Intellectual Property Crime Case-Law of National Courts (3rd edition)

January 2024

Criminal justice across borders

This document was prepared by the Intellectual Property Crime (IPC) Project at the European Union Agency for Criminal Justice Cooperation (Eurojust). The IPC Project is funded by the European Union Intellectual Property Office (EUIPO) and executed by Eurojust under the terms agreed in the Service Level Agreement signed between the two organisations in March 2021. The project aims to enhance cooperation and deliver an efficient and coherent response to intellectual property crimes at EU level.

Empact (European Multidisciplinary Platform Against Criminal Threats) is a security initiative within the EU Policy Cycle driven by EU Member States to identify, prioritise and address threats posed by serious and organised international crime.

This summary of national judicial decisions is created within the Empact framework for criminal law professionals dedicated to the fight against intellectual property crime in the EU. IPC is one of the crime areas addressed within the Empact priorities of the 2022–2025 EU Policy Cycle. It falls under the priority 'Fraud, economic and financial crimes' aimed 'to combat and disrupt criminal networks and criminal individual entrepreneurs involved in IP crime and in the production, sale or distribution (physical and online) of counterfeit goods or currencies, with a specific focus on goods harmful to consumers' health and safety, to the environment and to the EU economy'.

DISCLAIMER

The information contained in this document is based on research on national judgements available in national public domains. The original source of each judgement is hyperlinked and annexed to the present document. Neither Eurojust nor the EUIPO can be held responsible for any inaccuracies in the text of the judgments.

In case of any errors or inconsistencies in the document, please notify the IPC Project at IPCrime@eurojust.europa.eu.

Compliance with personal data protection requirements in publicly available judgments is a responsibility for the national authorities that upload the judgements onto the national judicial databases. Eurojust and the EUIPO shall not be held liable for any personal data protection breach arising from the information provided in the selected judgements.

Table of contents

Executive summary

This document, which is updated on an annual basis, provides an overview of the case-law of national courts with regard to the application of national legislations regulating intellectual property crime (IPC).

An IPC is an infringement of intellectual property (IP) rights, such as counterfeiting commodities or pirating content. Counterfeiting involves the manufacturing, sale or distribution of goods without the IP right owner's authorisation. The criminal offence of counterfeiting goods infringes intellectual property rights such as trademarks, designs, patents or geographical indications. Piracy, on the other hand, concerns the unauthorised use and exploitation of a copyright-protected work or copies thereof without the authorisation of the right holder.

The case-law overview contains summaries of national judgments, categorised in accordance with the main legal issues they address. Each summary includes a set of keywords reflecting the main issues of the case and references to the relevant legal provisions. Each summary also includes a list of the applicable legislation. The full text of each article in the original language, along with its English translation, can be accessed by clicking on the hyperlink provided.

This compilation of national judgment summaries aims to highlight the most common issues dealt with by national courts in the area of IPC. In so doing, it helps to identify common practices and assist practitioners in applying relevant legal provisions during IPC investigations and prosecutions and making optimal use of existing resources and best practices stemming from existing IPC cases.

The summaries of the provided judgments are not exhaustive. They should be used only as a reference and a supplementary tool for practitioners. Links to the full texts of the judgments are provided in the summaries and are also annexed to this document.

This document is the third version of the analysis of case-law of national courts prepared within the framework of the IPC Project. The first and second versions can be accessed here.

The IPC Project was launched in 2021 as a coordinated effort between the European Union Intellectual Property Office (EUIPO) and the European Union Agency for Criminal Justice Cooperation (Eurojust) to enhance cooperation and deliver an efficient and coherent response to intellectual property crimes at the EU level. The project aims to provide comparative analyses of national jurisdictions, promote uniform practices and raise awareness of IPC across the EU.

Have an interesting case on intellectual property crime that you think should be included in this document?

Contact us at
IPCrime@eurojust.europa.eu

Czech Republic – Case No 5 Tdo 1381/2020

In this case, the Supreme Court considered whether the lower instance court correctly determined the facts related to the sale of counterfeit vehicle rims to establish the elements of the crimes of infringement of industrial property rights (Article 269 of the Criminal Code) and infringement of trademarks (Article 268 of the Criminal Code).

Country	Czech Republic
Case No	5 Tdo 1381/2020
Keywords	Trademark, industrial property, design, labelling, applicable law, intent
Parties	The accused v Prosecutor General's Office
Date	28.4.2021
Court name	Czech Supreme Court
Instance	Third instance
EU norms	110(1) of the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs
Other norms	Articles 268 and 260 of the Criminal Code, Article 23 of the Act of Industrial Designs
Fine/damages	**Sentence/fine** The First Instance Court ordered the confiscation of counterfeit goods, which was confirmed by the Court of Appeals. The Supreme Court annulled the decisions of the lower instance courts and sent the case back for retrial.
Reference	https://www.zakonyprolidi.cz/judikat/nscr/5-tdo-1381-2020
Related judgements	CJEU decision in case C-228/03 dated 17.3.2005 CURIA - List of results (europa.eu) CJEU decision in joint case C-397/16 and C-435/16 dated 20.12.2017 CURIA - List of results (europa.eu)

Facts of the case

The accused sold imitations of aluminium vehicle rims and wheel centre caps with the trademarks of Skoda, Volkswagen, Audi, Bayerische Motoren Werke, Porsche, Daimler, Ford, Volvo, Jaguar, and wheels manufacturer Vossen Wheels.

The accused was found guilty of violating trademark rights under Article 268(1) and 3(b) of the Criminal Code, as well as violating protected industrial rights under Article 269(1) and (2)(a) and (c) of the Criminal Code. The First Instance Court ordered the confiscation of infringing products and referred the injured parties' claims for damages to civil procedures.

The Court of Appeals confirmed the decision of the First Instance Court.

The accused submitted a claim to the Supreme Court indicating that he was selling the official replicas of aluminium rims intended for use as spare parts. The rims were legally obtained in the Netherlands, the United Kingdom and Poland, and are legal products of manufacturers such as WSP Italy. The accused has never manufactured, altered or sold rims bearing the protected trademarks. The wheel cover was only used to determine which brands of automobiles the replicas may be put on. The accused further informed his clients that he was selling replicas. The sale of replicas is permitted under Article 110 of the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs (Designs Regulation).

The accused also argued that lower instance courts failed to address the subjective elements of the criminal offense adequately, claiming that the fact that the rims were sold in sets does not demonstrate intent to illegally use protected industrial designs and trademarks.

Finally, the accused claimed that the lower court erroneously regarded the claims of the car manufacturer as expert opinion. The car manufacturer's representative was present throughout the search and seizure, along with law enforcement authorities; therefore they have a vested interest in the result of the case.

The prosecution said in its response that the accused's business was not aimed at restoring and fixing the automobiles' original appearance. The accused made no attempt to ensure that the aluminium rims he was selling were actually used for repair. The prosecution also rejected the accused's claims that the injured party's statement was presented as an expert opinion. The statement of the injured party is significant in comprehending the case; nonetheless, it should not be regarded as an expert statement.

The prosecution further claimed that because the accused was selling the aluminium rims in the Czech Republic, EU law could not be applied in this case. Thus, according to the prosecution's case, national legislation is applicable for design infringement. The prosecution further added that according to Article 23(2)(b) and (c) of the Czech Act on the Protection of Industrial Designs, the use of reproductions as spare parts is prohibited; therefore, the accused's actions violated the Czech Act on the Protection of Industrial Designs. This claim by the prosecution became the main issue addressed by the Supreme Court.

Substance

The Supreme Court stated that the factual determinations of lower instance courts were insufficient to demonstrate the elements of crime against industrial rights laid out in Article 269 of the Criminal Code. There is no mention of any intangible legal assets, industrial designs or trademarks that the accused allegedly infringed on. The designs and trademarks were not identified, and no information was provided on which legal protection applied to them, how they were protected, and how this protection was violated. The accused's defence was not given adequate consideration and was rejected without a solid reason. The prosecution was quite accommodating to the victims, whom they consulted throughout the process. As a result, the accused could not adequately defend himself because it was not clear which rights had been breached.

For these reasons, the Supreme Court annulled the lower instance decisions and sent the case back for retrial.

- **Violation of industrial rights**

The objective of the criminal offence against industrial rights is to protect creative activity as well as the products that come from these activities. The appearance of the products is protected by awarding them the status of registered design.

A design may be granted national protection in the Czech Republic, EU protection in the territory of the European Union or international protection in the territory of members of the international community, depending on the scope of registration. National legislation applies to designs registered exclusively in the Czech Industrial Property Office. National designs usually do not have other registrations at EU or

international level; for this reason, they are subject to the Czech Design Protection Act, which protects the design. Companies that sell their products on the worldwide market usually register their designs with the European Union Intellectual Property Office (EUIPO), which provides protection throughout the EU granted by the Regulation on Designs. In this case, EU legislation protects the EU designs, which is directly applicable in the EU Member States.

The first stage in determining the accused's guilt was to establish whose design was violated and where this design is registered in order to determine the applicable law.

The lower courts applied the Czech Act on Industrial Design Protection; nevertheless, they did not inquire whether the designs in question were registered with the Czech Industrial Property Office. If the designs in question were registered nationally, national law would apply, which in this situation does not allow the use of design replicas for the repair of vehicles.

Based on the statements of injured parties, it could be deduced that the case concerns predominantly designs registered at EUIPO. The protection of these designs is derived from the Regulation on Designs, which is directly applicable in EU Member States. Article 110(1) of the Designs Regulation is a so-called repair clause, which allows other operators to participate in the market for spare parts for the repair of complex products, such as vehicles. The CJEU provided an interpretation of this article in the joint case C-397/16 and C-435/16, indicating that both manufacturers of replica rims and their distributors should exercise due diligence to ensure that the end-user of the product also complies with the conditions set out in Article 110 of the Design Regulation. This means that the lower courts were supposed to decide which law applies in this case, and if EU law applies, whether the accused's acts were in accordance with the conditions set out in Article 110 of the Designs Regulation.

Furthermore, the criminal offence specified in Criminal Code Article 269 is an intentional offence. In this case, guilt can be shown only if the accused knew he was violating Article 110 of the Designs Regulation. As a result, it was necessary to prove that the accused was aware of the Article 110 responsibilities, that he was not confused about them and that he was intentionally infringing on legally protected industrial designs.

The lower instance court further qualified the accused's activities as causing significant infringement of industrial property rights, as defined in Article 260(2) of the Criminal Code. The lower instance courts' descriptions of the facts do not include elements of this qualified criminal offence. It is unclear how many aluminium rims were offered for sale and sold; there was no indication of the price at which they were sold, nor was there an estimate of the amount of the sales and earnings.

- **Trademark violation**

In line with earlier findings, the Supreme Court concluded that lower instance courts had failed to identify allegedly infringed trademarks. Article 268 of the Criminal Code provides for two possible criminal offences: whether the accused placed goods on the market illegally bearing a trademark or whether the accused placed goods on the market marked with a sign that is interchangeable with a registered trademark. The absence of a trademark description makes it impossible to tell which alternative offence the defendant was accused of committing.
As in the case of designs, courts must assess which legal elements are applicable depending on the trademark registration, even though there are no material differences in EU and Czech trademark protection legislation.

The CJEU stated in its case C-228/03 that labelling of rims with trademark-protected marks cannot be accepted because the accused had the option to label the items differently. This rationale is consistent with Section 8 of the Czech Trademark Act.

Finally, the Supreme Court concluded that the accused's intent cannot be inferred in cases of trademark infringement. The court must prove that the accused was aware of the illegal use of a trademark placed on goods that he imported, exported and sold, and that, at that he was at least aware of the unlawful interference with the trademark holder's rights.

Comment

According to the Supreme Court, depending on where a design or trademark is registered, it may be granted national protection in the Czech Republic, EU protection in the territory of the European Union or international protection in the territory of members of the international community based on the scope of international registration. This is a critical factor in determining the applicable law, especially in the case of differing legal provisions. In the case of a registered design infringement, Czech legislation prohibits the use of replicas for the repair of complicated products, although the Design Regulation permits such use of replicas if the conditions set out in Article 110 are met.

The infringement of industrial property rights and trademarks are wilful criminal offences that require proof that the accused acted with the knowledge that the rights of the design or trademark holder were violated. If the accused believed that he was acting in accordance with the law, his acts cannot be classified as an intentional crime.

Czech Republic – Case No 2Tdo 513/2019

In this decision, the Supreme Court examined the concept of computer programs and when they are considered works protected by copyright. The court examined the elements of the crime of copyright infringement, concluding that it is critical to demonstrate how the accused gained access to the computer programs in question.

Country	Czech Republic
Case No	2Tdo 513/2019
Keywords	Copyright, computer program, copyright act
Parties	The accused v Office of the General Prosecutor
Date	17.07.2019
Court name	Supreme Court
Instance	Third instance
EU norms	—
Other norms	Article 270 of the Criminal Code Article 66 of the Copyright Act
Fine/damages	The First and Second Instance Courts found the accused guilty of copyright infringement and gave him a one-year suspended prison sentence. The court ordered the confiscation of the accused's laptop and the payment of CZK 108 992 (approximately EUR 4 586) to the injured party for unjust enrichment. Other parts of the injured party's civil claim, as well as the Microsoft Corporation's claim were referred to civil proceedings.
Reference	5 Tdo 513/2019 (zakonyprolidi.cz)
Related judgements	The Supreme Court decision in case No 5 Tdo 815/2009 dated 26 August 2009 5 Tdo 815/2009 (zakonyprolidi.cz) CJEU decision in case No C-128/11 dated 03 July 2012 CURIA - Documents (europa.eu) CJEU decision in case No C-166/15 dated 12 October 2016 CURIA - Documents (europa.eu)

Facts of the case

The accused is a former employee of the injured party who has set up his own business in the same area. He hacked the administrator's password to gain access to the injured party's server, thereby gaining unauthorised access to the injured party's computer system with the goal of obtaining information about the competitor's business activities. The accused also gained access to the injured party's email address and downloaded a computer application called WORK, which he later used for business purposes. This resulted in a loss of CZK 54 496 (approximately EUR 2 290).

The accused also illegally downloaded Windows 7 Home Premium and CorelDRAW Graphic Suite X4 computer programs. This caused damage to Microsoft Corporation in the amount of CZK 35 641 (about EUR 1 500).

The accused was found guilty of copyright crimes by the First Instance Court under Article 270(1)(2)(a) of the Criminal Code. The accused received a one-year suspended prison sentence. The court also ordered the confiscation of the accused's laptop and the payment of CZK 108 992 (approximately EUR 4 586) to the injured party for unjust enrichment. Other parts of the injured party's civil claim, as well as Microsoft Corporation's claim, were referred to civil proceedings. The ruling of the First Instance Court was upheld by the appellate court.

The accused appealed to the Supreme Court, arguing that there were substantial discrepancies in the lower courts' factual findings. According to the accused, the lower court incorrectly found that the computer program WORK is a copyright-protected work based on the expert's opinion. He further claimed that he received the WORK software from an anonymous third party who no longer required it.

Substance

At the outset, the Supreme Court indicated that it is not entitled to review and evaluate the accuracy of the facts or verify the completeness of the evidence assessed by the lower instance courts. The Supreme Court did not notice any significant discrepancies in the evaluation of the evidence. The computer programs were found on the computer that belongs to the accused and they were a 99.9% match with the computer programs illegally downloaded from the injured party's email.

- **Whether the computer program meets the requirements set in Article 2(2) of the Copyright Act**

Furthermore, the accused stated that the expert's opinion on the WORK program did not confirm whether it is a work of authorship. The Supreme Court, on the other hand, stated that the previous court practice (see decision in Case No 5Tdo 815/2009 dated 26 August 2009) confirmed that the question of whether a work is a work of authorship is purely legal question, which is not addressed to an expert. Computer programs are protected by Article 2(2) of the Copyright Act, which states that computer programs are the result of intellectual creativity. In general, a computer program is regarded as an intangible result of the author's creative activity: a specific structure given to data organisation, a sequence of instructions and the selection of algorithms, usually recorded in source language or machine (binary) code. In general, a computer program meets the criterion of distinctiveness of a copyright-protected work in the sense that it is a unique production. Even unregistered computer programs meet the requirements for originality. While certain computer programs may lack originality, the vast majority of computer programs meet the requirements of Article 2(2) of the Copyright Act.

In this case, there was no dispute that the WORK program met the requirement for originality. It is the result of the injured party's innovative intellectual work, which was applied to business activities. This computer program has previously been sold at least twice to others, demonstrating its originality. As a result, the Supreme Court rejected the accused's allegations about the WORK program's originality.

- **Burden of proof of copyright infringement**

Copyright infringement occurs when someone unlawfully interferes with the author's work, artistic performance, audiovisual recording, radio or television broadcast, or database. Criminal provisions for the protection of copyrights are referred to as blanket legal norms, and they must be used in conjunction with specific legislation, in this case the Copyright Act. The use of a computer program is considered legal under Article 66(6) of the Copyright Act when it is used by a person who legitimately acquired the right to use the computer program from the copyright holder.

The question of what constitutes a legitimate use of a computer program must be interpreted in accordance with the EU rules. The CJEU examined the differences between the copyright holder's right to reproduce the protected work and the right to distribute it in cases No C-128/11 dated 03 July 2012 and No C-166/15 dated 12 October 2016. The decision to create a copy of a copyrighted work is solely the responsibility of the copyright holder. On the contrary, the copyright holder's right to distribute copyright-protected works cannot be limited from the moment the protected works are placed on the EU market.

A contract is formed when one person transfers his property rights to another person through the sale of the first copy of a computer program. Only the person who bought the computer program has the right to dispose of the subject of the sale in the future. However, if the buyer intends to transfer the rights to use the computer software further, he must make his own copy unusable (delete or otherwise remove it from a computer).

Although the injured party can prevent its customer from producing a copy of its copyright-protected work in this circumstance, the injured party cannot prevent them from transferring the acquired computer program to another person. The accused stated that he obtained the program from an unknown person who no longer required it. However, the lower instance courts disregarded this argument, holding that how the computer software was obtained was irrelevant.

According to the Supreme Court, to meet the objective elements of the criminal offence, it is necessary to prove how the program was obtained because only the illegal acquisition of the program can result in criminal liability.

Although the argument of obtaining the computer program through an unknown third party may appear difficult to believe given the circumstances of the case (the accused was a former employee of the injured party who accessed their servers without authorisation), it was still necessary to follow the criminal procedure requirements. Each accusation must be handled and evaluated in light of the facts gathered.

The Supreme Court, considering these factors, determined that the accused cannot be regarded as an unauthorised user of the WORK computer program, despite the absence of a formal licensing agreement with the aggrieved party. Consequently, the Supreme Court reversed the decisions of the lower courts and remanded the case for a new trial.

Comment

In this decision, the Supreme Court examined when a computer program can be regarded a copyrighted work. It decided that, in general, computer programs require a significant amount of intellectual labour that meets the requirements for originality outlined in Article 2(2) of the Copyright Act.

The Supreme Court also decided that, while the copyright owner can restrict the copying of copyright-protected works, the original copyright owner cannot limit the right to transmit legitimately acquired works. As a result, it is critical to determine how the accused obtained the computer program because only unlawfully obtained computer programs bring criminal liability.

Slovakia – Case No 9To/57/2019

This case concerns copyrighted audiovisual works that were shared on the website www.fastshare.cz. The court considered whether the use of copyrighted works requires the authorisation of the copyright owners, as well as the status of injured parties.

Country	Slovakia
Case No	9To/57/2019
Keywords	Copyright, sharing with public, consent of rights holder, commercial purpose, injured parties in criminal proceedings
Parties	Accused v the prosecution
Date	4.12.2019
Court name	Regional Court in Presov
Instance	Second instance
EU norms	—
Other norms	Article 283 of the Criminal Code; Sections 7 and 24 of Act No 618/2003 on Copyright and Related Rights (Copyright Act)
Fine/damages	**Sentence/fine** A one-year suspended prison sentence. **Damages** The participation of injured parties was not allowed in this case.
Reference	9To/57/2019 - 9To/57/2019 (judikaty.info)
Related judgements	Decision of Supreme Court dated 5.10.2016 in case No 2 Ndt 20/2016 2 Ndt 20/2016 - návrh na nepripustenie účasti poškodených v trestnom konaní (judikaty.info)

Facts of the case

The accused made at least 910 protected audiovisual works available to the public, including links to download these protected works, via the server www.fileshare.cz. Under the username 'tom306ghz,' the accused posted these works to a file hosting service without the permission of the rights holders. The injured parties suffered damages in the amount of EUR 20 619.92 as a result of the accused's actions.

The accused was found guilty of copyright infringement under Slovak Criminal Code Article 283(1)(d) and sentenced to one year in prison by the First Instance Court. The prison sentence was suspended for 18 months.

The accused appealed to a regional court, claiming that the First Instance Court had erred in its assessment of the evidence in this case. The accused claimed that he worked for a company that had an open internet network. As there were seven permanent employees and five freelancers who had free

access to 15-30 computers located on the company's premises, it was impossible to determine whether the accused used the specific IP address to upload the copyright-protected works. The accused also denied receiving any compensation for allegedly uploading copyrighted works.

Substance

- Status of the injured parties

The investigation revealed that the accused violated the rights of at least 128 legal entities, the majority of which were located in the United States. The majority of the legal entities sought the status of the injured party in the criminal proceedings and sought compensation for the damage.

The Supreme Court decided the status of the injured parties in case No 2 Ndt 20/2016 on October 5, 2016. According to the Supreme Court, under Section 47(3) of the Criminal Procedure Code, the Attorney General may request that the injured parties be excluded from criminal proceedings if the following conditions are met:

- There is a large number of injured parties (more than 100); and
- The participation of injured parties in criminal proceedings could seriously undermine the purpose and speed of the criminal proceedings.

The Supreme Court established that the goal of criminal proceedings is to ensure that the case is adequately investigated and that the accused is brought to justice. The exercise of the rights of individual injured parties in large numbers could jeopardise the objective and speed of the criminal proceedings. For these reasons, the Supreme Court decided not to allow the injured parties to take part in the criminal proceedings.

The injured parties filed an appeal with the Regional Court, arguing that the Supreme Court had failed to explain how their involvement would jeopardise the goal and speed of the criminal proceedings. However, the Regional Court dismissed the appeal because the Supreme Court had already ruled in its judgment No 2 Ndt 20/2016 that the injured parties were ineligible to file an appeal.

- Evaluation of evidence

In accordance with Section 7 of the Act No 618/2003 on Copyright and Related Rights, audiovisual works are protected by copyright from the moment they are expressed in a form perceptible to the senses, regardless of their form, content, quality, purpose or mode of expression. The author has the right to grant permission for any use of the work, including creating a copy and communicating it to the public. A copy of a published work may be made for personal use and for a purpose that is not directly or indirectly commercial, according to Section 24 of the Copyright Act. There is no requirement to compensate the author in this circumstance for such use of copyright-protected works. However, if a copy of the audiovisual recording is made available to the public, the consent of the author is necessary.

In the present case, the copyright-protected works were uploaded to the website www.fastshare.cz from the IP address of the accused's employer. The user name 'tom306ghz' was also used by the accused also on other websites; therefore, there is no doubt that the accused made the copyright-protected works available to the public, even if it is not possible to determine the exact computer used by the accused.

In addition, the actions of the accused resulted in financial gain – the funds collected from downloads of the copyrighted works were sent to the bank account of the accused's girlfriend. The court considered that this direct and indirect evidence sufficiently demonstrate that the accused made copyright-protected works available to public without prior consent of the copyright holder.

The Regional Court concluded that the First Instance Court handled the evidence fairly, took into account the arguments and objections of all parties, and appropriately identified the copyright infringement in accordance with Article 283 of the Slovak Criminal Code.

Comment

This case established an important interpretation regarding the involvement of injured parties in the investigation and prosecution of copyright offences. The Supreme Court ruled that if there are more than 100 injured parties, there may be significant delays in the prosecution. For this reason, the Supreme Court rejected injured parties' requests to take part in the criminal proceedings.

The Regional Court ruled that although the copying of copyright-protected works is permitted if it is for personal use and there is no explicit or implicit commercial intent, in this case there was sufficient evidence to show that the accused shared the works publicly and profited financially. The court concluded that the defendant had violated copyright laws because he failed to obtain the rights holders' consent.

Poland – Case No II K 651/16/P

The courts in this case addressed the elements of crime listed in Article 305(1) and (3) of the Industrial Property Law, particularly the qualifying element of 'permanent source of income'. The court went on to analyse how selling counterfeit goods affected the market and how to measure the damage caused to trademark owners.

Country	Poland
Case No	II K 651/16/P
Keywords	Counterfeiting, calculation of damages, financial gain
Parties	Accused v Prosecutor of the District Prosecutor's Office in Kraków
Date	20.12.2016
Court name	District Court for Kraków-Podgórze in Kraków
Instance	First instance
EU norms	—
Other norms	Article 305(1) and (3) of the Industrial Property Law Act
Fine/damages	The accused was ordered to pay a fine of PLN 30 (approximately EUR 6.70) a day for 200 days. The accused was ordered to pay PLN 400 (around EUR 90) to each injured party as compensation.
Reference	II K 651/16 Szczegóły orzeczenia - System Analizy Orzeczeń Sądowych - SAOS

Facts of the case

The accused ran a business selling women's clothing and accessories in a shopping mall in Krak w. The accused sold fake goods in the store bearing the trademarks of brands such as Tommy Hilfiger, Polo Ralph Lauren, Chanel, Giorgio Armani, Calvin Klein, Yves Saint Laurent, Lacoste, Louis Vuitton, Bulgari, Burberry, Christian Dior, Dolce & Gabbana, Prada, Gianni Versace, Dolce & Gabbana and Burberry. The accused bought the counterfeit products in several shops in Warsaw and Lodz. Some of the fake products were given to the accused by her family members, who had acquired them overseas.

In 2015, the Customs Office in Krak w received a report indicating that a clothing stand in a shopping mall was selling counterfeit Armani products. Customs officials conducted an inspection and identified 40 counterfeit products. The goods were of poor quality, did not have country of origin labels and were not packed in official packaging, which suggested that the goods were counterfeit.

Even after the inspection, the accused continued to sell counterfeit goods. As a result, the Customs Office conducted another inspection. During the second inspection, more than 100 counterfeit items were identified.

The accused admitted her guilt. In accordance with Articles 305(1) and (3) of the Industrial Property Law of June 30, 2000 and Article 12 of the Penal Code, she was found guilty of the offence of counterfeiting.

The accused was sentenced to pay a daily fine of 30 PLN (around EUR 6.70) for 200 days. In addition, she was required to compensate each injured party (there were a total of 10 injured parties) PLN 400 (around EUR 90) in damages. Finally, the court ruled that all counterfeit items must be destroyed.

Substance

- **Elements of the criminal offence under Article 305(1) and (3) of the Industrial Property Law**

A person who trades goods with a registered brand or uses a counterfeit trademark that he does not have the right to use for the purpose of putting them on the market is subject to criminal prosecution under Article 305(1) of the Industrial Property Law. A more severe penalty is imposed under Article 305(3) of the Industrial Property Law if the trade in counterfeit goods is a primary source of income or if goods of significant value are traded.

According to the Supreme Court's explanation in its ruling KZP13/05, the phrase 'placed on the market" refers to the transfer of the counterfeit goods to the market. According to Article 154 of the Industrial Property Law, the term 'mark' refers to any goods or their packaging, affixing a trademark to documents or using it for advertising purposes. The term 'marking' refers to the alterations, counterfeiting or removal (complete or partial) of existing marks. The term 'counterfeiting' is defined in Article 120 of the Industrial Property Law to include both goods marked with an identical mark and goods that cannot reasonably be distinguished from a registered trademark.

In the current case, the accused was selling goods marked with identical trademarks, making it impossible for the consumer to determine whether the goods were counterfeit or authentic. Based on the customs report, photos obtained during the inspection and the trademark registration document, the court came to the conclusion that the products were counterfeit.

In order to determine whether Article 305(3) of the Industrial Property Law can be applied, it is necessary to determine whether the offender used the trade as a permanent source of income. In the case III KK 359/07, the Supreme Court concluded that the illicit income did not have to be the only source of income within the meaning of Article 305(3) of the Industrial Property Law. However, there must be some degree of regularity in the criminal income. The Supreme Court concluded that the offender had to make a profit at least three times for such income to be regarded as permanent. This would be considered stable and consistent income, as opposed to occasional or one-off income.

In this case, the accused was engaged in the business of selling products for some time. In light of this, the court determined that, despite other sources of income, the accused's activities met the criteria for making the sale of counterfeit products as a steady source of income.

The accused asserted that she had not verified the goods' authenticity and was unaware that they were counterfeit. However, the trademarks she used were well known, particularly to the accused who works in the clothing industry, so the court dismissed this claim. The accused was aware of the products' poor quality, which was evident in their price tag. Therefore, even if the accused did not check to see if the trademarks were registered, she must have recognised the possibility that she was dealing in counterfeit goods, thereby giving her consent to the commission of the crime. Last but not least, the accused continued to sell the products despite the fact that she had been expressly informed of their counterfeit nature by the customs authorities during the initial inspections.

- **Calculation of damages**

In case No II AKA 382/10, the Court of Appeals in Katowice stated that the effects on the market caused by trademark infringement are characterised as damage consisting of multiple components, such as damage to the right holder's reputation, customer confusion and the creation of a state of uncertainty on the market. As a result, the brand's reputation and image suffer, as does the recognition of the trademark and the demand for goods bearing that name.

The damage may include the need for increased advertising expenses, market clarity and the cost o0f remedying the detrimental effects on the market. Such damage is extremely difficult to quantify.

In the present case, the accused's actions were directed at customers who were not potential buyers of high-end clothing and accessories, which means that by selling counterfeit goods, the accused did not weaken the demand for the luxury products. The poor quality of the goods, which could be easily distinguished from the originals, the absence of appropriate tags or attention to detail of the final appearance led to conclusion that the damage to the company's image was minimal.

In light of this, the court awarded each injured party symbolic damages of PLN 400 (approximately EUR 90). If the trademark owners consider this to be insufficient, they have the right to pursue the case in the civil court.

Comment

In this case, the District Court analysed the elements of the criminal offence of counterfeiting set out in the Polish Industrial Property Law. According to the law, the court must establish the element of commercial scale. The qualifying element of 'source of permanent income' was specifically examined by the court. The court concluded for trading to be considered permanent income, it must be ongoing, and the financial gain must occur at least three times. Whether the accused had additional income was not relevant.

The court went on to examine the potential harm that might be caused to trademark owners. The court indicated that in this case, the nature of the counterfeit goods did not cause significant damage to the trademark holders because the accused's clients were unlikely to buy original products anyway. For this reason, the court awarded the injured parties only symbolic damages.

Latvia – Case No KA02-0181-15/6

In this case, the appellate court analysed the elements of the criminal offence of trademark counterfeiting set out in Article 206(1) of the Criminal Law. The court also analysed the status of injured parties in the criminal proceedings, and whether the injured party can be appointed as an expert.

Country	Latvia
Case No	KA02-0181-15/6
Keywords	Trademark, substantial damages, counterfeiting, expert opinion
Parties	Prosecutor v accused
Date	30 November 2015
Court name	Kuzeme Regional Court
Instance	Second instance
EU norms	—
Other norms	Article 206(1) of Criminal Law, Article 3 of Law on Forensic Experts, Article 23 of the Criminal Procedure Law.
Fine/damages	The accused was acquitted by the First and Second Instance Courts. The injured party claimed damages of EUR 8 453.76. The claim was rejected as there was no evidence of significant damage.
Reference	https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/246252.pdf

Facts of the case

From February 2013 to February 2014, the accused instructed her company's employees to produce bras with fraudulent labels and sewn-on sizing bands bearing the 'Milavitsa' trademark. This is a Belarusian company that sells its products only in a few selected Latvian stores.

1 776 bras and 26 465 labels carrying the 'Milavitsa' trademark were seized.

The injured party alleged that this conduct resulted in EUR 8453.76 in damages. Furthermore, it compromised the trademark's reputation and prestige, and misled consumers about the conformity of the products.

The accused was charged with trademark infringement under Article 206 of the Criminal Law. The accused was acquitted by the First Instance Court because the objective elements of the criminal offence were not proven. The evidence given cast reasonable doubt on the accused's guilt. The court then found that the description of the material damage was rather vague and general, in violation of the Criminal Procedure Law. Finally, the court concluded that the injured party had suffered no loss, as the counterfeit items were never sold.

The prosecutor appealed the First Instance Court's decision, arguing that the court had neglected to quantify the losses incurred when the counterfeit goods were manufactured. Even though the goods did not reach customers because they were seized by the authorities, the harm done to the trademark owner

is significant in a criminal law sense. This is supported by the circumstances of the criminal offence, the large quantity of counterfeit items manufactured and the fact that they were clearly intended for sale.

The injured party said in its statement that the accused did not have a licence agreement allowing them to make and sell their products. The injured party's representatives examined the goods and concluded that they were counterfeit based on several visual signs. The Milavitsa trademark was also fake and was not manufactured in their factory. The injured party alleged that the distribution of counterfeit goods damaged its reputation, misled customers, violated fair competition and reduced the trademark owner's market share. The monetary losses were calculated by multiplying the lowest wholesale price – EUR 4.76 – by the total amount of counterfeit goods seized. The calculation is based on Article 28 of the Law on Geographical Indications and Trademarks.

Substance

- **Whether injured party's opinion can be accepted as an expert opinion**

The appellate court pointed out that the prosecutor failed to produce evidence that the seized goods were counterfeit. The accused never admitted that she knew the labels in question were fake. Nor was there any expert valuation of the goods. The only evidence produced by the prosecution was the injured party's expertise, which was presented as an expert opinion. The injured party presented a report stating that the goods were manufactured differently than at Milavitsa, and that the labels and sewing tape did not meet the injured party's technical standards.

The court determined that the injured party's opinion could not be qualified as an expert opinion. Article 3 of the Law on Forensic Experts states that forensic examinations may be carried out by experts who are listed in the public register of experts. While other people can be designated as experts, the prosecution did not follow the required procedure in this case. There was no evaluation of the qualifications, knowledge or practical experience of the person giving the expert opinion.

Furthermore, choosing the injured party as an expert calls into question the veracity of the evidence. This goes against the principles of expert independence and impartiality. As a result, the injured party's opinion cannot be considered an expert opinion. However, it could be submitted as a victim's statement and used in court in conjunction with other evidence.

- **The element of harmful consequences set in Article 206(1) of the Criminal Law**

Article 206(1) of the Criminal Law establishes criminal liability for the unlawful use of a trademark, other distinctive mark or design for goods or services, the counterfeiting of a mark, or the knowing use or distribution of a counterfeit mark, if such use or distribution causes substantial damage to person's legitimate interests.

Article 206(1) of the Criminal Law defines a material offence as one that involves not only harmful acts but also damaging consequences. This implies that assessing significant damage is a mandatory element. This criminal offence cannot be considered as a crime in progress because the danger posed by the criminal acts becomes evident through the production of harmful consequences.

The court subsequently looked at the most recent amendments to the Criminal Law to determine the legislator's intent – prior to the 2011 amendments, the unauthorised use of a trademark was also punishable. The legislator specifically highlighted the occurrence of detrimental consequences by decriminalising the unauthorised use of a trademark without detrimental consequences and treating it as an administrative offence. Criminal responsibility cannot arise if detrimental effects are not demonstrated.

According to Article 23 of the Criminal Procedure Law, liability for a criminal offence causing substantial damage is established when the harmful activities cause substantial damage to property or endanger other legal interests, and if such endangerment is deemed substantial.

In this case, the injured party sought compensation based on an estimate. However, there was no evidence that the victim company had suffered any material or moral damage, and none of the counterfeit goods had actually been offered for sale or sold.

Therefore, the required element of harmful consequences was not demonstrated in this case. As a result, the court dismissed the appeal and upheld the accused's acquittal.

Comment

In this case, the court focused on whether the injured party's evaluation of the counterfeit products could be considered an expert opinion. The court concluded that the prosecution must adhere to the legal requirements for the appointment of legal experts. These requirements are designed to ensure the impartiality and independence of the experts. The statement of the injured party alone cannot be considered impartial; thus, it cannot be recognized as an expert opinion, only as the victim's.

The court went on to examine the element of harmful consequences specified in Article 206(1) of the Criminal Law. The court held that this was a required element and that the prosecution had to demonstrate that the accused's activities resulted in harmful consequences. In this case, the mere production of allegedly counterfeit goods is insufficient to establish that harmful consequences had occurred. A possible outcome can only be acknowledged in cases where the preparation to commit a crime is included in the criminal code as a *sui generis* offence.

Slovenia – Case No II K 84981/2009

In this case, the court examined what constitutes a trade secret and whether the victim company took the necessary precautions to protect its trade secrets. The evidence of the accused's disclosure of proprietary drawings of blasting machines was also examined by the court.

Country	Slovenia
Case No	II K 84981/2009
Keywords	Trade secret, know-how
Parties	Accused v Prosecutor's Office
Date	14.07.2014
Court name	District Court in Nove Gorica
Instance	First instance
EU norms	—
Other norms	Article 241(1)(3) of the Criminal Code
Fine/damages	The accused received a 10-month suspended prison sentence and a fine of EUR 8 726.
Reference	Summary of the case: Iskalnik sodne prakse (sodnapraksa.si)

Facts of the case

The accused was employed as a director at the victim company (Company A) for several years. After employment as director ended, he continued to work for the company on a project for six more months. At the same time, the accused was a partner in another company (Company B). Both companies specialised in the production of blasting machines. While working on this project in 2005, the accused exchanged technical drawings of blasting equipment with Company B.

The accused was charged with violating Article 36 of the Labour Relations Act by sharing with Company B project and technical drawings for the production of blasting machines and spare parts. Such acts were contrary to his responsibility to protect business secrets.

The First Instance Court found the accused guilty of violating trade secrets and infringing copyright under Article 148(1) of the Criminal Code and gave him a suspended prison sentence of 10 months and a fine of EUR 8 364.20. The appellate court upheld the decision for violation of trade secrets but acquitted the accused of copyright infringement under Article 148(1) of Criminal Code. The case was heard by the Supreme Court, which ruled that Article 241(3)(3) of the Criminal Code had been violated. The decisions were overturned, and the case was sent back for retrial. The Supreme Court instructed the lower courts to re-examine the evidence, namely whether the technical drawings from the accused's work laptop and portable hard drive were stored on Company B's computers.

Substance

- **Whether the accused transferred the technical drawings from Company A to Company B**

To determine whether there was a trade secret infringement, the court first analysed whether the accused had transferred the technical drawings in question to Company B.

The court found that it had been demonstrated that the accused had transferred the technical drawings of the blasting machines to Company B while employed by Company A. The following factors led to this court's conclusion:

- The accused worked for Company A while also being a partner in Company B.
- Both companies specialised in the construction of blasting machines.
- The technical drawings on the accused's work laptop and external hard drive matched those on Company B's. The analysis of the hard drive seized at Company B's premises contained 39 041 AutoCAD files that were identical to the files found on the accused's work laptop and external hard drive.
- There were only a few minor changes between the blasting machines developed by the two companies. The drawings were only slightly altered – for example, the colour of the drawers. The blasting machines featured identical box divisions and descriptions of the intended use were written in the same font and size. The markings on the blasting machines were also identical.

- **Whether technical drawings of blasting machines can be considered a trade secret**

The court further proceeded to determine whether the technical drawings in question can be considered a trade secret.

The court concluded that these technical drawings could not be regarded as common knowledge; rather, they are regarded as know-how and the knowledge that which makes them particularly appealing to businesses. There is no doubt that these were important documents. Company A had already identified them as trade secrets in 1995, and this was explicitly specified in the accused's employment contract. Furthermore, before taking up the position of director, the accused signed a declaration undertaking to protect industrial property, including technical drawings.

As a result, the court determined that Company A had taken all the necessary steps to classify the technical drawings as trade secrets and had taken all the necessary measures to inform its employees of the protection afforded to the company's trade secrets.

- **Whether the accused had the intent to benefit from trade secrets**

As the final step, the court turned to the question of establishing intent. The court rejected the accused's claim that he had the technical drawing because they were necessary to perform his work duties. The court noted that the accused was a director of Company A and was not involved in the blasting machine construction process. This means that these documents would not be required by the accused during business discussions or while organising the sale of blasting machines.

The court further established that the accused had material interest in transferring the technical drawings to Company B. The accused was a partner at Company B, which also specialised in the manufacture of blasting machines. Obtaining technical drawings reduces major costs associated with technology development and licensing. Lower development costs increase competitiveness and strengthens the company's market position. As a result, profitability increases.

As a result, the court decided that the accused had a significant interest and pursued it aggressively. The court found the accused guilty of violating a trade secret under Article 241(1)(3) of the Criminal Code and gave him a suspended prison sentence of 10 months and a fine of EUR 8 726.

Comment

In this case, the court analysed whether the accused had infringed trade secrets. The first step was to determine whether the accused had transferred the technical drawings – this element was proven by comparing the technical drawings of both companies. The second element was to determine whether the technical drawing was considered a trade secret. The court determined that the company had taken all the necessary steps to designate the technical drawings as a trade secret and inform its employees of this protection. Finally, the court concluded that the accused's intent and material interest were established.

Portugal – Case No 7/13.8EACBR.P1

In this case, the court addressed the offence of counterfeiting and imitation of a trademark, in line with Article 323b of the Industrial Property Code (the current version of the Code is available here). The court provided additional guidance on the concept of likelihood of confusion, which should be assessed from the standpoint of the average consumer.

Country	Portugal
Case No	7/13.8EACBR.P1
Keywords	Counterfeiting, imitation, illegal use of trademark
Parties	Prosecutor v C and D
Date	22.3.2017
Court name	Tribunal da Relação do Porto (Porto's Second Instance Court)
Instance	Second instance
EU norms	-
Other norms	Article 323b of the Industrial Property Code and Article 109(1) of the Criminal Code
Fine/damages	**Sentence/fine** A daily fine of EUR 9 for a period of 150 days was imposed on each of the accused, and a daily fine of EUR 30 was imposed on the company for the same period.
Reference	Acórdão do Tribunal da Relação do Porto (dgsi.pt)

Facts of the case

The accused in this case were a company specialising in the production of sparkling wines, liquors and their derivatives – Company B – and its two managers, C and D. In April 2012, Company B filed a request for the trademark registration of one of its liquors – Liquor E – which was granted by the National Institute for Industrial Property in July. In November of the same year, the company began producing and selling Liquor E on the national market.

The bottle of Liquor E had similar characteristics to the bottle of a well-known Portuguese liquor – Liquor F – produced by Company S. Liquor F's constituent elements, including word mark, label, slogan and the model of the bottle, were protected by trademark in Portugal and the European Union.

After starting to produce its new liquor, Company B received a written warning from Company S demanding that it refrain from using the same slogan on its bottles. Nevertheless, B continued to produce the liquor without Company S's consent.

The First Instance Court found Company B and its two managers C and D guilty of counterfeiting, imitation and illegal use of trademark, in line with Article 323b of the Code of Industrial Property. The two managers were ordered to pay a daily fine of EUR 9 for a period of 150 days, and Company B was ordered to pay a daily fine of EUR 30 for the same period. The court also ordered that the bottles of Liquor E, which had been seized by order of the Public Prosecutors Office, be forfeited to the State, in line with Article 109(1) of the Portuguese Criminal Code.

The accused appealed the First Instance Court decision, arguing that the (objective and subjective) elements of the crime were not present. They claimed that the report of the National Institute for Industrial Property (INPI) – which found that Liquor E was an imitation of Liquor F, on which the prosecution and the decision of the First Instance

Court relied – was flawed. In their view, the INPI did not carry out a comparative analysis of the word marks, bottles and labels of the two liquors.

Regarding the penalty, the accused considered that the fines imposed were excessive and requested that they be substantially reduced if the Court of Appeal were to uphold the decision of the lower court. Given the long shelf life of Liquor E, the accused also requested that the seized bottles be returned to them following the removal of the labels, to be paid by them.

Substance

The Court of Appeal first considered the defence's claim that the principle of *in dubio pro reo* had been violated. The defence argued that the accused should have been acquitted as no concrete situation of likelihood of confusion or error among consumers had been proven and doubts remained regarding the culpability of the accused. The court explained that the principle of *in dubio pro reo* requires that the First Instance Court express doubts about the facts. Based on the text of its decision, it was clear that the First Instance Court was left with no doubts after analysing the evidence. Thus, the principle of in *dubio pro reo* was not applicable in this case.

The court then continued with a legal assessment of the facts to ascertain whether the objective and subjective elements of the crime of counterfeiting, imitation and illegal use of trademark, governed by Article 323b of the Code of Industrial Property, were fulfilled.

Starting with the concept of imitation, the court pointed out that the decisive factor is the likelihood of confusion that results from the graphic, figurative and phonetic similarities between the distinctive signs of two trademarks. Accordingly, the likelihood of confusion should be assessed based on the similarity of the general appearance of the trademarks, as reflected in the totality of their constituent elements, and not on the basis of the dissimilarities or the degree of difference between them, as had been done by previous national courts on this matter. Importantly, the standard for assessing the likelihood of confusion between trademarks is that of the average consumer, not that of a specialist in the sector or an astute and attentive observer. The only parameter required is that the product in question could be mistaken for the original product, not that it actually was.

The court subsequently addressed the concept of counterfeiting, pointing out that, according to established legal doctrine, a trademark is considered to be counterfeited when the constituent elements of the later trademark are an exact reproduction, in whole or in part, of the elements of the previously registered trademark.

After carrying out a comparative analysis of the constituent elements of the trademarks of Liquor E and Liquor F, the court concluded that the differences between them did not enable consumers to distinguish the two liquors easily. The bottles of Liquor E and F had a similar format, especially with regard to their height, width and material. The labels affixed to them had an identical graphic and colour composition – their format, colour, the slogan used and the reference to the year were all similar. Other elements, such as the colour of the cap and the seal were identical.

The court also noted that Company B had only acquired a registration certificate for the use of the word mark for Liquor E and that the accused knew that the word mark for Liquor F and the respective distinctive elements – slogan, bottles and label – were protected in Portugal and in the European Union. By the format and configuration of the bottle, the slogan and the labels affixed to Liquor E, the accused knowingly appropriated the values associated with the Liquor F trademark without the consent of the respective rights holder. They were aware of the conceptual similarities between the two products and the consumers' inability to distinguish easily between them, which could mislead them into buying Liquor E, believing that they were purchasing Liquor F.

In view of the above, the court concluded that the conduct of the accused fulfilled the objective and subjective elements of the crime of imitation and illegal use of a trademark, rejecting their appeal on this point.

As for the sanctions imposed on the accused, the court concurred that a fine was the most appropriate penalty and that the duration and amount of the fines imposed by the lower court were adequate and proportionate to the preventive requirements of the case, the degree of guilt of the accused and their personal and financial situation. Consequently, the court dismissed this part of the appeal.

Finally, the only point of the appeal that the court upheld concerned the destruction of the seized bottles of Liquor E. Although the bottles were similar in format to those of Liquor F, the court agreed that once the labels were removed, the likelihood of confusion and the risk that the bottles be used for future criminal activity were no longer present. Accordingly, once the labels were removed, the bottles no longer fulfilled the requirements of Article 109(1) of the Criminal Code. The court therefore ruled that the seized bottles be returned to the defendants, who were required to pay for the removal of the labels.

Comment

This case makes an important contribution to the understanding of how national courts assess the concept of likelihood of confusion in cases involving similar trademark-protected goods, in particular by shedding light on the aspects that courts must take into account when deciding whether there is a likelihood of confusion. In doing so, it highlights the central role of the average consumer as the decision-maker in these cases.

The ruling also provides guidance on the legal interpretation of national provisions concerning the forfeiture to the state of objects used to commit a crime, and the considerations made by courts when assessing whether the conditions for forfeiture are met.

Portugal – Case No 10440/18.3T9LSB.L1-9

This case deals with the decryption of television signals and the distribution of television channels for commercial gain. The court argued that a person who uses an unauthorised set-top box and a computer program to illegally decrypt television signals and share them with others commits the crime of possession of illegal devices.

Country	Portugal
Case No	10440/18.3T9LSB.L1-9
Keywords	Decryption of television signals, illicit devices, set-top box, decrypted channels, illegitimate access, usurpation, commercial gain
Parties	Prosecutor v accused
Date	03.9.2023
Court name	Tribunal da Relação de Lisboa (Lisbon's Second Instance Court)
Instance	Second instance
EU norms	-
Other norms	Article 6(1) and Article 6(2) of Law 109/2009, Article 195(1) and Article 197(1) of the Act on Copyright and Related Rights, Article 221(1) and Article 221(5) of the Penal Code, Article 104(1) , Article 104(2)(a) and Article 104(3) of Law 5/2004
Fine/damages	**Sentence/fine** Not applicable
Reference	Acórdão do Tribunal da Relação de Lisboa (dgsi.pt)

Facts of the case

Between April 2016 and November 2019, the accused accessed and illegally decrypted television signals from a network operator and offered them to customers in exchange for a monthly, quarterly or annual subscription. To that end, the accused used unauthorised set-top boxes and provided his customers with hyperlinks to internet pages where they could watch the decrypted channels. These could be accessed by customers via an independent set-top box connected to the internet or by installing an app provided by the accused on the customers' televisions, mobile phones or other devices connected to the internet.

The First Instance Court found the accused guilty of the crime of illegal access, in line with Articles 6(1) and 6(2) of Law 109/2009 of 15 September and of the crime of usurpation under Article 195(1) and Article 197(1) of the Act on Copyright and Related Rights, for which he received a suspended prison sentence of one year and two months. The accused was also ordered to pay a daily fine of EUR 6 for a period of 200 days.

Concurrently, the First Instance Court acquitted the accused of the crime of computer fraud under Articles 221(1) and 221(5) of the Penal Code, and of the crime of possession of illicit devices under Articles 104(1), 104(2)(a) and 104(3) of Law 5/2004 of 10 February. The accused was also exempted from paying the damages claimed by the television network operator (EUR 36 841).

The prosecution appealed the decision of the First Instance Court, in particular with regard to the accused's acquittal for the crime of possession of illicit devices. In its view, the prosecution had proved that the accused used a computer program to access the encrypted television signals without the authorisation of the television network operator, and

that he owned and distributed devices, allowing him to view and share the protected content for a profit without paying for the use of the legal service.

The prosecution requested that the decision of the First Instance Court be partially revoked and replaced by a new decision that would sentence the accused for the crime of possession of illicit devices, in addition to the two crimes for which he had already been sentenced. In view of the accused's intent, lack of remorse and absence of a criminal record, the prosecution suggested that a two–year prison sentence would be an appropriate penalty for the crime committed.

Substance

The Second Instance Court began by addressing the lower court's decision to sentence the accused for the crime of usurpation under Article 195(1) and Article 197(1) of the Act on Copyright and Related Rights. In particular, the court noted that Article 195 had been amended by Law 92/2019 of 4 September, as a result of which the public communication of commercially published phonograms or videograms became an administrative offence (punishable by a fine) instead of a criminal offence. These administrative offences were to apply retroactively to criminally punishable acts committed before the new law came into force. This was the case with the accused's actions, which were ongoing at the time the new law came into force.

Accordingly, the Second Instance Court ordered that the decision of the lower court be amended to reflect the new provisions of Article 195 of the Act on Copyright and Related Rights, and that the accused be acquitted of the crime of usurpation and consequently exempted from the payment of the corresponding fine.

As for the central question in the appeal – whether the accused committed a crime of possession of illicit devices – the court began by explaining that Article 104 of the Law 5/2004 of 10 February on Electronic Communications (in force until August 2022) was aimed at tackling the growing use of devices to gain free access to digital services that are otherwise only available against payment, as well as the expansion of a parallel market in which such devices are being traded.

Importantly, the court noted that the law only criminalises conduct that has a commercial purpose, and instead treats infringing acts committed for private gain as administrative offences.

Touching on the concept of commercial purpose, the court acknowledged that the lack of an existing definition in national legislation can cause uncertainty in its interpretation. Referring to an earlier decision, the court concluded that commercial purpose within the scope of Article 104 refers only to conduct that takes place in the context of trade, in particular the placing of illicit devices (whether equipment or computer programs) on the market.

The court then proceeded to assess the conduct of the accused and concluded that it fulfilled the objective and subjective elements of the crime. Article 104 establishes that the production, import, distribution, sale, rental or possession of an illicit device for commercial purposes is a crime punishable by a prison sentence of up to three years or a fine. Furthermore, the term illicit device includes equipment or a computer program created or adapted for the purpose of facilitating access to a protected service.

Of particular importance for the court's decision was the fact that the accused used set-top boxes not authorised by the network operator, as well as computer programs that were created and adapted to enable the use and distribution of the television signal among his customers in exchange for payment. Furthermore, by creating several Facebook and email accounts to advertise his services and communicate with his customers, and by providing the latter with his bank account details, the accused had acted with the intention of making a profit (subjective element).

The court thus concluded that the accused was guilty of the crime of possession of illicit devices. In deciding on the penalty, the court argued that a prison sentence was more appropriate than a fine, as the imposition of a fine could undermine the purpose of punishment and be regarded as confirming the commonly held view that crime pays. After weighing the factors in favour (i.e. social integration, family composition, education level) and against the accused (i.e. duration of the infringing activity, direct intent and economic benefit generated), the court ordered that the accused be sentenced to 10 months in prison.

Owing to the fact that the accused was found guilty of two crimes, the court was required to issue a single penalty in line with the provisions of Article 77 of the Penal Code. Under national legislation, the penalty should not

represent a total sum of the individual crimes, but should instead reflect the global dimension and seriousness of the accused's criminal behaviour. Accordingly, the Second Instance Court ordered a 12-month suspended prison sentence for the crimes of illegitimate access and possession of illicit devices.

Comment

With this ruling, the Second Instance Court in Lisbon helped to clarify the legal provisions applicable to the criminalisation of conduct related to the use of illicit devices such as set-top boxes, which is a growing phenomenon in the online piracy landscape. By providing a legal context and an assessment of the elements of the crime of possession of illicit devices, the ruling offers relevant guidance for dealing with cases of this nature, which are gradually being brought before national courts.

The relevance of this case also lies on the court's interpretation of commercial purpose in the context of dealing with illicit devices, through which the court confirmed that the concept encompasses infringing activities that relate to the trade of illicit devices, such as the placing of those devices on the market.

Sweden – Case No 15213-21

This case before Sweden's Patent and Market Court concerns the unauthorised broadcasting of pirated television signals through the internet. It explores the role of the accused in running a large-scale network that sold pre-programmed set-top boxes to an extensive customer base that could illegally access Swedish and foreign television channels. The case represents the first conviction for serious copyright infringement in Sweden following the introduction of the offence into national law in 2020.

Country	Sweden
Case No	15213-21
Keywords	Illegal retransmission of television signals, set-top boxes, IPTV subscription, broadcasting organisation, contributory infringement, aiding and abetting
Parties	C More Entertainment AB, Discovery Communications Europe Limited, Viaplay Group Sweden AB v accused
Date	06.10.2023
Court name	Patent- och marknadsdomstolen (Patent and Market Court)
Instance	First Instance Court
EU norms	-
Other norms	Section 48, Section 53 and Section 53(2) Copyright Act
Fine/damages	**Sentence/fine** The accused were ordered jointly and severally to pay damages in the amount of SEK 196 247 000 (EUR 17 266 902).
Reference	A copy of the judgment can be requested from the Patent and Market Court via the following page: https://www.domstol.se/stockholms-tingsratt/domar-och-beslut/bestall-domar-beslut-eller-handlingar/

Facts of the case

Between September 2017 and October 2021, the accused (two Swedish nationals) ran a large-scale illegal IPTV network that provided access to television broadcasts via the internet without the rights holders' authorisation. To this end, they sold pre-programmed set-top boxes through which customers could watch broadcasts from a large number of Swedish and foreign television channels.

The network came to the attention of the television operators following a series of anonymous tips received by a regional anti-piracy group of which they were members, and later by the police. In 2021, a representative of the anti-piracy group was able to purchase a set-top box from an anonymous informant, which provided strong evidence of criminal activity and triggered an extensive police investigation involving surveillance and wiretappings.

The investigation culminated in police searches on the residences of the accused in October 2021, which led to the end of the illegal IPTV operation.

Substance

The central issue for the court was whether the accused were involved in the illegal IPTV operation and therefore guilty of violating the television operators' exclusive right to broadcasts under Section 48 of the Copyright Act.

The court began by reviewing the available evidence, much of which stemmed from the police searches of the residences of the accused in October 2021. During the searches, police found computers that were not only linked

to the illegal streaming device acquired by the anti-piracy organisation but also enabled other important findings, not least in relation to the role played by each of the accused within the network. More concretely, the police was able to ascertain that one of the accused was responsible for renting the servers used by the network, while the other was responsible for the software on which the network ran. On the computers, the authorities also found the IPTV panel – which revealed that the network had 12 000 customers at the time – customer lists that linked to set-top boxes, and email correspondence between the accused and others relating to boxes, payments and the IPTV service.

Analyses of the messages found in the mobile phones of the accused also helped to uncover discussions pertaining to servers, boxes and their prices, channels and ID numbers. The content of the messages showed that third parties contacted one of the accused with questions about the service and that several dealers of boxes and subscriptions worked for him.

The involvement of the accused and their primary role in the illegal network was further supported by other findings made during the searches, including notes, documents and electronic equipment such as set-top boxes, as well as wiretaps.

On the basis of the evidence presented, the court was satisfied that the accused jointed operated the illegal IPTV network.

The court also confirmed that the IPTV service was the main source of income for the accused, allowing them to generate a considerable income. Based on the financial report prepared and submitted as evidence in court, the basic price for a subscription was approximately SEK 900 (EUR 79), a set-top box without Wi-Fi cost SEK 1 000 (EUR 88) and a set-top box with Wi-Fi cost SEK 2 000 (EUR 176), of which SEK 1 200 (EUR 106) was the profit on the box.

In addition to the revenue generated from the illegal IPTV service, the accused had considerable assets, which were found during the house searches. One of the accused owned a collection of whisky bottles worth an estimated SEK 1 000 000 (approximately EUR 90 000) and the other 47 gold bars. Cash in the amount of SEK 270 000 (approximately EUR 24 000) and bitcoin with an approximate value of SEK 450 000 (EUR 40 000) were also found during the searches.

In view of the above, the court considered it to be proven beyond reasonable doubt that the accused had intentionally infringed the exclusive broadcasting rights of the television operators by retransmitting the television broadcasts of specific channels between 13 September 2017 and 5 October 2021.

Considering the large number of users on the network, the court concluded that the infringement should be deemed serious from 1 September 2020, when the new provision of the Copyright Act on serious copyright infringement came into force. Thus, both of the accused were sentenced for copyright infringement committed between 13 September 2017 and 31 August 2020 under Section 53 of the Copyright Act, and for serious copyright infringement between 1 September 2020 and 5 October 2021 under Section 53(2), the new provision of the Copyright Act.

In sentencing, the court took into consideration several factors, including the central role played by the accused in the operation of the network, the network's large scale and high number of users, the financial gain made by the accused and the significant damage caused to the television operators. The long-term nature of the operation, the fact that it was run in a professional and systematic manner, and the lack of cooperation by the accused also weighed heavily in the court's decision. In view of these factors, each accused received a prison sentence of two years and six months.

As for calculating damages, the court referred to the current model for determining reasonable compensation in cases of broadcast infringements according to existing court practice. The model is based on the fee the television operators would have received for the legal use of their service (less VAT), the number of users who accessed the channels and the duration of the unauthorised use. To ensure that the operators are not overcompensated, the amount calculated was reduced by 30%.

The court noted that the television operators' claim for damages was based on the correct model, which used their monthly subscription fee as the unit of measurement. On that basis, C More claimed damages of SEK 64 041 000 (EUR 5 634 683), Viaplay SEK 103 334 000 (EUR 9 091 900) and Discovery SEK 28 872 000 (EUR 2 540 319). In the court's view, there were no doubts that would justify a different calculation from that made by the three companies.

As a result, the court approved their claim for damages and ordered the accused to pay the claimed amount jointly and severally.

The prosecution had also requested that SEK 10 000 000 (EUR 879 855) be forfeited from one of the accused and SEK 5 000 000 (EUR 439 927) from the other as proceeds of crime. The amounts were calculated based on the number of customers each accused had and the cost of the subscriptions over a six-month period. While the court agreed with the method for calculating the amounts, it rejected the forfeiture request based on the high level of damages imposed on the accused.

In addition to damages, the accused were also ordered to reimburse the television operators for their legal costs. In assessing the reasonableness of their request for compensation, the court argued that the 300 hours of work claimed by their legal counsels could not be considered reasonable, especially since the two counsels represented all parties and formulated their legal arguments in an identical manner. Moreover, the companies largely relied on the same investigation as the public prosecutor. Accordingly, the court reduced to 210 hours the amount of legal work that would be considered reasonable for compensation. This corresponded to SEK 462 000 (EUR 40 649) and was to be equally divided between the three companies. The accused were thus ordered to jointly pay each plaintiff SEK 154 000 (EUR 13 549) for the legal costs incurred.

This case also involved a third accused. However, the court agreed with the prosecution that the existing evidence against him was insufficient to secure a conviction. The charges against him were thus dropped. In light of his acquittal, the court rejected the prosecution's claims for compensation, as well as the request for forfeiture of the proceeds of crime and confiscation of the 18 set-top boxes that had been found in his residence during the house searches. Regarding the latter, the court argued that all but one set-top box found in his home were legal, not pre-programmed and different from those sold by the other accused. Moreover, the third accused had not been previously convicted of an IPTV-related offence. The court therefore found no reason to believe that the set-top boxes could be used for criminal purposes.

Comment

This judgment was a landmark case in Sweden, as it was the first conviction for the offence of serious copyright infringement, which was introduced into national law on 1 September 2020. The new provision of the Copyright Act – Section 53(2) – is an important step in the fight against criminal copyright infringement, as it increases the penalty scale for infringing activities carried out on a large scale, and in turn provides law enforcement agencies with a wider set of investigative tools, including surveillance of electronic communications, which were also used to investigate the accused in this case.

The sentences and damages awarded also make this case unique, as they were much higher than those traditionally awarded by national courts in Sweden. The case is therefore likely to have a deterrent effect on other perpetrators by demonstrating the legal consequences that may ensue from their infringing acts.

From a legal perspective, this judgment is highly relevant, as it provides insight into several important aspects, including the calculation of damages, which often presents difficulties for national courts. In this regard, the court highlighted the factors to be considered when calculating the amount of compensation to be paid to the victims. Last but not least, the case provides clarity on the elements that courts should consider when deciding whether a copyright infringement is serious, namely the duration and scale of the infringing activity, its professional and systematic nature, the number of users, the financial gain and the damage caused.

Sweden – Case No B15448-19 and B12022-21

This case by the Swedish Patent and Market Court and the Patent and Market Court of Appeal deals with the retransmission of pirated television signals via the internet. In it, the two courts engage in a pragmatic assessment of the role of the accused in aiding and abetting the main offence through the sale of set-top boxes and IPTV subscriptions that facilitate access to the illegal rebroadcasts of four Swedish television companies.

Country	Sweden
Case No	B 15448-19 and B12022-21
Keywords	Illegal retransmission of television signals, set-top boxes, IPTV subscription, broadcasting organisation, contributory infringement, aiding and abetting
Parties	C More Entertainment AB, Discovery Networks Sweden, Nordic Entertainment Group AB and VIMN Nordic AB v K.H
Date	15.9.2021 (first instance) and 14.6.2022 (second instance)
Court name	Patent- och marknadsöverdomstolen and Patent- och marknadsdomstolen (Patent and Market Court and Patent and Market Court of Appeal)
Instance	First and second instances
EU norms	-
Other norms	Section 48, Section 53a and Section 54 of the Copyright Act
Fine/damages	**Sentence/fine** The accused was ordered to pay a fine of SEK 50 (EUR 5) for a period of 70 days and damages in the amount of SEK 1 085 562 (EUR 96 738) to the plaintiffs.
Reference	Mål: B 12022-21 - Patent- och marknadsöverdomstolen vid Svea hovrätt

Facts of the case

The accused managed a website through which he sold pre-programmed set-top boxes with IPTV subscriptions that provided customers with unauthorised access to the rebroadcasts of television channels from Swedish television operators.

A representative of an organisation that represents the television operators in the Nordic countries – A.B – purchased a set-top box from the accused's website, which provided important evidence for the police investigation. In particular, the purchased set-top box came with a pre-installed application, instructions and login details, which allowed A.B to access to the television channels of the Swedish television operators.

Substance

The Patent and Market Court began by examining the role of the accused in the infringement of the television operators' exclusive right to broadcasts under Section 48 of the Copyright Act.

During searches of the accused's residence, the police found 10 set-top boxes, some of which had the applications under investigation installed on them, as well as notes with login details, printed instruction manuals and information about the website's IPTV activities. Analyses of the accused's computers, phones, USB sticks and an external hard drive revealed large amounts of information, including e-mail correspondence with customers,

internet searches, pictures and text messages, which linked the accused to the sale of the pre-programmed boxes and subscriptions through his website. The search also led to the discovery of equipment and materials for the large-scale distribution of parcels.

The discoveries made by the police, along with the fact that the sale of set-top boxes via the accused's website ceased two days after the house search, led the court to conclude that the accused was responsible for the sale of the set-top boxes and IPTV subscriptions. This conclusion was further supported by the financial investigation carried out by the police, which revealed that the accused received payments for subscription-based set-top boxes on at least 119 occasions during the period of the alleged offence, generating revenues that ranged from SEK 200 000 (EUR 17 788) to SEK 300 000 (EUR 26 681).

Although the court found that the accused was not directly involved in the main offence (illegal retransmission of broadcasting signals) – the available information was insufficient to determine how it had been committed – the court found that his actions made him liable for contributory infringement. For the court, the question of the origin of the illegal rebroadcasts or the identity of the main perpetrator was irrelevant to the determination of the accused's subsidiary liability. In its view, the mere fact that the users of the set-top boxes and IPTV subscriptions had gained access to the illegal television rebroadcasts meant that the main offence had been committed, and as the set-top boxes sold by the accused were a prerequisite for the users to access the unauthorised transmissions, he had thus facilitated the principal offence.

The court thus sentenced the accused to a suspended prison sentence of four months for aiding and abetting a copyright offence under Section 48 of the Copyright Act and to the payment of a daily fine of SEK 50 (approximately EUR 5) for a period of 120 days. The fine issued resulted from a careful assessment of the relevant factors, including the lesser penal value of the accused's aiding and abetting of the main offence, the serious nature of his actions, which enabled 119 users to access the rebroadcasting of television signals, and the large amount of revenue generated through his illicit activity.

On the issue of damages, the court clarified that Section 54 of the Copyright Act does not expressly state that a person who contributes to an infringing act is liable for compensation. Nevertheless, the court argued that in such cases the general principles of tort law apply, according to which a person who has contributed to the infringement can also be ordered to pay damages.

According to the court, the accused's conduct of selling pre-programmed set-top boxes and IPTV subscriptions to the public constituted economic exploitation in violation of Section 48 of the Copyright Act, making him liable for the payment of damages to the affected television operators.

As for the model for calculating damages, the court stated that the principles for calculating reasonable compensation under the Decoding Act – aimed at preventing the unauthorised access to television broadcasts that are subject to conditional access and provided against payment – should be applied in this case, similarly to other cases of infringement of the exclusive right to broadcasts under the Copyright Act.

Referring to the case-law of the Supreme Court in this area, the Second Instance Court stressed that the calculation should be based on the fee that the television operators would have been paid through a subscription for the actual use of their services by the customers. The fee should also take into account the period of time during which the unauthorised use took place.

The court agreed with the calculation of damages proposed by the television operators. These were based on a formula that multiplied the number of customers who illegally accessed their channels by the number of months of the illegal activity and the number of channels that were rebroadcast. Accordingly, the accused was ordered to pay damages to the four companies of SEK 1 563 944 (approximately EUR 140 000). In the court's view, the liability of the accused as an accessory and not as a co-perpetrator did not justify a reduction of the amount of damages.

In line with Section 53a of the Copyright Act, the court also ordered the forfeiture of the seized set-top boxes to prevent further infringements. Last but not least, the accused was ordered to pay a fee of SEK 800 (EUR 72) under the Crime Victim's Fund Act.

The accused appealed the decision of the court and asked that the Court of Appeal dismiss the indictment, reject or reduce the amount of the damages, and dismiss the prosecution's request to forfeit the set-top boxes.

The Court of Appeal agreed with the lower court's assessment that the accused's conduct – the sale of pre-programmed set-top boxes that functioned as receivers for the retransmitted television channels – facilitated the main offence and constituted aiding and abetting of an infringement of the Copyright Act. In addition to the objective element, the Court of Appeal was also satisfied that the accused acted with intent, as he was fully aware of the illegality of the offence.

While the Court of Appeal agreed with the sentence imposed, it ordered that the lower court's decision be amended with regard to the duration of the crime, the number of daily fines and the calculation of damages. Accordingly, the duration of the crime should be slightly shorter than that established at first instance and the number of daily fines should be reduced to 70.

As for the amount of damages to be paid to the television operators, the Court of Appeal pointed out that, on the basis of the police investigation, 55 of the 118 transactions corresponded only to the first three months of the offence, whereas the remaining transactions were spread over the entire period of the offence. This fact should be taken into consideration in the calculation of damages, and therefore the compensation to the television operators should be set at 70% of the amounts claimed, resulting in a total of SEK 1 085 562 (EUR 96 738) in damages.

Comment

This case is an excellent example of how courts can overcome the technical challenges involved in copyright piracy cases to deliver a practical ruling that condemns the acts of those who contribute to copyright infringement in any capacity.

With this ruling, the Swedish Market and Patent Court and the Market and Patent Court of Appeal have shown that criminal prosecution remains an important tool for broadcasting organisations to enforce their exclusive rights and to stop infringing activities at any level.

Spain – Case No 2315/2022

In this case, the Supreme Court examined the illegal broadcasting of football matches through the use of decoders and ruled that this infringing conduct should be treated as a crime against the market and consumers and not as an intellectual property crime, both of which are governed in the country's Penal Code. Sports matches cannot be deemed artistic, literary or scientific works, or performances.

Country	Spain
Case No	2315/2022
Keywords	Illegal broadcasting of football matches, decoders, artistic, literary and scientific works, and performances
Parties	Prosecutor v accused
Date	02.6.2022
Court name	Tribunal Supremo (Supreme Court)
Instance	Third instance
EU norms	-
Other norms	Article 270 and Article 286(4) of the Penal Code
Fine/damages	**Sentence/fine** Not applicable
Reference	CENDOJ : Buscador del Sistema de Jurisprudencia (poderjudicial.es)

Facts of the case

The accused was the owner of three public establishments where, since at least 20 October 2018, he continuously broadcast football matches using television decoders. The accused did so knowing that he lacked the authorisation of the rights holders – La Liga Nacional de Fútbol Profesional (the Spanish League) – or their licensees.

The infringing activity was reported to the Spanish police following inspections of the accused's establishments by a representative of La Liga, during which various football matches were being illegally broadcast. The legitimacy of the broadcasts could be ascertained through the presence on the television screen of several security measures deployed by La Liga. These included a caption with La Liga's name, which appeared on the upper right-hand corner of the screen, a logo certifying the public establishment's contract with La Liga, and an alphanumeric code identifying the contract holder, which appeared on screen every 12 minutes.

The First Instance Court found the accused guilty of a minor offence against the market and consumers, in line with Article 286(4) of the Penal Code and sentenced him to the payment of a two-month fine with a daily quota of EUR 12, as well as the payment of legal costs, including those incurred by La Liga. The court also ordered the confiscation and destruction of the seized decoders and ordered the accused to pay La Liga damages in an amount to be determined during the execution of the judgment.

The Public Prosecutor, joined by La Liga, appealed against the decision. The Second Instance Court rejected the appeal, confirming the ruling of the lower court. Its decision prompted the prosecution to lodge an appeal in cassation, which was also joined by La Liga.

Substance

In the appeal, the prosecution argued that the lower courts made a legal error by applying Article 286(4) of the Penal Code – which governs offences against the market and consumers – to the accused's conduct, suggesting instead that

the facts of the case should have been classified as a crime against intellectual property under Articles 270(1) and 270(4) of the Penal Code.

The appeal centred on two main premises, namely that the accused's conduct should be sanctioned under Article 270 of the Penal Code, and that the accused should be sentenced concurrently under Article 286(4), which was applied by the lower instance courts.

Article 270, which was updated by the 2015 reform of the Spanish Penal Code, states that 'anyone who, with the intention of obtaining a direct or indirect financial benefit, and to the detriment of a third party, reproduces, plagiarises, distributes, publicly communicates or in any other way exploits economically, in whole or in part, a literary, artistic or scientific work or performance, or its transformation, interpretation or artistic execution (...) without the authorisation of the rights holders of the corresponding intellectual property rights or their licensees, shall be punished with a prison sentence of six months to four years and a fine of 12 to 24 months'.

According to the prosecution, broadcasts of football matches fall within the concept of performances in Article 270, and the words 'literary, artistic or scientific' that precede the concept of works and performances in that provision do not allow for the exclusion of intellectual property-related rights, which include broadcasts by broadcasting organisations, from the scope of the offence. The prosecutor sought to support this argument by referring to Circular 8/2015 of the Prosecutor's Office, which establishes that the concept of performances under the 2015 law encompasses related rights prescribed in Book II of the Spanish Intellectual Property Law, which include the rights that protect broadcasts made by broadcasting organisations.

The prosecutor further contended that the expression 'in any other way exploits' was introduced by the 2015 Penal Code reform with the aim of covering a wider range of possible criminal acts resulting from sophisticated technological advances that have the potential to affect IP rights in the online environment.

The court clarified that the main issue in the appeal was not whether television broadcasts of football matches are protected by IP rights, nor whether the infringement of the exclusive right to broadcasts is criminalised. In this respect, the court argued, the law is clear: the rights of broadcasting organisations constitute exclusive rights, and their transmissions, which form an integral part of IP rights, are only legitimate when authorised.

Instead, the main task for the court was to determine whether the conduct of a person who allows the viewing of sports events in a public establishment without paying for the exclusive right to show such events must always be sanctioned under Article 270(1) of the Penal Code. To that end, the court has to decide whether the infringement of the exclusive right to broadcast football matches falls within the notion of literary, artistic or scientific works or performances for the purpose of its criminalisation under Article 270(1).

The court took the view that such an interpretation was inconceivable. After ruling out the status of a football match as a literary, artistic or scientific work, the court argued that it was particularly difficult to regard a football match as a literary, artistic or scientific performance for the purpose of criminalisation.

In the court's opinion, the difficulty of defining the boundaries of a criminal conduct that involves normative elements evoking literature, art or science, requires that the existing guidelines that delimit its scope be extremely prudent so as not to exceed the limits of what each term is intended to encompass. With this in mind, the court concluded that a football match cannot be considered literature or science. As for the notion of artistic, the court acknowledged that football matches and other sports events often include moves with aesthetic value; however, it argued that interpreting these moments or sequences of technical perfection as defining features of an artistic performance could cause a transgression of the intended boundaries of criminal conduct. Ultimately, a football match is a sports event, not an artistic performance.

In support of its view, the court also argued that the omission of the word sports from the provisions of Article 270 would force the court to make an effort to integrate sports events into a mould designed for artistic, literary and scientific creations, which could lead to a violation of the legality principle.

The court therefore dismissed the appeal and upheld the decision of the lower instance courts.

As the conduct of the accused could not be criminalised under Article 270, the court did not consider it necessary to analyse the prosecutor's request that the accused be punished under both legal provisions – Article 270 and Article 286(4).

Comment

This was an important ruling, which established the jurisprudence in an area where courts would arrive at different conclusions.

Importantly, this case represents a new direction for case-law on the unauthorised broadcasting of football matches, as the offence is now treated as a crime against the market and consumers and not a crime against intellectual property. With this ruling, the court has effectively put an end to any alternative interpretations, as it clarified that television broadcasts of football matches cannot be considered artistic, literary or scientific works or performances. To protect this type of right under Article 270 of the Penal Code requires legislators to make their intention clear by adding the term sports to the wording of that legal provision.

Finland – KKO:2018:36

In this case, the Supreme Court answered the question of whether the infringement of an EU trademark and community design is covered by the national provision on industrial property offences of the Criminal Code. After examining the possible interdependences between national law and European law on trademarks and design rights, the Supreme Court concluded that the infringement of EU trademarks and design rights could not lead to the imposition of criminal sanctions under national law, as the applicable provisions did not specifically refer to EU trademarks and Community designs.

Country	Finland
Case No	KKO:2018:36
Keywords	Industrial property offence, counterfeit, trademarks, design rights, EU law, Community Trademark Regulation, Community Design Regulation
Parties	Prosecutor v A and B
Date	26.4.2018
Court name	Korkein Oikeus (Supreme Court of Finland)
Instance	Third instance
EU norms	Community Trade Mark Regulation (currently EU Trade Mark Regulation) and Community Design Regulation
Other norms	Chapter 49(2) of the Criminal Code (new version available here)
Fine/damages	**Sentence/fine** Not applicable
Reference	KKO:2018:36 - Korkeimman oikeuden ennakkopäätökset - FINLEX ®

Facts of the case

The accused – A and B – imported 1 000 counterfeit steam mops and 1 320 counterfeit multifunctional choppers, which infringed trademark and design rights under the Community Trade Mark Regulation (now EU Trade Mark Regulation) and the Community Design Regulation.

In 2016, the First Instance Court sentenced the accused to two industrial property offences for intentionally infringing the exclusive trademarks and design rights of the rights holders. The accused were ordered to pay a fine and the confiscated goods were to be forfeited to the state.

The case was subsequently appealed by the accused. On appeal, the Second Instance Court argued that since the Community regulations on trademark and design did not provide for criminal sanctions, Community trademarks and Community designs could not be deemed equivalent to the rights afforded by national law in criminal proceedings. The court argued that, in view of the legality principle, Chapter 49(2) of the Criminal Code, which governs the criminalisation of industrial property offences, could not be interpreted as extending to infringements of a Community trademark or design right. The Second Instance Court reversed the decision of the lower court and acquitted A and B of an industrial property offence and ordered that the confiscated goods be returned to them.

The prosecutor was granted leave to appeal to the Supreme Court.

Substance

The main question for the Supreme Court was whether the conduct of the accused, which infringed trademark and design rights under EU law, was punishable as an industrial property offence under national law.

The court began by stressing that, under the principle of legality, criminal liability only arises in relation to acts that are specifically prohibited by law at the time they are committed. Therefore, in line with this principle, courts should not go beyond the letter of the law or deviate from its legal and technical meaning, so as to guarantee legal protection and a predictable interpretation of the law.

When assessing criminal liability for an industrial property offence in Finland, the Supreme Court noted that the infringement of a trademark or design right under the provisions of Chapter 49(2) of the Criminal Code was limited to conduct that violates national laws. Accordingly, infringements of the Community Trade Mark Regulation and the Community Design Regulation could not be deemed criminal offences under the Criminal Code.

The court subsequently considered whether criminal liability could be derived from the national legislation on trademarks and designs. However, the court held that neither the trademark act nor the design act contained any provisions that suggested that the legal texts and the criminal liability provided for therein would apply to Community trademarks or designs.

Finally, the court examined whether criminal liability could arise from existing provisions in other sources of law. It recognised that the Community Trade Mark Regulation and the Community Design Regulation treated EU trademarks and design rights in the same way as their equivalent national counterparts. This was supported by Article 14 of the Community Trade Mark Regulation (now Article 17 of the EU Trade Mark Regulation), which specified that infringements of EU trademarks should be governed by the national laws relating to the infringements of national trademarks.

Nevertheless, the court noted that neither the regulation for trademark or for design could establish any criminal liability as EU legislative acts cannot have the effect of determining or aggravating criminal liability independently of the domestic law of a Member State – a position that is well established within the case-law of the Court of Justice of the European Union.

The court also argued that as Chapter 49 of the Criminal Code had not been amended after the entry into force of the two EU regulations, the interdependencies between the provisions of the national and EU legislation had not yet been addressed. Similarly, the court acknowledged the obligation imposed by the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, of which Finland is a signatory country, to impose criminal sanctions for certain types of infringement. More specifically, Article 61 of the TRIPS Agreement requires member countries to provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting and copyright piracy on a commercial scale. However, the court ruled that the provisions of Article 61 of TRIPS did not give rise to criminal liability under Finnish law, as Chapter 49 had not been changed by any national legislative amendments related to the TRIPS Agreement.

On the basis of this interpretation, the Supreme Court concluded that the intentional infringement of a Community trademark and a Community design did not constitute an industrial property offence under Chapter 49(2) of the Criminal Code. The Court therefore upheld the decision of the Second Instance Court.

Comment

This decision of the Supreme Court was significant in many respects. First, the court established jurisprudence in an area that had been debated for a while, and which at times led to conflicting decisions by different national courts. While the ruling created additional challenges to rights holders seeking to enforce their exclusive rights and contributed to a weakening of the legal protection of EU trademarks and design rights, it did provide legal clarity to the question of whether national and EU trademark and design rights should be treated differently with respect to criminal liability in Finland.

Most importantly however, this ruling was partly responsible for the subsequent legislative changes that took place in Finland. Following the ruling, Finland made important amendments to the relevant national legislation – namely

the Criminal Code and the Trademarks Act – both of which now provide for criminal liability for the infringement of exclusive rights to an EU trademark and Community design. The changes not only brought Finland in line with its obligations under EU law and international treaties, but also helped to strengthen the legal status of EU trademarks and designs in the country – a position that is not shared by all Member States.

Relevant legislation

Czech Republic

Czech Criminal Code (*Zákon trestní zákoník*)

No 40/2009 Sb.

Access the full text

Czech:

40/2009 Sb. Trestní zákoník (zakonyprolidi.cz)

English (unofficial translation, consolidated only till 2009)

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi_wrOX872BAxUw0gIHHSQ_BO8QFnoECA4QAQ&url=https%3A%2F%2Fantislaverylaw.ac.uk%2Fwp-content%2Fuploads%2F2019%2F08%2FCzech-Republic-Criminal-Code.pdf&usg=AOvVaw2Gd4OCVkJefIlS0ngjfwwg&opi=89978449

	Original language	English
Article 260	**Poškození finančních zájmů Evropské unie** (1) Kdo vyhotoví, použije nebo předloží nepravdivé, nesprávné nebo neúplné doklady, uvede nepravdivé, nesprávné nebo neúplné údaje anebo zatají doklady nebo údaje, a tím umožní neoprávněné použití nebo zadržování finančních prostředků pocházejících z rozpočtu Evropské unie nebo rozpočtů spravovaných Evropskou unií nebo jejím jménem anebo zmenšení zdrojů některého takového rozpočtu nebo umožní neoprávněné použití nebo zadržování majetku pořízeného z rozpočtu Evropské unie nebo rozpočtů spravovaných Evropskou unií nebo jejím jménem, bude potrestán odnětím svobody až na tři léta, zákazem činnosti nebo propadnutím věci. (2) Stejně bude potrestán, kdo neoprávněně použije finanční prostředky pocházející z rozpočtu Evropské unie nebo rozpočtů spravovaných Evropskou unií nebo jejím jménem, majetek pořízený z rozpočtu Evropské unie nebo rozpočtů spravovaných Evropskou	**Harming the financial interests of European Communities** (1) Whoever produces, uses or presents false, incorrect or incomplete documentation, or makes in such documentation false or grossly distorted statements related to income or expenses of summary budget of European Communities or to budgets administered by European Communities or on their behalf or conceals such documentation or data and thus facilitates the incorrect use or withholding of financial resources from any such budget or diminishing of funds of any such budget, shall be sentenced to imprisonment for up to three years, to prohibition of activity or to confiscation of a thing or other asset value. (2) The same sentence shall be imposed on anyone who diminishes or uses without authorisation financial resources that form income or expenses of summary budget of the European Communities or budgets administered by European Communities or on their behalf.

	unií nebo jejím jménem anebo zmenší zdroje některého takového rozpočtu. (3) Odnětím svobody na jeden rok až pět let nebo peněžitým trestem bude pachatel potrestán, způsobí-li činem uvedeným v odstavci 1 nebo 2 větší škodu. (4) Odnětím svobody na dvě léta až osm let bude pachatel potrestán, a) spáchá-li čin uvedený v odstavci 1 nebo 2 jako člen organizované skupiny, b) spáchá-li takový čin jako osoba, která má zvlášť uloženou povinnost hájit zájmy Evropské unie, nebo c) způsobí-li takovým činem značnou škodu. (5) Odnětím svobody na pět až deset let bude pachatel potrestán, způsobí-li činem uvedeným v odstavci 1 nebo 2 škodu velkého rozsahu.	(3) An offender shall be sentenced to imprisonment for one to five years or to a pecuniary penalty, if he/she causes more extensive damage by the act referred to in Subsection (1) or (2). (4) An offender shall be sentenced to imprisonment for two to eight years , if he/she a) commits the act referred to in Subsection (1) or (2) as a member of an organised group, b) commits such an act as a person who has a special obligation to protect the interests of European Communities, or c) causes substantial damage by such an act. (5) An offender shall be sentenced to five to ten years of imprisonment, if he/she causes extensive damage by the act referred to in Subsection (1) or (2)
Article 268	**Porušení práv k ochranné známce a jiným označením** (1) Kdo uvede do oběhu výrobky nebo poskytuje služby neoprávněně označené ochrannou známkou, k níž přísluší výhradní právo jinému, nebo známkou s ní zaměnitelnou nebo pro tento účel sobě nebo jinému takové výrobky nabízí, zprostředkuje, vyrobí, doveze, vyveze nebo jinak opatří nebo přechovává, anebo takovou službu nabídne nebo zprostředkuje, bude potrestán odnětím svobody až na dvě léta, zákazem činnosti nebo propadnutím věci. (2) Stejně bude potrestán, kdo pro dosažení hospodářského prospěchu neoprávněně užívá obchodní firmu nebo jakékoliv označení s ní zaměnitelné nebo uvede do oběhu výrobky nebo služby neoprávněně opatřené označením původu nebo zeměpisným označením anebo takovým označením s ním zaměnitelným nebo pro tento účel sobě nebo jinému takové výrobky nebo služby nabídne, zprostředkuje, vyrobí, doveze, vyveze nebo jinak opatří nebo přechovává. (3) Odnětím svobody na šest měsíců až pět let, peněžitým trestem nebo propadnutím věci bude pachatel potrestán,	**Infringement of trademark rights and rights to other marks** (1) Whoever sends to circulation products or offers services illegally labelled by a trademark, exclusive right to which belongs to another person, or by a trademark confusable with such a trademark, or whoever offers, mediates, manufactures, imports, exports or otherwise obtains or handles for him-/herself or for another for this purpose, or offers or arranges such a service, shall be sentenced to imprisonment for up to two years or to confiscation of a thing or other asset value. (2) The same penalty shall be imposed to anyone who for the purpose of achieving economic profit illegally uses a trade name or any mark confusable with it or who sends to circulation products or services illegally marked by a mark of origin or geographical mark or by a mark confusable with it, or who for this purpose offers, mediates, manufactures, imports, exports or otherwise handles for him-/herself or for another such products or services. (3) An offender shall be sentenced to imprisonment for six months to five years, to a pecuniary penalty or to confiscation of a thing or another asset value, if he/she

	a) získá-li činem uvedeným v odstavci 1 nebo 2 pro sebe nebo pro jiného značný prospěch, nebo b) dopustí-li se takového činu ve značném rozsahu. (4) Odnětím svobody na tři léta až osm let bude pachatel potrestán, a) získá-li činem uvedeným v odstavci 1 nebo 2 pro sebe nebo pro jiného prospěch velkého rozsahu, nebo b) dopustí-li se takového činu ve velkém rozsahu.	a) gains for him-/herself or for another substantial profit by the act referred to in Subsection (1) or (2), b) commits such an act in considerable extent. (4) An offender shall be sentenced to imprisonment for three to eight years, if he/she a) gains for him-/herself or for another extensive profit by the act referred to in Subsection (1) or (2), b) commits such an act in large extent.
Article 269	**Porušení chráněných průmyslových práv** (1) Kdo neoprávněně zasáhne nikoli nepatrně do práv k chráněnému vynálezu, průmyslovému vzoru, užitnému vzoru nebo topografii polovodičového výrobku, bude potrestán odnětím svobody až na dvě léta, zákazem činnosti nebo propadnutím věci. (2) Odnětím svobody na šest měsíců až pět let, peněžitým trestem nebo propadnutím věci bude pachatel potrestán, a) vykazuje-li čin uvedený v odstavci 1 znaky obchodní činnosti nebo jiného podnikání, b) získá-li takovým činem pro sebe nebo pro jiného značný prospěch, nebo c) dopustí-li se takového činu ve značném rozsahu. (3) Odnětím svobody na tři léta až osm let bude pachatel potrestán, a) získá-li činem uvedeným v odstavci 1 pro sebe nebo pro jiného prospěch velkého rozsahu, nebo b) dopustí-li se takového činu ve velkém rozsahu.	**Infringement of protected economical rights** (1) Whoever illegally interferes not insignificantly with rights to a protected invention, industrial design, utility design or topography of semi-conductor product, shall be sentenced to imprisonment for up to two years, to prohibition of activity or to confiscation of a thing or other asset value. (2) An offender shall be sentenced to imprisonment for six months to five years, to a pecuniary penalty or to confiscation of a thing or other asset value, if a) the act referred to in Subsection (1) has attributes of a business or other entrepreneurial activity, b) he/she gains for him-/herself or for another substantial profit by such an act, or c) he/she commits such an act in considerable extent. (3) An offender shall be sentenced to imprisonment for three to eight years, if he/she a) gains for him-/herself or for another extensive profit by the act referred to in Subsection (1), b) commits such an act in large extent.
Article 270	**Porušení autorského práva, práv souvisejících s právem autorským a práv k databázi** (1) Kdo neoprávněně zasáhne nikoli nepatrně do zákonem chráněných práv k autorskému dílu, uměleckému výkonu, zvukovému či zvukově obrazovému záznamu, rozhlasovému	**Infringement of copyright, rights related to copyright and rights to databases** (1) Whoever wrongfully interferes not insignificantly with legally protected right to an author

	nebo televiznímu vysílání, tiskové publikaci nebo databázi, bude potrestán odnětím svobody až na dvě léta, zákazem činnosti nebo propadnutím věci. (2) Odnětím svobody na šest měsíců až pět let, peněžitým trestem nebo propadnutím věci bude pachatel potrestán, a) vykazuje-li čin uvedený v odstavci 1 znaky obchodní činnosti nebo jiného podnikání, b) získá-li takovým činem pro sebe nebo pro jiného značný prospěch nebo způsobí-li tím jinému značnou škodu, nebo c) dopustí-li se takového činu ve značném rozsahu. (3) Odnětím svobody na tři léta až osm let bude pachatel potrestán, a) získá-li činem uvedeným v odstavci 1 pro sebe nebo pro jiného prospěch velkého rozsahu nebo způsobí-li tím jinému škodu velkého rozsahu, nebo b) dopustí-li se takového činu ve velkém rozsahu.	Work, artistic performance, sound or audiovisual record, radio or television broadcast, or database, shall be sentenced to imprisonment for up to two years or to prohibition of activity or to confiscation of an item or other asset value. (2) An offender shall be sentenced to imprisonment for six months to five years, to a pecuniary penalty or to confiscation of a thing or other asset value, if a) the act referred to in Subsection (1) has attributes of a business or other entrepreneurial activity, b) he/she gains for him-/herself or for another substantial profit or causes substantial damage by such an act, or c) he/she commits such an act in considerable extent. (3) An offender shall be sentenced to imprisonment for three to eight years, if he/she a) gains for him-/herself or for another extensive profit or causes extensive damage to another by the act referred to in Subsection (1), or b) commits such an act in large extent.

Czech Act on the Protection of Industrial Design (*Zákon o ochraně průmyslových vzorů*)

ACT No 207/2000 Coll

Access the full text

Czech:

https://www.zakonyprolidi.cz/cs/2000-207/zneni-20220201

English (not updated translation):

https://www.nbu.cz/images/download/act_on_CI_protection.pdf

	Original language	English
Article 23	**Omezení práv vyplývajících ze zapsaného průmyslového vzoru** (1) Práva vyplývající ze zapsaného průmyslového vzoru se nevztahují na a) jednání třetích osob uskutečněná pro neobchodní účely, b) jednání třetích osob uskutečněná pro experimentální účely, c) jednání třetích osob spočívající v reprodukci pro účely citace nebo výuky, za předpokladu, že tato jednání jsou slučitelná s poctivou obchodní praxí a nejsou nepřiměřeně na úkor řádnému užívání průmyslového vzoru a že je uveden zdroj. (2) Dále se práva vyplývající ze zapsaného průmyslového vzoru nevztahují na a) zařízení lodí a letadel registrovaných v jiné zemi, dostanou-li se přechodně na území České republiky, b) dovoz náhradních dílů a příslušenství do České republiky za účelem opravy takového dopravního prostředku, c) uskutečnění oprav tohoto dopravního prostředku.	**Limitation of rights conferred by design right upon registration** (1) The rights conferred by a design right upon registration shall not be exercised in respect of: a) acts done by third persons for non-commercial purposes, b) acts done by third persons for experimental purposes, c) acts done by third persons for the purposes of citation or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source. (2) In addition, the rights conferred by a design right upon registration shall not be exercised in respect of: a) the equipment on ships and aircraft registered in another country when these temporarily enter the territory of the Czech Republic, b) the import of spare parts and accessories into the Czech Republic for the purpose of repairing such craft, c) the execution of repairs of such craft.

Czech Trademark Act (*Zákon o ochranných známkách*)

ACT No 207/2000 Coll

Access the full text

Czech:

https://www.zakonyprolidi.cz/cs/2003-441/zneni-20220201

English (unofficial translation):

https://upv.gov.cz/files/uploads/PDF_Dokumenty/legislation/national/441_2003-012019_en.pdf

	Original language	English
Article 8	**Práva z ochranné známky** (1) Vlastník ochranné známky má výlučné právo užívat ochrannou známku ve spojení s výrobky nebo službami, pro něž je chráněna. Své právo prokazuje vlastník zapsané ochranné známky výpisem z rejstříku, popřípadě osvědčením o zápisu. Vlastník ochranné známky je oprávněn používat spolu s ochrannou známkou značku ®. (2) Nestanoví-li tento zákon jinak (§ 10 až 11), nikdo nesmí v obchodním styku bez souhlasu vlastníka ochranné známky užívat a) označení shodné s ochrannou známkou pro výrobky nebo služby, které jsou shodné s těmi, pro které je ochranná známka zapsána, b) označení, u něhož z důvodu jeho shodnosti nebo podobnosti s ochrannou známkou a shodnosti nebo podobnosti výrobků nebo služeb označených ochrannou známkou a označením existuje pravděpodobnost záměny na straně veřejnosti, včetně pravděpodobnosti asociace mezi označením a ochrannou známkou, c) označení shodné s ochrannou známkou nebo jí podobné bez ohledu na to, zda je užíváno pro shodné, podobné nebo nepodobné výrobky nebo služby, pro které je ochranná známka chráněna, a jde o ochrannou známku, která má dobré jméno v České republice, a jeho užívání bez řádného důvodu by neoprávněně těžilo z	**Rights conferred by a trademark** (1) The proprietor of a trademark shall have the exclusive right to use the trademark in relation to the goods or services covered by the trade mark. The proprietor of the trademark shall prove his rights by means of an abstract from the Register, or by means of a certificate of registration. The proprietor of the trademark shall have the right to use the sign ® together with the trademark. (2) Unless otherwise provided by this Act (Sections 10 to 11), third parties may not use without the consent of the proprietor of the trademark in the course of trade a) any sign identical to the trademark for goods or services identical to those for which the trademark is registered; b) any sign where, because of its identity or similarity to the trademark and because of the identity or similarity of the goods or services covered by the trademark, there exists a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the trademark; c) any sign identical or similar to the trademark, irrespective of whether the goods or services for which it is used are identical, similar or not similar to those for which the trademark is registered, where the trademark has a reputation in the Czech Republic and the use of the sign without due cause would take unfair advantage of, or be detrimental

	rozlišovací způsobilosti nebo dobrého jména ochranné známky nebo jim bylo na újmu.	to, the distinctive character or the repute of the trademark.
	(3) Pro potřeby odstavce 2 se za užívání v obchodním styku považuje zejména	(3) For the purposes of paragraph 2, the use of a sign in the course of trade shall mean, in particular:
	a) umísťování označení na výrobky nebo jejich obaly,	a) affixing the sign to the goods or their packaging;
	b) nabídka výrobků pod tímto označením, jejich uvádění na trh nebo skladování za tímto účelem anebo nabídka či poskytování služeb pod tímto označením,	b) offering the goods or putting them on the market or stocking them for those purposes under the sign, or offering or supplying services thereunder;
	c) dovoz nebo vývoz výrobků pod tímto označením,	c) importing or exporting the goods under the sign,
	d) užívání označení v obchodních listinách a v reklamě,	d) using the sign on business documents or in advertising;
	e) užívání označení jako název právnické osoby nebo obchodní firmu nebo jako součást názvu právnické osoby nebo obchodní firmy,	e) using the sign as a trade or company name or part of a trade or company name;
	f) užívání označení ve srovnávací reklamě způsobem, který je v rozporu s jiným právním předpisem6).	f) using the sign in comparative advertising contrary to other laws6).
	(4) Vlastník starší zapsané ochranné známky má právo bránit v přepravě výrobků z třetích zemí do České republiky v rámci obchodního styku, aniž by zde byly propuštěny do volného oběhu, pokud takové výrobky, včetně jejich obalů, jsou neoprávněně označeny ochrannou známkou, která je shodná s ochrannou známkou zapsanou pro tyto výrobky nebo kterou nelze v jejích podstatných rysech od této ochranné známky odlišit. To neplatí, pokud v rámci řízení o porušení práv ze zapsané ochranné známky, které bylo zahájeno v souladu s přímo použitelným předpisem Evropské unie7), poskytne deklarant nebo držitel zboží důkazy o tom, že vlastník této ochranné známky není oprávněn zakázat uvádění daných výrobků na trh v zemi konečného určení.	(4) The proprietor of an earlier trademark shall be entitled to prevent third countries from bringing goods, in the course of trade, into the Czech Republic without the goods being released for free circulation where such goods, including the packaging, bear without authorisation a trademark which is identical to the trademark registered in respect of such goods or which cannot be distinguished in its essential aspects from that trademark. This shall not apply if, during the proceedings to determine whether the registered trademark has been infringed, initiated in compliance with the directly applicable European Union regulation7), evidence is provided by the declarant or the holder of the goods that the proprietor of this trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.
	(5) Byla-li ochranná známka zapsána na jméno zástupce vlastníka ochranné známky bez souhlasu tohoto vlastníka, má vlastník právo zakázat užívání ochranné známky touto osobou, ledaže by své jednání řádně odůvodnila.	(5) If a trademark has been registered in the name of a trademark proprietor's representative without the proprietor's authorisation, the proprietor shall be entitled to prohibit this person from using the trademark, unless he duly justifies his action.

Czech Copyright Act (*Zákon o právu autorském*)

Act No 121/2000 Coll

Access the full text

Czech:

https://www.zakonyprolidi.cz/cs/2003-441/zneni-20220201

English (unofficial translation):

https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/cz/cz029en.pdf

	Original language	English
Article 2	**Autorské dílo** (1) Předmětem práva autorského je dílo literární a jiné dílo umělecké a dílo vědecké, které je jedinečným výsledkem tvůrčí činnosti autora a je vyjádřeno v jakékoli objektivně vnímatelné podobě včetně podoby elektronické, trvale nebo dočasně, bez ohledu na jeho rozsah, účel nebo význam (dále jen "dílo"). Dílem je zejména dílo slovesné vyjádřené řečí nebo písmem, dílo hudební, dílo dramatické a dílo hudebně dramatické, dílo choreografické a dílo pantomimické, dílo fotografické a dílo vyjádřené postupem podobným fotografii, dílo audiovizuální, jako je dílo kinematografické, dílo výtvarné, jako je dílo malířské, grafické a sochařské, dílo architektonické včetně díla urbanistického, dílo užitého umění a dílo kartografické. (2) Za dílo se považuje též počítačový program, fotografie a výtvor vyjádřený postupem podobným fotografii, které jsou původní v tom smyslu, že jsou autorovým vlastním duševním výtvorem. Databáze, která je způsobem výběru nebo uspořádáním obsahu autorovým vlastním duševním výtvorem a jejíž součásti jsou systematicky nebo metodicky uspořádány a jednotlivě zpřístupněny elektronicky či jiným způsobem, je dílem souborným. Jiná kritéria pro stanovení způsobilosti počítačového programu a databáze k ochraně se neuplatňují. (3) Právo autorské se vztahuje na dílo dokončené, jeho jednotlivé vývojové fáze a části, včetně názvu a jmen postav, pokud splňují	**The work** (1) The subject of copyright shall be a literary work or other work of art or a scientific work which is the unique outcome of the creative activity of the author and which is expressed in any objectively perceptible manner, including electronic form, permanent or temporary, irrespective of its scope, purpose or significance (henceforth referred to as 'work'). A work shall be namely a literary work expressed by speech or in writing, a musical work, a dramatic work or dramatico-musical work, a choreographic work and a pantomimic work, a photographic work and a work produced by a process similar to photography, an audiovisual work such as a cinematographic work, a work of fine arts such as a painting, graphic or sculptural work, an architectonic work including a work of urban planning, a work of applied art and a cartographic work. (2) A computer program shall also be considered a work if it is original in the sense of being the author's own intellectual creation; a database shall be considered a work if due to the manner of its selection or arrangement of its content it is the author's own intellectual creation; a photograph which is original in the sense of the first clause shall be protected as a photographic work. (3) Copyright shall apply to the work in its entirety, to its individual developmental phases and to parts of the work, including its title and the names of its

	podmínky podle odstavce 1 nebo podle odstavce 2, jde-li o předměty práva autorského v něm uvedené.	characters, if these comply with the conditions stipulated in paragraph 1, or in paragraph 2 if the items are subject to copyright as defined by that paragraph.
	(4) Předmětem práva autorského je také dílo vzniklé tvůrčím zpracováním díla jiného, včetně překladu díla do jiného jazyka. Tím není dotčeno právo autora zpracovaného nebo přeloženého díla.	(4) A work that is the outcome of the creative adaptation of another work, including its translation into another language, shall also be the subject of copyright. This shall not prejudice the rights of the author of the adapted or translated work.
	(5) Sborník, jako je časopis, encyklopedie, antologie, pásmo, výstava nebo jiný soubor nezávislých děl nebo jiných prvků, který způsobem výběru nebo uspořádáním obsahu splňuje podmínky podle odstavce 1, je dílem souborným.	(5) A collection such as a journal, encyclopaedia, anthology, broadcast programme, exhibition or other database (Art. 88), which is a collection of independent works or other elements that by reason of their selection and of the arrangement of the content constitute a unique outcome of the creative activity of the author.
	(6) Dílem podle tohoto zákona není zejména námět díla sám o sobě, denní zpráva nebo jiný údaj sám o sobě, myšlenka, postup, princip, metoda, objev, vědecká teorie, matematický a obdobný vzorec, statistický graf a podobný předmět sám o sobě.	(6) For the purpose of this Act, a work shall not mean the subject matter of the work as such, the news of the day and any other fact as such, an idea, procedure, principle, method, discovery, scientific theory, mathematical and similar formula, statistical diagram and similar item as such.
Article 66	**Omezení rozsahu práv autora k počítačovému programu**	**Restriction of the scope of the author's rights to a computer program**
	(1) Do práva autorského nezasahuje oprávněný uživatel rozmnoženiny počítačového programu, jestliže	(1) Copyright is not infringed by the authorised user of a copy of a computer program if he/she
	a) rozmnožuje, překládá, zpracovává, upravuje či jinak mění počítačový program, je-li to nezbytné k využití oprávněně nabyté rozmnoženiny počítačového programu, činí-li tak při zavedení a provozu počítačového programu nebo opravuje-li chyby počítačového programu,	(a) reproduces, translates, processes, modifies or otherwise alters a computer program if it is necessary for the use of the lawfully acquired copy of the computer program, if he/she does so in the course of implementing and operating the computer program or if he/she corrects errors in the computer program,
	b) jinak rozmnožuje, překládá, zpracovává, upravuje či jinak mění počítačový program, je-li to nezbytné k využití oprávněně nabyté rozmnoženiny počítačového programu v souladu s jeho určením, není-li dohodnuto jinak,	(b) otherwise reproduces, translates, processes, modifies or otherwise alters a computer program if necessary to use a lawfully acquired copy of the computer program in accordance with its intended use, unless otherwise agreed,
	c) zhotoví si záložní rozmnoženinu počítačového programu, je-li nezbytná pro jeho užívání,	(c) makes a backup copy of the computer program if necessary for its use,
	d) zkoumá, studuje nebo zkouší sám nebo jím pověřená osoba funkčnost počítačového programu za účelem zjištění myšlenek a principů, na nichž je založen kterýkoli prvek	(d) examines, studies or tests, by him-/herself or by a person authorised by him/her, the functionality of a computer program for the purpose of ascertaining the ideas and principles

	počítačového programu, činí-li tak při takovém zavedení, uložení počítačového programu do paměti počítače nebo při jeho zobrazení, provozu či přenosu, k němuž je oprávněn,	underlying any element of the computer program, if he/she does so in the course of such introduction, storage of the computer program in computer memory or display, operation or transmission as he/she is authorised to do,
	e) rozmnožuje kód nebo překládá jeho formu při rozmnožování počítačového programu nebo při jeho překladu či jiném zpracování, úpravě či jiné změně, je-li k ní oprávněn, a to samostatně nebo prostřednictvím jím pověřené osoby, jsou-li takové rozmnožování nebo překlad nezbytné k získání informací potřebných k dosažení vzájemného funkčního propojení nezávisle vytvořeného počítačového programu s jinými počítačovými programy, jestliže informace potřebné k dosažení vzájemného funkčního propojení nejsou pro takové osoby dříve jinak snadno a rychle dostupné a tato činnost se omezuje na ty části počítačového programu, které jsou potřebné k dosažení vzájemného funkčního propojení.	(e) reproduces the code or translates its form when reproducing a computer program or translating or otherwise processing, modifying or otherwise altering it, if he/she is authorised to do so, either individually or through a person authorised by him/her, if such reproduction or translation is necessary to obtain the information necessary to achieve the functional interconnection of the independently created computer program with other computer programs, if the information necessary to achieve functional interconnection is not otherwise readily and quickly available to such persons previously, and such activity is limited to those parts of the computer program which are necessary to achieve functional interconnection.
	(2) Za rozmnožování počítačového programu podle tohoto zákona se považuje i zhotovení rozmnoženiny, je-li nezbytná k zavedení a uložení počítačového programu do paměti počítače, jakož i pro jeho zobrazení, provoz a přenos.	(2) The making of a reproduction of a computer program under this Act includes the making of a reproduction if it is necessary for the introduction and storage of the computer program in the memory of the computer and for its display, operation and transmission.
	(3) Za pronájem či půjčování podle tohoto zákona se nepovažuje pronájem nebo půjčování rozmnoženiny počítačového programu, kde samotný program není podstatným předmětem pronájmu nebo půjčování.	(3) The rental or lending under this Act does not include the rental or lending of a reproduction of a computer program where the program itself is not the essential object of the rental or lending.
	(4) Informace získané při činnosti podle odstavce 1 písm. e) nesmějí být poskytnuty jiným osobám, ledaže je to nezbytné k dosažení vzájemného funkčního propojení nezávisle vytvořeného počítačového programu, ani využity k jiným účelům než k dosažení vzájemného funkčního propojení nezávisle vytvořeného počítačového programu. Dále nesmějí být tyto informace využity ani k vývoji, zhotovení nebo k obchodnímu využití počítačového programu podobného tomuto počítačovému programu v jeho vyjádření nebo k jinému jednání ohrožujícímu nebo porušujícímu právo autorské.	(4) Information obtained in the course of an activity referred to in paragraph (1)(e) shall not be disclosed to other persons unless necessary to achieve the functional interconnection of an independently developed computer program, nor shall it be used for purposes other than to achieve the functional interconnection of an independently developed computer program. Nor shall such information be used for the development, manufacture or commercial exploitation of a computer program similar to the computer program as expressed herein or for any other act that threatens or infringes copyright.
	(5) Pro omezení autorských práv k počítačovému programu podle odstavce 1 platí ustanovení § 29 odst. 1.	(5) The provisions of section 29(1) shall apply to the limitation of copyright in a computer program under subsection (1).
	(6) Oprávněným uživatelem rozmnoženiny počítačového programu je oprávněný nabyvatel rozmnoženiny počítačového programu, který	(6) The authorised user of a copy of a computer program is the authorised acquirer of the copy of the computer program who has ownership or other

	má vlastnické či jiné právo k rozmnožení počítačového programu, a to za účelem jejího využití, nikoli za účelem jejího dalšího převodu, dále oprávněný nabyvatel licence nebo jiná osoba oprávněná užívat rozmnoženinu počítačového programu. Takový uživatel může užít oprávněně nabytou rozmnoženinu počítačového programu v rozsahu stanoveném v odstavci 1 (minimální rozsah), pokud není smlouvou dohodnut rozsah širší; minimální rozsah nelze s výjimkou oprávnění uvedeného v odstavci 1 písm. b) dohodou zúžit.	rights in the copy of the computer program for the purpose of its use and not for the purpose of its further transfer, as well as the authorised licensee or other person authorised to use the copy of the computer program. Such a user may use a lawfully acquired copy of a computer program within the scope set out in paragraph 1 (minimum scope), unless a wider scope is agreed by contract; the minimum scope may not be narrowed by agreement, except for the authorisation referred to in paragraph 1(b).
	(7) Ustanovení § 30a až 31, § 32 a 33, § 34 písm. b) až d), § 35 a 36, § 37 odst. 1 písm. b) až d), § 37 odst. 2 až 5, § 37a, § 38, § 38a odst. 1 písm. b), § 38a odst. 2, § 38b až 39, § 39d, § 43 odst. 1, 4, 5 a 7 a ustanovení občanského zákoníku o právu na přiměřenou a spravedlivou dodatečnou odměnu za poskytnutí licence, o právu na informace o užití díla, o právu na odstoupení od smlouvy nebo omezení licence pro nečinnost nabyvatele a o odstoupení od smlouvy pro změnu přesvědčení autora40) se na počítačový program nepoužijí.	(7) The provisions of Sections 30a to 31, 32 and 33, 34(b) to (d), 35 and 36, 37(1)(b) to (d), 37(2) to (5), 37a, 38, 38a(1)(b), 38a(2), 38b to 39, 39d, 43(1), (4), (5) and (7) and the provisions of the Civil Code on the right to reasonable and fair additional remuneration for The right to information on the use of the work, the right to withdraw from the contract or to limit the licence for inaction of the licensee and the right to withdraw from the contract for a change in the belief of the author40) shall not apply to a computer program.
	(8) Právní ochranou technických prostředků podle § 43 nejsou dotčena ustanovení odstavce 1 písm. d) a e) v rozsahu nezbytném k využití těchto omezení. Autor, který pro své dílo použil technické prostředky podle § 43 odst. 3, je povinen zpřístupnit počítačový program oprávněnému uživateli v rozsahu podle odstavce 1 a je povinen označit počítačový program chráněný technickými prostředky uvedením jména a adresy osoby, na kterou se má oprávněný uživatel za tím účelem obrátit.	(8) The legal protection of technical means under section 43 shall be without prejudice to the provisions of subsections (1)(d) and € to the extent necessary to take advantage of those limitations. An author who has used technical means for his/her work pursuant to section 43(3) shall be obliged to make the computer program available to an authorised user to the extent referred to in paragraph 1 and shall be obliged to mark the computer program protected by the technical means by indicating the name and address of the person to whom the authorised user is to apply for this purpose.

SLOVAKIA

Slovak Criminal Code (*TRESTNÝ ZÁKON*)

300/2005 Z. z.

Access the full text

Slovak:

https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/300/

English (unofficial translation):

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwihxdv1wcWBAxXQgP0HHXx8DlIQFnoECBUQAQ&url=https%3A%2F%2Fwww.unodc.org%2Fuploads%2Ficsant%2Fdocuments%2FLegislation%2FSlovakia%2F201124_CC_en.pdf&usg=AOvVaw3XnNPVIpdPAw6uuwt9b7kI&opi=89978449

	Original language	English
Article 283	**Porušovanie autorského práva** (1) Kto neoprávnene zasiahne do zákonom chránených práv k dielu, umeleckému výkonu, zvukovému záznamu alebo zvukovo-obrazovému záznamu, rozhlasovému vysielaniu alebo televíznemu vysielaniu alebo databáze, potrestá sa odňatím slobody až na dva roky. (2) Odňatím slobody na šesť mesiacov až tri roky sa páchateľ potrestá, ak spácha čin uvedený v odseku 1 a) a spôsobí ním väčšiu škodu, b) závažnejším spôsobom konania, c) z osobitného motívu, alebo d) prostredníctvom počítačového systému. (3) Odňatím slobody na jeden rok až päť rokov sa páchateľ potrestá, ak spácha čin uvedený v odseku 1 a spôsobí ním značnú škodu.	Violation of copyright (1) Whoever illegally intervenes in the legally protected proprietary rights to works, artistic performance, audio recordings or audiovisual recordings, radio or television broadcasts, or databases, shall be punished by a prison sentence of up to two years. (2) A prison sentence of six months to three years shall be imposed upon an offender if they committed an act referred to in Subsection 1 a) and thus cause more extensive damage, b) in a more serious manner of conduct, c) out of a special motive, or d) through a computer system. (3) A prison sentence of one to five years shall be imposed upon an offender if they committed an act referred to in Subsection 1 and thus cause significant damage.

	(4) Odňatím slobody na tri roky až osem rokov sa páchateľ potrestá, ak spácha čin uvedený v odseku 1 a) a spôsobí ním škodu veľkého rozsahu, alebo b) ako člen nebezpečného zoskupenia.	(4) A prison sentence of three to eight years shall be imposed upon an offender if they committed an act referred to in Subsection 1 a) and thus cause extensive damage , or b) as a member of a dangerous group.

Slovak Criminal Procedure Code (*TRESTNÝ PORIADOK*)

301/2005 Z. z.

Access the full text

Slovak:

https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/301/20230601

English (unofficial translation):

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=ymB6nZIkmtMHmD4fHNtFCrhBbrSnouWQ6OlG+iJmT3CqVhJrTLhu57CXrgNjsqKx3NEOB54Y3D7217XjpDrQJg==

	Original language	English
Paragraph 47	(1) Oprávnenie poškodeného nemôže vykonávať ten, kto je v trestnom konaní stíhaný ako spoluobvinený. (2) Ak je v tej istej veci väčší počet poškodených a jednotlivým výkonom ich práv by mohol byť ohrozený účel a rýchly priebeh trestného stíhania a poškodení sa nedohodnú na spoločnom zástupcovi, sudca pre prípravné konanie na návrh prokurátora ustanoví opatrením v prípravnom konaní na výkon týchto práv spoločného zástupcu poškodených, spravidla niektorého z poškodených po jeho predchádzajúcom súhlase. Prokurátor oznámi opatrenie poškodeným, ktorí si už uplatnili nárok na náhradu škody, a opatrenie sa vhodným spôsobom uverejní. Spoločných zástupcov môže byť najviac desať. Spoločný zástupca vykonáva práva poškodených, ktorých zastupuje, vrátane uplatnenia nároku na náhradu škody v trestnom konaní a má rovnaké procesné postavenie ako splnomocnenec; bez písomného súhlasu poškodeného nemožno vziať späť uplatnený nárok na náhradu škody. (3) Ak je v tej istej veci veľký počet poškodených, spravidla prevyšujúci sto, a jednotlivým výkonom ich práv by mohol byť závažným spôsobom ohrozený účel a rýchly priebeh trestného stíhania, rozhodne v prípravnom konaní na návrh generálneho prokurátora Slovenskej republiky (ďalej len „generálny prokurátor“) o účasti poškodených	(1) The right of the injured party may not be exercised by a person who is prosecuted as a co-accused in criminal proceedings. (2) If there is a large number of victims in the same case and the individual exercise of their rights could jeopardise the purpose and the swift conduct of the criminal prosecution and the victims do not agree on a common representative, the judge for the preparatory proceedings shall, on the proposal of the public prosecutor, appoint by a measure in the preparatory proceedings a common representative of the victims, as a rule one of the victims, to exercise these rights, after the latter's prior consent. The public prosecutor shall notify the measure to the victims who have already claimed compensation and the measure shall be published in an appropriate manner. There may be no more than 10 joint representatives. The joint representative shall exercise the rights of the victims whom he/she represents, including the right to claim compensation in criminal proceedings, and shall have the same procedural status as an attorney; a claim for compensation may not be withdrawn without the written consent of the victim. (3) If there is a large number of victims in the same case, as a rule exceeding 100, and the individual exercise of their rights could seriously jeopardise the purpose and the rapid course of the criminal prosecution, the Supreme Court shall decide in the preparatory proceedings, on the proposal of the Prosecutor General of the Slovak Republic (hereinafter referred to as the

	v trestnom konaní najvyšší súd uznesením, ktoré sa doručí navrhovateľovi. Ak návrh nebol zamietnutý, generálny prokurátor zabezpečí, aby bolo uznesenie vhodným spôsobom zverejnené.	'Prosecutor General'), on the participation of the victims in the criminal proceedings by a resolution which shall be delivered to the plaintiff. If the application is not rejected, the Prosecutor General shall ensure that the order is published in an appropriate manner.
	(4) K návrhu generálneho prokurátora podľa odseku 3, ktorý musí byť odôvodnený, treba pripojiť dosiaľ získaný celý spisový materiál.	(4) The Attorney General's proposal under subsection (3), which must be substantiated, shall be accompanied by the entire file material so far obtained.
	(5) Ak je v tej istej veci väčší počet poškodených a jednotlivým výkonom ich práv by mohol byť ohrozený účel a rýchly priebeh súdneho konania, pričom poškodeným nebol v prípravnom konaní ustanovený spoločný zástupca podľa odseku 2, rozhodne o účasti poškodených v súdnom konaní súd; ak súd považuje za účelné ustanoviť poškodeným, ktorí si uplatnili nárok na náhradu škody, spoločného zástupcu, postupuje primerane podľa odseku 2.	(5) If there is a large number of victims in the same case and the individual exercise of their rights could jeopardise the purpose and the expeditious conduct of the court proceedings, and the victims have not been appointed a joint representative in the preparatory proceedings pursuant to paragraph (2), the court shall decide on the participation of the victims in the court proceedings; if the court deems it expedient to appoint a joint representative for the victims who have made a claim for damages, it shall proceed in accordance with paragraph (2) accordingly.
	(6) Poškodenému, ktorý uplatňuje nárok na náhradu škody a nemá dostatočné prostriedky, aby uhradil náklady s tým spojené, môže v prípravnom konaní po vznesení obvinenia na návrh prokurátora sudca pre prípravné konanie a v konaní pred súdom aj bez návrhu predseda senátu ustanoviť zástupcu z radov advokátov, ak to považuje za potrebné na ochranu záujmov poškodeného; posledná veta odseku 2 platí primerane. Skutočnosť, že nemá dostatočné prostriedky, musí poškodený preukázať.	(6) An injured party who claims compensation for damages and who does not have sufficient means to pay the costs of the claim may, in the preparatory proceedings after the indictment has been filed, on the motion of the public prosecutor, be appointed by the judge for the preparatory proceedings, and in the proceedings before the court, even without a motion, by the president of the chamber, to appoint a representative from among lawyers, if he or she deems it necessary to do so in order to protect the interests of the injured party; the last sentence of paragraph (2) shall apply mutatis mutandis. The injured party must prove that he or she has insufficient means.
	(7) Ak sa už v priebehu konania zistí, že poškodený má dostatočné prostriedky, aby uhradil náklady spojené s uplatňovaním nároku na náhradu škody v trestnom konaní, zástupcu ustanoveného podľa odseku 6 zruší orgán, ktorý zástupcu ustanovil. Po podaní obžaloby alebo návrhu na dohodu o vine a treste o tom rozhodne predseda senátu.	(7) If it is already established in the course of the proceedings that the injured party has sufficient means to pay the costs of the claim for compensation in criminal proceedings, the representative appointed pursuant to paragraph 6 shall be revoked by the authority which appointed the representative. The President of the Chamber shall take a decision thereon after the indictment or the application for a plea of guilty and penalty agreement has been lodged.

Slovak Copyright and Related Rights Act (*Zákon o autorskom práve a právach súvisiacich s autorským právom*) 185/2015 Z.z.

Access the full text

Slovak:

https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/618/20141029.html

English (unofficial translation):

https://www.dusevnevlastnictvo.gov.sk/en/web/guest/novy-autorsky-zakon

	Original language	English
Section 7	**Dielo** (1) Predmetom autorského práva je literárne a iné umelecké dielo a vedecké dielo, ktoré je výsledkom vlastnej tvorivej duševnej činnosti autora, najmä a) slovesné dielo a počítačový program, b) ústne podané, predvedené alebo inak vykonané slovesné dielo, najmä prejav a prednáška, c) divadelné dielo, predovšetkým dramatické dielo, hudobnodramatické dielo, pantomimické dielo a choreografické dielo, ako aj iné dielo vytvorené na zverejnenie, d) hudobné dielo s textom alebo bez textu, e) audiovizuálne dielo, predovšetkým filmové dielo, f) maľba, kresba, náčrt, ilustrácia, socha a iné dielo výtvarného umenia, g) fotografické dielo, h) architektonické dielo, predovšetkým dielo stavebnej architektúry a urbanizmu, dielo záhradnej a interiérovej architektúry a dielo stavebného dizajnu, i) dielo úžitkového umenia, j) kartografické dielo v analógovej alebo v inej forme.1a) (2) Predmetom autorského práva je aj súborné dielo vyjadrené v akejkoľvek forme vrátane	Artwork (1) The subject matter of copyright is a literary, artistic or scientific work which is the result of the author's own creative intellectual activity, in particular (a) a verbal work and a computer program, (b) a verbal work orally communicated, performed or otherwise executed, in particular a speech or a lecture, (c) a theatrical work, in particular a dramatic work, a dramatico-musical work, a pantomimic work and a choreographic work, as well as any other work created for publication, (d) a musical work with or without lyrics, (e) an audiovisual work, in particular a cinematographic work, (f) a painting, drawing, sketch, illustration, sculpture and other work of visual art, (g) a photographic work, (h) an architectural work, in particular a work of building architecture and urban planning, a work of garden and interior architecture, and a work of building design, (i) a work of applied art, (j) a cartographic work in analogue or other form.1a) (2) A compilation work expressed in any form, including an electronic form comprising both

	elektronickej formy zahŕňajúcej analógové aj digitálne vyjadrenie, najmä zborník, noviny, časopis, encyklopédia, antológia, pásmo, výstava alebo iná databáza, ak je súborom nezávislých diel alebo iných prvkov, ktorý je spôsobom výberu alebo usporiadaním obsahu výsledkom vlastnej tvorivej duševnej činnosti autora. (3) Ochrana podľa tohto zákona sa nevzťahuje na a) myšlienku, spôsob, systém, metódu, koncept, princíp, objav alebo informáciu, ktorá bola vyjadrená, opísaná, vysvetlená, znázornená alebo zahrnutá do diela, b) text právneho predpisu, úradné rozhodnutie, verejnú listinu, verejne prístupný register, úradný spis, slovenskú technickú normu vrátane ich prípravnej dokumentácie a prekladu a prejavy prednesené pri prerokúvaní vecí verejných; na súborné vydanie týchto prejavov a na ich zaradenie do zborníka je potrebný súhlas toho, kto ich predniesol, c) dennú správu; za dennú správu sa nepovažuje dielo obsahujúce informácie najmä o aktuálnych udalostiach alebo témach hospodárskeho, politického alebo iného spoločenského charakteru, ktoré je výsledkom vlastnej tvorivej duševnej činnosti autora.	analogue and digital representations, in particular a collection, newspaper, magazine, encyclopaedia, anthology, tape, exhibition or other database, shall also be subject to copyright if it is a collection of independent works or other elements which, by the manner of selection or arrangement of its contents, is the result of the author's own creative intellectual activity. (3) Protection under this Act shall not extend to (a) an idea, method, system, technique, concept, principle, discovery or information that has been expressed, described, explained, illustrated or incorporated into a work, (b) the text of a legislative enactment, an official decision, a public document, a public register, an official file, a Slovak technical standard, including their preparatory documentation and translation, and speeches made in the course of a public debate; the consent of the speaker shall be required for the collective publication of such speeches and for their inclusion in the proceedings, (c) a daily report; a daily report shall not be considered to be a work containing information, in particular on current events or topics of an economic, political or other social nature, which is the result of the author's own creative intellectual activity.
Section 24	**Vyhotovenie rozmnoženiny zverejneného diela** (1) Rozmnoženinu zverejneného diela môže fyzická osoba vyhotoviť bez súhlasu autora pre svoju osobnú potrebu a na účel, ktorý nie je priamo ani nepriamo obchodný; za také použitie nevzniká povinnosť uhradiť autorovi odmenu. (2) Rozmnoženinu zverejneného diela prenesením tohto diela na papier alebo na podobný podklad prostredníctvom reprografického zariadenia alebo iného technického zariadenia môže fyzická osoba alebo právnická osoba vyhotoviť bez súhlasu autora; túto rozmnoženinu možno verejne rozširovať predajom alebo inou formou prevodu vlastníckeho práva. Za tieto použitia nevzniká povinnosť uhradiť autorovi odmenu. (3) Ustanovenia odsekov 1 a 2 sa nevzťahujú na	**Making a copy of a published work** (1) A reproduction of a published work may be made by a natural person without the author's consent for his/her personal use and for a purpose which is not directly or indirectly commercial; such use shall not give rise to an obligation to pay remuneration to the author. (2) A reproduction of a published work may be made by a natural person or a legal person without the author's consent by transferring the work to paper or to a similar support by means of a reprographic device or other technical device; such reproduction may be publicly distributed by sale or by any other form of transfer of the right of ownership. No remuneration shall be payable to the author for such uses. (3) The provisions of paragraphs 1 and 2 shall not apply to

	a) architektonické dielo vo forme projektovej dokumentácie stavby alebo konštrukcie stavby,	a) an architectural work in the form of design documentation of a building or a structure of a building,
	b) celé literárne dielo ani na jeho podstatnú časť,	b) the whole or a substantial part of a literary work,
	c) celé kartografické dielo ani na jeho podstatnú časť,	c) the whole or a substantial part of a cartographic work,
	d) hudobné dielo zaznamenané v písomnej podobe,	d) a musical work recorded in written form,
	e) počítačový program, ak nie je ustanovené inak,	(e) a computer program, unless otherwise provided,
	f) databázu v elektronickej forme.	(f) a database in electronic form.
	(4) Autor diela, ktorého rozmnoženinu možno vyhotoviť podľa odseku 1, má právo na náhradu odmeny.	(4) The author of a work of which a reproduction may be made pursuant to subsection (1) shall be entitled to compensation.
	(5) Autor diela, ktorého rozmnoženinu možno vyhotoviť a verejne rozširovať podľa odseku 2, má právo na náhradu odmeny.	(5) The author of a work of which a copy may be made and publicly distributed pursuant to paragraph (2) shall be entitled to compensation.
	(6) Náhradu odmeny podľa odsekov 4 a 5 prostredníctvom organizácie kolektívnej správy (§ 79) uhradí za	(6) The remuneration referred to in paragraphs (4) and (5) shall be paid by the collecting society (section 79) for
	a) nenahratý nosič záznamu, ktorý sa zvyčajne používa na rozmnožovanie podľa odseku 1, jeho výrobca, príjemca z členského štátu (ďalej len „príjemca"), dovozca z tretej krajiny (ďalej len „dovozca") alebo iná osoba, ktorá ho umiestni na účely predaja prvýkrát na trhu v Slovenskej republike, a to 6 % z predajnej ceny alebo z dovoznej ceny takéhoto nosiča,	(a) a non-recordable recording medium that is usually used for reproduction pursuant to paragraph 1, its manufacturer, a recipient from a Member State (hereinafter referred to as the 'recipient'), an importer from a third country (hereinafter referred to as the 'importer') or any other person who places it on the market in the Slovak Republic for the purpose of sale for the first time, 6% of the selling price or the import price of such a medium,
	b) prístroj na vyhotovovanie rozmnožení zvukových alebo zvukovo-obrazových záznamov jeho výrobca, príjemca, dovozca alebo iná osoba, ktorá ho umiestni na účely predaja prvýkrát na trhu v Slovenskej republike, a to 3 % z predajnej ceny alebo z dovoznej ceny takéhoto prístroja,	(b) an apparatus for making copies of sound or sound-visual recordings by its manufacturer, recipient, importer or other person who places it on the market for the first time in the Slovak Republic for the purpose of sale, namely 3% of the selling price or the import price of such apparatus,
	c) reprografické alebo iné technické zariadenie na vyhotovovanie rozmnožení diela jeho výrobca, príjemca, dovozca alebo iná osoba, ktorá ho umiestni na účely predaja prvýkrát na trhu v Slovenskej republike, a to 3 % z predajnej ceny alebo z dovoznej ceny takéhoto zariadenia; ak je zariadenie súčasťou veci, náhrada odmeny sa uhrádza z pomernej časti predajnej ceny alebo dovoznej ceny tejto veci,	c) a reprographic or other technical device for making copies of a work by its manufacturer, recipient, importer or other person who places it on the market for the first time in the Slovak Republic for the purpose of sale, 3% of the sale price or import price of such device; if the device is part of the item, the remuneration shall be paid out of a proportionate part of the sale price or import price of the item,

	d) osobný počítač jeho výrobca, príjemca, dovozca alebo iná osoba, ktorá ho umiestni na účely predaja prvýkrát na trhu v Slovenskej republike, a to 0,5 % z predajnej ceny alebo dovoznej ceny pevného disku zabudovaného v takomto osobnom počítači; za takéto zariadenie sa náhrada odmeny podľa písmena c) neuhrádza,	(d) a personal computer by its manufacturer, recipient, importer or other person who places it on the market in the Slovak Republic for the first time for the purpose of sale, namely 0.5 % of the sale price or import price of the hard disk incorporated in such personal computer; no remuneration shall be paid for such equipment pursuant to subparagraph (c),
	e) rozmnožovacie služby poskytované odplatne ich poskytovateľ, a to 3 % z celkových príjmov za tieto služby,	(e) reproduction services provided for consideration by their provider, namely 3% of the total revenue for such services,
	f) nosič podľa písmena a), prístroj podľa písmena b) alebo zariadenie podľa písmena c) alebo d) jeho predajca, odosielateľ alebo dopravca vtedy, ak príslušnej organizácii kolektívnej správy neoznámi na jej písomnú výzvu údaje potrebné na určenie výrobcu, príjemcu, dovozcu alebo inej osoby, ktorá taký nosič, prístroj alebo zariadenie umiestnila na účely predaja prvýkrát na trhu v Slovenskej republike, a to v percentuálnom podiele podľa písmen a) až d).	(f) a carrier pursuant to point (a), an apparatus pursuant to point (b) or a device pursuant to point (c); or (d) its seller, consignor or carrier, if it fails to communicate to the relevant collecting society, upon its written request, the information necessary to identify the manufacturer, consignee, importer or other person who placed such carrier, apparatus or device on the market for the first time in the Slovak Republic for the purpose of sale, in the percentage referred to in points (a) to (d).
	(7) Náhrada odmeny sa neuhrádza za nosič podľa odseku 6 písm. a), prístroj podľa odseku 6 písm. b) alebo zariadenie podľa odseku 6 písm. c) alebo d), ktoré sa na účely ďalšieho predaja vyváža do tretích krajín alebo odosiela do členského štátu. Náhrada odmeny sa neuhrádza ani za nosič, prístroj alebo zariadenie, ktoré sa použije výhradne pre osobnú potrebu dovozcu alebo príjemcu.	(7) No remuneration shall be paid in respect of a carrier pursuant to paragraph 6(a), apparatus pursuant to paragraph 6(b) or device pursuant to paragraph 6(c) or (d) which is exported to third countries or dispatched to a Member State for the purpose of resale. Nor shall remuneration be paid in respect of a medium, apparatus or device which is used solely for the personal use of the importer or recipient.
	(8) Náhrada odmeny podľa odseku 6 sa uhrádza príslušnej organizácii kolektívnej správy pri prvom predaji nosiča, prístroja alebo zariadenia alebo pri jeho dovoze alebo príjme, a to štvrťročne do konca prvého mesiaca nasledujúceho štvrťroka.	(8) The remuneration referred to in paragraph (6) shall be paid to the relevant collecting society on the first sale of the medium, apparatus or device or on its importation or receipt, quarterly by the end of the first month of the following quarter.
	(9) Osoby podľa odseku 6 predkladajú príslušnej organizácii kolektívnej správy informácie o druhu, počte a dovoznej cene alebo predajnej cene dovezených, prijatých alebo predaných nosičov, prístrojov alebo zariadení alebo údaje o celkových príjmoch za rozmnožovacie služby; pri nesplnení tejto povinnosti ani v dodatočnej lehote určenej príslušnou organizáciou kolektívnej správy sa sadzba náhrady odmeny zvyšuje na dvojnásobok.	(9) The persons referred to in paragraph (6) shall submit to the relevant collecting society information on the type, number and import price or sale price of the imported, received or sold media, apparatus or devices or data on the total revenue for reproduction services; in the event of failure to comply with this obligation, even within an additional period of time specified by the relevant collecting society, the rate of remuneration compensation shall be doubled.
	(10) Osoby podľa odseku 6 písm. a) až d) predkladajú príslušnej organizácii kolektívnej správy informácie o druhu, počte a dovoznej	(10) Persons referred to in paragraph (6)(a) to (d) shall submit to the relevant collecting society information on the type, number and import

	cene alebo predajnej cene tovaru podľa odseku 6 písm. a) až d), ktoré na účely ďalšieho predaja vyvážajú do tretích krajín alebo odosielajú do členského štátu. (11) Ustanoveniami odsekov 1 a 2 nie sú dotknuté ustanovenia tohto zákona o ochrane opatrení na zabránenie neoprávnenému vyhotoveniu rozmnoženiny diela, ako aj inému neoprávnenému konaniu (§ 59 až 61).	price or selling price of the goods referred to in paragraph (6)(a) to (d) which they export to third countries or dispatch to a Member State for the purpose of resale. (11) The provisions of paragraphs (1) and (2) shall be without prejudice to the provisions of this Act on the protection of measures to prevent the unauthorised reproduction of a work as well as other unauthorised acts (Sections 59 to 61).

POLAND

Polish Industrial Property Law
(Prawo własności przemysłowej)

Dz.U. 2001 nr 49 poz. 508

Access the full text

Polish:
https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf

English (unofficial translation):

https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/pl/pl076en.pdf

	Original language	English
Article 120	1. Znakiem towarowym może być każde oznaczenie umożliwiające odróżnienie towarów jednego przedsiębiorstwa od towarów innego przedsiębiorstwa oraz możliwe do przedstawienia w rejestrze znaków towarowych w sposób pozwalający na ustalenie jednoznacznego i dokładnego przedmiotu udzielonej ochrony.	1. Any sign capable of being represented graphically may be considered a trademark, provided that such signs are capable of distinguishing the goods of one undertaking from those of other undertakings.
	2. Znakiem towarowym, w rozumieniu ust. 1, może być w szczególności wyraz, włącznie z nazwiskiem, rysunek, litera, cyfra, kolor, forma przestrzenna, w tym kształt towaru lub opakowania, a także dźwięk.	2. The following, in particular, may be considered trademarks within the meaning of paragraph (1): words, designs, ornaments, combinations of colours, the three-dimensional shape of goods or of their packaging, as well as melodies or other acoustic signals.
	3. Ilekroć w ustawie jest mowa o:	3. Any references in this Act to:
	1) znakach towarowych – rozumie się przez to także znaki usługowe;	(i) trademarks shall also mean service marks;
	2) towarach – rozumie się przez to w szczególności wyroby przemysłowe, rzemieślnicze, płody rolne oraz produkty naturalne, zwłaszcza wody, minerały, surowce, a także, z zastrzeżeniem art. 174 ust. 3, usługi;	(ii) goods shall mean, in particular, industrial or handicraft goods, agriculture products or natural products, such as, in particular, waters, minerals, raw materials, as well as, subject to Article 174(3), services;
	3) znakach towarowych podrobionych – rozumie się przez to użyte bezprawnie znaki identyczne lub takie, które nie mogą być odróżnione w zwykłych warun-kach obrotu od znaków zarejestrowanych, dla towarów objętych prawem ochronnym;	(iii) counterfeit trademarks shall mean identical trademarks illegally used or trademarks which in the course of trade cannot be distinguished from the trademarks registered for the goods covered by the right of protection;

	4) znakach wcześniejszych – rozumie się przez to znaki zgłoszone lub zarejestrowane z wcześniejszym pierwszeństwem.	(iv) earlier trademarks shall mean the trademarks applied for registration or registered basing on the earlier priority.
Article 154	Używanie znaku towarowego polega w szczególności na: 1) umieszczaniu tego znaku na towarach objętych prawem ochronnym lub ich opakowaniach, oferowaniu i wprowadzaniu tych towarów do obrotu, ich imporcie lub eksporcie oraz składowaniu w celu oferowania i wprowadzania do obrotu, a także oferowaniu lub świadczeniu usług pod tym znakiem; 2) umieszczaniu znaku na dokumentach związanych z wprowadzaniem towarów do obrotu lub związanych ze świadczeniem usług; 3) posługiwaniu się nim w celu reklamy.	The use of a trademark shall, in particular, consist of: (i) affixing the trademark to the goods covered by the right of protection or to their packaging, offering and putting the goods on the market, importing or exporting them or storing them for the purpose of offering and putting them on the market, as well as offering or providing services under that trademark; (ii) using the trademark on business documents handled in putting the goods on the market or in rendering services; (iii) using the trademark in advertising.
Article 305	1. Kto, w celu wprowadzenia do obrotu, oznacza towary podrobionym znakiem towarowym, w tym podrobionym znakiem towarowym Unii Europejskiej, zarejestrowanym znakiem towarowym lub znakiem towarowym Unii Europejskiej, którego nie ma prawa używać lub dokonuje obrotu towarami oznaczonymi takimi znakami, podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2. 2. W wypadku mniejszej wagi, sprawca przestępstwa określonego w ust. 1 podlega grzywnie. 3. Jeżeli sprawca uczynił sobie z popełnienia przestępstwa określonego w ust. 1 stałe źródło dochodu albo dopuszcza się tego przestępstwa w stosunku do towaru o znacznej wartości, podlega karze pozbawienia wolności od 6 miesięcy do lat 5.	1. Anyone marking goods with a counterfeit trademark or a registered trademark while not being entitled to use it in order to place the goods on the market or to trade in goods bearing such a trademark shall be liable to a fine, limitation of freedom or imprisonment for a period of up to two years. 2. In case of an act of minor gravity, a person committing the offence referred to in paragraph (1) shall be liable to a fine. 3. A person who regularly derives income from the offence referred to in paragraph (1), or commits that offence involving goods of significant value, shall be liable to imprisonment for a period from six months to five years.

Polish Criminal Code (*Kodeks karny)*

Dz. U. 1997 Nr 88 poz. 553

Access the full text

Polish:
https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20010490508

English (unoficial translation):

https://legislationline.org/Poland

	Original language	English
Article 12	§ 1. Dwa lub więcej zachowań, podjętych w krótkich odstępach czasu w wykonaniu z góry powziętego zamiaru, uważa się za jeden czyn zabroniony; jeżeli przedmiotem zamachu jest dobro osobiste, warunkiem uznania wielości zachowań za jeden czyn zabroniony jest tożsamość pokrzywdzonego. § 2. Odpowiada jak za jeden czyn zabroniony wyczerpujący znamiona przestępstwa ten, kto w krótkich odstępach czasu, przy wykorzystaniu tej samej albo takiej samej sposobności lub w podobny sposób popełnia dwa lub więcej umyślnych wykroczeń przeciwko mieniu, jeżeli łączna wartość mienia uzasadnia odpowiedzialność za przestępstwo.	1. Two or more acts committed at short intervals in the exercise of a premeditated intention shall be considered as a single offence; if the object of the attack is a personal property, the identity of the injured party shall be a condition for the multiple acts to be considered as a single offence. 2. A person who, at short intervals, using the same or the same opportunity or in a similar manner, commits two or more intentional offences against property shall be held liable for a single criminal offence, if the total value of the property justifies liability for the offence.

LATVIA

Latvian Criminal Law (*Krimināllikums*)

Access the full text

Latvian:
https://likumi.lv/ta/id/88966-kriminallikums

English:
https://likumi.lv/ta/en/en/id/88966-criminal-law

	Original language	English
Article 206	**Preču zīmes, citas atšķirības zīmes un dizainparauga nelikumīga izmantošana** (1) Par preču zīmes, preču vai pakalpojumu citādas atšķirības zīmes vai dizainparauga nelikumīgu izmantošanu, zīmes viltošanu vai viltotas zīmes apzinātu izmantošanu vai izplatīšanu, ja tā izdarīta ievērojamā apmērā vai ja ar to radīts būtisks kaitējums, — soda ar brīvības atņemšanu uz laiku līdz diviem gadiem vai ar īslaicīgu brīvības atņemšanu, vai ar sabiedrisko darbu, vai ar naudas sodu. (2) Par šā panta pirmajā daļā paredzēto noziedzīgo nodarījumu, ja to izdarījusi personu grupa pēc iepriekšējas vienošanās, — soda ar brīvības atņemšanu uz laiku līdz četriem gadiem vai ar īslaicīgu brīvības atņemšanu, vai ar sabiedrisko darbu, vai ar naudas sodu. (3) Par preču zīmes, preču vai pakalpojumu citādas atšķirības zīmes vai dizainparauga nelikumīgu izmantošanu, zīmes viltošanu vai viltotas zīmes apzinātu izmantošanu vai izplatīšanu, ja tas izdarīts lielā apmērā, vai par šā panta pirmajā daļā paredzēto noziedzīgo nodarījumu, ja to izdarījusi organizēta grupa, —	**Illegal use of trademarks, other distinguishing marks and designs** (1) For a person who illegally uses a trademark, other distinguishing marks for goods or services, or unauthorised using of a design, counterfeiting a mark or knowingly using or distributing a counterfeit mark, if substantial harm has been caused thereby to interests protected by law of a person, the applicable punishment is deprivation of liberty for a term of up to two years or temporary deprivation of liberty, or community service or a fine. (2) For a person who commits the criminal offence provided for in Paragraph one of this Section, if it has been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term up to four years or temporary deprivation of liberty, or community service or a fine. (3) For a person who illegally uses a trademark, other distinguishing marks for goods or services, or unauthorised using of a design, counterfeiting a trademark or knowingly using or distributing a counterfeit mark, if it is been committed by an organised group or in large scale, the applicable punishment is deprivation of liberty for a term up to six years, with deprivation of the right to engage in specific employment for a term up to five years, with deprivation of the right to engage in entrepreneurial activity of a specific type or of all types or the right to take up a specific office,

	soda ar brīvības atņemšanu uz laiku līdz sešiem gadiem, atņemot tiesības uz noteiktu vai visu veidu komercdarbību vai uz noteiktu nodarbošanos vai tiesības ieņemt noteiktu amatu uz laiku līdz pieciem gadiem, un ar probācijas uzraudzību uz laiku līdz trim gadiem vai bez tās.	and with or without police supervision for a term up to three years.

Trademark Law (*Preču zīmju likums*)

Access the full text

Latvian:
https://likumi.lv/ta/id/312695-precu-zimju-likums

English:

https://likumi.lv/ta/en/en/id/312695-trade-mark-law

	Original language	English
Article 28	**Tiesību uz preču zīmi pāreja** (1) Tiesības uz preču zīmi var pāriet, tostarp var tikt nodotas citai personai, attiecībā uz visu preču un pakalpojumu sarakstu, kuram preču zīme reģistrēta, vai tā daļu līdz ar uzņēmumu vai tā daļu, kas izmantoja šo preču zīmi, vai neatkarīgi no šā uzņēmuma. (2) Ja citai personai pāriet uzņēmums vai tā daļa, tiesības uz preču zīmi, kas tieši saistīta ar šā uzņēmuma vai tā daļas darbību, uzskatāmas par pārgājušām līdz ar uzņēmumu vai tā daļu, ja, pusēm vienojoties, nav noteikts citādi vai ja apstākļi acīmredzami nenosaka citādi. (3) Ziņas par reģistrētas preču zīmes īpašnieka maiņu pēc attiecīga iesnieguma, tiesību pāreju apliecinoša dokumenta un noteiktās maksas saņemšanas Patentu valde iekļauj Reģistrā un publicē savā oficiālajā izdevumā, kā arī nosūta esošajam un iepriekšējam īpašniekam paziņojumu par Reģistrā izdarīto ierakstu. (4) Ja preču zīmes īpašnieka maiņa neattiecas uz visu preču un pakalpojumu sarakstu, kuram preču zīme reģistrēta, Patentu valde šo reģistrāciju sadala, piemērojot šā likuma 44. panta noteikumus ar nepieciešamajām izmaiņām un izveidojot jaunu reģistrāciju precēm un pakalpojumiem, kuriem mainījies īpašnieks. (5) Preču zīmes ieguvējs kā īpašnieks var rīkoties ar tiesībām uz preču zīmi ar dienu, kad	**Transfer of the rights to a trademark** (1) Rights to a trademark may be transferred, including assigned to another person, in respect of the whole list of goods or services for which the trademark has been registered or any part thereof, together with an enterprise or part of an enterprise which has used that trademark, or independently of that enterprise. (2) If an enterprise or a part of an enterprise is transferred to another person, the rights to a trademark which is directly related to the operation of this enterprise or any part thereof shall be considered transferred together with the enterprise or a part thereof, unless otherwise agreed by the parties or unless circumstances clearly stipulate otherwise. (3) Upon receipt of a relevant submission, a document attesting to the transfer of rights and the stipulated fee, the Patent Office shall include in the Register and publish in its official gazette the information on the change in the proprietor of a registered trademark, and also send a notice of the entry made in the Register to the current and former proprietors. (4) If the change in the proprietor of the trademark does not concern the whole list of goods and services for which the trademark has been registered, the Patent Office shall divide this registration by applying the provisions of Section 44 of this Law to the necessary changes and create a new registration for the goods and services the proprietor of which has changed. (5) The acquirer of a trademark as a proprietor may exercise the rights to the trademark starting

	ziņas par īpašnieka maiņu iekļautas Reģistrā. Izņēmuma tiesības, kas izriet no preču zīmes reģistrācijas, preču zīmes ieguvējs var izmantot pret citām personām ar dienu, kad ziņas par īpašnieka maiņu publicētas Patentu valdes oficiālajā izdevumā.	from the day when the information on the change of the proprietor has been entered into the Register. The acquirer of the trademark may exercise exclusive rights arising from the registration of the trademark against other persons starting from the day when the information on the change of the proprietor has been published in the official gazette of the Patent Office.
	(6) Ja citai personai pāriet reģistrācijas pieteikums, pirms Patentu valde ir pieņēmusi lēmumu par attiecīgās preču zīmes reģistrāciju, tad pēc attiecīga iesnieguma, tiesību pāreju apliecinoša dokumenta un noteiktās maksas saņemšanas Patentu valde preču zīmes pieteicēja maiņu ņem vērā kā grozījumu reģistrācijas pieteikumā šā likuma 38. panta attiecīgo noteikumu izpratnē un reģistrācijas pieteikuma izskatīšanu turpina attiecībā uz jauno pieteicēju. Ziņas par tiesību pāreju ietver preču zīmju datubāzē un publisko Patentu valdes tīmekļvietnē.	(6) If an application for registration is transferred to another person before the Patent Office has taken a decision to register the relevant trademark, then the Patent Office shall, upon receipt of a relevant submission, a document confirming the transfer of rights and the stipulated fee, consider the change of the applicant for a trademark as an amendment of the application for registration within the meaning of the relevant provisions of Section 38 of this Law and continue the examination of the application for registration in respect of the new applicant. Information on the transfer of rights shall be included in the database of trademarks and published on the website of the Patent Office.
	(7) Ja reģistrācijas pieteikuma pāreja citai personai (preču zīmes pieteicēja maiņa) neattiecas uz visām precēm un pakalpojumiem, kam preču zīme pieteikta, Patentu valde šo pieteikumu sadala, piemērojot šā likuma 39. panta noteikumus ar nepieciešamajām izmaiņām un izveidojot jaunu reģistrācijas pieteikumu precēm un pakalpojumiem, kam mainījies preču zīmes pieteicējs.	(7) If the transfer of an application for registration (change of the applicant for a trademark) does not refer to all goods and services for which the trademark has been applied for, the Patent Office shall divide this application by applying the provisions of Section 39 of this Law with the necessary changes and shall prepare a new application for registration for the goods and services in respect of which the applicant for the trademark has changed.
	(8) Ministru kabinets nosaka kārtību, kādā preču zīmes reģistrācijas un reģistrācijas pieteikuma pāreja izskatāma un reģistrējama Patentu valdē.	(8) The Cabinet shall determine the procedures for examining and registering the transfer of registration of a trademark and of an application for registration with the Patent Office.

Criminal Procedure Law (*Kriminālprocesa likums*)

Access the full text

Latvian:
https://likumi.lv/ta/id/107820-kriminalprocesa-likums

English:
https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law

	Original language	English
Article 23	**Tiesas spriešana** Krimināllietās tiesu sprież tiesa, tiesas sēdēs izskatot un izlemjot pret personu celto apsūdzību pamatotību, attaisnojot nevainīgas personas vai arī atzīstot personas par vainīgām noziedzīga nodarījuma izdarīšanā un nosakot valsts institūcijām un personām obligāti izpildāmu krimināltiesisko attiecību noregulējumu, kas, ja nepieciešams, realizējams piespiedu kārtā.	**Administration of Justice** A court shall administer justice in criminal matters by examining and deciding the validity of charges brought against a person, acquitting persons who are not guilty, or finding persons guilty of committing a criminal offence in a court hearing and determining a regulation of criminal legal relations that must be enforced by State authorities and persons and the enforcement of which, if necessary, may be implemented by forced conveyance.

Law On Forensic Experts (*Tiesu ekspertu likums*)

Access the full text

Latvian:
https://likumi.lv/ta/id/280576-tiesu-ekspertu-likums

English:
https://likumi.lv/ta/en/en/id/280576-law-on-forensic-experts

	Original language	English
Article 3	**Tiesības veikt tiesu ekspertīzi**	**Right to perform a forensic expert examination**
	(1) Tiesu ekspertīzi Latvijas Republikā atbilstoši savai kompetencei ir tiesīgi veikt:	(1) The following persons are entitled to perform a forensic expert examination in the Republic of Latvia pursuant to their competence:
	1) valsts tiesu eksperti;	1) State forensic experts;
	2) privātie tiesu eksperti.	2) private forensic experts.
	(2) Ekspertīzi var veikt cita persona, kurai ir atbilstošas speciālās zināšanas:	(2) An expert examination may be performed by another person who has the appropriate special knowledge:
	1) ja ekspertīze nepieciešama jomās, kurās nav šā panta pirmās daļas 1. un 2.punktā minēto ekspertu;	1) if an expert examination is necessary in the field in which there are no experts referred to in paragraph one, Clauses 1 and 2 of this section;
	2) ja nepieciešams veikt atkārtotu ekspertīzi un šā panta pirmās daļas 1. un 2.punktā minētie tiesu eksperti attiecīgajā tiesu eksperta specialitātē ir jau veikuši ekspertīzi;	2) if it is necessary to repeat the expert examination and the forensic experts in the relevant speciality of the forensic expert referred to in paragraph one, Clauses 1 and 2 of this section have already performed the expert examination;
	3) ja šā panta pirmās daļas 1. un 2.punktā minētie tiesu eksperti ekspertīzi nevar veikt nepieciešamo speciālo zināšanu vai aprīkojuma trūkuma dēļ;	3) if the forensic experts referred to in Paragraph one, Clauses 1 and 2 of this Section cannot perform the expert examination due to the lack of the necessary special knowledge or equipment;
	4) ja šā panta pirmās daļas 1. un 2.punktā minētie tiesu eksperti ekspertīzi nevar veikt iespējamā interešu konflikta dēļ;	4) if the forensic experts referred to in paragraph one, Clauses 1 and 2 of this section cannot perform the expert-examination due to a possible conflict of interest;
	5) valsts mēroga katastrofas vai terorakta gadījumā.	5) in the event of a disaster or an act of terrorism.

SLOVENIA

Slovenian Criminal Code (*Kazenski zakonik*)

KZ-1-UPB2

Access the full text

Slovenian:
https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/109161#!/Kazenski-zakonik-(KZ-1-UPB2)-(uradno-precisceno-besedilo)

English (unofficial translation):

https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/si/si045en.html

	Original language	English
Article 148	**Kršitev materialnih avtorskih pravic** (1) Kdor neupravičeno uporabi eno ali več avtorskih del ali njihovih primerkov, katerih skupna tržna cena pomeni večjo premoženjsko vrednost, se kaznuje z zaporom do treh let. (2) Če tržna cena avtorskih del iz prejšnjega odstavka pomeni veliko premoženjsko vrednost, se storilec kaznuje z zaporom do petih let. (3) Če je bila z dejanjem iz prvega ali drugega odstavka tega člena pridobljena velika protipravna premoženjska korist in je šlo storilcu za to, da sebi ali komu drugemu pridobi tako premoženjsko korist, se kaznuje z zaporom od enega do osmih let. (4) Primerki avtorskih del in naprave za njihovo reproduciranje se vzamejo. (5) Pri ugotavljanju premoženjske vrednosti po določbah tega člena in 149. člena tega zakonika se upošteva korist iz neupravičene uporabe materialnih avtorskih pravic oziroma neupravičenega reproduciranja, dajanja na voljo javnosti, razširjanja ali dajanja v najem avtorski sorodnih pravic v pridobitne namene.	**Infringement of material copyrights** (1) Any unlawful use of one or more copyright works or copies thereof whose total market price implies a significant asset value shall be punishable by imprisonment of up to three years. (2) If the market price of the copyright works referred to in the preceding paragraph represents significant property value, the offender shall be punishable by imprisonment of up to five years. (3) If an act referred to in the first or second paragraph of this Article has generated substantial illicit proceeds and the offender has engaged in obtaining such proceeds from him-/herself or another person, he/she shall be punishable by imprisonment of between one and eight years. (4) Copies of copyrighted works and devices used to reproduce them shall be seized. (5) In determining the asset value under the provisions of this Article and Article 149 of this Code, account shall be taken of the benefit derived from the unlawful use of material copyrights or the unlawful reproduction, making available to the public, dissemination or rental of copyright-related rights for profit-making purposes.
Article 241	**Nedovoljeno sprejemanje daril**	**Unauthorised acceptance of gifts**

	(1) Kdor pri opravljanju gospodarske dejavnosti zase ali za koga drugega zahteva ali sprejme nedovoljeno nagrado, darilo ali kakšno drugo korist ali obljubo oziroma ponudbo take koristi, da bi zaradi pridobitve ali ohranitve posla ali druge nedovoljene koristi zanemaril koristi svoje organizacije ali druge fizične osebe ali ji povzročil škodo, se kaznuje z zaporom od šestih mesecev do petih let.	(1) Whoever, in the performance of an economic activity, requests or agrees to accept for him-/herself or any third person an unauthorised award, gift or other property benefit, or a promise or offer for such benefit, in order to neglect the interests of his/her organisation or other natural person or to cause damage to the same when concluding or retaining a contract or other unauthorised benefit, shall be sentenced to imprisonment for not less than six months and not more than five years.
	(2) Storilec dejanja iz prejšnjega odstavka, ki zahteva ali sprejme nedovoljeno nagrado, darilo ali kakšno drugo korist ali obljubo oziroma ponudbo take koristi zase ali za koga drugega kot protiuslugo zaradi pridobitve ali ohranitve posla ali druge koristi, se kaznuje za zaporom od treh mesecev do petih let.	(2) The perpetrator of the offence under the preceding paragraph of this Article, who requests or agrees to accept an unauthorised award, gift or other property benefit, or a promise or offer for such benefit, for him-/herself or any third person in exchange for making or retaining a contract or other benefit, shall be sentenced to imprisonment for not less than three months and not more than five years.
	(3) Storilec dejanja iz prvega odstavka tega člena, ki po sklenitvi posla ali opravljeni storitvi ali pridobitvi druge nedovoljene koristi zase ali za koga drugega zahteva ali sprejme nedovoljeno nagrado, darilo ali kakšno drugo korist, se kaznuje z zaporom do dveh let.	(3) The perpetrator of the offence under paragraph 1 of this Article who requests or agrees to accept an unauthorised award, gift or other property benefit after the contract is concluded or service performed, or other unauthorised benefit is acquired for him-/herself or any third person, shall be sentenced to imprisonment for not more than two years.
	(4) Sprejeta nagrada, darilo ali kakšna druga korist se vzamejo.	(4) The accepted gift, award, or any other benefit shall be seized.

Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs

Access the full text

English:

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02002R0006-20130701

Article 110 - Transitional provision

1. Until such time as amendments to this Regulation enter into force on a proposal from the Commission on this subject, protection as a Community design shall not exist for a design which constitutes a component part of a complex product used within the meaning of Article 19(1) for the purpose of the repair of that complex product so as to restore its original appearance.

2. The proposal from the Commission referred to in paragraph 1 shall be submitted together with, and take into consideration, any changes which the Commission shall propose on the same subject pursuant to Article 18 of Directive 98/71/EC.

PORTUGAL

Portuguese Code of Industrial Property (*Código da Propriedade Industrial*)

Law 110/2018 of 10 December

Access the full text

Portuguese:
https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2979&tabela=leis&so_miolo=

English (unofficial translation):
https://www.wipo.int/wipolex/en/legislation/details/21381

	Original language	English
Article 323	**Contrafacção, imitação e uso ilegal de marca** É punido com pena de prisão até 3 anos ou com pena de multa até 360 dias quem, sem consentimento do titular do direito: a) Contrafizer, total ou parcialmente, ou, por qualquer meio, reproduzir uma marca registada; b) Imitar, no todo ou em alguma das suas partes características, uma marca registada; c) Usar as marcas contrafeitas ou imitadas; d) Usar, contrafizer ou imitar marcas notórias cujos registos já tenham sido requeridos em Portugal; e) Usar, ainda que em produtos ou serviços sem identidade ou afinidade, marcas que constituam tradução ou sejam iguais ou semelhantes a marcas anteriores cujo registo tenha sido requerido e que gozem de prestígio em Portugal, ou na Comunidade Europeia se forem comunitárias, sempre que o uso da marca posterior procure, sem justo motivo, tirar partido indevido do carácter distintivo ou do prestígio das anteriores ou possa prejudicá-las;	**Counterfeiting, imitation and illegal use of a trademark** A penalty of imprisonment of up to 3 years or a fine of up to 360 days shall apply to anyone who, without the consent of the rights holder: a) Counterfeits, in whole or in part, or by any means reproduces a registered trademark; b) Imitates, in whole or in any of its characteristic parts, a registered trademark; c) Uses counterfeited or imitated trademarks; d) Uses, counterfeits or imitates well-known trademarks that have already been registered in Portugal; e) Uses, including in products or services that have no identity or affinity, trademarks that constitute a translation of or are the same or similar to earlier trademarks whose registration has been applied for and that enjoy prestige in Portugal or in the European Community, if they are Community trademarks, whenever the use of the later trademark seeks, without reason, to take undue advantage of the distinctive character or the prestige of earlier trademarks, or may harm them;

	f) Usar, nos seus produtos, serviços, estabelecimento ou empresa, uma marca registada pertencente a outrem.	f) Uses a registered trademark belonging to someone else on their products, services, establishment or company.

Penal Code

(Código Penal)

Law 48/95 of 15 March

Access the full text

Portuguese
https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis

English (unofficial translation):

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwizhIikmZyEAxUi1AIHHZz1CIUQFnoECA8QAQ&url=https%3A%2F%2Fadsdatabase.ohchr.org%2FIssueLibrary%2FPORTUGAL_Criminal%2520Code.pdf&usg=AOvVaw3Qo9k2zKZXocTT38k1uOHY&opi=89978449 (earlier version, as of 2007)

	Original language	English
Article 77	**Regras de punição do concurso** 1 - Quando alguém tiver praticado vários crimes antes de transitar em julgado a condenação por qualquer deles é condenado numa única pena. Na medida da pena são considerados, em conjunto, os factos e a personalidade do agente. 2 - A pena aplicável tem como limite máximo a soma das penas concretamente aplicadas aos vários crimes, não podendo ultrapassar 25 anos tratando-se de pena de prisão e 900 dias tratando-se de pena de multa; e como limite mínimo a mais elevada das penas concretamente aplicadas aos vários crimes. 3 - Se as penas aplicadas aos crimes em concurso forem umas de prisão e outras de multa, a diferente natureza destas mantém-se na pena única resultante da aplicação dos critérios estabelecidos nos números anteriores. 4 - As penas acessórias e as medidas de segurança são sempre aplicadas ao agente, ainda que previstas por uma só das leis aplicáveis.	**Rules for punishment of concurrence** 1 – When someone has committed several crimes before the conviction by any of them has become final is convicted in a single sentence. In the extent of the sentence are considered the facts together with the agent's personality. 2 – The applicable sentence has as maximum limit the sum of the sentences actually applied to the several crimes, which cannot exceed 25 years in the case of sentence of imprisonment and 900 days in the case of fine penalty; and as minimum limit the highest of the sentences actually applied to the several crimes. 3 – If the sentences applied to the crimes in concurrence are some of imprisonment and others of fine, the different nature of the same is maintained in the single sentence resulting from the applicability of the criteria set out in the previous numbers. 4 – The accessory sentences and the security measures are always applicable to the agent, even if only foreseen by one of the applicable laws.
Article 109	**Perda de instrumentos** 1 - São declarados perdidos a favor do Estado os instrumentos de facto ilícito típico, quando, pela sua natureza ou pelas circunstâncias do caso, puserem em perigo a segurança das pessoas, a moral ou a ordem públicas, ou	**Forfeiture of instruments** 1 - Instruments of an unlawful act shall be declared forfeited in favour of the state when, due to their nature or the circumstances of the case, they endanger the safety of persons, morals or public order, or if there is a serious risk that

	oferecerem sério risco de ser utilizados para o cometimento de novos factos ilícitos típicos, considerando-se instrumentos de facto ilícito típico todos os objetos que tiverem servido ou estivessem destinados a servir para a sua prática. 2 - O disposto no número anterior tem lugar ainda que nenhuma pessoa determinada possa ser punida pelo facto, incluindo em caso de morte do agente ou quando o agente tenha sido declarado contumaz. 3 - Se os instrumentos referidos no n.º 1 não puderem ser apropriados em espécie, a perda pode ser substituída pelo pagamento ao Estado do respetivo valor, podendo essa substituição operar a todo o tempo, mesmo em fase executiva, com os limites previstos no artigo 112.º-A. 4 - Se a lei não fixar destino especial aos instrumentos perdidos nos termos dos números anteriores, pode o juiz ordenar que sejam total ou parcialmente destruídos ou postos fora do comércio.	they will be used to commit new illicit acts, being considered instruments of an unlawful act all objects that have served or were intended to serve for their commission. 2 - The provisions of the previous paragraph shall apply even if no specific person can be punished for the offence, including in the event of the perpetrator's death or when the perpetrator has been declared in default. 3 - If the instruments referred to in paragraph 1 cannot be appropriated in kind, the forfeiture may be replaced by payment to the State of the respective value, which may be substituted at any time, even at the enforcement stage, subject to the limits provided for in Article 112a. 4 - If the law does not establish a special purpose for the instruments forfeited under the terms of the previous paragraphs, the judge may order that they be totally or partially destroyed or removed from commerce.
Article 221	**Burla informática e nas comunicações** 1 - Quem, com intenção de obter para si ou para terceiro enriquecimento ilegítimo, causar a outra pessoa prejuízo patrimonial, mediante interferência no resultado de tratamento de dados, estruturação incorreta de programa informático, utilização incorreta ou incompleta de dados, utilização de dados sem autorização ou intervenção por qualquer outro modo não autorizada no processamento, é punido com pena de prisão até 3 anos ou com pena de multa. 2 - A mesma pena é aplicável a quem, com intenção de obter para si ou para terceiro um benefício ilegítimo, causar a outrem prejuízo patrimonial, usando programas, dispositivos electrónicos ou outros meios que, separadamente ou em conjunto, se destinem a diminuir, alterar ou impedir, total ou parcialmente, o normal funcionamento ou exploração de serviços de telecomunicações. 3 - A tentativa é punível. 4 - O procedimento criminal depende de queixa. 5 - Se o prejuízo for:	**Computer and communications fraud** 1 - Anyone who, with the intention of obtaining unlawful enrichment for him-/herself or a third party, causes damage to another person's property by interfering with the result of data processing, incorrectly structuring a computer program, incorrect or incomplete use of data, unauthorised use of data or otherwise unauthorised intervention in processing, shall be punishable by imprisonment of up to three years or a fine. 2 - The same penalty shall apply to anyone who, with the intention of obtaining an illegitimate benefit for him-/herself or a third party, causes damage to the property of another, by using programmes, electronic devices or other means which, separately or jointly, are intended to diminish, alter or prevent, in whole or in part, the normal operation or exploitation of telecommunications services. 3 - Attempts are punishable. 4 - Criminal proceedings depend on a complaint. 5 - If the damage is:

	a) De valor elevado, o agente é punido com pena de prisão até 5 anos ou com pena de multa até 600 dias; b) De valor consideravelmente elevado, o agente é punido com pena de prisão de 2 a 8 anos. 6 - É correspondentemente aplicável o disposto no artigo 206.º.	a) of a high value, the perpetrator shall be punished with imprisonment of up to 5 years or a fine of up to 600 days; b) of considerably high value, the perpetrator shall be punished with imprisonment of 2 to 8 years. 6 - The provisions of article 206 shall apply accordingly.

Cybercrime Law

(Lei do Cibercrime)

Law 109/2009 of 15 September

Access the full text

Portuguese
https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=1137A0001&nid=1137&tabela=leis&pagina=1&ficha=1&so_miolo=&nversao=#artigo

English (unofficial translation):
https://www.anacom.pt/render.jsp?contentId=985560#:~:text=109%2F2009%2C%20of%2015%20September,-Print&text=Approves%20the%20Cybercrime%20Law%2C%20transposing.of%20the%20Council%20of%20Europe.

	Original language	English
Article 6	**Acesso ilegítimo** 1 - Quem, sem permissão legal ou sem para tanto estar autorizado pelo proprietário, por outro titular do direito do sistema ou de parte dele, de qualquer modo aceder a um sistema informático, é punido com pena de prisão até 1 ano ou com pena de multa até 120 dias. 2 - Na mesma pena incorre quem ilegitimamente produzir, vender, distribuir ou por qualquer outra forma disseminar ou introduzir num ou mais sistemas informáticos dispositivos, programas, um conjunto executável de instruções, um código ou outros dados informáticos destinados a produzir as ações não autorizadas descritas no número anterior. 3 - A pena é de prisão até 2 anos ou multa até 240 dias se as ações descritas no número anterior se destinarem ao acesso para obtenção de dados registados, incorporados ou respeitantes a cartão de pagamento ou a qualquer outro dispositivo, corpóreo ou incorpóreo, que permita o acesso a sistema ou meio de pagamento. 4 - A pena é de prisão até 3 anos ou multa se: a) O acesso for conseguido através de violação de regras de segurança; ou b) Através do acesso, o agente obtiver dados	**Illegitimate access** 1 - Anyone who, without legal permission or without being authorised to do so by the owner or other rights holder of the system or part of it, accesses a computer system in any way, shall be punished with imprisonment of up to one year or a fine of up to 120 days. 2 - The same penalty shall apply to anyone who unlawfully produces, sells, distributes or otherwise disseminates or introduces into one or more computer systems, programs, an executable set of instructions, code or other computer data intended to produce the unauthorised actions described in the previous paragraph. 3 - The penalty shall be imprisonment for up to 2 years or a fine of up to 240 days if the actions described in the previous paragraph are intended to provide access that enables the acquisition of data recorded on, incorporated into or relating to a payment card or any other device, whether tangible or intangible, which allows access to a payment system or means of payment. 4 - The penalty is imprisonment for up to 3 years or a fine if: a) The access is gained by violating security rules; or

	registados, incorporados ou respeitantes a cartão de pagamento ou a qualquer outro dispositivo, corpóreo ou incorpóreo, que permita o acesso a sistema ou meio de pagamento. 5 - A pena é de prisão de 1 a 5 anos quando: a) Através do acesso, o agente tiver tomado conhecimento de segredo comercial ou industrial ou de dados confidenciais, protegidos por lei; ou b) O benefício ou vantagem patrimonial obtidos forem de valor consideravelmente elevado. 6 - A tentativa é punível, salvo nos casos previstos nos n.os 2 e 3. 7 - Nos casos previstos nos n.os 1, 4 e 6 o procedimento penal depende de queixa.	b) Through the access, the perpetrator obtains data recorded on, incorporated into or relating to a payment card or any other device, tangible or intangible, which allows access to a payment system or means of payment. 5 - The penalty is imprisonment for 1 to 5 years when: a) Through the access, the perpetrator has become aware of a trade or industrial secret or confidential data, protected by law; or b) The benefit or advantage obtained is of a considerably high value. 6 – The attempt shall be punishable, except in the cases provided for in paragraphs 2 and 3. 7 - In the cases provided for in paragraphs 1, 4 and 6, criminal proceedings are dependent on a complaint.

Act on Copyright and Related Rights (Código dos Direitos de Autor e Direitos Conexos)

Law 63/85 of 14 March

Access the full text

Portuguese
https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=484&tabela=leis&so_miolo

English
No English translation is available for this legislative text.

	Original language	English
Article 195	**Usurpação** 1 - Comete o crime de usurpação quem, sem autorização do autor ou do artista, do produtor de fonograma e videograma, do organismo de radiodifusão ou do editor de publicação de imprensa, utilizar uma obra ou prestação por qualquer das formas previstas no presente Código. 2 - Comete também o crime de usurpação: a) Quem divulgar ou publicar abusivamente uma obra ainda não divulgada nem publicada pelo seu autor ou não destinada a divulgação ou publicação, mesmo que a apresente como sendo do respectivo autor, quer se proponha ou não obter qualquer vantagem económica; b) Quem coligir ou compilar obras publicadas ou inéditas sem autorização do autor; c) Quem, estando autorizado a utilizar uma obra, prestação de artista, fonograma, videograma, emissão radiodifundida ou publicação de imprensa, exceder os limites da autorização concedida, salvo nos casos expressamente previstos no presente Código. 3 - Será punido com as penas previstas no artigo 197.º o autor que, tendo transmitido, total ou parcialmente, os respectivos direitos ou tendo autorizado a utilização da sua obra por qualquer dos modos previstos neste Código, a utilizar directa ou indirectamente com ofensa dos direitos atribuídos a outrem. 4 - O disposto nos números anteriores não se aplica às situações de comunicação pública de fonogramas e videogramas editados	**Usurpation** 1 - The crime of usurpation is committed by anyone who, without the authorisation of the author or artist, the phonogram and videogram producer, the broadcasting organisation or the publisher of a press publication, uses a work or performance in any of the ways provided for in this Act. 2 - The offence of usurpation is also committed by: a) Anyone who abusively disseminates or publishes a work which has not yet been disseminated or published by its author or which is not intended for dissemination or publication, even if presented as the work of its author, whether or not he intends to obtain any economic advantage; b) Whoever collates or compiles published or unpublished works without the author's authorisation; c) Whoever, being authorised to use a work, performance by an artist, phonogram, videogram, broadcast or press publication, exceeds the limits of the authorisation granted, except in the cases expressly provided for in this Act. 3 - An author who, having transferred his/her rights in whole or in part or having authorised the use of his/her work in any of the ways provided for in this Act, uses it directly or indirectly in breach of the rights attributed to others, shall be punishable by the penalties provided for in Article 197. 4 - The provisions of the previous paragraphs do not apply to situations of public communication of commercially published phonograms and

	comercialmente, puníveis como ilícito contraordenacional, nos termos dos n.os 3, 4 e 6 a 12 do artigo 205.º 5 - A conduta não é punível quando o prestador de serviços de partilha de conteúdos em linha cumpra as condições previstas, consoante os casos, no n.º 1 do artigo 175.º-C ou nos n.os 1 e 2 do artigo 175.º-D.	videograms, which are punishable as an administrative offence under the terms of paragraphs 3, 4 and 6 to 12 of Article 205. 5 - The conduct is not punishable when the provider of online content sharing services fulfils the conditions laid down, as the case may be, in Article 175c(1) or Article 175d(1) and (2).
Article 197	**Penalidades** 1 - Os crimes previstos nos artigos anteriores são punidos com pena de prisão até três anos e multa de 150 a 250 dias, de acordo com a gravidade da infracção, agravadas uma e outra para o dobro em caso de reincidência, se o facto constitutivo da infracção não tipificar crime punível com pena mais grave. 2 - Nos crimes previstos neste título a negligência é punível com multa de 50 a 150 dias. 3 - Em caso de reincidência, não há suspensão da pena.	**Sanctions** 1 – The crimes provided for in the previous articles shall be punished by imprisonment of up to three years and a fine of between 150 and 250 days, depending on the seriousness of the offence, both of which shall be doubled in the event of a repeat offence, if the constitutive fact of the offence does not tipify a crime punishable by a more serious sanction. 2 – In the offences provided for in this title, negligence is punishable by a fine of 50 to 150 days. 3 – In the event of a repeat offence, the sentence shall not be suspended.

Law of Electronic Communications

(Lei das Comunicaões Electrónicas)

Law 5/2004 of 10 February

Access the full text

Portuguese
https://diariodarepublica.pt/dr/detalhe/lei/5-2004-581061

Replaced by law 16/2002 of 16 August:
https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=3560A0166&nid=3560&tabela=leis&pagina=1&ficha=1&so_miolo=&nversao=#artigo

English (unofficial translation):

https://www.anacom.pt/render.jsp?contentId=975162

Law 16/2002 of 16 August (unofficial translation):
https://www.anacom.pt/render.jsp?contentId=1737530

	Original language	English
Article 104	**Dispositivos ilícitos** 1 - São proibidas as seguintes actividades: a) Fabrico, importação, distribuição, venda, locação ou detenção, para fins comerciais, de dispositivos ilícitos; b) Instalação, manutenção ou substituição, para fins comerciais, de dispositivos ilícitos; c) Utilização de comunicações comerciais para a promoção de dispositivos ilícitos. 2 - Para efeitos do disposto no número anterior, entende-se por: a) «Dispositivo ilícito» um equipamento ou programa informático concebido ou adaptado com vista a permitir o acesso a um serviço protegido, sob forma inteligível, sem autorização do prestador do serviço; b) «Dispositivo de acesso condicional» um equipamento ou programa informático concebido ou adaptado com vista a permitir o acesso, sob forma inteligível, a um serviço protegido; c) «Serviço protegido» qualquer serviço de televisão, de radiodifusão sonora ou da sociedade da informação, desde que prestado mediante remuneração e com base em acesso	**Illicit devices** 1 - The following activities are prohibited: a) The manufacture, import, distributing, sale, rental or possession for commercial purposes of illicit devices; b) The installation, maintenance or replacement, for commercial purposes of an illicit device; c) The use of commercial communications to promote illicit devices. 2 - For the purposes of the preceding paragraph, the following definitions shall apply: a) «illcit device» shall mean any equipment or software designed or adapted to give access to a protected service in an intelligible form without the authorisation of the service provider; b) «Conditional access device» shall mean any equipment or software designed or adapted to give access to a protected service in an intelligible form; (c) «Protected service» shall mean any television, radio broadcasting or information society service provided for remuneration and on the basis of conditional access, or the provision of conditional access to such services considered as a service in its own right.

	condicional, ou o fornecimento de acesso condicional aos referidos serviços considerado como um serviço em si mesmo. 3 - Os actos previstos na alínea a) do n.º 1 constituem crime punível com pena de prisão até 3 anos ou com pena de multa, se ao caso não for aplicável pena mais grave. 4 - A tentativa é punível. 5 - O procedimento criminal depende de queixa.	3 - The actions provided for in paragraph 1 constitute a crime punishable by a prison sentence of up to three years or a fine, if a more serious penalty is not applicable. 4 – Attempt shall be punishable. 5 - Criminal proceedings depend on a complaint.

SWEDEN

Copyright Act
(Lag om upphovsrätt till litterära och konstnärliga verk)
Law 1960:729

Access the full text

Swedish:
https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-1960729-om-upphovsratt-till-litterara-och_sfs-1960-729/#K7

English (unofficial translation):

https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/se/se225en.html

	Original language	English
48 §	Radio- och tv-företag Ett radio- eller tv-företag har, med de inskränkningar som föreskrivs i denna lag, en uteslutande rätt att förfoga över en ljudradio- eller televisionsutsändning genom att 1. ta upp utsändningen på en anordning genom vilken den kan återges, 2. framställa exemplar av en upptagning av utsändningen, 3. sprida exemplar av en upptagning av utsändningen till allmänheten, 4. tillåta återutsändning eller en återgivning för allmänheten på platser där allmänheten har tillträde mot inträdesavgift, eller 5. tillåta att en upptagning av utsändningen på trådbunden eller trådlös väg överförs till allmänheten på ett sådant sätt att enskilda kan få tillgång till upptagningen från en plats och vid en tidpunkt som de själva väljer. De rättigheter som avses i första stycket 2, 3 och 5 gäller till utgången av femtionde året efter det år då utsändningen ägde rum. Bestämmelserna i 2 § andra stycket, 6-9 §§, 11 § andra stycket, 11 a, 12, 13 och 15 a-16 §§, 16 a § tredje stycket, 16 e-17 c, 17 e, 21, 22, 25-26 b, 26 e, 42 a, 42 b, 42 d och 42 g-42 k §§ ska tillämpas i fråga om ljudradio- och televisionsutsändningar som avses i denna paragraf. När ett exemplar av en upptagning enligt denna paragraf med företagets samtycke har överlåtits inom Europeiska ekonomiska	Radio and television organisations Subject to the limitations prescribed in this Act, a sound radio or television organization has an exclusive right to exploit a sound radio or television broadcast by 1. fixing the broadcast on a material support from which it can be perceived, 2. preparing copies of a recording of the broadcast, 3. distributing copies of a recording of the broadcast to the public, 4. permitting a re-broadcast or a communication to the public in places accessible to the public against the payment of an entrance fee, or 5. permitting that a fixation of the broadcast be communicated, by wire or wireless means, to the public in such a way that members of the public may access the recording from a place and at a time individually chosen by them. The rights referred to in the first Paragraph, items 2, 3 and 5, subsist until the expiry of the fiftieth year after the year in which the broadcast took place. The provisions of Article 2, second Paragraph, 6 - 9, 11, second Paragraph, 11 a, 12 and 16, 16 a, third Paragraph, 17 – 17 c, 17 e, 21, 22, 25 - 26 b, 26 e, 42 a, 42 b, 42 d, 42 g and 42 h shall apply in respect of sound radio and television broadcasts referred to in this Article. When a copy of a recording referred to in this Article has

	samarbetsområdet får exemplaret spridas vidare. Om ett radio- eller tv-företag har krav på ersättning för en sådan vidaresändning som avses i 42 f § och som har skett med företagets samtycke, ska företaget framställa sitt krav samtidigt med de krav som avses i 42 a § tredje stycket.	been, with the consent of the organization, transferred within the European Economic Area, that copy may be distributed further. If a sound radio or television organization has a claim for remuneration for a retransmission referred to in Article 42 f and which has been carried out with the consent of the organization, the organization shall forward its claim at the same time as the claims referred to in Article 42 a, third Paragraph.
53§	Den som beträffande ett litterärt eller konstnärligt verk vidtar en åtgärd, som innebär intrång i den till verket enligt 1 och 2 kap. knutna upphovsrätten eller som strider mot föreskrift enligt 41 § andra stycket eller mot 50 §, döms, om det sker uppsåtligen eller av grov oaktsamhet, för upphovsrättsbrott till böter eller fängelse i högst två år. Detta gäller också om någon för in ett exemplar av ett verk till Sverige i syfte att sprida det till allmänheten, om exemplaret har framställts utomlands och motsvarande framställning här skulle ha varit straffbar enligt första meningen. Om brottet begåtts uppsåtligen och är att anse som grovt, döms för grovt upphovsrättsbrott till fängelse i lägst sex månader och högst sex år. Vid bedömningen av om brottet är grovt ska det särskilt beaktas om gärningen 1. har föregåtts av särskild planering, 2. har utgjort ett led i en brottslighet som utövats i organiserad form, 3. har varit av större omfattning, eller 4. annars har varit av särskilt farlig art. Den som för sitt enskilda bruk kopierar ett datorprogram som är utgivet eller av vilket exemplar har överlåtits med upphovsmannens samtycke, ska inte dömas till ansvar, om förlagan för kopieringen inte används i näringsverksamhet eller offentlig verksamhet och han eller hon inte utnyttjar framställda exemplar av datorprogrammet för annat ändamål än sitt enskilda bruk. Den som för sitt enskilda bruk framställer exemplar i digital form av en offentliggjord sammanställning i digital form ska under de förutsättningar som nyss nämnts inte dömas till ansvar. Den som har överträtt ett vitesförbud enligt 53 b § får inte dömas till ansvar för intrång som omfattas av förbudet. För försök eller förberedelse till upphovsrättsbrott eller grovt upphovsrättsbrott döms det till ansvar enligt 23 kap. brottsbalken. *Lag (2020:540)*.	Anyone who, in respect of a literary or artistic work, commits an act which infringes the copyright enjoyed in the work under the provisions of Chapters 1 and 2 or which violates directions given under Article 41, second Paragraph, or Article 50, if the act is committed intentionally or by gross negligence, is punishable for copyright violation with a fine or imprisonment for up to two years. This also apply if someone brings in a copy of a work into Sweden with the aim to distribute it to the public, if the copy has been produced abroad and the corresponding production here would have been punishable under the first sentence. If the violation was committed intentionally and is considered serious, the person is punishable for serious copyright violation with imprisonment for a minimum of six months up to a maximum of six years. When assessing whether the violation is serious, particular consideration has to be given to whether the act concerned 1. has been preceded by particular planning, 2. was part of criminal activities conducted in an organised form, 3. was conducted on a large scale, or 4. was otherwise of a particularly dangerous nature. Anyone who for his personal use reproduces a computer program which has been published or of which a copy has been transferred with the consent of the author shall not be subject to criminal liability, if the master copy for the reproduction is not being used in commercial or public activities and he or she does not use the copies produced of the computer program for any purposes other than his or her personal use. Anyone who for his or her personal use has made a copy in digital form of a compilation in digital form which has been made the public shall, under the same conditions, not be subject to criminal liability for the act. Anyone who has violated an injunction issued with a penalty of a fine pursuant to Article 53 b, must not be held liable for infringements covered by the injunction. Responsibility is assigned under Chapter 23 of

		the Criminal Code for attempting to commit or preparation of copyright violation or serious copyright violation. (Act 2020:540)
53 a§	Egendom med avseende på vilken brott föreligger enligt denna lag skall förklaras förverkad, om det inte är uppenbart oskäligt. I stället för egendomen får dess värde förklaras förverkat. Även utbyte av sådant brott skall förklaras förverkat, om det inte är uppenbart oskäligt. Detsamma gäller vad någon har tagit emot som ersättning för kostnader i samband med ett sådant brott, eller värdet av det mottagna, om mottagandet utgör brott enligt denna lag.	Property in respect of which a violation has occurred pursuant to this Act shall be declared forfeited, if this is not considered obviously unreasonable. Instead of the property itself, its value may be declared forfeited. Also profits from such a violation shall be declared forfeited, if this is not obviously unreasonable. The same applies to what someone has received in compensation for costs related to such a violation, or the value of what has been received, where the act of receiving constitutes a violation pursuant to this Act.
54§	Den som i strid mot denna lag eller mot föreskrift enligt 41 § andra stycket utnyttjar ett verk ska betala skälig ersättning för utnyttjandet till upphovsmannen eller hans eller hennes rättsinnehavare. Sker det uppsåtligen eller av oaktsamhet, ska ersättning även betalas för den ytterligare skada som intrånget eller överträdelsen har medfört. När ersättningens storlek bestäms ska hänsyn särskilt tas till 1. utebliven vinst, 2. vinst som den som har begått intrånget eller överträdelsen har gjort, 3. skada på verkets anseende, 4. ideell skada, och 5. upphovsmannens eller rättsinnehavarens intresse av att intrång inte begås. Andra stycket gäller även den som annars uppsåtligen eller av oaktsamhet vidtar en åtgärd, som innebär intrång eller överträdelse enligt 53 §. Ersättningsskyldighet enligt första eller andra stycket gäller inte den som i samband med framställning av exemplar för privat bruk enbart överträder 12 § fjärde stycket, om inte denna överträdelse sker uppsåtligen eller av grov oaktsamhet. *Lag (2009:109)*	Anyone who exploits a work in violation of this Act or of directions pursuant to Article 41, second Paragraph, shall pay to the author or his or her successor in title a reasonable compensation for the exploitation. Where it has been carried out willfully or by negligence, compensation shall be paid also for the further damage that the infringement or the violation has caused. When the amount of the compensation is determined, special consideration shall be given to 1. lost profit, 2. profit made by the party committing the infringement or the violation 3. damage caused to the reputation of the work, 4. moral damage, and 5. the interest of the author or the right holder in that infringements are not committed. The provisions of the second Paragraph apply also to anyone who otherwise willfully or by negligence commits an act constituting an infringement or a violation pursuant to Article 53. The obligation to pay compensation pursuant to the first or second Paragraph does not apply to the person who, in making of copies for private purposes, violates only Article 12, fourth Paragraph, unless this violation is carried out willfully or by gross negligence. (Act 2009:109)

SPAIN

Penal Code
(Código Penal)
Law 10/1995 of 23 November

Access the full text

Spanish:
https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444

English (unofficial translation):

https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf
(earlier version, as of 2016)

	Original language	English
Article 270	1. Será castigado con la pena de prisión de seis meses a cuatro años y multa de doce a veinticuatro meses el que, con ánimo de obtener un beneficio económico directo o indirecto y en perjuicio de tercero, reproduzca, plagie, distribuya, comunique públicamente o de cualquier otro modo explote económicamente, en todo o en parte, una obra o prestación literaria, artística o científica, o su transformación, interpretación o ejecución artística fijada en cualquier tipo de soporte o comunicada a través de cualquier medio, sin la autorización de los titulares de los correspondientes derechos de propiedad intelectual o de sus cesionarios.	1. Whoever, in order to obtain direct or indirect economic gain and to the detriment of a third party, reproduces, plagiarises, distributes, publicly discloses or in any other manner financially exploits all or part of a literary, artistic or scientific work or performance, or transforms, interprets or performs it in any kind of medium, or broadcasts it by any medium, without authorisation by the holders of the relevant intellectual property rights or their assignees, shall be punished with a prison sentence of six months to four years and a fine of twelve to twenty-four months.
	2. La misma pena se impondrá a quien, en la prestación de servicios de la sociedad de la información, con ánimo de obtener un beneficio económico directo o indirecto, y en perjuicio de tercero, facilite de modo activo y no neutral y sin limitarse a un tratamiento meramente técnico, el acceso o la localización en internet de obras o prestaciones objeto de propiedad intelectual sin la autorización de los titulares de los correspondientes derechos o de sus cesionarios, en particular ofreciendo listados ordenados y clasificados de enlaces a las obras y contenidos referidos anteriormente, aunque dichos enlaces	2. The same punishment shall be incurred by those who, while providing media services, in order to obtain direct or indirect economic gain and to the detriment of a third party, actively and in a non-neutral manner, not limited to merely technical processing, provide access or enable the identification on the Internet of works or performances subject to intellectual property without authorisation of the holders of the corresponding rights or their assignees, in particular by providing ordered and classified lists of links to the aforementioned works and content, even in the event that said links were originally provided by the service recipients.

	hubieran sido facilitados inicialmente por los destinatarios de sus servicios. 3. En estos casos, el juez o tribunal ordenará la retirada de las obras o prestaciones objeto de la infracción. Cuando a través de un portal de acceso a internet o servicio de la sociedad de la información, se difundan exclusiva o preponderantemente los contenidos objeto de la propiedad intelectual a que se refieren los apartados anteriores, se ordenará la interrupción de la prestación del mismo, y el juez podrá acordar cualquier medida cautelar que tenga por objeto la protección de los derechos de propiedad intelectual. Excepcionalmente, cuando exista reiteración de las conductas y cuando resulte una medida proporcionada, eficiente y eficaz, se podrá ordenar el bloqueo del acceso correspondiente. 4. En los supuestos a que se refiere el apartado 1, la distribución o comercialización ambulante o meramente ocasional se castigará con una pena de prisión de seis meses a dos años. No obstante, atendidas las características del culpable y la reducida cuantía del beneficio económico obtenido o que se hubiera podido obtener, siempre que no concurra ninguna de las circunstancias del artículo 271, el Juez podrá imponer la pena de multa de uno a seis meses o trabajos en beneficio de la comunidad de treinta y uno a sesenta días. 5. Serán castigados con las penas previstas en los apartados anteriores, en sus respectivos casos, quienes: a) Exporten o almacenen intencionadamente ejemplares de las obras, producciones o ejecuciones a que se refieren los dos primeros apartados de este artículo, incluyendo copias digitales de las mismas, sin la referida autorización, cuando estuvieran destinadas a ser reproducidas, distribuidas o comunicadas públicamente. b) Importen intencionadamente estos productos sin dicha autorización, cuando estuvieran destinados a ser reproducidos, distribuidos o comunicados públicamente, tanto si éstos tienen un origen lícito como ilícito en su país de procedencia; no obstante, la importación de los referidos productos de un Estado perteneciente a la Unión Europea no será punible cuando aquellos se hayan	3. In these cases, the Judge or Court of Law shall order the withdrawal of the works or performances the object of the criminal offence. When, through an Internet access portal or media service, the content subject to intellectual property outlined in the preceding Sections is distributed exclusively or predominantly, the interruption of such distribution shall be ordered and the Judge may adopt any precautionary measure established for the purpose of protecting intellectual property rights. Exceptionally, when such conduct is reiterated and when it is considered as a proportionate, efficient and effective measure, the corresponding access may be blocked. 4. In the cases outlined in Section 1, the itinerant or merely occasional distribution or commercialisation shall be punished with a prison sentence of six months to two years. However, in view of the circumstances of the offender and the small amount of financial profit obtained or that could have been obtained, as long as none of the circumstances of Article 271 concurs, the Judge may hand down a fine of one to six months, or community service of thirty-one to sixty days. 5. The penalties foreseen in the preceding Sections, in the respective cases, shall be imposed on those who: a) Intentionally export or store copies of the works, productions or performances outlined in the first two Sections of this Article, including digital copies thereof, without due authorisation, with the intention of reproducing, distributing or publically disclosing them; b) Intentionally import these products without said authorisation, with the intention of reproducing, distributing or publically disclosing them, regardless of whether these have a lawful or unlawful origin in their country of origin. However, importing those products from a State pertaining to the European Union shall not be punishable when these have been acquired

	adquirido directamente del titular de los derechos en dicho Estado, o con su consentimiento. c) Favorezcan o faciliten la realización de las conductas a que se refieren los apartados 1 y 2 de este artículo eliminando o modificando, sin autorización de los titulares de los derechos de propiedad intelectual o de sus cesionarios, las medidas tecnológicas eficaces incorporadas por éstos con la finalidad de impedir o restringir su realización. d) Con ánimo de obtener un beneficio económico directo o indirecto, con la finalidad de facilitar a terceros el acceso a un ejemplar de una obra literaria, artística o científica, o a su transformación, interpretación o ejecución artística, fijada en cualquier tipo de soporte o comunicado a través de cualquier medio, y sin autorización de los titulares de los derechos de propiedad intelectual o de sus cesionarios, eluda o facilite la elusión de las medidas tecnológicas eficaces dispuestas para evitarlo. 6. Será castigado también con una pena de prisión de seis meses a tres años quien fabrique, importe, ponga en circulación o posea con una finalidad comercial cualquier medio principalmente concebido, producido, adaptado o realizado para facilitar la supresión no autorizada o la neutralización de cualquier dispositivo técnico que se haya utilizado para proteger programas de ordenador o cualquiera de las otras obras, interpretaciones o ejecuciones en los términos previstos en los dos primeros apartados de este artículo.	directly from the holder of the rights in that State, or with his consent; c) Promote or facilitate the conducts outlined in Sections 1 and 2 of this Article by eliminating or modifying, without authorisation by the holders of the intellectual property rights or their assignees, the effective technological measures put in place in order to prevent or restrict such conduct; d) In order to obtain direct or indirect economic gain, with the purpose of providing third parties with access to a copy of a literary, artistic or scientific work, or to transform, interpret or perform it in any kind of medium, or broadcast by any medium, without authorisation by the holders of the relevant intellectual property rights or their assignees, evade or facilitate evasion of the effective technological measures in place to prevent this from happening. 6. Whoever manufactures, imports, puts into circulation or possesses for commercial purposes any means specifically designed, produced, adapted or intended to facilitate unauthorised suppression or neutralisation of any technical device that has been used to protect computer programs or any of the other works, interpretations or performances under the terms foreseen in the first two Sections of this Article, shall be punished with a prison sentence of six months to three years.
Article 286	1. Será castigado con las penas de prisión de seis meses a dos años y multa de seis a 24 meses el que, sin consentimiento del prestador de servicios y con fines comerciales, facilite el acceso inteligible a un servicio de radiodifusión sonora o televisiva, a servicios interactivos prestados a distancia por vía electrónica, o suministre el acceso condicional a los mismos, considerado como servicio independiente, mediante: 1.º La fabricación, importación, distribución, puesta a disposición por vía electrónica, venta, alquiler, o posesión de cualquier equipo o programa informático, no autorizado en otro Estado miembro de la Unión Europea, diseñado o adaptado para hacer posible dicho acceso	1. Punishment by imprisonment of six months to two years and a fine from six to twenty-four months shall be handed down to whoever, without the consent of the service provider and for commercial purposes, provides intelligible access to a radio or television broadcasting sound or image service, to interactive services provided remotely by electronic means, or who provides conditional access to these, considered as an independent service, by means of: 1. Manufacturing, importation, distribution, making available by electronic means, sale, rental, or possession of any computer equipment or program that is unauthorised in another member State of the European Union, designed or adapted to make such access possible;

	2.º La instalación, mantenimiento o sustitución de los equipos o programas informáticos mencionados en el párrafo 1.º 2. Con idéntica pena será castigado quien, con ánimo de lucro, altere o duplique el número identificativo de equipos de telecomunicaciones, o comercialice equipos que hayan sufrido alteración fraudulenta. 3. A quien, sin ánimo de lucro, facilite a terceros el acceso descrito en el apartado 1, o por medio de una comunicación pública, comercial o no, suministre información a una pluralidad de personas sobre el modo de conseguir el acceso no autorizado a un servicio o el uso de un dispositivo o programa, de los expresados en ese mismo apartado 1, incitando a lograrlos, se le impondrá la pena de multa en él prevista. 4. A quien utilice los equipos o programas que permitan el acceso no autorizado a servicios de acceso condicional o equipos de telecomunicación, se le impondrá la pena prevista en el artículo 255 de este Código con independencia de la cuantía de la defraudación.	2. Installation, maintenance or replacement of the equipment or computer programs mentioned in Section 1. 2. An identical punishment shall be applied to whoever, for profit, were to alter or duplicate the identifying number of telecommunications equipment or sell equipment that has undergone fraudulent manipulation. 3. Whoever, for non-profit purposes, provides third parties the access described in Section 1, or through public communication, whether for commercial purposes or not, provides information to multiple persons on the way to obtain unauthorised access to a service or use of a device or program, of those stated in that same Section 1, inciting them to attain this, shall have the punishment of the fine foreseen therein imposed. 4. Whoever uses equipment or programs that allow unauthorised access to conditional access services or telecommunications equipment shall have the punishment foreseen in Article 255 of this Code imposed, regardless of the amount obtained by such fraud.

FINLAND

Criminal Code (Rikoslaki) Law 39/1889

Access the full text

Finnish:
https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001?search%5Btype%5D=pika&search%5Bpika%5D=rikoslaki#L49 **(current version)**

English (unofficial translation):

https://www.fao.org/faolex/results/details/en/c/LEX-FAOC180793/ **(earlier version, as of 2018)**

Current version of the Criminal Code: https://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf

	Original language	English
Chapter 49, section 2 (expired)		Industrial property right offence A person who, in violation of the Trade Marks Act (544/2019), the Patents Act (550/1967), the Registered Designs Act (221/1971), the Act on Exclusive Rights to Layout-Designs (Topographies) of Integrated Circuits (32/1991), the Act on Utility Model Rights (800/1991), the Plant Breeder's Right Act (1279/2009), Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, or Council Regulation (EC) No 6/2002 on Community designs, and in a manner conducive to causing considerable economic loss to the holder of the violated right, violates (1) the exclusive right to a trade mark specified in sections 3–9 of the Trade Marks Act, by using a sign that is identical with or similar to a trade mark or causes a likelihood of confusion on the part of the public or cannot be distinguished in its essential aspects from a trade mark, without the consent of the trade mark proprietor or contrary to the proprietor's prohibition or in any other comparable manner, (2) the exclusive right to an EU trade mark specified in Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, by using a sign or

		indication that is identical with or similar to an EU trade mark or causes a likelihood of confusion on the part of the public or cannot be distinguished in its essential aspects from an EU trade mark, without the consent of the proprietor of the EU trade mark or contrary to the proprietor's prohibition or in any other comparable manner, (3) the exclusive right to a Community design specified in Council Regulation (EC) No 6/2002 on Community designs, by exploiting a design without the consent of the holder of the Community design or in any other comparable manner, (4) the exclusive right conferred by a patent, (5) the right to a design specified in sections 1, 5, 5a–5c and 6 of the Registered Designs Act, by exploiting a design without the consent of the design right owner or in any other comparable manner, (6) the right to a layout-design, (7) the utility model right, or (8) the plant breeder's right shall be sentenced for an industrial property right offence to a fine or to imprisonment for at most two years.
Chapter 49, section 2 (current)		**Industrial property right offence** A person who, in violation of the Trade Marks Act (544/2019), the Patents Act (550/1967), the Registered Designs Act (221/1971), the Act on Exclusive Rights to Layout-Designs (Topographies) of Integrated Circuits (32/1991), the Act on Utility Model Rights (800/1991), the Plant Breeder's Right Act (1279/2009), Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, or Council Regulation (EC) No 6/2002 on Community designs, and in a manner conducive to causing considerable economic loss to the holder of the violated right, violates 1) the exclusive right to a trademark specified in sections 3–9 of the Trade Marks Act, by using a sign that is identical with or similar to a trade mark or causes a likelihood of confusion on the part of the public or cannot be distinguished in its essential aspects from a trademark, without the consent of the trademark proprietor or contrary to the proprietor's prohibition or in any other comparable manner, 2) the exclusive right to an EU trademark specified in Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trademark, by using a sign or indication that is identical with or similar to an EU trademark or causes a likelihood of confusion on the part of the public or cannot be

		distinguished in its essential aspects from an EU trademark, without the consent of the proprietor of the EU trademark or contrary to the proprietor's prohibition or in any other comparable manner, 3) the exclusive right to a Community design specified in Council Regulation (EC) No 6/2002 on Community designs, by exploiting a design without the consent of the holder of the Community design or in any other comparable manner, 4) the exclusive right conferred by a patent, 5) the right to a design specified in sections 1, 5, 5a–5c and 6 of the Registered Designs Act, by exploiting a design without the consent of the design right owner or in any other comparable manner, 6) the right to a layout design, 7) the utility model right, or 8) the plant breeder's right shall be sentenced for an industrial property right offence to a fine or to imprisonment for at most two years.

Eurojust, Johan de Wittlaan 9, 2517 JR The Hague, The Netherlands
www.eurojust.europa.eu • info@eurojust.europa.eu • +31 70 412 5000
Twitter & LinkedIn: @Eurojust

PDF: Catalogue number: QP-05-24-070-EN-N • ISBN: 978-92-9404-219-4 • DOI: 10.2812/56354