

QUESTIONNAIRE – ALAI CONGRESS 2018 – MONTREAL

Since the congress theme should attract many copyright practitioners, the Canadian group has chosen to develop a questionnaire which you are asked to complete with succinct answers, in either **French, English or Spanish**. The answers will be compiled in an analytical table that will be given to congress participants so that they can leave with a document allowing them to quickly compare the situation prevailing in several countries.

It is therefore essential to complete the table below by briefly answering each question. We invite you to refer to the legal provisions that apply in your country, if any.

For national groups who would also like to provide additional information related to certain questions, we ask you:

1) to indicate "* see also answer No. X below" after the short answer that you have provided in the table.

2) to put your more detailed answer after the table.

Please note, however, that only the answers to the table will be compiled in the practical tool that will be given to the participants.

<p><u>Korea</u></p> <p>Name of the person(s) answering the questionnaire</p> <p><u>Kyungsuk Kim</u></p> <p>_____</p> <p>_____</p>											
QUESTIONS FOR THE SUMMARY TABLE	1) Are statutory damages available? If so, please indicate the criteria for awarding them and the amount of such damages.	2) If punitive damages are available, indicate the criteria for awarding them.	3) Are class actions or class remedies available in copyright matters? If so, indicate in what circumstances they are used.	4) If seizures before judgment are available, indicate what gives rise to such procedures and the criteria for granting them.	5) Are there in your country 1) criminal remedies; 2) customs measures, in connection with copyright? If so, which ones?	6) Describe how circumvention of technological protection measures is dealt with, if such is done.	7) Is there a mandatory notice and notice regime or notice and take down regime for intermediaries in the case of alleged copyright infringement? If so, describe it briefly, and indicate if how it is dealt with differs based on which rights holder requests it.	8) Does the notion of secondary copyright infringement in the digital world exist in your country? If so, describe it briefly.	9) Indicate for which rights collective management is available.	10) With respect to collective management, indicate who sets the tariffs and how they are set.	11) Indicate whether copyright remedies are within the power of specialized courts or common law courts, and in the case of a mixed system, please specify in which cases an action should be brought before one rather than the other.
ANSWERS TO QUESTIONS FOR THE SUMMARY TABLE	Yes. Art.125bis(1) of the Copyright Act allows copyright holders to claim statutory damages against a person	No. There is no provision regarding punitive damages under the Korean Copyright Law.	No. Korea does not have any class actions or class remedies available in copyright matters.	Yes. The Korean Copyright Act provides seizure as a civil remedy (Art.123(3)) and a criminal	Yes. 1) Criminal remedies Art.136 of the Copyright Act (1) Any person who infringes upon	Art.2(28) of the Copyright Act. "Technical protection measures" means (a)Technical measures taken by	Yes. Korean Copyright Act provides in Art.102 and Art. 103 regarding notice and take down regime.	Yes. Art.102 of the Copyright Act provides Limitations on the Liability of Online Service Providers.	Korea has 13 Collective Management Organizations. The rights available for collective management	First of all, Collective Management Organizations negotiate with users about the tariffs. Then,	No. Korea does not have any other court specialized for copyright remedies.

	<p>who has infringed on rights intentionally or by negligence before the defense in a trial is concluded. The amount of this demand can be up to 10 million KRW for each work (in case of an intentional infringement done for profit, this amount can be up to 50 million KRW). (2) For the purpose of (1), when it comes to compilation works or derivative works which are composed of two or more works as their material shall be deemed as a one single work. (3) For the holder of author's property right to make a request pursuant to (1), their relevant works, etc. shall be registered pursuant to §53(Registration of copyright) and §55(Procedures, etc. for registration) before the act of infringement occurs. (4) In receipt of a request under (1), the court may acknowledge a considerable amount of damages within the scope under</p>			<p>remedy(Art139). Art. 123(3). In the case where a criminal indictment under this Act has been filed, on a application of a plaintiff or accuser, the court may, with or without imposing provision of a security, issue an order to temporarily cease the act of infringement, seize the goods made by the act of infringement, or take other necessary measures. Art.139. Copies made in infringement of copyrights or other rights protected under this Act which are owned by the infringing person, printer, distributor, or public performer shall be seized.</p>	<p>author's property rights or other property rights protected under this Act (excluding the rights under the provision of Article 93) by means of reproduction, public performance, public transmission, exhibition, distribution, rental, or production of a derivative work, shall be punishable by imprisonment for not more than five years or a fine of not more than KRW 50 million, or both. (2) Any person, who infringes authors' and performers' moral rights, database producer's rights, makes falsely registration, and commits an act deemed to be an infringement, shall be punishable by imprisonment for not more than three years or a fine of not more than KRW 30 million, or both. Art.137 of the Copyright Act. A person who made a work public under the real name or pseudonym of a</p>	<p>a right holder or a person who has obtained the said holder's consent, in order to effectively prevent or control the access to works, etc. protected under this Act, in relation to the exercise of copyright or other rights protected pursuant to this Act; (b)Technical measures taken by a right holder or a person who has obtained the said holder's consent in order to effectively prevent or control the act of infringing on copyright or other rights protected pursuant to this Act. Art.104bis (1) No person shall nullify technical protective measures without due authority, any intent or negligence in the manner of eliminating, altering, or circumvention. (2) No person shall, without reasonable permission, store, possess, or provide a service for the purpose of manufacturing, importing, distributing,</p>	<p>Art.102 provides that if an intermediary service provider give notice to a infringer and take down illegal copies of works when it has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent, it shall be exempted from the liability for copyright infringement. Art.103 is similar to Art.102 in that if an intermediary service provider takes down illegal copies of works immediately after receiving a notification from a copyright holder, it shall be exempted from the liability for copyright infringement. However, it shall not be exempted from any liability incurred from the time when it has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent to the time when it received a notification from a copyright holder.</p>	<p>Unless an intermediary service meets the provisions of Art.102. it shall take a liability for the secondary copyright infringement as an abetter under the Civil Act and the Criminal Act. As a result, the remedies of the Civil Act and the Criminal Act applies to the secondary copyright infringement.</p>	<p>depends on the kind of CMO. 1. The Korea Music Copyright Association : Right of Public Performance(stage performance, Workplace, department store), Right of Broadcasting, Right of Public Transmission(Right of Interactive Transmission), Webcasting, Right of Reproduction, Right of Rental, Right of Public Performance(Movie) 2. The Korean Society of Composers, Authors and Publishers : Right of Public Performance, Right of Broadcasting, Right of Public Transmission(Right of Interactive Transmission) - Webcasting, Right of Reproduction 3. The Korean Society of Authors : Right of Broadcasting, Right of Public Performance, Right of Reproduction, Right of Distribution, Right of Exhibition, Right of Public Transmission(Right of Interactive Transmission)</p>	<p>CMOs submit the negotiated tariffs to the Minister of Culture, Sports and Tourism. If the Minister endorses them after reviewing on the tariffs, they are set.</p>	
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	(1) in consideration of the purport of defense and the results of evidence investigation.				<p>person, performed or communicated to the public a performance, distributed copies of the performance, and committed an act which would be damaging to author's moral rights even after the death of the author, shall be punishable by imprisonment for a term of not more than one year or a fine of not more than KRW 10 million.</p> <p>Art.138 of the Copyright Act Any person, who has not indicated the sources, etc., shall be punishable by a fine of not more than KRW 5 million.</p> <p>Art.139 of the Copyright Act Copies made in infringement of copyrights or other rights protected under this Act which are owned by the infringing person, printer, distributor, or public performer shall be forfeited.</p> <p>2) Customs measures Art. 124 of the Copyright Act. If a</p>	<p>transmitting, selling, renting, offer to the public, advertising for sale or lending, or distributing any device, product, or part thereof, that —</p> <p>1. is promoted, advertised or marketed for the purpose of circumventing technical protection measures</p> <p>2. has only limited commercially significant purpose or use other than to circumvent a technological measure</p> <p>3. is primarily designed, produced, modified or functional for the purpose of enabling or facilitating circumvention of a technological measure.</p> <p>Art.136 (2) 3ter. A person, who has circumvented technological measures for business or for profit-making purpose, shall be punishable by imprisonment for not more than three years or a fine of not more than KRW 30 million, or both</p>			<p>4. The Korea TV & Radio Writers Association : Right of Broadcasting(Reshowing, Reproduction, Distribution, Etc.), Right of Broadcasting, Right of Reproduction, Right of Distribution, Right of Public Transmission(Right of Interactive Transmission), Right of Production of Derivative Works</p> <p>5. The Korea Scenario Writers Association : Right of Reproduction(First Cinematization), Right of Broadcasting(In Television, Reshowing), Right of Reproduction (videotape, etc instrument)</p> <p>6. The Korea Reproduction and Transmission rights Association : Right of Reproduction, Right of Public Transmission(Right of Interactive Transmission), copyright agency or brokerage service</p> <p>7. The Korea Culture Information</p>		
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work which was made infringing author's right(s) is imported, this act is deemed to be an act of infringing copyright.
Art. 235 of the Customs Act prohibits import or export of articles which infringe author's and performer's rights.

Service Agency :
Public Copyright
8. The Korean Film Producers Association :
Right of Public Performance,
Right of Public Transmission,
Right of Reproduction,
Right of Distribution,
Etc(Right of Exhibition, Right of Rental, Right of Production of Derivative Works)
9. The Korea Press Foundation :
Right of Reproduction,
Right of Public Transmission(Right of Interactive Transmission) ,
Right of Distribution
10. The Federation of Korean Music Performers :
Right of Reproduction,
Right of Rental,
Right of Broadcasting,
Right of Interactive Transmission,
Etc(Right of Distribution, Right of Performance
11. The Korea Broadcasting Performers' Rights Association :
Right of Broadcasting,
Right of Reproduction,

										Right of Interactive Transmission 12. The Recording Industry Association of Korea : Right of Reproduction/Right of Interactive Transmission, Right of Distribution, Right of Rental 13. The Korea Movie and Video Association : Right of Performance		
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FURTHER QUESTIONS (OPTIONAL)

QUESTION: Are there recent legislative or jurisprudential developments in your country that would be interesting to share with the ALAI public?

ANSWER :

Over last a few years, the Korean National Assembly and several copyright law academic circles have examined the criminal punishment of Art.136 of the Copyright Act and its justification of crime of Minor copyright infringement. Recently they proposed some revisions of the Copyright Act for the limitation of punishment on misdemeanor copyright infringement

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

ANSWER :

Administrative Remedies

- 1. Imposing of Fine for Negligence by the Ministry of Culture, Sports and Tourism**
 Article 104 enables the Minister of Culture, Sports and Tourism to set and give notice on the scope of such special OSPs, and accordingly, the relevant service providers must take technical measures, etc., that block illegal transmission of copyrighted works, etc., when action is requested by the rightful claimant. Article 142 of the Copyright Act specifies the criteria of fines for negligence that can be imposed on OSPs for the violation of Article 104-1 of the Copyright Act. With a closer look, the clause states that the Minister of Culture, Sports and Tourism can impose “a fine for negligence not exceeding 30 million won.”
- 2. Collection/Scrapping/Deletion of Illegal Reproductions**
 Article 133 of the Copyright Act concerns regulations on collection, scrapping, and deletion of illegal reproductions. It states the authorities of the Minister of Culture, Sports and Tourism, mayor of special metropolitan city/mayor of metropolitan city/governor/governor of special self-governing district, or mayor, governor of county, and head of gu (refers to the head of an autonomous district) concerning the collection, scrapping, deletion, etc., of illegal reproductions. The scope of their authorities concerns collection, scrapping, and deletion when they discover machinery, equipment, information, programs, etc., that aid the spread of reproductions infringing on copyrights.
 KCOPA is implementing tasks based on commissioned work from the Ministry of Culture, Sports and Tourism in accordance with Article 122-5 (Functions) of the Copyright Act. The tasks include administrative enforcement on illegal reproductions in the field of music/video/publication/game/character, investigative support for the Ministry of Culture, Sports and Tourism’s special judicial police on copyright, and regulation activity in cooperation with relevant organizations and KCOPA.