

15 April 2011

Screening report

Iceland

Chapter 7 – Intellectual property law

Date of screening meeting:

Bilateral meeting only: 20 December 2010

I. CHAPTER CONTENT

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

In the area of **copyrights and neighbouring rights**, the objectives of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society are to adapt legislation on copyright and related rights to reflect technological developments and to transpose into EU law the main international obligations arising from the treaties on copyright and related rights adopted within the framework of the World Intellectual Property Organisation (WIPO). Directive 2006/116/EC establishes a complete harmonisation of the period of protection for different types of works and other subject matter in the Member States – e.g. 70 years after the death of the author for works and 50 years after the trigger event for neighbouring rights. It also deals with the protection of previously unpublished works, of critical and scientific publications and of photographic works. As regards rental and lending rights, Directive 2006/115/EC deals with the rights of authors and neighbouring right holders. Furthermore, it provides for harmonisation of certain neighbouring rights including the right of fixation, reproduction, broadcasting and communication to the public and distribution. Directive 93/83/EEC has, as its objective, the facilitation of cross border transmission of audiovisual programmes, particularly broadcasting via satellite and retransmission by cable. The objective of Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art is to strike a balance between the economic situation of authors of graphics and plastic art works and that of other creators who benefit from successive exploitations of their works. Directives 87/54/EEC, 96/9/EC, and 2009/24/EC harmonise the level of protection in semiconductor topographies, databases and computer programs respectively.

In the field of **industrial property rights**, the *acquis* sets out harmonised rules for the legal protection of trademarks (Directive 2008/95/EC) and designs (Directive 98/71/EC), as well as a partially harmonised regime for patents. These include conditions for compulsory patent licensing. An important element of the EU-wide patent system is accession to the European Patent Convention and the European Patent Organisation. Other specific provisions apply for biotechnological inventions (Directive 98/44/EC), pharmaceuticals and plant protection products. The *acquis* also establishes a level playing field for the protection of industrial designs, and an EU trademark and design system. An important element of the EU-wide design system is participation in the Hague Agreement concerning the international registration of industrial designs. Moreover, provisions exist concerning supplementary protection certificates (SPCs) for pharmaceuticals and plant protection products, which serve to provide inventors with additional protection, when the subject matter of the patent is subject to an administrative marketing authorisation and therefore they could not benefit from the protection of a patent, for the entire period for which the patent was granted.

Directive 2004/48/EC on the **enforcement** of intellectual and industrial property rights such as copyright and related rights, trademarks, designs or patents requires all Member States to apply effective, dissuasive and proportionate remedies and penalties against those engaged in counterfeiting of goods and piracy and so create a level playing field for right holders in the EU. Customs administrations play an important role in preventing the circulation of products infringing copyright or industrial property. An important element of the EU enforcement of intellectual property rights (IPR) is its participation in the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement within the WTO framework, as well as in the proposed multilateral Anti-Counterfeiting Trade Agreement (ACTA).

Compliance with the *acquis* on intellectual property law requires an adequate implementation capacity and effective enforcement, including at courts' level. In particular, there is need for appropriate administrative structures, including a national authority to receive applications for protection, for all areas related to intellectual property rights. Moreover, the police and customs¹ authorities should be well trained in this field.

Intellectual property is covered by the EEA Agreement, which contains provisions on protection of intellectual property, exhaustion of rights, adherence to or participation in European Community measures and international conventions and relations with third countries. Annex XVII to the EEA Agreement lists the secondary legislation that is part of the EEA Agreement. Iceland does not benefit from any exemption/derogation in this area.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Iceland and the discussion at the screening meeting held on 20 December 2010.

Iceland indicated that it can accept the *acquis* regarding intellectual property rights. Iceland indicated that it already implements the *acquis* and does not expect any difficulties in continuing to implement the *acquis* up to the date of accession.

II.a. Copyright and neighbouring rights

On the terms of protection, Iceland transposed Directive 2006/116/EC by amending its Copyright Act 73/1972 as amended by the acts 145/1996 and 9/2006.

On the protection of semiconductor topographies, databases and computer programs, Iceland transposed Directive 87/54/EEC through Act 78/1993 on the protection of topographies of semiconductor chips, as amended by Act 19/1995. Directive 96/9/EC was transposed by Act 60/2000 amending its Copyright Act 73/1972. Directive 2009/24/EC was transposed by Acts 57/1992, 145/1996, 60/2000 and 9/2006, also amending Copyright Act 73/1972.

On resale rights, Iceland transposed Directive 2001/84/EC through Act 97/2006 amending Copyright Act 73/1972.

On rental and lending rights, Iceland transposed Directive 2006/115/EC through Acts 57/1992, 60/2000 and 9/2006 amending its Copyright Act 73/1972.

On satellite and cable transmission, Iceland transposed the Council Directive 93/83/EEC through Act 145/1996 amending its Copyright Act 73/1972.

On copyright in the information society, Iceland transposed Directive 2001/29/EC through Act 9/2006 amending its Copyright Act 73/1972. In October 2009 Iceland launched a copyright reform initiative comprising a three-year plan on the basis of which a new copyright bill will be drafted in 2012. The aim of the initiative is to make copyright legislation clear and easily comprehensible maintaining the Nordic legal unity², to promote the respect of copyright

¹ A Custom Action Plan was developed and endorsed by a Council Resolution of 16 March 2009 on the EU Customs Action Plan to combat IPR infringements for the years 2009 to 2012 (2009/C 71/01)

² The Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) have a long history of co-operation in the field of copyright legislation under the auspices of the Nordic Council of Ministers. The first co-ordinated Nordic copyright legislation was enacted in all the Nordic countries, bar Iceland, in 1960. By maintaining the Nordic legal unity through an ongoing co-operation for the development of the copyright legislation each country can benefit from the relevant caselaw and jurisprudence from other Nordic countries.

with regard to cultural and economic importance for society, to promote efficient and preventive enforcement procedures, to promote further the balance between right holders and users interests, to provide for legal alternatives for users (e.g. such as encouraging producers, publishers and rights holders to make their digital cultural content available for internet users to prevent illegal access to such material) and to launch information and awareness initiatives for right holders and users and to focus on the importance of international cooperation.

Regarding international cooperation, the working group of Nordic ministries on copyright issues, which is comprised of copyright experts from Denmark, Norway, Finland, Sweden and Iceland, meets 4-5 times per year. It is a forum for the exchange of information at national and international level, including the EU and EEA levels and it coordinates a common Nordic copyright policy. The EFTA working group on intellectual property also meets 4-5 times per year with experts from the Commission's DG Internal Market. Iceland, along with Norway and Liechtenstein, has observer status in the EU contact committees for Directives 2001/29 and 2001/84. Iceland is a member of WIPO and WTO.

Concerning implementation, Icelandic legislation foresees relevant provisions on accreditation of collecting companies. Accreditation does not confer a surveillance or interference into methods of distribution of royalties, financial accounts or number of right holders. Cases concerning copyright issues are dealt with by regular district courts and the Supreme Court on appeal. Infringement actions in the period 2006-2009 numbered 25 at district court level and 20 at the Supreme Court. Legal penalties foresee fines or imprisonment of up to two years. A dispute settlement forum exists for commercial users, but there has been no case in decades.

The Ministry of Education, Science and Culture is responsible for copyright issues. The ministry is divided into three departments and four offices and has 80 employees. The Office of legal affairs ensures the compliance of copyright legislation and administration and has five staff members including three lawyers, one of whom is an IPR expert. The copyright committee advises the Minister on issues of copyright policy and legislation; it has seven experts in the field of copyright. The copyright council operates as an information exchange and counselling forum for 40 stakeholder representatives in the field of copyright. The Council has annual meetings for the introduction or development of copyright legislation, enforcement and emerging issues.

II.b. Industrial property rights

Iceland is party to the main international agreements in the area of industrial property³. Moreover, Iceland is member of the World Intellectual Property Organisation (WIPO); the European Patent Office (EPO) and the Nordic Patent Institute (NPI). Iceland, as a member of the World Trade Organisation, has introduced provisions of the TRIPS into its legislation.

On trademarks, Iceland transposed Directive 2008/95/EC with Act 45/1997 on trademarks. This act was amended in order to make the exhaustion of trademark rights subject to regional instead of global exhaustion. Furthermore, Article 7 on exhaustion of the rights conferred by a trade mark is already implemented. The amendment is in line with the decisions of the EFTA court in the combined cases E-9/07 and E-10/07, L'Oreal Norge AS and L'Oreal SA vs. Per Aarskog AS, Nille AS and Smart Club AS which concluded that article 7 (1) of the Directive stipulates a regional exhaustion of trademarks. Iceland indicated that it has not yet transposed

³ The Paris Convention for the protection of Industrial property; the Protocol to the Madrid Agreement concerning the international registration of marks; the Patent Cooperation Treaty; the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs and the European Patent Convention.

Regulation 40/94 creating a Community Trademark System as it is not yet part of the EEA agreement.

On patents, Iceland has transposed Directive 98/44/EC on biotechnology inventions through its Patent Act 17/1991, as amended by the Act 22/2004 and Regulation 5747/1991 concerning patent applications. Regarding supplementary protection certificates for medicinal products, Regulation 1768/1992 (repealed according to article 22 of Regulation 469/2009) has the force of law in Iceland in accordance with article 65a of the Icelandic Patent Act. References to the repealed regulation shall be constructed as references to Regulation 469/2009 according to article 22 of the regulation. The licensing of patents relating to the manufacture of pharmaceuticals for export to "countries in need" (i.e. countries with public health problems in accordance with EC Regulation 816/2006) has been enacted by Regulation 1011/2006 on compulsory licenses relating to the export of pharmaceutical products to developing countries and to countries struggling with severe public health problems.

On designs, Iceland has transposed Directive 98/71/EC on industrial designs through Act 46/2001 on design protection. Iceland indicated that it has not yet transposed Regulation 6/2002 creating a Community Design system as it is not yet part of the EEA agreement.

The Icelandic Patent Office (a government agency under the auspices of the Minister of Economic Affairs) is responsible for issues relating to patents, trademarks, design and other comparable rights as provided for by law, regulations and international agreements in the area of protection of industrial property rights. The office registers industrial property rights, provides information and consultancy services on industrial property rights, and ensures that information on new technology and knowledge protected by industrial property law is made available to the public. Currently the patent office has 25 employees. The patent division has 7 employees and has an agreement with the Danish patent office regarding patents examination, while the trademark and design division has 8 employees. The average time-span between application and registration is 6 ½ years for patents. For trademarks it is 2 months in case of no refusal while 80% of trademarks registration is carried out within 12 months from application.

II.c. Enforcement

As Directive 2004/48/EC on enforcement of intellectual property rights is not yet incorporated into the EEA Agreement, Iceland has not transposed it. Iceland stated that approximately 80% of it has been incorporated into Icelandic legislation, in particular by Act 93/2010 amending the Copyright Act, or by Act 53/2006 on collection of evidence in relation to suspected violations of intellectual property rights. Furthermore, existing legislation on IPR enforcement covers online infringements.

Iceland stated that it would fully transpose the Enforcement Directive within two years and indicated that Article 132 of the Icelandic Act on Customs is in line with EU customs legislation.

The Icelandic patent office chairs the informal working group on enforcement policy where the Ministry of Education, Science and Culture, the Ministry of Economic Affairs, the Directorate of Customs, the Consumers Agency, the Icelandic Medicines Agency and other interested parties are represented. The aim of the group is to regularly discuss enforcement policy, to raise awareness on IPRs issues amongst consumers in Iceland and to establish a website with information and possible administrative and judicial proceedings against IPRs

infringements. Discussions in this working group are ongoing to put in place a warning system based on agreement between right-holders and telecoms operators.

Icelandic customs is the main authority responsible for enforcement. In 2010, customs dealt with 14 cases compared with 3 cases in 2009 and 1 case in 2008. Icelandic customs authorities can act *ex-officio* in cases of suspected IPR infringement and can postpone the clearance of customs if there is a suspicion of infringement. Internally, the police are actively involved in copyright matters.

A number of Icelandic judges have received training at the EPO academy with regard to patents and enforcement of IP rights, and lawyers at the Icelandic patent office have attended EFTA seminars on EU legislation. Police and customs authorities have not received any specific training on EU legislation and/or enforcement methods. Iceland has been working together with the European Observatory on Counterfeiting and Piracy on soft-law issues. There is also Nordic cooperation on the issue of copyright enforcement.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Iceland has reached a very high level of alignment with the EU *acquis* in the area of intellectual property rights due to its EEA membership. Iceland has also demonstrated that it has the necessary administrative capacity to enforce IPR effectively. The Commission will closely follow the legislative and administrative developments in the field of IP enforcement.

III.a. Copyright and neighbouring rights

Regarding copyright and neighbouring rights, Iceland is largely in line with the *acquis* and has the necessary administrative capacity.

III.b. Industrial property rights

Iceland is largely in line with the *acquis* on industrial property rights and has the necessary administrative capacity to implement it.

III.c. Enforcement

The EU Enforcement Directive 2004/48/EC is not part of the EEA agreement and Iceland still has to align with it. The Commission takes note of the fact that Iceland has started aligning in the field of copyright protection. Iceland's administrative capacity is sufficient. The Commission will closely monitor Iceland's efforts to complete its legislative framework and further strengthen its administrative capacity.