

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.

UNITED STATES Name of the person(s) answering the questionnaire Philippa S. Loengard, Julia Ambros, Andrew Elliott and Daniel Lee											
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	Yes, statutory damages are available under US Copyright law. An	United States copyright law does not provide for	Yes, class actions are a device potentially available in any	Judges have discretion to grant temporary restraining orders	The US Copyright Act provides for criminal penalties for willful	The circumvention of technical protection measures	Host service providers must participate in a notice and	Yes, in all copyright infringement cases—including	A single collective management organization that collects revenues	The Copyright Royalty Board — a panel of three administrative	Federal courts exercise exclusive jurisdiction over infringement

<p>SUMMARY TABLE</p>	<p>infringer of copyright may be liable for either the copyright owner’s actual damages and any additional profits she has made due to the infringement, or statutory damages. Courts may award no less than \$750.00 and no more than \$30,000 for each work infringed, but these awards may be increased to a maximum of \$150,000 per work if the court finds willful infringement.</p>	<p>punitive damages.</p>	<p>federal civil litigation, including copyright suits. Rule 23 of the Federal Rules of Civil Procedure [hereafter FRCivP] explains in detail the specific requirements for class certification, but, broadly speaking, a judge may certify a class when (1) the group of plaintiffs is sufficiently large, (2) common questions of law or fact “predominate over any questions affecting individual members,” and (3) the interests of the class will be adequately protected by the representative parties.</p>	<p>without prior notice to the adverse party, and to grant preliminary injunctions <i>or</i> impoundment during a proceeding under FRCivP Rule 65. To secure pre-judgment action, copyright owners must show they are likely to succeed on the merits, that they will suffer irreparable harm if an injunction does not issue, that the balance of equities tips in their favor, and that entry of an injunction is in the public interest. Impoundment before final judgment requires the copyright owner to provide a security to cover potential damage should it later be determined the defendant was wrongfully restrained.</p>	<p>copyright infringement provided the infringement was committed for commercial or private gain by either the reproduction or distribution (within a 180-day period) of one or more phonorecords or copies of copyrighted works having a retail value of more than \$1,000 or by making available on a computer network accessible by the public a work prepared for commercial distribution if the infringer knew or should have known that the work was to be made commercially available</p>	<p>controlling access to a protected work or protecting a right of the copyright owner is prohibited under US law except in certain circumstances. Every three years, the Librarian of Congress, in consultation with the United States Copyright Office (USCO), publishes a circumscribed list of classes of works whose non-infringing uses are or are likely to be adversely affected by the ban on circumvention of access controls. Those classes of works are then free of the prohibition on circumvention for the three-year period in which this rulemaking is in effect.</p>	<p>takedown process to take advantage of statutory safe harbors (see Question 8) that shield them from liability for user-posted infringing content. Copyright owners or their agents are responsible for initiating the procedure, and service providers who subsequently remove allegedly infringing content must notify the user who posted the content. If the user files a counter-notice, the service provider must re-upload the content, unless the copyright owner initiates court action within prescribed deadlines.</p>	<p>those in the digital world—secondary liability may be imposed on those who (1) knowingly induce or materially contribute to the copyright infringement of another (“contributory liability”) or (2) have the right and ability to supervise the infringing activity of another and have a direct financial interest in the infringing activities (“vicarious liability”). However, the Digital Millennium Copyright Act (DMCA) provides online service providers certain protections from secondary (as well as primary) liability for their (1) “transitory digital network communications,” (2) “system caching,” (3) “information residing on systems or networks at the direction of users,” and (4) “information location tools.”</p>	<p>from copyright users and distributes royalties manages statutory licenses of public performances by digital music services. Collective management organizations, which offer access to their full repositories for a flat rate, also exist for other rights on a voluntary (ie, non-statutory) basis. Two prominent organizations, ASCAP and BMI, handle non-dramatic public performance rights for a large library of musical compositions. Other similar services offer access to literary works and a limited library of motion pictures. Other, transactional (ie, pay-per-work) services also collectively manage licensing for many artists, and the available rights vary based on the copyright owner’s preferences and the organization’s work.</p>	<p>judges who sit for five-year terms – sets the rates for statutory licenses. . Rate-setting is subject to comment from interested parties, and may be appealed, or negotiated around if both parties consent (pending approval by the Board). Two of the most prominent collective rights management organizations, ASCAP and BMI, are governed by Consent Decrees that impose licensing restrictions, which are overseen by the Department of Justice to address possible antitrust concerns. All other rates in collective management organizations are set by the individual copyright owners.</p>	<p>claims arising under the 1976 copyright act. State courts, however, retain jurisdiction over, and state statutory or common law applies to infringement claims concerning sound recordings made prior to 1972. The US does not have specialized courts for copyright disputes; however, Congress is considering the Copyright Alternative in Small-Claims Enforcement (CASE) Act, which, if passed, would create a US Copyright Office Small Claims Board to decide certain civil copyright actions involving a relatively low amount in damages.</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 :

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

ANSWER :