CONGRÈS MONTRÉAL 2018

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Pays / Country / Pais	**Réponse / Answer / Respuesta**
Argentina (ENG)	Copyright Act 11,723 does not regulate statutory or pre-established damages.
Argentina (ESP)	La ley N° 11.723 sobre régimen legal de la propiedad intelectual no regula daños estatutarios o preestablecidos.
Belgium	There is no general provision providing for statutory damages under Belgian copyright law. Noteworthy, however: the law provides that the debtor who fails to pay the fair compensation due for private copy shall be liable to pay an additional amount equal to twice the amount of the fair compensation (article XI.293 of the Belgian Code of Economic Law- hereinafter "CEL"). Moreover, even though non-binding, CMO's tariffs may serve to calculate damages.
Canada	Oui. Article 38.1 de la *Loi sur le droit d'auteur*. Les dommages préétablis sont de 500$-20 000$ si la violation est faite dans un but commercial, ou 100-5000 si dans un but non commercial. Une large discrétion est laissée aux tribunaux sur le montant de ces dommages, mais certains des critères sont énoncés dans le texte de loi. Ils sont : a) la bonne ou mauvaise foi du défendeur; b) le comportement des parties avant l'instance et au cours de celle-ci; c) la nécessité de créer un effet dissuasif à l'égard de violations éventuelles du droit d'auteur en question; d) dans le cas d'une violation qui est commise à des fins non commerciales, la nécessité d'octroyer des dommages-intérêts dont le montant soit proportionnel à la violation et tienne compte des difficultés qui en résulteront pour le défendeur, du fait que la violation a été commise à des fins privées ou non et de son effet sur le demandeur.
Czech Republic	Yes, according to the Czech Copyright Act there are statutory damages available for copyright infringement committed by individuals or by legal entities. Such a legal sanction or penalty in the amount scale from 50 000,- CZK up to 500 000,- CZK could in general be imposed for illegal use of authors' work, artistic performance, audio or audio-visual recording, radio or tv broadcasting and database as well as for unauthorized violation of copyright as enumerated in the Sections 105a and 105b of the Czech Copyright Act.
Égypte	Il n'existe pas en Égypte de dommages-intérêts punitifs ou statutaires. Ainsi, les règles du droit commun s'appliquent (art. 163 à 172 du Code civil relatif à la responsabilité du fait personnel et art. 215 à 233 du C. civ. relatif à l'exécution par équivalent). Les juges disposent d'un pouvoir discrétionnaire quant à l'appréciation du montant des dommages et intérêts à allouer. Selon l'article 221/1 du C. civ. : « *Il appartient au juge de fixer le montant des dommages-intérêts, s'il n'a pas été déterminé dans le contrat ou dans la loi. Les dommages-intérêts comprennent les pertes qu'a subies le créancier et les gains dont il a été privé, à condition que ce soit la suite normale de l'inexécution de l'obligation ou du retard dans l'exécution. La suite normale comprend le préjudice qu'il n'était pas raisonnablement au pouvoir du créancier d'éviter* ».
España (ESP)	Ni la legislación española de derechos de autor, concretamente el Texto Refundido de la Ley de Propiedad Intelectual aprobado por Real Decreto Legislativo 1/1996, de 12 de abril ("LPI") ni su normativa de desarrollo prevén los daños estatutarios. A este respecto, es preciso aclarar que por "daños estatutarios" entendemos los daños previstos en la legislación nacional de derechos de autor correspondiente y que el demandante podría elegir como forma de obtener una indemnización en lugar de la indemnización por los daños realmente sufridos.
Finland	Yes. FinnCopAct Section 57. - depending on the level of the culpability: compensation + damages.
France	Malgré l'existence, en droit de la propriété littéraire et artistique, d'un régime dérogatoire au régime de responsabilité civile de droit commun, il n'existe pas, en droit d'auteur, de dommages statutaires ou préétablis. Toutefois, l'article L. 331-1-3 alinéa 2 du code de la propriété intellectuelle (CPI), issu de la transposition de la Directive européenne du 29 octobre 2004 (2004/48/CE), permet l'allocation, à titre de dommages-intérêts, d'une somme forfaitaire, qui n'exclut pas l'indemnisation du préjudice moral. Une seule condition d'attribution est énoncée par le texte : cette somme forfaitaire doit être demandée par la partie lésée. Le montant des dommages-intérêts forfaitaires n'est pas déterminé par la loi. Celle-ci ne mentionne qu'un élément guidant les juges dans leur appréciation souveraine, puisqu'elle dispose que *« la somme est supérieure au montant des redevances ou droits qui auraient été dus si l'auteur de l'atteinte avait demandé l'autorisation d'utiliser le droit auquel il est porté atteinte* ».
Germany	Yes, § 97 (2) UrhG (German Copyright Act). Damages are awarded if there is an infringement of copyright (or any other right protected under the German Copyright Act, such as neighbouring rights) and if the infringement was performed intentionally or negligently. The right owner has the right to choose between three different ways to calculate the damages: 1) compensation of his actual losses 2) account of the infringer's profits 3) payment of a hypothetical licence fee.

Question 1 / Question 1 / Pregunta 1 **Des dommages statutaires ou préétablis sont-ils disponibles? Si oui indiquez les critères d'attribution et le montant de ceux-ci. / Are statutory damages available? If so, please indicate the criteria for awarding them and the amount of such damages. / ¿Están regulados los daños estatutarios o preestablecidos? En caso afirmativo, indique los criterios de atribución y los montos de estos.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Greece	No. There is no provision for statutory damages.
Hungary	There are no statutory amount of damages in the Hungarian law. There is a provision on the so called general "lump sum" compensation of damages, which may be applied, if the exact amount of the damage caused cannot be established via the collection of evidence. A great deal of discretion is left to the courts over the amount of these damages, but some of the criteria are set out in the legislation. The general civil law rules applied in copyright cases. Civil Code Art 6:519, 6:142, 2:52, 2:53.
Israel	Courts may award statutory damages in a sum of up to NIS 100,000 for each infringement. For this purpose each infringement of a right will constitute a separate infringement. For example, where a work was reproduced in several different monthly issues of a magazine, the plaintiff was entitled to multiple awards of statutory damages. Such is also the case where different rights (e.g. the right of reproduction and the right of making available) have been infringed. Infringements of rights in multiple works are usually considered separate infringements (but there is a split of opinion among courts on this issue). However, infringements occurring in a "single series of acts" will be considered as one In setting the sum of an award, courts are directed to consider, inter alia: the scope and duration of the infringement; the severity and character of the infringement; actual damages of the plaintiff as estimated by the court; the benefit accruing to the defendant; the relationship between the parties and the good faith of the defendant.
Italy	According to Article 158 of the Italian Copyright Act damages are liquidated by the courts applying two alternative methods: a) lump sum based on equitable criteria; b) price of the consent; Interests and legal expenses must be awarded as well.
Japan	Statutory damages are not yet available.
Korea	Yes. Art.125bis(1) of the Copyright Act allows copyright holders to claim statutory damages against a person 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 (1) in consideration of the purport of defense and the results of evidence investigation.
Portugal	Yes. According to Section 211 (2) of the Portuguese Copyright and Neighbouring Rights Code, in determining the amount of the compensation for damages, both material and immaterial, the Court must attend to the profit obtained by the tortfeasor, to the lost profits and damages suffered by the injured party, the expenses incurred in connection with the protection of copyright and neighbouring rights as well as with the investigation and termination of the infringing conduct. According to Section 211 (3) the Court must also attend to the unfair profits generated by the illicit actions, namely the unlawfully performed. show(s). According to Section 211(4) the Court must attend to the moral prejudice caused by the tortfeasor's actions, as well as to the circumstances of the infringement, the seriousness of the injury suffered and the degree of the work's or performance's illicit broadcast. According to Section 211(5) in the event of impossible determination of the real damage suffered by the injured party, and as long as the latter doesn't oppose, the Court may, as an alternative, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.as well as the expenses incurred for the protection of copyright or neighbouring rights as well as with the investigation and termination of the violation of his/her rights. Lastly, under Section 211 (6) when, in relation to the injured party, the infringement is persistent or particularly serious, the Court may set the compensation cumulating all or only a some of the criteria above, from numbers (2) to (5).
Spain (ENG)	Neither the Spanish intellectual property (copyright and related rights) legislation, particularly Royal Legislative Decree No. 1/1996 of 12 April, approving the Revised Text of the Intellectual Property Act ("SIPA") nor its implementing regulations provide for statutory damages. In this regard, it should be specified that by the term "statutory damages" we understand those fixed amounts established by the relevant national intellectual property legislation which the plaintiff could choose to claim as a way to be compensated rather than claiming the damages based on the degree of harm actually suffered.

Question 1 / Question 1 / Pregunta 1 **Des dommages statutaires ou préétablis sont-ils disponibles? Si oui indiquez les critères d'attribution et le montant de ceux-ci. / Are statutory damages available? If so, please indicate the criteria for awarding them and the amount of such damages. / ¿Están regulados los daños estatutarios o preestablecidos? En caso afirmativo, indique los criterios de atribución y los montos de estos.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
The Netherlands	No.
Turkey	No. Statutory damages are not available.
United States	Yes, statutory damages are available under US Copyright law. An infringer of copyright may be liable for either the copyright owner's actual damages and any additional profits she has made due to the infringement, or statutory damages. Courts may award no less than $750.00 and no more than $30,000 for each work infringed, but these awards may be increased to a maximum of $150,000 per work if the court finds willful infringement.

Question 2 / Question 2 / Pregunta 2 Si des dommages punitifs sont disponibles, indiquez les critères d'attribution. / If punitive damages are available, indicate the criteria for awarding them. / Si están regulados los daños punitivos, indique los criterios de atribución.	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Argentina (ENG)	The Copyright Act does not regulate punitive damages. The general legal order does not do either, except as provided in cases of consumer protection.
Argentina (ESP)	La mencionada ley N° 11.723 no regula el daño punitivo. El ordenamiento de fondo tampoco lo hace, a excepción de lo que se sucede en materia de defensa del consumidor.
Belgium	No punitive damages apply in Belgium.
Canada	Bien que l'attribution de dommages punitifs ne soit pas expressément prévue par la *Loi sur le droit d'auteur*, celle-ci y fait mention à l'article 38.1 (7). Les dommages punitifs sont généralement reconnus et couramment octroyés par les tribunaux canadiens, et ce, en fonction du droit commun de la province dans laquelle les procédures sont engagées. Les dommages punitifs sont accordés lorsque le tribunal est d'avis qu'ils sont nécessaires pour dissuader le contrefacteur de violer les droits d'autrui, et lorsque la violation est faite d'une manière délibérée, intentionnelle, empreinte de mauvaise foi. En l'absence d'intention malicieuse, de fraude ou de mauvaise foi, les dommages punitifs seront refusés.
Czech Republic	A kind of the so called punitive damage could in the civil law tradition according to the Czech Copyright Act be considered the unjust enrichment which the right holder is entitled to claim in amount of twice the usual royalty against the illegal user who has used protected repertoire of works or artistic performances without prior licensing approval.
Égypte	n/a
España (ESP)	Ni la LPI ni su normativa de desarrollo prevén los daños punitivos. A este respecto, es preciso aclarar que por "daños punitivos" entendemos los daños que van más allá del daño real sufrido por el titular de los derechos de propiedad intelectual, es decir, los daños que persiguen la finalidad de disuadir al infractor la realización de nuevas conductas causantes de nuevos daños y de castigar de manera ejemplar. En materia de daños, la LPI regula únicamente los daños resarcitorios. Así, el artículo 138 de la Ley permite al titular de los derechos infringidos solicitar la indemnización de los daños materiales y morales en los términos del artículo 140 de esa misma Ley. La indemnización prevista en ese artículo 140 puede comprender no sólo el valor de la pérdida sufrida por el titular sino también el valor de la ganancia que haya dejado de obtener a causa de la violación de su derecho. Asimismo, se prevé que la cuantía indemnizatoria podrá incluir, en su caso, los gastos de investigación en los que el titular del derecho haya incurrido para obtener pruebas razonables de la comisión de la infracción objeto del procedimiento judicial. Por otro lado, la indemnización por daños y perjuicios se fijará, a elección del perjudicado, conforme a alguno de los criterios siguientes: a) Las consecuencias económicas negativas, entre ellas la pérdida de beneficios que haya sufrido la parte perjudicada y los beneficios que el infractor haya obtenido por la utilización ilícita. b) La cantidad que como remuneración hubiera percibido el perjudicado, si el infractor hubiera pedido autorización para utilizar el derecho de propiedad intelectual en cuestión. Independientemente del modo elegido para la valoración de los daños, el perjudicado también puede solicitar la indemnización del daño moral, aun no probada la existencia de perjuicio económico. Para su valoración se atenderá a las circunstancias de la infracción, gravedad de la lesión y grado de difusión ilícita de la obra. La acción para reclamar los daños y perjuicios prescribe a los cinco años desde que el legitimado pudo ejercitarla.
Finland	Not possible.
France	Les dommages-intérêts prévus par le CPI ne sont pas qualifiés, par la loi, comme étant punitifs. Le CPI comporte deux méthodes de détermination de dommages-intérêts (article L. 331-1-3). L'une tient compte des conséquences économiques négatives de l'atteinte aux droits, du préjudice moral ainsi que des bénéfices réalisés par l'auteur de l'atteinte. L'autre consiste en l'attribution de dommages-intérêts forfaitaires. Toutefois, il existe un débat doctrinal sur la nature punitive de ces deux méthodes de détermination. Certains estiment que celles-ci, spécifiques au droit de la propriété intellectuelle, s'éloignent de la seule indemnisation du préjudice, mais sont dépourvues de caractère punitif. D'autres considèrent qu'en laissant, au juge, la possibilité de prononcer des dommages-intérêts supérieurs au préjudice subi, le législateur a instauré des dommages-intérêts punitifs.
Germany	Punitive damages do not exist in German Law.

Question 2 / Question 2 / Pregunta 2 Si des dommages punitifs sont disponibles, indiquez les critères d'attribution. / If punitive damages are available, indicate the criteria for awarding them. / Si están regulados los daños punitivos, indique los criterios de atribución.	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Greece	No punitive damages are provided under the Greek Copyright Law. Article 65 (2) Law 2121/1993, provides that a person who by intent or negligence infringes copyright or a related right of another person shall indemnify that person for the moral damage caused, and be liable for the payment of damages of not less than twice the legally required or normally payable remuneration for the form of exploitation which the infringing party has effected without license. The intention or negligence is the important condition that must be fulfilled. The criteria for damages are either the legally required or the normally payable remuneration, which can be proven by receipts, invoices or other financial data. The *ratio legis* that underlies this provision is the difficulty to define the damage. However, the double damages are not considered to be of punitive nature.
Hungary	No. Article 13 of the EU Enforcement Directive provides full recovery of damages but it does not make possible the implementation of punitive damages under Hungarian law.
Israel	Not Available, although in awarding statutory damages courts sometimes consider the need for deterrence, which may lead to de-facto punitive damages.
Italy	According to a decision of the Supreme Court (no. 16601 ruled on 5 July 2017) thepunitive damages would require a specific law provision in order to be applied in legal disputes In a decision issued on 25 January 2017, the Court of Justice ruled that the UE Enforcement Directive does not preclude the legal provision of punitive damages by the Member States in IP cases (case 367/15 OTK v. SFP), making explicit reference to Italian Copyright Law
Japan	Punitive damages are not yet available.
Korea	No. There is no provision regarding punitive damages under the Korean Copyright Law.
Portugal	There is no special provision for punitive damages in copyright and neighbouring rights and it was never applied as such.However, some academics say that Section 211(6) is clearly compatible with punitive damages.There have been punitive damages awarded but not in Copyright Cases, so far.
Spain (ENG)	Neither the SIPA nor its implementing regulations provide for punitive damages. In this regard, it should be specified that by "punitive damages" we understand those damages that go beyond the actual harm suffered by the rightholder. In other words, punitive damages pursue the intention of acting as a deterrent for further wrongdoing and a punishment of the infringer in an exemplary manner. In general terms, with regards to damages, the SIPA only provides for compensatory damages. Thus, art. 138 SIPA allows the holder of the allegedly infringed rights to seek compensation for material and moral damages incurred in accordance with art. 140 SIPA. The compensation provided for under art. 140 may include not only the value of the loss suffered by the rightholder, but also the value of the profit that he or she has failed to obtain because of the infringement of his or her right. Moreover, the awarded compensation may include, where appropriate, the investigation expenses in which the rightholder has incurred in order to obtain reasonable evidence of the infringement subject of the ongoing legal proceedings. Furthermore, compensation for damages shall be calculated on the basis of one of the following criteria, at the discretion of the aggrieved party: a) Negative economic consequences, including the loss of benefits suffered by the aggrieved party and the benefits that the infringer has derived from the illegal use. b) The amount that the aggrieved party would have received as remuneration, if the infringer had requested authorization to use the relevant intellectual property right. Regardless of the choice for the assessment of damages, the aggrieved party may also request compensation for moral damages, even if the existence of economic damage has not been proven. For its assessment, the circumstances and the severity of the infringement as well as the degree of illicit dissemination of the work will be considered. The right to claim damages lapses after five years from the time at which the aggrieved party could first bring an action, or from first knowledge of the infringement.
The Netherlands	n/a
Turkey	Punitive damages are available. In case of infringement of economic rights, the right holders may claim the payment of compensation of up to three times the amount that could have been demanded if the right had been granted by contract, or up to three times the current value which shall be determined under the provisions of the Law. (Art. 68)
United States	United States copyright law does not provide for punitive damages.

Question 3 / Question 3 / Pregunta 3 **Les recours collectifs ou actions collectives sont-ils disponibles en matière de droit d'auteur? Si oui indiquez dans quel genre de circonstance il en est fait usage. / Are class actions or class remedies available in copyright matters? If so, indicate in what circumstances they are used. / ¿Están reguladas las acciones colectivas o recursos colectivos en materia de derechos de autor? En caso afirmativo, indique en cuales circunstancias está permitido su uso.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Argentina (ENG)	Class actions or class remedies are not available in copyright matters.
Argentina (ESP)	No están reguladas las acciones o recursos colectivos en materia de derechos de autor.
Belgium	Yes. First, collective management organizations (CMO's) and professional groups have standing to file applications for injunctions aiming at the protection of a global repertoire (article XVII.19, CEL). Second, CMO's are entitled to claim damages not only for the infringement of individual rights but also for the infringement of collective rights mentioned in their by-laws (case law, see detailed answer below). Third, in certain cases (e.g. private copy), one single CMO can act on behalf of all right owners (potentially) concerned (article XI.229, CEL).
Canada	Ce genre d'action est relativement récent au Canada en matière de droit d'auteur, mais les tribunaux se montrent assez réceptifs, lorsque les critères pour intenter un tel recours sont remplis. Au Québec, il a été fait usage d'un tel recours entre autres par une société de gestion collective contre une université, pour violation à grande échelle du doit de reproduction d'auteurs et éditeurs représentés par cette société (voici un lien pertinent :https://www.canlii.org/fr/qc/qcca/doc/2017/2017qcca199/2017qcca199.pdf
Czech Republic	No, recently there are no class actions practically used in the Czech civil court procedures but in April 2018 the Czech government has approved the strategy for implementation such an procedural instrument into the Czech law. Similar to this type of court proceeding is applicable in the Czech legislation regulating the bankruptcy law and allowing many creditors divided into groups as plaintiffs to enforce their claims against the debtor. But this way of solving insolvency is governed by special rules and is not a common or general type of court action.
Égypte	Oui. Il convient de noter que la jurisprudence égyptienne mixte avait admis depuis fort longtemps la faculté des sociétés d'auteurs d'ester en justice pour la sauvegarde des droits d'auteurs revenant à leurs membres ou aux membres des sociétés d'autres pays qui leur ont confié le droit de percevoir lesdits droits d'auteurs. Selon la jurisprudence constante, il est communément admis que la Société des Auteurs, Compositeurs et Editeurs de la République Arabe d'Égypte (SACERAU) peut agir en justice au nom et dans *l'intérêt collectif* des membres en sa qualité de « *mandataire* » des auteurs. D'autres tribunaux n'ont pas hésité à attribuer à ladite Société la qualité d' « *ayant-cause à titre particulier* » des auteurs. Les illustrations jurisprudentielles sont rares. Or, nous pouvons citer à titre d'exemple l'affaire du « Restaurant *Al Mashrabeya* ». En l'espèce, après avoir découvert qu'un restaurant utilisait les œuvres musicales égyptiennes et étrangères de son répertoire et d'autres répertoires de sociétés de gestion collective sans l'autorisation préalable, la SACERAU a intenté une action devant le Tribunal de grande instance de Gizeh. La SACERAU faisait valoir que l'administration du restaurant a violé le droit de l'auteur de décider la publication de son œuvre (droit de divulgation) car l'auteur possède seul la détermination du temps de publication de l'œuvre, les modalités de la publication, ainsi que sa place. Si la société n'est qu'indirectement concernée par l'exercice du droit moral, il n'en reste pas moins que le Tribunal a décidé, dans un jugement du 22 mai 1991, que : « *L'auteur est le seul apte à déterminer si son œuvre est achevée et devenue ainsi susceptible d'être publiée; et c'est l'auteur qui choisit le temps convenable pour publier son œuvre ainsi que déterminer les modalités de publication. C'est ainsi que l'œuvre est la production de son esprit et étant attachée à sa personne ; et s'il peut être insatisfait de son œuvre, il peut décider alors de ne pas la publier. Par conséquent, personne ne peut le contraindre de la publier et s'il est satisfait de son travail de fait qu'il décide de le publier, il peut à cet égard choisir de le publier dans un temps précis qui est, à ses yeux, le plus appropriable afin de le publier dans une exposition ou le vendre à une personne déterminée ou l'offrir. Ainsi, l'auteur a la pleine liberté de choisir le temps de publication et les modalités de celle-ci* […] »
España (ESP)	Las entidades de gestión de derechos de propiedad intelectual están legitimadas, en los términos que resulten de sus propios estatutos, para ejercer los derechos de propiedad intelectual confiados a su gestión y hacerlos valer en toda clase de procedimientos administrativos y judiciales (artículo 150, párrafo primero, LPI). Esta legitimación está establecida en el Derecho español desde la Ley 22/1987, de 11 de noviembre, de Propiedad Intelectual. Para acreditar dicha legitimación, la entidad de gestión únicamente deberá aportar al inicio del proceso una copia de sus estatutos y la certificación acreditativa de su autorización administrativa (artículo 150, párrafo segundo LPI). El demandado solo puede fundar su oposición a la legitimación de la entidad de gestión demandante en la falta de representación de la entidad, en la autorización del titular del derecho exclusivo o en el pago de la remuneración correspondiente. La LPI establece causas tasadas de oposición del demandado a la legitimación de la entidad de gestión demandante. Este artículo 150 es coherente con la obligación de reconocer legitimación a las entidades de gestión impuesta por el artículo 4, letra c), de la Directiva 2004/48/CE del Parlamento Europeo y del Consejo, de 29 de abril, relativa al respeto de los derechos de propiedad intelectual. El Tribunal Supremo español mantiene una interpretación amplia del artículo 150, de manera que la legitimación reconocida en ese precepto en favor de las entidades de gestión se aplica para la protección tanto de los derechos exclusivos como los derechos de remuneración, con independencia de si son de gestión

Question 3 / Question 3 / Pregunta 3 **Les recours collectifs ou actions collectives sont-ils disponibles en matière de droit d'auteur? Si oui indiquez dans quel genre de circonstance il en est fait usage. / Are class actions or class remedies available in copyright matters? If so, indicate in what circumstances they are used. / ¿Están reguladas las acciones colectivas o recursos colectivos en materia de derechos de autor? En caso afirmativo, indique en cuales circunstancias está permitido su uso.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
	colectiva voluntaria o de gestión colectiva obligatoria. Asimismo, esa legitimación rige para todas las pretensiones ejercitadas por las entidades de gestión (p. ej., de cesación de actividad ilícita, de indemnización, etc.).
Finland	Class action applied to consumer – enterprise –relationship only.
France	L'action de groupe, qui a été introduite récemment en droit français, n'est pas encore admise en droit d'auteur. Cette procédure au régime précis, initialement strictement cantonnée au droit de la consommation par la loi du 17 mars 2014, a depuis été étendue aux domaines de la discrimination au travail, de l'environnement, de la protection des données personnelles et de la santé. A l'heure actuelle, à notre connaissance, aucun projet ne vise à étendre l'action de groupe au domaine de la propriété intellectuelle. On peut cependant noter que, sans pour autant que cela ne constitue une action de groupe au sens strict du terme, la Cour de cassation a pu admettre qu'un organisme de gestion collective pouvait agir en justice au nom de « *l'intérêt collectif de la profession* » à condition qu'une telle possibilité soit prévue par ses statuts (Cass. 1ère Civ., 30 janvier 2007, n° 04-15.543). De plus, l'article L. 321-2 du CPI énonce que « *les organismes de gestion collective régulièrement constitués ont qualité pour ester en justice pour la défense des droits dont ils ont statutairement la charge* ».
Germany	No, class actions/ remedies are not available in German Law.
Greece	Class actions are available in copyright matters. Recently, different CMOs filed for an injunction against Internet access providers demanding to prohibit giving access to their customers to certain websites allowing internet users to stream or download films without the rightholders' authorization.
Hungary	No, there are no class actions or class remedies in the Hungarian copyright law. Class actions under the substantive rules of the Civil Code could be available if allegedly unfair general terms and conditions are challenged before the ordinary civil law court (for the benefit of small and medium undertakings.9 Such a dispute can be imagined (not occurred so far) with regards to some provisions of CMO tariffs (e.g. on the legal consequences of payment delay).
Israel	Class actions are available if it can be shown that infringing activity affects a class of plaintiffs. A number of requests for permits to file class actions are pending before the courts.
Italy	YES. Class actions have been introduced in Italy a few years ago. No cases of class action in the field of copyright yet.
Japan	Class actions are not available nor class remedies.
Korea	No. Korea does not have any class actions or class remedies available in copyright matters.
Portugal	There is no special provision regarding class actions for copyright matters and there hasn't been any case, so far.
Spain (ENG)	Collective management organisations ("CMOs") are entitled, under the terms of their own statutes, to exercise intellectual rights entrusted to them by rightholders in all types of administrative and judicial proceedings (art. 150, first paragraph, SIPA). This *locus standi* is established by the SIPA since 1987 (under Act 22/1987 of November 11th on Intellectual Property). In order to prove this *locus standi*, the CMO shall provide a copy of its statutes and the certification of its administrative authorization at the beginning of the legal proceedings (art. 150, second paragraph, SIPA). The defendant may only base his/her opposition to the CMO's *locus standi* in the lack of general power of representation of the CMO in the authorization by the holder of an exclusive right or in the payment of the corresponding remuneration (art. 150 SIPA). Thus, the SIPA establishes limited causes of opposition to the CMO's *locus standi*. Art. 150 is consistent with the obligation to recognize CMO's *locus standi* imposed by art. 4(c) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April on the enforcement of intellectual property rights ("Directive 2004/48/EC"). The Spanish Supreme Court subscribes to a broad interpretation of art. 150 SIPA. Thus, CMO's *locus standi* recognized by that provision is applied in proceedings regarding both exclusive rights and remuneration rights, regardless of whether the rights are under voluntary collective management or under compulsory collective management. Furthermore, CMO's *locus standi* covers all types of claims made on behalf of the rightholder (cessation of illegal activity, compensation, etc.).
The Netherlands	Organisations whose bylaws state that their goal is to protect the interests of a certain category of right holders, may obtain court measures on behalf of these right holders, such as seizures, injunctions or declaratory judgements (Article 3:305a Civil Code). This is used *i.a.* by Dutch anti-piracy organisation Brein to institute proceedings against internet platforms for (facilitating the) unauthorized distribution of music and

Question 3 / Question 3 / Pregunta 3 **Les recours collectifs ou actions collectives sont-ils disponibles en matière de droit d'auteur? Si oui indiquez dans quel genre de circonstance il en est fait usage. / Are class actions or class remedies available in copyright matters? If so, indicate in what circumstances they are used. / ¿Están reguladas las acciones colectivas o recursos colectivos en materia de derechos de autor? En caso afirmativo, indique en cuales circunstancias está permitido su uso.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
	films. To claim damages on behalf of right holders Article 3:305a cannot be invoked. At the moment a legislative proposal for class actions is on the table. The Copyright Act provides for various collective remedies.
Turkey	Class actions and class remedies are not available.
United States	Yes, class actions are a device potentially available in any federal civil litigation, including copyright suits. Rule 23 of the Federal Rules of Civil Procedure [hereafter FRCivP] explains in detail the specific requirements for class certification, but, broadly speaking, a judge may certify a class when (1) the group of plaintiffs is sufficiently large, (2) common questions of law or fact "predominate over any questions affecting individual members," and (3) the interests of the class will be adequately protected by the representative parties.

Question 4 / Question 4 / Pregunta 4 **Si des saisies avant jugement sont disponibles, indiquez ce qui donne ouverture à une telle procédure et les critères d'octroi. / If seizures before judgment are available, indicate what gives rise to such procedures and the criteria for granting them. / En caso de existir embargo precautorio (o medidas de incautación previas al juicio), indique cómo se inicia ese procedimiento y cuáles son los criterios para otorgarlo.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Argentina (ENG)	Seizures before judgment are available on Chapter called "On Preventive Measures", Section 79 of the Copyright Act. There are no different requirements than the general criteria for granting them.
Argentina (ESP)	La mencionada ley N° 11.723 tiene un capítulo específico denominado "De las Medidas Preventivas" (art. 79). No hay requisitos distintos que los criterios generales para su otorgamiento.
Belgium	Yes. Belgian law provides for a specific fast-track procedure on a ex-parte basis to obtain seizures before judgment (article 1369bis of the Belgian judicial code). Conditions are: First, the copyright must be at first sight valid. Second, the infringement is not subject to a potential serious challenge. Third, a fair balance must be struck between all the interests involved.
Canada	Oui. Les saisies avant jugement sont disponibles. Article 38 (1) de la *Loi sur le droit d'auteur.* Le titulaire des droits est réputé propriétaire de tous les exemplaires contrefaits et, par conséquent, est admis à entreprendre toutes les procédures en vue de prendre possession des ouvrages contrefaits, incluant la saisie avant jugement si une loi fédérale ou une loi de la province où sont engagées les procédures le lui permet. Au Québec, la saisie avant jugement est prévue aux articles 516 et suivant du *Code de procédure civile.* Les critères d'octroi sont prévus à l'article 38(4) de la *Loi sur le droit d'auteur* et sont les suivants : a) la proportion que représente l'exemplaire contrefait par rapport au support dans lequel ils sont incorporés, de même que leur valeur et leur importance par rapport à ce support; b) la mesure dans laquelle cet exemplaire peut être extrait de ce support ou en constitue une partie distincte.
Czech Republic	The reason for any judicial enforcements of rights is usually the delay with fulfilment of statutory or contractual duties confirmed by the respective judgement or court decision.
Égypte	Toute personne intéressée peut faire appel à une procédure d'ordonnance sur requête lorsqu'il existe une atteinte aux droits de l'auteur et aux droits voisins prévus par le Livre III, consacré aux « droits d'auteur et aux droits voisins », du Code égyptien de la propriété intellectuelle (ci-après « CEPI »). C'est ainsi que le président du tribunal compétent peut, par ordonnance sur requête (art. 179 du CEPI), ordonner des mesures conservatoires contre toute violation présumée, ainsi qu'ordonner les mesures suivantes : 1° La description détaillée de l'œuvre, de l'interprétation, du phonogramme ou du programme radiophonique ; 2° La suspension de la publication, de la représentation ou de la fabrication de l'œuvre, de l'interprétation, du phonogramme ou du programme radiophonique ; 3° La *saisie* de l'œuvre, de l'interprétation, du phonogramme ou du programme radiophonique original ou de ses exemplaires ainsi que du *matériel qui pourrait servir à la réédition* de l'œuvre, de l'interprétation, du phonogramme ou du programme radiophonique ou *à la reproduction des exemplaires* de ces derniers, pourvu que ce matériel ne soit destiné qu'à la reproduction de l'œuvre, de l'interprétation, etc. ; 4° Le constat de la violation portant sur le droit objet de la protection ; 5° La détermination des recettes provenant de l'exploitation de l'œuvre, de l'interprétation, du phonogramme ou du programme radiophonique, laquelle détermination sera faite, le cas échéant, par un expert désigné à cet effet et, dans tous les cas, la saisie de ces recettes. Il appartient au président du tribunal d'ordonner, dans tous les cas, la désignation d'un expert, pour assister l'huissier chargé de l'exécution, ainsi que le dépôt par le requérant d'une caution convenable. Le requérant devra, à peine de nullité de l'ordonnance, porter le fond du litige devant le tribunal compétent dans les quinze jours qui suivent la date de l'ordonnance. Quant à la partie contre laquelle l'ordonnance aura été rendue, elle a le droit de se pourvoir devant le président du tribunal ayant rendu l'ordonnance dans les trente jours qui suivent la date de l'ordonnance. Dans ce cas, le président du tribunal peut, après audition des parties en cause, confirmer l'ordonnance, l'annuler en tout ou en partie, désigner un séquestre qui aura pour mission la réédition, l'exploitation, la représentation, la fabrication ou la confection d'exemplaires de l'œuvre, de l'interprétation litigieuse, du phonogramme ou du programme radiophonique ; Les recettes réalisées devront être déposées à la caisse du tribunal jusqu'à ce que le litige soit tranché au fond par le tribunal compétent (art. 180 du CEPI).
España (ESP)	**4.1.** En general los remedios y sanciones procesales en propiedad intelectual siguen en España las pautas marcadas por la Directiva 2004/48/CE, citada, implementada en el Derecho español por la Ley 19/2006, de 5 de junio, que modificó tanto la LPI como la Ley de Enjuiciamiento Civil. Esta última ley establece el régimen procesal general español en materia civil. **4.2.** La normativa española *sustantiva* contempla expresamente la posibilidad de adopción de medidas cautelares en propiedad intelectual. Según el artículo 141 LPI, en caso de infracción o cuando exista temor

Question 4 / Question 4 / Pregunta 4 **Si des saisies avant jugement sont disponibles, indiquez ce qui donne ouverture à une telle procédure et les critères d'octroi. / If seizures before judgment are available, indicate what gives rise to such procedures and the criteria for granting them. / En caso de existir embargo precautorio (o medidas de incautación previas al juicio), indique cómo se inicia ese procedimiento y cuáles son los criterios para otorgarlo.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
	racional y fundado de que ésta va a producirse de modo inminente, la autoridad judicial podrá decretar, a instancia de los titulares de los derechos reconocidos en la Ley, las medidas cautelares que, según las circunstancias, fuesen necesarias para la protección urgente de tales derechos, y en especial: 1. La intervención y el depósito de los ingresos obtenidos por la actividad ilícita de que se trate o, en su caso, la consignación o depósito de las cantidades debidas en concepto de remuneración. 2. La suspensión de la actividad de reproducción, distribución y comunicación pública, según proceda, o de cualquier otra actividad que constituya una infracción a los efectos de esta Ley, así como la prohibición de estas actividades si todavía no se han puesto en práctica. 3. El secuestro de los ejemplares producidos o utilizados y el del material empleado principalmente para la reproducción o comunicación pública. 4. El secuestro de los instrumentos, dispositivos, productos y componentes cuyo único uso sea facilitar la supresión, elusión o neutralización no autorizadas de cualquier dispositivo técnico utilizado para proteger obras intelectuales o que sean utilizados para la supresión o alteración de la información para la gestión electrónica de los derechos. 5. El embargo de los equipos, aparatos y soportes materiales relativos a la compensación equitativa por copia privada, que quedarán afectos al pago de la compensación reclamada y a la oportuna indemnización de daños y perjuicios. 6. La suspensión de los servicios prestados por intermediarios a terceros que se valgan de ellos para infringir derechos de propiedad intelectual **4.3.** La normativa española *procesal* contempla dos procedimientos posibles para la solicitud y adopción de medidas cautelares: un procedimiento general *contradictorio* y un procedimiento sin contradicción o *inaudita altera parte.* Una vez presentada la solicitud de medidas cautelares, el Juzgado en el plazo de cinco días contados desde la notificación de aquélla al demandado, convocará a las partes a una Vista, que se celebrará dentro de los diez días siguientes (artículo 734 de la Ley de Enjuiciamiento Civil); sin embargo, cuando el solicitante así lo pida y acredite que concurren razones de urgencia o que la audiencia previa puede comprometer el buen fin de la medida cautelar, el tribunal podrá acordar su concesión sin más trámites y sin oír previamente al demandado, en el plazo de los cinco días siguientes (artículo 733.2 de la Ley de Enjuiciamiento Civil) . En este caso el demandado podrá oponerse por escrito a las medidas ya concedidas en un plazo de 20 días desde la notificación del Auto dictado en su contra. **4.4.** La adopción de toda medida cautelar está sujeta a la concurrencia de ciertos presupuestos comunes: (i) es necesaria una justificación inicial del derecho por parte del solicitante, o *fumus boni iuris* (ii) es necesario además evidenciar una situación de riesgo derivada de la infracción, o *periculum in mora*, que tiende a asociarse a la urgencia que requiere la adopción de las medidas (i+ii) es necesario finalmente que el solicitante constituya una fianza o caución para responder por los daños y perjuicios que puedan causarse al demandado, o *contracautela*. En el caso de las medidas cautelares sin audiencia se exige además la acreditación de un factor extra de urgencia: la premura en la adopción de las medidas es tal naturaleza que ni siquiera da tiempo a convocar a una vista para que se celebre un debate contradictorio.
Finland	Yes. Preliminary injunctions possible in copyright cases. procedural Code Ch 7, Section 3.
France	Le droit français prévoit des mesures de saisies avant jugement. Certaines mesures relèvent du droit commun, d'autres sont propres à la propriété littéraire et artistique (*pour plus de développements sur les mesures relevant du droit commun, voir également la réponse 4 ci-dessous). Le CPI prévoit ainsi une mesure spécifique de saisie avant jugement : la saisie-contrefaçon. En matière de droit d'auteur, l'article L. 332-1 énonce que les titulaires des droits sur une œuvre peuvent demander au juge, sur requête, c'est-à-dire sans respect du contradictoire, de désigner un huissier afin qu'il procède « *soit à la description détaillée, avec ou sans prélèvement d'échantillons, soit à la saisie réelle des œuvres prétendument contrefaisantes ainsi que de tout document s'y rapportant* ». Le juge peut également ordonner la description ou la saisie réelle « *des matériels et instruments utilisés pour produire ou distribuer illicitement les œuvres* » (*l'article se poursuit avec une liste des pouvoirs du juge en la matière, à propos de laquelle nous renvoyons à la réponse 4 ci-dessous). Un article spécifique, l'article L. 332-4 du CPI, prévoit une procédure similaire lorsque la contrefaçon alléguée porte sur un logiciel ou une base de données. Il est à noter que l'ordonnance par laquelle un juge est amené à autoriser une saisie-contrefaçon ne s'analyse pas comme un jugement, dans la mesure où il ne s'agit pas d'une décision apportant une réponse sur le fond du litige. C'est pourquoi, bien que la saisie ne puisse être réalisée que si elle a été autorisée par une ordonnance d'un juge, il s'agit bien d'une saisie *avant jugement*.
Germany	There are seizures before judgement that are conducted by the customs office (§ 111b UrhG). In the case of an obvious infringement of copyright (or any other right that is protected under the German Copyright Act) the customs authority may confiscate the copies. The infringement can be relevant in the case of the planned export of copies that were produced in Germany in violation of copyright. In addition, the import

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Pays / Country / Pais	**Réponse / Answer / Respuesta**
	of infringing copies in order to distribute them in Germany can give rise to seizures before judgment as well. Furthermore, the customs authority takes action only if there is an application by the rightholder of the copyright. In general, the customs authority does not examine all exports and imports and it controls the goods mainly based on the customs documents. The controls are random. The infringement is obvious, if there is no room for a reasonable doubt about the infringement for the customs officer.
Greece	According to Article 64 Law 2121/1993, in case of alleged infringement of copyright or related right provided for by articles 46 to 48 and 51 or the special right of database creators, the One-member First Instance Court shall order the precautionary seizure of items in the possession of the alleged infringer that constitute means of commission or product or evidence of the infringement. In case of an infringement committed on a commercial scale the court may order the precautionary seizure of the property of the alleged infringer including the blocking of his/her bank account. The court may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information. Furthermore according to art. 64 par. 5 the courts may grant ex parte preliminary injunctions (search orders) so that the right holder audits the infringing items (inventory executed by bailiff for example by taking photographs). The whole procedure (ex parte search order and audit) should be completed within two days, from the date of the ex parte decision. The right holder is at the same time given a trial date for interim measures, (claiming recognition of the right, discontinuation of the infringement i.e. recall from the channels of commerce of goods that and materials and implements principally used in the creation or manufacture of those goods, definitive removal from the channels of commerce, or destruction) and its omission to infringe in the future. Apart from or after the decision of the interim measures the right holder can claim damages.
Hungary	In line with the Article 9 (1) b), 11, 12 of the EU Enforcement Directive the Hungarian CA allows the seizure before judgement, in the frame of preliminary injunctions. [2] CA Art 94 (1) f), (7), (8), Art 94/A (1), (4). Seizure is in such cases is an order to the merit subject to appeal, not a pure security order
Israel	A court may order the appointment of an interim receiver with power to take possession of articles of property of the respondent, whether held by him, or a third party, if it is convinced on the basis of prima facie reliable evidence that there is a reasonable suspicion that the party may dispose of, or destroy them, or that they are infringing copies, or served in the infringement, and that the possibility of executing the judgment will be impaired if such an order is not made. Courts may also order the seizure and copying of potential evidence, including articles and documents, if convinced that there is a reasonable risk that the respondent or someone acting on his behalf may dispose of them, or destroy them, and that the proceedings may as a result be substantially prejudiced.
Italy	Both Penal and Civil Code provide the remedy of seizure also in a pre- trial phase. In the criminal proceedings, the seizure can be obtained during the investigations, pursuant to the general rules provided for by articles 253 and 321 of the Penal Code. In the civil proceedings, Articles 670 and 700 of the Civil Procedure Code and Articles 161 and 162 of the Copyright Law apply. The seizure can be ordered also as a precautionary measure in case there are grounds to deem that very serious and/or irreparable damages may intervene in the delay required for the judgment on the merit.
Japan	Seizures before judgment like French law, specialized in intellectual property, is not available.
Korea	Yes. The Korean Copyright Act provides seizure as a civil remedy (Art.123(3)) and a criminal 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.
Portugal	Yes. According to Section 210-H of the Portuguese Copyright and Neighbouring Rights Code, in the case of an infringement committed on a commercial scale which is ongoing or (merely) imminent and if the injured party demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information. Under Section 210-H (2) whenever there is an ongoing or imminent infringement of copyright or Neighbouring rights, the Court may, at the request of the applicant, order the seizure of the goods suspected of infringing an intellectual property right as well as the tools which serve specifically to accomplish the infringement. Under Section 210-H (3) for the purpose of applying the previous paragraphs the Court shall require the

Question 4 / Question 4 / Pregunta 4 **Si des saisies avant jugement sont disponibles, indiquez ce qui donne ouverture à une telle procédure et les critères d'octroi. / If seizures before judgment are available, indicate what gives rise to such procedures and the criteria for granting them. / En caso de existir embargo precautorio (o medidas de incautación previas al juicio), indique cómo se inicia ese procedimiento y cuáles son los criterios para otorgarlo.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
	applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder or that the applicant has a licence the copyright or Neighbouring rights and that the applicant's right is being infringed, or that such infringement is imminent. Under Section 210-H (4) and (5), the provisional measures referred to in paragraphs 1 and 2 (such as the seizures) may, in appropriate cases, be taken without the defendant having been heard, in particular where any delay would cause irreparable harm to the rightholder. In that event, the parties shall be so informed without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within ten days after notification of the measures, whether those measures shall be modified, revoked or confirmed. The provisional measures referred to in paragraphs 1 and 2 (including the seizures) may be revoked or otherwise cease to have effect, upon request of the defendant, under the General Civil Procedure Code, unless they assume the nature of injunctions. The provisional measures referred to in paragraphs 1 and 2 (including seizures) may be subject by the Court to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in the following paragraph. Where the seizures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.
Spain (ENG)	**4.1.** In general, judicial remedies and sanctions in the field of intellectual property follow in Spain the ruling of Directive 2004/48/EC, implemented in Spain by Act 19/2006, of 5 June, which modified both the SIPA and the Spanish Civil Procedural Act. The later establishes the Spanish general civil procedural regime. **4.2.** The Spanish *substantive* regulation expressly establishes the possibility of adopting precautionary measures in intellectual property. According to art. 141 SIPA, in case of infringement or when there is a rational and justified fear of such infringement to occur, the judicial authority may decide to adopt, at the request of the legally identified rightholders, the precautionary measures that may be necessary to urgently protect those rights, and specifically: 1. The intervention and deposit of all income obtained from the illicit activity or, if applicable, the consignation or deposit of any amount dues as remuneration. 2. The suspension of the reproduction, distribution and public communication, as it may apply, or any other activity that will constitute an infraction under the SIPA, as well as the prohibition of conducting those activities if they have not started yet. 3. The seizure of any copy produced or used and the material mainly use for the reproduction and public communication. 4. The seizure of the tools, devices, products and components whose only use is to facilitate the non authorized suppression, elusion or neutralization of any technical device used to protect intellectual works or used for the suppression or modification of the information for the electronic management of those rights. 5. The confiscation of equipment, devices and material media related to the private copy equitable compensation, which will be affected to the payment of the claimed compensation and to the corresponding damages indemnification. 6. The suspension of services provided by intermediate service providers to third parties using them to infringe intellectual property rights. **4.3.** The Spanish *procedural* law establishes two procedures for requesting and adopting those precautionary measures: a general procedure involving the parties or a procedure without the affected party (*inaudita altera parte*). Once a precautionary measures injunction is filed, the court has a five days deadline from the date when the defendant was informed of the procedure to call for a hearing, to be celebrated within the following ten days (art. 734 of the Spanish Civil Procedural Act); however, when the plaintiff requests so by justified reasons (urgency or the fact that a pre-trial hearing may compromise the effect of the precautionary measures), the court may impose those measures without hearing the defendant, within five days following (art. 733.2 of the Spanish Civil Procedural Act). In this case, the defendant may oppose in writing to the granted measures within a twenty days deadline from the notice of the decision of the court issued against her. 4.4. The adoption of all precautionary measures is subject to the following requirements to be complied with: (i) *fumus boni iuris*: it is necessary an initial justification of the right held by the claimant; (ii) *periculum in mora*: it is necessary to provide evidence as to the risk derived from the infraction, which tends to relate to the urgency in ordering the measures to be adopted. In the case of precautionary measures without hearing, it is also necessary to provide evidence as to the extra urgency factor: such urgency is so extreme that there is no time for a hearing in which the parties may initiate a contradictory debate.
The Netherlands	Right holders may obtain a court order for seizure of evidence provided the right holder can make a reasonable case of (imminent) infringement (articles 843a, 1019a-b Code of Civil Procedure).

Question 4 / Question 4 / Pregunta 4 **Si des saisies avant jugement sont disponibles, indiquez ce qui donne ouverture à une telle procédure et les critères d'octroi. / If seizures before judgment are available, indicate what gives rise to such procedures and the criteria for granting them. / En caso de existir embargo precautorio (o medidas de incautación previas al juicio), indique cómo se inicia ese procedimiento y cuáles son los criterios para otorgarlo.**	
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	Article 28 of the Dutch Copyright Act gives the possibility to obtain a court order for seizure of infringing goods. The right holder must show threat of embezzlement. The orders may be obtained in an *ex parte* proceeding or as a provisional measure in a regular proceeding. Pursuant to the EU Anti-Piracy Regulation (EU) No 608/2013) right holders may apply to customs to detain goods that infringe on their IP rights. The applicant must provide *i.a.* satisfactory evidence of the rights and specific and technical data on the authentic goods, including markings such as bar-coding and images where appropriate.
Turkey	Seizures before judgment are available. Upon the request of the person whose rights have been violated or are under threat of violation, the civil court may order the other party, before or after the commencement of the proceedings on the merits of the case, to perform certain acts or to refrain from performing them or to open or close the premises where the act is being committed, or may order as a precautionary measure the preservation of the reproduced copies of a work or moulds and other similar devices for reproduction exclusively enabling the manufacture of such copies, if such an order is deemed necessary for the prevention of a substantial injury or an instantaneous danger or accomplished facts or any other reason and if the claims asserted are considered to be strongly probable. (Art.77)
United States	Judges have discretion to grant temporary restraining orders without prior notice to the adverse party, and to grant preliminary injunctions *or* impoundment during a proceeding under FRCivP Rule 65. To secure pre-judgment action, copyright owners must show they are likely to succeed on the merits, that they will suffer irreparable harm if an injunction does not issue, that the balance of equities tips in their favor, and that entry of an injunction is in the public interest. Impoundment before final judgment requires the copyright owner to provide a security to cover potential damage should it later be determined the defendant was wrongfully restrained.

Question 5 / Question 5 / Pregunta 5 **Existe-t-il dans votre pays 1) des recours de nature pénale; 2) des mesures aux douanes, en lien avec le droit d'auteur? Si oui lesquels? / Are there in your country 1) criminal remedies; 2) customs measures, in connection with copyright? If so, which ones? / ¿Están reguladas en su país 1) acciones de naturaleza penal; 2) medidas en materia aduanera, de acuerdo con los derechos de autor? En caso afirmativo, ¿cuáles?**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Argentina (ENG)	Chapter called "Of the penalties", Section 71 to 74 of the Copyright Act typifies infringement of copyright and related rights. The Copyright Act does not regulate customs measures, but it is provided by the Customs Code (Section 608 and 609).
Argentina (ESP)	La mencionada ley N° 11.723 tiene un capítulo específico denominado "De las penas" (arts. 71 a 74). En este se tipifican las conductas que se consideran infracciones a los derechos de autor y conexos. La norma citada no regula medidas aduaneras, pero si el Código Aduanero (arts. 608 y 609).
Belgium	Criminal remedies: 1) Offence of counterfeiting (art. XI. 293, art. XV. 104 et art. XV. 70 CEL): «any malicious or fraudulent infringement of a copyright or a neighbouring right». Are also to be considered as criminal offences: sale, rental or import of infringing copies. The notion of criminal offence also covers aiding, or abetting and inciting such offence of counterfeiting. Criminal sanctions: fine ranging from 500 to 100.000 EUR, and an imprisonment penalty ranging from 1 year to 5 years, or one of these two penalties only . 2) Offences related to the technical measures of protection and identification: see next question (art. XI. 291 and XI. 292 CEL).These offences are sanctioned in the same way as the offence of counterfeiting. Customs measures According to EU-Regulation 608/2013, customs authorities can take a number of actions, including the suspension of the release of, and the detention of, the goods suspected of infringing (article 17 and following of the Regulation). The CEL provides for further details in relation to the competences of the customs authorities under Belgian law (art. XV. 21 and following of the CEL).
Canada	**1) Recours de nature pénale :** Oui. Les infractions de nature pénale sont prévues aux articles 42 et 43 de la *Loi sur le droit d'auteur*. **Infractions 42(1) et 42(2)** Commet une infraction quiconque, sciemment : - se livre, en vue de la vente ou de la location, à la contrefaçon d'une œuvre ou d'un autre objet du droit d'auteur protégés; - en vend ou en loue, ou commercialement en met ou en offre en vente ou en location un exemplaire contrefait; - en met en circulation des exemplaires contrefaits, soit dans un but commercial, soit de façon à porter préjudice au titulaire du droit d'auteur; - en expose commercialement en public un exemplaire contrefait; - en a un exemplaire contrefait en sa possession, pour le vendre, le louer, le mettre en circulation dans un but commercial ou l'exposer commercialement en public; - en importe pour la vente ou la location, au Canada, un exemplaire contrefait; - en exporte ou tente d'en exporter, pour la vente ou la location, un exemplaire contrefait. - confectionne ou possède une planche conçue ou adaptée précisément pour la contrefaçon d'une œuvre ou de tout autre objet du droit d'auteur protégés; - fait, dans un but de profit, exécuter ou représenter publiquement une œuvre ou un autre objet du droit d'auteur protégés sans le consentement du titulaire du droit d'auteur. **Infraction 42(3.1) :** contournement de mesure technique de protection **43(1) Infraction:** Exécution ou représentation en public de manière illicite et dans un but de lucre d'une œuvre dramatique, d'un opéra ou d'une œuvre musicale. **43(2) Infraction :** Modification ou retranchement du titre ou du nom de l'auteur d'une œuvre dramatique, d'un opéra ou d'une œuvre musicale ou apport d'un changement dans une telle œuvre afin que celle-ci puisse être exécutée ou représentée en public, dans un but de lucre. **2) Mesures aux douanes** Oui des mesures aux douanes sont prévues. Art. 44.01 et ss. de la *Loi sur le droit d'auteur*: **Interdictions** (Article 44.01(1)) Sont interdits d'importation et d'exportation les exemplaires d'une œuvre ou d'un autre objet du droit d'auteur protégé si : a) d'une part, ils ont été produits sans le consentement du titulaire du droit d'auteur dans le pays de production ; b) d'autre part, ils violent le droit d'auteur ou, s'agissant d'exemplaires qui n'ont pas été produits au Canada, ils le violeraient s'ils y avaient été produits par la personne qui les a produits. Les interdictions d'importation et d'exportation <u>ne s'appliquent pas</u> ((Article 44.01(2)) a) aux exemplaires qu'une personne physique a en sa possession ou dans ses bagages destinés qu'à son usage personnel; b) aux exemplaires qui, sont en transit au Canada sous la surveillance de la douane ou transbordés au

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	Canada sous cette surveillance. **Demandes d'aide de titulaires de droits** Les titulaires de droits peuvent présenter à l'Agence des services frontaliers du Canada (ASFC) une demande d'aide en vue de faciliter l'exercice de leurs recours au titre de la *Loi sur le droit d'auteur*. (Article 44.02 (1)). Si cette demande est acceptée, la *Loi sur le droit d'auteur* prévoit un mécanisme de partage de renseignements et fourniture d'échantillons de produits entre les agents des douanes et les titulaires de droits. (Article 44.04 (1)) L'article 101 de la *Loi sur les douanes* permet également là l'ASFC de retenir toute marchandise importée ou en instance d'exportation si elle a des motifs raisonnables de soupçonner que cette marchandise est interdite d'importation ou d'exportation en vertu de la *Loi sur le droit d'auteur*. (pour une période variant de 5 à10 jours ouvrables (Article 44.04(2)). Si, avant la fin de la rétention des exemplaires, le titulaire du droit d'auteur remet à l'ASFC une copie de l'acte introductif d'instance déposé devant un tribunal dans le cadre d'un recours formé au titre de la *Loi sur le droit d'auteur*, l'ASFC retient la marchandise jusqu'au prononcé d'une décision finale, d'une décision d'un tribunal ordonnant la fin de la rétention ou suivant le consentement du titulaire du droit d'auteur (Article 44.04(3)).
Czech Republic	There is a special provision in the Czech Criminal Code sanctioning the copyright infringement in relation to the author's work, artistic performance, audio and audio visual recording, tv or radio broadcasting and database as well as the forgery of the piece of fine arts. On the other hand in order to effectively enforce copyright claims in the court proceedings the author is according to the Czech Copyright Act allowed or entitled to ask customs authorities for information regarding the import of ware and goods which are used for copyright infringement or are illegal copies of protected subject matters themselves.
Égypte	Oui. 1) En ce qui concerne les recours de nature pénale, notons que le CEPI prévoit des sanctions pénales en cas de *diffusion, mise en vente, location, importation et exportation* de l'œuvre, de l'interprétation, du phonogramme, ou du programme radiophonique, bénéficiant de la protection prévue par la loi, sans l'autorisation écrite de l'auteur ou du titulaire du droit voisin ainsi qu'en cas de *contrefaçon*, en Égypte, d'une œuvre, d'une interprétation, d'un phonogramme, d'un programme radiophonique publiés à l'étranger ou vente, exportation ou expédition de ces derniers à destination de l'étranger. Il en va de même en cas d'atteintes aux *droits moraux et aux droits patrimoniaux* ainsi qu'en cas d'atteintes aux *mesures techniques* (*Cf.* la réponse à la question n° 6). Enfin, l'article 181/4° du CEPI réprime le fait de publier des œuvres, phonogrammes, programmes radiophoniques ou des interprétations protégés par la loi par le biais des logiciels, *via* Internet, réseau d'information, réseau de communication ou par d'autres moyens sans l'autorisation préalable écrite de l'auteur ou du titulaire du droit voisin. Les atteintes sont passibles d'une peine d'emprisonnement d'au moins un mois et d'une amende non inférieure à 5 000 et ne dépassant pas 10 000 livres égyptiennes (LE) ou de l'une de ces deux peines seulement. En cas de *récidive*, le délinquant sera puni d'un emprisonnement ne dépassant pas trois mois et d'une amende qui peut atteindre 10 000 à 50 000 LE. Le tribunal peut également ordonner la fermeture de l'établissement que les contrefacteurs ou leurs complices auront exploité dans l'accomplissement de leurs actes pour une période ne dépassant pas six mois. Cette fermeture est obligatoire en cas de récidive. Le tribunal ordonne, dans tous les cas, la confiscation des exemplaires contrefaits ainsi que la confiscation de tout le matériel ayant servi à la commission de l'infraction. De même, le tribunal peut ordonner la publication du jugement dans un ou plusieurs journaux, aux frais de la partie condamnée. 2) Le CEPI n'a pas réglementé la question des *mesures à la frontière*. Or, le décret n° 770 de 2005 du Ministre du commerce extérieur et de l'industrie, portant le règlement exécutif de la loi n° 118 de 1975 relative à l'importation et l'exportation ainsi que l'inspection et le contrôle des marchandises importées et exportées, a comblé cette lacune par les dispositions du chapitre 9. Ces dernières prévoient des mesures à la frontière pour assurer la protection contre l'importation de marchandises portant atteinte aux droits de propriété intellectuelle (art. 27 à 38 du décret n° 770 de 2005). Ainsi, lorsque les marchandises sont soupçonnées être contrefaisantes, le titulaire du droit d'auteur ou du droit voisin ou son représentant légal peut déposer une plainte, assortie de justifications, auprès des autorités douanières compétentes afin de suspendre la mise en libre circulation des marchandises, des produits importés ou des emballages portant atteinte aux droits de propriété intellectuelle, y compris les droits d'auteur et les droits voisins, les marques, les indications géographiques, les dessins et modèles industriels, les brevets d'invention, et les schémas de configuration de circuits intégrés. Il convient de remarquer que les autorités douanières peuvent intervenir d'office lorsqu'il existe des preuves suffisantes quant à la présence dans une cargaison de marchandises portant atteinte à un droit de propriété intellectuelle.

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España (ESP)	1.- **Acciones de naturaleza penal** Hasta la entrada en vigor de la Ley Orgánica 1/2015, de 30 de marzo (hecho que tuvo lugar el 1 de julio de 2015), por la que se modificó el Código Penal español, existía una notable desconexión entre la norma civil de referencia (la LPI) y la norma penal que protegía la propiedad intelectual. Hasta entonces tan solo existía reproche penal por la infracción de derechos sobre obras o un número muy limitado de prestaciones. Además, las formas de explotación constitutivas de delito aparecían tasadas de forma también limitada. En la actualidad, los delitos contra la propiedad intelectual aparecen recogidos en los artículos 270 a 272 del Código Penal. El tipo penal básico establece pena de prisión de 6 meses a 4 años y multa de 12 a 24 meses por cualquier forma de explotación con ánimo de lucro de una obra o prestación protegida, salvo si se trata de distribución o comercialización ambulante o meramente ocasional, que se castiga con pena de prisión de 6 meses a 2 años o, en los casos más leves, de multa o trabajos en beneficio de la comunidad de 31 a 60 días. También se castiga con la pena inicial (6 meses a 4 años y multa de 12 a 24 meses) a los responsables de servicios de la sociedad de la información que con ánimo de lucro faciliten de modo activo y no neutral el acceso o la localización en internet de obras o prestaciones sin autorización de los titulares. En estos casos, el Juez ordenará la retirada de las obras y prestaciones. Cuando a través del servicio de la sociedad de la información se difundan exclusiva o preponderantemente contenidos ilícitos, también se ordenará la interrupción del mismo, y se podrá adoptar cualquier medida cautelar que tenga por objeto la protección de los derechos de propiedad intelectual. Por otro lado, se castiga con pena de prisión de 6 meses a 3 años a quien fabrique, importe, ponga en circulación o posea con finalidad comercial cualquier medio principalmente concebido, producido, adaptado o realizado para facilitar la supresión o neutralización de dispositivos técnicos de protección de obras, interpretaciones o ejecuciones. Se prevé un tipo agravado, castigado con pena de prisión de 2 a 6 años, multa de 18 a 36 meses e inhabilitación profesional de 2 a 5 años cuando concurra alguna de las siguientes circunstancias: a) que el beneficio obtenido o potencial posea especial trascendencia económica; b) que los hechos revistan especial gravedad por el valor de los objetos producidos, el número de obras o prestaciones o la especial importancia de los perjuicios causados; c) que el culpable pertenezca a una organización, incluso transitoria, que tuviese como finalidad actividades infractoras de derechos de propiedad intelectual; d) que se utilice a menores de 18 años para la comisión de estos delitos. Respecto a estos delitos se establece que la responsabilidad civil derivada de estos delitos se rige por las disposiciones de la Ley de Propiedad Intelectual, y que en el supuesto de sentencias condenatorias puede decretarse la publicación de la sentencia en un periódico oficial a costa del infractor. Por otro lado, existe otro tipo penal indirectamente relacionado con la propiedad intelectual, recogido en el artículo 286 del Código Penal, que castiga con pena de prisión de 6 meses a 2 años y multa de 6 a 24 meses la facilitación de acceso no autorizado a servicios de radiodifusión sonora o televisiva o servicios interactivos prestados a distancia por vía electrónica. **2.- Medidas en materia aduanera** En España es de aplicación el Reglamento UE 608/2013, del Parlamento Europeo y del Consejo, de 12 de junio de 2013, relativo a la vigilancia por parte de las autoridades aduaneras del respeto a los derechos de propiedad intelectual. Los formularios del procedimiento han sido recientemente actualizados, mediante el Reglamento de Ejecución UE 2018/582, de la comisión, de 12 de abril de 2018. En España, el "departamento de aduanas competente" referido en el artículo 5 del Reglamento UE 608/2013 es el Servicio de Vigilancia Aduanera, dependiente de la Agencia Tributaria. Conforme a este procedimiento, las autoridades aduaneras pueden identificar mercancías sospechosas de vulnerar algún derecho de propiedad intelectual y suspender su levante o proceder a su retención y, en su caso, conforme a la decisión que se adopte, proceder a la destrucción de la mercancía infractora. Están legitimados para la presentación de solicitudes de actuación los titulares de los derechos afectados y, en general, sus asociaciones y representantes individuales o colectivos. Las solicitudes de intervención pueden afectar a toda la Unión Europea o a uno o varios Estados miembros de la misma. Igualmente, si la detección se realiza sin la previa solicitud de un legitimado, es el propio servicio aduanero quien identifica y comunica a los perjudicados la actuación. Aunque el procedimiento prevé específicamente que dentro de los derechos protegidos se encuentra el "derecho de autor o cualquier otro derecho afín con arreglo a la normativa nacional o de la Unión", en realidad la relación de este procedimiento con la protección de derechos de autor es hoy marginal, y su preponderante ámbito de aplicación práctica es más bien la protección de mercancías que impliquen la infracción de derechos de marca. Esto es así fundamentalmente por la creciente separación de los derechos de autor y los soportes físicos e, incluso para su producción de estos, la escasa utilidad de su importación en lugar de la producción en el lugar de destino.
Finland	1)Yes: criminal sanctions for copyright violation 2) EU regulation
France	Il existe plusieurs recours de nature pénale en droit d'auteur, puisque certaines atteintes ont été incriminées par le législateur. Ces recours peuvent avoir pour objet l'engagement de la responsabilité pénale, tant des personnes physiques que des personnes morales (article L. 335-8 du CPI). L'action publique est mise en mouvement conformément aux règles de procédure pénale de droit commun,

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	soit par les magistrats ou fonctionnaires habilités, soit par une plainte de la partie lésée, déposée auprès d'un officier de police judiciaire ou du procureur de la République, sur le fondement de l'article 1er du code de procédure pénale (CPP). Différents actes sont incriminés par le législateur et sont susceptibles d'être pénalement poursuivis. (*pour plus de développements sur ces différents actes, voir également la réponse 5 ci-dessous). Concernant les mesures aux douanes, il en existe deux catégories. D'une part, sur le fondement de l'article 28-1, I, 6° du CPP, des agents des douanes, spécialement désignés, sont compétents pour mener des enquêtes judiciaires en matière d'infractions au droit de la propriété intellectuelle, sur réquisition du procureur de la République ou sur commission rogatoire du juge d'instruction. Leurs prérogatives sont exclusivement définies par le CPP. D'autre part, les agents des douanes disposent de prérogatives administratives inscrites dans le code des douanes (CDD). Outre les mesures de droit commun, ces agents disposent de prérogatives spécifiques au droit de la propriété intellectuelle. En droit d'auteur, le législateur a prévu des mesures spéciales de retenue douanière (articles L. 335-10 à L. 335-18 du CPI).
Germany	1) Yes, there are criminal remedies, see §§ 106-111a UrhG (German Copyright Act). 2) Yes, the customs authority has the possibility to confiscate goods that obviously infringe copyright – see answer to 4).
Greece	1) According to Article 66 Law 2121/1993, there are criminal sanctions in case of copyright infringement. The criminal sanctions provided are imprisonment of no less than a year and to a fine from 2.900-15.000 Euro. If the financial gain sought or the damage caused by the perpetration of an act is particularly great, the sanction shall be not less than two years imprisonment and a fine of from six thousand (6,000) to thirty thousand (30,000) euros. If the guilty party has perpetrated any of the aforementioned acts by profession" or at a commercial scale" or if the circumstances in connection with the perpetration of the act indicate that the guilty party poses a serious threat to the protection of copyright or related rights, the sanction shall be imprisonment of up to 10 years and a fine of from15.000-60.000 euro together with the withdrawal of the trading license of the undertaking which has served as the vehicle for the act. 2) Regarding customs measures applies Regulation 608/2013, the right holder is entitled to file an application before the competent authority asking the competent customs to take actions by prohibiting the import of illegal products. In any case, even if rightholders have not filed an application for action, the customs authorities who have found infringing items have the right to detain, or suspend the release of, goods which they are suspect of infringing an IPR. If no application has been filed, the authorities contact the rightholder being entitled to file an application for action. A simplified destruction procedure is provided under the regulation.
Hungary	Yes. The criminal law protection is on a high level. Rules of the Act C of 2012 on Criminal Code follow the Article 69 of TRIPS and Articles 6 and 7 of the 2001/29/EC directive but the tools of protection are more detailed. Four types of delicts are regulated: plagiarism, infringement of copyright and certain rights related to copyright, including the refusal to pay private copy remuneration, compromising the integrity of technical protection, and falsifying data related to copyright management. The same acts, if the material disadvantage caused thereby is under HUF 100.000 are deemed to be infractions [3]
Israel	The Copyright Act creates criminal liability for certain acts of copyright piracy, namely: (1) Making an infringing copy of a work for the purpose of trading therein; (2) importing an infringing copy of a work for the purpose of trading therein; (3) engaging in the selling, rental, or distribution of an infringing copy of a work; (4) The sale, rental, or distribution of infringing copies of a work on a commercial scale;(5) Possessing of an infringing copy for the purpose of trading therein; (6) manufacture or possession of an object for the purpose of making an infringing copy of a work and trading therein. There is a pending bill proposing criminal liability for certain infringing broadcasts and acts of making available. Upon an application from a copyright owner, the Director of Customs may delay the release of goods claimed to be infringing copies of a work.
Italy	Yes, criminal penalties for copyright infringements are based on Articles from 171 to 171- nonies of the Copyright Act. Administrative penalties can be imposed on the basis of Articles 174 bis (pecuniary sanction) 171 last paragraph; .171 quater and 172, para. 1 of the Copyright Law. Customs measures are applicable both ex-officio or upon application of the interested parties

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Japan	Both exists. 1) a) Imprisonment up to 10 years or fine up to 10 million yen, or both will be charged against infringements of economic rights (Art. 119(1) of the Copyright Act, Act No. 48 of May 6, 1970). b) Imprisonment up to 5 years, fine up to 5 million yen, or both will be charged against infringements of moral rights (Art. 119(1) of the same Act). 2) a) Goods shall not be imported nor exported which infringe copyright and neighboring rights etc. (Art. 69-11(1)(iii) and Art. 69-2(1)(ix) of Customs Act, Act No.61, of April 12, 1954). b) The customs authorities shall confiscate and destroy such goods, or issue an order to reship to the importer (Art. 69-3 and followings of the same Act).
Korea	Yes. **1) Criminal remedies** Art.136 of the Copyright Act (1) Any person who infringes upon 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 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. **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. **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 forfeitured. **2) Customs measures** **Art. 124** of the Copyright Act. If a 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.
Portugal	1) Yes. Under articles 195. to 202, 218 and 224 of the Portuguese Copyright and Neighbouring Rights Code, there are the following crimes in relation to Copyright: • Usurpation - any unauthorised use of a work or performance protected by copyright or neighbouring rights (up to 3 years imprisonment); • Counter faction- any use of a protected third-party's work or performance as if it were own (up to 3 years imprisonment); • Breach of moral rights (up to 3 years imprisonment); • Taking advantage of the usurped or counterfeited work or performance (up to 3 years imprisonment); • Circumvention of any effective technological measures (up to 1 year imprisonment); • Removal or alteration of any electronic rights-management information; • distribution, importation for distribution, broadcasting, communication making available to the public of works or other subject-matter from which electronic rights-management information has been removed or altered without authority, if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights Related to copyright as provided by law, or of the sui generis right provided for in Chapter III of Directive 96/9/EC (up to 1 year iimprisonment) 2) Yes. Under Decree-Law nr 360/2007 of 2 November 2007, Customs Authorities may be required to intervene in relation to the goods likely to infringe IP rights, in accordance with Regulation (EC) nr 1383/2003 of the Council, of 22 July 2003. Concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.
Spain (ENG)	**1.- Criminal remedies**: Until the entry into force of the Organic Law 1/2015 of March 30th (which took place on July 1th, 2015), whereby the Spanish Criminal Code ("Spanish Criminal Code") was modified, there was a notable disconnection between criminal provisions and civil provisions (SIPA) protecting copyright. Before then, there were only criminal penalties for the infringement of copyright and a very limited number of related rights. Furthermore, the forms of copyright exploitation constituting a criminal offence were limited. Nowadays, criminal offences against copyright are listed under arts. 270 to 272 of the Spanish Criminal Code.

Question 5 / Question 5 / Pregunta 5 **Existe-t-il dans votre pays 1) des recours de nature pénale; 2) des mesures aux douanes, en lien avec le droit d'auteur? Si oui lesquels? / Are there in your country 1) criminal remedies; 2) customs measures, in connection with copyright? If so, which ones? / ¿Están reguladas en su país 1) acciones de naturaleza penal; 2) medidas en materia aduanera, de acuerdo con los derechos de autor? En caso afirmativo, ¿cuáles?**	
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	The basic criminal offence (i.e. any form of copyright exploitation for profit of a protected work or related right) is punishable by imprisonment of six (6) months to four (4) years and a fine of twelve (12) to twenty-four (24) months. Nevertheless, there is an exception regarding the case of itinerant or merely occasional distribution or commercialization, which is punishable by imprisonment from six (6) months to two (2) years or, in milder cases, by a fine or performance of community service from thirty-one (31) to sixty (60) days. Moreover, information society service providers who actively and non-neutrally provide access or location of copyright works or related rights for profit without authorisation from the rightholders will be punished by imprisonment of six (6) months to four (4) years and a fine of twelve (12) to twenty-four (24) months. In these cases, the judge will enjoin the information society service providers to remove infringing works. When the service provided by an information society service providers is used exclusively or predominantly to disseminate infringing works, the judge shall order the interruption of this service as well as any precautionary measure to ensure copyright protection. Furthermore, anyone who manufactures, imports, puts into circulation or possesses for commercial purposes any means that are mainly conceived, produced, adapted or carried out to facilitate the suppression or neutralisation of technical copyright protection devices, is punishable by imprisonment from six (6) months to three (3) years. The Spanish Criminal Code provides for an "aggravated" offence when any of the following circumstances apply: a) the actual or potential benefit is particularly substantial; b) the facts are especially serious due to either the value of the objects produced, or the number of infringed copyright works and/or related rights or the special importance of the damages caused; c) the infringer belongs to an organization, even of a temporary nature, which aims to carry infringements of copyright or related rights; d) minors under 18 years of age are used for the commission of these crimes. This "aggravated" offence is punishable by imprisonment from two (2) to six (6) years, a fine of eighteen (18) to thirty-six (36) months and professional disqualification from two to five years. Moreover, any civil liability derived from these offences is governed by the provisions of the SIPA. In the event of a conviction, the publication of the judgment in an official newspaper may be ordered at the expense of the infringer. Furthermore, another criminal offence indirectly related to copyright is provided under art. 286 of the Spanish Criminal Code, regarding the facilitation of unauthorized access to sound or television broadcasting services or interactive services provided at a distance electronically. This offence is punished by imprisonment of six (6) months to two (2) years and a fine of six (6) to twenty-four (24) months. **2.- Customs Measures** In Spain, Regulation (EU) nº 608/2013 of the European Parliament and of the Council of 12 June 2013, concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 ("Regulation 608/2013") applies. The application for action in this field has recently been updated by the Implementing Regulation (EU) 2018/582 of 12 April 2018, dated 12 April 2018. In Spain, the "competent custom department" referred to in art. 5 of the Regulation EU 608/2013 is the Custom Vigilance Service, subject to the Tax Agency's authority. According to these customs proceedings, customs authorities may identify goods suspected of infringing any intellectual property rights and suspend their release or retain them and, if applicable, according to the decision adopted, proceed with the destruction of the infringing goods. Those who are qualified to file these proceeding applications are the right holders of the affected rights and, in general, individual and collective representatives and associations of those right holders. The request for intervention may affect the whole European Union ("EU") or certain member states of the EU ("Member States"). Additionally, if the detention is pursued without the prior application of a legitimated entity, the customs service itself would identify and inform the affected entities of its actions. Even though the procedure establishes that the protected rights include the "author right or any other related right according to the national or Union's legislation", in practice, the relationship of this procedure with the protection of copyright is minimal, and its major scope relates to goods which infringe trade mark rights. This is mostly due to the increasing separation between author rights and physical media and, even for their production, the little utility of importing the goods instead of producing them at the place of destination.
The Netherlands	Yes. Prison sentences and fines may be imposed for intentional infringement, as well as for committing the following acts with respect to infringing copies, whether intentional or with reasonable suspicion of infringement: a) publicly offering for distribution, b) have on hand, for the purpose of reproduction or distribution; c) import, convey in transit or export; or d) keep in pursuit of profit. See below for sentences and fines. Also, prison sentences and fines may be imposed for circumventing or dealing with goods that circumvent technological protection measures. 2. Pursuant to Article 17(1) of the EU Anti-Piracy Regulation (EU) No 608/2013), customs authorities that identify goods suspected of infringing an intellectual property right (including goods suspected of infringing a copyright) shall suspend the release of the goods or detain them. Also, goods suspected of infringing an intellectual property right may, according to Article 23(1) of the Regulation, be destroyed under customs control.

Question 5 / Question 5 / Pregunta 5 Existe-t-il dans votre pays 1) des recours de nature pénale; 2) des mesures aux douanes, en lien avec le droit d'auteur? Si oui lesquels? / Are there in your country 1) criminal remedies; 2) customs measures, in connection with copyright? If so, which ones? / ¿Están reguladas en su país 1) acciones de naturaleza penal; 2) medidas en materia aduanera, de acuerdo con los derechos de autor? En caso afirmativo, ¿cuáles?	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Turkey	Both. Criminal remedies and customs measures in connection with copyright are available.
United States	The US Copyright Act provides for criminal penalties for willful copyright infringement provided the infringement was committed for commercial or private gain by either the reproduction or distribution (within a 180-day period) of one or more phonorecords or copies of copyrighted works having a retail value of more than $1,000 or by making available on a computer network accessible by the public a work prepared for commercial distribution if the infringer knew or should have known that the work was to be made commercially available.

Question 6 / Question 6 / Pregunta 6 **Décrivez le traitement réservé au contournement des mesures techniques de protection, s'il y a lieu. / Describe how circumvention of technological protection measures is dealt with, if such is done. / Si corresponde, describa el tratamiento reservado a la elusión de medidas técnicas de protección.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Argentina (ENG)	The Copyright Act does not provide legal remedies against the circumvention of effective technological measures.
Argentina (ESP)	La ley 11.723 de Propiedad intelectual no las regula.
Belgium	The circumvention of technological protection measures (TPM's) is expressly prohibited. The CEL treats as a criminal offence the circumvention of any effective TPM which the person concerned carries out in the knowledge, or with having reasonable grounds to know, that he or she is facilitating a malicious or fraudulent infringement of a copyright (art.XI.291 CEL). In that case, articles XV.104 and XV.70 of the CEL apply, which results in a fine from 500 to 100.000 EUR, possibly along with an imprisonment sentence (from 1 to 5 years). Furthermore, the CEL also treats as a criminal offence the manufacture, import, distribution, sale, rental, advertisement for sale or rental or possession for commercial purposes of goods or services which 1) are promoted, advertised or marketed for the purpose of circumvention ,or 2) have only a limited commercially significant purpose or use other than to circumvent, or 3) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures (art.XI.291 CEL). This criminal offence is subject to the same criminal sanctions as the offence of circumvention of TPM's. It is generally admitted that, apart from criminal sanctions, the abovementioned acts in relation to TPM's are also subject to civil proceedings, including injunctions, even though not expressly foreseen in the text of the Code on Economic Law.
Canada	Les mesures techniques de protection (MTP) sont définies à l'article 41 de la *Loi sur le droit d'auteur*. L'article 41.1 (1) interdit : a) de contourner une mesure technique de protection; b) d'offrir au public ou de fournir des services qui ont pour principal objet de contourner une mesure technique de protection; c) de fabriquer, d'importer ou de fournir (notamment par vente ou location), toute technologie ayant pour objet le contournement d'une mesure technique de protection. En cas de contravention à ces interdictions, le titulaire du droit d'auteur est admis à exercer contre le contrevenant tous les recours que la Loi prévoit pour la violation d'un droit d'auteur (Articles 41.1(2) et 41.1(4)) à l'exception des dommages-intérêts préétablis dans le cas où l'auteur de la contravention de contournement est une personne physique et n'a contrevenu à cette interdiction de contournement qu'à des fins privées. (Article 41.1(3)). Le montant des dommages-intérêts peut être réduit ou annulé si l'auteur de la contravention ne savait pas et n'avait aucun motif raisonnable de croire qu'il avait contrevenu à ces dispositions. (Article 41.19) La Loi prévoit des exceptions où le contournement, les services ou la technologie sont permis. (Articles 41.11 à 41.18). Des sanctions pénales sont prévues à l'article 42 (3.1) de *la Loi sur le droit d'auteur*.
Czech Republic	Any individual or legal entity committing the copyright offence by circumventing technological protection measures has to be punished by the fine up to 100.000,- CZK.
Égypte	Le CEPI offre une protection efficace aux mesures techniques de protection de toutes sortes en vue de protéger l'auteur et de prévenir les copies non autorisées. Il convient de noter que le législateur égyptien a adopté le niveau de protection le plus élevé pour les MTP dont la violation des dispositions anti-contournement est passible d'une peine d'emprisonnement d'au moins un mois et d'une amende non inférieure à 5 000 LE et n'excédant pas 10 000 LE, ou de l'une de ces deux peines seulement. Le CEPI sanctionne le fait de fabriquer, d'assembler, d'importer à des fins de vente ou de location tout dispositif, moyen ou outil spécifiquement conçu et/ou destiné à contourner une mesure de protection technique utilisée par l'auteur ou par le titulaire du droit voisin tel que le cryptage, ou tout procédé équivalent, etc. (art. 181, n° 5 du CEPI). Par ailleurs, il sanctionne le fait de supprimer, neutraliser, ou désactiver de mauvaise foi tout instrument de protection technique utilisée par l'auteur ou par le titulaire du droit voisin (art. 181, n° 6 du CEPI).
España (ESP)	Las medidas tecnológicas de protección ("MTP") se rigen por los artículos 196 a 198 LPI. Dichos preceptos son el resultado de la transposición de los artículos 6 y 7 de la Directiva 2001/29/CE del Parlamento Europeo y del Consejo, de 22 de mayo de 2001, relativa a la armonización de determinados aspectos de los derechos de autor y derechos afines a los derechos de autor en la sociedad de la información. La mera elusión de una MTP efectiva se configura como un supuesto de responsabilidad directa y permite que el titular pueda ejercer las acciones previstas en los artículos 138 a 141 LPI (acciones y medidas cautelares urgentes, cese de actividad e indemnización por daños). La elusión de MTP puede originar también responsabilidad penal, si se dan los supuestos del tipo descrito en el artículo 270.5, letras c) y d) del Código Penal. La responsabilidad directa y su respectiva sanción son independientes de las responsabilidades civiles y

Question 6 / Question 6 / Pregunta 6 Décrivez le traitement réservé au contournement des mesures techniques de protection, s'il y a lieu. / Describe how circumvention of technological protection measures is dealt with, if such is done. / Si corresponde, describa el tratamiento reservado a la elusión de medidas técnicas de protección.	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
	penales que puedan derivar por la infracción de los derechos de autor sobre la obra protegida por la MTP. En concreto, aquellos que fabriquen, importen, distribuyan, vendan, alquilen, publiciten para la venta o el alquiler o posean con fines comerciales cualquier dispositivo, producto o componente, así como quienes presten algún servicio que, respecto de cualquier medida tecnológica eficaz, tenga por fin eludirla, pueden ser responsables indirectos o por contribución (Sentencia de la Audiencia Provincial de Madrid de 31 de marzo de 2014, ECLI:ES:APM:2014:4112), sin perjuicio de su posible responsabilidad penal. Una MTP se considera eficaz cuando el uso de la obra o de la prestación protegida esté controlado por los titulares de los derechos mediante la aplicación de un control de acceso o un procedimiento de protección como, por ejemplo, codificación, aleatorización u otra transformación de la obra o prestación o un mecanismo de control de copiado que logre este objetivo de protección (artículo 196.3 LPI). Los programas de ordenador están excluidos de este régimen, por disponer del suyo propio (artículo 102 LPI). Sin embargo, la combinación de los artículos 102 y 196 LPI ha sido permitida por alguna jurisprudencia menor en el caso de videojuegos [Sentencia del Juzgado de Primera Instancia de Lugo de 5 de junio de 2012, ECLI:ES:JPI:2012:60, confirmada por Sentencia de la Audiencia Provincial de Lugo de 8 de noviembre de 2012, ECLI:ES:APLU:2012:924, y Sentencia del Juzgado de Primera Instancia de Barcelona de 2 de mayo de 2012, ECLI:ES:JMB:2012:56]. Con respecto de las excepciones y limitaciones, el artículo 197 LPI contiene el listado de aquellas que son obligatorias por ley. Ahora bien, para disfrutar de esta excepción, el beneficiario de esta ha de tener acceso legal a la obra o a la prestación protegida por una MTP. Fuera de este listado, la ley española contempla tres posibilidades voluntarias: a) una acción unilateral del titular; b) un acuerdo del titular(es) con el interesado; c) en el caso de consumidores, como beneficiarios de una excepción o limitación de los derechos de autor, por vía judicial al amparo de la legislación en materia de protección de consumidores y usuarios.
Finland	Yes. FinnCopAct Section 56 b Violation of technical measures (InfoSoc, Article 6)
France	Les dispositions relatives aux mesures techniques de protection et d'information sont issues de la transposition de la Directive européenne du 22 mai 2001 (2001/29/CE). Le législateur français a choisi d'incriminer le contournement des mesures techniques de protection d'une œuvre de l'esprit. Ainsi, l'article L. 335-3-1 du CPI incrimine les actes de contournement, de neutralisation, de suppression d'un mécanisme de protection ou de contrôle, réalisés au moyen d'un décodage, d'un décryptage ou de toute autre intervention personnelle, à l'exclusion de l'utilisation d'une application technologique, d'un dispositif ou d'un composant existant, dans le but d'altérer la protection d'une œuvre de l'esprit. L'atteinte doit avoir été portée sciemment et doit concerner une mesure technique efficace. Les auteurs des atteintes aux mesures techniques de protection encourent une peine d'amende de 3 750 euros. Le fait de procurer ou de proposer, directement ou indirectement, des moyens conçus ou spécialement adaptés pour porter une telle atteinte est puni de six mois d'emprisonnement et de 30 000 euros d'amende. Sont constitutives de cette infraction la fabrication, l'importation, la détention en vue de la vente, l'offre ou la location, la mise à disposition du public ou l'offre d'une application technologique, d'un dispositif ou d'un composant permettant de porter cette atteinte ainsi que la fourniture de service à cette fin. L'incitation à l'usage ou la commande, la conception, l'organisation, la reproduction, la distribution ou la diffusion d'une publicité en faveur de l'un de ces actes constituent, aussi, l'élément matériel de ce délit. L'auteur du contournement est donc puni moins fortement que l'individu qui en fournit les moyens.Toutefois, la responsabilité pénale n'est pas engagée lorsque ces actes sont réalisés à des fins de recherche ou de sécurité informatique, conformément aux dispositions du CPI. Des incriminations similaires sont prévues pour les atteintes aux mesures techniques d'information à l'article L. 335-3-2 du CPI.Ces actes portant atteinte aux mesures techniques peuvent aussi fonder une action en responsabilité civile.
Germany	§ 95a UrhG protects technological protection measures. On the one hand, the article forbids the circumvention of technological protection measures itself and on the other hand it prohibits preparatory and support measures. Technological protection measures must not be circumvented if the acting person is aware or should be aware that the circumvention is taking place in order to facilitate access to such a protected work (§ 95a (1) UrhG). Preparatory measures to circumvent technological protection measures are prohibited as well. § 95a (3) UrhG forbids the production and other uses of products or services that mainly have the function to circumvent technological protection measures. For more detail, see §§ 95 a – d and (for criminal law) 108b UrhG.
Greece	According to Article 66A Law 2121/1993, circumvention of effective technological measures is prohibited without the permission of the rightholder, when such act is made in the knowledge or with reasonable grounds to know that he is pursuing that objective. The circumvention is punished by imprisonment of at least one year and a fine of 2.900 to 15.000 Euro and entails the civil sanctions of Article 65 Law 2121/1993. The One-Member First Instance Court may order an injunction in accordance with the Code of Civil Procedure, the provision of article 64 Law 2121/1993 also being applicable.

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Pays / Country / Pais	**Réponse / Answer / Respuesta**
Hungary	Circumvention of TPM is forbidden in Hungary. It is acknowledged as an analogy to the infringement of copyright (see Act on Copyright Article 95-95/A)[4] and it is punished by the Criminal Code as well (see Criminal Code Article 386).
Israel	Israeli has not enacted legislation providing for protection of TM's. At least one justice of the Supreme Court have hinted that circumvention of a TM that controls access to a work may be considered making available.
Italy	Articles 171 bis and 171 ter para.1, lett. f bis) and h) of the Copyright Law concern the circumvention of technological protection measures, that is punished by fine and imprisonment.In Italy several Criminal Courts have sentenced the defendants for the crime in Article 171 ter (see for instance the Sony Play Station case - Supreme Court no.21621 25 May 2015).
Japan	Any person who does acts of manufacture, distribution, etc. of a device, etc. for the circumvention of technological protection measures shall be punishable by imprisonment for a term not exceeding three years or a fine not exceeding 3 million yen, or both. Any person who, as a business, circumvents technological protection shall also be punishable in the same way (Art. 120-2(i)(ii) of the Copyright Act).
Korea	**Art.2(28)** of the Copyright Act. "Technical protection measures" means (a)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 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.104*bis* (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, transmitting, selling, renting, offer to the public, advertising for sale or lending, or distributing any device, product, or part thereof, that — 1. is promoted, advertised or marketed for the purpose of circumventing technical protection measures 2. has only limited commercially significant purpose or use other than to circumvent a technological measure 3. is primarily designed, produced, modified or functional for the purpose of enabling or facilitating circumvention of a technological measure. **Art.136 (2) 3*ter***. 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
Portugal	Under art. 218 and 224 of the Portuguese Copyright and Neighbouring Rights Code, it is a criminal act to commit a circumvention of TPM and there is also a penalty for preparatory acts such as the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which: (a) are promoted, advertised or marketed for the purpose of circumvention of, or (b) have only a limited commercially significant purpose or use other than to circumvent, or (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures (up to 6 months imprisonment).
Spain (ENG)	Technical protection measures ("TPMs") are ruled in Title VI, arts. 196 to 198 SIPA. These articles are the result of the implementation of arts. 6 and 7 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ("Directive 2001/29/EC"). According to the regime established in these articles, the mere circumvention of effective TPMs constitutes a case of direct liability and entitles the copyright rightholder to make use of the general copyright remedies as regulated in arts. 138 to 141 SIPA (injunctions, restraining of the unlawful activity and damages). Circumvention of TPMs can cause also criminal liability, according to Art. 270.5(c) and (d) of the Spanish Criminal Code. This direct liability and its sanctions are independent of other civil and criminal remedies that may arise due to the copyright infringement of the work protected by TPMs as a consequence of its circumvention. In particular, those who manufacture, import, distribute, sell, rent or publish for sell or rental or possess for commercial purposes any device, product or component, as well as those who provide any kind of service meant to circumvent an effective TPM can be found either secondary or contributory liable in civil jurisdiction (Judgement by the Madrid Provincial Court (Sec. 28) of March 31, 2014 – AC/2014/385), irrespective of their criminal liability. A TPM is considered efficient as per art. 196.3 SIPA in case that "the use of the protected work or other subject-matter is controlled by the rightholder through the application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective". Software is excluded of this regime, as it has its own regulation (art. 102 SIPA). However, some minor Spanish jurisprudence (Judgemente of First instance Court of Lugo, dated June 5, confirmed by the Provincial Court Decision on November 8, 2012; and Judgement of First instance court of Barcelona, dated May 2, 2012) have allowed the application of the combination of both arts. 102 and 190 SIPA to complex works as videogames. With regards to exceptions and limitations, art. 197 SIPA indicates which are the exceptions and limitations

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Pays / Country / Pais	**Réponse / Answer / Respuesta**
	excluded of the TPM's regime. Yet, to enjoy this waiver, access to the protected work or subject-matter must have been lawful. Otherwise, it will not apply. Other than the exceptions and limitations of art. 197 SIPA, there are three options to lawfully circumvent TPMs: a) a unilateral voluntary decision of the copyright rightholder; b) access beyond the TPM can be reach through agreement between the copyright rightholder(s) and the interest party; c) in the case of consumers, as beneficiaries of an exception or limitation, they are entitled to pursue civil action under Spanish Consumer Law regime.
The Netherlands	A person who circumvents any effective technological measures knowingly, or with reasonable grounds to know he is doing so, acts unlawfully (Article 29a(2) Copyright Act). Those who provide services or manufacture, import, distribute, sell, rent out, advertise devices, products or components or are in the possession of these for commercial purposes act unlawfully if such: a) are offered, advertised or marketed for the purpose of circumventing the protective operation of effective technological measures; or b) have only a limited commercial significant purpose or use other than to circumvent the circumvention of the protective operation of effective technological measures; or c) are particularly designed, manufactured or adapted for the purpose of enabling or facilitating the circumvention of the protective operation of effective technological measures (Article 29a(3) Copyright Act.
Turkey	Criminal remedies available for such an illegal acts. Any person, who produces, puts up for sale, sells or possesses for non- private use programs and technical equipments which aim to circumvent additional programs developed to prevent illegal reproduction of a computer program shall be sentenced to imprisonment from six months to two years. (Art. 72). Additionaly, right owner may claim damages on civil court action.
United States	The circumvention of technical protection measures controlling access to a protected work or protecting a right of the copyright owner is prohibited under US law except in certain circumstances. Every three years, the Librarian of Congress, in consultation with the United States Copyright Office (USCO), publishes a circumscribed list of classes of works whose non-infringing uses are or are likely to be adversely affected by the ban on circumvention of access controls. Those classes of works are then free of the prohibition on circumvention for the three-year period in which this rulemaking is in effect.

Question 7 / Question 7 / Pregunta 7 **Existe-t-il un processus obligatoire d'avis et avis ou d'avis et retrait s'adressant aux intermédiaires en cas de violation alléguée d'un droit d'auteur? Si oui décrivez-le brièvement, et indiquez si le traitement est différent selon l'ayant droit qui en fait la demande. / 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. / ¿Está regulado un procedimiento de aviso y aviso o de aviso y retirada dirigido a un intermediario en caso de que se alegue una violación a un derecho autoral? En caso afirmativo, descríbalo brevemente, y señale si el tratamiento es diferente dependiendo del titular del derecho que lo solicita.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Argentina (ENG)	The Copyright Act does not provide mandatory notice and notice regime or notice and take down regime for intermediaries in the case of alleged copyright infringement.
Argentina (ESP)	La mencionada ley Nº 11.723 no lo prevé.
Belgium	There is no provision under Belgian law, which provides for a mandatory notice and notice regime, or notice and take down regime in the case of alleged copyright infringement.
Canada	Oui, le processus d'avis et avis est prévu à l'article 41.25 et ss de la *Loi sur le droit d'auteur*. Le titulaire d'un droit d'auteur peut envoyer un avis de prétendue violation au fournisseur de services Internet (FSI), à l'hébergeur ainsi qu'à la personne qui fournit un outil de repérage (moteur de recherche) (Article 41.25(1)) Les FSI et les hébergeurs sont traités différemment des fournisseurs d'outils de repérage dans la Loi. Lorsqu'un FSI ou un hébergeur reçoit un avis de prétendue violation de la part d'un titulaire de droit d'auteur et que cet avis contient l'information exigée par la Loi (41.25(2)), il doit : a) transmettre dès que possible par voie électronique une copie de l'avis à la personne à qui appartient l'emplacement électronique identifié dans l'avis et informer dès que possible le demandeur de cette transmission (ou des raisons de sa non-transmission); b) conserver, pour une période de 6 mois un registre permettant d'identifier la personne à qui appartient l'emplacement électronique (si des procédures sont engagées cette période est portée à 1 an). (Article 41.26(1)) Le seul recours dont dispose le titulaire de droit d'auteur contre le FSI ou l'hébergeur qui n'exécute pas ces obligations est le recouvrement de dommages-intérêts préétablis (au moins 5 000$ et au plus 10 000$). (Article 41.26 (3)) Quant aux fournisseurs d'outils de repérage, bien que les titulaires puissent leur envoyer un avis de prétendue violation, ils n'ont aucune obligation de transmettre cet avis. Le seul recours que peut obtenir le titulaire du droit d'auteur à l'encontre du fournisseur d'outil de repérage reconnu coupable d'avoir violé le droit d'auteur en reproduisant ou en communiquant la reproduction de l'œuvre visée par l'avis est l'injonction (Article 41.27(1)) Toutefois, si le fournisseur qui reçoit un avis de prétendue violation ne retire pas l'œuvre de l'emplacement électronique mentionné dans l'avis, celui-ci perdra l'avantage découlant de l'article 41.27(1) limitant le recours à l'injonction).
Czech Republic	Except for general regulation of the so called "safe harbours" allowing intermediaries to provide online services without being obliged to examine legality of the content third parties as their customers are uploading and communicating via these services, there is no special regulation similar to the "notice and action (take down)" procedure in the Czech Republic which would be applicable in cases of copyright infringement so far.
Égypte	Non. Il n'existe pas un régime d'avis en Égypte à l'égard des prétendues violations du droit d'auteur. Or, il convient de remarquer que la responsabilité des intermédiaires techniques est fondée sur les règles générales du droit d'auteur . Ils peuvent être soumis à la fois aux sanctions pénales et/ou à des recours civils à partir du moment où ils reçoivent un avis juridique du titulaire du droit d'auteur
España (ESP)	La LPI no prevé ningún procedimiento obligatorio de aviso, o de aviso y retirada, dirigido a intermediarios en el supuesto de una alegada infracción de derechos de autor. En el derecho español existe un procedimiento administrativo específico para obtener el bloqueo del acceso o la retirada de contenido potencialmente infractor en el entorno digital. Se describe este procedimiento administrativo al dar respuesta a la pregunta número 11 del cuestionario. Por otra parte, algunas empresas prestadoras de servicios online han establecido sus propios mecanismos de notificación y retirada, como es el caso de Youtube. Los usuarios que quieran colgar contenido en dicha plataforma deben aceptar someterse a este procedimiento.
Finland	Permanent or Interim order on discontinuation order FinnCopAct Section 60 b and 60 c
France	La procédure d' « avis et avis » existant en droit canadien n'a pas d'équivalent en droit français. Ce processus, qui permet à un titulaire de droits de solliciter la communication, par un fournisseur d'accès à Internet, de l'identité du titulaire d'une adresse IP qui aurait été identifiée comme contrevenant à ses droits sur Internet est propre à la législation canadienne. En France, un fournisseur d'accès ne peut pas se voir imposer

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Pays / Country / Pais	**Réponse / Answer / Respuesta**
	une telle obligation de communication de l'identité d'un de ses abonnés par un titulaire de droits : une telle demande doit passer soit par l'intermédiaire du juge, soit, en vertu de l'article L331-21 du CPI, par celui d'une autorité administrative indépendante spécialement habilitée, la Haute Autorité pour la diffusion des œuvres et la protection des droits sur Internet (HADOPI). Néanmoins, l'article L. 336-2 du CPI énonce qu'en présence d'une atteinte à un droit d'auteur ou à un droit voisin occasionnée par le contenu d'un service de communication au public en ligne, le tribunal peut ordonner, à la demande des titulaires de droits, de leurs ayants droit, des organismes de gestion collective ou des organismes de défense professionnelle, « *toutes mesures propres à prévenir ou à faire cesser une telle atteinte à un droit d'auteur ou un droit voisin, à l'encontre de toute personne susceptible de contribuer à y remédier* ». Quant à la procédure d'avis et retrait, elle existe bien en droit français puisque la loi n° 575-2004 du 21 juin 2004 pour la confiance dans l'économie numérique ("LCEN"), issue de la transposition de la Directive 2000/31/CE du 8 juin 2000, impose aux intermédiaires techniques que sont les fournisseurs d'accès et d'hébergement d'agir promptement afin de retirer tout contenu illicite à compter du moment où ils ont effectivement connaissance de son existence ou de « *faits et circonstances faisant apparaitre le caractère* » illicite d'un contenu. La loi française est venue compléter la directive européenne qu'elle transposait, en énonçant que la connaissance des faits litigieux était présumée acquise par les intermédiaires précités lorsqu'il leur est notifié les éléments suivants : - la date de la notification ; - l'identité complète du notifiant ; - l'identité complète du destinataire ; - la description des faits litigieux et leur localisation précise ; - les motifs pour lesquels le contenu doit être retiré (mention des dispositions légales et justifications de faits) ; - la copie de la correspondance adressée à l'auteur ou à l'éditeur des informations ou activités litigieuses demandant leur interruption, leur retrait ou leur modification, ou la justification de ce que l'auteur ou l'éditeur n'a pu être contacté. En revanche, le point de savoir si un tel processus est obligatoire dépend du sens donné à l'emploi de l'adjectif « obligatoire ».
Germany	Yes, in case of alleged copyright infringement, the intermediary has to delete the information or block the access to it (§ 10 TMG German Act on Telemedia). If he does not eliminate the infringing information, he can be held responsible for the copyright infringement. Nevertheless, Germany (and the European Union) does not have a fixed procedure like it exists in America. In the lack of fixed legal procedures, the user who uploaded data, for which copyright infringement was alleged, has no possibility to fight the takedown. Due to the lack of clear rules, there is a lot of uncertainty in this field.
Greece	According to Article 66E Law 2121/1993, a Committee for the Notification of Copyright and Related Rights Infringement on the Internet is constituted for the cases of copyright or related rights infringement on the internet. This procedure does not apply to infringements committed by end - users through downloading or streaming or peer to peer file sharing, which allow for direct exchange of digital files of works between end - users, or to cases of infringement by means of provision of data storage services through cloud computing. Upon rightholders' application for the termination of the infringement and according to a specific process, the Committee shall close the case by a reasoned act, where no infringement of copyright and/or related rights has been established, or the Committee shall request from the addresses of the notification to remove the infringing content from the website on which it had been illegally posted or to block access to it if it finds that a copyright or a related right has been infringed. If the content is hosted on a website whose server is located within the Greek territory, the Committee shall request the addressees of the notification to remove that content. In the case of large-scale infringements, the Committee may decide to discontinue access to this content, instead of its removal. If the website is hosted on a server located outside the Greek territory, the Committee shall request the internet access provider to block access to this content.
Hungary	There is a notice and take down regime in the Hungarian e-commerce law. It applies to all types of copyright and neighbouring rightholders, the procedure is the same. The rules of the Act CVIII of 2001 on electronic commerce Art. 13 see below.

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Israel	The Copyright Act does not contain such provisions. However, the courts have judicially adopted a "notice and takedown protocol" exempting ISP's from liability for infringing material hosted by them, if the ISP has no knowledge of the infringement, and, upon gaining such knowledge has taken down the allegedly infringing material. However, if the ISP encourages or induces the infringement, or if the site is "illegitimate", the ISP will not be entitled to benefit from this exemption. Although the courts speak of a "protocol", there are, in fact, no uniform rules regarding the circumstances under which the ISP will be exempt, what degree of intervention in the content will negate the exemption, the form of notice and the timeframe for takedown, and there are no rules relating to counter-notice. One court, in aa case involving infringing links, has laid out a rebuttable presumption of knowledge, which would cause a site to be classified as "illegitimate", based on the total number, or proportion of illegal links on the site.
Italy	See optional answer on the Regulation of the Independent Authority for Communications.
Japan	The "safe harbor" provisions concerning the liability against a subscriber for Japanese ISPs, include a notice and takedown regime that provides a chance for a subscriber to explain and respond to the claims from copyright owners, before the ISP terminates its files/activities (Art. 3 and followings of Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders, Act No. 137 of November 30, 2001).
Korea	Yes. Korean Copyright Act provides in Art.102 and Art. 103 regarding notice and take down regime. **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.
Portugal	There is no mandatory N&N or NTD regime for intermediaries in the case of alleged copyright infringement. According to art 18 of Decree-Law 7/2004 of January, 7, which implements EC Directive 2000/31/EC of June, 8, (the Electronic Commerce Directive) the intermediaries that host third-party content or search engines, provide hyperlinks or any analog procedures that may facilitate access to illicit content DO NOT have to remove content, or to prevent such access, at the request of an interested person in case the illegal activity or information is not apparent. However, any interested parties may apply to the (sectorial) competent supervisory entity, that must provide a provisional solution within 48 hours and convey this solution to the contenders. Should the provisional decision lead to the removal or access prevention, the party who is interested in preserving such content online may, in turn, apply to the same supervisory entity in order to obtain a provisional solution for the case. Such decision may be modified at all times, by the same supervisory authority. This procedure should have been the subject of specific regulation, but it wasn't, so far. There is a special provision exempting the supervisory entity as well as the intermediary of all responsibility for removing or preventing access to the content, or failing to do so, in case the illegal activity or information is not apparent. There is also the possibility of settling the case in the Courts of Law.
Spain (ENG)	The SIPA does not establish any mandatory notice and notice regime or notice and take down regime for intermediaries to comply with in the case of alleged copyright infringement. In the Spanish legislation, there is a specific administrative procedure for the blocking of access and removal of potentially illicit content in the digital environment. Such administrative procedure is described in our response to question 11. On the other hand, some private online service providers have established their own notice and take down procedures to which end users of their services must submit.
The Netherlands	There is no mandatory notice-and-take down regime. However, the Civil Code pursuant to the EU E-commerce Directive (2000/31/EC) exempts intermediaries from liability for damages if they respond to notices (Article 6:196c Civil Code). Courts have found not responding to notices to be unlawful and have ordered intermediaries to maintain notice and take down (and sometimes: stay down) procedures. Most intermediaries have voluntarily adopted NTD procedures.

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Turkey	Notice and take down regime is available. In case where rights of authors and related rights holders granted by the Law have been violated by providers of service and content through the transmission of signs, sounds, and/or images including digital transmission, the works which are subject of the violation shall, upon the application of the right holders, be removed from the content. Natural or legal persons whose rights have been violated shall to this end initially contact with the content provider and request that the violation be ceased within three days. Should the violation continue, a request shall next be made to the public prosecutor requiring that the service being provided to the content provider persisting in the violation be suspended within three days by the relevant service provider. The service being provided to the content provider shall be restored, if the violation is ceased. (Additional Art. 4)
United States	Host service providers must participate in a notice and takedown process to take advantage of statutory safe harbors (see Question 8) that shield them from liability for user-posted infringing content. Copyright owners or their agents are responsible for initiating the procedure, and service providers who subsequently remove allegedly infringing content must notify the user who posted the content. If the user files a counter-notice, the service provider must re-upload the content, unless the copyright owner initiates court action within prescribed deadlines.

Question 8 / Question 8 / Pregunta 8 **Existe-t-il une notion de violation secondaire du droit d'auteur dans l'univers numérique? Si oui décrivez-la brièvement. / Does the notion of secondary copyright infringement in the digital world exist in your country? If so, describe it briefly. / ¿Existe una noción de violación secundaria de un derecho autoral en el mundo digital? En caso afirmativo, descríbalo brevemente.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Argentina (ENG)	The Copyright Act does not address it. There are some judicial cases without a single criterion that still allows understanding the existence of the notion of secondary copyright infringement in the digital world A judicial case is mentioned as an example TARINGA Case Nº 42.318 "Nakayama, Alberto s/ procesamiento", Cámara Nacional de Apelaciones Sala VI, Juzgado de Instrucción Nº44.- October 7, 2011. Facts and decision: Alberto Nakayama, Matías Botbol and Hernán Botbol through the portal "www.taringa.net", offer anonymous users the possibility to freely share and download files whose content is not authorized for publication by the author, thereby facilitating the illegal reproduction of the material that is uploaded. The functioning as a library of hyperlinks justified the existence of the page that has a massive influx of users, receiving an economic return with the sale of advertising. They have allowed users to disclose links for the download of works whose intellectual property is protected, without being prevented by the administrators of the site, allowing its illegal reproduction. Beyond the fact that the links from which the illegally reproduced works were downloaded were located abroad, the truth is that the servers of "taringa.net" domain and its owners were domiciled in the Argentina, and the effects of the crime would have occurred in the national territory, so by virtue of the principle of ubiquity the application of Argentine criminal law was appropriate. The defendants provided the means for users to freely share and download files containing works without the respective authorizations of their authors.
Argentina (ESP)	La mencionada ley N° 11.723 no lo prevé. Existen decisiones judiciales con criterio dispar que no permiten aun entender la existencia de noción de violación secundaria de un derecho autoral. Se menciona un caso judicial a modo de ejemplo : Caso TARINGA Causa Nº 42.318 "Nakayama, Alberto s/ procesamiento", Cámara Nacional de Apelaciones Sala VI, Juzgado de Instrucción Nº44.- 7 de octubre de 2011. Hechos y decisión: Alberto Nakayama, Matías Botbol y Hernán Botbol a través del portal "www.taringa.net", ofrecen a usuarios anónimos la posibilidad de compartir y descargar gratuitamente archivos cuyo contenido no está autorizado para publicar por el autor, facilitando con ello la reproducción ilícita del material que se publica. El funcionamiento como biblioteca de hipervínculos justifica la existencia de la página que tiene un ingreso masivo de usuarios, percibiendo un rédito económico con la venta de publicidad. Han permitido que los concurrentes divulgaran links para la descarga de obras cuya propiedad intelectual está protegida, sin que fuera evitado por la administración del, permitiendo su reproducción ilícita. Más allá de que los links desde los cuales se habrían descargado las obras reproducidas ilegalmente (rapidshare.com, 4shared.com y mediafire.com) están ubicados fuera de nuestro país, lo cierto es que los servidores del dominio "taringa.net" desde donde se ofrecía su descarga (kui.wiroos.com.ar y lanark.wiroos.com) y cuyos titulares serían los imputados, registran domicilio en la República Argentina y los efectos del delito se habrían producido en el territorio nacional, por lo que en virtud del principio de ubicuidad es procedente la aplicación de la ley penal argentina.- Los imputados facilitaron los medios para que los usuarios pudieran compartir y descargar gratuitamente archivos que contenían obras sin las respectivas autorizaciones de sus autores.
Belgium	Yes. First, there is a general provision in the CEL, which provides that aiding or abetting and inciting intentional copyright infringements amounts to a criminal offence (art.XV.69, CEL). This provision is perfectly suited for the digital world, even though initially not designed for that particular purpose. Likewise, in the civil area, Belgian judges take the view that aiding or abetting and inciting copyright infringements amount to wrongful acts. Some decisions are noteworthy in this respect. In the pre Svensson era, Belgian courts have used the concept of secondary infringement (or indirect liability). They have considered that providing hyperlinks to works that have been made available to the public without the authorization of the right holder constitutes an act of tort (i.e. secondary infringement) when the link provider knows or ought to know that the making available of the linked works is not authorized. In another case and on another issue, they found that an Internet hosting provider is liable for secondary infringement in a situation where it failed to remove diligently hyperlinks to illegal files after being explicitly notified by the right holders that those links referred to illegal content. Second, there are specific provisions in the CEL, which seek to sanction particular forms of indirect copyright infringements. For instance, with respect to TPM's, the Code treats as a criminal offence the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of

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	devices, products or components or the provision of services which are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of TPM's (art.XI.291 CEL). Third, the provisions concerning the civil injunction procedure allow for obtaining an order imposed on individuals or entities who merely enable or facilitate copyright infringements. It must be stressed in this respect that the availability of injunctions is very broadly construed. An injunction is available against any defendant who is in a position to contribute in any manner to the discontinuation of the copyright infringements, even if he is only an indirect or secondary infringer – and even when he has no liability at all about the infringement (even not indirect).
Canada	Oui. Article 27(2.3) de la *Loi sur le droit d'auteur.* Constitue une violation du droit d'auteur le fait pour une personne de fournir un service sur Internet principalement en vue de faciliter l'accomplissement d'actes qui constituent une violation du droit d'auteur. L'article 27 (2.4) énumère des facteurs que le tribunal peut prendre en compte pour déterminer s'il y a violation de l'article 27(2.3) : a) le fait que la personne a fait valoir, même implicitement, dans le cadre de la commercialisation du service ou de la publicité relative à celui-ci, qu'il pouvait faciliter l'accomplissement d'actes qui constituent une violation du droit d'auteur; b) le fait que la personne savait que le service était utilisé pour faciliter l'accomplissement d'un nombre important de ces actes; c) le fait que le service a des utilisations importantes, autres que celle de faciliter l'accomplissement de ces actes; d) la capacité de la personne, dans le cadre de la fourniture du service, de limiter la possibilité d'accomplir ces actes et les mesures qu'elle a prises à cette fin; e) les avantages que la personne a tirés en facilitant l'accomplissement de ces actes; f) la viabilité économique de la fourniture du service si celui-ci n'était pas utilisé pour faciliter l'accomplissement de ces actes.
Czech Republic	One brief statutory provision in the Czech Copyright Act exists which allows the author to insist on the prohibition to provide services used by third persons to infringing or even endangering of copyright.
Égypte	Non.
España (ESP)	Desde la reforma introducida por la Ley 21/2014, de 4 de noviembre, el artículo 138, párrafo segundo, LPI recoge la figura de los denominados "responsables de la infracción". Se trata de sujetos que responden de la infracción en pie de igualdad con el infractor directo, aunque ellos no son quienes protagonizan la explotación usurpatoria, sino quienes inducen o han inducido al infractor primario, cooperan a la infracción u obtienen un beneficio de la conducta infractora, siempre que puedan controlar dicha conducta. En concreto, el artículo 138, párrafo segundo, LPI dispone literalmente que "*tendrá también la consideración de responsable de la infracción quien induzca a sabiendas la conducta infractora; quien coopere con la misma, conociendo la conducta infractora o contando con indicios razonables para conocerla; y quien, teniendo un interés económico directo en los resultados de la conducta infractora, cuente con una capacidad de control sobre la conducta del infractor*". Con esta reforma se ha ampliado en España el espectro de los responsables de la infracción, no solo en relación con la acción de cesación, sino también respecto de la acción de responsabilidad para exigir daños y perjuicios. Parece que se trata de una responsabilidad solidaria, de forma que *ad extra* los inductores, cooperadores o beneficiarios de la actividad infractora han de asumir todas las consecuencias indemnizatorias de la misma, con independencia de la posible acción de regreso frente al infractor directo. Aunque estas figuras de responsabilidad indirecta no están concebidas exclusivamente para las infracciones en el ámbito digital, no cabe duda de que ése será el entorno más probable en el que tendrán aplicación. Imagínese, por ejemplo, el prestador de un servicio de la sociedad de la información o comercializador de una tecnología que hace un ofrecimiento de esta tecnología en el mercado de tal forma que, ya sea por el contenido de su actividad publicitaria o promocional, ya sea por las informaciones o tutoriales con los que acompaña el producto o servicio, cabe inferir que está invitando o incitando a sus usuarios a valerse de él para llevar a cabo conductas infractoras de propiedad intelectual (inducción a la infracción). O si ese servicio de Internet o tecnología, si bien son en potencia aptos para propiciar usos o aplicaciones lícitos comercialmente relevantes, también lo son, en igual o mayor medida, para propiciar actos infractores de propiedad intelectual (cooperación a la infracción). En el tercero de los supuestos de responsabilidad secundaria, el control se ha de referir a la conducta infractora y no al sujeto. Es decir, no tiene por qué consistir en la existencia de una relación de dependencia o subordinación entre ambos sujetos, sino que basta con que el infractor sea un usuario que se ha dado de alta en un servicio o en una red social, el participante de un foro en Internet que sube contenidos al mismo, o alguien que efectúa contribuciones en el seno de un proyecto colaborativo en red.
Finland	No such notion in proper terms in the area of copyright.

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France	La notion de violation secondaire du droit d'auteur, telle qu'elle existe en droit canadien, n'a pas en tant que telle d'équivalent en droit français. Cette notion autonome, qui désigne les actes subséquents à une contrefaçon préexistante, ne trouve aucun écho dans le système pénal français, qui ne distingue pas de niveaux ou de degrés d'infraction. En revanche, le droit français appréhende les mêmes comportements que la loi canadienne, mais sans passer par le prisme d'une infraction dite « secondaire ». C'est ainsi que l'article L. 335-2 du CPI, après avoir défini la contrefaçon, énonce que « *seront punis des mêmes peines [soit trois ans d'emprisonnement et 300 000 euros d'amende] le débit, l'exportation, le transbordement ou la détention aux fins précitées des ouvrages contrefaisants* ». En dehors des dispositions spécifiques figurant dans le CPI, le droit pénal français réprime certains comportements de façon générique, ce qui peut permettre d'appréhender certains faits relevant, en droit canadien, de la notion de violation secondaire. D'une part, le droit pénal français connait une définition large de la complicité, qui inclut notamment la fourniture de moyens puisqu'est considéré comme complice celui qui, par une aide sciemment apportée, facilite la commission d'une infraction. D'autre part, le droit pénal français connait également l'infraction dite de recel. En application de l'article 321-1 du Code pénal, constitue un recel « *le fait de dissimuler, de détenir ou de transmettre une chose, ou de faire office d'intermédiaire afin de la transmettre, en sachant que cette chose provient d'un crime ou d'un délit* » ou encore « *le fait, en connaissance de cause, de bénéficier, par tout moyen, du produit d'un crime ou d'un délit* ». La qualification de recel permet donc d'appréhender un certain nombre de comportements découlant d'une infraction antérieure. Cependant, pour éviter d'avoir recours au recel ou la complicité, lesquels sont parfois difficiles à caractériser, le législateur français consacre régulièrement, en matière de droit d'auteur, des infractions autonomes. Ainsi, par exemple, l'article L. 335-2-1, 1° du CPI punit de trois ans d'emprisonnement et de 300 000 euros d'amende le fait « *d'éditer, de mettre à la disposition du public ou de communiquer au public, sciemment et sous quelque forme que ce soit, un logiciel manifestement destiné à la mise à disposition du public non autorisée d'œuvres ou d'objets protégés* ». Cette infraction spécifique, créée par le législateur français en 2009, permet d'appréhender, par une infraction autonome, le comportement de celui qui, sans commettre lui-même de contrefaçon, facilite sa commission par un tiers.
Germany	Yes, there is the concept of "Störerhaftung", which was developed by German courts. Secondary copyright infringement can arise if there is a violation of inspection obligations. The Act on Telemedia (in §§ 8-10) grants privileges to Internet providers (mostly for Access-, Host-, und Cache-Providers) who provide access to foreign information. Nonetheless, there can be a secondary copyright infringement if a provider does not react after having been notified about an alleged copyright infringement or if the provider made the content and information presented its own. In this second case he then is responsible for his own information.
Greece	No such notion exists under the Greek Copyright Law. However, according to Article 64A Law 2121/1993, rightholders may apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right. It is the same for the sui generis right of data base maker.
Hungary	There are no explicit rules of secondary liability in the Hungarian CA and we do not know any copyright case law in this field. In the course of the joint application of the e- commerce safe harbour rules and the enforcement rules of the CA the upper limit of the person that can be held liable under "secondary liability" is the cease and desist order.
Israel	Israeli courts apply the concept of contributory infringement, the ingredients of which are: (a) a primary infringement has occurred; (b) actual knowledge of the primary infringement (including wilful blindness); (c) substantive participation in the infringement including failure to prevent the infringement, or further infringement where that can be reasonably achieved. There is a split on the Supreme Court on the question of whether an infringement for which there is a defense, such as fair use, should be considered as an infringement under the first condition. It would appear that the view that it should not be considered, and thus cannot be factored into a contributory liability claim is the correct view. Case law has held that linking to infringing copies of works may trigger contributory liability if the person creating the link has actual knowledge of the infringement. Please see below for discussion of a pending bill designed to create accessory liability for infringement of the right of making available.
Italy	In Italy the notion of secondary or contributory infringement (including liability for internet services providers) does not exist. Nevertheless, the domestic courts have repeatedly acknowledged the joint liability of internet service providers for infringements committed directly by users of their services.

Question 8 / Question 8 / Pregunta 8 **Existe-t-il une notion de violation secondaire du droit d'auteur dans l'univers numérique? Si oui décrivez-la brièvement. / Does the notion of secondary copyright infringement in the digital world exist in your country? If so, describe it briefly. / ¿Existe una noción de violación secundaria de un derecho autoral en el mundo digital? En caso afirmativo, descríbalo brevemente.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Japan	Under the Copyright Act, there is no explicit provision or interpretation which allows a copyright holder to demand an injunction against intermediaries, while an injunction against a primary infringer is permitted under Art. 112 of the same Act. Against this background, case law has held several online platforms liable for injunctive relief by expanding the substantive scope of a primary "infringer" based on the normative interpretations including the so-called "Karaoke theory" justified with control on their clients and business profits; an online video sharing platform, a P2P file sharing service and an online electronic bulletin board. For further information, see NOTE 1 below.
Korea	Yes. Art.102 of the Copyright Act provides Limitations on the Liability of Online Service Providers. 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.
Portugal	No, it doesn't exist as such. In civil law, however, there are some cases of no fault liability, which is somehow akin to vicarious liability.
Spain (ENG)	After being modified by Act 21/2014, of November 4, article 138, second paragraph SIPA expressly refers to those entities so-called "responsible for the infringement". These are defined as subjects who must assume the consequences of the infringement together with the direct offender, although they are not those who commit the usurpatory exploitation, but those who induce or have induced the primary offender, cooperate with the offense or obtain a benefit from the infringing conduct, provided that they can control such behavior. Literally, article 138, second paragraph, SIPA states that "it shall also be considered responsible for the offense the entity who knowingly induces the infringing conduct; cooperates with the same, knowing the infringing conduct or having reasonable indications to know it; and, having a direct economic interest in the results of the infringing conduct, has a capacity to control the conduct of the offender". With this reform, the range of responsible subjects for the infringement has widened in Spain, not only in relation to injunctions, but also in respect of actions to claim damages. It seems that it is a joint responsibility, so that the inducers, cooperators or beneficiaries of the infringing activity have to assume *ad extra* all the compensatory consequences of the infringement, regardless of the possible return action against the direct offender. Although not specifically or exclusively conceived for being applied in the digital environment, this will be the most typical area in which these cases of indirect liability will arise: for instance, an Internet service provider, or a marketer of a double use technology, who makes an offer of the service or product in such a way that, either by the content of its advertising or promotional activity, either by the information or tutorials that accompany the product or service, it can be understood as an invitation to use it in order to carry out a copyright infringement (induction of infringement). Or, if the service or product, while potentially capable of proper lawful uses, is also, to an equal or greater extent, capable to commit copyright infringements (cooperation to infringement). In the third type of secondary liability, the control must refer to the infringing conduct and not to the person of the infringer. Thus, it does not need to exist a relationship of dependence or subordination between both subjects, but it is enough that the offender is a user who has registered in a service or in a social network, the participant of a forum on the Internet that uploads content to it, or someone who makes contributions within a collaborative network project.
The Netherlands	Although it is not specifically designated as a theory on secondary infringement, case law does consider facilitating infringement unlawful under specific circumstances. Courts in that case may order the facilitating party to cease its unlawful actions and to reimburse damages. Pursuant to Article 26a Copyright Act, a cease and desist order may also be imposed on an intermediary without the requirement of proof of unlawful actions. In addition, pursuant to recent ECJ case law, online platforms that enable the making available of copyright content for profit may be directly liable for the communication to the public involved (ECJ 14 June 2017, Case C 610/15, Brein v. Ziggo).
Turkey	Secondary copyright infringement in the digital world only exist within the scope of notice and take down regimes for host servers and content servers.
United States	Yes, in all copyright infringement cases—including those in the digital world—secondary liability may be imposed on those who (1) knowingly induce or materially contribute to the copyright infringement of another ("contributory liability") or (2) have the right and ability to supervise the infringing activity of another and have a direct financial interest in the infringing activities ("vicarious liability"). However, the Digital Millennium Copyright Act (DMCA) provides online service providers certain protections from secondary (as well as primary) liability for their (1) "transitory digital network communications," (2) "system caching," (3) "information residing on systems or networks at the direction of users," and (4) "information location tools."

Question 9 / Question 9 / Pregunta 9 Indiquez pour quels droits la gestion collective est disponible. / Indicate for which rights collective management is available. / Señale para cuáles derechos está regulada la gestión colectiva.	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Argentina (ENG)	Collective management is regulated in Argentina with respect to the rights of public communication of the authors and composers of musical works (SADAIC), writers of dramatic films, television, radio, choreography, pantomimic, journalistic, entertainment, scripts for the continuity of shows (ARGENTORES), of the cinematographic and audiovisual directors (DAC), of the performers in cinematographic and audiovisual works in the categories of actors and dancers (SAGAI), of the music performers fixed in phonograms and reproduced on discs or other media (AADI) and those of producers of phonograms reproduced on discs or other media (CAPIF). The collective management of reprographic rights (CADRA) and visual artists (SAVA) is also carried out. **ARGENTORES.** Sociedad General de Autores de la Argentina. General Society of Authors of Argentina. Act 20,115 (Published 31/1/1973), regulatory decree 461/73 (Published 31/1/1973). Carries out the collective management of the rights that correspond to writers of dramatic, cinematographic, television, radio, choreographic, pantomimic, journalistic, entertainment, scripts for the continuity of shows, both national and foreign, and their beneficiaries. **SADAIC.** Sociedad Argentina de Autores y Compositores de Música. Argentine Society of Authors and Music Composers. Act 17,648 (Published 03/07/1968). Regulatory Decree: 5.146/69 (Published 21/11/1969). Is responsible for the collective management of all rights that correspond to the authors and composers of both national and foreign musical works, and their beneficiaries. **DAC.** Asociación General de Directores Autores Cinematográficos y Audiovisuales. General Association of Directors Cinematographic and Audiovisual Authors. Decree 124/09 (Published 24/02/2009). Performs the collective management of public communication rights of national and foreign directors of cinematographic works and audiovisual works, and their beneficiaries. **SAGAI.** Sociedad Argentina de Gestión de Actores e Intérpretes, Asociación Civil. Argentine Society of Management of Actors and Performers, Civil Association. Decree 1914/06 (Published 12/27/2006). It performs the collective management of the sums that correspond by public communication to national and foreign performers referred to the categories of actors and dancers and their beneficiaries. **AADI.** Asociación Argentina de Intérpretes. Argentine Association of Interpreters. Decree 1671/74 (Published 12/12/1974). Carries out the collective management of the remuneration that corresponds to the national and foreign musical performers and their beneficiaries to receive and administer the remuneration provided in section 56 of the Copyright Act for the public performance, transmission or retransmission by radio and/or television of their performances fixed in phonograms and reproduced on discs or other media. **CAPIF.** Cámara Argentina de Productores e Industriales de Fonogramas. Argentine Chamber of Producers and Industrial Phonograms. Decree 1671/74 (Published 12/12/1974). It performs the collective management of the remuneration that corresponds to the producers for the public performance of their phonograms reproduced on discs or other media. **AADI CAPIF ACR (Asociación Civil Recaudadora).** Collecting Civil Association. Decree 1671/74 (Published 12/12/1974). It is in charge of the collection of the remuneration that corresponds to the performers (represented by the Argentine Association of Performers -AADI-) and to the phonographic producers (represented by the Argentine Chamber of Producers of Phonograms and Videograms -CAPIF-), for the communication to the public of phonograms. The sums collected by AADI CAPIF ACR are distributed in the following manner, according to Section. 5 of the mentioned decree 1671/74: I) 67% to the interpreters (distributed by AADI among the performers of all the levels that have intervened in the sound recordings fixed in phonograms and communicated to the public, corresponding -of the 67% mentioned- 45% to the main interpreters and 22% to the secondary interpreters), and II) 33% for the producers of phonograms.
Argentina (ESP)	La gestión colectiva está regulada en la Argentina respecto de los derechos de comunicación pública de los autores y compositores de obras musicales (SADAIC), de los escritores de dramáticas cinematográficas, televisivas, radiofónicas, coreográficas, pantomímicas, periodísticas, de entretenimiento, de los libretos para la continuidad de espectáculos (ARGENTORES), de los directores cinematográficos y de obras audiovisuales (DAC), de los artistas intérpretes en obras cinematográficas y audiovisuales en las categorías de actores y bailarines (SAGAI), de los intérpretes de música fijada en fonogramas y reproducida en discos u otros soportes (AADI) y de los de productores de fonogramas reproducidos en discos u otros soportes (CAPIF). También se efectúa la gestión colectiva de los derechos reprográficos (CADRA) y de los artistas visuales (SAVA). **ARGENTORES.** Sociedad General de Autores de la Argentina. Ley 20.115 (B.O. 31/01/73), decreto reglamentario 461/73 (B.O. 31/01/73). Realiza la gestión colectiva de los derechos que les corresponden a los escritores de obras dramáticas, cinematográficas, televisivas, radiofónicas, coreográficas, pantomímicas, periodísticas, de entretenimiento, los libretos para la continuidad de espectáculos, tanto nacionales como extranjeras, y a sus derechohabientes. **SADAIC.** Sociedad Argentina de Autores y Compositores de Música. Ley 17.648 (B.O. 07/03/68). Decreto Reglamentario: 5.146/69 (B.O. 21/11/69). Realiza la gestión colectiva de todos los derechos que les corresponden a los autores y compositores de obras musicales tanto nacionales como extranjeras, y a sus derechohabientes. **DAC.** Asociación General de Directores Autores Cinematográficos y Audiovisuales. Decreto 124/09 (B.O. 24/02/09). Realiza la gestión colectiva de los derechos de comunicación pública de los directores cinematográficos y de obras audiovisuales argentinos y extranjeros, y a sus derechohabientes.

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Pays / Country / Pais	**Réponse / Answer / Respuesta**
	SAGAI. Sociedad Argentina de Gestión de Actores e Intérpretes, Asociación Civil. Decreto 1914/06 (B.O. 27/12/06). Realiza la gestión colectiva de las sumas que corresponden por la comunicación pública a los artistas intérpretes argentinos y extranjeros referidos a las categorías de actores y bailarines y a sus derechohabientes. **AADI.** Asociación Argentina de Intérpretes. Decreto 1671/74 (B.O.12/12/74). Realiza la gestión colectiva de la retribución que les corresponde a los intérpretes musicales argentinos y extranjeros y a sus derechohabientes para percibir y administrar las retribuciones previstas en el art. 56 de la mencionada ley N° 11.723 por la ejecución pública, transmisión o retransmisión por radio y/o televisión de sus interpretaciones fijadas en fonogramas y reproducidas en discos u otros soportes. **CAPIF.** Cámara Argentina de Productores e Industriales de Fonogramas. Decreto 1671/74 (B.O.12/12/74). Realiza la gestión colectiva de la retribución que les corresponda a los productores por la ejecución pública de sus fonogramas reproducidos en discos u otros soportes. **AADI CAPIF ACR (Asociación Civil Recaudadora).** Decreto 1671/74 (B.O. 12/12/74). Está encargada de la recaudación de la retribución que les corresponde a los artistas intérpretes o ejecutantes (representados por la Asociación Argentina de Intérpretes –AADI-) y a los productores fonográficos (representados por la Cámara Argentina de Productores de Fonogramas y Videogramas –CAPIF-), por la comunicación al público de fonogramas. Las sumas recaudadas por AADI CAPIF ACR se reparten de la siguiente forma, de acuerdo al art. 5º del mismo decreto 1671/74: I) 67% a los intérpretes (que distribuye AADI entre los intérpretes o ejecutantes de todos los niveles que hayan intervenido en las grabaciones sonoras fijadas en fonogramas y comunicadas al público, correspondiendo —del 67% mencionado— 45% a los intérpretes principales y 22% a los intérpretes secundarios), y II) 33% para los productores de fonogramas.
Belgium	Collective rights management is available for all economic rights, i.e. rights of reproduction, distribution, rental, lending, communication to the public, making available, and so forth. The situation of moral rights is different. Admittedly, collective rights management organizations may also manage moral rights in some circumstances, when right owners grant them specific and *ad hoc* representation powers. However, in such cases, the management of granted rights may not be considered as «collective». With respect to economic rights, a distinction is to be made between rights that *may* be subject to collective management, and rights that *must* be subject to such management. In the first case, right owners confer the management of their rights on a voluntary basis to CMO's in order to benefit of wider means (enforcement, contracts, and so on). In the second case, right owners are legally compelled to have their rights managed by CMO's . The second case includes i.a. the following situations: granting an authorization for cable retransmission, collecting a fair compensation for private copy or reprography, etc.
Canada	-Droits d'auteur Arts Visuels -Audiovisuel et multimédia -Copie privée -Droits éducatifs, -Exécution publique de la musique, -Reproductions d'enregistrements sonores et de prestations d'artistes-interprètes, -Reproductions d'œuvres musicales, -Reproductions d'œuvres littéraires et dramatique (textes), -Retransmissions de signaux éloignés de radio et de télévision, -Veilles médiatiques
Czech Republic	Representing are all authors, performers and producers are represented for the following rights which are represented by: 1) obligatory collective management: a) right to remuneration for the use of artistic performances recorded on a phonogram issued for commercial purposes, by radio or television broadcasting or by broadcasting of radio or television broadcasting, the use of a sound record, issued for commercial purposes, broadcasting by radio or television or by broadcasting radio or television broadcasting, Making a copy for personal use on the basis of a sound or audio video record by transferring its contents by means of a device to an uncarried carrier, Making a copy of a work for personal use on the basis of a graphic representation by transferring it using a copier, even through a third party, resale the original of a work of art, b) the right to a reasonable remuneration for the rental of the original or a copy of the work or performance of the performer recorded on the sound or audio-visual record, c) the right to use cable transmission of works, live performances and performances recorded on a phonogram, except for such performances whose audio record was issued for commercial purposes, d) the right to use cable transmission of audio-visual recordings and phonograms other than for commercial

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	purposes. 2) extended collective management 3) collective management based on a contract a) music is applied to the full extent b) others are usually not applied
Égypte	En Égypte, la gestion collective des droits est limitée aux domaines « clés » des droits d'exécution publique des œuvres musicales, ce qui explique l'existence d'une seule et principale SPRD, à savoir la *Société des Auteurs, Compositeurs et Editeurs de la République Arabe d'Egypte* (SACERAU). Cette dernière gère sur le territoire égyptien le droit des créateurs et éditeurs de musique et les intérêts de diverses sociétés d'auteurs étrangères (comme la SACEM par exemple). Il existe une autre société mais qui n'a pas d'existence juridique, à savoir *l'Association égyptienne pour les auteurs de scénario* qui concerne les œuvres dramatiques. En effet, il convient de remarquer que le champ de la gestion collective dans la région arabe n'est pas développé, voire très restreint. Dans les pays arabes, la gestion collective se pratique essentiellement dans le domaine musical, qui est beaucoup plus actif que les autres, pour les droits relatifs à l'exécution publique et à la reproduction mécanique.
España (ESP)	Todos los derechos patrimoniales de propiedad intelectual son susceptibles de gestión colectiva a través de las entidades de gestión. Por tanto, el titular del derecho tiene libertad para decidir si gestiona su derecho de manera individual, o si, por el contrario, confía su gestión a una entidad de gestión o, en su caso, a un operador de gestión independiente. Sin embargo, existe un grupo de derechos de gestión colectiva obligatoria, es decir, derechos que necesariamente deben ser administrados por las entidades de gestión. Corresponde al legislador establecer los derechos que son de gestión colectiva obligatoria, atendiendo, en particular, a la imposibilidad o gran dificultad de ejercicio individual de esos derechos. Cuando un derecho es legalmente configurado como derecho de gestión colectiva obligatoria, la consecuencia es que el titular del derecho no puede gestionarlo personalmente, ni tampoco encomendar su gestión a un operador de gestión independiente. En el caso de los derechos de gestión colectiva obligatoria, la entidad de gestión correspondiente realiza la gestión del derecho de los titulares, con independencia de si estos titulares son o no socios de la entidad. En el momento actual, el Derecho español establece que los siguientes derechos son de gestión colectiva obligatoria: (1) el derecho de compensación equitativa por la copia privada de obras divulgadas en forma de libros o publicaciones que a estos efectos se asimilen reglamentariamente, de fonogramas, videogramas o de otros soportes sonoros, visuales o audiovisuales (artículo 25, apartados 1 y 9, LPI); (2) el derecho de remuneración de los autores por la distribución de sus obras, en la modalidad de préstamo, cuando es efectuada por determinados sujetos tales como los museos, archivos, bibliotecas, hemerotecas, fonotecas o filmotecas de titularidad pública o que pertenezcan a entidades de interés general de carácter cultural, científico o educativo sin ánimo de lucro, o a instituciones docentes integradas en el sistema educativo español (artículo 37.2 LPI); (3) el derecho de remuneración equitativa de los autores por la distribución, en la modalidad de alquiler, de fonogramas o grabaciones audiovisuales (artículo 90, apartados 2 y 7, LPI); (4) el derecho exclusivo de autorizar la retransmisión por cable [artículo 20.4, letra b), LPI], incluido el derecho exclusivo de los productores audiovisuales de autorizar la retransmisión por cable de las obras y grabaciones audiovisuales [artículos 88.1 y 122.1, segundo párrafo, LPI, en relación con el artículo 20, letras b y c), LPI]; (5) el derecho de remuneración de los artistas intérpretes o ejecutantes por la distribución en la modalidad de alquiler de fonogramas o grabaciones audiovisuales (artículo 109.3 LPI); (6) el derecho de remuneración de los autores de obras audiovisuales (i) por la proyección de las mismas en lugares públicos mediante el pago de un precio de entrada, (ii) por la proyección o exhibición sin exigir precio de entrada y (iii) por la transmisión al público por cualquier medio o procedimiento, alámbrico o inalámbrico, incluido, entre otros, la puesta a disposición del público de manera interactiva (artículo 90, apartados 3, 4 y 7, LPI); (7) el derecho de remuneración equitativa y única de los artistas intérpretes y ejecutantes y de los productores de obras y grabaciones audiovisuales por los determinados actos de comunicación pública de grabaciones audiovisuales (artículos 108.6 y 122.2 LPI); (8) el derecho de remuneración de los artistas intérpretes o ejecutantes por la puesta a disposición del público de un original o una copia de una grabación audiovisual o de fonogramas (artículo 108.3 LPI); y (9) el derecho de remuneración equitativa y única de los artistas intérpretes o ejecutantes y de los productores de fonogramas por la comunicación pública, a excepción de la puesta a disposición, de un fonograma publicado con fines comerciales (artículos 108.4 y 116, apartados 2 y 3, LPI).
Finland	No answer.
France	En droit d'auteur, tous les droits patrimoniaux peuvent faire l'objet d'une gestion collective volontaire, exception faite de ceux qui font déjà l'objet d'une gestion collective obligatoire :

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	- -Droit à rémunération au titre de l'exception de copie privée (cf. Art. L.311-1 du CPI) ; - -Droit d'autoriser la reproduction par reprographie (cf. Art. L122-10 du CPI) ; - -Droit d'autoriser la retransmission par câble, simultanée, intégrale et sans changement (cf. Art. L132-20-1 du CPI) ; - -Droit à rémunération au titre du prêt en bibliothèque (cf. Art. L133-1 du CPI) ; - -Droit d'autoriser la reproduction et la reproduction sous une forme numérique des livres indisponibles (cf. Art. L134-3 du CPI) ; - -Droit de reproduire et de représenter les œuvres d'art plastique, graphique ou photographique dans le cadre de services automatisés. En droit d'auteur, tous les droits patrimoniaux peuvent faire l'objet d'une gestion collective volontaire, exception faite de ceux qui font déjà l'objet d'une gestion collective obligatoire : - -Droit à rémunération au titre de l'exception de copie privée (cf. Art. L.311-1 du CPI) ; - -Droit d'autoriser la reproduction par reprographie (cf. Art. L122-10 du CPI) ; - -Droit d'autoriser la retransmission par câble, simultanée, intégrale et sans changement (cf. Art. L132-20-1 du CPI) ; - -Droit à rémunération au titre du prêt en bibliothèque (cf. Art. L133-1 du CPI) ; - -Droit d'autoriser la reproduction et la reproduction sous une forme numérique des livres indisponibles (cf. Art. L134-3 du CPI) ; - -Droit de reproduire et de représenter les œuvres d'art plastique, graphique ou photographique dans le cadre de services automatisés de référencement d'images (cf. Art. 136-2 du CPI). Le droit moral ne peut en revanche pas faire l'objet d'une gestion collective.
Germany	Generally, collective management is available for copyrights as well as neighbouring rights (§ 1 VGG; Collecting Societies Act). This includes the right of use, right to statutory remuneration. In particular, rights according to §§ 20b (cable retransmission), 26(6) (claims under right of resale for works of art), 27 (remuneration for rental and lending), 45a (limitation for persons with disabilities), 49 (newspaper articles and broadcast commentaries), 54, 60h (reproduction for private and other own use, uses for education, research, by libraries etc.), 78(2) (secondary uses, performers/phonogram producers) 79a (specific remuneration for studio musicians) and 137l(5) (remuneration for new types of use) UrhG may be asserted only by a collecting society.
Greece	According to Article 12 (1) Law 4481/2017, rightholders have the right to authorize a CMO of their choice to manage the economic right or the powers deriving therefrom or categories of powers or types of works or objects of protection of their choice. Mandatory collective management regime is provided for cable retransmission (Article 35 (5) Law 2121/1993), for the right to equitable remuneration in case of broadcasting or communication to the public for performers and phonogram producers (Article 49 Law 2121/1993) and finally, in case of reproduction for private use (Article 18 Law 2121/1993).
Hungary	All categories of economic right can be exercised by CMO's. There are several rights that fall under the scope of obligatory collective management, and there are several cases of extended collective management where the CA prefers (it is called prescribe collective management) the collective management but the rightholder is entitled to opt-out and exercise his or her rights individually.
Israel	Cinematic works: rights of public performance, broadcast (broadly speaking similar to communication to the public), making available to the public and commercial renal. Music works and phonograms: public performance, broadcast, making available to the public (to a degree) and synchronization and reproduction for broadcasting purposes/א
Italy	Collective management of copyright is available for reproduction, public communication and performance rights for musical, theatrical, audiovisual, literary and visual arts works. In the field of related rights collective management is normally limited to the equitable remuneration for performance and broadcasting rights.
Japan	Almost all branches of copyright (especially melodies and lyrics, literary works, scenarios, fine arts and photographies) and neighboring rights (especially performances and sound recordings). See https://pf.bunka.go.jp/chosaku/ejigyou/script/ipzenframe.asp (in Japanese) for the exhaustive list of registered management business operators in accordance with the Act on Management Business of Copyright and Neighboring Rights (Act No.131, of November 29, 2000).
Korea	Korea has 13 Collective Management Organizations. The rights available for collective management 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

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	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) 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 5. The Korea Scenario Writers Association: Right of Reproduction (First Cinematization), Right of Broadcasting (In Television, Reshowing), Right of Reproduction (videotape, etc instrument) 6. The Korea Reproduction and Transmission rights Association: Right of Reproduction, Right of Public Transmission (Right of Interactive Transmission), copyright agency or brokerage service 7. The Korea Culture Information 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
Portugal	Collective Management is available to all the rights granted by the framework. There are the following collective management organisations: SPA (Sociedade Portuguesa de Autores) for authors; GDA (Gestão de Direitos dos Artistas) for performers; AUDIOGEST (Associação para a Gestão e Distribuição de Direitos) for phonogram producers; GEDIPE (Associação para Gestão Coletiva de Direitos de Autor e de Produtores Cinematográficos e Audiovisuais) for audiovisual producers; VISAPRESS-Gestão de Conteúdos dos Media, CRL for publishers of newspapers, magazines and other regular publications; AGECOP (Associação para a Gestão da Cópia Privada) for the collection and distribution of private copy levies (this Entity encompasses all the others for the purpose of sharing private copy levies. Nevertheless, the only mandatory collective management cases are the following: 1) Cable retransmission, except for broadcasters; 2) Private use reproduction; 3) performer's rights to equitable remuneration following a contract with broadcasters or audiovisual producers.
Spain (ENG)	All economic intellectual property rights can be subject to collective management through CMOs. Therefore, any right holder is free to decide if she intends to manage her rights individually or if through a CMO or, if available, an independent management operator ("IMO"). However, there is a group of rights subject to mandatory collective management, which means that they can only be managed by CMOs. It is for the legislator to decide which are those rights, based -particularly- on the impossibility or great difficulty in individually manage those rights. When a right is legally defined as subject to mandatory collective management, the consequence is that the right holder cannot manage it individually, nor can this right be managed by an IMO. With regards to the mandatory collective management, the corresponding CMO in charge carries out the management of those right holder's rights, whether those right holders are members of the CMO. At present, the Spanish legislation establishes that the following rights must be subject to mandatory collective management: (1) the right of equitable remuneration for the private copying of works distributed in the form of books or other publications that are legally declared as similar to then, as well as phonograms and videograms or other sound, visual or audiovisual media (art. 25.1 and 9 SIPA); (2) author's right of remuneration for the distribution of their works, in the form of lending, when it is carried out by certain entities such as museums, archives, libraries or similar archiving audio, video and paper publications entities which are public or that belong to non-profit entities with a general cultural, scientific or educational interest, or to educational institutions integrated in the public educational system (art. 37.2 SIPA); (3) the right of equitable remuneration to authors for the distribution, in the form of rental of phonograms or audiovisual recordings (arts. 90.2 and 7 SIPA); (4) the exclusive right to authorize the cable retransmission (art. 20.4.b) SIPA), including the exclusive right of audiovisual producers to authorize the cable retransmission of works and audiovisual recordings (arts. 88.1 and 122.1, second paragraph SIPA, as related to art. 20. b) and c) SIPA); (5) the right to a remuneration of performers for the distribution in the form of rental of phonograms or audiovisual recordings (art. 109.3 SIPA); (6) the right of remuneration of authors of audiovisual works for (i) the exhibition of those works in public places for a price, (ii) the exhibition without for free, and (iii) the wire or wireless transmission to the public by any means or procedure including, among others, the interactive making available to the public (art. 90.3, 4 and 7 SIPA); (7) the right to a sole and equitable remuneration to performers and producers of works and audiovisual recordings for certain acts of public communication (arts. 108.6 and 122.2 SIPA); (8) the right to a

Question 9 / Question 9 / Pregunta 9 Indiquez pour quels droits la gestion collective est disponible. / Indicate for which rights collective management is available. / Señale para cuáles derechos está regulada la gestión colectiva.	
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	remuneration for performers for the making available of an original or a copy of an audiovisual recording or phonogram (art. 108.3 SIPA); and (9) the right to a sole and equitable remuneration to performers and phonogram producers for the public communication, excluding the making available to the public, of a phonogram commercially published (arts. 108.4 and 116.2 and 3 SIPA).
The Netherlands	Music: public performance, reproduction, broadcasting, cable retransmission, on demand Audiovisual works: cable retransmission, public screening of TV broadcasts, public archives Literary works, illustrations, photographs, visual arts: digital reproductions for internal use within companies and institutions; digital archives; cable retransmission Statutory remuneration rights: private copying, reprography, public lending, educational materials Phonograms: public performance, broadcast, cable retransmission Screenwriters and principal directors: right to equitable remuneration for communication to the public (other than making available).
Turkey	Collective Management Organizations (CMO) are authorized to set the tariffs. CMO's may grant a license and pursuit of the rights granted by the Law and the collection and distribution of fees to the right holders. CMO's may file a civil and criminal court actions on behalf of their members.
United States	A single collective management organization that collects revenues from copyright users and distributes royalties manages statutory licenses of public performances by digital music services. Collective management organizations, which offer access to their full repositories for a flat rate, also exist for other rights on a voluntary (ie, non-statutory) basis. Two prominent organizations, ASCAP and BMI, handle non dramatic public performance rights for a large library of musical compositions. Other similar services offer access to literary works and a limited library of motion pictures. Other, transactional (ie, pay-per-work) services also collectively manage licensing for many artists, and the available rights vary based on the copyright owner's preferences and the organization's work.

Question 10 / Question 10 / Pregunta 10 En matière de gestion collective, indiquez comment et par qui les taux de redevances sont fixés. / With respect to collective management, indicate who sets the tariffs and how they are set. / En materia de gestión colectiva, señale cómo y quién determina las tarifas de regalías.	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
Argentina (ENG)	The tariffs that SADAIC receives are established by the Board of Directors of said entity - usually in accordance with the business chambers - and cover all possible uses of musical works, although in some cases they are only minimal and the final amount is defined by the owner himself. The tariffs that ARGENTORES receives are established by the Board of Directors of said entity - usually in accordance with the business chambers - although in most cases they are only minimal and the final amount is defined by the owner himself. The tariffs that DAC receives are those fixed by Resolution 61/2010 Chief of Cabinet of Ministers (Published 03/11/2010). The tariffs that AADI CAPIF receives are those set by Resolution 390/05 of the Public Communication Secretariat (Published 12/09/2005). The tariffs that SAGAI receives are those fixed by Resolution 181/08 of the Public Communication Secretariat (Published 21/04/2008).
Argentina (ESP)	Los aranceles que percibe SADAIC son establecidos por la Comisión Directiva de dicha entidad – habitualmente de conformidad con las cámaras empresarias– y cubren la totalidad de los posibles usos de obras musicales, aunque en algunos casos son sólo mínimos y el monto final lo define el propio titular. Los aranceles que percibe ARGENTORES están establecidos por la Comisión Directiva de dicha entidad – habitualmente de conformidad con las cámaras empresarias– aunque en la mayoría de los casos son sólo mínimos y el monto final lo define el propio titular. Los aranceles que percibe DAC son los fijados por la Resolución 61/2010 Jefatura Gabinete de Ministros (B.O. 11/03/10). Los aranceles que percibe AADI CAPIF son los fijados por la Resolución 390/05 de la Secretaría de Medios de Comunicación (B.O. 09/12/05). Los aranceles que percibe SAGAI son los fijados por la Resolución 181/08 de la Secretaría de Medios de Comunicación (B.O. 21/4/08).
Belgium	The answer depends on the situation. A distinction has to be made between the following situations: (a) The collective management is voluntary; (b) The collective management is compulsory, there is no fee set by the public authority; (c) The collective management is compulsory, and there is a fee set by the public authority. The first situation (a) happens, e.g., when a CMO of copyright owners authorizes an entity to communicate works to the public during a live concert. The collective management takes place on a voluntary basis. In such a situation, the CMO's may in principle decide on their own the setting of their tariffs (article XI.279 CEL). That setting of tariffs is, however, monitored by an administrative authority in charge with the supervision of the CMO's (article XI.270 CEL). Furthermore, recent case law precised that judicial authorities do have a marginal appreciation on the increases of tariffs by CMO's under the legislation concerning unfair commercial practices. The second situation (b) occurs, e.g., when a CMO authorizes cable operators to retransmit television broadcasts. The collective management is compulsory, but there is no fee fixed by the authority, and there is no binding fee setting process prescribed by law. The parties concerned, i.e. the CMO and the cable operators, have to negotiate in order to reach an agreement. The third situation (c) occurs when it comes to fix the fair compensation which is due, e.g., for private copy and reprography. The fee is set by the authority (the government) after consultation of the stakeholders.
Canada	Généralement, les tarifs sont proposés par la société de gestion à la Commission du droit d'auteur du Canada qui l'homologue après avoir entendu les représentations des parties concernées par ce tarif. Néanmoins, pour certains secteurs, et pour certains types d'utilisations, les tarifs sont négociés de gré à gré entre les utilisateurs et les sociétés de gestion collective.
Czech Republic	According to the new statutory provisions of Copyright Act the collective management organization itself sets the tariffs which become applicable and effective towards the representative association of users which is negotiating the contractual terms with the collecting society unless it doesn't object against the proposed tariff settings.
Égypte	Pas de réponse.
España (ESP)	Las entidades de gestión están obligadas a establecer tarifas generales, simples y claras que determinen la remuneración exigida por la utilización de su repertorio. Dichas tarifas generales se acompañarán de una memoria económica, cuyo contenido se determinará reglamentariamente, que proporcionará una explicación pormenorizada por modalidad tarifaria para cada categoría de usuario (artículo 164.1 LPI). Las tarifas generales deberán prever reducciones para las entidades culturales que carezcan de finalidad lucrativa (artículo 164.2 LPI). En lo que se refiere al importe de las tarifas generales, la ley exige que se establezca en condiciones

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	razonables, atendiendo al valor económico de la utilización de los derechos sobre la obra o prestación protegida en la actividad del usuario, y buscando el justo equilibrio entre ambas partes. Es preciso que, a la hora de fijar las tarifas generales, las entidades de gestión tengan al menos los siguientes criterios: (a) el grado de uso efectivo del repertorio en el conjunto de la actividad del usuario; (b) la intensidad y relevancia del uso del repertorio en el conjunto de la actividad del usuario; (c) la amplitud del repertorio de la entidad de gestión; a estos efectos, se entenderá por repertorio las obras y prestaciones cuyos derechos gestiona una entidad de gestión; (d) los ingresos económicos obtenidos por el usuario por la explotación comercial del repertorio; (e) el valor económico del servicio prestado por la entidad de gestión para hacer efectiva la aplicación de tarifas; (f) las tarifas establecidas por la entidad de gestión con otros usuarios para la misma modalidad de uso, y (g) las tarifas establecidas por entidades de gestión homólogas en otros Estados miembros de la Unión Europea para la misma modalidad de uso, siempre que existan bases homogéneas de comparación (artículo 164.3 LPI). Las entidades de gestión están obligadas a publicar en su página web de forma fácilmente accesible y mantener actualizada la información sobre las tarifas generales vigentes, junto con la memoria económica justificativa, para cada una de las modalidades de uso de su repertorio, incluidos los descuentos y las circunstancias en que deben aplicarse [artículo 185, letra e), LPI]. También tienen la obligación de notificar a la Administración las tarifas generales y sus modificaciones, junto con la memoria económica justificativa prevista en la normativa reglamentaria de desarrollo [artículo 186, letra d), LPI]. Desde el 1 de enero de 2015, en virtud de la reforma introducida en el LPI por la Ley 21/2014, de 4 de noviembre, existe un procedimiento administrativo para la determinación de las tarifas generales en determinados casos. En efecto, la Comisión de Propiedad Intelectual, a través de su Sección Primera, tiene atribuida la función de determinación de las tarifas para la explotación de los derechos de gestión colectiva obligatoria, y para los derechos de gestión colectiva voluntaria que, respecto de la misma categoría de titulares, concurran con un derecho de remuneración sobre la misma obra o prestación (artículo 194.3 LPI). Ese procedimiento de determinación de tarifas generales puede iniciarse a solicitud de la propia entidad de gestión afectada, de una asociación de usuarios, de una entidad de radiodifusión o de un usuario especialmente significativo, a juicio de la Sección, cuando no haya acuerdo entre ambas en el plazo de seis meses desde el inicio formal de la negociación. En la resolución que ponga fin al procedimiento de determinación de tarifas generales, la Sección Primera establecerá el importe de la remuneración exigida por la utilización de obras y demás prestaciones del repertorio de las entidades de gestión, la forma de pago y demás condiciones necesarias para hacer efectivos los derechos de propiedad intelectual. En la determinación de las tarifas generales, la Sección Primera observará, al menos, los criterios que se han indicado con anterioridad, establecidos en el artículo 164.3 LPI. Las decisiones de la Sección Primera se publicarán en el “Boletín Oficial del Estado” y serán aplicables a partir del día siguiente al de la publicación, con alcance general para todos los titulares y obligados, respecto de la misma modalidad de uso de obras y prestaciones e idéntico sector de usuarios.
Finland	No answer.
France	En matière de gestion collective volontaire, les modalités de calcul de la redevance sont fixées par les organismes de gestion collective, conformément à l’article L.324-6 du CPI, qui impose le recours à des critères *« objectifs, transparents et non discriminatoire* », ainsi qu’à « *une rémunération appropriée* », tenant notamment compte « *de la valeur économique des droits exploités, qu'il s'agisse de droits exclusifs ou de droits à rémunération, de la nature et de l'étendue de l'utilisation des œuvres et autres objets protégés sur lesquels portent ces droits, et de la valeur économique du service fourni par l'organisme de gestion collective* ». En matière de gestion collective obligatoire, les modalités de calcul de la redevance peuvent être fixées : 1° par les organismes de gestion collective (ex. : livres indisponibles cf. Art. L134-3 du CPI), ou par voie de convention négociée entre les organismes de gestion collective et les représentants des exploitants concernés (ex. : reprographie, exploitation des œuvres d’art plastique, graphiques ou photographiques dans le cadre de services automatisés de référencement d’images) 2° par une commission administrative (ex. : la commission copie privée prévue par l’article L311-5 du CPI et rattachée au Ministère de la Culture), 3° par décret (ex. : première part de la rémunération au titre du prêt en bibliothèque à la charge de l’Etat cf. Art. L133-3 du CPI), ou par la loi (ex. : seconde part de la rémunération au titre du prêt en bibliothèque correspondant à un pourcentage de 6% du prix public de vente hors taxes des livres achetés par les personnes gérant les bibliothèques accueillant du public, cf. Art. L133-3 du CPI).
Germany	The respective collecting society sets the tariffs (§ 38 VGG, Collecting Societies Act). Generally, the tariffs shall be calculated on the basis of the pecuniary benefits derived from the exploitation. When setting the tariffs, reasonable consideration shall be given to the share which the use of the work represents of the total utilisation and to the economic value of the services provided by the collecting society. Furthermore, the tariffs shall take into account the religious, cultural and social concerns of the users, including the concerns of the youth services (see § 39 VGG Collecting Societies Act).

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Greece	According to Article 23 (2) Law 4481/2017, CMOs shall, by decision of the Board of Directors, draw up a table of the remunerations required by the users (tariffs). In determining and applying their tariffs, CMOs must apply objective criteria, never act in an arbitrary way, nor engage in abusive discrimination. Further, CMOs and representative associations of users may enter into agreements for the determination of the remuneration payable by the user to each category of rightholders.
Hungary	The tariffs are set by the CMO-s, but in case of the registered CMOs' that exercise extended collective management they have to be approved by the Ministry of Justice. (The detailed procedure regulated in the Act XCIII of 2016 on the collective management of copyright and neighbouring rights Art. 145-156).
Israel	The CMO's themselves set the tariffs. However, a user, or an organization representing users may petition the court to set aside a tariff and to set a reasonable in its place. In setting such a tariff, the courts will consider various factors, including economic analysis, past and comparable rates, and, in certain cases, may also take note of comparable tariffs in foreign jurisdictions if such a comparison is appropriate and possible
Italy	Tariffs are set through negotiations between the interested parties, namely the CMO on one hand, and the trade association representing each category of commercial users (e.g. concert promoters; associations of radio broadcasters; HORECA; etc.), on the other hand.
Japan	In principle, a management business operator can set the tariffs on condition that it makes a previous report thereof to the Commissioner of the Agency for Cultural Affairs (Art. 13 of the Act on Management Business of Copyright and Neighboring Rights). But for some management business operators with a considerable share (ex. JASRAC), there is a specific rule about consultation and arbitration by the Agency for Cultural Affairs between users of the managed works (Art. 23 and 24 of the same Act).
Korea	First of all, Collective Management Organizations negotiate with users about the tariffs. Then, 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.
Portugal	According to Law 26/2015 of April 14, modified by Decree-Law 100/2017 of August, 23 (Law on CMOs,) the procedure of general tariffs setting is driven by means of collective negotiation between CMOs and associations which are representative of users and there is currently a provision empowering an expert committee, in case of negotiations' failure. While the negotiation is still pending, previously agreed tariffs apply, instead of those unilaterally established by CMOs. Also according to the new CMOs Law, such unilateral tariffs will be suspended during the negotiation procedure, and interim licenses shall be issued and applied, simply based on a statement made by users, according to which they will accept the final result of the negotiation or the tariffs determined by CMOs.
Spain (ENG)	CMOs must establish general, simple and clear tariffs in order to set out the remuneration due to the use of their repertoire. Together with these general tariffs, CMOs must provide an economic report -which content to be legally settled- in order to provide a detailed explanation of each tariff for each category of user (art. 164.2 SIPA). General tariffs must establish reductions for non-profit cultural organizations. Regarding the amounts of the general tariffs, they must be set out in reasonable conditions, according to the law taking into account the economic value of the use of rights as related to the works or other subject-matters protected in the activity of the user, and looking for a fair balance between the parties. CMOs must also take into account the following criteria in order to approve their general tariffs: (a) the actual use of the repertoire in the activity of the user as a whole; (b) the intensity and relevance of the use of the repertoire in the activity of the user as a whole; (c) the extent of the repertoire of the CMOs (in this context, the concept of repertoire must include works and other subject-matters whose rights are managed by the CMO at stake; (d) the income obtained by the user due to the commercial exploitation of the repertoire; (e) the economic value of the CMO's service provided to the rightholders in order to the make the tariffs effective; (f) the tariffs set out by the CMO for other users for the same kind of use; and (g) the tariffs established by CMOs of other Member States of the EU for the same kind of use, only in case there are equal basis of comparison (art. 164.3 SIPA). CMOs must publish in their website information about their current general tariffs, to be easily accessible, and updating the available information. They also shall public the economic report mentioned above for every kind of use of their repertoire, including discounts and the circumstances to apply them (art. 185.e) SIPA). Additionally, CMOs must inform the Administration about their general tariffs and their changes, and also with respect to the economic report, according to the rules to be specifically set forth in its regard (art. 186.d) SIPA). Since January 1st, 2015, as per the modification to SIPA by Act 21/2014, of November 4, there is an administrative procedure in place that can be initiated in order to set out the applicable general tariffs in some cases. In fact, the First Chamber ("FC") of the Intellectual Property Commission ("IPC") is in charge of purse such determination of tariffs for the exploitation of the rights under mandatory collective management, regarding the same category of rightsholders, as well as those subject to voluntary management that may apply to the same category of rightholders when concurrent with a remuneration right over the same work or other subject-matters (art. 194.3 SIPA). The CMO itself, user associations, broadcasting organizations or an

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	especially relevant user -at the FC's discretion- may initiate such procedure, when an agreement has not been reached between the interested parties in a six-month period of negotiations. In its decision, the FC will establish the applicable general tariffs for the use of works and other subject-matters of the CMO's repertoire, the means of payment and other conditions needed for the respect of the intellectual property rights in its resolution. In the fixing of general tariffs, the FC will take into consideration the criteria aforementioned and established in art. 164.3 SIPA. FC's resolutions will be published at the Spanish Official Gazette (Boletín Oficial del Estado) and they can be applied from the day after their publication to every rightholder and responsible party, with respect to the same kind of use of the works and other subject-matters and for the exact same category of users.
The Netherlands	Exclusive rights: CMO's set their own tariffs, subject to competition laws, specific legislation on collective management and supervision by the Supervisory Authority. CMO's and organizations of users must negotiate in good faith (Article 2l Act on Supervision on Copyright and Neighbouring rights Collective Management Organisations). Statutory remuneration rights: a) private copying, public lending: tariffs are set by a negotiating body consisting of representatives of rightholders and users and an independent chair (Article 15d, 16e Copyright Act). b) Reprography: by Royal Decree (16i Copyright Act). In practice photocopying within companies and institutions is covered by a set of industry agreements dealing also with digital uses. c) public performance and broadcasts of phonograms: by CMO Sena. d) equitable remuneration for screenwriters and principal directors (Article 45d(2) Copyright Act): industry agreement.
Turkey	CMO's are authorized to set the tariffs. Initially CMO's determine the tariffs and notify them to the Ministry and users. Users may oppose to this tariffs. In case an agreement can not be reached in the determination of the tariffs a commission formed by the Ministry shall make that determination. However the decisions of the commission are not binding. As result if an agreement is not reached between users and CMO's then CMO's may file a criminal ve civil court actions against users for any unauthorized use. Consequently the system is not well organized and not working in practice.
United States	The Copyright Royalty Board — a panel of three administrative judges who sit for five-year terms – sets the rates for statutory licenses. . Rate-setting is subject to comment from interested parties, and may be appealed, or negotiated around if both parties consent (pending approval by the Board). Two of the most prominent collective rights management organizations, ASCAP and BMI, are governed by Consent Decrees that impose licensing restrictions, which are overseen by the Department of Justice to address possible antitrust concerns. All other rates in collective management organizations are set by the individual copyright owners.

Question 11 / Question 11 / Pregunta 11 **Indiquez si les recours en matière de droit d'auteur relèvent de tribunaux spécialisés ou des tribunaux de droit commun et dans le cas d'un système mixte, veuillez préciser dans quel cas un recours est exercé devant l'un plutôt que l'autre. / 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. / Señale si las acciones en materia de derechos autorales se tramitan ante tribunales especializados o tribunales ordinarios y tratándose de un sistema mixto, precise en qué casos una acción se ejerce ante uno u otro.**	
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Argentina (ENG)	Foreign natural and legal persons can litigate in the country, as well as nationals, complying with the provisions of the respective Procedure Codes (Criminal Procedure Code and Civil and Commercial Procedure Code of the Nation). In the offenses provided for in Section 71 to 74 of the Copyright Act (11,723), the action may be initiated ex officio by the Public Prosecutor's Office. The lawsuit for damages for infringement of copyright can be deduced in a civil or commercial court and the complaint, based on Section 71 to 74 of law 11,723, in criminal court. There is no specialized court on copyright and related matters. There are also no special prosecutor's offices related to the matter. The actions on copyright issues are carried before common courts.
Argentina (ESP)	Las personas naturales y jurídicas extranjeras pueden litigar en el país, al igual que los nacionales, cumpliendo lo dispuesto por los respectivos Códigos de Procedimientos (Código Procesal Penal y Código Procesal Civil y Comercial de la Nación). En los delitos previstos en los artículos 71 a 74 de la mencionada ley N° 11.723 la acción puede iniciarse de oficio por el Ministerio Fiscal. La demanda por infracción a derechos de autor puede deducirse en sede civil o comercial y la querella, basada en los artículos 71 a 74 de la ley 11.723, en sede penal. No hay tribunal especializado en temas de derecho de autor y conexos. Tampoco hay Fiscalías especiales relativas a la materia. Las acciones en materia de derechos autorales tramitan ante tribunales ordinarios.
Belgium	The Belgian rules in judicial matters do not provide for courts specializing in copyright on a specific and exclusive basis. However, some rules have the effect of concentrating certain procedures in copyright matters in the hands of a limited number of jurisdictions. First, there is a general rule ensuring some concentration in terms of territory. According to said rule, IP-infringement cases, including copyright matters, may only be filed with five courts, namely those courts established in the five main cities. Second, special rules provide that injunction proceedings (as opposed to ordinary proceedings on the merits) in copyright matters must be filed with a specific section of the courts. Third, other rules rules provide for a similar system concerning the so-called descriptive-seizure procedure, namely the procedure seeking to obtain measures of description and seizure on an ex-parte basis. Apart from the limitations resulting from the above, the liberty for the parties to bring a case before the court of their choice is quite significant.
Canada	L'article 41.24 de la *Loi sur le droit d'auteur* institue une compétence concurrente de la Cour fédérale avec les tribunaux provinciaux pour toute procédure liée à l'application de cette loi, à l'exclusion des poursuites des infractions de nature pénale. La Commission du droit d'auteur dispose quant à elle d'une compétence pour certaines décisions économiques (dont notamment que la fixation des redevances lorsque la gestion de ce droit est confiée à une société de gestion collective) (Articles 66 et ss.) La Commission délivre également des licences lorsque le titulaire du droit d'auteur est introuvable.
Czech Republic	In procedural terms the copyright remedies are subject to action before the common or general courts within the Czech Republic and no mixed court system applies here.
Égypte	Il convient de noter que dans le contexte du processus de réforme économique destiné à libéraliser le commerce et à stimuler l'investissement, le législateur égyptien a mis en place des *Cours économiques* par la loi n° 120 du 22 mai 2008 qui constituent une première étape ayant pour objet d'instituer des juridictions quasi spécialisées en matière de propriété intellectuelle. À l'exception des litiges et des affaires qui relèvent de la compétence du Conseil d'État, les Cours économiques sont désormais compétentes de façon exclusive pour connaître les litiges et les affaires relatives à l'application du CEPI (art. 6 de la loi n° 120 de 2008). C'est ainsi que les Chambres de 1ère instance des Cours économiques sont exclusivement compétentes pour examiner les litiges et les affaires dont la valeur n'excède pas cinq millions LE, et qui découlent de l'application de treize lois dont *8° La loi sur la protection des droits de propriété intellectuelle*. En ce qui concerne les Chambres statuant en appel, elles ont une compétence exclusive pour connaître en 1er degré les litiges et les affaires prévus par l'article 6, alinéa 1er au cas où leur valeur excède cinq millions LE ou si elle est inestimable (art. 6, préc.). Par ailleurs, les Chambres de 1ère instance et d'appel sont désormais « exclusivement » compétentes pour connaître qualitativement et territorialement les affaires pénales relevant des infractions prévues par dix-sept lois parmi lesquelles on trouve : 9) le CEPI qui a été promulgué par la loi n° 82 du 2 juin 2002 sur la protection des droits de propriété intellectuelle (art. 4).

Question 11 / Question 11 / Pregunta 11 **Indiquez si les recours en matière de droit d'auteur relèvent de tribunaux spécialisés ou des tribunaux de droit commun et dans le cas d'un système mixte, veuillez préciser dans quel cas un recours est exercé devant l'un plutôt que l'autre. / 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. / Señale si las acciones en materia de derechos autorales se tramitan ante tribunales especializados o tribunales ordinarios y tratándose de un sistema mixto, precise en qué casos una acción se ejerce ante uno u otro.**	
Pays / Country / Pais	**Réponse / Answer / Respuesta**
España (ESP)	En España existen desde septiembre del año 2004 juzgados especializados en materias mercantiles dentro del orden jurisdiccional civil. Fueron creados por el artículo 2.7 de la Ley Orgánica 8/2003, de 9 de julio, que modificó la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial ("LOPJ"), para incorporar en ésta un nuevo artículo 86ter LOPJ en el que se contemplan estos nuevos juzgados especializados, de los cuales tiene que haber al menos uno en cada provincia. La implantación de los juzgados especiales de lo mercantil en la primera instancia del orden jurisdiccional civil exigía también una implantación en la segunda instancia. Para ello, una o varias secciones de las Audiencias Provinciales (Cortes de Apelación) deben asumir los asuntos propios de esta subjurisdicción mercantil. El propósito perseguido por el legislador fue el de avanzar decididamente en el proceso de especialización judicial para dar respuesta más rápida y eficaz a la complejidad de la realidad social y económica de nuestro tiempo en algunas materias señaladas, entre las que cuentan el derecho concursal, el derecho de sociedades mercantiles, el derecho de la competencia y la publicidad o el derecho de la propiedad intelectual. La denominación "mercantil" alude a la naturaleza predominantemente mercantil o comercial de las materias sometidas al conocimiento de estos juzgados y tribunales, no a una identificación plena con la legislación mercantil, resultando así que no todas las materias sobre las que se extiende su competencia son exclusivamente mercantiles, tal y como puede suceder, en particular, con los derechos de autor y de los derechos conexos regulados en el LPI. En el caso de los delitos contra la propiedad intelectual (arts. 270 a 272 CP), la competencia judicial corresponde a los Juzgados de Instrucción (artículo 87 LOPJ) y a los Juzgados de lo Penal (artículo 89bis LOPJ). Los Juzgados de instrucción instruyen las causan penales y los Juzgados de lo Penal enjuician las causas penales previamente instruidas. El artículo 195 LPI regula un procedimiento administrativo de salvaguarda de los derechos de autor y derechos conexos en el entorno digital frente a su vulneración por los responsables de servicios de la sociedad de la información, cuya competencia recae sobre la Sección Segunda de la Comisión de Propiedad Intelectual, un órgano administrativo especializado dentro del Ministerio de Cultura. Este órgano podrá adoptar medidas para que se interrumpa la prestación de un servicio de la sociedad de la información que vulnere derechos de propiedad intelectual o para retirar los contenidos que vulneren esos derechos siempre que el prestador del servicio haya causado o sea susceptible de causar un daño patrimonial. Dichas medidas podrán comprender medidas técnicas y deberes de diligencia específicos exigibles al prestador del servicio infractor, que tengan por objeto asegurar la cesación de la vulneración y evitar la reanudación de la conducta infractora. Las resoluciones de la Sección Segunda Comisión de Propiedad Intelectual ponen fin a la vía administrativa. Al final de este cuestionario, en las preguntas opcionales, se añaden algunos datos más sobre este procedimiento.
Finland	No answer.
France	Les recours en responsabilité civile des individus portant atteinte au droit d'auteur sont exclusivement portés devant les juridictions civiles spécialisées en droit de la propriété intellectuelle. Les sièges des tribunaux de grande instance compétents, au nombre de 9, ainsi que les ressorts des cours d'appel correspondants sont listés par décret (n° 2009-1205 du 9 octobre 2009). Lorsqu'une action civile, fondée sur le droit d'auteur, comporte des demandes connexes de concurrence déloyale, elle est exclusivement portée devant ces tribunaux spécialisés (article L. 331-1 alinéa 1 du CPI). Les pourvois en cassation sont portés devant la première Chambre civile, notamment spécialisée en droit de la propriété intellectuelle. Les recours en responsabilité pénale des individus commettant une infraction au droit d'auteur sont portés devant les tribunaux correctionnels. Ces tribunaux, qui constituent des formations répressives au sein des tribunaux de grande instance, ne sont pas spécialisés en droit de la propriété intellectuelle. Les individus ayant personnellement souffert d'un dommage directement causé par l'infraction peuvent engager une action civile en réparation de ce dommage, soit en même temps que l'action publique devant la juridiction répressive, soit séparément, devant la juridiction civile compétente. Dans la première hypothèse, la juridiction statuera après la déclaration de culpabilité du prévenu, sur les demandes civiles de la victime en appliquant les dispositions civiles du droit d'auteur. Dans la seconde hypothèse, la juridiction civile doit surseoir à statuer, jusqu'au prononcé définitif sur l'action publique.
Germany	All disputes concerning claims that arise from a legal relationship regulated by the German Copyright Act are to be decided by the civil courts (§ 104 UrhG). Most German federal states have concentrated the competence for copyright cases at one or only a few local and district courts with specialized judges and chambers.
Greece	Copyright remedies are within the power of specialized IP courts (placed under the jurisdiction of the existing civil courts). The judges of these specialized Courts have expertise in IP. According to Art. 3 Par. 26a of Law 2479/1997, the first instance courts of Athens, Piraeus, and Thessaloniki comprise a special division that hears copyright cases. Regular judges specialized in copyright matters are appointed to this division, which is set up in the said courts according to the procedure provided for by the law

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	on the constitution of courts' divisions in general. Appeals against the decisions of the first instance courts are tried before the Special Division of the Court of Appeal of Athens.
Hungary	Copyright cases in Hungary fall within the civil law courts' competence. There are no specialized courts. Nevertheless it is possible that the acting judge has got a special IP education. The Hungarian Board of Copyright Experts supports the judiciary. The opinions of the HBCE to be prepared upon the appointment of HBCE by the court to provide an expert opinion do not oblige the judge but they serve as a solid background of the decision. (Most of the court judgements follow the opinions of the HBCE.)
Israel	Copyright cases are heard before the general courts. There is not a specialized court. In practice, certain judges tend to specialize in copyright, or IP more generally. Cases involving injunctions are normally heard in the District (second tier) Courts. Monetary claims are heard either in the Magistrates (for claims of less than 2.5 million NIS,) and in the District Courts for claims exceeding this sum.
Italy	In the main Italian cities, there are specialized sections for proceedings related to IP and company law. Such courts have exclusive jurisdiction, both at first and second instance, also on copyright and related rights matter.
Japan	Copyright remedies are within the power of common jurisdiction. There are no specialized courts. Japanese Constitution Art. 76(2) prohibits them. But there are some special IP Divisions in some big courts in Tokyo and Osaka who have exclusive or selective jurisdictions in some Copyright cases.
Korea	No. Korea does not have any other court specialized for copyright remedies.
Portugal	There is a Specialized Court on Intellectual Property matters in Lisbon since 2011. It embraced all subjects Related to IP conflicts. It has three Sections. However, the Court of Appeals of Lisbon, which decides on appeal from the IP Court of Lisbon, and the Supreme Court of Law, which settles all legal matters, do not have any specialized sections.
Spain (ENG)	Since September 2004, specialized commercial courts exist in Spain within the civil jurisdiction, one of each of them to be created in each territorial province. They were created by art. 2.7 of the Spanish Organic Law 8/2003, of 9 July, which modified Organic Law 6/1985 of the Judicial Power ("LOPJ"), by including in the latter a new art. 86 ter. The implementation of these courts in the first instance of the civil jurisdiction also required their implementation in second instance. For that purpose, one or several sections in each Provincial Appellate Court must be in charge of the cases related to this specialized jurisdiction. The purpose of the legislator was to advance in the judicial specialization in order to provide more efficient and rapid responses to the complex social and economic reality of our time in some special matter, which include liquidations, corporate, competition, advertising and intellectual property laws. The designation of "commercial" refers to the prevailing commercial nature of the matters subject to these courts, not to a global identification to all commercial law. As a result, all matters under these courts' jurisdiction are of exclusive commercial matter, as it occurs with copyright and related rights. With regards to criminal acts of copyright infringement (arts. 270 and 272 of the Spanish Criminal Code), the responsible courts are the Courts of Instruction (art. 87 LOPJ). Instruction Courts instruct (investigate) criminal acts and the Criminal Courts decide on the criminal acts previously instructed (investigated) by those Courts of Instruction. Also, art. 195 SIPA rules a specific administrative procedure for the protection of copyright and related rights in the digital environment against their infringement by entities responsible of information society services. The Second Chamber of the IPC ("SC") is in charge of this procedure, as a specialized administrative body within the Ministry of Education and Culture. This body may adopt measures for the blocking of the provision of an information society service which may infringe copyrights or related rights or to withdraw any infringing content, provided that the service provers has caused or may have caused an economic damage. The measures to be applied may be of technical nature or diligence obligations to be required from the infringing service provider, with the aim to guarantee that the infraction ends and that it will not be reproduced. The SC's decisions end the administrative procedure and they can be judicially appealed. At the end of this questionnaire, in optional questions, some additional information with regards to this procedure is provided.
The Netherlands	Copyright remedies are within the power of general civil courts. Disputes on the level of fees payable pursuant to statutory remuneration rights for private copying, public lending, reprography and public performance of phonograms are subject to exclusive jurisdiction by the District Court of the Hague (Articles 15e, 16g Copyright Act; Article 7(3) Act on Neighbouring Rights). Supervision of CMO's by Supervisory Authority. Review of copyright fees by Dispute Resolution Board

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Turkey	In 2001 the specialized IP Civil and Criminal Courts were established. Since then the specialized courts have been handling the IP cases including copyright remedies. Currently there are approximatly 20 IP courts in Turkey. They are established in Istanbul, Ankara and Izmir. In other cities provincial courts are authorized to handle IP cases.
United States	Federal courts exercise exclusive jurisdiction over infringement claims arising under the 1976 copyright act. State courts, however, retain jurisdiction over, and state statutory or common law applies to infringement claims concerning sound recordings made prior to 1972. The US does not have specialized courts for copyright disputes; however, Congress is considering the Copyright Alternative in Small-Claims Enforcement (CASE) Act, which, if passed, would create a US Copyright Office Small Claims Board to decide certain civil copyright actions involving a relatively low amount in damages.

Nom(s) de la (des) personne(s) répondant au questionnaire /
Name of the person(s) answering the questionnaire /
Nombre de las personas respondiendo al cuestionario

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Argentina (ESP):	Alejo Barrenechea Nicolás Hermida Delia Lipszyc (colaboración)
Belgium:	Benoît Michaux Zorana Rosic Noémie Gillard Michael Lognoul
Canada :	Geneviève Barsalou, avocate Madeleine Lamothe-Samson, avocate Annie Massicotte, avocate
Czech Republic:	JUDr. Věra Popelková
Égypte :	Yasser OMAR AMINE
ESPAÑA (ESP): (orden alfabético)	Montserrat Benzal Ricardo Cabaleiro Llanos Cabedo Serna Fernando Carbajo Cascón Ramón Casas Vallès Antonio Castán Begoña González Otero Álvaro Hernández-Pinzón Juan José Marín Rafael Sánchez-Aristi Nerea Sanjuan Rodríguez
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