



**International Trademark Association**  
*Representing the Trademark Community since 1878*

## **APPENDICES TO**

### **CRIMINAL PROSECUTION OF COUNTERFEITING AND PIRACY IN MEMBER STATES OF THE EUROPEAN UNION**

By the Task Force on Criminal Sanctions Of  
The Anti-Counterfeiting and Enforcement Committee (ACEC)  
European Union Subcommittee Of  
The International Trademark Association (INTA)

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#### **DISCLAIMER:**

This document is provided to facilitate the on-going discussions between INTA and policy makers on harmonization of criminal prosecution of trademark counterfeiting in the European Union. The country information provided in this report was prepared by INTA members or correspondents in each country of interest. For further information or if you have any questions, please contact INTA (Candice Li at [cli@inta.org](mailto:cli@inta.org)). The Report should not be construed as INTA position on any of the issues covered in the Report.

This document consists of appendices to the INTA Report titled “Criminal Prosecution of Counterfeiting and Piracy in Members States of the European Union” (“the Report”). Specifically, it contains translations of relevant provisions of national laws of European Union Member States that are referred to in the Report. The translations are not official certified translations and were prepared by the contributors to the Report that are listed on page 11 of the Report.

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## AUSTRIA

### APPENDIX 1

#### **MschG - Austrian Trademark And Service Mark Law**

##### Section 60 - Punishable (Criminal) Infringements of Signs

- (1) A person who infringes a trade mark in the course of trade shall be punished by the court with a fine of up to 360 daily rates. A person who commits such act on a commercial scale, shall be punished with imprisonment of up to two years.
- (2) Penalties shall also be imposed upon a person who, in a manner apt to cause confusion in the course of trade, makes unauthorized use of a name, a company name or the special designation of an enterprise or a sign resembling these designations for the marking of goods and services according to Section 10a.
- (3) The proprietor or managing director of an enterprise shall be punished if he does not prevent an infringement according to subsection 1 or 2 committed by an employee or agent in the operation of the enterprise.
- (4) If the proprietor of the undertaking according to subsection 3, is a corporation, a co-operative society, an association, or another legal entity other than a natural person, Section 3 shall be applied to the organs, if they have made themselves guilty of such omission.
- (5) The penal provisions specified in subsections 1 and 2 shall not be applicable to employees or agents who have acted by order of their employer or instructing principal, as far as they could not be expected to refuse such action because of their economic dependence.

##### Section 60a

- (1) The offences specified in Section 60 shall only be prosecuted upon request of the injured party.
- (2) The criminal proceedings shall lie with the judge of the first instance court sitting alone.
- (3) For asserting claims according to Section 53, the provisions of XXI main part of the Code of Criminal Procedure 1975, Federal Law Gazette No. 631 shall be applicable. Both parties shall be entitled to appeal against the judgment on the claim for compensation.

## Section 60b

For the criminal proceedings in cases of infringement of trade marks and distinctive signs, Section 52 of this Federal Act (removal) as well as Section 119 subsection 2 (exclusion of the public) and Section 149 (publication of the judgment) of the Patent Act 1970, Federal Law Gazette No. 259, shall apply mutatis mutandis. For criminal proceedings in trade mark infringement cases also Section 57 (preliminary questions) shall apply mutatis mutandis.

## **UrhG – Austrian Copyright Law**

### Section 85 – Publication of Judgment

- (1) If a complaint is lodged requesting forbearance or removal or ascertainment of existence or non-existence of a right of exemption or authorship based on this law (Section 19), the court has, upon request, to award to the winning party, if that party has a legitimate interest thereon, the right to publish the judgment within a certain time frame on the cost of the adverse party. The type of publication has to be defined in the judgment.
- (3) The court of first instance has upon request of the winning party to fix the cost of the publication and to assign the adverse party with their reimbursement.
- (4) The publication on the grounds of a legally valid judgment or another enforceable execution title is to be effected by the media entrepreneur without unnecessary delay.

### Section 86 – Entitlement to appropriate consideration

- (1) Anyone who, without authority:
  - 1 Uses a creation of literature or art in a manner of exploitation reserved according to Sections 14 to 18a to the creator;
  - 2 Records or copies the recitation or the performance of a creation of literature or musical art contrary to Section 66 (1) and (5) on an image or sound carrier or distributes it contrary to Section 66 (1) and (5) or Sec. 69 (2);
  - 3 Broadcasts via radio, reproduces it publicly or provides to the public the recitation or the performance of a creation of literature or musical art contrary to Section 66 (7), Section 69 (2), Sections 70, 71 or 71a;
  - 4 Uses a photograph or a sound carrier in a manner of exploitation reserved according to Sections 74 or 76 to the producer;
  - 5 Uses a radio broadcast transmission in a manner of exploitation reserved according to Section 76a to the broadcasting enterprise; or

- 6 Uses a database in a manner of exploitation reserved according to Section 76d to the producer, has, even without being responsible, to pay to the infringed party, whose consent should have been obtained, an appropriate consideration.

#### Section 90b – Protection of Computer Programs

The owner of a right to exclusion on a computer program based on this law, who helps himself with technical mechanisms to protect this program, has the right to sue for forbearance and removal of the condition contrary to this law if means are brought into circulation or owned for purposes of purchase which are destined exclusively to facilitate the unauthorized removal or bypass of these technical mechanisms. Sections 81, 82 (2) to (6), 85, 87 (1) and (2), 87a (1), 88 (2), 89 and 90 apply.

#### Section 90c – Protection of Technical Measures

- (1) The owner of a right of exclusion based on this law, using effective technical measures to avoid or to restrict a violation of this right has the right to sue for forbearance and removal of the condition contrary to this law:
  - 1 If these measures are avoided by a person which knows or has, according to the circumstances, to know, that he is prosecuting this goal;
  - 2 If means for evasion are produced, imported, distributed, sold, rented and owned for commercial purposes;
  - 3 If it is advertised for the purchase or rent of means for evasion;
  - 4 If it is advertised for purchase or rental services of evasion.

#### Section 90 d – Protection of Marks

- (1) The owner of a right of exclusion based on this law, using marks in the meaning of these designations, has the right to sue for forbearance and removal of the condition contrary to this law:
  - 1 If such marks are removed or changed;
  - 2 If copies of works or other subjects of protection , of or on, respectively, marks were without authority removed or changed, distributed or imported for distribution or used for an emission, for a public reproduction or for a public provision.

#### Section 91 - Infringement

- (1) Anyone who commits an infringement of the kind designated in Section 86 (1), Section 90b, Section 90c (1) or Section 90d (1), shall be punished by the court with imprisonment

of up to six months or with a fine of up to 360 daily rates. The infringement is then not punishable if it is only an unauthorized copying or an unauthorized recording of a speech or a performance each for own personal use or free of charge upon order of a third party for his personal use.

- (1a) *[Suspended]*
- (2) The proprietor or managing director of an enterprise shall be punished, if he does not prevent an infringement (according to subsection 1 or 1a) committed by an employee or agent in the operation of the enterprise.
- (2a) A person who commits a criminal action according to Subsections 1, 1a or 2 on a commercial basis, is to be punished with imprisonment of up to 2 years.
- (3) The offender is to be prosecuted only upon request of the person violated in his/her rights.
- (4) Section 85 (1), (3) and (4) on the publication of the judgment applies.
- (5) The criminal proceeding is incumbent upon the single judge of the court of first instance.

### **MuSchG – Austrian Design Law**

#### Section 35 –Design Law Criminal Provisions

- (1) A person who infringes a design law shall be punished by the court with a fine up to 360 daily rates. A person who commits such an act on a commercial scale shall be punished with imprisonment of up to two years.
- (2) Likewise shall be punished a person who as proprietor or managing director of an enterprise does not prevent an infringement of this kind (subsection 1 or 1a) committed by an employee or agent in the operation of the enterprise.
- (3) If the proprietor of the undertaking according to Section 2 is a corporation, a co-operative society, an association, or another legal entity other than a natural person, Section 2 shall be applied to the organs, if they have made themselves guilty of such omission.
- (4) The penal provisions specified in Section 1 shall not be applicable to employees or agents who have acted by order of their employer or instructing principal, as far as they could not be expected to refuse such action because of their economic dependence.
- (5) The prosecution takes place only upon request of the injured party.
- (6) For the criminal proceedings, Sections 148, 149 and 160 of the Patent Law 1970 apply.

## BELGIUM

### APPENDIX 2

**Act of 15 May 2007 concerning the punishment of counterfeiting and piracy of intellectual property rights, published in the Belgian State Gazette of 18 July 2007 and in force as of 1 October 2007**

Chapter III – Sanctions in relation to infringements of certain intellectual property rights

Section 1 – Criminal Provisions

Article 8

§ 1 Is punishable with imprisonment of 3 months to 3 years and a fine of 100 to 100.000 euro or only one of these penalties, he who, in the course of trade, maliciously or fraudulently infringes the rights of the holder of a trade mark (...), as these rights are defined in:

1) in relation to trade marks:

- (a) article 2.20, first paragraph, a., b., and c., of the Benelux Convention on Intellectual Property of 25 February 2005, ratified by the Act of 22 march 2006;
- (b) article 9 of the Regulation (EC) n° 40/94 of 20 December 1993 of the Council of the European Communities concerning the Community trade mark;

(...)

§ 2 Paragraph 1 of this article is not applicable to, *inter alia*:

1) in relation to trade marks:

- (a) the acts as defined in article 2.23 of the Benelux Convention on Intellectual Property of 25 February 2005, ratified by the Act of 22 march 2006;
- (b) the acts as defined in articles 12 and 13 of Regulation (EC) n° 40/94 of 20 December 1993 of the Council of the European Communities concerning the Community trade mark;”

(...)



**Benelux Convention on Intellectual Property of 25 February 2005, ratified by the Act of 22 march 2006 and into force as of 1 February 2007**

Chapter 5 - Rights of the proprietor

Article 2.20 – Scope of protection

(1) The registered trade mark shall confer on the proprietor exclusive rights therein. Notwithstanding the possible application of common torts law, the proprietor shall be entitled, based on its exclusive right, to prevent all third parties not having his consent from using any sign:

- a) when this sign is identical with the trade mark, and when it is used, in the course of trade, in relation to goods or services which are identical with those for which the trade mark is registered.
- b) when this sign is identical with or similar to the trade mark, and when it is used, in the course of trade, in relation to identical or similar goods or services, and in case there exists a likelihood of confusion on the part of the public as a consequence thereof; the likelihood of confusion includes the likelihood of association between the sign and the trade mark.
- c) when this sign is identical with or similar to the trade mark, and when it is used, in the course of trade, in relation to goods or services which are not similar to those for which the trade mark is registered, where this trade mark has a reputation in the Benelux territory, and where use of this sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.

(...)

(2) In the light of paragraph 1, the use of a trade mark or a similar sign means, *inter alia*:

- a) affixing the sign to the goods or to the packaging thereof;
- b) offering the goods, putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder;
- c) importing or exporting the goods under that sign;
- d) using the sign on business papers and in advertising.

(...)

**Act of 30 June 1994 concerning copyrights and neighboring rights, published in the Belgian State Gazette of 27 July 1994 and in force as of 1 August 1994**

Chapter VIII – General Provisions

Section 2 – Criminal Provisions

Article 80

Any person who maliciously or fraudulently infringes copyrights and neighboring rights is guilty of the offense of piracy.

The same shall apply to malicious or fraudulent use of the name of an author or of a holder of a neighboring right, or of any distinctive sign adopted by such person to designate his work or his performance. Such goods shall be deemed pirated.

Any person who knowingly sells, hires, places on sale or on hire, holds in storage for hire or for sale or who introduces onto the Belgian territory with a commercial intent such pirated goods shall be guilty of the same offense.

(...)

Article 81

The offenses referred to in article (...) 80 are punished with an imprisonment of three months to three years and with a fine of 100 to 100,000 euro, or only one of these penalties.

## CYPRUS

### APPENDIX 3

#### **Right of Intellectual Property Law of 1976 to 2006, Law No. 59/1976**

##### Section 14(a)(1)

The circulation, sale, distribution of any sound recording of any cinematic film or computer program is permitted only if it has placed on it by the creator or his authorized representative in a visible location a special label determined by the Minister and that this sticker states that the sale or distribution of this cinematic film or computer program does not constitute an infringement of the intellectual property of the creator.

##### Section 14(a)(2)

Anyone who acts in breach of this Article commits a criminal act and if convicted faces a fine which will not exceed 1,500 Cyprus Pounds for every infringing copy or imprisonment not exceeding 2 years, or both such criminal penalties and where a second or any later conviction, to a fine not exceeding 2,000 Cyprus Pounds or imprisonment not exceeding 3 years or both such criminal penalties.

#### **Right of Intellectual Property Law of 1976 to 2006, Law 128(I)/2002**

##### Section 14

- (1) Anyone who knowingly:
- a) Produces for sale any copy which infringes Intellectual Property rights in any work or related right protected by this Law; or
  - b) Sell or advertise for sale or display commercially or offer for sale any such copy; or
  - c) Obtains possession or distributes such copies either with the intention to trade in such goods or to such an extent to damage the interests of the IP owner; or
  - d) Display commercially and publicly any such copy; or
  - e) Export from or import to the Republic of Cyprus for sale any such copy

commits a crime and if convicted faces a fine not exceeding 30,000 Cyprus Pounds or imprisonment not exceeding 3 years or both such criminal penalties and where a second or any later conviction, to a fine not exceeding 35,000 Cyprus Pounds or imprisonment not exceeding 4 years or both such criminal penalties.

- (2) Anyone who knowingly manufactures or have in their possession any reproductive equipment to manufacture copies which infringe Intellectual Property rights of any work commits a crime and if convicted faces a fine not exceeding 30,000 Cyprus Pounds or imprisonment not exceeding 3 years or both such criminal penalties and where a second or any later conviction, to a fine not exceeding 35,000 Cyprus Pounds or imprisonment not exceeding 4 years or both such criminal penalties.
- (3) Anyone who knowingly acts or allows the public display or presentation of a scientific, literary, artistic or musical work or film which infringes any Intellectual Property rights in such a work commits a crime and if convicted faces a fine not exceeding 30,000 Cyprus Pounds or imprisonment not exceeding 3 years or both such criminal penalties and where a second or any later conviction, to a fine not exceeding 35,000 Cyprus Pounds or imprisonment not exceeding 4 years or both such criminal penalties.
- (4) In relation to any procedure in relation to crimes in breach of this Law the term “creator” shall include any person who recreates with the creator’s or his authorized representative’s permission.
- (5) The Court which shall hear any such criminal procedure can, independently to whether the infringer is convicted or not, order all copies of a work or all reproduction plates in the infringer’s possession, which, in the Court’s discretion, amount to copies which infringe the current Intellectual Property rights in that work, or plates whose purpose is the creation of copies which infringe such Intellectual Property rights, to be destroyed or delivered up to the Intellectual Property owner or any other action that the Court deems appropriate.
- (6) For the purposes of the existing Article, “Court” includes the President of the District Court or Senior District Court Judge or District Judge who, despite the provisions of any other law, has the jurisdiction under this Law to hear any crime under this Article and impose the criminal penalties provided by this Article.

#### Section 14A (1)

- (1) Notwithstanding the provisions of Art.14 of this Law, anyone who knowingly:
  - a) circulates a copy of a computer program knowing or having reason to believe that it is unauthorized
  - b) distributes possesses for commercial purposes a copy of a computer program knowing or having reason to believe that it is unauthorized
  - c) distributes or possesses for commercial purposes with the sole purpose to facilitate the unauthorized removal or destruction of any type of technical system used to protect any computer program

Commits a crime and if convicted is subject to the criminal penalties stated in Art 14(1) above.

Section 14A(2)

Every unauthorized copy of a computer program and every circumvention method described in (1)(c) above will be confiscated in accordance with these provisions.

**Right of Intellectual Property Law of 1976 to 2006, Law 133(I)/2006**

Section 9

(1) Any person who:

- a) Attempts to clear (customs excise clearance) goods for free circulation for export or re-export in accordance with the EU Customs Code
- b) Imports or exports from the customs jurisdiction of the Republic of Cyprus
- c) Defer payment of customs excise duties
- d) Re-exports
- e) Places in free zones or bonded warehouse

goods which infringe IP rights is guilty of a crime.

- (2) (a) A person who knowingly commits any crime under (1) above and if convicted faces a fine not exceeding 3,000 Cyprus Pounds or imprisonment not exceeding 3 years or both such criminal penalties and where a second or any later conviction, to a fine not exceeding 5,000 Cyprus Pounds or imprisonment not exceeding 5 years or both such criminal penalties.
- (2) (b) A person who commits any of the acts in (1) above, without knowing that the goods infringe IP rights is guilty of crime punishable by a fine of up to 1,000 Cyprus Pounds.
- (3) In accordance with the provisions in this Law goods which are covered by the circumstances described in (1) above are subject to confiscation in accordance with the applicable Customs Code Law.
- (4) The court which hears any of the criminal acts under this Law can, irrespective of whether the infringer is actually convicted or not, order all goods infringing IP rights, to be destroyed or any other action that the Court deems appropriate and to decide on any costs which may arise.

## Section 12

Any person who obtains possession or in any way contributes to the transportation, storage or concealment of any goods or trades in any goods which infringe IP rights and knowingly believes such goods infringe IP rights is guilty of a crime and if convicted faces a fine not exceeding 3,000 Cyprus Pounds or imprisonment not exceeding 3 years or both such criminal penalties.

## DENMARK

### APPENDIX 4

#### **Danish Trademark Act, Consolidated Act No. 90 of 28 January 2009**

##### Section 42

- (1) Anyone who with intent or by gross negligence infringes a trademark right established by registration or use shall be punished by fine.
- (2) Where an intentional infringement has been committed under aggravating circumstances, including in particular if the purpose of the violation is a significant and obviously unlawful profit, the punishment may increase to imprisonment for a term not exceeding 1 year and 6 months, unless a longer term is prescribed under Section 299b of the Penal Code.
- (3) Companies (legal persons) may be subject to criminal liability in accordance with the rules set down in Chapter 5 of the Penal Code.
- (4) Proceedings in respect of violations comprised by subsection 1, shall be instituted by the injured party. Proceedings in respect of violations comprised by subsection 2, shall be instituted by the State at the request of the injured party, unless general interest objectives require the State to institute proceedings.

#### **Danish Copyright Act, Consolidated Act no. 587 of 20 June 2008**

##### Section 76:

- (1) Anyone who with intent or by gross negligence
  - a) Violates Section 2 or Section 3;<sup>1</sup>
  - b) Violates Sections 65, 66, 67, 69, 70 or 71;<sup>2</sup>
  - c) Violates Section 11(2), Section 60 or Sections 72-75;<sup>3</sup>
  - d) Fails to file a statement according to Section 38(6);<sup>4</sup>

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<sup>1</sup> Section 2 provides for the author's exclusive right to control the work by reproduction and making it available to the public. Section 3 provides for the author's "droit moral."

<sup>2</sup> Sections 65-67 and 69-71 provide for the rights of performing artists, of producers of sound recordings, of producers of recordings of moving pictures, of broadcasters, of producers of photographic pictures and of products of catalogues.

<sup>3</sup> Section 11(2) relates to unnecessary alterations. Section 60 relates to commissioned portraits. Sections 72-75 relate to press releases, protection of titles, signing of works of art, moral rights after the expiration of copyright.

- e) Fails to register or fails to disclose information to the joint organization according to Section 41(1) and the first sentence of Section 46, or fails to keep and hold accounts according to Section 45;<sup>5</sup> or
  - f) Violates regulations laid down pursuant to Section 61(2) is liable to a fine.<sup>6</sup>
- (2) Where an intentional violation of the provisions mentioned in subsection (1)(a) and (b) has been committed by production for commercial purposes or by distribution for commercial purposes among the general public of copies of works or performances or productions that are protected under said provisions, the punishment may under aggravating circumstances be increased to imprisonment for a term not exceeding 1 year and 6 months, unless a longer term is prescribed under Section 299b of the Penal Code.

Aggravating circumstances are deemed to exist especially where the offence concerns a considerable number of copies, or where the works and performances are copied in such a way, that the general public acquires access to them at an individually chosen place and time (*see* Section 2, subsection 4(a), second sentence).

#### Section 77

- (1) Where copies of works or of performances or productions that are protected under Sections 65-71<sup>7</sup> have been produced outside Denmark under such circumstances that a similar production in Denmark would have been in conflict with the law, anyone who with intent or by gross negligence imports such copies with a view to making them available to the public shall be liable of a fine.
- (2) The provision of Section 76(2) shall apply correspondingly to intentional violations of the provision of sub-Section (1).

#### Section 80

Companies (legal persons) may be liable to punishment under the provisions of Chapter 5 of the Penal Code.

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<sup>4</sup> Section 38(6) relates to seller's or agent's obligation regarding statements in relation to remuneration for commercial resale of works of art to Copydan (the official Danish organization for collection of remuneration for copyrighted works).

<sup>5</sup> Sections 41(1), 46, and 45 provide various additional obligations in relation to levy on blank CDs, DVDs, etc. and in relation to reporting on the production and import of such medias.

<sup>6</sup> Section 61(2) relates to author's directions on inheritance of copyright.

<sup>7</sup> See above footnote 2.



**Danish Penal Code, Consolidated Act no. 1068 of 6 November 2008 as amended by Act no. 1404 of 27 December 2008, Act no. 319 of 28 April 2009 and Act no. 501 of 12 June 2009**

*Chapter 4: Attempt and Complicity*

Section 21

- (1) Acts which aim at the promotion or accomplishment of an offence shall be punished as an attempt when the offence is not completed.
- (2) The punishment prescribed for the offence may be reduced in the case of attempt, particularly where the attempt gives evidence of little strength or persistence in the criminal intention.
- (3) Unless otherwise provided, an attempt shall only be punishable when a penalty exceeding imprisonment for 4 months can be imposed for the offence.

*Chapter 5: Criminal Liability for Legal Persons*

Section 25

A legal person may be punished by a fine, if such punishment is authorized by law or by rules pursuant thereto.

Section 26

- (1) Unless otherwise stated, provisions on criminal liability for legal persons, apply to any legal person, including joint-stock companies, co-operative societies, partnerships, associations, foundations, estates, municipalities and state authorities.
- (2) Furthermore, such provisions apply to a one-person businesses if, considering their size and organization, these are comparable to the companies referred to in subsection (1) above.

Section 27

- (1) Criminal liability of a legal person is conditional upon a transgression having been committed within the establishment of this person at the fault of one or more persons connected to this legal person or at the fault of the legal person himself. As for punishment for attempt, Section 21(3) similarly applies.
- (2) Agencies of the state and of municipalities may only be punished for acts committed in the course of the performance of functions comparable to functions exercised by natural legal persons.

*Chapter 28: Property Offences*

Section 299b

Any person who, for the purpose of obtaining for himself or others an unlawful gain, or who otherwise under particularly aggravating circumstances commits the following infringements shall be liable to imprisonment for any term not exceeding six years:

1. Copyright infringements of a particularly serious nature, *see* Section 76(2) of the Copyright Act, *cf.* Section 77(2)
2. Trademark infringement of a particularly serious nature, *see* Section 42(2) of the Trade marks Act,
3. Design infringement of a particularly serious nature, *see* Section 36(2) of the Designs Act,
4. Patent infringement of a particularly serious nature, *see* Section 57(2) of the Patents Act,
5. Utility model infringement of a particularly serious nature, *see* Section 54(2) of the Utility Models Act, or
6. Infringement of the Radio and Television Broadcasting Act of a particularly serious nature, *cf.* Section 91 of the Radio and Television Broadcasting Act, *cf.* Section 94(2).

## ESTONIA

### APPENDIX 5

#### Chapter 14 of the Criminal Code

##### Section 219: Violation of authorship

A person who discloses a work, performance of a work, an invention, industrial design or a layout-design of an integrated circuit of another in his or her own name shall be punished by a pecuniary punishment or up to 3 years' imprisonment.

##### Section 222: Manufacture of pirated copy

- (1) Reproduction, with the intention of distribution, of a work or an object of copyright without the permission of the author of the work, the holder of the copyright or the holder of the related rights is punishable by a pecuniary punishment or up to 3 years' imprisonment.
- (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.
- (3) The court shall confiscate the object which was the direct object of commission of an offence provided for in this Section.

##### Section 222<sup>1</sup>: Possession of unlawfully reproduced computer programs

- (1) Unlawful physical use or possession of a computer program for commercial purposes is punishable by a pecuniary punishment or up to 3 years' imprisonment.
- (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.
- (3) The court shall confiscate the object which was the direct object of commission of an offence provided for in this Section.

##### Section 223: Unlawful direction of works or objects of related rights towards public

- (1) Unlawful public performance, showing, transmission, re-transmission or making available to the public or a work or an object of related rights for commercial purposes is punishable by a pecuniary punishment or up to one year of imprisonment.
- (2) The same act, if performed by using a pirated copy, is punishable by a pecuniary punishment or up to 3 years' imprisonment.
- (3) An act provided for in subsection (1) or (2) of this Section, if committed by a legal person, is punishable by a pecuniary punishment.

- (4) The court shall confiscate the object which was the direct object of the offence provided for in subsection (2) of this Section.

Section 224: Trade in pirated copies

- (1) Trade in pirated copies, if a punishment for a misdemeanor has been imposed on the offender for the same act, is punishable by a pecuniary punishment or up to 3 years' imprisonment.
- (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.
- (3) The court shall confiscate the object which was the direct object of commission of an offence provided for in this Section.

Section 225: Removal of technical means of protection preventing violation of copyright and related rights

- (1) Unlawful removal of a of technical means of protection preventing violation of copyright and related rights, or manufacture, transfer or possession, or advertising for commercial purposes of a device or equipment intended for removal of such means of protection is punishable by a pecuniary punishment or up to 3 years' imprisonment.
- (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.
- (3) The court shall confiscate the object which was the direct object of commission of an offence provided for in this Section.

Section 226: Violation of exclusive rights of owner of patent, utility model, trade mark, industrial design or layout-design of integrated circuit

- (1) Knowing violation of the exclusive rights of the owner of a patent, utility model, trade mark, industrial design or a layout-design of an integrated circuit is punishable by a pecuniary punishment or up to 3 years' imprisonment.
- (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.
- (3) The court shall confiscate the object which was the direct object of commission of an offence provided for in this Section.

Section 227: Trade in counterfeit goods

- (1) Trade in counterfeit goods is punishable by a pecuniary punishment or up to 3 years imprisonment. (24.01.2007 entered into force 15.03.2007 - RT I 2007, 13, 69)
- (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

- (3) The court shall confiscate the object which was the direct object of commission of an offence provided for in this Section.

Section 228: Disclosure of invention or industrial design

Disclosure of an invention or an industrial design without the permission of the person holding the right to the patent, utility model or industrial design, before the invention or industrial design has been disclosed or published by such person pursuant to the procedure prescribed by law, is punishable by a pecuniary punishment or up to one year of imprisonment.

Section 229: Violation of rights arising from plant variety right

- (1) Illegal appropriation of rights belonging to the breeder or owner of a protected variety, or use of a protected variety without a license issued by the owner, is punishable by a pecuniary punishment or up to 3 years' imprisonment.
- 2) The court shall confiscate the substance or object which was the direct object of commission of an offence provided for in this Section.

Section 230: Unlawful use of registered geographical indications

- (1) Unlawful use of a registered geographical indication is punishable by a pecuniary punishment or up to one year of imprisonment.
- 2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.
- 3) The court shall confiscate the substance or object which was the direct object of commission of an offence provided for in this Section.

**Misdemeanors - Criminal Code, Chapter 14, Offences Against Intellectual Property**

Section 225<sup>1</sup>: Illegal receipt of information society services and broadcasting

- (1) Manufacture for commercial purposes, transfer, installation, maintenance, possession or advertising of equipment or software enabling illegal access to fee-charging information society services or pay-TV or pay-radio programs or broadcasts, or services enabling access to such services, programs and broadcasts is punishable by a fine of up to 300 fine units.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

## **Copyright Act, Chapter 10<sup>1</sup> – Responsibility**

### Section 81<sup>2</sup>: Removal or alteration of information on exercise of rights

- (1) Removal or alteration of electronic information on the exercise of the rights of authors or holders of related rights; and distribution, communication, communication to the public or making available to the public of works, objects of related rights or databases from which information concerning the exercise of rights has been removed without authorization or the information has been altered, is punishable by a fine of 300 fine units.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 500 000 kroons.

### Section 81<sup>3</sup>: Violation of personal right of author or performer

- (1) Violation of author's or performer's personal rights, is punishable by a fine up to 300 fine units.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 500 000 kroons.

### Section 81<sup>4</sup>: Violation of economic rights of author or the holder of related rights

- (1) Violation of author's or the holder of the related rights economic rights, is punishable by a fine up to 300 fine units.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 500 000 kroons.

### Section 81<sup>5</sup>: Avoiding payment of a fees described by the Copyright Act

- (1) Not paying the fee in the case of a sale of the original copy of the visual art work, also in the case of manufacturing, importing, selling or bringing from European Union country into Estonia an audiovisual or sound recording device or blank recording media intended for personal use by a person who is obliged to pay such fee, is punishable by a fine up to 300 fine units.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 500 000 kroons.

## **Customs Act, Chapter 9, Liability for Violation of Customs Rules**

### Section 73: Illegal conveyance of goods to Estonia or out of Estonia

- (1) A person who, while carrying goods to be declared from a third country to Estonia or from Estonia to a third country, evades customs control, fails to declare the goods, declares the goods under an incorrect tariff classification or description, or behaves in any other fraudulent manner shall be punished by a fine of up to 300 fine units.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

Section 74: Illegal acts with goods subject to prohibitions and restrictions upon movement thereof between Estonia and third countries

- (1) The conveyance of goods which are subject to prohibitions and restrictions without a mandatory document or register entry, from a third country to Estonia or from Estonia to a third country, the carriage of forbidden goods from a third country to Estonia or from Estonia to a third country, or the declaration of such goods for customs-approved treatment or use is punishable by a fine of up to 300 fine units or by detention.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

Section 75: Illegal acts with goods subject to prohibitions and restrictions upon movement thereof between Member States

- (1) The conveyance of goods which are subject to prohibitions and restrictions without a mandatory document or a register entry, or the carriage of forbidden goods from a Member State of the European Union to Estonia or from Estonia to a Member State of the European Union, where the customs authorities exercise state supervision of compliance with such prohibitions and restrictions, is punishable by a fine of up to 300 fine units or by detention.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

Section 76: Illegal acts with goods located in Estonia

- (1) Illegal acts or operations performed with goods brought into Estonia from a third country with customs preferences or goods under customs supervision are punishable by a fine of up to 300 fine units or by detention.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

## FINLAND

### APPENDIX 6

#### Penal Code of Finland

##### Chapter 49, Section 1

A person who for profit and in violation of the Copyright Act (404/1961) and in a manner conducive to causing considerable inconvenience or damage to the person holding a right, breaches the right of another to

1. literary or artistic work;
2. the performance of a literary or artistic work;
3. record or other device where sound has been recorded;
4. film or other device where moving images have been recorded;
5. television or radio broadcast;
6. register, table, program or another similar work referred to in the Copyright Act and containing the compilation of a lot of information, or a database whose compilation, verification or presentation has required a lot of effort; or (251/1998)
7. photograph shall be sentenced for a copyright offence to a fine or to imprisonment for at most two years.

A person shall also be sentenced for a copyright offence if he/she for profit and in a manner conducive to causing considerable inconvenience or damage to the person holding a right, imports for the purpose of dissemination a sample or a copy of a work or photograph, a record, film or other device or a register, table, program or another similar work containing the compilation of a lot of information, or a database whose compilation, verification or presentation has required a lot of effort, as referred to in paragraph (1), while knowing that it has been produced or copied in circumstances under which said production or copying would in Finland be punishable under paragraph (1) or Section 56a of the Copyright Act. (251/1998).

##### Chapter 49, Section 2

A person who in violation of the Trademark Act (7/1964), the Patents Act (550/1967), the Registered Designs Act (221/1971), the Act on the Protection of Semiconductor Topographies (32/1991), the Utility Models Act (800/1991) or the Plant Variety Rights Act (789/1992) and in a manner conducive to causing considerable financial loss to a person holding a right, breaches the right to a trademark, the exclusive right conferred by a patent, the right to a registered design, the right to a semiconductor topography, the right to a utility model, or a plant variety right shall be sentenced for an *intellectual property offence* to a fine or to imprisonment for at most two years.



## **Copyright Act of Finland**

### Chapter 7, Section 56a

A person who:

1. willfully or through gross negligence manufactures a piece of a work or brings a work into public against the provisions of this Act or violates the moral rights stipulated in Article 3.
2. otherwise violates a provision laid down in this Act for the protection of copyright or acts in breach of a direction issued under the section paragraph of Article 41, of a provision of Article 51 or 52 or of a prohibition referred to in the first paragraph of Article 53 or Article 54b;
3. importing into the country or importing into the Finnish territory to be forwarded to a third country pieces of work, which he knows or has a grounded reason to doubt that have been manufactured abroad in such circumstances that such manufacturing is punishable according to this Act.

shall, unless the act is punishable as a copyright offense under Article 1 of Chapter 49 of the Criminal Code, be sentenced to a fine for copyright violation. (1024/1995).

## **The Trademarks Act of Finland**

### Chapter 7 Section 39

Anyone who deliberately infringes the right to a trade symbol protected by this Act shall, unless the act is punishable as an industrial property rights offence under Section 2 of chapter 49 of the Penal Code, be sentenced to a fine for a violation of trademark rights.

## FRANCE

### APPENDIX 7

#### **French Intellectual Property Code**

##### Article L716-9

Any person, who, for the purpose of selling, supplying, offering for sale or lending goods under an infringing mark:

- a) Imports, under any customs regime, exports, re-exports or transships goods presented under an infringing mark;
- b) Reproduces industrially goods presented under an infringing mark;
- c) Gives instructions or orders to commit the acts provided for at (a) and (b) shall be liable to a four-year imprisonment and a fine of € 400.000.

Where the offences provided for under this article have been committed by an organized criminal group, the penalties will be increased to a five-year imprisonment and a fine of € 500.000.

##### Article L716-10

A person who:

- a) holds without legitimate reason, imports under all customs procedures or exports goods presented under an infringing mark;
- b) offers for sale or sells goods presented under an infringing mark;
- c) reproduces, imitates, uses, affixes, removes, modifies a mark, a collective mark or a collective mark of certification in violation of the rights conferred by its registration and of prohibitions which rise from this;
- d) delivers knowingly a product or provides a service other than that which is required of him under a registered mark shall be liable to a three-year imprisonment and a fine of € 300.000.

The infringement, under the conditions provided for at (d), shall not be considered constituted if a pharmacist exercises the faculty of substitution provided for under Article L. 5125-23 of the Public Health Code.

Where the offences provided for at (a) to (b) have been committed by an organized criminal group, the penalties shall be increased to a five-year imprisonment and a fine of € 500.000.

#### Article L716-11

Any person who:

- a) Has knowingly made any use whatsoever of a registered collective certification mark in a manner other than that laid down in the regulations accompanying the registration;
- b) Has knowingly sold or offered for sale a product bearing a collective certification mark employed in an irregular manner;
- c) Within a period of 10 years as from the date on which protection of a collective certification mark that has been used has terminated, has knowingly used a mark that constitutes a reproduction or imitation of such mark or sold or offered for sale, furnished or offered to furnish goods or services under such mark,

shall be liable to the same penalties.

#### Article L716-11-1

In addition to the sanctions provided for in Articles L716-9 and L716-10, the court may order the total or partial, permanent or temporary closure, for a period not exceeding five years, of the establishment that has served for the commission of the offense.

Temporary closure may not be a cause of either the termination or the suspension of employment contracts or of any monetary consequence prejudicial to the employees concerned.

#### Article L335-2

Any edition of writings, musical compositions, drawings, paintings or other printed or engraved production made in whole or in part regardless of the laws and regulations governing the ownership of authors shall constitute an infringement. Any infringement shall constitute an offence.

Infringement in France of works published in France or abroad shall be liable to a three-year imprisonment and a fine of € 300.000.

The sale, exportation and importation of infringing works shall be subject to the same penalties.

Where offences provided for by this Article are committed by an organized criminal group, the penalties will be increased to five-year imprisonment and a fine of € 500.000.

## **Customs Code**

### Article 38

For the implementation of this Code, are considered as prohibited, all goods which importation or exportation is prohibited on any grounds, or subject to restrictions, rules or quality of packaging or formalities.

### Article 215

Those who possess or transport any counterfeited dangerous goods for health, safety or morals, must, at the first requisitioning of customs officials, produce receipts showing that they were legally imported into the customs territory of the European Community, or purchase invoices, manufacturing vouchers or other evidence of origin from people or companies regularly established within the territory of the European Community.

### Article 414

The sentence of imprisonment is increased to a maximum of ten years and a fine up to five times the value of the illegal goods either when the facts of smuggling, import or export concern dangerous goods for health, morals or public security, which list is set by order of the Minister responsible for customs, or when committed by an organized gang.

## GERMANY

### APPENDIX 8

#### **MarkenG - Provisions Concerning Fines and Penalties; Seizure During Importation and Exportation**

##### Division 1 - Provisions Concerning Fines and Penalties

##### Article 143 - Punishable Infringement of Signs

- (1) Any person who, in the course of trade, unlawfully:
  - (1) uses a sign in contravention of Article 14, Subsection 2, No. 1 or 2,
  - (2) uses a sign with the intention of taking advantage of or impairing the distinctive character or the repute of a trade mark which has a reputation in contravention of Article 14, Subsection. 2, No. 3,
  - (3) affixes a sign in contravention of Article 14, Subsection. 4, No. 1, or unlawfully offers, puts on the market, stocks, imports or exports a get-up or packaging or a means of marking in contravention of Article 14, Subsection 4, No. 2 or 3, insofar as third parties would be prohibited from using the sign.
    - (a) pursuant to Article 14 Subsection 4, No. 1 or 2, or
    - (b) pursuant to Article 14, Subsection 2, No. 3, and the act is committed with the intention of allowing the distinctive character or the repute of a trade mark which has a reputation to be taken advantage of or to be impaired,
  - (4) uses a designation or a sign in contravention of Article 15, Subsection 2, or
  - (5) uses a sign with the intention of taking advantage of or impairing the distinctive character or the repute of a trade designation which has a reputation in contravention of Article 15, Subsection 3, shall be sentenced to imprisonment for up to three years or to a fine.
- (2) If the offender acts on a commercial basis, he shall be sentenced to imprisonment for up to five years or to a fine.
- (3) The attempt is punishable.
- (4) in the cases referred to in subsection 1, the offence shall only be prosecuted upon request, unless the public prosecution authority considers an intervention ex officio as imperative because of particular public interest in the prosecution of the criminal offence.
- (5) Objects to which the criminal offence relates may be confiscated. article 74a of the penalty code (stgb) shall be applied. as far as the claims to destruction specified in article 18 are granted in a procedure according the provisions of the code of criminal procedure

on the indemnification of the injured party (Articles 403 to 406 c of the code of criminal procedure) the provisions concerning confiscation shall not be applied.

- (6) If a penal sentence is passed, it shall be ordered that the sentence be published on demand if the injured party so requests and can show a legitimate interest therein. the mode of publication shall be determined in the judgement.

#### Article 143a - Punishable use of a Community trade mark

- (1) Any person who, in the course of trade, infringes the trade mark owner's rights in a community trade mark according to art. 9 of the council regulation (ec) no 40/94 of 20 December 1993 on the community trade mark (abl. eg 1994 nr. 1 11 s.1) by using against the prohibition and without the trade mark owner's consent:

- (1) Any sign which is identical with the Community trade mark in relation to goods or services which are identical with those for which the trade mark is protected;
- (2) Any sign where, because of its identity with, or similarity to, the Community trade mark and the identity or similarity of the goods or services covered by the Community trade mark and the sign, there exists a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the trade mark; or
- (3) Any sign which is identical with or similar to the Community trade mark in relation to goods or services which are not similar to those for which the Community trade mark is protected; where the Community trade mark has a reputation in the Community and where the use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of such Community trade mark.

Shall be punished by imprisonment of up to three years or by a fine.

- (2) Section 143 (2) through (6) shall apply mutatis mutandum.

#### Article 144 - Punishable use of an indication of geographical origin

- (1) Any person who, in the course of trade, unlawfully uses an indication of geographical origin, a name, an indication or a sign:

- (1) Contrary to Section 127(1) or (2), also in conjunction with subsection (4) or a statutory order under Section 137(1), respectively; or
- (2) Contrary to Section 127(3), also in conjunction with subsection (4) or a statutory order under Section 137(1) with the intention of taking advantage of or of impairing the reputation or the distinctive character of an indication of geographical origin,

Shall be punished by imprisonment of up to two years or by a fine.

- (2) Any person shall be punished in the same way who, contrary to article 13 (1) lit. a or lit. b of the council regulation (ec) no 510/2006 of 20 march 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, in the course of trade:
  - (1) Uses a registered name in respect of goods mentioned there, respectively; or
  - (2) Misappropriates a registered name or copies it.
- (3) The attempt to commit such an offense shall be punishable.
- (4) in the case of conviction, the court shall order that the unlawful marking of the objects which are in the possession of the convicted person be removed or, if this is not possible, that the objects be destroyed.
- (5) if a sentence is awarded, its publication shall be ordered if this is necessary in the public interest. the scope and nature of the publication shall be determined in the judgment.

#### Article 145 - Provisions Governing Fines

- (1) An administrative offense shall be deemed to be committed by any person who, in the course of trade, uses for marking goods or services, in identical or counterfeit form,
  - (1) armorial bearings, flags or other emblems of a State or the armorial bearings of a locality or an association of communities or an association of other communal entities within the country within the meaning of Section 8(2), No. 6;
  - (2) official signs and hallmarks within the meaning of Section 8(2), No. 7; or
  - (3) other signs, seals or designations within the meaning of Section 8(2), No. 8.
- (2) An administrative offense shall be deemed to be committed by any person who, willfully or negligently,
  - (1) contrary to Section 134(3), also in conjunction with subsection (4),
    - (a) does not permit the entering or inspection of business premises and real properties, sales outlets or means of transport;
    - (b) does not display the agricultural products or foodstuffs to be inspected so as to make it possible for the inspection to be carried out in due form;
    - (c) fails to provide the necessary assistance in the case of inspections;

- (d) does not permit the taking of samples;
  - (e) does not submit business records or does not submit them in full or does not permit their examination; or
  - (f) fails to supply information or does not supply it correctly or fully; or
- (2) contravenes an ordinance issued under Section 139(1) provided it refers to this provision governing fines in connection with a specific offense.
- (3) The administrative offense may be punished by a fine of up to euro 2,500.00 in the cases referred to in subsection (1), and by a fine of up to euro 10,000.00 in the cases referred to in subsection (2).
- (4) In the cases referred to in subsection (1), section 144(4) shall apply mutatis mutandis.

### **Copyrights (Urheberrechtsgesetz)**

#### *Criminal Law Provisions*

#### Article 106: Unauthorized Exploitation of Copyrighted Works

1. Any person who, other than in a manner allowed by law and without the right holder's consent, reproduces, distributes or publicly communicates a work or an adaptation or transformation of a work shall be liable to imprisonment for up to three years or a fine.
2. the attempt to commit such an offence shall be punishable.

#### Article 107: Unlawful Affixing of Designation of Author

1. Any person who:
  - (1) Without the author's consent, affixes a designation of author (Article 10(1)) to the original of a work of fine art or distributes an original bearing such designation;
  - (2) Affixes a designation of author (Article 10(1)) on a copy, adaptation or transformation of a work of fine art in such manner as to give to the copy, adaptation or transformation the appearance of an original or distributes a copy, adaptation or transformation bearing such designation, shall be liable to imprisonment for up to three years or a fine if the offence does not carry a more severe penalty under other provisions.
2. The attempt to commit such an offence shall be punishable.



#### Article 108: Infringement of Neighbouring Rights

- (1) Any person who, other than in a manner allowed by law and without the right holder's consent:
1. Reproduces, distributes or publicly communicates a scientific edition (Article 70) or an adaptation or transformation of such edition;
  2. Exploits a posthumous work or an adaptation or transformation of such work contrary to Article 71;
  3. Reproduces, distributes or publicly communicates a photograph (Article 72) or an adaptation or transformation of a photograph,;
  4. Exploits a performance contrary to Articles 77 I or II, 1, or Article 78;
  5. Die Darbietung eines ausübenden Künstlers entgegen den Section 77 Abs. 1 oder Abs. 2 Satz 1, Section 78 Abs. 1 verwertet,
  6. Exploits an audio recording contrary to Article 85;
  7. Exploits a broadcast contrary to Article 87;
  8. Exploits a video or video and audio recording contrary to Article 94 or Article 95 in conjunction with Article 94;
  9. Exploits a database contrary to Article 87 b I, shall be liable to imprisonment for up to three years or a fine.
- (2) The attempt to commit such an offence shall be punishable.

#### Article 108a: Unlawful Exploitation on a Commercial Basis

- (1) Where the person committing the acts referred to in articles 106 to 108 does so on a commercial basis, the penalty shall be imprisonment for up to five years or a fine.
- (2) The attempt to commit such an offence shall be punishable.

## GREECE

### APPENDIX 9

#### **Greek trademark law No. 2239/1994**

##### Article 28

- (1) Whoever:
  - (a) Counterfeits or knowingly uses a counterfeit trademark
  - (b) Knowingly affixes a trademark belonging to others to his business' goods
  - (c) Knowingly imitates, in whole or in part, a trademark with the intention to cause confusion to the consumers or knowingly uses such trademark
  - (d) Knowingly sells, offers for sale counterfeit goods or goods bearing indications that are confusingly similar to a trademark belonging to another
  - (e) Uses a trademark in violation of article 19 of this same law (i.e. unauthorized use of a trademark of others)
  - (f) Uses as a trademark the badges and symbols, including religious symbols, of the Greek state or of any other authority including religious symbols, is punished by imprisonment of at least 3 months and/or a monetary fine of at least 587 euros.
- (2) The above apply also to the trademarks distinguishing services.

#### **Greek Copyright Law No. 2121/1993**

##### Article 66

- (1) Any person who, in contravention of the provisions of this law or of the provisions of lawfully ratified multilateral international conventions on the protection of copyright, unlawfully makes a fixation of a work or of copies, reproduces them directly or indirectly, temporarily or permanently in any form, in whole or in part, translates, adapts, alters or transforms them, or distributes them to the public by sale or other means, or possesses with the intent of distributing them, rents, performs in public, broadcasts by radio or television or any other means, communicates to the public works or copies by any means, imports copies of a work illegally produced abroad without the consent of the author and, in general, exploits works, reproductions or copies being the object of copyright or acts against the moral right of the author to decide freely on the publication and the presentation of his work to the public without additions or deletions, shall be liable to imprisonment of no less than a year and to a fine from 2.900-15.000 EURO.
- (2) The sanctions listed above shall be applicable to any person who, in contravention of the provisions of this law, or of the provisions of lawfully ratified multilateral international conventions on the protection of related rights, makes the following actions:
  - (A) Without the permission of the performers:
    - (a) fixes their performance,

- (b) directly or indirectly, temporarily or permanently reproduces by any means and form, in whole or in part, the fixation of their performance
  - (c) distributes to the public the fixation of their performance or possesses them with the purpose of distribution,
  - (d) rents the fixation of their performance,
  - (e) broadcasts by radio and television by any means, the live performance, unless such broadcasting is re-broadcasting of a legitimate broadcasting,
  - (f) communicates to the public the live performance made by any means, except radio and television broadcasting,
  - (g) makes available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, the fixation of their performance.
- (B) Without the permission of phonogram producers (producers of sound recordings):
- (a) directly or indirectly, temporarily or permanently reproduces by any means and form, in whole or in part, their phonograms,
  - (b) distributes to the public the above recordings, or possesses them with the purpose of distribution,
  - (c) rents the said recordings,
  - (d) makes available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, their phonograms,
  - (e) imports the said recordings produced abroad without their consent.
- (C) Without the permission of producers of audiovisual works (producers of visual or sound and visual recordings):
- (a) directly or indirectly, temporarily or permanently reproduces by any means and form, in whole or in part, the original and the copies of their films,
  - (b) distributes to the public the above recordings, including the copies thereof, or possesses them with the purpose of distribution,
  - (c) rents the said recordings,

- (d) makes available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, the original and the copies of their films
  - (e) imports the said recordings produced abroad without their consent.
  - (f) broadcasts by radio or television by any means including satellite transmission and cable retransmission, as well as the communication to the public rebroadcasts their broadcasts by any means.
- (D) Without the permission of radio and television organizations:
- (a) rebroadcasts their broadcasts by any means,
  - (b) presents their broadcasts to the public in places accessible to the public against payment of an entrance fee,
  - (c) fixes their broadcasts on sound or sound and visual recordings, regardless of whether the broadcasts are transmitted by wire or by the air, including by cable or satellite
  - (d) directly or indirectly, temporarily or permanently reproduces by any means and form, in whole or in part, the fixation of their broadcasts,
  - (e) distributes to the public the recordings containing the fixation or their broadcasts,
  - (f) rents the recordings containing the fixation of their broadcasts,
  - (g) makes available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, the fixation of their broadcasts.
- (3) If the financial gain sought or the damage caused by the perpetration of an act listed in paragraphs (1) and (2), above, is particularly great, the sanction shall be not less than two years imprisonment and a fine of from 2 to 10 million drachmas. If the guilty party has perpetrated any of the aforementioned acts by profession or at a commercial scale or if the circumstances in connection with the perpetration of the act indicate that the guilty party poses a serious threat to the protection of copyright or related rights, the sanction shall be imprisonment of up to ten (10) years and a fine of from 5 to 10 million drachmas, together with the withdrawal of the trading license of the undertaking which has served as the vehicle for the act. The act shall be likewise deemed to have been perpetrated by way of standard practice if the guilty party has on a previous occasion been convicted of a contravention pursuant to the provisions of the Article or for a violation of the preceding copyright legislation and sentenced to a non-redeemable period of imprisonment. Any

infringement of copyright and related rights in the form of felony is tried by the competent Three-member Court of Appeal for Felonies.

- (4) Any person who did not pay the remuneration provided for by Article 18, paragraph (3) hereof to a collecting society is punished with the sanction of paragraph (1), (2) and (3).

The same sentence is imposed on the debtor who, after the issuance of the decision of the one-member first instance court, does not submit the declaration under the provisions of Article 18, par. 6, of this law.

- (5) The sanctions specified in paragraph (1), above, shall be applicable likewise to any person who:

(a) uses or distributes, or possesses with the intent to distribute, any system or means whose sole purpose is to facilitate the unauthorized removal or neutralization of a technical system used to protect a computer program;

(b) manufactures or imports or distributes, or possesses with intent to distribute, equipment and other materials utilizable for the reproduction of a work which do not conform to the specifications determined pursuant to Article 59 of this Law;

(c) manufactures or imports or distributes, or possesses with intent to distribute, objects which can thwart the efficacy of the above-mentioned specifications, or engages in an act which can have that result;

(d) reproduces or uses a work without utilizing the equipment or without applying the systems specified pursuant to Article 60 of this Law;

(e) distributes, or possesses with intent to distribute, a phonogram or film without the special mark or control label specified pursuant to Article 61 of this Law.

- (6) Where a sentence of imprisonment is imposed with the option of redeemability, the sum payable for the redemption shall be 10 times the sum specified as per the case in the Penal Code.

- (7) Where mitigating circumstances exist, the fine imposed shall not be less than half of the minimum fine imposable as per the case under this law.

- (8) Any person who proceeds to authorized temporary or permanent reproduction of the database, translation, adaptation, arrangement and any other alteration of the database, distribution to the public of the database or of copies thereof, communication, display or performance of the database to the public, is punished by imprisonment of at least one (1) year and a fine of one (1) to five (5) million drachmas.

- (9) Any person who proceeds to extraction and/or re-utilization of the whole or of a substantial part of the contents of the database without the authorization of the author

thereof, is punished by imprisonment of at least one (1) year and a fine of one (1) to five (5) million drachmas (Article 12 of directive 96/9).

- (10) When the object of the infringement refers to computer software, the culpable character of the action, as described in paragraph 1 of Article 65a and under the prerequisites provided there, is raised under the condition that the infringer proceeds in the unreserved payment of the administrative fee and the infringement concerns a quantity of up to 50 programs.
- (11) When the object of infringement concerns recordings of sound in which a work protected by copyright law has been recorded, the unreserved payment of an administrative fee according to the stipulation of par.2 of Article 65a and under the prerequisites provided there, the culpable character of the action is raised under the condition that the infringement concerns a quantity of up to five hundred (500) illegal sound recording carriers.
- (12) The payment of the administrative fee and the raising of the culpable character of the action, do not relieve the infringers from the duty of buying off the copyright and related rights or from the duty of compensating and paying the rest expenses to the holders of these rights, according to the provisions of the relevant laws.
- (13) In case of recidivism during the same financial year the administrative fee provided for by Article 65A doubles.

## HUNGARY

### APPENDIX 10

#### **Criminal Code (Act 4 of 1978)**

##### Section 296: False Marking of Goods

Any person who produces a product with distinctive appearance, packaging, labeling or name, from which a competitor or his product that has these distinctive features can be recognized, and who does so without the consent of such competitor, or who acquires such product for the purpose of placing it on the market, is guilty of a crime punishable by imprisonment for up to three years.

##### Section 329D: Violation of Industrial Design Rights

- (1) A person who violates the right of the holder of a patent, plant variety, certification of supplementary protection, trademark, geographical indication, design rights, utility models or topographies conferred on the basis of an act, promulgated international convention or Community legislation by imitating or copying the subject matter of protection, and thereby causing financial injury, is guilty of a crime punishable by imprisonment of up to two years, community service work, or a fine.
- (2) The punishment for crime shall be imprisonment for up to three years if the violation of industrial design rights:
  - (a) results in substantial financial injury; and
  - (b) is committed in a pattern of business operation.
- (3) The punishment for crime shall be:
  - (a) imprisonment of up to five years if the violation of industrial design rights results in particularly considerable financial injury; or
  - (b) imprisonment between two to eight years if the violation of industrial design rights results in particularly substantial financial injury.

Section 329A: Copyright Section

- (1) A person who infringes the copyright or certain rights related to copyright of another person afforded under the Copyright Act for the purpose of financial gain or advantage and/or thereby causing financial injury, is guilty of a crime punishable by imprisonment of up to two years, community service work, or a fine.
- (2) The punishment for a crime shall be imprisonment for up to three years if the infringement of copyright or certain rights related to copyright:
  - (a) results in substantial financial injury; and
  - (b) is committed as part of a business operation.
- (3) The punishment shall be:
  - (a) imprisonment for up to five years if the infringement of copyright or certain rights related to copyright results in particularly considerable financial injury; or
  - (b) imprisonment between two to eight years if the infringement of copyright or certain rights related to copyright results in particularly substantial financial injury.



## IRELAND

### APPENDIX 11

#### Trade Marks Act, 1996

##### Section 92 - Fraudulent application or use of trade mark in relation to goods:

- (1) Subject to the provisions of subsection (3), it shall be an offence for any person:
  - (a) to apply a mark identical to or nearly resembling a registered trade mark to goods or to material used or intended to be used for labeling, packaging or advertising goods,
  - (b) to sell, let for hire, offer or expose for sale or hire or distribute
    - (i) goods bearing such a mark, or
    - (ii) material bearing such a mark which is used or intended to be used for labeling, packaging or advertising goods,
  - (c) to use material bearing such a mark in the course of a business for labeling, packaging or advertising goods, or
  - (d) to possess in the course of a business goods or material bearing such a mark with a view to doing any of the things mentioned in paragraph (a) to (c), when that person is not entitled to use the mark in relation to the goods in question or authorized by a person who is so entitled.
- (2) Subject to the provisions of subsection (3), it shall be an offence for any person to possess in the course of a business goods or material bearing a mark identical to or nearly resembling a registered trade mark with a view to enabling or assisting another person to do any of the things mentioned in subsection (1) (a), (b) or (c), knowing or having reason to believe that the other person is not entitled to use the mark in relation to the goods in question or authorized by a person who is so entitled.
- (3) Any person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence, but only if that person acts with a view to gain, for himself or another, or with intent to cause a loss to another and it shall be a defense for a person charged with an offence under subsection (1) to show that he believed, on reasonable grounds, that he was entitled to use the trade mark in relation to the goods in question.
- (4) A person who commits an offence under this Section shall be liable
  - (a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £1,000, or to both;

- (b) on conviction on indictment to imprisonment for a term not exceeding five years or to a fine not exceeding £100,000, or to both.

## **Copyright and Related Rights Act 2000**

### Section 140

- (1) A person who, without the consent of the copyright owner:
  - (a) makes for sale, rental or loan,
  - (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
  - (c) imports into the State, otherwise than for his or her private and domestic use,
  - (d) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or
  - (e) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the owner of the copyright,

a copy of a work which is, and which he or she knows or has reason to believe is, an infringing copy of the work, shall be guilty of an offence.

- (2) In this Section “loan” means a loan for reward and in particular does not include a loan to a family member or friend for private and domestic use, and “lends” shall be construed accordingly.

- (3) A person who
  - (a) makes,
  - (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
  - (c) imports into the State, or
  - (d) has in his or her possession, custody or control,

an article specifically designed or adapted for making copies of a work, knowing or having reason to believe that it has been or is to be used to make infringing copies, shall be guilty of an offence.

- (4) A person who:
  - (a)

- (i) makes,
- (ii) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (iii) imports into the State, or
- (iv) has in his or her possession, custody or control,

a protection-defeating device, knowing or having reason to believe that it has been or is to be used to circumvent rights protection measures, or

(b) provides information, or offers or performs any service, intended to enable or assist a person to circumvent rights protection measures, shall be guilty of an offence.

(5) Where copyright is infringed by

- (a) the public performance of a literary, dramatic or musical work,
- (b) the playing or showing in public of a sound recording, artistic work, original database or film, or
- (c) broadcasting a work or including a work in a cable program service, the person who caused the work to be so performed, played, broadcast, included in a cable program service or shown shall be guilty of an offence where he or she knew or had reason to believe that the copyright in the work would be infringed.

(6) An offence shall not be committed under subsection (1) or (5) by the undertaking of an act which under this Part may be undertaken without infringing the copyright in a work.

(7) A person guilty of an offence under subsection (1), (3) or (4) shall be liable

- (a) on summary conviction, to a fine not exceeding £1,500 in respect of each infringing copy, article or device, or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

(8) A person guilty of an offence under subsection (5) shall be liable

- (a) on summary conviction, to a fine not exceeding £1,500 in respect of such offence or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

### Section 371: Offence of unlawful reception

A person who receives a broadcast or cable program to which rights protection measures have been applied, knowing or having reason to believe that it is being received unlawfully with the intent to avoid payment of any charge applied by the rights owner for the reception of that broadcast or cable program shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.

### Section 376: Removal or interference with rights management information

(1) A person who:

- (a) removes or alters rights management information from copies of copyright works, copies of recordings of performances or copies of databases knowing or having reason to believe that the primary purpose or effect of such removal or alteration is to induce, enable, facilitate or conceal an infringement of any right conferred by this Act,
- (b) makes available to the public copies of copyright works or copies of recordings of performances or re-utilizes copies of databases, referred to in paragraph (a), knowing or having reason to believe that rights management information has been removed or altered from those copies, or
- (c)
  - (i) sells, rents or lends, or offers or exposes for sale, rental or loan,
  - (ii) imports into the State, or
  - (iii) in the course of a business, trade or profession, has in his or her possession, custody or control,

copies of copyright works, copies of recordings of performances or copies of databases, referred to in paragraph (a), knowing or having reason to believe that rights management information has been removed or altered from those copies, shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable:

- (a) on summary conviction to a fine not exceeding £1,500 in respect of each copy, or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment to a fine not exceeding £100,000, or imprisonment for a term not exceeding 5 years, or both.

Section 143: Search warrants and seizure.

- (1) Where a judge of the District Court is satisfied by information on oath that there are reasonable grounds for suspecting
- (a) that an offence under section 140 has been, or is about to be, committed in, on or at any premises or place, and
  - (b) that evidence that such an offence has been, or is about to be, committed is in on or at those premises or that place,

the court may issue a warrant authorising a member of the Garda Síochána, accompanied by such other members of the Garda Síochána or other person or persons as that member thinks proper, at any time or times within 28 days from the date of the issue of the warrant on production, where requested, of that warrant, to enter and search the premises or place specified in the warrant using reasonable force where necessary, and to do all or any of the following acts:

- (i) to seize any copies of any works, articles or devices in respect of which he or she has reasonable grounds for suspecting that an offence under section 140 has been or is about to be committed;
  - (ii) to make an inventory or prepare other evidence of infringement of copyright or potential infringement of copyright;
  - (iii) to seize anything found there which he or she believes on reasonable grounds may be required to be used in evidence in any proceedings brought in respect of an offence under this Act;
  - (iv) to require any person found there to give his or her name and address.
- (2) A warrant issued under this section may authorise persons, including the copyright owner or designated representative thereof, to accompany and assist any member of the Garda Síochána in executing the warrant or in collating any inventory or other evidence.
- (3) A person who
- (a) obstructs or interferes with a person acting under the authority of a warrant issued under this section,
  - (b) is found in, on or at the premises or place specified in the warrant by a member of the Garda Síochána acting as aforesaid and who fails or refuses to give the member his or her name and address when required to do so or gives a name or address that is false or misleading,
  - (c) obstructs the exercise of an authority conferred by a warrant under this section, or

(d) fails or refuses to give information to a member of the Garda Síochána when requested to do so under this section,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or both.

### Section 258

(1) A person who, without the consent of the rightsowner

(a) makes for sale, rental or loan,

(b) sells, rents or lends, or offers or exposes for sale, rental or loan,

(c) imports into the State, otherwise than for his or her private and domestic use,

(d) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or

(e) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the rightsowner,

a recording which is, and which he or she knows or has reason to believe is, an illicit recording, shall be guilty of an offence.

(2) A person who

(a) makes,

(b) sells, rents or lends, or offers or exposes for sale, rental or loan,

(c) imports into the State, or

(d) has in his or her possession, custody or control,

an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings, shall be guilty of an offence.

(3) A person who

(a)

(i) makes,

(ii) sells, rents or lends, or offers or exposes for sale, rental or loan,

(iii) imports into the State, or

(iv) has in his or her possession, custody or control,

a protection-defeating device, knowing or having reason to believe that it has been or is to be used to circumvent rights protection measures, or

(b) provides information, or offers or performs any service intended to enable or assist persons to circumvent rights protection measures,

shall be guilty of an offence.

(4) Where the rights conferred by this Part are infringed

(a) by the playing or showing in public of a recording of a performance, or

(b) by the broadcasting or inclusion in a cable programme service of a performance or a recording of a performance,

the person who caused the recording of the performance to be shown or played, or the performance or the recording of the performance to be broadcast or included in a cable programme service, shall be guilty of an offence where he or she knew or had reason to believe that the rights conferred by this Part would be infringed.

(5) An offence shall not be committed under *subsection (1)* or *(4)* by the undertaking of an act which under this Part may be undertaken without infringing the rights conferred by this Part.

(6) A person guilty of an offence under *subsection (1)*, *(2)* or *(3)* shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500 in respect of each illicit recording, article or device, or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

(7) A person guilty of an offence under *subsection (4)* shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500 in respect of each offence, or to

imprisonment for a term not exceeding 12 months, or both, or

(*b*) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.



## ITALY

### APPENDIX 12

#### **Criminal Code**

#### Article 473 – Counterfeiting, alteration or use of trademarks or distinctive signs or patents or industrial designs

1. Whoever, being able to have knowledge of the existence of a title of IP, counterfeits or alters trademarks or distinctive signs of industrial products, national or foreign, or whoever, even if he/she did not participate to the counterfeiting or alteration, uses said trademarks or counterfeited signs, is punished with imprisonment from six months up to three years and a fine from € 2,500 up to €25,000.
2. Whoever counterfeits or alters patent or industrial designs, national or foreign, or whoever, even if he/she did not participate to the counterfeiting or alteration, uses said patent or industrial designs, is punished with imprisonment from one year up to four years and a fine from € 3,500 up to €35,000.
3. The crimes under paragraphs 1 and 2 are punishable conditioned upon the observance of the rules provided by internal laws, Community regulations or International conventions on the protection of industrial and intellectual property”

#### Article 474 – Importation into the Country and trade of products bearing fake signs

1. Except for the case of participation in the crimes listed in art. 473, whoever else introduces for profit in the country industrial products with trademarks or other distinctive signs, national or foreign counterfeited or altered, is punished with imprisonment from one year up to four years and a fine from € 3,500 up to 35,000
2. Except for the case of participation in the crimes of counterfeiting, alteration and introduction in the country, whoever owns for sale, sales or otherwise put into circulation the products indicated in the first paragraph, is punished with imprisonment up to two years and with fine up to € 20.000
3. The crimes under paragraphs 1 and 2 are punishable conditioned upon the observance of the rules provided by internal laws, Community regulations or International conventions on the protection of industrial and intellectual property.”

#### Article 474 bis – Seizure

1. For the crimes indicated under art. 473 and 474, save the rights of the offended person to the restitution and repayment of the damages, it is always ordered (by the judge must always) the seizure of the things which were used to commit the crime and of the things

which were the object, the product, the price or the profit from whomever they may belong

2. If it's impossible to carry out the seizure, the judge orders the seizure of the defendant's goods whose value is equal to the profit. Art. 322ter is applicable (a special procedure introduced, I guess, against Mafia's crimes and called the "seizure by equivalent)
3. Articles 240 (2) and (3) are applicable if the things which were used to commit the crime or which were the object, the product, the price or the profit belong to a third party extraneous to the commission of the crime, if such person shows to have been unable to foresee the unlawful use, even if occasional, or the unlawful origin and (shows) not to have been negligent (Author tried to translate as "negligence" the concept of Latin origin of "culpa in vigilando")
4. The provisions of the present article are applicable even in case of application of the entry of sentence upon request by the parties in accordance with the II Title of the VI Book of the Code of the Criminal procedure

#### Article 474 *ter* – Aggravating circumstances

1. If, outside from application of art. 416 (conspiracy to commit a crime) the crimes under articles 473 and 474(1) are committed in a systematic way with organized activities and means, the punishment is from two year up to six years of imprisonment and the fine is from €5,000 up to €50,000.
2. The imprisonment is up to three years and the fine up to €30,000 for the crimes under art. 474(2).

#### Article 474 *quater* – Attenuating circumstances

The penalties provided for by articles 473 and 474 are diminished from half up to two thirds in case the defendant actively and concretely collaborates with the police or judicial authorities in the actions against the crimes under articles 473 and 474 as well as the gathering of evidence decisive to reconstruct the facts and for the identification and capture of accomplices or the identification of the means necessary for the commission of such crimes or of the profit generated by them.”

#### Article 441 – Modification or Counterfeiting of other goods

Whoever, in a way dangerous to public health, modifies or counterfeits goods to be traded, different from the alimentary substances that the previous article refers to [food and pharmaceutical products], is punished with imprisonment from one to five years and a fine of amount not lower than € 309.

#### Article 442 – Trade of counterfeit or modified alimentary substances

Whoever, out of the provisions of the three previous articles, holds for trade, trade or distributes for their consumption waters, substances or goods that have been by others poisoned, corrupted, modified or counterfeited, in a way dangerous to public health, is subject to the punishments respectively set forth in those previous articles.

#### Article 517 – Sale of industrial products with misleading signs

Whoever sells or trades intellectual works or industrial products having national or foreign trade names, trademarks or distinctive signs, capable to mislead their buyer as to the origin, manufacturing source, or qualities of the intellectual work or industrial product is punished, if the action does not constitute a felony pursuant to other provisions of the law, with imprisonment up to two years or a fine up to € 1,032.

#### Article 517 *ter* – Manufacturing and sale of products realized usurping titles of industrial property

1. Except for the application of articles 473 and 474, whoever, being able to have knowledge of the existence of a title of IP, manufactures or use in an industrial manner objects or other goods realized by usurping a title of industrial property or in violation of such title, is punished, at the request of the offended person with imprisonment up to two years and a fine up to €20,000.
2. The provisions of articles 474 *bis*, 474 *ter* (2) and 517 *bis* (2) are applicable.
3. The crimes under paragraphs 1 and 2 are punishable conditioned upon the observance of the rules provided by internal laws, Community regulations or International conventions on the protection of industrial and intellectual property.

#### Article 648 – Receipt of stolen property

...whoever, to the aim of gaining a profit for himself or third persons, buys, receive or hide money or goods originating from any felony whatsoever, or anyway procure the same to be purchased, received or hidden, is punished with imprisonment between two and eight years and the fine between € 516 and € 10,329...

#### **Copyright Act N° 633 of 22 April 1941**

##### Art. 171 *bis* on protection of software

1. Punishes whoever illicitly duplicates, for gaining a profit, programs for computer or to the same aims imports, distributes, sells, holds for commercial purpose or leases programs contained in supports not marked from the Italian Authors and Publishers Association (SIAE), is punished with imprisonment from six months up to three years and a fine from euro 2,582 to euro 15.493. The same penalty is applied if the fact

concerns any means to concur or facilitate the removal or the by-passing of devices applied to protection of a program for computers. The penalty is not lower than two years of imprisonment and the fine to euro 15,493 if the criminal act is of important gravity.

2. Pursuant to the same statutory provision, anyone, to the aim of gaining a profit, on unmarked supports SIAE reproduces, transfers on other support, distributes, communicates, introduces or demonstrates in public the content of a database in violation of the provisions of Articles 64 *quinques* and 64 *sexies* of the same law, or performs the download or the reuse of a database in violation of the provisions of Articles 102 *bis* and 102 *ter* of the same law, or distributes, sells or leases a database, is subject to imprisonment for a period from six months to three years and of the fine from euro 2,582 to euro 15.493. The penalty is not lower than two years of imprisonment and the fine to euro 15,493 if the criminal act is of important gravity.

Article 171 *ter*, on protection of copyright other than software punishes:

- (1) With imprisonment from six months up to three years and with the fine from euro 2,582 to 15,493 Euros whoever, for a use other than personal use:
  - a) Illicitly duplicates, reproduces, transmits or publicly divulge by any means, in its entirety or partially, a work of art deemed for transmission on television, for cinematographic circuit, for sale or rent , discs, tapes or other similar supports containing audio or video content of musical, cinematographic or audiovisual works or sequences of images in motion;
  - b) Illicitly reproduces, transmits or publicly divulges, with any procedure, literary, dramatic, scientific or didactic, musical or dramatic-musical or multimedia works or their parts, even when included in collective or composite works or data banks;
  - c) Even not having participated to the duplication or reproduction, introduces in the territory of the State, holds for sale or distribution, distributes, trades, rents or anyhow conveys it at any title, projects in public, transmits on television by any mean, transmits via radio, divulge in public those illicit duplications or reproductions under the letters a) and b);
  - d) Holds for sale or distribution, trades, sells, rents, conveys at any title, projects in public, transmits by way of radio or television with any procedure, videotapes, music-tapes, any containing audio or video support of musical, cinematographic or audiovisual works or sequences of images in motion, or other support for which is required, according to of the same law, the labeling of mark of the Italian Authors and Publishers Association (S.I.A.E.), which lack of that mark, are counterfeit or bear an altered mark;
  - e) Without consent from the authorized distributor, re-transmits or divulges by any means an encrypted service received by using apparatuses or parts of apparatuses aimed at decoding of transmissions, whose access is conditioned;

f) Introduces in the territory of the State, holds for sale or distribution, distributes, sells, rents, conveys at any title, promotes commercially, installs devices or elements of special decoding that allow the access to encrypted services without the payment of the due fee;

f *bis*) Manufactures, imports, distributes, sells, rents, conveys at any title any title, advertises for sale or renting, holds for commercial purposes, equipments, products or components, or offers services that have the main or the commercial purpose of by-passing those effective technological measures that Article 102-quarter sets forth, or that are mainly programmed, manufactured, adapted or realized with the purpose of rendering possible or facilitating the by-passing of the fore-told measures. Among the technological measures concerned, are those applied, or that remain, as a result of the removal of the same measures consequently to voluntary initiative of the holders of their rights or to agreements between these latter and the beneficiaries of exceptions, or as a result of enforcement of decisions by the administrative or jurisdictional authority;

h) ) Illicitly removes or alters the electronic information that article 102 *quinques* provides for, or distributes, imports for the purpose of distributing, divulge through radio or television, communicates or renders available to the public the works or other protected materials from which the same electronic information have been removed or altered.

2) With imprisonment from one up to four years and with fine from euro 15,493 to 2,582 Euros whoever:

- a) Reproduces, duplicates illicitly, transmits or divulges, sells or places otherwise in commerce, conveys at any title or illicitly imports more than fifty items or copies of works protected by copyright or other related rights a-bis) In violation of the provision of article 16, for gaining a profit, communicates to the public a work protected by copyright or other related right by divulging it via systems of transmission of digital data nets, by means of any kind of connections
- b) Becomes guilty of the facts that the above paragraph 1 provides for, by exercising a business activity of reproduction, distribution, sale or commercialization, import of works protected by copyright or other related rights
- c) Promotes or organizes the illicit activities that the above paragraph 1 sets forth.

## LATVIA

### APPENDIX 13

#### **Criminal Code:**

#### Section 148: Infringement of Copyright and Neighbouring Rights

1. For a person who commits intentional infringement of copyright, if such is committed by infringing the rights of the author to use of the work, or commits intentional infringement of neighbouring rights, the applicable sentence is custodial arrest, or community service, or a fine not exceeding one hundred times the minimum monthly wage, with or without confiscation of property.
2. For a person who commits the same acts, if commission thereof is repeated, or is committed in a group of persons pursuant to prior agreement, the applicable sentence is deprivation of liberty for a term not exceeding two years, or custodial arrest, or community service, or a fine not exceeding one hundred and fifty times the minimum monthly wage, with or without confiscation of property.
3. For a person who commits appropriation of authorship or copyright or compelling of joint authorship, the applicable sentence is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding two hundred times the minimum monthly wage, with or without confiscation of property.
4. For a person who commits compelling, by means of violence, threats of violence or blackmail, the renouncing of authorship or commits compelling of joint authorship, the applicable sentence is deprivation of liberty for a term not exceeding five years, or a fine not exceeding two hundred times the minimum monthly wage, with or without confiscation of property.
5. For a person who commits the acts provided for in Paragraph one, three or four of this Section, if commission thereof is by an organized group, the applicable sentence is deprivation of liberty for a term of not less than three years and not exceeding seven years, confiscation of property, and with police supervision for a term not exceeding three years.

#### Section 149: Unlawful Acts with Objects of Copyright and Neighbouring Rights

1. For a person who commits acquisition for sale, storage or concealment of objects of copyright and neighbouring rights repeatedly during a period of one year, if they are published, reproduced or otherwise used, infringing copyright or neighbouring rights, the applicable sentence is custodial arrest, or community service, or a fine not exceeding one hundred times the minimum monthly wage, with or without confiscation of property.
2. For a person who commits the unlawful sale of the objects referred to in Paragraph one of this Section, as well as commits acquisition of other material benefits, using such objects,

the applicable sentence is deprivation of liberty for a term not exceeding two years, or custodial arrest, or community service, or a fine not exceeding one hundred times the minimum monthly wage, with or without confiscation of property.

3. For a person who commits the same acts, if commission thereof is repeated or if they have been committed by a group of persons pursuant to prior agreement, or if they have been committed on a large scale, the applicable sentence is deprivation of liberty for a term not exceeding five years, or custodial arrest, or a fine not exceeding two hundred times the minimum monthly wage, with confiscation of property.
4. For a person who commits the same acts, if commission thereof is by an organized group, the applicable sentence is deprivation of liberty for a term of not less than three years and not exceeding seven years, confiscation of property, and with police supervision for a term not exceeding three years.

#### Section 206: Unauthorized Use of Trademarks, other Distinguishing Marks and Designs

1. For a person who commits using or counterfeiting a trademark or other distinguishing mark for goods or services of another person, or knowingly using or circulating a counterfeit mark, the applicable sentence is deprivation of liberty for a term not exceeding one year, or custodial arrest, or community service, or a fine not exceeding one hundred times the minimum monthly wage, with or without confiscation of property.
2. For a person who commits the same acts, if commission thereof is repeated, or if substantial harm is caused thereby to rights and interests protected by law of a person, the applicable sentence is deprivation of liberty for a term not exceeding five years, or a fine not exceeding two hundred times the minimum monthly wage, with or without confiscation of property.

#### **Administrative Violations Code:**

##### Section 155:<sup>8</sup> Unlawful Acts with Objects of Copyright and Neighboring Rights

- (1) In the case of the acquisition of copyright or neighbouring rights objects for the marketing, storage or concealment thereof, which are published, reproduced or used in another manner, violating the copyright or neighbouring rights – a fine shall be imposed in an amount from LVL 100 up to LVL 250, with confiscation of the objects and their carriers.

##### Section 166:<sup>14</sup> Sale of Counterfeit Goods

- (1) In the case of the offering or sale of counterfeit goods – a fine shall be imposed on natural persons in an amount up to LVL 250, but for legal persons – up to LVL 1000, with confiscation of the goods.

Section 166:<sup>17</sup> Violation of the Regulations regarding the Utilisation of Trademarks (Service Marks)

- (1) In the case of violation of the regulations regarding utilisation of a trademark or a service mark registered according to the specified procedures – a fine shall be imposed in an amount from LVL 50 up to LVL 100, with confiscation of the infringing goods.

Section 201:<sup>10</sup> Violation of the Regulations regarding the Performance of the Customs Regime

[...]

- (1) (3) In the case of the application of the customs regime to infringing or pirated goods or the temporary storage of these goods – a fine shall be imposed on natural persons in an amount from LVL 50 up to LVL 250, but for legal persons – from LVL 500 up to LVL 5000, with the confiscation of the goods.

[...]



## LITHUANIA

### APPENDIX 14

#### Criminal Code

##### Article 204: The use of the borrowed trademark or service mark

1. The person who has marked a great number of goods with the borrowed trademark without permission or offered these goods for sale or used the borrowed service mark and made big damages (EUR 5,648 and more) thereat shall be disentitled to work particular job or engage in particular activity or fined (up to EUR 3,765) or confined or imprisoned for up to two years.
2. The person who has marked negligible number of goods with the borrowed trademark without permission or offered these goods for sale or used the borrowed service mark and made damages (up to EUR 5,648) thereat may be held as the principal of misdemeanour and shall be disentitled to work particular job or engage in particular activity or forced to work public works or fined (up to EUR 1,883) or confined.
3. Legal person shall be also liable for the actions indicated above in this article.

##### Article 191: Appropriation of authorship

1. The person who has published or communicated to the public the borrowed literary, scientific, artistic or other work or part of it in one's own name shall be forced to work public works or fined (up to EUR 5,648) or confined or arrested or imprisoned for up to two years.
2. The person, while abusing his official position or using compulsion, who has forced the author of literary, scientific, artistic or other work or part of it to recognize other person as a co-author or successor in title or reject the right of authorship, shall be fined (up to EUR 3,765) or confined or arrested or imprisoned for up to three years.
3. Legal person shall be also liable for the actions indicated above in this article.

##### Article 192: Illegal reproduction of literary, scientific, artistic or other work, distribution, transportation or possession of illegal copies

1. The person who has illegally reproduced literary, scientific, artistic or other work or part of it or imported, exported, distributed, transported or possessed illegal copies of them for commercial purposes, if total value of the copies (counting retail price of legal copies) exceeded the amount of EUR 3,765 shall be forced to work public works or fined (up to EUR 3,765) or confined or arrested or imprisoned for up to two years.
2. Legal person shall be also liable for the actions indicated above in this article.

## LUXEMBOURG

### APPENDIX 15

**Act of 18 April 2001 on copyright, neighboring rights and databases, published in the Luxembourg State Gazette of 30 April 2001 and in force as of 3 May 2001**

#### Article 82

- (1) Any fraudulent or harmful infringement of the rights protected under this copyright act, of the owners of the neighboring rights and of the producers of databases, qualifies as an offence of counterfeiting (*“délit de contrefaçon”*).
- (2) Is guilty of the same offence, any person knowingly selling, offering for sale, importing, exporting, fixing, reproducing, communicating, transmitting via wire or wireless, making available to the public and generally putting or putting again into circulation, for remuneration or free of charge, a work, a performance or a database without the consent of the author, the owner of the neighboring rights or the producer of the database.

**MALTA**

**APPENDIX 16**

**Criminal Code**

Chapter 9 Article 298

(1) Whosoever:

(a) forges or alters, without the consent of the owner, the name, mark or any other distinctive device of any intellectual work or any industrial product, or knowingly makes use of any such name, mark or device forged or altered, without the consent of the owner, even though by others;

(b) forges or alters, without the consent of the owner, any design or model of manufacture, or knowingly make use of any such design or model forged or altered, without the consent of the owner, even though by others;

(c) knowingly makes use of any mark, device, signboard or emblem bearing an indication calculated to deceive a purchaser as to the nature of the goods, or sells any goods with any such mark, device or emblem;

(d) puts on the market any goods in respect of which a distinctive trade mark has been registered, after removing the trade mark without the consent of the owner thereof;

(e) applies a false trade description to any goods, that is to say, applies to goods any forged or altered figure, word or mark which according to the custom of the trade is taken to indicate

(i) the number, quantity, measure, gauge or weight of the goods,

(ii) the place or country in which the goods are made or produced,

(iii) the mode of manufacturing or producing the goods,

(iv) that the goods are the subject of an existing patent, privilege or industrial copyright;

(f) knowingly puts into circulation, sells or keeps for sale or imports for any purpose of trade, any goods bearing a fraudulent imitation of any mark, device or emblem;

(g) knowingly makes, keeps or transfers to any person, any die, block, machine or other instrument for the purpose of forging, or of being used for forging, a trade

mark, shall, on conviction, be liable to imprisonment for a term from four months to one year.

(2) For the purposes of sub article (1)(e), any figure, word or mark which, according to the custom of the trade, is commonly taken to indicate any of the matters therein referred to, shall be deemed to be a trade description thereof.

#### Article 298B

- (1) Whosoever, for gain, or by way of trade prints, manufactures, duplicates or otherwise reproduces or copies, or sells, distributes or otherwise offers for sale or distribution, any article or other thing in violation of the rights of copyright enjoyed by any other person and protected by or under Maltese law, shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to both such fine and imprisonment.
- (2) Proceedings under this article may not be taken except on the complaint of the injured party.

#### **Trademarks Act - Chapter 416 of the Laws of Malta**

#### Article 72

- (1) Any person who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor:
  - (a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trademark, or
  - (b) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign, or
  - (c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b), or
  - (d) applies a sign identical to, or likely to be mistaken for, a registered trademark to material intended to be used:
    - (i) for labeling or packaging goods,
    - (ii) as a business paper in relation to goods, or
    - (iii) for advertising goods, or

(e) uses, in the course of a business material bearing such a sign for labeling or packaging goods, or as a business paper in relation to goods, or for advertising goods, or

(f) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything, by himself or another, which would be an offence under paragraph (e), or

(g)

(i) makes an article specifically designed or adapted for making copies of a sign of or to make a sign likely to be mistaken for, a registered trademark, or

(ii) has such an article in his possession, custody or control in the course of a business, knowing or having reason to believe that it has been, or is to be, used to produce goods, or material for labeling or packaging goods, as a business paper in relation to goods, or for advertising goods, shall be guilty of an offence against this article.

(2) A person does not commit an offence against this article unless:

(a) the goods to which the offence refers are goods in respect of which the trademark is registered, or

(b) the trademark has a reputation in Malta and the use of the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trademark.

(3) It is a defense for a person charged with an offence against this article to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trademark.

(4) A person guilty of an offence under this article shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine (multa) of not more than twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73) or to both such fine and imprisonment.

## **Intellectual Property Rights (Cross Border Measures) Act**

### Chapter 414 - Article 11

(1) If any person shall import or cause to be imported any goods infringing an intellectual property right, such person shall be liable for every such offence to a fine (“multa”) equivalent to double the value of such goods.

- (2) All proceedings under this article shall be taken before the Court of Magistrates and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said Court or a Court of Criminal Judicature and the award and execution of the punishments thereby imposed.
- (3) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgment given by the Court of Magistrates in respect of criminal proceedings ensuing out of this Act.

## THE NETHERLANDS

### APPENDIX 17

#### Dutch Criminal Code

##### Article 337

1. He who deliberately imports, transits or exports, sells, offers for sale, delivers, distributes or has in stock:

- (a) false, falsified or unlawfully made trademarks,
- (b) goods, which are furnished with trade names or false trademarks belonging to someone else,
- (c) goods, which are, as an indication of origin, furnished with a false place of origin,
- (d) goods, on which the trademark of another brand or a trademark belonging to someone else is imitated, or
- (e) goods, parts of goods which have the same appearance as a drawing or a design belonging to someone else, or only bear minor differences, is punished with a term of imprisonment of not more than one year or a fine of the fifth category (a maximum of EUR 74,000).

2. Not liable to a punishment is a person who owns goods, parts of goods or trademarks as referred to in paragraph 1 for private usage.

3. The guilty person who commits the criminal offence, as referred to in paragraph 1, as his profession or business is punished with a term of imprisonment of not more than four years or a fine of the fifth category (a maximum of EUR 74,000).

4. If a criminal offence, as referred to in paragraph 1, will constitute a danger for persons or goods, the guilty person is punished with a term of imprisonment of not more than four years or a fine of the fifth category (a maximum of EUR 74,000).

##### Article 23(3), (4) and (7)

3. The fine which can be imposed for an unlawful act is equal to the amount of the category designated for that act.

4. There are six categories:

the first category, EUR 370

the second category, EUR 3,700

the third category, EUR 7,400

the fourth category, EUR18,500

the fifth category, EUR 74,000

the sixth category, EUR 740,000.

7. A convicted legal person can, if the respective penalty category does not allow for an appropriate penalty, be sanctioned a penalty up to the amount of the subsequent category.

## **Copyright Act of 23 September 1912**

### Article 31

A person who intentionally infringes another person's copyright is liable to a term of imprisonment of not more than six months or a fine of the fourth category (a maximum of EUR 18,500).

### Article 31A

He who intentionally:

- (a) publicly offers for distribution;
- (b) has in his possession for the purpose of reproduction or distribution;
- (c) imports, exports or transits; or
- (d) keeps for profit

an object containing a work infringing another person's copyright is liable to a term of imprisonment of not more than one year or a fine of the fifth category (a maximum of EUR 74,000).

### Article 31B

A person who commits the criminal offences referred to in articles 31 and 31a, as his profession or business is liable to a term of imprisonment of not more than four years or a fine of the fifth category (a maximum of EUR 74,000).

### Article 32

A person who:

- (a) offers for public distribution;
- (b) has in his possession for the purpose of reproduction or distribution;
- (c) imports, exports or transits; or
- (d) keeps for profit



an object having reasonable grounds to know that it contains a work which infringes another person's copyright is liable to a fine of the third category (a maximum of EUR 7,400).

### Article 33

Acts defined in articles 31, 31A, 31B, 32 and 32A shall constitute serious offences.

## POLAND

### APPENDIX 18

#### **Industrial Property Law**

##### Article 305:

- (1) Anyone marking goods with a counterfeit trademark or a registered trademark, he or she is not entitled to use, for the purpose of placing them on the market or placing on the market goods bearing such trademark shall be liable to a fine, limitation of freedom or imprisonment for a period of up to two years.
- (2) In case of an act of minor gravity, a person committing the offence referred to in paragraph (1) shall be liable to a fine.
- (3) A person who has made the offence referred to in paragraph (1) his continuing source of proceeds or commits that offence in respect of the goods of major value shall be liable to imprisonment for a period from 6 months to five years.

##### Article 306:

- (1) In case of conviction for the offence specified in Article 305(3), the court shall order forfeiture to the state treasury of the materials, tools and technical means, which have served or have been intended to serve for the purpose of committing the offence; if such materials, tools or technical means do not belong to the perpetrator, the court may order the forfeiture thereof to the state treasury.
- (2) In case of conviction for the offence specified in Article 305(1) and (2), the court may order forfeiture to the state treasury of the materials, tools and technical means, which have served or have been intended to serve for the purpose of committing the offence, even if they do not belong to the perpetrator.
- (3) In case of ordering the forfeiture referred to in paragraph (1) or (2), Article 195 of the Executive Penal Code shall apply accordingly, whatever is the value of the goods, the forfeiture of which has been ordered.

(...)

##### Article 309:

In corporate entities, the liability referred to in Articles: 303, 304, 305, 307 and 308 shall incur a person running or managing an entity, unless the allocation of responsibilities implies the liability of another person.

##### Article 310:

Prosecution of persons committing the offences referred to in Articles: 303, 304 and 305(1) and (2) shall be initiated at the injured person's request.

## **Law on Copyright and Neighboring Rights**

### Article 116:

- (1) Whoever, without authorization or acting contrary to its terms, disseminates a work of another in its original or derivative version, or artistic performance, a phonogram or videogram or broadcast shall be liable to imprisonment of not more than two years, restriction of liberty, or a fine.
- (2) If the infringer commits an act referred to in Section 1 for purpose of economic gain, he or she shall be liable to imprisonment of not more than three years.
- (3) If the infringer turns the offence specified in Section 1 into a regular source of income, or criminal commercial activity specified in Section 1, organizes or directs such activity, he or she shall be liable to imprisonment for not less than six months and not more than five years.
- (4) If the infringer commits an act specified in Section 1 not willfully, he or she shall be liable to imprisonment for not more than one year, restriction of liberty, or a fine.

### Article 117:

- (1) Whoever, without authorization or acting contrary to its terms, fixes or reproduces a work of another in its original version or in a derivative form, artistic performance, phonogram, videogram or broadcast, and consents to their dissemination, shall be liable to imprisonment for not more than two years, restriction of liberty, or a fine.
- (2) If the infringer turns the offence specified in Section 1 into a regular source of income, or a criminal commercial activity specified in Section 1, organizes or directs the such activity, he or she shall be liable to imprisonment for not more than three years.

### Article 118:

- (1) Whoever, for a purpose of economic gain, purchases, helps in its vending, accepts or helps to hide an object which serves as a carrier of a work, artistic performance, phonogram, videogram or broadcast reproduced, or disseminated without authorization or against its terms, shall be liable to imprisonment for not less than six months and not more than five years.
- (2) If the infringer turns the offence referred to in Section 1 into a regular source of income, or if he organizes or directs the offending activity referred to in Section 1, he or she shall be liable to imprisonment of not more than five years.

Article 118<sup>1</sup>: [refers to removing DRM devices]

Article 119:

Whoever obstructs or prevents the exercise of the right to monitor the use of a work or artistic performance, or who refuses to give the information provided for in Article 47, shall be liable to imprisonment, restriction of liberty or a fine.

(...)

Article 121:

- (1) In the case of condemnation for an act referred to in Article 115, 116, 117, 118 or 118<sup>1</sup>, the court shall decide to confiscate the objects resulting from the infringement, even if they do not belong to the perpetrator thereof.
- (2) In the case of condemnation for an act referred to in Article 115, 116, 117 or 118, the court may decide to confiscate the objects that served for the commission of the infringement, even if they do not belong to the perpetrator thereof.

Article 122:

The acts referred to in articles 116, sections 1, 2 and 4, 117, section 1, 118, section 1, 118<sup>1</sup>, and 119 shall be proceeded against on a complaint from the injured party [which may be also collective management society].

## PORTUGAL

### APPENDIX 19

#### **Industrial Property Code (as approved by Decree-law No. 36/2003 and amended by Decree-laws Nos. 318/2007 and 360/2007, Law No. 16/2008 and Decree-Law No. 143/2008)**

##### Section 323

The following acts, without the consent of the proprietor of the respective right, are punishable by a prison sentence of up to three years or a fine of up to three hundred and sixty days:

- (a) Counterfeiting, totally or partially, or by any other means reproducing a registered trademark;
- (b) Imitating a registered trademark either as a whole or using characteristic parts thereof;
- (c) Using counterfeit or imitated trademarks;
- (d) Using, counterfeiting or imitating well-known trademarks for which registration has already been applied for in Portugal;
- (e) Using, even if in products or services without identity or affinity, trademarks that are an interpretation or are identical or similar<sup>r</sup> to previously existing trademarks for which registration has been applied for and that enjoy prestige in Portugal or the European Union, if they are Community trademarks, whenever the use of the subsequent trademarks seeks to unjustly derive undue benefit from the distinctive or prestigious character of the prior trademarks or may be prejudicial to them;
- (f) Using, in products, services, or an establishment or company, a registered trademark belonging to another person.

**Authorship and neighboring rights code (as approved by decree-law no. 63/85 and amended by laws nos. 45/85 and 114/91, by decree-laws nos. 332/97 and 334/97, by laws nos. 50/2004, no. 24/2006 and no. 16/2008)**

Article 195 – Infringement

1. Any person who, without the authorization of the author or performer, the producer of the phonogram or videogram or the broadcasting organization, uses a work or performance for any of the uses provided for in this Code, shall be guilty of the offense of illegal exercise of rights.
2. The following persons shall also be guilty of the offense of illegal exercise of rights:
  - (a) any person who unlawfully discloses or publishes a work not disclosed nor published by its author or not destined to be disclosed or published, even where he presents it as the respective author's work and whether or not he seeks to obtain economic benefits;
  - (b) any person who makes a collection or compilation of published or unpublished works without the author's consent;
  - (c) any person granted an authorization to exploit a work, performance, phonogram, videogram or broadcast program who exceeds the limitations of the said authorization, except for the cases specifically provided for in this Code.
3. Any author who has transferred his respective rights in whole or in part, or who has authorized the use of his work in any of the forms provided for in the present Code, and who uses it directly or indirectly in a manner prejudicial to the rights granted to a third party, shall be liable to the penalty provided for in Article 197.

Article 196 – Counterfeiting

1. Any person who unlawfully represents as being his own creation or performance, a performance, phonogram, videogram or broadcast which reproduces in whole or in part another person's work or performance, whether disclosed or not, or in such a way that it does not have its own specificity, shall be guilty of the offense of infringement.
2. Where the reproduction referred to in the preceding paragraph represents a part or fragment of the work or performance, only the said part or fragment shall be deemed to be infringement.
3. Infringement shall not necessarily imply that the reproduction must be made by the same process as the original, nor need it be of the same size or format.
4. The following shall not constitute infringement:

(a) any resemblance between duly authorized translations of the same work, or between photographs, drawings, engravings or other forms of representation of the same object, where, despite the similarities due to the identity of the object itself, each one of the works has its own specificity;

(b) any reproduction by photography or engraving made solely for the purposes of illustrating criticism of art.

#### Article 197 – Penalties

1. The offenses referred to in the preceding Articles shall be subject to a term of imprisonment of up to three years and a fine of between 150 and 250 days, depending on the gravity of the offense, both being doubled in the event of a repeated offense, provided that the offense in question does not constitute an offense punishable by a more severe penalty.

2. Negligence shall be punishable by a fine of between 15 and 150 days for the offenses referred to in this Title.

3. There shall be no stay of sentence in the event of repeated offenses.

#### Article 198 - Infringement of moral rights

Any person shall be liable to the penalties laid down in the preceding Article:

(a) if he unlawfully claims authorship of a work or a performance that he knows not to be his own;

(b) if he prejudices the authenticity or integrality of a work by an act that changes its nature and which is liable to cause prejudice to the honor or reputation of the author or performer.

#### Article 199 - Use of infringed or unlawfully appropriated works

1. Any person who sells, offers for sale, imports, exports, or in any way distributes to the public an infringed or illegally used work or an unauthorized copy of a phonogram or videogram, whether the copies in question were produced in Portugal or abroad, shall be liable to the penalties provided for in Article 197.

2. Negligence shall be liable to a fine not exceeding 50 days.

## ROMANIA

### APPENDIX 20

#### **Law on Trademarks and Geographical Indication No. 84/1998 (Law No. 84/1998)**

##### Article 83

The following represent a crime and are sanctioned with imprisonment from 3 months to 3 years or with a fine of 1,500 lei:

- a) counterfeiting, imitating or using a trademark for the purpose of misleading the public with respect to the quality of the products or services that the trademark refers to;
- b) issuing without right a product bearing a trademark which is identical or similar to a trademark registered for products identical or similar and which damage the owner of the registered trademark;
- c) issuing products bearing geographical indications which indicate or suggest that the respective product comes from a geographical area, other than the real place of origin, for the purpose of misleading the public with respect to the geographical origin of the product.

The performance by any third party of any action provided in Article 35 paragraph 2 without the consent of the owner of the registered trademark represents the crime of counterfeiting.

(...)

##### Article 35

Registration of the trademark grants its owner an exclusive right over the trademark.

The owner of the trademark may request the competent court to forbid third parties from using, in their business activity, without the owner's consent:

- a) a sign identical to the trademark for products and services identical to those that the trademark is registered for;



b) a sign which, given the identity or resemblance with the trademark or given the identity or resemblance of the products or services that the sign is applied to with the products or services that the trademark was registered for would lead to a risk of confusion in the public's perception, including a risk of association of the trademark with the sign;

c) a sign identical or similar to the trademark for products or for services different from those that the trademark is registered for, when the latter became renown in Romania and if, by using the sign, without justified reasons, one would take advantage of the distinctive nature or the renown of the trademark or the use of the sign would damage the owner.

### **The Law on Unfair Competition no. 11/1991 ("Law no. 11/1991")**

#### Article 5

The following are considered crimes and are sanctioned with imprisonment from 6 months to 2 years or with a fine from Lei 2,500 to Lei 5,000:

a) the use of a company, invention, trademark, geographical indication, industrial design or model, of some topographies of an integrated circuit, of an emblem or a packaging which may cause confusion in relation to the ones used in a legitimate manner by another tradesman;

b) the issuance of counterfeited and/or pirated merchandise, the trade of which prejudices the owner of the trademark and misleads the consumer regarding the quality of the product/service;

c) the use for commercial purposes of the results of some experiments the obtaining of which required a considerable effort or of other secret information in connection therewith, sent to the competent authorities for the purpose of obtaining the permits for the trade of the pharmaceutical products or of the chemical products for agriculture, which contain new chemical compounds;

d) the disclosure of some information provided at letter c), except for the cases when the disclosure thereof is required for the protection of the public or except in case there have been taken measures to ensure that the information is protected against unfair trade use, if this information comes from the competent authorities;

e) the disclosure, purchase or use of the trade secret by third parties, without the consent of its legitimate holder, as a result of a commercial or industrial espionage action;

f) the disclosure or use of the trade secret by persons belonging to public authorities, as well as by persons empowered by the legitimate holder of these secrets in order to represent them before the public authorities;

g) the manufacture in any way, the importation, exportation, storage, offering to sell or the sale of certain merchandise/services bearing false mentions regarding the patents, trademarks, geographical indications, industrial designs or models, topographies of integrated circuits, other types of intellectual property such as the external appearance of the company, the design of the windows or the clothes of the staff, the advertising methods and other similar thereto, the origin and characteristics of the merchandise, as well as regarding the name of the manufacturer or of the trader, for the purpose of misleading the other traders or beneficiaries.

**Copyright piracy is currently regulated by the Law on Copyright and Related Rights no. 8/1996 (“Law no. 8/1996”)**

Article 139<sup>6</sup>

(1) The following actions represent crimes and are sanctioned with imprisonment from 2 to 5 years or with a fine:

a) creating pirated merchandise, for the purpose of distributing it, without aiming, directly or indirectly a material benefit, with any means and by any method;

b) placing the pirated merchandise under a final import or export regime, under a suspensive regime or in free areas;

c) any other method of introducing the pirated merchandise on the domestic market.

(2) Providing, distributing, holding or storing or carrying, for distribution purposes, pirated merchandise, as well as holding such merchandise for the purpose of using it by public communication in the work points of legal entities.

(3) In case the actions set forth in paragraphs (1) and (2) are carried out for a commercial purpose, they are sanctioned with imprisonment from 3 to 12 years.

(4) The sanction provided in paragraph (3) is also applied to borrowing or lending pirated merchandise.

(5) The promotion of pirated merchandise by any means and by any method including by use of public advertisements or electronic means of communication or by displaying or presenting lists or catalogues of products to the public represents a crime and is sanctioned with imprisonment from 6 months to 3 years or with a fine.

(6) In case any of the actions set forth in paragraphs (1)-(4) led to extremely serious consequences, they are sanctioned with imprisonment from 5 to 15 years. In order to assess the seriousness of the consequences, the value of the material damage is calculated considering the pirated merchandise identified under the conditions set forth in paragraphs (1)-(4) and by the price per unit of the original products, cumulated with the amounts illegally collected by the offender.

(7) The sanction provided in paragraph (6) is applied for the actions set forth in paragraphs (1)-(5) performed by an organized group of offenders.

(8) For the purpose hereof, pirated merchandise means: all copies, regardless of their format, including covers, made without the consent of the owner of the rights or of the person duly authorized by the latter and which are exercised, either directly or indirectly, totally or partially, from a product bearing copyrights or associated rights or from the packs or covers thereof.

(9) For the purpose hereof, commercial purpose means aiming to obtain, either directly or indirectly, an economic or material benefit.

(10) Commercial purpose is presumed if the pirated merchandise is identified at the headquarters, the work points, in the annexes or in the means of transport used by the economic operators which have reproduction, distribution, lease, storage or transport of products bearing copyrights or associated rights among their objects of activity.

#### Article 139<sup>7</sup>

Refusing to declare the origin of the pirated merchandise or of the pirated devices for access control, used for the services of conditional access programs is sanctioned with imprisonment from 3 years to 2 years or with a fine.

### Article 139<sup>8</sup>

Making available to the public, including by internet or by other computer networks, without the consent of the owners of the right, of the works or the products bearing associated rights or sui-generis rights of the manufacturers of data bases or of copies thereof, regardless of their format, so that the public may access them in any place or at any moment which they chose individually is a crime and is sanctioned with imprisonment from 1 to 4 years or with a fine.

### Article 139<sup>9</sup>

The unauthorized reproduction on digital computers of computer programs by any of the following methods: set-up, storing, running or execution, display or transfer in the internal network represents a crime and is sanctioned with imprisonment from 1 to 4 years or with a fine.

### Article 140

(1) The following actions performed without the approval or consent of the owner of the rights acknowledged by this law represent crimes and are sanctioned with imprisonment from one month to 2 years or with a fine:

- a) reproduction of the works or products bearing associated rights;
- b) distribution or import on the domestic market of works or products bearing associated rights, others than the pirated merchandise;
- c) public communication of the works or products bearing associated rights;
- d) broadcasting the works or products bearing associated rights;
- e) re-transmitting by cable the works or products bearing associated rights;
- f) creating derivative works;
- g) fixing the artistic performances or radio or TV programs for a commercial purpose;
- h) breaching the provisions of Article 134.

(2) “Products bearing associated rights” means the fixed artistic performances, phonograms, video grams, and own shows or program services of radio and television bodies.

### Article 141

The act of the person who appropriates without rights the capacity of author of a work or the action of a person who publicizes a work with another name than the one decided by the author represents a crime and is sanctioned with imprisonment from 3 months to 5 years or with a fine from 2,500lei to 50,000lei.

#### Article 141<sup>1</sup>

(1) The illegal manufacturing, import, distribution, holding, set-up, maintenance or replacement of access control devices, either original or pirated, used for the services of conditional access programs represents a crime and is punished with imprisonment from 2 to 5 years or with a fine.

(2) The action of a person who connects, without right another person to services of conditional access programs represents a crime and is sanctioned with imprisonment from 6 months to 3 years or with a fine.

(3) The use of public advertisements or electronic means of communication for the purpose of promoting pirated access control devices for services of conditional access programs, as well as the rightless display or presentation to the public in any way of the information required for manufacturing devices of any type, suitable for ensuring unauthorized access to the aforesaid program services, with conditional access, or meant for unauthorized access in any way to such services, represent crimes and are sanctioned with imprisonment from 1 month to 3 years.

(4) The sale or lease of pirated access control devices is sanctioned with imprisonment from 3 to 10 years.

(5) Performing the actions provided in paragraphs (1) and (2) for a commercial purpose is sanctioned as provided in paragraph (4).

(6) For the purpose hereof, pirated access control devices means any device the manufacturing of which was not authorized by the owner of the rights acknowledged hereby in relation with a certain service of television programs with conditional access, made for facilitating access to such service.

#### Article 143

(1) The action of a person who produces, imports, distributes or leases, provides in any way for sale or lease or holds, in order to sell, without right, devices or components which allow the neutralization of technical protection measures or which provide services which lead to the neutralization of the technical protection measures or which neutralize such technical protection

measures, including in the digital environment, represents a crime and is sanctioned with imprisonment from 6 months to 3 years or with a fine.

(2) The action of the person who, without having the consent of the owners of the rights and being aware thus it allows, facilitates, causes or hides a breach of a right provided by this law:

a) removes, for trading purposes, from works or other protected products, or changes any information on them in electronic format regarding the applicable regime of copyrights or of associated rights;

b) distributes, imports for the purpose of distribution, broadcasts or publicly communicates or provides to the public works or other protected products, for which the information existing in electronic format, regarding the regime of copyrights or associate rights, was removed or changed without authorization in order for them to be accessed, in any place and at any time, individually chosen, rightlessly, by means of digital technique.

### **Criminal Code entered into force on September 1<sup>st</sup>, 2009**

#### Article 430

(1) The following are sanctioned with strict imprisonment from 1 to 3 years or with days-fine:

(a) counterfeiting, imitating or using a trademark for the purpose of misleading the public with respect to the quality of the products or services that the trademark refers to;

(b) issuing a product bearing a trademark which is identical or similar to a trademark registered for products identical or similar and which damage the owner of the registered trademark;

(c) issuing products which bear geographical indications which indicate or suggest that the respective product comes from a geographical area, other than the real place of origin, for the purpose of misleading the public with respect to the geographical origin of the product.

(2) Criminal action is initiated upon the prior complaint from an injured party. The conciliation of the parties removes criminal liability.

#### Article 431 – Unfair use of trademarks or geographical indications

- (1) The use of trademarks and geographical indications, contrary to fair practices in trading or industrial business, is sanctioned with imprisonment from 6 months to 1 year or with days-fine.
- (2) Criminal action is initiated upon the prior complaint from an injured party. The conciliation of the parties removes criminal liability.

#### Article 432 – Production and issuance of pirated merchandise and devices

- (1) The creation for trading purposes, with any means and by any method, of pirated merchandise or pirated access control devices, as well as the import, transit or any other method for introducing on the domestic market is sanctioned with strict imprisonment from 3 to 5 years.
- (2) Distributing or holding, for commercial purposes, of pirated merchandise or pirated access control devices in stores specialized in distributing products bearing copyrights or related rights is punished with strict imprisonment from 2 to 5 years.
- (3) Storing and carrying for commercial purposes pirated merchandise or pirated access control devices is sanctioned with strict imprisonment from one to 5 years.
- (4) Any of the following is sanctioned with strict imprisonment from one to 3 years, if previously there were two sanctions applied for actions of the same type:
  - (a) distributing pirated merchandise or pirated access control devices or holding them for distribution purposes, when such activities take place in public, save for the stores specialized in distributing products bearing copyrights or associated rights;
  - (b) providing for sale or lease pirated merchandise by presenting the covers and catalogues of pirated merchandise.
- (5) In case any of the actions set forth in paragraphs (1)-(3) led to extremely serious consequences, they are sanctioned with imprisonment from 5 to 10 years. In order to assess the seriousness of the consequences, the value of the material damage is calculated considering the pirated merchandise identified under the conditions set forth in paragraphs (1)-(3) and by the price per unit of the similar original products at the date when the action was performed.
- (6) The lease of pirated merchandise or pirated access control devices, as well as providing them for sale or lease by public advertisements or electronic means of communication are sanctioned with strict imprisonment from one to 3 years or with days-fine.
- (7) Pirated merchandise means: all copies made without the consent of the owner of the rights or of the person duly authorized by the latter and which are executed, either directly or indirectly, totally or partially, from a product bearing copyrights or associated rights.

(8) Pirated access control devices means: any unauthorized device created in order to facilitate access to services of television programs with conditional access.

(9) Commercial purpose is presumed if the pirated merchandise is identified at the headquarters, the work points, in the annexes or in the means of transport used by the economic agents who have reproduction, distribution, lease, storage or transport of products bearing copyrights or associated rights among their objects of activity.

(10) The person who, before commencement of the criminal investigation, confesses to the competent authorities his/her participation in an association or agreement in order to commit any of the crimes provided in article paragraphs (1)-(6), thus allowing the identification and sanctioning of the participants, is not sanctioned.

(11) The person who committed one of the crimes provided in paragraphs (1)-(6) and who, during the criminal investigation, denounces and facilitates the identification and sanctioning of persons who committed crimes related to pirated merchandise or pirated access control devices, benefits from a decrease to half of the limits of the sanction provided under the law.

#### Article 433 –Refusing to cooperate with the competent authorities

Refusing to declare the origin of the pirated merchandise or of the pirated devices for access control is sanctioned with imprisonment from 1 to 2 years or with days- fine.

#### Article 434 – Making available to the public right-bearing products

Making available to the public without the consent of the owners of the right, of the products bearing copyrights, associated rights or sui-generis rights of the manufacturers of data bases, so that the public may access them in any place or at any moment which they chose individually is a crime and is sanctioned with imprisonment from 1 to 4 years or with days- fine.

#### Article 435 –Unauthorized reproduction of computer programs

(1) Unauthorized reproduction on digital computers of computer programs by any of the following methods: set-up, storing, running or execution, display or transfer in the internal network represents a crime and is sanctioned with imprisonment from 1 to 4 years or with days-fine.

(2) Criminal action is initiated upon the prior complaint from an injured party. The conciliation of the parties removes criminal liability.

#### Article 436 – Nonobservance of the norms regarding protection of the copyrights and associated rights

(1) The following actions performed without the approval or consent of the owner of the copyrights or of the associated rights are sanctioned with strict imprisonment from 1 to 3 years or with days-fine if they do not represent a serious crime:



- (a) distribution of the works or products bearing associated rights;
- (b) import on the domestic market of copies of works or products bearing associated rights;
- (c) lease of the works or products bearing associated rights;
- (d) public communication of works, other than musical ones, or products bearing associated rights;
- (e) broadcasting the works or products bearing associated rights;
- (f) re-transmitting by cable the works or products bearing associated rights;
- (g) creating derivative works;
- (h) fixing the artistic performances or radio or TV programs for a commercial purpose;

(2) “Products bearing associated rights” means the fixed artistic performances, phonograms, video-grams, and own shows or program services of radio and television bodies.

(3) Criminal action is initiated upon the prior complaint from an injured party. The conciliation of the parties removes criminal liability.

Article 437 –Inobservance of the norms regarding protection of copyrights which are not part of the assets

(1) The act of the person who appropriates the capacity of author of a work without right or the action of a person who publicizes a work with another name than the one decided by the author represents a crime and is sanctioned with imprisonment from 1 to 5 years or with days-fine.

(2) Criminal action is initiated upon the prior complaint from an injured party. The conciliation of the parties removes criminal liability.

Article 438 – In observance of the technical measures for protecting the information regarding the regime of copyrights and associated rights

(1) The action of a person who produces, imports, distributes or leases, provides in any way for sale or lease or holds, in order to sell, without right, devices or components which allow the neutralization of technical protection measures or which provide services which lead to the neutralization of the technical protection measures or which neutralize such technical protection measures, including in the digital environment, represents a crime and is sanctioned with imprisonment from 1 to 3 years or with days-fine.

(2) The sanction of strict imprisonment from 1 to 3 years or days-fine is applied to the person who, without having the consent of the owners of the rights:

- (a) removes, for trading purposes, from works or other protected products, or changes any information on them in electronic format regarding the applicable regime of copyrights or of associated rights;
- (b) distributes, imports for the purpose of distribution, broadcasts or publicly communicates or provides to the public, in order to be accessed, works or other protected products, for which the information existing in electronic format, regarding the regime of copyrights or associate rights, was removed or changed without authorization in order for them to be accessed, in any place and at any time, individually chosen, without authorization, by means of digital technique, knowing that this allows, facilitates, causes ore hides a crime provided by articles 436-437.

## **SLOVAKIA**

### **APPENDIX 21**

#### **Criminal Code**

##### Section 281

Each person that imports, exports or introduces on the market goods and services bearing a trade mark without authorization of the trade mark owner or bearing a sign capable of easy confusion with such trademark is punishable by imprisonment of up to three years.

Imprisonment from one to five years may be imposed if, by the above described act, the perpetrator; causes by the act under subsection significant damage, or acts from a personal motif, commits such act in a more serious manner,

Imprisonment from three to eight years may be imposed if by the above described act, the perpetrator; causes by the act under subsection substantial damage, or acts as a member of a dangerous organized group.

##### Section 283

Each person that infringes the statutory rights in copyright, artistic performance, audio or audiovisual recording, radio or television broadcast or database is punishable by imprisonment of up to two years.

The perpetrator shall be punished by imprisonment from six months to three years and/or penalty and/or forfeiture if: he or she causes by the act under subsection substantial damage, or commits such act in a more serious manner, from a personal motif, by means of a computer system.

## SLOVENIA

### APPENDIX 22

#### **Penal Code (Kazenski zakonik, Official Gazette of the Republic of Slovenia, No. 55/2008)**

##### Article 233:

(1) Whoever, while engaging in economic activities, uses another's trade name, trademark, geographical indication, or another's special goods trademark or services trademark, or whoever uses particular components of another's mark in his own trade name, trademark, or other mark of goods or services shall be sentenced to imprisonment up to three years.

Whoever, while engaging in economic activities, uses another's model without due authorization, shall be punished to the same extent.

Objects under paragraphs 1 and 2 of this Article, as well as tools and devices used for their manufacture, shall be seized.

##### Article 148:

(1) Whoever uses for the purpose to sell and without authorization one or more copyrighted works or copies thereof of a high total market value shall be given a prison sentence of up to three years.

(2) If the market value of copyrighted works from the preceding paragraph is very high, the perpetrator shall be given a prison sentence of up to five years.

(3) If a very large pecuniary benefit has been unlawfully gained through committing an offence under paragraphs 1 or 2 of this Article and the perpetrator's intention was to secure this pecuniary benefit for himself or another person, the perpetrator shall be given a prison sentence of between one and eight years.

(4) Copies of copyrighted works and the equipment used to reproduce them shall be seized.

## SPAIN

### APPENDIX 23

#### Spanish Criminal Code

##### Article 274

(1) It will be punishable by law with a prison sentence of a minimum of six months up to two years and a fine of 12 to 24 months for anyone that, with an industrial or commercial aim, without the consent of the holder of an intellectual property right registered according to the trademark law and with knowledge of the trademark registration, reproduces, imitates, modifies or in any other way uses a distinctive sign identical or confusingly similar with the latter, for distinguishing the same or similar products, services, activities or establishments for which the intellectual property right is registered. Likewise, will incur in the same penalty those who intentionally import these products without the referred consent, whether these have a licit or illicit origin in its country of origin; nevertheless, the importation of the referred products from a European Union Member State will not be punishable when these have been purchased directly from the owner of the rights in such State, or with its consent.

(2) The same penalties will be imposed to those who, deliberately possess for their commercialization, or introduce in trade, products or services with distinctive signs which, according to paragraph 1 of this article, imply an infringement of the exclusive rights of the right holder of the same, even when these products are imported from abroad.

(...)

##### Article 270

(1) It will be punishable by law with a prison sentence of a minimum of six months up to two years and a fine of 12 to 24 months for anyone that, with profit aim and to the detriment of a third party, reproduces, plagiarizes, distributes or publicly communicates, completely or partially, a literary, artistic or scientific work, or its transformation, interpretation or artistic execution fixed in any type of support or communicated through any means, without the authorization of the owners of the corresponding intellectual property rights or of its licensees.

(2) It will be punishable by law with a prison sentence of a minimum of six months up to two years and a fine of 12 to 24 months for anyone who intentionally exports or stores copies of works, productions or executions to which the previous paragraph refers to without the referred authorization. Likewise, those will incur in the same penalty who intentionally import these products without said authorization, whether these have a licit or an illicit nature in their country of origin; notwithstanding, the importation of the referred products of a European Union Member State will not be punishable when those have been acquired directly from the owner of the rights in said State, or with their consent.

(3) It will also be punishable with the same penalty for anyone who manufactures, imports, puts into circulation, or has any mean specifically destined to facilitate the unauthorized suppression or the neutralization of any technical device that has been used to protect computer

programs or any of the other works, interpretations or executions under the terms foreseen in the first paragraph of this article.

## SWEDEN

### APPENDIX 24

#### **Swedish Trademark Act 1960:644**

##### Article 37:

Where a person commits an infringement of the right in a trade symbol as referred to in Articles 4 to 10 (trademark infringement) and where the infringement is committed wilfully or with gross negligence, that person shall be punished by fines or imprisonment for not more than two years. A person who has violated a prohibition under the penalty of a fine under Article 37 may not be adjudicated to criminal liability for the infringement covered by the prohibition.

Attempts to commit an infringement under the first paragraph as well as the preparation of such acts shall be punishable according to the provisions of Chapter 23 of the Criminal Code.

A public prosecutor is entitled to bring an action for a violation as mentioned in the first and second paragraphs only if there is a complaint from the injured party and such an action is called for in the public interest.

#### **Swedish Copyright Act 1960:729**

##### Article 53:

Anyone who, in relation to a literary or artistic work, commits an act which infringes the copyright enjoyed in the work under the provisions of Chapters 1 and 2 or which violates directions given under Article 41, second paragraph, or Article 50, shall be punished by fines or imprisonment for not more than two years, if the act is committed wilfully or with gross negligence.

Anyone who for his private use reproduces a computer program which is published or of which a copy has been transferred with the authorisation of the author shall not be subject to criminal liability, if the master copy is not used in commercial or public activities and he does not use the copies produced of the computer program for any purposes other than his private use. Anyone who for his private use has made a copy in digital form of a compilation in digital form which has been made available to the public shall, under the same conditions, not bear criminal liability for the act.

The provisions of the first paragraph apply also if a person imports into Sweden copies of a work for distribution to the public, if such copies have been produced abroad under such circumstances that a similar production here would have been punishable under that paragraph.

Anyone who has violated an injunction issued under penalty of a fine under Article 53a, may not be held liable under criminal law for the infringement covered by the injunction.

Attempts to commit acts mentioned in the first or third paragraphs as well as the planning of such acts shall be punishable according the provisions of Chapter 23 of the Criminal Code.

Article 59:

A criminal action for violation of this Act may be instituted by a public prosecutor only if there is a complaint from the injured party or if such an action is called for in the public interest.

An action relating to a violation of the provisions in Article 3 or of directions given under Article 41, second paragraph, may be instituted by the surviving spouse of the author, by his heirs in the ascending or descending line or by his brothers or sisters.

If there are reasons to believe that a criminal violation under this Act has occurred, the property mentioned in Article 55 may be taken into custody; the general rules governing custody in criminal cases shall apply.



## UNITED KINGDOM

### APPENDIX 25

#### **Trade Marks Act of 1994**

##### Section 92:

(1) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor

- (a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trade mark, or
- (b) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign, or
- (c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).

(2) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor

- (a) applies a sign identical to, or likely to be mistaken for, a registered trade mark to material intended to be used
  - (i) for labeling or packaging goods,
  - (ii) as a business paper in relation to goods, or
  - (iii) for advertising goods, or
- (b) uses in the course of a business material bearing such a sign for labeling or packaging goods, as a business paper in relation to goods, or for advertising goods, or
- (c) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).

(3) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor

- (a) makes an article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trade mark, or

- (b) has such an article in his possession, custody or control in the course of a business, knowing or having reason to believe that it has been, or is to be, used to produce goods, or material for labeling or packaging goods, as a business paper in relation to goods, or for advertising goods.
- (4) A person does not commit an offence under this Section unless
- (a) the goods are goods in respect of which the trade mark is registered, or
  - (b) the trade mark has a reputation in the United Kingdom and the use of the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trade mark.
- (5) It is a defense for a person charged with an offence under this Section to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trade mark.
- (6) A person guilty of an offence under this Section is liable
- (a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding ten years, or both.

## **Copyright, Designs and Patents Act 1988**

### Section 107— Criminal liability for making or dealing with infringing articles

- (1) A person commits an offence who, without the license of the copyright owner
- (a) makes for sale or hire, or
  - (b) imports into the United Kingdom otherwise than for his private and domestic use, or
  - (c) possesses in the course of a business with a view to committing any act infringing the copyright, or
  - (d) in the course of a business
    - (i) sells or lets for hire, or
    - (ii) offers or exposes for sale or hire, or
    - (iii) exhibits in public, or

- (iv) distributes, or
  - (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.
- (2) A person commits an offence who:
  - (a) makes an article specifically designed or adapted for making copies of a particular copyright work, or
  - (b) has such an article in his possession, knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.
- (2A) A person who infringes copyright in a work by communicating the work to the public
  - (a) in the course of a business, or
  - (b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work.
- (3) Where copyright is infringed (otherwise than by reception of a communication to the public)
  - (a) by the public performance of a literary, dramatic or musical work, or
  - (b) the playing or showing in public of a sound recording or film, any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.
- (4) A person guilty of an offence under sub Section (1)(a), (b), (d)(iv) or (e) is liable
  - (a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding ten years, or both.
- (4A) A person guilty of an offence under sub Section (2A) is liable:
  - (a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;

- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.
- (5) A person guilty of any other offence under this Section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- (6) Sections 104 to 106 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this Section; but without prejudice to their application in proceedings for an order under Section 108 below.