

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.

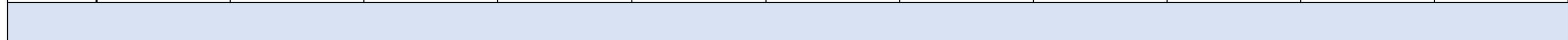
Please note, however, that only the answers to the table will be compiled in the practical tool that will be given to the participants.

Country GREECE											
Name of the person(s) answering the questionnaire Dr Evangelia Vagena Dr Galatea Kapellakou Dr Krystallenia Kolotourou											
QUESTION S 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 QUESTION S FOR THE SUMMARY TABLE	No. There is no provision for statutory damages.	No punitive damages are provided under the Greek Copyright Law. Article 65 (2) Law	Class actions are available in copyright matters. Recently, different CMOs filed for an injunction against	According to Article 64 Law 2121/1993, in case of alleged infringement of copyright or	1) According to Article 66 Law 2121/1993, there are criminal sanctions in case of copyright	According to Article 66A Law 2121/1993, circumvention of effective technological	According to Article 66E Law 2121/1993, a Committee for the Notification of Copyright and	No such notion exists under the Greek Copyright Law. However, according to Article 64A Law	According to Article 12 (1) Law 4481/2017, rightholders have the right to authorize a CMO	According to Article 23 (2) Law 4481/2017, CMOs shall, by decision of the Board of Directors, draw up	Copyright remedies are within the power of specialized IP courts (placed under the

		<p>2121/1993, provides that a person who by intent or negligence infringes copyright or a related right of another person shall indemnify that person for the moral damage caused, and be liable for the payment of damages of not less than twice the legally required or normally payable remuneration for the form of exploitation which the infringing party has effected without license. The intention or negligence is the important condition that must be fulfilled. The criteria for damages are either the legally required or the normally payable remuneration, which can be proven by receipts, invoices or other financial data. The <i>ratio legis</i> that underlies this provision is the difficulty to define the damage. However, the double damages are not considered</p>	<p>Internet access providers demanding to prohibit giving access to their customers to certain websites allowing internet users to stream or download films without the rightholders' authorization (see below recent jurisprudence)</p>	<p>related right provided for by articles 46 to 48 and 51 or the special right of database creators, the One-member First Instance Court shall order the precautionary seizure of items in the possession of the alleged infringer that constitute means of commission or product or evidence of the infringement. In case of an infringement committed on a commercial scale the court may order the precautionary seizure of the property of the alleged infringer including the blocking of his/her bank account. The court may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information. Furthermore according to art. 64 par. 5 the courts may grant ex parte preliminary injunctions (search</p>	<p>infringement. The criminal sanctions provided are imprisonment of no less than a year and to a fine from 2.900-15.000 Euro. If the financial gain sought or the damage caused by the perpetration of an act is particularly great, the sanction shall be not less than two years imprisonment and a fine of from six thousand (6,000) to thirty thousand (30,000) euros. If the guilty party has perpetrated any of the aforementioned acts by profession" or at a commercial scale" or if the circumstances in connection with the perpetration of the act indicate that the guilty party poses a serious threat to the protection of copyright or related rights, the sanction shall be imprisonment of up to 10 years and a fine of from 15.000-60.000 euro together with the withdrawal of the</p>	<p>measures is prohibited without the permission of the rightholder, when such act is made in the knowledge or with reasonable grounds to know that he is pursuing that objective. The circumvention is punished by imprisonment of at least one year and a fine of 2.900 to 15.000 Euro and entails the civil sanctions of Article 65 Law 2121/1993. The One-Member First Instance Court may order an injunction in accordance with the Code of Civil Procedure, the provision of article 64 Law 2121/1993 also being applicable.</p>	<p>Related Rights Infringement on the Internet is constituted for the cases of copyright or related rights infringement on the internet. This procedure does not apply to infringements committed by end - users through downloading or streaming or peer to peer file sharing, which allow for direct exchange of digital files of works between end - users, or to cases of infringement by means of provision of data storage services through cloud computing.</p> <p>Upon rightholders' application for the termination of the infringement and according to a specific process, the Committee shall close the case by a reasoned act, where no infringement of copyright and/or related rights has been established, or the Committee shall request from the addresses of the notification to remove the infringing content</p>	<p>2121/1993, rightholders may apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right. It is the same for the sui generis right of data base maker.</p>	<p>of their choice to manage the economic right or the powers deriving therefrom or categories of powers or types of works or objects of protection of their choice. Mandatory collective management regime is provided for cable retransmission (Article 35 (5) Law 2121/1993), for the right to equitable remuneration in case of broadcasting or communication to the public for performers and phonogram producers (Article 49 Law 2121/1993) and finally, in case of reproduction for private use (Article 18 Law 2121/1993).</p>	<p>a table of the remunerations required by the users (tariffs). In determining and applying their tariffs, CMOs must apply objective criteria, never act in an arbitrary way, nor engage in abusive discrimination. Further, CMOs and representative associations of users may enter into agreements for the determination of the remuneration payable by the user to each category of rightholders.</p>	<p>jurisdiction of the existing civil courts). The judges of these specialized Courts have expertise in IP. According to Art. 3 Par. 26a of Law 2479/1997, the first instance courts of Athens, Piraeus, and Thessaloniki comprise a special division that hears copyright cases. Regular judges specialized in copyright matters are appointed to this division, which is set up in the said courts according to the procedure provided for by the law on the constitution of courts' divisions in general. Appeals against the decisions of the first instance courts are tried before the Special Division of the Court of Appeal of Athens.</p>
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		to be of punitive nature.		orders) so that the right holder audits the infringing items (inventory executed by bailiff for example by taking photographs). The whole procedure (ex parte search order and audit) should be completed within two days, from the date of the ex parte decision. The right holder is at the same time given a trial date for interim measures, (claiming recognition of the right, discontinuation of the infringement i.e. recall from the channels of commerce of goods that and materials and implements principally used in the creation or manufacture of those goods, definitive removal from the channels of commerce, or destruction) and its omission to infringe in the future. Apart from or after the decision of the interim measures the right holder	trading license of the undertaking which has served as the vehicle for the act. 2) Regarding customs measures applies Regulation 608/2013, the right holder is entitled to file an application before the competent authority asking the competent customs to take actions by prohibiting the import of illegal products. In any case, even if rightholders have not filed an application for action, the customs authorities who have found infringing items have the right to detain, or suspend the release of, goods which they are suspect of infringing an IPR. If no application has been filed, the authorities contact the rightholder being entitled to file an application for action. A simplified destruction procedure is		from the website on which it had been illegally posted or to block access to it if it finds that a copyright or a related right has been infringed. If the content is hosted on a website whose server is located within the Greek territory, the Committee shall request the addressees of the notification to remove that content. In the case of large-scale infringements, the Committee may decide to discontinue access to this content, instead of its removal. If the website is hosted on a server located outside the Greek territory, the Committee shall request the internet access provider to block access to this content.				
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				can claim damages.	provided under the regulation.						
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QUESTION: Are there recent legislative or jurisprudential developments in your country that would be interesting to share with the ALAI public?

ANSWER :

Prof. Dionysia Kallinikou & Dr Pierrina Koriatopoulou, News from Greece, RIDA 254 oct. 2017

Legislation:

The Greek legislation was harmonised with Directive 2014/26 by Law 4481/2017 and specifically by articles 1 to 54 of the first part of the law in question.

The provisions of Law 4481/2017 concerning collective management cover in particular the following matters: aim and scope, definitions, operating licence, establishment of a single collective management organisation, sphere of competence of collective management organisations, legal presumptions, operation and structure, general assembly of members and supervisory board, assignment of management, admission of a new member, licences for non-commercial use, rights of non-member rightholders, obligation to provide information, rights revenue, management costs, distribution of royalties, management of rights under representation agreements, user licences and setting of tariffs, tariff scales, user obligations, communication and publication of information, annual transparency report, multi-territorial licensing of rights in musical works, complaints procedure, notice of infringement, alternative dispute resolution procedure, imposition of sanctions, exchange of information, protection of personal data, independent management entities in a dominant position, and the commissioner in charge of reorganisation. The Greek Law 4481/2017 included a provision which introduces the notion of “independent management entities in a dominant position on the Greek market”, on which it confers a large number of privileges enjoyed by collective management.

Law 4481/2017 also includes provisions dealing with infringements of rights on the internet, reproduction for private use and the extension of the fair compensation to computers, tablets and smartphones, and the right of public lending of works by libraries.

Articles 54 to 58 of Law 2121/1993, which were repealed, contained provisions on the legal form of collective management organisations and their supervision by the Ministry of Culture, the contract for the grant of rights, the assignment of management, the organisations’ relations with authors and users, dispute resolution and the sanctions which may be imposed on collective management organisations.

Jurisprudence:

Athens District Court decisions nos. 4658/2012, 13478/2014, 10452/2015 and Multimember Court of Athens 3530/2017)

The Athens District Court granted the application for an injunction filed by collective management societies to prohibit Greece’s biggest internet access providers from giving their customers access to certain websites allowing internet users to stream or download films without the rightholders’ authorization.

In the first decision (no. 4658/2012) the Athens District Court held that the access providers were indeed intermediaries within the meaning of Directive 2001/29/EC and ordered them to block the infringing websites by any effective means and notably by blocking certain domain names. It is interesting to note that, before ordering the measures, the judge considered the process and cost of disabling subscribers’ access to specific internet addresses (IP addresses) as well as the effectiveness of the measure and its impact on the ISPs’ overall offer, to ensure that the chosen enforcement measure satisfied the principle of proportionality. For that reason, the judge also stressed that the chosen measure’s implementation would not compromise the performance of the other internet access services, like the access speed, the response time and the available bandwidth.

Two years later, the same Court (Athens District Court, decision no. 13478/2014) dismissed a similar application by stressing that such an undertaking would lead to the passive monitoring of internet traffic. According to the judge, the blocking measures would infringe on the internet access provider’s freedom to conduct business; in addition, the proposed measures would infringe on fundamental rights and particularly freedom of information because there was a risk that the filtering would not sufficiently differentiate between illegal and legal content, with the result that its deployment could lead to communications of legal content being blocked.

Still 3 years later a similar case was addressed before the Multimember Court of Athens and according to its decision 3530/2017 which accepted this time the collecting societies’ claims and granted an order to ISPs to block access to copyright infringing sites.

So the first tendency to prevail the fundamental rights over copyright protection in the view of the Greek courts was overturned and ISPs were finally involved as the best placed to prevent infringement occurring via their services, in conformity with the process endorsed in Greek law by European law (article 8(3) of Directive 2001/29/EC and article 9(1)(a) of Directive 2004/48/EC) which is ultimately, more proportionate and effective.

More jurisprudence may be found at the article mentioned above RIDA no 254/ October 2017, News from Greece, written by Prof. Dionysia Kallinikou and Dr Pierrina Koriatopoulou

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

ANSWER :