



Questionnaire

Part II

**Information provided by the Government of the Republic of Moldova
to the Questionnaire of the European Commission**

CHAPTER 7: INTELLECTUAL PROPERTY LAW

May 2022

The *acquis* on intellectual property law specifies harmonised rules for protection of copyright and neighbouring rights, for industrial property rights and contains provisions on civil enforcement.

In the area of **copyright and neighbouring rights**, the objectives of the Directive on the harmonisation of certain aspects of copyright and related rights in the information society (2001/29/EC) are to adapt legislation on copyright and related rights to reflect technological developments and to transpose into EU law the main international obligations arising from the two treaties on copyright and related rights adopted within the framework of the World Intellectual Property Organisation (WIPO). Directive 93/83/EEC aims at facilitating the cross border transmission of audiovisual programmes, particularly broadcasting via satellite and retransmission by cable. The objective of the Directive on the resale right for the benefit of the author of an original work of art (2001/84/CE) is to provide a balance between the economic situation of authors of graphics and plastic works of art and that of other creators who benefit from successive exploitations of their works. The protection of semiconductor's topographies is harmonised through Directive 87/54/EC. The Directive 96/9/EC on the legal protection of Databases creates a new *sui generis* right for database producers, to protect their investment. Directive 2011/77/EU amending the Directive 2006/116/EC (the codified version of original Directive 93/98/EEC) harmonises the terms of protection of copyright and neighbouring rights for each type of work and each related right in the Member States and extends the term of protection for performers and sound recordings to 70 years. Directive 2006/115/EC (the codified version of original Directive 92/100/EEC) harmonises the provisions relating to rental and lending rights as well as on certain rights related to copyright. The Directive 2009/24/EC (the codified version of original Directive 91/250/EEC) harmonises Member States' legislation regarding the protection of computer programmes. Directive 2012/28/EU sets out common rules on the digitisation and online display of so-called orphan works. Directive 2014/26/EU aims at ensuring that right holders have a say in the management of their rights and envisages a better functioning of collective management organisations as a result of EU-wide standards.

In the field of **industrial property rights**, the *acquis* sets out harmonised rules for the legal protection of trade marks and designs, as well as a partially harmonised regime for patents. The latter relates to the accession to the European Patent Convention; specific provisions on biotechnological inventions, supplementary protection certificates (SPCs) for medicinal and plant protection products and compulsory licencing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems. The *acquis* also establishes a EU trade mark and a Community design system.

The Directive 2004/48/EC on the **enforcement** of intellectual property rights such as copyright and related rights, trade marks, designs, patents or geographical indications, requires all Member States to apply effective, dissuasive and proportionate civil remedies and penalties against those engaged in counterfeiting of goods and piracy and so create a level playing field for right holders in the EU. Customs Administrations play an important role in preventing entry into the EU of products infringing intellectual property.

The Association Agreement already lays down specific obligations in the areas covered by this chapter. When answering the questions below, please make reference to the state of implementation of such obligations.

I. COPYRIGHT AND NEIGHBOURING RIGHTS

1. Please describe the domestic legislation in Moldova concerning copyright and neighbouring rights. To what extent is it aligned with the EU acquis? Please indicate the relevant legislation and provide the concordance table, if available. What are the major discrepancies, if any? What are the reasons for these discrepancies? If domestic legislation is not yet aligned with the Directive, are there plans to that extent?

The main Law which regulates the protection of copyright and related rights is the Law No. 139/2010 on copyright and related rights¹, which is supplemented by other legal acts that regulates the activity and the responsibilities of the State Agency on Intellectual Property (AGEPI) in the field, in particular:

- Law No. 114/2014 on the State Agency on Intellectual Property of the Republic of Moldova²;
- Law No. 1459/2002 on Distribution of Copies of Works and Phonograms³;
- Government Decision No. 89/2012 for the approval of the Regulation on the Registration of Objects of Copyright and Related Rights⁴;
- Government Decision No. 774/1997 on Fees for Services with Legal Significance in the Field of Protection of Intellectual Property Objects⁵;
- Government Decision No. 744/2003 for the approval of the Regulation on the Production, Release and Application of Control Markings on the Copies of Works and Phonograms and the Regulation on the Registration in the State Register of the Holders of Control Markings⁶.

In addition, the regulatory framework in the field of copyright and related rights is complemented by the following secondary legislation:

- Government Decision No. 641/2001 on the Minimum Tariffs for the Author Remuneration⁷;

¹ Law No. 139/2010 on copyright and related rights, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

² Law No. 114/2014 on the State Agency on Intellectual Property of the Republic of Moldova, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=110504&lang=ro

³ Law No. 1459/2002 on Distribution of Copies of Works and Phonograms, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95186&lang=ro#

⁴ Government Decision No. 89/2012 for the approval of the Regulation on the Registration of Objects of Copyright and Related Rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=20910&lang=ro

⁵ Government Decision No. 774/1997 on Fees for Services with Legal Significance in the Field of Protection of Intellectual Property Objects, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95613&lang=ro#

⁶ Government Decision No. 744/2003 for the approval of the Regulation on the Production, Release and Application of Control Markings on Copies of Works and Phonograms and the Regulation on the Registration in the State Register of the Holders of Control Markings, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=85165&lang=ro#

⁷ Government Decision No. 641/2001 on the Minimum Tariffs for the Author Remuneration, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=76184&lang=ro#

- Government Decision No. 184/2015 for the approval of the Regulation on the organization and functioning of the Commission on mediation in the field of intellectual property and the procedure of mediation⁸;
- Government Decision No. 987/2017 for approval of the Regulation on the organization and functioning of Arbitration specialized in intellectual property and arbitration procedures⁹.

Regarding the alignment of national legislation with the EU acquis¹⁰, it is to be noted that the Law No. 139/2010 on copyright and related rights partially transposes:

- Council Directive 93/83/EEC of 27 September 1993 on the Coordination of Certain Rules Concerning Copyright and Rights Related to Copyright Applicable to Satellite Broadcasting and Cable Transmission;
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the Legal Protection of Databases;
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society;
- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the Resale Right for the Benefit of the Author of an Original Work of Art;
- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property Rights;
- Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on Rental Right and Lending Right and on Certain Rights related to Copyright in the Field of Intellectual Property (codified version);
- Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the Term of Protection of Copyright and Certain Related Rights (codified version);
- Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the Legal Protection of Computer Programs (codified version).

⁸ Government Decision No. 184/2015 for the approval of the Regulation on the organization and functioning of the Commission on mediation in the field of intellectual property and procedure of mediation, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95771&lang=ro#

⁹ Government Decision No. 987/2017 for the approval of the Regulation on the organization and functioning of Arbitration specialized in intellectual property and arbitration procedures, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=102833&lang=ro#

¹⁰ The concordance tables, available in Romanian at: https://agepi.gov.md/sites/default/files/2022/05/Tabel_de_concordanta_Lege_2010.PDF; https://agepi.gov.md/sites/default/files/2022/05/Tabel_de_concordanta_Lege_de_modificare_2016.PDF

Even the EU acquis served as a benchmark while developing the Law No. 139/2010 on copyright and related rights, the copyright and related rights system remains sensitive, and many provisions of the law are still not applicable in practice. The collective management system is facing a lot of challenges, including the lack of transparency and accountability in the process of collection and distribution of royalties, weak institutional capacities of CMO and insufficiently skilled personnel, improper cooperation mechanisms with foreign CMO, etc. A major deficiency of the collective management system is the limited coverage by the CMOs of the rights to be administrated through the collective management system. For example, although according to the Law No. 139/2010 on copyright and related rights the renting rights shall be exercised only through a collective management organization, in practice it is not administrated. The same is valid for the resale right and the equitable remuneration for reprographic reproduction.

The Law No. 139/2010 on copyright and related rights does not transpose the Directive 2014/26/EU and the Directive 2017/1564/EU, although the Republic of Moldova ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted in Marrakesh (January 2018);

In addition, there are other discrepancies with the EU legislation and practices, including the lack to provide for the rights and obligations of the users or for the sanctions applicable in case of failure to observe the legal provisions. The actual regime for setting tariffs for authors' remuneration has certain deficiencies. The Government Decision No. 641/2001 on the Minimum Tariffs for the Author Remuneration provides only for minimum tariffs for the author remuneration but does not establish the maximum limit of tariffs or their negotiation, and this creates difficulties in administration of the collective management system, places the users in a disadvantageous position, and generates tensions and disputes between users and OGCs.

In order to identify all the inconsistencies of the existing copyright legislation and its discrepancies with the EU Directives in the field, in February 2021, an assessment of the Law No. 139/2010 on copyright and related rights was performed with the assistance of the European Union Project “*Support for Structured Policy Dialogue, Coordination of the Implementation of the Association Agreement, and Enhancement of the Legal Approximation Process*” (hereinafter – the EU Project). The Assessment Report was presented to all interested stakeholders and made publicly available on the AGEPI web site:

http://agepi.gov.md/sites/default/files/2021/03/IP_Gap_Assessment_ENG.pdf.

Based on the outputs of the Assessment Report and considering the multiplicity of amendments required for the harmonization of Law No. 139/2010 on copyright and related rights with the EU Directives in the copyright field, a new Draft Law on copyright and related rights¹¹ has been developed.

¹¹ The Draft Law on copyright and related rights, available in Romanian at: <https://agepi.gov.md/sites/default/files/2022/02/1.Proiectul Legii privind dreptul de autor si drepturile conexe.pdf>

One of the main objectives of drafting a new Law on copyright and related rights is to improve the efficiency of the collective management system, in particular through the transposition of the provisions of the Directive 2014/26/EU regulating the collective management of copyright and related rights as well as implementation of best EU practices in the field. The draft provides also for the adoption of a series of sub-laws to ensure putting in place efficient application mechanisms for the administration of all rights covered by the law.

This draft law ensures the full transposition of the following Directives:

- Council Directive 93/83/EEC of 27 September 1993 on the Coordination of Certain Rules Concerning Copyright and Rights Related to Copyright Applicable to Satellite Broadcasting and Cable Transmission¹²;
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the Legal Protection of Databases¹³;
- Directive 2001/29/EC¹⁴ of the European Parliament and of the Council of 22 May 2001 on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society;
- Directive 2001/84/EC¹⁵ of the European Parliament and of the Council of 27 September 2001 on the Resale Right for the Benefit of the Author of an Original Work of Art;
- Directive 2004/48/EC¹⁶ of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property Rights;
- Directive 2006/115/EC¹⁷ of the European Parliament and of the Council of 12 December 2006 on Rental Right and Lending Right and on Certain Rights related to Copyright in the Field of Intellectual Property (codified version);

¹² The concordance table of the Draft Law on copyright and related rights with the Directive 93/83/EEC, available in Romanian at:

https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_93_83_CEE.pdf

¹³ The concordance table of the Draft Law on copyright and related rights with the Directive 96/9/EC, available in Romanian at: https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_96_9_CE.pdf

¹⁴ The concordance table of the Draft Law on copyright and related rights with the Directive 2001/29/EC, available in Romanian at:

https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2001_29.pdf

¹⁵ The concordance table of the Draft Law on copyright and related rights with the Directive 2001/84/EC, available in Romanian at:

https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2001_84_CE.pdf

¹⁶ The concordance table of the Draft Law on copyright and related rights with the Directive 2001/48/EC, available in Romanian at:

https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2004_48_CE.pdf

¹⁷ The concordance table of the Draft Law on copyright and related rights with the 2006/115/EC, available in Romanian at:

https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2006_115_CE.pdf

- Directive 2006/116/EC¹⁸ of the European Parliament and of the Council of 12 December 2006 on the Term of Protection of Copyright and Certain Related Rights (codified version), as last amended by Directive 2011/77/EC of the European Parliament and of the Council of 27 September 2011;
- Directive 2009/24/EC¹⁹ of the European Parliament and of the Council of 23 April 2009 on the Legal Protection of Computer Programs (codified version);
- Directive 2017/1564/EU²⁰ of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society.

The draft law ensures partial transposition of the following Directives:

- Directive 2014/26/EU²¹ of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (*except Art. 3 (b), (m) and (n); Art. 7 para. (2); Art. 8 paras. (7), (11), (12) and (13); Art. (23)-(32); Art. (37)-(45)*);
- Directive (EU) 2019/789²² of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC (Text with EEA relevance) (*just Recital 2 in the preamble to the Directive; Art. 2 paras. (2) and (3); Art. 4-6; Art. 9*);
- Directive (EU) 2019/790²³ of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (*just Art. 1*

¹⁸ The concordance table of the Draft Law on copyright and related rights with the 2006/116/EC, available in Romanian at:

https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2006_116_CE.pdf

¹⁹ The concordance table of the Draft Law on copyright and related rights with the 2009/24/EC, available in Romanian at:

https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2009_24_CE.pdf

²⁰ The concordance table of the Draft Law on copyright and related rights with the 2017/1564/EU, available in Romanian

at: https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2017_1564_EU.pdf

²¹ The concordance table of the Draft Law on copyright and related rights with the 2014/26/EU, available in Romanian at:

https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2014_26_EU.pdf

²² The concordance table of the Draft Law on copyright and related rights with the 2019/789/EU, available in Romanian at:

https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2019_789_EU.pdf

²³ The concordance table of the Draft Law on copyright and related rights with the 2019/790/EU, available in Romanian at:

https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2019_790_EU.pdf

paras. (5) and (6); Art. 12 paras. (1)-(4); Art. 14, Art. 17 paras. (1) – (9); Art. 18 -23; Art. 27).

The elaboration of the Draft Law on copyright and related rights is part of the short-term objectives of the Government and is included in the Government Action Plan for the years 2021-2022, approved by Government Decision No. 235/2021²⁴ (activity 19.5.1.), the deadline for the draft law approval being set for December 2022.

The Draft Law passed the public consultation, was submitted for information to the European Commission and is, at present, in the process of internal coordination procedure with the relevant stockholders (ministries, collective management organizations, et al.). Subsequently, it will be forwarded to the Government for examination and approval.

Subsequently, within 6 months from the date of entry into force of the law, the Government shall elaborate and present to the Parliament proposals for amending the legislation in force in compliance with the new law; bring its normative acts in accordance with the new law and ensure the elaboration of the implementing regulations; ensure the revision and abrogation of the departmental normative acts that contravene the new law.

2. Does the legislation in Moldova provide for a rental right, lending right and the provisions on certain related rights set out in Directive 2006/115/EC (the codified version of original Directive 92/100/EEC)?

a) If yes, please give references and the principal contents of the legislation.

Yes. The Law No. 139/2010 on copyright and related rights²⁵ defines the notions of rental and lending in Art. 3: lending means the making available of publications for a limited time, where there is no direct or indirect economic or commercial advantage, and where the act is performed by establishments accessible to the public; rental means the making available for use for a limited period of time and for direct or indirect economic or commercial advantage of a work or an object of related rights.

The exclusive right to rental is recognized for:

- the author (Art. 11 para. (1) letter c) of Law No. 139/2010 on copyright and related rights);

²⁴ Government Decision No. 235/2001 regarding the approval of the Action Plan of the Government for the years 2021-2022, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=128407&lang=ro

²⁵ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

- the performers (Art. 33 para. (2) letter d) of Law No. 139/2010 on copyright and related rights)
- the producers of phonograms (Art. 34 para. (1) letter c) of Law No. 139/2010 on copyright and related rights)
- the producers of videograms (Art. 35 para. (1) letter c) of Law No. 139/2010 on copyright and related rights)

Art. 12 of Law No. 139/2010 on copyright and related rights regulates the right to remuneration for the lending, recognized to the authors and holders of the copyright.

Does the legislation notably provide for a right to equitable remuneration for rental where an author or performer has transferred or assigned his rental right concerning a phonogram or an original copy of a film to a phonogram or film producer?

Yes. Where an author has transferred or assigned his rental right to the producer of a phonogram or an audiovisual work, he shall retain the right to obtain an equitable remuneration . This right cannot be waived and may only be exercised through a collective management organization (Art. 11 para. (4) of Law No. 139/2010 on copyright and related rights).

Likewise, where a performer has transferred or assigned his rental right to a producer of a phonogram, videogram or audiovisual work, respectively, he shall retain the right to obtain an equitable remuneration for the rental. This right cannot be waived and may only be exercised through a collective management organization (Art. 33 para. (8) of Law No. 139/2010 on copyright and related rights).

Does the legislation provide that at least authors obtain remuneration for public lending?

Yes. Where the owner lends the original or copies of his work, except for the works of architecture and works of applied art, the consent of the author or other holder of copyright shall not be necessary, however, the author or the holder of copyright is entitled to equitable remuneration (Art. 12 para. (1) of Law No. 139/2010 on copyright and related rights).

Does it provide for derogation from the exclusive public lending right and if so, would this be in line with the Directive?

Yes. According to Art. 12 of the Law No. 139/2010 on copyright and related rights, where the owner lends the original or copies of his work, except for the works of architecture and works of applied art, the consent of the author or other holder of copyright shall not be necessary, however, the author or the holder of copyright is entitled to equitable remuneration. This remuneration specified shall be waived for libraries and other similar institutions which are not for direct or indirect economic or commercial advantage, in accordance with Art. 6 of Directive 2006/115/EC.

Does the legislation provide that a single equitable remuneration is paid by the user to the relevant performers and phonogram producers every time a phonogram published for commercial purposes is used for broadcasting by wireless means or for any communication to the public?

Yes. Public performance of a phonogram, communication to the public of the phonogram by air or by cable and simultaneous and unchanged retransmission of the phonogram shall be permitted without the consent of the producer of a phonogram published for commercial purposes and of the performer whose performance is recorded on such phonogram, subject to payment of an equitable remuneration, amount of which shall be agreed by the parties. The right to an equitable remuneration may be exercised through a collective management organization (Art. 37 para. (1) and (2) of Law No. 139/2010 on copyright and related rights).

b) If no, is there any plan to adopt legislation on the protection of rental rights, lending rights and related rights?

The Draft Law on copyright and related rights²⁶ transposes the provisions of the Directive Directive 2006/115/EC²⁷. It contains provisions regarding: lending, the right to equitable remuneration for public lending. Also, in the Draft Law, the equitable remuneration for public lending is not due if the lending is made through libraries in educational institutions and the amount of the remuneration shall be determined by Government Decision.

3. Is the term of protection of copyright and related rights in Moldova in conformity with Directive 2011/77/EU and Directive 2006/116/EC (the codified version of original Directive 93/98/EEC)? If no, how and by when is it planned to align the legislation with this directive?

Yes. The terms of protection of copyright and related rights are in line with Directive 2011/77/EU and Directive 2006/116/EC (codified version of the original Directive 93/98/EEC).

- Law No. 139/2010 on copyright and related rights²⁸ provides as follows:
- Art. 23: Term of Protection of Copyright
- Art. 39: Terms of Protection of Related Rights

²⁶ The Draft Law on copyright and related rights, available in Romanian at: https://agepi.gov.md/sites/default/files/2022/02/1.Proiectul_Legii_privind_dreptul_de_autor_si_drepturile_conexe.pdf

²⁷ The concordance table of the Draft Law on copyright and related rights with the Directive 2006/115/EC, available in Romanian at: https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2006_115_CE.pdf

²⁸ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

- Art. 45: Protection of Previously Unpublished Works Fallen into the Public Domain
- Art. 46: Protection of Critical and Scientific Publications of Works Fallen into the Public Domain.

The Draft Law on copyright and related rights²⁹ transposes the provisions of the Directive 2011/77/EU on additional annual remuneration. Thus, where the contract provides for the right of the performer to a single remuneration, he/she shall be entitled to receive from the phonogram producer an additional annual remuneration for each full year immediately following the 50th year following the lawful publication of the phonogram or, in the absence of such publication, the 50th year following its lawful communication to the public. The right to obtain additional annual remuneration may not be waived by the performer.

4. Does the copyright law provide for the legal protection of computer programs?

Yes, Law No. 139/2010 on copyright and related rights³⁰ provides for the protection of computer programs, which are protected in the same manner as literary works (Art. 7 para. (2) letter b).

5. If yes, is it fully compatible with Directive 2009/24/EC (the codified version of original Directive 91/250/EC), including with the provisions of this directive on authorship, restricted acts, exceptions to the restricted acts, decompilation and special measures of protection?

The Law No. 139/2010 on copyright and related rights³¹ does not fully transpose the Directive 2009/24/EC (codified version of the original Directive 91/250/EC).

According to the Law No. 139/2010 on copyright and related rights, author means the creative person whose creative effort had led to the creation of a work (Art. 3). Computer programs are protected in the same manner as literary works (Art. 7 para. (2) letter b), respectively, the author and owner of the economic rights in a computer program shall be the natural person who has created the program.

Copyright in a computer program which is the result of the joint creative effort of two or more persons in the execution of an assignment from an employer or service

²⁹ The Draft Law on copyright and related rights, available in Romanian at: https://agepi.gov.md/sites/default/files/2022/02/1.Proiectul_Legii_privind_dreptul_de_autor_si_drepturile_conexe.pdf

³⁰ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

³¹ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

duties, in the absence of legal provisions or contrary contractual clauses, shall belong to the employer (Art. 14 of the Law No. 139/2010 on copyright and related rights).

Copyright in a computer program which is the result of the joint creative effort of two or more persons shall belong in common to the joint authors (Art. 13 of the Law No. 139/2010 on copyright and related rights).

In accordance with Art. 29 of Law No. 139/2010 on copyright and related rights:

„(1) In the absence of specific contractual provisions, no acts shall require the authorisation by the author or other holder of copyright where it is necessary for the use of a computer program or a database by the lawful acquirer thereof, in accordance with its intended purpose, including for error correction.

(2) The making of a back-up copy by a person having a right to use a computer program may not be prevented by contract insofar as it is necessary for that use.

(3) A person having a right to use a copy of a computer program shall be entitled, without the authorisation of the author or other holder of copyright, to observe, study or test the functioning of the program in order to determine the ideas which underlie any element of the program if he does so while performing any of the acts of loading, running, transmitting or storing the program which he is entitled to do.

(4) The authorisation of the author or other holder of copyrights shall not be required where the reproduction of the code and translation of its form are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

a) these acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorised to do so;

b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in point (a); and

c) these acts are confined to the parts of the original program which are necessary to achieve interoperability.

(5) The provisions of paragraph (4) shall not permit the information obtained through its application:

a) to be used for purposes other than to achieve the interoperability of the independently created computer program;

b) to be given to others, except where necessary for the interoperability of the independently created computer program; or

c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.”

The Law No. 139/2010 on copyright and related rights does not contain provisions regarding on restricted acts, exceptions to the restricted acts, decompilation and special measures of protection.

6. If no, is there any plan to adopt any legislation in this field? Please give details and dates.

The Draft Law on copyright and related rights³² fully transposes Directive 2009/24/EC³³ (the codified version of original Directive 91/250/EC), inclusive:

- defines the computer program in accordance with the provisions of Art. 1 – The object of protection;
- defines the notions of interface and interoperability, in accordance with Recital 10;
- regulates the exclusive rights of the author of a computer program, according to Art. 4 - Restricted acts;
- defines the rental of the computer program in accordance with Recital 12;
- ensures transposition of Art. 7 – Special protective measures.

As mentioned in answers to question 1, the Draft Law on copyright and related rights is expected to be approved by the Government by the end of the year 2022 and, subsequently, submitted to the Parliament for examination and adoption.

7. Does the copyright law provide for the legal protection of databases?

a) If yes, is it fully compatible with Directive 96/9/EC, including on scope of protection, protection under copyright and sui generis protection?

Yes. Law No. 139/2010 on copyright and related rights³⁴ provides for the legal protection of databases, without being fully harmonised with Directive 96/9/EC.

³² The Draft Law on copyright and related rights, available in Romanian at: https://agepi.gov.md/sites/default/files/2022/02/1.Proiectul_Legii_privind_dreptul_de_autor_si_drepturile_conexe.pdf

³³ The concordance table of the Draft Law on copyright and related rights with the Directive 2009/24/EC, available in Romanian at: https://www.agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2009_24_CE.pdf

³⁴ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

Art. 3 of the Law No. 139/2010 on copyright and related rights defines the notion of database, and Art. 40-44 regulate the rights and term of protection in the case of database producers, as well as the exceptions granted to lawful users of databases.

b) If no, is there any plan to adopt legislation on the legal protection of databases (including sui generis protection)? Please give details and dates.

The Draft Law on copyright and related rights³⁵ comes with much more consistent transpositions of Directive 96/9/EC³⁶, namely:

- Chapter II – Copyright, respectively Art. 3 – Object of protection, Art. 4 – Database authorship, Art. 5 – Restricted acts and Art. 6 – Exceptions on restricted acts;
- The definition of databases, in accordance with Recitals 13, 14 and 17, as well as with Art. 1 of Directive 96/9/EC;
- Art. 15 – Binding nature of certain provisions.
- Regarding Art. 12 – Sanctions, the existing provisions of the Contravention Code of the Republic of Moldova No. 218/2008³⁷ and the existing ones in the Criminal Code of the Republic of Moldova No. 985/2002³⁸ do not meet the requirements of Directive 96/9/EC on appropriate sanctions against unauthorized extraction and reuse of the contents of a database, further amendments to the two Codes being required.

8. Does the copyright legislation provide for the legal protection of copyright and related rights in conformity with Directive 2001/29/EC? If yes, is it fully compatible with the listed exclusive rights of authors and certain neighbouring right holders?

Yes. The exclusive right of reproduction is recognized for:

- Authors (Art. 11 para. (1) letter a) of Law No. 139/2010 on copyright and related rights³⁹);

³⁵ The Draft Law on copyright and related rights, available in Romanian at:

<https://agepi.gov.md/sites/default/files/2022/02/1.Proiectul Legii privind dreptul de autor si drepturile conex e.pdf>

³⁶ The concordance table of the Draft Law on copyright and related rights with the Directive 96/9/EC, available in Romanian at:

https://www.agepi.gov.md/sites/default/files/2022/02/Tabel de concordanta Directiva 96_9 CE.pdf

³⁷ Contraventional Code of the Republic of Moldova, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=131058&lang=ro#

³⁸ Criminal Code of the Republic of Moldova, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=130983&lang=ro#

³⁹ Law No. 139/2010 on copyright and related rights, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

- Performers (Art. 33 para. (2) letter b) of Law No. 139/2010 on copyright and related rights);
- Producers of phonograms (Art. 34 para. (1) letter a) of Law No. 139/2010 on copyright and related rights);
- Producers of videograms (Art. 35 para. (1) letter a) of Law No. 139/2010 on copyright and related rights);
- Broadcasting organizations by air or cable (Art. 36 para. (1) letter b) of Law No. 139/2010 on copyright and related rights).

The exclusive rights of public communication and the right to make works and other protected objects available to the public are granted to authors (Art. 11 para. (1) letters g) and i) of Law No. 139/2010 on copyright and related rights).

The exclusive rights to make the protected objects available to the public are granted to:

- Performers (Art. 33 para. (2) letters e) and f) of Law No. 139/2010 on copyright and related rights);
- Producers of phonograms (Art. 34 para. (1) letter e) of Law No. 139/2010 on copyright and related rights);
- Producers of videograms (Art. 35 para. (1) letter e) of Law No. 139/2010 on copyright and related rights);
- Broadcasting organizations (Art. 36 para. (1) letters d), f) and g) of Law No. 139/2010 on copyright and related rights).

The exclusive right of distribution is recognized for:

- Authors (Art. 11 para. (1) letter b) of Law No. 139/2010 on copyright and related rights);
- Performers (Art. 33 para. (2) letter c) of Law No. 139/2010 on copyright and related rights);
- Producers of phonograms (Art. 34 para. (1) letter b) of Law No. 139/2010 on copyright and related rights);
- Producers of videograms (Art. 35 para. (1) letter b) of Law No. 139/2010 on copyright and related rights);
- Broadcasting and Cable Distribution Organisations (Art. 36 para. (1) letter c) of Law No. 139/2010 on copyright and related rights).

9. Does the legislation provide, in particular, for a right of communication to the public of works and a right of making available to the public other subject-matter? Does it provide for the mandatory exception for "temporary copies" (Article 5.1)? Does it provide for other exceptions? If yes, please list them.

Yes. Art. 3 of Law No. 139/2010 on copyright and related rights⁴⁰ separately defines:

- *communication to the public* means the transmission by air, including by satellite (broadcasting), by cable or by any other means, of images and/or sounds of works or objects of related rights where such images or sounds may be perceived by persons outside the usual circle of a family and its close acquaintances in places where, without the transmission they would not be able to perceive the images and/or the sounds. Communication of codified signals shall represent a transmission by air (broadcasting) or by cable when the decoding means are offered to the public by the air broadcasting organisation or by the cable distributor organisation, respectively, or with its consent. Retransmission by air (rebroadcasting) or by cable of works or objects of related rights transmitted by air (broadcast) or by cable which does not takes place simultaneously with the original communication to the public, or which includes changes (dubbing, subscriptions, insertions of advertisement etc.) shall be qualified as a new act of communication to the public by air (broadcasting) or by cable
- *making available to the public* means the making available of a work or an object of related rights, by wire or wireless means, in a way that members of the public may access it from a place, and at a time individually chosen by them.

Yes. Art. 25 of Law No. 139/2010 on copyright and related rights provides that temporary acts of reproduction shall be permitted without the consent of the author or other copyright holder and without the payment of remuneration, provided that:

- they are transient or incidental;
- they are integral and essential part of a technological process;
- their sole purpose is to enable:
 - a transmission in a network between third parties by an intermediary, or
 - a lawful use of a work, and
- they have no independent economic significance.

⁴⁰ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

Also, Art. 28 of Law No. 139/2010 on copyright and related rights provides for other exceptions and limitations:

- short quotations in another work for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, provided that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;
- use of works by way of illustration in publications, broadcast or sound or visual recordings for teaching, as long as the source, including the author's name, is indicated, unless this turns out to be impossible, and to the extent justified by the non-commercial purpose to be achieved;
- reproduction and distribution by the press, communication to the public or interactive making available of published articles on current economic, political or religious topics or of broadcast works or other subject matter of the same character, in cases where this is not expressly reserved, and as long as the source, including the author's name, is indicated;
- use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;
- use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;
- use for the purposes of public security or to ensure the proper performance and reporting of parliamentary, administrative or judiciary proceedings;
- in respect of ephemeral recordings of works made by broadcasting organizations by means of their own facilities and for their own broadcasts. Such recordings shall be erased or destroyed after six months, with the exception of those that have exceptional documentary character, which may be preserved in official State archives;
- use, for the benefit of people with a disability, which is directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;
- in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals, on condition that the rightholders receive fair remuneration;
- use of works during religious celebrations or national or international official celebrations organized by public authorities for educational and promotional purposes without obtaining an economic or commercial advantage;
- use of works, such as works of architecture or sculpture, made to be located permanently in public places;

- use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;
- use for the purpose of caricature or parody;
- use in connection with the demonstration or repair of equipment;
- use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;
- use by communication or interactive making available to the public, for the purpose of research or private study, by individual members of the public through special equipment in libraries, archives and educational institutions, of works and other subject-matters not subject to purchase or licensing terms which are contained in their collections.

10. Does the legislation in Moldova provide for a system of fair compensation to right holders for the following: reprography, reproductions made by a natural person for private use, reproductions of broadcasts made by social institutions pursuing non-commercial purposes?

The legislation of the Republic of Moldova provides for a system of fair compensation to right holders for the reprography and for reproductions made by a natural person for private use.

- Reprography – Art. 27 of Law No. 139/2010 on copyright and related rights⁴¹.

The equitable remuneration for reprography shall be paid by the natural or legal persons that manufacture or import the equipment (photocopying, machines, scanners, etc.) used for the reprographic reproduction (equipment royalty) and by any natural or legal persons that operate equipment for reprographic reproduction at a place open to the public (operator royalty). The remuneration shall not be less than 3% of the resale price of the equipment.

The equitable remuneration shall be paid by the producers and importers of the equipment to the collective management organization, before putting into circulation (that is, before including in the chain of distribution immediately after manufacturing or importation) of such equipment.

- Reproductions made by a natural person for private use – Art. 26 of Law No. 139/2010 on copyright and related rights.

⁴¹ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

The equitable remuneration for reproductions made by a natural person for private use shall be paid by those natural or legal persons who produce or import any equipment (sound recording equipment, video recorders, drivers for recordable and re-recordable discs, etc.) and mediums (blank tapes and cassettes, laser discs, compact discs, etc.) that may be used for reproduction of audiovisual works and phonograms. The equitable remuneration for reproductions made by a natural person for private use shall not be less than 3% of the resale price of the equipment and mediums that may be used for reproduction of audiovisual works and phonograms.

The equitable remuneration shall be paid by the manufacturers or importers of the recording equipment or mediums to the collective management organisation before putting into circulation (that is, before including into the chain of distribution immediately after manufacturing or importation) of such equipment or mediums.

The Draft Law on copyright and related rights⁴² provides a complete list of limitations and exceptions contained in art. 5 of Directive 2001/29/EC⁴³, which also includes the payment of compensatory remuneration for reproductions of programmes broadcast by non-profit social institutions, such as hospitals or prisons, provided that rightholders receive a fair compensation.

11. Does the legislation provide for the legal protection of technological measures and rights management information?

Yes. Chapter VIII (Art. 52-53) of Law No. 139/2010 on copyright and related rights⁴⁴ provides for technological protection measures and information on rights management.

Technological measures and rights management information are defined in Art. 3 of Law No. 139/2010 on copyright and related rights.

⁴² The Draft Law on copyright and related rights, available in Romanian at: https://agepi.gov.md/sites/default/files/2022/02/1.Proiectul_Legii_privind_dreptul_de_autor_si_drepturile_conexe.pdf

⁴³ The concordance table of the Draft Law on copyright and related rights with the Directive 2001/29/EC, available in Romanian at: https://www.agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2001_29.pdf

⁴⁴ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

12. What sanctions and remedies does the legislation provide in respect of infringements of the rights and obligations set out in Directive 2001/29/EC?

According to Art. 54. of Law No. 139/2010 on Copyright and Related Rights⁴⁵, any use of an object of copyright, related rights or other rights protected by Law that is performed in violation of the provisions of the Law shall be regarded as an infringement. Any copy of an object of copyright, related rights or other rights protected by Law, the reproduction, importation, distribution, rental or lending of which constitutes an infringement shall be regarded as an infringing copy.

The possession, for commercial purposes, of a copy or an object of copyright, related rights or other rights protected by Law shall be regarded also as an infringement.

Violation of the rights recognized and guaranteed by Law No. 139/2010 on Copyright and Related Rights attracts civil, contravention or criminal liability.

According to the Contravention Code of the Republic of Moldova No. 218/2008⁴⁶ (Art. 96), sanction for infringements in the field of copyright and related rights include fines from 48 to 90 conventional units for the individual and from 120 to 210 conventional units for the persons in a position of authority.

According to the Criminal Code of the Republic of Moldova No. 985/2002⁴⁷ (Art. 185¹), sanction for infringements in the field of copyright and related rights depends of the severity of the offense and includes:

- For the individual: fine from 1150 to 6000 conventional units, unpaid community work from 180 to 240 hours, imprisonment from 3 to 5 years;
- For the legal entity: fine from 3000 to 11000 conventional units with deprivation of the right to practice certain activities for 1 to 5 years, or liquidation of the legal entity.

13. Does the copyright law provide for a resale right for the benefit of the author of an original work of art?

a) If yes, is it fully compatible with Directive 2001/84/EC?

b) If no, is there any plan to adopt any legislation in this field?

⁴⁵ Law No. 139/2010 on Copyright and Related Rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

⁴⁶ Contravention Code of the Republic of Moldova No. 218/2008, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=131058&lang=ro#

⁴⁷ Criminal Code of the Republic of Moldova No. 985/2002, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130983&lang=ro#

Yes. Art. 20 of Law No. 139/2010 on Copyright and Related Rights⁴⁸ provides for a resale right for the benefit of the author of an original work of art. Original works of art mean works of plastic or graphic art (pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs), provided they are made by the artist himself or are copies considered to be original works of art. Copies of such works of art that have been executed in a limited number by their author himself or with his consent (normally numbered, signed or otherwise authorised by him) shall be considered to be original works of art.

Respectively, for each resale of an original work of art, subsequent to the first transfer of property thereof by the author, the seller shall be obligated to pay to the author or his successor in title a remuneration representing 5% of the resale price where such a price is at least 20 times the minimum wage (resale right). This right shall be inalienable during the lifetime of the author and may be transferred only to the legal or testamentary heirs of the author, for the duration of copyright.

The resale right shall apply to all acts of resale involving – as sellers, buyers or intermediaries – dealers of works of art, such as auction organisers, salesrooms, art galleries, shops, etc. The resale right may be exercised only through a collective management organisation.

Law No. 139/2010 on Copyright and Related Rights does not ensure the full transposition of the Directive 2001/84/EC, in particular, it is in line with Art. 1-2 of the Directive 2001/84/EC and partly transpose the provisions of Art. 6-7.

An extensive approximation of the national copyright legislation with the Directive 2001/84/EC is envisaged through the adoption of the Draft Law on Copyright and Related Rights⁴⁹, that transposes the Directive 2001/84/EC except for optional and inapplicable to the non-member states articles⁵⁰.

⁴⁸ Law No. 139/2010 on Copyright and Related Rights, available in Romania at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro

⁴⁹ Draft Law on Copyright and Related Rights, available in Romanian at: <https://www.agepi.gov.md/sites/default/files/2022/02/1.Proiectul Legii privind dreptul de autor si drepturile conexe.pdf>

⁵⁰ The concordance table of the Draft Law on Copyright and Related Rights with the Directive 2001/84/EC, available in Romanian at: https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2001_84_CE.pdf

14. Has Moldova adhered to the two WIPO Treaties of 1996 (WCT and WPPT)? To which other international treaties and agreements relevant to copyright and related rights is Moldova a party?

Yes, both treaties were ratified by the Republic of Moldova in 2002 and have been in effect since 06 March 2002 (WCT) and 20 May 2002 (WPPT).

In addition, the Republic of Moldova is a member state to the following international treaties relevant to copyright and related rights:

- Berne Convention for the Protection of Literary and Artistic Works, in force for the Republic of Moldova as of 02.11.1995;
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organization, in force for the Republic of Moldova as of 05.12.1995;
- Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs), in force for the Republic of Moldova as of 26.07.2001;
- Universal Copyright Convention, in force for the Republic of Moldova as of 27.05.1993;
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, in force in the Republic of Moldova as of 17.07.2000;
- Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite, in force for the Republic of Moldova as of 28.10.2008;
- Beijing Treaty on Audiovisual Performances, in force as of 28.04.2020;
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, in force for the Republic of Moldova as of 19.05.2018.

15. Does the copyright law provide for the protection of satellite broadcasting? If yes, do you consider that it is in conformity with the provisions of Directive 93/83/EEC, in particular as regards the principle of acquisition of broadcasting rights in accordance with the terms of this directive? Is there a definition of communication to the public by satellite? If no, is there any plan to adopt any legislation in this field?

Yes. Law No. 139/2010 on Copyright and Related Rights⁵¹ provides for the protection of satellite broadcasting, even if this law partially transposes Directive 93/83/EEC.

⁵¹ Law No. 139/2010 on Copyright and Related Rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro

Art. 3 of Law No. 139/2010 on Copyright and Related Rights defines the notion of communication to the public: the transmission by air, including by satellite (broadcasting), by cable or by other means, of images and/or sounds of works or objects of related rights where such images or sounds may be perceived by persons outside the usual circle of a family and its close acquaintances in places where, without the transmission they would not be able to perceive the images and/or sounds. Communication of codified signals shall represent a transmission by air (broadcasting) or by cable when the decoding means are offered to the public by the air broadcasting organization or by the cable distributor organization, respectively, or with its consent. Retransmission by air (rebroadcasting) or by cable which does not take place simultaneously with the original communication to the public, or which includes changes (dubbing, subscriptions, insertions of advertisement) shall be qualified as a new act of communication to the public by air or by cable.

In addition, Art. 3 of Law No. 139/2010 on Copyright and Related Rights defines the notion of satellite as any satellite operating on frequency bands which, under telecommunication law, are reserved, for communication to the public (broadcast) of signals for reception by the public or which are reserved for closed, point-to-point communication. In the latter case, however, the circumstances in which the reception of the signals by the members of the public takes place must be comparable to those which apply in the first case.

According to Art. 11 para. (1) letter g) of Law No. 139/2010 on Copyright and Related Rights, an author or other holder of copyright shall enjoy the exclusive right to perform, to authorize or prohibit the communication of the work by air to the public, including satellite (broadcasting by television and radio), or by cable.

The Draft Law on Copyright and Related Rights⁵² ensures the full transposition of Chapters I and II of Directive 93/83/EEC.⁵³

16. Does the copyright law provide for the protection of cable retransmission?

a) If yes, do you consider that it is in conformity with the provisions of Directive 93/83/EEC, in particular in relation to the following: principle of mandatory collective management extended to non-members of a collecting society; principle of good faith in the negotiations for cable retransmission and principle of mediation?

b) If no, is there any plan to adopt any legislation in this field?

⁵² Draft Law on Copyright and Related Rights, available in Romanian at: https://www.agepi.gov.md/sites/default/files/2022/02/1.Proiectul_Legii_privind_dreptul_de_autor_si_drepturile_conexe.pdf

⁵³ The concordance table of the Draft Law on Copyright and Related Rights with the Directive 93/83/EEC, available in Romanian at: https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_93_83_CEE.pdf

Yes, the Law No. 139/2010 on copyright and related rights⁵⁴ provides for the protection of cable retransmission, even if this law partially transposes Directive 93/83/EEC.

Art. 3 of Law No. 139/2010 on copyright and related rights defines the notion of retransmission as the simultaneous broadcasting, by air or cable, by a broadcasting or cable distribution organization of programs of another broadcasting or cable distribution organization.

According to Art. 11 para. (1) letter h) of Law No. 139/2010 on copyright and related rights, an author or other holder of copyright shall enjoy the exclusive right to perform, to authorize or prohibit the simultaneous retransmission and without modifications, by air or cable, of the work transmitted by air or cable.

The right of cable retransmission may only be exercised through a collective management organisation. The amount of remuneration for the authorisation granted by the collective management organisation shall be established on the basis of any payment that the members of the public have to pay to the cable network operators for their corresponding services including for the technical access, as well as for the maintenance of the equipment used for retransmission.

Currently, in accordance with the Government Decision No. 641/2001 on the minimum tariffs for the Author Remuneration⁵⁵ the minimum amount for the retransmission right is 5.6% of the amount received from subscribers (3.2% - copyright and 2.4% - related rights) or it could be –agreed as a monthly or quarterly fee for the entire volume of broadcasts, established in the contract,. It should be noted that this is the minimum amount from which the parties can negotiate the amount of the remuneration for the retransmission right, the maximum amount is not regulated. Therefore, there are no guarantees on the establishment of reasonable and equitable tariffs to be applied uniformly and transparently in relation to cable operators.

The Draft Law on Copyright and Related Rights⁵⁶ ensures the full transposition of the Directive 93/83/EEC⁵⁷ including:

- Chapters III (cable retransmission) and IV (general provisions): including the prevention of the abuse of negotiating positions, the conduct in good faith of negotiations on the authorization of cable retransmission, optional mediation,

⁵⁴ Law No. 139/2010 on copyright and related rights, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro

⁵⁵ Government Decision No. 641/2001 on the Minimum Tariffs for the Author Remuneration, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=76184&lang=ro#

⁵⁶ Draft Law on Copyright and Related Rights, available in Romanian at:

<https://www.agepi.gov.md/sites/default/files/2022/02/1.Proiectul Legii privind dreptul de autor si drepturile conexe.pdf>

⁵⁷ The concordance table of the Draft Law on Copyright and Related Rights with the Directive 93/83/EEC, available in Romanian at:

https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_93_83_CEE.pdf

- transposition of the definition of the right of retransmission by cable, as provided in Art. 9 of Directive 2019/789; the regulation of retransmission, as regulated in Directive 789/2019;
- transposition of the provision Art. 9 para. (2) of Directive 93/83/EEC.

17. Is the functioning of collective management organisations in Moldova in conformity with Directive 2014/26/EU? Does the legislation provide the rules enabling the multi-territorial licensing by collective management organisations of authors' rights in musical works for online use set out in this Directive? If no, is there plan to adopt any legislation in this field? Please, give details and dates.

The provisions of the Directive 2014/26/EU in relation to the functioning of collective management organizations have not been transposed into Law No. 139/2010 on Copyright and Related Rights⁵⁸.

The revision of the copyright and related rights management system, by ensuring the partial transposition of Directive 2014/26/EU⁵⁹, is the subject of the Draft Law on Copyright and Related Rights⁶⁰.

Law No. 139/2010 on Copyright and Related Rights does not regulate the multi-territorial licensing of rights in musical works for online use in the internal market, and the Draft Law on Copyright and Related Rights provides for the partial transposition of Directive 2014/26/EU, with the exception of multi-territorial licensing of the copyright in musical works for online use and of independent management entities, taking into account the current conditions in the Republic of Moldova, and the level of economic and social development of the country. The implementation of rules enabling the multi-territorial licensing by collective management organisations of authors' rights in musical works for online use as set out in the Directive 2014/26/EU will be re-considered at a later stage, should there be changes on the Moldovan market that would reason the establishment of such a regime.

⁵⁸ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

⁵⁹ The concordance table of the Draft Law on Copyright and Related Rights with the Directive 2014/26/EU, available in Romanian at: https://agepi.gov.md/sites/default/files/2022/02/Tabel_de_concordanta_Directiva_2014_26_UE.pdf

⁶⁰ Draft Law on Copyright and Related Rights, available in Romanian at: https://www.agepi.gov.md/sites/default/files/2022/02/1.Proiectul Legii_privind_dreptul_de_autor_si_drepturile_conexe.pdf

18. Which authorities are responsible for intellectual property law in Moldova? What is Moldova's administrative capacity in this area?

In the Republic of Moldova, legal protection of intellectual property is provided by the National Intellectual Property Office which is the State Agency on Intellectual Property (AGEPI), which exercises its functions and duties under Law No. 114/2014 on State Agency on Intellectual Property⁶¹ and other normative acts, ensures implementation of intellectual property development strategies and monitors compliance with the legislation in the field.

The State Agency on Intellectual Property is the central administrative authority subordinated to the Government, responsible for promoting and implementing activities in the field of legal protection of intellectual property relating to industrial property rights, copyright and related rights.

AGEPI shall ensure protection of intellectual property and carries out activities that include examination of the applications in intellectual property and granting titles of protection in accordance with the relevant national legislation in the field, activities of extra-judicial dispute resolution, mediation and specialized arbitration in intellectual property, information and documentation, promotion and dissemination, editorial-polygraphic activities, education and training of specialists in intellectual property.

According to Art. 4 para. (1) of the Law No. 139/2010 on Copyright and Related Rights⁶², the State Agency on Intellectual Property has the following tasks and functions:

- developing – and within its competence - applying adequate policy for protection, exercise and enforcement of copyright, related rights and other rights protected in accordance with the national law, with international commitments and with the corresponding national interests of the Republic of Moldova;
- submitting to the Government and/or other governmental bodies proposals where certain measures necessary for the applications of the policy for the protection, exercise and enforcement of copyright, related rights and other protected rights goes beyond its competence;
- collecting necessary information, carrying out studies and consulting for the governmental bodies, administrative, judicial and other institutions, rightholders and users concerning the importance and the legal and practical aspects of the protection, exercise and enforcement of copyright, related and other rights protected under the copyright law through

⁶¹ Law No. 114/2014 on State Agency on Intellectual Property, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=110504&lang=ro

⁶² Law No. 139/2010 on Copyright and Related Rights, available in English at: https://www.agepi.gov.md/sites/default/files/law/national/l_139_2010-en.pdf

- preparing and distributing information materials, organising awareness campaigns, and maintaining active relationship with the press and media;
- preparing draft laws and regulations concerning the protection, exercise and enforcement of copyright, related rights and other protected rights;
 - representing the Republic of Moldova at international and regional organisations dealing with copyright, related rights and other protected rights;
 - establishing and maintaining mutually advantageous cooperation with governmental offices, agencies and research institutions and other organisations of other countries dealing with copyright, related rights and other protected rights, in accordance with the legislation of the Republic of Moldova;
 - receiving and examining applications for the registration of objects of copyright and related rights, effecting the registration of works, and issuing, on behalf of the state, registration certificates;
 - accrediting, monitoring and supervising the activities of collective management organisations;
 - granting control markings (hallmarks) according to the legislation.

Also, according to Art. 4 para. (2) of the Law No. 139/2010 on Copyright and Related Rights, a Mediation and Arbitration Body shall be set up under the State Agency on Intellectual Property for the settlement of disputes in the field of intellectual property in cases provided for by intellectual property laws, as well as the disputes in the field of collective management of copyright and related rights.

According to Law No. 139/2010 on Copyright and Related Rights, AGEPI is responsible for the supervision of the activities of collective management organisations. . In this context, AGEPI shall carry out annual and special inspections on the activities of collective management organisations.

The Copyright Department of AGEPI is responsible for copyright and related rights activities. The Department is composed of the Head of the Department and 4 specialists.

II. INDUSTRIAL PROPERTY RIGHTS

A. Patents

19. Please provide information on Moldova's intention regarding accession to the European Patent Convention. Is the legislation fully aligned with the EU *acquis* on industrial property in the field of patents? Has the Union *acquis* served as benchmark when your national law was created?

The Republic of Moldova intends to accede to the European Patent Convention. As part of the Moldova's European integration process, the accession to the European Patent Convention was initiated. With this in line, in 2012, the Republic of Moldova withdrew its membership from the Eurasian Patent Convention and in 2013, the Government of the Republic of Moldova signed an agreement with the European Patent Organization on validation of European patents (Validation Agreement). The validation Agreement entered into force in 2015, after the implementation into the national legislation (Law No. 50/2008 on protection of inventions⁶³) of the European Patent Convention (EPC) principles and transposition of the provision of the Validation Agreement. In 2019, the Republic of Moldova addressed to the Administrative Council of the European Patent Organization a letter of intention confirming its intent to accede to the EPC, in accordance with Art. 166 para. (1) letter (b) of the EPC.

The legislation of the Republic of Moldova is largely aligned with the EU *acquis* on industrial property in the field of patents. The EU *acquis* on industrial property in the field of patents in particular the European Patent Convention has served as benchmark for the development of the national legislation in the field of patents - Law No. 50/2008 on the protection of inventions.

20. What are the plans for further alignment, and by when? Is the legislation aligned with the Directive 98/44/EC on the legal protection of biotechnological inventions? If no, please indicate what are the plans for further alignment and by when.

The provisions of Directive 98/44/EC are transposed in Law No. 50/2008 on the protection of inventions⁶⁴. The protection of inventions in the field of biotechnology is provided in Art. 6 para. 4 of Law No. 50/2008 on the protection of inventions, which specifies which inventions in the field of biotechnology shall be deemed patentable. The exceptions to patentability of inventions, including the biotechnological inventions, are provided for in Art. 7 of Law No. 50/2008 on the protection of inventions.

⁶³ Law No. 50/2008 on the protection of inventions, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=107070&lang=ro#

⁶⁴ Law No. 50/2008 on the protection of inventions, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=107070&lang=ro#

21. Are supplementary protection certificates (SPCs) for medicinal products and/or plant protection products available?

Yes. The protection of medicinal products or phytopharmaceutical products is regulated in the Republic of Moldova in accordance with Art. 69-72 of Law No. 50/2008 on the protection of inventions⁶⁵.

22. Are there rules governing the grant of compulsory licences and are they aligned with Regulation 2006/816/EC on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems in relation to the Doha Declaration/TRIPS and Public Health? If not, what are the plans for further alignment and by when?

Currently, the grant of compulsory licenses is governed by Art. 28 and 29 of Law No. 50/2008 on the protection of inventions⁶⁶. In order to improve the compulsory licenses regime and to bring it in line with the principles of the Doha Declaration on Public Health, amendments to the Law 50/2008 on the protection of inventions were initiated. The draft law foresees also a partial transposition of the Regulation 2006/816/EC. The draft for amending Law No. 50/2008 on the protection of inventions⁶⁷ was published on 28.10.2021 for public consultation. In accordance with the Action Plan of the Government for 2021-2022, approved by the Government Decision No. 235/2021, the draft law is planned to be approved by the Government by November 2022 and afterwards submitted to the Parliament for examination and adoption.

B. Trade marks

23. What are the plans for full alignment with the EU *acquis* on industrial property in the field of trade marks? Has the Union *acquis* served as benchmark when your national law was created? What are the plans for further alignment, and by when?

Trademark protection is regulated in the Republic of Moldova by the Law No. 38/2008 on the protection of trademarks⁶⁸.

The EU *acquis*, in particular the Directive 2008/95/EC, served as benchmark when the Law 38/2008 on the protection of trademarks was developed. The Law No.

⁶⁵ Law No. 50/2008 on the protection of inventions, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=107070&lang=ro#

⁶⁶ Law No. 50/2008 on the protection of inventions, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=107070&lang=ro#

⁶⁷ The draft for amending Law No. 50/2008 on the protection of inventions, available in Romanian at: <https://agepi.gov.md/sites/default/files/2021/10/proiect-4.pdf>

⁶⁸ Law No. 38/2008 on the protection of trademarks, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93464&lang=ro#

38/2008 on the protection of trademarks set the legal framework for the protection of trademarks similar to the one existing in the EU.

To fully align the national legislation with the EU *acquis*, the Republic of Moldova intends to amend the Law No. 38/2008 by transposing the provisions of Directive 2015/2436 as mentioned in point 24.

With a view to align the trademark examination practices with the EU standards in the field, AGEPI started the implementation of the Common Practices elaborated by the European Union Intellectual Property Network within the Convergence Program implemented by the European Union Intellectual Property Office (EUIPO). In 2021, the first Common practice in the field of trademarks was implemented, namely CP5 “Relative Grounds – Likelihood of Confusion (Impact of non-distinctive/weak components)”.

24. Is Moldova trademark law harmonized with EU *acquis* (Trade mark Package), in particular with the recent Directive 2015/2436 to approximate the domestic laws of EU Member States relating to trademarks (codified version)?

The Law No. 38/2008 on the protection of trademarks⁶⁹ is to a large extent harmonized with the EU *acquis* on industrial property in the field of trade marks. The Republic of Moldova intend to transpose the Directive 2015/2436 (in particular Art. 3, Art. 4 para. 1, Art. 5 para. 4, Art. 13, Art. 17, Art. 27, Art.39 para. 2, Art. 43 para. 2) that are not yet implemented into the national legislation. At present, assessment of compliance of the Moldovan trademark legislation with the Directive 2015/2436 is under consideration.

25. Are there specific provisions relating to the protection of trade marks with reputation/wellknown trademarks?

Yes. The protection of well-known trademarks is governed by Law No. 38/2008 on the protection of trademarks⁷⁰, that in Art. 2 defines the well-known trademark as a widely known trademark in the Republic of Moldova on the date of filing a trademark application or on the date of the priority claimed in the application, within the target audience for the products and / or services to which the trademark applies, without being necessary to register or use the well-known trademark in the Republic of Moldova in order to be opposed. Art. 3 letter c) of the Law No. 38/2008 on the protection of trademarks stipulates that the rights in a trademark shall be acquired and protected on the territory of the Republic of Moldova, including by means of recognition of a trademark as well known. The requirements

⁶⁹ Law No. 38/2008 on the protection of trademarks, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93464&lang=ro#

⁷⁰ Law No. 38/2008 on the protection of trademarks available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93464&lang=ro#

for protections and recognition of a trademark as well-known are regulated in accordance with the provisions of Chapter III, Section 1¹ Recognition of trademark as well-known, of the Law No. 38/2008 on the protection of trademarks, that provides as follows:

- Art. 32¹. Protection of a well-known trademark
- Art. 32². Filing a claim for recognition of a trademark as well known
- Art. 32³. Content of the claim for recognition of a trademark as well known
- Art. 32⁴. Materials attached to the claim for recognition of a trademark as well known
- Art. 32⁵. Criteria for recognition of a trademark as well known
- Art. 32⁶. Examination of the claim for recognition of a trademark as well known
- Art. 32⁷. Decision on for recognition of a trademark as well known

The Law No. 38/2008 on the protection of trademarks stipulates that a trademark can be recognized as well-known only if a claim for the notoriety has been filed at the district court where AGEPI premises are located, or of a counterclaim in an action to protect the rights, filed at the same court. The term of protection of a well-known trademark shall not be limited.

The Law No. 38/2008 on the protection of trademarks is in line with Art. 6bis of the Paris Convention for the Protection of Industrial Property, Art. 16 para. 2 and 3 of the TRIPS Agreement and the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organisation.

26. Are there specific provisions relating to the protection of collective marks?

Yes. A collective trademark is defined in Art. 2 of Law No. 38/2008 on the protection of trademarks⁷¹ as a trademark used by an association of manufacturers, producers, service providers or salesmen, or by other similar organizations to designate their goods and/or services. The protection of collective marks is regulated in Chapter IV “Collective trademarks and certification trademarks” of the Law No. 38/2008 on the protection of trademarks, that provides as follows:

- Art. 51. Collective trademarks
- Art. 52. Regulations on use of a collective trademark
- Art. 53. Refusal of a collective trademark registration application
- Art. 54. Amendments to regulations on use of a collective trademark

⁷¹ Law No. 38/2008 on the protection of trademarks, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93464&lang=ro#

- Art. 55. Bringing a suit for protection of rights in a collective trademark
- Art. 56. Grounds for deprivation of rights in a collective trademark
- Art. 57. Grounds for invalidity of a collective trademark.

The protection regime of the collective trademarks is in line with the Directive 2015/2436 to approximate the domestic laws of EU Member States relating to trademarks.

27. To what extent is compliance with the TRIPs Agreement, the Paris Convention, the Singapore Treaty on the Law of Trademarks and Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks assured?

The Law No. 38/2008 on the protection of trademarks⁷² is fully in line with the TRIPs Agreement, the Paris Convention, the Singapore Treaty on the Law of Trademarks and Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Marks Registration. As of January 1, 2022, the 11 edition of The International Classification of Goods and Services is used by the AGEPI, and it applies to all applications filed, and their resulting registrations, for all statutory purposes.

C. Designs

28. What are the plans for full alignment with the EU *acquis* on industrial property in the field of designs? Has the Union *acquis* served as benchmark when your national law was created? What are the plans for further alignment, and by when?

The protection of industrial designs in the Republic of Moldova is regulated by the Law No. 161/2007 on the protection of industrial designs⁷³.

The EU *acquis*, Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs and Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs on the legal protection of designs, served as benchmark when the Law 161/2007 on the protection of industrial designs was developed. The Law No. 161/2007 on the protection of industrial designs sets a legal framework for the protection of industrial designs similar to the ones that exist in the EU, therefore no changes of the Law No. 161/2007 on the protection of industrial designs are planned.

⁷² Law No. 38/2008 on the protection of trademarks, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93464&lang=ro#

⁷³ Law No. 161/2007 on protection of industrial designs, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93462&lang=ro#

With a view to align the industrial design examination practices with the EU standards in the field, AGEPI started the implementation of the Common Practices elaborated by the European Union Intellectual Property Network within the EUIPO Convergence Program. The first Common practice in the field of design, namely CP10 “Criteria for assessing disclosure of designs on the internet” is planned to be implemented by end of May 2022.

29. Is Moldova legislation harmonized with the content of Directive 98/71/EC on the legal protection of designs?

Yes. The Law No. 161/2007 on the protection of industrial designs is harmonized with the provision of Directive 98/71/EC on the legal protection of designs.

30. Are there, or are there plans to adopt, provisions relating to the protection of unregistered designs?

Yes. Protection of unregistered designs is stipulated in Art. 4 para. (2) letter c) of the Law No. 161/2007 on the protection of industrial designs⁷⁴ providing that an unregistered design shall be recognized and protected on the territory of the Republic of Moldova if made available to the public in conformity with the Law No. 161/2007 on the protection of industrial designs.

31. Are the registrability criteria for designs compliant with the public policy or morality principles?

Yes. Pursuant to Art. 11 para. (4) of the Law No. 161/2007 on the protection of industrial designs⁷⁵, no industrial design shall be protected if it infringes public order or accepted morality standards.

32. Can a design protected by a registered design right be also eligible for protection under the law of copyright?

Yes. Pursuant to Art. 4 para. (3) of the Law No. 161/2007 on the protection of industrial designs⁷⁶, an industrial design protected by a registered design right is also eligible for protection under the law of copyright.

⁷⁴ Law No. 161/2007 on protection of industrial designs, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93462&lang=ro#

⁷⁵ Law No. 161/2007 on protection of industrial designs, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93462&lang=ro

⁷⁶ Law No. 161/2007 on protection of industrial designs, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93462&lang=ro

33. To what extent is compliance with the TRIPs Agreement, the Paris Convention and the Locarno Agreement Establishing an International Classification for Industrial Designs assured?

The Law No. 161/2007 on the protection of industrial designs is in compliance with the TRIPs Agreement, the Paris Convention and the Locarno Agreement Establishing an International Classification for Industrial Designs. As of 1 January 2021, the 13th edition of International Classification for Industrial Designs is used by the AGEPI, and it applies to all applications filed, and their resulting registrations, for all statutory purposes.

III. TRADE SECRETS

34. Is there protection for trade secrets in Moldova? What are the conditions for protection?

In the Republic of Moldova, trade secrets belong to the field of intellectual property, but it has a separate regulatory system, according to the provisions of Art. 476, Art. 2047-2054 of the Civil Code of the Republic of Moldova No. 1107/2002⁷⁷.

For the purposes of the Civil Code of the Republic of Moldova No. 1107/2002, trade secrets mean information which meets the following cumulative requirements:

- they are secret in the sense that they are not, as a body or in the precise configuration and assembly of its components, generally known among or easily accessible to persons within the circles that normally deal with the kind of information in question;
- they have commercial value because they are secret;
- they have been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep them secret.

The holder of the trade secret, natural or legal person, who has legal control over a trade secret, has the right to exercise the legal measures provided by the Civil Code of the Republic of Moldova No. 1107/2002 and other legal provisions to prevent or obtain redress for the unlawful acquisition, use or disclosure of his trade secrets as a result of such acts.

35. What measures can be taken in case of unlawful acquisition, use and disclosure of trade secrets?

In case of unlawful acquisition, use or disclosure of a trade secret, the trade secret holder, according to the provisions of Art. 2051 of the Civil Code of the Republic of Moldova No. 1107/2002⁷⁸, may exercise one or more of the following measures against the perpetrator:

- the cessation of or, as the case may be, the prohibition of the use or disclosure of the trade secret;
- the prohibition on the production, offering, placing on the market or use of goods infringing a trade secret (hereinafter referred to as infringing

⁷⁷ The Civil Code of the Republic of Moldova No. 1107/2002, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=129081&lang=ro#

⁷⁸ The Civil Code of the Republic of Moldova No. 1107/2002, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=129081&lang=ro#

good), or the importation, export or storage of such goods for those purposes;

- the adoption of the appropriate corrective measures with regard to the infringing goods;
- the destruction of all or part of any document, object, material, substance or electronic file containing or embodying the trade secret or, where appropriate, the delivery up to the applicant of all or part of those documents, objects, materials, substances or electronic files.

The corrective measures with regard to the infringing goods shall include:

- recall of the infringing goods;
- depriving the infringing goods of their infringing quality;
- destruction of the infringing goods or, where appropriate, their withdrawal from the market, provided that the withdrawal does not undermine the protection of the trade secret in question.

When having disposed the withdrawal of the infringing goods from the market, the court may order, at the request of the trade secret holder, that the goods be delivered up to the holder or to charitable organizations.

The court shall order that the measures referred to in letters c) and d) of the first paragraph be carried out at the expense of the perpetrator, unless particular reasons are invoked for not doing so. Those measures shall be without prejudice to any damages that may be due to the trade secret holder by reason of the unlawful acquisition, use or disclosure of the trade secret.

36. What are the plans for full alignment with the EU acquis in the field of trade secrets (see Directive 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure)? What are the plans for further alignment, and by when?

Art. 2047-2054 of the Civil Code of the Republic of Moldova No. 1107/2002⁷⁹ transpose Articles 1-10 of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

At the same time, based on the commitments of the Republic of Moldova regarding the harmonization of the national legislation with the existing and future community legislation, we will follow the developments of the reference field at

⁷⁹ The Civil Code of the Republic of Moldova No. 1107/2002, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=129081&lang=ro#

EU level and ensure the transposition, if necessary, of the new provisions on trade secrets.

IV. ENFORCEMENT AND INSTITUTIONAL CAPACITIES

37. Which area(s) of intellectual, industrial and commercial property law still require further major changes/adaptations to fully comply with the EU acquis, and for what reasons?

Currently, the national legal framework in the field of intellectual property is in line with most international treaties and the European Union Directives and Regulations in the field, and ensure an adequate and effective level of protection and enforcement of intellectual property. At the same time, the process of consolidating the legislation is a continuous one, in order to face the technological development, global health and security challenges, and the evolutions in the international and EU legal framework.

In the period 2007 to 2010, the intellectual property legislation was to a large extent harmonized with the EU acquis, but the continuous legal development process taking place at the EU level, impose the need for further amendments to some intellectual property laws, namely:

- the field of copyright and related rights - is a top priority due to the need to provide a high degree of protection to authors and holders of copyright and related rights. With that end in view, the draft Law on copyright and related rights⁸⁰ has already been drafted with the support of an expert from the European Union Project “Support for Structured Policy Dialogue, Coordination of the Implementation of the Association Agreement, and Enhancement of the Legal Approximation Process”.
- In particular, it is proposed to transpose the provisions of Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, as well as other changes that occurred in the community acts after the entry into force of Law No. 139/2010 on copyright and related rights⁸¹. More details on this topic are set forth in the answers to the questions in the COPYRIGHT AND NEIGHBOURING RIGHTS section.
- the field of trademark protection - the Republic of Moldova intends to transpose the provisions of Directive 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (in particular Art. 3, Art. 4 para. (1), Art. 5 para. (4), Art. 13, Art. 17, Art. 27, Art. 39 para. (2), Art. 43 para. (2) that are not yet implemented into the national legislation.

⁸⁰ Draft Law on copyright and related rights, available in Romanian at: https://agepi.gov.md/sites/default/files/2022/02/1.Proiectul_Legii_privind_dreptul_de_autor_si_drepturile_conexe.pdf

⁸¹ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

- *the field of protection of geographical indications, appellations of origin and traditional specialties guaranteed* - implementation of Community practices arising from new EU Common Agriculture Policy in order to address deficiencies in the protection system, by establishing the necessary institutional framework and, in particular, designating the entities responsible for verification and certification of products with geographical indications, appellations of origin and traditional specialties guaranteed from the Republic of Moldova, before placing them on the market, in order to offer Moldovan producers the opportunity to benefit from the advantages of designating products which are distinguished by certain special, specific qualities, reputation or tradition with geographical indications, appellations of origin or traditional specialties guaranteed. It will also be implemented the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, adopted at the Diplomatic Conference for the Revision of the International Registration System for Names That Identify the Geographical Origin of Products, held on 11-21.05.2015, in Geneva, Switzerland, signed by the Republic of Moldova on 11.04.2016.

The Republic of Moldova will continue to monitor the legal development in intellectual property field in order to ensure the transposal of the EU standards into the national legislation in line with the EU- Republic of Moldova Association Agreements and EU integration process commitment of our country.

38. Please describe which domestic institutions are competent on the enforcement of intellectual property law, and their institutional set-up. What are the tasks and powers of these bodies? Do they have the necessary institutional capacity to carry out their tasks? Do the administrative and operational enforcement authorities dispose of sufficient and sufficiently trained staff? Please explain their capacity to ensure IPR protection and provide their organisation chart and the number of staff employed.

There are multiple institutions with a role to play in the enforcement of IPR in the Republic of Moldova, combating counterfeiting and piracy:

- Customs Service;
- Ministry of Internal Affairs;
- General Prosecutor's Office;
- Agency for Consumer Protection and Market Surveillance;
- National Agency for Food Safety;
- State Agency on Intellectual Property.

Customs Service

The Customs Service of the Republic of Moldova is an administrative authority subordinated to the Ministry of Finance. In accordance with the normative acts regulating the customs activity, as well as with the international treaties to which the Republic of Moldova is a party, Custom Service provide for the enforcement of intellectual property rights at the border.

According to Art. 11 of the Customs Code of the Republic of Moldova No. 1149/2000⁸², one of the basic attributions of the customs authority by law is to stop illicit movement across the customs frontier of intellectual property objects.

In particular, the intellectual property border protection measures are carried out by the customs authorities according to Chapter XII of the Customs Code of the Republic of Moldova No. 1149/2000 and the Government Decision No. 915/2016 for the approval of the Regulation on enforcement of intellectual property rights by customs authorities⁸³.

The customs authorities shall take action in order to detain goods suspected of infringing an intellectual property right and/or suspend the customs clearance operation in respect of them, when the right holder has an application for action by the customs authority, accepted by the Central Apparatus of the Customs Service or ex officio, by measures prior to the lodgment of the application for action, according to the procedures established in Art. 304 or Art. 302 of the Customs Code of the Republic of Moldova No. 1149/2000.

According to Art. 301 para. (1) of the Customs Code of the Republic of Moldova No. 1149/2000, the intellectual property protection measures at the borders shall apply to goods liable to infringing an intellectual property right.

The respective measures shall be provided by customs authorities:

- at the central level, through the Intellectual Property Protection Service within the Customs Fraud Investigation Department; and
- at the operational level, through customs offices, customs posts, mobile teams, subdivisions empowered with investigative and criminal prosecution activities, as well as those of subsequent control.

Intellectual property protection service shall:

⁸² The Customs Code of the Republic of Moldova No. 1149/2000, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130518&lang=ro#

⁸³ Government Decision No. 915/2016 for the approval of the Regulation on Enforcement of Intellectual Property Rights by Customs Authorities, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=94241&lang=ro

- examine the applications for action by the customs authority, lodged by the right holders to the Central Apparatus of the Customs Service and adopt decisions thereon;
- keep records of the applications for action by the customs authority;
- keep centralized records of the goods detained and/or in respect of which the customs clearance operation has been suspended by the customs authorities, as liable to infringing an intellectual property right;
- keep centralized records of the intellectual property objects protected by the customs authority, according to the Register of Intellectual Property Objects to which border protection measures are applied, placed on the official website of the Customs Service www.customs.gov.md, at the compartment “BUSINESS ENVIRONMENT”/“Protection of Intellectual Property”;
- notify the right holder and the declarant/consignee/owner of the goods of the detention by the subdivisions of the Central Apparatus of the Customs Service of the goods liable to infringing an intellectual property right;
- notify the international right holder of the suspension of the customs clearance operation and/or the detention of goods liable to infringing an intellectual property right, in case of application of ex-officio action (*measure prior to the lodgment of the applications for action by the customs authority*) according to Art. 302 para. (1) of the Customs Code of the Republic of Moldova No. 1149/2000;
- provide methodological and practical support to the subdivisions of the customs authority in matters of protection of intellectual property rights;
- apply intellectual property rights protection measures when notifying the mobile teams, the subdivisions empowered with investigative and criminal prosecution activities, as well as that of subsequent control within the Central Apparatus of the Customs Service;
- exercise other duties established by the Regulation on the Organization and Functioning of the Customs Fraud Investigation Department.

Customs office shall:

- exercise the customs control by the subordinated customs posts or, as the case may be, exercise certain forms of customs control (*e.g.: subsequent control, etc.*) of the goods found in the situation provided for in Art. 301 para. (1) of the Customs Code of the Republic of Moldova No. 1149/2000;
- notify the right holder and the declarant/consignee/owner of the goods of the detention of the goods and/or in respect of which the customs clearance operation has been suspended by the subdivisions of the customs office, as liable to infringing an intellectual property right according to Art. 304 para. (1) and Art. 302 para. (1) of the Customs Code of the Republic of Moldova No. 1149/2000;

- designate a customs official within the Contravention Procedure Section (with the exception of the Center customs office where a specialized subdivision is created with two employees - a Head of Service and a Chief Inspector) as the person responsible for supervision and proper conduct of intellectual property protection measures in the customs office, for providing methodological and practical support, and, respectively, the contact person between the Intellectual Property Protection Service, the customs office and the customs post;
- designate two customs officials within the subordinated customs posts with responsibilities for providing methodological and practical support in the field of intellectual property protection, to the employees of the respective customs post.

Customs post shall:

- directly exercise the customs control of the goods found in the situation provided for in Art. 301 para. (1) of the Customs Code of the Republic of Moldova No. 1149/2000;
- suspend the customs clearance operation and/or detain the goods liable to infringing an intellectual property right based on the record of detention of the goods and objects under customs control;
- prepare draft notifications and reports, according to the models in annex No. 3, No. 4 and No. 5 of the Government Decision No. 915/2016 for the approval of the Regulation on enforcement of intellectual property rights by customs authorities and present them to the management of the customs office for signing;
- apply insurance measures regarding the goods liable to infringing the rights in intellectual property objects, under the conditions provided for in Art. 306 of the Customs Code of the Republic of Moldova No. 1149/2000;
- carry out the customs clearance of the goods confirmed as original, when the right holder did not comply with the notification of the customs authority or did not act in court challenging the measure of detention and/or suspension of the customs clearance operation of goods liable to infringing an intellectual property right within the established term;
- sample counterfeit goods on the basis of the record of sampling goods to be destroyed and ensure the transmission of samples for storage;
- ensure and supervise within the term established by the legislation the destruction of the goods infringing an intellectual property right, including those that are the subject of small deliveries;
- ensure and supervise the application of measures that have as a consequence the deprivation of the persons involved in the economic profit of the operation with the goods infringing an intellectual property right, according to Art. 305 para. (1) letter b) of the Customs Code of the Republic of Moldova No. 1149/2000;

- ensure and supervise the free transmission of counterfeit goods, according to Art. 305 para. (1) letter c) of the Customs Code of the Republic of Moldova No. 1149/2000.

At present, the staff of the Intellectual property protection service within the Customs Fraud Investigation Department consists of 3 customs officials, one of whom is a chief and two are chief inspectors.

The staff number is sufficient to maintain the status quo, but for the development and optimization of intellectual property rights enforcement measures in accordance with European Union standards, it has been proposed that the Intellectual Property Protection Section be created on the basis of the Intellectual Property Protection Service with a staff number of 5 units, and within the North and South customs offices, a Service with a staff number of 1 unit each, similar to the structure of the Center customs office.

Ministry of Internal Affairs

The Ministry of Internal Affairs is a law-enforcement authority vested with powers of preventing and combating offenses against intellectual property on the internal market. The foresaid powers are exercised by the Copyright and Related Rights Crime Investigation Division №4 within the Economic Fraud Investigation Directorate and Centre for Combating Cybercrime the of the National Inspectorate of Investigations (NII) of the General Police Inspectorate (GPI) of the Ministry of Internal Affairs (MIA).

The mission of the Division №4 is to organize and carry out actions to prevent, detect and document crimes related to IPR infringements, actions aimed at protecting natural persons and legal entities against economic activities that could infringe intellectual property rights and also generate increased risks for potential consumers of counterfeit products.

Copyright and Related Rights Crime Investigation Division №4 have 7 police officers involved in investigating IPR infringements.

The Centre for Combating Cybercrime currently employs 29 officers (7 criminal investigative officers and 22 investigative officers) tasked with preliminary investigative and operative-detective activities in terms of cybercrime offences (including the ones implying an intellectual property right). Similar to other jurisdictions, the Centre is active in providing assistance and guidance to local police units in cybercrime and electronic evidence matters.

The work of the Centre is supported by a cyber lab created within the Technical Criminalist Directorate of the Ministry of Internal Affairs, where technical specialists work on analyses, collection and processing of electronic evidence. The competence of the officers of the IT Crimes Investigation Directorate aims at

documenting the cases of IPR violation oriented primarily in the virtual environment

The process of forensic examinations takes place in compliance with the provisions of the Criminal Code of the Republic of Moldova No. 985/2002⁸⁴, the Criminal Procedure Code of the Republic of Moldova No. 122/2003⁸⁵, methodological materials and other applicable standards.

In accordance with legislation, the police officers are competent to ascertain and examine cases that fall within the scope of Art. 185¹ (Violation of copyright and related rights) and art. 185² (Violation of the right to industrial property) of the Criminal Code of the Republic of Moldova No. 122/2003, Art. 96 and Art. 99 to 104 of the Contravention Code of the Republic of Moldova No. 218/2008⁸⁶. The prosecution of criminal cases are within the competence of the prosecutors.

General Prosecutor's Office

The General Prosecutor's Office is an autonomous public institution within the judicial authority which, in criminal proceedings and in other procedures provided by law, contributes to the observance of the rule of law, the performance of justice, the protection of the legitimate rights and interests of the person and society. The activity of the General Prosecutor's Office is regulated by the provisions of Law No. 3/2016 on the Prosecutor's Office⁸⁷.

In accordance with Art. 270 of the Criminal Procedural Code of the Republic of Moldova No. 122/2003⁸⁸, the prosecutor prosecutes the following IPR infringements provided for in Art. 185¹ – 185³ of the Criminal Code of the Republic of Moldova No. 122/2003, namely:

- Art. 185¹ Infringement of copyright and related rights;
- Art. 185² Infringement of industrial property rights;
- Art. 185³ False intentional statements in registration documents related to the protection of intellectual property; and
- Art. 246² Counterfeiting of products.

⁸⁴ The Criminal Code of the Republic of Moldova No. 985/2002, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130983&lang=ro#

⁸⁵ The Criminal Procedure Code of the Republic of Moldova No. 122/2003, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130985&lang=ro#

⁸⁶ The Contravention Code of the Republic of Moldova No. 218/2008, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=131058&lang=ro#

⁸⁷ Law No. 3/2016 on the Prosecutor's Office, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130952&lang=ro#

⁸⁸ The Criminal Procedure Code of the Republic of Moldova No. 122/2003, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130985&lang=ro#

In the context of a rapidly expanding cyberspace and, consequently, the rise of cybercrime, the Prosecutor's Office is increasingly involved in the fight against cybercrime, including cybercrime involving IPR. In order to carry out the activity of combating cybercrime and other related crimes, as well as to ensure the monitoring of trends in these phenomena in order to identify solutions to effectively react to new challenges, the General Prosecutor issued the Order No. 47/4 of 09.12.2016 on the interaction between the subdivisions of the Prosecutor General's Office, the specialized and territorial public prosecutor's offices in carrying out the activity of combating cybercrime.

There is no specialized unit in the field of intellectual property within the General Prosecutor's Office, prosecution of IPR crimes being the responsibility of the Criminal Investigation and Forensics Department, and the Information Technology and Cybercrime Combating Unit that deals with IPR infringements in cyberspace.

Since 2013, AGEPI and the National Institute of Justice are organizing professional intellectual property training for Judges and Prosecutors. The intellectual property trainings are organized twice a year and typically has a duration of 2-3 days, and includes theoretical and practical training on IPR protection and enforcement. In addition, Prosecutors are participating in other training on IPR organized by AGEPI or other national or international partners.

Agency for Consumer Protection and Market Surveillance (ACPMS)

ACPMS is an administrative authority subordinated to the Ministry of Economy responsible for the implementation of consumer protection policy, conformity of products and/or services placed on the market, legal metrology and trade activities.

The ACPMS is competent to perform the following activities on the internal market:

- Organise and carry out surveillance activity on the compliance of products placed on the market and services rendered against the prescribed and/or declared requirements, including by exercising the control, on behalf of the State, at all stages of the vital life cycle of the product or service;
- Exercise legal metrological control over metrological assurance standards, status of standards, measuring instruments and reference materials in the field of legal metrology;
- Exercise state control on compliance with the norms and rules of conduct of trade activities;
- Exercise control on IPR Enforcement;
- Carry out activities to protect the economic interests of consumers; and
- Carry out information and education activities concerning consumer rights.

- The ACPMS is responsible for overseeing and examination of the IPR contraventions as provided for in Contravention Code of the Republic of Moldova No. 218/2008, in particular:
- Art. 97 Illegal use of a trademark
- Art. 97¹ Illegal use of the designation of origin of the product and of the geographical indication
- Art. 97² Illegal use of the names of traditional specialties guaranteed
- Art. 98 (para. 2) Use of false or misleading information in labeling products
- Art. 283 (para. 2) Counterfeiting of Products.

The Agency staff at the end of 2021 was of 63 employees. There is no specialised IPR Unite within the ACPMS, the inspections, including observance of IPR on the market are carried out by inspectors from the Department for surveillance of industrial goods and services that has the following competences:

- Market surveillance, quality control of industrial products and services;
- State control regarding the observance of the norms and rules in the trade activity;
- Examination of petitions, notifications. Providing advice to consumers and businesses.

In the period 2017-2018, there were several training courses for the ACPMS inspectors from and an IPR Guide for Agency for Consumer Protection and Market Surveillance was elaborated with the support of an EU funded project. In the last two years, there were no dedicated intellectual property training for the ACPMS. Due to staff fluctuation, there is a stringent need for consolidation of staff and the continuous training of ACPMS inspectors dealing with IPR enforcement issues.

The National Agency for Food Safety (ANSA)

The National Agency for Food Safety (ANSA) is the administrative authority with national activity responsible for implementing the state policy in the field of regulation and control for food safety and in the sanitary-veterinary, zootechnical, plant protection and phytosanitary quarantine, seed control, quality of primary products, food and feed.

According to the Law No. 57/2006 on Vine and Wine⁸⁹, ANSA ensures the control of wines with protected appellations of origin (PAO) and protected geographical indications (PGI). ANSA is responsible for the verification of a product's conformity with the corresponding product specification, checks the labelling of

⁸⁹ Law No. 57/2006 on Vine and Wine, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=131005&lang=ro#

products with PAO/PGI. It has the right to prohibit the marketing of batches of wine and wine products, including the ones with PGIs/PAOs that do not fulfil the production and legal requirements, including technical specification, labelling, etc.

In line with Art. 414 of Contravention Code of the Republic of Moldova No. 218/2008, the National Agency for Food Safety is competent for contraventions that falls under Art. 98 para. (1), being responsible for the ascertaining and examination of the use, in the marking of foodstuffs, of false or misleading indications for the purpose of misleading the consumer as to the quality, quantity, properties, destination, value or date of manufacture of the goods or services, as well as the manufacturer and its premises.

State Agency on Intellectual Property (AGEPI)

AGEPI is the central administrative authority subordinated to the Government, responsible for granting IPR in the Republic of Moldova. Apart from granting IPR, AGEPI is responsible for formulation of intellectual property policy, elaboration and development of intellectual property legislation, observance of the implementation of national intellectual property legislation and of international agreements in the field, representation of the Republic of Moldova in specialized International organizations, intellectual property education and training. AGEPI also keeps the register of IPRs protected on the territory of the Republic of Moldova, maintain and provide online, free of charge access to public IPR databases. AGEPI has no control competences but it monitor the IPR enforcement activity, collect and process data on IPR infringements and organise trainings in intellectual property field for enforcement bodies and judiciary. To support the enforcement activities in intellectual property, an IPR Enforcement Observatory was established by AGEPI. More information about the AGEPI competencies is provided in answers to question 47.

Regardless of the existence or non-existence of special IPR units, there is a need for continuous IPR training of enforcement officers and allocation of sufficient resources for IPR training within the enforcement bodies, either through IPR specialised units or through train-the-trainer programs. The dedicated IPR units and/or the IPR trainers could become centres of excellence and training for other enforcement officers.

39. Does Moldova provide for a specific border regime preventing importation, exportation and transit of counterfeited and pirated subject matter? Please explain how the prevention of import of counterfeited goods is ensured? Does Moldova have any legislation regarding customs enforcement of IPR?

Yes. The Customs Enforcement of IPR is governed by the following legislation:

- The Customs Code of the Republic of Moldova No. 1149/2000⁹⁰ (Chapter XII); and
- Government Decision No. 915/2016 for the approval of the Regulation on enforcement of intellectual property rights by customs authorities⁹¹.

The Moldovan customs legislation was aligned with 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.

According to Art. 301 para. (1) of the Customs Code of the Republic of Moldova No. 1149/2000, the intellectual property protection measures shall apply to goods liable to infringing an intellectual property right, that:

- are brought into or out of the customs territory of the Republic of Moldova;
- are declared to customs authorities in order to place them under a permanent or suspensive customs procedure;
- is under customs supervision in all other cases;
- have not been declared when entering or leaving the country and are discovered by customs authorities during customs controls;
- entered into the state ownership by confiscation or abandoned in favor of the State;
- released for free circulation.

The IPR protection legislation does not apply to goods manufactured with the consent of the right-holder or goods intended for personal use which are carried across the border by natural persons.

Customs officers shall detain goods which are suspected of infringing an invention, utility model, plant variety, topographies of integrated circuits, designations of origin, trademarks, industrial designs, objects of copyright and related rights and trade secrets.

The customs legislation grants ex-officio powers to the Customs Service and it also outlines the procedure for a right holder to lodge an application for action with the Customs Service. Furthermore, the legislation obligates the Customs Service to immediately inform a right holder and importer of a suspension.

⁹⁰ The Customs Code of the Republic of Moldova No. 1149/2000, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130518&lang=ro#

⁹¹ Government Decision No. 915/2016 for the approval of the Regulation on Enforcement of Intellectual Property Rights by Customs Authorities, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=94241&lang=ro

There is also a simplified procedure option for the right holder and importer to reach agreement on the disposal of goods suspected of infringing an IPR and a small consignment procedure.

Details procedure of the IPR enforcement is provided in Art. 304 of the Customs Code of the Republic of Moldova No. 1149/2000 and the Regulation on enforcement of intellectual property rights by customs authorities, approved by Government Decision No. 915/2016.

According to the legislation in force, when Customs officers suspect, on the basis of “adequate evidence”, that goods under their supervision infringe an IPR, they may suspend the release of, or detain, the goods either on their own initiative or on application by the right-holder, in order to enable the right-holder to initiate proceedings to determine whether or not his intellectual property rights have been infringed (the responsibilities of different customs units are described in answer to question 38).

On the basis of an application for action, the customs authority has the right to suspend the customs clearance and/or to detain, for a period of ten (10) working days, the goods suspected to infringe an IPR, which are placed under the Customs warehouse from the account and on behalf of the declarant.

Following the issuance of a decision to withhold goods liable to infringe an IPR or to suspend the customs clearance, the customs authority shall notify the right holder and the declarant / recipient of the goods of the decision.

If the customs body suspends the customs clearance operation and/or holds the goods and there is a request for intervention accepted before the expiry of the term of four (4) working days, the deadline of ten (10) working days shall run from the day following that in which the request for intervention was accepted.

The right-holder shall inform the customs authority in writing within ten (10) working days of receipt of the notification or three (3) working days in the case of perishable goods if the detained goods infringe an IPR. In justified cases and at the written request of the right holder, the original ten (10) working days may be extended by up to an additional (10) working days, except for perishable goods.

In the decision to withhold goods liable to infringe an IPR and/or to suspend the customs clearance, an act of physical control of the goods and a record of the detention of the goods and objects under customs control shall be made, which shall be kept under customs supervision.

If the customs authority has withheld goods liable to infringe an intellectual property right and/or suspended the customs clearance operation, the goods may be destroyed under the conditions laid down in Art. 304 of the Customs Code of the Republic of Moldova No. 1149/2000.

If, within the prescribed period, the right-holder fails to sue the declarant/recipient of the goods, the customs body shall dispose the release of the goods and/or the customs clearance of the goods, according to the provisions of the Customs Code of the Republic of Moldova No. 1149/2000.

When examining the goods, the customs officer may allow to take samples in accordance with the procedure established by the Customs Service and, at the express request of the right holder, may hand them over or forward it solely for analysis and to facilitate further proceedings, if circumstances permit and/or samples must be returned on completion of the technical analysis and if possible before the release or detention of the goods. Sampling shall be carried out under the conditions laid down in the customs rules.

In the absence of an application for action or until such a request is accepted, the customs authority may suspend the customs clearance procedure and/or withhold the goods for a period of four (4) working days, within an ex-officio procedure provided under the Art. 302 of Customs Code of the Republic of Moldova No. 1149/2000 when it has sufficient grounds for believing that the goods in question have infringed an IPR.

When the right-holder does not file an application for action within the prescribed time limit, the customs body shall release the goods and/or shall apply the customs clearance procedure but only if the other legal conditions are met.

Goods in respect of which turned out to infringe an IPR, cannot be brought into or out of the customs territory of the Republic of Moldova, or free economic zones or free warehouses, cannot be imported, exported, re-exported, and placed under suspensive customs regime.

40. Which system of exhaustion of intellectual, industrial and commercial property rights does Moldova apply? In particular, does Moldova apply a system of national or international exhaustion of trademarks? Does Moldova apply a system of national or international exhaustion of the distribution right (copyright and related rights)?

The national exhaustion of rights is applicable in the Republic of Moldova. The special laws on intellectual property are providing for the exhaustion of rights for each intellectual property right.

Thus, for *trademarks*, Art. 13 of Law No. 38/2008 on the protection of trademarks⁹², provides that:

⁹² Law No. 38/2008 on the protection of trademarks, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93464&lang=ro#

“(1) The owner of a registered trademark shall not be entitled to demand prohibition on other persons from using the trademark on goods and/or services marketed in the Republic of Moldova directly by the owner or with its consent.

(2) The provisions of paragraph (1) shall not apply where the owner submits reasoned objections against the sale of goods or provision of services, in particular where their quality is modified or distorted after being placed on the market.”

For **copyright and related rights**, in accordance with Art. 11 para. (3), Art. 33 para. (7), Art. 34 para (3), Art. 35 para. (3), Art. 36 para. (3) of Law No. 139/2010 on copyright and related rights⁹³, the right of distribution is exhausted with the first sale or other first transmission of the ownership right over the original or copies of the work, the fixation of the performance, the phonogram, the videogram, the fixation of the broadcast on the territory of the Republic of Moldova. Also, in accordance with Art. 40 para. (2) of Law No. 139/2010 on copyright and related rights, the first sale of a copy of a database on the territory of the Republic of Moldova by the right holder or with his consent shall exhaust the right to control sale of that copy.

The Exhaustion of **patent rights** is regulated by Art. 23 of Law No. 50/2008 on the protection of inventions⁹⁴ that provides that “The rights conferred by a patent shall not extend to acts concerning the patented product insofar as such acts are performed on the territory of the Republic of Moldova, after that product has been so put on the market in the Republic of Moldova by the patent owner or with his express consent.”

In case of **plant varieties protection**, Art. 17 of the Law No. 39/2008 on the protection of plant varieties⁹⁵, provides that “The patent owner’s rights shall not extend to acts concerning any material of the protected variety, or of varieties (...), which have been marketed by the breeder or with his consent, unless such acts:

- a) involve further propagation of the variety in question, except where such propagation was envisaged in the context of marketing of the corresponding material;
- b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.”

⁹³ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

⁹⁴ Law No. 50/2008 on the protection of inventions, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=107070&lang=ro#

⁹⁵ Law No. 39/2008 on the protection of plant varieties, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93465&lang=ro#

41. Does Moldova provide for an effective system of enforcement of intellectual property rights (both copyright and related rights and industrial property rights) to combat piracy and counterfeiting? If yes, is it fully compatible with Directive 2004/48/EC on the enforcement of intellectual property rights?

Yes. The inalienability of intellectual property rights are endorsed by the Constitution of the Republic of Moldova No. 1/1994⁹⁶. Moldova has a comprehensive and modern legal framework called to ensure an efficient and effective level of IPR protection and enforcement. The Republic of Moldova has subscribed to the principles for intellectual property rights protection and enforcement, along with its adherence to WTO and signature of TRIPs Agreement in 2000. The TRIPs provisions were accepted as basic principles and minimal protection standards.

A step forward was made by Moldova's commitment to ensure on its territory a level of IPR protection similar to that in the EU, including effective means of enforcement. With this in view, a deep revision of the national legislation started in 2004. As an output of this revision process, 6 (six) new laws regulating the protection of intellectual property objects, and ensuring the compliance of the domestic legislation with international standards and EU legislation, including the EU Directive 48/2004/EC of the European Parliament and of the Council on the Enforcement of Intellectual Property Rights, were adopted. Each intellectual property law has a special chapter dealing with IPR enforcement that transpose the EU Directive 48/2004/EC, as follows:

- Law No. 50/2008 on the protection of inventions⁹⁷ (enforced on 04.10.2008), Chapter VI (Art. 73-85);
- Law No. 38/2008 on the protection of trademarks⁹⁸ (enforced on 06.09.2008), Chapter VI (Art. 61-73);
- Law No. 161/2007 on the protection of industrial designs⁹⁹ (enforced on 30.11.2007), Chapter V (Art. 57-69);
- Law No. 39/2008 on the protection of plant varieties¹⁰⁰ (enforced on 06.09.2008), Chapter VII (Art. 70-83);

⁹⁶ The Constitution of the Republic of Moldova No. 1/1994, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=128016&lang=ro

⁹⁷ Law No. 50/2008 on the protection of inventions, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=107070&lang=ro#

⁹⁸ Law No. 38/2008 on the protection of trademarks, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93464&lang=ro#

⁹⁹ Law No. 161/2007 on the protection of industrial designs, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93462&lang=ro#

¹⁰⁰ Law No. 39/2008 on the protection of plant varieties, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93465&lang=ro#

- Law No. 66/2008 on the protection of geographical indications, appellations of origin and traditional specialties guaranteed¹⁰¹ (enforced on 25.10.2008), Chapter VI (Art. 47-59);
- Law No. 139/2010 on copyright and related rights¹⁰² (enforced on 01.01.2011), Chapter IX (Art. 54-68).

There is also a special Law on Protection of Topographies of Integrated Circuits (Law No. 655/1999¹⁰³) regulating the protection granted to Topographies of Integrated Circuits on the territory of the Republic of Moldova, providing for in Art. 9 of the law thereof, the liability for infringing the exclusive right on a topographies of integrated circuit. It is to be mentioned that, by now, no rights has been granted on the base of this particular law (no application for protection filled).

The national legislation contains civil, administrative and penal measures for IPR infringement, including ex-officio actions for IPR enforcement at the border and on the internal market. The Custom Code of the Republic of Moldova No. 1149/2000¹⁰⁴ is in line with the TRIPs provisions and incorporates the EU Regulation No. 608/2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No. 1383/2003.

The legislation provides for various options for initiating intellectual property related actions, extensive pre-trial and trial procedures, and interim and final remedies. The court system in the Republic of Moldova is accessible, time and cost efficient. There are also extrajudicial ways for settlement of IPR litigation through mediation and arbitrations procedures. Intellectual property related cases are, mostly dealt as civil cases. There is possibility of initiation of criminal proceedings. An overview of IPR enforcement activities including IPR infringements is provided in the National Report on IPR Enforcement, published annually by the IPR Observatory established within the State Agency on Intellectual Property of the Republic of Moldova and available online on: <http://observatorpi.md>.

¹⁰¹ Law No. 66/2008 on the protection of geographical indications, appellations of origin and traditional specialties guaranteed, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=107008&lang=ro#

¹⁰² Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

¹⁰³ Law No. 655/1999 on the protection of integrated circuit topographies, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93460&lang=ro#

¹⁰⁴ The Customs Code of the Republic of Moldova No. 1149/2000, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130518&lang=ro#

42. Are there specialised courts or tribunals to hear intellectual or industrial and commercial property cases? Is there litigation on intellectual/industrial property litigated matters in Moldova?

There are no specialised courts or tribunals to hear intellectual or industrial and commercial property cases. According to Law No. 514/1995 regarding judicial organisation¹⁰⁵, the Republic of Moldova has three court levels, specifically the:

- District Courts;
- Courts of Appeal; and
- Supreme Court.

The district (first instance) Courts are competent to hear all civil, contravention and criminal cases, unless the law otherwise provides. The Courts of Appeal are competent to hear the judgments handed down by the first instance Courts. The Supreme Court of Justice is the supreme court, which ensures the correct and unitary application of laws by all courts.

There are not so many litigations in the field of intellectual property and most of intellectual property cases are dealt as civil proceedings. There is possibility of initiation of criminal proceedings as well but they are not so numerous. According to the data available at the Agency for Court Administration, there were 65 criminal and contravention (including administrative) cases dealt by courts in 2021, of which:

- criminal cases – 4,
- contravention cases – 36,
- administrative case – 25.

As already mentioned the intellectual property litigation are dealt mostly in civil proceedings. In 2021, there were 46 civil cases dealt by courts where AGEPI was involved as a party or accessory intervener, but the number of the civil litigations involving an intellectual property right are much more numerous but they are not reported to AGEPI.

There are also extrajudicial ways for settlement of IPR litigation through mediation and arbitrations procedures. The regulations on the organization and functioning of the Mediation Commission were approved in 2015 (Government Decision No. 184/2015 approving the Regulation on the organization and functioning of the Commission on mediation in the field of intellectual property and the mediation procedure¹⁰⁶). The regulations on arbitral proceedings were approved in 2017 (Government Decision No. 987/2017 approving the Regulation on the

¹⁰⁵ Law No. 514/1995 regarding judicial organisation, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=127868&lang=ro#

¹⁰⁶ Government Decision No. 184/2015 approving the Regulation on the organization and functioning of the Commission on mediation in the field of intellectual property and the mediation procedure, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95771&lang=ro#

organization and functioning of the arbitration specialized in intellectual property and the arbitral procedure¹⁰⁷). Neither the mediation nor the arbitration intellectual property mechanism were properly used since the establishment, the intellectual property disputes being mostly dealt by courts.

There is also a Board of Appeals, under AGEPI that is a specialized body for the extrajudicial settlement of appeals filed against administrative decisions regarding the rejection of applications for registration or the registration of an intellectual property right. Decisions taken by the Board of Appeals may be appealed by the parties in the courts, as provided by the relevant intellectual property laws, the Civil Code of the Republic of Moldova No. 1107/2002¹⁰⁸ and the Administrative Code of the Republic of Moldova No. 116/2018¹⁰⁹. During 2021, the Board of Appeals issued: 122 decisions, of which 117 – refer to trademarks, 1 – inventions, 4 – industrial designs.

The courts decisions are made publicly available on the website: <https://jc.instante.justice.md/ro/court-decisions>; <https://cac.instante.justice.md/ro/court-decisions>; http://jurisprudenta.csj.md/db_col_civil.php.

A non-exhaustive databases of intellectual property -related decisions issued by the courts with reference to lawsuits attended by AGEPI representatives is available on the AGEPI website: <https://www.agepi.gov.md/en/decisions>.

As there are no courts or judges specialized in intellectual property and in order to ensure a fair level of intellectual property understanding by judges, judges have the option to attend professional trainings organized by the National Institute of Justice, during their service. Since 2013, AGEPI and the National Institute of Justice have organized professional intellectual property training for serving Judges. The intellectual property trainings are organized twice a year and typically has a duration of 2-3 days, and includes theoretical and practical training on IPR protection and enforcement.

43. In which cases is it possible to obtain provisional and precautionary measures?

Intellectual property law provides for the possibility of applying prompt and provisional actions, as follows:

¹⁰⁷ The Government Decision No. 987/2017 approving the Regulation on the organization and functioning of the arbitration specialized in intellectual property and the arbitral procedure, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=102833&lang=ro#

¹⁰⁸ The Civil Code of the Republic of Moldova No. 1107/2002, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=129081&lang=ro#

¹⁰⁹ The Administrative Code of the Republic of Moldova No. 116/2018, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=129135&lang=ro#

- Art. 59, 60 and 64 Law No. 161/2007 on the protection of industrial designs¹¹⁰ (enforced on 30.11.2007);
- Art. 75, 76 and 80 Law No. 50/2008 on the protection of inventions¹¹¹ (enforced on 04.10.2008);
- Art. 63, 64 and 68 Law No. 38/2008 on the protection of trademarks¹¹² (enforced on 06.09.2008);
- Art. 73, 74 and 78 Law No. 39/2008 on the protection of plant varieties¹¹³ (enforced on 06.09.2008);
- Art. 49, 50 and 54 Law No. 66/2008 on the protection of geographical indications, appellations of origin and traditional specialties guaranteed¹¹⁴ (enforced on 25.10.2008);
- Art. 57 and 59 Law No. 139/2010 on copyright and related rights¹¹⁵ (enforced on 01.01.2011).

Thus, any entitled person, who presents sufficient evidence to demonstrate that his rights are infringed, may request the court or other competent authority, **prior to the beginning of the proceedings against the illegal actions, to take prompt and provisional action to protect the relevant evidence**, subject to the protection of confidential information and provision of a corresponding security or an equivalent guarantee, which would be necessary to repair the eventual damage which might be caused to the defendant in case the infringement is not confirmed.

In order to take actions to protect the evidence, the court may request the detailed description of the goods covered by the litigation with or without taking of sampling or arrest the goods covered by the litigation and, where appropriate, the materials and tools used to produce and/or distribute the goods covered by the litigation, as well as the documents referring to them.

Actions to preserve evidence may be taken without hearing the defendant where a delay may cause irreparable damage to the rightholder or where there is likelihood of evidence being destroyed in the opposite case. The court decision shall be communicated promptly to the affected party.

Where the court finds actual or imminently threatening violation of the rights on a protected geographical indication, or a protected appellation of origin, or a

¹¹⁰ Law No. 161/2007 on the protection of industrial designs, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93462&lang=ro

¹¹¹ Law No. 50/2008 on the protection of inventions, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=107070&lang=ro#

¹¹² Law No. 38/2008 on the protection of trademarks, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93464&lang=ro#

¹¹³ Law No. 39/2008 on the protection of plant varieties, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=93465&lang=ro#

¹¹⁴ Law No. 66/2008 on the protection of geographical indications, appellations of origin and traditional specialties guaranteed, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=107008&lang=ro#

¹¹⁵ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

traditional specialty guaranteed, it may, upon request of the rightholder, take measures to bring a suit for infringement of rights in relation to the infringer and/or intermediaries, such as:

- issue an interlocutory injunction against any actions constituting an infringement of rights or to allow the continuation of the actions, subject to the lodging of guarantees sufficient to ensure the compensation of the rightholder;
- seizure of goods suspected of infringing rights to prevent their introduction into the commercial circuit;
- precautionary seizure of any property of the defendant, including the blocking of his/her bank accounts, communication of bank, financial or commercial documents in case the violation is committed on commercial scale and there is a risk of non-compensation of incurred damage.

44. What are the possibilities for the right holder to obtain damages from the infringing party?

Intellectual property law provides for the possibility of the rightholder to obtain damages from the infringing party, as follows:

- Art. 68 Law No. 161/2007 on the protection of industrial designs¹¹⁶ (enforced on 30.11.2007);
- Art. 84 Law No. 50/2008 on the protection of inventions¹¹⁷ (enforced on 04.10.2008);
- Art. 72 Law No. 38/2008 on the protection of trademarks¹¹⁸ (enforced on 06.09.2008);
- Art. 82 Law No. 39/2008 on the protection of plant varieties¹¹⁹ (enforced on 06.09.2008);
- Art. 58 Law No. 66/2008 on the protection of geographical indications, appellations of origin and traditional specialties guaranteed¹²⁰ (enforced on 25.10.2008);
- Art. 63 Law No. 139/2010 on copyright and related rights¹²¹ (enforced on 01.01.2011).

¹¹⁶ Law No. 161/2007 on the protection of industrial designs, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=93462&lang=ro#

¹¹⁷ Law No. 50/2008 on the protection of inventions, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=107070&lang=ro#

¹¹⁸ Law No. 38/2008 on the protection of trademarks, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=93464&lang=ro#

¹¹⁹ Law No. 39/2008 on the protection of plant varieties, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=93465&lang=ro#

¹²⁰ Law No. 66/2008 on the protection of geographical indications, appellations of origin and traditional specialties guaranteed, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=107008&lang=ro#

¹²¹ Law No. 139/2010 on copyright and related rights, available in Romanian at:

https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

Upon request of the affected party, the infringer who knowingly, or with reasonable grounds to know, infringed the intellectual property rights shall be ordered to pay the right holder damages appropriate to the actual prejudice suffered by him as a result of the infringement of his rights.

Where an infringement of the exclusive right is found, in evaluating the damage:

- due account shall be taken of the respective circumstances, such as the negative economic effect, including the lost profits suffered by the affected party, the benefits received unfairly by the infringer and, as the case may be, other aspects, such as moral damage the affected party has suffered because of the infringement of his rights; or
- alternatively, a lump amount may be fixed on the basis of certain components, such as, at least, the amount of the royalty or fees which would have been payable, had the infringer applied for the authorization to use the respective intellectual property object.

When the infringer commits the infringement not knowingly, or with reasonable grounds to know about it, he shall be obliged to repay the lost profits or the damages suffered by the right holder, established by the applicable law.

The rightholder could present the amount of the due damages calculated on the bases of available to him evidences or on the basis of the evaluation done by an independent evaluator in the field of intellectual property. The evaluation of the damage caused to the rightholder performed by the evaluators of intellectual property objects is conducted in accordance with the provisions of Law No. 989/2002 on the evaluation activity¹²² and the Regulation on the evaluation of intellectual property objects, approved by Government Decision No. 783/2003¹²³.

45. Are infringements of intellectual property rights (both copyright and related rights and industrial property rights) covered by criminal law provisions? Are infringements of intellectual property rights covered by administrative law provisions? Does the legal framework properly tackle the issue of intellectual property infringements over the Internet? Are these infringements covered by specific legal provisions (civil, administrative or criminal)? Is there the possibility to obtain provisional and/or permanent injunction orders against intermediaries, including online intermediaries such as internet service providers?

The Republic of Moldova has an efficient system for enforcement of IPR. The legal framework provides for civil, administrative and criminal measures for IPR infringements.

¹²² Law No. 989/2002 on the evaluation activity, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=128398&lang=ro#

¹²³ The Regulation on the Evaluation of Intellectual Property Objects, approved by Government Decision No. 783/2003, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95768&lang=ro#

The specialized IPR laws list various enforcement options, including determining the infringement; prohibiting infringing actions; paying compensation for damages; publishing the court's decision; and seizing and destroying infringing products.

Yes. Criminal protective measures are regulated by the Criminal Code of the Republic of Moldova No. 985/2002¹²⁴, as further amended and the Criminal Procedure Code of the Republic of Moldova No. 122/2003¹²⁵.

- Art. 185¹. Infringement of copyright and related rights.
- Art. 185². Violation of industrial property rights (including patents, trademarks, plant varieties, industrial designs, geographical indications, traditional specialties guaranteed).
- Art. 185³. False statements in intellectual property registration documents.
- Art. 246². Counterfeiting of products.

The Ministry of Internal Affairs (Police) is the competent authority to detect intellectual property offenses and the Prosecutor's Office is responsible to conduct criminal prosecution.

The criminal investigative body shall, within 30 days by ordinance, initiate the criminal prosecution if, from the act of notification or of the acts of finding, it results reasonable suspicion that a crime has been committed. The order of commencement of the criminal prosecution issued by the criminal investigative body within 24 hours from the commencement of the criminal prosecution shall be announced in writing to the prosecutor who conducts the criminal investigation activity and presenting his/those.

The offense of counterfeiting of products is classified as a minor offense and the infringement action is considered a less serious offense. Criminal liability is applicable if the value of the goods or damage caused is of large or particularly large proportions, as the case may be.

After finding that the evidence administered is conclusive and sufficient to complete the criminal prosecution, the criminal prosecution body submits to the prosecutor the file accompanied by a report recording the outcome of the prosecution.

The person who committed an IPR infringement provided for in Art. 185¹ and Art. 185² of the Criminal Code of Republic of Moldova No. 985/2002 shall be released from criminal liability if he has actively contributed to the discovery or countering of the crime by self-denunciation, by denouncing and facilitating the prosecution of other persons who have committed or contributed to the commission of the

¹²⁴ The Criminal Code of the Republic of Moldova No. 985/2002, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130983&lang=ro#

¹²⁵ The Criminal Procedure Code of the Republic of Moldova No. 122/2003, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130985&lang=ro

crime, by voluntarily handing over the intellectual property, by indicating the funds and/or goods or income resulting from the crime, if he compensated the amount of material damage caused or otherwise repaired the damage caused by the crime.

As regards the material objects of offenses and counterfeit products, the criminal investigative body, if it has sufficient evidence of an infringement of IPR, is required to take appropriate steps to seize the goods suspected of being counterfeited, and materials and equipment for the manufacture and reproduction of counterfeit specimens.

Sanctions for IPR infringements, provided for by the Criminal Code of Republic of Moldova No. 985/2002, depends of the severity of the offense and includes:

- Fine from 1150 to 6000 conventional units for the individual;
- Unpaid community work from 180 to 240 hours for the individual;
- Fine from 3000 to 11000 conventional units for the legal entity;
- Imprisonment from 1 to 5 years for the individual;
- Deprivation of the right to practice certain activities for 1 to 5 years for the legal person; and
- Liquidation of the legal entity.

The national legislation provide for administrative procedure to be applicable for IPR infringements, including at the border.

The actions applicable at the border of the Republic of Moldova for IPR protection are stipulated in chapter XII of the Customs Code of the Republic of Moldova No. 1149/2000¹²⁶ and the Government Decision No. 915/2016 for the approval of the Regulation on enforcement of intellectual property rights by customs authorities¹²⁷. The legal provisions and the procedures provided by the customs legislation are described under question 39 of the Questionnaire.

The contravention measures of protection are regulated by the Contravention Code of the Republic of Moldova No. 218/2008¹²⁸.

Contravention protection rules cover the following facts:

- Art. 96. Infringement of copyright and related rights;
- Art. 97. Illegal use of the trademark;

¹²⁶ The Customs Code of the Republic of Moldova No. 1149/2000, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130518&lang=ro#

¹²⁷ Government Decision No. 915/2016 for the approval of the Regulation on Enforcement of Intellectual Property Rights by Customs Authorities, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=94241&lang=ro#

¹²⁸ The Contravention Code of the Republic of Moldova No. 218/2008, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=131058&lang=ro#

- Art. 97¹. Illegal use of the product designation and geographical indication;
- Art. 97². Illegal use of the names of traditional specialties guaranteed;
- Art. 98. Use of false or misleading indications when marking products;
- Art. 99. Infringement of the exclusive right of the patent owner;
- Art. 100. Violation of the exclusive right of the rightholder on the industrial design;
- Art. 101. Violation of the patent owner's exclusive right of plant variety;
- Art. 102. Violation of the exclusive rights of the owner of the integrated circuit topography;
- Art. 103. Infringement of copyright on the invention or industrial design; and
- Art. 283 (para. 2). Counterfeiting of products.
- The sanctions for the IPR related contraventions include:
- Fine from 12 to 90 conventional units for the individual;
- Fine from 30 to 180 conventional units for the persons in a position of authority;
- Fine from 48 to 210 conventional units for the legal entity;
- Unpaid community work from 40 to 60 hours;

The contraventions specified in Art. 283 (para. 2) of the Contravention Code of the Republic of Moldova No. 218/2008 that refers to counterfeiting of products, if it does not meet the constitutive elements of a crime, is sanctioned with a fine from 60 to 90 conventional units with or without deprivation of the right to carry out a certain activity for a period of 6 months to one year.

IPR related contraventions are in the competence of deferent authorities, namely:

- The Ministry of Internal Affairs is competent for detecting and examination of contraventions provided for in Art. 6, Art. 99-103 and Art. 283 of the Contravention Code of the Republic of Moldova No. 218/2008.
- The Agency for Consumer Protection and Market Surveillance is dealing with infringement provided for in Art. 97, Art. 97¹, Art. 97², Art. 98 para. (2) and Art. 283 of the Contravention Code of the Republic of Moldova No. 218/2008.
- The National Agency for Food Safety is competent for contraventions that falls under Art. 98 para. (1) of the Contravention Code of the Republic of Moldova No. 218/2008, being responsible for the ascertaining the use, in the marking of foodstuffs, of false or misleading indications for the purpose of misleading the consumer as to the quality, quantity, properties, destination, value or date of manufacture of the goods or services, as well as the manufacturer and its premises.

In the case of contraventions in the field of intellectual property, the contraventions process is initiated either by the rightholder or by the ex-officio procedure.

In accordance with Art. 440 (para. 3) of the Contravention Code of the Republic of Moldova No. 218/2008, in the case of a referral, the ascertaining agent is obliged, within 15 days from the date of the referral, to verify the complaint and to take procedural measures and to issue a decision. Where the offenses specified in Art. 96 para. (1) letter a) and para. (3) and Art. 97-103 of the Contravention Code of the Republic of Moldova No. 218/2008, except for the contravention referred to illegal use of geographical indications or appellations of origin protected based on bilateral agreements concluded by Republic of Moldova as provided in Art. 971 para. (2) of the Contravention Code of the Republic of Moldova No. 218/2008, have been established by the ascertaining agent, it shall notify the right holder or in the case of geographical indication the competent authority of the findings. Notifying the right holder is not necessary in the case of other offenses in the field of intellectual property.

Given that intellectual property offenses can be detected by several authorities, if the competence of another authority competent to find the contravention or to examine the contravention is established at the time of the detection or examination of the contravention case, the materials are surrendered on the same day according to the competence.

In order for the case to be settled, the ascertaining agent shall collect the necessary evidence to determine the existence or non-existence of the offense, to identify the perpetrator, to establish the guilt and to know other important circumstances.

The evidence is admitted as evidence by means of the following means:

- Minutes on contravention;
- Minutes of lifting objects and documents;
- The search report;
- Minutes on on-site research;
- Proceedings on other procedural actions;
- Explanations of the person on whose behalf the contravention process was initiated;
- Depositions of the right holder;
- Documents;
- Audio or video recordings and photos;
- Offending bodies;
- Objects and documents raised; and
- Technical-scientific findings and expertise report.

Counterfeit or pirated goods, of which there are grounds, presuppose serving the offense or have been the object of such an act, or may serve as a means of

ascertaining the existence or non-existence of constituent elements of the offense are considered bodies of offences and are to be attached to the minutes.

After examining the contravention, the person authorized by the Ministry of Internal Affairs, the Agency for Consumer Protection and Market Surveillance and the National Agency for Food Safety issues the decision on the case. If the offender or the owner of the IPR disagrees with the decision of the ascertaining agent, they are entitled to challenge the decision issued on the contravention cause within 15 days from the date of its issuance.

The appeal against the decision issued on the contravention case is submitted to the authority to which the ascertaining agent belongs, according to the territorial competence, which examined the case. Within 5 working days from the date of filing, the ascertaining agent shall send the appeal and the file of the contravention case to the competent court.

The appeal against the decision in the contravention case is examined by the court in whose territorial area the competent authority or the prosecutor who issued the decision operates.

Yes. The IPR enforcement legal framework covers intellectual property infringement in general, irrespective of the space (virtual or onsite) the infringements took place. Thus, in the case of violation of intellectual property rights over the internet, the general provisions shall apply as indicated in the answers above.

In addition to the general legal framework, there are specific provisions for copyright infringement through Computer Networks. Art. 66 of the Law No. 139/2010 on copyright and related rights¹²⁹ stipulates as follows:

”(1) Any natural or legal person who provides services of hosting and/or data transmissions (internet/intranet), including internet-provider, upon their direct contribution to the infringement of copyright and/or related rights shall be deemed accomplice and becomes responsible in the following situations, if:

a) given the technical possibility of blocking, restricting the access and/or deleting, in due time, the objects published and/or used by actions infringing copyright and/or related rights, and notified about the violation concerned (with the indication of the specific object) by the holder of respective rights or his representatives, he does not act according to the rightholder's requests for blocking, restricting the access and/or deleting the indicated objects;

¹²⁹ Law No. 139/2010 on copyright and related rights, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=95282&lang=ro#

b) informed about the illegal activity in the field of copyright and/or related rights, he enables, financially supports, and contributes to the illegal actions of other person;

c) he publishes erroneous information, modifies or deletes information concerning the holder of copyright and/or related rights, as well as distributes copies of works and/or objects of related rights in relation to which the information has been modified or deleted;

d) he intentionally makes available to third persons (links, web addresses) any information that creates possibility of illegal access to the objects of copyright and/or related rights.

(2) Any natural or legal person who provides services of hosting and/or data transmissions (internet/intranet), including internet-provider, shall not be responsible for the illegal actions of other persons who use his services in the actions infringing copyright and/or related rights provided he had not knowledge about such infringing actions or no possibility to restrict the access or delete the objects published or used by such actions.”

Yes. The Law No. 139/2010 on copyright and related rights provides for provisional and permanent injunctions. In accordance with Art. 59 para. (1) letter b) of Law No. 139/2010 on copyright and related rights the judicial authorities may, at the request of the applicant issue an interlocutory injunction, against an intermediary whose services are being used by a third party to infringe copyright or related rights, including for intermediaries whose computer and telecommunication services are used by a third party for such infringement;

Art. 61 para. (1) of Law No. 139/2010 on copyright and related rights provides that where a judicial decision is taken finding an infringement of copyright or related rights, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Such injunction may be issued also against an intermediary whose services are being used by a third party to infringe copyright or related, including intermediaries whose computer and telecommunication services are used by a third party for such infringement.

46. Do judicial authorities have the possibility to order the destruction of counterfeit or pirated goods?

Yes. According to the regulatory framework in the field of intellectual property, the court may order the destruction of counterfeit or pirated goods.

47. What is Moldova's administrative capacity in the area of examiners (e.g. patent, trade mark, design examiners, etc.), and what are the future plans?

The State Agency on Intellectual Property (AGEPI) is a central administrative authority subordinated to the Government whose main responsibilities include among others, examination of applications and granting intellectual property rights in the Republic of Moldova. It covers all intellectual property rights, including patents for inventions, plant varieties, topographies of integrated circuits, trademarks, geographical indications, appellations of origin and traditional specialties guaranteed, industrial designs and copyright and related rights.

AGEPI operates in accordance with the Law No. 114/2014 on the State Agency on Intellectual Property¹³⁰, special laws and other legal acts in the field, International Treaties on intellectual property to which Republic of Moldova is party. The AGEPI activity is certified with ISO 9001: 2015 for Quality Management. At present, AGEPI personnel are of 131 posts, 17 posts being vacant at present.

AGEPI is headed by the Director General appointed by the Government, who is assisted by a cabinet (4 posts/2 vacant). Its activities are implemented through its various departments including Patents Department (18 posts/1 vacant); Trademarks and Industrial Design Department (28 posts/1 vacant); Copyright Department (5 posts/1 vacant); Law Department (15 posts/4 vacant); Intellectual Property Promotion and International Relations Department (21 posts/6 vacant) and Institutional Management Department (35 posts/2 vacant). There is also an Internal Auditing Service (2 staff members).

The departments are answerable to the Director General and to the two Deputy Director Generals. The office has capacity to perform search and examination activities of intellectual property applications filed with AGEPI, seeking protection in the Republic of Moldova. AGEPI has an IT system, the office has developed an e-filing system and most of its information has been digitalized.

Patent Department is dealing with applications for patents for inventions, short term patents and plant varieties. It is responsible for applications filed through national procedures but also applications through PCT system (in its capacity of receiving office and office of origin for PCT applications filed by Moldovan nationals for seeking protection in other countries through the PCT system) and European validation patents.

The Patent Department is managed by the Head of Department and is composed of two sub-unites:

¹³⁰ Law No. 114/2014 on the State Agency on Intellectual Property, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=110504&lang=ro#

Examination Division (12 employees): Head of division and 11 examiners that conduct substantive examination and issue decisions on patents. Two examiners are involved in examination of plant variety patents;

Documents Management Division (5 employees): Head of Division and 4 specialists responsible for formal examination and other related activities, including the administration of procedures related to the PCT applications and European validations).

Trademarks and Industrial Design Department is dealing with applications for trademarks, industrial design and geographical indications, including appellations of origin and traditional specialties guaranteed. It is also responsible for administration of the international applications received/sent through Madrid system for international registration of trademarks, the Hague System for the international registration of industrial designs and Lisbon System for the international registration of appellations of origin (in its capacity of receiving office and office of origin).

The Trademarks and Industrial Design Department is managed by the Head of Department, and a Deputy Head of Department, and is composed of four sub-units:

Industrial Design Division (4 employees): Head of Division and 3 examiners responsible for formal, preliminary and substantive examination and other industrial design related activities for both national and international (the Hague System) procedures;

National Trademarks Division (9 employees): Head of Division and 8 examiners responsible for formal, preliminary and substantive examination of trademarks, geographical indications, appellations of origin, traditional specialties guaranteed applications filed through national procedure;

International Trademarks Division (8 employees): Head of Division and 7 examiners responsible for examination of international trademarks applications received through Madrid System; international registration of appellations of origin received through Lisbon System.

Documents Management Division (5 employees): Head of Division and 4 specialists responsible for trademark related formal activities (notifications, publication, issuance of IPR titles etc.) for both national and international trademark procedures.

Copyright Department is dealing with copyright and related rights issues, including examination of application and registration of copyright works and related rights, representation of AGEPI in courts (in copyright related cases), cooperation with right holders and monitoring the activity of Collective Management Organisations. The department is also responsible receiving and examining applications and documents required for registration of the applicants

in the State Register of holders of control marks; issuing control marks for rightholders of copies of works or phonograms registered with AGEPI. The Department is composed of the Head of the Department and 4 specialists.

AGEPI has sufficient capacity to deal with IPR protection procedures and other responsibilities the office is empowered to take care of. The AGEPI staff, in particular the intellectual property examiners, are permanently trained both in-house and within intellectual property specialised trainings organised by international and regional organisations such as WIPO UP Academy, EPO Academy and EUIPO academy.

In order to consolidate the capacity of AGEPI staff to deal with the increased number of intellectual property applications and there complexity, to raise the efficiency and the quality of granted intellectual property rights, AGEPI intend to improve its IT system and the tools used for intellectual property search and examination, in particular through the implementation of a new IT system (WIPO IPAS) and further integration of EUIPO search and classification tools. AGEPI is already using/integrated in the TMclass, TMview, DesignClass and DesignView).

48. Please describe the cooperation and coordination mechanisms put in place between relevant administrations (including market inspectorate, intellectual property office, police, customs, etc.), as well as cooperation with rights-holders. What are the channels of communication and mechanism for cooperation, and how do these work in practice? What are the plans to improve enforcement capacity? Are there any special units to tackle internet piracy?

The Republic of Moldova has established a dedicate body to facilitate cooperation between the institutions responsible for IPR, including the fight against counterfeiting and piracy, called the National Commission for Intellectual Property. The Secretariat for the National Commission for Intellectual Property is situated in AGEPI.

The National Commission on Intellectual Property, is an advisory body under the Government, established in 2008, to coordinate and ensure the interaction of ministries, other central administrative authorities, and holders of intellectual property rights in activities aimed at developing and strengthening the National Intellectual Property System, combating, and preventing IPR infringements and fighting against counterfeiting, import and sale of counterfeit goods in the Republic of Moldova. To increase the efficiency of the National Commission on Intellectual Property, the Government Decision No. 489/2008 on the National Commission on Intellectual Property¹³¹ was amended by Government Decision No. 542/2020 for extending its membership and efficiency. According its

¹³¹ The Government Decision No. 489/2008 on the National Commission on Intellectual Property, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=122683&lang=ro#

Regulation, at least one ordinary meeting of the National Commission for Intellectual Property is convened yearly.

There is also an Observatory on Enforcement of IPR established by AGEPI which includes representatives from AGEPI, Customs Service, General Inspectorate of Police and General Prosecutor's Office. The Secretariat for the Observatory is situated in AGEPI and its aim is to:

- Ensure exchange of information between the authorities responsible for IPR enforcement;
- Preparing IPR enforcement reports;
- Conduct IPR enforcement analysis; and
- Preparing IPR enforcement statistics.

In order to facilitate the IPR data exchange between, Moldovan authorities developed with the support of an EU project an IPR Information System to track the exchange of IPR data between agencies, including AGEPI, Customs, Prosecution, Police, the Agency for Consumer Protection and Market Surveillance, and the Agency for Court Administration. On September 30, 2020, the Government Decision No. 721/2020 on Intellectual Property Rights Protection Information Platform¹³² (IPR IT Platform) that provides for the establishment of the two IT systems:

- The information system of intellectual property objects (maintained by AGEPI) that contains all the IPRs registered/protected in the Republic of Moldova and allows access top and communication between beneficiary authorities (enforcement bodies), and that allows online reporting on the infringements of intellectual property rights, etc.;
- The information system "Register of Applications for Action" (whose owner is the Customs Service) which enabling IPR holders to submit online applications for action for interventions for the protection of IPR at the border.

By the Government Decision No. 721/2020 the legal framework for the functioning of the IPR IT Platform were approved:

- The technical concept of the Information System in the field of protection of intellectual property objects;
- Regulation on the organization and functioning of the State Register formed by the Information System in the field of protection of intellectual property objects;

¹³² The Government Decision No. 721/2020 on Intellectual Property Rights Protection Information Platform, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=123618&lang=ro

- The technical concept of the Information System “Register of intervention requests”;
- The Regulation on the organization and functioning of the State Register formed by the Information System “Register of requests for intervention”.

49. Do the enforcement bodies have ex-officio powers to act against intellectual property infringements?

Yes. Customs Service, Police and Prosecutors do have ex-officio powers to act against intellectual property infringements in both criminal and administrative (contravention) cases.

Customs authorities could undertake ex-officio actions in accordance with Art. 302 of the Customs Code of the Republic of Moldova No. 1149/2000¹³³ measures prior to an application for action was filled with customs authorities. The procedure for ex-officio actions is lead down Art. 302 of the Customs Code of the Republic of Moldova No. 1149/2000 and items 21-24 of the Government Decision No. 915/2016 for the approval of the Regulation on enforcement of intellectual property rights by customs authorities¹³⁴.

In the case of IPR infringements that falls under the competencies of the Contravention Code of the Republic of Moldova No. 218/2008¹³⁵, Art. 440 para. (2), the ascertaining agent shall initiate a case if notified by a complaint or denunciation or ex-officio when he has sufficient information to consider with a high degree of probability that contravention is committed either by ascertaining the contravention deed.

In the case of IPR infringements that falls under the competencies of the Criminal Code of the Republic of Moldova No. 985/2002¹³⁶, Art. 274 para. (2) of the Criminal Procedural Code of the Republic of Moldova No. 122/2003¹³⁷ provides that the criminal investigation body or the prosecutor in case of initiating ex-officio a criminal investigation, he shall draw up a report in which he records the findings regarding the detected crime, afterword orders the initiation of the criminal investigation.

¹³³ The Customs Code of the Republic of Moldova No. 1149/2000, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130518&lang=ro#

¹³⁴ Government Decision No. 915/2016 for the approval of the Regulation on Enforcement of Intellectual Property Rights by Customs Authorities, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=94241&lang=ro#

¹³⁵ The Contravention Code of the Republic of Moldova No. 218/2008, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=131058&lang=ro#

¹³⁶ The Criminal Code of the Republic of Moldova No. 985/2002, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130983&lang=ro#

¹³⁷ The Criminal Procedure Code of the Republic of Moldova No. 122/2003, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=130985&lang=ro#

50. If there is no stem of enforcement of intellectual property rights, what measures, procedures and remedies does Moldova envisage adopting in order to dispose of an efficient system to fight against piracy and counterfeiting?

The Republic of Moldova does have a system for IPR enforcement, including efficient means for the protection of IPR at the border and on the internal market.

To consolidate the institutional capacities of the enforcement bodies to deal with IPR infringements, AGEPI in cooperation with enforcement bodies, other national partners such as the National Institute of Justice, and Moldova's development partners (EU, USA, etc) and international associations of rightholders, intend to consolidate the human capacities of the enforcement officers, develop and implement intellectual property training program and course (ie distance learning course for judiciary).

Increase the use and enhance the functionalities of the system for IPR enforcement approved by the Government Decision No. 721/2020 on Intellectual Property Rights Protection Information Platform¹³⁸. Consolidation of the IPR Enforcement Observatory established within AGEPI extending its capacity to serve as a platform for discussion for all IPR enforcement bodies, but also right holders (more information on the IPR Observatory is given in the answer to question 48). Enhancement of the cooperation between the AGEPI Observatory with the EU IPR Observatory managed by EUIPO is also considered as a short term priority and as foreseen in the Memorandum of Understanding signed between AGEPI and EUIPO in 2021.

51. Which international conventions is Moldova part to? Does Moldova have plans to accede in the next five years to any international conventions relating to intellectual, industrial and commercial property of which it is not yet a member? If so, which convention(s) and when?

The Republic of Moldova is member to the majority of the intellectual property related international conventions; including all (26) WIPO administrated treaties.

<i>No.</i>	<i>Name of Agreement, Convention, Treaty</i>	<i>Date of entry into force for the RM</i>
1.	Convention Establishing the World Intellectual Property Organization (1967)	25.12.1991
2.	Paris Convention for the Protection of Industrial Property (1883)	25.12.1991
3.	Madrid Agreement Concerning the International Registration of Marks (1891)	25.12.1991

¹³⁸ The Government Decision No. 721/2020 on Intellectual Property Rights Protection Information Platform, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=123618&lang=ro

4.		
5.	Patent Cooperation Treaty (1970)	25.12.1991
6.	Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purposes of Patent Procedure (1977)	25.12.1991
7.	Nairobi Treaty on the Protection of the Olympic Symbol (1981)	25.12.1991
8.	Universal Copyright Convention (1952)	27.05.1993
9.	Hague Agreement Concerning the International Deposit of Industrial Designs (1925)	14.03.1994
10.	Berne Convention for the Protection of Literary and Artistic Works (1886)	02.11.1995
11.	International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) (1961)	05.12.1995
12.	Trademark Law Treaty (1994)	01.08.1996
13.	Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989)	01.12.1997
14.	Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957)	01.12.1997
15.	Locarno Agreement Establishing an International Classification for Industrial Designs (1968)	01.12.1997
16.	Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973)	01.12.1997
17.	Strasbourg Agreement Concerning the International Patent Classification (1971)	01.09.1998
18.	International Union for the Protection of New Varieties of Plants (1961)	28.10.1998
19.	Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971)	17.07.2000
20.	Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891)	05. 04.2001
21.	Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958)	05. 04.2001
22.	Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994)	26.07.2001
23.	WIPO Copyright Treaty (1996)	06.03.2002
24.	WIPO Performances and Phonograms Treaty (1996)	20.05.2002
25.	Patent Law Treaty (PLT, 2000)	28.04.2005
26.	Singapore Treaty on the Law of Trademarks (2006)	16.03.2009
27.	Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (1974)	28.10.2008

28.	Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (2016)	19.05.2018
29.	Beijing Treaty on Audiovisual Performances (2012)	28.04.2020

As a signatory country of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (2015), Moldova intend to accede to the Geneva Act and is in the process of the internal preparation for its ratification. In particular, a draft law for emending the Law No. 66/2008 on the protection of geographical indications¹³⁹, appellations of origin and traditional specialties guaranteed is under development aimed at, inter alia, ensuring the implementation of Geneva Act provisions into national legislation.

As part of the Republic of Moldova's European integration process, the accession to the European Patent Convention was initiated. In 2019, the Republic of Moldova addressed to the Administrative Council of the European Patent Organization a letter of intent confirming its intent to accede to the European Patent Convention (EPC), in accordance with Art. 166 para. (1) letter (b) of the EPC. The Administrative Council did not yet formally consider Moldova's request. More information on the EPC accession procedures is given in the answer to question 19.

¹³⁹ Law No. 66/2008 on the protection of geographical indications, available in Romanian at: https://www.legis.md/cautare/getResults?doc_id=107008&lang=ro#