPC is that the court may send the same to the Magistrate/IPT which is in the local limits of the offender which will then serve the same to the offender.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

The criminal procedure in Pakistan grants powers to the Magistrate/IPT and the police to confiscate/seize, destroy or deliver the infringing copies to the original owner. Sections 73 and 74 CO’62, reproduced below, stipulate:

73. Power of the court to dispose of infringing copies plates or recordings equipment for purpose of making infringing copies, -- The court before which any offence under this Ordinance is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all plates or recording equipment in the possession of the alleged offender, which appear to it to be infringing copies, or plates or recording equipment used or intended to be used for purpose of making infringing copies, be destroyed or delivered to the owner of the copyright or otherwise dealt with as the court may think fit.

74. Power of police to seize infringing copies, plates and recording equipments, -- (1) Any police officer, not bellow the rank of Sub-inspector, shall, if he is satisfied that an offence under Chapter XIV in respect of infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant all copies of the work and all plates and recording equipments used for the purposes of making infringed copies of the work, wherever found, and all copies, plates and recording equipments so seized shall, as soon as practicable, be produced before a Magistrate.

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

Infringement of copyright under Sections 66 to 70 CO’62 may be treated as predicate crime under Section 3 of the Anti-Money Laundering Act 2010 and Section IV to the Schedule thereof. This means, that if a predicate crime results in the offender accumulating money that
are “proceeds of crime”, then according to Section 3 of Anti-Money Laundering Act, 2010, the offender can also be convicted of the “offence of money laundering” that carries the punishment of a fine up to one million rupees (PKR 1,00,000 / US$ 8,140 approximately) and/or imprisonment between one (1) year to ten (10) years, as well as forfeiture of property involved in the given offences.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

The Extradition Act of 1972 enables cross border extradition of person convicted of an extraditable offence. Under the Act and extraditable offence is:

“an offence the act or omission constituting which falls within any of the descriptions set out in the Schedule and, if it took place within, or within the jurisdiction of, Pakistan would constitute an offence against the law of Pakistan and also
(i) in the case of a treaty State, an offence a person accused of which is, under the extradition treaty with that State, to be returned to or from that State; and
(ii) in the case of a foreign State not being a treaty State, an offence specified in a direction issued under section 4”

The Schedule of the Extradition Act 1972 lists, amongst others, “an act against the laws relating to forgery” as one of the offenses. This is the closest reference to copyright infringement from the list of offenses. Therefore, if the copyright infringement is considered by the court as an act of forgery, for example forgery of artwork etc, then it would be an extraditable offense under the law. However, it may not be straightforward to establish the same.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

The Directorate General of IPR Enforcement (Pakistan Customs) has been created for enforcement of IPR laws of Pakistan especially at the import and export stage. It is also be the centralized contact office of Federal Board of Revenue for IPR related national and international organizations and trade & industry. The Directorate General of IPR Enforcement (Pakistan Customs) keeps an eye out for counterfeit imports and exports and instructs original right holders (or their agents) in case infringement has occurred provided that the right holder has recorded their rights with the Directorate.

Moreover, the Federal Investigation Agency (FIA) takes jurisdiction and conducts investigations/raids in cases of copyright infringements that constitute a crime at a national level i.e. which affects the machinery of the state.

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

Per the Intellectual Property Organization Act of 2012, IP Tribunals were created whereby the tribunals have exclusive jurisdiction to try any offense under intellectual property laws
including copyright infringement. The tribunals, in exercise of their criminal jurisdiction have all the powers vested in a Court of Sessions under the Code of Criminal Procedure 1898.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

Unlike civil litigation, there is no specified period of limitation to bring criminal proceedings in Pakistan. The Supreme Court has remained liberal in allowing the delay in criminal cases coming before it. There is no limitation for preferring a complaint of a criminal offence unless the penal law creating the offence prescribes any period within which the complaint must be brought. Since CO’62 does not specify a time limit, there is no specified limitation period. The reason for this is that if a limitation period is imposed for criminal proceedings, the offender may delay the time by slowing down the investigation procedure by non-compliance or any other means so that the limitation period expires. Therefore, for criminal proceedings, limitation period is not prescribed. However, it must be noted that a long delay in filing the case without any reasonable explanation would not be excused.

---

6 PLD 1980 SC 14
7 KLR 1983 Cr. C. 272
1. **What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law?**

   The Criminal Code of Peru provides for a minimum penalty of two (2) months of imprisonment and a maximum penalty of eight (8) years of imprisonment.

2. **What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   In Peru an important number of cases of criminal copyright infringement refers to unauthorized copying or reproduction of an intellectual work (article 216 of Peruvian Criminal Code), and against this background, as to said criminal offense, on average, criminal courts do award from two (2) to three (3) years of imprisonment, and within this context it is important to mention that in most cases the execution of imprisonment is suspended for the period of one year (1) in which certain conditions are established which, if complied with, will allow for the extinguishing of criminal liability – such cases are authorized by the Peruvian Criminal Code for those criminal offenses where the penalty of imprisonment does not exceed four (4) years and if the offender fulfills some other personal legal requirements (specified in articles 57 and 58 of Peruvian Criminal Code).

3. **What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law.**

   The Peruvian Criminal Code (PCC) does not specify any amounts of the pecuniary penalties; the latter are expressed in days-fine. Accordingly, the PCC provides for a minimum pecuniary penalty of ten (10) days-fine and a maximum pecuniary penalty of three hundred sixty-five (365) days-fine, and on a case by case basis it is the judge handling the case at issue who has to establish the equivalent amount of one (1) day-fine (it is calculated in a margin of 25% to 50% of the average daily income of the convicted person and this is determined based on the assets, income and other external signs of wealth of the convicted person).

4. **What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

   In Peru, on average, the minimum monetary penalty awarded by criminal courts is of a ten (10) days-fine and the maximum of a ninety (90) day-fine, where, in general, each day equals to 2.00 Peruvian Soles (approx. US$ 0.65).

5. **Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a**
copyright registration certificate will not be required in order to initiate/commence a criminal case.

(If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

In Peru the protection of copyrights is not dependent on registration. Thus, for purposes of initiating before criminal courts a proceeding in matters of copyright the claimant does not require a copyright registration certificate.

As to the type of evidence, in principle, any kind of evidence proving the authorship of the intellectual work which is being infringed is admitted by courts.

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

The Peruvian jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet. In the Peruvian Criminal Code, in connection with the reproduction, diffusion, distribution and circulation of the work without the authorization of the author (art. 217), express reference is made to public communication or broadcasting, transmission or retransmission by any means or procedures.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

Based on paragraphs 1 and 2 of article 21 of the Peruvian Criminal Procedure Code, the courts in Peru are competent for handling the case of an accused that is outside the Peruvian territory if the criminal offense committed by the accused was perpetrated within the Peruvian territory or if the criminal offense committed by the accused produces effects within the Peruvian territory.

According to article 2 of the Peruvian Criminal Code, Peruvian Criminal Law is applicable to all criminal offenses committed outside the Peruvian territory, when:

1. The agent is a public official or servant performing his duties;
2. The act is directed against public security or tranquility, or it is the case of conducts classified as money laundering, provided that they produce their effects in the territory of the Republic of Peru;
3. The act is offensive to the Peruvian State and the national defense, the Powers of the State and the constitutional order or the monetary order;
4. The act is perpetrated against Peruvian national or by Peruvian national and the criminal offense is provided for as susceptible to extradition according to Peruvian Law, provided that it is also punishable in the State in which it was committed and the agent enters in any way into the territory of the Republic of Peru;
5. Peru is obliged to punish in accordance with international treaties.
8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

In article 221 of Peruvian Criminal Code (PCC) it is established that in case of conviction the copies, illicit materials, devices and means used for the commission of the criminal offense shall be confiscated and destroyed, except in exceptional cases where these exceptions are duly justified by the judicial authority.

Apart from the above, the other criminal law sanctions provided for by PCC against copyright infringements do not contain any specific provisions enabling confiscation and forfeiture of the property of the person convicted of copyright infringement.

Nevertheless, article 102 of PCC does provide for means that allow confiscation and forfeiture of assets derived from the committed criminal offense.

“Article 102.- Confiscation of property derived from criminal offense

The judge, whenever the autonomous process of extinction of domain does not proceed, resolves the seizure of the instruments with which the crime was executed, even when they belong to third parties, except when they have not given their consent for its use. The objects of the crime are confiscated when, according to their nature, their delivery or return does not correspond. Likewise, it provides for the seizure of the effects or gains of the crime, whatever the transformations they may have experienced. The confiscation determines the transfer of said assets to the sphere of ownership of the State.

The judge also provides for the seizure of intrinsically criminal assets, which will be destroyed.

When the effects or gains of the crime have been mixed with goods of lawful origin, confiscation proceeds to the estimated value of the illicit mixed goods, unless the former had been used as means or instruments to hide or convert the goods of illicit origin, in which case the confiscation of both types of goods will proceed.

If forfeiture of the effects or gains of the offense is not possible because they have been concealed, destroyed, consumed, transferred to a third party in good faith and for consideration or for any other analogous reason, the judge orders the confiscation of the assets or assets of ownership of the responsible or eventual third party for an amount equivalent to the value of said effects and profits.”

Besides, it is worth mentioning that article 93 of PCC provides for civil reparation that can be claimed by the affected party and which comprises (i) the restitution of the goods or, if this is not possible, the payment of its value, and (ii) compensation for damages, and said civil reparation is determined jointly with the penalty to be imposed against the convicted offender (article 92) and the civil reparation is made effective against the realizable property of the convicted offender. In the event that the convicted offender does not have realizable property, the Judge will indicate up to one third of the offender’s remuneration for the payment of civil reparation (article 98).
In addition, the affected copyright owners may claim damages before civil courts through a separate civil suit, and it is before civil courts - within the context of damage claims - that actions against the property of the convicted person are possible.

9. **Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.**

   According to Legislative Decree 1106 – Law against Money-Laundering, whoever acquires, uses, saves, administers, guards, receives, hides or keeps in his possession money, goods, effects or gains, whose illicit origin is known or should be presumed, in order to avoid identifying its origin, seizure or confiscation, commits money laundering.

   It must be said that there is not an exhaustive list of criminal offenses that are to be considered predicate offenses. Taking into consideration that copyright infringement is a criminal offense, it could be considered as predicate crime to money-laundering, in principle. However, in practice, this must be analyzed and assessed in attention to the particular circumstances of the specific case under examination.

10. **Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.**

   Paragraph 1 of article 516 of the Peruvian Criminal Procedure Code states that the person prosecuted, accused or convicted as author or participant of a criminal offense committed in a foreign country and who is in the Peruvian territory, either as a resident, as a tourist or passing through, may be extradited in order to be investigated or prosecuted or in order for him to comply with the sanction imposed against him.

   Moreover, according to paragraph 2 of said article, the granting of extradition is conditional on the existence of guarantees of a fair administration of justice in the requesting State; and, if an extradition previously tried by the requesting State, before a third State, had been rejected for having considered the extradition with political implications.

   Pursuant to paragraph 1 of article of 517 of the Peruvian Criminal Procedure Code, extradition is not applicable, if the fact that is the subject matter of the proceeding does not constitute a criminal offense in the requesting State as well as in Peru, and if in the legislation of both States there is no provision for punishment, in any of its extremes (i.e. the minimum and maximum prison terms), equal or superior to an imprisonment for the period of one year.

11. **Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.**

   Since 2007 there are three Provincial Prosecutor’s Offices specialized in IP related criminal offenses in the city of Lima; in addition there such Prosecutor’s Offices specialized in IPIn the city of Callao (Peru’s main port) and in the cities of Tumbes (located to the North close to border to Ecuador) and Puno (located close to the border to Bolivia).
12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

No, in Peru such criminal offenses are processed before and by regular criminal courts.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

Yes, in Peru there is a statute of limitations (regulated in article 80 and following of Peruvian Criminal Code (PCC).) The time limit for the legal proceedings varies in accordance to the maximum sanction to be applied to each criminal offense. In case of criminal offenses regulated by article 216 of PCC, considering the maximum penalty of four (4) years of imprisonment, the time limit for prosecuting the criminal offense is of four (4) years. In case of criminal offenses regulated by article 217 of PCC, considering the maximum penalty of six (6) years of imprisonment, the time limit for prosecuting the criminal offense is of six (6) years and in case of criminal offenses regulated by articles 218, 219 and 220 of PCC respectively, considering the maximum penalty of eight (8) years of imprisonment, the time limit for prosecuting the criminal offense is of eight (8) years.

Article 82 of PCC regulates when to begin with the computing of the statute of limitations:

1. In case of attempt, from the day the criminal activity ceased;

2. In case of instant criminal offense, from the day it was consummated;

3. In case of continuing criminal offense, from the day the criminal activity ended;

4. In case of permanent criminal offense, from the day on which the permanence ceased.
Poland

Contributors: Michal Siciarek

1. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.

   Typically 1 month to 3 years or 3 months to 5 years, depending on type of criminal offence.

2. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

   Prison is awarded in exceptional cases, it may be eg. 3 months or 6 months. Monetary fine is preferred. Generally prison if awarded for the first time for the perpetrator will most likely be in suspension.

3. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law.

   Monetary fine is awarded as 10 to 540 daily rates, the amount of a daily rate is set taking into account personal situation of the perpetrator, it may be between 10 PLN and 2000 PLN.

4. What are the minimum and maximum monetary penalties usually awarded by the courts in the jurisdiction for criminal copyright infringement?

   Typically the court would award between 30 and 100 daily rates, and set a daily rate between 20 and 200 PLN. This is because majority of criminal copyright cases are against small retailers.

5. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

   (If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

   No official registration procedure is required for existence or protection of copyright.

   Any injured party should however show what is the copyrighted work which was subject of the crime and show their title as injured party (i.e. being author or being the assignee of the economic copyrights in which case full chain of title should be proven such as labour law or civil law contracts in writing providing for copyright transfer in the scope in which the rights were infringed).

   For typical works (literature, audiovisual, music etc.) and typical cases of infringement (copyright, distribution of copies, uploading or streaming) no specific evidence for protection and infringement is required. However, for more complicated cases eg. works of design, scientific works, applied works, an expert opinion, literature or prior jurisprudence will be typically needed to show that the subject matter has copyright protection and that the act of
the defendant was a copyright infringement taking into account scope and way of use of the work.

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

YES, according to general rules.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

This is possible (although not very likely) As per relevant provisions of the Criminal Code

Article 109. The Polish penal law shall be applied to Polish citizens who have committed an offence abroad.

Article 110. § 1. The Polish penal law shall be applied to aliens who have committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organizational unit not having the status of a legal person.

§ 2. The Polish penal law shall be applied to aliens in the case of the commission abroad of an offence other than listed in § 1, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of prison, and the perpetrator remains within the territory of the Republic of Poland and where no decision on his extradition has been taken.

Article 111. § 1. The liability for an act committed abroad is, however, subject to the condition that the liability for such an act is likewise recognised as an offence, by a law in force in the place of its commission.

§ 2. If there are differences between the Polish penal law and the law in force in the place of commission, the court may take these differences into account in favour in the perpetrator.

§ 3. The condition provided for in § 1 shall not be applied to the Polish public official who, while performing his duties abroad has committed an offence there in connection with performing his functions, nor to a person who committed an offence in a place not under the jurisdiction of any state authority.

Article 112. Notwithstanding the provisions in force in the place of the commission of the offence the Polish penal law shall be applied to a Polish citizen or an alien in case of the commission of:

1) an offence against the internal or external security of the Republic of Poland;

2) an offence against Polish offices or public officials;

3) an offence against essential economic interests of Poland

4) an offence of false deposition made before a Polish office.

Article 113. Notwithstanding regulations in force in the place of commission of the offence, the Polish penal law shall be applied to a Polish citizen or an alien, with respect to whom no decision on extradition has been taken, in the case of the commission abroad of an offence which the Republic of Poland is obligated to prosecute under international agreements.
8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

As per Article 121 of the Law on copyright and neighbouring rights,

In the event of sentencing for an offence specified in Articles 115, 116, 117, 118 or 118\textsuperscript{1}, the court \textit{may order forfeiture} of objects \textit{coming from the offence}, even if they were not owned by the offender.

\textbf{ALSO}

the court \textit{may order forfeiture} of objects \textit{used to commit the offence}, even if they were not owned by the offender.

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

The basic applicable “anti laundering” provision is art. 299 of the Polish Criminal Code, which refers to forms of property obtained from the profits of offences committed by other persons. There is no limitation of the list of offences covered by the provision and the list may include also criminal copyright infringement offence as a predicate crime.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

The Polish Code of Criminal Procedure theoretically allows cross border extradition of persons convicted of any crime including copyright infringement. However, there is a number of circumstances which entitle the courts to refuse cross border extradition.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

Preparatory proceedings (i.e. from detection of crime up to filing indictment to criminal court) are conducted by state prosecutor or Police under supervision of state prosecutor. Within the structure of the Police, anti-counterfeiting and anti piracy proceedings are normally conducted by specialized units for economic crime.

Preparatory proceedings related to certain crimes including crimes against intellectual property rights, may be also conducted by officers of Customs and Revenue Administration if the crimes were discovered by those officers. This may happen both for on border seizures and domestic seizures of counterfeited or pirated goods.
12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

No. The criminal cases for copyright infringement are prosecuted before criminal divisions of district courts together with majority of lower rank crimes. However the Minister of Justice has, by regulation, appointed district courts competent to hear cases of offences, within the area of competence of a given circuit court.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

The amenability to a penalty for a crime ceases, if from the time of the commission thereof the following number of years have elapsed:

(…)

10 - when the act constitutes a crime subject to the penalty of prison exceeding 3 years (eg. 3 months to 5 years as in some crimes related to copyright);

5 - when the act is subject to the penalty of prison not exceeding 3 years (in majority of crimes related to copyright);

3 - when the act is subject to the penalty of restriction of liberty or a fine.

If in the period provided above proceedings against a person have been instituted (ie individual faced formal penal charges), the amenability to an penalty for the offence ceases after the expiration of additional 5 years from the end of that period.
South Africa

Contributors: Christine Strutt (Von Seidels)

1. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.

The maximum prison term prescribed by the Criminal Procedure Act 51 of 1977 is life imprisonment with the opportunity of parole after serving a minimum of 25 years.

The minimum prison term prescribed by the Criminal Procedure Act 51 of 1977 is a period of no less than 4 days in prison.

2. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

Civil claims based on copyright infringement are more common and criminal copyright cases are rare in South Africa.

A fairly recent case (2013) involved an individual who was convicted of criminal copyright infringement for posting a copy of a local movie, “Four Corners” on the Pirate Bay. The defendant entered into a plea agreement whereby he was sentenced to a 3 year prison sentence in terms of the Copyright Act, wholly suspended for 5 years. Furthermore, he was sentenced to a 6 month suspended sentence in terms of the Counterfeit Goods Act.

The maximum possible prison sentence for Copyright Infringement or Counterfeiting is 3 years for a first conviction, and 5 years for a subsequent conviction of Copyright Infringement.

3. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law.

The maximum monetary penalty to be imposed by a court where such a court is of a regional division is ZAR600 000 as prescribed by section 92(1)(b) of the Magistrates’ Courts Act.

There is no maximum penalty generally prescribed in the High Court.

There is no prescribed minimum fine as this is determined by the severity of the criminal offence on a case-to-case basis.

For certain serious crimes (none of which are linked to copyright infringement), statutory mandatory minimum sentences are set but trial courts are permitted to depart from the prescribed minimum sentences whenever they find a “substantial or compelling circumstance” warranting a departure.
4. What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?

Monetary awards for copyright infringement are typically calculated as damages suffered. Penalties are in line with the prescribed fines based on the quantity of the infringing products.

5. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

South African law does not require or have a system for copyright registration, except for a voluntary registration system for films in which case the registration merely serves as a means of identifying the copyright owner and does not establish copyright. Accordingly, a registration certificate is not required to institute criminal proceedings founded on copyright infringement.

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

Yes. Such matters are treated equally to traditional instances of copyright infringement.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

South Africa is a signatory to the Berne Convention and adheres to the principle of national treatment. Local courts can enforce local copyright laws against foreign persons and entities provided jurisdiction is established through, for instance, locality or impact of the cause of action.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

Both the Copyright Act and Counterfeit Goods Act, as well as the Electronic communications and Transactions Act provide for the inspection, seizure, confiscation and forfeiture of the infringing property for destruction. Re-introduction of those goods into the local or export market is expressly prohibited.

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence/ proceeds of crime.
The Prevention of Organized Crime Act 121 of 1998 combats organised crime and money laundering activities, amongst other things, in South Africa.

The definition of “racketeering” in this Act includes offences outlined in Schedule 1, and currently, criminal copyright infringement is not included in this Schedule. (It may be useful to note that the crime of forgery is listed as a Schedule 1 offence).

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

South Africa has a number of standard term extradition agreements with various countries. Regarding what constitutes an extraditable offence, the wording of the standard agreement provides that it would be something that was an offence in both countries, punishable by imprisonment for a period of more than one year.

Taking into consideration that the Copyright Act imposes a prison sentence of a maximum of 5 years for criminal copyright infringement, the conclusion can be made that the criminal procedures in place in South Africa do enable cross border extradition on the basis that the hosting country also recognizes copyright infringement as a criminal offence.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

The South African Police Service has a specialised commercial crimes unit.

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

The Copyright Act makes provision for a Copyright Tribunal, but this Tribunal does not have jurisdiction to adjudicate criminal matters.

There are also specialised commercial crimes Courts throughout South Africa, which can be used to investigate and prosecute complex commercial crimes emanating from the SAPS Commercial Crime Branch.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

According to section 18 of the Criminal Procedure Act, unless some other period is expressly provided for by law, claims lapse after the expiration of a period of 20 years from the time when the offence was committed. There is no specific statute of limitations in the Copyright Act.
Spain

Contributors: Ignacio Temiño (Abril Abogados)

1. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.

   The minimum prison term is of three (3) months and the maximum is the revisable life sentence.

2. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

   The Spanish Criminal Code provides for a minimum of six (6) months and a maximum period of six (6) years of imprisonment.

3. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law?

   The minimum monetary penalty consists of a one (1) month day-fine, and it escalates up to a maximum of thirty-six (36) months day-fine.

4. What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?

   On average, the ordinary monetary penalties oscillate between twelve (12) and twenty-four (24) months day-fine. However, aggravated offences shall be punished with a penalty set between eighteen (18) and thirty-six (36) months day-fine; and, on the other hand, if any mitigating circumstance concur, the fine will be set between one (1) month and six (6) months day-fine.

5. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

   Registration is not necessary for copyright to exist. It arises upon the making of the work. However, an official Copyright Registry exists for registration of any copyrightable work, including actions and contracts related to copyrights. There is a presumption, unless the contrary is proved, that the registered rights exist and belong to their holder in the form determined in the respective registry seat.

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

   Yes. This category of infringement may be prosecuted through the criminal jurisdiction or through a specific administrative proceeding before the Second Section of the Intellectual Property Commission, whereby any copyright holder may request the safeguarding of its
copyrights against any infringement by those responsible for services of the information society through an expedited procedure.

The procedure will be initiated ex officio, upon complaint of the owner of the intellectual property rights considered to be violated or of the person entrusted with its exercise, and the latter must provide with it a reasonable proof of the previous unsuccessful withdrawal attempt to the service of the information society allegedly infringing, requesting the withdrawal of the specific contents offered without authorization, being sufficient to direct said requirement to the electronic address provided by the provider to the public in order to communicate with it.

Regulation regarding consumer rights and service provider duties on the digital/electronic medium, mobile or internet network can be found on Law 34/2002, of July 11th, on information society and electronic commerce services.

EU Directives on the matter shall also be applied.

7. **Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.**

It is applicable on the Spanish territory the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This Regulation applies for anyone from or established in any of the EU member states (article 7.2 of the said Regulation)

The Spanish Courts have jurisdiction on any crime committed in the Spanish territory, regardless the nationality of the infringer or where is established.

In addition:

**Article 158 ter.** Establishes that “When the infractions have been committed by service providers established in States that are not members of the European Union or the European Economic Area but whose services are specifically directed to Spanish territory, the body that has imposed the corresponding sanction may order the providers of intermediation services that take the necessary measures to prevent access from Spain to the services offered by them for a maximum period of one year”.

**Article 11.2 Law 34/2002** 2. If, in order to guarantee the effectiveness of the resolution that resolves the interruption of the provision of a service or the withdrawal of contents from a provider established in a State not belonging to the European Union or the European Economic Area, the competent body considers it necessary to prevent the access from Spain to them, and for this purpose it was necessary the collaboration of intermediation service providers established in Spain, the said body may order the aforementioned intermediation service providers to suspend the corresponding intermediation service used for the provision of the service of the information society or of the contents whose interruption or withdrawal have been ordered respectively.

8. **Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.**
Article 127 of the Criminal Code establishes that “Any penalty that is imposed for an intentional crime will entail the loss of the goods that come from it and of the products, means or instruments with which it was prepared or executed, as well as the proceeds of the crime, whatever they may be. The transformations that they might have experienced.” The following articles up to 128 include further considerations regarding the matter.

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence/ proceeds of crime.

It is an aggravating circumstance on the commission of an intellectual property infringement crime to belong to an organization or association, even of a transitory nature, whose purpose is to carry out activities that infringe industrial property rights.

Regarding money-laundering offences, according to article 1 of the Law 10/2010, of April 28, on the prevention of money laundering and the financing of terrorism:

“For the purpose of this Law, the following activities shall be considered money laundering:

a) The conversion or transfer of goods, knowing that the said assets come from a criminal activity or participation in a criminal activity, with the purpose of concealing or concealing the illicit origin of the goods or of helping people who are involved in circumventing the legal consequences of their actions.

b) The concealment or concealment of the nature, origin, location, disposition, movement or real ownership of property or property rights, knowing that the said assets come from a criminal activity or participation in a criminal activity.

c) The acquisition, possession or use of property, knowingly, at the time of receipt thereof, that they come from a criminal activity or participation in a criminal activity.

d) Participation in any of the activities mentioned in the previous letters, the association to commit this type of acts, the attempts to perpetrate them and the fact of helping, instigating or advising someone to perform them or facilitate their execution.

There will be money laundering even when the activities described in the preceding letters are carried out by the person or persons who committed the criminal activity that generated the assets.

For the purposes of this Law, assets derived from a criminal activity shall be understood as all types of assets whose acquisition or possession originates in an offense, whether tangible or intangible, tangible or intangible, as well as legal documents or instruments, whether tangible or intangible, movable or immovable. Irrespective of its form, including electronic or digital, that proves the ownership of said assets or a right over them, including the fee defrauded in the case of crimes against the Treasury.” Nothing precludes the possibility of an offence to constitute both an intellectual property infringement and a money laundering crime.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.
Yes, it is the National Court (“Audiencia Nacional”) – under request by the judge or court deciding the case – that has the exclusive competence to process requests for international legal cooperation requested by other countries of the world and does so through two procedures: extradition and European warrant.

The communication for the solicitation of extradition is between the judicial authorities of the EU member states implicated, in case of European warrant, and between the states’ government in case of extradition from or to non-EU member states.

The extradition effectiveness depends on the existence of a bilateral or international Treaty in which Spain takes part. To request the extradition, there must be a prison sentence or a final conviction against the person whose extradition is requested, and the State receiving the request must grant it. If there is no treaty, the requested State is authorized to agree to extradition, but is not obliged to grant it, and this will always depend on the application of the principle of reciprocity.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

Yes, there is a specialized law enforcement department dedicated to IP crimes. The structure is as follows:

- Judicial Police General Police Station
  - Specialized and violent crimes central unit
  - Specialized crimes central brigade
  - Section on Intellectual Property crimes

- Judicial Police General Police Station
  - Financial and economic crimes unit
  - Financial and economic crimes brigade
  - Section on Money Laundering

There is no particular procedure for the investigation of IP crimes.

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

No, the Criminal courts will decide on criminal cases regarding intellectual property offences.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

The periods for the time limitation of criminal liability depends on the penalties that may apply, are determined by the penalties indicated in the abstract. The penalty in the abstract must be estimated in all its extension and therefore in its conception of maximum penalty that can be imposed, being from this perspective that the term "maximum penalty" must be interpreted.
1. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.

There are no minimum terms only maximum terms. The law provides a maximum sanction of one year. If the offender acted for commercial gain, the penalty is rising up to five years imprisonment. In addition the offender shall be prosecuted *ex officio*.

2. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

There are only very few cases regarding criminal copyright infringement in Switzerland and often the infringer also committed other felonies. It is therefore very difficult to clearly distinguish how each offense carried weight. However, taking into account the low penalty frame, the imprisonment has often been replaced by services to the community and a pecuniary penalty.

If the offender acted for commercial gains, the punishment is imprisonment up to five years or a fine. However, in most cases, courts sentenced the accused to fines, imprisonment is the exception.

3. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law?

The law refers only to the standard Swiss monetary penalty without any concrete framework. The standard Swiss monetary penalty is defined in the Swiss Criminal Code Art. 34 para. 1 ff. The assessment is based on daily penalty units. Unless the law provides otherwise, a monetary penalty amounts to a minimum of 3 and a maximum of 180 daily penalty units. The court decides on the number according to the culpability of the offender. The daily penalty unit itself normally amounts to a minimum of 30 and a maximum of 3’000 CHF. The court decides on the value of the daily penalty unit according to the personal and financial circumstances of the offender at the time of conviction, and in particular according to his income and capital, living expenses, any maintenance or support obligations and the minimum subsistence level. The maximum monetary penalty can’t exceed the amount of 540’000 CHF.

If the copyright infringement is committed in a corporate undertaking in the exercise of commercial activities in accordance with the objects of the undertaking and if it is not possible to attribute this act to any specific natural person, then the infringement is attributed to the undertaking. In such cases, the undertaking is liable to a fine not exceeding 5 million CHF.

If the copyright infringement was committed for commercial gain and a custodial sentence is
imposed, a monetary penalty must also be imposed, Art. 67 para. 2 CopA.

4. What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?

As the application of the concrete monetary penalty depends on various criteria (as mentioned above), it is not possible to give reliable information. We also note that in the past years, less than a dozen convictions under the CopA have been recorded by the Federal Bureau of Statics.

5. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

(If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

In contrast to patent, design or trademark protection, copyright protection arises automatically with the creation of the work of art. There is no register.

In a dispute, there are different options to prove ownership of the work, including witnesses statements, written documentation, evidence of deposit of the work with a notary or lawyer.

Art. 8 CopA contains a presumption of authorship of the person whose name appears visually on the work.

6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

The Swiss CopA is characterized by its technology-neutral design. For the protection of a song, for example, it does not matter in which form it is presented and in which form a copyright infringement is committed. Newly included paragraphs in the law take into account the use of new mediums.

According to art. 67 para. 1 lit. g bis, any person who willfully and unlawfully makes a work available through any kind of medium in such a way that persons may access it from a place and at a time individually chosen by them commits a copyright infringement. The right of making works available is a broad exclusive right which covers many different actions. Nevertheless, there are still limits to this right. For example, it is still controversial if linking to somebody else’s work/s can be regarded as an infringement of the right of making a work available.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.
The Swiss CopA is according to the territorial principle of jurisdiction only applicable for Swiss works on Swiss territory. Switzerland applies the *Lex loci protectionis* principle to stipulate that the law applied to copyright infringement is the law of the *locus protectionis*. Consequently, the law of the country where the intellectual property was created or registered is not applied.

Switzerland is in addition party to the most important copyright treaties (i.e. Berne Convention, WCT) for a more comprehensive protection, and party to a large number of bilateral trade agreements.

8. **Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.**

The CopA entitles on behalf of an applicant in Art. 77c para. 1 the Customs Administration to destroy goods brought into Swiss customs territory which would violate copyright rights.

Art. 69 et seqq. of the Swiss Criminal Code concerning the confiscation and forfeiture of the property and assets that have been acquired through the commission of an offence is applicable. The court shall order the forfeiture of objects that have been used or were intended to be used for the commission of an offence or that have been produced as a result of the commission of an offence in the event that such objects constitute a future danger to public safety, morals or public order. The court may order that the objects forfeited be rendered unusable or be destroyed. The CopA makes just an exception in Art. 72 regarding works of architecture that already have been constructed.

9. **Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.**

There is not an exhaustive list of crimes that are considered predicate offences. The prerequisite is just in general a felony according to Art. 10 para. 2 of the Swiss Criminal Code. Therefore felonies are offences that carry a custodial sentence of more than three years. Regarding copyright infringement this is just the case if the crime was committed for commercial gains and therefore can be sanctioned up to five years of prison.

10. **Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.**

Swiss citizens can’t be extradited by the Swiss Constitution without their consent in writing. Although with the US there is extradition agreement concluded which undermines this principle. How Swiss courts would rule is still open. For foreigners an extradition will not be upheld except for political reasons and the ECHR.

11. **Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.**
Art. 73 para. 1 CopA defines that prosecution is the responsibility of the cantons. Therefore there is no specialized law enforcement on a federal level.

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

No, such infringements are judged by regular courts.

13. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

Art. 97 para. 1 of the Swiss Criminal Code states that the right to prosecute is subject to a time limit depending on the penalty. If the infringement was committed for commercial gains the limitation period is ten years: in all other cases just seven years. Additionally if the infringement is only prosecuted by complaint the right to file a complaint expires after three months. The period begins on the day that the person entitled to file a complaint discovers the identity of suspect.
1. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.

   Minimal term of restraint of liberty for copyright infringement is not provided by Criminal Code of Ukraine. Maximum term of restraint of liberty for copyright infringement is six years.

2. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

   In court practice of Ukraine there is only one sentence that provides for 2 years imprisonment for copyright infringement with the conditional release.

3. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law.

   The Criminal Code of Ukraine provides for a fine from two hundred tax-free minimum incomes (200 * 17 = 3400 UAH, approximately 126 USD) to three thousand tax-free minimum incomes (3000 * 17 = 51000 UAH, approximately 1880 USD).

4. What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?

   The courts apply fines in the amounts stipulated by the Criminal Code of Ukraine from two hundred tax-free minimum incomes (200 * 17 = 3400 UAH, approximately 126 USD) to three thousand non-taxable minimum incomes (3000 * 17 = 51000 UAH, approximately 1880 USD).

5. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

   (If the registration certificate is not required, what type of evidence (e.g. expert opinion, prior jurisprudence, literature) are allowed by law/court/customary procedure to acknowledge vested statutory copyright)

   In Ukraine the copyright protection does not depend on registration. Therefore, a copyright registration certificate is not required to initiate a criminal case. Any kind of evidence that demonstrates the authorship of the intellectual work that is being infringed is admitted by courts.
6. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

The Ukrainian jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

Ukrainian courts have jurisdiction over a nonresident defendant who commits a crime within the national territory or whose crime caused results within the territory of Ukraine.

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

Yes, the criminal procedure in Ukraine enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence / proceeds of crime.

Yes, the criminal procedure in Ukraine enables treatment of a criminal copyright infringement offence as a predicate crime to money-laundering offence / proceeds of crime.

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

According to the Article 573 of Ukrainian Criminal Procedure Code request for extradition may be considered only provided that at least one of the offenses for which an extradition is requested may be punished with at least one year imprisonment or a person was sentenced to serve the punishment in the form of imprisonment and the unserved portion of sentence is at least four months.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

Yes, State Service of fight against economic crime of the Ministry of Internal Affairs of Ukraine and its units detect and terminate violations of intellectual property rights. There is also Cyber police that carries out counteraction to cybercrime.

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.
13. **Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?**

Under article 49 of the Ukrainian Criminal Code, the time limit for the commencement of legal proceedings varies according to the degree of gravity of a crime. In case of crimes prescribed by Article 176, a person shall be discharged from criminal liability if the following periods have elapsed from the date of the criminal offense to the effective date of the judgment:

1) three years for the Illegal reproduction, distribution of works of science, literature and art, computer programs and databases, as well as illegal reproduction, distribution of performances, phonograms, videograms and broadcast programs, their illegal replication and distribution on audio and video cassettes, floppy disks, and other media information, camcorders, cardhaching or other intentional violations of copyright and related rights, as well as the financing of such acts, if it caused material damage to a significant amount (for year 2019 – minimum 19210 UAH, approx..708 USD),

2) five years for the same actions, if committed repeatedly, or by a previous conspiracy by a group of persons, or caused material damage in a large amount (for year 2019 – minimum 192100 UAH, approx..7075 USD);

1. ten years for Actions provided for in paragraphs 1 or 2 of this article, committed by an official using the official position or organized group, or if they caused material damage in a especially large amount (for year 2019 – minimum 960 000 UAH, approx.35 356 USD).
1. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.

- No minimum.
- Maximum on summary conviction is 3-6 months depending on the form of infringement (please see Annex 1 for further detail).
- Maximum on indictment is up to 10 years.

2. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

- The courts have been willing to impose custodial sentences, taking the view (in R v Kemp (1995) 16 Cr App Rep (S) 941 CA) that counterfeiting offences should normally attract at least a short sentence of imprisonment because they are difficult, time consuming and expensive to detect and the rights owners are entitled to be protected against their unlawful exploitation.

- There is no usual sentence as each case will turn on its own facts.

- In R v Evans [2017] 1 Cr App Rep (S) 434 the court did however collate the considerations relevant to sentencing under s 107. Please see paragraph 434 of this case for further details.

- Since the maximum prison term on indictment was increased to 10 years (in 2002), there have been few reported cases.

- In one unreported case brought by Sky in 2018 against an individual, Warren Gleave, who was selling illicit streaming devices pre-loaded with premium content, it appears that Mr Gleave received a 16 month prison sentence. Although the case concerned offences under the Fraud Act 2006, this also suggests that the courts will not shy away from imposing prison sentences in analogous cases involving criminal copyright infringement.

- In two further cases relating to the sale of ‘Kodi boxes’ (set top boxes loaded with third party content and used to stream content), press reports suggest that the individuals received respective prison sentences of 21 months suspended for 2 years and 18 months also suspended for 2 years.

- Trade mark offence cases may give some insight since they carry the same maximum penalties. In those cases which are reported in text books it appears that sentences up to 30 months have been handed down.

3. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law?
- For the offences of making for sale or hire, importing, distribution and communication to the public there is no limit to the monetary penalties under the law. All other offences carry a maximum penalty of a fine not exceeding level 5 on the standard scale (currently £5,000).

- Further, the Proceeds of Crime Act 2002 provides for the confiscation of property arising from the proceeds of crime and copyright infringement is deemed as amounting to a ‘lifestyle offence’ under Schedule 2. This means that the prosecuting authority can seize all property and is not constrained to property proven directly to have been acquire as a result of the criminal activity.

4. **What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

- As there are few reported cases and each case will turn on its own facts it is difficult to say what is usual.

- In one case brought by Sky against an individual called Luke Skinner in Scotland, Mr Skinner was fined £50,000 for selling illegal streaming devices and subscriptions on Facebook Marketplace.

5. **Please list the specific subject matter for which criminal enforcement of copyrights is available in the jurisdiction (Note: items below are examples, please edit/delete as applicable):**

In the UK, criminal prosecutions for offences relating to all categories of copyright work may be brought, namely the following types of work:-

(i) **‘Literary work’** means any work other than dramatic or musical work which is written, spoken or sung and accordingly includes a table or compilation, a computer program, preparatory design material for a computer program and a database. (CPDA s 3)

(ii) **‘Dramatic work’** includes a work of dance or mime (CDPA s 3)

(iii) **‘Musical work’** means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music. (CDPA s 3)

(iv) **‘Artistic work’** means: (i) a graphic work, photograph, sculpture or collage, irrespective of artistic quality (ii) a work of architecture being a building or a model for a building or (iii) a work of artistic craftsmanship. (CDPA s 4)

(v) **‘Film’** means a recording on any medium from which a moving image may by any means be produced. The sound track accompanying a film shall be treated as part of the film for the purposes of this part. (CDPA s 5B)

(vi) **‘Sound Recording’** means a recording of sounds from which the sounds may be reproduced or a recording of the whole or any part of a literary, dramatic or musical work, form which sounds reproducing the work or part may be produced. (CDPA s 5A)
(vii) 'Broadcast' means an electronic transmission of visual images, sounds or other information which (a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them (b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public (other than excluded broadcasts (see the legislation for greater detail). (CDPA s 6)

(viii) The Typographical arrangements of Published Editions and 'Published Edition' means a published edition of the whole or any part of one or more literary, dramatic or musical works. (CDPA s 8)

6. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

- Copyright is not registrable in the UK. It subsists automatically and without registration. No certification of any kind is required to initiate a criminal case. However, reliable evidence of subsistence and ownership is required.

7. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

- Yes, it would usually fall under 1(d)(iv) – distribution. As an example, a defendant was convicted under 107(1)(d)(iv) in R v Lewis [1997] 1 Cr App Rep (S) 208 for distributing copyright computer games online.

8. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

In specific circumstances there are statutes which enable the UK to exercise extra-territorial jurisdiction over an offence, for example:

- Fraud (the 2006 Act imposes extra territorial jurisdiction in respect of offences in subsections 1, 6, 7, 9 and 11 of the Fraud Act 2006) and dishonesty (Criminal Justice Act 1993 Part 1 still applies to the remaining unrepealed sections of the Theft Act 1968); and

- Bribery (The Bribery Act 2010 repeals the common law and the statutory offences of corruption for offences committed wholly on or after 1 July 2011. For those offences the Bribery Act imposes extra-territorial jurisdiction. Section 109 of the Anti-Terrorism and Security Act 2001 still applies to provide extra-territorial jurisdiction in respect of offences committed wholly or partially before 1 July 2011.

In addition, in cross-border cases involving England and Wales and other jurisdictions (including non-EU countries), for courts in England and Wales to have jurisdiction an offence must have a "substantial connection with this jurisdiction". Where a substantial number of the criminal activities take place within England and Wales, the courts of England and Wales have jurisdiction unless it can be argued, on a reasonable view, that the conduct ought to be dealt with by the courts of another country. (R v Smith (Wallace Duncan) (No.4) [2004] 3 WLR 229, per Lord Chief Justice Woolf).
9. Please advise if the criminal procedure in the country affords the accused the option of seeking bail from court as a matter of right or as a matter of the discretion of the court.

- All defendants remanded for a criminal offence have a right to unconditional bail under section 4 of the Bail Act 1976. Section 4(2) of the Bail Act stipulates situations in which a defendant would not have a right to bail.

- The court will consider whether bail is granted at a bail hearing and it may make the bail conditional on a number of things – the authority for these conditions comes from section 3 of the Bail Act 1976.

10. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

- A copyright owner has the right to seize infringing copies of a work found being offered for sale or hire in respect of which the copyright owner would be entitled to apply for an order for delivery up under section 99 CDPA, provided that pre-seizure, the police are notified of the time and place of the proposed seizure and a notice is left at the place from which goods are to be seized (s100 CDPA has more details). No force can be used (s 100(3)).

- Under s114 CDPA, an order may be sought that infringing copies or articles seized under sections 99-100 of the CDPA are destroyed or forfeited to the copyright owner.

11. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence/ proceeds of crime.

- Criminal copyright infringement can help to make up the offence of conspiracy to defraud. (Scott v Metropolitan Police Commissioner [1975] AC 819)

- The court has the power to make a confiscation order under the provisions of the Proceeds of Crime Act 2002 and where this is the case, the order should be considered before any fine is fixed or any further property confiscated.

12. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

- In certain circumstances a person may be extradited to another country to face trial for an offence committed in that country which would have been an offence under UK law if committed in the UK. (Extradition Act 2003 s 64)

13. Please advise if the criminal procedure in the country enables criminal prosecution for copyright infringement – based on private complaint only and/or whether authorized government representatives can also prosecute on the government’s own motion.

- Individuals can bring a private complaint under s 107 for criminal copyright infringement or the police can arrest somebody on behalf of the state for criminal infringement. The person would then be tried against the state.
14. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

- The Police Intellectual Property Crime Unit (PIPCU) is a department of the City of London Police. Its remit is to investigate and deter serious IP crime in the UK. There is an online referral process for IP crimes which meet the PIPCU criteria – see www.cityoflondonpolice.uk/pipcu-make-a-referral. If a referral is accepted PIPCU will commence an investigation.

15. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

- It does not.
16. Please advise if the country/jurisdiction provides for any criminal penalties for a corporation that has been found guilty of copyright infringement.

- A body corporate can be considered guilty under s 107 for criminal copyright infringement. However, the *mens rea* (guilty mind) element of a criminal offence is human and must be identified in one of the officers of the corporate. Penalties will be taken against not only the person who had the *mens rea* but other officers of the body corporate as explained in question 18 below.

17. Are any officers or employees of a corporation liable for the criminal acts of the corporation?

- Where any offence is committed by a body corporate under s 107 of the CDPA, any director, manager, secretary or other such officer of the company or any person purporting to act in any such capacity with whose consent or connivance the offence was committed is himself guilty of the offence. (CDPA s 110(1)).

18. Please advise whether the jurisdiction has a criminal statute of limitations or similar rule applicable to copyright infringement. If so, which is the time limit for the commencement of the legal proceedings?

- No statute of limitations for criminal offences other than summary offences for which the information for the offence must be laid within 6 months (CDPA s 108(2)).
19. What are the minimum and maximum prison terms that are provided for in the jurisdiction’s criminal law.

   Up to 1 year is the minimum sentence and the maximum is 10 years.

20. What are the minimum and maximum prison terms usually awarded by the courts in the jurisdiction for criminal copyright infringement?

   N/A

21. What are the minimum and maximum monetary penalties that are provided for in the jurisdiction’s criminal law?

   A fine of up to $100,000 is the minimum if a monetary penalty is given and no more than $1,000,000 is the maximum.

22. What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?

   N/A

23. Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.

   According to the Department of Justice, initiating a criminal prosecution under Title 17, United States Code, Section 506(a) requires proof that the defendant infringed a valid copyright. The government may prove validity of a copyright by demonstrating that the formal requirements of copyright registration have been fulfilled. While registration of a copyrighted work is not a prerequisite to obtaining copyright protection, it is in most cases a jurisdictional prerequisite to initiate any infringement action, including criminal.

24. Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?

   The Digital Millennium Copyright Act of 1998 (DMCA) is a federal law criminalizing the circumventing of digital rights through technology and software designed to defeat copyright protections. The DMCA provides criminal jurisdiction for copyright infringement that occurs through digital/electrical mediums, the Internet and other technologies.

25. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.
Yes, i.e., the Southern District Court in NY charged Richard O’Dwyer (a UK national), with criminal copyright infringement for a site that was not based in the US or sitting on a US server.

Also, DMCA implements World Intellectual Property Organization (WIPO).

26. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

Pursuant to Title 18, United States Code, Section 981(a)(1)(c) and Title 28 United States Code, Section 2461(c) any property constituting or derived from proceeds obtained directly or indirectly as a result of any conspiracy to commit violations of Title 18, United States Code, Sections 2318, 2319, and 2320, may be confiscated by the government.

Pursuant to Title 18, United States Code, Sections 2323 and 981(a)(1)(c), any property used, or intended to be used, in any manner or part to commit or facilitate the commission of violations of Title 17, United States Code, Section 506(a)(1) and Title 18, United States Code, Section 2319, may be confiscated by the government.

27. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence/ proceeds of crime.

Under Title 18, United States Code, Section 1961, racketeering includes any act which is indictable under any of the following provisions of Title 18, United States Code Section, 2319 (relating to criminal infringement of a copyright) and section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances).

Under Title 18, United States Code, Section 1956 for the laundering of monetary instruments, the term “specified unlawful activity” includes an offense as under Section 2319 (relating to copyright infringement).

28. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

Extradition into the US would depend on a country’s laws, relationship, and treaties with the US – i.e., Richard O’Dwyer, a U.K. citizen extradited to the US for trial for a criminal copyright infringement under the UK-US Extradition Treaty of 2003. Under US law Title 18, United States Code, Section 3184, extradition from the US may be granted only pursuant to a treaty. The US has extradition treaties for criminal crimes with more than 100 countries.

29. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

Yes, there are multiple entities – some examples below:

The Office of International Intellectual Property Enforcement (IPE) - https://www.state.gov/e/eb/cba/ipe/index.htm

30. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

No there is no specialized court or tribunal for criminal prosecution of copyright infringement cases.