

**REVIEW OF LEGISLATION ON ENFORCEMENT**

**POLAND<sup>1</sup>**

The present document reproduces the introductory statement of the delegation of Poland, the questions put to it and the responses given in the review of legislation on enforcement at the Council's meeting of 17-21 November 1997.<sup>2</sup>

**I. INTRODUCTORY STATEMENT**

It is necessary to stress that the Polish legal system is fully compatible with the relevant part of the TRIPS Agreement, concerning enforcement of copyright and neighbouring rights. The Government of Poland wishes to improve the existing situation, and is now working on a new regulation which would permit the customs authorities to undertake suspension actions in the case of the infringement of intellectual and industrial property rights.

Polish authorities undertook efforts to increase the efficiency of intellectual property law enforcement which have resulted in the new Act of 9 January 1997 - Customs Code, which shall become effective as from 1 January 1998.

In order to permit effective action against any act of infringement of intellectual property rights covered by the TRIPS Agreement, the Polish Government has ensured the adequate remedies and the appropriate procedures are in the Act on Copyright and Neighbouring Rights (1994), Civil Code (1964), Code on Civil Procedure (1964), Act - Customs Code (1997), Unfair Competition Law and a new project – the Code of Industrial Property.

The Polish delegation would like to mention that the Polish legal system, like in other countries in Europe, is of the typical European continental kind, similar to those existing in France and Germany (especially in respect of civil and criminal procedures).

The Polish Act on Copyright and Neighbouring Rights in Chapter 14 makes the illegal production and trading in objects which have the form of fixed works (e.g. books, phonographic cassettes, video cassettes, and computer programs) punishable offences. The penal sanctions have been made proportionate to the penalties envisaged for the seizure and theft of the property. The penalties are up to five years of imprisonment with a fine (Article 116).

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<sup>1</sup> As regards laws and regulations relevant to the area under review and notified by Poland under Article 63.2 of the Agreement, reference is made to documents IP/N/1/POL/1/Rev. 1 and IP/N/6/POL/1.

<sup>2</sup> The minutes of this meeting have been circulated as document IP/C/M/16.

It is to be stressed that the replies given to the questions posed by the European Communities and their Member States, Japan, Switzerland and the United States are based on the present legal situation, at least as far as industrial property protection is concerned.

However, this situation is going to be changed soon, with the adoption of a new Industrial Property Law. Work on this important legal Act was initiated in the early nineties. The recent parliamentary elections in Poland have slowed down the legislative process; nevertheless it is to be expected that at the beginning of 1998 work on the draft will be resumed and in the course of the next year they will reach a successful conclusion.

The importance of the draft is especially to be identified in that, apart from the provisions relating to the protection of industrial property rights, the regulations relating to the enforcement of rights are intended to find relevant reflection, particularly those relating to border control.

The new Industrial Property Law is foreseen to be adopted by the end of 1998.

## **II. REPLIES TO QUESTIONS POSED BY THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES**

**1. Considering the time-consuming and costly nature of civil court proceedings in Poland, please clarify whether Polish civil procedures comply with the requirements of Article 41.2 of the TRIPS Agreement, which provides that enforcement procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.**

The Polish civil procedure regarding enforcement of intellectual property rights (claims) seems to comply with the requirements of Article 41.2 of the TRIPS Agreement.

The enforcement of these claims follows the ordinary course of civil trial proceedings.

Enforcement of intellectual property rights in Poland takes place before ordinary courts under the provisions of the Act of 17 November 1964 - Code of Civil Procedure (Journal of Laws, 1964 No. 43, item 296 with further amendments), hereinafter referred to as the abbreviation "CCP". There are no specialised courts in this respect.

The courts competent to give decisions in these cases are *voievodship* courts competent for the place of residence or the seat of the defendant or the place of the occurrence of the event causing injury (Article 17 point 2; Article 27 § 1; Articles 30 and 35 CCP).

Action on behalf of these claims is initiated by a written statement of claim submitted to the provincial court having territorial jurisdiction corresponding with the place of residence of the plaintiff or with regard to the place where the act causing the damage or of infringement of the protected right occurred.

Cases regarding intellectual property rights do not invoke any additional costs or other deadlines, compared with proceedings in other cases.

Polish law does not enforce a statutory limit on the duration of proceedings. Nevertheless, it requires that the proceedings continue without undue interruptions, and the actions are taken by the court without delay. The cases of enforcement of intellectual property rights are heard in the order of their submission to the court. The only time-limits that may cease proceedings stem from the necessity to adhere to the principle of equal rights of the parties to the proceedings.

Enforcement of valid and immediately enforceable court decisions fails within the responsibilities of court authorities, i.e. courts and court enforcement officers (bailiffs).

**2. Please explain how Polish law complies with the requirements of Articles 42 and 43 of the TRIPS Agreement, which require that enforcement procedures provide a means to protect confidential information obtained during the course of proceedings.**

A court procedure provides for suitable measures to protect confidential information as follows:

A court hearing during which the evidence consisting of confidential information shall be carried out *in camera*, i.e. without members of the general public present (Articles 153 and 154 CCP). The files of the case are accessible only to the parties (Article 9 CCP). In cases heard *in camera*, only the parties and persons supervising the court proceedings may access case files. The officials (judges, court officials, barristers) participating in the examination of cases are under an obligation to keep confidential all information obtained in connection with the proceedings.

**3. Please explain in detail how the Customs Code of 9 January 1997 will comply with Part-III, Section 4 of the TRIPS Agreement relating to border measures.**

The Customs Code,<sup>3</sup> in Articles 2 § 3 and 57 §§ 2 and 3, provides for intervention of customs authorities in adherence to obligations under international agreements in order to protect intellectual and commercial property rights (including the TRIPS Agreement). The means and procedure for customs authorities, including suspension of release of goods when intellectual property rights infringement is suspected, shall be regulated by the ordinance of the Council of Ministers.

The person entitled to use the customs procedure is one to whose name the custom declaration is made, or a person to whom such rights and obligations have been legally transferred.

The required presentation of goods for custom clearance entails the possibility to include such items in the measures adopted by the customs authorities regarding protection of intellectual, industrial or commercial property rights, upon demand from the person entitled to such protection, submitted prior to, and under the scope of the protection granted to him by these authorities.

**4. With regard to cases that involve the infringement of intellectual property, could the Government of Poland provide data on the number of:**

- **law suits that have been filed, including their respective outcome and the average length from the filing of a complaint until the final judgement;**

Civil law suits involving infringement of intellectual property rights constitute a small fraction of cases before courts having jurisdiction in these cases, amounting to about 0.7% of cases filed in these courts.

- **injunctions that have been issued (as defined in Article 44 of the TRIPS Agreement) and explain how such injunctions are being enforced;**

In such cases, the courts issue the following injunctions:

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<sup>3</sup> The Act of 9 January 1997 - Customs Code (Journal of Laws No. 23, item 117, No. 64, item 407 and No. 121, item 770).

- order to desist from infringements of the protected right;
  - order to desist from activities threatening an infringement of a protected right.
  - order to remove the effects of the infringement made;
  - order to return benefits obtained from the infringement of protected intellectual property rights;
  - order to destroy goods (things)
  - forfeiture to the State Treasury of items serving to make copies of works protected under copyright,
  - order to seize goods, packages, and other items illegally bearing a protected trademark or a mark similar to it, or means used in advertising and affixing the goods with such trademarks;
  - order to publish an appropriate statement in the press;
  - adjudicating compensation of losses incurred by the entitled person due to infringement of his rights;
  - adjudicating a multiplied royalty due to the entitled person under his economic copyright entitlement;
  - adjudicating pecuniary compensation for harm suffered (non-economic loss) to the person enjoying moral rights under copyright; and
  - adjudicating a pecuniary contribution for a community purpose, upon such demand from a person entitled to moral rights under copyright.
- **provisional measures (as defined in Article 50 of the TRIPS Agreement) that have been granted and the average length to obtain such measures (from the request);**

The procedural provisions laid down provisional measures compliant with Article 50 of the TRIPS Agreement.

These provisions may include:

- securing the claim of the creditor (entitled) and
- securing evidence.

These measures can be undertaken upon demand from the entitled person:.

- before the trial proceedings on a claim based on the protection of intellectual property rights, or
- at the commencement of and throughout proceedings.

The application should occur no later than three days after a written motion is filed with the court. This deadline is deemed "without delay" regarding the remaining area of intellectual property rights protected. The proceeding considering the grant of measures could be held *in camera* (without hearing the opposing party).

The motion should meet general formal requirements for pleadings, and should also make plausible both the claim and the likeness that the refusal of measures will result in depriving the applicant of satisfaction the claim (causing an irreparable damage).

The court may adopt any of the measures which it deems necessary.

The court may make enforcement (under Article 739 § 3 CCP) or granting the decision on securing the claim (under Article 80 of the Copyright Act) conditional upon the payment of a security deposit to cover possible claims of the other party.

The orders issued *ex parte* are delivered to the absent party together with grounds for the decision.

Appeals (complaints to the court of the second instance) are considered under normal procedure, but in cases involving protected copyright and neighbouring rights they are considered within seven days.

- **suspensions at the border of counterfeit trademark/pirated copyright goods or in relation to goods where other intellectual property rights are infringed;**

The procedure of suspension at the border of counterfeit trademark goods or goods where other intellectual property rights are infringed, has not been applied yet, as it comes into force on 1 January 1998.

- **criminal cases including the sentences that have been applied; whether they have been executed; and please also explain what kind of infringement of an intellectual property right would be regarded as a violation of criminal law;**

The following acts against the protection of intellectual property rights are considered criminal offences by Polish law:

- (i) usurpation of authorship of all or part of the work or artistic performance of another;
- (ii) disclosing, without mentioning the author's name or pseudonym, the work of another either in its original or derived form, or a performance, or publicly distorting such work;
- (iii) other infringements on the rights of the author, in an attempt to make a material profit;
- (iv) disclosing, without authorisation or without respecting the conditions imposed, work of another person;
- (v) fixing or reproducing a work of another person, without authorisation or without respecting the conditions imposed;

- (vi) acquiring, assisting in the sale, concealing or assisting in the concealment of the material embodiment of a work, a performance, a phonogram or videogram disclosed or reproduced without authorisation or without respecting the conditions imposed;
- (vii) obstructing or hindering the exercise of the right to monitor the use of a work or artistic performance;
- (viii) appropriating a patent or a design of another with view to obtaining the right to protection;
- (ix) marking items not protected under patent or protected design in a way misleading as to having such protection;
- (x) intentional marketing, storing and advertising of such items;
- (xi) usurpation of authorship of topography of integrated circuits of another;
- (xii) infringement of registered rights to integrated circuit topography in order to derive material benefits;
- (xiii) marketing goods or providing services using a registered trademark;
- (xiv) marking goods or services with a registered trademark in order to market such goods or services, without obtaining the right to do it.

The above offences involve the following penalties:

- a term in prison from one to two years, depending on the type of offence;
- restriction of liberty;
- a fine.

The penalties for the above offences are increased (regarding an increased upper limit of prison term to three years) if the perpetrator made the infringement into a permanent source of income or if he directs or organises such criminal activities.

- **seizures and/or destruction of counterfeit trademark and pirated copyright goods.**

In most cases the court will decide on forfeiture of things derived from the offence even if they do not belong to the perpetrator.

**Furthermore, could the Government of Poland explain and give practical examples:**

- **how the compensation for damages of the infringement of intellectual property rights is calculated (Article 45.1 of the TRIPS Agreement);**

The adjudication of damages regarding claims of intellectual property rights infringement is based on the principle of full compensation of the loss, i.e.:

- (1) the actual losses regarding decreasing assets of the injured, suffered as a result of the infringement, including expenditures purposefully made to identify the perpetrator of the infringement, e.g. a fee of a detective seeking to find the perpetrator;
- (2) unrealised income which could be earned in absence of the infringement. This liability covers only normal (i.e. under a normal cause-and-effect relationship) consequences of acting or refraining from action by the perpetrator causing the loss.

Example:

The perpetrator manufactured and marketed 5 000 items of a product illegally marked with a protected trademark, of which he sold 2 000. Marketing this illegal product occurred at the same time when the right holder marketed the product marked with a legal trademark. Thus, the perpetrator inflicted loss on the right holder, described under (2) above.

If not for the counterfeit trademark goods marketed and sold, the right holder could sell (marketed legally and with the rightfully used trademark) this quantity of his goods, i.e. 2 000 items. The unit profit on the sale of one item was Zl 5.00, and the loss in unrealized profits will thus amount to Zl 10 000.

In addition, the right holder had to, because of the emergence of this illegal "competition", cut production of the work, which resulted in the paying Zl 10 000 in liquidated damages to his suppliers of raw material, and dismissing ten employee persons, paying each a three-month wage as compensation, totalling Zl 1 800. The loss to the injured right holder under direct losses described above in paragraph (1) is thus Zl 11 800.

The two components of loss are under a normal cause-and-effect relationship with infringement on the holder's rights, and hence the total amount of damages will be Zl 21 800.

- **what would be regarded as "expenses of the right holder" which have to be reimbursed pursuant to Article 45.2, first half of the first sentence, of the TRIPS Agreement and how they would be calculated;**

Under Polish law, the costs incurred by the injured right holder (Article 45.2 of the TRIPS Agreement) constitute eligible cost necessary to exercise his rights (Article 98 CCP) and include: court costs (court charges, cost of experts, travel costs of witnesses), travel costs of the plaintiff and his attorney, and compensation for lost income for the time spent in court, if the plaintiff is not represented by his attorney.

- **whether attorney's fees can be reimbursed and how such fees would be calculated;**

If the plaintiff (seeking enforcement of his claim) is represented by an attorney, the cost also includes attorney's fees and expenses, as well as all expenses associated with court costs.

Attorney's fees are based on an invoice prepared by the attorney for the entire legal representation. The amount of the attorney's fee may not exceed the maximum fees set out by the ordinance of the Minister of Justice. When the attorney does not provide a list of expenses, the amount is estimated within the limits set out in the ordinance, taking into account the complexity of the case. This rule is applied only in exceptional cases, because attorneys usually produce the invoice. The court may not reduce the amount on invoice if it is within the levels in the ordinance.

Recently, because of amendments in legislation, the attorney's fee is freely agreed in a contract between the attorney and his client. In order to protect the losing party, a principle was introduced preventing the adjudicated compensation of the attorney's fee from exceeding the maximum levels set out in the ordinance of the Minister of Justice. these levels are determined according to the value of matter of proceeding (the claim).

The court has to, upon demand from the parties, decide on costs of the proceedings and they constitute the sum of all the above expenses of the party

- **whether Article 45.2, second sentence, of the TRIPS Agreement has been implemented in Poland and how such "damages" would be calculated?**

Polish law includes this type of authorization of courts, provided for in the second sentence of Article 45.2 of the TRIPS Agreement (e.g. Article 79 § 1 Act on Copyright and Neighbouring Rights).

### **III. REPLIES TO QUESTIONS POSED BY JAPAN**

#### **1. Please indicate the "competent authorities" stipulated in Article 51 of the TRIPS Agreement.**

The Polish legislation currently in force does not provide for any regulations which would permit the customs authorities to undertake actions in case of suspected infringement of intellectual property rights. As a result, it is not possible for us to provide you with separate answers to each question posed.

Legal regulations pursuant to which the customs authorities are obliged to conduct inspections in order to check whether the goods exported and imported from and into the Polish customs area comply with the intellectual property rights, have been included in the Act of 9 January 1997 - Customs Code (Journal of Law No. 23, item 117) which shall become effective as of 1 January 1998, in reliance on their provisions of Part III of the TRIPS Agreement.

In regard to the above-mentioned, the Polish delegation is not in a position to answer questions 1 to 21 because the rules regarding Section 4 of Part III of the TRIPS Agreement shall be issued in the rules of implementation to the Customs Code.

For the presentation of the rules we quote Articles 2.1 and 57 below.

#### Article 2.1

"Provisions concerning the goods imported to or exported from the Polish customs area shall be applied respectively to the import to and export from the Polish customs area of goods covered under separate regulations by protection of intellectual, trade and industrial property."

#### Article 57

- "(1) Goods, regardless of their type, composition, origin, place of shipment or destination may at any time, subject to specified terms and conditions, obtain customs destination admissible for the given goods.
- "(2) The regulation contained in Section 1 does not exclude the application of international agreements, and prohibitions or limitations arising from separate provisions, in particular those concerning, decency, public security, health care,



protection of human or animal life, protection of environment and natural resources, culture goods, intellectual, trade and industrial property, as well as prohibitions and limitations established due to trade.

- "(3) The Council of Ministers may specify, by an ordinance, the manner of procedure to be adopted by customs authorities in the event of their seizing goods as to which a suspicion has arisen that they have infringed the intellectual, trade and industrial property rights."

The protection of intellectual, trade and industrial property rights is subject to the following regulations under the above-mentioned Act.

Pursuant to the delegation contained in Article 57, section 3 of the Customs Code, a draft Ordinance of the Council of Ministers specifying the mode of procedure to be adopted by custom authorities in the event of seizing the goods as to which a suspicion has arisen that they have infringed the intellectual, trade and industrial property rights, has been prepared. This draft relies on provisions contained in Section 4 of Part III of the TRIPS Agreement which contains regulations concerning specific requirements referring to measures undertaken during border control. This constitutes the performance by our country of an obligation to adjust provisions of the domestic legislation to international agreements.

However, due to the fact that the above-mentioned draft is being discussed now, and its provision may change, it is not possible at the moment to provide independent answers to questions 1 to 21. This can be effected only after the Customs Code, and the secondary legislation which will regulate the competences and mode of procedure to be adopted by customs authorities with respect to the protection of intellectual protection of intellectual property, have come into force, i.e. after 1 January 1998.

- 2. Please explain whether "proceedings leading to a decision on the merits of the case" stipulated in Article 55 of the TRIPS Agreement, are judicial or administrative.**

Please see the reply to question 1.

- 3. Are there any ways other than the application stipulated in Articles 51 and 52 of the TRIPS Agreement (hereafter referred to as "the Application") which enable a right holder to request the competent authorities to suspend the release of the goods which infringe intellectual property rights or which are suspected to infringe intellectual property rights?**

Please see the reply to question 1.

- 4. Please explain what term your country regards as "a reasonable period within which the competent authorities shall inform the applicant whether or not they have accepted the Application" stipulated in Article 52 of the TRIPS Agreement.**

Please see the reply to question 1.

- 5. Please explain the term during which the Application is effective.**

Please see the reply to question 1.

- 6. Please explain whether a right holder is obliged to pay any fees to lodge the Application.**

Please see the reply to question 1.

**7. Please indicate provisions of laws and ordinances which prescribe the "proceedings leading to a decision on the merits of the case" stipulated in Article 55 of the TRIPS Agreement. And please summarize their contents.**

Please see the reply to question 1.

**8. Please explain the specific procedure, if any, to be applied to the goods which are not evident whether or not they infringe intellectual property rights, in Article 55 of the TRIPS Agreement.**

Please see the reply to question 1.

**9. Please explain the responsibility that the competent authorities and other related authorities take to the right holders when they fail to suspend the release into free circulation of goods which infringe intellectual property rights with regard to the suspension based on the Application or the Ex Officio Action stipulated in Article 58 of the TRIPS Agreement.**

Please see the reply to question 1.

**10. Please explain the responsibility that the competent authorities and other related authorities take to the right holders when they examine goods which infringe intellectual property rights and nevertheless release them into free circulation with regard to the suspension based on the Application or the Ex Officio Action stipulated in Article 58 of the TRIPS Agreement.**

Please see the reply to question 1.

**11. Please explain the responsibility that the competent authorities and other related authorities take to the importers when they suspend the release into free circulation of goods which do not infringe intellectual property rights with regard to the suspension based on the Application or the Ex Officio Action stipulated in Article 58 of the TRIPS Agreement.**

Please see the reply to question 1.

**12. Is the right holder informed of identities of the importers and consignors when the competent authorities "suspend" the goods which infringe on intellectual property rights or which are suspected to infringe intellectual property rights, as well as the case where the right holder is informed of identities of the importers and consignors stipulated in Article 57 of the TRIPS Agreement?**

Please see the reply to question 1.

**13. Please explain the measures to protect confidential information in the course of the inspection stipulated in Article 57 of the TRIPS Agreement. And please indicate provisions of laws and ordinances which prescribe such measures.**

Please see the reply to question 1.

**14. Please explain the procedures of detentions and seizures to be ordered by the competent authorities based on Articles 51 and 55 of the TRIPS Agreement.**

Please see the reply to question 1.

**15. Please explain the procedures to appeal against any decisions ordered by the competent authorities based on Articles 51 and 55 of the TRIPS Agreement.**

Please see the reply to question 1.

**16. Please explain the basis for calculating the security or equivalent assurance stipulated in Article 53 of the TRIPS Agreement that the competent authorities may require an applicant when they suspend the release into free circulation.**

Please see the reply to question 1.

**17. Please explain who shall pay the cost of detentions based on Article 51 of the TRIPS Agreement or destruction stipulated in Article 59 of the TRIPS Agreement.**

Please see the reply to question 1.

**18. Please explain what kind of cases are regarded as "the exceptional circumstances" in which the competent authorities may allow re-exportation of counterfeit trademark goods stipulated in Article 59 of the TRIPS Agreement.**

Please see the reply to question 1.

**19. Please indicate names of laws and ordinances and their provisions in which the suspension of the release of goods which infringe intellectual property rights or which are suspected to infringe intellectual property rights is prescribed, as stipulated in Article 51 of the TRIPS Agreement.**

Please see the reply to question 1.

**20. Please indicate which intellectual property rights are protected based on the Application by a right holder.**

Please see the reply to question 1.

**21. Please explain kinds and contents of documents which shall be provided by the applicant to lodge the Application.**

Please see the reply to question 1.

**22. Please explain the remedies which the judicial authorities order regarding a copyright and other related rights, patents, industrial designs, trademarks and layout-designs (topographies) of integrated circuits, including injunctions, damages, expenses, destruction or other disposal of infringing goods and materials/implements for their production.**

Measures taken in the event of infringement of the author's moral rights:

- (a) prohibiting the infringement of rights;
- (b) ordering the elimination of the infringement, in particular by making a public statement, suitable in its content and form, or otherwise as ordered by the court, including the destruction of illegally produced copies of a work;
- (c) ordering a compensation for the moral damage.

With regard to measures taken in the event of infringement of the author's economic rights: please see the answer to question 23.

In cases concerning the protection of industrial property rights, the court may order:

- (a) the cessation of infringement of rights (including, with respect to trademarks and chip sets, the cessation of actions which may cause an infringement of rights); and
- (b) the elimination of the effects of infringement.

The court may also order the infringer to release the obtained benefits or remedy the damage done. Furthermore, the court may also issue a decision with respect to illegally produced goods and means used for their production (e.g. destruction of an object).

In cases concerning the infringement of rights arising from the registration of a trademark, the court may order the attachment of goods, packaging, and other objects to which a protected trademark or a trademark which is similar thereto was affixed, as well as the attachment of means used for the purpose of advertising or marketing these goods in order to secure the claims before the introduction of these goods to trade, and to prevent the advertising, thereof.

In the above-described cases, the court may also impose an obligation on the relevant party to publish an applicable announcement in a newspaper.

**23. Please explain whether the amount of damages which judicial authorities order the person who infringes intellectual property rights to pay the right holder is adequate compensation for the injury the right holder has suffered, and what criteria and the way for calculation to decide the amount for compensation.**

In the event of a wilful infringement of moral rights, the court may determine a relevant pecuniary compensation for the benefit of the author of the protected work for the moral injury.

In the event of infringement of economic rights, the author may demand:

- (a) the release by the defendant of the benefits obtained as a result of infringement of copyright, or the payment by the defendant of an applicable double, or in the case of wilful infringement, triple, remuneration at the time of its pursuing;
- (b) that the damage done to the plaintiff be remedied if the action of the defendant was wilful.

When determining the amount of damages, the court shall take into consideration *damnum emergens* (damage actually incurred by the injured party) and *lucrum cessans* (profits which the injured party could have obtained but for the damage done to its detriment).

In the event of difficulties or incapability of proving the amount of the above-mentioned claims precisely, their court may adjudicate a relevant amount according to its own decision, based on the consideration of all circumstances of the case.

**24. Please explain whether the amount of damages which judicial authorities order the person who infringes intellectual property rights to pay the right holder includes investigations expense and appropriate attorney's fees.**

Costs of the legal proceedings, i.e. court fees and attorney fees shall be borne by the losing party. The court shall order the defendant to pay such costs for the benefit of the plaintiff regardless of the amount of the determined damages.

**25. Please describe to what extent the amount of damages have been estimated by courts since 1 January 1996. Please explain whether the amount of damages is adequate compensation for the injury the right holder has suffered, and how such civil procedures are consistent with Article 45 of the TRIPS Agreement.**

There is no statistical data which would enable to specify what was the upper limit of damages determined by the court before 1 January 1996. The damages were and still are determined according to the principles described in the answer to question 23. Provisions of Polish civil procedure comply with Article 45 of the TRIPS Agreement.

**26. Please explain the kinds and amounts of penalties (imprisonment or fines) in criminal cases. Please also explain whether these penalties are consistent with Article 61 of the TRIPS Agreement which requires provisions for a sufficient deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.**

Offences against copyright or related rights are subject to a fine, a punishment, consisting in the limitation of freedom or deprivation of freedom.

The court shall inflict the punishment of imprisonment for one to two years, depending on the type of offence committed.

As of 1 January 1998 the new Penal Code passed on 6 June 1997 shall come into force. This Code provides for new types of offences against rights to software, which are subject to the penalty of imprisonment for the period from three months up to five years.

In addition, the new Code specifies new principles of calculating the fine. This shall be calculated in daily rates by way of specifying the number of rates and the value of one rate. The lowest possible number of rates shall be ten, and the highest 360. The daily rate may not be lower than Zł 10.00 nor can it exceed Zł 2 000.00

#### **IV. REPLIES TO QUESTIONS POSED BY SWITZERLAND**

**1. Please explain whether international treaties which contain detailed provisions addressed to the (judicial) authorities and not to the State itself are considered as self-executing in your system? If not, when there is a divergence between the intellectual property legislation/practices and the international agreement in your country, does the latter automatically prevail? If not, please explain the means allowing your country to fulfil the international obligations? Please cite the relevant texts or jurisprudence.**

Yes, generally, international treaties (also these containing detailed provisions addressed to the (judicial) authorities and not to the State itself) are considered as self-executing in our system.

Article 91 of the Polish Constitution provides as follows:

- "(1) After promulgation thereof in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), a ratified international agreement shall constitute part of the domestic legal order and shall be apply directly, unless its application depends on enactment of a statute.
- "(2) An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.
- "(3) If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws."

In addition, Article 7 of the Polish Act on Copyright and Neighbouring Rights provides that:

"Should the international agreements, to which the Republic of Poland is a party, provide for broader protection than envisaged by this Act for unpublished works of Polish citizens or for works published for the first time within the territory of the Republic of Poland or simultaneously within the territory of the Republic of Poland, or for works published for the first time in Polish, the provisions of such agreements shall apply."

**2. Article 55 of the TRIPS Agreement provides that "... in appropriate cases, this time-limit [of ten days] may be extended by another ten working days". Is such time extension foreseen in your laws? If yes, please cite the relevant provisions. If not, please explain how an applicant can avail himself of this possibility as provided by the TRIPS Agreement?**

The Government of the Republic of Poland will answer this question immediately after completing the process of amendment of the relevant regulation.

## **V. REPLIES TO QUESTIONS POSED BY THE UNITED STATES**

### General obligations

**1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative<sup>4</sup> procedures in Poland in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.**

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<sup>4</sup> These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

In Poland protection of intellectual property rights falls into judicial procedures which means that cases in this category are examined by the courts of law.

Enforcement of these claims takes place in ordinary civil contentious proceedings.

Enforcement of intellectual property rights in Poland takes place before courts of common law under the provisions of the Act of 17 November 1964 - Code of Civil Procedure (Journal of Laws from 1964 No 43, item 296 with further amendments), hereinafter referred to as the abbreviation "CCP". There are no specialized courts in this respect.

The courts competent to give decisions in these cases are *voievodship* courts competent for the place of residence or the seat of the defendant or the place of the occurrence of the event causing injury (Articles 17, point 2; 27 § 1; 30 and 35 CCP).

It should be noted that the structure of the courts of common law separates commercial courts. It is the subject criteria which decides about subordinating the case to the commercial court. Therefore, if both parties to the dispute are entrepreneurs then the competent court will be Commercial Court (then also *voievodship* court) and the case will come before this court and will be heard in accordance with the regulations on separate proceedings in commercial cases (Title VII, Section IV a CCP).

The claim is reported in the form of a written statement of claim submitted to the *voievodship* court competent for the place of residence of the plaintiff or competent for the place of the occurrence of the event causing injury or the infringement of the protected right (Articles 17, point 2; 27 § 1; and 35 CCP). The statement of claim must comply with the formal requirements specified in Articles 126-129 CCP.

Moreover, the statement of claim should contain the reported demand (claims) along with its amount, statement of the facts on the basis of which one demands the required protection and indication of evidence necessary to prove their statements (Article 126 § 2 CCP) and should have an attached power of attorney if the statement of claim is lodged by attorney (Article 126 § 3 CCP).

In proceedings before the courts of common law, obligatory representation by an attorney is not required. An exception is the obligation to use services of attorney or legal advisor in case of appealing by cessation to the Supreme Court against the decision given by a court of the second instance.

However, with respect to intellectual rights protection the party's attorney may be the following persons: attorney, legal advisor, close family member (Article 87 CCP), patent attorney, social institution concerned with support of inventiveness and also organization of collective management of copyrights and related rights.

The laws of Poland do not specify statutory duration of legal proceedings. It requires, however, that proceedings take place without any unnecessary breaks and actions be taken by courts instantaneously. Cases involving intellectual property protection are examined by courts in the order they are brought to the court.

The only dates adjourning the course of the proceedings result from the necessity to maintain equality of both parties in the civil proceedings.

*Voievodship* courts are the second organizational level of the state courts and are established in *voievodship* towns. Courts of higher instances than *voievodship* courts are courts of appeal.

In this context a special "quasi-court" procedure relating to the enforcement of industrial property rights should also be mentioned, which has been established and practised with the Patent Office.

The details of this procedure are regulated in:

- the Law on Inventive Activity,
- the Law on Trademarks, and
- the Law on the Protection of Topographies of Integrated Circuits.

The procedure as mentioned is as follows:

The Patent Office applies, as the first instance the litigation procedure, when taking a decision on:

- (a) the invalidation of a patent or of a right of protection for utility model, the invalidation of the right in a topography registration or of the right in the registration of a trademark where the statutory requirements for the registration have not been met or the right in a mark that is well known in Poland has been infringed;
- (b) the transfer of a patent or of a right of protection for a utility model or a right in a topography registration obtained by a person not entitled thereto;
- (c) the recognition of a patent or a right of protection for a utility model as a dependent patent or a dependent right of protection;
- (d) the right to exploit an invention or a utility model in specific cases as mentioned in Articles 43, 70 and 74 of the Law on Inventive Activity;
- (e) the ascertainment that a specific production is not covered by a particular patent or a particular right of protection;
- (f) the grant of a compulsory licence for a topography of an integrated circuit;
- (g) the ascertainment that no similarity exists between a registered trademark and a mark that another enterprise uses or intends to use;
- (h) the recognition of the lapse of the right in a trademark registration where the mark has lost its distinctive character or the owner of the right in the trademark registration has ceased economic activities.

In the matters referred to above, the Patent Office takes its decisions in adjudication boards on which the chairmen are judges appointed by the Minister of Justice from among the judges of the district (*voyevodian*) court of the capital city of Warsaw, and on which are represented social organizations whose activities include the encouragement of inventive activity as well as autonomous organs operating within economic entities, and providing assistance to creators of inventive proposals.

Decisions and determinations made by the Patent Office are appealable to the Board of Appeals with the Patent Office, which reaches its decisions in boards, chairmen of which are judges appointed by the First President of the Supreme Court from among the judges of that Court and on which the above-mentioned organizations are represented.



In the case of any final decision given by the Patent Office or the Board of Appeals which terminates the procedure or is clearly contrary to law, an extraordinary procedure for review may be initiated by the President of the Patent Office, the First President of the Supreme Court, the General Public Prosecutor or the Ombudsman.

To the extraordinary procedure the provisions of the Code of Civil Procedure are applicable.

**2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.**

Procedures of a foreign party aimed at initiating an enforcement procedure before Polish courts do not differ from procedures which must be followed by a Polish party and which are described in response to question 1.

**3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Poland and cite the legal authorities providing for those differences.**

A foreign party does not have to meet any other requirements than the ones required of a national or resident of Poland.

The only difference, in case this party resides or has its seat outside Poland, is the necessity to indicate in the statement of claim an agent for delivery in Poland if it has not appointed an attorney *ad litem* having its seat in Poland (Article 1135 § 1 CCP) .

A foreign party is given a due date to pay court fees not shorter than two months (Article 16 § 2 of the Act on Court Fees in Civil Cases).

Moreover, a foreign party may be imposed, at the request of the defendant, the obligation to place a deposit to secure the costs of the lawsuit of the opposing party (Article 1119 CCP) . Deposits do not apply to foreign parties in case Polish citizens do not have such an obligation in their countries if they have a sufficient property in Poland to secure the costs or if they have been exempted from incurring court fees (Article 1120 CCP).

The plaintiff does not have such an obligation in the following cases (Article 1120 CCP):

- if in its country Polish citizens do not have such an obligation;
- if it has in Poland a place of residence or a property sufficient to secure the costs;
- if it has been granted or is entitled to exemption from paying the costs of the lawsuit;
- in cases which have been submitted by the parties to jurisdiction of Polish courts.

Obtaining by a foreign party of exemption from paying the costs depends on reciprocity condition.

According to the requirements laid down in the Law on Inventive Activity, (Article 32(7)), Law on Trademarks (Article 51) and in the Law on the Protection of Topographies of Integrated Circuits (Article 36), foreign natural and legal persons may act, in proceedings before the Patent

Office or the Boards of Appeals, only when represented by an patent agent who is a permanent resident in Poland.

**4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Poland to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.**

Safeguards against abuse of judicial enforcement procedures under the laws of Poland, provided for in Articles 41.1 and 48 of the TRIPS Agreement, are covered by the following institutions:

A party against whom the claim has been dismissed (sued unjustly) has the right to be refunded the costs of the lawsuit. The costs of the lawsuit are refunded at the request of the entitled party. The costs of the lawsuit of the party represented by a attorney include remuneration and expenses of one attorney, court fees and costs of the party's appearance in person ordered by the court (Article 98 § 3 CCP). The costs of the lawsuit are adjudicated regardless of the adjudicated compensation.

If the party sued unjustly suffered injury as a result of an ungrounded action being instituted against him, it will have the right to vindicate its remedy. The basis for the claim will be Article 415 of the Civil Code. Institution of an ungrounded action shall be treated as an action caused by the plaintiff's fault.

The principle of full amount of the injury is used to determine the amount of compensation (Article 361 of the Civil Code), namely:

- real losses including diminishment of the property suffered by the injured party,
- lost benefits which it could have gained if it had not suffered the injury.

This liability covers only standard (i.e. being in a standard causative relation) effects of action or negligence on part of the party causing the injury.

If at the plaintiff's request means of securing the claim have been used unjustly, and the court collected a deposit (Article 739 CCP) the defendant shall have the priority to have its claim satisfied from this deposit. The amount of the deposit is determined by the court prior to giving a ruling securing the claim, taking into consideration the amount of any possible injury that may be suffered by the party against whom the safeguard is used.

In cases on protection of certain categories of intellectual property will apply also special regulations contained in the Act of 16 April 1993 on counteracting unfair competition (Journal of Laws No. 47, item 211). In accordance with Article 22 § 1 of the above-mentioned Act in case of instituting an obviously ungrounded action concerning unfair competition, the court at the request of the defendant, may order the plaintiff to submit a single or reiterated declaration of appropriate contents and appropriate form.

**5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.**

The costs of proceedings in cases involving intellectual property are determined in the Act of 13 June 1967 on Court Fees in Civil Cases (Journal of Laws No 24, item 110 with further amendments).

Article 31 of the cited Act stipulates that in cases involving non-property rights or in cases involving property rights the value of which cannot be determined upon instituting the legal action a temporary entry is specified. In its ruling ending the legal action in the first instance the court determines the amount of the final entry - in cases involving non-property rights, taking into consideration the property situation of the party burdened with costs, and in cases involving property rights - taking into consideration the value of the object of dispute of the case determined in the course of the proceedings.

The same fee (entry) applies to appeal and cessation, thus to means of appeal in the course of the proceedings, whereas their amount is determined according to the value of the object of appeal.

Moreover, the parties are obliged to cover, in the form of advance payment, the necessary amounts for experts' opinions if they apply for their execution.

Besides, the parties pay insignificant fees to copies of legal documents issued to them, covering the costs of preparing the documents.

Judicial procedure does not provide for any forms intended to inform parties of the amount of due court fees. Each time the amount of the fee is determined by the court and in its order to pay the fee determines its amount, date and form of payment.

**6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time-limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.**

Judicial procedure does not provide for explicitly determined time-limits to examine civil cases, including cases involving protection of intellectual property.

There is a principle to examine cases in the sequence of their coming in before the court, without unjustified delay.

Time-limits which may be relevant for the parties to the lawsuit in cases on violation of intellectual property rights are the following:

- time-limit to lodge a complaint is one week and is counted from the day of serving the decision or from the day of announcing the decision taken at the hearing unless the party has not demanded serving of the decision (Article 394 § 2 CCP);

One is entitled to lodge a complaint to a court of the second instance about the decision of a court of the first instance ending the case, and also about the decision of a court of the first instance enumerated in Article 394 § 1 CCP;

- time-limit to make an appeal against the judgement of a court of the first instance to a court of the second instance is two weeks from the delivery to the party appealing against the judgement with justification (Article 369 § 1 CCP). Appeal is a means of appealing against the judgement pronounced in the first instance to which a party is entitled;

- time-limit to submit a demand a written justification of the judgement of the first instance is one week from the day of announcing the conclusion of the judgement (Article 328 § 1 CCP);
- time-limit to institute cessation is a month, counted from the day of serving the decision to the claiming party. The party is entitled to cessation from the judgement or decision given by a court of the second instance and ending the proceedings in the case;
- time-limit to make a demand for serving of the ruling pronounced in the second instance is one week from the announcement of the conclusion of the judgement (Article 387 § 3 CCP);
- motion for securing is examined by the court immediately but not later than within one week from its submittal. If the act provides for examination of the motion at the hearing, it should be examined not later than within one month. However, if the Act on Copyright and Neighbouring Rights provides for examination of the motion for securing the claim within three days from the day of its submittal to the court, it stipulates the same time-limit for examination of the motion to secure the evidence and motion to oblige the defendant to provide information and make available the documentation specified by the court which is relevant for the claims.

**7. Please explain any provisions in the enforcement system in Poland that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.**

The laws of Poland do not provide for expeditious proceedings. However, the party causing protraction of proceedings with the use of possibilities to which it is entitled may be subjected to a sanction imposed by the court in the form of being burdened with the costs of the proceedings, arisen because of this (Article 103 CCP).

**8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.**

All decisions of Polish courts must be prepared in writing. Such obligation is specified in Article 324 § 1 CCP with respect to judgements and Article 361 with respect to decisions. The contents of decisions are specified in Article 325 CCP.

Written justification of a judgement is prepared at the party's request, submitted within a week's time from the day of announcing the conclusion of the judgement, and in case of absence at the hearing of the party deprived of liberty - from the day of serving the conclusion of the judgement. The court prepares justification of also in the situation when the judgement was appealed against in the statutory time-limit of three weeks from announcing the judgement (Article 328 § 1 CCP). Judgement with justification is served only to the party who demanded preparation of justification.

Decisions pronounced at open sitting are justified by the court only when they are appealed against and only at the party's request submitted within a week's time from the day of pronouncing the decision. These decisions are only served to this party who demanded preparation of justification and serving of the decision with justification. Decisions reached at closed sitting are served ex officio by the

court to both parties. In case the party is entitled to means of appeal, the decision should be served with justification, while serving the decision one should instruct the party appearing in the case without a attorney or legal advisor of admissibility, time-limit and form of lodging means of appeal (Article 157 § 1 and 2 CCP). The justification referred to in the preceding paragraphs, should be prepared within a week from pronouncing the decision at closed sitting. If the decision was taken at open sitting, the week's period is counted from the day on which its serving was demanded, and in case there was no such demand - from the day of lodging a complaint.

The court of the second instance justifies the judgement and decision ending the proceedings in the case (Article 387 § 1 CCP). Justification should be prepared within two weeks' time from the day of announcing the conclusion of the ruling. If the ruling was not announced, this period is counted from the day of pronouncing the ruling. The ruling with justification is served to the party who within a week's time from announcing the conclusion demanded its serving. If the ruling was not announced, the ruling together with justification is served to the parties ex officio within a week from preparing the justification.

If there are no special regulations concerning proceedings before the Supreme Court, to these proceedings apply respectively regulations on appeal, while the time-limit for preparing the justification of the ruling by the Supreme Court is four weeks (Article 393 CCP).

**9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.**

Decisions taken by courts may be based exclusively on evidence concluded before the court at the hearing (Article 210 § 3 CCP). The object of the evidence before the court are facts relevant for the settlement of the case (Article 227 CCP). The court judges credibility and force of evidence at its own discretion (Article 233 § 2 CCP).

The court may also base its decision on facts not requiring any evidence which are publicly known (Article 228 § 1 CCP) and on facts admitted by the other party in the course of the proceedings (Article 229 CCP).

The court notifies all parties to the proceedings of the court's sitting in order to hold a hearing (its place and date) (Article 149 § 2 CCP). The summons should be submitted to the parties not later than one week prior to its due date and should contain, among other things, indication of the parties, object of the proceedings, objective of the sitting and effects of failure to appear (Article 150 CCP). Parties' appearance at the hearing is not obligatory.

A party has the right at the hearing to put forward motions and express opinions about all the issues being object of the hearing (Article 2110 § 1 CCP). It may also do it in the written statement of claim submitted to the court before due date of the hearing (Articles 209 and 211 CCP).

**10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.**

Polish judicial procedure does not allow the possibility of excluding admissibility of lodging an appeal against the judgement of a court of the first instance to another, separate judicial authority (Article 367 § 1 CCP: One is entitled to appeal against the judgement of a court of the first instance to a court of the second instance. § 2: Appeal against the judgement of a district court is reviewed by a *voievodship* court, and appeal against the judgement of a *voievodship* court as the court of the first instance - by a court of appeal).

#### Civil and administrative procedures and remedies

**11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.**

Courts are obliged to notify defendants of each intellectual property enforcement proceedings being brought against them.

Performance of this obligation is as follows:

- (1) after the statement of claim is submitted and duly paid, the court serves the copy of the statement of claim to the defendant by post or by intermediary of an usher (Article 131 CCP) notifying him at the same time of the hearing and instructing about the effects of failure to appear or failure to reply to the statement of claim, in which it may furnish explanations or put forward its motions, including motions as to evidence.
- (2) the present parties are notified of each date of the next sitting orally at the sitting, and absent parties are notified by being served a notice (Article 149 CCP).

The effect of the defendant's failure to appear at the hearing, in case it did not furnish any explanations in writing or orally at the foregoing hearing or it did not put forward a motion to conduct a hearing in its absence, is passing a judgement by default (Article 339 CCP). The court instructs the defendant about the above effects upon notifying of the due date of the hearing.

The same procedure is followed in case of other statements of claim, including in particular statements of claim containing means of appeal (appeal and cessation).

**12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under Poland's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.**

The laws of Poland do not limit in any respect the right of parties to be represented by an independent attorney (Article 87 CCP).

The obligation to appear personally at the hearing before the court may be imposed only in case:

- the court concludes that it is necessary to better explain the state of the case (Article 216 CCP);

- the court rules to prove the evidence obtained by hearing the parties, if after exhausting other evidence facts which are relevant for settlement of the case remained unexplained (Article 299 CCP).

In both cases the appearance of the party may not be imposed, and failure to appear may not cause adverse effects, apart from omission of evidence from hearing the parties (Articles 302 § 1 and 304 CCP).

**13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Poland on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.**

The laws of Poland do not limit the parties in supporting their claims and putting forward motions as to evidence (Article 217 CCP).

However, the court will omit the evidence, if controversial circumstances have already been substantiated or if a party brings forward evidence only to cause delay (Article 217 § 2 CCP) and besides the court is not obliged to conclude evidence in the appeal proceedings (of the second instance) if a party does not prove that it could not use it in the proceedings before a court of the first instance or if the need to conclude it appeared later (Article 381 CCP: "A court of the second instance may omit new facts and evidence, if a party could bring it forward in the proceedings before a court of the first instance, unless the need to base on it arose later.").

Parties may also in the course of the proceedings present to the court legal bases for their demands and motions (Article 210 § 1 CCP).

**14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of Poland for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.**

Judicial procedure provides for appropriate means of protecting confidential information in the following form:

A judicial hearing during which materials (evidence) containing confidential information are supposed to be disclosed, is conducted at the request of each party *in camera* i.e. with no members of the public permitted to be present (Articles 153 and 154 CCP). Files of judicial proceedings are available only to the parties taking part in the proceedings (Article 9 CCP). In cases examined with exclusion of openness nobody apart from the parties and persons discharging supervision functions of the judicial proceeding may have access to the files. Officials (judges, court officials, attorneys) who take part in examination of cases are obliged to keep secret the information disclosed to them in connection with the proceedings.

**15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant**

**evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.**

In accordance with Article 208 § 1 CCP, the court may demand the opposing party to produce for the hearing the evidence in that party's control if that party is a state or self-government entity and each party to produce at the hearing documents, books, plans etc. The basis for proving such evidence is the court's decision not being subject to separate appeal (Articles 236 and 233 § 2 CCP)

The defendant in the proceedings involving infringement of copyright or related rights may be obliged by the court to provide information and make available specific documentation relevant for the claims of the qualified author (Article 80 § 1 point 1 of the Act on Copyright and Neighbouring Rights).

Failure to comply with this obligation may lead to the use of coercive measures. However, in its ruling the court judges the importance of the party's refusal to produce ordered evidence or causing the impediments in proving thereof, and may consider the circumstance which was to be substantiated with this evidence to be proved (Article 233 § 2 CCP).

**16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of Poland for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.**

The method and scope of protection of confidential information ordered by the judicial or administrative officials, obtained from the opposing party (as in the answer to question 15) does not differ from the protection mentioned in the answer to question 14.

**17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.**

The answer to question 17 is contained in the answer to question 15.

**18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.**

Under the laws of Poland courts may prohibit any activity infringing copyright the moment there is a danger of such infringement (Article 78 § 1 of the Act on Copyright and Neighbouring Rights) and after their infringement (Article 79 § 1 of the Act) abandonment of rights resulting from the registration of trademark (Article 20 § 1 of the Law on Trademarks of 30 January 1985) (Journal of Laws No 5, item 17).

This law includes also preventing the entry of goods infringing intellectual property rights subject to customs clearance, immediately after the end of these proceedings.



**19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Poland and cite the legal authorities providing for those limitations.**

The laws of Poland do not provide for the limitations specified in Article 44.2 of the TRIPS Agreement to payment of adequate remuneration as provided in Article 31(h) of the TRIPS Agreement.

**20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.**

In order to establish the amount of damages to compensate for the infringement of intellectual property rights the principle of full amount of the injury is used, namely:

- real losses including diminishment of the property suffered by the injured party as a result of infringement of its right, including purposeful expenses incurred in order to establish the infringer, e.g. remuneration for a detective searching for the infringer;
- lost benefits which it could have gained if it had not suffered the injury.

This liability covers only standard (i.e. being in a standard causative relation) effects of action or negligence on the part of the party causing the injury.

The legal basis are the provisions of Articles 361 and 415 of the Civil Code and Article 79 of the Act on Copyright and Neighbouring Rights, and also Article 20 § 2 of the Law on Trademarks.

**21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.**

The right holder expenses subject to refund by the infringer of the right (Article 45.2 of the TRIPS Agreement) are, according to the laws of Poland, costs necessary for the purposeful vindication of rights (Article 98 CCP) and include the following: incurred legal costs (legal fees, costs of court experts, costs of appearance of witnesses), the plaintiff's and its attorney's travel costs to the court, salaries lost by the plaintiff as a result of its appearance in court if the plaintiff is not represented by its attorney (Article 98 § 1 and 2 CCP).

If the plaintiff (party vindicating its claim) is represented by a attorney, to the costs subject to refund is also added the attorney's remuneration and his expenses, and also all expenses for the paid legal costs (Article 98 § 3 CCP).

The attorney's costs are determined in the amount resulting from the invoice issued by the attorney for the whole legal representation. The amount of the attorney's remuneration may not exceed the rates specified in the decree of the Ministry of Justice. If the attorney does not submit the

specification of costs (invoice), their amount is determined by the court within the rates' limit specified in the decree, taking into consideration labour consumption of the case. This formula is used exceptionally since attorneys usually submit invoices. The court cannot then reduce its due remuneration if it is within the rates' limit.

At present, due to amendments in the law, the amount of the attorney's remuneration is determined freely in the agreement concluded with the attorney. However, in order to protect the rights of the party losing the lawsuit, there is a rule that the adjudicated refund of the attorney's costs may not exceed maximum rates specified in the decree of the Minister of Justice. These rates are determined according to the value of the object of the judicial proceedings (of the vindicated claim).

The court passing its judgement, is obliged, at the request of the parties, to decree the costs of the proceedings and the adjudicated costs are the total of the above-mentioned expenses of the party (Article 108 CCP).

**22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of Poland, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.**

The laws of Poland do not provide for pronouncing by the court rulings containing the following:

- forfeiture to the benefit of the State Treasury of objects used to create copies of works subject to protection of copyright (Article 80, §§ 3 and 4 of the Act on Copyright and Neighbouring Rights);
- order to confiscate goods, packaging and other objects illegally bearing protected trademark or mark similar to it and means used for advertising and designation of goods with such a trademark (Article 20 of the Law on Trademarks);
- order to eliminate designation of goods with lawlessly used protected trademark (Article 20 § 3 of the Law on Trademarks).

**23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of Poland to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.**

In Polish civil procedure it is possible to obtain from a party specific information (e.g. concerning the identity of third parties involved in the production and dissemination of goods and services which have been ruled to infringe the right and information concerning the distribution of these goods) by hearing this party (Article 299 CCP). In the meaning of Article 271 § 1 CCP in connection with Article 304, last sentence, in the course of hearing of the party, the opposing party may ask questions.

Besides, the Act on Copyright and Neighbouring Rights imposes on the judge the obligation to examine the motion on obliging by the court the infringer of copyright to provide information and made available documentation specified by the court which is relevant for the claims. Information relevant for the claims will be information concerning the distribution of copies of works lawlessly created.

These rights enable to exercise the right to information contained in Article 47 of the TRIPS Agreement.

Nevertheless, additionally Article 119 of the Polish Act on Copyright and Neighbouring Rights states that whoever makes impossible or hinders the exercise of the right to supervise the use of a work or artistic performance or denies information provided for in Article 47 should be liable to a fine.

**24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.**

The State Treasury is liable for damages caused by state officials while carrying out their responsibilities - if this damage was the official's fault (Article 417 § 1 of the Civil Code). The official's fault takes place when he transgresses his rights under the legal regulations. However, if such fault is the result of the pronounced ruling (judicial or administrative decision) the State Treasury is liable only if while pronouncing the ruling the right was infringed (by the official) in the way subject to prosecution in the mode of criminal or disciplinary proceedings, and the official's fault was stated in the ruling or recognized by a superior authority (Article 418 of the Civil Code). The above prerequisites of liability apply also to the damage which may be caused by lawless use of means of protection of intellectual property rights.

#### Provisional measures

**25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.**

The Polish intellectual property laws provide for the use of provisional measures in order to prevent an infringement of intellectual property rights. General regulations are contained in the Code of Civil Procedure.

In order to secure claims the court may issue an interim order (Article 730 CCP). The court issues an interim order on request, and in cases in which proceedings may be instituted without a motion, also ex officio (Article 732 § 1 CCP). In the motion for issuing an interim order one should state and make plausible the circumstances which justify issuing of an interim order (Article 737 § 1 CCP).

The court may issue an interim order when the claim is credible, and the lack of security could deprive the creditor of its satisfaction.

Detailed regulations concerning the establishment of provisional measures in the meaning of the TRIPS Agreement are contained in the following acts concerning intellectual property rights.

- Copyright - the court may secure the claim at the request of the party having a legal interest therein. The applicant must make plausible that failure to secure the claim may deprive the entitled party of its satisfaction. The court may make the issue of the decision to secure claims dependent on placing a suitable deposit (Article 80 § 1, point 3 and § 4).
- The Law on Trademarks in Article 20 § 3 stipulates that in cases involving infringement of rights from registration the court may order to confiscate goods, packaging and other objects bearing a registered trademark or a trademark similar to it and means used for advertising and designation of goods with this trademark.
- Besides, in cases involving protection of geographical designation and non-disclosed information apply the provisions of the act on counteracting unfair competition, concerning the interim order. Article 21 § 1 of this Act provides that an entrepreneur whose interest has been endangered or infringed, may move for issuing an interim order. Under the interim order the court may establish an order of disposal or another introduction to trading of specific goods as well as carrying out advertising of specific contents. The court examines the motion for securing the claim immediately.

**26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.**

The laws of Poland provide for provisional measures in the form of preservation of evidence, at the motion of the entitled creditor, submitted to the court, and in the course of the proceedings also ex officio.

The motion put forward prior to instituting the proceedings in the case states the reason for the demanded preservation. Preserving of evidence takes place there is a danger that proving of evidence becomes infeasible or too impeded, or for other reasons (to be recognized by the court) there is a need to state the existing state of affairs.

Preservation of evidence may be admitted without calling the opposing party in urgent cases or when the opposing party may not be indicated or its place of residence is not known.

In cases involving protection of copyright or related rights is not necessary to indicate the risk that proving of evidence will become infeasible or too impeded.

The basis for adopting these measures are the provisions of Articles 310 - 313 CCP and Article 80 § 1, point 1 of the Act on Copyright and Neighbouring Rights.

**27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.**

Provisional measures may be adopted *inaudita altera parte* with respect to all cases of securing the claim in case of each intellectual property right. It is provided for in Article 738 CCP. However, the ruling concerning security measures must be served to the debtor if it is not subject to execution by the

executive body. Otherwise, it is subject to serving only to the creditor, and serving to the debtor is effected by the executive organ after proceeding to adopting the security measures. From this serving to the debtor flows the time allowed for appealing against the decision.

Securing of the claim fails if within the time-limit specified by the court, not longer than two weeks' period, a case involving this claim has not been instituted (Article 733 § 2 CCP).

**28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.**

Under the laws of Poland the condition of issuing a decision to secure the claim is the fact of making plausible that the lack of security is likely to deprive the creditor of its satisfaction (Article 730 CCP). This condition is not required while safeguarding copyright and related rights (Article 80 § 1, point 2 of the Act on Copyright and Neighbouring Rights). The laws of Poland go beyond Article 50.2 of the TRIPS Agreement (giving greater possibilities of taking advantage of securing the claim).

Judgement of the circumstances is at the court's discretion.

**29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".**

The risk that proving the evidence will become infeasible or too impeded, being the condition to preserve the evidence (except in case of evidence of infringement of copyright and related rights) includes also a demonstrable risk of evidence being destroyed. Judgement of this circumstance falls within the court's competence. The court will take into consideration factors connected with the place of existence of the evidence and the person who has the evidence in its control and its interest in preventing from proving the evidence. These factors have not been indicated in the Act but result from courts' practice.

**30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.**

Evidence as to holding intellectual property right are certified copies of documents confirming the registration of rights subject to registration (right resulting from the registration of a trademark or utility (industrial design), of the right resulting from the patent or registration of topography of integrated circuits.

In case of assigning the right to another person the evidence are copies of documents concerning assignment of the right.

With respect to copyright and related rights the evidence may be each document indicating or making plausible that the applicant is entitled to enjoy the right the protection of which he demands in the form of safeguarding.

**31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.**

The obligation to make a deposit with respect to all intellectual property rights while securing the claim results from Article 739 § 3 CCP and when it concerns copyright and related rights from Article 80 § 2 of the Act on Copyright and Neighbouring Rights.

**32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.**

Adoption of provisional measures without hearing the other party (*inaudita altera parte*) requires serving the court's decision to this party. The mode of proceeding has been discussed in the answer to question 27.

**33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.**

The defendant (debtor) may question, in the form of complaint examined by the court of higher instance, the decision concerning the use of provisional measures. For this purpose, it has to lodge a complaint to the court which pronounced the decision within seven days from the day of being served the decision in this case.

This debtor may at any time submit to the court of the first instance the demand to revoke or change the provisional measure ruled by a lawful decision (Article 742 § 1 CCP). Examination of such a motion must be preceded by a hearing with the presence of the creditor (Article 742 § 2 CCP).

**34. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.**

The body executing the security of the claim may require the parties to the executory proceedings (including also the right holder - the applicant) to furnish necessary explanations. These explanations include also information necessary for the identification of goods subject to provisional measure. The legal basis for such a demand is Article 761 § 1 CCP applying to the performance of provisional measures, in accordance with Article 743 CCP.

**35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions in the law of Poland authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.**

The answer to this question is contained in the answer to question 27.

Failure to initiate the proceedings within the time period specified by the court with the use of provisional measure (not longer than two weeks) causes by virtue of law cessation of provisional measures. At the request of the debtor with respect to whom the measure has been applied, the court issues a certificate of cessation of security which leads to releasing of security by the executory body (e.g. revocation of confiscation of goods).

**36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".**

In such a situation when as a result of adopting a provisional measure the debtor suffered injury, and adoption of this measure was ungrounded and was the plaintiff's fault it is considered that the injury was caused by the plaintiff's fault and may be the basis for instituting a lawsuit for reparation of the injury (compensation). The legal basis constitutes Article 415 of the Civil Code.

The principle of full amount of the injury is used to determine the amount of compensation (Article 361 of the Civil Code), namely:

- real losses including diminishment of the property suffered by the injured party;
- lost benefits which it could have gained if it had not suffered the injury.

This liability covers only standard (i.e. being in a standard causative relation) effects of action or negligence on part of the party causing the injury.

If the court has charged a deposit (Article 739 CCP), the defendant shall have priority to have its claims satisfied from this deposit. While establishing the amount of the deposit the court takes into consideration the amount of any possible damage that may be suffered by a party against whom the security is provided.

#### Special requirements related to border measures

**37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in Poland authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.**

Please see the reply to question 1 from Japan.

**38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.**

Please see the reply to question 1 from Japan.

**39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.**

Please see the reply to question 1 from Japan.

**40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is *prima facie* infringement of their trademark or copyright. Please explain what evidence will constitute *prima facie* infringement in Poland.**

Please see the reply to question 1 from Japan.

**41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Poland for a description to be "sufficiently detailed".**

Please see the reply to question 1 from Japan.

**42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.**

Please see the reply to question 1 from Japan.

**43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.**

Please see the reply to question 1 from Japan.

**44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.**

Please see the reply to question 1 from Japan.

**45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.**

Please see the reply to question 1 from Japan.



**46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.**

Please see the reply to question 1 from Japan.

**47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.**

Please see the reply to question 1 from Japan.

**48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.**

Please see the reply to question 1 from Japan.

**49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.**

Please see the reply to question 1 from Japan.

**50. Article 57 also requires that, where the decision on the merits favours the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Poland can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.**

Please see the reply to question 1 from Japan.

**51. Article 58 specifies procedures to be followed where the competent authorities can act ex officio. Please explain whether the competent authorities in Poland are empowered to act ex officio and, if so, please identify the intellectual property areas subject to ex officio action.**

Please see the reply to question 1 from Japan.

**52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Poland permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.**

Please see the reply to question 1 from Japan.

**53. Please identify:**

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

Please see the reply to question 1 from Japan.

**54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Poland.**

Please see the reply to question 1 from Japan.

#### Criminal procedures

**55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of Poland that fulfil that obligation and provide legal citations.**

Polish criminal regulations penalizing activity infringing intellectual property rights are contained in the following Acts:

- Act of 4 February 1994 on copyright and related rights (Articles 115, 116, 117 and 118),
- Act of 19 October 1972 on inventive activity (Articles 121, 122 and 123),
- Act of 31 January 1985 on trademarks (Article 57),
- Act of 30 October 1992 on protection of topography of integrated circuits (Articles 42 and 43),
- Act of 16 April 1993 on counteracting unfair competition (Articles 23 - 26)
- Act of 16 August 1987 on cinematography (Article 58),
- Act of 6 June 1997 - Penal Code (Article 278).

Offences as defined by the Polish Penal Law are the following acts against protection of intellectual property rights:

- (a) usurpation of authorship of the whole or part of somebody else's work or artistic performance,
- (b) dissemination of the work in its original version or in the form of compilation, artistic performance or public deformation of such work without giving the author's surname or pseudonym,
- (c) another infringement of somebody else's copyright in order to gain financial benefits,
- (d) dissemination without authorization or against its conditions of somebody else's work,
- (e) recording or copying without authorization or against its conditions of somebody else's work,
- (f) acquisition, assistance in sale, accepting or assistance in concealing, in order to gain financial benefit, carrier of the work, artistic performance, phonogram or videogram disseminated or copied without authorization or against its conditions,
- (g) impeding the exercise of copyright to control to use the work or its artistic performance,
- (h) usurpation of somebody else's patent or somebody else's utility design in order to gain a protective right,
- (i) designation of goods not protected by a patent or utility design in the way inspiring misleading impression as if they used such a protection,
- (j) deliberate introduction of such goods to trading, their storage and advertising,
- (k) usurpation of authorship of somebody else's topography of integrated circuits,
- (l) infringement of the right resulting from registration of topography of integrated circuits in order to gain financial benefits,
- (m) introduction to trading of goods and provision of services with the use of a registered trademark,
- (n) designation, in order to introduce goods and services to trading, with a registered trademark, without being granted the right to it.

The above-mentioned offences are subject to the following penalties:

- deprivation of liberty for the period up to one year or up to two years according to the type of act,
- restriction of liberty,
- fine.

The culpability of the above-mentioned acts is increased (the upper limit of the penalty of deprivation of liberty is increased up to three years) if the perpetrator has turned it into its permanent source of income, is in charge of such activity or organizes this activity.

**56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offence. Please explain the provisions in the law of Poland that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.**

Regardless of the principal penalties indicated above in the answer to question 55, the court rules forfeiture of goods coming from offence, even if they were not property of the perpetrator and forfeiture of goods used to commit the offence, in cases involving usurpation of authorship of work, illegal dissemination of somebody else's work or its deformation, illegal copying of somebody else's work, phonogram or videogram, acquisition, assistance in sale or in concealing of illegally disseminated or copied carrier of work, videogram or phonogram (Article 121 of the Act on Copyright and Neighbouring Rights).

**57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of Poland that provide for such procedures and remedies and provide legal citations.**

In the above-cited Acts wilful offences of infringement of intellectual property rights and committing them on a commercial scale have their qualified forms. Threat of punishment for such offences is higher, compare Articles 116 §§ 1, 2, 3 and 4; 117 §§ 1 and 2; and 118 §§ 1 and 2 of the Act on Copyright and Neighbouring Rights.

**58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Poland comply with that obligation.**

The severity and type of penalties provided for in the legal regulations should be sufficient to provide a deterrent for trademark counterfeiting and copyright piracy.

[Follow-up questions from the US]

**1. Please provide statistical information related to civil copyright, trademark, geographical indication, industrial design, patent, integrated circuit layout-design and trade secret enforcement for each of the years 1996 and 1997, including the number of cases filed; injunctions issued; infringing products seized; infringing equipment seized; cases resolved (including settlement); and the amount of damages awarded.**

There are no statistics available either related to civil copyright, trademark, geographical indication, industrial design, patent, integrated circuit layout-design, and trade secret enforcement or criminal enforcement in the area of copyright piracy and trademark infringement for the years 1996 and 1997.

**2. Please provide statistical information related to criminal enforcement in the area of copyright piracy and trademark infringement for each of the years 1996 and 1997, including the number of raids, prosecutions, convictions and the amount of fines and/or jail terms (including whether the fines were paid and whether the jail term was actually served or was suspended)**

**and any other information establishing that your criminal system operates effectively to deter copyright piracy and trademark counterfeiting.**

See the reply to follow-up question 1.

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