

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: Israel											
Name of the person(s) answering the questionnaire Tony Greenman											
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	Courts may award statutory damages in a sum of up to NIS 100,000 for each infringement. For this purpose each infringement of a right will constitute a separate	Not Available, although in awarding statutory damages courts sometimes consider the need for deterrence, which may lead to de-facto punitive damages	Class actions are available if it can be shown that infringing activity affects a class of plaintiffs. A number of requests for permits to file class actions are	A court may order the appointment of an interim receiver with power to take possession of articles of property of the respondent, whether held by him, or a third party, if it is	The Copyright Act creates criminal liability for certain acts of copyright piracy, namely: (1) Making an infringing copy of a work for the purpose of trading therein; (2)	Israeli has not enacted legislation providing for protection of TM's. At least one justice of the Supreme Court have hinted that circumvention of a TM that controls access to	The Copyright Act does not contain such provisions. However, the courts have judicially adopted a "notice and takedown protocol" exempting ISP's	Israeli courts apply the concept of contributory infringement, the ingredients of which are: (a) a primary infringement has occurred; (b) actual knowledge	Cinematic works: rights of public performance, broadcast (broadly speaking similar to the public), making available to the public and commercial rental	The CMO's themselves set the tariffs. However, a user, or an organization representing users may petition the court to set aside a tariff and to set a reasonable in its	Copyright cases are heard before the general courts. There is not a specialized court. In practice, certain judges tend to specialize in copyright, or IP more generally.

	<p>infringement. For example, where a work was reproduced in several different monthly issues of a magazine, the plaintiff was entitled to multiple awards of statutory damages. Such is also the case where different rights (e.g. the right of reproduction and the right of making available) have been infringed. Infringements of rights in multiple works are usually considered separate infringements (but there is a split of opinion among courts on this issue). However, infringements occurring in a "single series of acts" will be considered as one</p> <p>In setting the sum of an award, courts are directed to consider, inter alia: the scope and duration of the infringement; the severity and character of the infringement; actual damages of the plaintiff as estimated by the court; the benefit accruing to the defendant; the relationship between the parties and the</p>		<p>pending before the courts.</p>	<p>convinced on the basis of prima facie reliable evidence that there is a reasonable suspicion that the party may dispose of, or destroy them, or that they are infringing copies, or served in the infringement, and that the possibility of executing the judgment will be impaired if such an order is not made.</p> <p>Courts may also order the seizure and copying of potential evidence, including articles and documents, if convinced that there is a reasonable risk that the respondent or someone acting on his behalf may dispose of them, or destroy them, and that the proceedings may as a result be substantially prejudiced.</p>	<p>importing an infringing copy of a work for the purpose of trading therein; (3) engaging in the selling, rental, or distribution of an infringing copy of a work; (4) The sale, rental, or distribution of infringing copies of a work on a commercial scale; (4) Possessing of an infringing copy for the purpose of trading therein; (5) manufacture or possession of an object for the purpose of making an infringing copy of a work and trading therein</p> <p>See below for a pending bill proposing criminal liability for certain infringing broadcasts and acts of making available.</p> <p>Upon an application from a copyright owner, the Director of Customs may delay the release of goods claimed to be infringing copies of a work.</p>	<p>a work may be considered making available.</p>	<p>from liability for infringing material hosted by them, if the ISP has no knowledge of the infringement, and, upon gaining such knowledge has taken down the allegedly infringing material. However, if the ISP encourages or induces the infringement, or if the site is "illegitimate", the ISP will not be entitled to benefit from this exemption. Although the courts speak of a "protocol", there are, in fact, no uniform rules regarding the circumstances under which the ISP will be exempt, what degree of intervention in the content will negate the exemption, the form of notice and the timeframe for takedown, and there are no rules relating to counter-notice. One court, in aa case involving infringing links, has laid out a rebuttable presumption of knowledge, which would cause a site to be classified as "illegitimate", based on the total number, or proportion of illegal links on the site.</p>	<p>of the primary infringement (including wilful blindness); (c) substantive participation in the infringement including failure to prevent the infringement, or further infringement where that can be reasonably achieved. There is a split on the Supreme Court on the question of whether an infringement for which there is a defense, such as fair use, should be considered as an infringement under the first condition. It would appear that the view that it should not be considered, and thus cannot be factored into a contributory liability claim is the correct view. Case law has held that linking to infringing copies of works may trigger contributory liability if the person creating the link has actual knowledge of the infringement.</p> <p>Please see below for discussion of a pending bill designed to create accessory liability for infringement of the right of making available.</p>	<p>Music works and phonograms: public performance, broadcast, making available to the public (to a degree) and synchronization and reproduction for broadcasting purposes/κ</p>	<p>place. In setting such a tariff, the courts will consider various factors, including economic analysis, past and comparable rates, and, in certain cases, may also take note of comparable tariffs in foreign jurisdictions if such a comparison is appropriate and possible</p>	<p>Cases involving injunctions are normally heard in the District Courts (second tier) Courts. Monetary claims are heard either in the Magistrates (for claims of less than 2.5 million NIS,) and in the District Courts for claims exceeding this sum.</p>
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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 :

A the time of writing, a bill updating the copyright act, mainly on matters concerning online infringements, pending before the Israeli parliament would create secondary liability for a person who by his acts (for instance, by creating a link) facilitates or expands access of others to a work that has been made available to the public if the person who performs the act has actual, or constructive knowledge that the work was made available by way of infringement and if he acts with the intent to profit from the act and from the making available. At the time of writing, this clause and its actual wording is still under discussion in a parliamentary committee.

The above bill also proposes creating criminal liability for certain acts of infringing broadcast or making available of works by way of trade and with a profit motive.

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

ANSWER :