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Sri Lanka

INTELLECTUAL PROPERTY

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This country-specific Q&A provides an overview of intellectual property laws and regulations applicable in Sri Lanka.

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SRI LANKA

INTELLECTUAL PROPERTY



1. What different types of intellectual property rights exist to protect: (a) Inventions (e.g. patents, supplementary protection certificates, rights in trade secrets, confidential information and/or know-how); (b) Brands (e.g. trade marks, cause of action in passing off, rights to prevent unfair competition, association marks, certification marks, hallmarks, designations of origin, geographical indications, traditional speciality guarantees); (c) Other creations, technology and proprietary interests (e.g. copyright, design rights, semiconductor topography rights, plant varieties, database rights, rights in trade secrets, confidential information and/or know-how).

(a) Patent protection is available in Sri Lanka under the Intellectual Property Act, No. 36 of 2003 (as amended) (the "IP Act"). Rights in trade secrets, confidential information and know-how would be protected under the category of "undisclosed information" which is a subset of unfair competition. Supplementary protection certificates are not available in Sri Lanka.

(b) Statutory protection is provided to registered trade marks and service marks, collective marks, certification marks and geographical indications. Trade names are protected without any registration requirement. Registered and unregistered marks may also be protected under the remedies against unfair competition and passing off.

(c) The IP Act grants protection to copyright and related rights (encompassing rights of performers, producers of sound recordings and broadcasting organizations), expressions of folklore, industrial designs and layout designs of integrated circuits. Databases are protected under copyright law. Rights in trade secrets, confidential information and know-how would be protected under the category of "undisclosed information" which is a subset

of unfair competition. There is no protection for plant varieties.

2. What is the duration of each of these intellectual property rights? What procedures exist to extend the life of registered rights in appropriate circumstances?

Copyright – 70 years after the year of the author's death

Collective work (other than work of applied art), audiovisual work and work of unknown authorship – 70 years from date of first publication or making of the work

Work of applied art – 25 years from the date of making of the work

Industrial designs – Up to three five-year terms from filing date (total of 15 years)

Patents – 20 years from filing date

Registered trade marks, service marks, certification marks, collective marks and geographical indications – 10 years from filing date, subject to unlimited number of renewal terms

Layout designs – 10 years from date of first commercial exploitation or filing, whichever is earlier

3. Who is the first owner of each of these intellectual property rights and is this different for rights created in the course of employment or under a commission?

Copyright

The general rule of copyright ownership is that the author who created the work is the first owner of the economic rights, subject to the following exceptions:

- In the case of a work of joint authorship, the

co-authors will be the first owners

- In the case of a collective work, the first owner is the person who initiated and directed the creation of the work
- In the case of a work created by employees in the course of employment or pursuant to a commission, the first owner is the employer or person who commissioned the work, unless otherwise agreed
- In the case of audiovisual works, the first owner is the producer, unless otherwise agreed

Industrial designs

The ownership of an industrial design belongs to its creator or joint creators. The person who applies first to register an industrial design is deemed to be the creator of that industrial design, subject to the exceptions below:

- Where the essential elements of an industrial design have been derived from a design created by someone else, that person may apply to be recognized as the owner
- The ownership of industrial designs created by employees or pursuant to a commission belongs to the employer or person who commissioned the work, unless otherwise agreed

Patents

The right to a patent belongs to the inventor or joint inventors. The first person to file a patent application will be entitled to the patent subject to the following exceptions:

- Where the essential element of an invention claimed in a patent application or patent has been unlawfully derived from an invention invented by someone else, that person may be recognized as the owner
- The ownership of inventions invented by employees or pursuant to a commission belongs to the employer or person who commissioned the work, unless otherwise agreed

Trade marks, service marks, collective marks, certification marks and geographical indications

The first owner will be the named applicant.

Layout designs

The right to protection of a layout design belongs to the

creator or creators of that design, subject to the following exceptions:

- Where the essential elements of a layout design have been unlawfully derived from a layout design created by someone else, that person may be recognized as the owner
- The ownership of layout designs created by employees or pursuant to a commission belongs to the employer or person who commissioned the work, unless otherwise agreed

4. Which of the intellectual property rights described above are registered rights?

Industrial designs, patents, registered trade marks and service marks, collective marks, certification marks, geographical indications and layout designs are registered rights.

5. Who can apply for registration of these intellectual property rights and, briefly, what is the procedure for registration?

The first owner as defined above, their successor in title or a registered IP agent on their behalf, may apply to register an IP right. Where the applicant for a patent or layout design is not resident or does not have their principal place of business in Sri Lanka, the application should be made through an IP agent.

In brief, the procedure involves submitting an application in the prescribed form along with the relevant fee to the National Intellectual Property Office of Sri Lanka ("NIPO"). For industrial designs and trade marks there will be an internal examination stage which, if successful, will result in the application being published in the Gazette. A period for third party opposition will follow. If no opposition is received, the applicant will be issued a certificate of registration. In the case of patents, the application will be subjected to formal and substantive examination by the NIPO and if successful the patent will be granted. In the case of layout designs, the application is only subject to formal examination followed by grant.

6. How long does the registration procedure usually take?

The length of time the registration procedure may take depends on the type of IP right, whether the application faces internal refusal or third party opposition, the number of pending applications in the same class,

whether the application has been amended etc. On average, registration of an industrial design can take between one to three years. Registration of a patent application filed directly in Sri Lanka may take between three to six years. For a trade mark application the average time is between 18 months to three years if the application does not face internal refusal or third party opposition.

7. Do third parties have the right to take part in or comment on the registration process?

Third parties can oppose an application to register an industrial design by filing a notice of opposition within two months of the date the application is published in the Gazette. For trade marks, service marks, collective marks, certification marks and geographical indications the time to file a notice of opposition is three months from the publication of the application. In the case of patents, if the application is not accompanied by an international search report, a period of three months is provided prior to granting the patent for any interested party to seek a remedy from the Court. Pre-grant opposition is not available for layout designs.

8. What (if any) steps can the applicant take if registration is refused?

If an industrial design or mark application is refused at the internal examination stage, the applicant may make submissions against such refusal to the Director-General of the NIPO (the "Director-General") within a period of one month. In the case of an application to register a geographical indication, the relevant time is three months. If the Director-General maintains the refusal, the applicant may prefer an appeal to the Commercial High Court (the "Court"). If a third party files a notice of opposition to an industrial design, trade mark or geographical indication application, the Director-General will hold an inquiry and decide whether or not to grant registration. The Director-General's decision is subject to an appeal to the Court. A decision refusing to register a patent or layout design may also be appealed to the Court.

9. What are the current application and renewal fees for each of these intellectual property rights?

The current application and renewal fees (inclusive of VAT at 15%) are given below:

Type of IPR	Application fee	Renewal fee
Industrial design - Students - Individuals - Others	Rs. 661.25 Rs. 991.88 Rs. 1,322.50	Rs. 2,645/- (1st renewal), Rs. 5,290/- (2nd renewal) As above As above
Patent - Students - Individuals - Others	Rs. 1,322.50 Rs. 3,306.25 Rs. 7,935/-	Rs. 1,983.75 to Rs. 9,918.75 Rs. 3,967.50 to Rs. 26,450/- Rs. 5,290/- to Rs. 46,287.50
Trade mark or service mark - Individuals - Others	Rs. 1,322.50 Rs. 3,967.50	Rs. 3,967.50 Rs. 5,290/-
Certification mark or Collective mark	Rs. 6,612.50	Rs. 6,612.50
Layout design	Rs. 3,967.50	n/a
Geographical indication	Not prescribed	Not prescribed

10. What are the consequences of a failure to pay any renewal fees and what (if any) steps can be taken to remedy a failure to pay renewal fees?

A grace period of six months from the expiry of the relevant term is available to renew, or extend the term of, a registered industrial design, patent or mark. Such renewal is subject to payment of a surcharge. Where the renewal fee has not been paid by the end of the grace period, the registration will be removed from the register. There is no remedy against such removal.

11. What are the requirements to assign ownership of each of the intellectual property rights described above?

A copyright assignment and an assignment of any registered IPR should be in writing and signed by the assignor and assignee.

In the case of assignment of a trade mark or service mark, it is provided that such assignment shall be invalid if the purpose or effect thereof is to mislead the public, in particular in respect of the nature, source, manufacturing process, characteristics or suitability for their purpose of the goods or services to which the mark is applied.

A trade name may be assigned together with the assignment of the enterprise or part of the enterprise identified by that name. Such an assignment should be in writing and signed by the assignor and assignee.

12. Is there a requirement to register an assignment of any of these intellectual property rights and, if so, what is the consequence of failing to register?

There is no system in place to register copyright assignments. For the other registered IPRs, it is not mandatory to record an assignment in the relevant register. However, it is provided that an assignment shall not have effect against third parties unless it has been so recorded.

13. What are the requirements to licence a third party to use each of the intellectual property rights described above?

Copyright licenses and licenses of any registered IPR should be in writing and signed by the licensor and licensee.

14. Is there a requirement to register a licence of any of these intellectual property rights and, if so, what is the consequence of failing to register?

There is no system in place to register copyright licenses. For the other registered IPRs, it is not mandatory to record a license in the relevant register. However, it is provided that a license shall not have effect against third parties unless it has been so recorded.

15. Are exclusive and non-exclusive licensees given different rights in respect of the enforcement of the licensed IP, and if so, how do those rights differ?

Exclusive and non-exclusive licensees are not given different rights in respect of the enforcement of the licensed IP. In the first instance, either may request the licensor to apply to the Court for an injunction to restrain an act of infringement or threatened infringement. If the licensor fails to initiate action within three months of such request, or if immediate action is necessary to avoid substantial damage, the licensee may apply for an injunction in their own name with notice to the licensor.

16. Are there criminal sanctions for infringement of any intellectual property rights, and if so, what are they and how

are they invoked?

Criminal sanctions are provided for the following acts under copyright law:

- Willful infringement of any of the exclusive rights of copyright
- Dealing in infringing copies
- Manufacturing or dealing in devices intended to circumvent technological protection measures
- Making use of an infringing computer program for commercial gain

The following criminal offences apply in relation to the other categories of IPR:

- Willful infringement of any of the exclusive rights in an industrial design, patent, mark, geographical indication or layout design
- Willful disclosure of undisclosed information
- Forging a mark
- Making or dealing in any instrument used for the purpose of forging a mark
- Dealing in counterfeit trade mark goods

Criminal sanctions are invoked by making a complaint to the police. The police are authorized to investigate into IP offences and file prosecutions against the perpetrators in the Magistrate's Courts. Alternatively, the right holder may file a private prosecution in the Magistrate's Court in respect of an IP violation.

17. What other enforcement options are available for each of the intellectual property rights described above? For example, civil court proceedings, intellectual property office proceedings, administrative proceedings, alternative dispute resolution.

Civil court proceedings, intellectual property office proceedings and administrative proceedings are available as alternatives to criminal sanctions for IP infringement.

Civil court proceedings are the most popular and favoured remedy for IP infringement. All civil IP proceedings are brought before a specialist court, the Commercial High Court of Colombo, which has exclusive jurisdiction in relation to IP matters.

IP office proceedings are available for the resolution of disputes involving copyright and related rights. The process is initiated by the aggrieved party submitting a

request in the prescribed form to the Director-General of NIPO. The Director-General will conduct an inquiry and make a decision which is binding on the parties, subject to a right of appeal to the Court.

Administrative proceedings for IP infringement are available under the Customs Ordinance. These are described in the answer to question 20.

18. What is the length and cost of such procedures?

The length and cost of the available procedures vary widely depending on factors such as the complexity of the dispute, the backlog of cases and whether the parties settle at an early stage. In general, an application to the Court for an interim injunction may take between six months to a year while a full trial may take between three to six years.

19. Where court action is available, please provide details of which court(s) have jurisdiction, how to start proceedings, the basics of the procedure, the time to trial, the format of the trial, the time to judgment and award of relief and whether any appeal is available.

The Commercial High Court of Colombo (the "Court") has exclusive jurisdiction to hear civil IP disputes. The procedure applicable to IP cases is regular procedure (as opposed to summary procedure). Proceedings are commenced by filing a plaint in the Court. After the defendant has been served with summons the defendant files an answer to the plaint. If the answer contains a claim in reconvention against the plaintiff, the plaintiff has the right to file a replication. This concludes the pleadings stage and the case is then fixed for pre-trial hearing (the procedure would be slightly different if the plaintiff has sought interim relief in their plaint).

At the pre-trial hearing the judge may attempt to bring about a settlement between the parties. If there is no settlement, the admissions and issues will be settled and the case will be fixed for trial.

At the trial, the plaintiff will usually go first by calling their witnesses and producing their documents, followed by the defendant. Once the defendant has closed their case the parties will be permitted to file written submissions and the Court will reserve its judgment. The judgment will be pronounced in open court and a decree will be entered according to the judgment. A party who is aggrieved by the Court's judgment has a right of

appeal to the Supreme Court, which is the apex court. The party who succeeded in the trial (judgment creditor) may make an application to the Court to execute the decree pending appeal. The Court will hold a separate inquiry and decide whether to grant or stay execution. As indicated in the answer to the previous question, it is not possible to provide time scales for the various stages. In general, a full trial may take between three to six years from filing plaint to final judgment, with a further possible three to six years in appeal.

20. What customs procedures are available to stop the import and/or export of infringing goods?

The importation and exportation of counterfeit trade mark goods, pirated copyright goods or any other goods that contravene the IP Act are prohibited by the Customs Ordinance. A right holder who has reason to believe that such goods are being imported to Sri Lanka may make a written request to the Director-General of Customs to suspend the release of such goods. If the Director-General is satisfied that the right holder has made out a prima facie case of infringement, he may suspend the release of the goods in question for up to 10 days. During that time the right holder will have to obtain an order from a competent court preventing the release of the goods. If a court order is not produced within 10 days the Director-General will release the goods to the importer.

21. Are any non-court enforcement options or dispute resolution mechanisms mandatory in respect of intellectual property disputes in any circumstances? If so, please provide details.

A party may invoke IP office proceedings to resolve a dispute involving copyright or related rights. Please see the answer to question 17 for more details.

The law does not provide for any other mandatory non-court enforcement options or dispute resolution mechanisms in respect of IP disputes.

22. What options are available to settle intellectual property disputes in your jurisdiction?

Intellectual property disputes can be settled at any time, whether before, during or after a trial or appeal. When a trial or appeal is pending, the settlement may take the form of an out-of-court settlement or one that is

recorded as a decree of the court. In the latter case, the court's enforcement powers can be invoked if a party fails to comply with the terms of the settlement.

23. What is required to establish infringement of each of the intellectual property rights described above? What evidence is necessary in this context?

Under the Civil Procedure Code, a plaintiff should disclose a cause of action against the defendant or defendants. Where the cause of action is a violation of an IPR, the plaintiff should clearly describe the exclusive right(s) alleged to have been infringed, and the circumstances under which the infringement took place. In addition, the plaintiff will have to prove that the IPR is valid and in force and that the plaintiff has standing to sue. The burden of proof is on the plaintiff and the standard of proof in civil proceedings is on a balance of probability. However, in certain situations the burden of proof may be reversed. For example, in an action brought against violation of a process patent, the burden is on the defendant to prove that an alleged infringing product was not obtained from the patented process if the product is a new product. In addition, if the defendant pleads one of the defences to infringement the burden of establishing the facts constituting the defence is on the defendant.

The evidence necessary to establish an infringement of IPR will depend on the circumstances and may encompass oral, documentary and/or expert evidence.

24. How does the court acquire any necessary information (fact or technical) and in what circumstances does it do so? In particular a) Is there a technical judge, a judge with technical experience, a court appointed expert, an expert agreed by the parties, and/or parties' expert witness evidence? b) What mechanisms are available for compelling the obtaining and protecting of evidence? Is disclosure or discovery available?

The Sri Lankan legal system follows the adversarial model where the parties are responsible for presenting evidence in support of their respective cases. Accordingly, any factual or expert evidence would normally be presented by the parties. Exceptionally, at the pre-trial hearing the judge may, after consultation with the parties, appoint an independent court expert to inquire and report on any question of fact or opinion. A

court expert is someone specially skilled or knowledgeable in any subject, field or discipline.

The judges of the Commercial High Court do not necessarily have previous training in IP but they acquire "on-the-job" specialization and training upon being appointed to the Court. Limited pre-trial disclosure and discovery is available under the Civil Procedure Code. In addition, the IP Act provides for Norwich Pharmacal orders to be made, subject to safeguards to protect confidential information.

25. How is information and evidence submitted to the court scrutinised? For example, is cross-examination available and if so, how frequently is it employed in practice?

Cross-examination is the principal method of testing the veracity of evidence in a court of law in Sri Lanka. Cross-examination is available as of right and is invariably employed in practice, except perhaps in the case of non-contentious witnesses. Where the genuineness or authenticity of a signature or document is in issue, the matter may be referred to the Government Examiner of Questioned Documents or other expert for report. Such an expert would also be liable to be cross-examined at the instance of an affected party.

26. What defences to infringement are available?

The following acts in relation to a work shall not constitute copyright infringement (further conditions and limitations apply):

- Fair use for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research
- Private reproduction of a single copy of a published work for exclusive personal use
- Quotation of a short part of a published work
- Reproduction of a short part of a published work for teaching purposes
- Reprographic reproduction of published articles, other short works or short extracts of works for face-to-face teaching in any educational institution which is not run on a commercial basis
- Reprographic reproduction of a single copy of a work by a library or archives which is not run on a commercial basis
- Reproduction of an article or broadcast on

- current economic, political or religious topics
- Incidental reproduction of short excerpts of a work in the course of reporting current events
- Reproduction of a political speech, lecture, address, sermon or other work of a similar nature for the purpose of providing current information
- Reproduction in a single copy or the adaptation of a computer program by the lawful owner of a copy of that computer program for purposes of backup or interoperability
- Importation of a copy of a work by a physical person for their own personal purposes
- Public display of originals or copies of works whose title has passed to a third party
- Adaptation, reproduction or issue of copies of any work in an accessible format for the benefit persons who are blind, visually impaired or otherwise unable to read a book due to a physical disability

The following shall not constitute infringement of an industrial design:

Non-industrial non-commercial use

Acts in respect of a product embodying the registered industrial design that has been lawfully manufactured, imported, offered for sale, sold, used or stocked in Sri Lanka

The following shall not constitute patent infringement:

- Non-industrial non-commercial use
- Prior manufacture or use
- Presence or use of products on foreign vessels, aircraft, spacecraft or land vehicles which temporarily or accidentally enter the waters, airspace or territory of Sri Lanka
- Acts in respect of articles which have been put in the market by the patent owner or a licensee
- Acts authorized by a compulsory license

The following shall not constitute trade mark infringement:

- Using a party's bona fide name, address, pseudonyms, a geographical name or exact indications concerning the kind, quality, quantity, destination, value, place of origin or time of production or of supply of their goods and services, so long as such use is for purely descriptive purposes and does not mislead the public as to trade origin
- Using the mark in relation to goods lawfully

manufactured, imported, offered for sale, sold, used or stocked in Sri Lanka under that mark, provided that such goods have not undergone any change

The following shall not constitute infringement of a layout design:

- Reproduction of the protected layout design for the purpose of evaluation, analysis, research or non-profit teaching or education
- Incorporation in an integrated circuit of a layout design created on the basis of such analysis, evaluation or research referred to above, if such layout design is itself original
- Acts done in respect of a protected layout design or an integrated circuit in which such layout design is incorporated, which has been put on the market by or with the consent of the right holder
- Acts done in respect of an integrated circuit incorporating an unlawfully reproduced layout design or any article incorporating such an integrated circuit, where the person performing or ordering the act did not know, and had no reasonable grounds of knowing, that it incorporated an unlawfully reproduced layout design
- Acts done in respect of any layout design which has been commercially exploited in or outside Sri Lanka for more than two years prior to the commencement of the IP Act

In addition to the above affirmative defences, the defendant may countersue the plaintiff for a declaration of nullity of the relevant IPR. This is described in the following answers.

27. Who can challenge each of the intellectual property rights described above?

Any person having a "legitimate interest", or any competent authority including the Director-General of the NIPO, may apply to the Court for a declaration that the registration of an industrial design, patent or mark is null and void. In addition, the defendant in an IP infringement case may countersue the plaintiff for a declaration that the registration of an industrial design, patent, mark or any other registration provided for under the IP Act, or any part of it, is null and void.

28. When may a challenge to these

intellectual property rights be made (e.g. during any registration process or at any time during the subsistence of the right)?

Please see the answers to questions 7 and 27 above.

29. Briefly, what is the forum and the procedure for challenging each of these intellectual property rights and what are the grounds for a finding of invalidity of each of these intellectual property rights?

Pre-grant challenge proceedings take place before the Director-General of the NIPO as explained in the answer to question 7. After grant, any challenge must take place in the Court.

The procedure in the IP office involves filing a notice of opposition within the prescribed time along with the prescribed fee. The notice of opposition should state the grounds on which registration is opposed and be accompanied by evidence to substantiate such grounds. The NIPO will serve the notice of opposition on the applicant and call on the applicant to submit their written observations and supporting evidence. Thereafter a hearing will be held and the Director-General will decide whether or not to grant the registration.

Actions for a declaration of nullity should be filed in the Commercial High Court of Colombo. The registered owner and every assignee, licensee and sub-licensee on record should be made a defendant. The case will follow the regular procedure outlined in the answer to question 19 above.

The grounds of nullity of an industrial design are:

- Lack of novelty
- It consists of a scandalous design or is contrary to morality, public order or public interest or is likely to offend the religious or racial susceptibilities of any community
- It consists of a design which serves solely to obtain a technical result
- Prior registration of an identical industrial design
- The essential elements of the design have been unlawfully derived from someone else's creation

The grounds of nullity of a patent are:

- Subject matter is not an "invention" according to the definition in the IP Act

- Subject matter belongs to the category of inventions that are excluded from being granted a patent under the IP Act
- Where it is necessary to prevent commercial exploitation of the claimed invention to protect public order and morality, including protection of human, animal or plant life or health or to avoid serious prejudice to the environment
- Lack of novelty, inventive step or industrial applicability
- Lack of enabling disclosure
- The claim or claims are not clear, concise and supported by the description
- Any drawings required for the understanding of the claimed invention have not been furnished
- The right to the patent belongs to someone else

A mark may be annulled for non-compliance with any of the absolute or relative grounds of refusal of registration. However, grounds of nullity which do not exist on the date of the application to Court are not taken into account. A collective mark or certification mark may additionally be annulled if the application is not accompanied by a copy of conditions governing the use of such mark which comply with the requirements of the IP Act.

30. Are there any other methods to remove or limit the effect of any of the intellectual property rights described above, for example, declaratory relief or licences of right?

Any person having a "legitimate interest", or any competent authority including the Director-General of the NIPO, may apply to the Court to remove a mark from the register on the ground of non-use for a period of five years or if the mark has become generic. The registered owner and every assignee, licensee and sub-licensee on record should be made a defendant to the action.

A collective mark may also be removed if it has been used in a manner that misleads the public into thinking that the mark has state patronage, or if the owner has failed to secure observance of the conditions governing use of the mark, or if those conditions have been amended so that they no longer comply with the requirements of the IP Act or are contrary to morality or public policy.

A certification mark may also be removed if the owner of the mark has commenced a business involving the

supply of goods or services of the kind certified, or the mark has been used in a manner that misleads the public as to the character or significance of the mark, or if the owner has failed to secure observance of the conditions governing use of the mark or is no longer competent to certify the goods or services for which the mark is registered, or if the conditions governing use of the mark have been amended so that they no longer comply with the requirements of the IP Act or are contrary to morality or public policy.

Any person, body of persons, government department or statutory body may make an application to the Director-General of the NIPO to obtain a compulsory license to exploit a patent. The Director-General may issue such a license if satisfied that the applicant has made efforts to obtain approval from the right holder on reasonable commercial terms and that such efforts have not been successful within a reasonable period of time, or that a national emergency or any other circumstances of extreme urgency exist or in the case of public non-commercial use for purposes such as national security, nutrition, health or for the development of any other vital section of the national economy. The Director-General may also grant a compulsory license where a judicial or administrative body has determined that the manner of exploitation of a patent by its owner or licensee is anti-competitive, and the Director-General is satisfied that the grant of a compulsory license would remedy such practice.

31. What remedies (both interim and final) are available for infringement of each of the intellectual property rights described above?

The following final civil remedies are available for infringement of IPR:

- Injunction
- Damages
- Statutory damages as an alternative to proved actual damages
- Impounding infringing copies, their packaging and implements used to make them (for violations of copyright and related rights)
- Legal costs
- Account of profit
- Destruction or disposal outside the channels of commerce of infringing copies or goods and/or implements used to commit infringement

The following interim civil remedies are available for all categories of IPR infringement:

- Interim injunction
- Ex parte enjoining order
- Sequestration

The following criminal sanctions may be imposed for offences relating to IPR:

- Term of imprisonment of up to six months (or for forgery of a mark up to 2 years)
- Fine of up to Rs. 500,000
- In the case of a second or subsequent conviction, the term of imprisonment and/or fine may be doubled
- Destruction or delivery up to the right holder of infringing copies and of plates or implements used to make infringing copies (for infringement of copyright)
- Destruction or forfeiture to the State of chattels, articles, instruments or things used to forge a mark

32. What are the costs of enforcement proceedings and is any kind of costs recovery available for successful parties? Is there a procedural mechanism enabling or requiring security for costs?

As stated in the answer to question 18, cost varies widely depending on factors such as the complexity of the dispute, the backlog of cases and whether the parties settle at an early stage. The successful party is in principle entitled to their costs in proceedings before the Director-General and the Court. However, the amount of costs that may be recovered is usually lower than the actual costs. Under the Civil Procedure Code, a defendant in a civil action may seek an order against the plaintiff for security for costs if either the plaintiff or the defendant is not resident in Sri Lanka. There is no provision for a plaintiff to seek an order for security for costs against a defendant. Additionally, the Court may order the applicant to provide security when granting any interim relief.

33. The Unified Patent Court ("UPC") [came into] [will come into] existence in certain European states on 1 June 2023, as did the introduction of European patents with unitary effect ("unitary patents"). Have industry-specific trends developed in your country in terms of the number of patent applicants seeking unitary patent protection and/or enforcing European

patents or unitary patents before the UPC?

Sri Lanka is not within the Unified Patent Court or Unitary patent system.

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