



# **Corrective Measures in Intellectual Property Rights**

## **Introduction.**

In the context of the European Observatory on Counterfeiting and Piracy, the private sector members called for the establishment of a professional and technical group of legal practitioners, to horizontally assess intellectual property rights legal framework. The Commission welcomed this and on 22 October 2009 an inaugural meeting of the Observatory's sub-group on the legal framework took place. The group is mainly composed of legal practitioners from different Member States, suggested by the industries represented in the Observatory.

The task of the group is to, horizontally, examine the shortcomings, best practices and overall effectiveness of the intellectual property rights legal framework in respect of all intellectual property rights. It focuses on providing a practical view of the enforcement of intellectual property rights. The Commission (DG Internal Market and Services, Unit D3) acts as the Secretariat for the Group.

The sub-group commenced with a screening of Directive 2004/48/EC on the enforcement of intellectual property rights. Discussions have taken place on the enforcement of intellectual property rights, through criminal measures, with DG Justice, Liberty and Security. In addition, the enforcement of intellectual property rights through border measures has been discussed with DG Taxation and Customs Union.

The sub-group's methodology is as follows: members of the legal sub-group draft questionnaires which are then forwarded to legal practitioners in all Member States according to an agreed distribution of Member States. The experts' responses are included in a table and an *Executive Summary* is drafted on each topic. Members of the legal sub-group have also outlined best practices or shortcomings and have added specific *Recommendations* for each topic.

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## **Corrective Measures in Intellectual Property Rights Infringements:**

### **ANALYSIS, RECOMMENDATIONS AND BEST PRACTICES**

#### **Overview**

Corrective measures are included by the EU's Directive on the Civil Enforcement of Intellectual Property Rights ("IPRED") among the remedies for infringements of intellectual property rights. In this context the IPRED contemplates recall and definitive removal from the channels of commerce, and/or destruction.

It has, however, been noted that, even if in implementing the IPRED almost all Member States provide these remedies, there are very few precedents/relevant court cases concerning recall/removal. It has though been found that it is unclear in certain member states from whom the infringing products may be recalled/removed. In addition, it seems as the infringer in many countries gets the opportunity just to remove the infringing object, with the result that the infringer may still financially benefit from the infringing activity. Also the distinction between recall and definitive removal seems to be rather unclear, at least in a crucial part of Member States.

In many countries it is further unclear whether the relevant costs for destruction of infringing goods should be borne by the infringer or by the IPR holder. Likewise, the positions taken by the single Member States differ significantly in the practical applications of the principle of proportionality and in determining when the secondary use of infringing goods should be allowed.

#### **The Purpose of Corrective Measures**

The purpose of the IPRED Directive is

- a) **to correct an infringement**, and
- b) **to deter further infringements** to occur.

**Destruction** of infringing goods shall therefore be the general principle and there should be very few exceptions to this rule.

Accordingly, the measure of *definitive removal* of the infringing products from the market must be obligatory and considered in strict relationship with the destruction, while *market recall* seems to be a measure of a temporary nature, which may be reversed once there is a final decision.

#### **Shortcomings in the Directive's Corrective Measures**

A review of the implementation of the IPRED with regard to corrective measures is hindered by the lack or at least the scarcity of precedents/relevant court cases. However it is clear that there are at least a number of problems in this specific field, which may undermine the achievement of the main objective of the IPRED of ensuring an equivalent and homogeneous

level of protection of IPRs in the Internal market. In particular the following seem to be of special relevance:

- Destruction of infringing products is not the general principle in all Member States and Secondary use admitted on different and even unclear grounds in the various Member States
- Different prerequisites for the issue of the order of definitive removal from the channels of commerce and unclear distinction between recall and definitive removal from the channels of commerce
- Costs of storage and destruction born by the IPRs'holders
- Insufficient expertise and consequent uncertainty on the principle of proportionality

## **Recommendations and Best Practices**

### **Best Practices**

In some Member States (e.g. in **Poland, Denmark and Belgium**), recall may be issued **as a preliminary measure**, before the proceedings on the merits are commenced. In this way the cost and difficulties of extensive seizures may be reduced. In particular, in **Germany and Italy** claims for recall in preliminary proceedings may be included into injunction claim, in case the infringers still control the infringing goods. The latter seems to be a balanced solution, as it imposes a reasonable burden on the infringer at this stage.

Again in **Germany** in civil proceedings usually either the infringer takes care of destruction himself (and issues a statutory declaration in this regard), or the goods are taken under a bailiff's custody and destroyed under his/her supervision by a service provider.

### **Recommendations**

#### ***1. Destruction***

Infringing goods should normally be **destroyed**. The reason for this is that the infringer should not retain any advantage from his/her illicit activity and shall thus not be able to put the products on the market after having removed infringing items (e.g trademarks) from the product, since that could contribute to the infringers business or finance payment of damages. The destruction of the infringing goods and of the contrivances specifically employed for the infringement should thus be considered the normal outcome of all the legal proceedings in which an IPR infringement has been ascertained, unless the IPR owner does not ask for this measure or the application of the principle of proportionality deems it unreasonable. This would also be in line with the principle in Council Regulation 1383/2003 concerning the handling of products found to be infringing products.

#### Recommendations:

Therefore it must be clearly stated that any legal proceedings that ascertain the accomplishment of an infringing activity should **order the destruction of the infringing goods and of the contrivances specifically employed for the infringement as a general sanction for the infringing activity**, unless otherwise claimed by the IPRs holders or if found unreasonable by a proper application of the principle of proportionality.

It should also be considered the **possibility of ordering an earlier destruction of the infringing products/contrivances**, by introducing a system like the **simplified custom procedure, that should** be provided for both in civil and criminal proceedings, in the latter at least when the infringement is established, **even if the defendant is not convicted for other reasons** (in particular, because he was not aware of the infringing nature of the products). In civil cases the situation can be that the infringer has admitted to the infringement but contests the damages, which can result in lengthy court proceedings. In any case the **destruction should be carried out by a service provider under bailiff's supervision or by the infringer him/herself under the IPRs holder control** or requesting the services of a notary in order to certify the compliance.

**The principle of proportionality should be specified**, in order to make it clear that **for no reason the infringing materials cannot reach the market again** and that therefore the destruction could be avoided, unless otherwise agreed on with the IPR holder or in the case of it being unreasonable.

## ***2. Definitive removal/market recall***

The measure of ***definitive removal*** is normally necessary to collect the items that should be destroyed, otherwise only the infringing products already seized or still present at the infringer's premises at the end of the proceedings on the merits would end be destroyed. Recourse to these measures should be encouraged in order to save the costs of extensive seizures at several different locations. It is unclear if removal from the channels of commerce relate only to situations in which the goods are still in the possession of the infringer or is admitted also for goods which are no longer in the infringer's possession unless they have reached the stage of consumer or end-user. In practice this might be no more than an obligation for the infringer to write all of its customers with the notification of infringement and offering them the possibility to sell back the litigious goods. Additionally, it has been noted that it is not entirely un-complicated to draft the obligation of definite removal or market recall for several reasons. and there is a heavy burden placed on the court to draft the decision precisely enough so that it is possible to execute.

This measure must also entail the demand that in case of re-selling by this contractual partner, the contractual partner also raises the same demand towards its customers. In any case, the infringer should supply the right holder all the information concerning his attempt to remove the infringing products as well as information about which customers that did not agree to return the infringing products in order to enable the right holder to pursue those customers during the ongoing case and not having to await the final decision in the matter. This could also motivate the infringer's customers to meet his demand to sell back the infringing products. It shall also be made explicitly clear that a third party holding or storing the goods on behalf of the infringer, for example a shipping agent, shall also be obliged to hand out the infringing goods for the purpose of destruction and shall not be able to retain the infringing goods for the purpose of securing any debts that the infringer owns the third part.

Instead, ***market recall*** seems to come within the range of provisional and precautionary measures, rather than being a corrective measure. In order to be consistent with its corrective nature, we can consider market recall as a measure intended to temporarily prevent the marketing of products which are infringing IPRs of temporary nature, which are due to expire within short time, so that after the expire the products may be legitimately marketed. However this interpretation seems to be inconsistent with the end of deterrence of these measures, since it would give the infringers the possibility of retaining at least a part of the economic benefit coming from their infringing activity. The infringer shall not be abled to merely store the

infringing goods awaiting the expiration of the IPR with no real consequences unless the application of the principle of proportionality finds this unreasonable or the right holder explicitly agrees.

#### Recommendations:

The definitions “removal” and “market recall” must be further specified so that it is clear that market recall as a measure is intended to temporarily prevent the marketing of products and that removal is a measure that aims at removing the infringing products definitely.

The order of definitive removal of the infringing products from the market should include the obligation for the infringer both to **recall all the products that he/she still controls**, even if they are held by third parties, and to **ask its contractual partners to give back the infringing goods delivered to the infringer at the infringer’s expense**. The order of **market recall** should be admitted also in **preliminary proceedings** and also granted ex parte, at least in case the infringers still control the infringing goods.

**Exceptions** to this general rule and in particular the **secondary use** of infringing goods/contrivances should be admitted only in **special cases**, and namely **only when the right holders has agreed to it** and (1) there is **no risk at all that the products reach the market again**, , and (2) there is a **specific public interest** for avoiding the destruction

### *3. Costs*

In most Member States, at least in civil proceedings, the costs of destruction, including bailiff’s services and storage costs, have to be paid first by the right owner, who then has a claim for reimbursement from the infringer. However this reimbursement is very hard to be obtained, also because practice has shown that the infringers are often companies which are liquidated very shortly after an initiation of proceedings. In criminal cases, the general rule seems to be that the state bears the cost for storage and destruction.

#### Recommendations:

The **issue of the costs for the storage and destruction** should be specifically addressed, in order to avoid that these costs be borne by the IPRs holders and instead that these cost be borne by the infringer. Among the measures aimed at ensuring that the IPRs holders are able to recover the costs of the storage and destruction of the infringing goods, it should be admitted that at an early stage of the proceedings the assumed infringer should be asked to put a **financial warranty** for said costs, on the grounds of a prima facie evidence of infringement. Such financial warranty should also be possible to request from the shipping agent, in case the name of final recipient, i.e the infringer, is not known. This warranty should be put in particular in **transshipment cases** where the infringer is a foreign entity, especially when the infringer is incorporated in a country with which there is **no bilateral (reciprocity) agreement on the recognition and enforceability of judgements**.

**Good faith should not be normally considered a valid defence for the infringer** for not paying the costs of destruction, since it should be up to the defendant to claim these costs back from their suppliers or clients (in the case of service providers). For this reason, the destruction should therefore be ordered against **all the parties involved in the infringing activity, including holders and intermediaries**.

# Corrective Measures in Intellectual Property Rights Cases<sup>1</sup>

## EXECUTIVE SUMMARY

### Recall and definitive removal from the channels of commerce

#### 1. What are the practical differences between recalls from channels of commerce and definitive removals from channels of commerce?

The problem is **the lack of precedents/relevant court cases**, as expressly stated by **Estonia, Denmark, Finland, Hungary, Lithuania, Malta, Portugal and Sweden**. **Latvia** was aware of one precedent only and **Belgium** had only a few precedents.

- **Recall**: is of a **temporary nature**, which means that it may be reversed following a final decision. It is used, for example, when the goods reach the retailers, but not the final consumers (**Sweden**). In **Belgium**, market recall typically refers to situations in which the goods are no longer in the possession of the defendant. The defendant is then ordered by the court to claim the goods back from its customers (wholesalers, distributors, retailers etc.).

In **Belgium**, a market recall can be ordered as a provisional measure, as well as a final measure.

In **Luxembourg** market recalls relate to situations in which the goods have already been disposed of by the defendant. Removals from 'channels of commerce' relate to situations in which the goods are still in the possession of the defendant.

In some Member States (e.g. in **Poland, Denmark**), a recall may be issued as a **preliminary measure**, before the proceedings on the merits are commenced.

- **Definitive removal**: indicates the finality of the ordered measure. Definitive removal is a precondition for destruction of goods in France.

In **Germany**, claims for recalls or definitive removals may only be raised in proceedings *on the merits* and *not in quick preliminary proceedings*, according to the prevailing case law (*although there are some other opinions saying that a recall may be included in an injunction claim, in case the infringers still control the infringing goods*).

In **Austria**, it seems that there is no legal provision other than for *destruction*; Austrian IP Law does not cover *recalls* and *removals* at all.

- **Destruction**: seems to be the main remedy.

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<sup>1</sup> This document has been drafted on the basis of the responses of experts to the Questionnaire drafted by the members of the Legal Sub-group of the European Observatory on Counterfeiting and Piracy. The views expressed are those of the authors and do not represent the views of the other members of the European Observatory on Counterfeiting and Piracy or the European Commission.

In **France**, both a recall and a removal are subject to financial warranty from the rightholder (*rightholder must be certain of its rights and must be prepared to advance the funds as requested*).

In some countries, recalls and definitive removals are **used without any distinction (Greece, Spain, and Romania)**.<sup>2</sup> **Are these measures often used by rightholders in civil intellectual property infringement cases? Are there any precedents?**

Generally, these measures are not used very often (e.g. **Spain**), instead, injunctions are the preference of rightholders (**Finland**). In **Germany**, recalls and definitive removals *are used* by rightholders, but *not on an extensive scale*.<sup>2</sup>

**Slovakia** stated that recalls and definitive removals are not widely used due to the limited enforceability of these measures (*because at the relevant time, the defendant is often no longer, , the owner of the goods*).

An obligation on the defendant to re-buy the goods (under a penalty) could potentially solve this problem (suggestion from **Slovakia**).

### **3. Is the situation different when the goods are no longer in infringer's possession (e.g. goods have already reached retailers, wholesalers or consumers)?**

It appears that, in these cases, recalls/definitive removals are rather difficult and even impossible. Many respondents have no experience in this area.

In the **Netherlands**, if the claim for a recall is granted, it is often no more than an obligation for the infringer to write to all of its customers with notifications of infringement, offering them the possibility to sell back the litigious goods.

In **Greece**, the courts hesitate to order recalls/definitive removals of infringing products already sold to third parties.

In **Denmark** the principle of proportionality entails that corrective measures will not normally be applied to private persons/consumers.

In **Germany**, in the event that goods are no longer in the infringer's position, the claim is limited to an obligation to inform all buyers and to ask them to return the goods to the infringer, at the infringer's expense. This measure is only to be taken in respect of the *infringers' contractual partners and* must entail the demand, that in case of re-selling by this contractual partner, the contractual partner must raise the same demand with its customers.

The interests of third parties who have purchased the goods in good faith must be taken into account (**Slovakia**).

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<sup>2</sup> If the recall is not included in the injunction claim and therefore cannot be pursued in preliminary proceedings, it is quicker for the right holder to go against the customers of the infringer on its own, after the infringer has rendered the names and the addresses of its customers. Such information may be claimed from the infringer in quick preliminary proceedings in obvious cases.

In the **UK**, there is generally no difference in whether the goods are in the infringer's possession or not: if an order is made by the court for delivery up/destruction, then this applies irrespective of where the goods are/in or in whose possession. However, the position is different, depending on who is in possession of the goods. It is relatively easy to retrieve the goods **from retailers and wholesalers**. Retrieving goods **from consumers** is practically difficult, expensive and time consuming and therefore, it is not usually done in the UK.

**Secondary use of goods (e.g. removals of the infringing trademarks, donations to charities, recycling etc.)**

#### **4. Is secondary use of goods allowed? If so, is it used in civil proceedings or only in customs proceedings? Are there any precedents?**

Secondary use of the goods is allowed in **Estonia** (also several precedents exist), **Denmark**<sup>3</sup> (but *not in customs proceedings*, only destruction is foreseen in customs proceedings), **Germany** (where equally secondary use is not possible in the customs proceedings, goods can only be destroyed), **Finland** (destruction may be ordered, only if secondary use is not possible), **Hungary** (it is possible in civil proceedings, but not in customs proceedings, where only destruction can be claimed), **Italy, Portugal** (contradictory opinions exist), **Spain** (both in civil and customs proceedings), **Romania, Italy, Sweden and UK** (not in customs proceedings).

On the contrary, it is not possible in **France, Greece, Latvia, Belgium, the Netherlands and Slovenia**.

Secondary use is not expressly prohibited in **Lithuania** and **Slovakia**. In **Poland**, secondary use of goods is not explicitly mentioned as a remedy available to the plaintiff in civil proceedings

Secondary use of infringing goods has *never been used in civil proceedings* in **Luxembourg**. Internal discussions in Customs have already taken place on the subject of donations to charities, , but it has never been carried out in practice.

In **Germany**, it may be contrary to the principle of proportionality to grant the destruction of goods, after they have been altered or no longer infringe intellectual property rights (therefore the principle of proportionality is explicitly mentioned as limiting the destruction, recall and definitive removal claims).

In **Lithuania** on some occasions the Supreme Court has emphasized that the courts must take a more pro-active stance and analyze whether there is a possibility to remove infringing content and thereby nullify the IPR infringement or damage caused by secondary use of goods/products.

#### **5. Can secondary use of goods be applied in copyright cases (since it is often not possible, as in trademark cases, to "remove the infringing content")?**

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<sup>3</sup> Removal of the infringing trademark is specifically governed by the law. Donation to charity is not specifically mentioned by the law but if it satisfies the principle of proportionality it would be probably allowed.

Secondary use would *not* be possible in **Estonia, France, Spain, Belgium** and **Latvia**.

On the contrary, it *would be allowed* in **Germany, Greece, Hungary, Slovenia, Italy, Portugal, Sweden** (although it would be rare) and in the UK.

It would *not be prohibited* in **Lithuania, Slovakia** and **Romania** (but there are no precedents).

## **6. Is secondary use of goods applied for goods which infringe patent rights?**

Secondary use would *not* be possible for example in **Estonia, Belgium, the UK** and **Hungary**.

On the contrary, it *would be allowed* in **France, Germany** (it would be possible, but rare), **Greece, Italy, Portugal, Spain** and **Slovenia** (although in Slovenia secondary use would be possible only in criminal proceedings and in the public interest).

It would *not be prohibited* in **Lithuania, Romania** (but there are no precedents).

**Latvia** has no precedents in this respect. A **Maltese** expert stated that the rightsholders will opt for destruction.

## **Destruction**

### **7. Is there a difference between the destruction of goods in customs, civil and criminal proceedings? Is there an overlap between destruction in civil proceedings (covered by the IPR Enforcement Directive) and in customs proceedings (covered by the Customs Border regulation 1383/2003)?**

**Who bears the costs of destruction, including possible supervision costs (bailiff, customs authorities, etc.)? Who bears the costs of storage? Is the situation different when court proceedings are directed against good-faith intermediaries/service providers (Are there any precedents in this respect)?**

1. In principle, in **criminal proceedings**, destruction is performed by state officials, mainly by the police. A Court decision confirming an infringement is normally necessary.

It is unclear whether the *costs* of storage and destruction are born by the infringer or by the State. In **Greece**, the costs of destruction are born by the State, but storage costs are born by the rightsholders. In **Malta**, it is the court's discretion whether the infringer pays or whether the State will incur such costs. However, since the State does not often have a budget for destruction and for (sometimes several years of) storage costs, authorities often contact the rightsholder to help the state to pay for the destruction costs (**Hungarian** experience). In **Belgium, Luxembourg** and the **Netherlands** the destruction of goods is considered to be a penalty and can only be imposed on a defendant who has been convicted. Hence, the criminal

courts are not able to order the destruction of goods when the defendant is not convicted, even when they have established that the goods are counterfeit (*for example because the court is not convinced that the defendant was aware of the infringing nature of the goods*). Consequently, it will sometimes be easier for the rightsholder to launch civil proceedings than criminal proceedings. Moreover, in **criminal proceedings**, the destruction is treated as part of the sentence if a defendant is found guilty (i.e. destruction is a criminal penalty), so if the defendant is acquitted, no destruction can be ordered, even if the infringement is established.

2. In **civil proceedings**, the costs of the destruction are to be born by the infringers. A Court decision confirming an infringement is normally necessary.

However, even though the infringer has to bear the costs of destruction, including bailiff's services and storage costs, the costs have to be paid first by the rightsholder, who must then a claim for reimbursement.

The destruction of goods is provided for as a civil sanction, therefore the injured party **must specifically request destruction** (*whereas in criminal and administrative proceedings it may be ordered by the competent Court/Administrative Board on its own*).

3. In **customs procedures**, parties have a possibility to opt for destruction within the **simplified procedures** rules (without a court decision confirming the infringement).

Destruction of the goods in customs proceedings is carried out by customs officials. The expenses are covered by the rightsholders, but they can be recovered from the infringer in civil proceedings. Most provisions related to customs are administrative in nature; but the proceedings that need to be filed to enforce such provisions are civil.

In **Germany**, in civil proceedings the court usually orders that the goods must be destroyed, but does not describe the way or how. This is left to the parties. Usually, the infringer either takes care of destruction himself (*and issues a statutory declaration in this regard*), or the goods are taken custody by a bailiff and destroyed under his supervision by a service provider (*which is more frequent*).

**Greece** and **Poland** stated that there is no overlap between the various provisions concerning the destruction.

In **criminal proceedings** in **Sweden**, the infringing goods are usually destroyed. While in civil proceedings the courts have a wider discretion as to which measures are best suited and may also order recalls, etc.

In **transshipment cases** the defendant is usually unknown. It is therefore quite common, as stated by **Malta**, that the court appoints a curator to represent the absent defendant and the plaintiff (rightsholder) must incur the costs of the destruction.

**Good faith intermediaries/service providers** are not normally ordered to pay the costs of destruction but there seem to be no or very few precedents in this respect. Instead, it is the rightsholder who bears the costs. In **Germany**, intermediaries or service providers become

subject to legal claims for destruction only, where they are either “interferer” (“Störer”) or direct contributors to the infringement.

#### **8. Have there been any particular reasons invoked by infringers for not paying the costs of the destruction?**

Most respondents stated that there was insufficient expertise/precedents on this issue. At the same time, there was an indication that the reason which could be invoked by the infringers, for not paying the costs of the destruction, is that the infringer **has no assets**, that he has **acted in good faith**, that the **goods were not ordered by him, or that** they were meant for **private purposes only**.

Practice has shown that the **infringers are often non-existing companies** or if they exist, they are **liquidated very shortly after the initiation of proceedings**.

Specifically, **importers and freight companies** try to avoid responsibility (**Germany**). In **Belgium**, good-faith intermediaries usually claim that they should not be ordered to support storage and destruction costs. However, good faith is normally not a valid defence, since the courts usually consider that it is for the defendant to claim these costs back from their clients (in the case of service providers), suppliers, etc.

In **Spain**, amongst the three main Intellectual Property statutes (Trade Mark Law, Patent law and Designs Law) which refer to the destruction of infringing materials, **only the patent law** states that an infringer may invoke well founded reasons for not paying the costs of destruction.

A specific situation occurs in **transshipment cases** where the infringer is a foreign entity. It is often impossible to enforce the judgement of making the infringer pay the destruction costs, especially when the infringer is resident in a country where there is **no bilateral (reciprocity) agreement on the recognition and enforceability of judgements**.

**Poland** has stated that infringing parties in most cases agree to bear the costs of destruction, supervision and storage as a part of the overall settlement. Reasons for refusal are **that the importer did not realise that the goods were illegitimate**, or the that the **exporter supplied goods that were not ordered**, and for these reasons it would be unfair for the importer (being innocent) to bear any costs connected with the destruction.

#### **Principle of proportionality.**

#### **9. In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as, the interests of third parties shall be taken into account. Has there been any interference with this principle (e.g. case-law)? Have there been cases when recalls or destruction have been deemed disproportionate?**

It was stated by a majority of the respondents that there was insufficient expertise (not enough precedents) with which to address this subject.

In **Slovenia**, the court has ruled that the destruction of clothes was not proportionate and the court decided that the removal of the trademark was sufficient. Other cases where this principle was addressed related to illegal file-sharing.

In **Italy**, the court did not grant the destruction in a patent infringement case, as the patent would have expired in two months. In another case, the court did not allow destruction of equipment and materials employed for the infringement, since they were also capable of legal uses.

In **Luxembourg**, the court dismissed the recall of infringing goods simply stating that the defendant could not put the infringing goods at the disposal of the rightsholder because they were no longer in his possession.

In **Spain**, only the patent law expressly refers to the principle of proportionality.

In **Austria**, in particular copyright cases, copies shall not be destroyed merely because the statement of source is lacking or is not in compliance with the law. In trademark cases, the removal of the trademark from the article is sufficient, if other approaches may lead to a disproportionate, disadvantage for the infringer.

#### **Internet cases.**

#### **10. Are corrective measures applied differently in cases where the goods have been sold over the Internet?**

Most experts stated that there were no special procedures/laws which would specifically address goods sold over the Internet. Instead, **the legislation applies equally to all forms of sales, offline or online.**

In the **Netherlands** it seems, that preliminary measures (*without a hearing for the infringer*) are more likely to be granted if the goods have been sold over the Internet.

#### **11. Are there any practices for seizures of materials and implements used in the creation or manufacture of infringing goods, which were subsequently sold over the Internet (e.g. seizure of personal computers used for piracy?)**

Personal computers used for piracy, where the pirated goods were subsequently sold over the Internet, have been seized on several occasions (e.g. **Estonia, Finland and Greece**). In **Estonia**, this practice is more typical for **criminal proceedings**.

In the **Netherlands**, the seizure of personal computers is not allowed, except in the event where infringing software has been installed.

In **Germany**, materials and implements can be seized, but they must be *predominantly* used to manufacture infringing products. Therefore, it would be possible to seize tools, machines and moulds used for a particular infringements, whereas, it will not be possible to seize

personal computers that have been used to create, upload or store infringing data/files or works.

In **Austria**, seizures and destruction of personal computers are difficult, because in most of the cases the personal computer does not satisfy the judicial conditions of an "infringing device intended *exclusively or primarily* for unlawful reproduction".

In **Spain**, the seizure of personal computers used for piracy and any CD/DVD duplicators and *burning* machines used to carry out the infringing conduct is a common practice.

## **12. Alternative measures. Article 12 of Directive 2004/48/EC**

Alternative measures are essentially financial compensation for the person whose rights have been infringed, if the infringer has not acted intentionally (with negligence) and where the application of other measures would be disproportionate.

The following countries have introduced alternative measures **Denmark, Estonia, Germany** (only for some, but not all, intellectual property titles), **Lithuania, Malta, Poland, Portugal, Romania** (only for industrial property rights infringements), **Slovakia**, and **Sweden**.

## **Primary legal and practical difficulties with respect to corrective measures**

### **13. Are there any best practices, case-law? Please indicate proposals for improvements.**

- Lack of relevant court practice.
- Enforcement of judgments against foreign defendants is rather difficult.
- Customs simplified procedures have not been not transposed in all Member States.
- Saisie conservatoire (temporary seizure) cannot be ordered *ex parte*.
- Long litigation.
- The State is not able to finance the costs of storage and destruction in criminal proceedings.
- When the rightholder claims compensation for storage and destruction costs, which were paid in advance by the infringer, the infringer is often insolvent (subject to winding up or liquidation procedure).
- Problematic identification, whether or not the goods are counterfeit by bailiffs, since they often do not possess the necessary expertise.
- Unclear implementation of recalls and definitive removals from channels of commerce (defining the two options would be helpful).
- It is unclear who should carry out the destruction, according to which procedures and who should pay for it.
- Difficult enforcement of recalls/definitive removals from channels of commerce.
- The costs of storage are not mentioned as an expense to be born by the counterfeiter, they are in practice paid by the claimant.
- Infringing goods should be in principle destroyed and there should be few exceptions to this rule. If infringing goods, after a long and costly procedure, eventually reach the

market again, many participants in the law enforcement process, including rightholders, the customs and police, see their efforts as ultimately wasted.

- Consumer's purchase of counterfeit goods does not constitute an infringement of a trademark, because the consumer's purchase is not considered *use in the course of trade*.
- Destruction claims may be *preliminarily* enforced in a case where a rightholder presents adequate security.
- Evidence gathering is problematic (for instances showing the date on which the infringement has ceased or the infringing products are destroyed). Consequently, it is advisable to request the services of a notary in order to certify the compliance.
- In criminal proceedings, destruction is a penalty. Consequently, when an accused person is acquitted (because, for example, of a failure to prove *bad faith*), no destruction can be ordered even if the infringement is established.
- Provisions relating to market recalls and definitive removals from channels of commerce are clear and give rise to little debate. However, the courts are usually (too?) cautious when it comes to order a market recall.
- Civil law provisions concerning destruction are only applicable to the owner of the goods and devices. They should also be applicable to the rightholder and the intermediary.

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COUNTRY	<p><b>2.1. Recall and definitive removal from the channels of commerce.</b></p> <p><i>What are practical differences between recall from the channels of commerce and definitive removal from the channels of commerce? Are these measures used often by the rights holders in civil intellectual property infringement cases? Are there any precedents?</i></p>	<p><b>2.2. Recall and definitive removal from the channels of commerce.</b></p> <p><i>Is the situation different when the goods are no longer in infringer's possession (e.g. goods already reached retailers, wholesalers or consumers)?</i></p>	<p><b>3.1. Secondary use of goods (e.g. removal of the infringing trademark, donation to charities, recycling, etc.).</b></p> <p><i>Is secondary use of goods allowed? If so, is it used in civil proceedings or only in customs proceedings? Are there any precedents?</i></p>
<p><b>Austria</b></p>	<p>There is no legal provision other than for <i>destruction</i>, there is no experience with the <i>recall</i> and <i>removal</i> and their practical differences in Austria.</p>	<p>No, because Austrian IP Law does not cover <i>recall</i> and <i>removal</i> at all.</p>	<p>There are <i>no specific provisions for secondary use of goods</i> in Austrian IP Laws:</p> <p>In all mentioned IP Acts the right holder can demand the transfer of the infringing articles or devices to him by their owner for equitable remuneration not exceeding the costs of production.</p> <p>Where the infringing articles or devices contain parts of which the unaltered state and use by the defendant do not infringe the exclusive right of the plaintiff, the court shall designate such parts in the decree ordering destruction</p>

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			<p>or rendering unusable. When enforcing the decree, such parts shall, as far as possible, be exempted from destruction or rendering unusable if the person liable therefore pays in advance the associated costs (Copyright, Trademark Protection and Patent Act). Where relief may be provided other than in the manner referred above, and where such measure would entail no, or less destruction of assets, the injured person may require only such measure.</p> <p>In particular in copyright cases, copies shall not be destroyed merely because the statement of source is lacking or is not in compliance with the law. In particular in trademark cases, the removal of the trademark from the article is only sufficient, if another approach may lead to a disproportionate disadvantage for the infringer.</p> <p>Austrian Product Piracy Act Article 6 (2) provides that, with the agreement by the right holder, the goods may be used for</p>
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			<p>charitable purposes or may be utilized in any other way.</p> <p>As far as we can see and from what has been published there are no precedents concerning <i>secondary use</i> in Austria.</p>
<p><b>Belgium</b></p>	<p><b>Market recall</b> can have a preliminary (provisional) or final character. It can be ordered in the framework of <i>summary proceedings pending the proceedings on the merits</i>. The goods would then typically be collected by a bailiff or an expert appointed by the court whose duty it will be to keep an eye on the goods pending the main action.</p> <p>Market recall can also be ordered at the outcome of the <i>main action</i> and is then definitive (subject to a possible appeal).</p> <p>Unlike <b>removal from the channels of commerce</b> (confiscation), market recall typically refers to situations in which the goods are no longer in the possession of the defendant. The defendant is then ordered by</p>	<p><b>Market recall</b> is in principle available when the goods are <i>no longer in the infringer's possession</i>.</p> <p>However, having regard to the <b>principle of proportionality</b>, the courts are unwilling to order a recall whenever this could harm the consumers' interests (provided that such consumers acted in good faith).</p> <p>As indicated above, at the <i>criminal level</i>, Articles 12(2) and 13(2) of the Law of 15 May 2007 provide for the possibility for the courts to order the confiscation and destruction of goods infringing intellectual property and belonging to other persons than the defendant. However, this possibility does not prejudice the rights of third parties, as</p>	<p>Normally, <i>second use</i> is <i>not allowed</i>. No legislation empowers the courts to order the donation of infringing goods to charities, nor their recycling. However, in those cases <i>where the infringer and the right holder agree to second use</i>, the courts tend to agree to give effect to such arrangements. Moreover, at the right holder's request, the goods may in some cases be assigned to the right holder, who may then decide to dispose of the goods as he deems fit. For obvious reasons, however, this option is only used by the rights holders in exceptional circumstances (e.g. in the case of genuine parallel imported goods).</p>

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	<p>the court to claim the goods back from its customers (wholesalers, distributors, retailers).</p> <p>By contrast with market recalls which are not ordered so often, confiscation and destruction are quite common in IP-related actions and are frequently ordered by the courts.</p>	<p>legitimate owners of the goods, to claim them goods back.</p>	
<b>Bulgaria</b>	<p>Definitive removal is not provided in the above mentioned statutory provisions.</p>	<p>Court's decision on the seizure and destruction may be imposed with regard to goods in infringer's possession. As regards third parties (retailers, wholesalers), a separate claim for seizure and destruction should be filed against the respective persons.</p>	<p>Secondary use is not envisaged.</p>
<b>Cyprus</b>			
<b>Czech Republic</b>			
<b>Denmark</b>	<p><b>Recall:</b> possibility of said goods returning to the retail trade at a later stage, e.g. after the removal of infringing trademarks.</p> <p><b>Definitive removal:</b> is permanent. However, a definitive removal does not prevent e.g. counterfeit goods from being utilized through</p>	<p>Corrective measures are applicable against any person or legal entity who infringes an IP-right.</p> <p>Corrective measures can also be applied in case of infringements committed in good faith.</p> <p>The measures have been applied</p>	<p>Secondary use in the form of removal of the infringing trademark is directly mentioned as a corrective measure. Donation to charities of e.g. infringing goods, recycling of e.g. infringing goods and other secondary use through non-commercial channels are not governed by any of the above-mentioned acts. However, if the</p>

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	<p>non-commercial channels.</p> <p>So <i>recall</i> and <i>definitive removal</i> have not been applied in any published case law, as opposed to <i>destruction</i> which is regularly invoked. This is probably partly due to the fact that many IP infringement matters begin with a preliminary injunction in the Bailiff's Court where the right holder inter alia will invoke the recall of the infringing products from the channels of commerce. Such claims are normally successful.</p>	<p>in preliminary injunction proceedings in relation to goods which are no longer in the possession of an infringer, e.g. in the possession of retailers or wholesalers.</p> <p>However, the <i>principle of proportionality</i> entails that corrective measures will normally not be applied against private persons/consumers. On the other hand, if e.g. very expensive infringing products have been sold to consumers, recall of the infringing products from such consumers could probably be obtained.</p>	<p>rights holder files a civil lawsuit and claims that the infringing products are given to charity, the court would probably allow it if such measure satisfies the principle of proportionality.</p> <p>The Danish Customs Authorities find that they do not have the authority to dispose of the goods in other ways than through destruction or handover to the consignee, which is why the Customs Authorities will not accept donation to charity of such goods.</p> <p>To our knowledge, there is no published case law regarding secondary use of infringing goods.</p>
<p><b>Estonia</b></p>	<p>Differences between the recall and definitive removal from the channels of commerce are rather difficult to define, as there are no precedents or relevant court cases.</p> <p>The explanation for this may be that the right holders are seeking for the protection of their intellectual property rights in Estonia mainly through criminal proceedings.</p>	<p>The law actually does not specify who should or could be the potential defendant in these cases.</p> <p>Destruction, recall and definitive removal from the channels of commerce may be requested if the seriousness of the violation is proportional to the measures to be applied and the rights and interests of third parties.</p>	<p>Yes. The <i>secondary use</i> of clothes and footwear is allowed, but <i>only in customs proceedings</i>: “The procedure for transfer of confiscated counterfeit clothing and footwear to state or local government health care or social welfare institutions”.</p> <p>There have also been relevant precedents in previous years.</p>

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		<p>Based on relevant provisions of law, the <i>situation should be different when the goods are no longer in infringer's possession</i> as in such case the interests of such third person (who may possess the goods) need to be taken into account as well.</p> <p>At the same time, in our opinion, <i>there should not be substantial differences</i> for recalling and definitive removal from the channels of commerce of goods that have <i>reached retailers or wholesalers</i>.</p> <p>In case the goods have already <i>reached customers</i>, the recalling or definitive removal of such goods may be rather difficult, if even not possible.</p>	<p>In our knowledge, <i>thousands of clothes and boots have been donated</i> (after the infringing trademarks have been removed) to social welfare institutions (including orphanages).</p>
<p><b>Finland I.</b> <b>Finland II.</b></p>	<p>I. No practical differences between recall and definitive removal from the channels of commerce. Both actions aim at the same purpose. Such measures are however, not use too often.</p> <p>Instead in practice the RHs</p>	<p>I. The right holder may claim that the infringing products must be removed from the channels of commerce even if said products are in the possession of retailers or wholesalers as the infringement still occurs when the infringing products are used in trade.</p>	<p>I. Secondary use of goods is allowed in Finland and actually removing of the infringing trademarks is even the preliminary option to be ordered by court and only if the removal is not possible the goods with the infringing trademarks shall be ordered to be</p>

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	<p>usually claim injunctions against the infringing party/parties to cease infringing the respective IPRs and that the products at the infringing party's possession are to be destroyed if the infringing signs cannot be removed. The injunction can be requested as a preliminary injunction already to be in force during the infringement proceedings (executed against ordered guarantee) or as the final injunction in connection with the decision in the infringement proceedings.</p> <hr/> <p>II. The law acknowledges that there is a difference between recall and definitive removal; however, there are no separate provisions in the Finnish law dealing with recall and definitive removal from the channels of commerce as described in the legislation.</p> <p>We are not aware of any published precedents on recall or removal from channels of commerce.</p>	<p>However, if the products are already in the possession of consumers, the IPR rights have already consumed and removal is no longer possible.</p> <hr/> <p>II. The situation may be different, but appropriate remedy is always within court's discretion. However, where a person that has not himself engaged in the infringing activity and that has got possession of the infringing goods <i>bona fide</i>, that person will not be liable to hand over the infringing goods.</p>	<p>destroyed. Other corrective measures like donation to charities and recycling are so far possible only if the parties in question have agreed upon such measures because the Finnish legislation does not include provisions based on which the Finnish court could order the infringing goods to be donated to charity or recycled.</p> <p>If the removal could be possible an often used claim is to claim removal as the preliminary option and if it is not possible then the products should be destroyed – both should be ordered to be done on infringer's cost.</p> <hr/> <p>II. Yes, e.g. when the infringing trademark is removed or altered. This is within the court's discretion. This provision should be used in exceptional cases rather than a general rule.</p>
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<p><b>France</b></p>	<p><b>Recall</b> from the channels of commerce is a way of keeping hold of the products under scrutiny, in order to prevent them from entering the channel of commerce. Recall is used to <i>avoid the introduction or circulation of products in the channel of commerce.</i></p> <p><b>Definitive removal</b> from the channel of commerce presumes that the <i>goods are definitely infringing someone's right</i> and should therefore be <i>completely excluded</i> from the channel of commerce. This is also a <i>precondition to their destruction.</i></p> <p>The <i>recall and the definitive removal</i> are both measures which can be <i>subject to payment by the claimant of a financial warranty</i>, in order to <i>indemnify the defendant if the act of counterfeit is not established</i> or the measures are quashed.</p> <p>The claimant must therefore be <i>certain of his rights</i> and <i>be prepared to advance the funds requested.</i></p>	<p>There is no practical difference, but it should be pointed out that it is <i>generally more difficult</i> to recall products from the channels of commerce than to stop them from entering the market.</p>	<p>No.</p>
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	<p>It is important to note that these measures have been <i>rarely used</i> by the Courts.</p>		
<p><b>Germany</b></p>	<p>Compared to <i>recall</i> the <i>definitive removal</i> has no independent meaning.</p> <p>Recall and definitive removal are used in Germany by rights-holders, but not on an extensive scale. One of the main reasons is that such claims <i>may only be raised in proceedings on the merits and not in quick preliminary proceedings</i>.</p> <p>If the recall is not included in the injunction claim and therefore cannot be pursued in preliminary proceedings, it is quicker for the right holder to go against the customers of the infringer on its own, after the infringer has rendered the name and the address of its customers. Such information may be claimed from the infringer in quick preliminary proceedings in obvious cases.</p> <p>In case the claim for recall is already included in the injunction claim, the claim for a recall has no</p>	<p>Yes. In case the goods are no longer in the infringer's position, the claim is limited to informing all buyers and to ask them to give back the goods delivered to the infringer at the infringer's expense. This measure only has to be taken with respect to the infringers' contractual partners, but must entail the demand that in case of re-selling by this contractual partner, the contractual partner also raises the same demand towards its customer.</p> <p>Although German law is not entirely clear on this point, the <i>prevailing opinion in Germany does not accept a recall or definitive removal from private consumers</i></p>	<p>Yes, the secondary use of goods <i>is allowed</i>, as far as the goods do no longer bear the infringement and may not be re-altered. Furthermore, it may be contrary to the <i>principle of proportionality</i> to grant the destruction claim to destroy goods, which after they have been altered are no longer illegal.</p> <p>This principle of proportionality is explicitly mentioned as limiting the destruction, recall and definitive removal claims. But only alterations of goods are relevant which may not be removed later. For example, removable stickers would not be deemed sufficient; the same is true for over painting an illegal painting, if the new paint layer may be removed.</p> <p><b>In border seizure matters</b>, customs decide on forfeiture of the goods in question, if no</p>

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	<p>independent relevance anyway. According to this opinion, the claim for a recall in German law <i>only has practical importance in case the infringer no longer controls the infringing goods</i>. In particular in these cases, it seems to be a more efficient way to combat infringements for the right-holder to go directly after the costumers of the infringer through the aforementioned path of the information claim.</p>		<p>opposition is filed or consent is assumed due to lack of defense/opposition. <i>The goods are always destroyed</i>, usually burnt or chaffed. There is <i>no secondary use and goods will not be returned to sender</i>. There is <i>no room for customs' discretion and no principle of proportionality applied</i>. This is valid both for national border seizure proceedings and those under the European Regulation 1383/2003.</p> <p><b>Donation to charity is not recognized as a legal secondary use of goods, which still bears the infringement</b> (prevailing opinion: it is, however, possible that the right owner on its own motion consents to donation to charity (not available in border seizure matters)).</p>
<p><b>Greece</b></p>	<p>There is no practical difference between the recall and definitive removal from the channels of commerce sought in <i>preliminary injunction</i> and <i>main infringement actions</i>.</p> <p><i>Recall and definitive removal are</i></p>	<p>Courts' orders do not usually extend to goods that are no longer in infringer's possession.</p>	<p>No. Secondary use of the infringing goods is not allowed.</p>

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	<p>applied without any distinction.</p> <p>In practice, the courts hesitate to order the infringer to recall/remove infringing products already sold to third parties. Therefore, the removal obligation affects the products that are in the infringer's possession or are kept by third parties on behalf of the infringer.</p>		
<p><b>Hungary</b></p>	<p>Not aware of any case law on this issue.</p>	<p>The statutory provisions make it possible for the courts to recall infringing goods that are no longer in the infringer's possession, but we are not aware of any case law on this issue.</p>	<p><i>Secondary use</i> is Possible (except in customs procedures).</p> <p>In <b>criminal proceedings</b>: possible to offer the products for charity purposes. The authority which seized the products informs the so-called "Charity Council", which appoints a charity association. Then the charity association appointed by the Charity Council contacts the right holder's representative in order to obtain its consent for the offer of the products for charity purposes. In case the right holder refuses, the appointed charity association can request the Court to declare that these products are suitable for charity purposes (<i>we have no</i></p>

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			<p><i>aware of any precedent in this respect). Whether or not a donation to charities is appropriate depends on whether the infringing elements of the products can be removed.</i></p> <p><i>The costs of the removal of the infringing elements, as well as the storage and transport costs and the customs clearance would in this situation be supported by the appointed charity association.</i></p> <p><i>According to our experience most of the goods offered to charities are clothes.</i></p> <p><b>In civil proceedings:</b> the right holder can claim the handing over of the infringing products to a person appointed by the right holder, after which the right holder can offer them for charity purposes.</p> <p><i>In such cases, if the products have not yet been subjected to customs clearance, the customs duties must be paid by the right holder.</i></p> <p><b>In customs procedures:</b> no possibility of offering infringing</p>
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			products for charity purposes. The right holder <i>can only claim the destruction</i> thereof.
<b>Ireland</b>			
<b>Italy</b>	<p>Article 124 IIPC provides for an order to <i>withdraw the same products from the market issued against the owners of said products or those who, at any rate, have them at their disposal.</i></p> <p>According to the Italian scholars and case law, this rule obliges the infringer to take action to recover and remove from the channels of commerce also infringing goods distributed <i>for sale on account</i>, i.e. by way of a contract of sale or return, or such like. See in particular Court of Milan, 16 January 2009, which upheld as a final ruling an order to definitively withdraw from the market the infringing product (a calendar) issued in preliminary proceedings also against an intermediary who was not held guilty of infringement.</p> <p>However, in those cases in which the specimens, the copies or the contrivances involved in the</p>	<p>According to the Italian scholars, the order may be issued also against subjects having the products <i>at their disposal</i>, i.e. who are entitled to recall them from the actual holder. Otherwise, the goods which are in retailers' or wholesalers' possession may be recalled only if these subjects have been sued as well.</p>	<p>If specimens, copies or contrivances are susceptible, upon an adequate modification, of legitimate utilization by the infringer, the judge may order their temporary withdrawal from the market with a possibility of their reinstatement following the adjustments imposed for guarantying the respect of the right.</p> <p>Likewise, The <b>removal</b> or <b>destruction</b> may be effected only as regards specimens or copies illegally reproduced or disseminated, and contrivances employed for reproduction or dissemination which, by their nature, are not capable of use for the reproduction or dissemination of other matter. If <b>a part of</b> the specimen copy, or contrivance referred to in paragraph 1 is capable of use for the reproduction or dissemination of other matter, the interested party may, <b>at his expense, request the</b></p>

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	<p>violation are <i>capable of licit uses</i> by the infringer, the Italian legal system provides an <i>alternative to the their definitive removal from the market</i>. If such specimens, copies or contrivances are <i>susceptible, upon an adequate modification, of legitimate utilization by the infringer, the judge may order <b>their temporary withdrawal from the market with a possibility of their reinstatement</b> following the adjustments imposed for guarantying the respect of the right.</i></p>		<p><b>separation, in his interest, of such party .</b></p> <p>A more comprehensive rule, whereby the President of the competent IP Specialized Division may authorize the <i>donation to charities or the recycling of the goods, as an alternative to the destruction</i> of the same, was proposed by the former High Commissioner for the Fight against Infringement, but it <i>has not yet been passed.</i></p> <p>However, Article 124 lays down a further option for the IP right owner, providing that: A decision ascertaining the infringement of industrial property rights may order that <b>ownership of the goods</b> manufactured, imported or sold in violation of the right and the specific means solely aimed at manufacturing or at exploiting the protected method or process <b>shall be transferred to the holder of the right</b>, without prejudice to the right to the compensation in damages. Likewise, the injured party may, at any time, ask that the specimens, copies, and</p>
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			contrivances liable to destruction be delivered to him and their appraised value applied to the reparation due him. This option is usually chosen by the IP right owner when the secondary use of the infringing goods has an economic relevance.
<b>Latvia</b>	We are aware of only one patent case where the provisions of the Civil Procedure Law on corrective measures have been successfully applied.	No experience.	No. Secondary use of goods is not regulated by the national provisions and there are apparently <i>no civil cases where such claim would ever have been made</i> or addressed.  Secondary use is <i>not used in customs proceedings</i> either.
<b>Lithuania</b>	The main problem is the <i>lack of court practice</i> in applying such corrective measures. Therefore <i>one can only speculate</i> regarding the practical differences between the two.  So for example it may be suggested that the term <b>recall</b> is of temporary nature and may be reversed once there is a final judicial decision. It may be suggested that the recalled goods	The transfer of the goods from the infringer to third parties makes the enforcement of the recall/definitive removal measures <i>extremely complicated</i> .  Firstly, there is the issue of <i>locating and informing third parties</i> regarding the corrective measures. Secondly, a party in possession of the goods who is faced with such a measure (s) <i>most likely has spent money to</i>	Secondary use of goods <i>is not expressly prohibited</i> .  The permission for the secondary use of the goods may be reaffirmed by providing for the recovery of material damages.  The legal acts also provide for the goods/products/objects/copies of works etc. to <i>be handed over to the right holder at his request</i> . The actions of the right holder

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	<p>remain in possession of the alleged infringer and the goal of the measure is to make the goods inaccessible to the buyers/consumers. <b>Definitive removal</b> is more indicative of the finality of the ordered measure. It also invokes a possible transfer of the allegedly infringing goods from their seller/disseminator into the custody of state authority.</p>	<p><i>obtain them</i>, thus it has no interest in returning the goods. Thirdly, absent a tradition of respecting IPRs one's willingness to return something already in possession becomes highly questionable, especially because of the flaws in something that is intangible (rights)..</p>	<p>after the handover are not regulated.</p> <p>The interviewed (by telephone) <i>customs officials could not confirm any case where the secondary use of the goods (handing over to right holder) took place.</i></p> <p>Possibility of using the goods once the infringing content (say certain logos from clothing) is removed was mentioned (say donation to the charity etc.). Yet, the customs officials could not confirm it has ever been done.</p> <p>No precedents were recorded in the court cases database regarding the secondary use of the goods.</p> <p>However, on some occasions the <i>Supreme Court has emphasized that the courts must take a more pro-active stance and analyze whether there is a possibility to remove the infringing content and cure the IPRs infringement caused damage by secondary use of the goods/products.</i></p>
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<p><b>Luxembourg</b></p>	<p><b>Removal</b> from the channels of commerce relate to situations in which the goods are still in the possession of the defendant.</p> <p><b>Market recall</b> relate to situations in which the goods have already been disposed of by the defendant.</p> <p>There is no significant case law yet concerning corrective measures.</p> <p><i>Before the implementation, there have been very few cases where the right holder requested the destruction of the infringing goods. The destruction was only ordered in cases where the goods had been seized and/or were still in possession of the infringer.</i></p>	<p>Removal cannot be done when the goods are no longer in infringer's possession.</p> <p>In one recent decision, the court dismissed the recall of the infringing goods because they were no longer in possession of the defendant. In this case, however, the goods were in possession of <i>end consumers</i>. It is not clear whether the decision would have been different if the goods had been in possession of a retailer; the court simply stated in this regard that with respect to goods that have already been sold over, the defendant cannot recall them since they are not longer his possession. However, it can be assumed that the court would have been more likely to order the recall of the goods if they had been in possession of a retailer.</p>	<p>There is no case law on this subject.</p> <p>Secondary use of infringing goods has never been used in civil proceedings in Luxembourg.</p> <p>Concerning customs proceedings, customs have already internally discussed the subject of donation to charities, but it has never been done in practice. Indeed, they have concerns about the dangerousness and/or toxicity of counterfeit goods.</p> <p>Concerning recycling, the companies instructed to destroy the goods are asked to recycle the remains if possible.</p>
<p><b>Malta</b></p>	<p>These measures have <i>not been tested</i> by the Maltese Courts, we are not aware of any right-holder who has enforced such rights locally. As such, any <i>interpretation</i> relating to the practical differences between</p>	<p>Similar if not identical.</p>	<p>It is very difficult in Malta for a court to order a measure <i>not</i> being the destruction of the infringing goods.</p> <p>In <b>criminal cases</b>, the goods would be automatically</p>

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	<p><i>recall</i> and <i>definitive removal</i> remain <i>purely theoretical</i> in nature.</p> <p>The <i>main remedy</i> granted is generally the <b>destruction</b> of infringing goods but that may only be ordered by the court when such measures are proportionate to the seriousness of the infringement.</p> <p>When assessing whether to order a recall or a definitive removal from the channels of commerce, or rather, the destruction, the court should <i>assess whether or not one is more justified than the other</i>.</p> <p>In other words, if a recall from the channels of commerce (implying also temporary recalls) suffices to secure the RH's rights at law then, a definitive removal from the channels of commerce may be disproportionate and ultimately, unjustified.</p> <p>At the same time, it would appear <i>very difficult to convince</i> a local court that the destruction of infringing goods is <i>not</i> justified.</p>		<p>confiscated in favour of the Government and the court has the liberty to order whether the goods should be so confiscated for destruction or whether they may be donated to non-governmental organisations in the form of charities.</p> <p><b>Customs proceedings:</b> (administrative in their nature) are regulated specifically albeit in a similar way to civil proceedings. <i>Removal of infringing trademarks on counterfeit goods is allowed but only in exceptional cases.</i> However, such concepts have not been subject to judicial interpretation and therefore it remains very unclear what these 'exceptional cases' may be. Trademarks legislation, the existence of 'secondary use' of infringing goods is <i>just as clear</i>.</p>
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<p><b>Netherlands</b></p>	<p>The practical difference between recall and definitive removal is that <b>recall</b> of the goods <i>also concerns goods that already reached consumers.</i></p> <p><b>Definitive removal</b> basically only applies to goods that are in the possession of the infringer or its professional customers/retailers.</p> <p>If the claim for a recall is granted, it is often no more than an obligation for the infringer to write to all of his/her customers with the notification of infringement and offering them the possibility to sell back the litigious goods.</p>	<p>Market recall (i.e. in those cases where the litigious goods are no longer in the infringer's possession) is less likely to be granted by the courts.</p> <p>In this situation, most of time is chosen for the definitive removal from the channels of commerce by destroying all stock of the litigious goods at the infringer or its professional customers.</p>	<p>Secondary use of goods is in our opinion not allowed.</p> <p>Not aware of any case law on this issue.</p>
<p><b>Poland</b></p>	<p>In practice, the effect of <b>recall</b> from the channels of commerce may be achieved through a <i>preliminary injunction</i>, issued by the court before the proceedings are commenced or when the case is already pending. The court may decide in any infringement case, as a measure of conservation of a claim, that the defendant be prohibited from the sale or otherwise placing onto the market of goods that may infringe upon</p>	<p>When infringing goods have already reached retailers, wholesalers, consumers or other entities not connected with the infringer, or when the goods are otherwise no longer in the infringer's possession or under its control, it is <i>impossible to recall</i> or definitely remove the goods from the channels of commerce through an order issued by the court against the infringing party.</p>	<p>Secondary use of goods is in principle <i>not mentioned as a remedy available to the plaintiff in civil proceedings</i> (at any rate, the law does not explicitly provide for such possibility).</p> <p>The court may, upon a motion filed by a plaintiff, decide about unlawfully manufactured goods which include: withdrawal of the goods from commerce, adjudicating these goods to the</p>

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	<p>plaintiff's IP rights.</p> <p><b>Definite removal</b> from the channels of commerce is, in turn, <i>decided in a final judgement</i> when ruling on the infringement of a right, at the right-holder's request, regarding unlawfully manufactured or marked products and the means used in their manufacturing or marking.</p> <p>If enforcement is effected through civil proceedings, right holders quite often make use of the conservation of a claim in civil intellectual property infringement cases, by way of applying for prohibition of sales of infringing goods. The other aforementioned measures are not so frequently used in the civil procedure.</p>		<p>plaintiff or ordering the destruction thereof. However, if goods are adjudicated (assigned) to the plaintiff, in some circumstances the plaintiff may intend to sell them to the market. In addition, in the event of trademark infringement, the Industrial Property Act provides that <i>only in exceptional circumstances</i> may the removal of the infringing trademark be accepted when the court decides on the infringing goods, which is an indication that such goods could (<i>although in exceptional situations and after infringing trademarks have been removed</i>) be placed on the market. Also, as a decision on the fate of goods is always taken by the court <i>at the request of the right towner</i>, one should conclude that <i>in the absence of such request, the court will not have the authority</i> to issue such a decision and, in consequence, the infringing goods may find their way onto the market.</p>
<p><b>Portugal</b></p>	<p>Up to the present date, the decisions of Portuguese courts do</p>	<p>In IP Code and in the Copyright law it is stated that the court must</p>	<p>This is an issue that raised very contradictory opinions and there</p>

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	<p>not apply any of these legal provisions and we are not aware of any situation where the owner of the IP right may have request the application of such measures.</p> <p>Therefore, no jurisprudence has yet been determined regarding possible practical differences between recall from the channels of commerce and definitive removal from the channels of commerce.</p>	<p>take into consideration the interests of third parties, namely consumers in good faith. This may imply that these measures are not to be applicable should they have been regularly sold to third parties in good faith.</p> <p>However, given the lack of jurisprudence on this regard, we cannot ascertain how these provisions will be taken into consideration by the Portuguese courts, namely, which situations will be considered as exceptions to the appliance of the above corrective measures.</p>	<p>are different solutions for the same problem.</p> <p>In fact, in what concerns goods infringing Industrial Property rights, article 330 of the IP Code states that the goods proven to be counterfeit and the instruments for its manufacture are given as lost in favour of the Portuguese Authorities, unless the holder of the IP right authorizes in the re-entry of the goods in the market or any other solution. However, these goods have to be destroyed if it is not possible to remove the part that infringes the IP right (for instance, the trademark).</p> <p>However, in what concerns goods that constitute a violation of works protected by Author's rights, article 210 I, no. 3 states that considering the nature and quality of the goods given as lost in favour of the Portuguese Authorities, the court can decide to offer them to public or non-profit private entities, if the RH authorizes it.</p>
<b>Romania</b>	There is no practical difference	As seen from a point of view of	Generally, the goods proved to

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	<p>noticed.</p>	<p>practice, there is no such difference.</p> <p>From a legal point of view, the Copyright Law specifically provides that the instruments and means used for committing the infringement are to be seized <i>only if still in the infringer's possession</i>. The legal provisions do not make a difference however when it comes to the infringing goods themselves.</p>	<p>infringe the intellectual property rights are to be <i>destroyed</i>.</p> <p>Alternatively to the destruction, the possibility to hand-over free of charge the goods <i>for charity purposes</i>, if:</p> <ul style="list-style-type: none"> <li>(i) the right holder has agreed in writing;</li> <li>(ii) the goods may be used or consumed by individuals; and</li> <li>(iii) the goods are not to be commercialized.</li> </ul>
<p><b>Slovakia</b></p>	<p>Recall from the channels of commerce is not adjudicated often, because of impossible or limited enforceability. This is mainly because the defendant is not, at that time, the owner of the goods any longer.</p> <p>It could be imposed on the defendant by obliging him to re-buy the goods, or recall them the same way as the goods have been distributed by him.</p> <p>Definitive removal is for example burning of the products, shredding or other destruction.</p>	<p>Yes, because one needs to take into account the interests of third parties who have purchased the goods in good faith.</p>	<p>In civil proceedings secondary use of goods would be possible, since it is not forbidden but the trademark owners would have to agree with it. Those charities who would receive such goods would have to, on their own cost, remove the infringing signs and would have to ensure that the goods in questions are indicated with signs that they are for charities or humanitarian aim only.</p>

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<p><b>Slovenia</b></p>	<p><b>Recall:</b> two main characteristics:            (i) the interests of <i>bona fide</i> third parties need to be considered and            (ii) the recall itself takes place in a particular moment. However, <i>in case of a recall the possibility to put respective goods back into commerce remains provided that the infringement is removed.</i></p> <p><b>Definite removal:</b> there is <i>no possibility</i> for infringing goods to be brought back into channels of commerce.</p> <p>Which measure is more appropriate depends on the nature of a particular infringement.</p> <p><i>Recall</i> is more suitable in cases, where the cause of infringement can be removed and respective goods may be put back into commerce. <i>Definite removal</i>, is more suitable in cases, where infringement derives from the sole nature of a certain goods and it cannot be removed without altering the essence of respective goods.</p> <p>We are unaware of any</p>	<p>The entitled person may claim that the objects of infringement be recalled from the channels of commerce, taking account the interests of <i>bona fide</i> third parties (parties in good faith).</p> <p>Accordingly, it is evident, that the right holder's protection is limited, if retailers, wholesalers and customers acquire infringing goods in good faith.</p> <p>We are unaware of any precedents.</p>	<p>The Act implementing the customs regulations states that the seized goods are to be <i>destroyed</i>. Therefore, it may be assumed that <i>no other use is anticipated</i>, except for the following ones:            (i) goods are assigned to the State Budget            (ii) sale of goods            (iii) if no sale is possible, goods may be free of charge assigned to humanitarian organizations etc.</p> <p>IPA or CRRA include <i>no provisions that would provide grounds to pursue secondary use of goods</i>.</p> <p>In <b>criminal procedure</b> or <b>offences procedure</b> it is possible to attain <i>secondary use of goods in public interest</i>.</p> <p>The kind of specific secondary use of goods, which is to be determined by the court, depends on the nature of the seized goods and the nature of infringement. Whether that could be applied also to infringing goods remains unclear.</p>
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	precedents.		We are unaware of any precedents.
<b>Spain</b>	<p>In Spain recall from the channels of commerce and definitive removal from the channels of commerce are not measures particularly used by intellectual property right holders in infringement cases.</p> <p>The Spanish courts do not differentiate between recall and definite removal, when ordering the removal of the infringing materials.</p>	The implementation of IPRED has enabled intellectual property right holders to file court actions to stop infringing conduct and file preliminary injunctions against any retailers and wholesalers.	<p>Secondary use of goods is allowed and used in <b>civil proceedings</b> and <b>customs proceedings</b>.</p> <p>For instance, article 41 of the <i>Trade Mark Law</i> states that when the removal of the infringing trade mark is not possible, the plaintiff may choose to request the destruction of the infringing goods or their donation for humanitarian purposes, which will always be at the expense of the infringer.</p> <p>In <i>patent matters</i>, and in accordance with article 63 of the Patent Law, the patent right holder may opt for the transformation of the seized goods.</p>
<b>Sweden</b>	<p>A <i>recall from the channel of commerce</i>: for instance a manufacturer has sold the product to wholesaler but the product has not yet been re-sold to reach the end market. Although a party cannot <i>per se</i> control the goods that are in the third party's possession, he must take</p>	In such case the infringer must take measures that can reasonably be expected from him. It is clear that the rules on recall and removal will apply against goods in the possession of retailers and wholesalers. There are also reasons to believe that these rules will apply in respect of	<p>Secondary use, such as donation to charities has been allowed also in civil proceedings.</p> <p>At the moment there are no Swedish precedents as regards secondary use in IPR infringement cases.</p>

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	<p>reasonable measures to recall the product.</p> <p><i>Definite removal from the channels of commerce</i> is included under <i>other appropriate measures</i>, which comprise a non-exhaustive list of corrective measures other than those explicitly listed (i.e. destruction, amendment and recall from the market). A definite removal from the channels of commerce may for example include donation of the goods to charity or the goods being handed over to the rights-holder.</p> <p>We have yet not seen any precedents in Swedish case law and nor is it possible to at this stage state any general trends in the practice, the implementation of IPRED has taken place only recently.</p>	<p>consumers.</p> <p>As a general rule, a party cannot be ordered to act against goods in someone else's control.</p> <p>In the bill to the implementation of the IPRED it is suggested that the infringer could be order to inform the holder of the goods and provide a refund in order to retrieve the goods that are to be recalled.</p>	
<p><b>United Kingdom</b></p>	<p>There are <i>no practical differences between recall and definitive removal</i>. In the UK, <i>recall</i> is not a term used. The procedure used is akin to <i>removal</i> from channels of trade. An owner of IP rights needs to apply to the court for an order</p>	<p>It is generally no different when the goods are no longer in the infringer's possession, because, if an order is made by the court for delivery up/destruction, then that applies irrespective of where the goods are/in whose possession</p>	<p>Yes, see section 15 TMA 1994. However, in <i>Kabushiki Kaisha Sony Computer Entertainment Inc v Nuplayer Ltd</i> (2005), the High Court held that <i>obliteration of marks from infringing goods</i> was merely a possible remedy under</p>

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	<p>for <i>delivery up</i> of the infringing goods. The court has an inherent equitable jurisdiction to make the order; and, for example under the CDPA 1988, no order for delivery up will be made unless the court also makes, or it appears to it there are grounds for making, an order for destruction of the goods, or for their delivery up to the copyright owner, under section 114 of the CDPA (section 99(2)).</p> <p>The remedy of delivery up is common for all types of IP infringement, including patent infringement.</p> <p>The right to seize goods <i>without</i> a court order is, in practice, of relatively limited use because, for example, under the CDPA 1988, while an owner may enter premises to which the public have access in order to seize relevant goods, the right owner may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his, and may not use any force (section 100(3)). Accordingly, in practice this seizure power is likely only to be</p>	<p>they are. However, the position is different, depending on who is in possession of the goods.</p> <p><b>Retailers/wholesalers</b></p> <p>It is <i>relatively easy to retrieve</i> the goods from retailers and wholesalers, as the goods are usually all kept in one place. It is just a question of locating the relevant retailer/ wholesaler, arriving at its premises and seizing the relevant goods. This often happens and is usually carried out by the local Trading Standards Departments under the criminal provisions of the various statutes.</p> <p><b>Consumers</b></p> <p>Retrieving goods from consumers is <i>practically difficult, expensive and time consuming</i>. This is therefore not usually done in the UK.</p>	<p>s15(1) and not the basis for an argument that products that would otherwise be infringing ceased to be so when the marks were erased or obliterated. Obviously, each case will turn on its own facts, however this is an interesting view of the UK courts' approach and should be noted.</p> <p>Secondary use is not possible in customs proceedings.</p>
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	<p>appropriate in cases where a trader is found selling counterfeit goods in one-off situations away from a regular place of business. Further, there is no right to seize goods under section 100 of the CDPA unless they are infringing copies. It is not sufficient for the copyright owner to reasonably believe that the goods are infringing copies. Accordingly, copyright owners should only exercise this power with caution, reserving it for cases where they are sure that the relevant goods are infringing.</p>		
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<p><b>COUNTRY</b></p>	<p><b>3.2. Secondary use of goods (e.g. removal of the infringing trademark, donation to charities, recycling, etc.).</b></p> <p><i>Can secondary use of goods be applied in copyright cases (since it is often not possible, like in trademark cases, to "remove the infringing content")?</i></p>	<p><b>3.3. Secondary use of goods (e.g. removal of the infringing trademark, donation to charities, recycling, etc.).</b></p> <p><i>Is secondary use of goods applied for goods which infringe patent rights?</i></p>	<p><b>4.1. Destruction.</b></p> <p><b>Is there a difference between destruction of goods in customs, civil and criminal proceedings?</b></p> <p><i>Is there an overlap between destruction in civil proceedings (covered by the IPR Enforcement Directive) and in customs proceedings (covered by the Customs Border regulation 1383/2003)?</i></p>
<p><b>Austria</b></p>	<p>Where the infringing articles or devices <i>contain parts</i> of which the unaltered state and use by the defendant <i>do not infringe</i> the exclusive right of the plaintiff, the court shall designate such parts in the decree ordering destruction or rendering unusable. When enforcing the decree, such parts shall, as far as possible, be exempted from destruction or rendering unusable if the person liable therefore pays in advance the associated costs.</p> <p>In practice it will be possible at premium offers (e.g. a shaving cream was offered in a package</p>	<p>Where the infringing articles or devices contain parts of which the unaltered state and use by the defendant do not infringe the exclusive right of the plaintiff, the court shall designate such parts in the decree ordering destruction or rendering unusable. When enforcing the decree, such parts shall, as far as possible, be exempted from destruction or rendering unusable if the person liable therefore pays in advance the associated costs.</p> <p>There are no other provisions concerning <i>secondary use</i> in Austrian Patent Act.</p>	<p>(i) <b>Customs proceedings:</b> Product Piracy Act (same as the EC-Product-Piracy-Regulation 2004) is not applicable in any case of infringement of the distribution right (e.g. parallel imports). The application refers to the goods infringing IPR. If either the declared holder or owner of the goods and the right holder agree to an immediate destruction, the destruction can be executed.</p> <p><b>Civil proceedings:</b> Any person whose exclusive rights are infringed may require that copies produced or distributed in violation of the Law or copies</p>

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	<p>with a music-CD containing unauthorized tracks). Additionally, in case of works of art (e.g. photographs) a separation could be reasonable.</p>		<p>intended for unlawful distribution be destroyed and the devices intended exclusively or primarily for unlawful reproduction (moulds, stones, plates, films, etc) be rendered unusable.</p> <p>Only the Copyright Act provides that the action shall be directed against the owner of the articles, only (not the holder, intermediary etc). Trademark Protection Act and Patent Act are applicable to the infringing person, insofar no <i>rights in rem</i> of third parties are violated. That is why the destruction is enforceable even if the infringer is not the owner of the goods, but the (absent) owner has to be an infringer in a juridical sense as well.</p> <p><b>Criminal proceedings:</b> The criminal provision of the Copyright Act concerning 'destruction' provides that on a motion by the injured party the judge shall order the destruction of infringing articles intended for lawful distribution and the rendering unusable of infringing devices intended exclusively or</p>
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			<p>primarily for unlawful reproduction, irrespective of the ownership of the articles and devices.</p> <p>(ii) Cause of the periods of time that are provided in the Product Piracy Act the various proceedings may overlap sometimes.</p>
<b>Belgium</b>	<p>Not aware of any single case where secondary use of pirated goods would have been allowed by the courts.</p> <p>Under Article 17 of Regulation 1383/2003 (in customs matters) and Article 46 of TRIPS (in civil and administrative procedures), the <i>simple removal of trademarks from counterfeit goods should not be deemed to be sufficient to make the infringement disappear, except in exceptional circumstances</i>. Belgian case law does not provide any guidance as to when such <i>exceptional circumstances</i> are deemed to exist. Except in a few isolated decisions <i>in summary proceedings</i> (e.g. pending the main infringement action), we are <i>not aware of any court decision in</i></p>	<p>Not aware of any single case where secondary use of goods that infringe patent rights would have been allowed by the courts.</p>	<p>There are differences as well as overlaps between <b>customs, civil</b> and <b>criminal</b> proceedings:</p> <p>In <b>civil proceedings</b>, the destruction can only be ordered by the courts. (decision that the goods infringe IP).</p> <p><b>Customs proceedings</b> should in principle be followed by civil or criminal proceedings. However, in practice this is only seldom the case since a so-called simplified <i>procedure</i>, allows goods to be destroyed without there being any need to file court proceedings.</p> <p>Any breach of the Regulation also constitutes a customs offence in Belgium. Article 6(1) of the Law of 15 May 2007 empowers the</p>

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	<p>Belgium having decided that the <i>mere removal of trademarks was sufficient to put an end to the infringement</i>. However, the courts tend to authorize the release of goods which have been found to be infringing, subject to removal of the infringing signs, when there is a settlement agreement for that purpose between the right holder and the infringer.</p> <p>As regards <b>recycling</b>, some customs services agree to allow infringing goods to be recycled, provided that any infringing trademarks etc. are duly removed.</p>		<p>courts to order the destruction and the definitive removal from the channels of commerce of any infringing goods that have been blocked by Customs and have been found to violate the Regulation.</p> <p>In <b>criminal proceedings</b>, the court can order the destruction of the infringing goods, even in those cases where the goods do no (longer) belong to the convinced infringer (see above in this regard).</p> <p>Earlier in the criminal proceedings, the Public Prosecutor or Investigating Magistrate can order the destruction of goods pending the criminal inquiry (i.e. prior to the filing of the court action) if their destruction is necessary to safeguard public security or public order or when the storage of the goods is problematic (i.e. the cost of storing the goods exceeds their value). The goods can only be destroyed in the absence of any claim on them being made in the two months following their seizure (Article 13(3) of the Law</p>
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			<p>of 15 May 2007). The Public Prosecutor can also order the destruction of the goods when a settlement took place, provided that the infringer agreed to abandon the goods for destruction.</p> <p><b>Criminal proceedings</b> also require the proof of the <i>infringer's bad faith</i>. In the absence of any fraudulent intent, the accused person is acquitted. Consequently, it will sometimes <i>be easier for the right holder to launch civil proceedings</i> than criminal proceedings. Moreover, in criminal proceedings, the destruction is treated as part of the sentence of a defendant found guilty (i.e. destruction is a criminal penalty), so if the defendant is acquitted, no destruction can be ordered, even if the infringement is established.</p> <p>There <i>can be an overlap</i> between the provisions laid down in the IPRED, the national provisions implementing the Directive and the provisions laid down in the Regulation and the Law of 15 May 2007 when the provisions of</p>
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			<p>the Law of 15 May 2007 and the Regulation are applicable and are followed by civil proceedings (overlap between <i>civil infringement</i>, <i>customs offence</i> and <i>criminal offence</i>).</p>
<b>Bulgaria</b>	No.	No.	<p>Goods could be subject of destruction only after a final decision on the merits is pronounced. In <b>criminal cases</b>, infringing goods are subject of seizure in favour of the state and destruction upon the explicit provisions of the Penal Code. In cases originating from <b>customs</b> detention, goods could be subject of destruction only upon final civil court decision or criminal court sentence is pronounced.</p> <p>In <b>civil proceedings</b> goods are destroyed through bailiff's execution proceeding. In criminal cases infringing goods are destroyed upon court's/prosecutor's ruling by the respective police authorities under whose custody the goods are.</p> <p>As per cases originating from customs detention, goods are</p>

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			destroyed in accordance with the above mentioned civil or criminal procedures.
<b>Cyprus</b>			
<b>Czech Republic</b>			
<b>Denmark</b>	<p>Secondary use is not governed by the Copyrights Act. However, if the rights holder files a civil lawsuit and claims that the infringing products are given to charity instead of being destroyed, the court would probably allow it.</p>	<p>Secondary use is not governed by the Patents Act. However, if the rights holder files a civil lawsuit and claims that the infringing products are given to charity instead of being destroyed, the court would probably allow it.</p>	<p>Destruction of infringing goods in customs proceedings is executed by the Danish Customs, whereas destruction of infringing goods in civil and criminal proceedings is executed by the rights holder and the police authority respectively.</p> <p>The <b>Customs</b> Authorities may have goods <i>destroyed without the need to determine whether an infringement has in fact taken place</i> on the condition of consent from the involved parties, or if the importer fails to oppose destruction within a prescribed period, cf. Article 11(1) of the Customs Border regulation 1383/2003.</p> <p>In <b>civil</b> and <b>criminal proceedings</b>, the destruction of goods/products requires that the courts beforehand have established that the goods in question <i>constitute an</i></p>

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			<p><i>infringement</i> of an IP-right or that the defendant accepts said destruction.</p> <p>The rights holder and the consignee may settle the dispute before civil proceedings are instituted. If civil proceedings are instituted as the parties have not been able to settle the dispute beforehand, there is an overlap between destruction in civil proceedings and in customs proceedings, as the rules pertaining to civil proceedings, including the rules implementing the IPRED, will apply.</p>
<p><b>Estonia</b></p>	<p>No. The secondary use of infringing goods does not apply to copyright cases.</p> <p>At the same time, it should be noted that Estonian law allows the re-using of the computer system that was used for copyright infringement after the infringing material has been removed (deleted) from the computer.</p> <p>A computer system confiscated pursuant to <i>Penal Code</i> of Estonia</p>	<p>No. The law does not allow the secondary use of goods that infringe the patent rights.</p>	<p>There is a difference between destruction of goods in customs, civil and criminal proceedings.</p> <p><b>Customs:</b> the customs authorities shall decide the method of destruction at their own discretion.</p> <p><b>Criminal</b> (and misdemeanour) proceedings: the counterfeit and pirated goods, which are confiscated in criminal and misdemeanour cases (e.g. by police), shall be transferred for</p>

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	<p>shall be transferred to the Ministry of Education and Research. The Ministry of Education and Research shall remove the computer program installed in the computer without the consent of the author or holder of the author's rights and shall transfer the computer system to a state or municipal educational institution or any other educational institution in public law free of charge and for permanent use within the framework of the Tiger Leap (i.e. IT education) programme.</p>		<p>destruction or any further transfer to customs.</p> <p>The legal problem here is that the Regulation <i>does not apply to the destruction of goods confiscated in other proceedings than customs proceedings</i>. The Regulation does also not prescribe how the counterfeit and pirated goods, which were confiscated in criminal and misdemeanour cases, <i>shall be destroyed</i>. It means that there are certain lacks in the legal regulation concerning the destruction of counterfeit and pirated goods, which were confiscated in criminal and misdemeanour cases.</p> <p>The situation is even more complicated regarding the destruction in <b>civil proceedings</b> as there is <i>no relevant legal regulation at all</i>. It means that after the plaintiff filed a claim for destruction of infringing goods to the civil court and got a relevant court decision that has also come into force, the court bailiff, who executes this decision, should basically organize relevant</p>
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			destruction at his/her discretion, possibly consulting before any action with the rights holder.
<p><b>Finland I.</b> <b>Finland II.</b></p>	<p>I. Secondary use of goods can be applied in copyright cases under the same principles, although in practice it is not often possible.</p> <p>-----</p> <p>II. Secondary use of goods is not available under the Finnish Copyright Act.</p>	<p>I. Secondary use of goods can be applied for goods which infringe patent rights under the same principles, although in practice the infringing goods are in most of the cases destroyed based on court's order.</p> <hr/> <p>II. No.</p>	<p>I. Yes, there is a difference. If the goods are destroyed in <b>criminal</b> proceedings, the destruction is done on the <i>cost of the storage</i> and the destruction is done by officials, mostly police.</p> <p>If the destruction order is given in <b>civil</b> proceedings the RHs normally claim that the destruction must be ordered to be made on the <i>infringer's cost</i> and under supervision of the officials involved.</p> <p>If the goods have been seized by the <b>customs</b>, then the court orders the goods to be destroyed under customs supervision. Most often in customs proceedings the <i>parties involved can amicably agree on the destruction</i>. Also then the destruction is done under supervision of the customs officials and the aim of the right holders is of course that the <i>infringer should pay for the destruction</i>.</p>

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			<p>It is to be noted that the <i>simplified destruction procedure</i> has still <i>not</i> been implemented into Finnish national legislation and cannot therefore be applied in Finland yet. However, a proposal for an article of the simplified destruction procedure to be included in the Finnish Customs Law is currently under legal preparation.</p> <hr/> <p>II. There is <b>no difference between destruction of goods in customs, civil and criminal proceedings.</b></p> <p>The rules governing civil proceedings and customs proceedings both regulate destruction of goods but in practice there is no overlap as the authorities are competent in different situations.</p>
<p><b>France</b></p>	<p>No.</p>	<p>No.</p>	<p>In <b>civil</b> and <b>criminal</b> proceedings the destruction order must automatically be made by the Courts.</p> <p>French <b>Customs</b> have the power to independently order the</p>

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			destruction of the offending goods.
<b>Germany</b>	<p>Yes, there are certain cases discussed in German copyright law where non-infringing secondary use would be possible, e.g; blackening of infringing content in books or other printed material.</p> <p>However, it is true that in particular in cases involving illegal audiovisual or audio content, a legal secondary use is in general <i>not possible</i>.</p>	<p>Secondary use is not excluded but rather unusual.</p> <p>It only applies where the goods in question <i>can be amended in a way to exclude infringement of the patent</i>. This is usually not possible where the infringement of a patented method or system is in question, but possible where the patent refers to the product itself.</p> <p>Under all circumstances, the legal system recognises <i>destruction as the main relief</i> and it is on the infringer to show that the destruction would be disproportionate. The mere possibility of secondary non-infringing use is in itself not sufficient, it is required to show that the amended product could not be again modified in a way that would make it fall within the ambit of the patent. Thus, such cases are rare.</p>	<p>In <b>criminal</b> and <b>customs</b> proceedings, forfeiture is ordered and destruction takes place under official supervision, and the goods be sent to incineration plant or to other service providers, e.g. to chaff the goods.</p> <p>In <b>civil proceedings</b>, the <i>court order usually only includes that the goods have to be destroyed, but does not describe the way, how</i>. This is left to the parties. Usually, the infringer either takes care for destruction itself and issues a statutory declaration in this regard, or the goods are taken under a bailiff's custody and destroyed under his supervision by a service provider. The latter scenario is more typical.</p> <p>It is also possible in civil proceedings that the goods in question are <b>delivered-up</b> to the right owner for destruction under <i>his own responsibility</i>. This is <i>not available in customs or criminal proceedings</i> where the public</p>

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			authorities have to maintain a responsible position.
<b>Greece</b>	Yes. Secondary use can be applied in copyright infringement cases.	No secondary use of goods is applied in case of infringement of patent rights.	<p>Destruction of goods in <b>customs</b> is conducted by the customs authorities. The expenses are paid by the IPR owner, but can be recovered from the infringer.</p> <p>In <b>criminal</b> proceedings, the infringing goods are destroyed by the police after the criminal court decision becomes irrevocable.</p> <p>In <b>civil</b> proceedings, the infringing goods are destroyed by the defendant or, following enforcement proceedings, by a court clerk.</p> <p>There is no overlap between destruction in civil proceedings and in customs proceedings.</p>
<b>Hungary</b>	Yes, the same conditions as for other types of infringements.	Yes, the same conditions as for other types of infringements.	In <b>customs</b> procedures: if the infringer does not expressly oppose the destruction, the destruction is ordered by the customs office. <i>The costs of the destruction shall be paid in advance by the right holder.</i> If the infringer co-operates, the

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			<p>reimbursement is possible. In case no settlement is concluded between the parties, <i>the right holder may claim these costs back from the infringer in civil proceedings.</i></p> <p>In <b>civil</b> proceedings: In case no agreement is concluded and the infringement is established by the court, <i>the right holder shall pay the costs of the destruction and may claim the reimbursement as damages by filing a separate civil claim.</i></p> <p>In <b>criminal</b> proceedings: <i>the State should be supposed to pay the storage and destruction costs. In case the infringer is convicted, he can be ordered by the court to pay the legal costs of the criminal proceedings, which include, inter alia, the storage and destruction costs.</i></p> <p>Unfortunately, in my experience this never happens in practice. First of all, <i>the criminal courts never order the convicted infringer to bear the storage and destruction costs.</i> Secondly, the</p>
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			<p><i>State has no budget to finance the destruction of counterfeit or pirated goods; hence, the goods seized in criminal proceedings are often stored for several years after the destruction is ordered. In several cases, the authorities contact the right holders to ask them to help the State to pay the destruction costs.</i></p> <p>In every <b>criminal</b> case where it is established that the goods are counterfeit the Court orders the <i>confiscation</i> thereof. But then the problem occurs, which was mentioned above in connection with the destruction of the goods (<i>lack of financial sources for the destruction</i> from the side of the courts as the destruction in criminal procedures is to be financed by the State).</p> <p>In case the goods are declared to be counterfeit in the course of the criminal procedure, the defendant will not get them back, even if he/she is not convicted (e.g. because he has not acted in bad faith).</p>
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<b>Ireland</b>			
<b>Italy</b>	<p>Yes, it depends on the single case. See for instance Court of Milan, 11 March 1996, which did not grant a destruction order of contrivances used for the infringement, which were capable of further licit uses.</p>	<p>Yes. See Court of Milan, 10 February 1997, which although authorizing the seizure of contrivances used for the infringement of a biotechnological patent, excluded the seizure of those among such contrivances that were detained by <i>recovery structures and care houses</i> because of their licit use.</p>	<p>In <b>civil</b> proceedings the destruction of goods is provided for as a <i>civil sanction</i> that the injured party should specifically ask for. While in <b>criminal</b> and <b>administrative</b> proceedings it may be ordered by the competent court/administrative board on its own. According to Italian Criminal Code, it is always ordered the <i>expropriation</i> of the goods which were used or were aimed to perpetrating the crime and of the goods that represent the object, the product, the price or the profit of the crime, regardless of their provenience, except for the rights of the offended person to the restitution and the compensation for the damages. In case of an impossibility to apply the measure referred to in paragraph 1, paragraph 2 states that the judge may order the expropriation of the goods possessed by the offender having a value corresponding to the profit resulting from the crime.</p>
<b>Latvia</b>	No.	No experience.	There are differences in procedural terms, regarding the

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			<p>person/authority who takes care of the destructions.</p> <p>The <i>major number of destructions</i> is made in Customs cases.</p> <p>Customs destruct the goods in the presence of IPR owner and, where appropriate, in the presence of the declarant or holder of the goods.</p>
<p><b>Lithuania</b></p>	<p>Not prohibited by law, yet such precedents can not be confirmed.</p>	<p>Not prohibited by law. However, the existence of such court practice can not be confirmed.</p>	<p>No essential differences between destruction of goods in customs, civil and criminal proceedings.</p> <p>However, <b>customs authorities</b> may apply the <i>simplified procedure</i>.</p> <p>In <b>civil</b> or <b>criminal proceedings</b> the goods can be destroyed just after court decision enters into force acknowledging the goods as manufactured infringing intellectual property rights.</p> <p>Yes, there is an overlap between destruction of goods in civil proceedings and in customs proceedings in a sense that the goods are destroyed by the actions of authorized state officials.</p>

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<p><b>Luxembourg</b></p>	<p>There is no case law on this question</p>	<p>There is no case law on this question</p>	<p>Like in Belgium and the Netherlands, in the framework of criminal proceedings in Luxembourg, the courts may not order the confiscation and destruction of counterfeit goods when the defendant is not convicted (e.g. because he was in good faith).</p>
<p><b>Malta</b></p>	<p><i>The Court may order that all the infringing articles still in possession of the defendant be delivered to the plaintiff.</i> Certain facets of the <i>secondary use</i> concept may not be applicable in the case of copyright, but for example donations to charity would seem to be a plausible (albeit unlikely) scenario even in copyright cases.</p> <p>If the goods so delivered-up are forfeited following a judgment in favour of the plaintiff, such plaintiff may then dispose of the goods in any manner he wishes.</p> <p>It must be stressed that in practice, plaintiffs in local cases inevitably opt for the destruction of the</p>	<p><i>The court may order that the machinery or other industrial means or contrivances used in contravention of the patent, the infringing articles, and the apparatus be forfeited, wholly or partially, and delivered up to the proprietor of the patent or of the patent application, without prejudice to the relief mentioned in this article.</i></p> <p>Once again, if the goods are forfeited and delivered-up to the plaintiff it is up to him to decide what to do with them.</p> <p>It must be said yet again that in practice, <i>plaintiffs inevitably opt for the destruction</i> of the goods.</p>	<p>Most provisions relating to customs are administrative in nature, the proceedings that need to be filed to enforce such provisions are civil in nature.</p> <p>In this regard, the proceedings in such scenarios as well as those scenarios which are <i>purely</i> civil in nature (and not involving any imported/exported goods or goods in transit) are practically identical.</p> <p>The main differences therefore need to be assessed in respect of Civil proceedings on one hand and Criminal proceedings on the other.</p> <p>In <b>civil proceedings</b> the destruction of the infringing goods</p>

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	goods.	The situation with respect to Designs is very similar (almost identical).	<p>is one of the remedies available for right holders who wish to take action against breaches of their intellectual property rights. It is a right which is in addition to the normal avenues for obtaining a remedy (damages claims and all such other relief as may be available in particular) and may at times be of invaluable importance to the rights holders (sometimes being more important than obtaining damages for such infringements).</p> <p>In <b>criminal proceedings</b>, the order for destruction of the goods is usually done as a punitive measure (and also to act as a deterrent).</p> <p>In practical terms the only practical difference in the destruction of the goods in Civil and in Criminal proceedings relates to costs.</p> <p>As already pointed out above, the Court proceedings which need to be initiated by right-holders under both this legislative instruments are civil in nature and are</p>
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## CORRECTIVE MEASURES

			<p>therefore practically identical.</p> <p>In <b>transhipment cases</b> the defendant is usually unknown. It is therefore very common in these types of cases for curators to be appointed by the Court to represent such absent persons and for the <i>Plaintiff to incur the costs of destruction</i>. This is opposed to those cases where the defendant is known and is ordered to pay for such costs him/herself.</p>
<p><b>Netherlands</b></p>	<p>In our opinion, secondary use of goods cannot be applied in copyright cases.</p> <p>Not aware of any case law on this issue.</p>	<p>In our opinion, secondary use of goods cannot be applied in copyright cases.</p> <p>Not aware of any case law on this issue.</p>	<p>In <b>civil and criminal</b> proceedings, the goods can only be destroyed if the claim of destruction is awarded by judgement.</p> <p>In the framework of <b>criminal proceedings</b>, like in Belgium the destruction of goods is considered to be a penalty and can only be imposed on a defendant who has been convicted. Hence, the criminal courts are not able to order the destruction of the goods when they have established that the goods are counterfeit but the defendant is not convicted (for example because the court is not</p>

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			<p>convinced that the defendant was aware of the infringing nature of the goods).</p> <p>Only in <b>customs proceedings</b> it is possible, pursuant to article 11 of the Regulation, to destroy infringing goods without any judgement. If infringing goods are intercepted, the customs authorities will notify the recipient of the goods. If the recipient does not reply, the goods are considered to be infringing and therefore can be destroyed.</p>
<p><b>Poland</b></p>	<p>This very much depends on the type of goods embodying copyright works. For example, apparel bearing some markings protected by copyright will have a similar status to apparel designated by infringing trademarks. On the other hand, it is not possible to erase the infringing copyrighted content from some other goods (such as DVDs containing motion pictures or games) without rendering these goods useless. As stated above, the problem of secondary use mostly relates to forfeiture proceedings</p>	<p>In <b>civil patent matters</b> the secondary use of goods may occur if infringing goods are adjudicated/assigned to a right owner in a final verdict, at its request. In such situations the right-holder may be given these products or means as a part of its compensation, which may lead to the infringing goods being placed on the market.</p> <p>In <b>criminal patent matters</b> the court is not able to declare in its judgment the forfeiture of physical evidence for the</p>	<p><b>Customs proceedings:</b> destruction may occur when the matter is settled and the infringing party is obliged to file a motion to the Customs office to destroy the goods infringing upon IP rights or when a court prescribes the forfeiture of physical evidence for the benefit of the State Treasury.</p> <p>In <b>civil proceedings:</b> the court may, at the right-holder's request, decide on unlawfully manufactured or marked products. In particular, the court is able to declare in its judgment the</p>

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	<p>and the consent of IP right owners is needed for donations or other forms of placing goods onto the market again.</p>	<p>benefit of the State Treasury. For this reason, it is not possible for the goods to be eventually given to charity or otherwise placed on the market.</p>	<p>destruction of the goods.</p> <p><b>In criminal proceedings,</b> destruction may occur when the court prescribes the forfeiture of physical evidence for the benefit of the State Treasury.</p> <p>The three above-mentioned types of procedure are all different and do not overlap one another.</p>
<p><b>Portugal</b></p>	<p>Secondary use of goods can be applied to copyright cases, without any further limitation regarding the removing of infringing content.</p>	<p>IP Code does not contain any information or distinction for goods infringing patent rights.</p>	<p><b>Customs procedure:</b> possibility of having goods being destroyed without any court decision stating that those are counterfeited goods (in comparison with the civil law provisions).</p> <p>In addition, this destruction of goods not yet proven to be counterfeit can be performed without the express consent of the goods owner, as this destruction can be requested by the holder of the violated rights and if the goods' owner does not opposes such request within the term of 5 days, the law says that it is assumed that the good's owner has agreed with such destruction.</p>

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<p><b>Romania</b></p>	<p>Secondary use for goods seized during customs proceedings, <i>does not impose the condition of preliminary removal of the infringing content</i>, theoretically it is possible to have such situations also in copyright infringing goods cases.</p> <p>No relevant practice to be reported.</p>	<p>There are no special rules for goods infringing patent rights.</p> <p>The law does not impose the condition of preliminary removal of the infringing content, theoretically it is possible.</p>	<p>The procedure of destruction in <b>civil proceedings</b> is not regulated as such.</p> <p>In case of <b>criminal proceedings</b>, the infringing goods are seized, they hence become property of the state and the destruction will take place in the presence and under signed confirmation of a committee constituted for taking over and destroying the goods.</p> <p>In case of <b>customs proceedings</b>: procedure described at criminal proceedings applies, except for bearing the costs.</p>
<p><b>Slovakia</b></p>	<p>It is not excluded, but only in limited cases, e.g. goods in orphanages' libraries (other social establishments).</p>	<p>Such goods could still be useful in poor countries in Africa for example.</p>	<p>Destruction is ordered by the court. If the defendant does not comply with the obligation imposed by the court, the good may be given to the claimant and he can destroy it, on the expense of the defendant. Similar provisions are valid for customs proceedings.</p>
<p><b>Slovenia</b></p>	<p>The Act implementing the customs regulations states that the seized goods are to be <b>destroyed</b>.</p>	<p>The Act implementing the customs regulations states that the seized goods are to be <b>destroyed</b>.</p>	<p>Differences in destruction of goods in criminal, customs and civil proceedings are mostly related to the question, which</p>

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	<p>IPA or CRRA include <i>no provisions</i> that would provide grounds to pursue secondary use of goods.</p> <p>In <b>criminal procedure</b> or offences procedure <i>it is possible to attain secondary use of goods</i> in public interest.</p> <p>The kind of specific secondary use of goods, which is to be determined by the court, depends on the nature of the seized goods and the nature of infringement. Whether that could be applied also to infringing goods remains unclear.</p>	<p>IPA or CRRA include <i>no provisions that would provide grounds to pursue secondary use of goods</i>.</p> <p>In <b>criminal procedure</b> or offences procedure <i>it is possible to attain secondary use of goods</i> in public interest.</p> <p>The kind of specific secondary use of goods, which is to be determined by the court, depends on the nature of the seized goods and the nature of infringement. Whether that could be applied also to infringing goods remains unclear.</p>	<p>authority is competent to carry out destruction of goods in certain procedure:</p> <p><b>Criminal proceedings:</b> destruction is performed by a competent court or an authorised executor;</p> <p><b>Customs proceedings:</b> destruction of goods is performed by a competent customs office or by the infringing party under supervision of the competent customs office.</p> <p><b>Civil proceedings:</b> in civil proceedings, destruction of goods partly overlaps with both of above stated possibilities, <i>depending on which authority had seized the infringing goods</i>. If goods to be destroyed were seized by customs office and if the infringed right holder enforces his rights, the same customs office is competent to destroy respective goods. Goods seized by other authorities (police, inspection services) are to be destructed accordingly to the rules of destruction in criminal proceedings.</p>
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<p><b>Spain</b></p>	<p>No.</p>	<p>Articles 62 and 63 of the Patent Law provide foresee the remedies available to patent right holders in infringement cases. Whereas article 63 lists a number of remedies the patent holder may request (for instance, cessation, compensation or publication of the decision), Article 62 enables the patent right holder to bring all the necessary actions and to request any necessary measures to protect its rights. Therefore, it can be argued that, in principle, there is room for alternative actions and, particularly, for a secondary use of the goods which infringe patent rights.</p>	<p>In <b>customs proceedings</b>, when the importer does not reply to the cease &amp; desist letter sent by the intellectual property right holder, the destruction of goods is carried out by the customs authorities.</p> <p>In <b>civil</b> and <b>criminal proceedings</b>, the destruction must be ordered by the Court.</p>
<p><b>Sweden</b></p>	<p>The court may on its own discretion decide the appropriate measures to be taken with the goods.</p> <p>In practice it is likely that this rule will apply only on rare occasions.</p> <p>On the other hand, the court may also in exceptional circumstances, i.a. with respect to the value of the work (and only if the infringer has</p>	<p>The court may on its own discretion decide the appropriate measures to be taken on the goods.</p> <p>On the other hand, the court may also in exceptional circumstances allow the infringer to dispose of the infringing goods during the remaining effective time of the patent protection, provided that this disposal is subject to a</p>	<p>Destruction both <b>criminal</b> and <b>civil proceedings</b> require a <i>court ruling that establishes infringement</i>.</p> <p>In <b>criminal proceedings</b> the main rule is that the infringing goods should be <i>destroyed</i>, unless it is apparently unfair, whilst the court have a <i>wider discretion in civil proceedings</i> to order the appropriate measures to be taken</p>

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	<p>acted in good faith), allow the infringer to retain or use the infringing goods for the intended purpose, provided that the rights-holder receives a reasonable compensation.</p>	<p>reasonable license fee and under reasonable terms.</p>	<p>with the goods, such as destruction, amendment, recall etc.</p> <p><b>In customs proceedings,</b> however, the customs may destroy the goods upon suspicion of infringement and consent by the importer, without the infringement being established in a court ruling.</p>
<p><b>United Kingdom</b></p>	<p>No.</p>	<p>No.</p>	<p>There is <i>no difference</i> between destruction of goods in customs, civil and criminal proceedings.</p> <p>Trading Standards authorities and the Police have power to seize goods and/or or to bring criminal prosecutions for:(i) trade mark infringement under ss 92 &amp; 93 of the Trade Marks Act 1994; and</p> <p>(ii) copyright infringement under s 107 of the Copyright, Designs &amp; Patents Act 1988.</p> <p>The Proceeds of Crime Act may also be used to trace and confiscate the defendant's assets.</p>

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			<p>The Police also have power to search premises for infringing goods in certain circumstances. Trading Standards authorities and the Police may act on their own initiative or in response to complaints. On discovering traders dealing in infringing goods, Trading Standards or the Police will seize the goods and try to obtain supplier information (which is notoriously difficult to obtain). Retailers may be formally warned or, in serious or repeat cases, a criminal prosecution may commence.</p> <p>The right to bring a private prosecution is a historical right enshrined in UK case law and preserved by section 6(1) of the Prosecution of Offences Act, 1985. However, the Magistrates Court may refuse to issue a summons if the claim is frivolous, vexatious or abusive.</p> <p>Further, the Director of Public Prosecutions can take over conduct of any case.</p> <p>A private prosecution is generally</p>
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			<p>cheaper and quicker than a civil action. In particular, there is no risk of liability to pay the accused's costs (unless the action was abusive) and the costs of a private prosecution can be recovered from central Crown funds. The trade-off is that the rights owner will not be able to recover any damages (although it may be able to share in a confiscation or compensation order), there is no interim relief (although this may not matter if goods have been seized), and it is not possible to withdraw from the prosecution unless it is in the public interest to do so (and so the case cannot be settled part way through). The rights owner will have to prove its case beyond a reasonable doubt in a private prosecution, and there are broad disclosure requirements on the rights owner, but very limited requirements on the defendant.</p> <p>Most of the offences are triable either way (i.e. in the Magistrates Court or Crown Court). The sentence for the main offences is up to 6 months imprisonment</p>
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			<p>and/or a maximum of £5,000 fine on summary conviction and up to 10 years' imprisonment and/or an unlimited fine on indictment.</p> <p>It is possible to bring civil and criminal proceedings at the same time. Although, the civil proceedings will normally be stayed pending completion of the criminal action (so that the prosecution cannot benefit from the wide ranging disclosure available in civil claims). Urgent interim relief through the Civil courts can generally be obtained at the same time as a criminal action.</p> <p>In the UK, recent court decisions have made clear that criminal prosecutions should be reserved for clear cases of counterfeiting or piracy (see <i>Nottinghamshire County Council v Woolworths plc</i> [2007] FSR 19). The civil courts may therefore be the appropriate forum for other types of IPR infringement, e.g. design rights and patents.</p>
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## CORRECTIVE MEASURES

COUNTRY	<p><b>4.2. Destruction.</b></p> <p><i>Who bears the costs of destruction, including possible supervision costs (bailiff, customs authorities, etc.)? Who bears the costs of the storage? Is the situation different when court proceedings are directed against good-faith intermediaries/service providers (Are there any precedents in this respect)?</i></p>	<p><b>4.3. Destruction.</b></p> <p><i>Have there been any particular reasons invoked by the infringers for not paying the costs of the destruction?</i></p>	<p><b>5.1. Principle of proportionality.</b></p> <p><i>In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. Has there been any interference with this principle (e.g. case-law)? Have there been cases when recall or destruction have been deemed disproportionate?</i></p>
Austria	<p><b>Civil and criminal proceedings:</b> If the motion is granted, the failing <b>defendant has to bear the costs of destruction</b> (there is no supervision provided). The failing party has to pay the costs of storage due to a preliminary injunction or a seizure securing the destruction.</p> <p><b>Good-faith-intermediaries/ISPs:</b> No difference in criminal copyright cases, but the articles and devices must be used exclusively or primarily for unlawful purposes!</p>	No.	<p>In particular in copyright cases, copies shall not be destroyed merely because the statement of source is lacking or is not in compliance with the law.</p> <p>In particular in trademark cases, the removal of the trademark from the article is only sufficient, if another approach may lead to a disproportionate disadvantage for the infringer.</p> <p>As far as we can see and from what has been published, there are no precedents in this respect in</p>

## CORRECTIVE MEASURES

	<p>In trademark and patent cases the infringer will have to bear the costs, not the good-faith intermediary/ISP, if there is no evidence of his status as co-infringer.</p> <p>As far as we can see and from what has been published, there are no precedents in this respect in Austria.</p>		<p>Austria. Nevertheless, the cited provisions offer the possibility to consider the principle of proportionality.</p>
<p><b>Belgium</b></p>	<p>A distinction has to be made between the different types of proceedings:</p> <p>(i) In <b>civil proceedings</b>, <i>the infringer</i> bears the cost of destruction, unless particular reasons are invoked for not doing so. The destruction is ordered without prejudice to any damages due to the right holder: <i>the cost of destruction cannot be set off against the damages due to the right holder</i>. Consequently, legal scholars agree that the <i>damages due to the right holder cannot be indirectly reduced by ordering the right holder to bear part of the cost of destruction</i>. The defendant's good faith is usually not a valid defence in this regard.</p>	<p>In civil proceedings, the infringer must bear the cost of destruction, unless particular reasons are invoked for him not to do so, as provided under the Directive. However, to date there is no case law brought to our knowledge on this point. In practice, good-faith intermediaries usually claim that they should not be ordered to support storage and destruction costs. However, good faith is normally not a valid defence in IPR-infringement cases. The courts usually consider that it is up to the defendant to claim these costs back from their clients (in the case of service providers), suppliers, etc.</p>	<p>The court will generally take into account the <i>end consumers' interests and reject claims for a market recall directed against end consumers</i>, provided that such consumers acted in good faith.</p> <p>Moreover, in <b>civil actions</b>, corrective measures can only be ordered when claimed by the claimant. The court cannot order such measures on its own initiative. Regarding the materials and implements principally used in the creation or manufacture of infringing goods, corrective measures can only be ordered <i>in appropriate cases</i>. There is no guidance in the case law on the interpretation of what constitutes</p>

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	<p>Of course, good-faith defendants, when being ordered by the court to bear the destruction and storage costs, may claim the reimbursement of these costs against the supplier, producer of the goods, etc. In practice, <i>settlements are very often reached with the right holder in those cases when the lawsuit has been filed against intermediaries</i> (the right holder usually accepts to support the storage and destruction costs provided that the good-faith defendant accepts not to dispute the infringement and to abandon the goods. There have been several recent instances of such settlements in the case law of the Antwerp Courts, for instance, in the purview of patent infringement proceedings against shipping agents).</p> <p>(ii) In <b>criminal proceedings</b>, the cost of destruction is usually supported by the Exchequer. However, when the destruction is ordered by the Public Prosecutor or Investigating Magistrate, he/she can order that the costs are borne by the owner, the holder or the</p>		<p><i>an appropriate case.</i></p>
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	<p>addressee of the goods, or by the right holder (Article 13 of the Law of 15 May 2007).</p> <p>(iii) In <b>customs proceedings</b>, the <i>right holder</i> bears the cost of the destruction in first instance (i.e. vis-à-vis the public authorities). However, the right holder can always file a recursive action against the infringer to <i>recover this cost or conclude a settlement</i> with the latter in this regard.</p>		
<b>Bulgaria</b>	<p>Destruction costs, including state fees and bailiff's costs, as well as storage costs are a burden to the defendant. The costs incurred should be claimed by the plaintiff and are ruled with the court's decision on the merits.</p>	-	No.
<b>Cyprus</b>			
<b>Czech Republic</b>			
<b>Denmark</b>	<p>Once it has been established in court proceedings that an infringement has in fact taken place, the costs for the possible storage of the goods during the proceedings and/or the subsequent destruction, if claimed by the rights holder, shall be borne by</p>	<p>To our knowledge, there have not been any published cases. From other cases we know that alleged <i>good faith</i> is sometimes invoked by infringers as an argument for not paying the costs of destruction.</p>	<p>To our knowledge, there are no published Danish precedents in which the principle of proportionality has been invoked or applied in regards to recall of products/goods from the channels of commerce or destruction.</p>

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	<p><i>the defendant</i>, unless particular reasons are invoked for not doing so.</p> <p>In <b>customs proceedings</b>, <i>the rights holder shall bear all costs related to storage and destruction of the infringing goods/products and other related measures which need to be taken, but the rights holder can request to have the costs covered by the infringer as an ordinary damage claim.</i></p> <p>To our knowledge, there are no precedents showing whether good faith intermediaries/service providers in court proceedings can be required to cover the destruction and storage costs.</p>		
<p><b>Estonia</b></p>	<p>In case of <b>customs proceedings</b>, the destruction costs shall be born <i>by a person who was responsible for the occupation of the goods by customs.</i></p> <p>In case of <b>criminal and misdemeanour proceedings</b>, the costs of destruction of confiscated goods shall be born <i>by the convicted</i>; the costs of destruction</p>	<p>No information.</p> <p>At the same time, we can assume that such reasons may be mainly economic and financial.</p>	<p>No relevant <b>civil court practise</b> available regarding the destruction, recall and definitive removal from the channels of commerce in Estonia.</p>

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	<p>of evidence shall be born by state</p> <p>In <b>civil proceedings</b>: at the expense of the <i>infringer</i> unless it would be. The costs related to the <i>transport, storage, and guarding of seized property and other costs related to the preservation of the property</i> are considered as enforcement costs (also for the <i>infringer to pay</i>).</p> <p>The <i>bailiff</i> may, by a decision, demand that a <i>claimant</i> (i.e. rights holder) make an <i>advance payment for particularly high enforcement costs</i>, such as costs related to the <i>transport, storage</i> etc.. If the enforcement costs are collected from the infringer in full, the bailiff shall return the advance payment of the enforcement costs to the claimant (if, enforcement costs have not been collected from an infringer, a bailiff shall repay to the claimant <i>at least half of the advance payment</i> of enforcement costs paid by the claimant).</p> <p>In this situation, one of the legal questions is whether the bailiff is entitled to ask from the claimant also the pre-payment of</p>		
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## CORRECTIVE MEASURES

	<p>destruction costs in case of <i>destruction at the expense of the violator?</i></p> <p>The situation may be <i>different</i> when court proceedings are directed against <i>good-faith intermediaries/service providers</i> but there is no relevant court practice (precedents).</p> <p>It should also be noted that <i>acting in good faith does not directly reduce the liability of infringer</i>. A person who has obtained a pirated copy in good faith has the right to file an action in court against the person who sold or transferred the pirated copy to that person.</p>		
<p><b>Finland I.</b> <b>Finland II.</b></p>	<p>I. If the destruction is ordered in <b>criminal proceedings</b> the state pays for the destruction.</p> <p>If the destruction is ordered by the court in <b>civil proceedings</b>, the main rule is that the <i>infringing party</i> is obliged to bear all related costs but normally only the destruction claim (or alternatively removal of the infringing trademarks if possible) is made in</p>	<p>I. The reasoning usually given by the infringer is that the infringer does not have any assets to pay costs of the destruction or the infringer is of the opinion that the right holder's claim is unjust.</p> <p>Especially in transit shipments stopped by the customs: foreign parties/entities are involved; it is therefore often impossible to execute the judgement by way of</p>	<p>I. Not aware of any such case-law.</p> <p>II. The principle of proportionality is recognised as a general principle of law that should be taken into account.</p> <p>We are not aware of any cases where recall/destruction would have been found to be disproportionate, however.</p>

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	<p>proceedings. So far there is no legal praxis on the responsibility of the warehouse costs in IPR infringement cases.</p> <p>If court (civil) proceedings are directed against good-faith intermediaries/service providers like forwarding agents, it is likely that the court will order the goods to be destroyed under supervision of the officials but will most likely not order the good-faith intermediaries / service providers to pay for the destruction.</p> <p><i>Precedent from the Supreme Court:</i> forwarding agent was not found to be liable for the trademark infringement but the infringing products were clearly found infringing and were ordered to be destroyed. The court did not order specifically on the responsibility of the destruction costs but since it was a civil infringement case in praxis the execution of the court order meant that <b>the right holder had to pay for the destruction.</b></p> <hr/>	<p>making the infringer to pay e.g. the destruction costs. This is especially the situation where the infringer is from a country where a Finnish court decision cannot be executed as no execution agreement exists between said country (e.g. Russia) and Finland. This is why the right holders may have to pay themselves for the destruction in order to have the judgements executed and the goods out of the warehouses.</p> <hr/> <p>II. We are not aware of any reasons of this kind; this has not been a particular problem.</p>	
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	<p>II. There are no provisions in the Finnish IP legislation on who bears the costs of destruction or costs of the storage.</p> <p>The respondent is liable to pay the necessary costs caused by the enforcement of the payment obligation or other obligation, for the transport, storage or sale of property or the other enforcement measures taken. These are secondarily the liability of the applicant. Separate provisions apply to fees that are to be paid to the State as compensation for the costs of enforcement.</p>		
<p><b>France</b></p>	<p>The costs of recall and destruction are borne by the <i>infringer</i>.</p> <p>As nothing is mentioned in the IPC on the issue of <b>storage</b>, in practice, the Courts generally put the <i>burden on the claimant</i>.</p>	<p>We are not aware of any particular reasons invoked by the infringer.</p>	<p>Because of the <i>relative recentness of the law</i>, the French Courts have not yet had the possibility to consider the principle of proportionality in corrective measures orders.</p> <p>Therefore, we cannot mention any particular case law on the matter.</p>
<p><b>Germany</b></p>	<p>Generally, <b>the infringer has to bear the costs of destruction</b> and service providers used, including bailiff's services and storage</p>	<p>Regularly, infringers try to defend themselves by arguing that <i>the goods were not ordered by them</i> (but none at all or different), that</p>	<p>The principle of proportionality existed before the implementation in German case law.</p>

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	<p>costs. It is to be noted, however, that the costs have to be paid first by the right owner, who then has a claim for reimbursement. Official bodies and the service providers do not accept the risk that the infringer cannot or will not pay. This risk is left to the right owner.</p> <p>Intermediaries or service providers become subject to legal claims for destruction only, where they are either <i>interferer (Störer)</i> or direct contributor, in that a sort of responsibility for the infringement can be allocated to them, although they have not initiated the infringement and are not the beneficiary of the same.</p> <p>Such responsibility may exist where, for instance, the importer (freight company) of infringing items has been advised on the legal problems and thereafter does not take appropriate to clarify the legal situation.</p> <p>The infringer's duty to reimburse costs for destruction and related other necessary costs (of storage etc.) is an implied consequence</p>	<p>these were meant <i>for private purposes only</i> (concerning IPR infringements except copyright), or that there is no responsibility for destruction otherwise.</p> <p>Specifically, <i>importers and freight companies try to sneak out of responsibility</i>. This course of defence has been made more complex by the Supreme Court decision <i>MP3-Player-Import</i> cited above. Of course, it is regularly heard that the <i>infringer simply cannot pay the costs for destruction</i>.</p> <p>All of these arguments usually are not successful.</p>	<p>Case law: relevant factors:</p> <ul style="list-style-type: none"> <li>(i) Level of negligence of infringer or even intent of infringer;</li> <li>(ii) Severity of the infringement, i.e. in copyright law most severe case: 1:1 copy, or in contrast <i>only</i> illegal adaptation. In trademark law: 1:1 copy or <i>only</i> confusingly similar trademark;</li> <li>(iii) Comparison of the damage occurred for the infringer due to the destruction or re-call to damage occurred to the right holder;</li> <li>(iv) Other measures to stop infringement, which cause less damage to infringer.</li> </ul> <p>The German Federal Supreme Court, however, emphasized that in particular the destruction claim also serves an aim of general prevention with respect to other infringements of the same type. Therefore, <i>disproportionality</i> will only be held as an exception to the rule. In the specific case, the infringer acted with more than slight negligence. Therefore, the quite easy possibility to remove</p>
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	from the legal claim for destruction.		the infringement did not prevent the destruction claim from being proportionate.
<b>Greece</b>	<p>In <b>criminal proceedings</b>, the costs of <i>destruction</i> are borne by the <i>police</i>; the costs of the <i>storage</i> are usually borne by the <i>IPR owner</i>.</p> <p>In <b>civil proceedings</b>, the <i>defendant</i> bears the costs of destruction; the costs of <i>storage</i> are usually paid by the <i>infringer</i>.</p> <p>In <b>customs proceedings</b>, the costs are paid by the <i>IPR owner</i>, but may be recovered from the <i>infringer</i>; it is the <i>infringer</i> who bears the <i>storage costs</i>.</p> <p>The situation is not different when court proceedings are directed against good-faith intermediaries/service providers.</p>	<p>In <b>customs proceedings</b>, when the procedure of article 11 of the EC Regulation 1383/2003 is followed, the infringers usually refuse to pay the destruction fees.</p> <p>In <b>civil proceedings</b>, however, there haven't been any reasons invoked by the infringers for not paying the costs of the destruction.</p>	There have not been any cases where the destruction of the infringing goods has been deemed disproportionate.
<b>Hungary</b>	In case the <b>civil liability</b> of the infringer is established, the right holder can claim compensation for the <i>storage and destruction costs as damages</i> under the general rules of the civil law.	Usually, they say they have not ordered the infringing goods and have therefore acted in good faith.	Not aware of any case law on this issue. In some cases the courts have decided that publication of the relevant part of the judgement in the press and/or on the Internet - disproportionate.

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	<p>However, such claims <i>cannot be filed against good-faith intermediaries or service providers</i> under Hungarian law.</p>		<p>Even in those cases when they have found such claims to be reasonably justified, the courts have usually decided that the Court Order (i.e. operative part) of the judgement had to be published in cheap newspapers, in black and white with no pictures of the infringing products and in small characters, or only on the Internet (for example only on the infringer's website).</p>
<b>Ireland</b>			
<b>Italy</b>	<p>The costs of the destruction and storage of the infringing goods are borne <i>by the infringer</i>. We do not have any specific precedents concerning <i>good-faith intermediaries/service providers</i>. However the only exceptions to the order of destruction regards the cases in which the destruction of the infringing goods «harms the national economy» and those in which the articles which constitute an infringement of IP rights belong to a person who is using them for <b>personal or domestic purposes</b> and likewise no further exception should be made also with regard to the costs of the</p>	<p>No precedents.</p>	<p>There are some specific cases in which the destruction is considered disproportionate, while no exception is made for recall.</p> <p>In the Italian case law see for instance: Court of Appeal of Milan, 8 April 1977, that did not grant the destruction order in a patent infringement case, <i>since the patent would have expired after two months</i>; and Court of Milan, 11 March 1996, whereby it cannot be ordered the destruction of contrivances employed for the infringement which are <i>capable of licit uses</i>.</p>

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	<p>destruction. In particular Article 124 IIPC, paragraph 6, lays down that <i>Articles which constitute an infringement of industrial property rights may not be ordered to be removed or destroyed, nor may their use be prohibited, if they belong to a person who is using them for personal or domestic purposes. In applying the sanctions, the judiciary authority takes into account the necessary proportion between the violations and the sanction, as well as the interests of third parties.</i></p> <p>The provisions for destruction and delivery shall not apply to infringing specimens or copies acquired in good faith for personal use.</p>		
<p><b>Latvia</b></p>	<p>The costs for destruction of goods detained by <b>Customs</b> are supported the IPR owner.</p> <p>In <b>civil cases:</b> costs for destruction are borne the defendant. <i>Otherwise, these costs are borne by the plaintiff, who may subsequently claim them back</i></p>	<p>No.</p>	<p>No case law.</p>

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	<p><i>from the defendant.</i></p> <p>The law <i>does not determine</i> who is supposed to support destruction costs in criminal cases.</p> <p>Costs for <b>storage</b>:</p> <p>In <b>customs cases</b>, they are supported by the <i>IPR owner</i>.</p> <p>In <b>civil cases</b>, they are <i>initially supported by the plaintiff</i>, who may subsequently claim reimbursement from the defendant.</p> <p>The law does not make any distinction on these issues between mala fide infringers and good-faith intermediaries/service providers.</p>		
<p><b>Lithuania</b></p>	<p>Corrective measures shall be carried out <i>at the expense of the infringer</i>, without compensating and taking into account proportionality between the seriousness of the infringement and the measure applied as well as the legitimate interests of third parties.</p> <p>Law on Customs: The subject of</p>	<p style="text-align: center;">-</p>	<p>The case law regarding the principle of proportionality is limited.</p> <p>Furthermore, according to the Supreme Court, there can be <i>exclusive exceptions</i>, but simple removing of trademarks which have been affixed to the counterfeited goods without</p>

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	<p>intellectual property rights shall cover the expenses of shipment to storage location, storage and destruction of detained or suspended goods.</p> <p>According to the Law on Customs of the Republic of Lithuania Article 86 Paragraph 3, if the court acknowledges that released and suspended goods are manufactured in infringing intellectual property rights, according to the application of the rights holder (if such was submitted) it can adopt the decision to destroy the counterfeited or pirated goods by the expenses of defendant.</p> <p>There are <i>no precedents</i> in Lithuania when court proceedings are directed against <i>good-faith intermediaries/service providers</i>.</p>		<p>authorisation shall <i>not be regarded as effectively depriving the persons concerned of any economic gains from the transaction</i>. However, The Supreme Court of Lithuania does not provide the list or definition of the exclusive exceptions that could be deemed as application of proportionality.</p>
<p><b>Luxembourg</b></p>	<p>The infringer bears the costs of the corrective measures, unless specific reasons are opposed.</p> <p>It can be assumed that the <i>costs of the storage are part of the costs of the corrective measures</i>, but there</p>	<p>There is no significant case law yet concerning corrective measures.</p> <p>Before the implementation, there have been very few cases where the right holder requested the</p>	<p>In a case concerning copyright infringing design furniture, the right owner had requested that the defendant should recall and put the infringing goods which had been sold at his disposal in order to have them destroyed.</p>

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	<p>is no case law on this subject.</p> <p>Concerning good-faith intermediaries/service providers, there is no case law either.</p>	<p>destruction of the infringing goods. The destruction was only ordered in cases where the goods had been seized and/or were still in possession of the infringer.</p>	<p>The defendant had argued that his former clients who bought the infringing goods were protected by article 2279 of the Civil code which provides that in matters of personal property, possession of the goods equals property of the goods.</p> <p>The court dismissed the recall of the infringing goods in its judgment of 17 November 2009 simply stating that the defendant could not put the infringing goods at the disposal of the right owner because they were no longer in his possession.</p> <p>In this case, the court did not examine the claims in the light of the new Article 77 of the Copyright Act. Nevertheless, it can be assumed that in the future the courts will presumably continue to refuse recall or destruction of goods that are in the possession of end consumers, deeming such measure disproportionate.</p>
<b>Malta</b>	<b>In Civil proceedings</b> ( <i>including</i>	The most common reason invoked	Although there have been cases

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	<p><i>Customs</i>) all such costs are theoretically incurred by the defendant. Having said that, in various cases (transshipment cases being the most predominant), the defendant is unknown, it is the plaintiff who would incur such costs.</p> <p>Despite this, most right holders decide to go through with such proceedings in any case because the costs might be greater if the infringing goods are placed on the market.</p> <p>In <b>Criminal proceedings</b>, it is the accused who is ordered to pay for all such costs. That being said, it is in the Court's discretion whether to choose this option or else force the Government to incur the costs.</p> <p><i>In certain exceptional circumstances, the right-holder may even volunteer to incur all such costs himself (to expedite matters and ensure that the goods are ordered for destruction by the Court). To achieve this result however, the accused must consent to such request (since in</i></p>	<p>in this regard is that the infringer <i>did not know</i> that what he/she was doing was illegal.</p> <p>Of course <i>such a plea is only relevant in Criminal proceedings</i> (where the requisite <i>criminal intent is necessary</i> for the occurrence of an offence) or else where the element of good faith plays a role.</p>	<p>wherein the destruction of the goods was not ordered by the Court, this was not on the basis of lack of proportionality.</p>
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	<p><i>criminal matters the issue of 'intent' plays a crucial role, and the accused might wish to contest the matter all the way). If the accused consents to such request by the right-holder, the goods can even be destroyed pendente lite.</i></p> <p>Concerning <b>Good-faith intermediaries</b>, not aware of any prior cases. <i>Theoretically</i>, if the person concerned proves his/her good-faith in the matter, he/she might have a good argument for the <i>partitioning and/or sharing of costs</i> to be ordered by the Court. We do not envisage the <i>good-faith</i> plea being effective enough to <i>exonerate oneself from the payment of any costs</i> (for destruction etc.) both in civil as well as criminal proceedings.</p>		
<p><b>Netherlands</b></p>	<p>The costs of destruction are borne <i>by the infringer</i>. The destruction takes place under supervision of a Dutch Bailiff, who will order the destruction to the infringer.</p> <p>Costs of <b>storage</b> are in principle borne by the holder of rights. These costs however, can be claimed from the infringer in legal</p>	<p>Not that we are aware of.</p>	<p>The Dutch courts always consider the proportionality of each case. On the basis of this principle, recall and/or destruction has more than once been deemed as disproportionate.</p>

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	<p>proceedings. If the goods are proved to be infringing, the infringer will bear these costs.</p> <p>If court proceedings are directed against <b>good-faith intermediaries/service providers</b>, costs will (in principle) be <b>borne by the holder of rights</b>.</p>		
<p><b>Poland</b></p>	<p>The provisions of Customs Border regulation 1383/2003 state that the <i>right holder shall also agree to bear all costs incurred under this Regulation in keeping goods under Customs' control, including possible supervision costs or storage</i>. The <b>destruction</b> is carried out at the right holder's expense and it is also the right holder's responsibility to ensure this. <i>However, it is possible to provide in the settlement agreement that the infringer bears the costs of destruction, supervision and storage, which arrangements customs accept</i>.</p> <p>In <b>civil proceedings</b>, when the court rule on the infringement of a right and declares in its judgment the destruction of goods, the</p>	<p>According to our experience drawn especially from customs seizure matters, <b><i>infringing parties in most cases eventually agree to bear the costs of destruction, supervision and storage as a part of overall settlement</i></b>, the reasons for refusal being that the importer did not realise that goods are illegitimate, or the exporter supplied goods that were not indeed ordered, and for these reasons it would be unfair for the importer (being innocent) to bear any costs connected with the destruction.</p>	<p>We do not have any experience drawn from <b>civil</b> matters (again, it needs to be emphasised that very often right owners decide not to choose civil proceedings), nor are we aware of any cases where recall or destruction have been deemed disproportionate by the court.</p>

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	<p>infringing party should, in principle, bear the costs of destruction.</p>		
<b>Portugal</b>	<p>The law does not contain any provisions regarding this matter.</p> <p>The costs should be paid by the loosing party of the proceedings.</p> <p>If we are facing a situation where the goods have been destroyed without prior court analysis, then the costs have to be supported by the owner or holder of the goods.</p> <p>However, until this payment of these expenses is made by the infractor, the holder of the right who decided to initiate the judicial proceedings against the infringer, has to support such expenses and much request the court to include these amounts in the condemnation decision.</p> <p>No precedents have been revealed regarding this matter.</p>	No precedents.	No precedents.
<b>Romania</b>	<p>For <b>civil proceedings</b>, the costs of destruction are borne <i>by the infringer</i>, except if there are</p>	no	no

## CORRECTIVE MEASURES

	<p>grounded reasons for the court not to impose so.</p> <p>For <b>criminal proceedings</b>, there are contradictory provisions:</p> <ul style="list-style-type: none"> <li>- <i>on the one hand</i>, principle of the <b>infringer bearing the costs</b>;</li> <li>- <i>on the other hand</i>, costs are to be borne by the person or the company <i>from which the goods were seized</i> (which might be the same as the infringer and/or other holders of the goods – distributors etc.) or, in case this person cannot be identified, <i>by the holder of the goods</i> (which means the institution where they are stored – e.g. the Copyright Office, the Police etc.)</li> </ul> <p>For <b>customs proceedings</b>, costs are to be borne <i>by the right holders</i>.</p> <p>There are <i>no precedents</i> concerning a difference of treatment between <i>good-faith holders and the others</i>.</p>		
<p><b>Slovakia</b></p>	<p>The infringer bears the costs of the destruction.</p>	<p>No.</p>	<p>No practical experience.</p>

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<p><b>Slovenia</b></p>	<p><b>1. Customs proceedings:</b> Costs of storage and preservation of goods during temporary retention, seizure of goods until finality of court decision or until destruction of goods, incl. costs of goods destruction, are borne by the person against whom the right holder initiated the procedure.</p> <p>There are, however, certain cases, in which the costs are borne by the right holder (i.e. if no law suit is filed within the statutory time limit or the law suit is withdrawn or the court dismisses the lawsuit or does not find for the plaintiff as well as in some cases where goods are to be destroyed).</p> <p><i>If costs are not paid within the given time by the person against which the right holder initiated the procedure they have to be paid by the right holder or the person who agreed to pay them in the written agreement on destruction of goods (i.e. owner of the goods or person having control over the goods).</i></p>	<p>We have found no such reasons invoked by infringers.</p> <p>In our practice the <i>main problem</i> is the fact that <i>infringers are either non-existing companies</i> or, if they do exist at the time when proceedings are initiated, they are <i>liquidated very shortly after the initiation of proceedings.</i></p>	<p>We did not find any example of a court's decision rendering destruction of goods inappropriate. But, we are aware of cases where such decision was indeed made (e.g. in case of counterfeit clothes the court considered the removal of the label to be sufficient).</p>
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	<p>2. <b>Criminal proceedings:</b> Costs are attributed to the State Budget.</p> <p>3. <b>Civil proceedings:</b> Different possibilities of destruction depending on the type of destruction, attribution of costs is possible in a manner described in point 1 or point 2.</p> <p>In one case the Court held that intermediary service provider (carrier) <i>cannot be held responsible, since he had no knowledge of the type of cargo being carried. NB: The case deals with the carrier's liability in general and not the costs as such.</i></p>		
<p><b>Spain</b></p>	<p>Neither the Civil Procedure Rules nor the Criminal Procedure Rules contain provisions regarding the costs of destruction and storage. <i>In practice, in civil and criminal proceedings, it is at the Court's own expense.</i></p> <p>However, the Law on Intellectual Property and Trade Mark Law establish that the destruction costs should be borne <i>by the infringer.</i></p> <p>According to article 11 of the</p>	<p>Amongst the three main IP statutes (Trade Mark Law, Patent law and Designs Law) which refer to the destruction of the infringing materials <i>only the Patent Law that state that an infringer may invoke well founded reasons for not paying the costs of destruction.</i></p> <p>Article 63.2 of the Patent Law is very broad because it simply states that the seizure and transformation of the infringing</p>	<p><i>Only the Patent Law expressly refers to the principle of proportionality.</i></p> <p>Article 66.2(b) Patent Law states in connection with compensation states that when assessing the possible damages, the following factors, amongst others, must be taken into account: the <i>financial importance</i> of the patent, <i>duration</i> of the patent when the infringing act commenced, the number and</p>

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	<p>Customs Border regulation 1383/2003, the destruction of the infringing goods is carried out at the <i>expense and under the responsibility of the right holder.</i></p> <p><i>The law does not differentiate between good and bad faith intermediaries.</i></p> <p>We are not aware of any case-law regarding court proceedings directed against good-faith intermediaries/service providers.</p>	<p>goods will be at the expense of the infringer, unless well founded reasons are invoked. The reason mostly invoked by infringers is <i>insolvency.</i></p>	<p><i>type of licences granted.</i> There are no particular cases regarding the disproportion of recall and destruction.</p>
<p><b>Sweden</b></p>	<p>Once infringement is established by the court, the defendant is liable for the costs for storage, destruction or other measures. <i>It should be noted though that this position in Swedish law is not entirely clear.</i></p> <p>The main rule is that a defendant acting in good-faith is liable for the costs involved in corrective measures also in regard to costs for destruction and storage. <i>There are no Swedish precedents regarding destruction costs for good-faith parties.</i></p>	<p>All corrective measures in respect of infringement are to be paid by the defendant.</p> <p>There have been no particular reasons invoked by the infringers for not paying the destruction costs.</p>	<p>So far only a few cases where the corrective measures and the need for proportionality has been subject for assessment in Swedish courts.</p> <p>Both are related to <i>file-sharing.</i></p> <p>In the <i>first case</i>, the Appeal Court found that the plaintiff did not present enough proof on the fact that the infringing server was not serving the public instead of a closed circle of individuals. The case is pending trial in Supreme Court. The proportionality is not explicit mentioned as a reason for</p>

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			<p>the decision, but considering the statements in the judgement, it has probably been considered.</p> <p>In the <i>second case</i>, the defendant claimed that the need for proportionality and privacy of Internet users must be taken in consideration. The District Court did not find any conflict with the need for proportionality and ordered the defendant to release the identity behind the infringing IP-number.</p>
<p><b>United Kingdom</b></p>	<p>The infringer.</p> <p>Further, the practice direction to Part 63 of the Civil Procedure Rules provides that where an order is made by the court for delivery up, it should state that delivery up should be carried out at the expense of the infringer.</p>	<p>No.</p>	<p>There has not been any interference with this principle, nor have there been cases when recall or destruction have been deemed disproportionate. <i>Proportionality</i> is a <i>key feature</i> of the Civil Procedure Rules, enshrined in the overriding objective of enabling the court to deal with cases justly.</p>

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COUNTRY	<p><b>6.1. Internet cases.</b></p> <p><i>Are corrective measures applied differently in case the goods have been sold over the Internet?</i></p> <p><i>Are there any practices for seizures of materials and implements used in the creation or manufacture of infringing goods which were subsequently sold over the Internet (e.g. seizure of personal computers used for piracy?)</i></p>	<p><b>7. Has your country implemented article 12 of Directive 2004/48/EC? (Alternative measures)?</b></p>	<p><b>8. What are primary legal and practical difficulties with respect to the corrective measures? Are there any best practices, case-law? Please indicate proposals for improvements.</b></p>
<p><b>Austria</b></p>	<p>There is <i>no difference</i> between goods which are sold offline and/or over the Internet.</p> <p><b>Seizures</b> and <b>destructions</b> of personal computers are difficult, because in most of the cases the personal computer does not satisfy the juridical condition of an <i>infringing device intended exclusively or primarily for unlawful reproduction.</i></p>	<p>No.</p>	<p>(i) ...that the <b>civil law</b> provision concerning <i>destruction</i> is only applicable to the owner of the goods and devices. It should be also applicable to the holder and the intermediary. The possibility to destroy or remove the infringing parts for example on a computer hard disc should be considered in the Law and could be executed by a joint expert.</p> <p>(ii) ...that the <b>customs proceedings</b> are not provided for parallel import cases, although it would be the suitable proceeding to recall and/or remove the goods</p>

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			<p>from the channels of commerce before entering an unauthorized marketplace.</p> <p>(iii) In lack of provisions concerning <i>recall</i> and <i>removal</i> there are no best practices or case-law in this respect.</p>
<b>Belgium</b>	<p>The same principles apply to goods that have been sold over the Internet. In appropriate cases, corrective measures can be applied to materials and implements principally used in the creation or manufacture of those goods. Confiscation of such materials and implements is also possible. The courts (typically the criminal courts) have occasionally ordered the seizure of personal computers and materials used to produce infringing goods subsequently sold over the Internet. The same applies with respect to devices intended to circumvent TPMs (mod-chips, etc.).</p>	No.	<p>The main problem is the <i>difference</i> between criminal proceedings and civil proceedings.</p> <p>In <b>criminal proceedings</b>, the destruction is a <i>penalty</i>. Consequently, when the accused person is acquitted, no destruction can be ordered even if the infringement is established.</p> <p>Provisions relating to market recall and definitive removal from the channels of commerce are clear and give rise to little discussions. However, the courts are usually cautious when it comes to order a market recall.</p>
<b>Bulgaria</b>	No. However, no court practice accumulated.	No.	No answer.
<b>Cyprus</b>			
<b>Czech Republic</b>			
<b>Denmark</b>	The corrective measures outlined	Yes.	No legal or practical difficulties

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	<p>in the above-mentioned acts <i>do not differentiate between products/goods being sold online or through traditional means of trade</i>. Moreover, there are, to our knowledge, no published Danish precedents where corrective measures have been applied differently in matters concerning goods/products sold online.</p>		<p>with respect to the corrective measures.</p> <p>According to Danish law, a consumer's purchase in Denmark of counterfeit goods does not constitute a violation of the Danish Trademarks Act or Council Regulation 40/94 on the Community trademark, because <i>the consumer's purchase is not considered use of the trademark in the course of trade</i> (this raised a question whether an import of a counterfeit product by a consumer can be said to constitute an infringement of an intellectual property right according to Council Regulation 1383/03 and Sections 44(1), (3) and 44(3) of the Danish Trademarks Act, thus providing the legal basis for not only destruction of the goods, but also that such destruction should be carried out at the expense of the consumer).</p> <p><b>Proposal:</b> We propose a clear rule which allows for destruction of counterfeit and pirated goods, notwithstanding whether such products are to be used for commercial purposes, i.e. whether</p>
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			<p>they are on the way to a consumer who will use them for non-commercial purposes, as the legislation is unclear today. At least where the consumer knew or should have known that manufacture of the goods would infringe an intellectual property right in the country of destination, the consumer should be liable to pay for the destruction.</p> <p>Alternatively, it could be specified that a consumer's purchase of counterfeit or pirated goods from a commercial distributor is considered part of a commercial activity covered by the intellectual property rights, as it is in some countries.</p>
<p><b>Estonia</b></p>	<p>There is no separate legal regulation regarding the corrective measures in case the goods have been sold over the Internet. The existing legislation applies similarly to all forms of sales.</p> <p>There have been <b>criminal cases</b> where the personal computers used for piracy (reproducing of pirated copies and selling those over the Internet) have been</p>	<p>Yes, <i><b>financial compensation to the person whose rights were violated instead of the application of the measures, if the person has not acted intentionally or carelessly, the application of the measures would cause him or her unproportionally major damage and financial compensation may be considered sufficient compensation for the person who</b></i></p>	<p>At the moment, the main problem is the lack of relevant (court) practice. Therefore, it is also very difficult to say how the law will be implemented by courts and which practical questions or problems may or will arise.</p> <p>We would predict that one of the problems will be the <i>execution of the civil court decision</i> regarding the corrective measures,</p>

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	<p>seized.</p>	<p><i>requested application of the measures.</i></p>	<p>especially the <b>destruction</b>, as there is no relevant legal regulation for civil proceedings in Estonia.</p>
<p><b>Finland I.</b> <b>Finland II.</b></p>	<p>I. We are not aware of any practices for seizures of e.g. personal computers used for piracy or other similar equipments. If personal computer is used for an act which constitutes a crime, in such case the computer may be ordered to be lost to the government.</p> <hr/> <p>II. Corrective measures are equally applicable in cases involving online and offline infringements.</p> <p>For example, computers that have been used for piracy may be seized as well as infringing files destroyed. Orders of this kind have been issued in Finland.</p>	<p>I. Finland has not directly implemented article 12 IPRED. The Finnish law includes, however, certain provisions which are similar compared to article 12 IPRED.</p> <hr/> <p>II. The Finnish legislation does include special provisions based on which the possession of an infringing product may be retained, rather than having the product recalled from the market. For example, Section 59(3) of the Patents Act allows a court to order, on request, if there are special reasons for this, that the holders of objects shall be able to dispose of the objects for the remainder of the patent term or for a part thereof, against reasonable compensation and on reasonable conditions. Similar provisions are found in Section 37(3) of the Registered Designs Act and Section 59 of the Copyright Act.</p>	<p>I. Foreign defendants and the difficulties then in executing the judgement.</p> <p>Long proceedings- also because article 11 of the EC Regulation 1383/2003. The Simplified procedure has not yet been implemented. Therefore, the only ways to get the infringing goods destroyed is either by amicable settlement or by court order. The latter meaning lots of costs and time in order to get even the destruction order from the court and thereafter still remains the question of destruction costs.</p> <hr/> <p>II. There are <i>no significant practical difficulties</i> with respect to the corrective measures.</p> <p>Recall and definitive removal from channels of commerce are seen to be available even though these provisions do not explicitly mention such corrective measures.</p>

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			Thus, the current situation leaves room for improvement, as it would be clearer if the provisions could expressly mention recall and removal from channels of commerce.
<b>France</b>	<p>The IPC doesn't mention any specific provision concerning the Internet, therefore the <i>general provisions on corrective measures will apply</i>.</p> <p>All the articles on corrective measure contained in the IPC (i.e. articles stated in question 1) state that the judge can order, at the request of the applicant, that infringing goods and materials used in the creation or manufacture of those goods to be recalled from the channels of commerce, definitively removed from the channel of commerce or destroyed. The IPC does not specify whether the goods were to be sold over the Internet or through <i>traditional</i> channel of commerce. Therefore, such difference is not present in French law.</p>	No.	<p>Corrective measures are still rarely used in practice, and it is therefore difficult to appreciate their impact on the French legal system.</p> <p>The only practical disadvantage of the French implementation of corrective measures is the fact that <i>the costs of storage are not mentioned as an expense borne by the counterfeiter, they are in practice paid by the claimant</i>. As the destruction can take a considerable amount of time, the claimant can face a damaging and costly situation.</p>

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<p><b>Germany</b></p>	<p>No different rules for Internet.</p> <p>Seizure of materials and implements is possible. There is, however, a special provision to exclude disproportionate measures: the materials and implements must have been <i>predominantly</i> used to <i>manufacture infringing products</i>. Therefore, it would be possible to seize tools, machines and moulds used for a particular infringement, whereas <i>it will not be possible to seize personal computers that have been used to create, upload or store infringing data/files or works</i>. If there is a reasonable possibility to use one's property in a non-infringing way, then there is no valid claim for seizure.</p>	<p>Yes. But only for some IP titles (e.g. designs). It does not exist in e.g. trademark or patent law.</p>	<p>The German Federal Supreme Court has first held that a destruction claim may be <i>preliminarily</i> enforced in case the right holder presents an adequate security.</p> <p>The German Federal Supreme Court did not think that the <i>principle of proportionality</i> (according to Art. 10 IPRED) would be infringed here. Under German procedural law, there is the possibility for the infringer to apply for a suspension of the destruction in case the destruction brings him an irreparable damage or the infringer may ask for damages in case of an unjustified destruction.</p> <p>Destruction claims may be prepared and secured through quick preliminary proceedings, ordering the (preliminary) seizure of the infringing goods by a bailiff. This is common practice in offline piracy. Court orders in general may be granted without hearing the infringer, as this would unduly warn the infringer and give him/her the opportunity</p>
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			to get rid of the illegal.
<b>Greece</b>	<p>In case the infringing goods have been sold over the Internet, corrective measures are not applied differently.</p> <p>In <b>criminal proceedings</b>, the means used for the creation, manufacture or distribution of the infringing goods (i.e. personal computers used for piracy), are seized <i>ex officio</i> by the authorities.</p>	No.	<p><i>Saisie conservatoire</i> (temporary seizure) cannot be ordered <i>ex parte</i>. Therefore, the infringer enjoys the <i>luxury</i> of time to hide or sell off the counterfeits following service of the writs of summon.</p> <p>Law No. 2239/1994 on Trademarks lacks a specific provision allowing for the publication of court decisions, at the defendant's expense, in trademark infringement cases.</p> <p>Long-lasting litigation proceedings. It takes up to <i>six years</i> to obtain an enforceable decision in a typical trademark or copyright infringement case.</p>
<b>Hungary</b>	<p>The same provisions and procedures as are applicable for goods sold over the Internet.</p> <p>Usually implements/computers/machines are seized, when the seizure is realized at the premises of the producer of the infringing goods.</p>	No	<p>1. Execution of the judgments: the <i>State is not able to finance</i> the costs of the destruction and storage in <b>criminal proceedings</b>. Thus, the goods remain stored at the customs offices and after several years the competent customs office asks the right holders to help support the costs</p>

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	<p>According to my experience when a <b>seizure</b> takes place for example at a sewing factory which produces counterfeit products, the authorities <i>usually seize the personal computers</i> which were used for piracy/counterfeiting, as well. Conversely, when the seizure takes place at a <i>distributor's premises</i> the authorities usually <i>do not seize computers and other equipments</i>.</p>		<p>of the destruction of those products.</p> <p>2. When the right holder intends to claim <i>compensation for the storage and destruction costs</i> which he had paid in advance , it often occurs that the <b>infringer</b> is <b>insolvent</b> (subject to winding-up or liquidation procedure) by the time the courts have ordered them to reimburse these costs. So, in most cases there is no possibility to recover the money which has been paid in advance by the right holder.</p>
<p><b>Ireland</b></p>			
<p><b>Italy</b></p>	<p>No different rules for the Internet.</p> <p>In Italian case law there are no specific practices for seizures of materials and implements used in the creation or manufacture of infringing goods sold over the Internet. Therefore, it has to be concluded that, in such cases, general practices apply.</p>	<p>No.</p>	<p>The <i>primary difficulty</i> with respect to the corrective measures concerns the <i>interpretation of the provisions</i>: with regard to the <b>removal from the channels of commerce</b> of the infringing goods belonging to a third party, for instance, some scholars deem that it has to be ordered exclusively in relation to those goods which are at the disposal of third parties <i>that participated in the trial</i>, while other scholars believe, also according to their interpretation of</p>

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			<p>Article 10 of the Directive, that the European legislator meant to <i>involve also those subjects that did not participate in the proceedings</i>. The same interpretation problem concerns also the destruction of the infringing goods.</p> <p>As <b>best practices</b> on corrective measures in the Italian case law, besides those already mentioned above, see: Court of Appeal of Bologna, 29 September 1981 which stated that the <b>destruction must not be ordered if there is not a sufficient interest of the right holder in obtaining it</b>; Court of Milan, 19 May 1980, according to which if the infringement of the trademark consists in the <i>addiction of elements to the original product, the destruction shall uniquely concern the added parts and not the original</i>; Court of Milan, 30 March 1987, whereby it cannot be ordered the transfer to the right holder of contrivances employed for the infringement, when such <i>contrivances are capable also of licit uses</i>.</p>
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<p><b>Latvia</b></p>	<p>The statutory provisions do not distinguish between goods that have been sold over the Internet and other goods. No case law on this point.</p>	<p>No.</p>	<p>There are no problems to enforce corrective measures. But rather narrow practice does not allow indicating proposals for improvement yet.</p>
<p><b>Lithuania</b></p>	<p>-</p>	<p>Yes.</p>	<p>The primary legal difficulty is <b>unclear implementation of recall</b> from the channels of commerce and definitive removal from the channels of commerce. The two options are not clearly separated, defined and elaborated therefore unused by intellectual right holders or their agents.</p> <p>The <b>destruction</b> of counterfeit or pirated goods <i>is used in all cases</i> as more efficient and simple measure. The <i>defining of the two options would solve the case.</i></p> <p>The <i>lack of control of the state agencies. The only efficient counterfeit and pirated goods control agency is Lithuanian customs; however the customs can not control goods that come from EU member state. There is little control available from the state agencies to check if the goods that</i></p>

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			<p>comes from EU are genuine, not counterfeited. The lack of control reduces the numbers of cases and the possibilities to develop other corrective measures than destruction of goods.</p>
<p><b>Luxembourg</b></p>	<p>No case law.</p>	<p>No.</p>	<p>Since the IPRED has only been implemented eight months ago and there is almost no case law available, no difficulties have arisen yet.</p> <p>In general, it can be said that with the implementation of IPRED, the position of the right owners has been strengthened and the courts have been given more possibilities to enforce IPR's, for example the corrective measures.</p> <p>These measures, like the recall of goods, can have very broad legal and practical consequences and effects.</p> <p>It is to be hoped that the courts will not be reluctant to use/grant these new measures considering the fact that the consequences and effects can be much broader than before.</p>

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<p><b>Malta</b></p>	<p>No difference in the corrective measures that apply in the case of goods which have been sold over the internet. Once those goods reach Malta (either as a final destination or a transit zone), the normal customs procedures (as well as subsequent civil proceedings) would take place. Practices for seizures of materials and implements: no practices which are tailor-made for such instances. In such cases the normal practices would generally apply.</p>	<p>Yes. Pecuniary compensation possible.</p> <p><i>In cases where the measures laid down in Part V of this Act may be applied, it shall be within the discretion of the Court, on an application by the person liable to such measures, to refrain from applying the said measures and order instead the payment of pecuniary compensation to the injured party if it is of the opinion that the infringer involved has acted unintentionally and without negligence, if execution of the measures in question would cause the infringer disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.</i></p>	<p>Lack of judicial interpretation.</p> <p>Without judgments on the matter it is very hard to determine the way in which the law is to be applied.</p> <p>Most provisions relating to corrective measures in Malta are currently theoretical and have yet been applied in practice.</p>
<p><b>Netherlands</b></p>	<p>In principle not. <i>Preliminary measures (without the hearing of the infringer) however, are more likely to be granted if the goods have been sold over the Internet.</i> One reason for that is the velocity of stock turnover that can be reached with selling over the</p>	<p>No. It does not fit into the Dutch legal system.</p>	<p>Our legal system is working very well in this field.</p> <p>In practice, the seizure and storage of the infringing goods can be seen as a difficulty. In particular the <b>identification</b> (<i>whether or not the goods are an infringement</i>) by</p>

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	<p>Internet.</p> <p>The seizure of personal computers is <i>not allowed except in the event that there is infringing software installed on the personal computers</i>. This has recently been confirmed by the District Court of Haarlem on 8 January 2010 in interlocutory proceedings (Silver Holding vs. Siemens).</p>		<p>a Dutch Bailiff can be a problem, while the Bailiff often does <i>not have the expertise to identify infringing goods</i>.</p>
<p><b>Poland</b></p>	<p>We have not observed any crucial differences.</p> <p>If the infringing activity consists of manufacturing (as opposed to trading in) infringing goods, then the police also seizes the materials, equipment and tools used in the unlawful activity.</p>	<p>Yes.</p>	<p>Pirated goods, especially originating from unknown sources, should be in principle destroyed and there should be few exceptions to this rule. Pirated goods constitute a health hazard, as it is almost always impossible to verify the types of raw materials used to manufacture them and whether they have passed safety tests.</p> <p>Finally, if pirated goods, after a long and costly procedure, eventually reach the market again, many participants in the law enforcement process, including right holders, the customs and police, see their efforts as ultimately wasted.</p>

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<p><b>Portugal</b></p>	<p>There are no special provisions, on this regard, in case of goods sold through the Internet.</p> <p>Also, up to the present date, no precedents have been revealed regarding this matter.</p>	<p>Yes. By request of the of person liable to be subject to the measures provided for in this section, the Court may decide to substitute such injunctions with the payment of a compensation, if such payment is considered as sufficient to guarantee the payment of a final compensation to the right owner.</p> <p>This substitution however, is only made after the owner of the right had the opportunity to comment on this matter.</p>	<p>-</p>
<p><b>Romania</b></p>	<p>There are no differences provided for by the legislation in force in this respect.</p> <p>Also, the practice did not prove any discrimination.</p>	<p>Yes, but only as regard the industrial property rights, not when it comes to copyright and related rights.</p>	<p>It is <i>not always very clear who should do the destruction, according to which procedure and who should pay for this</i> and in practice there have been a lot of gaps.</p> <p>For instance, infringing goods are seized at the beginning of a criminal investigation and they are held at the Police premises or at the Romanian Copyright Office. At the end of the trial, the judge or the prosecutor decides that the goods are to be destroyed, according to the law. Usually,</p>

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			<p><i>they do not specify also who should do this and, further on, they do not specify who bears the costs or the amount thereof.</i></p> <p>The result is that none of the institutions will organize the destruction.</p> <p>It has been interpreted, since by seizure the goods become state property, that the destruction should take place in the presence and under signed confirmation of a committee constituted for taking over and destroying the goods. The setting-up of this committee for each case has proved to be impossible in practice and it is only set-up from time to time.</p> <p>On the other hand, since the amount of the destruction costs is not specified by the judge or by the prosecutor, so that to impose to the infringer to pay a specific amount of money, no such costs are collected by the holder of the infringing goods with a view to the future destruction. <i>In practice, in most of the cases, it is the holder of the infringing goods (i.e. the Police or the Copyright</i></p>
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			<p><i>Office) that bears the costs of the destruction of infringing goods in criminal enforcement cases.</i></p> <p>Of course, both Police and the Copyright Office claim they do not have funds for organizing such destruction actions. Normally, after the destruction takes place, the Copyright Office and/or the Police should try to get back the money from infringers, since they have the legal grounds for that, but this has never happened in practice.</p>
<b>Slovakia</b>	No different practices in internet cases.	Yes. § 75 ods. 8 OSP (zák. č. 99/1963 Zb.)	It would be useful to order the infringer (defendant) an obligation to re-buy all the infringing goods within 30 days under a penalty of 150 EUR per day.
<b>Slovenia</b>	<p>No difference in application of corrective measures in cases where goods were sold over the Internet.</p> <p>In publicly available case law, we have found no cases on the respective issue.</p>	No.	<p>We had a <b>copyright case</b> where <b>definite removal</b> from the channels of commerce had to be enforced and it was very difficult, time consuming and costly to engage executors.</p> <p>We are unaware of any best practices.</p>
<b>Spain</b>	No special rules for the Internet.	(Unclear).	Evidence gathering is problematic

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	<p>The seizure of personal computers used for piracy and any CD/DVD duplicators and “burning” machines used to carry out the infringing conduct is a common practice.</p>	<p>There has not been a literal implementation of the wording of article 12 IPRED.</p>	<p>(for instances showing the date on which the infringement has ceased or the infringing products are destroyed). Consequently, it is advisable to request the services of a notary in order to certify the compliance.</p>
<p><b>Sweden</b></p>	<p>IPRED has not yet been subject of a trial in a case where goods have been sold over the Internet.</p> <p>IP laws contain seizure of accessories which were used in the manufacturing of infringing goods. These provisions have not been changed due to IPRED.</p> <p>The court must make a proportionality assessment when deciding on seizures.</p>	<p>Yes.</p>	<p>Withdrawal of an infringing product from the market seems to be difficult.</p> <p>Heavy burden is put upon the courts to ensure that the decisions were so precise that they could be executed.</p> <p>The courts do in major part of the cases follow the right holder’s claim to destroy the infringing goods.</p> <p>The courts have a possibility to order the removal of the infringing sign. However, such possibility is seldom used.</p> <p>In customs cases, the court is more or less prevented from not ordering the destruction of the entire product even if there is a</p>

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			possibility to remove just the infringing sign.
<b>United Kingdom</b>	No.	No. The view is that there is no need to do so, as there are already equivalent provisions (section 50 Supreme Court Act 1981 and section 38 County Courts Act 1984) which say that the court may order damages in lieu of an injunction.	The difficulties are primarily expense and inconvenience. It is very expensive going to court to get an order for destruction/delivery up of goods, and similarly seizure is also expensive. Legally, obtaining these remedies is difficult because they are equitable remedies and so rights owners are not entitled to them as of right.