

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.

TURKEY Name of the person(s) answering the questionnaire Adv. Dr. Cahit Suluk Adv. Bahattin Carkaci											
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	No. Statutory damages are not available.	Punitive damages are available. In case of infringement of economic rights, the right holders may claim the payment of	Class actions and class remedies are not available.	Seizures before judgment are available. Upon the request of the person whose rights have	Both. Criminal remedies and customs measures in connection with copytight are available.	Criminal remedies available for such an illegal acts. Any person, who produces, puts up for sale, sells or possesses for non-	Notice and take down regime is available. In case where rights of authors and related rights	Secondary copyright infringement in the digital world only exist within the scope of notice and take down	Collective Management Organizations (CMO) are authorized to set the tariffs.	CMO's are authorized to set the tariffs. Initially CMO's determine the tariffs and notify	In 2001 the specialized IP Civil and Criminal Courts were established. Since then the specialized courts

		<p>compensation of up to three times the amount that could have been demanded if the right had been granted by contract, or up to three times the current value which shall be determined under the provisions of the Law. (Art. 68)¹</p>		<p>been violated or are under threat of violation, the civil court may order the other party, before or after the commencement of the p</p> <p>roceedings on the merits of the case, to perform certain acts or to refrain from performing them or to open or close the premises where the act is being committed, or may order as a precautionary measure the preservation of the reproduced copies of a work or moulds and other similar devices for reproduction exclusively enabling the manufacture of such copies,</p> <p>if such an order is deemed necessary for the prevention of a substantial injury or an instantaneous danger or accomplished facts or any other reason and if the claims asserted are considered to be</p>		<p>private use programs and technical equipments which aim to circumvent additional programs developed to prevent illegal reproduction of a computer program shall be sentenced to imprisonment from six months to two years. (Art. 72).</p> <p>Additionally, right owner may claim damages on civil court action.</p>	<p>holders granted by the Law have been violated by providers of service and content through the transmission of signs, sounds, and/or images including digital transmission, the works which are subject of the violation shall, upon the application of the right holders, be removed from the content.</p> <p>Natural or legal persons whose rights have been violated shall to this end initially contact with the content provider and request that the violation be ceased within three days.</p> <p>Should the violation continue, a request shall next be made to the public prosecutor requiring that the service being provided to the content provider persisting in the violation be</p>	<p>regimes for host servers and content servers.</p>	<p>CMO's may grant a license and pursuit of the rights granted by the Law and the collection and distribution of fees to the right holders.</p> <p>CMO's may file a civil and criminal court actions on behalf of their members.</p>	<p>them to the Ministry and users</p> <p>Users may oppose to this tariffs.</p> <p>In case an agreement can not be reached in the determination of the tariffs a commission formed by the Ministry shall make that determination.</p> <p>However the decisions of the commission are not binding.</p> <p>As result if an agreement is not reached between users and CMO's then CMO's may file a criminal ve civil court actions against users for any unauthorized use.</p> <p>Consequently the system is not well organized and not working in practice.</p>	<p>have been handling the IP cases including copyright remedies.</p> <p>Currently there are approximately 20 IP courts in Turkey. They are established in Istanbul, Ankara and Izmir. In other cities provincial courts are authorized to handle IP cases.</p>
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¹ Law on Intellectual And Artistic Works - Law No. 5846-Turkey

				strongly probable. (Art.77)			suspended within three days by the relevant service provider. The service being provided to the content provider shall be restored, if the violation is ceased. (Additional Art. 4)				
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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 : There is a Draft Law amending Law No.5846 on Intellectual and Artistic Works (“Draft Law”) has been in progress since November of 2016 and recently transferred to the Turkish Grand National Assembly is expected to be adopted at the end of this year. This new Draft Law proposing significant amendments to the Turkish Copyright Law. We will inform the ALAI members once the Draft Law is adopted.

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

ANSWER : In Case of infringement of economic rights, the right holders may claim the payment of compensation of up to three times the amount that could have been demanded if the right had been granted by contract, or up to three times the current value which shall be determined under the provisions of the Law (Art. 68.).