



Injunctions in Intellectual Property Rights

Introduction.

In the context of the European Observatory on Counterfeiting and Piracy, the private sector members called for the establishment of a professional and technical group of legal practitioners, to horizontally assess intellectual property rights legal framework. The Commission welcomed this and on 22 October 2009 an inaugural meeting of the Observatory's sub-group on the legal framework took place. The group is mainly composed of legal practitioners from different Member States, suggested by the industries represented in the Observatory.

The task of the group is to, horizontally, examine the shortcomings, best practices and overall effectiveness of the intellectual property rights legal framework in respect of all intellectual property rights. It focuses on providing a practical view of the enforcement of intellectual property rights. The Commission (DG Internal Market and Services, Unit D3) acts as the Secretariat for the Group.

The sub-group commenced with a screening of Directive 2004/48/EC on the enforcement of intellectual property rights. Discussions have taken place on the enforcement of intellectual property rights, through criminal measures, with DG Home Affairs. In addition, the enforcement of intellectual property rights through border measures and cooperation with the carriers and the shippers have been discussed with DG Taxation and Customs Union.

The sub-group's methodology is as follows: members of the legal sub-group draft questionnaires which are then forwarded to legal practitioners in all Member States. These practitioners have been previously contacted by the members of the sub-group, according to an agreed distribution of Member States. The experts' responses are included in a table and an Executive Summary has been drafted on each topic. Members of the legal sub-group have also outlined best practices or shortcomings and have added specific Recommendations for each topic.

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Injunctions in Intellectual Property Rights: ¹

ANALYSIS, RECOMMENDATIONS AND BEST PRACTICES ²

Overview

Directive 2004/48/EC on the Enforcement of Intellectual Property Rights (“IPRED”) requires EU Member States to make certain measures available to rights-holders, including the ability to apply for an (interlocutory or permanent) injunction intended to prevent an imminent infringement, or to forbid the continuation of the alleged infringement (see Articles 9 and 11). It also specifies that these measures, like other procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by the IPRED, shall be fair and equitable and shall not be unnecessarily complicated nor costly, nor entail unreasonable time-limits nor unwarranted delays. They must also be effective, proportionate and dissuasive and should be applied in such a manner as to avoid the creation of barriers to legitimate trade and to allow the application of safeguards against their abuse (see Article 3).

Prior to the IPRED’s adoption and implementation, the availability and use of injunctions had been shown to be insufficient or inadequate to protect intellectual property rights-holders in many cases. In practice, international smuggling of counterfeit products – and in particular the well-known technique of “route-breaking” – often allowed counterfeiters’ identity to be hidden. The rights-holders in many cases had no opportunity to stop infringements in progress by means of an injunction against an intermediary service that the infringer was using. Consistent with Article 8(3) of Directive 2001/29/EC – which requires that rights-holders be able to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right –, the IPRED made a major advance by allowing rights-holders to request injunctions against intermediaries, without any requirement that the intermediary necessarily be complicit in or culpable for the infringement.

The work of the Sub-Group has shown that the Member States seem to have taken adequate measures to empower their courts to issue injunctions against counterfeiters that order them to cease infringing intellectual property rights. The Member States also appear to have extended this empowerment to allow them to issue injunctions against intermediaries. However, the conditions imposed by national law or by jurisprudence for injunctions against intermediaries vary from country to country. These disparities in the enforcement of IP rights via injunction have thus hampered the uniform enforcement of intellectual property rights throughout the EU.

Moreover, it would appear that, in some Member States, the statutory provisions transposing Articles 9 and 11 of the IPRED have had little practical effect, because they are not backed up with (deterrent) sanctions for non-compliance with an injunction. In addition, in some Member States, the prohibitive

¹ The issue of cross-border injunctions is not being addressed in this document, and will be dealt with in a separate set of recommendations.

² This document has been drafted on the basis of the replies by experts to the questionnaire drafted by the members of the Legal Sub-group of the European Observatory on Counterfeiting and Piracy. The views expressed are those of the authors and do not represent the views of the European Commission.

The authors would like to stress that some of the experts who were sent questionnaires failed to reply, which means that the analysis and recommendations provided in this document should not be taken to reflect the state of the law and practice in *all* 27 Member States, but in the (vast) majority of them.

cost or time-span of proceedings make them unusable in practical terms. Finally, as in other areas³, it would seem that Articles 9 and 11 of the IPRED sometimes are not adequately reconciled with other rules, in particular those concerning the protection of personal data and banking secrecy – despite the fact that intellectual property rights and judicial redress are, like data privacy, also fundamental rights. Case law from both the national courts and the CJEU have had limited success in harmonising these rules in a way that reconciles all such rights effectively.

This report provides a high-level analysis of measures relating to injunctions. The analysis has been drawn from the Legal Sub-Group’s more detailed review of Member States’ laws and case law, and includes some recommendations and best-practice examples which could serve as the basis for improvements in all Member States.

The Purpose of Injunctive Relief

The power given to courts to issue injunctions in order to make illegal practices cease is, by all accounts, a fundamental right of any legally-established sovereign state. International conventions, as well as several European Regulations and harmonisation Directives, which pre-date the IPRED, had already compelled the Member States, in most areas of IP law, to empower their national courts to issue injunctions against counterfeiters.

The overriding purpose of injunctive relief is to ensure that IPR infringements cease as soon as possible. However, necessary guarantees must be in place to safeguard the rights of defence of all parties.

Under applicable international agreements and under the express terms of the IPRED itself, there must be an easy, effective and cost-efficient means open to rights-holders to ensure that the protection of their legitimate rights is respected. It is not sufficient for legislation to state that the rights-holder has this right: it has to be *de facto* effective and enforceable quickly. To be able to enforce his rights, the rights-holder should not have to spend an unaffordable amount of money. Nor should he be forced to post an excessive security deposit with the court. Where required, the posting of a security deposit should not be unreasonably complicated or burdensome, as this would also deter the rights-holder (in particular a foreign-based rights-holder) from taking action on an expedited basis against IP infringements.

Provisional and precautionary measures (Article 9)

Interlocutory injunctions

The IPRED requires Member States to ensure that rights-holders are able to apply for interlocutory injunctions intended to prevent imminent infringements of their intellectual property rights, or to order the cessation of effective infringements, on a provisional basis, subject, where appropriate, to recurring fines under national law for their continuation, or to make any such continuation subject to the depositing of a guarantee intended to ensure the compensation of the rights-holder. The IPRED further states that interlocutory injunctions against intermediaries should also be available under *the same conditions*.

Seizure or delivery up of goods suspected of infringing an IP right

The IPRED further provides that, at the rights-holder’s request, the courts in the Member States should also have the ability to order the precautionary seizure or delivery up of goods suspected of infringing intellectual property rights so as to prevent their entry into, or movement within, the channels of commerce.

³ Cf. e.g. the Sub-Group’s paper on “Evidence and Right of Information: Analysis, Recommendations and Best Practices”.

Precautionary seizure of the movable and immovable property of an alleged infringer

The IPRED also states that, in the case of infringements committed on a commercial scale, the Member States must ensure that, if the injured party demonstrates circumstances likely to endanger the recovery of damages, the courts are empowered to order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To this end, the competent authorities must be empowered to order the communication of bank, financial or commercial documents, or must be given appropriate access to the relevant information.

Ex parte proceedings and respect of the rights of defence

There is a need for injunctions and provisional/precautionary measures to be granted promptly following the request from the rights-holder. The IPRED therefore provides, consistent with TRIPS⁴ Article 50(2), that the Member States must ensure that their national courts are empowered to take the provisional measures referred to above, when appropriate, without having to hear the defendant, in particular where any delay would cause irreparable harm to the rights-holder. To balance this, the IPRED states that Member States should ensure that their national law requires a review hearing to be held, to safeguard the rights of defence of the defendant.

It appears that in all countries reviewed, a provisional/precautionary measure can be issued/ordered without the defendant having been heard⁵. This is mainly in cases when it is unlikely that the rights-holder will be able to recover damages, or if there is a risk that evidence will be destroyed, or that the proceedings will be delayed by hearing the defendant, thus causing irreparable harm to the rights-holder, when the prior service of the application for an interim measure would be likely to hinder the effective enforcement of the precautionary measure or seizure, or when possible counter-arguments by the defendant would be invalid.

Finally, Member States must also ensure that the above-mentioned provisional measures are revoked or otherwise cease to have effect upon request of the defendant, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority, such “reasonable period” to be determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer.⁶

General requirements regarding claims for precautionary/provisional measures

The IPRED provides that, before granting an interim injunction or any of the above precautionary measures, the court may require the applicant to provide reasonably-available evidence to satisfy the

⁴ WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, Art. 50(2), http://www.wto.org/english/docs_e/legal_e/27-trips.pdf: “The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the rights-holder, or where there is a demonstrable risk of evidence being destroyed.

⁵ Provided of course that the rights-holder can adduce prima facie evidence of the validity of his rights and of the alleged infringement.

⁶ This requirement obviously does not apply in those Member States (e.g. Sweden) where it is only possible to request an interlocutory injunction as a provisional measure in the framework of proceedings on the merits of the case; it is only relevant in those Member States where it is possible to file a claim for an interlocutory injunction in the framework of separate proceedings.

court with a sufficient degree of certainty that the applicant is the rights-holder and that his rights are being infringed, or that such infringement is imminent.

The courts may also make the provisional measures referred to above subject to the payment into court by the applicant of an adequate security deposit or an equivalent guarantee, intended to ensure that compensation is available, if required, for any prejudice suffered by the defendant. Indeed, the IPRED stipulates that, where the provisional measures are revoked or where they lapse due to an act or omission by the rights-holder, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the courts shall have the authority to order the rights-holder, on request by the defendant, to pay the defendant appropriate compensation for any injury caused by those measures.

In all countries reviewed, the courts can order an applicant to pay the defendant appropriate compensation for any injury caused by any provisional/precautionary measures.

However, each Member State requests different kinds of security. In some countries (e.g. Sweden), the security, where required, must be posted upon filing the application for precautionary/provisional measures, and the applicant must assess a “reasonable amount” based mainly on the estimated prejudice that could be incurred by the defendant if the defendant were to win the proceedings on the merits; in such circumstances, the defendant often claims the amount of the security deposit is too low. By contrast, in other countries (e.g. Denmark) it is the court that sets the amount of the security deposit after reviewing the case; the applicant is then given a few weeks to post the security deposit.

Injunctions following a decision on the merits of the case (Article 11)

The IPRED requires the Member States to empower their national courts, where they conclude that an IP right has been infringed, to issue an injunction to prohibit the continuation of the infringement. Where provided for by national law, non-compliance with an injunction must, where appropriate, be subject to a recurring fine to ensure compliance. Member States are also required to ensure that rights-holders can apply for injunctions against intermediaries whose services are used by third parties to infringe IP rights.

Recital 25 of the IPRED specifies that, where an infringement has been committed unintentionally and without negligence, and where the corrective measures or injunctions specified in the IPRED would be disproportionate, Member States should have the option of empowering their national courts to award financial compensation to the injured party where appropriate. However, this option should not be available where the commercial use of counterfeit goods or the supply of services would constitute an infringement of laws other than intellectual property laws or would be likely to harm consumers.

Overall assessment

In most of the Member States the measures prescribed by Articles 9 and 11 of the IPRED are available. It seems that, in general, rights-holders use those measures on a regular basis and with overall success. In some Member States (e.g. Denmark, Slovenia, Greece and Italy), it was reported that rights-holders even rely on precautionary/provisional measures as their primary enforcement remedy; in some countries (e.g. Italy and Germany) *ex parte* injunctions can usually be obtained within a few days (or months, in complex patent cases), and are reportedly the most effective remedies. The willingness of the courts to grant interim injunctions (where appropriate, *ex parte*) implies that, in many cases, the filing of an action on the merits is not necessary because a settlement can be concluded with the infringer, who recognises the infringement, abides by the court order and agrees to compensate the prejudice incurred by the rights-holder as a result of the infringement, in order to avoid further proceedings.

Shortcomings of Injunctive Relief

However, in some cases the conditions in which those measures are available vary widely:

- **Disparities concerning injunctions against intermediaries:** All Member States reviewed allow interlocutory injunctions against alleged infringers. Most Member States also allow interlocutory injunctions against intermediaries whose services are being used by a third party to infringe an IP right (with the exception of Germany⁷, the Czech Republic and Slovakia, where the law does not explicitly allow such a possibility). The conditions in which injunctions against intermediaries are available vary widely, however. It appears that, in general, injunctions may be issued against intermediaries who act in good faith. However, in some countries, an injunction may only be issued against an intermediary if he consciously contributes to the infringement – despite the fact that under the IPRED, injunctive relief is not conditional on the intermediary being liable. In other countries (such as Sweden, Germany or Latvia), an injunction is only available where the rights-holder can prove that the intermediary is “aiding” or “abetting” the infringement, or has contributed to the infringement due to his negligence, especially by failing to observe certain duties (including a general “duty of care”). And it is reportedly almost impossible in practice in at least one Member State (Slovakia), to obtain an injunction against intermediaries (also due to the fact that injunctions against intermediaries are not embedded in the law).

Hence, in some countries, injunctions against intermediaries aimed at the prevention or discontinuation of a third party’s infringement are subject to more stringent conditions than injunctions aimed at obtaining related information from such intermediaries. In some Member States, intermediaries can be subject to injunctions regardless of whether they can be held civilly liable with respect to a third party’s infringement, while in others it would seem that an injunction cannot be obtained at all unless the intermediary can be held liable for the third party’s infringement.⁸ This is of particular importance in the digital environment, where the unintended consequence of some Member States’ restrictive approach to injunctions is to increase the incentives to try to prove that the intermediary is liable for the third-party’s infringement, notwithstanding Article 12 or 15 of Directive 2000/31/EC which may actually insulate certain intermediaries from damages or other liability.⁹

Furthermore, injunctions against intermediaries in some Member States seem to have an ineffective scope, insofar as they only enjoin the intermediary from allowing *exactly the same infringement* to happen (i.e. a continuation of the specific infringement by the same infringer), whereas in practice it is quite possible that the same infringer may engage in future infringe-

⁷ In Germany, the legislator failed to explicitly implement the provisions of the IPRED on this issue, but rather relied on an old principle of law (“*Stoererhaftung*”) to fulfil its implementation obligations.

⁸ This problem has been noted in the recent “Report from the Commission on the Application of Directive 2004/48/EC of the European Parliament and the Council of 29 April 2004 on the enforcement of intellectual property rights of 22 December 2010”, COM (2010) 779 final. As the Commission Staff Working Document (SEC (2010) 1589 final, at p. 16) accompanying the Report indicates, in some countries it is not possible to issue injunctions against intermediaries unless their liability is established, even though Article 11 of the IPRED, and Article 8(3) of Directive 2001/29/EC do not link injunctions with the liability of an intermediary.

⁹ Directive 2000/31/EC (“E-Commerce Directive”) makes clear that the limitations on liability it establishes do not extend to injunctive relief. The scope of such relief is still the subject of major debate before the courts (including the CJEU), when it comes to ordering ISPs to implement filtering or blocking measures on their networks that would prevent internet users from infringing IP rights.

ments of the right owner's title/product. Last but not least, it would reportedly be almost impossible in practice, in at least one Member State (Slovakia), to obtain an injunction against intermediaries even following a decision on the merits of the case.

- **Conflict between the IPRED and data-protection legislation:** Jurisprudence in the Member States illustrates the obstacles to obtaining injunctions against ISPs. In some Member States, national data-protection legislation is a significant obstacle, particularly for the initial evidence collection necessary to bring such litigation in the first place.¹⁰ The permissible scope of injunctions is also potentially affected by data protection and other rules, for example, with respect to the types of technical blocking that may be required under injunction. Reference is made on this subject to the questions that have been referred to the CJEU in the *Scarlet* and *Netlog* cases, with respect to internet access providers and web-hosts respectively (C-70/10 and C-360/10).
- **Insufficient protection of the rights-holders' interests in the absence of a cessation order:** In a number of Member States, it is impossible to claim an interlocutory injunction requiring the alleged infringer or intermediary to lodge a guarantee to compensate the rights-holder if the infringement continues.
- **Excessive securities:** In practice, the applicant is often required to post a security deposit or give an equivalent assurance before the courts will grant any provisional/precautionary measures. In a number of Member States, the security deposit required to be able to obtain such measures is so high that few rights-holders rely on them. In some countries, rights-holders are required to calculate the amount of the security deposit on their own, on the basis of an estimate of the prejudice that would be suffered by the defendant if he won the action on the merits of the case. The calculation of what would constitute an appropriate security is particularly difficult in such cases, since the rights-holder generally does not have enough information in his possession to assess the possible economic loss to which the defendant might be exposed as a consequence of the requested provisional measures. Finally, in several Member States, the process for posting securities is very burdensome and lengthy, and regularly delays enforcement actions.
- **Discrepancies regarding the precautionary seizure of the movable and immovable property of an alleged infringer in respect of infringements:** All Member States seem to provide for the possibility for the courts to order the precautionary seizure of the movable and immovable property of an alleged infringer in respect of infringements¹¹. However, in at least one country it was reported that such measures would almost never be granted and that the courts prefer to opt for less severe measures, such as the simple withdrawal of the infringing products from the market. In addition, in some Member States, such remedies are only available in the case of infringements committed on a commercial scale. The national laws of these Member States do not always define "commercial scale".¹² Furthermore, in some countries, before the courts may make such an order, the rights-holder must demonstrate that it is

¹⁰ On this issue, cf. also the Sub-Group's paper on "Evidence and Right of Information: Analysis, Recommendations and Best Practices".

¹¹ In Italy, for example, the Court of Milan ordered the seizure of an infringer's own trademarks in a judgment of 6 November 2009.

¹² According to Recital 14 of the IPRED, "[a]cts carried out on a commercial scale are those carried out for direct or indirect economic or commercial advantage; this would normally exclude acts carried out by end-consumers acting in good faith." Section 23(1) of the Anti-Counterfeiting Trade Agreement (ACTA) provides that should be considered as "acts carried out on a commercial scale" "at least those carried out as commercial activities for direct or indirect economic or commercial advantage".

likely to be impossible to recover damages if his claim for precautionary measures were to be rejected. Finally, in most Member States such measures are only possible subject to a reasonable evaluation by the rights-holder of his prejudice, which is difficult when the infringer's accounts are (as frequently happens) not in order.

- **Limitation of disclosure of bank and financial documents:** It appears that in most Member States, the courts may: (i) order bank accounts to be blocked and other assets to be seized pending infringement proceedings; (ii) order bank, financial or commercial documents to be communicated to the rights-holder, or grant access to the relevant information to the latter. However, in some Member States, such orders are very difficult, or even impossible, to obtain, *inter alia* because of the bank secrecy and a stringent application of the proportionality requirement. In most countries, the communication of bank, financial or commercial documents is only possible for infringements committed on a commercial scale.
- **Discrepancies regarding the level of evidence required or the timeframe within which a request for provisional/precautionary measures has to be filed:** The level of evidence required to satisfy the courts that the applicant is the rights-holder and that his rights are being infringed, or that such infringement is imminent, is generally at the courts' discretion. However, in some Member States, provisional/precautionary measures are difficult to obtain, either because the burden of proof is set high, or because the rights-holder is required to file his request within a very short time of becoming aware of the (actual or threatened) infringement (e.g. in Slovakia the timeframe within which claims for provisional/precautionary measures have to be filed is reportedly 14 days).
- **Costs sometimes prohibitive:** In some Member States, it is costly to obtain and/or enforce¹³ injunctions (including provisional/precautionary measures). Usually, rights-holders are required to pay all costs in advance, including bailiff and lawyers' fees. In several countries, it is not possible for a successful rights-holder to recover all the legal costs incurred to obtain the injunction.
- **Timeframe sometimes inappropriate:** In many Member States, it is time-consuming to obtain provisional/precautionary measures. In most countries, there is no timeframe within which the courts must rule on an application for provisional/precautionary measures.
- **Sanctions not sufficiently deterrent:** It is important that there are incentives to comply with rules and orders made regarding injunctions and provisional/precautionary measures. Significant disparities between the laws of the Member States appear to exist regarding the sanctions in place for failing to comply with provisional/precautionary measures. In most countries, it is possible to obtain an interlocutory injunction that requires the alleged infringer or intermediary to pay a penalty if the infringement continues. However, this is impossible in several countries. In some countries, maximum fines of €290, or even €100 (or €200 in the case of a repeated failure to comply with the order), have been reported; the only remedy open to rights-holder in the case of non-compliance with an interim injunction is to claim damages at a later stage. Finally, while the victim of a failure to comply with an injunction is the rights-holder, recurring fines for non-compliance with a court order often accrue to the benefit of the exchequer.
- **Article 9(5) of IPRED unduly burdensome:** In accordance with Article 9(5) of the IPRED, in almost all Member States, provisional/precautionary measures cease to have effect if the applicant does not commence proceedings leading to a decision on the merits of the case

¹³ In at least one Member State, it appears that in case of non-compliance with the injunction imposed by the final decision on the merits, execution proceedings have to be initiated. The applicant has to pay the court fee for such proceedings.

against the alleged infringer within a reasonable period of time. In Lithuania, the deadline for filing proceedings is 14 days (the courts may impose a shorter term), which is not in line with the IPRED and may be unreasonably brief. In practice, however, it appears that in many cases, once a provisional/precautionary measure has been granted, the defendant no longer disputes the infringement, no longer appears at court hearings and/or becomes insolvent by the time the judgment on the merits of the case is handed down. The requirement on the rights-holders to file proceedings on the merits of the case to avoid revocation of an interlocutory injunction is then unduly costly and burdensome.

Recommendations and Best Practices

The following best practices have been identified:

- In several Member States (but not all), such as Belgium and Denmark, **the injunction may be granted irrespective of the intermediary's liability or irrespective of the violation by the intermediary of any kind of duty** (such as a general “duty of care”).
- Consistent with the Advocate General’s opinion in case C-324/09 (*L’Oreal v. eBay*), **in some Member States host providers (intermediaries) may not only be enjoined to prevent an infringer from engaging in the same (i.e. continuous) infringement, but also to prevent that infringer from engaging in certain types of further infringements.**
- In Italy, the Industrial Property Code has recently been amended to implement the IPRED and it now specifies that an interlocutory injunction should be available whenever an IP infringement is ongoing or imminent, **irrespective of the degree of urgency of the matter** (i.e. there is a legal presumption that stopping IP infringements is a matter of urgency in itself). Thus, there is no requirement on the rights-holder to file his request within a short time of becoming aware of the (actual or threatened) infringement. It is sufficient for the rights-holder to establish that he could not obtain an injunction quicker in an action on the merits. A similar situation exists in Belgium.
- In Italy, the Industrial Property Code and the Copyright Act specify that an interim injunction, when granted, is considered as an anticipation of what the outcome of the proceedings on the merits is expected to be. Therefore, **the interim injunction becomes final if both parties refrain from filing proceedings on the merits.**
- **In some countries, such as Belgium, a permanent injunction can be obtained in a timeframe that is scarcely longer than would be required for an interlocutory injunction.**¹⁴ A greater specialisation of the courts in IP matters in some Member States clearly amounts to a more effective and adequate enforcement of IP rights.
- **The possibility** offered to the rights-holders in some Member States, such as Belgium, **to enforce a final injunction immediately in all cases, notwithstanding an appeal**, should also be considered a best practice.
- **In many countries intentional failure to comply with an injunction is a criminal offence.** For example in Denmark, Germany, Finland, Sweden and the UK, the court can impose fines and ultimately imprisonment. In Germany, fines of up to €250,000 or 6 months’ imprisonment can be imposed; in Italy, non-compliance with an injunction can lead to a fine or up to 3 years’ imprisonment.

¹⁴ However, such accelerated proceedings have drawbacks: since it is generally not possible to claim damages in the framework of such actions, the deterrent effect vis-à-vis the infringer is limited (the only risk he runs is to be ordered to discontinue the infringement and to compensate the rights-holder for the costs and part of the lawyers’ fees incurred).

onment. In Sweden, seizure of property can also be ordered in the case of non-compliance with a court order.

We make the following recommendations:

- As the recent Commission’s Report on the application of the IPRED¹⁵ advocates, the lack of interaction between Article 15 of the E-Commerce Directive and Articles 9 and 11 of the IPRED with regard to injunctions against intermediaries should be made clearer. In other words, it should be clarified that such injunctions are not affected by the limitations on liability for ISPs set forth in the E-Commerce Directive, and do not depend on the liability of the intermediary. Consequently, even in a case where an ISP is “neutral” with regard to the content transmitted or stored, it should still be possible to obtain an injunction forcing the ISP to remove illegal content or block access to it. Articles 9 and 11 of the IPRED Directive (as well as Article 8(3) of Directive 2001/29/EC) should be interpreted consistently so as to **make clear that the intermediary’s liability (or the violation by the intermediary of any kind of duty) is not a pre-condition to an injunction being issued against him** with respect to a third party’s infringement. This appears to be the practice in the majority of Member States, and is supported by the wording of Article 9(1)(a) of the IPRED. It also is consistent with the E-Commerce Directive which, while not excusing the persons directly engaged in law-breaking activity, explicitly permits injunctions against service providers to stop such activity, even where the service provider is not liable for damages.
- The availability of an injunction against intermediaries should not depend on whether the infringer has or has not been identified; nor should the availability of such an injunction be made subject to an obligation for the rights-holder to sue the actual infringer (**no rule of subsidiarity**).
- Under appropriate circumstances, injunctive relief against infringers and intermediaries should be available **irrespective of whether they have received prior notice** (such as a notice to cease the infringement or a Take-Down Notice).
- The above principles should be applicable to both preliminary and permanent injunctions.
- **As to the scope of the injunction against intermediaries**, Article 9(1)(a) and Article 11, third sentence, of the IPRED should also oblige the Member States in case of obvious infringements not only to prevent intermediaries from allowing the same infringer to continue the same infringement, but also – consistent with the AG’s opinion in *eBay vs. L’Oreal* – to prevent them from allowing that infringer to engage in certain types of future infringements of the title/product. For example, the fact that an infringer has been shown to be violating rights in one or a few of a rights-holder’s titles/products does not mean that the injunction should be limited to those titles/products, even if the injunction is against his intermediary.
- **The courts should be given the opportunity to modify their orders to deal with changing circumstances over time.**
- **Possibility of requesting the seizure of the movable and immovable property of an alleged infringer in all IP infringement cases:** In principle, rights-holders should be able to request the precautionary seizure of the movable and immovable property of an alleged infringer in respect of infringements, in all IP cases, not just those where the infringement is committed on a commercial scale. Introducing the commercial scale requirement as a prerequisite may not be helpful – the nature of the infringement can be considered by the court along with all the other circumstances when deciding whether or not to grant the order. Furthermore, the rights-holder should not have to demonstrate in all cases, before the courts may make such an order, that it is unlikely that it

¹⁵ Cf. fn 8, above.

will be possible to recover damages if his claim for precautionary measures were to be rejected. Finally, the costs of storage of goods whose seizure or delivery up has been ordered by the courts should be supported by the infringer pending the proceedings on the merits.

- **Clarify the relation between injunctive relief under the IPRED and Directive 2001/29/EC and data-protection rules:** There is considerable uncertainty surrounding the interplay between injunctive relief and other enforcement issues vis-à-vis intermediaries (in particular, internet service providers), and data-protection laws. Although some aspects of this issue are still being debated before the CJEU in the *Scarlet* and *Netlog* cases, there is an opportunity in the EU's pending review of the Data Protection Framework to reconcile the important and fundamental human right of personal privacy, with the equally fundamental human rights of intellectual property and judicial redress (Arts. 17, 47, Charter of Fundamental Rights of the European Union). These fundamental rights can be reconciled, in the area of IP enforcement-related injunctions and other issues, to ensure that rights-holders are not deprived of their right to effective remedies.
- **Provide for general sanctions for failure to comply with orders:** There is a need to ensure that court orders imposing an injunction on a defendant are subject to appropriate penalties for non-compliance. In this regard, it would be useful to consider as best practice those Member States where the court is empowered to impose sanctions that are appropriate in the circumstances (thus, in Slovenia, for example, failure to comply with an order may lead the courts to replace the initial measure (e.g., a market recall) by another, more severe, one (e.g., a confiscation order) and those where intentional failure to comply with a court order is considered a criminal offence. Moreover, recurring fines for failure to comply with the order should accrue to the benefit of rights-holders, not the exchequer. In Belgium and in Italy, for example, recurring fines can be imposed by the courts in the order and accrue automatically to the rights-holder if the infringer fails to comply, while criminal fines can also be imposed by the State in cases of *intentional* non-compliance (contempt of court).
- **Clarify that unchallenged precautionary measures should become final.** The Commission should investigate the possibility of making clear in Article 9(5) of the IPRED that provisional/precautionary measures (in particular, interlocutory injunctions) – at least where they have been granted in the framework of *inter partes* proceedings – can or should become final if the defendant does not challenge them by filing proceedings leading to a decision on the merits of the case against the rights-holder within a reasonable period of time. When considering this option, the Commission will have to examine the compatibility of such a regime with Article 50(6) of TRIPS and the CJEU's case law relating to this provision.¹⁶

¹⁶ Cf., in particular, Judgment of 18 June 1998 in case C-53/98, *Hermès International v FHT Marketing Choice BV*; Judgment of 14 December 2000 in cases C-300/98 and C-392/98, *Parfums Christian Dior SA v Tuk Consultancy BV, Assco Gerüste GmbH et al.*; Judgment of 13 September 2001 in case C-89/99, *Schieving-Nijstad vof anors v Robert Groeneveld*.

Injunctive relief in Intellectual Property Rights Cases¹

EXECUTIVE SUMMARY

2.1. Does the law provide that the courts may issue interlocutory injunctions against:

a) Alleged infringers of an IP right? Yes/ No

All countries provide for interlocutory injunctions against alleged infringers.

b) Intermediaries whose services are being used by a third party to infringe an IP right? Yes/ No

All countries provide for interlocutory injunctions against intermediaries whose services are being used by a third party to infringe an IP right. In the **Czech Republic** this could be foreseen only if it is "fair to ask the intermediary to do so" as normally injunctions are issued between the parties of a litigation. In **Poland**, courts may issue interlocutory injunctions against parties such as abetter (person who persuades the infringer), accessory (person who helps the infringer) or a person that took advantage of the damage caused. These parties are liable for their own actions provided that their action has been found culpable. The intermediary is jointly liable with the alleged primary infringer. Preliminary injunctions cannot be issued against "innocent" intermediaries, as there are no provisions which govern such possibility.

c) If you have answered 'yes' to question 2.1 (a) or (b), please answer the following:

i) Regarding injunctions aimed at preventing any imminent infringement of an IP right, have the courts interpreted "imminent" in a strict way or otherwise make it difficult to obtain an injunction unless the matter is extremely urgent? Yes/ No

It appears that most countries do not interpret "imminent" in a strict way. In **Estonia, Luxembourg, Slovenia** and **Spain** no court practice exists on this issue. In **Sweden**, it is not required that the matter is extremely urgent and such injunctions may be granted not only for "imminent" infringements, but also for attempts or preparation. In **Germany**, there must be the imminent danger that an infringement will happen in the near future. In **Italy**, the law was amended, introducing the specification whereby an interlocutory injunction may be granted in the case of "any imminent violation" of the right. This should allow interlocutory injunctions being granted whenever the violation is ongoing or imminent, irrespective of the degree of urgency of the matter.

ii) Regarding injunctions aimed at forbidding alleged infringements from continuing, must a rightholder apply for an interlocutory injunction within a certain time limit following discovery of the alleged infringement? Yes/ No

¹ This document has been drafted on the basis of the responses of experts to the Questionnaire drafted by the members of the Legal Sub-group of the European Observatory on Counterfeiting and Piracy. The views expressed are those of the authors and do not represent the views of the other members of the European Observatory on Counterfeiting and Piracy or the European Commission.

If you answered ‘yes’, please briefly provide details.

In most countries there is no such time limit.

In **Austria**, however, it is strongly advised to act as soon as possible; otherwise the court would be reluctant to recognize that there is a realistic danger of infringement. In the law against unfair commercial practices the deadline for applying for interlocutory injunction is 6 months. In **Latvia**, the time limit is 3 months following a discovery of the infringement. In **Sweden** longer delays could be considered as a passive acceptance of the infringement. In **Denmark**, formally there is no time limit but the rightholder can't stand by for a longer period of time. In **Germany** the time limit is at the court's discretion. Time limit of 4-6 weeks after obtaining the knowledge of the infringement seems to be accepted by most courts. According to the case law of the Court of Appeals in Hamburg, *there is no “safe harbour” within a specific time period – this is strictly decided on a case by case basis, which may lead to a much shorter time to file the injunction after the right holder has knowledge of the infringement.* In **Italy**, sometimes applications for interlocutory injunctions are still rejected, when it results that the IPR holder tolerated the violation for a long time (*usually more than one year*, i.e. the time usually taken by the proceedings on the merits).

iii) Is it possible to obtain an injunction that requires the alleged infringer or intermediary to pay a penalty if the infringements continue? Yes/No

Even in most countries it would be possible to obtain an injunction that requires the alleged infringer or intermediary to pay a penalty if the infringements continue, it would not be possible in a significant number of countries.

In **Austria**, decision granting an injunction doesn't contain a penalty amount. However, if the defendant violates the interlocutory injunction, rightholder may apply to the court for an imposition of a penalty up to EUR 100 000. The amount of the penalty is decided by the court.

iv) Is it possible to obtain an injunction that requires the alleged infringer or intermediary to lodge a guarantee in order to compensate the rightholder if the infringements continue? Yes/No

The situation is unclear on this point. It seems that half of the Member States provide for this possibility and the other half don't. Injunction that requires the alleged infringer or intermediary to lodge a guarantee in order to compensate the rightholder would not be possible in the **Czech Republic, Denmark, Germany, Latvia, Spain and Estonia**. In **Portugal**, the alleged infringer may also offer a warranty to suspend the provisional injunction.

d) If you have answered ‘yes’ to 2.1(b), please explain which third parties may be enjoined – can information be requested from “innocent” intermediaries, such as transporters, Internet Service Providers, online shopping sites, etc.? Please briefly explain if there have been obstacles to obtaining such injunctions in your country, such as requirements to establish that the intermediary is independently liable for infringement or jointly liable with the alleged primary infringer.

It appears that generally "innocent" intermediaries may be enjoined, although there are some restrictions in some countries. In some countries, relevant case-law on this issue is missing.

In **Austria**, only the person who consciously assists the infringer may be enjoined. There is no injunction for "innocent" intermediaries. With regard to third parties, interlocutory injunction must be differentiated from a request for information. In the **Czech Republic** the issue is not resolved in the legislation. It would be, however, quite difficult to obtain such injunction. In **Denmark** such intermediaries (e.g. intermediaries that are hosters or provide access to infringing websites) can be subject to injunctions but normally not to civil/criminal liability. In **Finland**, case-law indicates that intermediary may be deemed liable for an infringement if the alleged primary infringer remains unknown; Finish Supreme Court stated that the expeditor of a cloth business was deemed liable for trade mark infringement as the actual infringer remained unknown. In **Latvia** any third party may be enjoined and case-law does not distinguish between "innocent" and "guilty" intermediaries. This is partly due to the fact that in many cases the intermediaries, indeed, are not aware of their participation in the chain of infringing activities, and if they may be not enjoined, but the right holder/owner would not have any other means to terminate the infringement. In **Sweden** information requests can be issued against innocent intermediaries; as for other types of injunctions, such as interlocutory injunctions, ceasing an action requires that the intermediary is considered as "aiding" and "abetting". In **Belgium**, applicant can apply for measures towards ("innocent" or bad-faith) intermediaries provided that he shows an interest to act toward this intermediary. However, when it comes to the preservation of evidence, preliminary injunctions are seldom requested in practice in Belgium. Instead, rightholders would file a petition for descriptive measures (search and seize orders). In **Cyprus**, in case where the defendant is an "innocent" intermediary (i.e. an intermediary who was not aware of the infringement and, also, there was no reasonable ground for him to believe that there was such infringement), the Cyprus Copyright Law provides that the plaintiff is not entitled to damages (but is entitled to an account of profits). In **Italy**, seizure and preliminary injunction may be ordered also against any "intermediary whose services are being used by a third party to infringe" an IPR, irrespective of whether the intermediary is independently liable for infringement or not. In **Poland**, courts may issue interlocutory injunctions against parties such as abetter, accessory or a person that took advantage of the damage caused. These parties are liable for their own actions provided that their action has been found culpable. Preliminary injunctions cannot be issued against "innocent" intermediaries, as there are no provisions which govern such possibility.

2.2 Does the law provide that the courts may order the seizure or delivery up of goods suspected of infringing an IP right in order to prevent their availability on the market?

Yes/No

Large majority of countries seem to provide for this possibility.

In the **Czech Republic**, within the interlocutory injunction the court cannot order a seizure but can prohibit disposal or order delivery to the court escrow. Alternatively, preliminary seizure of evidence may be requested.

2.3. Does the law provide that the courts may order the precautionary seizure of the movable and immovable property of an alleged infringer in respect of infringements?

Yes/No

If you have answered ‘yes’, please answer the following:

a) Are such orders only available in relation to infringements committed on a commercial scale?

Yes (only for commercial scale)/ No (not limited to commercial scale)

If you have answered ‘yes’ above, how is ‘commercial scale’ defined?

It appears that most countries do not need a commercial scale. It however appears that limitation to commercial scale infringement is present in **Estonia** (where this term is not defined), Hungary, **Finland, Latvia, Lithuania, Luxembourg, Spain, and Portugal** (where it is defined as "acts committed in view to obtain a direct or indirect economic or commercial advantage, which normally excludes acts committed by final consumers acting in good faith"). In **Austria** it seems that only in very special circumstances the court would grant precautionary seizure for infringements not committed on a commercial scale. In the **UK**, the term “commercial scale”, as applied to the perceived benefit to the infringer, is not in itself a limiting factor.² In **Belgium**, such orders are not limited to commercial scale infringements, but there is an exception regarding injunctions aimed at obtaining information *from intermediaries*. This is normally only possible when the intermediary detains the goods or has provided services “on a commercial scale”. In **Slovenia**, there are no provisions that would stipulate that commercial scale of infringement is required. However, due to the nature of IP rights, it is very difficult to prove that requirement for such order are met when alleged infringement occurs on non-commercial scale. It is very difficult to establish occurrence or imminent danger of infringement, outside of commercial domain. In relation to provisional/precautionary measures, it is possible to recognize tendencies of courts towards “commercial scale only” approach. “Commercial scale” is defined as any activity performed on the market with the aim of direct or indirect economic benefit, whereas market is being defined as place governed by rules of supply-demand interaction and the decisive factor defining aim of economic benefit being the intent of the person under scrutiny (alleged infringer).

b) Before the courts may make such an order, must the injured party demonstrate that due to the circumstances it is unlikely that it will be possible to recover damages?

Yes/ No

In most countries, the injured party will be required to demonstrate that it will be unlikely to recover damages. It would not be required in **Bulgaria, the Slovak and Czech Republics, Estonia, Slovenia** and the **UK**. In the **UK**, the issue is not whether the injured party will be able to recover damages, but whether it can be adequately compensated by damages. The third party may have plenty of money, but the harm to the intellectual property right owner may go well beyond pure monetary loss.

² When for example, a third party seeks to publish highly confidential information belonging to an intellectual property right owner, this might be a “non-commercial” act in the sense that the third party is not seeking to make any financial gain from this disclosure, but the impact of the disclosure might be highly damaging for the intellectual property right owner. In such a situation it is likely that such an order would be granted.

c) May the courts order bank accounts to be blocked and other assets to be seized?

Yes/No

This would be possible in all countries with the exception of **Slovenia** and **Spain** (not expressly foreseen by the law with regards to block bank accounts, but it is foreseen that the amounts and incomes deposited at bank accounts are seized).

d) May the courts order bank, financial or commercial documents to be communicated to the injured party, or for the injured party to be granted access to relevant information? Yes/No

This would be possible in all countries with the exception of **Luxembourg**. In **Greece** it would be possible, but under strict conditions.

e) Please briefly explain whether there are any obstacles to obtaining such orders.

In **Austria**, inexperienced judges are reluctant to freeze bank accounts or seize immovable property except for infringing goods. Therefore these measures are rather unusual. In **Denmark** it is not possible to force the infringer to disclose the information. In **Luxembourg** there are no particular obstacles but because of the intrusiveness of these measures, they have to be limited to the most obvious cases and be exceptional. In **Slovakia**, it is very sensitive to obtain such an order because of the bank secrecy. In **Italy**, in order to obtain such a precautionary seizure, at least with an approximate estimation of the damages has to be provided to the court, which is difficult when the infringer's accounts are irregular (as it often happens). In **Bulgaria**, a common obstacle in obtaining such an order is that the competent civil courts will oblige the injured party to lodge a security. In the **UK**, high attorneys' fees, even in relatively simple cases, are acting as a *de facto* barrier to justice.

2.4. If you have answered 'yes' to question 2.1(a) or (b), 2.2 or 2.3 regarding interlocutory injunctions, seizure or delivery up orders, and orders for precautionary seizure of movable and immovable property (collectively "provisional/precautionary measures"), please answer the following supplementary questions:

a) Are there any difficulties in providing the level of evidence required to satisfy the courts that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent? Yes/No

If you answered 'yes', please briefly explain the difficulties.

In most countries, there are no such difficulties.

In **Austria**, the question of the level of evidence is always at the court's discretion. In the **Czech Republic** there are no standards for the level of evidence. Generally, it is not easy to obtain a provisional/precautionary measure order. In **Estonia**, there is no prior court practice on this issue, and therefore it is difficult to predict which evidence the court would require (this was stated identically for **Latvia**). It is standard behaviour to send a cease and desist letter prior to applying for a preliminary injunction. Negative response to a cease and desist letter will help arguing that there exists a serious and imminent threat of infringement. In

Finland, the Finish Supreme Court decided that the courts have to compare the benefits resulting from granting an interlocutory injunction to the applicant, with the costs and harm to the alleged infringer. In **Spain**, raids based on an anonymous complaint, private investigators or rightholders are not possible. In the **UK** it is worth noting that one of the unintended effects of data privacy legislation is that it can operate in a manner that restricts the exchange of useful data between the parties that would otherwise help in the apprehension and detention of infringements.

b) May a provisional/ precautionary measure be issued/ordered without the defendant having been heard, (for example, where any delay would cause irreparable harm to the rightholder)? Yes/ No

If you answered ‘yes’, please briefly explain whether there are any conditions that an applicant must satisfy before the court will issue/order a provisional/precautionary measure without the defendant being heard.

In all countries provisional/precautionary measures may be issued/ordered without the defendant having been heard. This is mainly in cases when it is unlikely that the rightholder will be able to recover damages, or if there is a risk that evidence will be destroyed, process will be delayed by hearing the defendant or when possible counter-arguments by the defendant would be invalid.

In **Portugal**, in practical terms it is not easy to obtain provisional/precautionary measures without the defendant having been heard.

c) Please briefly explain the level of difficulty and level of costs required to obtain any of these provisional/precautionary measures, i.e. is it a time-consuming and costly exercise? What costs are likely to be incurred in executing these measures – for example, does the applicant have to pay costs of a lawyer, bailiff or expert to supervise the process?

In **Austria**, it is time-consuming and costly. As for the costs, lawyer's costs, bailiff costs and/or costs of the expert to supervise the process and typically a guarantee to compensate the defendant in case he suffers damage shall be paid. In **Bulgaria**, proceedings are not time-consuming but are costly. In the **Czech Republic**, the most significant cost is the security for potential damage caused to the defendant. In **Denmark**, the process is time-consuming and costly. If expert's assistance is needed, the applicant must in most cases lodge security for his/her salary. In **Estonia**, lawyer's fee (in case one uses a lawyer) and state fee (450 Estonian kroons, cca. EUR 29) shall be advanced. In **Finland**, obtaining provisional/precautionary measures can be time-consuming. In **Germany**, as to the *level of difficulty*, it depends on the obviousness of the infringement. If the provisional measure is meant to secure claims for reimbursement of damages resulting from the infringement, the detailed specification of the amount of damages can cause problems. As to the *level of costs*, lawyer's costs (based on the statutory fee system), bailiff fee and, where needed, an external expert fee should be paid. The amount of the costs is low compared to sometimes long-lasting law-suits. They depend upon the value of the claim. The value of the claim is determined by court and will usually be 1/3 or 1/2 of the amount of the damages. In **Latvia**, the cost of filing an application for provisional/precautionary measures is 0.5 % of the amount of the claim, but not less than LVL 50 (approx. EUR 71). The court may order the applicant to secure the defendant against losses by means of a deposit with a bailiff or other guarantee. In **Luxembourg**, costs likely to

be incurred can be estimated to EUR 4000 to EUR 8000, depending on the difficulty of the case. In **Slovakia**, basic court fee is 33 EUR. Applicant has to pay costs of a lawyer, bailiff or expert to supervise the process. In some cases the Court can ask right holder to pay some security payment for the case that right holder shall not be successful. Amount of this payment shall be stated by the Court. In **Sweden**, an applicant almost always has to lodge security to obtain a provisional measure. The amount of the security is set based on a discretionary evaluation, depending on circumstances such as the scope of the infringement, the plausibility of the infringement and the damage the defendant may be caused. In general, obtaining a provisional/precautionary measure is not time-consuming – courts have an obligation to handle such requests with urgency. In the **UK**, obtaining an *ex parte* order for a provisional measure is expensive, procedurally complicated and time-consuming; however, the court processes can take place extremely quickly, meaning that, for example, a search and seizure order can be applied for, obtained and executed within a matter of hours. **Italy** enjoys excellent levels of efficiency in responding to infringement for what concerns the use of *emergency measures* (injunction, seizure, order to withdraw goods from the market) and instruments of judicial investigation of evidence (description order, normally granted *ex parte*). Said emergency measures are examined and granted with great speed (normally a few days, in the case of measures protecting trade marks, copyright and designs, very often granted *ex parte*; a few months in the case of measures protecting patents, this period including a technical expertise stage). In **Belgium**, *ex parte* injunctions, when granted, can be obtained very quickly (typically between 2 and 8 days). In *intra partes* proceedings, a decision can usually be expected within 3 weeks to 3 months. The applicant has to pay the costs of a lawyer and a bailiff. Costs likely to be incurred can be estimated at approximately 1,500 € for *ex parte* requests and 5,000 € for *intra partes* requests. The costs can, however, be higher for more complex cases. Part of the lawyer's costs and the entirety of the bailiff's costs are ultimately refundable by the losing party. In **Hungary**, the rightholder shall pay the stamp duty of the procedure in the amount of EUR 50 per trademark and per defendant. The court usually orders the injunction within 40-70 days (instead of the 15 days required by the law). Lawyer's fees are between EUR 800 and 4000 depending on the rate of the law firm involved. The fee of the bailiff is between EUR 300 and 600.

d) Must the courts rule on an application for any of these provisional/precautionary measures within a certain timeframe? Yes/ No

The situation seems to be equal, in approximately half of the Member States there is a timeframe, if the other half there is no such timeframe.

In the **UK** it seems that there is no deadline, but application for any of these provisional/precautionary measures are dealt with extremely quickly. In **Poland**, the deadlines are seldom observed by the courts.

e) Do provisional/precautionary measures cease to have effect if the applicant does not commence proceedings (leading to a decision on the merits of the case) against the alleged infringer within a reasonable period of time? Yes/ No

If you answered 'yes', how quickly must an applicant commence proceedings after a court grants any provisional/precautionary measures?

Almost in all countries provisional/precautionary measures do cease to have effect if the applicant does not commence proceedings (leading to a decision on the merits of the case) against the alleged infringer within a reasonable period of time.

These periods are usually stipulated by the courts and are often 1 month/30 days (e.g. **Bulgaria, Finland, Latvia**). In **Denmark** it's 2 weeks and in **Spain** 20 days.

f) Must the applicant lodge adequate security or an equivalent assurance before the courts will grant any provisional/precautionary measures? (This may be intended to ensure alleged infringers who turn out to be innocent are compensated for any prejudice suffered.) Yes/No

If you answered 'yes', please briefly provide details of how security is calculated and the circumstances in which this is required.

Security is mostly required. It is aimed to compensate the defendant for potential damages and it's at the court's discretion. In the **Czech Republic** it is approximately CZK 50 000 (approx. EUR 2000) in commercial matters and CZK 10 000 in other matters. Security is always required. In **Estonia**, providing security is quite general practice in IP infringement cases. In **Latvia** if the decision was adopted without the defendant having been heard, provision of security is a pre-condition for execution. In **Luxembourg** security is very rarely ordered by the courts. In **Italy** such security is not required. In **Spain** such security will always be required, always at the judges' discretion.

g) Can the courts order an applicant to provide the defendant appropriate compensation for any injury caused by any provisional/precautionary measures that have been granted? Yes/No

If you answered 'yes', please briefly explain the circumstances in which such an order can be made, (for example, where the measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an IP right).

In all countries (apart from **Hungary**, where it would be a separate lawsuit) the courts can order an applicant to provide the defendant appropriate compensation for any injury caused by any provisional/precautionary measures.

h) Are the legal provisions related to these provisional/precautionary measures often relied upon by right holders and have right holders generally been successful in using them in practice? Yes/No

If you answered 'no', please briefly explain why not.

Most relies are positive on this issue, it can therefore be assumed that in general the rightholders have been using these measures often and rather successfully. In **Denmark**, it was reported that many rightholders use it as their primary enforcement remedy.

In some countries, respondents stated negative experiences with provisional/precautionary measures. For example in **Bulgaria** the measures are expensive and significant security is required for a long period of time. In **Finland**, burden of proof is set high. In **Slovakia** courts

are hesitant to order these measures as they either claim that they need to hear the defendant or that it's too late for provisional/precautionary measures (e.g. after 14 days). In **Slovenia**, provisional and precautionary measures are often relied upon by the rightholders, but the rightholders are usually unsuccessful. In **France**, the use of these measures is still in the beginning. Rightholders do not systematically use provisional measures.

i) What are the sanctions (if any) for failing to comply with a provisional/precautionary measure?

In **Bulgaria**, a fine of EUR 100 is in place, and a repeat failure to comply is sanctioned by EUR 200 fine. In the **Czech Republic**, the most important sanction is that any legal act made by the subject of the provisional measure by which the duty imposed by the provisional measure is breached, is invalid. In **Denmark**, criminal penalties and damages to the rightholder, are in place. In **Estonia**, maximum amount of fine is 30 000 Estonian crowns (EUR 2900) but this can be imposed several times. In **Finland**, conditional fine may be imposed. In **Germany** there are monetary sanctions up to EUR 250 000 or personal arrest up to 6 months. In **Slovakia** there are no sanctions. In **Sweden** conditional fines are in place and if such fines are not paid, seizure of property or arrest warrant are possible. In the **UK** fines or imprisonment are in place.

3.1. Where a court makes a final decision on the merits of a case finding an infringement of an IP right, does the law provide that the court may issue an injunction aimed at prohibiting the infringement from continuing against:

a) The infringer? Yes/No

b) Intermediaries whose services are used by a third party to infringe an IP right? Yes/No

If you answered 'yes', please briefly explain if there have been obstacles to obtaining such injunctions against intermediaries in your country, such as requirements to establish that the intermediary is independently liable for infringement or jointly liable with the third party who uses the services of the intermediary.

From the responses it appears that in all countries it is possible to issue such injunction against the infringer. As for the intermediaries, it is possible with the exception of the **Czech Republic** and **Slovakia**.

In **Austria**, intermediary is liable under the same conditions as the infringer. With regard to copyright infringements, the rightholder has to send a "cease and desist" letter before suing the intermediary. In the **Czech Republic** the only way to reach any final injunction against the intermediary is to include the intermediary into the law suit as the defendant. In **Denmark** the injunction may be granted irrespective of intermediary's liability. When intermediary claims exemption from liability according to the Directive 2000/31/EC on electronic commerce, rightholder must first apply the Notice and Take-Down procedure. In **Finland** it seems that the intermediary must be held liable in order to receive an injunction order. In **Germany**, for this kind of injunction, the intermediary must have contributed to the infringement in a way that he can be blamed, especially by failing to observe certain duties. In **Latvia**, liability (whatever its form) of the intermediary, needs to be proven. In **Sweden**, court can issue an injunction against an intermediary if it is considered "aiding" and "abetting" the

infringement. If the intermediary has been aware of the infringement without taking any action, intermediary may be held responsible. Establishing that the intermediary had knowledge of the infringement may constitute an obstacle.

3.2. If you have answered ‘yes’ to question 3.1((a) or b)), please answer the following supplementary questions:

a) Can non-compliance with an injunction be made subject to a recurring penalty payment, with a view to ensuring compliance? Yes/ No

If you answered ‘yes’, please briefly explain the circumstances that are taken into account before such a penalty is imposed.

In a majority of the countries such recurring penalty payment with a view to ensuring compliance would be possible. However, this would not be feasible in a significant number of countries (e.g. **Austria, Bulgaria, Czech Republic, Denmark, Estonia, Finland and Lithuania**).

b) What level of costs are required in order to obtain such an injunction? What costs are likely to be incurred in executing such an injunction – for example does the applicant have to pay costs of a lawyer, bailiff or expert to supervise the process?

In **Austria**, the rightholder has to carry the costs of the lawyer, bailiff and/or expert to supervise the process. In **Bulgaria**, the execution of an injunction aimed at prohibiting the infringement from continuing does not require the use of a bailiff. The court directly notifies the infringer what is necessary to be done by the defendant to be compliant with it. In the **Czech Republic**, in case of non-compliance with the injunction imposed by the final decision on the merits, execution proceedings should be initiated. The applicant has to pay the court fee for the execution proceedings. In **Germany**, such costs seem to be even lower than for a provisional injunction because only court fees, and usually no further legal fees, are incurred. In **Luxembourg**, the applicant will have to pay the cost of a lawyer and a bailiff. The level of costs required in order to obtain such an injunction would typically be between EUR 5,000 and EUR 10,000 in the purview of so-called ‘cease-and-desist proceedings’ (i.e. for getting an injunction only; no claim for damages). In the **UK**, the costs will primarily be the costs of the litigation (including trial). These will be significant (although they can be recovered from the unsuccessful party). In **Belgium**, costs likely to be incurred to obtain an injunction are very difficult to anticipate, as they depend on the complexity of the case and of the defence arguments that are being raised by the defendant. On average, the costs fluctuate between 7,500 € and 15,000 € and may be much higher in, e.g., complex patent cases. In **Hungary**, the rightholder pays the stamp duty of the procedure in the amount of EUR 100 per trade mark and per defendant. Lawyers' fees are between EUR 1600 and 10 000 depending on the rate of the law firm involved. The fee of the bailiff is between EUR 300 and 600. In **Italy**, the final injunction is issued at the end of the proceedings on the merits. Therefore the costs to be incurred in obtaining the injunction are those related to said proceedings. Usually the injunction does not need enforcement, since the defendant spontaneously stops the prohibited activity. Otherwise, as previously indicated, criminal proceedings may be started, which are conducted ex officio.

c) What are the sanctions (if any) for failing to comply with an injunction?

In **Latvia**, the sanction for failing to comply with such a measure is a fine of EUR 100. A repeat failure is sanctioned with a fine of EUR 200. In **Estonia**, the maximum amount of the fine is, only up to 30 000 Estonian kroons (2 900 EUR) but this can be imposed several times. In **Germany**, upon application of the applicant, the court can impose monetary sanctions up to EUR 250 000 or personal arrest for up to 6 months. In case the court imposes a fine and the infringer does not pay the fine, the court can impose a personal arrest as well. In **Luxembourg** the IPR Enforcement Law does not provide any sanctions for failing to comply with a provisional/precautionary measure except the penalty payment, which is very effective. In **Slovakia**, there are no real sanctions.

In many countries (e.g. **Latvia, Denmark, Czech Republic, Portugal, Sweden**) intentional failure to comply with an injunction is a criminal offence.

4.1. What legal costs of the rightholder can be recovered from the defendant in respect of the application for:

(i) provisional/precautionary measures and

(ii) an injunction issued following a decision on the merits of the case?

(E.g., lawyers' fees, fees of technical counsel (such as trade mark or patent attorneys, fees of judicial experts appointed by the courts, etc.).)

What evidence is required to prove these costs? What are the conditions or limitations to such recovery of costs? (E.g. does the rightholder have to prove that the costs were necessary and proportionate for the purpose of obtaining the provisional/precautionary measures or injunction?)

In **Austria**, the costs for provisional proceedings initially are borne by the applicant. If the court grants the provisional measures the applicant has to carry the costs on a provisional basis depending on the decision on the merits of the case. If the applicant wins in the main proceedings, including the injunction on the merits, the applicant is also entitled to the compensation of the costs for the provisional proceedings. In **Bulgaria**, (rightholders are not entitled to recover expenses on experts or trade mark or patent attorneys for expert reports commissioned by the right holders beyond the scope of the court proceedings. This applies for both, provisional/precautionary measures as well as for an injunction following a decision on the merits of the case). In the **Czech Republic**, apart from the court fee, attorney fees, trade mark/patent agents' fees, the courts are usually ready to adjudicate compensation for travelling costs, cost for the expert opinions delivered by the successful party. In **Germany**, courts also usually grant the costs of test purchases (with invoices provided as evidence). In **Latvia**, state duty, chancellery duty, litigation costs, which are: attorneys fees, costs related to attendance of the court (transportation, accommodation fees, etc.), and costs related to gathering evidence may be recovered in the end of the main proceedings. The state duty and chancellery duty can be recovered in full amounts. The litigation costs can be recovered in the following amounts: attorney fees up to 5 % from the total sum of the claim, costs related to attendance of the court – in the amounts as specified by the Cabinet of Ministers, costs related to gathering of evidence – in their actual amount (in certain cases). In **Luxembourg**, both for provisional and precautionary measures as well as for injunctions after the merits of the case, the rightholder can recover lawyers' fees and fees of technical counsel *other than court-appointed experts* but only to a certain amount determined *ex aequo et bono* by the court. The

court will determine the amount that is proportionate to the claim. This amount is normally between EUR 1000 and 5000, which in most cases will not cover all the legal costs incurred. Concerning fees of judicial experts appointed by the courts, these will normally have to be paid *in full* by the infringer. In **Slovakia**, the only limitation is the court's discretion – the court can reduce payment of the costs to the zero, based on the court's discretion. In **Sweden**, it should be noted that the court will not make a decision on costs in relation to provisional/precautionary measures until a final decision is reached in the case. In **Greece**, legal costs range between EUR 500 and EUR 2500. Only a percentage of the actual legal costs incurred by the rightholder are actually recovered. In **Italy**, lawyers' costs are determined by the court according to the official legal tariffs. Since these tariffs are usually lower than the real costs (depending on the high specialization that IP matters require), normally just one third/one half of the real costs are recovered. In **Poland**, only the costs that were "indispensable" to protection of the applicant's rights shall be adjudicated. They include: all courts fees, fees of the court-appointed expert, as well as the cost of a legal representation, which is determined by judges at a very low level.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

COUNTRY	<p>2.1. Does the law provide that the courts may issue interlocutory injunctions against:</p> <p>a) Alleged infringers of an IP right? <input type="checkbox"/> Yes/No</p> <p>b) Intermediaries whose services are being used by a third party to infringe an IP right? <input type="checkbox"/> Yes/No</p>	<p>c) If you have answered ‘yes’ to question 2.1 (a) <u>or</u> (b), please answer the following:</p> <p>i) Regarding injunctions aimed at preventing any imminent infringement of an IP right, have the courts interpreted “imminent” in a strict way or otherwise make it difficult to obtain an injunction unless the matter is extremely urgent? <input type="checkbox"/> Yes/No</p> <p>ii) Regarding injunctions aimed at forbidding alleged infringements from continuing, must a rightholder apply for an interlocutory injunction within a certain time limit following discovery of the alleged infringement? <input type="checkbox"/> Yes/No</p> <p>If you answered ‘yes’, please briefly provide details.</p> <p>iii) Is it possible to obtain an injunction that requires the alleged infringer or intermediary to pay a penalty if the infringements continue? <input type="checkbox"/> Yes/No</p>	<p>d) If you have answered ‘yes’ to 2.1(b), please explain which third parties may be injuncted – can information be requested from “innocent” intermediaries, such as transporters, Internet Service Providers, online shopping sites, etc.? Please briefly explain if there have been obstacles to obtaining such injunctions in your country, such as requirements to establish that the intermediary is independently liable for infringement or jointly liable with the alleged primary infringer.</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		iv) Is it possible to obtain an injunction that requires the alleged infringer or intermediary to lodge a guarantee in order to compensate the rightholder if the infringements continue? Yes/No	
Austria	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): No.</p> <p>Ad (ii): Yes. The interlocutory injunction in copyright and trademark law is subject only to a 30-year statute of limitations. However, it is strongly advised to seek legal measures as soon as possible because otherwise the court would be reluctant to recognise that there is a realistic danger of infringement. In trade mark law the defendant may also argue acquiescence if the trademark holder has not acted within 5 years.</p> <p>Note that in the law against unfair commercial practices the deadline for applying for interlocutory injunctions is 6 months.</p> <p>Ad (iii): Yes. The decision granting an injunction does not contain a certain penalty amount. However,</p>	<p>Only persons who consciously assist the infringer may be enjoined. There is no injunction of “innocent” intermediaries. With regard to third parties interlocutory injunctions must be differentiated from a request for information.</p> <p>Only the UrhG Austrian Copyright Act contains specific references to the services of an intermediary, in Sec 81 (1a) UrhG. An interlocutory injunction may be issued against an intermediary if the infringer uses the service of the intermediary. However, if the intermediary may be subject to the provisions of Sec 13-17 of the E-Commerce Act, which implement Art 12 ff of the E-Commerce Directive 2000/31 EC, a cease-and-desist letter must be sent to intermediary before the intermediary may be sued. Apart</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>if the defendant violates the interlocutory injunction, the right holder may apply to the court for the imposition of a penalty of up to EUR 100.000. The amount of the penalty is decided by the court.</p> <p>Ad (iv): No.</p>	<p>from that, intermediaries may be enjoined under the same conditions as the infringer. Right holders may request information and take legal action against the infringer and persons who had infringing goods in their possession or procured infringing services or provided services for infringements. This right of information is established in all IP laws: An interlocutory injunction can only be obtained under the more general conditions of the Act on Enforcement.</p>
<p>Belgium</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes. <i>In the framework of Article 3 of the Proceedings Act, they can only be issued if they are likely to help stop the infringement.</i></p>	<p>Ad (i): The urgency requirement is extremely strict in the framework of <i>ex parte</i> petitions for an injunctive relief, where the right holder needs to show an “<i>absolute necessity</i>” (i.e. that it is absolutely necessary, in order to preserve his rights, to impose an injunction). In the framework of <i>intra partes</i> petitions, the <i>case law is not always consistent</i>. In general terms, the requirement is applied quite reasonably. However, according to some courts, an interlocutory injunction is no longer possible in IP-related</p>	<p>In the framework of proceedings based on Article 584 of the Judicial Code, the applicant can apply for measures towards (“innocent” or bad-faith) intermediaries provided that <i>he shows an interest to act toward this intermediary</i>. The rightholder must typically aim at the cessation of an infringement or the prevention of a threatened infringement. He may also obtain an interim injunction in order to preserve evidence material pending the proceedings on the merits. However, when it comes</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>matters (or only in exceptional circumstances) since the legislator has introduced for all IP rights an action on the merits ‘like in summary proceedings’. Although it is true that this action is supposed to be as fast and expedited as summary proceedings, this is not always the case in practice, far from it (e.g. because the courts, unlike in ‘regular’ summary proceedings, may in that framework examine a counterclaim for revocation or nullification). This case law makes it unreasonably difficult to obtain an interlocutory injunction in a timely fashion.</p> <p>Ad (ii): No, however, in the framework of proceedings based on Article 584 of the Judicial Code, the urgency has to be established.</p> <p>Ad (iii): Yes.</p> <p>Ad (iv): This possibility has been explicitly provided with respect to</p>	<p>to the preservation of evidence, preliminary <i>injunctions</i> are <i>seldom requested in practice</i> in Belgium. <i>Instead, rightholders would file a petition for descriptive measures (search and seize orders; see Belgian report on Evidence).</i></p> <p>Similar interlocutory provisions can also be ordered by the courts under Article 19(2) of the Judicial Code pending proceedings on the merits.</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>trademark and design infringements (see respectively Articles 2.22(3)(c) and 3.18.(3)(c) of the Benelux Intellectual Property Convention). With respect to all IP-rights, the right holder may ask the courts to seize assets or freeze bank accounts, subject to: (a) evidence of an IP right that is prima facie valid; (b) evidence of an infringement that is not seriously disputable and (c) a balance of convenience.</p>	
<p>Bulgaria</p>	<p>Ad a): Yes. Ad b): Yes.</p>	<p>Ad (i): No. Ad (ii): No. Ad (iii): - Ad (iv): -</p>	<p>According to the relevant provisions of the applicable Bulgarian law such provisional and precautionary measures may also be imposed to third persons for whom there is sufficient evidence that they are conducive to the activity for which it is claimed that it constitutes or will constitute unlawful use.</p> <p>No consistent court practice concerning obstacles or special requirements.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

<p>Cyprus</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p> <p>Note: An interlocutory injunction against intermediaries is only expressly provided for in the Cyprus Copyright Law.</p>	<p>Ad (i): Yes.</p> <p>Ad (ii): Yes.</p> <p>Ad (iii): No.</p> <p>Ad (iv): No.</p>	<p>The Cyprus Copyright Law provides for the issue of an injunction against intermediaries, without defining the term “intermediary”. In case where the Defendant is an “innocent” intermediary (i.e. an intermediary who was not aware of the infringement and, also, there was no reasonable ground for him to believe that there was such infringement), the Cyprus Copyright Law provides that the plaintiff is not entitled to damages (but is entitled to an account of profits).</p>
<p>Czech Republic</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes; Generally said, the provisional and precautionary measures are designed for interlocutory arrangement of the relationship between parties of the litigation and therefore any interlocutory injunction assumes further court procedure involving the infringer on one side and the rights holder on the other side. There is possibility to issue an interlocutory injunction against a</p>	<p>Ad (i): Yes.</p> <p>Ad (ii): No.</p> <p>Ad (iii): No.</p> <p>Ad (iv): No.</p>	<p>This is an issue which is not expressly resolved by our legislation. The general rule regarding possibility to issue interlocutory injunction against a third party mentioned above (2.1.b) should apply. From the practical point of view we believe that it would be quite difficult to obtain such injunction.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	third party other than participant of the litigation but only if “it is possible to fairly ask him to do so”, which is quite broad wording leaving a lot of interpretation and implementation space.		
Denmark	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): No.</p> <p>Ad (ii): Not formally, but the right holder must not stand by for a longer period of time.</p> <p>Ad (iii): Yes.</p> <p>Ad (iv): No.</p>	Intermediaries, whose services or properties are being used for infringing purposes e.g. intermediaries that are hosters or provide access to infringing websites can be subject to injunctions but normally not to civil or criminal liability. Operators, administrators and owners of websites that are used for infringing purposes can in view of the circumstances be subject to injunctions and both civil and criminal liability depending on the role of the operator etc. Danish case law does not provide many examples, but so far no general obstacles have occurred.
Estonia	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): There is no prior court practice in Estonia how the courts would interpret “imminent”.</p> <p>Ad (ii): No.</p>	There is no prior court practice in Estonia on how the courts would interpret <i>the third parties and intermediaries</i> to whom the interim injunction may be applied

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Ad (iii): Yes. The bailiff can impose a fine.</p> <p>Ad (iv): Yes.</p>	<p>as well. However, such a request is in accordance with the aim of the Estonian laws and therefore possible. The Law of Obligations Act (§ 1055 (3)) stipulates that if unlawful damage is caused by violation of copyright and related rights or industrial property right, the person whose rights are violated may request that the violator and <i>the person whose services a third party used for the purpose of violation of the right</i> be refrained from further violation. In our opinion the wording of § 1055 (3) of the Law of Obligations Act is quite broad and it is possible to apply interim injunction to all those intermediaries whose services are used for the purpose of violation of the right.</p>
<p>Finland</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): Yes.</p> <p>Ad (ii): No.</p> <p>Ad (iii): Yes.</p> <p>Ad (iv): Yes.</p>	<p>The interpretation of the term intermediaries is the same in the context of the Directive 2004/48/EC as in the Directive 2001/29/EC; Information can be requested from “innocent” intermediaries. However, the definition of <i>intermediary</i> is, according to the legislation on</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			<p>copyrights and industrial rights, limited to intermediaries in information networks in accordance with Section 60c of the Copyright Act (404/1961). Currently also the Act on Provision of Information Society Services (458/2002) grants the Court the right to give an order to disable access to information stored by the intermediary on the basis of an application (Sections 16-19). However, according to Finnish case law, also other intermediaries, such as transporters, may be granted injunctions, <i>i.e.</i> the intermediary may be deemed liable for infringement if the alleged primary infringer remains unknown (Finnish Supreme Court, decision 2002:119, according to which the expeditor of a cloth business was deemed liable for trademark infringement as the actual infringer remained unknown).</p>
<p>France</p>	<p>Ad a): Yes. Ad b): Yes.</p>	<p>Ad (i): Yes. Ad (ii): No.</p>	<p>All kind of intermediaries that have allowed the distribution of the suspected goods can be enjoined (transporters, storage</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Ad (iii): Yes.</p> <p>Ad (iv): Yes.</p>	<p>companies, Internet service providers, e-commerce platforms...).</p>
<p>Germany</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): No. there must be the imminent danger that an infringement will happen in the near future.</p> <p>Ad (ii): Yes. The time limit is not defined in the law but subject to the discretion of the court. Some courts have defined a rather strict deadline of 1 month after receiving knowledge of the infringement within which the application must be filed. Other courts are more flexible and decide on a case by case basis. Most courts are fine with a time line of between 4 to 6 weeks. If the right holder takes longer he needs to explain in detail why he did not take action earlier. NB the Court of Appeals Hamburg stated that there is no “safe harbour” within a specific time period – this is strictly decided on a case by case basis, which may lead to a much shorter time to file the injunction after the right holder has knowledge of the infringement.</p>	<p>Under § 101 I I UrhG third parties can be enjoined in case of an evident infringement or in case a claim against the infringer is pending. The third party must have acted on a commercial scale and “with regard to the infringement”. “With regard to the infringement” means the third party must either have:</p> <ul style="list-style-type: none"> - had possession of the infringing copies, or - made use of infringing services, or - delivered services that were used for infringing acts, or - according to the information of one of the third parties mentioned under points (1) (3), have participated in the production or the resale of such copies, goods or services.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Ad (iii): Yes.</p> <p>Ad (iv): No.</p>	
Greece	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): No.</p> <p>Ad (ii): There is no statutory time limit for filing the application for an interlocutory injunction. However, it should be filed within a ‘reasonable’ period of time (to be determined on a case-by-case basis), following discovery of the infringement and the identity of the infringer, so that to satisfy the requirement of urgency.</p> <p>Ad (iii): No.</p> <p>Ad (iv): No. In theory, such possibility exists, but it has been used only in very exceptional circumstances by the courts.</p>	<p>Anyone holding the goods on behalf of, or deriving rights in connection with the goods from, the alleged primary infringer may be enjoined. Objections raised by the third party (particularly if it has not participated in the injunction proceedings) may delay considerably the enforcement of such injunctions.</p>
Hungary	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): No.</p> <p>Ad (ii): Yes. The deadline is 6 months from the commencement of the infringement and 60 days from the date on which the</p>	<p>No.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>rightholder became aware of the fact of infringement. After this deadline the court can still order the injunction, but it has much wider discretionary power and the burden of proof on the IP right holder is more severe.</p> <p>Ad (iii): Yes but this is a fine, not a payment to the IP right holder.</p> <p>Ad (iv): No.</p>	
Ireland	<p>Ad a):</p> <p>Ad b):</p>	<p>Ad (i):</p> <p>Ad (ii):</p> <p>Ad (iii):</p> <p>Ad (iv):</p>	
Italy	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): The matter had been highly debated both among scholars and in the case law. Therefore in implementing the IPRED, Article 131 IIPC was amended, introducing the specification whereby an interlocutory injunction may be granted in the case of «<i>any imminent violation</i>» of the right. This should allow restrictive interpretations given on</p>	<p>According to the rules already quoted of IIPC and ICL, seizure and preliminary injunction may be ordered also against any “intermediary whose services are being used by a third party to infringe” an IPR, irrespective of whether the intermediary is independently liable for infringement or not. See Court of Milan, 28 October and 14</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>any occasion by the courts to be superseded: expressly in the sense that interlocutory injunction is to be granted whenever the violation is ongoing or imminent, irrespective of the degree of urgency of the matter, see Court of Naples, 19 September 2008.</p> <p>Ad (ii): As indicated above, Article 131 IPC was redrafted with the aim of admitting the recourse to interlocutory injunction also in any case of ongoing violation of IPRs, irrespective of since when the violation has started (see the case law quoted above). However sometimes applications for interlocutory injunctions are still rejected, when it results that the IPR holder tolerated the violation for a long time (usually more than one year, i.e. the time usually taken by the proceedings on the merits).</p> <p>Ad (iii): Yes.</p> <p>Ad (iv): No.</p>	<p>November 2005, which granted interlocutory injunction and order of withdrawal from the market, and Court of Milan, 16 January 2009, which granted the same measures as final, against a national distributor of a publication amounting to trademark infringement, <i>notwithstanding this subject was perfectly innocent</i>, since under the Italian law these distributors of newspapers and periodical publications are legally bound to accept any kind of publication, without checking the content of the same.</p> <p>As far as the Internet Service Providers are concerned, the possibility of issuing injunctive relief against the same, irrespective of their liability, is expressly provided for by legislative decree No. 70/2003. Furthermore a very recent decision (Court of Rome, 15 December 2009, later upheld by Court of Rome, 12 February 2010) held that the liability of the provider shall be assessed on a case by case basis, and that, in</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			<p>particular, such a liability holds every time that “the provider...distributes adjunctive services and/or predisposes a control of the information and, above all, when, aware of the presence of suspicious material, refrains from ascertaining its unlawfulness and from removing it or if aware of lack of legalness omits of intervening”, clarifying that, in this specific case, the illicit activity has been developed with modalities “not compatible with... the simple placing at disposal of the platform”.</p>
<p>Latvia</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): Yes.</p> <p>Ad (ii): Yes. A right holder/owner may apply for interlocutory injunction at any time if he/she has submitted a civil claim against an infringer. A right holder/owner may apply for the interlocutory injunction before the submission of the claim, but it has to be applied for within a 3-months period following the discovery of the alleged infringement.</p> <p>Ad (iii): No.</p>	<p>Any third parties may be enjoined if they operate as intermediaries. The case law has not established any difference between the “innocent” and “guilty” intermediaries, this is partly due to the fact that in many cases the intermediaries, indeed, are not aware of their participation in the chain of infringing activities, and if they may be not enjoined, the right holder/owner would not have any other means to terminate the infringement.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		Ad (iv): No.	
Lithuania	Ad a): Yes. Ad b): Yes.	Ad (i): Yes. Ad (ii): No. Ad (iii): No. Ad (iv): Yes.	Both “innocent” persons and the ones that are independently liable for infringement or jointly liable with the alleged primary infringer may be enjoined.
Luxembourg	Ad a): Yes, for all IPR. Ad b): Yes, for all IPR.	Ad (i): There is no case law on this question yet because Directive 2004/48 has only been implemented recently. Ad (ii): No. Except the limitation period of 10 years which generally exists for commercial relations. Ad (iii): This possibility is not specifically mentioned in the provision but Articles 2059 to 2066 of the Civil code relating to penalties should be applicable here. Ad (iv): Yes.	
Malta	Ad a): Ad b):	Ad (i): Ad (ii):	

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Ad (iii):</p> <p>Ad (iv):</p>	
Netherlands	<p>Ad a):</p> <p>Ad b):</p>	<p>Ad (i):</p> <p>Ad (ii):</p> <p>Ad (iii):</p> <p>Ad (iv):</p>	
Poland	<p>Ad a): Yes. The courts may issue interlocutory injunctions against the party “infringing” a given IP right, in accordance with the wording of the Polish law provisions.</p> <p>Ad b): Yes. Please see however the more thorough explanation contained in point d. below.</p>	<p>Ad (i): No.</p> <p>Ad (ii): No. However, it is less probable that an interlocutory injunction will be obtained when the applicant does not take legal action while being aware of the alleged infringement.</p> <p>Ad (iii): Yes.</p> <p>Ad (iv): Yes.</p>	<p>Courts may issue interlocutory injunctions against parties such as: abetter (person who persuades the infringer), accessory (person who helps the infringer) or a person that took advantage of the damage caused. These parties are liable for their own actions provided that their action has been found culpable. The intermediary is jointly liable with the alleged primary infringer. Preliminary injunctions cannot be issued against “innocent” intermediaries, as there are no provisions which govern such possibility.</p>
Portugal	<p>Ad a): Yes.</p>	<p>Ad (i): Yes. Our experience about imminent infringement is not so</p>	<p>The injunctions may be requested against an <i>innocent</i> intermediary.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>Ad b): Yes.</p>	<p>good. The court uses to take too much time and usually decides to hear the alleged infringer and on these cases the infringements are usually fully consumed before a decision.</p> <p>Ad (ii): Yes. There is no time limit in general, but the court may decide against the rightholder if he takes too much time to react against the infringement, namely if he takes time enough to have a definitive decision.</p> <p>Ad (iii): Yes.</p> <p>Ad (iv): Yes. The alleged infringer may also offer a warranty to suspend the provisory injunction.</p>	<p>Nevertheless, we have neither experiences in such cases nor knowledge about cases like this in Portugal.</p>
<p>Romania</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): No.</p> <p>Ad (ii): No.</p> <p>Ad (iii): Yes. Although the art. 582 from the Romanian Civil Procedure Code stipulates the civil fine as a penalty for the debtor (in our case – the infringer), in practice this penalty is an inefficient measure, as it</p>	<p>Any third party that uses in an unauthorized way in the commercial activity the IP right (including the transporters, Internet Service Providers, online shopping sites) may be subject to a preliminary proceeding initiated by the injured party. Such obstacles as the ones above mentioned are not stipulated by the Romanian Law.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>represents a very small amount (between 20 (almost 3.5 Eur) and 50 lei (almost 9 Eur) per day of delay).</p> <p>Ad (iv): Yes.</p>	
Slovakia	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): No.</p> <p>Ad (ii): No.</p> <p>Ad (iii): -</p> <p>Ad (iv): -</p>	<p>Third parties innocent intermediaries such as transporters, Internet Service Providers, online shopping sites.</p>
Slovenia	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): Yes.</p> <p>*Not many cases in publicly available case law relate to this question, however, it is evident that not any kind of usage of right holder's right constitutes infringement. In order to constitute infringement, use of allegedly infringed right must be directly linked to goods or services used for commercial purposes by the alleged infringer and as a general rule, infringement must be of a commercial nature. This is especially the case in relation to trademark infringements. Following that, interpretation of</p>	<p>However, this is not very likely in practice. In practice, courts will usually opt for less severe measures such as ordering alleged infringer to withdraw allegedly infringing goods from the market.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>“imminent infringement” by the courts is rather strict.</p> <p>Ad (ii): No.</p> <p>Ad (iii): Yes.</p> <p>Ad (iv): Yes. EIA provides that the court may allow that a guarantee is offered instead of issuing an injunction.</p> <p>Also measures specified by law are mere exemplary and according to EIA, it is possible for a court to order any injunction that suits the purpose of security.</p> <p>We could not find relevant case law nor have any practical experiences of our own. IPA and CRRA state that it is possible that by injunction to “seize, exclude from circulation and take into custody the objects of infringement and the means of infringement that are intended or used exclusively or principally for infringement”.</p> <p>To our knowledge, independent liability of intermediaries has not been so far dealt with (except in relation to goods in transit). In</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>relation to injunctions, injunctions are used as an effective and low-cost solution, for example, intermediaries acting as Web Hosting Services Providers might be ordered to disable access to web site containing infringing material.</p>	
Spain	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): To the best of our knowledge, there are no precedents about the construing of the word <i>imminent</i> in the adoption of these injunctions, there has been no debate about the meaning of this word.</p> <p>Ad (ii): No.</p> <p>Ad (iii): No. There is no penalty or fine as such, but it would imply the breach of a judicial decision with the consequences described in the answer to question 2.4.i.</p> <p>Ad (iv): No.</p>	<p>Against all intermediaries whose services are used by a third party to infringe IP rights, even in the case that the acts of such intermediaries do not constitute by themselves an IP breach.</p> <p>Art. 256 7^a. LEC, preliminary investigations by courts in the field of Intellectual property, in order to obtain information and data about the origin of the infringing products or services, etc...</p>
Sweden	Ad a): Yes.	Ad (i): No. Swedish law does not specifically refer to “imminent”	An order to provide information can also be issued against

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>Ad b): Yes.</p>	<p>infringements. Instead, under Swedish law it is possible to obtain an injunction in case of attempt (Sw. försök) or preparation (Sw. förberedelse) of infringement. Attempt and preparation cover more than only imminent infringement. Hence, it is not required that the matter is extremely urgent to obtain an injunction.</p> <p>Ad (ii): In principle no. Before issuing an interlocutory injunction, courts make a proportionality assessment between the parties' interests. Delays are considered in such assessments. In addition, longer delays could be considered as a passive acceptance of the infringement.</p> <p>Ad (iii): Yes.</p> <p>Ad (iv): Yes.</p>	<p>“innocent” intermediaries, e.g. Internet Service Providers, transporters and online shopping sites. Other types of injunctions, such as interlocutory injunctions to cease with an action, require that the intermediary can be considered aiding and abetting (Sw. medverka) the infringer.</p>
<p>United Kingdom</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad (i): No.</p> <p>Ad (ii): Yes, although this is not prescribed precisely. The principle applied to these situations is that</p>	<p>An injunction may be obtained against any third party that is involved in an intellectual property infringement in an “innocent” or “unknowing”</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>an applicant must act promptly and without undue delay in applying for an injunction, failing which the application is at risk of failing.</p> <p>Ad (iii): No, generally speaking. There may be special circumstances in which a financial penalty could be imposed as a sanction for breaching an injunction, but the penalty for breaching an injunction is commonly a finding that the offending party has acted in contempt of court, which can result in that party being fined, or imprisoned.</p> <p>Ad (iv): Yes. The court can require a party to lodge a security payment with the court as a condition, or in lieu, of an injunction.</p>	<p>fashion, once that third party has been advised of its involvement. It is usual in such circumstances for the third party to be asked by the intellectual property right owner to undertake not to repeat the relevant act, rather than the intellectual property owner applying for an injunction. There is a specific provision in Section 97A of the Copyright, Designs and Patents Act 1988 which provides for such an injunction to be made against an internet service provider.</p> <p>Part 31 of the CPR also allows an intellectual property right owner to apply for a “pre-action disclosure” order against such a third party. This is a helpful remedy that allows an intellectual property right owner to obtain documents or data from a third party that the third party is either unwilling, or unable (for example, because of contractual or regulatory restrictions) to share with the intellectual property right owner.</p> <p>An example of a situation where</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			<p>this remedy is useful is in connection with investigations into online copyright infringement, whereby an intellectual property right owner might ascertain the IP address of an infringer, and wish to take action accordingly. The infringer's internet service provider will be in a position to provide the intellectual property right owner with details of the infringer's name and address, but constrained by data privacy regulation from doing so. A pre-action disclosure order against the ISP will allow the ISP to share this data.</p> <p>The principal procedural obstacle to such applications is that the applicant will generally be responsible for the respondent's costs (including legal fees). Given the high level of legal fees in the United Kingdom, this can act as a significant deterrent to the making of such applications.</p>
<p>QUESTION</p>	<p>2.2. Does the law provide that the courts may order the seizure or delivery up of goods suspected of</p>	<p>2.3. Does the law provide that the courts may order the precautionary seizure of the</p>	<p>2.4. If you have answered 'yes' to question 2.1(a) or (b), 2.2 <u>or</u> 2.3 regarding interlocutory</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>infringing an IP right in order to prevent their availability on the market? <input type="checkbox"/> Yes/No</p>	<p>movable and immovable property of an alleged infringer in respect of infringements? <input type="checkbox"/> Yes/No</p> <p>If you have answered ‘yes’, please answer the following:</p> <p>a) Are such orders only available in relation to infringements committed on a commercial scale? <input type="checkbox"/> Yes (only for commercial scale)/<input type="checkbox"/> No (not limited to commercial scale)</p> <p><i>If you have answered ‘yes’ above, how is ‘commercial scale’ defined?</i></p> <p>b) Before the courts may make such an order, must the injured party demonstrate that due to the circumstances it is unlikely that it will be possible to recover damages? <input type="checkbox"/> Yes/No</p> <p>c) May the courts order bank accounts to be blocked and other assets to be seized? <input type="checkbox"/> Yes/No</p> <p>d) May the courts order bank,</p>	<p>injunctions, seizure or delivery up orders, and orders for precautionary seizure of movable and immovable property (collectively “provisional/precautionary measures”), please answer the following supplementary questions:</p> <p>a) Are there any difficulties in providing the level of evidence required to satisfy the courts that the applicant is the rightholder and that the applicant’s right is being infringed, or that such infringement is imminent? <input type="checkbox"/> Yes/No</p> <p>If you answered ‘yes’, please briefly explain the difficulties.</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>financial or commercial documents to be communicated to the injured party, or for the injured party to be granted access to relevant information? Yes/No</p> <p>e) Please briefly explain whether there are any obstacles to obtaining such orders.</p>	
Austria	Yes.	<p>Ad a): No. However, only in very special circumstances would a court grant a precautionary seizure with regard to infringements not committed on a commercial scale.</p> <p>Ad b): yes.</p> <p>Ad c): yes.</p> <p>Ad d): yes.</p> <p>Ad e): Obstacles are mostly of a practical nature. For example, judges who do not have experience with precautionary measures are very reluctant to freeze bank accounts or seize immovable or movable property except for infringing goods. It also may take some time before a court decides upon the grant of such a measure.</p>	<p>Yes.</p> <p>Ultimately, it is always within the discretion of the court to decide whether there is sufficient evidence that infringement is imminent. Depending on the nature of infringement and the infringer, the amount of evidence required may be higher.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		Therefore, these measures are rather unusual.	
Belgium	Yes. The court may order the seizure and of the materials and implements used for their production and distribution, plus any related documents. They may also order the removal of the goods from the market or the recall of the goods market recall, and ultimately their destruction (see Belgian report on Corrective Measures).	<p>The Belgian legislator considered in this regard that the provisions in matter of evidence (descriptive seizure measures / Articles 1369bis and 1369ter of the Belgian Judicial Code) were sufficient to empower the courts to order measures provided in Article 9.1 (b) of the Directive. Therefore, Article 9.1 (b) has not been explicitly implemented in Belgium. Article 1369bis of the Belgian Judicial Code empowers the court to order the seizure of goods suspected of infringing an IPR.</p> <p>The courts may order the seizure and of the materials and implements used for their production and distribution, plus any related documents and the proceeds of the alleged infringement. They may also order the removal of the goods from the channels of commerce or the recall of the goods and the destruction of the goods, provided that such measures are necessary to help stop the infringing activities.</p>	No, even though this leads to a subjective assessment.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Similar measures can also be requested in the framework of summary proceedings. Indeed, Article 584 (3) (5) of the Judicial Code empowers the courts, in cases of infringements committed on a commercial scale if the injured party demonstrates circumstances likely to endanger the recovery of damages, to order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets.</p> <p>The above measures (in the framework of summary proceedings as well as in the framework of a descriptive seizure) can be ordered only if the following conditions are fulfilled :</p> <ol style="list-style-type: none">1) the IPR is prima facie valid;2) the IPR infringement cannot be reasonably disputed;3) If, after taking into account all interests (including the general interest), facts and exhibits founding the application, the	
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>seizure for the IPR protection can be considered as reasonably justified.</p> <p>Similar interlocutory provisions can also be ordered by the courts under Article 19(2) of the Judicial Code pending proceedings on the merits.</p> <p>Ad a): In principle, no. However, there is an exception regarding injunctions aimed at obtaining information from intermediaries (see Belgian report on Evidence re Article 8 of the Directive). This is normally only possible when the intermediary detains the goods or has provided services “on a commercial scale”.</p> <p>Ad b): Yes.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): See Belgian report on Evidence.</p>	
Bulgaria	Yes.	<p>Yes.</p> <p>Ad a): No.</p>	No.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Ad b): No.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): A common obstacle in obtaining such an order is that the competent civil courts in Bulgaria will oblige the injured party to lodge a security.</p>	
Cyprus	No.	<p>The Cyprus IP Laws do not expressly provide for such orders for the precautionary seizure of movable and immovable property. In theory, it may be possible for a plaintiff to apply for such an order under the general provisions of the Cyprus Courts of Justice Law and the Civil Procedure Law, but in practice the Courts may be reluctant to grant such drastic measures unless there is compelling evidence justifying the same.</p> <p>Ad a): -</p> <p>Ad b): Yes.</p>	<p>Please note that all such interim applications must be supported by an affidavit or affidavits, which must be deposed by persons having direct knowledge of the facts surrounding the case and to which all supporting evidence must be attached thereto as Exhibits.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): As indicated above it may be difficult to obtain an interim order for seizure of movable property. An order to freeze a bank account is more common and likely to be obtained.</p>	
Czech Republic	<p>Yes.</p> <p>Within the interlocutory injunction the court can't order a seizure but can prohibit disposal (sale etc.) or order delivery to court escrow. Some kind of alternative is to ask for preliminary seizure of evidence pursuant sec. 78b of the CPC. Based on this provision the court may "secure" goods or sample of the goods by which intellectual property rights could be infringed. But again, this is not a standard seizure this is only to seize evidence for the litigation</p>	<p>No.</p> <p>Generally, the court can issue provisional and precautionary measures if it is necessary to preliminarily arrange the relationship between parties of the litigation (see above) or if there is a concern that the execution of court decision could be endangered. In the practise the measures based on the concern that the execution of court decision could be endangered are often issues by the courts in further stages of the proceedings, usually after the decision in merits is done. Anyway (again), the courts can not order the seizure. The court can prohibit disposal (sale etc.) or order delivery to court escrow.</p>	<p>Yes.</p> <p>There are no standards for the level of evidence to be delivered to the court. Generally said it is not easy to obtain a provisional/precautionary measure order.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

Denmark	Yes, if the property is regarded as evidence, if the property is itself infringing products, or if the property is or has been used for infringing purposes.	<p>Yes, but only movable property can be seized.</p> <p>Ad a): No.</p> <p>Ad b): No.</p> <p>Ad c): Bank accounts can be blocked by addressing the bank. Movable property owned by the infringer that is itself infringing or is being/have been used for infringing purposes can be seized.</p> <p>Ad d): Yes.</p> <p>Ad e): Such documents can be disclosed to right holders in accordance with the normal civil regulation on disclosure of evidence with regard to proportionality etc. One obstacle is that it is most cases it is only possible to obtain such evidence during a court case and in far most of the cases it is not possible to force an infringer to disclose the information.</p>	No general obstacles.
Estonia	Yes.	Yes.	Yes.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Ad a): Yes, only for commercial scale).</p> <p>The phrase “commercial scale” has not been defined in the Code of Civil Procedure. Also, there is no prior court practice in Estonia how the courts would interpret “commercial scale”.</p> <p>Ad b): No. According to the Code of Civil Procedure (§ 377) it is possible to request for interim injunction if it is necessary for the prevention of significant damage or arbitrary action or for another significant reason. The interim injunction may be requested regardless of the fact whether there is a reason to believe that otherwise it would be difficult to enforce the decision (and recover damages) or it would be impossible.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): In order to obtain interim injunction the plaintiff has to be able to prove that there exists</p>	<p>There is no prior court practice in Estonia on the interpretation of “the imminent threat of infringement” in IP cases, thus it is difficult to predict which evidence the court would require in order to agree on the fact that the applicant's right is being infringed or that such infringement is imminent.</p> <p>However, in order to prove the argument that there is a threat of imminent infringement it is standard behaviour in Estonia to send a cease and desist letter prior to apply for preliminary injunction or submit a claim to the court. As the other party will most likely not consider its actions to be in violation of the patent, then the negative response to a cease and desist letter will help arguing that there exists a serious and imminent threat of infringement.</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		serious and imminent threat of infringement. Also, according to the § 378 (4) of the Code of Civil Procedure the means for securing a claim will be chosen such that the means, when applied, would burden the defendant only in so far as this can be considered reasonable taking account of the legitimate interests of the plaintiff and the circumstances.	
Finland	Yes.	<p>Yes.</p> <p>Ad a): Yes.</p> <p>Ad b): Yes.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): The right to grant access to relevant information would not be possible if it results in unreasonable harm to the defendant. The harm could be <i>e.g.</i> commercial harm (such as revealed trade secrets). It is also required that the defendant has infringed the right of the applicant in a commercial scale as defined in the</p>	<p>Yes.</p> <p>In the Finnish case law, the discussion on the threshold of required probability of infringement has been considered by the Finnish Supreme Court in <i>e.g.</i> decisions 2003:118; 1998:143 and 2000:94. When deciding on an interlocutory injunction, courts have, along with the required level of probability of an infringement, generally compared the benefits resulting from granting an interlocutory injunction to the applicant with the costs and harm to the alleged infringer. If this comparison shows that the benefits to the applicant exceed</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Directive 2004/48.</p>	<p>the costs to the infringer, the court has granted an order (see <i>e.g.</i> the Court of Appeal of Helsinki, decision N:ro 1957, dated 9 July 2009).</p> <p>In the legal literature, some sources find that the applicable threshold for required probability of infringement in interlocutory injunctions should be lowered. Currently the evidence threshold required in precautionary seizures is apparently lower than in interlocutory injunctions – yet also here; opinions vary in terms of whether the burden of proof in seizures as well is too high in IPR related issues.</p> <p>This trend presumably reflects the courts' inclination to follow previous case law on precautionary measures; In previous case law, the applicant was mainly interested in securing that the defendant could not wilfully destroy or lose his/ her property and in that way jeopardize the enforcement of the eventual decision. Interlocutory injunctions were rather rare; and</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			<p>when they were granted, the financial interests were relatively minor compared to the present-day IPR related cases.</p> <p>In general, it seems that courts still do not fully appreciate the different nature of IPRs and thus the requirements they set on provisional/precautionary measures are too stringent. In IPRs the precautionary measures need to focus on interlocutory injunctions rather than on ensuring that the defendant has the means to compensate the plaintiff after the final judgment.</p>
France	Yes.	<p>Ad a): No. Not limited to commercial scale.</p> <p>Ad b): Yes.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e):</p>	<p>The level of evidence required to satisfy the courts that the applicant is the rightholder is currently very high in France, especially concerning copyrights owned by companies.</p>
Germany	Yes.	<p>Ad a): No. -- the only exemption is trademark infringements, but this is due to the fact that commercial use is a general requirement for</p>	No.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>trademark claims.</p> <p>Ad b): Yes.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e):</p>	
Greece	Yes.	<p>Ad a): No. Not limited to commercial scale.</p> <p>Ad b): Yes.</p> <p>Ad c): Yes. Under strict conditions.</p> <p>Ad d): Yes, under strict conditions.</p> <p>Ad e): Proceedings may be long-lasting if the defendant raises objections to the enforcement of the order.</p>	No.
Hungary	Yes.	<p>Ad a): Yes. Only for commercial scale. If it is obvious from the feature and quantity of the products/services that the activities in question are intended to realize profits. Paragraph (6) of Section 27 of Act XI of 1997 on the protection of trademarks and</p>	No.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>geographical indications, Paragraph (4) and (5) Section 35 of Act XXXIII of 1995 on the protection of patents and Paragraph (3) and (4) Section 94 of Act LXXVI of 1999 on copyright.</p> <p>Ad b): Yes.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes. Only the communication can be ordered, access cannot be granted.</p> <p>Ad e): Judicial enforcement in Hungary is not really effective, so we have no experience of successful precautionary measures.</p>	
Ireland		<p>Ad a):</p> <p>Ad b):</p> <p>Ad c):</p> <p>Ad d):</p> <p>Ad e):</p>	
Italy	Yes.	<p>Ad a): Yes. Not limited to commercial scale.</p> <p>Ad b): Yes.</p>	No.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Ad c): Yes.</p> <p>Ad d): Yes. Only for commercial scale. We do not have a definition of commercial scale.</p> <p>Ad e): For a very recent case of precautionary seizure of the assumed infringer's assets, see Court of Milan, 6 November 2009 (which seized also the infringer's own trademarks). The main obstacle faced in these cases concerns the identification of valuable assets. Actually when the assumed infringer is a large company with its place of business located in Italy, there is no need for precautionary seizure of assets, while when it is a trader or a single person business it is hard to find valuable assets to be seized. Furthermore, in order to obtain such a precautionary seizure, we need to provide the Court at least with an approximate estimation of the damages, which is difficult when the infringer's accounts are irregular (as it often happens).</p>	
Latvia	Yes.	No.	Yes.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Ad a): Yes.</p> <p>Ad b): -</p> <p>Ad c): -</p> <p>Ad d): -</p> <p>Ad e): -</p>	<p>In relation to evidence of the fact that the rights are being infringed or that the infringement is imminent, it is at the discretion of the court to evaluate if the submitted evidence is sufficient, and the decisions of the court vary on case-by-case basis without much coherence. Therefore, it is difficult to foresee the outcome of the case in advance.</p>
Lithuania	Yes.	<p>Ad a): Yes. Only for commercial scale. There is no definition of “commercial scale” in the above mentioned law, therefore it has to be defined each time in case on the infringement. Usually the concept of “commercial scale” is linked to the seeking for the profit.</p> <p>Ad b): Yes.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): There are no obstacles to obtain such orders, provided all conditions indicated in the laws are</p>	No.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		satisfied (the requirement to prove that the person who applies for provisional measures to provide any reasonably available evidence in order to satisfy the court with a sufficient degree of certainty that the said person or the person in whose interest provisional measures are applied for is the holder or user of the rights, etc.).	
Luxembourg	Yes, for all IPRs.	<p>Yes, for all IPRs.</p> <p>Ad a): Yes.</p> <p>Article 1 §2 of the IPR Enforcement Law defines <i>commercial scale</i> as follows: <i>“Acts committed in view to obtain a direct or indirect economical or commercial advantage, which normally excludes acts committed by final consumers acting in good faith”.</i></p> <p>Ad b): Yes, for all IPRs.</p> <p>Ad c): Yes, for all IPRs.</p> <p>Ad d): No.</p> <p>Ad e): There are no particular</p>	No.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>obstacles. However, because of the intrusiveness of these measures, they have to be limited to the most obvious cases and be exceptional. The judges have to apply the conditions set by Article 28 of the IPR Enforcement Law very strictly.</p>	
Malta		<p>Ad a):</p> <p>Ad b):</p> <p>Ad c):</p> <p>Ad d):</p> <p>Ad e):</p>	
Netherlands		<p>Ad a):</p> <p>Ad b):</p> <p>Ad c):</p> <p>Ad d):</p> <p>Ad e):</p>	
Poland	<p>The courts may order the seizure of goods suspected of infringing an IP right in order to prevent their availability on the market. There are no provisions regarding</p>	<p>Ad a): No. Not limited to commercial scale.</p> <p>Ad b): Yes.</p>	<p>Yes. In copyright cases there may be a difficulty in explaining the complexity of the chain of title.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	the delivery up of such goods.	<p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): We are not aware of any obstacles to obtaining such orders.</p>	
Portugal	Yes.	<p>Yes.</p> <p>Ad a): Yes. There is also other <i>general</i> precautionary seizure (applicable to all kind of rights and also IP rights) that doesn't depend of the <i>commercial scale</i>.</p> <p><i>Definition commercial scale:</i> Acts of infringement with the objective to obtain an economic advantage (direct or indirect). Acts of <i>innocent</i> end-users are expressly excluded.</p> <p>Ad b): Yes.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): Not enough experience about this particular issue.</p>	No, in general.
Romania	Yes.	<p>Ad a): No. Not limited to commercial scale.</p>	No.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Ad b): Yes.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): It presumes an enforcement proceeding through which the bailiff should require further information from the authorities concerning the movable and immovable goods of the alleged infringer. The authorities may delay the answer or the infringer may not declare his goods.</p>	
Slovakia	Yes.	<p>Yes.</p> <p>Ad a): No.</p> <p>Ad b): No.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): It is very sensitive to obtain such an order because of the bank secret.</p>	No.
Slovenia	However, this is not very likely in practice. In practice, courts will	Although there is no express provision regulating this, the court	Yes. From publicly available case law

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>usually opt for less severe measures such as ordering alleged infringer to withdraw allegedly infringing goods from the market.</p>	<p>may issue any preliminary injunction, which can achieve the purpose to secure non-monetary claims.</p> <p>Ad a): No. Not limited to commercial scale.</p> <p>There are no provisions that would stipulate that commercial scale of infringement is required for such an order to be issued. However, due to the nature of IP rights, it is very difficult to prove that requirements for such order are met when alleged infringement occurs on non-commercial scale. Furthermore, protection of IP rights governed by IPA and CRRA aims particularly to protect commercial interest of their holder. Consequently, it is very difficult to establish occurrence or imminent danger of infringement, outside of commercial domain. In relation to provisional/precautionary measures, it is possible to recognize tendencies of courts towards “commercial scale only” approach.</p>	<p>it is evident, that right holders quite often fail to provide sufficient evidence to substantiate and prove that their right is infringed or that there is imminent risk of infringement. Proving a title in allegedly infringed right on the other hand, did not usually present difficulties for right holders.</p> <p>Still, according to case law, the main difficulty for the right holders was to prove:</p> <ul style="list-style-type: none"> - existence of danger that the enforcement of claims will be made impossible or rather difficult; - necessity of a provisional measure being adopted in order to avoid damage difficult to repair; or - a provisional measure, which may prove unfounded in the course of the proceedings does not have more detrimental consequences for the alleged infringer that would have the non-adoption of such measure for the owner of the right or that
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>“Commercial scale” is defined as any activity performed on the market with the aim of direct or indirect economic benefit, whereas market is being defined as place governed by rules of supply-demand interaction and the decisive factor defining aim of economic benefit being the intent of the person under scrutiny (alleged infringer).</p> <p>Ad b): No. Although this is usually the most important and decisive factor, it is possible for the court to issue such order without infringed party demonstrating the existence of such risk if infringed party successfully proves probable grounds for belief that:</p> <p>(a) a danger exists that the enforcement of infringed party’s claims will be made impossible or rather difficult; (b) the adoption of a provisional measure is necessary to prevent damage difficult to repair or (c) detriment sustained by the alleged infringer, should the injunction prove to be unfounded,</p>	<p>detriment to be sustained by the alleged infringer is merely insignificant.</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>would not exceed detriment sustained by the right holder if no injunction were issued.</p> <p>Ad c): No. The law does not provide this expressly. Although it does provide that the courts are able to order any measure they deem adequate to the purpose of securing holders legitimate interests, we are not aware of any court cases finding such measure proportional in relation to non-monetary claims (as claims deriving from IP rights infringements, with the exception of damage claims, are).</p> <p>However, this does not apply to monetary claims.</p> <p>Ad d): Yes.</p> <p>Ad e): IPA and CRRA state that an order that information on the origin and distribution networks of the goods or services, which infringe a right under those acts, shall be provided by the alleged infringer upon a justified request of the opposite party. In regard to</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		bank, financial and commercial documents, such an order is limited to commercial scale.	
Spain	<p>Yes.</p> <p>Seizure and preventive escrow while the precautionary measures and the civil procedure is carried forward until judgement.</p>	<p>Yes, as precautionary measures.</p> <p>Ad a): Yes. Not defined by the legislation. According to Spanish jurisprudence it is understood as “acts of commerce”, acts which imply benefit purpose.</p> <p>Ad b): Yes and no. It must not be demonstrated in a specific way, but it is usual to be pleaded or to produce initial evidences.</p> <p>Ad c): No. Not expressly foreseen by the law with regards to block bank accounts, but it is foreseen that the amounts and incomes deposited at bank accounts are seized.</p> <p>Ad d): Yes. Investigation of the assets during the enforcement of the judgement issued by the court.</p> <p>Ad e): Not specifically.</p>	<p>Yes.</p> <p>Not the rightholder but the infringement: no granting of raids based on anonymous complaints, no granting of raids based on information provided by rightholder, no granting of raids based on reports of private investigators, etc.</p>
Sweden	<p>Yes.</p>	<p>Yes.</p> <p>Ad a): No.</p>	<p>No.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>Ad b): Yes.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): Both seizures and information orders are decided after a proportionality assessment made by the court. In its assessment the court considers the parties' respective interests (damage to the right holder vs. damage to the infringer). Security shall be lodged by the applicant.</p>	
United Kingdom	Yes.	<p>Yes.</p> <p>Ad a): No. In practice, however, a court is required to have regard to issues of proportionality in relation to the granting of seizure orders, and it might be that “non-commercial scale” infringement would not warrant the making of such an order. This though depends on what is considered to be “non-commercial” infringement: for example, a third party may seek to publish highly confidential information belonging to an intellectual property right</p>	<p>No. The applicant is required to satisfy a court, on the balance of probabilities, that it is the intellectual property right owner. In relation to copyright, there are presumptions of copyright ownership contained in Sections 104-106 of the Copyright, Designs and Patents Act 1988 that assist an applicant. In relation to trade mark and patent rights, the fact of registration is taken to be evidence that the applicant is the owner of the industrial property right.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>owner. This might be a “non-commercial” act in the sense that the third party is not seeking to make any financial gain from this disclosure, but the impact of the disclosure might be highly damaging for the intellectual property right owner. In such a situation it is likely that such an order would be granted. The term “commercial scale”, as applied to the perceived benefit to the infringer, is not in itself a limiting factor.</p> <p>Ad b): No. The issue is not whether the injured party will be able to recover damages, but whether it can be adequately compensated by damages. In the example referred to in (a) above, the third party may have plenty of money, but the harm to the intellectual property right owner may go well beyond pure monetary loss.</p> <p>Ad c): Yes.</p> <p>Ad d): Yes.</p> <p>Ad e): There are no significant</p>	<p>There are no evidential “difficulties” <i>per se</i> with providing evidence that shows that an intellectual property right infringement is imminent, but courts will apply a high standard in respect of the quality of that evidence. Evidence is admissible in civil proceedings in a variety of formats, and there are helpful procedural provisions that mean that the amount of evidence required in a case can be streamlined.</p> <p>In passing, it is worth noting that one of the unintended effects of data privacy legislation is that it can operate in a manner that restricts the exchange of useful data between parties that would otherwise help in the apprehension and detection of intellectual property right infringement.</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>procedural obstacles as such to obtaining freezing and search and seizure orders, nor to obtaining bank, financial or commercial documents. The relevant processes are, overall, transparent, fair and expeditious: that is not to say that they are taxing for an applicant (they are), but this is an important safeguard.</p> <p>There is, however, a highly significant practical obstacle in that the cost of litigation is prohibitively high in such cases, and often beyond the means of all but the most cash-rich of intellectual property right owners. This is a major concern as it is increasingly clear that attorneys' fees, even in relatively simple cases, are acting as a <i>de facto</i> barrier to justice.</p>	
<p>QUESTION</p>	<p>b) May a provisional/precautionary measure be issued/ordered without the defendant having been heard, (for example, where any delay would cause irreparable harm to</p>	<p>c) Please briefly explain the level of difficulty and level of costs required to obtain any of these provisional/precautionary measures, <i>i.e.</i> is it a time-consuming and costly exercise? What costs are likely to be</p>	<p>d) Must the courts rule on an application for any of these provisional/precautionary measures within a certain timeframe? Yes/No</p> <p>e) Do provisional/precautionary</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>the rightholder)? Yes/No</p> <p>If you answered ‘yes’, please briefly explain whether there are any conditions that an applicant must satisfy before the court will issue/order a provisional/precautionary measure without the defendant being heard.</p>	<p>incurred in executing these measures – for example, does the applicant have to pay costs of a lawyer, bailiff or expert to supervise the process?</p>	<p>measures cease to have effect if the applicant does not commence proceedings (leading to a decision on the merits of the case) against the alleged infringer within a reasonable period of time? Yes/No</p> <p>If you answered ‘yes’, how quickly must an applicant commence proceedings after a court grants any provisional/precautionary measures?</p>
<p>Austria</p>	<p>Yes. The interlocutory injunction may be granted without the defendant being heard if it is unlikely that the right holder will be able to recover damages.</p>	<p>In practice it may be difficult to obtain provisional/precautionary measures because some courts are still reluctant to grant such measures to right holders. Securing such measures is usually time-consuming and costly. The right holder has to carry the costs of the lawyer, bailiff and/or expert to supervise the process and typically a guarantee in order to compensate the defendant if he suffers damages from the measure and the court of appeal decides that the measures should not have been granted in the first place. Even if</p>	<p>Ad d): No.</p> <p>Ad e): Yes. The court stipulates the time period within which the applicant must commence proceedings.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>the right holder is not required to lodge a guarantee, the right holder must compensate the defendant for all damages suffered due to an unjustified measure.</p>	
<p>Belgium</p>	<p>Yes. In the framework of ex parte summary proceedings, the applicant must prove an “absolute necessity” (i.e. that an interim injunction is very urgent, in the sense that, if the petition for an injunction would be dismissed, the applicant’s rights or interests would be seriously and irretrievably harmed).</p> <p>In the framework of descriptive seizure proceedings, where it is also possible to request the seizure of properties, the procedure is in principle always conducted ex parte. However, the court may decide to hear the adverse party before granting a seizure (see Belgian report on Evidence).</p>	<p>Ex parte injunctions, when granted, can be obtained very quickly (typically between 2 and 8 days). In intra partes proceedings, a decision can usually be expected within 3 weeks to 3 months. The applicant has to pay the costs of a lawyer and a bailiff. Costs likely to be incurred can be estimated at approximately 1,500 € for ex parte requests and 5,000 € for intra parte requests. The costs can, however, be higher for more complex cases. Part of the lawyer’s costs and the entirety of the bailiff’s costs are ultimately refundable by the losing party.</p>	<p>Ad d): According to the Judicial Code, the courts are supposed to hand down their judgments within a time period of maximum 1 month. However, there is no penalty if they don’t. When the timeframe exceeds 3 months, the judges must give reasons for the delay to their hierarchy. Disciplinary measures may ultimately ensue (but we as lawyers have no view on this).</p> <p>Ad e): In the framework of proceedings based on Article 584 of the Judicial Code (i.e. summary proceedings), Article 1369ter of the Judicial Code specifies that precautionary measures must be revoked or cease their effect if the applicant does not commence proceedings, within a reasonable timeframe, normally set by the court in its order or, in the absence of any precision by the court, within 20</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			<p>working days or 31 calendar days (whatever term is the longest).</p> <p>In the framework of descriptive seizure proceedings, Article 1369bis/9 of the Judicial Code specifies that a formal claim on the merits must be filed by the deadline set by the court or, in the absence of such a deadline, within 20 working days or 31 calendar days of the filing of the expert's report (whatever term is the longest). If no such claim on the merits has been filed by this deadline, the court order automatically ceases to have effect.</p>
<p>Bulgaria</p>	<p>Yes. There are no such conditions. According to the applicable Bulgarian law the participation of the defendant is <i>ex lege</i> excluded from such proceedings.</p>	<p>The related proceedings are not time-consuming but certainly expensive. According to the provisions of the applicable Bulgarian law courts must decide on the allowance of a requested measure within a day. If the requested measure is allowed then another request should be filed with the bailiff to proceed with the execution of the court order. The bailiff should undertake the</p>	<p>Ad d): Yes.</p> <p>Ad e): Yes.</p> <p>The usual periods of time provided by Bulgarian courts for applicants to commence proceedings are two weeks or one month after the court has granted the respective measures.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>necessary actions within three days since being notified by the applicant.</p> <p>As the proceedings involve participation of both courts and bailiffs and should develop within a limited timeframe to be effective, it is recommendable that the right holder authorizes a lawyer to represent him in such proceedings. It should be also noted that apart from the attorney fees, state fees are also due.</p>	
<p>Cyprus</p>	<p>Yes.</p> <p>It is possible to obtain an interim injunction on an ex parte basis. However, the Respondent will be given the chance to appear before the Court and contest such ex-parte Order, within a short period of time.</p> <p>An application for the issue of an interim order on an ex parte basis will only be issued if the Court is convinced of the urgency of the matter and the applicant demonstrates that there is a serious question to be tried at the hearing, that there is a probability</p>	<p>In order to be successful, the Applicant must act as speedily as possible, as delay can seriously prejudice the chances of success. An ex parte order can be issued within a few days from the date of filing the relevant application. If the Respondent decides to contest the ex parte Order, it may take up to 3 months approximately before a final decision is issued by the Court on whether the ex parte order should become absolute or not (during which period the ex parte order will of course remain in force). Costs in such cases are usually determined on an hourly</p>	<p>Ad d): No.</p> <p>Ad e): It is only possible to apply for interim relief within the context of an existing main legal action.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage .	basis, pursuant to a relevant agreement between the lawyer and the client, plus out of pocket expenses	
Czech Republic	Yes. No specific rules regarding this.	The most significant duty of the applicant is the duty to stand bail (security) for potential damage caused to the defendant by the provisional measure (please see below).	Ad d): Yes. Ad e): Yes. The deadline for commencing of the proceedings is set out by the court in the provisional measure order (usually 30 days). In the provisional measure order, the court can also determine the fixed time for which the measure will have effect.
Denmark	Yes. An infringement must be imminent and/or there is a risk that evidence will be destroyed if the process is delayed by hearing the defendant.	It is time consuming and costly. Since the court system is involved, pleadings must be submitted, and judges and lawyers need to be involved in the process. If expert's assistance is needed, the applicant must in most cases lodge security for his or her salary.	Ad d): No. Ad e): Yes, unless the alleged infringers waives his rights of such proceedings Normally, within two weeks.
Estonia	Yes. The court may decide the request for interim injunction without	The state fee for filing interim injunction is 450 Estonian kroons (29 EUR). It is not necessary to	Ad d): Yes. Pursuant to the law, the court has

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>hearing the defendant (i.e. ex parte), however, if this is clearly reasonable, the court may first hear the defendant. In practice, the court usually grants the defendant an opportunity to express its opinion on the request for interim injunction.</p> <p>In order to secure defendants interests, courts tend to make the interim injunction dependant on providing security (i.e. payment of certain amount of money to the account administered by the court) by the plaintiff in order to compensate possible damage to be caused to the defendant. If the security is not lodged by the due date set by the court, the court shall not grant an interim injunction. According to our experience, providing security is quite general practice in case of intellectual property infringement disputes in Estonia.</p>	<p>use the help of a lawyer to draft and submit the request for interim injunction to the court. However, when the plaintiff uses the help of a lawyer, it has to pay the costs of the lawyer as well. The costs on the lawyer are dependant on different law firms' hourly rates.</p>	<p>to decide on the interim injunction within one working day from the request by the plaintiff (§ 384 of the Code of Civil Procedure). In practice the court usually grants the defendant an opportunity to express its opinion on the request for interim injunction. In case the court decides to hear the defendant, the defendant will be given a day or two to prepare the response. Therefore in practice the court decides on issuing interim injunction within a week or two.</p> <p>Ad e): Yes.</p> <p>According to the Code of Civil Procedure (§ 382) it is possible to request for preliminary injunction before the statement of claim is filed. The court may issue interim injunction before the actual claim is filed, however, the request for interim injunction has to include reasoning why it is not possible to file the actual claim and request for interim injunction at the same time. As a general rule sufficient reason can relate to the time issue – the plaintiff has just</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			<p>learned about the infringement and needs more time to prepare the claim as it concerns complicated issues. <i>If the court decides to issue interim injunction before the claim is filed, the court has to set a deadline for filing the actual claim.</i> The deadline has to be within one (1) month. If the actual claim is not filed within the deadline given by the court, the court will cancel interim injunction.</p>
<p>Finland</p>	<p>Yes. If there is a possibility that the purpose of the precautionary measures might be compromised/endangered, the court may, on the request of the applicant, issue an interim order on precautionary measures without reserving the opposing party the opportunity to be heard.</p>	<p>Obtaining provisional / precautionary measures can be time-consuming, because the applicant is primarily responsible for all costs arising from the application and its enforcement. If the main proceedings continue for a long period of time (which is usual in patent litigations), the time that the applicant's security/funds is/are committed is rather long, even though it is likely from the very beginning that the applicant has the actual right. The costs consist of legal fees and bailiff's fees.</p>	<p>Ad d): No. Note: However, the Court must urgently try the matter. Ad e): Yes. Within one month of when the decision to issue an order has become final.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

<p>France</p>	<p>Yes. This procedure can only be requested “sur requête” (i.e. petition) and must remain exceptional. It must be justified by the fact that any delay would cause irreparable damage to the rightholder.</p>	<p>The applicant has to pay a lawyer firstly to grant these measures and secondly to plead before the court. Moreover the summons must be done by a bailiff.</p>	<p>Ad d): No. Ad e): Yes. The applicant must commence proceedings 20 working days or 31 calendar days after the court has granted measures in order to stop an infringement (ex: article R716-1 of the IP Code concerning trademarks).</p>
<p>Germany</p>	<p>Yes. The defendant will not be heard if the applicant claims and furnishes prima facie evidence that the possible counter-arguments of the defendant are not valid.</p>	<p><i>Level of difficulty</i> The level of difficulty depends on the obviousness of the infringement. If the infringement is obvious the injunction can be obtained within hours or a few days with limited effort. Even though it is highly recommended to hire an attorney, this is not required by law. However if the matter is extremely complex and the court cannot render a decision without involving external experts, the court may refuse to grant an injunction. This may happen especially in patent infringement cases. If the provisional measure is meant</p>	<p>Ad d): No, but courts usually decide within three days to 2 weeks. Ad e): No, but the court will request the applicant to commence proceedings if the defendant asks the court to do so. In such a case the injunction will be waived if the applicant does not file a claim that leads to a decision on the merits of the case within a time limit set by and at discretion of the court. The applicant is forced to commence proceedings only upon application by the defendant (see 2.4d). Upon such an application, the court sets a time</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>to secure claims for reimbursement of damages resulting from the infringement, the detailed specification of the amount of damages can cause problems (i.e. in case there is no or only incomplete disclosure by the defendant, it is hard to prove the number of infringements, or it is not clear whether the court will accept the way damages have been calculated by the applicant). However, specification of the amount of damages is absolutely necessary because the extent of the provisional measure of the court depends upon it.</p> <p><i>Level of costs</i></p> <p>The applicant will have to bear the costs for the lawyer, the bailiff and – where needed – an external expert. However if the applicant prevails he can apply for an enforceable cost order in which the court decides that the infringer has to reimburse the costs. The amount of the costs is low compared to sometimes long- lasting law suits. They depend upon the value of the claim. The value of the claim is determined by court and will</p>	<p>limit at its discretion (at least 2 weeks, usually 3-4 weeks).</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		usually be 1/3 or 1/2 of the amount of the damages. Please note that lawyer costs can only be reimbursed based on this statutory fee system even if the lawyer is paid per hour.	
Greece	<p>Yes.</p> <p>In cases of extreme urgency or imminent danger of incurring irreparable harm (article 687 CCP).</p>	<p>The hearing of a request for a temporary restraining order (TRO) usually takes place within 3-4 weeks after filing of the TRO request and the decision is issued immediately. The hearing of a preliminary injunction (PI) action usually takes place within 5-6 months after filing of the PI action and the decision is issued within the following 2 months. In executing provisional/precautionary measures the IP owner has to pay the costs of a lawyer and court bailiff to supervise the process.</p>	<p>Ad d): No.</p> <p>Ad e): Yes.</p> <p>The applicant must file a main infringement action within thirty calendar days as of the publication of the PI decision (article 693 CCP).</p>
Hungary	<p>Yes.</p> <p>Paragraph (12) Section 95 of Act XI of 1997 on the protection of trademarks and geographical indications, Paragraph (12) Section 104 of Act XXXIII of 1995 on the</p>	<p>The right holder shall prove that the trademark is existing, and the plaintiff is the rightholder thereof. The rightholder shall pay the stamp duty of the procedure in the</p>	<p>Ad d): Yes, 15 days.</p> <p>Ad e): Yes. At the request of the defendant, the court shall annul its decision on provisional measures requested before initiation of a court action, if the</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

protection of patents and
Paragraph 11 Section 94 of Act LXXVI of 1999 on copyright.

	protection of patents and Paragraph 11 Section 94 of Act LXXVI of 1999 on copyright.	amount of EUR 50 per trademark and per defendant. The court usually orders the injunction within 40-70 days (instead of the 15 days required by the law). Lawyer's fees are between EUR 800 and 4000 depending on the rate of the law firm involved. The fee of the bailiff is between EUR 300 and 600.	IP rightholder has not instituted, within 15 days court proceedings for IP right infringement with respect to the claim enforced by the provisional measures. The court shall decide on the request for annulling the provisional measures within 15 days from the filing of the request at the latest.
Ireland			Ad d): Ad e):
Italy	Yes.	According to Article 130 IIPC, as amended by Legislative Decree No. 131/2010 (which came into force on 2 September 2010), ex parte interlocutory measures may be granted "In cases of special urgency, and in particular when a delay could cause an irreparable damage to the right holder or when the previous service of the application on the defendant may hinder the enforcement of the precautionary measures or	Ad d): The Italian Civil Courts enjoy <i>excellent levels of efficiency</i> in responding to infringement for what concerns the use of <i>emergency measures</i> (injunction, seizure, order to withdraw goods from the market) and instruments of judicial investigation of evidence (description order, normally granted ex parte). This has been especially the case since 2003 when 12 Specialized IP Divisions

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>seizure”. Of course the right holder must also show prima facie evidence of both the validity and the violation of its IPR, as requested for the grant of any interlocutory measure.</p>	<p>were set up at 12 Courts and Courts of Appeal, with exclusive competence to decide on civil actions relating to trade marks, patents, copyright and unfair competition linked to these rights and their violation. Said emergency measures are examined and granted with great speed (normally a few days, in the case of measures protecting trade marks, copyright and designs, very often granted ex parte; a few months in the case of measures protecting patents, this period including a technical expertise stage). Use of these measures very often means that <i>first instance proceedings may be avoided</i> as extra-judicial agreements can be reached based on acceptance by the infringer of the court order and on payment by the infringer of a sum agreed by the parties.</p> <p>The cost for the Court activity and the bailiff are very low (less than 500 €), and also the costs for the Court expert, if appointed, are usually low, since his/her activity is compensated on the basis of a very low tariff (usually less than</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			<p>5,000 €). Of course the applicant must anticipate also the costs for its lawyer. In trademark, design and copyright matters According to Article 130 IIPC,as amended by Legislative Decree No. 131/2010 (which came into force on 2 September 2010), ex parte interlocutory measures may be granted “In cases of special urgency, and in particular when a delay could cause an irreparable damage to the right holder or when the previous service of the application on the defendant may hinder the enforcement of the precautionary measures or seizure”. Of course the right holder must also show prima facie evidence of both the validity and the violation of its IPR, as requested for the grant of any interlocutory measure.</p> <p>Ad e): The proceedings on the merits are to be commenced within a period to be determined by the Judge ordering the measures, or, in the absence of such determination, within a period not exceeding 20 working</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			<p>days or 31 calendar days, whichever is the longer. However according to Article 131 IPC and Article 162-bis ICP, the preliminary injunction granted is considered as an anticipation of the outcome of the proceedings on the merits and therefore the decision granting such an injunction may become final, if both the parties refrain from bringing the proceedings on the merits.</p>
<p>Latvia</p>	<p>Yes.</p> <p>The applicant would have to prove that the delay in issuing the provisional/precautionary measure may cause an irreparable damage to the right holder/owner.</p>	<p>The cost of filing an application for provisional/precautionary measures is 0.5 % of the amount of the claim, but not less than LVL 50 (approx. EUR 71). The court may order the applicant to secure the defendant against losses by means of a deposit with a bailiff or other guarantee.</p> <p>The enforcement procedure of the court order is prescribed by law. All procedures and practicalities are performed by the bailiff. Costs of bailiff's assistance differ depending of the amount of work</p>	<p>Ad d): Yes.</p> <p>Ad e): Yes.</p> <p>In its decision on issuing the provisional/precautionary measure the court indicates the deadline by which the applicant has to file the main claim, and this deadline may not exceed 30 days.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>involved and the approach of the particular bailiff. At the lower end, bailiff's fees might be about 100 EUR but could easily reach about 1000 EUR.</p> <p>Involvement of a qualified lawyer is not obligatory.</p>	
Lithuania	<p>Yes.</p> <p>Provisional measures and measures for preserving evidence may be applied without the defendant having been notified or heard, in particular where any delay would cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed. Where provisional measures are applied without the defendant having been notified and heard, the defendant must be given notice without delay, i.e. after the execution of such measures at the latest. At the request of the parties, including a right to be heard, the provisional measures may be reviewed with a view to deciding, within a reasonable period after the notification of application of the measures, whether such measures must be modified, revoked or</p>	<p>Due to the concrete provisional/precautionary measure, the applicant shall pay the costs of courts bailiff and/or expert. After the case is finished, such expenses of the applicant shall be recovered by the infringer.</p>	<p>Ad d): Yes.</p> <p>Ad e): Yes.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	confirmed.		
Luxembourg	Yes. The applicant must provide evidence in order to satisfy the court with a sufficient degree of certainty (i.e. <i>prima facie</i>) that the applicant is the right holder and that its right is being infringed, or that such infringement is imminent. The applicant must also prove that any delay would cause him irreparable harm.	The applicant will have to pay the costs of a lawyer and a bailiff. Costs likely to be incurred can be estimated to 4000 to 8000 € depending on the difficulty of the case.	Ad d): No. Ad e): Yes. According to Article 29 § 1 of the IPR Enforcement Law, the time period for filing a formal claim is set by the court in its order. If the court does not set a time period, the formal claim has to be filed within one month of the sending of the expert's report.
Malta			Ad d): Ad e):
Netherlands			Ad d): Ad e):
Poland	Yes. A provisional/precautionary measure is, as a rule, issued ex-parte. Participation of a defendant is obligatory only when an injunction is based on the Industrial Property Law Act of 30 June 2000 in a situation of an injunction relates to the applicant's right to obtain	Every matter shall be treated separately and may cause different levels of difficulty and various levels of cost. In general, it is quite difficult to obtain the provisional/precautionary measures, as the courts are not fully familiar with this type of matters. The court fee is not high and amounts to an equivalent of 25	Ad d): Yes. These deadlines are seldom observed by the courts, though. Ad e): Yes. Whenever the court grants provisional/precautionary measures, it also indicates the time limit for the applicant to commence proceedings, which

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	information that is crucial to assert the claims from the infringer or other parties.	euro per claim, payable upon submission of a relevant application to the court. However, cooperation with a competent and qualified legal counsel is seen as crucial to obtain the aforementioned measures due to the overall complexity of IP rights, which may greatly	may not exceed two weeks.
Portugal	Yes. Applicant must demonstrate that any delay may cause irreversible damages or may cause severe difficulties in obtain evidences of the infringement (in relation to measures to obtain or preserve evidences). In practical terms it is not easy to obtain a provisional / precautionary measure without the defendant having been heard.	The costs are supported by the applicant but they could make part of the final claim against the alleged infringer.	Ad d): No, this is one of the main problems. Ad e): Yes. In 30 days or less if the provisional/precautionary measure were issued/ordered without the defendant having been heard.
Romania	Yes. The plaintiff must ask the Court to pronounce the solution without summoning the defendant. Although such a proceeding is stipulated by the law, in practice, the courts summon all the parties in the file.	They may be lengthy proceedings (in one case the trial on the merits of the case was finished before the first instance court prior to us managing to obtain the evidence – it took more than one year). In another case, in which we represent the defendant, the seizure of the products took several	Ad d): No. Ad e): No.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>months and the appeal against the seizure order took almost a year and it has not been solved yet). This is especially difficult in connection with internet infringements. The involved costs may be: attorneys' fees for the court proceedings and the bailiff costs for the enforcement proceeding, if necessary (in case the infringer does not comply with the court's order). It is not mandatory to hire an attorney. Also, if an enforcement proceeding is started, the bailiff may recover his fee directly from the infringer or may ask the injured party to pay an initial fee, also recoverable from the infringer.</p>	
Slovakia	Yes.	<p>The Court is obliged to issue decision in these matters till 30 days from delivery of the Writ to the Court. Basic court fee is 33 EUR it is paid by applicant and in the case of success it is paid by defendant. Applicant has to pay costs of a lawyer, bailiff or expert to supervise the process too and in the case of success these costs are paid by defendant. In some cases the Court can ask right holder to</p>	<p>Ad d): Yes. Ad e): Yes.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		pay some security payment for the case that right holder shall not be successful. Amount of this payment shall be stated by the Court.	
Slovenia	Yes. Additionally to general requirements, the applicant needs to show probable grounds for belief that there is a danger that any delay of granting the order might cause him/her damage difficult to repair.	We are not able to give the exact answer to this question, since level of costs as well as level of difficulty depend significantly upon the circumstances of a respective case, in particular, value of the disputed matter, level of difficulty pertaining to production of evidence and costs necessary to give effect to imposed measures. All the costs relating to exercise and supervision of imposed measures are borne by the applicant and can be reimbursed later if those measures are justified in subsequent procedures.	Ad d): No. There is no time limit for ruling on application for provisional/precautionary measures set out by law. However, both IPA and CRRA stipulate that ruling on application for such measures constitutes expeditious procedure therefore the court should rule on the matter as soon as possible. Ad e): Yes. Appropriate time period, in which the applicant is required to institute respective proceedings is left to court's discretion and is set out in each particular decision on provisional measure(s). Usually, that is 30 days.
Spain	Yes. Prove / plead especial urgency or prove / plead that if defendant is	-	Ad d): No. Ad e): Yes.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	previously informed the success of the precautionary measure will be jeopardized.		20 days after notification of the court resolution that accepts the execution of precautionary measures.
Sweden	<p>Yes.</p> <p>The applicant must show that it has a reason worthy of consideration (Sw. beaktansvärd anledning) for a provisional/precautionary measure to be ordered without the defendant being heard, e.g. that there is a risk that such communication triggers the defendant to remove, destroy or distort objects or documents of importance for the investigation. Further, the applicant's interest of the measure must be weighed against the disadvantages that such an immediate measure might entail for the defendant. When weighing the interests against each other, any irreparable damage for the defendant is of material importance.</p>	<p>As regards the level of difficulty, it depends on what kind of measure is requested and what evidence the applicant puts forward. Many requests for provisional/precautionary measures require that the applicant shows probable cause (Sw. sannolika skäl) for the action. However, the level of proof varies depending on the measure requested. There is no legal requirement to engage a lawyer, bailiff or expert to supervise the process, but in practical reality legal advice (e.g. from a lawyer) is often necessary to properly present one's case to the court. In addition, an applicant almost always has to lodge security to obtain a provisional measure. The amount of the security is set based on a discretionary evaluation, depending on circumstances such as the scope of the infringement, the plausibility of the infringement and the damage the defendant may</p>	<p>Ad d): Yes.</p> <p>There is no specified time frame. However, courts have an obligation to handle such requests with urgency.</p> <p>Ad e): Yes.</p> <p>An applicant must commence proceedings within one month after the court's issue/order.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>be caused. In general, obtaining a provisional/precautionary measure is not time-consuming – courts have an obligation to handle such requests with urgency.</p>	
<p>United Kingdom</p>	<p>Yes. Whilst the grounds upon which an <i>ex parte</i> measure can be ordered are the same as those generally applied to applications for provisional measures, the court will take into account the seriousness of the situation, and, in particular, will require evidence as to why the respondent has not been advised of the application.</p>	<p>Obtaining an <i>ex parte</i> order for a provisional measure is expensive, procedurally complicated and time-consuming: however, the court processes can take place extremely quickly, meaning that, for example, a search and seizure order can be applied for, obtained and executed within a matter of hours.</p> <p>To obtain a provisional measure, an application must be made to a court. The application must explain, in some detail, the nature of the complaint and why a provisional measure is warranted, this evidence being provided in the form of (often lengthy) witness statements and/or affidavits. The applicant must show that it can compensate the intended defendant if it turns out that it was wrong to apply for the measure, and will usually be required to show that it is in a position to commence legal</p>	<p>Ad d): No, but in practice they are dealt with extremely quickly.</p> <p>Ad e): Yes: the timeframe for issuing proceedings is set by the court when granting a provisional measure. It usually requires proceedings to be commenced as soon as is practicable.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>proceedings as soon as the application for a provisional order has been made.</p> <p>In the vast majority of cases, this requires the assistance of legal counsel.</p> <p>Once obtained, an order will need to be executed by counsel, supported by sufficient personnel to ensure that the order is executed effectively. Experts are frequently required, for example in connection with the obtaining and preserving of data held on computers.</p> <p>A search and seizure order requires the presence of a “supervising solicitor”, who will be an independent solicitor enlisted by the applicant as, in effect, a “referee” for the process of execution.</p> <p>The costs of this process are significant: even a relatively straightforward set of facts can result in legal costs running to several tens of thousands of pounds.</p>	
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

<p>QUESTION</p>	<p>f) Must the applicant lodge adequate security or an equivalent assurance before the courts will grant any provisional/precautionary measures? (This may be intended to ensure alleged infringers who turn out to be innocent are compensated for any prejudice suffered.) Yes/No</p> <p>If you answered ‘yes’, please briefly provide details of how security is calculated and the circumstances in which this is required.</p>	<p>g) Can the courts order an applicant to provide the defendant appropriate compensation for any injury caused by any provisional/precautionary measures that have been granted? Yes/No</p> <p>If you answered ‘yes’, please briefly explain the circumstances in which such an order can be made, (for example, where the measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an IP right).</p>	<p>h) Are the legal provisions related to these provisional/precautionary measures often relied upon by right holders and have right holders generally been successful in using them in practice? Yes/No</p> <p>If you answered ‘no’, please briefly explain why not.</p> <p>i) What are the sanctions (if any) for failing to comply with a provisional/precautionary measure?</p>
<p>Austria</p>	<p>Yes. The applicant is liable for all damages suffered by the defendant that result from an unjustified measure. Additionally, a court may order the applicant to lodge a guarantee in order to compensate the defendant if he suffers damages from the measure and the court of appeal decides</p>	<p>Yes. The applicant is liable for all damages suffered by the defendant if the measure is ultimately revoked by the court of appeals.</p>	<p>Ad h): Yes. Ad i): The right holder may apply to the court to enforce the measure and to impose fines upon the non-compliant defendant.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>that the measures should not have been granted in the first place.</p>		
<p>Belgium</p>	<p>This is not an absolute requirement. The courts have a discretionary power in this respect.</p> <p>In the framework of proceedings based on Article 584 of the Judicial Code or in the framework of descriptive seizure proceedings, the court can order the applicant to lodge adequate security or an equivalent assurance in order to compensate any possible damage suffered by the defendant. The amount, as the case may be, is then set by the courts depending on the circumstances and the likely prejudice that would be suffered by the infringer as a result of the injunction. The case law is very variable in this regard.</p>	<p>Yes.</p> <p>In the framework of proceedings based on Article 584 of the Judicial Code or in the framework of descriptive seizure proceedings, if the measures are revoked or are no longer applicable due to an act or omission by the applicant or due to it being found that no infringement or threat of infringement has occurred, the court may order the applicant to pay the defendant appropriate compensation for any injury caused by the measures. This compensation can only be ordered if requested by the defendant.</p> <p>It is unclear, however, whether this new provision (Article 1369ter (3) of the Judicial Code) implementing the Directive is subject to the general principles of tort law, in which case the defendant, to be successful, would have to demonstrate that the plaintiff has committed a ‘fault’ (within the meaning of general tort law) when</p>	<p>Ad h): On average, yes. This is particularly true for the so-called “descriptive seizure” (Articles 1369bis of the Judicial Code, in line with Article 8 of the Directive). By contrast, summary proceedings (Article 584 of the Judicial Code) have become quite rare in IP-related matters since the so-called ‘proceedings-like-in-summary-proceedings’ (which are proceedings on the merits but handled like in summary proceedings and leading to a judgment which is immediately enforceable notwithstanding any appeal) have become available for all IP rights.</p> <p>However, there are still cases in which it would be more appropriate to seek an injunction in the framework of ex parte summary proceedings. Such petitions are almost never granted, which is unfortunate.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>requesting an injunction, e.g. because he should have known or expected that the judge on the merits would ultimately conclude that there was infringement); or whether this Article provides for a so-called ‘objective liability’ (meaning that the defendant would not have to prove that the plaintiff has been negligent or reckless). The legal authors take different views on this issue, which is currently pending before the Brussels Commercial Court (hearing in September 2010). To our knowledge, there are no precedents on this issue in the case law yet.</p>	<p>Ad i): When a recurring penalty payment has been imposed in the judgment, the plaintiff may enforce it.</p>
<p>Bulgaria</p>	<p>Yes. According to the provisions of the applicable Bulgarian legislation a security may not be required when the request is supported by convincing written evidence. Nevertheless in most cases at the court’s sole discretion a security is required even if such convincing evidence is presented. The amount of the security is usually commensurate to the amount of</p>	<p>Yes. Provided that the measures requested by the applicant (right holder) are revoked or lapse or it is subsequently found that there has been no infringement or threat of infringement of an IP right, then the defendant is entitled to seek compensation for any injury caused by the imposed measures. The applicant can withdraw the security only with the consent of</p>	<p>Ad h): No. Our practice indicates that right holders do not rely often on these measures because they are expensive and require a significant security to be lodged for a long period of time as civil litigation is generally slow and time-consuming. Ad i): The sanction for failing to comply with such a measure is a</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	damage recovery that is to be claimed by the applicant within the proceedings on the merits or to the trade value of the respective goods.	the defendant.	fine of EUR 100. A repeat failure is sanctioned with a fine of EUR 200.
Cyprus	Yes. If an interim order is obtained as against a Defendant, the Plaintiff will be required to put up a security for an amount to be determined by the Court in each case depending on the scale of the legal action in question. This may be either in the form of an actual bond for the relevant amount or, alternatively, in the form of a letter of guarantee.	Yes. If the Respondent proves that he has suffered damage due to an interim order that has been issued unjustifiably, he may claim damages up to the amount of the security which has been put up by the Applicant. Usually, the Respondent will have to file a fresh legal action to prove his loss.	Ad h): Yes. Ad i): Failure to comply entitles the applicant to file proceedings for contempt of Court, punishable by a fine and/or imprisonment.
Czech Republic	Yes. The amount of security is CZK 50,000 (approx. EUR 2,000) in commercial matters and CZK 10,000 in other matters. It is always required.	Yes. There aren't practical experiences with this but theoretically such compensation could be available for the defendant where it is subsequently found that there has been no infringement or threat of infringement of an IP right.	Ad h): Yes. Ad i): The most important sanction is that any legal act made by the subject of the provisional measure (infringer or a third person affected by the measure), by which the duty imposed by the provisional measure is breached, is invalid.
Denmark	Yes. The calculation of security is	Yes, in accordance with the general principles of damages	Ad h): Yes, many right holders use these legal provisions as their

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>based on the discretion of the court with regard to e.g. the potential harm of the injunction on the alleged infringer, the risk of trade secrets being exposed etc. Only if the applicant establishes substantial evidence showing that infringements are taking place, can the applicant be exempted from lodging a security.</p>	<p>based on civil liability (requires evidence of an economical loss etc.).</p> <p>The courts can provide compensation in all cases presumed that the conditions are fulfilled, cf. above.</p>	<p>primary enforcement remedy.</p> <p>Ad i): Criminal penalties and compensation/damages to right holders.</p>
Estonia	<p>Yes.</p> <p>In order to secure defendants interests, courts tend to make the interim injunction dependant on providing security (<i>i.e</i> payment of certain amount of money to the account administered by the court) by the plaintiff in order to compensate possible damage to be caused to the defendant. If the security is not lodged by the due date set by the court, the court shall not grant an interim injunction. According to our experience, providing security is quite general practice in case of intellectual property infringement disputes in Estonia.</p>	<p>Yes.</p> <p>According to the Code of Civil Procedure (§ 391), the party who applied for interim injunction shall compensate the damage caused to the other party by the interim injunction, if:</p> <ul style="list-style-type: none"> - a court judgment for refusal to satisfy the action enters into force, or the proceeding in the matter is terminated on any other grounds except approval of the compromise (settlement) of parties; - it becomes evident that no claim for interim injunction or no cause for interim injunction existed at the time of issuing the interim injunction; - a ruling on interim injunction 	<p>Ad h): No.</p> <p>There is no prior court practice in Estonia on filing a claim requesting defendant to restrain from infringement before actual infringement, due to imminent infringement of IP right (threat). Thus no conclusions could be made on this point.</p> <p>Ad i): If the defendant does not refrain from certain transaction or from performing certain acts, a plaintiff will make a proposal to a court to impose a fine on the defendant. The maximum amount of the fine is, however, only up to 30 000 Estonian kroons (2 900 EUR) but this can be imposed several times.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>which was made before the action was filed has been revoked due to the fact that the action was not filed on time.</p> <p>If the defendant does not file an action requesting compensation for damage caused by the interim injunction within two months as of the time specified in previous clauses, the deposit for compensation for damage, if it is requested by the court upon granting an interim injunction, will be returned to plaintiff.</p>	
<p>Finland</p>	<p>Yes.</p> <p>The security lodged by the applicant shall cover all the damages and costs incurred by the defendant. Only if the applicant is incapable of lodging the security and his/her right is deemed manifestly well-founded, the court may on application release the applicant from this duty. The required value of the lodged security is set by the bailiff.</p>	<p>Yes.</p> <p>If an infringement action is ultimately rejected the defendant can claim compensation for all damages and costs incurred. Whether the costs have been caused due to negligence or intent by applicant is irrelevant when deciding the amount of the compensation.</p>	<p>Ad h): No.</p> <p>It seems that the applicant's burden of proof is set to a rather high level considering the probability and grounds they need to bring forth. The appropriate legislation and case law still does not pay enough attention to the specific nature and problems related to IPRs and the overall business environment relevant to these rights.</p> <p>Ad i): The Court can order a conditional fine.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

<p>France</p>	<p>Yes. The courts may ask the applicant to give security in order to compensate the alleged infringer if judges consider him as innocent or if the applicant does not commence proceedings in time.</p> <p>The security is mostly required when the provisional measures are granted without the defendant being heard, but it is not automatic.</p>	<p>Yes. The defendant may ask for compensation on the basis of article 1382 of the Civil Code for what is called “procedure abusive” (Unfair Proceedings).</p>	<p>Ad h): This is still the beginning in France. Right holders do not systematically use these provisional measures.</p> <p>Ad i): Either the court decides the defendant have to pay an amount of money for each day of delay in enforcing the measures or there is no sanction for failing to comply with the measures.</p>
<p>Germany</p>	<p>No. But the court can include a provision in the provisional injunction that the applicant may not enforce the injunction before he/she has lodged a security. The amount is at the discretion of the court. The security is meant to cover potential damage claims that defendant could raise in case it turns out that he/she is innocent and that the enforcement of the injunction has caused damages. Respective claims can be raised based on § 945 ZPO.</p>	<p>Yes, according to § 945 ZPO.</p> <p>Compensation will be granted where</p> <ul style="list-style-type: none"> - the injunction turns out to have been unjustified right from the beginning, or - the court waives the measures due to an omission by the applicant (e.g. where the applicant did not commence proceedings which led to a decision based on the merits of the case within the set time limit). <p>- Please note that such compensation claim does not</p>	<p>Ad h): Yes.</p> <p>Ad i): Upon application of the applicant, the court can impose monetary sanctions up to EUR 250.000 or personal arrest for up to 6 months. In case the court imposes a fine and the infringer does not pay the fine, the court can impose a personal arrest as well.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		require proof that the applicant has acted negligently or even with intent.	
Greece	<p>No. In theory, such possibility exists, but it has been used only in very exceptional circumstances by the courts.</p> <p>It is in the absolute discretion of the Court to rule (i) whether any security or assurance will be imposed upon the applicant and (ii) the amount of such security/assurance.</p>	<p>Yes.</p> <p>The circumstances under which such an order can be made are (article 703 CCP):</p> <ul style="list-style-type: none"> ▪ the main action (filed following the granting of a PI order) is finally rejected on the merits; and ▪ the applicant was aware, or by gross negligence unaware, that the IP right he/she asserted in PI proceedings did not actually exist (at the time of filing). 	<p>Ad h): In fact, PI proceedings are the most effective legal action in Greece.</p> <p>Ad i): Compulsory enforcement of the PI order with the assistance of a court bailiff (articles 904-1054 CCP).</p>
Hungary	<p>Yes.</p> <p>It depends on the discretion of the court.</p>	<p>No, this can be a claim in a separate lawsuit.</p>	<p>Ad h): Yes.</p> <p>Ad i): A penalty shall be imposed on the infringer. The amount of the penalty is defined by the court in an amount between EUR 35 and 700 per day.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

Ireland			Ad h):
Italy	No.	Yes. Pursuant to Article 96 ICCP, compensation for damages caused to the defendant may be provided when the applicant was in fault in applying for the preliminary measures, in particular, when he/she was aware of circumstances from which it clearly resulted that his/her IPR was null or the contested defendant's activity was not infringing the same.	Ad i): Ad h): Yes. Ad i): An injunction is usually backed up by a civil fine for each violation, to be paid to the holder of the violated right. Violation of a right is also subject to a criminal sanction (a prison term of up to three years or a fine) under Article 388 Criminal Code.
Latvia	No. The applicant does not have to lodge security before the court grants the provisional/precautionary measure, however, in its decision the court may order the applicant to lodge adequate security in order to secure the defendant. If the decision has been adopted without the defendant having been heard, provision of security is a precondition for execution. There are no guidelines as to how the amount of security must be	Yes. Damages can be ordered when the applicant has failed to submit a claim within the deadline set by the court, and when the applicant has been unsuccessful as to the merits of the case.	Ad h): Yes. Ad i): The provisional/precautionary measures are executed by the bailiff. Any activity against the execution of the court's order may lead to criminal liability.

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	calculated. The courts make a <i>prima facie</i> assessment of the likely amount of loss. The amount of security does not appear to be a function of the likelihood of success in the main proceedings.		
Lithuania	Yes. It is the competence of the court to decide whether adequate security or an equivalent assurance shall be presented. There are no general rules on calculating of such security. The amount shall be calculated following proves on possible prejudice provided by both parties.	Yes. These are the cases when the claim of the applicant is rejected.	Ad h): Yes. Ad i): In such cases the court may grant a penalty up to 1000 Litas (app. 289.62 EUR), also the applicant may ask for the compensation of the damages due to the fail to comply with a provisional/precautionary measure.
Luxembourg	No. The judge may ask the applicant to lodge adequate security but it is not an obligation. In practice, such security is very rarely ordered by the courts.	Yes. According to article 29 § 3 of the IPR Enforcement Law, the court can order the applicant to provide the defendant appropriate compensation where the measures are revoked or lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an IP right.	Ad h): Yes. Ad i): The IPR Enforcement Law does not provide any sanctions for failing to comply with a provisional/precautionary measure. However, in practice, the applicant always asks the judge to impose a penalty payment in order to ensure compliance.
Malta			Ad h):

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			Ad i):
Netherlands			Ad h): Ad i):
Poland	<p>No. However, the court may order the applicant to lodge adequate security. There are no provisions which govern how the security is calculated. It is up to the defendant to prove the level of likely damage, and up to the court to verify such evidence and take a decision.</p>	<p>Yes. The court may demand that the applicant grant the defendant appropriate compensation whenever: (i) the applicant failed to file the statement of claim in the time-limit prescribed by the court, (ii) the applicant withdrew the statement of claim or the motion for injunction, (iii) the statement of claim was returned or rejected by the court, (iv) the action or motion was dismissed by the court, (v) the proceeding has been remitted, or (vi) the applicant filed the statement of claim based on a different claim or which is based on the proper, but not the entire claim. The defendant must file a motion for compensation from the applicant within a period of one year from the day that the damage has emerged.</p>	<p>Ad h): Yes. Ad i): Whenever the defendant fails to comply with a provisional/precautionary measure, the court may impose a fine upon the applicant's motion and once the court has heard both parties.</p>
Portugal	<p>Yes. The applicant could be responsible for any damages caused to defendant if there was no infringement or eminent</p>	<p>Yes. In all of the above mention cases the applicant should compensate the defendant.</p>	<p>Ad h): Yes. Ad i): Besides the civil compensation and penalties</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	infringement.		failing to comply with, a provisional / precautionary measure is a public crime.
Romania	A very important note is the fact that the “transposition” of the Directive was realized by a translation of its provisions, without further measures which would have ensured the effectiveness of those measures. Therefore, all the provisions of the Ordinance no 100/2005, including those relating to provisional and precautionary measures are general and vague and sometimes difficult to interpret and to corroborate with the general procedure law – Romanian Civil Procedure Code. So, for keeping under seal proceeding, the Romanian Civil proceeding Code stipulates the obligation of lodging an assurance (50% of the claimed value), since the special provisions in the IP field do not stipulate such an assurance. The lack of clear legal provisions, the lack of case law give the possibility of interpretation of the provisions. For example, in one case when we represented the	Yes. Indeed, the above/mentioned examples are relevant explanations.	Ad h): Yes. Ad i): The bailiff (during the enforcement proceeding) or the TM owner may initiate a distinct trial for obliging the debtor to pay a civil fine. As we previously mentioned, Although the art. 582 from the Romanian Civil Procedure Code stipulates the civil fine as a penalty for the debtor (in our case – the infringer), in practice this penalty is an inefficient measure, as it represents a very small amount (between 20 (almost 3.5 Eur) and 50 lei (almost 9 Eur) per day of delay).

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	defendant, the court admitted our claim and obliged the claimant (keeping under seal proceeding) to pay an assurance.		
Slovakia	No.	Yes. This situation is where the measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an IP right	Ad h): No. Courts are afraid to decide in such matters from various reasons. Such reasons are e.g.: - The Court thinks that defendant must be heard in the process and in this process of provisional/precautionary measure is not place to do it. - The Court thinks that right holder respected situation for 14 days and there is too late to issue provisional/precautionary measure. Ad i): There are not any sanctions.
Slovenia	Lodging of adequate security does not apply as a general rule. EIA provides that there are two cases, in which lodging of security is relevant: if the claimant fails to prove	Yes. Opposite party (alleged infringer, intermediary) shall have the right to claim compensation for damage caused by provisional/precautionary measure,	Ad h): Yes provisional/precautionary measures often relied upon by right holders No, right holders have generally

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>likelihood of infringement or existence of danger that infringement will occur, the court can still grant a temporary injunction if the claimant lodges a security (for damage that the opposite party might sustain) in the amount and in time period set out by the court</p> <p>even if likelihood of infringement or existence of danger that infringement will occur was proven, the court may (on opposite party's motion) require that the applicant lodges a security.</p> <p>Security is calculated or defined as the value sufficient to cover damage that might be unduly sustained by the opposite party. We have found no case law that would indicate exact level of security.</p>	<p>if it is subsequently found that the provisional/precautionary measure has been unfounded (when it is established in subsequent proceedings that no breach had occurred) or that the holder of the right has not justified it (did not institute the appropriate proceedings).</p>	<p>been unsuccessful.</p> <p>*Publicly available case law provides variety of cases of right holders applying for provisional/precautionary measures.</p> <p>**According to publically available case law, applications for such measures are mostly unsuccessful, main reason being that right holders seldom succeed to prove that requirements are met, namely existence of danger of irreparable damage, risk that they might be precluded to successfully exercise claims deriving from IP rights infringement(s) or the fact that threatening damage exceeds damage to be sustained by the alleged infringer, shall provisional/precautionary measures be imposed or that damage sustained by alleged infringer due to the injunction would be insignificant.</p> <p>Ad i): Sanctions for non-compliance with</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			provisional/precautionary measures depend on the obligation imposed. Orders on such measures usually contain provisions, threatening to impose more severe measures in case that primarily imposed obligations were breached (e.g. obligation to withdraw infringing goods from the market is replaced by confiscation of the same goods). Also, in practice orders on provisional/precautionary measures usually impose monetary penalty for cases of non-compliance.
Spain	Yes. Always. Totally discretionary, at Judge's own criteria.	Yes. Compensation is possible if precautionary measures previously granted <i>inaudita altera parte</i> were revoked, and damages caused are proven.	Ad h): Yes. Ad i): The own penalties foreseen by the law for breach of judiciary decisions (fines and possibility of criminal procedures based on the crime established by the Criminal Code for breach of fulfilment of judiciary resolutions – “desobediencia a la autoridad judicial”).
Sweden	Yes. As a main rule, which is almost always applied, a suitable security shall be lodged. Security is not	Yes. Such order can be issued when the applicant fails to pursue the case or when it is established that the	Ad h): Yes, such measures are often relied upon by right holders. It is not possible to say if right

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>required, e.g. when the applicant is not able to provide security and has shown exceptional reasons for its request. As suitable security, a bank guarantee is often provided. Regarding the calculation of the security, no specific rules or guidelines are set forth in Swedish legislation. Thus, the lodging of security constitutes a discretionary evaluation, depending on circumstances such as the scope of the infringement, the plausibility of the infringement and the damage the defendant may be caused.</p>	<p>applicant did not have a legitimate claim.</p>	<p>holders in general are successful, as this depends on the type of measure and the circumstances in the individual case. The outcome is e.g. dependent on what proof the applicant can present to the court.</p> <p>Ad i): Conditional fines, and if such fines are not paid, seizure of property. An arrest warrant is also an available sanction.</p>
<p>United Kingdom</p>	<p>Yes. In making an application for a provisional measure, an applicant will generally be required to provide a “cross-undertaking as to damages”, which is, in effect, a promise to make good any losses suffered by the defendant in connection with the execution of the provisional measures, should it become apparent that the applicant was mistaken in asking for a provisional measure.</p> <p>The manner in which this cross-undertaking is effected will vary</p>	<p>Yes. This is what the cross-undertaking referred to in (f) above is for. If, for example, the applicant failed, when making its application, to provide “full and frank” disclosure of all material facts (which must include facts that would suggest that a provisional measure should not be granted), that could result in the provisional measure being set aside. In this situation, the applicant could be required to make good all losses suffered by the defendant (for example,</p>	<p>Ad h): Yes, but note the comments regarding costs above.</p> <p>Ad i): Failure to comply with a provisional measure will constitute a contempt of court, which may result in defendant being fined or imprisoned.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>from case to case, although the most common format is for an applicant to provide a bank guarantee. It rarely involves the making of a cash payment, although a defendant can request that this level of security be provided if it has bona fide concerns over the applicant's solvency, or if the applicant is from overseas.</p>	<p>business interruption losses).</p> <p>In the clothing example referred to in paragraph 1.1(c) above, such a failure might be in relation to facts surrounding failed negotiations between the parties regarding a trade mark licence deal, or a dispute over territorial extent of licence.</p>	
<p>QUESTION</p>	<p>3.1. Where a court makes a final decision on the merits of a case finding an infringement of an IP right, does the law provide that the court may issue an injunction aimed at prohibiting the infringement from continuing against:</p> <p>a) the infringer? <input type="checkbox"/> Yes/No</p> <p>b) intermediaries whose services are used by a third party to infringe an IP right? <input type="checkbox"/> Yes/No</p> <p>If you answered 'yes', please briefly explain if there have been obstacles to obtaining such injunctions against intermediaries in your country, such as</p>	<p>3.2. If you have answered 'yes' to question 3.1 ((a) or (b)), please answer the following supplementary questions:</p> <p>a) Can non-compliance with an injunction be made subject to a recurring penalty payment, with a view to ensuring compliance? <input type="checkbox"/> Yes/No</p> <p>If you answered 'yes', please briefly explain the circumstances that are taken into account before such a penalty is imposed.</p> <p>b) What level of costs are required in order to obtain such an injunction? What costs are likely to be incurred in executing such an</p>	<p>4.1. What legal costs of the rightholder can be recovered from the defendant in respect of the application for</p> <p>(i) provisional/precautionary measures and</p> <p>(ii) an injunction issued following a decision on the merits of the case?</p> <p>(E.g., lawyers' fees, fees of technical counsel (such as trade mark or patent attorneys, fees of judicial experts appointed by the courts, etc.).)</p> <p>What evidence is required to prove these costs? What are the</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>requirements to establish that the intermediary is independently liable for infringement or jointly liable with the third party who uses the services of the intermediary.</p>	<p>injunction – for example does the applicant have to pay costs of a lawyer, bailiff or expert to supervise the process?</p> <p>c) What are the sanctions (if any) for failing to comply with an injunction?</p>	<p>conditions or limitations to such recovery of costs? (E.g. does the rightholder have to prove that the costs were necessary and proportionate for the purpose of obtaining the provisional/precautionary measures or injunction?)</p>
<p>Austria</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes. The intermediary is basically liable under the same conditions as the infringer. However, with regard to copyright infringements the right holder has to send a cease-and-desist letter to an intermediary who is subject to the provisions of Sec 13-17 E-Commerce Act (which implements Art 12 ff of the E-Commerce Directive 2000/31 EC), before he may sue the intermediary. See the above answer to question 2.1.d.</p>	<p>Ad a): No. The right holder must make an application to the court to impose a fine on the defendant with respect to each violation of the interlocutory injunction. This can be repeated until the defendant complies with the injunction.</p> <p>Ad b): The right holder has to carry the costs of the lawyer, bailiff and/or expert to supervise the process, but ultimately receives compensation of its statutory costs if he wins the injunction. This applies also to the enforcement proceedings.</p> <p>Ad c): The right holder may apply</p>	<p>(i) The costs for provisional proceedings initially are borne by the applicant. If the court grants the provisional measures the applicant has to carry the costs on a provisional basis depending on the decision on the merits of the case.</p> <p>(ii) If the applicant wins in the main proceedings, including the injunction, on the merits, the applicant is also entitled to the compensation of the costs for the provisional proceedings.</p> <p>According to the Austrian Act on civil procedure, only the winning party receives compensation for its necessary costs, which include costs according to the Statutory</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>to the court to impose fines upon the non-compliant defendant.</p>	<p>Tariff for Lawyers (which are usually lower than the agreed lawyer's fees) and the costs for technical counsels. If costs are demanded on the basis of the Statutory Tariff, proof of costs is only required for external costs such as private expert opinions and the like. However, the court decides whether any such costs were necessary.</p>
<p>Belgium</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes. To our knowledge, there have been such obstacles to obtaining injunctions against intermediaries, except insofar as ISPs are concerned. Two decisions concerning requests for injunctions against intermediaries have recently been rendered and illustrate the conflict that can occur between, on the one hand, ordering an injunction against intermediaries and, on the other hand, existing data protection (Directives 95/46 and 2002/58) and e-commerce (Directive 2000/31) legislation. Both of the cases which led to these two decisions were initiated</p>	<p>Ad a): Yes. Requests for penalty payments are generally granted provided that they aim to ensure compliance with the injunction. Note that we are aware of a few judgments that have refused to provide for a recurring penalty payment vis-à-vis good-faith intermediaries, considering that there was a priori no reason to anticipate that they would not voluntarily comply with the court order. In such cases, a recurring penalty payment can still be applied for later on, if it appeared that the defendant does refuse to comply with the order.</p> <p>Ad b): The applicant has to pay the costs of a lawyer and, when it</p>	<p>Pursuant to Articles 1022 and 1023 of the Judicial Code, fees charged by technical counsel and court-appointed experts can normally be recovered in full, subject to the necessity principle. The Legal Fees Recovery Act of 21 April 2007 specifies that the winning party can recover its lawyers' fees from the losing party via a fixed deposit system, where the amount deposited depends on the nature and the value of the claims and, in practice, usually does not correspond to the real lawyers' fees which have been disbursed by the claimant. The maximum, minimum and average fees which can be recovered in court cases are laid down in the Royal</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>by the Belgian collecting society Sabam.</p> <p>In the first decision rendered on 28 January 2010 by the Brussels Court of Appeal, Sabam had requested an injunction against the ISP Scarlet Extended SA (“Scarlet”) to stop illegal downloads by making any form of transmission or reception of the electronic files impossible. Earlier in the case, this injunction had been issued against Scarlet by the Court of First Instance of Brussels preventing the transmission or reception of electronic files would be possible without having to process personal data. Indeed, according to the first judge, IP addresses do not constitute personal data. Scarlet had appealed to the Brussels Court of Appeal.</p> <p>The Court of Appeal decided to refer the case for a preliminary ruling to the Court of Justice of the European Union (“CJEU”), considering it necessary in light of the argumentations of the parties. Indeed, Scarlet claimed that the</p>	<p>comes to enforcing the judgment, a bailiff. Costs likely to be incurred to obtain an injunction are very difficult to anticipate, as they depend on the complexity of the case and of the defence arguments that are being raised by the defendant. On average, the costs fluctuate between 7,500 € and 15,000 € and may be much higher in, e.g., complex patent cases. The costs can, however, be higher for more complex cases. Part of the lawyer’s costs and the entirety of the bailiff’s costs are ultimately refundable by the losing party.</p> <p>Ad c): When the judgment has been rendered based on Article 2 of the Proceedings Act (this concerns judgments rendered on the merits, ‘like in summary proceedings’), the defendant who wails to comply with the order may face criminal sanctions (i.e. a fine) (Article 126 (1) of the Proceedings Act).</p> <p>Besides, when a recurring penalty payment has been imposed in the judgment, the plaintiff may</p>	<p>Decree of 26 October 2007.</p> <p>For cases that are not estimable (most of the cases where provisional/precautionary measures are asked), the basic amount that can be recovered by the rightholder is 1.200 EUR (minimum of 75 EUR and maximum of 10.000 EUR).</p> <p>For further details, and concerning the (in)consistency of this regime with the Directive, see Belgian report on Damages.</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>injunction based on Article 87 § 1 of the Copyright Act breached both the European data protection legislation and the European e-commerce Directive, which established a liability exemption for intermediaries (Articles 12 and 15 of Directive 2000/31).</p> <p>The questions referred to the CJEU (Case C-70/10) is as follows:</p> <p>“1. Do Directives 2001/29 and 2004/48, in conjunction with Directives 95/46, 2000/31 and 2002/58, construed in particular in the light of Articles 8 and 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, permit Member States to authorise a national court, before which substantive proceedings have been brought and on the basis merely of a statutory provision stating that: 'They [the national courts] may also issue an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right', to order an Internet Service Provider (ISP)</p>	enforce it.	
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>to introduce, for all its customers, in abstracto and as a preventive measure, exclusively at the cost of that ISP and for an unlimited period, a system for filtering all electronic communications, both incoming and outgoing, passing via its services, in particular those involving the use of peer-to-peer software, in order to identify on its network the sharing of electronic files containing a musical, cinematographic or audio-visual work in respect of which the applicant claims to hold rights, and subsequently to block the transfer of such files, either at the point at which they are requested or at which they are sent?</p> <p>2. If the answer to the question in paragraph 1 is in the affirmative, do those directives require a national court, called upon to give a ruling on an application for an injunction against an intermediary whose services are used by a third party to infringe a copyright, to apply the principle of proportionality when deciding on the effectiveness and dissuasive effect of the measure sought?"</p>		
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>In a second case, Sabam also requested an injunction – on ground of Article 87, §1 of the Copyright Act – against Netlog, a social networking website. On 28 June 2010, the Court of First Instance in Brussels decided to ask a similar preliminary question to the CJEU, but with relation to Netlog’s hosting services.</p> <p>These cases illustrate the obstacles to obtaining injunctions against intermediaries. The data protection legislation is likely to be a significant obstacle defeating applications for injunctions from the copyright holders. At the moment, it remains uncertain whether copyright holders can benefit from the exceptions provided by Article 7 of Directive 95/46. In addition, the data required to fight illegal downloading could be considered “sensitive judicial data” which can only be processed in a limited number of situations. Indeed, the Belgian Data Protection Authority considers that data collected on the Internet for the fight against online copyright infringement is</p>		
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>data related to suspicions of criminal offences. For this reason, it would be judicial data and its processing would therefore be prohibited unless strictly regulated exceptions apply.</p>		
Bulgaria	<p>Ad a): Yes.</p> <p>Ad b): Yes. No consistent court practice.</p>	<p>Ad a): No.</p> <p>Ad b): The execution of an injunction aimed at prohibiting the infringement from continuing does not require the use of a bailiff to be imposed on the infringer. The court directly notifies the infringer what the injunction is and what is necessary to be done by the defendant to be compliant with it.</p> <p>Ad c): The sanction for failing to comply with such a measure is a fine of EUR 100. A repeat failure is sanctioned with a fine of EUR 200.</p>	<p>Right holders can recover from defendants costs incurred for the procedure and the imposition of the provisional/precautionary measures as well as costs incurred during a civil case on the merits, such as:</p> <ul style="list-style-type: none"> - state and attorney fees; - fees of judicial experts appointed by the courts. <p>Right holders are not entitled to recover expenses on experts or trade mark or patent attorneys for expert reports commissioned by the right holders beyond the scope of the court proceedings.</p>
Cyprus	<p>Ad a): Yes.</p> <p>Ad b): Yes. There is not yet any established Cyprus case law on this issue.</p>	<p>Ad a): Yes. We are not aware of a precedent Cyprus case where such a penalty has been imposed. Obviously, the submission of evidence showing that the defendant has failed to comply with the relevant Court</p>	<p>The amount of legal costs to be recovered will be calculated by the Registrar of the Court, in accordance with the Court scale used for the proceedings. In practice, the amount of legal costs awarded is less than the</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>order shall be required.</p> <p>Ad b): Costs in such cases are usually determined on an hourly basis, pursuant to a relevant agreement between the lawyer and the client, plus out of pocket expenses</p> <p>Ad c): Failure to comply entitles the applicant to file proceedings for contempt of Court, punishable by a fine and/or imprisonment.</p>	<p>actual amount of legal costs incurred by the parties in accordance with what has been agreed upon between them and their lawyers.</p>
Czech Republic	<p>Ad a): Yes.</p> <p>Ad b): No. The only way how to reach any final injunction against the intermediary is to include such intermediary into the action/proceedings as the defendant and to win the case against him.</p>	<p>Ad a): No.</p> <p>Ad b): In case non-compliance of the defendant with the injunction imposed by the final decision in merits the execution proceedings should be initiated. The applicant has to pay court fee for the execution proceedings. All the reasonable costs incurred by the applicant should be reimbursed by the non-compliant defendant (infringer).</p> <p>Ad c): Liability for costs of the execution proceedings, liability for</p>	<p>General rule is that any successful party of the litigation has the right against the unsuccessful party for compensation of the costs necessary for the purpose of defending or enforcing of his rights. Especially the following costs are usually compensated:</p> <p>Court fee – fee paid by the applicant in the beginning of the litigation, fully compensated;</p> <p>Attorneys’ fees – calculated on the basis of a special legislation,</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>damage, criminal liability.</p>	<p>usually fully compensated, no need to prove that the fees actually paid to the attorney;</p> <p>Trade marks or patent attorneys' fees – the same as in case of attorneys' fees;</p> <p>Other costs – necessary to prove that the costs were necessary & actually paid (usually the courts are ready to adjudicate compensation for travelling costs, cost for the expert opinions delivered by the successful party).</p>
<p>Denmark</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes. When a right holder can establish, that an intermediary's actions/omissions are unlawful (whether the intermediary is liable or not), it is possible to obtain an injunction.</p> <p>This rule is modified when the intermediary claims exemption from liability based on the provisions in Article 14-16 of the E-Commerce Directive. In such</p>	<p>Ad a): No, only fixed penalties.</p> <p>Ad b): In far most of the cases the applicant must pay the costs of a lawyer, expert witnesses, storage costs etc. in order to carry through an injunction proceeding.</p> <p>Ad c): Criminal penalty and economical damages.</p>	<p>Costs can be awarded to the right holder by the court following an interlocutory procedure and/or a normal/confirmatory court case. The calculation of costs is based on the discretion of the court taking into account the time consumption, the right holders expenses e.g. lawyers fee, costs for expert witnesses, collection of evidence, storage costs, technical counsel etc. However, in practise the court's decision is based on a schematic measure.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>cases the right holder must first apply the notice and take down procedure as provided in those provisions.</p> <p>If the intermediary contributes to the infringements e.g. by operating an illegal website, injunction and liability can be imposed regardless of the exemptions in the E-Commerce Directive.</p> <p>Danish case law on this area is modest. At the moment a case concerning an injunction against a Danish major internet service provider is pending before the Supreme Court and thus, a closer clarification of the state of law in relation to intermediaries operating on the Internet awaits the Supreme Court's decision in late May 2010.</p>		
<p>Estonia</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p> <p>When the court makes a final decision on the merits of a case by finding an infringement of an IP</p>	<p>Ad a): No.</p> <p>Ad b): The costs in order to obtain such injunctions (measures) comprise the cost of the preparation of the main statement of claim. The costs are dependant</p>	<p>The party against whom the court decides shall be bear the procedural expenses. These expenses include the legal costs and extra-judicial costs incurred by a participant in a proceeding. Legal costs are the state fee,</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

<p>right then the court does not apply interim injunction any more to regulate the prohibited acts of the defendant. The court relies on the measures stipulated in the Law of Obligations Act. Law of Obligations Act (§ 1055 (3)) stipulates that if unlawful damage is caused by violation of copyright and related rights or industrial property right, the person whose rights are violated may request that and the court may apply that:</p> <ul style="list-style-type: none"> - the violator and the person whose services a third party used for the purpose of violation of the right be refrained from further violation; - in order to eliminate the violation, reasonable measures be applied with regard to the infringing goods and the materials and implements principally used in the manufacture or creation of those goods, including destruction, recall and definitive removal thereof from the channels of commerce. <p>The requirement that must be satisfied in obtaining the measures</p>	<p>on different law firms' hourly rates.</p> <p>Ad c): If the defendant does not refrain from certain transaction or from performing certain acts, a plaintiff will make a proposal to a court to impose a fine on the defendant. The maximum amount of the fine is, however, only up to 30 000 Estonian kroons (2 900 EUR) but this can be imposed several times.</p> <p>The amount of the fine depends on the behaviour of the defendant and whether the defendant is willing to comply with the court ruling. If the defendant refuses to refrain from certain acts and continues to infringe plaintiff's IP rights, then it is possible to impose the fine in a bigger amount but not exceeding the maximum amount.</p>	<p>security and the costs essential to the proceeding. The procedural expenses of a legal representative of a party shall be reimbursed pursuant to the same procedure as the procedural expenses of a party. In the case an action is satisfied in part, the parties shall bear the procedural expenses in equal parts unless the court divides the procedural expenses in proportion to the extent to which the action was satisfied.</p> <p>In order to prove the costs it is necessary to submit the invoices and evidence that the respective invoices have been paid (payment order). The costs that can be recovered must be reasonable. The fact whether the costs have been reasonable is assessed in accordance with the regulation of the Government of the Republic of Estonia nr 137 from September 4, 2008 "Limit values of the costs of contractual representatives and other advisers to be recovered from other parties to the proceeding". According to that regulation the limit value of the costs that can be recovered in non-proprietary disputes is</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>stipulated in § 1055 (3) of the Law of Obligations Act is that the claim of the plaintiff cannot be vague. It must derive clearly and precisely from the plaintiff's claim what particular acts of the defendant the plaintiff requests to be prohibited. If the plaintiff's claim is vague the court cannot satisfy it.</p>		<p>200 000 Estonian kroons.</p>
<p>Finland</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p> <p>It seems that the intermediary must be held liable in order to receive an injunction order (as in the Supreme Court decision 2002:119); the intermediary may be held liable seemingly only if the primary infringer cannot be held liable for the infringement for some reason (<i>e.g.</i> unknown whereabouts). The argumentation is that if the intermediary would have a more extended liability, a third party, <i>e.g.</i> an operator could be forbidden to enter any future contracts with the primary infringer. This would result in unreasonable harm to the infringer</p>	<p>Ad a): No.</p> <p>Ad b): Yes, the applicant pays for the lawyer (if needed); and bailiff who executes the process.</p> <p>Ad c): The Court can impose a conditional fine.</p>	<p>With regard to (i) provisional/precautionary measures; the party who is finally held liable for the costs is decided on the request of one of the parties in the main proceedings - this includes the fees of the lawyer and the technical counsel etc.</p> <p>With regard to a decision on the merits of the case, if the Court deems that an infringement has occurred and ii) in favour of the claimant, the defendant can also be ruled to bear all reasonable costs incurred by the claimant (<i>i.e.</i> right holder), which includes the fees of the lawyer, technical counsel as well as the use of experts etc. The obligation of the</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>in business practices that were not related to the matter at hand and would therefore severely limit the possibility to conduct just business.</p>		<p>party, who ultimately loses the case, to bear all costs of the opposing party arising from the proceedings presents a general principle in Finnish civil cases and can be found under Chapter 21 Section 1 in the Code of Judicial Procedure (4/1734). Finnish courts apply the principle of free assessment of evidence, which means that the right holder must substantiate that he was incurred such costs (e.g. by a calculation of costs including invoices to lawyers and technical counsels).</p>
<p>France</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad a): Yes.</p> <p>The party has to ask for such a penalty, which is most of the time granted by the judge.</p> <p>Ad b): Obtaining an injunction: no extra cost –just the cost of the lawsuit.</p> <p>Executing an injunction: The party has to return to the judge (who can be either the judge who granted the injunction or the “Juge de l’Exécution”, specialized in the</p>	<p>In both cases, the recovering of the costs is based on the article 700 of the Code of civil procedure: “in all proceedings, the judge will order the party obliged to pay for legal costs or, in default, the losing party, to pay to the other party the amount which he will fix on the basis of the sums outlayed but not included in the legal costs. The judge will take into consideration the rules of equity and the financial condition of the party ordered to pay. He may, even sua</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>execution of injunctions). Therefore, the party has to pay his lawyer again, and often a bailiff to establish that the injunction hasn't been executed.</p> <p>Ad c): Penalties.</p>	<p>sponte, for reasons based on the same considerations, decide that there is no need for such order.”</p>
<p>Germany</p>	<p>Ad a): This is not necessary because any decision on the merits of the case automatically contains such an injunction aimed at the prohibition of further infringement. This injunction can be enforced directly: §§ 883 ff. ZPO.</p> <p>Ad b): Yes, but please note that this would be a “regular injunction” as described in 2.1b. The intermediary must have contributed to the infringement in a way that he can be blamed for it, especially by failing to observe certain duties.</p>	<p>Ad a): Yes. Each act of non-compliance can be sanctioned by court order (up to EUR 250.000 fine or personal arrest for up to 6 months: see 2.4i).</p> <p>Ad b): The level of costs is even lower than for a provisional injunction because only court fees, and usually no further legal fees, are incurred.</p> <p>Ad c): Upon application of the applicant, the court can impose monetary sanctions up to EUR 250.000 or personal arrest for up to 6 months. In case the court imposes a fine and the infringer does not pay the fine, the court can impose a personal arrest as well.</p>	<p>The applicant will have to bear the costs of the lawyer and patent attorney, the bailiff and – where needed – an external expert. However, if the applicant prevails he can apply for an enforceable cost order in which the court decides that the infringer has to reimburse the costs. Concerning court costs and legal fees the amount is set by law and depends upon the value of the case, so there is no further evidence needed (except for possible expenditures such as travel expenses). Concerning the costs of the bailiff, his invoice is usually sufficient (unfortunately some courts tend not to grant the costs of the bailiff that occurred with regard to the seizure of the products. They only grant the costs of the bailiff with regard to</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			the delivery of the injunction). Courts also usually grant the costs of test purchases (with invoices provided as evidence).
Greece	<p>Ad a): Yes.</p> <p>Ad b): Yes. Anyone holding the goods on behalf of, or deriving rights in connection with the goods from, the alleged primary infringer may be enjoined. Objections raised by the third party (particularly if it has not participated in the injunction proceedings) may delay considerably the enforcement of such injunctions.</p>	<p>Ad a): Yes. Circumstances to be taken into account are: the liability of the infringer, the scope of the infringement, the financial status of the infringer, whether the infringement was committed on a commercial scale, etc.</p> <p>Ad b): In executing injunction orders, the IP owner has to pay the costs of a lawyer and court bailiff to supervise the process.</p> <p>Ad c): Compulsory enforcement of the PI order with the assistance of a court bailiff (articles 904-1054 CCP), including a monetary penalty.</p>	<p>The Court usually sets an aggregate amount of legal costs including lawyer fees and court expenses. The calculation/assessment of this amount lies in the Court's discretion. Under a rather long practice of the Greek Courts, legal costs range between 500 € and 2,500 €. Apparently, only a percentage of the actual legal costs incurred by the rights owner are typically recovered. No evidence is required to prove the above aggregate costs.</p>
Hungary	<p>Ad a): Yes.</p> <p>Ad b): Yes. We are not aware of any court practice in connection with</p>	<p>Ad a): Yes. After the first 30 days the penalty is doubled. And the further sum is doubled in every further month, which lapses without the</p>	<p>In the final decision the Court shall order the defendant to reimburse the costs and fees acknowledged by the court to the IP right holder.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	intermediaries.	compliance by the defendant. Ad b): The rightholder shall pay the stamp duty of the procedure in the amount of EUR 100 per trademark and per defendant. Lawyer's fees are between EUR 1600 and 10 000 depending on the rate of the law firm involved. The fee of the bailiff is between EUR 300 and 600. Ad c): A penalty shall be imposed on the infringer. The amount of the penalty is defined by the court in an amount EUR 35 and 700 per day.	As a part of the costs the right holder can claim: - its lawyer's fees incurred, but if the court finds the fee too high, it can reduce it. - its expenses incurred - the amount of stamp duty paid The costs of the IP right holder shall be proved by invoices or contracts.
Ireland	Ad a): Ad b):	Ad a): Ad b): Ad c):	
Italy	Ad a): Yes. Ad b): Yes. The rules already quoted of IIPC and ICL expressly set forth that also the final injunction may be ordered also against any " <i>intermediary whose services are being used by a third party to infringe</i> " an IPR, irrespective of	Ad a): Yes. As already indicated, both interlocutory and final injunctions are usually backed up by a civil fine for each violation, to be paid to the holder of the violated right. Violation of a right is also subject to a criminal sanction (a prison term of up to three years or a fine) under Art. 388 Criminal Code.	In principle, all the relevant costs should be recovered, including lawyers' fees, fees of trade mark or patent attorneys, fees of judicial experts appointed by the Court. However the lawyers costs are determined by the Court according to the official legal tariffs. Since these tariffs are usually lower than the real costs

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>whether the intermediary is independently liable for infringement or not. See again Court of Milan, 16 January 2009, already quoted.</p>	<p>While the criminal sanction requires the intention of the defendant not to comply with the injunction, the civil fine is due on the grounds of the pure non compliance. Usually the fine is provided for each single violation and/or for each day of delay in complying with the orders contained in the (final or interlocutory) decision. See again Court of Milan, 16 January 2009, which ordered the defendant a 100,000.00 € fine for the multiple violations of a preliminary injunctions ascertained at the outcome of the proceedings on the merits.</p> <p>Ad b): The final injunction is issued at the end of the proceedings on the merits. Therefore the costs to be incurred in obtaining the injunction are those related to said proceedings. Usually the injunction does not need an enforcement, since the defendant spontaneously stops the prohibited activity. Otherwise, as previously indicated criminal proceedings may be started, which</p>	<p>(depending on the high specialization that IP matters require), normally just one third/one half of the real costs are recovered.</p>
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>are conducted ex officio.</p> <p>Ad c): As already indicated, these sanctions are: (1) the payment of the civil fine which backed the injunction; and (b) the criminal sanction set forth by Article 388 Criminal Code.</p>	
Latvia	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p> <p>Normally the injunction in such case would be to terminate the intermediary's activities (<i>e.g.</i>, manufacturing, transporting, selling, etc.), which infringe the intellectual property rights of the right holder/owner, and such injunction would directly derive from the court's decision against the defendant. Liability – whatever its form – of the intermediary, however, needs to be proven.</p>	<p>Ad a): Yes.</p> <p>The penalty may be imposed upon the defendant in a situation when the court's order requires the defendant to perform certain activities, which can be performed only by the defendant, and the defendant has not performed them. The amount of the penalty is LVL 250 (approx. EUR 357) or LVL 500 (approx. EUR 714) if the activity has not been performed after infliction of the first penalty.</p> <p>Ad b): Bailiff's fees will be incurred. As the amount, see answer 2.4.(c) above.</p> <p>Ad c): Intentional failure to comply with an injunction is a criminal offence. In relation to the</p>	<p>Costs of the following items may be recovered in the end of the main proceedings: state duty, chancery duty, litigation costs, which are: attorneys fees, costs related to attendance of the court (transportation, accommodation fees, etc.), and costs related to gathering evidence.</p> <p>The state duty and chancery duty can be recovered in full amounts (if the claim is satisfied in full amount). The litigation costs can be recovered in the following amounts: attorney fees up to 5 % from the total sum of the claim, costs related to attendance of the court – in the amounts as specified by the Cabinet of Ministers, costs related to gathering of evidence –</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>possible penalties, please see answer 3.2.(a) above.</p>	<p>in their actual amount (in certain cases).</p> <p>The amount of costs should be proven with respective supporting documents, usually –invoices and bank statements. During the case, the parties may claim the recovery of the abovementioned costs and in its final judgement the court, among other decisions, also orders the recovery of the costs. The claim on costs may be submitted with the court also later, but doing so is less convenient.</p> <p>Necessity and proportionality of costs is checked implicitly by verifying if adequate supporting documents – sufficiently detailed and understandable invoices as well as bank statements – have been adduced.</p>
<p>Lithuania</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes. No obstacles have been noticed.</p>	<p>Ad a): No.</p> <p>Ad b): After the decision of the court satisfying the claim, all costs shall be recovered by the infringer.</p> <p>Ad c): The court bailiff executing the decision and/or ruling of the</p>	<p>The legal costs that can be recovered from the defendant are the following:</p> <ul style="list-style-type: none"> - The costs for witnesses, experts, translators, also costs related to examination the of the place on infringement; - Costs on search of the infringer;

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>court may impose a penalty for failing to comply with an injunction.</p>	<ul style="list-style-type: none"> - Costs related to the delivery of procedural documentation; - Costs related to the execution of the decision of the court; - Costs for the lawyers; - other necessary and grounded costs. <p>The costs for the professional help of the attorneys at law are, upon the discretion of the courts, limited to the recommended sums established by the Government.</p>
<p>Luxembourg</p>	<p>Ad a): Yes, for all IPR.</p> <p>Ad b): Yes, for all IPR.</p> <p>To our knowledge there have been no obstacles to obtaining such injunctions.</p>	<p>Ad a): Yes.</p> <p>Such a penalty payment will almost always be granted if the applicant applies for it in order to ensure compliance with the injunction.</p> <p>Ad b): The applicant will have to pay the cost of a lawyer and a bailiff. The level of costs required in order to obtain such an injunction would typically be between 5,000 and 10,000 € in the purview of so-called ‘cease-and-desist proceedings’ (i.e. for getting an injunction only; no claim for</p>	<p>In both cases, the right holder can recover lawyers’ fees and fees of technical counsel <i>other than court-appointed experts</i> but only to a certain amount determined <i>ex aequo et bono</i> by the court. The court will determine the amount that is proportionate to the claim. This amount is normally between 1000 and 5000 € which in most cases will not cover all the legal costs incurred.</p> <p>Concerning fees of judicial experts appointed by the courts, these will normally have to be paid <i>in full</i> by the infringer.</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		damages). Ad c): The IPR Enforcement Law does not provide any sanctions for failing to comply with a provisional/precautionary measure except the penalty payment which is very effective though.	
Malta	Ad a): Ad b):	Ad a): Ad b): Ad c):	
Netherlands	Ad a): Ad b):	Ad a): Ad b): Ad c):	
Poland	Ad a): Yes. Ad b): Yes. When a court makes a final judgement on the merits of a case finding an infringement of an IP right, the court may issue an injunction aimed at prohibiting the infringement from continuing against the infringer. Courts may (however, we are not able to	Ad a): Yes. Whenever the defendant fails to comply with an injunction, the court may impose a fine upon the applicant's motion after hearing both parties. Moreover, on the basis of the applicant's motion, the court may oblige the defendant to indemnify the applicant against its losses.	In its final judgement the court should determine the costs of injunction proceedings regarding the application for provisional/precautionary measures or application for an injunction issued following a decision on the merits of the case. The defendant shall bear the costs of the proceedings whenever the applicant prevails. Only the costs

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>advise whether that has occurred) issue such injunctions against certain intermediaries, such as: abetter (person who persuades the primary infringer), accessory (person who helps the primary infringer) or a person who took advantage of the damage caused. Thus, “guilty” intermediaries can be liable. (Please also see the discussion contained in point 2.1.d. above).</p>	<p>Ad b): Every matter shall be treated separately and may cause different levels of difficulty and various levels of costs. A court fee amounts to 5% of the value of the claim and is payable upon submission of a relevant application to the court. In IP cases specialised lawyers are usually engaged due to the complexity of the subject matter. However, legal assistance of a qualified lawyer is not obligatory under the provisions of law. If the applicant prevails in the lawsuit, the defendant bears the costs of the process.</p> <p>Ad c): Please see point a. above.</p>	<p>that were “indispensable” to protection of the applicant’s rights shall be adjudicated. They include: all court fees, fees of the court–appointed expert, as well as the cost of a legal representation, which is determined by judges at a very low level.</p>
<p>Portugal</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p> <p>No knowledge of such cases.</p>	<p>Ad a): Yes.</p> <p>There are no express rules about it but, in general, it will depend of the type of injunction and the risk of defendant failing to comply.</p> <p>Ad b): The costs are supported by the applicant but they could make part of the final claim against the</p>	<p>In general all the legal costs (including lawyers) and other cost incurred with the protection of IP rights and detection of IP infringements can be recovered. Nevertheless, we have not enough experience about this particular issue, due to the delay of the courts in taking final decisions. Actually there are just a few cases with final decisions were the “new law” was</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>alleged infringer.</p> <p>Ad c): Besides the civil compensation and penalties failing to comply with an injunction is a public crime.</p>	<p>applicable.</p>
<p>Romania</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p>	<p>Ad a): Yes.</p> <p>The bailiff (during the enforcement proceeding) or the TM owner may initiate a distinct trial for obliging the debtor to pay a civil fine. As we mentioned before, the penalty is inefficient in practice.</p> <p>Ad b): The involved costs may be: attorneys' fees for the court proceedings and bailiff costs for enforcement proceeding, if necessary (in case the infringer does not comply with the court's order). It is not mandatory to hire an attorney. Also, if an enforcement proceeding is started, the bailiff may recover his fee directly from the infringer or may ask the injured party to pay an initial fee, also recoverable from the infringer.</p> <p>Concerning the sanctions for</p>	<p>-</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>failing to comply with an injunction, theoretically there is the civil fine, but it is inefficient in practice.</p> <p>Ad c): -</p>	
Slovakia	<p>Ad a): No.</p> <p>Ad b): No.</p>	<p>Ad a): Yes.</p> <p>In the case that execution process was opened but it is according to the special law – it is not automatic.</p> <p>Ad b): Yes, applicant has to pay costs of a lawyer, bailiff or expert to supervise the process.</p> <p>Ad c): No real sanctions.</p>	<p>All these cost may be obtained from defendant under condition that the Court shall decide that costs must be paid to the right holder.</p> <p>Bills of the paid court fees, invoices of the expert and lawyers fees according to the special law.</p> <p>The only limitation is the Court decision – the court can reduce payment of these costs to the 0 based on the Court’s will.</p>
Slovenia	<p>Ad a): Yes.</p> <p>Ad b): *Not many cases in publicly available case law relate to this question, however, it is evident that not any kind of usage of right holder’s right constitutes infringement. In order to constitute infringement, use of</p>	<p>Ad a): Yes.</p> <p>Should the court (by means of injunction) impose upon the infringer an obligation to refrain from any action that would cause harm to the right holder or some other obligation, significance of respective obligation in particular and all the other circumstances of</p>	<p>Regarding the costs, general provisions of the Civil Procedure Act (Official Journal No. 96/2004) relating to cost apply. Accordingly, when successful, right holder is entitled to reimbursement of necessary costs, which includes attorney fees and remuneration to other</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>allegedly infringed right must be directly linked to goods or services used for commercial purposes by the alleged infringer and as a general rule, infringement must be of a commercial nature. This is especially the case in relation to trademark infringements. Following that, interpretation of “imminent infringement” by the courts is rather strict.</p>	<p>the case shall be taken into account.</p> <p>Ad b): We are not able to give the exact answer to this question, since level of costs as well as level of difficulty depend significantly upon the circumstances of a respective case, in particular, value of the disputed matter, level of difficulty pertaining to production of evidence and costs necessary to give effect to imposed measures.</p> <p>All the costs relating to exercise and supervision of imposed measures are borne by the applicant and can be reimbursed later if those measures are justified in subsequent procedures.</p> <p>Ad c): Provisions on sanctions for the case of failing to comply with injunction, as a general rule, form an integral part of injunction itself. Most often such sanctions include monetary penalty or imposition of secondary measure that is more encumbering for the alleged infringer.</p>	<p>persons entitled to it by the law (e.g. experts – if such form of evidence is necessary).</p>
<p>Spain</p>	<p>Ad a): Yes. The judgement itself may include an order to immediately stop the illegal</p>	<p>Ad a): Yes. Same as answer to question 2.4 i).</p>	<p>No. All costs mentioned in the</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>activity as well as the order of not incurring in the same infringement in the future.</p> <p>Ad b): Yes. Same as previous answer.</p>	<p>Ad b): Lawyers fees, solicitors fees, judicial taxes, computer expert's fees and bond for precautionary measures if requested by court.</p> <p>Ad c): Same as answer to question 2.4 i).</p>	<p>question might be recovered, but always within the limits established according to criteria set by bar or other professional associations, and according to the total economic amount of the procedure (namely, the total valuation of damages claimed). In order to recover such costs, it is only required to produce copy of the invoices of the professional involved that comply with such criteria.</p>
<p>Sweden</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes.</p> <p>Under Swedish law, a court can issue an injunction aimed at prohibiting infringements from continuing against an intermediary if it is considered aiding and abetting the infringement. The mere provision of the specific intermediary service does not suffice to establish liability. However, if the intermediary has been aware of the infringement without taking any action, the intermediary may be held responsible. Establishing</p>	<p>Ad a): Yes.</p> <p>A recurring penalty can be ordered if considered appropriate under the circumstances of the individual case. A recurring penalty has been considered appropriate in situations where, on the basis of the defendant's prior behaviour and the conditions of the specific market, there has been reason to believe that a defendant would disregard the court's decision several times.</p> <p>Ad b): Depending on the complexity of the case, costs vary. There is no legal requirement to</p>	<p>The general rule is that the successful party is reimbursed by the losing party for all its costs relating to the litigation, including fees for technical counsel, etc. However, costs are only reimbursed to the extent the court considers them reasonable. The costs shall be substantiated by a statement of costs (Sw. kostnadsräkning).</p> <p>It should be noted that the court will not make a decision on costs in relation to provisional/precautionary measures until a final decision is reached in the case, and interest is</p>

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

	<p>that the intermediary had knowledge of the infringement may constitute an obstacle.</p>	<p>engage a lawyer, bailiff or expert to supervise the process, but in practical reality legal advice (e.g. from a lawyer) is often necessary to properly present one's case to the court.</p> <p>Ad c): Conditional fines, and if the fines are not paid, seizure of property. Arrest warrant is also an available sanction.</p>	<p>only awarded from the day of the final decision.</p>
<p>United Kingdom</p>	<p>Ad a): Yes.</p> <p>Ad b): Yes. The principal procedural obstacle to such applications is that the applicant will generally be responsible for the respondent's costs (including legal fees). Given the high level of legal fees in the United Kingdom, this can act as a significant deterrent to the making of such applications.</p>	<p>Ad a): Yes, (although this is not common). There are no general circumstances in which such an order would be made.</p> <p>Ad b): The costs will primarily be the costs of the litigation (including trial). These will be significant (although they can be recovered from the unsuccessful party).</p> <p>Ad c): As 2.4(i) above.</p>	<p>The recovery of costs is wholly within the jurisdiction of the court, although the default position is that a successful party will usually be entitled to recover its costs from the unsuccessful party.</p> <p>Part 44 CPR has detailed rules on the recovery of costs. Some of the broad principles in relation to costs that the court will have regard to include:</p> <ul style="list-style-type: none"> - the conduct of all the parties; - whether a party has succeeded on part of his case, even if he has not been wholly successful; - conduct before, as well as during, the proceedings - whether it was reasonable for a

INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

		<p>party to raise, pursue or contest a particular allegation or issue;</p> <ul style="list-style-type: none"> - the manner in which a party has pursued or defended his case or a particular allegation or issue; and - whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim. <p>The court is also required to consider:</p> <ul style="list-style-type: none"> - whether the costs were proportionately and reasonably incurred; - whether the costs were proportionate and reasonable in amount: - the efforts made, if any, before and during the proceedings in order to try to resolve the dispute; - the amount or value of any money or property involved; - the importance of the matter to all the parties; - the particular complexity of the matter or the difficulty or novelty of the questions raised; - the skill, effort, specialised knowledge and responsibility involved; - the time spent on the case; and the place where and the
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INJUNCTIONS IN INTELLECTUAL PROPERTY RIGHTS

			circumstances in which work or any part of it was done.
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