

ENFORCEMENT OF RIGHTS

According Copyright and Neighboring Rights Protection Proclamation 410/2004 and its Amendment Legal and Administrative Remedies Awarded in the following Provisions:-

In regard to provisional measures ¹

- 1) The court shall order prompt and effective provisional measures:
 - a) To prevent an infringement of a right from occurring, in particular to prevent the entry into channels of commerce goods, including imported goods immediately after customs clearance.
 - b) To preserve relevant evidence in regard to the alleged infringement.
- 2) The court shall have the power to adopt provisional measures, in audita altera part where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.
- 3) In a suit for restraining the defendant from committing an infringement, the plaintiff may apply to the court for a temporary injunction to restrain the infringement until the suit is disposed of. The court:
 - a) Shall consider if the threatened interest cannot be redressed by awarding damages, whether the threat is imminent, the prima facie strength of the action and the gravity of the prejudices a decision for or against may cause to either of the parties in deciding an application of injunction.
 - b) May grant injunction on such terms as to the duration of the injunction on such terms as to the duration of the injunction, keeping an account, giving security or otherwise, as it thinks fit.
 - c) May make a deeper investigation of the relative strength of the parties before granting a temporary injunction where the applications of the above criteria put the parties on equal position.
- 4) Where an act that infringes the rights protected under this law is committed, the provisions of the civil procedure and the criminal procedure codes on search and seizure shall be applicable.
- 5) The court to require the applicant to provide evidence in order to satisfy it with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

¹ Copyright and Neighboring Rights Protection, Proclamation No. 410/2004, Federal Negarit Gazeta of Federal Democratic Republic of Ethiopia, 10th Year No.55, Addis Ababa, 19th July 2004. (Hereinafter Copyright and Neighboring Rights Proclamation), Art 33

- 6) Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the, execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.
- 7) where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of a copyright, the court shall have the power to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

Civil Remedies

- 1) The court that have jurisdiction to try civil suits arising under this law, shall have the authority to award adequate compensation for the material and moral damage suffered including payment of the right holder's expenses, grant injunction, give order, including those provided below, as it may deem reasonable.
 - a) To grant injunction that prohibit the committing or the continuation of committing an infringement of any right protected under this law.
 - b) To order confiscation of the infringed work that is made or imported without the authorization of the owner of any right protected under this law, where the making or importation of copies is subject to such authorization.
 - c) To impound the packaging and implements that could be used for the making of documents, accounts or business papers referring to such copies.
- 2) The owner of copyright or neighboring right may instead of or alternatively to compensation under sub Article (1) of this Article claim for the replacement of the unjust enrichment derived from the act of infringement. The infringer shall be deemed unlawfully paid as a royalty had he been licensed by the owner of the right.
- 3) Notwithstanding Sub Article (2) of this Article the right holder can instead claim to be paid the net profit gained by the infringer. In such cases an account will be made to determine the net profit derived by the infringement and it shall be for the infringer to prove that part of the profit is attributable to other market factors.
- 4) The amount of compensation for material damage under Sub Article (1) of this Article shall be fixed taking into account the extent of material damage suffered by the owner of the right and the amount of profit attributable to the act of infringement The amount of compensation for moral damage shall be determined based on the extent of the damage and not less than Birr 1000,000 (Birr one hundred thousand).
- 5) Where the person who commits the act of infringement is not aware of or has no reasonable ground to be aware of, the court may limit the amount of compensation to the profit derived from the act.
- 6) Where copies and packages that infringes a right are discovered requires, the court shall make the copies outside the channels of commerce, order their destruction of other

reasonable disposition, without causing harm to the owner of the right. This provision shall not apply to copies and packages acquired by third parties in good faith.²

Border measures

- 1/ The Ethiopian Customs and Revenue Authority shall, based on a written application of the owner of copyright or neighboring right, retain under its control goods, which in the opinion of the applicant infringe his right or, based on its own initiative, it believes that they may cause infringement of rights.³
- 2) The customs authority shall forthwith inform the applicant or the owner of the good of the measure taken to retain the said goods.⁴
- 3) The measure to retain goods shall be lifted where the application fails to provide with any justifiable evidence within ten days beginning from the date of notification of retention of the goods.⁵
- 4) The applicant shall be held responsible for the damage caused by the retention of good, where the application is proved unfounded.⁶
- 5) The customs authority may confiscate infringed good when ordered by the court.⁷

Criminal Sanctions⁸

- 1) Unless otherwise heavier penalty is provided for under the criminal law, whoever intentionally violates a right protected under this law shall be punished with rigorous imprisonment of a term not less than 5 years and not more than 10 years.
- 2) Unless otherwise heavier penalty is provided for under the criminal law, whoever by gross negligence violates a right protected under this law shall be punished with rigorous imprisonment years.
- 3) The penalty, where appropriate, shall include the seizure, forfeiture and destruction of the infringing good and of any materials and implements used in the commission of the offence.
- 4/ Whoever intentionally violates a right protected under this proclamation, shall in addition to the imprisonment stipulated under sub-article (1) of this Article, be punished with a fine not less than Birr 25,000 and not exceeding Birr 50,000.⁹

² Ibid Art. 34

³ Copyright and Neighboring Rights Protection Amendment No. 872/2014, Federal Negarit Gazeta of Federal Democratic Republic of Ethiopia, 21st Year No.20, Addis Ababa, 15th January, 2015. Art. 39(10)(1)

⁴ Copyright and Neighboring Rights Protection, Proclamation No. 410/2004, Federal Negarit Gazeta of Federal Democratic Republic of Ethiopia, 10th Year No.55, Addis Ababa, 19th July 2004. (Hereinafter Copyright and Neighboring Rights Proclamation), Art 35(2)

⁵ Ibid Art. 35(3)

⁶ Ibid Art. 35(4)

⁷ Ibid Art. 35(5)

⁸ Ibid Art. 36

5/ whosoever by gross negligence violates a right protected under this proclamation, shall in addition to the imprisonment stipulated under sub-article (2) of this Article, be punished with a fine not less than Birr 5,000 and not exceeding Birr 25,000.¹⁰

Punishment Applicable to Legal Persons¹¹

According to Article 34 of the criminal Code, when a legal person participate in infringement of copyright and neighboring rights criminal offence protected under this proclamation, be punished in accordance with Article 90 of the Criminal Code.

⁹ Copyright and Neighboring Rights Protection Amendment No. 872/2014, Federal Negarit Gazeta of Federal Democratic Republic of Ethiopia, 21st Year No.20, Addis Ababa, 15th January, 2015. Art. 39(11)(4)

¹⁰ Ibid Art. 39(11)(5)

¹¹ Ibid Art. 45