

QUESTIONNAIRE – ALAI CONGRESS 2018 – MONTREAL

Since the congress theme should attract many copyright practitioners, the Canadian group has chosen to develop a questionnaire which you are asked to complete with succinct answers, in either **French, English or Spanish**. The answers will be compiled in an analytical table that will be given to congress participants so that they can leave with a document allowing them to quickly compare the situation prevailing in several countries.

It is therefore essential to complete the table below by briefly answering each question. We invite you to refer to the legal provisions that apply in your country, if any.

For national groups who would also like to provide additional information related to certain questions, we ask you:

1) to indicate "* see also answer No. X below" after the short answer that you have provided in the table.

2) to put your more detailed answer after the table.

Please note, however, that only the answers to the table will be compiled in the practical tool that will be given to the participants.

<p>_____ Germany _____</p> <p>Name of the person(s) answering the questionnaire</p> <p>_____ Felix Wahler _____</p> <p>_____</p> <p>_____</p>											
QUESTIONS FOR THE SUMMARY TABLE	1) Are statutory damages available? If so, please indicate the criteria for awarding them and the amount of such damages.	2) If punitive damages are available, indicate the criteria for awarding them.	3) Are class actions or class remedies available in copyright matters? If so, indicate in what circumstances they are used.	4) If seizures before judgment are available, indicate what gives rise to such procedures and the criteria for granting them.	5) Are there in your country 1) criminal remedies; 2) customs measures, in connection with copyright? If so, which ones?	6) Describe how circumvention of technological protection measures is dealt with, if such is done.	7) Is there a mandatory notice and notice regime or notice and take down regime for intermediaries in the case of alleged copyright infringement? If so, describe it briefly, and indicate if how it is dealt with differs based on which rights holder requests it.	8) Does the notion of secondary copyright infringement in the digital world exist in your country? If so, describe it briefly.	9) Indicate for which rights collective management is available.	10) With respect to collective management, indicate who sets the tariffs and how they are set.	11) Indicate whether copyright remedies are within the power of specialized courts or common law courts, and in the case of a mixed system, please specify in which cases an action should be brought before one rather than the other.
ANSWERS TO QUESTIONS FOR THE SUMMARY TABLE	Germany: Yes, § 97 (2) UrhG (German Copyright Act). Damages are	Punitive damages do not exist in German Law.	No, class actions/ remedies are not available in German Law.	There are seizures before judgement that are conducted by the customs office (§ 111b UrhG).	1) Yes, there are criminal remedies, see §§ 106-111a UrhG (German Copyright Act).	§ 95a UrhG protects technological protection measures.	Yes, in case of alleged copyright infringement, the intermediary has to delete the information or	Yes, there is the concept of "Störerhaftung", which was developed by German courts.	Generally, collective management is available for copyrights as well as neighbouring	The respective collecting society sets the tariffs (§ 38 VGG, Collecting Societies Act).	All disputes concerning claims that arise from a legal relationship regulated by the German Copyright

	<p>awarded if there is an infringement of copyright (or any other right protected under the German Copyright Act, such as neighbouring rights) and if the infringement was performed intentionally or negligently.</p> <p>The right owner has the right to choose between three different ways to calculate the damages: 1) compensation of his actual losses 2) account of the infringer's profits 3) payment of a hypothetical licence fee.</p>			<p>In the case of an obvious infringement of copyright (or any other right that is protected under the German Copyright Act) the customs authority may confiscate the copies. The infringement can be relevant in the case of the planned export of copies that were produced in Germany in violation of copyright. In addition, the import of infringing copies in order to distribute them in Germany can give rise to seizures before judgment as well.</p> <p>Furthermore, the customs authority takes action only if there is an application by the rightholder of the copyright. In general, the customs authority does not examine all exports and imports and it controls the goods mainly based on the customs documents. The controls are random.</p> <p>The infringement is obvious, if there is no room for a reasonable doubt about the infringement for the customs officer.</p>	<p>2) Yes, the customs authority has the possibility to confiscate goods that obviously infringe copyright – see answer to 4).</p>	<p>On the one hand, the article forbids the circumvention of technological protection measures itself and on the other hand it prohibits preparatory and support measures.</p> <p>Technological protection measures must not be circumvented if the acting person is aware or should be aware that the circumvention is taking place in order to facilitate access to such a protected work (§ 95a (1) UrhG).</p> <p>Preparatory measures to circumvent technological protection measures are prohibited as well. § 95a (3) UrhG forbids the production and other uses of products or services that mainly have the function to circumvent technological protection measures. For more detail, see §§ 95 a – d and (for criminal law) 108b UrhG.</p>	<p>block the access to it (§ 10 TMG German Act on Telemedia). If he does not eliminate the infringing information, he can be held responsible for the copyright infringement.</p> <p>Nevertheless, Germany (and the European Union) does not have a fixed procedure like it exists in America.</p> <p>In the lack of fixed legal procedures, the user who uploaded data, for which copyright infringement was alleged, has no possibility to fight the takedown.</p> <p>Due to the lack of clear rules, there is a lot of uncertainty in this field.</p>	<p>Secondary copyright infringement can arise if there is a violation of inspection obligations.</p> <p>The Act on Telemedia (in §§ 8-10) grants privileges to Internet providers (mostly for Access-, Host-, und Cache-Providers) who provide access to foreign information.</p> <p>Nonetheless, there can be a secondary copyright infringement if a provider does not react after having been notified about an alleged copyright infringement or if the provider made the content and information presented its own. In this second case he then is responsible for his own information.</p>	<p>rights (§ 1 VGG; Collecting Societies Act).</p> <p>This includes the right of use, right to statutory remuneration.</p> <p>In particular, rights according to §§ 20b (cable retransmission), 26(6) (claims under right of resale for works of art), 27 (remuneration for rental and lending), 45a (limitation for persons with disabilities), 49 (newspaper articles and broadcast commentaries), 54, 60h (reproduction for private and other own use, uses for education, reserach, by libraries etc.), 78(2) (secondary uses, performers/phonogram producers) 79a (specific remuneration for studio musicians) and 137I(5) (remuneration for new types of use) UrhG may be asserted only by a collecting society.</p>	<p>Generally, the tariffs shall be calculated on the basis of the pecuniary benefits derived from the exploitation.</p> <p>When setting the tariffs, reasonable consideration shall be given to the share which the use of the work represents of the total utilisation and to the economic value of the services provided by the collecting society.</p> <p>Furthermore, the tariffs shall take into account the religious, cultural and social concerns of the users, including the concerns of the youth services (see § 39 VGG Collecting Societies Act).</p>	<p>Act are to be decided by the civil courts (§ 104 UrhG).</p> <p>Most German federal states have concentrated the competence for copyright cases at one or only a few local and district courts with specialized judges and chambers.</p>
--	--	--	--	---	--	--	--	--	---	---	--

FURTHER QUESTIONS (OPTIONAL)

QUESTION: Are there recent legislative or jurisprudential developments in your country that would be interesting to share with the ALAI public?

ANSWER :

QUESTION: Are there any special remedies in your jurisdiction that, to your knowledge, are less or not available in other jurisdictions?

ANSWER :