



CRIMINAL ENFORCEMENT OF COPYRIGHTS
AN ANTHOLOGY FOR IP PRACTITIONERS

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(ENFORCEMENT SUB-COMMITTEE)
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Executive Summary

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

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

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

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Albania

Contributors: Irma Cami

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

The Albanian Criminal Code provides a general minimum prison term of 5 days – though it does not specially provide it for criminal copyright infringement, and a maximum prison term of 4 years for criminal copyright infringement.

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

Considering that most of the cases are of unauthorized reproduction of an intellectual work (art. 149), the courts, usually, award from three (3) months to two (2) years of imprisonment. In most cases, the imprisonment has been replaced by services to the community and a pecuniary penalty, which is authorized by the Albanian Criminal Code in case of crimes committed without violence, provided that the criminal fulfils some other personal legal requirements.

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

It depends on the nature of the infringement.

If the infringing actions fall within provisions of articles 148 and 149 of the Criminal Code i.e., publication of copyright work under someone's own name, or unauthorized reproduction, the monetary penalties vary from EUR 400 (minimum) to EUR 15,000 (maximum).

Whereas for the infringing actions that fall within provision of article 147 (fraud), the monetary penalties vary from EUR 800 to EUR 80,000.

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

Criminal proceedings are uncommon as majority of cases are resolved through civil court proceedings. However, according to the law, the awarded monetary penalty depends on the guilt of the infringer, and also the damage of the author.

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

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

Registration in Albania is possible; however, it is mandatory to enforce the right or initiate criminal proceedings. According to article 13 of the Act on Copyright and Related Right, the owner of the copyright of a work is the author of the original work regardless of the way of expression. Further, copyright protection arises automatically with the creation of the work (article 17 of the Act on Copyright and Related Right).

It follows that you need to evidence the date of the creation of the work on which author rights is claimed, or the date of disclosure of the copyrighted work to the public under the name of the author claiming rights. As a common means of evidence of copyright ownership, it is possible to deposit the first specimen of the work by the notary, who will confirm the date of deposit. However, other form of evidencing it is through any documents, having a certain date, ideally not originating from the author himself.

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

Yes, the law does not limit the activity of infringement to the physical world. A broad interpretation approach is usually taken.

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

The Albanian courts have jurisdiction over a non-resident whose crime is committed in the Albanian territory or causes results within the Albanian territory. This means for copyright infringements where the infringer has been acting/infringing abroad but the results have taken place within the Albanian territory.

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

Yes, criminal procedure enables confiscation and forfeiture of goods and materials used to commit a crime [article 30 (2) of the Albanian Criminal Code].

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

It is not a specified offence under the Albanian Money Laundering law. However, since it is criminal, in theory, it could be a predicate to money-laundering offence.

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

Extradition into or out of the Albania depends on the law of and relationship with the country. However, in general, for a grant to another state, the crime must be an offence in Albania with a prison sentence of not less than one year.

It also should be noted that the Republic of Albania has ratified the European Convention on Extradition and its two first protocols.

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

No specialized investigation procedure, but within the Police there is a division responsible for IP in the Technical Investigation and Cybercrime.

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

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

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

It depends on the nature of the infringement.

If the infringing actions fall within provisions of articles 148 and 149 of the Criminal Code i.e., publication of copyright work under someone's own name, or unauthorized reproduction, the statute of limitation is three (3) years from prosecuting.

Whereas for the infringing actions that fall within provision of article 147 (fraud), the statute of limitation is five (5) year from prosecuting.

The terms of statute of limitation are set forth in article 66 of the Albanian Criminal Code that sets the terms of the statute of limitation for different criminal and offensive actions, including that of the abovementioned copyright criminal infringement.

Australia

Contributors: Richard Watts

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

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

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

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

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

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

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

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

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

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

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

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

There is nothing to preclude criminal prosecution for copyright infringement that happens only through digital mediums. Subject to the establishment of the necessary elements of the offence

the fact that the copyright infringement occurred only through digital medium would not affect a criminal prosecution.

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

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

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

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

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

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

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

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

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

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

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

Australia does not have a specialized law enforcement department dedicated to intellectual property crimes. Intellectual property crimes are investigated by the Australian Federal Police. Prosecutions are brought by the Australian Commonwealth Director of Public Prosecution

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

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

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

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

Belgium

Contributors: Tom Heremans and Françoise Billen

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

The prison term ranges from one year to five years.

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

In practice, the remedy of imprisonment in relation to copyright infringements is seldom applied in Belgium. The majority of the criminal disputes lead to monetary penalties to be paid by the infringers.

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

The monetary penalties range from 26 up to 100.000 euros to be multiplied today by a factor 8, so in 2020 the minimum is 208 euros and the maximum 800.000 euros.

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

The monetary penalties often range from 1.000 to 5.000 euros.

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

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

Under Belgian law, a work of authorship is automatically protected, without any requirement of registration or certification.

A copyright registration certificate is thus not necessary in order to initiate a criminal case. In Belgium, each creation will be examined by the court in case of a legal dispute and the court will on the basis of all the evidence available decide whether or not the creation is a protected work of authorship.

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

The Belgian Code of Economic Law authorizes criminal prosecution for copyright infringements that occur, regardless of the type of medium used to commit the infringement.

Article XI.292 WER states that “Any person who intentionally performs any of the following acts without authorization:

2° the distribution, import for distribution, broadcasting, communication to the public or making available to the public of works or performances from which electronic information concerning the management of rights has been removed or altered in an unauthorized manner, and who knows or should reasonably know that he is thereby inciting, facilitating or concealing an infringement of copyright or of a neighboring right, is guilty of a criminal offence.”

The infringer will be punished with a level 6 penalty conform article XV.104 WER.

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

The Belgian criminal courts have no jurisdiction for a criminal offense committed outside the Belgian national territory.

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

Confiscation and forfeiture are possible in Belgium. Article 43 of the Belgian Criminal Code reads: “In case of crime or offence, special forfeiture (applicable to the cases referred to in article 42, 1° and 2°) is always pronounced. The forfeiture of goods that served or were intended to serve as the object of the crime or offence is pronounced, except when this would result in the convicted person being subjected to an unreasonably severe punishment.”

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

In theory, copyright infringement could be considered a predicate crime to money-laundering, but there is no case law known to us in this regard.

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

The Belgian law of 15 March 1874 on Extradition and the law of 19 December 2003 on the Act on the European Arrest Warrant govern the conditions, procedures and effects of extradition.

In theory, a criminal court decision ordering an imprisonment fine for more than one year for copyright infringement may lead to an extradition, but there is no case law known to us in this regard.

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

There is no department specialized in IP crimes, but IP is being dealt with by the economic crimes departments of the Public Prosecutors' offices.

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

No, there is no specialized court or tribunal. Such cases are judged by the general "Correctional Court."

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

An action for counterfeiting must be initiated before the criminal courts with 5 years after the infringement occurred (but the term can be suspended during the investigation).

Brazil

Contributors: Tânia Aoki Carneiro

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

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

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

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

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

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

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

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

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

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

In Brazil, the copyright protection does not depend on registration. Therefore, a copyright registration certificate is not required to initiate a criminal case. Any kind of evidence that demonstrates the authorship of the intellectual work that is being infringed is admitted by courts.

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

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

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

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

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

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

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

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

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

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

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

Nowadays, there are 5 (five) police stations specialized in crimes of piracy and against intellectual property rights.

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

No. Such crimes are judged by regular courts.

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

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

Note that, in case of private criminal complaint or public criminal prosecution conditional on the victim's representation, the victim has 6 (six) months from the date the offender is known to present the criminal complaint or the representation.

Bulgaria

Contributors: Nevena Radlova and Tanya Stefanova

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

There is no minimum prison term (save for in certain qualified cases, where the minimum could be one, two or five years). The maximum prison term provided for by the Bulgarian Criminal Code is eight years (Article 172a (4) and Article 172b (2) of the Bulgarian Criminal Code).

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

Sentences of Bulgarian courts tend to be at the lower end of the available range (typically between 4 months and 2 years). Nevertheless, courts decide on a case-by-case basis and considering the aggravating or extenuating circumstances.

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

There is no minimum monetary penalty (save for in certain qualified cases where the minimum penalty could be from BGN 100 (ca. EUR 50) to BGN 10 000 (ca. EUR 5 000)). The maximum monetary penalty provided by the Bulgarian Criminal Code is BGN 50 000 (ca. EUR 25 000) (Article 172a (4) of the Bulgarian Criminal Code).

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

As noted above in question 3, sentencing is largely discretionary and sentences can vary. The fines tend to be at the lower end of the available range (typically between BGN 100/ca. EUR 50 and 4 000/ca. EUR 2 000) but this could vary depending on aggravating circumstances.

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

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

Under Bulgarian law registration is not necessary for copyright to exist. The holder of the copyright is the author of the work and protection starts automatically with the creation of the work.

Article 6, Paragraph (1) of the Bulgarian Copyright and Neighbouring rights act provides for a presumption of authorship: „Until proved otherwise, the person whose name or other identifying mark is inscribed in the customary manner on the original of a work, replicas or copies thereof and/or the packaging, shall be considered its author“.

In criminal proceedings, various types of evidence can be used to prove the creation of the work by the author: evidence for the first publication of the work etc. Very often an expert opinion is used to certify questions related to copyright ownership.

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

Yes. Bulgarian law allows criminal prosecution for copyright infringement that happens in or through only the digital medium/electronic medium/ mobile network/ Internet.

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

The criminal court will exercise a long-arm jurisdiction if:

1. protection is sought within the territory of the Republic of Bulgaria; or
2. the crime, prosecuted by public prosecution, is committed abroad but affects the interests of the Republic of Bulgaria or of a Bulgarian citizen; or
3. this is stipulated in an international agreement in which the Republic of Bulgaria participates, regardless of the nationality of the perpetrator.

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

Yes. The general principle is that the object of the crime is taken to the benefit of the state, irrespectively of the fact whose property it is, and is destroyed.

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

In theory, since the copyright infringement is a criminal offence, it could be considered a predicate crime to money-laundering. However, the copyright infringement is not directly considered as one of the money laundering and terrorist financing risk events according to the Bulgarian National Risk Assessment – AMLC.

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

Yes. The Extradition and European Arrest Warrant Act (promulgated in the State Gazette, Issue 46/2005, as amended) governs the conditions and procedure in relation to extradition.

The extradition may be at the request of another State or requested by the Republic of Bulgaria. The Act applies also where extradition is requested by an international court.

The Extradition and European Arrest Warrant Act provides for a principle of double criminality. That means that the extradition shall only be granted where the act constitutes a criminal offence under Bulgarian law and under the law of the requesting State, which is punishable by deprivation of liberty or where the perpetrator must be under a detention order, and where additional requirements are met.

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

In Bulgaria there is a Cybercrime Unit of the Bulgarian General Directorate Combating Organised Crime of the Ministry of Interior that organizes an investigation in relation to computer crimes or crimes committed in or through computer networks and systems; in relation to crimes that relate to Intellectual Property.

Also, the Copyright and Neighbouring Rights Directorate of the Ministry of Culture organizes the initiation and conduct of administrative-criminal proceedings and files for administrative violations under the Copyright and Neighbouring Rights Act.

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

There are no specialized courts or tribunals.

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

The limitation period for crimes against Intellectual Property can vary between three and ten years, depending on the penalty provided for the crime. However, for crimes prosecuted on the grounds of a complaint by the aggrieved party, the limitation period is six months from the date on which the aggrieved party has become aware of the committed crime.

Canada

Contributors: Lorne Lipkus

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

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

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

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

Punishment

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

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

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

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

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

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

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

[20] The case involved the importation and sale of forged copies of computer operating systems and security software. The Appeal Court found that the trial judge erred in principle, including factors such as a threatened or actual civil proceeding, as an aggravating

factor. The judge below was also found to have erred in imposing victim fine surcharges on offences under the *Copyright Act*. In addition, the trial court failed to take into account the lack of the appellant's criminal record, the personal circumstances of the appellant, and the lack of evidence establishing the volume of commerce or profit involved in the offences. The jail time was deleted from the sentence for the individual accused and the fine for that individual reduced to \$10,000. The corporate fine was reduced to \$5,000.

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

CROWN'S SUBMISSION ON SENTENCE

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

[23] Crown counsel included a brief which included the following cases, *R. v. Bin Min Hu*, October 17, 2005, Vancouver Registry No. 164559-1; *R. v. Jason Kin Wah Jew*, May 15, 2006, Vancouver Registry No. 150253-1; *R. v. Lay Ha Leung*, March 12, 2003, Vancouver Registry No. 131792-3; *R. v. Chui Lau*, November 16, 2006, Richmond Registry No. 48984-2-C; *R. v. Bing Min Peter Hu*, November 5, 2008, B.C.S.C. Vancouver Registry No. 24383; *R. v. Chen* 2004 BCPC 365 (CanLII), 2004 B.C.P.C. 0365; *R. v. AFC Soccer*, 2002 M.J. No. 441 (Manitoba Provincial Court), and appeal granted 2004 M.J. No. 194 (M.C.A.).

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

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

[26] In the case before this Court, a business, where most of the goods for sale were forgeries and an abuse of copyright, was organized in the store in Langley, B.C. The store contained a large number of such items with more similarly illicit items to arrive but for the detection and seizure thereof by the Canadian Border Services Agency. While the value thereof was not proven to a mathematical certainty, the value of the goods was significant.

[27] Of the cases cited, the case of *R. v. Chen*, a decision of the Honourable Madam Justice Bruce, then sitting in this Court, provides some considerable assistance as it has a fact pattern which, although not identical, bears more than a passing resemblance to the case at bar. One of the differences is that in *R. v. Chen* the trial judge found that customers, including the undercover officer, were well aware that they were purchasing counterfeit clothing rather than brand name products. In the case at bar there was some evidence that representations as noted above were made that the goods, particularly brand name purses, were genuine. No evidence was led concerning other customers at all.

CONCLUSIONS

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

In *R. v. Smith* [2002] OJ No. 5018 (Ont. S.C.J.) Pierce J, placed the convicted Smith, on probation for a period of 3 years.

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

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

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

The appeal was allowed, in part. The Court of Appeal set aside the fine imposed by the trial judge for the *Copyright Act* offence. The Court of Appeal noted that section 734(2) of the

Criminal Code “makes clear that in fining an offender, a judge is required to be satisfied that the offender has the ability to pay the fine before imposing it.”

The Court of Appeal concluded that the trial judge had failed to do so. The Court of Appeal suggested that in “Mr. Strowbridge’s case his financial situation, especially his financial obligations which now include a new restitution order, would make the imposition of a fine very burdensome to him.”

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

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

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

See answer to question number 2 above.

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

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

Fundamental principle

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

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

Other sentencing principles

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

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

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

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

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

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

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

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

(v) evidence that the offence was a terrorism offence, or

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

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

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

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

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

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

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

Registration is not necessary for copyright to exist. It arises upon the making of the work. Registration provides *prima facie* evidence of ownership and subsistence of copyright but is not required to initiate/commence a criminal case. Evidence will need to be adduced to

establish: subsistence of copyright, infringement of the copyright, and knowledge that the copyright has been infringed.

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

Conditions for subsistence of copyright

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

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

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

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

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

(c) in the case of a published work, including a cinematographic work,

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

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

Evidence can be adduced in a criminal case via testimony.

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

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

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

Circumvention of technological protection measure

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

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

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

Prohibition

41.1 (1) No person shall

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

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

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

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

(iii) the person markets those services as being for the purposes of circumventing a technological protection measure or acts in concert with another person in order to market those services as being for those purposes; or

(c) manufacture, import, distribute, offer for sale or rental or provide — including by selling or renting — any technology, device or component if

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

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

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

Circumvention of technological protection measure

(2) The owner of the copyright in a work, a performer's performance fixed in a sound recording or a sound recording in respect of which paragraph (1)(a) has been contravened is,

subject to this Act and any regulations made under section 41.21, entitled to all remedies — by way of injunction, damages, accounts, delivery up and otherwise — that are or may be conferred by law for the infringement of copyright against the person who contravened that paragraph.

No statutory damages

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

Services, technology, device or component

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

Law enforcement and national security

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

Marginal note: Services

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

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

2012, c. 20, s. 47.

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

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

Section 6(2) of the Canadian Criminal Code provides that, subject to the Code or other federal legislation to the contrary, no person may be convicted of an offence committed outside Canada.

However, even for states such as Canada, which favour the territorial principle, there has been a progressive increase in assertions of extraterritorial criminal jurisdiction to deal with international and trans-national crime, often pursuant to international treaty commitments.

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

The Copyright Act provides that:

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

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

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

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

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

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

462.3 (1) In this Part, ^[SEP]...^[SEP] “designated offence” means

- (a) any offence that may be prosecuted as an indictable offence under this or any other Act of Parliament, other than an indictable offence prescribed by regulation, or
- (b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a);

^[SEP]...^[SEP]R.S., 1985, c. 42 (4th Supp.), s. 2; 1993, c. 25, s. 95, c. 37, s. 32, c. 46, s. 5; 1994, c. 44, s. 29; 1995, c. 39, s. 151; 1996, c. 19, ss. 68, 70; 1997, c. 18, s. 27, c. 23, s. 9; 1998, c. 34, ss. 9, 11; 1999, c. 5, ss. 13, 52; 2001, c. 32, s. 12, c. 41, ss. 14, 33; 2005, c. 44, s. 1; 2010, c. 14, s. 7.

Punishment

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

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

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

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

Yes, if approved by the Minister of Justice.

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

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

There are three key stages to the Canadian extradition process:

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

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

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

Central Authorities from outside Canada are encouraged to contact the IAG to determine what is required to make an extradition request to Canada, including the evidentiary requirements, and whether provisional arrest is appropriate in a given situation.

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

No.

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

No.

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

Proceedings by summary conviction in respect of an offence under this section [Copyright] may be instituted at any time within, but not later than, two years after the time when the offence was committed.

Colombia

Contributors: María Fernanda Castellanos

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

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

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

In Colombia, courts have imposed imprisonment term up to two (2) years minimum¹, and maximum four (4) years².

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

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

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

In Colombia, courts have imposed fines up to five (5) minimum³ and maximum twenty-six point sixty-six (26.66)⁴ times the statutory monthly minimum wage.

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

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

First, according to the Colombian copyright legislation the registration of a copyrighted work is not a prerequisite to obtaining copyright protection.

¹ Supreme Court of Justice. Process 31403 against Luz Mary Giraldo. Decision issued on May 28th, 2010.

² Circuit Criminal Court of Zipaquirá. Process against Jairo Ramón Jurado Mesa.

³ Supreme Court of Justice. Process 31403 against Luz Mary Giraldo. Decision issued on May 28th, 2010.

⁴ Circuit Criminal Court of Zipaquirá. Process against Jairo Ramón Jurado Mesa.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The statute of limitations applicable to criminal actions regarding copyright infringement, according to article 83 of the Colombian criminal code, is a time equal to the maximum of the imprisonment penalty established by the law. Nevertheless, under any circumstance this time will be less than five (5) years or more than twenty (20).

Czech Republic

Contributors: Tomas Matejovsky and Jan Jezek Billen

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

The Criminal Code does not set out a minimum prison term. The maximum prison term is 20 years. For particularly serious crimes an exceptional punishment may be imposed where the criminal law provides. The term of exceptional punishment denotes both a prison term for over twenty to thirty years and a life prison term. Criminal law does not provide imposition of exceptional punishment for copyright offences.

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

Prison terms are usually not awarded. Within the years 2016 to 2018, courts have imposed sentences with prison terms only in two cases – first for 9 months and second for 10 months. Within the same years, courts have imposed sentences with conditional prison terms in 62 cases – the conditional prison terms ranged from 2 to 36 months with probational periods between 12 to 60 months.

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

Generally, the courts can impose monetary penalties from CZK 2,000 (approx. EUR 74) to CZK 36,500,000 (approx. EUR 1,354,360).

However, in case of minors the courts can impose monetary penalties from CZK 1,000 (approx. EUR 37) to CZK 1,825,000 (approx. EUR 677,180), and in case of legal persons the courts can impose monetary penalties from CZK 20,000 (approx. EUR 742) to CZK 1,460,000,000 (approx. EUR 54,174,397).

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

Sentencing is largely discretionary and varies by case. However, there is no official data publicly available in respect to the amounts.

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

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

There are no such requirements, in the Czech Republic no copyright register (and, thus, no copyright registration certificate) exists.

The type of evidence varies depending on the type of work. Nevertheless, anything can be used as evidence before Czech courts and in case of copyright offences e.g. expert opinions, lists of protected works by collecting societies / authors, etc. are commonly used.

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

Yes, there is no difference between forms of copyright offences.

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

Copyright offence committed abroad by a Czech citizen or a stateless person who was granted a permanent residence in the Czech Republic is punishable under Czech law.

Copyright offence committed abroad by a foreign citizen or a stateless person who was not granted a permanent residence in the Czech Republic is punishable under Czech law if:

- a) the offence is punishable under the laws in the territory where it was committed,
- b) the offender was apprehended in the territory of the Czech Republic and was not extradited to foreign state for criminal prosecution, and
- c) the foreign state requested the criminal prosecution of the offender in the Czech Republic.

Copyright offence committed abroad by a foreign citizen or a stateless person who was not granted a permanent residence in the Czech Republic is punishable under Czech law even when the offence was committed in favour of a legal entity with its registered seat or branch in the territory of the Czech Republic.

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

Forfeiture of property (entire property or such part of it as determined by the court) may be imposed for committing copyright offence only if the upper limit of the prison term amounts to a minimum of ten years and if the offender sought to gain or gained for himself or for another person monetary benefits. Therefore, forfeiture of property may only be imposed for committing copyright offence under Section 271 Paragraph 3 of the Criminal Code (for details of the offence please see the relevant question).

The court shall impose forfeiture of an item that is direct proceeds of crime. The court may impose forfeiture of an item (a) which is an instrument of crime, or (b) which is an arranged proceeds of crime where the value of the item constituting the direct proceeds of crime is not negligible in relation to the value of the item constituting the arranged proceeds of crime.

Confiscation of an item (as a protective measure instead of punishment) may be imposed in cases where the punishment of the forfeiture of items cannot be imposed, specifically (a) such item belongs to a person who may not be prosecuted or convicted, (b) such item is owned by an offender whose punishment the court waived, (c) such item threatens the safety of persons or property or society, or if there is a risk that it will be used to commit a crime, or (d) such item which is direct proceeds of crime or arranged proceeds of crime where the value of the item constituting the direct proceeds of crime is not negligible in relation to the value of the item constituting the arranged proceeds of crime.

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

Generally, any criminal act including copyright offences may represent a predicate crime to money-laundering offence.

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

Yes, it is permitted.

A person may be surrendered from one EU Member State to another under the European Arrest Warrant. Offender may be surrendered only if the copyright offence constitutes an offence under criminal law of both states and if the offence is punishable by the law of the requesting Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

A person may be extradited from the Czech Republic to a third country if the copyright offence is punishable by the law of the Czech Republic by a custodial sentence or a detention order for a maximum period of at least one year or, where a sentence has been passed or a detention order has been made, for sentences of at least four months. Extradition is inadmissible in several cases (e.g. the person to be extradited is a Czech citizen and did not express consent; a capital punishment may be imposed in the requested country for the offence concerned; criminal liability for the offence would be statute-barred under the law of the Czech Republic, etc.).

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

There is no specialized investigation procedure. Copyright offences are investigated by the Department of Economic Crimes of the Police of the Czech Republic.

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

There is no specialized court for criminal prosecution of copyright offence cases.

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

The length of the period of statutory limitation depends on the upper limit of the prison term.

Criminal liability for a criminal offence expires upon the lapse of the period of statutory limitation, which amounts to

- fifteen years where the upper limit of the prison term amounts to a minimum of ten years;
- ten years where the upper limit of the prison term amounts to a minimum of five years;
- five years where the upper limit of the prison term amounts to a minimum of three years;
- three years for other criminal offences.

Dominican Republic

Contributors: Jaime R. Angeles

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

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

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

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

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

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

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

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

The courts usually award 50 Minimum wages

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

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

In the Dominican Republic, the copyright protection does not depend on registration, neither it is a requisite to initiate an enforcement action or a criminal case. Any kind of evidence that demonstrates the authorship of the intellectual work that is being infringed is admitted by courts.

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

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

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

The Digital Crimes Law (Law No. 53-07 on Crimes and High Tech Crime) on Article 2 indicates:

Scope of the law in the territory of the Dominican Republic to any individual or corporation, domestic or foreign person who commits an offense under said Law:

- a) When the active subject conducts or orders the commission of criminal activity within national territory
- b) When the active subject conducts or orders the commission of criminal activity from abroad, producing effects in national territory;
- c) When the origin and effects of the activity occur abroad, using means located in national territory; and
- d) When any type of complicity takes place from national territory.

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

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

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

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

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

This legislation in the Dominican Republic brings the concept of serious offences, (crimes) that generally produce money laundry assets. Besides the usual crimes (drug trafficking, terrorism, etc.) in the list of this type of offences is included: Counterfeiting and piracy of products and also Intellectual Property violations.

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

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

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

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

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

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

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

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

There are rules for statute of limitations. In Copyright infringements is 3 years.

France

Contributors: Jehan-Philippe Jacquey (Gilbey Legal)

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

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

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

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

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

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

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

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

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

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

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

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

The French criminal courts authorize criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet.

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

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

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

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

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

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

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

According to article 696 of the French code of criminal procedure:

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

The below is a summary of the French applicable provisions:

- No surrender to a foreign government may be made of any person who is not the object of a prosecution or a conviction for an offence provided for by the present section;
- The French government may hand over any person who does not have French nationality and who is the subject of a prosecution initiated in the name of the requesting state or of a conviction imposed by its courts, to foreign governments, at their request, where this person is found on French national territory;
- However, extradition is only granted if the offence for which the application has been made was committed:

- either on the territory of the requesting state by a national of this state or by a foreigner;
- or outside the territory of the requesting state by a national from that state;
- or outside the territory of the requesting state by a foreigner, where the offence features among those for which
- French law authorizes prosecution in France, even if they are committed by a foreigner abroad;
- The offences which may result in extradition, whether this is the application for or the granting of extradition, are the following:
 - all offences punished as felonies by the law of the requesting state;
 - offences punished as misdemeanours by the law of the requesting state, where the maximum prison sentence incurred, under that law, is two years or more, or, in the case of a convicted person, where the sentence imposed by the court of the requesting state is at least two years' imprisonment.
- In no case is extradition granted by the French government if the offence does not incur a punishment for felony or misdemeanour under French law.
- Facts constituting attempt or complicity are subject to the above rules, on condition that they are punishable under laws of both the requesting and the requested state.
- If the application concerns a number of offences committed by the requested person and these have not yet been tried, extradition is only granted if the maximum sentence incurred under the law of the requesting state, for all of the offences together, is not less than two years' imprisonment
- Extradition is not granted:
 - where the requested person is of French nationality, as determined at the date of the offence for which the extradition is requested;
 - where the felony or misdemeanour has a political flavour, or where the circumstances reveal that the extradition is requested for political reasons;
 - where the felonies or misdemeanours were committed on French national territory;
 - where the felonies and misdemeanours, while they were committed outside French national territory, were prosecuted and finally disposed of in France;
 - where, under the law of the requesting state or French law, the limitation period for the prosecution has expired prior to the request for extradition, or the limitation period for the penalty has expired prior to the requested person's arrest, and in general whenever the right to prosecute in the requesting state is extinguished;
 - where the offence for which the extradition has been requested is punished by the law of the requesting state which imposes a penalty or a safety measure contrary to French public policy;
 - where the requested person would be tried in the requesting state by a court which does not provide fundamental procedural guarantees and protection for the rights of the defence;
 - where the felony or misdemeanour constitutes a military offence under Book III of the Military Justice Code
- Where a requested person is being prosecuted or has been convicted in France, and the French government is requested to extradite him for another offence, surrender is only carried out after the prosecution is over and, in the case of a conviction, after the sentence has been executed. However, this provision does not prevent the requested person from being temporarily sent to appear before the courts of the requesting state, on the express condition that he will be sent back as soon as the foreign courts have ruled.

- The provisions of the present article also apply where the requested person is subject to imprisonment in default under the provisions of Title VI of Book V of the present Code.
- Except in cases where the provisions of the present title relating to the European Arrest Warrant apply if an application for temporary custody for the purpose of extradition is made by a state that is party to the convention of 10 March 1995 relating to a simplified extradition procedure between the member states of the European Union, this is carried out in accordance with the provisions of articles 696-10 and 696-11. However, as an exception to the provisions of the second paragraph of article 696-10, the time limit for the appearance of the requested person is fixed at three days. In addition, this person is informed that he may consent to his extradition in accordance with the simplified proceedings provided for by the present section.

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

Yes (police, customs etc....).

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

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

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

The criminal statute of limitations is 6 years (5 years in the frame of infringement action brought before the civil court).

Germany

Contributors: Astrid Gérard & Micaela Schork

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

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

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

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

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

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

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

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

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

The amount of daily rates depends on the personal and financial circumstances of the infringer, Section 40 (2): the daily rate shall typically base on the actual average one-day net income of the infringer (or the average income he could achieve in one day).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Greece

Contributor: Alkisti-Irene Malamis

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

According to art. 66 of Law 2121/1993 on Copyright the minimum prison term is one (1) year while the maximum prison term is ten (10) years in the case that the defendant has made any of the infringing actions "by profession or at 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.

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

The Copyright infringement cases distinguished by Greek Law No 2121/1993 (as amended and in force) are the following:

- I) Copyright infringement (misdemeanor) as described in the par. 1 and 2 of art. 66 (basic crime).
- II) Copyright infringement (misdemeanor) as described in the subparagraph 1 of par. 3 of art. 66 which applies in case that the financial gain sought or the damage caused by the perpetration of an act listed in paragraphs (1) and (2), above, is particularly high (1st variation);
- III) Copyright infringement (felony) as described in the subparagraph 2 of the par. 3 of art. 66 which applies in case that 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 (2nd variation);

Therefore:

- In respect of the criminal action as described in the par. 1 and 2 of art. 66 the sentence awarded by the Court cannot be less than 1 year or higher than 5 years. In such cases the prison terms usually awarded by the Court are of 18-24 months.
- In respect of the criminal action as described in the subparagraph 1 of par. 3 of art. 66 the sanction shall be not less than 2 years or higher than 5 years. In such cases, the prison terms which are usually awarded by the courts are of 24-30 months.
- In respect of the criminal action as described in the subparagraph 2 of par. 3 of art. 66 the sentence which will be imposed by the Court, will be of at least 5 years and up to

10 years. In such cases the minimum prison terms usually awarded are of 5 years while the maximum prison terms of 7 years.

Please note that according to Greek Penal Code's provisions the prison term which will be eventually awarded depends on other factors as well, such as the defendant's previous behavior as well as his/her behavior after the criminal action, but also on other factors as listed in art. 84 of the Penal Code. Such factors are considered by the Court and tend to decrease the quantum of the sentence. This is why the prison terms usually awarded by the Courts tend to be closer to the minimum (rather than to the maximum) of the threatened penalty.

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

According to the aforementioned art. 66 of Law 2121/1993 on Copyright, the minimum monetary penalty awarded by the Court cannot be less than 2.900 euro nor higher than 60.000, the latter in case that the infringement was made "by profession" or at "a commercial scale".

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

In respect of the criminal action as described in the par. 1 and 2 of art. 66 the infringer shall be liable to a monetary penalty no less than 2.900 nor higher than 15.000 euro. In such cases the Courts usually award monetary penalties of 2.900-6.500 euro.

In respect of the criminal action as described in the subparagraph 1 of par. 3 of art. 66 the infringer shall be liable to a monetary penalty no less than 6.000 nor higher than 30.000 euro. In such cases the Courts usually award monetary penalties of 6.000-10.000 euro.

In respect of the criminal action as described in the subparagraph 2 of par. 3 of art. 66 the infringer shall be liable to a monetary penalty no less than 15.000 nor higher than 60.000 euro. In such cases the Courts usually award monetary penalties of 20.000-35.000 euro.

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

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

According to Greek law, copyright protection arises simultaneously with the creation of the work. Registration is not necessary for copyright to exist, thus such registration is not required in order to initiate a criminal case.

However, the copyright owner can deposit the first specimen of the work with a Notary Public, in order for the latter to confirm the exact date of the deposit, for evidence purposes.

Even in that case though, it is up to the Court to determine the originality of the work, namely whether the latter should be protected by the Copyright law.

In a dispute, the ownership of the work can be proved as follows: with witnesses' statements, written agreements, prior jurisprudence, evidence of deposit of the work with a notary, expert opinion.

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

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

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

Greek courts are competent to hear any criminal offence that has taken place within the Greek territory.

Moreover, according to art. 6 of the Greek Penal Code, Greek courts are also competent to hear a crime committed abroad by a Greek individual in case that the crime is considered by Greek law as felony or misdemeanor, provided that such action is also punishable according to the law of the country where the latter committed.

Furthermore, according to art. 8 of the Greek Penal Code, Greek courts are also competent in case that a foreign national commits a crime against a Greek individual or legal person provided, when the crime is considered by Greek law as felony or misdemeanor as well as if the said action constitutes a crime in accordance with the laws of the country where the action has taken place.

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

According to art. 68 and 76 of Greek Penal Code objects or assets that are products of a felony or a misdemeanor or objects and assets that have been used or were intended to be used in order for a person to commit a felony or a misdemeanor can be confiscated. Such assets are often vehicles used for the transportation or storage of copyright infringing products, as well as computer hardware etc.

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

According to Greek legislation, racketeering/ money-laundering constitute independent criminal offenses.

However, according to the circumstances, the facts of a copyright criminal offence in practice often may form basis for the offence of accepting and distributing of proceeds of crime.

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

According to the Greek Penal Procedure Code the cross-border extradition of a non-Greek citizen convicted of copyright infringement is possible. However, those provisions are applicable in the absence of an international treaty and without prejudice to particular legal provisions applicable to certain offenses.

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

There is a number of enforcement authorities in Greece that have parallel competences for the investigation of IP crimes according to art.39 of Law 4155/2013 on illegal trade. Such are the Police (Ministry of Public Order), the Economic Police (Ministry of Finance), the Body of Prosecution of Financial Crimes of the Ministry of Finance (acronym: SDOE), and also the Coast Guard and Customs.

The same authorities are competent to investigate also economic crimes.

In respect of economic crimes committed via electronic means the Cyber Crime Division of the Greek Police constitutes the competent authority.

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

Whilst we have Greek civil courts specialized in IP matters, there is no specialized court for criminal prosecution of copyright infringement cases.

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

According to Greek law, the crime of copyright infringement constitutes a misdemeanor.

However, it is considered to be a felony when the infringing acts were made at a commercial scale or by profession or in the case that the guilty party poses a serious threat to the protection of copyright or related rights.

According to Greek Penal Code the statute of limitations in case of a misdemeanor is 5 years starting from the date on which the copyright infringement took place and 15 years in the case of a felony.

It is worth-mentioning that in case that the defendant has been notified the date of the hearing of his/her penal case (meaning that the inquisition has been concluded and the Prosecutor has

drawn the accusation), then the statute of limitations' duration extends for 3 additional years in the case of a misdemeanor and for 5 additional years in the case of a felony.

Hong Kong

Contributors: Steven Birt

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Copyright Ordinance provides for forfeiture.

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

- i. any article which appears to him to be an infringing copy of a copyright work or an article specifically designed or adapted for making copies of a particular copyright work which appears to him to be intended for use for making infringing copies of any such work;
- ii. anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Part; and
- iii. any vessel, aircraft or vehicle (other than a ship of war or a military aircraft or vehicle) which he reasonably suspects to be or, has been used in connection with an offence under this Part.

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

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

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

- i. forfeited to the Government; (Amended 22 of 1999 s 3)
- ii. delivered up to the person who appears to the court to be the owner of the copyright concerned; or
- iii. disposed of in such other way as the court may think fit,

whether or not the person charged is convicted of the offence with which he was charged.

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

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

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

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

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

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

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

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

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

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

Under Section 120A of the Copyright Ordinance, prosecution for an offence under the Ordinance must be commenced within 3 years from the date of commission of the offence.

Hungary

Contributors: Agnes Solyom and Miklos Boros

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

The minimum prison term is 3 months. The maximum term depends on whether the crime falls under the scope of the basic definition or the qualified definition. The prison terms under the qualified definitions are further divided in accordance with the amount of the financial loss caused by the crime, e.g. if the infringement of copyright or certain rights related to copyright results in particularly substantial financial loss, the penalty should be imprisonment between 5 to 10 years. The 'particularly substantial' amount is an amount exceeding HUF 500,000,000 (approx. EUR 1,450,000). Please see the statutory texts under question 1 above for details.

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

Unfortunately, no official up-to-date statistics are available in this respect. Courts impose imprisonment in the most serious cases only where imprisonment is justified by e.g. the criminal history of the perpetrator. Should imprisonment be imposed, its term tends to be at the lower end of the available range.

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

If the criminal offence committed is punished by a maximum sentence of three years of imprisonment, the term of imprisonment may be substituted by, among others, monetary penalty.

When imposing a monetary penalty, the amount should be divided evenly among a specific number of days, each day representing the same amount of money. The minimum and the maximum number of days should be between 30 and 540 days. The amount of monetary penalty for one day should be minimum HUF 1,000 (approx. EUR 2.90) and maximum HUF 500,000 (EUR 1,450). Based on this, the amount of the monetary penalty may range between approx. EUR 90 and 785.000.

A person who is sentenced to a fixed-term imprisonment for a criminal offense committed with the purpose of financial gain and has sufficient income or property must also have a monetary penalty imposed.

For the sake of completeness, we note that, if the infringement of copyright and certain rights related to copyright results in a financial loss not exceeding HUF 100,000 (approx. EUR 290), the conduct qualifies as a minor offence. Among others, monetary penalties are imposed on the perpetrators of minor offences.

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

Unfortunately, no official up-to-date statistics are available in this respect. The amount of the monetary penalty should be determined in view of the severity of the criminal offense and in accordance with the financial situation and income and the everyday needs of the perpetrator.

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

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

In Hungary, a work or creation is entitled to copyright protection on the basis of its individualistic and original nature deriving from the intellectual activity of the author. There is no mandatory registration regime, however the Hungarian IP Office does make a voluntary registration process available, which registration can be used as evidence in a potential court procedure. Furthermore, the Hungarian IP Office also operates the Expert Body for Copyrights (in Hungarian: Szerzői Jogi Szakértő Testület), the opinion of which is usually requested in copyright related court procedures. The general forms of evidence (i.e. the ones listed in the question) are also possible types of evidences in copyright related procedures.

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

Yes, the Hungarian jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet. There is no distinction between online and offline copyright infringements.

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

Hungarian criminal law shall generally apply to

- a) criminal offenses committed in the territory of Hungary or
- b) offenses committed by a Hungarian citizen abroad, if the offense committed is punishable under Hungarian law.

Furthermore, Hungarian criminal law shall also apply

- a) to any act committed by non-Hungarian citizens abroad, if it is punishable as a criminal offense under Hungarian law and also in accordance with the laws of the country where committed,

b) to any act committed by non-Hungarian citizens abroad against a Hungarian national or against a legal person or unincorporated business association established under Hungarian law, which are punishable under Hungarian law.

In such cases, the residency of the perpetrator has no relevance, i.e. the court will have jurisdiction also over a non-resident.

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

Confiscation (in Hungarian: *elkobzás*) and confiscation of property (in Hungarian: *vagyonekobzás*) are measures under Hungarian law which may be ordered independently, or in addition to a penalty or another measure.

An object shall be confiscated:

- a) which is actually used or intended to be used as an instrument for the commission of a criminal offense;
- b) which is created by way of a criminal act;
- c) for which the criminal act was committed, or that was used for the transportation of this object in connection with the criminal act after the fact;
- d) the possession of which is assessed as posing a potential risk to public safety, or is illegal.

Media products, in which a criminal act is realized, should as well be confiscated.

In the cases provided for in paragraphs a) and c) above, confiscation should not be ordered if the object is not owned by the perpetrator, provided that the owner was unaware of the perpetration of the criminal act, unless confiscation is prescribed mandatorily under international legal commitments.

Confiscation of an object should not be ordered if it falls within the scope of confiscation of property.

The following should be subject to confiscation of property:

- a) any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with, a criminal act;
- b) any financial gain or advantage that was used to replace the financial gain or advantage obtained by the offender in the course of or in connection with, a criminal act;
- c) any property that was supplied or intended to be used to finance the means used for the commission of a crime, the conditions required therefor or facilitating thereof;
- d) any property embodying the subject of financial gain given or promised.

Any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with, a criminal act, also if it served the enrichment of another person, should be confiscated. If such gain or advantage was obtained by a business entity, this business entity should be subject to confiscation of property.

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

The possibility of copyright infringement being a predicate offence can be interpreted in the context of money-laundering.

Pursuant to the Criminal Code, any person who, in connection with an asset obtained from any punishable criminal offense committed by others:

a) converts or transfers the asset in question, or performs any financial transaction or receives any financial service in connection with the thing in order to:

aa) conceal or disguise the origin of the asset, or

ab) prevents the criminal proceedings to be conducted against the perpetrator of a punishable criminal offense committed by others;

b) conceals or disguises the origin of the asset and any right attached to the asset or any changes in this right, or conceals or suppresses the place where the asset can be found;

commits money-laundering.

As copyright infringement is a criminal offence under Hungarian law, in theory, it can be considered a predicate crime to money-laundering but this will be adjudicated by the criminal court based on the individual circumstances of the respective case.

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

A person being at the territory of Hungary may be extradited at the request of a foreign state for the purpose of (i) conducting a criminal procedure, (ii) executing an imprisonment imposed or (iii) executing a measure entailing deprivation of liberty.

For the purpose specified in (i) above, extradition should be granted in respect of offences punishable under the laws of the requesting party and of the requested party by imprisonment for a maximum period of at least one year or by a more severe penalty. For the purpose specified in (ii) and (iii) above, there is at least a six-months period left to be executed of the punishment imposed.

If the corresponding regulation does not provide otherwise, Hungarian citizen may only be extradited if

a) the person requested to be extradited is citizen of another state as well; and

b) has no address in the territory of Hungary.

Based on the above, if the above described conditions are met, extradition of a person convicted of copyright infringement is in theory possible.

As per Act CLXXX of 2012 on the Co-operation with the Member States of the European Union in Criminal Matters, under the European arrest warrant issued by the judicial authority of another Member State a person staying in the territory of Hungary may be arrested and surrendered for the purposes of conducting a criminal prosecution or executing an imprisonment or a measure entailing deprivation of liberty for acts punishable by the law of the issuing Member State by an imprisonment or a measure entailing the deprivation of liberty for a maximum period of at least 12 months or, where a sentence has been passed or an order for a measure entailing deprivation of liberty has been made, for sentences of at least 4 months.

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

No specialized IP crime related procedure is provided.

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

No specialized court exists for criminal prosecution of copyright infringement cases.

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

As a general rule, prosecution may not be initiated after the lapse of a period of time equal to the maximum penalty prescribed for the respective criminal offence, but in all cases, after the lapse of a minimum of 5 years (which is the general limitation period).

As per the basic definition, copyright infringement is punishable by an imprisonment not exceeding 2 years. In this case, the general limitation period applies, therefore, prosecution may be initiated within 5 years. However, if the copyright infringement results in particularly substantial financial loss, the maximum penalty could be imprisonment up to 10 years, which means that in such case, the limitation period will be 10 years.

India

Contributors: Xerxes Ranina

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

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

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

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

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

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

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

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

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

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

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

Under computer programmes- (section 63-B):

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

Please note that all USD rates have been calculated @ Rupees 72 per 1 USD and has been rounded off to the nearest tenth.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Any person having an interest in any copies of a work or plates seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies or plates being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

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

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

Offences under The Copyright Act, 1957, including

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Limitation Act 1963 sets out the statute of limitations for filing infringement actions. The usual time limit for bringing an action is three years from the date the cause of action arises.

Italy

Contributors: Paola Nunziata

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

The Copyright Law provides a maximum prison term of four years (Article 171 *octies*). No minimum term is provided for.

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

The prison terms usually awarded by Italian Courts in relation to copyright infringements vary between a minimum of two months and a maximum of eight months.

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

The minimum monetary penalty provided for by the Copyright Law is equal to Euro 51 (Article 171), while the maximum monetary penalty is equal to Euro 25,822 (Article 171 *octies*).

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

The monetary penalties usually awarded by Italian Courts in relation to copyright infringements vary between Euro 500 and Euro 4,000.

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

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

According to Italian law, in order to be eligible for copyright protection, intellectual works must have a creative character: if this requirement occurs, copyright may be invoked automatically.

Therefore, a copyright registration certificate is not required in order to commence a criminal case.

However, the existence of the creative character shall be verified within judicial proceedings and this usually happens through a case by case assessment to be carried out in relation to the peculiarities of each case, according to parameters as much as possible objectives.

For example, Courts use to take into account the recognition that the intellectual work has received from the artistic, cultural and institutional environments. Such recognition is usually manifested through (i) exhibits in shows and museums, (ii) publications in (non-commercial) specialized magazines; (iii) participations in artistic events; (iv) awarding of prizes; (v) articles by critics with experience in the field.

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

Yes, the Copyright Law authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium/electronic medium/mobile network/Internet.

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

According to Article 6 of the Criminal Code, Italian criminal courts can exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the courts, provided that (i) the conducts or the omissions representing the crime have been carried out, entirely or partially, in the Italian territory, or (ii) the event that is consequence of the above conducts or omissions occurred in the Italian territory.

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

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

In particular, according to Article 171 *sexies*, paragraph 2, of the Copyright Law, there shall always be ordered the forfeiture of means and materials which contributed or were meant to commit the offences under articles 171 bis and 171 *ter*, as well as the forfeiture of the videotapes and of any other audiovisual, phonographic, or information carriers that have been unlawfully duplicated, reproduced, transferred, marketed, held or introduced into the national territory and not bearing the SIAE's mark, when provided for by law, or bearing a mark which has been counterfeited, or altered or meant for another work.

Furthermore, according to Article 240 of the Criminal Code, in case of conviction, the Court may order the forfeiture of the things which contributed or were meant to commit the offences and of the things which are their product or profit. Furthermore, the Court shall order the forfeiture of (i) things that constitutes the price of the offence and of (ii) things which manufacture, use, carrying, possession or alienation constitutes a criminal offence, even if no decision has been pronounced.

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

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

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

Without prejudice of international conventions, the cross-border extradition is regulated by Article 13 of the Criminal Code and by Article 697 and subsequent of the Code of Criminal Procedure. These articles contain general rules and, as such, can be considered applicable also to criminal copyright infringements.

However, as specified by Article 13, the extradition can be granted only if the conduct in relation to which it is requested is qualified as a crime both by the Italian law and by the foreign law.

In any case, the extradition of an Italian citizen cannot be granted, unless expressly allowed by international conventions.

Within the European Union territory reference must be made to the provisions contained in the Law no. 69/2005, implementing in Italy the EU arrest warrant. According to Article 7 of the above law, Italy can perform an EU arrest warrant only if the conduct in relation to which the arrest warrant is requested is qualified as a crime by the Italian law too.

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

Italian law does not provide for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes. However, a special police unit (so called “*Polizia Postale*”) is in charge with investigations related to infringements (including those concerning copyright) committed through internet.

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

No specialized Court for criminal prosecution of copyright infringement cases is provided for by Italian law.

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

As a general rule, the legal proceeding shall be commenced within 6 months from the recordal of the offender’s name in the Register of the news of crime. Such a recordal must be

performed by the competent Public Prosecutor, as soon as he has knowledge of the crime. Under certain circumstances the above 6-month period can be extended.

Furthermore, Italian law provides the criminal statute of limitations. The expiry of the statute of limitations period implies the extinction of the crime. Therefore, the legal proceeding shall be initiated and completed within the end of the statute of limitations period.

According to Article 157 of the Criminal Code, the statute of limitations period is equal to the maximum penalty provided for by the law for the crime in question and in any case cannot be lower than six years. Therefore, considering that the maximum penalty provided for criminal copyright infringements is equal to four years of imprisonment, the statute of limitations period is equal to six years.

Kosovo

Contributors: Irma Cami

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

According to article 42 of the Kosovo Criminal Code, the minimum prison term is thirty (30) days, though not specifically provided for criminal copyright infringement. This is general term and is deemed applicable to any criminal action unless a minimum term for a specific criminal action is not expressly stipulated. While the maximum prison term is eight (8) years in case "when the perpetrator uses without authorization a copyrighted work or a work which is subject matter of related rights, and obtains for himself, herself, or for another person more than fifty thousand (50,000) EUR" [article 290 (7) of the Kosovo Criminal Code].

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

Considering that most of the cases are of unauthorized use of a copyrighted work or work which is subject to related rights, the courts, usually, award from three (3) months to two (2) years of imprisonment. In most cases, the imprisonment has been replaced by services to the community and a pecuniary penalty, which is authorized by the Kosovo Criminal Code in case of crimes committed without violence, provided that the criminal fulfils some other personal legal requirements.

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

The minimum monetary penalty is one hundred (100) European Euros, while the maximum is twenty-five thousand (25,000) EUR [article 43 (1) of the Kosovo Criminal Code].

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

Criminal proceedings are uncommon as majority of cases are resolved through civil court proceedings. However, according to the law, the awarded monetary penalty depends on the guilt of the infringer.

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

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

Registration is not required in order to initiate a criminal copyright proceeding. According to Kosovo Copyright Act, copyright protection arises automatically with the creation of the work (article 7 of the Kosovo Act on Copyright and Related Right).

It follows that you need to evidence the date of the creation of the work on which author rights is claimed, or the date of disclosure of the copyrighted work to the public under the name of the author claiming rights. As a common means of evidence of copyright ownership, it is possible to deposit the first specimen of the work by the notary, who will confirm the date of deposit. However, other form of evidencing it is through any documents, having a certain date, ideally not originating from the author himself.

The court also should determine the originality of the work, namely whether the latter should be protected by the Copyright law, usually it is done by an expert opinion.

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

Yes, the law does not limit the activity of infringement to the physical world. A broad interpretation approach is usually taken.

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

The Kosovo courts have jurisdiction over a non-resident whose crime is committed in the Kosovo territory or causes results within the Kosovo territory. This means for copyright infringements where the infringer has been acting/infringing abroad but the results have taken place within the Kosovo territory.

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

Yes, criminal procedure enables confiscation and forfeiture of goods and materials used to commit a criminal copyright infringement [articles 290 (8) and 291 of the Kosovo Criminal Code].

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

It is not a specified offence under the Kosovo Money Laundering law. However, since it is criminal, in theory, it could be a predicate to money-laundering offence.

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

Extradition into or out of the Kosovo depends on the law of and relationship with the country. However, in general, for a grant to another state, the crime must be an offence in Kosovo with a prison sentence of not less than one year.

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

No specialized investigation procedure, but within the Police there is a division responsible for IP in the Technical Investigation and Cybercrime.

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

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

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

It depends on the nature of the criminal copyright infringement.

If the infringing actions fall within points 2, 3 and 4 of article 290 of the Criminal Code, the statute of limitation is four (4) years from prosecuting.

If the infringing actions fall within points 1 and 5 of article 290 and article 291 of the Criminal Code, the statute of limitation is six (6) years from prosecuting.

If the infringing actions fall article 290 (6) of the Criminal Code, the statute of limitation is ten (10) years from prosecuting.

Whereas for the infringing actions that fall within provision of article 290 (8) the statute of limitation is fifteen (15) year from prosecuting.

The terms of statute of limitation are set forth in article 66 of the Albanian Criminal Code that sets the terms of the statute of limitation for different criminal and offensive actions, including that of the abovementioned copyright criminal infringement.

When the law provides for more than one punishment for a criminal offense, the period of limitation shall be determined according to the most serious punishment.

The terms of statute of limitation are provided in article 99 of the Kosovo Criminal Code.

Luxembourg

Contributors: Vincent Wellens

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yes. Under article 83 of the Law of 2001, the Luxembourg judge can order “*The confiscation of counterfeit works and goods or supports/media containing the counterfeits, as well as*

boards, molds or dies and other utensils directly used to carry out the offences referred to in the preceding article, and this irrespective of ownership, (...), as well as the confiscation of their copying, digitization or network feeding materials". The judge can also request the destruction of the confiscated things.

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

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

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

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

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

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

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

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

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

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

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

There is no specific statute of limitations applicable to copyright infringement. Under article 638 of the Luxembourg Criminal Procedure Code, five-year statute of limitation applies to criminal offences.

New Zealand

Contributors: Richard Watts

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

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

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

Sentencing tends to be at the lower end of the available range but this could vary depending on the severity of harm caused.

There are few reported decisions dealing with sentences imposed under section 131 of the Copyright Act 1994. Sentencing is largely an individual and discretionary act.

Police v Adams [waiting to get citation from DC]

The defendant was convicted and sentenced to 4 months in prison and a reparation payment of \$784, for copying and selling hard drives of karaoke music.

Police v Vile [2007] DCR 24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pakistan

Contributors: Faisal Daudpota

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

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

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

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

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

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

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

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

Same as question 2.

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

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

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

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

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

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

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

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

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

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

(b) when any person:-

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

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

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

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

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

Therefore, criminal prosecution would be allowed for infringement occurring through any medium including the internet / digital medium / electronic medium / mobile network.

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

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

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

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

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

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

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

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

Infringement of copyright under Sections 66 to 70 CO'62 may be treated as predicate crime under Section 3 of the Anti-Money Laundering Act 2010 and Section IV to the Schedule thereof. This means, that if a predicate crime results in the offender accumulating money that

are “proceeds of crime”, then according to Section 3 of Anti-Money Laundering Act, 2010, the offender can also be convicted of the “offence of money laundering” that carries the punishment of a fine up to one million rupees (PKR 1,00,0000 / US\$ 8,140 approximately) and/or imprisonment between one (1) year to ten (10) years, as well as forfeiture of property involved in the given offences.

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

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

“an offence the act or omission constituting which falls within any of the descriptions set out in the Schedule and, if it took place within, or within the jurisdiction of, Pakistan would constitute an offence against the law of Pakistan and also

(i) in the case of a treaty State, an offence a person accused of which is, under the extradition treaty with that State, to be returned to or from that State; and

(ii) in the case of a foreign State not being a treaty State, an offence specified in a direction issued under section 4”

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

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

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

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

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

Per the Intellectual Property Organization Act of 2012, IP Tribunals were created whereby the tribunals have exclusive jurisdiction to try any offense under intellectual property laws including copyright infringement.⁵ The tribunals, in exercise of their criminal jurisdiction have all the powers vested in a Court of Sessions under the Code of Criminal Procedure 1898.

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

Unlike civil litigation, there is no specified period of limitation to bring criminal proceedings in Pakistan. The Supreme Court has remained liberal in allowing the delay in criminal cases coming before it.⁶ There is no limitation for preferring a complaint of a criminal offence unless the penal law creating the offence prescribes any period within which the complaint must be brought. Since CO'62 does not specify a time limit, there is no specified limitation period. The reason for this is that if a limitation period is imposed for criminal proceedings, the offender may delay the time by slowing down the investigation procedure by non-compliance or any other means so that the limitation period expires. Therefore, for criminal proceedings, limitation period is not prescribed. However, it must be noted that a long delay in filing the case without any reasonable explanation would not be excused.⁷

⁵ Intellectual Property Organization Act, 2012, Section 18(2).

⁶ PLD 1980 SC 14

⁷ KLR 1983 Cr. C. 272

Peru

Contributors: Juan Carlos Durand Grahammer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*“Article 102.- Confiscation of property derived from criminal offense
The judge, whenever the autonomous process of extinction of domain does not proceed, resolves the seizure of the instruments with which the crime was executed, even when they belong to third parties, except when they have not given their consent for its use. The objects of the crime are confiscated when, according to their nature, their delivery or return does not correspond. Likewise, it provides for the seizure of the effects or gains of the crime, whatever the transformations they may have experienced. The confiscation determines the transfer of said assets to the sphere of ownership of the State.
The judge also provides for the seizure of intrinsically criminal assets, which will be destroyed. When the effects or gains of the crime have been mixed with goods of lawful origin, confiscation proceeds to the estimated value of the illicit mixed goods, unless the former had been used as means or instruments to hide or convert the goods of illicit origin, in which case the confiscation of both types of goods will proceed.
If forfeiture of the effects or gains of the offense is not possible because they have been concealed, destroyed, consumed, transferred to a third party in good faith and for consideration or for any other analogous reason, the judge orders the confiscation of the assets or assets of ownership of the responsible or eventual third party for an amount equivalent to the value of said effects and profits.”*

Besides, it is worth mentioning that article 93 of PCC provides for civil reparation that can be claimed by the affected party and which comprises (i) the restitution of the goods or, if this is not possible, the payment of its value, and (ii) compensation for damages, and said civil reparation is determined jointly with the penalty to be imposed against the convicted offender (article 92) and the civil reparation is made effective against the realizable property of the convicted offender. In the event that the convicted offender does not have realizable property, the Judge will indicate up to one third of the offender’s remuneration for the payment of civil reparation (article 98).

In addition, the affected copyright owners may claim damages before civil courts through a separate civil suit, and it is before civil courts - within the context of damage claims - that actions against the property of the convicted person are possible.

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

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

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

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

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

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

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

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

Since 2007 there are three Provincial Prosecutor's Offices specialized in IP related criminal offenses in the city of Lima; in addition there such Prosecutor's Offices specialized in IP in the city of Callao (Peru's main port) and in the cities of Tumbes (located to the North close to border to Ecuador) and Puno (located close to the border to Bolivia).

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

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

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

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

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

- 1. In case of attempt, from the day the criminal activity ceased;**
- 2. In case of instant criminal offense, from the day it was consummated;**
- 3. In case of continuing criminal offense, from the day the criminal activity ended;**
- 4. In case of permanent criminal offense, from the day on which the permanence ceased.**

Poland

Contributors: Michal Siciarek

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

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

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

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

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

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

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

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

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

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

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

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

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

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

YES, according to general rules.

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

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

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

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

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

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

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

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

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

- 1) an offence against the internal or external security of the Republic of Poland;
- 2) an offence against Polish offices or public officials;
- 3) an offence against essential economic interests of Poland
- 4) an offence of false deposition made before a Polish office.

Article 113. Notwithstanding regulations in force in the place of commission of the offence, the Polish penal law shall be applied to a Polish citizen or an alien, with respect to whom no

decision on extradition has been taken, in the case of the commission abroad of an offence which the Republic of Poland is obligated to prosecute under international agreements.

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

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

In the event of sentencing for an offence specified in Articles 115, 116, 117, 118 or 118¹, the court may order forfeiture of objects coming from the offence, even if they were not owned by the offender.

ALSO

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

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

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

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

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

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

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

Preparatory proceedings related to certain crimes including crimes against intellectual property rights, may be also conducted by officers of Customs and Revenue Administration if the crimes were discovered by those officers. This may happen both for on border seizures and domestic seizures of counterfeited or pirated goods.

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

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

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

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

(...)

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

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

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

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

Romania

Contributors: Valentina Parvu and Andra Ionescu

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

Minimum 1 month and maximum 7 years.

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

Based upon reviewed case law, the minimum prison term was 1 month and maximum - 3 years.

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

Monetary fine is awarded as 30 to 400 daily rates, the amount of a daily rate is set based on the personal situation of the perpetrator and it may range between 10 RON and 500 RON. Note that if the perpetrator aimed to obtain monetary advantages by committing the crime, the limits of the fine can be raised by a third.

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

Based upon reviewed case law, the minimum was 1500 RON and maximum 6000 RON.

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

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

Art. 204 of Law no. 8/1996 on Copyright provides that:

(1) In order to record, as a means of proof, the works realized in Romania, the National Register of Works, administered by the Romanian Copyright Office is set up, the registration is optional and is made against cost, according to the methodological norms and the tariffs established by Government decision.

(2) The existence and content of a work can be proved by any means of evidence, including its inclusion in the repertoire of a collective management body.

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

Yes, it is treated according to general rules.

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

This is possible.

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

Yes, as per Article 188 par. 10 of Law no. 8/1996 on Copyright:

The holders of the infringed rights can ask the court to order the application of any of the following measures:

- (a) handing over of the profits obtained through the illegal deed, in order to cover the damages suffered;
- (b) destruction of the equipment and means owned by the perpetrator, whose sole or main purpose was to produce the illegal deed;
- (c) commercial sealing, seizure and destruction of the illegally made copies.

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

Racketeering in Romania is incriminated under several different crimes, e.g. fraud. Art. 244 par. (2) of the Romanian Criminal Code on fraud provides that "Fraud committed using false names or attributes or other fraudulent means shall be punished with imprisonment from one to five years. If the fraudulent means constitutes an offense by itself, the rules on the contest of offenses apply." There is no limitation on the offences that can be covered by this provision, thus the list may include also criminal copyright infringement offence as a predicate crime.

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

In theory, Law no. 302/2004 on international judicial cooperation in criminal matters allows cross border extradition of persons convicted of any crime including copyright infringement. However, art. 22 which provides for non-compulsory grounds for refusal of extradition: "Extradition can be refused when the deed that determined the request is the subject of a criminal investigation in progress or when this deed can be the subject of a criminal trial in Romania".

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

Within the structure of the police / prosecutor's office, anti-counterfeiting and anti-piracy proceedings are normally conducted by specialized units for economic crimes.

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

No.

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

The general statutes of limitations provided by art. 154 par. (1) of the Romanian Criminal Code are applicable also for copyright infringement and they are:

- a) 8 years – when the maximum prison term for the crime exceeds 5 years, but is not more than 10 years;
- b) 5 years – when the maximum prison term for the crime exceeds 1 year, but is not more than 5 years;
- c) 3 years – when the maximum prison term for the crime does not exceed 1 year or it is a fine.

Slovakia

Contributors: Martina Šimová and Dominika Mislovičová

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

There is no minimum prison term in the primary merits of the criminal act of copyright infringement.

The maximum prison term in the strictest merits of the criminal act of copyright infringement is eight years.

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

Prison terms are usually not awarded.

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

The court may impose a monetary penalty ranging from EUR 160 to EUR 331,930.

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

Sentencing is largely discretionary and varies by case, but monetary penalties tend to be on the lower end, usually ranging from EUR 160 to EUR 1,000.

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

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

There are no such requirements, in Slovakia no copyright register (and, thus, no copyright registration certificate) exists.

The type of evidence varies depending on the type of work. Nevertheless, anything can be used as evidence before Slovak courts and in case of copyright offences, expert opinions and lists of protected works prepared by collecting societies are commonly used.

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

mobile network / Internet?

The law does not limit the definition of the criminal act of copyright infringement to acting in the physical world.

Copyright infringement through a computer system represents a qualified (stricter) merits of this criminal act.

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

Copyright infringement committed by a foreigner in the territory of another state will be tried under the Slovak Criminal Code if the act is punishable under the law effective in the territory where it was committed, the offender was apprehended or arrested in the territory of the Slovak Republic and was not extradited to another state for criminal prosecution.

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

Slovak law distinguishes between forfeiture of the whole property and forfeiture of items.

Forfeiture of the property as a sentence for copyright infringement is not possible.

The court shall impose the sentence of forfeiture of items owned by the offender in relation to the items that (i) were used to commit the criminal act, (ii) were intended for the commission of the criminal act, (iii) the offender acquired through the criminal offence or as a reward for it, or (iv) the offender acquired for an item under (iii).

Confiscation of items (as a protective measure instead of punishment) may be imposed in cases where the punishment of the forfeiture of items cannot be imposed (e.g. such item belongs to a person who may not be prosecuted or convicted; such item is owned by an offender whose punishment the court waived or by an offender against whom criminal prosecution was terminated; such item does not belong to the offender and was obtained by a criminal offence or as remuneration for a criminal offence; etc.).

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

Generally, any criminal act producing proceeds, including copyright infringement, may represent a predicate crime to money-laundering offence.

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

Yes, it is permitted. The extradition of a person to a foreign state is admissible if the act for which the extradition is requested is a criminal act under the legal system of the Slovak

Republic, and the upper penalty limit of the prison sentence that may be imposed for such a criminal act is at least one year under the legal system of the Slovak Republic.

The extradition of a person to a foreign state for the serving of the imposed prison sentence for a criminal act under the previous sub-paragraph is admissible if the imposed sentence (or its remaining term which is to be served) is at least four months. Several punishments or outstanding remaining terms of such punishments shall be added.

As with regards extradition within the EU, a person may be extradited from one EU Member State to another under the European Arrest Warrant. Offender may be extradited only if the copyright offence constitutes an offence under criminal law of both states and if the offence is punishable by the law of the requesting Member State by a prison sentence with the upper penalty limit of the prison sentence at least 12 months or, where the imposed sentence (or its remaining term which is to be served) is at least four months.

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

No specialized investigation procedure. Economic crimes are investigated by a special department of the criminal police.

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

No.

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

Under Slovak law limitation periods vary according to the maximum penalty, which may be imposed.

In relation to a copyright infringement, the following limitation periods are of importance: (i) 10 years in the case of intentional criminal act with an upper limit of the criminal penalty ranging from 5 to 10 years, (ii) 5 years in the case of a criminal act with an upper limit of the criminal penalty being at least 3 years, and (iii) 3 years for other criminal acts.

South Africa

Contributors: Christine Strutt

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

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

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

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

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

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

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

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

The maximum monetary penalty to be imposed by a court where such a court is of a regional division is ZAR600 000 as prescribed by section 92(1)(b) of the Magistrates' Courts Act. There is no maximum penalty generally prescribed in the High Court.

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

For certain serious crimes (none of which are linked to copyright infringement), statutory mandatory minimum sentences are set but trial courts are permitted to depart from the prescribed minimum sentences whenever they find a "substantial or compelling circumstance" warranting a departure.

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

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

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

South African law does not require or have a system for copyright registration, except for a voluntary registration system for films in which case the registration merely serves as a means of identifying the copyright owner and does not establish copyright.

Accordingly, a registration certificate is not required to institute criminal proceedings founded on copyright infringement.

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

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

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

South Africa is a signatory to the Berne Convention and adheres to the principle of national treatment.

Local courts can enforce local copyright laws against foreign persons and entities provided jurisdiction is established through, for instance, locality or impact of the cause of action.

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

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

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

The Prevention of Organized Crime Act 121 of 1998 combats organised crime and money laundering activities, amongst other things, in South Africa.

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

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

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

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

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

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

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

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

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

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

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

Spain

Contributors: Ignacio Temiño

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

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

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

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

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

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

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

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

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

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

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

Yes. This category of infringement may be prosecuted through the criminal jurisdiction or through a specific administrative proceeding before the Second Section of the Intellectual

Property Commission, whereby any copyright holder may request the safeguarding of its copyrights against any infringement by those responsible for services of the information society through an expedited procedure.

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

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

EU Directives on the matter shall also be applied.

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

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

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

In addition:

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

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

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

Article 127 of the Criminal Code establishes that “Any penalty that is imposed for an intentional crime will entail the loss of the goods that come from it and of the products, means or instruments with which it was prepared or executed, as well as the proceeds of the crime, whatever they may be. The transformations that they might have experienced.” The following articles up to 128 include further considerations regarding the matter.

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

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

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

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

- a) The conversion or transfer of goods, knowing that the said assets come from a criminal activity or participation in a criminal activity, with the purpose of concealing or concealing the illicit origin of the goods or of helping people who are involved in circumventing the legal consequences of their actions.
- b) The concealment or concealment of the nature, origin, location, disposition, movement or real ownership of property or property rights, knowing that the said assets come from a criminal activity or participation in a criminal activity.
- c) The acquisition, possession or use of property, knowingly, at the time of receipt thereof, that they come from a criminal activity or participation in a criminal activity.
- d) Participation in any of the activities mentioned in the previous letters, the association to commit this type of acts, the attempts to perpetrate them and the fact of helping, instigating or advising someone to perform them or facilitate their execution.

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

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

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

Yes, it is the National Court (“Audiencia Nacional”) – under request by the judge or court deciding the case – that has the exclusive competence to process requests for international legal cooperation requested by other countries of the world and does so through two procedures: extradition and European warrant.

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

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

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

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

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

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

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

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

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

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

The periods for the time limitation of criminal liability depends on the penalties that may apply, are determined by the penalties indicated in the abstract. The penalty in the abstract must be

estimated in all its extension and therefore in its conception of maximum penalty that can be imposed, being from this perspective that the term "maximum penalty" must be interpreted.

Switzerland

Contributors: Martine Roth/Eva-Maria Strobel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Swiss CopA is according to the territorial principle of jurisdiction only applicable for Swiss works on Swiss territory. Switzerland applies the *Lex loci protectionis* principle to stipulate that the law applied to copyright infringement is the law of the *locus protectionis*. Consequently, the law of the country where the intellectual property was created or registered is not applied.

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

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

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

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

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

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

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

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

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

Art. 73 para. 1 CopA defines that prosecution is the responsibility of the cantons. Therefore there is no specialized law enforcement on a federal level.

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

No, such infringements are judged by regular courts.

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

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

The Netherlands

Contributors: Rogier de Vrey

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

In the Netherlands no specific minimum prison terms exist. The maximum prison term ranges from 6 months for intentionally infringing another person's copyright (Article 31 Dutch Copyright Act (DCA)) till 4 years in case of an offence committed by a habitual offender who infringes copyright on a professional base (Article 31b DCA)

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

There have not been many cases in the Netherlands concerning criminal copyright infringement. Criminal proceedings are very rare since most copyright infringement issues are handled by Civil Courts. The very few judgments in criminal cases range from six (6) weeks till eighteen (18) months imprisonment.

In 2019 the Court of Appeal imposed a prison sentence of eighteen (18) months based on Article 31a DCA. This was related to infringement of the copyrights owned by the Dutch Chamber of Commerce by posting 385.000 letters with the logo of the Dutch Chamber of Commerce. (Court of Appeal Arnhem-Leeuwarden, 30 march 2017)

In 2017 the Court of Amsterdam punished the accused with twelve (12) months imprisonment based on article 31/31a/31b DCA. This person secretly made pictures of driving license exam questions and used them in his driving school. (Court of Amsterdam, 25 January 2017, ECLI:NL:RBAMS:2017:381).

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

The maximum monetary penalties are stated in categories, see Article 23 of the Dutch Criminal Code.

These categories are as follows:

- 1st category: € 435
- 2nd category: € 4.350
- 3rd category: € 8.700
- 4th category: € 21.750
- 5th category: € 87.000
- 6th category: € 870.000

If a legal person is convicted, a penalty can be imposed up to the amount of the next higher category. If a sixth category fine can be imposed for that criminal offense and that category of fines does not allow appropriate punishment, a fine may be imposed up to a maximum of ten percent of the legal entity's annual turnover in the financial year prior to the judgment or penalty decision. (Article 23 Criminal Code)

There are no minimum monetary penalties. The highest monetary penalty, a penalty of the 5th category (€ 87.000) is provided in Article 31b DCA, relating to infringing copyright on a professional level.

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

As stated above in question 3, criminal proceedings regarding copyright issues are very rare in the Netherlands. We did only find one recent criminal copyright case where the accused was ordered to pay a penalty.

In a case regarding the illegal copying and marketing of CDs on a very large scale, a prison sentence was imposed of 15 months in prison and a fine of € 20.000. (Court of appeal, 19 March 2008, ECLI:NL:GHARN:2008:BC7231).

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

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

A so-called copyright register doesn't exist in the Netherlands, no registration is required to claim copyright protection / infringement.

In criminal proceedings, evidence is obtained from statements made by suspects, witnesses, experts, observations of the court and written evidence. (Article 339 Dutch Code of Criminal Procedure).

The copyright holder needs to prove his copyright. This can be evidenced by any means available, for example by providing substantial documents proving copyright ownership, through a (notarial) deed or by depositing an i-DEPOT of the Benelux Office of Intellectual Property (BOIP).

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

In the Netherlands it is possible to criminal prosecute copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet. There is no basic difference between the offline and online world regarding criminal prosecution.

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

Pursuant to the principle of territoriality stated in Article 2 of the Criminal Code, the Dutch law applies mainly to offenses committed in Dutch territory. Regarding criminal prosecuting of copyright infringement Dutch criminal courts have no jurisdiction over a criminal offense committed outside the Dutch national territory.

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

A judge can order the confiscation and/or destruction of confiscated items.

The judge can also, without the copyright owner having to join as a civil party, determine that the forfeited objects are handed over to the copyright owner, whether or not for a fee, which benefits the state. (Article 36 DCA).

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

We do not think that the treatment of a copyright infringement offence can enable as a predicate crime to racketeering / money-laundering offence / proceeds of crime. No specific (legal) rule regarding this matter exists in the Netherlands. However in a judgment of the Supreme Court concerning the relationship between the criminal offense handling of stolen good (Article 416 Criminal Code) and copyright infringement (Article 32 DCA), the Supreme Court ruled that article 32 DCA is not a special provision of Article 416 Criminal Code, because Article 32 DCA does not contain all components of Article 416. Furthermore there is no reason to believe that the legislator intended a generalis-specialis relationship. (Supreme Court 14 April 1981, NJ 1981, 509)

The same can be said about the relationship between money laundering (Article 420 Criminal Code) and copyright infringement.

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

Cross border extradition from the Netherlands to another country is possible if the copyright infringement is punishable in both countries. An extradition treaty must exist. Without an extradition treaty there is no obligation to extradite a person to another state. The judge rules on the admissibility of the extradition request. The Minister of Justice and Security then takes a formal decision to grant or refuse the extradition request.

Please note: The European Arrest Warrant provides that persons can be transferred from one EU Member State to another through a simpler procedure.

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

Since almost all copyright infringement cases are dealt with before civil courts in the Netherlands, there exist no specialized law enforcement department dedicated to IP crimes within the Public Prosecution Service or within the criminal courts.

However every criminal court has a specialized chamber that deals with economic crimes; a police court for economic offences, a single-judge division, that deals with minor offences and a three-judge division for more serious economic criminal crimes.

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

There exist not a specialized court / tribunal for criminal prosecution of copyright infringement cases in the Netherlands.

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

Most causes of action in the Netherlands are subject to limitation periods of five (5) years, with a few types of claims having extra short (1-2 years) or extra-long (20-30 years) limitation periods.

The criminal statute of limitation depends on the type of crime (Article 70 Criminal Code).

For crimes with prison terms more than 3 years, the statute of limitations is 12 years, Article 31b, 32a DCA

For crimes with a maximum of 3 prison years, the statute of limitations is 6 years, Article 31, 31a, 32, 34 DCA

For the minor offences (and not crimes), stated in Article 35, 35a, 35b, 35c and 35d DCA, the statute of limitations is 3 years.

Ukraine

Contributors: Viktoriia Ostapchuk and Mariia Koval

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

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

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

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

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

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

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

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

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

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

In Ukraine the copyright protection does not depend on registration. Therefore, a copyright registration certificate is not required to initiate a criminal case. Any kind of evidence that demonstrates the authorship of the intellectual work that is being infringed is admitted by courts.

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

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

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

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

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

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

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

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

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

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

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

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

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

No, such crimes are judged by regular courts.

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

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

1. three years for the Illegal reproduction, distribution of works of science, literature and art, computer programs and databases, as well as illegal reproduction, distribution of performances, phonograms, videograms and broadcast programs, their illegal replication and distribution on audio and video cassettes, floppy disks, and other media information, camcorders, cardhaching or other intentional violations of copyright and related rights, as well as the financing of such acts, if it caused material damage to a significant amount (for year 2019 – minimum 19210 UAH, approx..708 USD),
2. five years for the same actions, if committed repeatedly, or by a previous conspiracy by a group of persons, or caused material damage in a large amount (for year 2019 – minimum 192100 UAH, approx..7075 USD);
3. ten years for Actions provided for in paragraphs 1 or 2 of this article, committed by an official using the official position or organized group, or if they caused material damage in a especially large amount (for year 2019 – minimum 960 000 UAH, approx.35 356 USD).

United Kingdom

Contributors: Shireen Peermohamed, Alastair Shaw

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

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

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

- The courts have been willing to impose custodial sentences, taking the view (in *R v Kemp* (1995) 16 Cr App Rep (S) 941 CA) that counterfeiting offences should normally attract at least a short sentence of imprisonment because they are difficult, time consuming and expensive to detect and the rights owners are entitled to be protected against their unlawful exploitation.
- There is no usual sentence as each case will turn on its own facts.
- In *R v Evans* [2017] 1 Cr App Rep (s) 434 the court did however collate the considerations relevant to sentencing under s 107. Please see paragraph 434 of this case for further details.
- Since the maximum prison term on indictment was increased to 10 years (in 2002), there have been few reported cases.
- In one unreported case brought by Sky in 2018 against an individual, Warren Gleave, who was selling illicit streaming devices pre-loaded with premium content, it appears that Mr Gleave received a 16 month prison sentence. Although the case concerned offences under the Fraud Act 2006, this also suggests that the courts will not shy away from imposing prison sentences in analogous cases involving criminal copyright infringement.
- In two further cases relating to the sale of 'Kodi boxes' (set top boxes loaded with third party content and used to stream content), press reports suggest that the individuals received respective prison sentences of 21 months suspended for 2 years and 18 months also suspended for 2 years.
- Trade mark offence cases may give some insight since they carry the same maximum penalties. In those cases which are reported in text books it appears that sentences up to 30 months have been handed down.

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

- For the offences of making for sale or hire, importing, distribution and communication to the public there is no limit to the monetary penalties under the law. All other offences carry a maximum penalty of a fine not exceeding level 5 on the standard scale (currently £5,000).
- Further, the Proceeds of Crime Act 2002 provides for the confiscation of property arising from the proceeds of crime and copyright infringement is deemed as amounting to a 'lifestyle offence' under Schedule 2. This means that the prosecuting authority can seize all property and is not constrained to property proven directly to have been acquired as a result of the criminal activity.

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

- As there are few reported cases and each case will turn on its own facts it is difficult to say what is usual.
- In one case brought by Sky against an individual called Luke Skinner in Scotland, Mr Skinner was fined £50,000 for selling illegal streaming devices and subscriptions on Facebook Marketplace.

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

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

- (i) **'Literary work'** means any work other than dramatic or musical work which is written, spoken or sung and accordingly includes a table or compilation, a computer program, preparatory design material for a computer program and a database. (CDPA s 3)
- (ii) **'Dramatic work'** includes a work of dance or mime (CDPA s 3)
- (iii) **'Musical work'** means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music. (CDPA s 3)
- (iv) **'Artistic work'** means: (i) a graphic work, photograph, sculpture or collage, irrespective of artistic quality (ii) a work of architecture being a building or a model for a building or (iii) a work of artistic craftsmanship. (CDPA s 4)
- (v) **'Film'** means a recording on any medium from which a moving image may by any means be produced. The sound track accompanying a film shall be treated as part of the film for the purposes of this part. (CDPA s 5B)

- (vi) **'Sound Recording'** means a recording of sounds from which the sounds may be reproduced or a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced. (CDPA s 5A)
- (vii) **'Broadcast'** means an electronic transmission of visual images, sounds or other information which (a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them (b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public (other than excluded broadcasts (see the legislation for greater detail). (CDPA s 6)
- (viii) **The Typographical arrangements of Published Editions** and 'Published Edition' means a published edition of the whole or any part of one or more literary, dramatic or musical works. (CDPA s 8)

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

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

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

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

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

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

- Fraud (the 2006 Act imposes extra territorial jurisdiction in respect of offences in subsections 1, 6, 7, 9 and 11 of the Fraud Act 2006) and dishonesty (Criminal Justice Act 1993 Part 1 still applies to the remaining unrepealed sections of the Theft Act 1968); and
- Bribery (The Bribery Act 2010 repeals the common law and the statutory offences of corruption for offences committed wholly on or after 1 July 2011. For those offences the Bribery Act imposes extra-territorial jurisdiction. Section 109 of the Anti-Terrorism and Security Act 2001

still applies to provide extra-territorial jurisdiction in respect of offences committed wholly or partially before 1 July 2011.

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

9. Please advise if the criminal procedure in the country affords the accused the option of seeking bail from court as a matter of right or as a matter of the discretion of the court.

- All defendants remanded for a criminal offence have a right to unconditional bail under section 4 of the Bail Act 1976. Section 4(2) of the Bail Act stipulates situations in which a defendant would not have a right to bail.
- The court will consider whether bail is granted at a bail hearing and it may make the bail conditional on a number of things – the authority for these conditions comes from section 3 of the Bail Act 1976.

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

- A copyright owner has the right to seize infringing copies of a work found being offered for sale or hire in respect of which the copyright owner would be entitled to apply for an order for delivery up under section 99 CDPA, provided that pre-seizure, the police are notified of the time and place of the proposed seizure and a notice is left at the place from which goods are to be seized (s100 CDPA has more details). No force can be used (s 100(3)).
- Under s114 CDPA, an order may be sought that infringing copies or articles seized under sections 99-100 of the CDPA are destroyed or forfeited to the copyright owner.

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

- Criminal copyright infringement can help to make up the offence of conspiracy to defraud. (*Scott v Metropolitan Police Commissioner* [1975] AC 819)
- The court has the power to make a confiscation order under the provisions of the Proceeds of Crime Act 2002 and where this is the case, the order should be considered before any fine is fixed or any further property confiscated.

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

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

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

- Individuals can bring a private complaint under s 107 for criminal copyright infringement or the police can arrest somebody on behalf of the state for criminal infringement. The person would then be tried against the state.

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

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

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

- It does not.

16. Please advise if the country/jurisdiction provides for any criminal penalties for a corporation that has been found guilty of copyright infringement.

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

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

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

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

- No statute of limitations for criminal offences other than summary offences for which the information for the offence must be laid within 6 months (CDPA s 108(2)).

United States of America

Contributors: Elizabeth Han

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

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

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

N/A

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

A fine of up to \$100,000 is the minimum if a monetary penalty is given and no more than \$1,000,000 is the maximum.

4. **What are the minimum and maximum - monetary penalties - usually awarded by the courts in the jurisdiction for criminal copyright infringement?**

N/A

5. **Please list the specific subject matters (if any) for which: (1) a copyright registration certificate will be required in order to initiate/commence a criminal case, and (2) a copyright registration certificate will not be required in order to initiate/commence a criminal case.**

According to the Department of Justice, initiating a criminal prosecution under Title 17, United States Code, Section 506(a) requires proof that the defendant infringed a *valid* copyright. The government may prove validity of a copyright by demonstrating that the formal requirements of copyright registration have been fulfilled. While registration of a copyrighted work is not a prerequisite to obtaining copyright protection, it is in most cases a jurisdictional prerequisite to initiate any infringement action, including criminal.

6. **Please advise if the jurisdiction authorizes criminal prosecution for copyright infringement that happens in or through only the digital medium / electronic medium / mobile network / Internet?**

The Digital Millennium Copyright Act of 1998 (DMCA) is a federal law criminalizing the circumventing of digital rights through technology and software designed to defeat copyright protections. The DMCA provides criminal jurisdiction for copyright infringement that occurs through digital/electrical mediums, the Internet and other technologies.

7. Please advise if the country’s criminal court/tribunal/magistrate will exercise a long-arm jurisdiction for criminal prosecution of an accused that is outside the territorial jurisdiction of the court/tribunal/magistrate.

Yes, i.e., the Southern District Court in NY charged Richard O’Dwyer (a UK national), with criminal copyright infringement for a site that was not based in the US or sitting on a US server.

Also, DMCA implements World Intellectual Property Organization (WIPO).

8. Please advise if the criminal procedure in the country enables confiscation and forfeiture of the property of the person convicted of copyright infringement.

Pursuant to Title 18, United States Code, Section 981(a)(1)(c) and Title 28 United States Code, Section 2461(c) *any property constituting or derived from proceeds obtained directly or indirectly as a result of any conspiracy to commit violations* of Title 18, United States Code, Sections 2318, 2319, and 2320, may be confiscated by the government.

Pursuant to Title 18, United States Code, Sections 2323 and 981(a)(1)(c), *any property used, or intended to be used, in any manner or part to commit or facilitate the commission of violations* of Title 17, United States Code, Section 506(a)(1) and Title 18, United States Code, Section 2319, may be confiscated by the government.

9. Please advise if the criminal procedure in the country enables treatment of a criminal copyright infringement offence as a predicate crime to racketeering / money-laundering offence/ proceeds of crime.

Under Title 18, United States Code, Section 1961, racketeering includes any act which is indictable under any of the following provisions of Title 18, United States Code Section, 2319 (relating to criminal infringement of a copyright) and section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances).

Under Title 18, United States Code, Section 1956 for the laundering of monetary instruments, the term “specified unlawful activity” includes an offense as under Section 2319 (relating to copyright infringement).

10. Please advise if the criminal procedure in the country enables cross border extradition of the person convicted of copyright infringement.

Extradition into the US would depend on a country’s laws, relationship, and treaties with the US – i.e., Richard O’Dwyer, a U.K. citizen extradited to the US for trial for a criminal copyright infringement under the UK-US Extradition Treaty of 2003. Under US law Title 18, United States Code, Section 3184, extradition from the US may be granted only pursuant to a treaty. The US has extradition treaties for criminal crimes with more than 100 countries.

11. Please advise if the country provides for specialized investigation procedure through a specialized law enforcement department dedicated to IP crimes or economic crimes.

Yes, there are multiple entities – some examples below:

The Office of International Intellectual Property Enforcement (IPE) -
<https://www.state.gov/e/eb/cba/ipe/index.htm>

U.S. Secret Service and local police - <https://www.treasury.gov/about/organizational-structure/offices/Treasurer-US/Pages/if-you-suspect.aspx>

12. Please advise if the country provides for a specialized court / tribunal for criminal prosecution of copyright infringement cases.

No there is no specialized court or tribunal for criminal prosecution of copyright infringement cases.