

LAW 3966/24.05.2011 (GG 118 A')

LAW 3966 (GG 118 A', 24.05.2011) "Institutional framework of Model Pilot Schools, Establishment of an Institute of Educational Policy, Organisation of the Institute of Computer Technology and Publications 'DIOFANTOS' and other provisions"

THE PRESIDENT OF THE HELLENIC REPUBLIC

Hereby issues the following law that was adopted by the Hellenic Parliament:

CHAPTER D'
MATTERS RELATING TO INDUSTRIAL PROPERTY

Article 53

Harmonisation of the national law with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights

1. Paragraph 1 of article 17 of Hellenic Law 1733/1987 (published in Hellenic Government Gazette A' 171) is replaced as follows:

"1. In any case of an infringement or threatened infringement of a copyright, the holder of such copyright (rightholder) may request the lifting of the infringement and its omission in the future. The lifting of the infringement may include, on application by the rightholder, indicatively and not restrictively, (a) the recall of the goods that were found to be infringing a right provided for under the present law and, as in appropriate cases, materials principally used in the creation or manufacture of these goods from the channels of commerce, (b) the definitive removal of these goods and materials from the channels of commerce or (c) the destruction of these goods and materials in accordance with paragraph 5. In considering the application of the previous clause, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account. The measures provided for under the second clause are carried out at the expense of the infringer, unless particular reasons are invoked for not doing so. The rightholder may also exercise the rights provided for under the first clause of the present paragraph against intermediaries whose services are used by a third party to infringe the rights provided for under the present law (articles 10 and 11 of Directive 2004/48/EC). For each act of omission contributing to an infringement, the court may impose a monetary penalty of up to ten thousand (10,000.00) Euros in favour of the rightholder, while in all other cases article 947 of the Hellenic Code of Civil Procedure shall apply. In establishing the infringement of the obligation not to act provided for under the preceding clause, the procedure provided for under articles 686 et seq. of the Hellenic Code of Civil Procedure is

applied.”

2. Articles 17A, 17B, 7C, 17D, 17E, 17F, and 17G are added after article 17 of Hellenic Law 1733/1987 (published in Hellenic Government Gazette A' 171) as follows:

“Article 17A (Articles 6 and 8 of Directive 2004/48/EC)
Evidence and right of information

1. When a party has presented reasonably available evidence sufficient to support its claims of infringement or threat of infringement of the rights provided for under this law, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the court may order, on application by the party, that such evidence be presented by the opposing party. The existence of a substantial number of copies, the other circumstances of the case having been considered, shall be considered to constitute reasonable evidence. If a party is summoned to produce the evidence provided for under the first clause and unjustifiably fails to produce such evidence, the claims of the party that sought the production or communication of such evidence shall be considered as confessed.

2. Under the conditions provided for under the first clause of the previous paragraph, in the case of infringement committed on a commercial scale, the court may also order, on application by a party, the notification of banking, financial or commercial documents in the control of the opposing party. The existence of a substantial number of copies, the other circumstances of the case having been considered, shall be considered to constitute reasonable evidence of an infringement on a commercial scale. If a party is summoned to produce the documents provided for under the first clause and unjustifiably fails to produce such evidence, the claims of the party that sought the production or communication of such evidence shall be considered as confessed.

3. In any case, the court shall ensure the protection of confidential information.

4. In response to a justified request of the party, considered by the court as to its proportionality, which is filed with the action or and on its own within the context of a case concerning an infringement of rights provided for under the present law, the president of the multi-member court or the judge of the single-member court, trying pursuant to the proceedings provided for under articles 686 et seq. of the Hellenic Code of Civil Procedure, may, prior to the hearing of the case, order that information on the origin and distribution networks of the goods or services which infringe a right provided for under this law be provided by the infringer. The same may be ordered against any other person who (a) was found in possession of the infringing goods on a commercial scale, (b) was found to be using the infringing services on a commercial scale, (c) was found to be providing on a commercial scale services used in infringing a right or (d) was indicated by the person

referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services. Any party that unjustifiably violates an order of the court as provided for under the present paragraph shall be sentenced to pay, in addition to the legal costs, a monetary penalty of up to one hundred thousand (100,000.00) Euros, which shall be deposited in a public fund.

5. The information referred to in paragraph 4 shall, as appropriate, comprise (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers, (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

6. Paragraphs 4 and 5 shall apply without prejudice to other provisions which (a) grant the rightholder rights to receive fuller information, (b) govern the use in civil or criminal proceedings of the information communicated pursuant to paragraphs 2 and 3 of this article, (c) govern responsibility for misuse of the right of information, or (d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 4 to admit to his/her own participation or that of his/her close relatives in an infringement of rights provided for under this law or (e) govern the protection of confidentiality of information sources or the processing of personal data.

7. If the party responsible to provide information provides inaccurate information intentionally or with negligence, he/she is liable for damages that were caused for this reason.

Article 17B

(Articles 7 and 9 of Directive 2004/48/EC)

Precautionary evidence and other injunction measures

1. In case of alleged infringement of a right protected under this law, the Single-Member Court of First Instance shall order, as an injunction measure, the precautionary seizure of items in the possession of the alleged infringer that constitute means of commitment or product or evidence of the infringement. Instead of precautionary seizure, the court may order the detailed description of such items, including the taking of photographs. In cases provided for under the present paragraph, paragraph 1 of article 687 of the Hellenic Code of Civil Procedure shall be applied and, as appropriate, a provisional order shall be issued pursuant to paragraph 2 of article 691 of the Hellenic Code of Civil Procedure.

2. The court may issue against the alleged infringer injunction measures intended to prevent any imminent infringement of the rights provided for under this law or to forbid, on a provisional basis and subject, where appropriate, to a penalty

payment provided for under article 947 of the Hellenic Code of Civil Procedure the continuation of the infringement, for each infringement or continuation of the infringements of such rights. In ascertaining that the conditions for the activation of the obligation to pay a monetary penalty have been met, pursuant to the injunction measure ordered or the relative provision of paragraph 2 of article 691 of the Hellenic Code of Civil Procedure, the procedure provided for by articles 686 et seq. of the Hellenic Code of Civil Procedure shall apply. The court may make such continuation subject to the lodging of guarantees intended to ensure the compensation of the rightholder. The court may also order the precautionary seizure or judicial sequestration of the goods suspected of infringing rights provided for under this law so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an infringement committed on a commercial scale, the court may order, as an injunction measure, the precautionary seizure of the property of the alleged infringer, including the blocking of his bank accounts. To that end, the court may order any holder of such relevant information to communicate bank, financial or commercial documents, or ensure appropriate access to the relevant information.

4. The decision on the injunction measures referred to in paragraphs 2 and 3 may, in appropriate cases, be taken without the defendant having been heard as provided for under paragraph 1 of article 687 of the Hellenic Code of Civil Procedure, in particular where any delay would cause irreparable harm to the rightholder. In that event, the decision or the order of the court is not notified to the defendant before or during its enforcement, it shall be notified on the first business day following the enforcement, otherwise, any relevant procedural acts shall be null and void.

5. In the cases of paragraphs 1, 2 and 3, the court may make the measures subject to the lodging by the applicant of a security determined in the decision or provisional order or/and without a security and shall specify a time limit for the lodging of the action for the main case as provided for under paragraph 1 of article 693 of the Hellenic Code of Civil Procedure, which cannot exceed thirty (30) days. If no action is lodged within said time limit, the injunction measure shall be lifted ipso jure.

6. The court shall order injunction measures or precautionary evidence without needing to specify the evidence proving the infringement or threat of infringement, only to determine such evidence on a category basis.

7. In respect of paragraphs 1 to 6, the court shall have the authority to require the applicant to provide any reasonably available evidence in order to conclude, on the basis of sufficient information, that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.

8. Where the injunction measures provided for under this article are revoked 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 the rights provided for under this law, the court may order the applicant, if he acted abusively, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

Article 17C

(Article 12 of Directive 2004/48/EC)

Alternative measures

On application by the person liable to be subject to the measures provided for under articles 17A and 17B, the court may order pecuniary compensation to be paid to the injured party instead of applying the aforementioned measures if that person acted unintentionally or without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article 17D

(Articles 13, 14 and 15 of Directive 2004/48/EC)

Damages, legal costs and publication of judicial decisions

1. On application by the injured party, the court may order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the rightholder damages appropriate to the actual prejudice suffered by him as a result of the infringement of his right. In setting the compensation the court (a) shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the rightholder by the infringement, or (b) as an alternative to clause (a), may, in appropriate cases, set the compensation 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 infringed right.

2. In the cases provided for under the present law, the general legal costs and expenses shall mandatorily include any other relative expenditure reasonably incurred by the successful party, such as witness costs, attorney fees, fees of the experts and technical consultants of the parties and expenses for finding the infringers. In all other cases, the provisions set forth in articles 173 et seq. of the Hellenic Code of Civil Procedure shall apply.

3. The court, on application by the party, may allow it to publish all or part of the decision concerning rights protected under the present law in the media or on the internet at the expense of the unsuccessful party.

Article 17E

(Articles 17 and 19 of Directive 2004/48/EC)

Codes of conduct and Exchange of information

1. The interested trade or professional associations develop codes of conduct aimed at contributing on a national, Community or international level towards the enforcement of the rights provided for under the present law. The codes of conduct and any evaluations of the application of these codes of conduct are submitted to the Commission of the European Union.

2. The Industrial Property Organisation is designated the national correspondent for any question relating to the rights provided for under the present law.

Article 17F

(Article 4 of Directive 2004/48/EC)

Persons entitled to apply for the application of measures

The application of the measures provided for under paragraph 1 of article 17 and articles 17A, 17B, 17C, 17D and 17E may also be sought by:

(a) all other persons authorised to use those rights, in particular licensees, in accordance with the provisions in force.

(b) professional defence bodies that are regularly recognised as having a right to represent holders of intellectual property rights, in accordance with the provisions in force.

Article 17G

Application on other industrial property rights

Paragraph 1 of article 17 and articles 17A, 17B, 17C, 17D, 17E and 17F also apply to the protection of holders of an entitlement to a supplementary protection certificate for medicinal products and supplementary protection certificate for plant protection products, holders of statements of extension of the force of a supplementary protection certificate for paediatric medicines and holders of entitlements to plant varieties, designations of origin and geographical indications.”

3. Paragraph 1 of article 17 of Hellenic Presidential Decree 45/1991 (published in Hellenic Government Gazette A' 24) is replaced as follows:

“1. In any case of an infringement or threatened infringement of exclusive rights that emanate from a protected topography, the holder of such topography (rightholder) may request the lifting of the infringement and its omission in the future. The lifting of the infringement may include, on application by the rightholder, indicatively and not restrictively, (a) the recall of the goods that were found to be infringing a right provided for under the present decree and, as in appropriate cases, materials principally used in the creation or manufacture of

these goods from the channels of commerce, (b) the definitive removal of these goods and materials from the channels of commerce or (c) the destruction of these goods and materials. In considering the application of the previous clause, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account. The measures provided for under the second clause are carried out at the expense of the infringer, unless particular reasons are invoked for not doing so. The rightholder may also exercise the rights provided for under the first clause of the present paragraph against intermediaries whose services are used by a third party to infringe the rights provided for under the present law (articles 10 and 11 of Directive 2004/48/EC). For each act of omission contributing to an infringement, the court may impose a monetary penalty of up to ten thousand (10,000.00) Euros in favour of the rightholder, while in all other cases article 947 of the Hellenic Code of Civil Procedure shall apply. In establishing the infringement of the obligation not to act provided for under the preceding clause, the procedure provided for under articles 686 et seq. of the Hellenic Code of Civil Procedure is applied.”

4. Paragraph 3 of article 17 of Hellenic Presidential Decree 45/1991 (published in Hellenic Government Gazette A' 24) is replaced as follows: “The provisions set forth in paragraphs 3, 4, 5, 6 and 7 of article 17 of Hellenic Law 1733/1987, as well as those set forth in articles 17A to 17F of the same law, are accordingly applied.”

5. Paragraph 1 of article 28 of Hellenic Presidential Decree 259/1997 (published in Hellenic Government Gazette A' 185) is replaced as follows:

“1. In any case of an infringement or threatened infringement of a registered design or specimen, the holder of such design or specimen (rightholder) may request the lifting of the infringement and its omission in the future. The lifting of the infringement may include, on application by the rightholder, indicatively and not restrictively, (a) the recall of the goods that were found to be infringing a right provided for under the present law and, as in appropriate cases, materials principally used in the creation or manufacture of these goods from the channels of commerce, (b) the definitive removal of these goods and materials from the channels of commerce or (c) the destruction of these goods and materials. In considering the application of the previous clause, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account. The measures provided for under the second clause are carried out at the expense of the infringer, unless particular reasons are invoked for not doing so. The rightholder may also exercise the rights provided for under the first clause of the present paragraph against intermediaries whose services are used by a third party to infringe the rights provided for under the present law (articles 10 and 11 of Directive 2004/48/EC). For each act of omission contributing to an infringement, the court may impose a monetary penalty of up to ten thousand (10,000.00)

Euros in favour of the rightholder, while in all other cases article 947 of the Hellenic Code of Civil Procedure shall apply. In establishing the infringement of the obligation not to act provided for under the preceding clause, the procedure provided for under articles 686 et seq. of the Hellenic Code of Civil Procedure is applied.”

6. Paragraph 2 of article 28 of Hellenic Presidential Decree 259/1997 (published in Hellenic Government Gazette A' 185) is replaced as follows: “The provisions set forth in paragraphs 2, 3, 4, 5, 6 and 7 of article 17 of Hellenic Law 1733/1987, as well as those set forth in articles 17A to 17F of the same law, are accordingly applied.”

7. a) In cases pending at the time the present law enters into force, the procedural acts that have not been carried out are carried out in accordance with the provisions of that law. b) The duration of the deadlines that had begun prior to the entry into force of this law is estimated in accordance with the provisions set forth in that law only if the stipulated duration of those deadlines is greater than that provided for under the provisions that were in force.

Article 61

Entry into force

1. Article 21 and paragraph 1 of article 60 shall enter into force on the date of start-up of the Industrial Property Organisation, which is determined pursuant to paragraph 33 of article 20.

2. Sub-paragraph (h) of paragraph 2 of article 56 and paragraph 1 of article 59 shall enter into force on 1 September 2010.

3. Paragraph 2 of article 60 shall enter into force from the date of winding-up of the Hellenic Organisation for the Publication of Text Books (OEΔB), namely 31 December 2011, pursuant to paragraph 1 of article 33.

4. Paragraph 15 of article 59 and paragraph 3 of article 60 shall enter into force on 1 January 2011.

5. All other provisions set forth in the present law shall enter into force on the date of its publication in the Hellenic Government Gazette, unless it is otherwise provided for in the distinct provisions thereof.

I hereby order the publication of the present law in the Hellenic Government Gazette and its enforcement as a law of the State.