

REVIEW OF LEGISLATION

Responses from Sri Lanka to Questions posed by the European Communities
and their member States

Addendum

By means of a communication from the Permanent Mission of Sri Lanka, dated 16 January 2002, the Secretariat has received a copy of the following responses to the additional questions posed by the European Communities and their member States, as circulated in document IP/C/W/320/Add.2.

A. COPYRIGHT AND RELATED RIGHTS

1. *Please provide details as to where provisions for "rental rights", in accordance with Articles 11 and 14.4 of the TRIPS Agreement, are to be found in the Code of Intellectual Property Act No 52 of 1979 (as amended).*

The Code of Intellectual Property Act No. 52 of 1979 does not provide for rental rights but Section 10(1)(e) of the proposed law makes necessary provisions.

2. *With particular reference to the element of fixation, please indicate where, in Act 52 of 1979, provisions in compliance with Article 14.1 of the TRIPS Agreement are to be found.*

The Act No. 52 of 1979 does not make provisions relating to fixation but Section 18(2) of the proposed law makes necessary provisions.

3. *With particular reference to indirect reproduction, please state where provision is to be found in Act 52 of 1979 for producers of phonograms to enjoy such protection in compliance with Article 14.2 of the TRIPS Agreement.*

The Act No. 52 of 1979 does not contain provisions in compliance with Article 14.2 but Section 19(1)(a) of the proposed law makes necessary provisions.

4. *Again with particular reference to the prohibition on fixation, please indicate where protection for broadcasting organisations, in compliance with Article 14.3 of the TRIPS Agreement, is to be found in Act 52 of 1979.*

The Act No. 52 of 1979 does not contain provisions in compliance with Article 14.33 but Section 21(1)(c) and (d) of the proposed law makes necessary provisions.

5. *Please advise whether Section 22(c) of Act 52 of 1979 will be interpreted in Sri Lanka to mean that all works of the kind covered by Part II, Chapter II of that Act are protected in the precise terms of the TRIPS Agreement; the Paris Convention (1967); the Berne Convention (1971); and the Rome Convention (1961).*

Section 22(c) of the Act No. 52 of 1979 applies only to the relevant provisions of the Berne Convention.

6. *Please advise where in particular provisions in compliance with Articles 3, 4 and 5 of the Berne Convention are to be found in Act 52 of 1979.*

Section 22(c) of the Act No. 52 of 1979.

7. *Please also indicate where provisions corresponding to Article 18 of the Berne Convention are to be found in Act 52 of 1979.*

The Act No. 52 of 1979 does not contain such provisions and Clause 56 of the proposed law makes necessary provisions for retrospective effect.

8. *Please explain why Section 15 of Act 52 of 1979 is not to be interpreted as being in conflict with Article 8 of the Berne Convention.*

This Section has been removed under the proposed law.

9. *Please advise where provisions corresponding to each of Articles 51 to 60 of the TRIPS Agreement are to be found in Act 52 of 1979 or elsewhere in the national legislation of Sri Lanka.*

Provisions of Part VI and Chapter XXXII of the Act No. 52 of 1979 are in compliance with the TRIPS requirement to a great extent. In addition, the Code of Criminal Procedure Act, the Civil Procedure Code and the Judicature Act make necessary provisions with regard to remedies and judicial process. The proposed law makes necessary provisions fully, in line with the Articles 51 to 60 of the TRIPS Agreement.

B. TRADEMARKS

10. *Please indicate where in Act 52 of 1979 provision is made for compliance with the presumption specified in Article 16.1 of the TRIPS Agreement of a likelihood of confusion being presumed in the case of the use of an identical sign for identical goods or services by a third party.*

The Act No. 52 of 1979 does not contain provisions with regard to the presumption but the required provisions are introduced under Section 117 of the proposed law (Clause 26).

11. *Please indicate where in Act 52 of 1979 provision is made for compliance with Article 16.2 and 16.3 of the TRIPS Agreement relating to well known trademarks.*

Section 100(1)(d). However, the provisions in line with Article 16.2 & 16.3 are made under Section 100(1)(d) of the proposed law.

12. *Please explain whether the provisions of Section 166 of Act 52 of 1979 read with the relevant Sections of the Customs Ordinance, are in compliance with Articles 51 to 60 of the TRIPS Agreement.*

Section 166 of the Act No. 52 of 1979 will be expanded to comply with TRIPS requirements under the proposed law (Section 166 and 166A).

C. INDUSTRIAL DESIGNS

13. *Please explain if the provisions of Section 44(1) of Act 52 of 1979 include the right of the owner of a registered design to prevent a third party from committing an act of infringement in relation to "substantially a copy" of the protected design as provided for in Article 26.1 of the TRIPS Agreement.*

Section 44(3) makes the necessary provisions.

D. PATENTS

14. *Please explain how Section 80 of Act 52 of 1979 complies with Article 33 of the TRIPS Agreement.*

Section 80 of the Act No. 52 of 1979 is amended under the proposed law to comply with Article 33 of the TRIPS Agreement.

15. *Please advise where provisions in compliance with Article 31 of the TRIPS Agreement are to be found in Act 52 of 1979.*

The Act No. 52 of 1979 does not contain any provision with regard to "the use without authorization of the right holder".

16. *Please advise where provisions in compliance with Article 34 of the TRIPS Agreement are to be found in Act 52 of 1979.*

The Act No. 52 of 1979 does not contain such provision but the proposed law will make necessary provisions (Clause 17).

E. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

17. *Please advise where provisions in compliance with Article 35 through to 38 are to be found in Act 52 of 1979 and, if no such direct provisions are in operation in Sri Lanka, what steps (if any) are being implemented in Sri Lanka to bring about compliance with the TRIPS Agreement.*

The Act No. 52 of 1979 does not contain any provision with regard to layout-designs of integrated circuits. A new law will be soon passed.

F. PROTECTION OF UNDISCLOSED INFORMATION

18. *Please advise whether Act 52 of 1979, or any other provision of the law of Sri Lanka, contains provisions in compliance with Article 39 of the TRIPS Agreement.*

The Act No. 52 of 1979 does not contain any provision with regard to the protection of undisclosed information but the proposed law will make necessary provisions (Section 142).
