

Copyright Litigation

The first edition of this publication aimed to provide practical guidance to anyone involved in multi-jurisdictional copyright litigation. This second edition has been updated to include more topical issues such as liability of internet service providers and protection of computer software.

Laws and procedures regarding copyright are so different worldwide, that endless opportunities for forum shopping exist both when bringing a claim for infringement or when countering a third party's claim. This book is intended as an easy reference guide to the differing regimes in some of the world's most important jurisdictions.

After the great success of our two previous books, *Patent Litigation* and *Trade Mark Litigation*, we were proud to be able to include a record number of top level contributors.



SECOND
EDITION
2015

Copyright Litigation

General Editors:
Thierry Calame, Lenz & Staehelin &
Massimo Sterpi, Studio Legale Jacobacci & Associati

THE EUROPEAN LAWYER
REFERENCE

Copyright Litigation

Jurisdictional comparisons

Second edition 2015

Foreword Thierry Calame, Lenz & Staehelin & Massimo Sterpi,
Studio Legale Jacobacci & Associati

Brazil José Mauro Decoussau Machado & Matheus Chucri dos Santos
Pinheiro Neto Advogados

China Lian Yunze & Liu Yuping Hylands Law Firm

Denmark Janne Glæsel & Johan Leonhard Svendsen Gorrissen Federspiel

Ecuador Santiago Mosquera Alcocer & Mario Ruiz Fernandez Falconi Puig Abogados

Finland Mikko Manner & Tiina Komppa Roschier, Attorneys Ltd.

France Jean-Mathieu Bertho, Olympe Vanner & Alexia de Maulde Jacobacci Avocats

Germany Albrecht Conrad & Fabian Seip Hengeler Mueller

Greece Alkisti-Irene Malamis & Ioanna Charalabous Malamis & Associates

Hong Kong Charmaine Koo Deacons

India Dhruv Anand & Tanvi Misra Anand and Anand

Italy Massimo Sterpi & Angela Tasillo Studio Legale Jacobacci & Associati

Japan Masao Torikai, Koichi Nakatani & Koji Ohe Momo-o Matsuo & Namba

Malaysia Karen Abraham Shearn Delamore & Co.

Malta Dr. Luigi A. Sansone Salomone, Sansone & Co.

Mexico Luis Schmidt Olivares

The Netherlands Michiel Rijdsdijk Arnold + Siedsma

Singapore Regina Quek One Legal LLC

South Africa Herman Bignaut Spoor & Fisher

South Korea Jay (Young-June) Yang, Chang-Hwan Shin & Nayoung Kim Kim & Chang

Spain Iban Díez López & Jaime Bello Ayala Gómez-Acebo & Pombo

Sweden Håkan Borgenhäll & Tobias Kempas Advokatfirman Vinge KB

Switzerland Thierry Calame & Peter Ling Lenz & Staehelin

Thailand Nandana Indananda, Suebsiri Taweepon & Hassana Chira-Aphakul
Tilleke & Gibbins

United Kingdom Nicola Dagg Allen & Overy LLP

United States Jonathan D. Reichman, Maria Luisa Palmese & Abhishek Bapna
Kenyon & Kenyon, LLP

Vietnam Linh Thi Mai Nguyen & Loc Xuan Le Tilleke & Gibbins

General Editors:

Thierry Calame, Lenz & Staehelin
& Massimo Sterpi, Studio Legale
Jacobacci & Associati

THE EUROPEAN LAWYER
REFERENCE

Copyright Litigation

Jurisdictional comparisons

Second edition 2015

**General Editors: Thierry Calame, Lenz & Staehelin
& Massimo Sterpi, Studio Legale Jacobacci & Associati**



THOMSON REUTERS

**General Editors:
Thierry Calame & Massimo Sterpi**

Commercial Director
Katie Burrington

Commissioning Editor
Emily Kyriacou

Senior Editor
Lisa Naylor

Publishing Assistant
Nicola Pender

Publications Editor
Dawn McGovern

Published in 2014 by
Thomson Reuters (Professional) UK Limited
trading as Sweet & Maxwell
100 Avenue Road, London NW3 3PF
Friars House, 160 Blackfriars Road, London SE1 8EZ
(Registered in England & Wales, Company No 1679046.
Registered Office and address for service:
2nd floor, Aldgate House, 33 Aldgate High Street, London EC3N 1DL)

Printed and bound in the UK by Polestar UK Print Limited, Wheaton

A CIP catalogue record for this book is available from the British Library.
ISBN: 9780414035249

Thomson Reuters and the Thomson Reuters logo are trademarks of Thomson Reuters.

Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland.

While all reasonable care has been taken to ensure the accuracy of the publication, the publishers cannot accept responsibility for any errors or omissions.

This publication is protected by international copyright law.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior written permission, except for permitted fair dealing under the Copyright, Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgement of author, publisher and source must be given.

© 2014 Thomson Reuters (Professional) UK Limited

Contents

Foreword	Thierry Calame & Massimo Sterpi	1
Brazil	José Mauro Decoussau Machado & Matheus Chucri dos Santos Pinheiro Neto Advogados	3
China	Lian Yunze & Liu Yuping Hylands Law Firm	21
Denmark	Janne Glæsel & Johan Leonhard Svendsen Gorrissen Federspiel	43
Ecuador	Santiago Mosquera Alcocer & Mario Ruiz Fernandez Falconi Puig Abogados	61
Finland	Mikko Manner & Tiina Komppa Roschier, Attorneys Ltd.	77
France	Jean-Mathieu Bertho, Olympe Vanner & Alexia de Maulde Jacobacci Avocats	95
Germany	Albrecht Conrad & Fabian Seip Hengeler Mueller	115
Greece	Alkisti-Irene Malamis & Ioanna Charalabous Malamis & Associates	135
Hong Kong	Charmaine Koo Deacons	155
India	Dhruv Anand & Tanvi Misra Anand and Anand	183
Italy	Massimo Sterpi & Angela Tasillo Studio Legale Jacobacci & Associati	201
Japan	Masao Torikai, Koichi Nakatani & Koji Ohe Momo-o Matsuo & Namba	223
Malaysia	Karen Abraham Shearn Delamore & Co.	241
Malta	Dr. Luigi A. Sansone Salomone, Sansone & Co.	269
Mexico	Luis Schmidt Olivares	291
The Netherlands	Michiel Rijdsdijk Arnold + Siedsma	309
Singapore	Regina Quek One Legal LLC	327
South Africa	Herman Blynaut Spoor & Fisher	351
South Korea	Jay (Young-June) Yang, Chang-Hwan Shin & Nayoung Kim Kim & Chang	375
Spain	Iban Díez López & Jaime Bello Ayala Gómez-Acebo & Pombo	391
Sweden	Håkan Borgenhäll & Tobias Kempas Advokatfirman Vinge KB	411
Switzerland	Thierry Calame & Peter Ling Lenz & Staehelin	433
Thailand	Nandana Indananda, Suebsiri Taweepon & Hassana Chira-Aphakul Tilleke & Gibbins	459
United Kingdom	Nicola Dagg Allen & Overy LLP	479
United States	Jonathan D. Reichman, Maria Luisa Palmese & Abhishek Bapna Kenyon & Kenyon, LLP	509
Vietnam	Linh Thi Mai Nguyen & Loc Xuan Le Tilleke & Gibbins	527
Contacts		547

Foreword

**Thierry Calame, Lenz & Staehelin
& Massimo Sterpi, Studio Legale Jacobacci & Associati**

COPYRIGHT IS THE NEW STEEL

In recent years, copyright has taken a central role in the global economy.

Creativity, once the elitist domain of artists, has become the bread and butter of daily life. Anyone posting a comment or a snapshot online can be an author for copyright purposes. In addition, virtually every digital start-up is based on copyrightable contents, such as graphic design, texts, images or music.

In the job market, what counts is no longer the physical energy of the worker, but rather his creativity. At the same time, trying to enlarge copyright protection for new forms of creations – such as programme formats, culinary recipes or fragrances – is a growing trend.

In such a scenario, copyright takes a fundamental role in protecting one's creativity, and often becomes the basis for one's success.

At the same time, another form of copyright protection becomes increasingly relevant, namely that afforded to databases. When data mining represents an essential prerequisite in decision-making processes, ownership of data becomes the new source of power.

However, circulation and distribution of content also raises serious and yet unresolved issues. Can an Internet Service Provider, who not only takes advantage of the circulation of content but is often actively involved in shaping such circulation, avail itself of exemptions of liability for underlying copyright infringements? Where should the limits be drawn between hosting, granting access to and transporting (infringing) content on the one hand and active participation in the content distribution on the other?

Finally, projects of massive appropriation and distribution of content (such as the scanning of entire libraries) increase the conflict between the public interest to access knowledge and the rights of the authors, originally created to enable authors to live off their creations.

A rising source of power, copyright is the steel of the current world economy.

Rome/Zurich, 29 October 2014

Thierry Calame Massimo Sterpi

Sweden

Advokatfirman Vinge KB

Håkan Borgenhäll & Tobias Kempas

1. SOURCES OF LAW

1.1 What are the principal sources of law and regulation relating to copyright and copyright litigation?

The principal sources of law governing copyright and copyright litigation are the Swedish Act on Copyright in Literary and Artistic Works (the 'Copyright Act') and the Swedish Code of Judicial Procedure. Other salient legislation includes the Copyright Regulation, the International Copyright Regulation, the Act on Mediation in Certain Copyright Disputes, and the Act on Protection of Topographies of Semiconductor Products.

The Copyright Act is based on the Berne Convention for the Protection of Literary and Artistic Works (the 'Berne Convention') and is also the result of co-operation between the Nordic countries. The Copyright Act has also been influenced by and modified in accordance with EU legislation. Over the last decade, the Copyright Act has undergone several consequential amendments as a result of the implementation of several European Commission directives such as Directive (2001/29/EC) on the harmonisation of certain aspects of copyright and related rights in the information society and the IP Enforcement Directive (2004/48/EC).

Sweden has acceded to a number of international treaties including the Berne Convention, the Universal Copyright Convention, the European Agreement on the Protection of Television Broadcasts, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the Geneva Phonograms Convention and the TRIPs Agreement. The Brussels I Regulation and the Lugano Convention are also relevant for copyright matters concerning international private law.

In those situations where the codified legislation does not provide any clear guidance on a specific matter, the preparatory works to the legislation in question are often used as an aid to the interpretation thereof. Unlike common law jurisdictions, case law is not legally binding in the same way as the written law, although such is considered to be an important instrument for interpretation of the codified law. The judgments of the Swedish Supreme Court do of course constitute binding precedent although the courts may also seek guidance from decisions delivered by the lower courts. Legal doctrine also serves as a source of law in Sweden and is frequently relied upon in judgments delivered in civil and arbitral proceedings.

1.2 What is the order of priority of the relevant sources, ie which takes precedence in the event of a conflict?

The relevant sources have the following order of priority: codified law, preparatory works, case law and legal doctrine. In the event of any conflict, the relevant sources take precedence in accordance with the order of priority as specified above.

2. COURT AND ADMINISTRATIVE SYSTEM

2.1 In which courts are copyrights enforced? Are they specialised copyrights courts? If not, what level of expertise can a copyright holder expect from the courts?

The Government has recently proposed that a specialised IPR court be established in order to enhance legal security, make proceedings more transparent, and increase the opportunities for specialisation for practitioners who work with IPR cases. The proposal has not yet resulted in any legislation and copyrights are thus still mainly enforced in the courts of general jurisdiction. The proceedings in these courts are conducted in accordance with the provisions of the Swedish Code of Judicial Procedure. While copyrights are thus generally not enforced by specialised courts, Stockholm District Court is the exclusive venue in certain copyright cases such as those regarding radio or television broadcasts in violation of the Copyright Act. The same applies to certain specific types of claims for compensation.

In some of the major courts, such as Stockholm District Court and Svea Court of Appeal (the Court of Appeal for, *inter alia*, the Stockholm region), copyright actions are heard by judges who have particular focus on IPR matters. It should be emphasised however that this is the exception, not the rule. Accordingly, a copyright holder cannot expect any particular degree of expertise from the court. Both the court and the parties are entitled to engage experts in copyright proceedings and it is quite common that such experts are engaged, at least by the parties.

2.2 Is there any administrative body (eg a copyright office)? If so, does it have any jurisdiction in copyright litigation?

There is no separate governmental or administrative body that deals with copyright issues in Sweden. With respect to works of applied art, however, there is an impartial expert body within Svensk Form (the Swedish Society of Crafts and Design), called the Svensk Form Copyright Panel. The panel's task is to express an opinion regarding copyright protection for works of applied art.

2.3 To what extent are courts willing to consider, or are bound by, the opinions of other national or foreign courts that have handed down decisions in similar cases?

As stated above, the decisions of national courts are not legally binding. However, lower instance courts follow judgments delivered by the Swedish Supreme Court. Decisions from other national courts may also serve as guidance for the courts although such decisions are of persuasive authority only.

By virtue of Sweden's membership of the European Union (EU), judgments of the Court of Justice of the European Union (CJEU) serve as a source of law in national copyright proceedings. Swedish courts are not bound by other foreign decisions. However, Swedish courts may take into account the reasoning advanced in support of a foreign decision when adjudicating a similar case provided such decisions are relied upon by either of the parties to the proceedings. This applies mostly with respect to judgments from other courts within the EU.

2.4 Who can represent parties before the courts handling copyright litigation?

The Code of Judicial Procedure, which is the governing statute in this context, does not contain any specific requirements in terms of the level of education or any similar vocational qualifications which must be fulfilled in order for a person to represent parties before the courts handling copyright litigation. The sole requirement is that the court must be satisfied that the person concerned is 'suitable', eg by conducting an examination of the person's honesty and level of knowledge. The representative must have a good command of the Swedish language.

In criminal cases, only members of the Bar Association may appear as publicly appointed defense attorneys.

2.5 What is the language of the proceedings? Is there a choice of language?

The proceedings are always conducted in Swedish. It is always possible of course to engage an interpreter to assist the court in those cases where any foreign party or witnesses cannot understand or speak Swedish.

3. SUBSTANTIVE LAW

3.1 What types of works are copyrightable under your law? Does your national law provide for a closed list of copyrightable works or for an open list?

The Copyright Act protects literary and artistic works irrespective of whether these constitute a fictional or descriptive representation in writing or speech, a software program, a musical or dramatic work, a cinematographic work, a photographic work or another work of fine arts, a work of architecture or applied art or a work expressed in some other manner. Although the list may be regarded as 'closed', seeing that the works ought to be 'literary' or 'artistic', the list actually comprises a vast variety of works, as they may be expressed in 'any manner'.

In order to satisfy the definition of a work under the Copyright Act, the work must fulfil the required standard of originality, which thus entails that the work must be the result of an author's personal and creative effort.

So-called neighbouring rights (ie certain rights granted to performing artists, producers of recordings of sound and images, radio and television organisations and producers of catalogues and databases) are also protected by the Copyright Act.

3.2 Is software considered copyrightable under your law?

Yes (see section 3.1 above).

3.3 Does the author of a work have to be a national of your country for the work to qualify as copyrightable or does a work qualify for copyright protection irrespective of the nationality of the author?

It follows from Sweden's accession to several international treaties such as the Berne convention and the TRIPs Agreement, as well as Sweden's membership of the EU, that the Copyright Act will provide protection not only to works created by Swedish citizens but also to works created by nationals of countries that are parties to the relevant international treaties and other EU member states. Such nationals must always be treated in the same way as Swedish nationals in the application of copyright law.

3.4 What types of rights are covered by copyright? To what extent are moral rights covered by copyright?

Both economic and moral rights are covered by the Copyright Act. Both rights are exclusive although there are certain limitations on the exclusivity of economic rights. For example, it is to some extent lawful to make copies of a protected work for private purposes.

Economic rights include the right to exploit the work in question by making copies of it and making it available to the public. A work can be made available to the public in several ways including, among other things, by communicating a work to the public, through public performances or exhibitions or by distributing copies of the work to the public.

Moral rights include the entitlement of the author to due attribution through the inclusion of his or her name when the protected work is copied and made available to the public. Moral rights also include the author's right to prevent any alteration of the work or to prohibit it from being made available to the public in those circumstances where such would be prejudicial to the author's individuality or that person's literary or artistic reputation.

3.5 What defences are available to an alleged infringer? To what extent can 'fair use' or 'fair dealing' be used as a defence? If these doctrines do not exist, are there any comparable limitations?

Defendants often contend that the work does not fulfil the required standard of originality and is thus not protected under the Copyright Act. In addition, it is quite common for defendants to argue that the claimed infringing object does not fall within the scope of protection of the claimant's work.

The doctrines of 'fair use' or 'fair dealing' do not exist under Swedish copyright law. As stated above, there are however specific limitations to the economic rights afforded by the Copyright Act. Under certain conditions, a protected work may be used freely and it may, *inter alia*, be permissible to make temporary copies, copies for private purposes and copies for educational purposes. Further limitations to the exclusive economic rights follow from the 'consumption principle' which entails that a copy of a work that has been transferred or published with the consent of its author within the

European Economic Area may be further distributed and publicly exhibited. Furthermore, the right to reproduce short quotations of works that have been made available to the public constitutes a limitation of copyright.

3.6 Are compulsory licenses available? If so, under which circumstances?

There are only a few compulsory licensing provisions in the Copyright Act. They are not designed specifically to address anti-competitive uses of copyrights but rather to protect a number of national and public interests. In essence, these provisions establish a right of use of works without permission, on condition that the right holder is remunerated. The provisions permit: (i) the use of works included in authority decisions and other public materials; (ii) the making of copies, etc for disabled persons; (iii) the making of composite works for use in educational activities; and (iv) the use of sound recordings for public performance or public transmissions.

The Copyright Act also contains a number of provisions giving extended effect to collective licences granted by collecting societies. These provisions confer on the user the right to exploit works under the collecting society's licence agreement even in those cases where the right holder is not represented by the collecting society.

3.7 Is there a requirement of copyright registration? Is copyright registration required to enforce a copyright, ie to obtain damages or other relief? Is a copyright deposit required? Is a copyright notice required? What are the consequences, if any, for failure to make a copyright deposit or to display a copyright notice?

Copyright protection arises automatically as soon as the work is created. There are no registration requirements under the Swedish Copyright Act.

3.8 How long does copyright protection last?

Copyright protection subsists to the expiry of the 70th year after the year in which the author deceased. The protection in respect of a work that has been made public anonymously subsists until the end of the 70th year after the year in which the work was made public. Copyright in a cinematographic work subsists to the expiry of the 70th year after the year of the death of the last deceased of one of the following persons, namely the principal director, the author of the screenplay, the author of the dialogue or the composer of the music specifically created for the work.

The duration of protection for neighbouring rights is 50 years although the starting point varies depending on the right in question. For instance, protection for radio and television broadcasts subsists until the end of the 50th year from the year in which such were broadcast.

The duration of protection for catalogues (databases, etc.) subsists until 15 years have elapsed from the year in which the product was completed.

The duration of protection for titles (ie that a literary or artistic work may not be made available to the public under a title, pseudonym or signature whereby the work or its author may be easily confused with a work which has

been made available to the public previously, or with the author thereof) and the duration of protection for classics (ie that a literary or artistic work which is performed or reproduced in a manner which violates cultural interests may be prohibited) both apply in perpetuity.

3.9 How is copyright infringement assessed? Is actual copying to be proved or is substantial similarity sufficient to establish infringement?

The Swedish Copyright Act prohibits, as a main rule, unauthorised reproduction of the work. However, the right holder does not have to prove actual copying to establish infringement. If there is great similarity between the allegedly infringing object and the copyrighted work, there is a presumption that the defendant has reproduced the work.

The question of whether copyright infringement has been committed depends on the scope of protection granted to the work. The scope of protection is determined by the work's originality. Determining whether or not there is a risk of double creation is a supporting rule used to establish copyright protection and the reach of the protection. The assessment of copyright infringements is thus performed on a case-by-case basis and differs depending on the type of work.

The exclusive right of the copyright holder to exploit the protected work extends not only to the work in its original form but also to the work in altered form, eg where the work is translated or altered to another artistic form.

3.10 Are there any particularities for assessing copyright infringement for specific types of works (eg software)?

No. As explained above (in section 3.9), in all situations the decisive issue is essentially the degree of similarity between the allegedly infringing copy and the original work.

3.11 Can a copyright be enforced against a trade mark, a domain name, a trade name, a pseudonym or other distinctive signs?

Copyright may be enforced against a pseudonym or distinctive sign where the pseudonym or sign in question is used as part of a work, a trade mark or a trade name. A copyright may also be enforced against a domain name.

The Swedish Trademarks Act provides that a trade mark may not be registered if the mark contains an element which is likely to convey the impression of being the title of another person's protected literary or artistic work or if the registration could violate another person's copyright in a literary or artistic work. Equivalent provisions apply under the Trade Names Act.

3.12 On what grounds can a copyright be declared invalid?

Copyright protection arises automatically, provided that the work has sufficient originality, and thus the Copyright Act does not contain any provisions governing invalidity. However, it is possible to contend that the prerequisites for copyright protection under the Copyright Act are not fulfilled within the scope of copyright litigation.

3.13 To what extent can enforcement of a copyright expose the copyright holder to liability for an antitrust violation?

All intellectual property rights create, by definition, a monopoly situation although this is not traditionally viewed as a violation of antitrust laws. Accordingly, copyright protection does not per se constitute a violation of antitrust law. However, copyright enforcement measures, eg in relation to concentration of copyrights in conjunction with abuse of a dominant position, may however be deemed to constitute infringements of Swedish and EU competition law. For instance, it has been alleged that the remuneration systems employed by the Swedish copyright organisations representing a number of artists have constituted an abuse of a dominant position (see the CJEU's judgment in *Kanal 5 and TV 4 v STIM* [2008], Case C-52/07). Another ruling regarding abuse of dominant position is the CJEU's judgment in *RTE and ITP v Commission* [1995], joined Cases C- 241/91 P and C-242/91 P.

3.14 Are there any grounds on which an otherwise valid copyright can be deemed unenforceable, owing to misconduct by the copyright holder, or for some other reason? Is there a time limit for bringing an infringement action?

Swedish copyright law does not include any principles governing misconduct or similar types of behaviour by the copyright holder that would thereby result in the copyright being deemed unenforceable. The Copyright Act does not include any limitation period relating to the initiation of any civil infringement actions. In such context, the general 10 year limitation period is applicable. However, a right holder may be deemed to have impliedly waived its right to prevent infringement in those cases where the right holder is aware of, but fails to take any action against, an alleged infringer. Most cases will turn on their own facts but the duration of the right holder's awareness of the infringement and its passivity will often prove decisive.

3.15 Can a copyright holder bring a lawsuit claiming both copyright infringement and unfair competition for the same set of facts?

A copyright holder is entitled to bring an action claiming both copyright infringement and unfair competition based on the same set of facts. However, copyright infringement and unfair competition actions fall under the jurisdiction of different courts and the salient rules of procedure do not permit the consolidation of cases in this context.

4. PARTIES TO LITIGATION

4.1 Who can sue for copyright infringement (copyright holder, exclusive licensee, non-exclusive licensee, distributor)? Does a licensee need to be registered to be eligible to sue?

The Copyright Act provides that the author or their successor in title or any party who has the right to exploit the work as a duly appointed licensee is thereby entitled to commence civil proceedings for copyright infringement. A licensee does not have to be registered in order to sue for copyright infringement.

A copyright holder may commence criminal proceedings for copyright infringements if the public prosecution service has decided not to commence proceedings for infringement. The public prosecution service is only entitled to commence criminal proceedings if an injured party has made a complaint or where prosecution is warranted on public interest grounds. Criminal proceedings are usually commenced for copying films and music. An illustrative example thereof is the *Pirate Bay* case ([2010] Svea Court of Appeal case no. B 4041-09).

4.2 Can copyright collecting societies sue for copyright infringement to enforce their members' rights? If so, can copyright holders sue in parallel with the collecting societies or do collecting societies have an exclusive right to sue for certain types of infringement?

The Copyright Act does not give collecting societies an independent right to represent their members in legal proceedings. Provided that the member has empowered the collecting society to legally represent the member in court proceedings, the collecting society may sue for copyright infringement. In practice, many collecting societies include such mandates in their accession agreements with their members. The terms of the accession agreement (or any other agreement made by the member and the collecting society) will determine whether the member retains a right to sue in a personal capacity. Parallel proceedings on the same subject matter are however not allowed because of the rules on *lis pendens* contained in the Code of Judicial Procedure.

4.3 Under what conditions, if any, can an alleged infringer bring a lawsuit to obtain a declaratory judgment on non-infringement?

The Code of Judicial Procedure allows a party to apply for a declaration concerning the existence of a legal relationship in those cases where the claimant considers that such relationship is uncertain and may expose the claimant to some form of detriment. A motion for a declaration may also be filed when the existence of a legal relationship constitutes a preliminary issue in the adjudication of the matter. Recent case law from the courts of appeal confirms that a declaratory judgment on non-infringement may be also requested regarding the question of whether a certain action constitutes copyright infringement or not.

4.4 Who can be sued for copyright infringement? Can the company directors be sued personally? Under what conditions, if any, can someone be sued for inducing or contributing to copyright infringement by someone else?

The Copyright Act and the Swedish Penal Code contain provisions which entail that both actual infringers and any persons who contribute to an infringement may be sued for copyright infringement. In addition, any person who attempts or prepares to commit an infringement may be sued.

Both natural and legal persons may be sued for copyright infringement. However, legal persons cannot be a party to criminal proceedings.

Actions for copyright infringement are normally directed towards the

company which has undertaken infringing actions. However, provided certain conditions are fulfilled, it is possible to sue company directors in a personal capacity for copyright infringement based on such directors' own personal involvement and actions in relation thereto.

4.5 How is the liability of Internet Service Providers (ISPs) treated? Under which conditions may they be considered jointly liable with the copyright infringer?

There is no general rule governing liability for ISPs in the Copyright Act. Nevertheless, an ISP may, like any other intermediary, be found liable for contributory copyright infringement (see section 4.4 above). However, the conditions governing such liability are still somewhat unclear.

As a main rule, according to the preparatory works prepared in the course of implementing the InfoSoc Directive 2001/29/EC, an intermediary's pure operation and provision of services, or the supply of hardware or wire capacity for transmission, is not deemed to be sufficient for liability. It is also indicated that a hosting service provider may be liable for contributory infringement if the provider is getting 'concrete indications' that the server space is used in a way that implies infringement.

Quite recent case law from Svea Court of Appeal suggests that these statements also apply to ISPs. In the *Black Internet* case ([2010] Svea Court of Appeal case no. Ö 7131-09), the court held that the ISP Black Internet could be deemed to be contributing to the infringements carried out by the users of The Pirate Bay by providing the The Pirate Bay website with access to the internet. Similarly, in the *Portlane* case ([2010] Svea Court of Appeal case no. Ö 10146-09), the court held that the ISP, Portlane contributed to infringement by providing internet access to certain trackers used for illegal file-sharing. In both cases, Svea Court of Appeal held that liability for contributory infringement may arise if the intermediary is aware of the existence of illicit materials and thereupon fails to prevent the distribution thereof even though such preventive steps could have been easily taken.

4.6 Is it possible to add or subtract parties during litigation?

It is possible to add parties during litigation provided the court takes the view that this will benefit the adjudication of the proceedings. If the claimant decides to withdraw its claim against one of several co-defendants after the defendant in question has responded to the claim then such co-defendant is entitled to demand that the case be adjudicated on the merits.

5. ENFORCEMENT OPTIONS

5.1 What options are open to a copyright holder when seeking to enforce its rights in your country?

A copyright holder is entitled to commence civil proceedings in Sweden in order to enforce its rights. In relation to criminal proceedings, please see section 5.2 below.

5.2 Are criminal proceedings available? If so, what are the sanctions?

The public prosecutor may only institute criminal proceedings for copyright infringement following a complaint by any party affected by the infringement or where such proceedings are warranted on public interest grounds. Criminal proceedings may be commenced by the copyright holder if the public prosecutor has declined to do so.

The sanctions for infringement are fines or up to two years' imprisonment.

5.3 Are border measures available?

The Swedish Customs Authority may seize and confiscate goods which are suspected of infringing copyright protected works. These measures may be taken by the Customs Authority either following an application to the Authority or *ex officio*. An application for border measures may relate to any or all of the European Union's member states. The application is valid for one year and may be prolonged by one year at a time. The Swedish provisions governing border measures are based on EC regulations pertaining to counterfeiting.

5.4 Are proceedings for fast removal of infringing content from the internet available?

The fastest way to legally prevent copyright infringements on the internet is to apply for an interlocutory injunction, on an *ex parte* basis, if possible, against the infringing party (see section 8 below). If the infringing party's identity is unknown, a court may, upon application, order the ISP to provide information on the origin and distribution networks for the infringing content, eg the name and address of the person behind the IP address concerned. Alternatively, the right holder (or his licensee) may request an injunction prohibiting the ISP from allowing its customers access to the infringing website. While this alternative has not yet been tried by the Swedish courts, a recent judgment from the CJEU (*UPC v Constantin and Vega* [2014], Case C 314/12) seems to confirm that this is indeed an option. This is because the relevant provisions in the Copyright Act are to be applied in accordance with, eg Directive (2001/29/EC) as interpreted by the CJEU.

5.5 Are 'graduated response'-type sanctions (such as bandwidth reduction or temporary suspension of internet access) available against infringers online? If so, which authorities (administrative bodies or courts) are competent? How long does the procedure typically last?

The Copyright Act does not contain any provisions on 'graduated response'-type sanctions. According to the legislator, such measures ought to be avoided as they interfere with fundamental rights such as freedom of speech, legal security and respect for private and family life.

5.6 Is it compulsory to send a cease and desist letter to an alleged infringer before commencing copyright infringement proceedings? What are the consequences, if any, for making unjustified threats of copyright infringement?

The salient provisions of the Swedish Bar Association's Code of Conduct

and principles governing fair business practices dictate that cease and desist letters should be sent to an alleged infringer prior to the commencement of proceedings. Exceptions to the aforesaid include those situations where the claimant will be prejudiced unless prompt action is taken. Failing to send a cease and desist letter before commencing infringement proceedings can also result in the claimant having to bear both its own and the defendant's litigation costs in the event the defendant admits the claim following service of the summons application.

Any person who makes unjustified threats of copyright infringement or unjustified claims of ownership of copyright in a cease and desist letter may also be liable for unfair marketing practices under the Swedish Marketing Practices Act. Such letters may also result in liability in damages.

5.7 To what extent are courts willing to grant cross-border or extra-territorial injunctions?

Any injunction or order handed down by a Swedish court will not normally have any extra-territorial effect unless the injunction or order falls within the scope of any applicable international conventions and EU regulations. For instance, the Brussels I Regulation provides that any provisional or protective measures issued by a court in one member state will be recognised and enforced in other member states without special proceedings, unless the enforcement is contested.

5.8 To what extent do courts recognise the blocking effect of 'torpedo' actions abroad?

The Brussels I Regulation and the Lugano Convention contain rules on *lis pendens* that prohibit proceedings involving the same cause of action between the same parties from being brought concurrently in the courts of different member states. The court's rule on *lis pendens* situations *ex officio*. It should be noted that Article 31 of the Brussels I Regulation provides that the *lis pendens* rule does not apply to provisional measures. Accordingly, provisional measures cannot be stymied by 'torpedo' actions abroad.

5.9 To what extent are alternative dispute resolution (ADR) methods (such as arbitration or mediation) available to resolve copyright disputes? How widespread are ADR methods and in which sectors?

The Code of Judicial Procedure provides that a civil court shall investigate the possibilities of, and encourage the parties to, reach an amicable settlement to the extent appropriate considering the nature of the case and other relevant circumstances. Where the nature of the case dictates that it is more appropriate for mediation, the civil court is at liberty to direct the parties to appear at a mediation session before a mediator appointed by the court.

Arbitration can be used to resolve copyright disputes provided there is an arbitration agreement between the parties in question. Alternatively, if the parties agree to use a mediator, the dispute may be resolved through mediation eg in accordance with the Mediation Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. Arbitration and mediation is however rarely used in practice outside contractual matters.

6. PROCEDURE IN CIVIL COURTS

6.1 What is the format of copyright infringement proceedings?

The format of copyright infringement proceedings is governed by the Swedish Code of Judicial Procedure. The proceedings are commenced when the claimant files a summons application. Thereafter the defendant files a statement of defence within the requisite time limit. There then follows further exchange of pleadings in which the parties invoke or respond to the factual circumstances and evidence adduced by the counterparty. In addition, both parties are required to submit a schedule of evidence containing the oral and written evidence upon which they intend to rely and must also state the evidential theme or proof for each item of evidence specified therein. A preparatory hearing is usually held in order to resolve the procedural aspects of the case prior to the main hearing.

When the preparation stages are concluded a main hearing will be held. The main hearing will be oral. Written proceedings are only used in exceptional cases. At the main hearing, the parties present their claims and respond to those of the opposing party, followed by a presentation of the evidence. Once the evidence has been presented, the parties may present their closing arguments. Finally, the parties present their motion for reimbursement of their litigation costs.

In some circumstances the case may be tried without a main hearing, as described further under section 6.8 below.

The Code of Judicial Procedure stipulates that a written judgment must be handed down within two weeks from the conclusion of the main hearing unless extraordinary circumstances otherwise dictate. However, it is fairly common for judgments in civil cases not to be handed down until three to five weeks (and sometimes longer) after the main hearing. The delay in this context is often caused by the complexity of the case and the court's workload.

6.2 Are disputed issues decided by a judge or a jury?

The jury system does not exist under the Swedish law of civil and criminal procedure in relation to copyright issues and contentious issues are thus determined by judges.

At main hearings in civil cases, the composition of the district court panel is made up of one or three legally qualified judges depending on, among other things, the complexity of the case.

As regards main hearings in criminal cases, the general rule is that a district court panel consists of one qualified judge and three lay judges. The qualified judge and the lay judges decide the case together. Thus, a lay judge has the same voting rights as the qualified judge and may adjudicate on both facts and law.

6.3 To what extent are documents, affidavits, witnesses and/or (court-appointed or private) experts used? Is it possible to cross-examine witnesses?

Written submissions, various types of documentary evidence, witnesses and experts are all frequently used in copyright litigation. Parties frequently engage

experts who possess a professional knowledge of copyright.

The use of witness statements drafted in contemplation of pending or contemplated proceedings was previously subject to rather stringent conditions although recent amendments to the Swedish Code of Judicial Procedure have allowed parties in commercial cases to agree on the use of witness statements unless the court considers that the use thereof would be inappropriate in the case at hand.

Examination-in-chief, cross-examination and re-examination of witnesses is permitted under the rules and the court is also entitled to ask witnesses additional questions.

6.4 To what extent is survey evidence used (eg to prove substantial similarity)? What is its relevance in proceedings (eg party allegation, evidence)? Who decides which consumers are questioned in the survey (eg the court, court expert)? What level of cost should one expect to incur to carry out a survey? Are these costs recoverable from the losing party?

Survey evidence is rarely invoked in Swedish copyright proceedings. Exceptionally, surveys are commissioned by either party in order to support its contentions. However, it is for the court to determine the cogency of the survey evidence. The court is more likely to attach greater significance to a survey performed by an independent professional survey company.

The costs incurred will of course depend on the size and nature of the survey. Such costs are recoverable from the losing party according to the general rule that costs follow the event as prescribed by law (see section 10.2 below).

6.5 Is evidence obtained for criminal proceedings admissible in civil proceedings, and vice versa?

Under Swedish law there is no exclusionary rule which prevents the same evidence from being adduced in both civil and criminal proceedings.

6.6 To what extent is pre-trial discovery permitted? If it is permitted, how is discovery conducted? If it is not permitted, what other, if any, mechanisms are available for obtaining evidence from an adverse party or from third parties?

The Copyright Act provides that a court may issue an order for an infringement investigation in order to secure evidence of any infringements or violations of copyright. An investigation order may be issued either prior to or following the commencement of infringement proceedings. The court will only issue an investigation order if it is satisfied that it can be reasonably assumed that an infringement has been committed. In addition, the grounds in favour of granting the order must outweigh the potential detriment that may be suffered by the prospective defendant. The claimant is required to provide some form of security to cover any damage which may be caused to the defendant although this requirement may be dispensed with where the court is satisfied that the claimant is unable to provide such security.

An investigation order must contain information about the purpose of the investigation, what types of objects and documents may be seized, and which venues may be searched. The investigation order is executed by officers of the local enforcement authority.

Evidence of infringement may also be acquired by copyright holders through the procurement of information regarding the origin and distribution networks of infringing goods and services. A disclosure obligation arises in this context following an examination and approval by a court and will only be given if the claimant shows probable cause that a copyright infringement has been committed. An order will only be issued if the balance of inconvenience test as specified above is satisfied in the claimant's favour.

Swedish civil procedure does not include the concept of pre-trial discovery although there are certain provisions which are, to some extent, analogous. In such context, a party may submit an application to the court regarding the future preservation of evidence. The court may take and order the preservation of specific evidence in the form of witness examinations, expert opinions, judicial review or written evidence, provided however that there is a risk that a party's legitimate rights might be lost or rendered more difficult to obtain unless an order is granted and that no trial concerning the rights is pending.

Following the commencement of an action, a party may request that the court orders either a counterparty or a third party to disclose written documents. A general requirement is that the information requested can be assumed to be of importance as evidence. In criminal cases, an obligation to produce evidence cannot be imposed upon the suspect or any person related to him.

The requesting party is not permitted to undertake a fishing expedition but, rather, must be in a position to clearly state what the documents are intended to prove and to specifically identify the requested document or a category of documents or all documents which are of relevance and the purpose of the disclosure of them. It is also possible to request production of documents in order to achieve the future preservation of evidence subject to the conditions set out above.

During the preparatory stages of the proceedings and upon request by the counterparty, a party is under an obligation to indicate what additional items of written evidence is in its possession although this duty is not subject to any sanctions for non-compliance.

6.7 What level of proof is required for establishing infringement or invalidity?

As a general rule, the claimant has the burden of proving that the defendant has committed copyright infringement. However, as regards civil law liability, the Supreme Court has established a rule for situations where an allegedly infringing product has a striking similarity to the claimant's copyrighted work. In such situations, the defendant will have to prove with a certain degree of probability that the allegedly infringing product was created independently from the claimant's work.

The standard of proof is higher in criminal proceedings and the prosecution

has the burden of proving beyond reasonable doubt that the defendant has committed the crime in question.

6.8 How long do copyright infringement proceedings typically last? Is it possible to expedite this process?

The proceedings before a court of first instance will normally last between 12-18 months from and including the date on which the claimant submits the summons application until the date that the judgment is handed down. This varies of course due to the nature of the case and the caseload of the court of question.

As described under section 6.1 above, a case is determined following a main hearing. There are exceptions to this general rule, for instance where, due to the nature of the case and the evidence in issue, the parties agree to the case being determined on the basis of written submissions, or when one party consents to, or agrees to a concession in respect of, a claim.

There is also a possibility to conduct a main hearing in simplified form. Such hearings are seldom used in copyright proceedings since the expedited procedure is more suitable for minor cases and requires the consent of the parties to it unless the court considers that the resolution of the dispute is quite self-evident.

It is normally viewed as unrealistic to anticipate that copyright infringement proceedings will be resolved without a main hearing. Indeed, the best means of expediting the process is for the parties to act effectively and to co-operate, wherever possible and without prejudicing their respective position, in the resolution of the dispute.

6.9 What options, if any, are available to a defendant seeking to delay the proceedings? Under what conditions, if any, can proceedings be stayed? How can a plaintiff counter delaying tactics of a defendant?

A defendant seeking to delay the proceedings may adopt various dilatory tactics including advancing statements or objections that are unfounded and/or ambiguous, attempting to withhold evidence or by consistently requesting extensions of time for filing submissions, etc.

A court may order a stay where it is of extraordinary importance for the adjudication of the case that a matter *sub judice* in another court proceeding, or type of proceeding, is determined first. The aforesaid also applies where some other form of substantial impediment arises.

The Code of Judicial Procedure provides a court with methods that may counter the delaying tactics of a defendant. For example, during the preparatory stages the parties will be directed to appear at a preparatory hearing and if a party fails to do so a default judgment may be issued against it. Another form of practice direction which is designed to counter delaying tactics is to set a final date on which a party shall finally determine his defence and to state the evidence that he invokes. The court may take such a measure, ie preclusion, where such is warranted by the dilatory party's earlier conduct in the proceedings. Moreover, the Code of Judicial Procedure provides that a party in a civil action, an aggrieved person in a criminal case, or an intervener

in a case who attempts to delay the litigation shall be sentenced to a fine. However, this provision is very rarely applied. In addition, the procedural rules provide that any party who has deliberately delayed the case or otherwise caused additional costs for the counterparty will be subject to an adverse costs order.

7. FINAL REMEDIES

7.1 What remedies are available against a copyright infringer (final injunction, delivery up or destruction of infringing goods, publication of the decision, recall-order, monetary remedies, etc)?

The following battery of remedies are available under the Copyright Act:

- Penalties in the form of fines or imprisonment for a maximum term of two years. Penalties will only be imposed where an infringement has been committed intentionally or with gross negligence.
- Injunction subject to a default fine which prohibits a party from continuing to commit, committing, or contributing to an act constituting an infringement. An injunction may also be issued to prohibit an attempted or prepared infringement.
- Damages (see section 7.3 below).
- Property in relation to which a violation has occurred, the value thereof as well as profits emanating from such a violation or any tools used in connection with a violation, etc, may be seized and subsequently declared subject to forfeiture.
- Corrective measures. A court may order that any property in respect of which an infringement exists as well as items used or intended to be used in connection with the infringement shall be withdrawn from all chains of commerce or that such be altered or destroyed or that some other relevant measures be taken.

A court may also issue an order requiring an infringer to defray the cost of appropriate measures to disseminate information about a judgment in a copyright case.

7.2 To the extent it is possible to obtain a final injunction against future infringement, is it effective against the infringer's suppliers or customers?

An injunction may be issued to prevent an actual, attempted or prepared infringement. An injunction will only be binding upon the defendant in the infringement proceedings. Accordingly, it will only be binding on a supplier or customer if that party is named as a defendant.

7.3 What monetary remedies are available against a copyright infringer (reasonable royalty, lost profits, account of profits, or some other basis)? Are punitive damages available? If so, under what conditions? Are liability and quantum of monetary remedies assessed at the same time by the court or is the quantum assessed at a separate, later stage from liability?

Right holders may obtain damages in the form of reasonable compensation

for the exploitation of their works and compensation for other loss caused by the infringing act. The latter type of compensation is only paid when the infringement was committed intentionally or through negligence. The Copyright Act stipulates which aspects a court will take into account when adjudicating claims for other heads of damage. When determining quantum, the court will consider the right holder's lost profits, any unfair profits made by the infringer, damage caused to the reputation of the work, moral damage, and the interest of the right holder in infringements not being committed. However, the basic premise is that a right holder will only be compensated for the actual damage suffered by an infringement. Punitive damages are not available under Swedish law.

In civil proceedings, liability and damages are often assessed jointly, although they may also be determined in separate proceedings. If a joint assessment is performed then the court will deal with liability first and then assess quantum. Criminal proceedings relating to copyright infringement may be combined with civil claims for damages.

8. PRELIMINARY RELIEF

8.1 Is preliminary relief available? If so, what preliminary measures are available (eg preliminary injunction) and under what conditions? Is urgency a condition for the court to grant preliminary relief? If so, how is it determined?

It is possible to apply for preliminary injunctions under the Copyright Act. An injunction application may be submitted in connection with, or after the filing of, the summons application. It is not required that the matter is extremely urgent. Preliminary injunctions may be granted not only for 'imminent' infringements, but also for attempts or preparation (see 8.2 regarding *ex parte* relief below). The claimant must show probable cause that an act constituting an infringement or a contribution to it is occurring or is being prepared or attempted and that it can reasonably be expected that the defendant will thereby diminish the value of the copyright if it continues to act in such manner. A preliminary injunction is issued subject to a default fine and remains valid until the final adjudication of the case or until further order. A further requirement is that the claimant is required to deposit security with the court for any damage that may be caused to the defendant.

However, the court may dispense with the requirement for security if satisfied that the claimant is unable to provide it due to its limited financial resources.

The court may also order the court may order a provisional seizure of the infringing product.

8.2 Is ex parte relief available, where defendant is given no notice at all? If so, under what conditions?

As a general rule, the defendant must be given the opportunity to respond to an application for a preliminary injunction. However, an injunction may be issued on a 'without notice' basis where the nature of the case dictates that speed is of the essence and that a delay would result in risk of damage. It

should be noted that *ex parte* relief is rarely used in copyright proceedings in Sweden.

8.3 Is it possible to file a protective writ, ie a letter setting out possible defences by a potential defendant, at the court at which an ex parte application may be filed against that defendant? If so, is the protective writ communicated to the plaintiff and what effect does it have on the preliminary injunction proceedings? For how long does the court take the protective writ into consideration? Can the protective writ be renewed?

It is not possible to file protective writs in Swedish copyright proceedings. It is, however, possible to regularly check the court dockets to find out whether *ex parte* proceedings have been initiated, although this strategy is quite unusual.

8.4 Is the plaintiff entitled to ask for an order that the defendant's premises are searched and a description of the infringing goods (and the accounting data relating thereto) is made in order to establish proof of infringement? If not, what other mechanisms, if any, are available for seizing and preserving evidence for trial?

The court may order an infringement investigation and/or order that the right holder is entitled to obtain, from a third party, information regarding the origin and distribution networks of infringing goods and services. Accordingly, these measures are intended to provide right holders with evidence of copyright infringement. For further information in respect of these measures, please see section 6.6 above.

8.5 Can the defendant put the validity of a copyright at issue in preliminary injunction proceedings?

A defendant is entitled challenge the validity of a copyright in the course of preliminary injunction proceedings. The defendant will usually argue that no infringement exists because the claimant's work does not fulfil the legal prerequisites for copyright protection.

8.6 What is the format of preliminary injunction proceedings?

By definition, speed is of the essence in relation to preliminary injunction proceedings and thus the application is usually heard on a written submissions basis. Although the parties may request a hearing, such hearings will hardly ever be scheduled in preliminary injunction proceedings.

8.7 If a preliminary injunction is granted and the main infringement action is finally lost, can the defendant claim damages for the unjustified preliminary injunction? If so, how are the damages calculated? Must the plaintiff provide some form of bond/guarantee to compensate the defendant in the event that the preliminary injunction is later held to have been wrongly imposed?

The defendant may claim damages caused by a preliminary injunction if the main infringement action proves to be unsuccessful. The claimant's obligation

to deposit security with the court is described under section 8.1 above. In principle, the claimant is strictly liable for any loss suffered by the defendant as a result of the preliminary injunction.

8.8 To what extent are documents, affidavits, witnesses, survey evidence, and/or (court-appointed or private) experts used in preliminary injunction proceedings?

All types of evidence may be invoked in preliminary injunction proceedings. Moreover, in preliminary proceedings, the courts are generally more inclined to accept written witness statements than in ordinary proceedings.

8.9 What level of proof is required for establishing infringement or invalidity in preliminary injunction proceedings?

The claimant must show probable cause that an infringement is being committed or is being prepared or attempted and that it can reasonably be expected that the defendant will diminish the value of the copyright, by continuing its course of conduct. In addition, if the claimant submits an *ex parte* application for an injunction, it must satisfy the court that there is a risk of damage.

As a general rule, the court will carefully examine both the validity (existence) of the claimed copyright and the allegedly infringing act. Seeing that the court's investigation is quite comprehensive, the preliminary proceedings can be compared with a small trial.

8.10 How long do preliminary injunction proceedings typically last?

The proceedings will usually last from between a few days up to two weeks or even longer. *Ex parte* relief is normally granted within a few days.

8.11 Where a preliminary injunction is granted, is it necessary to start main proceedings to confirm the preliminary injunction? In the affirmative, what is the deadline?

Preliminary injunctions under the Copyright Act will only be granted if main proceedings have already been commenced. The preliminary injunction is valid until trial or further order and when the case is concluded the court will then determine the continuation or cessation of the injunction.

9. APPEAL PROCEDURE

9.1 What avenues of appeal are available for a defeated party in main proceedings or preliminary injunction proceedings? Under what conditions?

The provisions governing appeals in the Code of Judicial Procedure apply to appeals against judgments in main proceedings in both civil and criminal cases. An appeal in respect of a district court judgment must be made in writing and filed with the district court in question within a period of three weeks after the judgment was delivered. Unless the appeal is dismissed on procedural grounds, ie for failure to comply with the aforementioned time limit, the district court will thereafter send the appeal documents to the

Court of Appeal seized with jurisdiction.

The Code of Judicial Procedure provides that permission to appeal is required in order for a Court of Appeal to hear an appealed district court judgment in a civil case. Permission to appeal will be granted under certain conditions including, *inter alia*, when the Court of Appeal is uncertain whether the judgment of the district court is correct, or when there are otherwise extraordinary reasons to hear the appeal.

If a party wishes to appeal a Court of Appeal judgment this must also be made in writing and the appeal documents must be submitted to the Court of Appeal within four weeks from the date of the judgment. Unless the appeal is dismissed on procedural grounds, ie for failure to comply with the aforementioned time limit, the Court of Appeal will thereafter send the appeal documents to the Supreme Court. Permission to appeal is always required in order for the Supreme Court to hear an appeal and permission will only be granted where it is of importance as a matter of precedent and guidance in relation to the relevant legislation that the Supreme Court hears the appeal, or if there are extraordinary reasons for such an adjudication, ie, that there are grounds for relief due to judicial error.

As for appeals against decisions relating to preliminary injunctions, the Copyright Act refers to the salient provisions of the Code of Judicial Procedure which provides that issues relating to preliminary injunctions constitute immediately enforceable decisions which can be appealed to a Court of Appeal. Since decisions relating to preliminary injunctions are final decisions it is thus possible to appeal them separately from the judgment in the main proceedings. An appeal must be made in writing and filed with the district court within three weeks from the date of the decision.

9.2 If an appeal is filed, is relief usually stayed pending the outcome of the appeal?

Judgments subject to a payment obligation for a debtor may be enforced irrespective of whether the judgment has gained legal force unless the debtor provides some kind of security. As regards prohibitory injunctions, the general rule is that such only become enforceable once they have gained legal force. However, a preliminary injunction is enforceable during the appeal proceedings, unless the order is suspended by the Court of Appeal upon application by the respondent/appellant.

9.3 How long do appeal proceedings typically last?

The appeal proceedings in the Court of Appeal typically extend over a period of one to two years. If permission to appeal is granted by the Supreme Court, at least one additional year may be expected before the case is finally decided.

If a preliminary injunction is appealed, the time period will vary depending on whether the Court of Appeal decides to direct the respondent to provide a written submission, which is a legal prerequisite if the court intends to set aside the original decision. The respondent's submission is usually filed within a period of seven days.

If the court finds that the original decision should be upheld, it may rule

on the matter without involving the respondent. In such case, the court will normally issue its decision within a week.

10. LITIGATION COSTS

10.1 What level of cost should one expect to incur to take a case through to a first instance decision, preliminary injunction proceedings and/or appeal proceedings?

The costs for legal representation will depend on how long the case will continue, but also on the complexity of the matter and the parties' respective positions, arguments and evidence. From a case management and costs perspective, it would be reasonable to allocate between EUR 50,000-200,000 to take the case through to a first instance decision and at least an additional EUR 80,000 to take the case through to a decision in any appeal proceedings. Costs in relation to counterfeiting cases are normally much lower.

10.2 Can attorneys' fees and costs be recovered by the winning party?

The general rule in the Code of Judicial Procedure is that costs follow the event, ie that the loser pays the winner's litigation costs.

11. FORTHCOMING LEGISLATION

11.1 What are the important developing and emerging trends in your country's copyright law?

The legislator is still facing a number of unresolved legal issues relating to mass digitisation, eg cross-border distribution of copyrighted works through the internet. The copyright debate focuses primarily on this uncertainty and the need for international harmonisation to provide a high level of protection for right holders, encourage investments in innovative services and products and stimulate multi-territorial licensing of online rights.

11.2 To the extent it relates to copyright enforcement, please outline any major copyright legislation in the pipeline.

The government's special commissioner has recently proposed a number of revisions to the Copyright Act. The proposal is primarily intended to redraft the Act to provide greater clarity, but also to modernise the provisions on copyright contracts, especially the provisions regarding extended collective licences. In 2014, the government also formed a new commission to evaluate what is needed to implement Directive (2014/26/EU) on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. The commission's report is due to be presented in March 2015. When implemented, the new provisions will reflect, in particular, the ongoing digitisation (eg the challenges of internet uses) and cross-border licences.

12. USEFUL REFERENCES

12.1 Please identify any useful works of reference relating to copyright law and copyright litigation in your country, including useful websites.

For a general description of Swedish copyright law:

Olsson, *Upphovsrättslagstiftningen – En kommentar*, Olsson, *Copyright: Svensk och internationell upphovsrätt*, Bernitz et al., *Immaterialrätt och otillbörlig konkurrens*, Levin, *Lärobok i immaterialrätt* and Rosén, *Upphovsrättens avtal*.

For information on the proceedings in civil cases:

Lindell, *Civilprocessen*, Fitzer, *Rättegångsbalken – en kommentar* and Ekelöf, *Rättegång I – V*.

Useful websites:

www.government.se (search for 'copyright')

www.wipo.int (search for 'Sweden' under 'Country Profiles')

www.aippi.se (reports are available under 'AIPPI-material')

Contact details

GENERAL EDITORS

Thierry Calame
Lenz & Staehelin
Bleicherweg 58
8027 Zurich
Switzerland
T: +41 58 450 80 00
F: +41 58 450 80 01
E: thierry.calame@lenzstaehelin.com
W: www.lenzstaehelin.com

Massimo Sterpi
Studio Legale Jacobacci & Associati
Via delle Quattro Fontane 15,
00184 Rome
Italy
T: +39 06 42013332
F: +39 06 42870022
E: msterpi@jacobacci-law.com
W: www.jacobacci-law.com

BRAZIL

José Mauro Decoussau Machado &
Matheus Chucri dos Santos
Pinheiro Neto Advogados
Rua Hungria, 1100
01455-906
São Paulo
Brazil
T: +55 11 3247 8730
F: +55 11 3247 8600
E: jmachado@pn.com.br
W: www.pinheironeto.com.br

CHINA

Lian Yunze & Liu Yuping
Hylands Law Firm
5A1, Hanwei Plaza
No. 7 Guanghua Road
Chaoyang District
Beijing 100004
China

T: +86-10 5232-8313
F: +86-10 6561-2464/ 6561-2322
E: lianyz@hylandslaw.com
E: liuyuping@hylandslaw.com
W: www.hylandslaw.com

DENMARK

Janne Glæsel & Johan Leonhard
Svendsen
Gorrissen Federspiel
H. C. Andersens Boulevard 12
1553 Copenhagen V
Denmark
T: +45 33 41 41 41 /+45 33 41 42 81
F: +45 33 41 41 33
E: jgl@gorrissenfederspiel.com
E: jls@gorrissenfederspiel.com
W: www.gorrissenfederspiel.com

ECUADOR

Santiago Mosquera Alcocer & Mario
Ruiz Fernandez
Falconi Puig Abogados
Av. Amazonas N21-147 y Roca
Ed. Río Amazonas, Of. 900
170517 Quito, Ecuador
T: +593 2 256-1808
F: +593 2 256-7293
E: smosquera@falconipuig.com
E: mruiuz@falconipuig.com
W: www.falconipuig.com

FINLAND

Mikko Manner & Tiina Komppa
Roschier, Attorneys Ltd.
Keskuskatu 7 A
FI-00100 Helsinki
T: +358 20 506 6000
F: +358 20 506 6100
E: mikko.manner@roschier.com
E: tiina.komppa@roschier.com
W: www.roschier.com

FRANCE

Jean-Mathieu Bertho,
Olympe Vanner & Alexia de Maulde
JACOBACCI AVOCATS (A.A.R.P.I)
23-25, rue Jean-Jacques Rousseau
75001 Paris
France
T: +33 (0) 1 79 97 02 00
F: +33 (0) 1 42 85 08 73
E: jmbertho@jacobacci-law.com
W: www.jacobacci-law.com

GERMANY

Albrecht Conrad & Fabian Seip
Hengeler Mueller
Partnerschaft von Rechtsanwälten
mbB
Behrenstr. 42
D-10117 Berlin
T: +49 30 20374-187
F: +49 30 20374-333
E: albrecht.conrad@hengeler.com
W: www.hengeler.com

GREECE

Alkisti-Irene Malamis
MALAMIS & ASSOCIATES
8, Palea Tatoiou Street
GR-145 64 Kifissia - Athens
Greece
T: +30 210 36 29 855
F: +30 210 36 47 994
E: malamis@malamis.gr
W: www.malamis.gr

HONG KONG

Charmaine Koo & Winnie Yue
Deacons
5th Floor, Alexandra House
18 Chater Road
Central, Hong Kong
T: +852 2825 9211
F: +852 8108 0313
E: charmaine.koo@deacons.com.hk
E: winnie.yue@deacons.com.hk
W: www.deacons.com.hk

INDIA

Pravin Anand, Dhruv Anand &
Tanvi Misra
Anand And Anand
First Channel Building Plot No. 17 A
Sector 16 A
Film City
Noida 201301 (UP)
India
T: +91.120.4059300
F: +91.120.4243056 058
E: pravin@anandandanand.com
E: dhruv@anandandanand.com
E: tanvi@anandandanand.com
W: www.anandandanand.com

ITALY

Massimo Sterpi
Studio Legale Jacobacci & Associati
Via delle Quattro Fontane 15,00184
Roma
Italy
T: +39 06 42013332
F: +39 06 42870022
E: msterpi@jacobacci-law.com
W: www.jacobacci-law.com

JAPAN

Masao Torikai, Koichi Nakatani &
Koji Ohe
Momo-o Matsuo & Namba
Kojimachi Diamond Bld.
4-1 Kojimachi, Chiyoda-ku,
Tokyo 102-0083, Japan
T: +813-3288-2080
F: +813-3288-2081
E: torikai@mmn-law.gr.jp
E: nakatani@mmn-law.gr.jp
E: ohe@mmn-law.gr.jp
W: www.mmn-law.gr.jp

MALAYSIA

Karen Abraham
Shearn Delamore & Co.
7th Floor, Wisma Hamzah-Kwong
Hing
No 1 Leboh Ampang

50100 Kuala Lumpur
Malaysia
T: +603 20272893 (Direct)
+603 20272727 (General)
F: +603 20722758/20341889
E: karen@shearndelamore.com
W: www.shearndelamore.com

MALTA

Dr. Luigi A. Sansone
Salomone, Sansone & Co.
84, Melita Street
Valletta VLT 1120
Malta
T: +356 21237685
+356 21227781
+356 21234588
F: +356 21237684
E: info@salomonesansone.com
W: www.salomonesansone.com

MEXICO

Luis C Schmidt
OLIVARES
Pedro Luis Ogazón 17
San Ángel 01000
México, DF México
T: +5255 53 22 30 00
F: +5255 53 22 30 01
E: lsr@olivares.com.mx
W: www.olivares.com.mx

THE NETHERLANDS

Michiel Rijsdijk
Arnold & Siedsma
A.J. Ernststraat 595F
1082 LD Amsterdam
P.O. Box 71720
1008 DE Amsterdam
The Netherlands
T: +31 20 333 14 33
F: +31 20 333 14 34
E: mrijsdijk@arnold-siedsma.com
W: www.arnold-siedsma.com

SINGAPORE

Regina Quek
One Legal LLC
6 Shenton Way
OUE Downtown 2 #21-08
Singapore 068809
T: +65 6720 6728
F: +65 6720 7998
E: regina.quek@onelegal.sg
E: reginaq@singnet.com.sg
W: www.onelegal.sg

SOUTH AFRICA

Herman Blignaut
Spoor & Fisher
Building No. 13
Highgrove Office Park
Oak Avenue
Centurion
Pretoria, 0157
Republic of South Africa
T: +27 12 676 1111
F: +27 12 676 1100
E: h.blignaut@spoor.com
W: www.spoor.com

SOUTH KOREA

Jay (Young-June) Yang, Chang Hwan
Shin
& Nayoung Kim
Kim & Chang
Jeongdong Building, 17F
21-15 Jeongdong-gil, Jung-gu
Seoul 100-784, Korea
T: +82-2-2122-3900
+82 2-3703-1060
+82 2-3703-1310
+82 2-6488-4068
F: +82-2-2122-3800
E: jyayang@kimchang.com
E: chshin@kimchang.com
E: nkim@ip.kimchang.com
W: www.ip.kimchang.com

SPAIN

Iban Díez López & Jaime Bello Ayala
Gómez-Acebo & Pombo
Castellana 216
28046 Madrid
Spain
T: +34 91 582 91 00
F: +34 91 582 91 14
E: idiez@gomezacebo-pombo.com
E: jbello@gomezacebo-pombo.com
W: www.gomezacebo-pombo.com

SWEDEN

Håkan Borgenhall & Tobias Kempas
Advokatfirman Vinge KB
Smålandsgatan 20
Box 1703
SE-111 87
Stockholm
Sweden
T: +46 (0)10 614 3000
+46 (0)10 614 3030
F: +46 (0)10 614 3190
E: hakan.borgenhall@vinge.se
E: tobias.kempas@vinge.se
W: www.vinge.se

SWITZERLAND

Thierry Calame & Peter Ling
Lenz & Staehelin
Bleicherweg 58
8027 Zurich
Switzerland
T: +41 58 450 80 00
F: +41 58 450 80 01
E: thierry.calame@lenzstaehelin.com
E: peter.ling@lenzstaehelin.com
W: www.lenzstaehelin.com

THAILAND

Nandana Indananda, Suebsiri
Taweepon & Hassana Chira-Aphakul
Tilleke & Gibbins
Supalai Grand Tower, 26th Floor
1011 Rama 3 Road, Chongnonsi,
Yannawa
Bangkok, Thailand 10120

T: +66 2653 5879
+66 2653 5877
+66 2653 5881
F: +66 2653 5678
E: nandana.i@tilleke.com
E: suebsiri.t@tilleke.com
E: hassana.c@tilleke.com
W: www.tilleke.com

UNITED KINGDOM

Nicola Dagg
Allen & Overy LLP
One Bishops Square
London E1 6AD
United Kingdom
T: +44 20 3088 3871
E: nicola.dagg@allenoverly.com
W: www.allenoverly.com

UNITED STATES

Jonathan D Reichman & Maria Luisa
Palmese
Kenyon & Kenyon LLP
One Broadway
New York
NY 10004-1007
T: +1 212 425 7200
F: +1 212 425 5288
E: jreichman@kenyon.com
E: mpalmese@kenyon.com
W: www.kenyon.com

VIETNAM

Linh Thi Mai Nguyen & Loc Xuan Le
Tilleke & Gibbins
HAREC Building
4th Floor 4A Lang Ha Street
Ba Dinh District
Hanoi
Vietnam
T: +84 4 3772 5536
+84 4 3772 5559
F: +84 4 3772 5568
+84 4 3772 5568
E: loc.l@tilleke.com
E: mailinh.n@tilleke.com
W: www.tilleke.com