

Chapter 73

Laws of Cyprus with Commentary

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I. INTRODUCTION

§ 73:1 In general

The courts and authorities in Cyprus adhere strictly to the relevant provisions of the law so as to ensure the protection of intellectual property rights against piracy and infringement. The constant flow of judicial decisions and the widespread interest in the subject following the ubiquity of the new technologies have made “intellectual property” an increasingly amorphous and fast-developing area of law, making it difficult to give clear-cut and enduring definitions. In practice, intellectual property is usually divided into two main categories, namely:

1. Industrial property, i.e., patents, industrial designs, geographical indications and designations of origin, plant and seed varieties, trade marks, service marks, and trade names; and

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2. Copyright and related rights.

§ 73:2 Domestic law

Intellectual property in Cyprus is regulated both by statute and by the general principles of common law, such as the torts of passing off and malicious falsehood as well as the breach of confidence action which has its roots in equity. Whereas statute in the main creates proprietary rights prohibiting third parties from using and exploiting the subject protected by these rights, the relevant common law principles are primarily concerned with providing rights of action.

Moreover, these common law rights are complementary to the statutory formal rights, resulting at times in some overlaps, as, for example, between trade mark law and the tort of passing off. A detailed analysis of the law of passing off, malicious falsehood, and breach of confidence as it applies in Cyprus is outside the scope of this chapter. It should, however, be emphasised that these rights of action under common law and equity principles play a significant role in intellectual property litigation in Cyprus. The laws dealing with the statutory protection of intellectual property in Cyprus were thoroughly modernized in preparation for EU entry in 2004. They are:

1. The Patents Law, Law Number 16(I)/1998, as amended by Law Number 21(I)/1999, Law Number 153(I)/2000, Law Number 163(I)/2002, and Law Number 122(I)/2006;
2. The Trade Marks Law, Chapter 268 of the Laws of Cyprus, as amended by Law Number 63/1962, Law Number 69/1971, Law Number 206/1990, Law Number 176(I)/2000, and Law Number 121(I)/2006;
3. The Partnerships and Trade Names Law, Chapter 116 of the Laws of Cyprus, as amended by Law Number 77/1977, Law Number 54(I)/2011 and Law Number 146(I)/2011;
4. The Protection of Industrial Designs and Samples Law, Law Number 4(1)/2002, as amended by Law Number 70(I)/2003 and Law Number 119(I)/2006;
5. The Copyright Law, Law Number 59/1976, as amended by Law Number 63/1977, Law Number 18(I)/1993, Law Number 54(I) of 1999, Law Number 12(I)/2001, Law Number 128(I)/2002, Law Number 128(I)/2004, Law Number 123(I) of 2006, and Law Number 181(I) of 2007;
6. The Legal Protection of Semiconductor Topographies Law, Law Number 5(I)/2002, as amended by Law Number 122(I)/2006, Law Number 59(I)/2007 and Law Number 31(I)/2010;
7. The Appellations of Origin and Geographical Indications of Agricultural Products and Foodstuffs Law, Law Number 139(I)/2006;
8. The Legal Protection of New Varieties of Plants Law, Law Number 21(I)/2004; and
9. The Law for the Protection of the Commercial Exploitation of

Cinematographic Films, Law Number 159/1990, as amended by Law Number 41(I)/1999.

§ 73:3 International agreements

Cyprus is a party to a number of international agreements, which can be divided into two broad categories, namely:

1. Agreements laying down minimum harmonized standards of protection; or
2. Agreements providing for reciprocal arrangements regarding application or examination procedures for the registration of intellectual property rights.

Following is a chronological list by date of ratification of the most important international agreements to which Cyprus is a party:

1. European Agreement concerning Program Exchanges by means of Television Films, Ratifying Law Number 83/1969;
2. European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories, Ratifying Law Number 36/1971;
3. The Berne Convention for the Protection of Literary and Artistic Works (Act of Paris 1971), Ratifying Law Number 86/1979;
4. The Paris Convention for the Protection of Industrial Property (Lisbon Act), Ratifying Laws Number 63/1965 and (Stockholm Act), Law Number 66/1983;
5. The Convention establishing the World Intellectual Property Organization (WIPO), Ratifying Law Number 36/1984;
6. The Nairobi Treaty on the Protection of the Olympic Symbol, Ratifying Law Number 9/1985;
7. The Universal Copyright Convention, Ratifying Law Number 51/1990;
8. The Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, Ratifying Law 21(III)/1992;
9. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Ratifying Law Number 16(III)/1995;
10. The European Convention relating to Questions on Copyright Law and Neighboring Rights in the Framework of Transfrontier Broadcasting by Satellite, Ratifying Law Number 29(III)/1995;
11. The Geneva Trade Marks Law Treaty 1994, Ratifying Law Number 12(III)/1996;
12. The European Patent Convention 1973, Ratifying Law Number 26(III)/1997;
13. The Patent Co-operation Treaty 1970, Ratifying Law Number 27(III)/1997;
14. The Rome Convention for the Protection of Performers, Produc-

- ers of Phonograms and Broadcasting Organizations, Ratifying Law Number 14(III)/1999;
15. The WIPO Treaty on the Copyright and Agreed Statements, Ratifying Law Number 23(III)/2002;
 16. The Madrid Agreement concerning the International Registration of Marks, Ratifying Law Number 3(III)/2003;
 17. The Protocol relating to the Madrid Agreement concerning the International Registration of Marks, Ratifying Law Number 4(III)/2003; and
 18. The WIPO Performances and Phonograms Treaty, Ratifying Law Number 37(III)/2004.

The above brief outline of the wealth of intellectual property law applicable in Cyprus today can only serve as a starting point for further research and investigation into this challenging and constantly developing area of law. This chapter will focus on the three main proprietary intellectual property rights, namely, patents, trade marks, and copyright, and the protection afforded to their respective owners under Cyprus statute law.¹

§ 73:4 Patents

The Patents Law 16(I)/1998 came into force on 1 April 1998 and introduced significant changes to Cyprus patent law. The most striking development was the establishment of an independent Registry of Patents under the supervision of the department of the Registrar of Companies and Official Receiver. This effectively provided for a direct patent application process in Cyprus and rendered the registration of a patent independent of the prior grant of the same in the United Kingdom, as was necessary prior to the enactment of the new Law.

The Law also enabled patents granted under the European Patent Convention or under the Patent Co-Operation Treaty to be recognized in Cyprus upon registration. A further development was the requirement that patents be published in the *Official Gazette* of Cyprus, thereby giving the right to any person to object to the grant of the patent concerned. Under the Patents Law, a register of patents is maintained to record the names and addresses of the patentees as well as any other information which is considered necessary by the Registrar for the identification of the owner of the patent.

Under section 26 of the Patents Law, rights and privileges of a pa-

[Section 73:3]

¹The author gratefully acknowledges the assistance received from the Ministry of Justice and Public Order and the Service for the Revision and Consolidation of the Cyprus Legislation in preparing the following extract material. Translations of relevant laws prepared by these bodies have been utilized to compile, in particular, the legislation on copyright. Any errors or omissions are, of course, the authors' responsibility. The law is stated as at 1 June 2009.

tent are conferred for a term of 20 years from the date of filing the application. The maintenance of a patent depends on the payment of an annual renewal fee, the amount of which is designated in the Patent Regulations (Fees & Rights) of 1999, as amended.

II. STATUTORY TEXT

§ 73:5 Patents Law

PART I — INTERPRETATION

[Interpretation]

2. In this Law, unless the context otherwise requires:

- “the Court” means the Supreme Court of Cyprus;
- “prescribed” means prescribed by this Law or the Regulations made thereunder;
- “the Register” means the register of patents kept under this Law and includes the register kept under the Patents Law repealed by this Law;
- “the Registrar” means the Registrar of Companies and Official Receiver and includes any other person appointed to exercise all or any of the powers and perform all or any of the duties of the Registrar;
- “Biological Material” means any material that contains genetic information and that is capable of reproducing itself or being reproduced in a biological system;
- “Mainly Biological Process” means any process which consists entirely of natural phenomena such as crossing or selection;
- “Microbiological Process” means any process involving or performed upon or resulting in microbiological material;
- “TRIPS Agreement” means the Trips Agreement that was concluded at the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations of 1995 and which was ratified by the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Ratifying) Law of 1995;
- “Plant Variety” or “Varieties of Botanical Genera and Species” means a plant grouping within a single botanical taxon of the lowest known rank, which consists of entire plants or parts of plants as far as such parts are capable of producing entire plants, and which grouping, irrespective of whether the conditions for the grant of a plant variety are fully met, can be:
 - (a) defined by the expression of the characteristics that results from a given genotype or combination of genotypes;The expression of the characteristics referred to above may be either invariable or variable between variety constituents of the same kind provided that also the level of variation results from the genotype or combination of genotypes.

(b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and

(c) considered as a unit with regard to its suitability for being propagated unchanged.

PART II — ADMINISTRATION

[Register]

3. — (1) There shall continue to be kept at the Office of the Registrar a register known as the Register of Patents in which shall be entered patents numbered in the order of their registration.

(2) The Register shall include such matters constituting or relating to the patent as are prescribed and entries of all corrections, amendments, assignments, transmissions or other matters which the Registrar is empowered or required by this Law to record.

(3) The Register shall be *prima facie* evidence of all matters entered as directed or authorized under this Law.

PART III — PATENTABILITY

[Patentable Inventions]

5. — (1) An invention shall not be patentable unless it is new, involves an inventive step and is capable of industrial application.

(2) The following in particular, shall not be regarded as inventions within the meaning of sub-section (1) of this section:

(a) discoveries, scientific theories, or mathematical methods;

(b) aesthetic creations;

(c) schemes, rules, or methods for performing mental acts, playing games or carrying on economic activities or programs for computers;

(d) presentations of information.

(3) A patent shall not be granted in respect of an invention, the exploitation of which would be contrary to public order or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by the Law or the Regulations.

COMMENTARY

In sub-section (3) of this section, the wording in the original Greek text appears somewhat contradictory. It is submitted that the reference should be to any law or regulations, excluding the Patents Law and the Regulations made under section 78 of the Patents Law.

5A. — (1) Pursuant to this Law and without prejudice to the obligations that the Republic of Cyprus has, which stem from international agreements and in particular the TRIPS Agreement, patents that have as their objective a product which is comprised of or consists of biological material or a method for the production, processing or use of biological material (a biotechnical invention) can be protected. Biological material which is isolated

from its natural environment or produced by means of a technical process may be the subject of an invention even if it previously occurred in nature.

(2) The following shall not be patentable:

(a) Plant and animal varieties:

Inventions which concern plants or animals shall be patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety.

(b) Essentially biological processes for the production of plants or animals:

The restriction above shall be without prejudice to the patentability of inventions which concern a microbiological or other technical process or a product obtained by means of such a process.

(3) The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute patentable inventions:

An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element. The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.

(4) On the basis of sub-section (3) of section 5 above, the following cannot be protected as patents:

(a) processes for cloning human beings;

(b) processes for modifying the germ line genetic identity of human beings;

(c) uses of human embryos for industrial or commercial purposes;

(d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

COMMENTARY

Law Number 163(I)/2002 was enacted to give effect to European Directive 98/44/EC on the Legal Protection of Biotechnical Inventions and is incorporated throughout the text of the amended legislation at the relevant sectors.

[Novel Invention]

6. — (1) An invention shall be considered new if it does not form part of the state of the art.

(2) The state of the art means all matter which, before the date of filing or before the priority date, where priority of the application for the grant of the invention is claimed, has been made

available to the public in a written or other graphic form, by an oral description, by use or in any other manner anywhere in the world.

(3) The state of the art shall also comprise all matter contained in an application for another patent which has been registered or which is valid in Cyprus if such application or the patent granted as a result of the application has been published by or on behalf of the Office of the Registrar, provided that the date of filing or, where priority is claimed, the priority date of such application is earlier than the date referred to in sub-section (2) of this section.

[Inventive Step]

7. An invention shall be considered to involve an inventive step if, having regard to the state of the art as defined in sub-section (2) of section 6, it is not obvious to the judgement of an expert skilled in the art.

[Industrial Application of Invention]

8. — (1) An invention shall be considered as capable of industrial application if it can be made or used in any sector of industry.

(2) For the purposes of sub-section (1) of this section the word “industry” shall be construed in the broadest sense of the term and, in particular, shall include handicraft, agriculture, breeding of fish, and services.

PART IV — RIGHT TO APPLY FOR AND OBTAIN A PATENT AND BE MENTIONED AS INVENTOR

[Right to Obtain a Patent]

9. Any individual or legal person shall have a right to submit an application for a patent, either individually or jointly with another person.

10. — (1) The right to a patent shall belong to the inventor or his successor in title. Joint inventors shall, unless they agree otherwise, have equal rights.

(2) Where two or more applications have been filed by different persons in respect of the same invention and the inventors concerned made the invention independently of each other, the right to a patent for that invention shall belong to the applicant whose application bears the earlier date of filing or, where priority is claimed, the earlier priority date, so long as his application has not been withdrawn, abandoned or rejected.

COMMENTARY

Cyprus is a signatory of the Paris Convention for the Protection of Industrial Property, pursuant to which nationals of any country of the Union for the Protection of Industrial Property established under the Convention have equal rights with respect to the registration and protection of patents.

Under the system of priority established by the Convention, any person who has duly filed an application for a patent in one of the countries of the Union enjoys, for the purposes of filing in the other signatory countries, a

right of priority during a 12-month period starting from the date of filing of the first application. The procedure to be followed to avail oneself of the priority of a previous filing is dealt with in section 20 of the Patents Law.

[Inventions Made in Execution of Commission or by Employees]

11. — (1) Notwithstanding the provisions of section 10 of this Law, when an invention is made in execution of a commission or an employment contract, the right to the patent for that invention shall belong to, in the absence of contractual agreement between the parties concerned to the contrary, the person who commissioned the work and services or to the employer.

(2) The employee shall have the right to fair remuneration taking into account his salary, the economic value of the invention and any benefit derived from the invention by the employer. In the case of disagreement between the parties as to the fair remuneration, such remuneration shall be determined by the Court.

PART V — APPLICATIONS

[Particulars of Application]

13. — (1) An application for a patent shall be made in the prescribed form, shall be filed at the Office of the Registrar and shall contain the following:

- (a) a request for the grant of a patent;
- (b) a part which *prima facie* appears to be a description of the invention for which a patent is applied for;
- (c) a part which *prima facie* appears to be a claim or claims;
- (d) any drawings referred to in the description or any claims;
- (e) an abstract of the invention.

(2) The application shall name the inventor or where there is more than one inventor, all of them.

(3) The application shall be accompanied by the prescribed filing fee.

[Date of Filing Application]

14. — (1) The date of filing of an application shall be the date of receipt by the Office of the Registrar of an application which contains:

- (a) an express or implied indication that the grant of a patent is sought;
- (b) information identifying the applicant;
- (c) a part which *prima facie* appears to be a description of the invention which a patent is applied for.

(2) (a) If the Office of the Registrar ascertains that, at the time of receipt of an application, the specification referred to in sub-section (1) has not been complied with, it shall require the applicant to comply by providing the missing particulars.

(b) If the applicant complies with and provides the missing particulars referred to in paragraph (a) of this sub-section, the date of filing of the application shall be the date of receipt of all missing particulars. If the applicant fails to comply, the application shall be treated as not having been filed.

(c) [. . .]

[Specification]

15. The specification shall disclose the invention in a manner which is clear and complete enough for the invention to be performed by an expert skilled in the art.

COMMENTARY

Section 15A of the Law, incorporated by Law Number 163(I)/2002 into the Patents Law, provides that where an invention concerns biological material which is not available to the public and which cannot be described in a patent application in such a manner as to enable the invention to be reproduced by a person skilled in the art, the description will be considered inadequate for the purposes of the Patent Law unless it fulfils certain conditions, which are stipulated in sub-section 1.

Further requirements with regard to the supply of a sample of the biological material as provided by articles 13 and 14 of Directive 98/44/EC are then set out.

[Claims]

16. — (1) The claims shall specify the invention which patent protection is applied for.

(2) The claims shall be clear and concise.

(3) The claims shall be accompanied by the specification.

(4) The claims shall be presented in the prescribed manner.

[Abstract of Invention]

17. The purpose of the abstract of the invention is simply to give technical information and it shall not be taken into account for the purpose of the interpretation of the claims.

[Unity of Invention]

18. — (1) An application shall relate to one invention only or to a group of inventions so linked as to form a single specific inventive concept.

(2) Failure to comply with the requirement of unity of invention shall not constitute a ground for cancellation or revocation of a patent.

[Amendment of Application]

19. — (1) Applicants may amend their application, provided that the amendment does not go beyond the limits of the object of the invention, as provided for in the description of the initial application.

(2) [. . .]

[Right of Priority]

20. — (1) The application may contain a declaration pursuant to

the Paris Convention for the Protection of Industrial Property claiming priority of one or more previous state, regional or international applications filed by the applicant or his predecessor in title in or for any state which is party to the said Convention.

(2) Where the application contains a declaration in accordance with sub-section (1) of this section, the Office of the Registrar may require that the applicant shall submit, within the prescribed time limit, a copy of the earlier application certified as correct by the office at which it was filed or, where the earlier application is an international application filed under the Patent Co-Operation Treaty, by the International Bureau of the World Intellectual Property Organization.

(3) and (4) [. . .]

PART VI — EXAMINATION AND GRANT OR REFUSAL OF PATENT

[Examination of Applications]

21. — (1) Where an application for a patent has a date of filing and is not withdrawn, the Registrar shall refer the application to an examiner to determine whether the application complies with the requirements of the Law and the Regulations, and the examiner shall submit to the Registrar a report thereon.

(2) If it is mentioned in the examiner's report to the Registrar that the application does not comply with the requirements of this Law, the applicant shall be given an opportunity to make observations on the report and to amend the application within a prescribed period so as to comply with the requirements of the Law, and if the applicant fails to do so, the Registrar may refuse the application.

(3) If the examiner reports to the Registrar that the application, whether as originally filed or as amended pursuant to sub-section (2) of this section, complies with all the formal requirements of the Law at any time before the end of the prescribed period referred to in sub-section (2) of this section, the Registrar shall notify the applicant of that fact.

[Submission of Search Report]

22. Where the applicant has been notified pursuant to sub-section (3) of section 21 of this Law that his application fulfils the requirements of the Law, he shall, within the prescribed period, submit to the Office of the Registrar a search report prepared by a prescribed authority, which shall mention those matters of the state of the art which must be taken into consideration to ascertain whether the subject matter of the application refers to an invention which is obviously patentable under sections 6 and 7 of this Law. If the applicant fails to comply within the prescribed period, the Registrar may refuse the application.

COMMENTARY

In accordance with Regulation 38(1), the prescribed authority encompasses any International Searching Authority appointed under article 16(3) of the Patent Co-Operation Treaty. Additionally, the Registrar may draw up a list of approved authorities for the purposes of section 22 of the Patents Law.

In practice, the International Search Authority prescribed is the European Patent Office.

[Grant of Patent]

24. — (1) Where the applicant has been notified pursuant to sub-section (3) of section 21 of this Law that his application complies with all the formal requirements and he submits a search report in accordance with section 22 of this Law, the Registrar shall, on payment of the prescribed fee, grant a patent on the basis of the application.

(2) Subsequent to his decision to grant a patent, the Registrar shall publish in the *Official Gazette* of the Republic a notification that the patent has been granted and publishes the patent in the prescribed manner together with the search report submitted in accordance with section 22 of this Law.

[Publication of Applications or Patents]

25. — (1) (a) Subject to paragraphs (b) and (c) of this sub-section, the Office of the Registrar shall publish, within the time limit provided by sub-section (2) of this section and in the prescribed manner, all applications filed thereat.

(b) No application shall be published which has been withdrawn or abandoned or is considered as withdrawn or abandoned, or has been rejected before the expiry of 17 months from the date of filing or, where priority is claimed, from the priority date of the application.

(c) If, by the time an application is due to be published in accordance with sub-section (2) of this section a patent has been granted on the basis of that application, the Office of the Registrar shall not publish the application but shall publish the patent in the prescribed manner together with the search report submitted in accordance with section 22 of this Law and shall allow any interested person to inspect the application.

(2) The Office of the Registrar shall publish each application filed on time after the expiry of 18 months from the date of filing or where priority is claimed, from the priority date of the application. However, where, before the expiry of the aforesaid period of 18 months, the applicant makes a written request to the Office of the Registrar that his application be published, the Office of the Registrar shall publish the application immediately after the receipt of the request.

PART VII — EFFECTS OF AN APPLICATION FOR THE GRANT OF A PATENT**[Term and Maintenance of Patent]**

26. — (1) Subject to sub-section (2) of this section and sections

30 to 48 of this Law, the term of a patent shall be 20 years from the date of filing of the application.

(2) The term of a patent granted on the basis of a separated application shall be 20 years from the date of filing of the application from which the separated application is derived.

(3) The maintenance of a patent is subject to the payment of the prescribed renewal fees.

[Rights Conferred by a Patent]

27. — (1) Where the patent concerns a product, the owner of the patent shall have the right to prevent any third party from performing, without his consent, the following acts:

(i) producing a product incorporating the protected invention;

(ii) offering or putting on the market a product incorporating the protected invention, using such product, or importing or stocking such product to offer it or put it on the market or for a similar use;

(iii) inducing third parties to perform any of the above acts.

(2) Where the patent concerns a process, the owner of the patent shall have the right to prevent any third party from performing, without his consent, the following acts:

(i) using a process which is the subject matter of the patent;

(ii) in respect of any product directly resulting from the use of a process, doing any of the acts referred to in paragraph (ii) of sub-section (1) of this section even where a patent cannot be obtained for this product;

(iii) inducing third parties to perform any of the above acts.

(3) Notwithstanding sub-sections (1) and (2) of this section, the proprietor of a patent shall have no right to prevent third parties from performing, without his consent, the acts referred to in sub-sections (1) and (2) of this section in the following cases:

(i) where the act concerns a product which has been put on the market by the proprietor of the patent or with his express consent, as long as such act is performed after that product has been so put on the market in Cyprus;

(ii) where the act is performed privately and on a non-commercial scale, provided that it does not significantly affect the economic interests of the proprietor of the patent;

(iii) where the act consists of the production or use for purely experimental purposes or for scientific research;

(iv) where the act consists of the extemporaneous preparation in a pharmacy or by a doctor of medicine in individual cases in accordance with a prescription given by a medical practitioner, or where the acts concern a medicine so prepared.

(4) (a) Subject to paragraph (b) of this sub-section, a patent

also shall confer on its proprietor the right to prevent a third party from supplying or offering to supply a person other than that entitled to work the patented invention with any of the means, relating to the elements of the invention, solely for putting the invention into effect when the third party knows, or it is obvious in the circumstances that those means are suitable for putting, and are intended to put, the invention into effect.

This provision shall not apply when the means are commercial products and the circumstances of the supply of such products do not constitute inducement to infringe the patent.

(b) Persons performing the acts referred to in paragraphs (ii), (iii) and (iv) of sub-section (3) of this section shall not be considered to be persons entitled to work the invention within the meaning of paragraph (a) of this sub-section.

COMMENTARY

It is interesting to note that paragraph (i) of sub-section (3) of section 27 provides for an exhaustion of rights clause in relation to patents. This must be seen in connection with the efforts of the Cypriot legislator to harmonize Cypriot intellectual property law with the *acquis communautaire*. Part of the *acquis* is the case law of the European Court of Justice on the exhaustion of intellectual rights which imposes limits on the monopoly created by exclusive proprietary rights (see Case 15/74, *Centrafarm BV v. Sterling Drug Inc.*, [1974] ECR 1147, [1974] 2 CMLR 480; Case 187/80, *Merck & Co. Inc. v. Stephar BV* [1981] ECR 2063, [1981] 3 CMLR 463; Case C-267/95, *Merck & Co. Inc. v. Primecrown Limited* [1997] 1 CMLR 83).

During the screening process of the existing Cypriot intellectual property legislation, the European Commission stressed the importance of exceptions to patent rights protection. Limits to the commercial exploitation of proprietary rights, as stipulated in paragraph (1) of sub-section (3) of section 27, are designed to ensure that the exercise by a patentee of rights enjoyed under member states' legislation does not create obstacles to the free movement of patented goods within the Single Market.

Section 27A describes the scope of and limits to the rights of a biotechnological patent and essentially incorporates articles 8–11 of Directive 98/44/EC.

[Rights of Applicant after the Publication of the Application for a Patent]

28. — (1) An application for a patent published under section 25 of this Law shall provisionally confer on the applicant from the date of such publication the same rights in respect of the subject matter of the application as are conferred by section 27 in respect of the subject matter of a patent.

(2) The Court may decide to stay any proceedings brought before it in respect of unauthorized acts performed in relation to an invention which is the subject of a published application until the final decision of the Registrar to the applicant for the grant or refusal of a patent.

(3) An application for a patent shall be deemed as never having had the effects set out in sub-section (1) of this section if it is withdrawn or deemed to have been withdrawn or finally refused.

[Extent of Protection]

29. — (1) The extent of protection conferred by a patent or an application for a patent shall be determined by the claims, having at the same time due regard to the description and drawings.

(2) For the period up to grant of the patent, the extent of the protection conferred by an application for a patent shall be determined by the filed claims contained in the publication in accordance with section 25. However, the patent as granted or as amended in revocation proceedings shall retrospectively determine the protection conferred by the application for a patent as long as the protection is thereby not extended.

**PART VIII — SUPPLEMENTARY PROTECTION
CERTIFICATE FOR MEDICINAL PRODUCTS****[Definitions]**

30. For the purposes of sections 31–48:

(a) “medicinal product” means any substance or combination of substances presented for treating or preventing disease in human beings or animals and any substance or combination of substances which may be administered to human beings or animals with a view to making a medical diagnosis or to restoring, correcting, or modifying physiological functions in humans or in animals;

(b) “product” means the active ingredient or combination of active ingredients of a medicinal product;

(c) “basic patent” means a patent which protects a product as defined in paragraph (b) of this section as such, or a process to obtain a product or an application of a product, and which is designated by its holder for the purpose of the procedure for grant of a certificate;

(d) “certificate” means the supplementary protection certificate.

[Scope]

31. Any product protected by a patent in Cyprus and subject, prior to being placed on the market as a medicinal product, to an administrative authorization procedure may, under the conditions and in accordance with the procedures provided for in this Law, be the subject of a certificate.

COMMENTARY

Part VIII of the Patents Law gives effect to European Council Regulation 1768/92/EEC of 18 June 1992, concerning the creation of a supplementary protection certificate for medicinal products (OJ 1992 L 182/1).

The certificate constitutes a *sui generis* intellectual property right for medicinal products and confers the same rights as the basic patent. In practice, it thus affords an extension of the patent term for pharmaceutical products whose placing on the market is, as a rule, subject to substantial safety testing and controls by government authorities.

The length of the period of protection offered by the certificate is calculated in relation to the period for which protection was lost due to the government approval process for pharmaceutical products up to a maximum of five years.

[Conditions for Obtaining a Certificate]

32. A certificate shall be granted if, at the date of the relevant application:

- (a) the product is protected by a basic patent in Cyprus;
- (b) a valid authorization to place the product on the market as a medicinal product has been granted;
- (c) the product has not already been the subject of a certificate;
- (d) the authorization referred to in paragraph (b) of this section is the first authorization to place the product on the market as a medicinal product.

[Subject Matter of Protection]

33. Within the limits of the protection conferred by the basic patent, the protection conferred by a certificate shall extend only to the product covered by the authorization to place the corresponding medicinal product on the market and for any use of the product as a medicinal product that has been authorized before the expiry of the certificate.

[Effects of the Certificate]

34. Subject to the provisions of section 33, the certificate shall confer the same rights as conferred by the basic patent and shall be subject to the same limitations and the same obligations.

[Entitlement to the Certificate]

35. The certificate shall be granted to the holder of the basic patent or his successor in title.

[Application for a Certificate]

36. — (1) The application for a certificate shall be lodged within six months of the date on which the authorization referred to in paragraph (b) of section 32 to place the product on the market as a medicinal product was granted.

(2) Notwithstanding sub-section (1) of this section, where the authorization to place the product on the market is granted before the basic patent is granted, the application for a certificate shall be lodged within six months of the date on which the patent is granted.

[Duration of the Certificate]

42. — (1) The certificate shall take effect at the end of the lawful term of the basic patent for a period equal to the period which elapsed between the date on which the application for a basic patent was lodged and the date of the first authorization to place the product on the market reduced by a period of five years.

(2) Notwithstanding sub-section (1) of this section, the duration of the certificate may not exceed five years from the date on which it takes effect.

[Invalidity of the Certificate]

44. — (1) The certificate shall be invalid if:

- (a) it was granted contrary to the provisions of article 32;
- (b) the basic patent has lapsed before its lawful term expires;
- (c) the basic patent is revoked or limited to the extent that the product for which the certificate was granted would no longer be protected by the claims of the basic patent or, after the basic patent has expired, grounds for revocation exist which would have justified such revocation or limitation.

(2) Any person may lodge an application or bring an action for a declaration of invalidity of the certificate with the Court competent to revoke the corresponding basic patent.

[Appeals]

46. The decisions of the Registrar and the Court referred to in section 44(2) which are taken in application of sections 30 to 48 inclusive, shall be subject to the same time limits and the same appeals as those provided for under Cypriot law against similar decisions taken in respect of Cypriot patents.

COMMENTARY

On the basis of Agricultural Medicine Law Number 1(I)/1993, as amended by Law Number 117(I)/2004, section 48A-48IH of the Patents Law also provides for a supplementary protection certificate for plant protection products.

The scope, application contents, and conditions for obtaining such certificate, as well as the rights the certificate conveys, are therefore regulated under a different set of provisions from the supplementary protection certificate for medicinal products.

PART IX — COMPULSORY LICENCES AND GOVERNMENT USE

[Compulsory Licences]

49. — (1) At any time after the expiration of four years, or of such other period which may be prescribed, from the date of the grant of a patent, any person may apply to the Registrar on one or more of the grounds specified in sub-section (2) below:

- (a) for a compulsory licence under the patent;
- (b) where the applicant is a government department, for the grant to any person specified in the application for a licence under the patent.

(2) The grounds for the submission of an application for a compulsory licence are:

- (a) where the patented invention is capable of being commercially worked in Cyprus, that it is not being worked satisfactorily or is not being worked to the fullest extent that is reasonably possible;
- (b) where the patented invention is a product, that a demand for the product in Cyprus:
 - (i) is not being met; or
 - (ii) is not being met on reasonable terms;

(c) that by reason of the refusal of the proprietor of the patent to grant a licence or licences on reasonable terms:

(i) a market for the export of any patented product manufactured in Cyprus is not being supplied; or

(ii) the working or efficient working in Cyprus of any other patented invention which makes a substantial contribution to the art is prevented or hindered; or

(iii) the establishment or development of commercial or industrial activities in Cyprus is adversely affected.

(d) that by reason of conditions imposed by the proprietor of the patent on the grant of licences under the patent or on the disposal or use of the patented product, or on the use of the patented process, the manufacture, use or disposal of materials not protected by the patent or the establishment or development of commercial or industrial activities in Cyprus is adversely affected.

(3) Subject to the provisions of sub-sections (4) to (6) below, if the Registrar is satisfied that any one of the said grounds is established, he may:

(a) where the application is made under paragraph (a) of sub-section (1), above, order the grant of a licence to the applicant on such terms as the Registrar thinks fit;

(b) where the application is made under paragraph (b) of sub-section (1), above, order the grant of a licence to the person specified in the application on such terms as the Registrar thinks fit.

(4) to (7) [. . .]

COMMENTARY

Following accession to the European Union, it is now necessary to ensure that compulsory licences do not lead to discrimination against exporters from other EU member states (*Commission v. Italy* and *Commission v. United Kingdom* [1992] 1 ECR 777, 829).

[Provisions about Licences under Section 49]

50. — (1) Where the Registrar is satisfied, on an application made under section 49 above in respect of a patent, that the manufacture, use or disposal of materials not protected by the patent is unfairly prejudiced by reason of conditions imposed by the proprietor of the patent on the grant of licences under the patent or on the disposal or use of the patented product or the use of the patented process, he may (subject to the provisions of section 49) order the grant of licences under the patent to such customers of the applicant as he thinks fit as well as to the applicant.

(2) Where an application is made under section 49 above in respect of a patent by a person who holds a licence under the patent, the Registrar:

(a) may, if he orders the grant of a licence to the applicant, order the existing licence to be cancelled; or

(b) may, instead of ordering the grant of a licence to the applicant, order the existing licence to be amended.

(3) Where, on an application made under section 49 above in respect of a patent, the Registrar orders the grant of a licence, he may direct that the licence shall operate:

(a) to deprive the proprietor of the patent of any right provided he works the invention concerned or grants licences under the patent;

(b) to revoke all existing licences granted under the patent.

[Opposition and Arbitration]

52. — (1) The proprietor of the patent concerned or any other person wishing to oppose an application under sections 49 to 51 above may, in accordance with the Regulations, give to the Registrar notice of opposition, and the Registrar shall consider the opposition in deciding whether to grant the application.

(2) Where an opposition is made under sub-section (1) of this section against an application made under sections 49 to 51 above and either:

(a) the parties consent; or

(b) the proceedings require a prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Registrar satisfactorily be carried out before him, the Registrar may at any time order the whole proceedings or any question or issue of fact arising therefrom to be referred to an arbitrator or expert agreed by the parties or, in default of agreement, appointed by the Registrar.

(3) Where any question is so referred, the arbitrator or expert shall report his findings to the Registrar and the Registrar shall proceed to make a decision.

[Special Provisions where Patented Invention is Being Worked in a Country Member of the World Trade Organization]

54. The import in Cyprus of any product protected by a patent granted by any country member of the World Trade Organization shall be considered as use in Cyprus.

COMMENTARY

Section 54 was introduced in the Patents Law in order for Cyprus to comply with its obligations under articles 3 and 31 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Article 31 of the TRIPS Agreement makes the use of the subject matter of a patent without the authorization of the right holder subject to a host of conditions, with which Part IX of the Patents Law is intended to be fully compliant.

[Use by the Government or by Third Parties Authorized by the Government]

55. Where national defence or public security so requires, the

Council of Ministers may authorize, even without the consent of the proprietor of the patent or the applicant for the grant of a patent, by publication of a notice in the *Official Gazette* of the Republic, a government agency or a person designated in the aforesaid notice, to produce, use, or sell an invention for which a patent has been granted or an application for a patent has been filed, so long as a fair remuneration is paid to the proprietor of the patent or the applicant for a patent. The decision of the Council of Ministers in relation to the remuneration may be the subject of a recourse to the Court.

PART X — SURRENDER AND REVOCATION

[Revocation of Patent]

58. — (1) The Court may, on the application of any person, revoke a patent, in whole or in part, only on any of the following grounds:

(i) the subject matter of the patent is not patentable within the meaning of the terms as provided in sections 5 to 8 of this Law;

(ii) the patent does not disclose the invention in a satisfactory, clear and complete manner so that it may be performed by a person skilled in the art;

(iii) the right to the patent does not belong to the person to whom the patent was granted.

(2) The Court may require the proprietor of the patent to submit to it for the purpose of examination publications and other documents showing the state of the art and which have been referred to either in connection with an application for a patent or other title of protection filed for the same or essentially the same invention by the proprietor of the patent in any national or regional office of industrial property or in connection with any proceedings relating to the patent or other title of protection founded on such application.

[Effects of Revocation of Patent]

59. — (1) Any revoked patent, or claim, or part of a claim shall be considered to be null and void from the date of the grant of the patent.

(2) When a decision of the Court to revoke a patent, in whole or in part, becomes final, the registrar of the Court shall notify the decision to the Office of the Registrar, which shall file the decision and arrange for its publication as soon as possible.

PART XI — INFRINGEMENT

[Acts of Infringement]

60. — (1) Subject to the provisions of this Law, the performance of any act referred to in sub-sections (1), (2), and (4) of section 27 of this Law in Cyprus by a person other than the proprietor of the

patent and without the consent of the proprietor in relation to a product or process falling within the scope of protection of the patent shall constitute an infringement of the patent.

(2) Subject to the provisions of this Law, the performance of any act referred to in sub-sections (1), (2), and (4) of section 27 of this Law, in Cyprus, by a person other than the applicant for a patent and without the consent of the applicant in relation to a product or process falling within the scope of preliminary protection conferred on a published application for a patent shall constitute an infringement of that preliminary protection.

[Cause of Action by Proprietor and Applicant in the Case of Infringement and Remedies]

61. — (1) The proprietor of a patent and an applicant shall have a cause of action against any person who has infringed or is infringing the patent or the preliminary protection conferred on a published application for a patent. The proprietor of the patent and the applicant shall have the same rights against any person who has performed or is performing acts which constitute such infringement (“imminent infringement”). No cause of action shall exist after the lapse of five years from the act of infringement.

(2) (a) If the proprietor of the patent proves that an infringement has been committed or is being committed, the Court may award damages and may grant a prohibitory injunction prohibiting further infringement and may also award any other remedy provided by the Law.

(b) The court that ascertains a patent infringement can order the infringer not to repeat the violation. Failure to comply with the order is punishable by a fine of up to €35,000, imprisonment for up to three years, or both of these sanctions.

(c) If the proprietor of the patent proves an imminent infringement, the Court may grant a prohibitory injunction prohibiting the infringement and may award any other remedy provided by the Law.

(3) The defendant in any proceedings referred to in this section may apply in the same proceedings for the revocation of the patent. In such a case the provisions of section 58 of this Law shall apply.

(4) (a) Unless the licence contract provides otherwise, any licensee may demand from the proprietor of the patent to institute Court proceedings for any infringement indicated by the licensee, who must specify the desired relief.

(b) The licensee, if he proves that the proprietor of the patent received the request but refuses or fails to institute the proceedings within three months from the receipt of the request, may institute proceedings in his own name, after notifying the proprietor of the patent of such intention. The proprietor shall have the right to take part in the proceedings.

(c) Even before the end of the three-month period referred to in paragraph (b) of sub-section (4) of this section, the Court, on the application of the licensee, may grant an appropriate prohibitory injunction prohibiting the infringement of the patent or its continuation, if the licensee proves that immediate action is necessary to avoid substantial damage.

COMMENTARY

Once a patent has been registered and a certificate of registration is granted and published, any person other than the patentee is expressly prohibited from manufacturing, selling, importing, or otherwise commercially exploiting either the patented product or the product obtained by a patented process.

In the event of infringement, the patentee may commence an action in court seeking an injunction, damages, or any other remedy provided by the Law, with respect to the grant of an interim injunction in design right and patent litigation (see *Vetalia Clothing Manufacturers Limited v. Marelli Fashions* (1981) JSC Part 1, 192). The most important grounds on which an action for infringement of a patent may be defended are:

1. The patent is not for an invention within the meaning of the Patents Law;
2. The invention is not novel;
3. The invention is obvious to a person skilled in the art;
4. The invention is not capable of industrial application;
5. The invention belongs to a category of excluded subject matters;
6. The claims of the complete specification are ambiguous;
7. The complete specification is insufficiently explicit; or
8. The application for the patent was not in order.

[Declaration as to Non-Infringement of Patent]

62. — (1) Subject to the provisions of sub-section (4) of this section, any interested person shall have the right to apply to the Court by way of filing an application against the proprietor of a patent for a declaration that the performance of a specific act does not constitute an infringement of the patent.

(2) and (3) [. . .]

(4) If the said act has already been made the subject of infringement proceedings, the defendant in the infringement proceedings may not institute proceedings for a declaration as to non-infringement.

(5) [. . .]

62A. — (1) In the case where a party to an action attaches reasonably available evidence sufficient to support his claims on infringement or imminent infringement pursuant to this Law, whilst simultaneously evoking evidence that is in the possession of the adverse party, the court may, after application by the said party and subject to such conditions as it may decide that ensure the confidentiality of such information, order the adverse party to produce such evidence.

(2) If the alleged infringement of rights takes place on a commercial scale, the court may also, upon application by the claim-

ant, and under conditions which it considers ensure the confidentiality of the information, order the notification of financial, bank, or commercial documents that are in the adverse party's possession.

(3) The confidential information that is provided on the basis of this provision is used only for the purposes that the court order decrees.

(4) [. . .]

62B. — (1) In the course of any proceedings pursuant to this Law that concern the infringement of a patent on a commercial scale, the court may, following a reasoned claim by the litigant, order the provision of information on the origin and distribution network of the goods or provision of services that infringe the patent from any other person who:

(a) was found to hold the illegal goods on a commercial scale;

(b) was found to utilize the illegal services on a commercial scale;

(c) was found to provide on a commercial scale, services utilised in the course of the violation of the rights;

(d) was indicated by the person referred to in paragraph (a), or (b), or (c), as involved in the production, manufacture or distribution of the said goods or said services.

(2) The information that is provided in accordance with paragraph (1) above will consist where advisable of the following:

(a) the name, surname and addresses of the producers, manufacturers, distributors, suppliers, and other previous holders of the said products or services, as well as their recipient, wholesaler, and retailer;

(b) any information on the quantities that were produced, manufactured, delivered, received or ordered as well as for the price that was collected for the said goods or services.

COMMENTARY

The above provisions were incorporated into the Patents Law by Amendment Number 122(I)/2006. As can be seen, the objective of the law was to assist the court with regard to the evidence that could be utilized in a case of patent infringement.

PART XII — APPLICATION IN ACCORDANCE WITH THE EUROPEAN PATENT CONVENTION

[Application in Accordance with the European Patent Convention]

63. — (1) The European Patent Convention of 5 October 1973 (hereinafter referred to as the “EPC”) shall have full effect and shall apply in accordance with the provisions of this Law.

(2) In the case of conflict between the provisions of the EPC and the provisions of this Law the former shall prevail.

COMMENTARY

Cyprus signed the European Patent Convention in 1997. With effect from 1 April 1998, Cyprus became the nineteenth member of the European Patent Organisation, which currently comprises all the EU member states, Croatia, Iceland, Liechtenstein, the former Yugoslav Republic of Macedonia, Monaco, Norway, San Marino, Switzerland, and Turkey.

[Filing of the Application for a European Patent]

64. Any European Patent application may be filed at the Office of the Registrar.

[Rights Conferred by a European Patent]

65. The rights specified in sub-section (1) of section 27 of this Law have legal effect in respect of a European Patent only from the date on which the translation of the claims which were submitted by the applicant has been published in one of the official languages of the Republic by the Office of the Registrar in the prescribed manner or has been notified to the person who allegedly infringes the European Patent.

[Translation of European Patent]

66. — (1) When the European Patent Office grants a European Patent designating Cyprus, the proprietor of the Patent shall file in the Office of the Registrar a translation of the Patent in one of the official languages of the Republic, and where applicable, of the Patent as amended in opposition proceedings.

(2) The translation referred to in sub-section (1) of this section shall be filed and the prescribed fee shall be paid before the end of the prescribed period. The translation shall be published by the Office of the Registrar in the prescribed manner.

(3) Where the translation is not filed or the fee is not paid in accordance with the provisions of sub-section (2) of this section, the patent shall be deemed to be void *ab initio*.

[Effect of Entry in the Register of European Patents]

68. Entry in the Register of European Patents of acts transferring or amending the rights deriving from a European Patent application or a European Patent shall have the effect provided by sub-section (3) of section 3 of this Law.

[Conversion of a European Patent Application into a National Patent Application]

70. — (1) A European Patent application may be converted into a national patent application in the cases set out in article 135(1)(a) of the EPC. It may also be converted into a national patent application in the case provided by article 90(3) of the EPC insofar as article 14(3) of the EPC stipulates so.

(2) From the date on which the Office of the Registrar receives the application for conversion, the European Patent application shall be considered a national patent application.

(3) [. . .]

(4) The application for a Patent shall be refused if within the prescribed period the applicant is unable to provide evidence of payment of the filing fee referred to in sub-section (3) of section 13 of this Law and to provide a translation into one of the official languages of the Republic of the original text of the European Patent application as well as, where appropriate, of the text as amended in the course of proceedings before the European Patent Office which the applicant wishes to use as a basis for the procedure of grant by the Office of the Registrar.

(5) If the applicant does not have his ordinary residence or principal place of business in Cyprus, he must, within the prescribed period, authorize in the prescribed manner an agent in Cyprus to represent him.

[Prohibition of Simultaneous Protection]

71. — (1) Where a national patent relates to an invention for which a European Patent has been granted to the same inventor or his successor in title, with the same date of filing or priority, the national patent shall not be effective either from the date on which the period for filing an opposition to the European Patent has expired without any opposition having been filed or from the date on which the opposition proceedings are concluded by a decision for the maintenance of the European Patent.

(2) Where a national patent is granted on a date later than any of the dates referred to in sub-section (1) of this section, as the case may be, such patent shall have no effect.

(3) The subsequent expiry or revocation of the European Patent shall have no effect on the provisions of sub-sections (1) and (2) of this section.

PART XIII — APPLICATION IN ACCORDANCE WITH THE PATENT CO-OPERATION TREATY

[Application of the Patent Co-Operation Treaty]

74. — (1) The Patent Co-Operation Treaty of 19 June 1970 (hereinafter referred to as the “PCT”) shall have full effect and shall apply in accordance with the provisions of this Law.

(2) In the case of conflict between the provisions of the PCT and the provisions of this Law, the former shall prevail.

(3) [. . .]

[International Applications Designating Cyprus]

75. Where an international application is filed under the PCT and it designates Cyprus, it shall have the effect of indicating the applicant’s intention to obtain a European Patent under the European Patent Convention.

COMMENTARY

With the enactment of this provision, Cyprus has elected to make use of the right under article 45(2) of the Patent Co-Operation Treaty to “close the

national route” with respect to international applications designating Cyprus.

In other words, in an international application filed under the Patent Co-Operation Treaty it is not possible to designate Cyprus for a national patent, but such application is deemed to be an indication of the applicant’s wish to obtain a European Patent.

[International Applications Filed in the Office of the Registrar as Receiving Office and Transfer Fee]

76. — (1) International applications under the Patent Co-Operation Treaty may be filed at the Office of the Registrar as receiving office within the meaning of article 2(XV) of the Patent Co-Operation Treaty if the applicant is a citizen or a resident of Cyprus.

(2) [. . .]

[Competent International Searching Authority and International Preliminary Examining Authority]

77. — (1) The European Patent Office shall be competent to carry out international searches for international applications filed at the Office of the Registrar.

(2) The European Patent Office shall be competent to carry out the international preliminary examination under chapter II of the Patent Co-Operation Treaty of international applications referred to in sub-section (1) of this section.

PART XIV — MISCELLANEOUS

[Regulations by the Council of Ministers]

78. — (1) The Council of Ministers may from time to time make Regulations under this Law, prescribing all matters which by this Law are required or permitted to be prescribed or which are necessary or desirable to be prescribed for carrying out or giving effect to this Law or for the conduct of any business relating to the Office of the Registrar.

(2) [. . .]

COMMENTARY

The Regulations referred to above were passed by the Cypriot House of Representatives and were published in the *Official Gazette* of Cyprus on 26 March 1999. They are officially referred to as the **Patents (Fees and Rights) Regulations 1999, Number 46/99**. The Regulations were amended by the

Patents (Fees and Rights) Regulations 2000, Number 320/2000 published on 17 November 2000.

Among other things, the Regulations deal with the formalities in relation to the various types of applications set out in the Law, the procedures for examination of applications, grant or refusal and publication of patents, maintenance of patents, compulsory licensing and government use, and revocation of patents, as well as the implementation of the European Patent Convention and the Patent Co-Operation Treaty in Cyprus.

[Patent Agent]

79. — (1) Where, under this Law, something ought to be done by or to somebody in connection with any procedure or matter under

this Law, this may be done in accordance with the Regulations by or to an agent who has been duly authorized in the prescribed manner.

(2) If the applicant is not ordinarily resident or the main part of his business is not in Cyprus, he must authorize an agent in the prescribed manner to represent him in Cyprus.

§ 73:6 Trade Marks Law

DEFINITIONS

[Interpretation]

2. — (1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:

- “the appointed day” means the date of the commencement of this Law;
- “assignment” means assignment by act of the parties concerned;
- “the Court” means the Supreme Court of Cyprus;
- “limitations” means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as a proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods or services to be sold, or otherwise traded in, in any place within Cyprus, or as to use in relation to goods or services to be exported to any market outside Cyprus;
- “permitted use” has the meaning assigned to it by subsection (1) of section 29;
- “prescribed” means, in relation to proceedings before the Court, prescribed by Rules of Court, and, in other case, prescribed by this Law or any rules made thereunder;
- “the register” means the register of trade marks kept under this Law;
- “registered trade mark” means a trade mark that is actually on the register;
- “registered user” means a person who is for the time being registered as such under section 29;
- “the Registrar” means the Official Receiver and Registrar and includes any other person appointed by the Committee for Public Service to exercise all or any of the powers and perform all or any of the duties of a Registrar;
- “rules” means rules made by the Council of Ministers under section 37 or section 38;
- “trade mark” means any mark comprised of any elements

of allowed graphic presentation (particularly that of words, including names of persons, from images, letters, numbers, the shape of the goods or packaging, or any combination of such), that can from its nature discern the goods or services of one business from that of a corresponding business, so long as the mark is used or is purported to be used for the purposes of such discernment;

– “transmission” means transmission by operation of law, devolution on the personal representative of a deceased person, and any other mode of transfer not being assignment;

– “The Paris Convention for the Protection of Industrial Property” means the convention that was ratified with the Convention on the Protection of Industrial Property (Ratifying) Law of 1965 and with the Paris Convention for the Protection of Industrial Property Law of 1983.

[. . .]

COMMENTARY

Until 1990, the expression “trade mark” referred only to goods. An amendment of the Law by Law Number 209/90 introduced the term “services”, so that the expression “trade” used throughout the Law refers to both goods and services. Law Number 176(I)/2000 abolished the definition of “mark”, leaving only the definition of “trade mark” to be followed.

REGISTRATION, INFRINGEMENT, AND OTHER SUBSTANTIVE PROVISIONS

[The Register of Trade Marks]

3. — (1) There shall continue to be kept at the Office of the Registrar for the purposes of this Law the record called the register of trade marks, wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of all registered users, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed.

(2) The Register is available to the public for inspection at all reasonable hours subject to any regulations that may be prescribed.

(3) The Register is under the control and administration of the Registrar.

COMMENTARY

Prior to 2000, the register was divided into two sections, Part A and Part B, which differed as regards the rights afforded to trade marks registered in each section. With the enactment of Law Number 176(I)/2000, this distinction was abolished, and currently all trade marks are recorded in one register, and enjoy the same protection and rights.

[No Action for Infringement of Unregistered Trade Mark]

4. No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregis-

tered trade mark, but nothing in this Law shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

COMMENTARY

The express wording of the second part of section 4, saving the right to bring an action for passing off, implies that it will be no defence to an action for passing off that the defendant is registered as the proprietor of the mark which he is using.

[Right Given by Registration and Infringement Thereof]

6. — (1) Subject to the provisions of this section, and of sections 9 and 10, the registration of a trade mark in the register either before or after the enactment of this Law gives the proprietor the exclusive right to the aforesaid trade mark.

(2) The proprietor of a trade mark is entitled to forbid any third party from using in the course of trade, without his consent:

(a) a mark that is identical to the trade mark, for goods or services that are identical to those for which the trade mark is registered;

(b) a mark that, due to its identity or its similarity with the said trade mark and due to the identity or similarity with the goods or services for which the trade mark is registered, causes a danger of confusion of the public, including the danger of relating the mark to the trade mark.

The mark is identical or similar to the trade mark for goods or services that are not similar to those for which the trade mark is registered if the trade mark enjoys fame in the Republic of Cyprus and the use of the trade mark, without reasonable cause, would bring about, with no cost, a benefit from the distinctive character or fame of the trade mark, or would be injurious to such distinctive character or such fame.

(3) For the purposes of the present section, “use of a mark” constitutes:

(a) the display of the mark on the goods or their packaging;

(b) the offer of goods or commerce or the possession of such for commerce, or the offer or supply of services under the mark;

(c) the import or export of the goods under the mark;

(d) the use of the mark in a professional printed document and in advertisement.

(4) The right to the use of a trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in, in any place, in relation to goods to be exported to any market or in relation to services rendered to any place or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

(5) The right to the use of a trade mark given by registration, as mentioned above, shall not be deemed to be infringed by the use of said trade mark from any person:

(a) in relation to any goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to the goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark;

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and, neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(6) The use of the registered trade mark, being one of two or more registered trade marks that are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

(7) The right given with the registration of the trade mark, as mentioned above, does not allow the proprietor of the said trade mark to forbid the use of the trade mark for goods that have been put on the market bearing the trade marks, within the European Community from the proprietor or with his consent.

The above provision does not apply where the proprietor does have legal reasons to oppose the latter commercial use of the goods, especially where the condition of the goods is altered or degraded after they have been supplied to trade.

COMMENTARY

The above section refers to the concept of “parallel imports”, i.e., where genuine (non-counterfeit) products bearing the registered trade mark are placed on the market in one country with the proprietor’s consent and then exported to another country without the proprietor’s consent. Parallel imports are therefore regulated by section 6(7), which stipulates that a proprietor cannot control transfers of goods bearing the trade mark already placed on the market in the EU.

Nevertheless, EU case law (particularly the judgment in *Silhouette*, Case C-355/1996), suggests that a proprietor may prevent the importation into the EU without his consent of goods bearing the trade mark, where such goods have been marketed in a non-EU country.

...

Section 7, which stipulated the rights given by registration of a trade mark in Part B and the remedies in respect of infringement, was abolished

by Law Number 176(I)/2000, which merged the two sections of the register into one register alone (essentially part A of the Register in terms of rights and infringement thereof).

The relief usually sought in an action for infringement is an injunction restraining the further use of the mark by the unauthorized party or an inquiry as to damages. If the infringement is on a large scale, the court may order the delivery up of the spurious marks for destruction or order the defendant to tender an account of the profits made through the sale of the goods or the provisions of the services in respect of which the proprietor's trade mark was infringed.

Where a plaintiff is seeking an injunction to restrain infringement of a registered mark, there is no onus on the plaintiff to prove anything other than that the mark is registered. The registration of his mark is proved by the production of the Registrar's certificate of registration. The most common defences in an action for infringement are:

1. The plaintiff has no title;
2. The registration is for other reasons invalid;
3. There is no infringement;
4. The plaintiff is debarred from suing the defendant for all or part of the relief he seeks by an agreement or some personal estoppel or because the mark is deceptive or his business is fraudulent; or
5. The use complained of is not likely to deceive or cause confusion.

REGISTRABILITY AND VALIDITY OF REGISTRATION

[Distinctiveness Requisite for Registration]

11. — (1) Marks are not registered as trade marks, or if registered, will be declared void, where:

(a) it is a mark that does not fall within the legal definition of a trade mark as defined in section 2;

(b) it lacks distinctive character;

(c) the trade marks consist exclusively of signs or indications which may serve in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods, or the provision of the services or other characteristics of the goods or services;

(d) the trade marks consist exclusively of signs or indications that have become customary in the current language or in the *bona fide* established practices of the trade for designating the goods or services;

(e) the trade marks that consist exclusively of:

(i) the shape that results from the nature of the goods themselves;

(ii) the shape of the goods necessary to obtain a technical result; (iii) the shape that gives substantial value to the goods.

(f) the trade marks that are of such nature as to deceive the public, especially with regard to the nature, quality or geographical origin of the goods or services;

(g) the trade marks that are unacceptable or void under

article *6ter* of the Paris Convention for the Protection of Industrial Property;

(h) the trade marks that include a sign of great symbolic importance, particularly a religious symbol;

(i) the trade marks, the application of which was made in bad faith.

(2) A trade mark is accepted for registration or is not declared invalid upon application of subsections (b), (c), and (d) of section 1, provided that prior to the date of the application for registration and after it had been utilized, it gained distinctive character.

COMMENTARY

In the case where a mark sought to be registered is considered to lack sufficient inherent distinctiveness to justify registration by itself, evidence for distinctiveness in fact and use of trade mark must be provided.

[Prohibition of Registration of Deceptive, etc., Matter]

13. A trade mark or part of a trade mark will not be registered, or if registered may be declared void, if it is a scandalous design or is contrary to public policy or accepted principles of morality.

[Prohibition of Registration of Identical and Resembling Trade Marks]

14. — (1) A trade mark shall not be registered, or if registered, may be declared void if:

(a) it is identical with an earlier trade mark and the goods or services for which the trade mark is declared or registered are identical to that of which the earlier trade mark is protected for;

(b) due to the identity or the similarity of an earlier trade mark and the identity or similarity of the goods or services that the two trade marks specify, there is a danger of confusion of the public, which includes a danger of correlation with the prior trade mark;

(c) it is identical or similar to an earlier trade mark and the goods or services for which the trade mark is declared or is registered are not similar to those which are protected by the prior trade mark, where the prior trade mark is well-known in the Republic of Cyprus, and the use of the latter trade mark would bring about, without due cause and at no cost whatsoever, a benefit from the distinctive character or reputation of the prior trade mark or would be detrimental to the distinctive character or repute of the earlier trade mark;

(d) the use of the trade mark may possibly be forbidden due to a prior trade mark, further than the rights stipulated in section 14A and on the basis of:

- (i) the right to the name;
- (ii) the right to the same picture;

- (iii) authorship rights;
 - (iv) right to industrial property.
- (e)–(f) [. . .]

(2) In case of honest concurrent use, or of other special circumstances which, in the opinion of the Court or the Registrar, make it proper so to do, the Court or the Registrar may permit the registration of trade marks that are identical or nearly resemble each other in respect of the same goods or description of goods or services by more than one proprietor subject to such conditions and limitations, if any, as the Court or the Registrar, as the case may be, may think it right to impose.

(3) [. . .]

COMMENTARY

The onus is on the applicant to satisfy the Registrar that the trade mark applied for is not reasonably likely to deceive or cause confusion.

14A. For the purposes of the present Law, an “earlier trade mark” means:

(a) trade marks that have been registered prior to the date of application for registration of the trade mark, having taken into account the priority rights of the said trade marks and that belong to the following categories:

- (i) trade marks registered in the register;
- (ii) internationally registered trade marks that have effect in Cyprus;
- (iii) European Community trade marks registered with Office for the Harmonization in the Internal Market;

(b) the applications for registration of trade marks that belong to the above category from (i)-(iii) above subject to their registration;

(c) trade marks which on the date of the application for registration of the trade mark, can be deemed to be well-known in Cyprus in accordance with Article 6*bis* of the Paris Convention for the Protection of Industrial Property.

(2) [. . .]

14B. A trade mark is registered or, if registered, is not declared void, if the owner of the earlier registered trade mark or earlier right, consents to the registration of the said trade mark.

14C. If the proprietor of the earlier trade mark was aware of the use of the latter trade mark for a continuous period of five years and acquiesced to such use, he is no longer entitled on the basis of the earlier trade mark to request the cancellation of the latter trade mark, nor to go against the use of the latter trade mark for the goods or services for which the latter trade mark was used, unless the application for registration of the latter trade mark was made in bad faith:

The proprietor of the latter trade mark is not entitled to go against the use of the prior right, even if that right can no longer be imposed through the earlier trade mark.

[Registration Subject to Disclaimer]

16. If a trade mark:

(a) contains any part not separately registered by the proprietor as a trade mark; or

(b) contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether the trade mark shall be entered or shall remain on the register, may require, as a condition of its being on the register:

(i) that the proprietor shall disclaim any right to the exclusive use of any part of the trade mark, or to the exclusive use of all or any portion of any such matter as aforesaid, to the exclusive use of which the Registrar or the Court hold him not to be entitled; or

(ii) that the proprietor shall make such other disclaimer as the Registrar or the Court may consider necessary for the purpose of defining his rights under the registration, provided that no disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

PROCEDURE FOR AND DURATION OF REGISTRATION

[Application for Registration]

19. — (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it must apply in writing to the Registrar in the prescribed manner for registration in the register.

(2) Subject to the provisions of this Law, the Registrar may refuse the application, or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think right.

(3) In the case of a refusal or conditional acceptance, the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat, and the decision shall be subject to appeal to the Court.

(4) An appeal under this section shall be made in the prescribed manner, and on the appeal the Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what amendments, modifications, conditions or limitations, if any, the application is to be accepted.

(5) and (6) [. . .]

COMMENTARY

In the event of the Registrar not giving his consent to the registration, the

applicant may apply to the Supreme Court of Cyprus for judicial review of the decision under article 146 of the Cypriot Constitution.

It should be noted that the Supreme Court has shown reluctance to interfere with the Registrar's exercise of discretionary powers.

[Opposition to Registration]

20. — (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted to be advertised in the prescribed manner, and the advertisement shall set forth all conditions and limitations subject to which the application has been accepted.

The Registrar may cause an application to be advertised before acceptance if it appears to him that it is expedient so to do, and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application, give notice to the Registrar of opposition to the registration.

(3) The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(4) The Registrar shall send a copy of the notice to the applicant, and within the prescribed time after receipt thereof the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(5) If the applicant sends such a counter-statement as aforesaid, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(6) The decision of the Registrar shall be subject to appeal to the Court.

(7) to (9) [. . .]

(10) On an appeal under this section the Court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity thereof, but in any such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(11) [. . .]

COMMENTARY

The words “advertised” and “advertisement” in this section refer to publication of the trademark in the *Official Gazette* of the Republic.

[Registration]

21. — (1) When an application for registration of a trade mark in the register has been accepted, and either:

(a) the application has not been opposed and the time for notice of opposition has expired; or

(b) the application has been opposed and the registration has been decided in favor of the applicant, the Registrar shall, unless the application has been accepted in error or unless the Court otherwise directs, register the trade mark, as the case may be, and the trade mark, when registered, shall be registered as of the date of the application for registration, and that date shall be deemed for the purposes of this Law to be the date of registration.

(2) On the registration of a trade mark the Registrar shall under his hand and seal issue to the applicant a certificate in the prescribed form of the registration thereof.

(3) [. . .]

COMMENTARY

The procedure for registration of a trade mark or service mark may take two to three years until a certificate of registration is issued. However, once accepted, the trade mark enjoys protection from the date of the filing of the application.

[Duration and Renewal of Registration]

22. — (1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section:

In relation to a registration as of a date before the appointed day, this sub-section shall have effect with the substitution of a period of 14 years for the said period of seven years.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of 14 years from the date of expiration of the original registration or of the last renewal of registration, as the case may be, which date is in this section referred to as “the expiration of the last registration”.

(3) and (4) [. . .]

ASSIGNMENT AND TRANSMISSION**[Powers of and Restrictions on Assignment and Transmission]**

24. — (1) Notwithstanding any rule of law or equity to the contrary, a registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible either in connection with the entire or the remainder goodwill of a business or otherwise.

(2) A registered trade mark shall be, and shall be deemed

always to have been, assignable and transmissible in respect either of all the goods or services in respect of which it is registered, or was registered, as the case may be, or of some (but not all) of those goods or services.

(3) The provisions of the two foregoing sub-sections shall have effect in the case of an unregistered trade mark used in relation to any goods or services as they have effect in the case of a registered trade mark registered in respect of any goods or services, if at the time of the assignment or transmission of the unregistered trade mark it is or was used in the same business as a registered trade mark, and if it is or was assigned or transmitted at the same time and to the same person as that registered trade mark and in respect of goods or services all of which are goods or services in relation to which the unregistered trade mark is or was used in that business and in respect of which that registered trade mark is or was assigned or transmitted.

(4) Notwithstanding anything in the foregoing sub-sections, a trade mark shall not be, or be deemed to have been, assignable or transmissible in a case in which as a result of an assignment or transmission there would in the circumstances subsist, or have subsisted, whether by way of registration or otherwise, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods or services and of the trade marks, the use of the trade marks in exercise of those rights would be, or have been, likely to deceive or cause confusion, provided that, where a trade mark is, or has been, assigned or transmitted in such a case as aforesaid, the assignment or transmission shall not be deemed to be, or to have been, invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, or were, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold or services to be provided, or otherwise traded in, within Cyprus (otherwise than for export therefrom) or in relation to goods to be exported to the same market outside Cyprus or in relation to services to be provided outside Cyprus.

(5) The proprietor of a registered trade mark who proposes to assign it in respect of any goods or services in respect of which it is registered may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances, and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods or services and of the trade marks referred to in the case, the proposed assignment of the first mentioned trade mark would or would not be invalid under the last foregoing sub-section, and a certificate so issued shall, subject to the provisions of this section as to appeal and unless it is shown

that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under the last foregoing sub-section of the assignment in so far as such validity or invalidity depends on the facts set out in the case, but, as regards a certificate in favor of validity, only if application for the registration under section 27 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

(6) Notwithstanding anything in sub-sections (1), (2), and (3) of this section, a trade mark shall not, on or after the appointed day, be assignable or transmissible in a case in which as a result of an assignment or transmission thereof there would in the circumstances subsist, whether by way of registration or otherwise, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in or services to be provided, in a place or places in Cyprus, and an exclusive right in another of those persons to the use of a trade mark nearly resembling the first mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods or services limited to use in relation to goods to be sold, or otherwise traded in, or services to be provided, in another place or other places in Cyprus, provided that, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or of a person who claims that a trade mark has been transmitted to him or to a predecessor in title of his on or after the appointed day, in any such case, the Registrar, if he is satisfied that in all the circumstances the use of the trade marks in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not be deemed to be, or to have been, invalid under this sub-section or under sub-section (4) of this section, so, however that in the case of a registered trade mark this provision shall not have effect unless application for the registration under section 27 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

(7) Where an assignment in respect of any goods or services of a trade mark that is at the time of the assignment used in a business in those goods or services is made, on or after the appointed day, otherwise than in connection with the entire or the remainder goodwill of that business, the assignment shall not take effect until the following requirements have been satisfied, that is to say, the assignee must, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, apply to him for directions with respect to the advertisement of the assignment, and must advertise it in such form and manner and within such period as the Registrar may direct.

(8) Any decision of the Registrar under this section shall be subject to appeal to the Court.

COMMENTARY

The effect of sub-sections (1) and (2) of section 24 is that the assignee of a registered mark, subject to the exceptions specified in later sub-sections and to compliance with the requirements of sub-section (7) of section 24, can become the registered proprietor of the mark. In such case the validity of the assignment cannot be attacked on the ground that no goodwill of a business or only a part of the goodwill was assigned.

In the case of the assignment of an unregistered mark in accordance with the provisions of sub-section (3) of section 24, the assignments of the unregistered and the registered mark need not be effected by the same document, subject, however, to the limitations of sub-sections (4) and (6).

Sub-section (7) of section 24 does not extend to unregistered marks assigned together with registered marks under sub-section (3) of section 24.

[Registration of Assignments and Transmissions]

27. — (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall make application to the Registrar to register his title, and the Registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods or services in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

(2) Any decision of the Registrar under this sub-section shall be subject to appeal to the Court.

(3) [. . .]

USE AND NON-USE

[Removal from Register and Imposition of Limitations on Ground of Non-Use]

28. — (1) A registered trade mark may be struck off the register in respect to any of the goods or services for which it is registered upon application to the court or Registrar from any person who has a complaint or, by option of the applicant and subject to the provisions of section 49, where:

(a) for the period of five continuous years, there has been no *de facto* use of the trade mark for the goods or services for which it had been registered and there was no due cause for its non-use;

(b) after the date of registration of the trade mark, and in consequence of actions or inactions of the proprietor, it has been established as a common commercial name for the goods or services for which it has been registered;

(c) due to the use of the trade mark from the proprietor, or with his consent, for the goods or services for which it has been registered, it is possible that the public may be misled with regard to the nature, quality, or geographical origin of the goods or services.

(2) A registered trade mark is not struck off the register pursuant to subsection 1(a) of the present section if during the time between the end of the five-year continuous period and the application for striking off, stipulated by the said subsection, there was commencement or recommencement of substantial use of the mark.

The commencement or recommencement of the use of the trade mark within a period of three months prior to the submission of an application for striking off, which is not deemed submitted until after the conclusion of the continuous five-year period, is not taken into account in the case where the preparative actions for the commencement or recommencement of the use of the trade mark took place after the proprietor had obtained knowledge that there was a chance that such an application for striking off would be submitted.

[Registered Users]

29. — (1) Subject to the provisions of this section, a person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods or services in respect of which it is registered and either with or without conditions or restrictions.

The use of a trade mark by a registered user thereof in relation to goods or services with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being such as to comply with any conditions or restrictions to which his registration is subject is in this Law referred to as “the permitted use” thereof.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be used by a person other than the proprietor, for the purposes of section 28 and section 28A and for any other purpose for which such use is material under this Law or otherwise.

(3) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call on the proprietor thereof to take proceedings to prevent infringement thereof, and, if the proprietor refuses or neglects to do so within two months after being so called on, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

A proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(4) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user must apply in writing to the Registrar in the prescribed manner and must furnish him with a statutory decla-

ration made by the proprietor, or by some person authorized to act on his behalf and approved by the Registrar:

(a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;

(b) stating the goods or services in respect of which registration is proposed;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods or services, to the mode or place of permitted use, or to any other matter; and

(d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof, and with such further documents, information or evidence as may be required under the rules or by the Registrar.

(5) When the requirements of the last foregoing sub-section have been complied with, the Registrar may register the proposed registered user as a registered user in respect of the goods or services as to which he is so satisfied.

(6) The Registrar, if so requested by the applicant, takes measures to ensure that any information given to it for the purposes of the application due to the above provisions of this section (besides the data recorded with the register) will be not be revealed to competitors in the market.

(7) Without prejudice to the provisions of section 33, the registration of a person as a registered user:

(a) may be varied by the Registrar as regards the goods or services in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark; or

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, that is to say:

(i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion;

(ii) that the proprietor or the registered user misrepres-

sented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(8) and (9) [. . .]

(10) Any decision of the Registrar under the foregoing provisions of this section shall be subject to appeal to the Court.

COMMENTARY

The main feature of this section is that users should be registered where the Registrar is satisfied that the proprietor is in a position to exercise effective control over use of the mark by the user. There is no particular form of control specified in the Law. Although in practice it is often very difficult for the Registrar to ensure that the proprietor does in fact exercise any control, the Registrar has a duty to satisfy himself that there is the possibility for the proprietor to exercise control.

RECTIFICATION AND CORRECTION OF THE REGISTER

[General Power to Rectify Entries in Register]

33. — (1) Any person aggrieved by non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Court or, at the option of the applicant and subject to the provisions of section 49, to the Registrar, and the Court or the Registrar, as the case may be, may make such order for making, expunging or varying the entry as they may think fit.

(2) to (4) [. . .]

COMMENTARY

In applications to remove a mark from the register the onus is on the applicant. Section 44 expressly provides that in applications under section 33, registration is *prima facie* evidence of the validity of the original registration and of all subsequent assignments and transmissions.

Where a mark has been registered for some time and the validity of the registration depends on the facts which existed at or prior to the date of registration, the courts are likely to give the registered owner the benefit of the doubt.

[Correction of Register]

35. — (1) The Registrar may, on request made in the prescribed manner by the registered proprietor:

(a) correct any error in the name, address or description of the registered proprietor of a trade mark;

(b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark;

(c) cancel the entry of a trade mark on the register;

(d) strike out any goods or classes of goods or services from those in respect of which a trade mark is registered; or

(e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on request made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change, in the name, address or description of the registered user.

(3) Any decision of the Registrar under this section shall be subject to appeal to the Court.

COMMENTARY

This sections deals with alterations to entries in the register. However, changes of proprietorship do not come under this section but are provided for in section 27.

[Alteration of Registered Trade Mark]

36. — (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) [. . .]

(3) Any decision of the Registrar under this section shall be subject to appeal to the Court.

(4) [. . .]

COMMENTARY

Section 36 relates to alterations to the mark itself and does not extend to alterations to the register. It allows alterations to the trade mark, notwithstanding that this might entail the change of an essential element of the mark.

However, the addition or alteration must not substantially affect the identity of the trade mark. Moreover, no alteration may be effected which might prejudice the rights of other registered proprietors or would result in an entry that infringes the provisions of the Trade Marks Law.

[Certification Marks]

37A. — (1) A certifying trade mark is a trade mark that implies that the goods or services in relation to which it will be used are certified by the proprietor of the said trade mark as to the quality, the accuracy or other characteristics, including origin, ingredients, or for goods, the method of manufacture, and for services, the method of their performance.

(2) The provisions of the present law are applied to the certifying trade marks subject to the provisions of Appendix 1 of the Law.

COMMENTARY

Appendix 1 of the Law sets out provisions specific to the registration and application of a certifying mark, such as the requirement that the application for registration of a certifying mark be accompanied by regulations that will govern the use of the trade mark.

Where such regulations do not meet with the approval of the Registrar, he may refuse registration. Under section 8 of the Appendix, the Registrar has the power to strike off the trade mark or to amend any of the regulations or information submitted to the Registrar, where it determines that the proprietor is no longer capable of certifying the goods or services, or where the proprietor has not upheld a regulation that was submitted, or where it is no longer in the interests of the public for the trade mark to be registered, or it is necessary in the interests of the public for the regulations to be amended.

Certifying trade marks cannot be assigned or transferred without the Registrar's prior consent. Section 10 of the Appendix stipulates that subsections (4)-(8) of section 24, sections 28-30, and 55 do not apply in regard to certifying trade marks.

37B. — (1) A collective trade mark is a trade mark that discerns the goods or services of the members of an association that is the proprietor of the mark, from those of other businesses.

(2) For the purposes of the present section, the term "association" includes legal persons of public law, unions, foundations, co-operative companies and in general groups of persons who, according to the legislation that governs them, are able under their own name, to have the rights and obligations and to undertake legal acts, to enter into agreements, to sue and be sued.

(3) No association is registered as the proprietor of a collective trade mark, unless the members are persons that carry out activities of manufacture, production, alteration or trading of goods or the provision of services.

(4) The provisions of the present Law are applied to collective trade marks, subject to the provisions of Appendix 3.

COMMENTARY

Appendix 3 sets out provisions that are exclusively applicable to collective trade marks, such as the marks which a collective trade mark can be comprised of, prohibitions on the registration of a trade mark that is misleading as to its character or meaning, and reasons for which it may be struck off the register.

Included is the requirement that rules that govern the use of the collective trade marks be submitted along with an application for registration, and that such rules be open for public examination. Provisions allowing for the amendment of such rules are also stipulated.

GENERAL AND MISCELLANEOUS

[Power of Council of Ministers to Make Rules]

38. — (1) The Council of Ministers may from time to time make such Rules, prescribe such forms and generally do such things as it thinks expedient:

(a) for regulating the practice under this Law, including the service of documents;

(b) for classifying goods for the purposes of registration of trade marks;

(c) for making or requiring duplicates of trade marks and other documents;

(d) for securing and regulating the publishing and selling or

distributing, in such manner as the Registrar thinks fit, of copies of trade marks and other documents;

(e) generally, for regulating the business of the Office of the Registrar in relation to trade marks and all things by this Law placed under the direction or control of the Registrar.

(2) Rules made under this Law shall, while in force, be of the same effect as if they were contained in this Law.

(3) Any Rules made in pursuance of this section shall be published in the *Gazette*.

COMMENTARY

Regulations have been issued by the Council of Ministers in exercise of the power conferred on it by section 38 of the Law. The Regulations which are currently in force are the Trade Marks Regulations of 1951–2003.

POWERS AND DUTIES OF REGISTRAR

[Preliminary Advice by Registrar as to Distinctiveness]

40. — (1) The power to give advice to a person who proposed to apply for the registration of a trade mark in the register, as to whether the trade mark appears to the Registrar *prima facie* to be inherently adapted to distinguish, or capable of distinguishing, as the case may be, shall be a function of the Registrar under this Law.

(2) and (3) [. . .]

LEGAL PROCEEDINGS AND APPEALS

[Registration to Be *Prima Facie* Evidence of Validity]

44. In all legal proceedings relating to a registered trade mark (including applications under section 33) the fact that a person is registered as proprietor of the trade mark shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

[Trade Usage, etc., to Be Considered]

47. In any action or proceeding relating to a trade mark or trade name, the Court or the Registrar, as the case may be, shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.

EVIDENCE

[Evidence of Entries in Register]

51. — (1) A printed or written copy of any entry in the register, purporting to be certified by and under the hand of the Registrar and sealed with the seal of his Office, shall be admitted in evidence in all courts, and in all proceedings, without further proof or production of the original.

(2) [. . .]

[Evidence of Things Done by Registrar]

52. A certificate purporting to be under the hand of the Registrar

as to any entry, matter or thing that he is authorized by this Law or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

OFFENCES

[Falsification of Entries in Register]

53. If any person makes or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence and shall on conviction be liable to imprisonment not exceeding one year or to a fine not exceeding €1,708 or to both such imprisonment and fine.

53A. — (1) The court that determines an infringement of a trade mark or trade name, may order the infringer to not repeat the said infringement in the future. Where the infringer does not comply with the order of the court to not repeat infringement, the court can impose, in order to ensure compliance, a monetary fine which shall not exceed €59,801 or to a term of imprisonment not exceeding 3 years or to both such imprisonment and fine.

(2) [. . .]

COMMENTARY

Law Number 121(I)/2006 was enacted to improve the provisions of the Law with regard to the gathering and use of evidence and to impose stricter penalties for the infringement of trade marks.

[Fine for Falsely Representing a Trade Mark as Registered]

54. — (1) Any person who makes a representation:

(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark;

(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is so registered;

(c) to the effect that a registered trade mark is registered in respect of any goods or services in respect of which it is not registered; or

(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not give that right, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding €213.

(2) [. . .]

§ 73:7 Copyright Law

[Interpretation]

2. — (1) In this Law, unless the context otherwise requires:

- “adaptation” includes any of the following:
 - (a) in relation to a literary work:
 - (i) in the case of a non-dramatic work, a version of the work (whether in its original language or a different language) in which it is converted into a dramatic work;
 - (ii) in the case of a dramatic work, a version of the work (whether in its original language or a different language) in which it is converted into a non-dramatic work;
 - (iii) translation of the work and in relation to programs for electronic computers, the translation includes the form of the program into which it is converted from or into the language of the electronic computer or code, other than that which is coincidental to the running of the program;
 - (iv) a version of the work in which the story and action are conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, newspaper, magazine or similar periodical; and
 - (b) in relation to a musical work an arrangement or transcription of the work:
- “artistic work” means, irrespective of artistic quality, any of the following or works similar thereto:
 - (a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;
 - (b) maps, plans and diagrams;
 - (c) works of sculpture;
 - (d) photographs not comprised in a cinematographic film (a photograph is considered an artistic work under the condition that it is a creation of the author and not a copy of an existing photograph);
 - (e) works of architecture in the form of buildings or models;
 - (f) works of artistic craftsmanship not falling within any of the preceding paragraphs and, subject to the provision of sub-section (3) of section 3, includes pictorial woven tissues and articles of applied handicraft and industrial art;
- “author”, in the case of a cinematographic film or sound recording, means the person who undertook the making of the film or sound recording or the initial material incorporation of the film in a medium, or in the case of a broadcast transmitted from within a country, means the person by whom the arrangements for the making of the transmission from within that country were undertaken, or in the case of a photograph, means the person who at the time when the photograph is taken, is the owner of the material on which it is taken, and in any other case it includes the author, composer, painter, sketcher, sculptor, turner, engraver, and electronic computer programmer and database creator;

- “broadcast” means a sound or visual broadcast by wireless telegraphy or wire or both and includes rebroadcast as well as any method of receiving or transmitting by satellite or through cable system for any use;
- “broadcasting organization” means the television or radio station which operates on the basis of the Radio and Television Station Laws of 1998 to 2001, as these are amended, and which transmits and/or relays programs with wireless or wire means;
- “building” includes any structure;
- “cable retransmission” means the simultaneous, unaltered and unabridged retransmission by a cable or microwave system for reception by the public of an initial transmission from another member state, by wire or wireless means, including that by satellite, of television or radio programs intended for reception by the public;
- “communication to the public” includes, in addition to any live performance or delivery, every mode of visual or acoustic presentation, including a presentation by means of apparatus for receiving broadcasts but does not include a broadcast, and “communicate to the public” shall be construed accordingly;
- “communication to the public through satellite” means the act of introducing, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth;
- “copy” means that which may be reproduced directly or indirectly in written form, sound recording, cinematographic film, recording by electronic or other means or in any other material form, so however that an object shall not be taken to be a copy of an architectural work unless the object is a building or model;
- “copyright” means copyright provided for under this Law;
- “electronic form” means a form which uses electronic means;
- “electronic means” means a means which is actuated by electric, magnetic, electromagnetic, electrochemical, or electro-mechanical energy;
- “information with regard to the rights” means any information that comes from the right-holder, which allows the identification of the protected item referred to in section 7F or which is covered by the *sui generis* rights of databases as provided for in section 7C, of the author or any other right-holder or information related to the terms and conditions of use of the work or other protected item, as well as every number or code that represents such information;

- “interactive broadcasting by application” means the broadcasts that are characterized by the fact that the public may have access to them at the time and place which each chooses individually;
- “legal user” when the term is used in relation to electronic programs or databases, means the user who legally obtained an electronic computer program or who legally obtained the database;
- “licence” means a lawfully granted licence permitting the performance of an act controlled by copyright;
- “licensing” means the offer to use for a limited period of time and for indirect or direct economic or commercial benefit, with the reservation that the licensing of an electronic computer program means its distribution;
- “literary work” means irrespective of literary quality any of the following or works similar thereto:
 - (a) novels, stories, and poetical works;
 - (b) plays, stage directions, film scenarios, and broadcasting scripts;
 - (c) textbooks, treaties, historical works, biographies, essays, and articles;
 - (d) encyclopaedias and dictionaries;
 - (e) letters, reports, and memoranda;
 - (f) lectures, addresses, and sermons, not including speeches delivered from a pulpit and addresses delivered in the House of Representatives and Courts;
 - (g) table or compilation;
 - (h) electronic computer program;
- “member state” means member state of the European Union;
- “Minister” means the Minister of Commerce and Industry;
- “movie” means the cinematographic or audiovisual work or moving images either accompanied by sound or not;
- “musical work” means any musical work irrespective of musical quality;
- “original works of art” have the meaning referred to in section 11A;
- “participating member state” means the member state that has adopted the uniform currency (euro) according to the Treaty;
- “performers or artists” means the persons who perform or undertake in any form, intellectual works, such as actors, musicians, singers, choirs, dancers, artists from puppet shows, shadow theatres, variety presentations or circuses;

- “photograph” means the product of photography or of any other process akin to photography other than a part of a cinematographic film;
- “plate” means any article or apparatus capable of making copies or adaptations of any work;
- “rebroadcast” means a simultaneous or subsequent broadcast by one broadcasting authority of the broadcast of another broadcasting authority, whether situated in the Republic or abroad, and includes diffusion of such broadcast over wires, and “rebroadcasting” shall be construed accordingly;
- “related rights” means the right provided for in the present Law that is related to copyright;
- “reproduction” means the making of one or more copies of a scientific, literary, musical or artistic work, cinematographic film or sound recording;
- “Republic” means the Republic of Cyprus;
- “right to distribute” means the right to supply to the public material which contains the object of the rights, through its sale or through other means, and include the licensing of electronic computer programs;
- “right to licence and lend” means the exclusive right to consent or prohibit the licensing and lending of the material which contains the original or a copy of the work which is protected by copyright, and acts which are protected by a related right;
- “right to monitor of the author of an original work of art” means the right which is provided for in section 11A;
- “right of copyright” means the right of intellectual property that is provided for by the present law;
- “rights of a radio- or television broadcast and presentation to the public” means the exclusive right to consent or prohibit the wireless radio-television broadcast and presentation to the public;
- “right of fixation” means the exclusive right of the right-holder to allow or prohibit the material incorporation of the objects and rights;
- “satellite” means the satellite that broadcasts in frequency bundles, which, according to telecommunication law, is destined exclusively for the broadcasting of signals to be received by the public or for closed communication between two points. In the latter case the conditions under which the signal is individually received must be capable of comparison with the conditions which apply in the former case;
- “scientific work” includes any work of a scientific nature irrespective of the scientific quality thereof;

- “sound recording” means the first and constant fixation of a sequence of sound capable of being perceived aurally and of being reproduced, but does not include a soundtrack associated with a cinematographic film;
- “technological measures” means every technology, mechanism or component which, with its usual method of operation, intends to hinder or limit actions, in relation to protected items, which are not permitted by the right-holder of any intellectual property rights or related rights or the *sui generis* rights of the manufacturer of database that is provided by section 7C;
- “telegraph” has the meaning assigned to it by section 2 of the Telegraphs Law;
- “temporary acts of reproduction” means acts of reproduction, which are transitional or sequential and which comprise an integral and substantial part of the technological method, and have as exclusive purpose to allow:
 - (a) the transmission between third parties through an intermediary within the network; or
 - (b) the legal use; of a protected item and which have no independent economic importance;
- “the Berne Convention” means the International Berne Conventions of 9 September 1886 for the Protection of Literary and Artistic Works, which was ratified by the Berne Convention for the Protection of Literary and Artistic Works (Ratifying) Law of 1979;
- “the Rome Convention” means the International Rome Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations which was ratified by the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Ratifying) Law 1999;
- “Treaty” means the Treaty for the creation of the European Union as amended;
- “wireless telegraphy” has the meaning assigned to it by sub-section (1) of section 2 of the Wireless Telegraphy Law;
- “work” includes translations, adaptations, new versions or arrangements of pre-existing works and anthologies, collections or works which by reason of the selection and arrangement of their content present an original character;
- “work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors; and
- “written” includes any form or code whether by hand or otherwise irrespective of the method or means with which or on which it has been recorded or entered.

(2) For the purposes of this Law the following provisions shall apply with respect to publication:

(a) work shall be deemed to have been published if a copy or copies thereof have been made available with the consent of the author thereof in a manner sufficient to satisfy the reasonable requirements of the public;

(b) where, in the first instance, a part only of a work is published, that part shall be treated for the purposes of this Law as a separate work;

(c) a publication in any country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere if the two publications took place within a period of not more than 30 days.

COMMENTARY

The Copyright (Amendment) Law 1993, Law Number 18(I)/93, has introduced a number of technology-induced amendments and additions to Cypriot copyright laws which have filtered through mainly into the interpretation section. The definition of “broadcast” has been broadened to include both transmission by wireless means and cable.

Law Number 128(I)/2002 was enacted to incorporate EU Directive 96/9/EC on the Legal Protection of Databases. In general, the recent legislative changes brought about to copyright law were enacted for the purposes of bringing Cyprus law into line with EU law on copyright and to reflect technological advances.

As far as the area of information technology is concerned, it is interesting to note that Cyprus copyright law treats electronic computer programs, and arguably also databases, as literary works. The term “copying” now includes copying by electronic means and copying in any other form. “Electronic means” refer to means which are actuated by electric, (electro-) magnetic, electrochemical, or electromechanic energy. Finally, the definition of adaptation has been widened to refer to the form of the program into which it is converted from or into the language of the electronic computer or code other than that which is coincidental to the running of the program.

[Works in which Copyright Shall Subsist]

3. — (1) Subject to the provisions of this section, the following are protected by this law:

(a) under copyright;

(i) scientific works;

(ii) literary works;

(iii) musical works;

(iv) artistic works;

(v) films;

(vi) databases;

(vii) sound recordings;

(viii) broadcasts; and

(ix) publications of works that were formerly unpublished.

(b) under related rights, the performances or execution of works by artists;

(i) the protection of copyright provisions apply according to related rights; the provisions of this Law which provide protection for related rights are not subject to broad translation;

(ii) the provisions which provide protection for related rights can not be interpreted so as to affect, directly or indirectly, now or in the future, and possibly even, the protection of works of copyrights, as well as the interests of the author;

(iii) the recognized exceptions and limitations of copyright as set forth in the present section and in section 7, including the provisions on exhaustion of rights stipulated in section 7, are, in the absence of any provision to the contrary, implemented with regard to related rights as well.

(2) This Law does not protect an object that:

(a) is not in written form, has not been taped, recorded, or documented in any way through electronic or other means, or has not otherwise appeared in any material form; and

(b) is not original.

A work is original if it is a personal intellectual creation of the author and not a copy of an existing work or preliminary work or model work. The recognition of protection does not depend on the implementation of any additional criteria.

(3) (a) Under no circumstances does this Law's recognized protection extend to the ideas, procedures, system methods (including operation methods), principles and data which are expressed in the protected item.

(b) If an idea, procedure, system, method (including operation methods), principles and data can be expressed only in one and unique way, then this one and unique way (expression) is not protected by this Law.

(4) In accordance with this Law, a protected item does not lack the possibility of protection for the only reason that its creation or, with regard to related rights, the relevant act, constitutes a violation of copyright or a related right, of another object.

(5) Copies of original works of art are considered original works of art and are protected as such, provided that they are produced in a limited number by the author himself, or under his responsibility. These copies must be numbered, signed or otherwise authorized by the artist.

COMMENTARY

Originality in terms of sub-section (2) of section 3 does not mean that the work concerned must be the expression of inventive thought as it is required under the Patents Law. Copyright protection is granted where labor, skill, and capital have been sufficiently expended to impart some distinctive quality or character to the work at issue.

This has been confirmed in the case of *Socratous v. Gruppo Editoriale Fab-*

bri and Gnosis Publishing Company Limited (1992), where it was held that the law of copyright does not protect the original thought or information but rather the original expression of thought or information in some concrete form.

[Copyright by Virtue of Citizenship or Residence]

4. Copyright shall be conferred by this Law:

(a) In respect to any protected item, the right-holder of which, or in the case of many right-holders, any of the right-holders who is/are at the point of creation of the right, or specifically in the case of a broadcast, at the point of completion of the broadcast, a qualified person, that is:

(i) an individual who is a citizen of the Republic or is habitually resident in the Republic;

(ii) a legal entity, established under the laws of the Republic;
or

(iii) a national of a member state of the European Union.

The same applies to legal persons of the European Union, provided they are truly and consistently connected with the economy of the member state of the EU under which law they are governed.

(b) In respect to any protected item besides a broadcast, which:

(i) was published for the first time in the Republic;

(ii) is an architectural work, which was constructed on the territory of the Republic or is another artistic work, which has been incorporated into the building, which is situated in the territory of the Republic;

(iii) is a recording or film or performance/execution which took place in the Republic; or

(iv) is a database, which was set up in the Republic;

and which has not been rendered an object of recognized copyright by sub-section (a) above.

(c) In respect to the item protected by virtue of this Law, which is created or produced or made available from the Government, or under the supervision and control of the Government or international bodies or other government agencies as may be prescribed, and which has not been rendered an object of recognized copyright by sections (a) and (b) above.

[Duration of Copyright]

5. — (1) Subject to certain provisions of this Law, the duration of protection of copyright is determined according to Appendix 1 of the present Law, and is calculated from 1 January of the year following the creation, as stipulated in the Appendix.

(2) (a) In the case of a work of joint authorship, the reference in the Appendix to the death of the author must be understood as referring to last surviving author, regardless of whether he

is a qualified person or not.

In the case where the identity of the author becomes known, the term of copyright is calculated in accordance with paragraph (i) of Appendix 1.

(3) (a) Where the author is a legal person or a governmental or international organization, the term of protection is 70 years from the publication of the work.

(b) If the identity of the individuals who either created the work initially, which was later transferred to a legal person according to subsection (1) of paragraph 11, or contributed to the creation of the work in such a way so as to be regarded as the authors, is subsequently verified, and their identities are known in the forms of work which are made accessible to the public, the term of protection is calculated under subsection (1), and the legal person is substituted by the natural person. The rights of the natural persons as such remain intact.

(4) In case of works, the term of protection of which had not been calculated by the death of the author or authors, and of which have not been made legally accessible to the public within 70 years from their creation, the protection ends after 70 years from their creation.

(5) When work is published in volumes, parts, issues or episodes, and the term of protection runs from the time the work is lawfully made available to the public, the term of protection is calculated separately for each part.

[Copyright by Virtue of International Treaties]

6. — (1) Subject to reservations of subsection (2), the present Law shall also apply to protected items, that must be protected under international treaties or agreements, which bind the Republic.

(2) (a) Under subsection (1) in conjunction with section 5, the given period of protection may not end later than the date of termination of protection which is granted in the country of which the right-holder is a national, nor can it exceed that provided in this Law with regard to local copyright.

(b) Where the country of origin of a protected item is a third country within the meaning of the International Berne Convention, and the right-holder is not a national of a member state of the European Union, the term of protection granted, under subsection (1), ends upon the date of termination of protection as applies in the country of origin of the protected item, with maximum term as defined in paragraph 5.

(c) Any contrary obligations of the Republic based on international conventions they have entered remain in force.

(3) (a) The right to control the copyright on both sides of the euro banknotes, as this right is determined by the applicable

provisions, is exercised within the Republic either from the European Central Bank which owns such right, or by the Central Bank of Cyprus on behalf of the Central Committee.

(b) The right to control the copyright on the common side of euro coins, as this right is determined by the applicable provisions, is exercised within the Republic either from the European Central Bank which owns such right, or by the Central Bank of Cyprus on behalf of the Central Committee.

(4) Notwithstanding the provisions of section 5, the right under subsection (3) is not subject to any time limit.

[Nature of Copyright]

7. — (1) (a) Copyright is comprised of the exclusive right to control the carrying out in the Republic of Cyprus of:

- (i) the reproduction;
- (ii) the advertisement;
- (iii) the sale, rental, distribution, lending, and exhibiting to the public of the original and copies thereof;
- (iv) the transmission, broadcasting or presentation to the public through satellite or cable relay;
- (v) the translation, adaptation and any other arrangement;
- (vi) the presentation of the works, through wired or wireless means, as well as the right of the author to make their works accessible to the public in such a manner that anyone may have access to them when he/she so chooses;
- (vii) the prohibition or consent to making the protected item available to the public through wire or wireless means, according to the provisions of paragraph 7F; of the whole work or a substantial part of it.

(b) The following applies with regard to the rights mentioned in subsection (iii) of paragraph (a):

- (i) the first sale within the European Union of the fixation or of a copy or replica of the fixation, of a protected object by the right-holder or with his consent, exhausts the right of control of sales and distribution of the specific fixation or of the specific copy or replica in the European Union;
- (ii) subsection (1) above is without prejudice to the right to control any subsequent rentals and lending;
- (iii) the public lending of a protected object or its fixation shall not in any event be subject to the exhaustion stipulated in subsection (i);
- (iv) the rights that are mentioned in subsections (vi) and (vii) of paragraph (a), are not exhausted from any act of presentation or making available to the public.

(c) The simple provision of the material means for the facili-

tation or the completion of the presentation does not constitute a presentation to the public as such within the meaning of subsection (vi) of paragraph (a).

(2) The intellectual property right does not include the right to control:

(a) the *bona fide* performance of any of the aforementioned acts, for the purposes of research for personal use, critical review or report on current events, under the condition that if this use is made in public, it is accompanied by the acknowledgment of the title and authorship of the work, with exception cases where the work was included in a broadcast;

(b) the inclusion in a film or broadcast of any artistic work situated in a place where it may be viewed by the public;

(c) the reproduction and distribution of copies of any artistic work permanently situated at a place where it is possible for it to be viewed by the public;

(d) the incidental inclusion of an artistic work in a film or broadcast;

(e) the inclusion of a work in a broadcast, communication to the public, sound recording, film or work collection, as long as this inclusion is made by way of illustration for teaching purposes and is compatible with fair practice and provided a reference is made of the source and name of the author which appears on the work thus used;

(f) the quotation of passages from published works, if they are compatible with fair practice and their extent does not exceed that justified by the purpose, including providing extracts from newspaper articles and magazines in the form of a synopsis of this type, provided a reference is made of the source and of the name of the author which is shown in the works used in such way;

(g) the reproduction by the press, presentation to the public as defined in section (1) above or the provision of published articles for economical, political or religious current issues or audiovisual transmitted works or other objects of the same type, when this usage is not expressly prohibited and as long as the source is mentioned, including the name of the author, or usage of works or other objects during the presentation of current affairs, to the degree so justified for information purposes and as long as the source is mentioned, including the name of the author unless it is realized that this is impossible;

(h) the recording of a literary or musical work, as well as the reproduction of said recording by the author or with his permission, provided that the copies of which are intended for retail sale in the Republic of Cyprus and provided that this work has already been recorded either in the Republic or overseas under licence by the right-holder of the relevant part of the copyright,

subject to such conditions and on payment of such reasonable compensation as the Minister may prescribe;

(i) the reading or recitation in public or in a broadcast by one person, of any reasonable extract from a published literary work so long as it is accompanied by sufficient acknowledgement;

(j) any use or presentation of a work made by public libraries, non-commercial collections and documentation centers and scientific institutions, educational institutions or museums, as may be prescribed, where such use is carried out in the public interest, no revenue is derived therefrom, and no admission fee is charged for the communication of the work so used to the public;

(k) any reproduction for the ephemeral recording of works that takes place by a broadcasting organization or under the address or the control of such, provided that such reproduction or any copies of such are made solely for the purpose of legal broadcasting, and are destroyed prior to the end of a six calendar-month period, which commences immediately after the reproduction has taken place, or prior to the end of greater periods which might have been agreed by the broadcasting authority and the right-holder of the relevant part of the copyright on the work:

Every reproduction of a copy made by virtue of this present section, provided such work represents a depiction or impression of objective facts (documentary) of exceptional historic interest, can be retained at the archives of the broadcasting authority, which are hereby classified as the official archives for the above purpose. However, subject to the provisions of this Law, such reproduction cannot be used for broadcasting or for any other purpose, without the consent of the right-holder of the relevant part of the copyright of the work.

(l) the broadcasting of a published work with which no licensing body referred to under section 15 is concerned, subject to the condition that, saving the provisions of this section, the owner of the broadcasting right in the work receives reasonable remuneration determined in the absence of agreement by the competent authority appointed under section 15;

(m) any use made of a work for the purpose of a judicial, parliamentary or administrative proceeding or of a report for any such proceeding;

(n) the reproduction by the press, communication to the public or making available of published articles on current economic, political or religious issues or broadcast works or other subject matter of the same character, where such use is not expressly reserved and so long as the source is indicated, including the author's name, or the use of works or other subject mat-

ter in connection with the reporting of current events, to the extent so justified by its informative purpose and so long as the source is referenced, including the author's name, unless it is determined that such reference is impossible;

(o) the reproduction by any means that is carried out by a natural person for private use and for ends that are neither directly nor indirectly commercial, subject to the condition that the right-holders receive reasonable compensation that takes into account the application or non-application of technological measures in the specific work or other material;

(p) the reproduction on paper or another material medium, with the use of any type of photographic technique, or with any other method that will bring about the same result, with the exception of sheet music, subject to the condition that the right-holder receive fair compensation;

(q) the reproduction of broadcasts on behalf of non-profit social institutions, such as hospitals or prisons, subject to the condition that the right-holder receive fair compensation;

(r) any use for the purpose of illustration for teaching or scientific research, as long as the source is mentioned, including the author's name, unless it is determined that this is impossible and provided that it is justified by the non-commercial purpose to be achieved;

(s) any use for the benefit of people with special needs, or that is directly connected with a disability and does not have a commercial nature, to the degree necessary for that specific disability.

(3) The use of a work under the provisions of (a), (e), (f), (g), (i), (l), and (m) of subsection (2) includes the use thereof in any of the languages in general use in the Republic.

(4) Copyright in a scientific, literary, musical, or artistic work, in a cinematographic film or photograph, includes the right of the author during his lifetime to claim authorship of the work and to object to any distortion, mutilation or other alteration thereof which would be prejudicial to his honor or reputation, provided that an author who authorizes the use of his work in a cinematographic film or a television broadcast may not oppose modifications which are absolutely required on technical grounds or for the purpose of commercial exploitation of the work.

(5) Temporary actions of reproduction which are transient or incidental in nature, such as actions that make browsing and caching possible, including those that make possible the effective operation of transmission systems, are exempt from the exclusive right of reproduction, subject to the condition that the intermediate does not alter the information or obstruct the legal use of the technology, which is widely recognized and utilized by the industry, with the purpose of obtaining data relevant to the use of

the information. Such use is considered legal provided that it is allowed by the right-holder and is not limited by the Law.

[Nature of Copyright in Architectural Works]

7A. Copyright in a work of architecture shall also include the exclusive right to control the construction of any building which reproduces the whole of a substantial part of the work either in its original form or in any form recognizably derived from the original. Copyright in any such work shall not include the right the control the renovation in the same style as that of the original of a building to which that copyright relates.

[Nature of Copyright in a Computer Program]

7B. — (1) By this present law, computer programs are protected as literary works, including their preparatory design material, subject to the sole condition that it is the author's own intellectual creation, or a joint creation by their authors, and not a copy of an already existing program or pre-design of a program.

(2) Protection in accordance with the Law applies to the expression in any form of a computer program. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright.

(3) Subject to the provisions of subsections (4) and (5), as well as the control rights provided by subsection (1) of section 7, the copyright of a computer program is comprised of the exclusive right of carrying out in the Republic any of the following acts:

(a) the permanent or temporary reproduction of a computer program by any means and in any form, in part or in whole; insofar as loading, displaying, running, transmission or storage of the computer program necessitate such reproduction, such acts shall be subject to the authorization of the right-holder;

(b) the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program;

(c) any form of distribution to the public, including the rental of the original computer program or of copies thereof.

(4) Subject to the exceptions stipulated in subsection (2) of section 7, it is permitted for the legal user to carry out, without authorization from the right-holder and without reward to him, the following actions:

(a) in the absence of any contractual provisions, the permanent or temporary reproduction, translation, adaptation, arrangement or any other alteration of a computer program and the reproduction of the results thereof, where such actions are necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose, including for error correction;

(b) the making of a back-up copy of the computer program, to the extent where such back-up is necessary for the legitimate use of the program; any agreement to the contrary is void;

(c) the observation, study or testing of the functioning of the program, in order to determine the ideas and principles which underlie any element of the program, subject to the condition that such actions take place while performing any of the acts of loading, displaying, transmitting or storing of the computer program; any agreement to the contrary is void;

(d) the reproduction for non-private, as well as private use that does not fall within the cases set out in subsections (b) and (c) above, is not permitted; and

(e) with regard to licensing to the public, computer programs whereby the program itself does not form the material part of the licence.

(5) (a) A legal user who can use the program or authorize another person to do so is permitted to carry out the reproduction of the code and the modification of its form within the meaning of (a) and (c) of subsection (4), provided that such actions are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, and subject to the condition that the information necessary to achieve interoperability was not previously readily and speedily available to the legal user and the actions are confined to the parts of the original program which are necessary to achieve such interoperability.

(b) The information obtained during decompilation as provided in (a) above is not permitted:

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

(ii) to be given to others, except when necessary for the interoperability of the independently created computer program;

(iii) to be used for the development, production or marketing of a computer program substantially similar in its expression with the original program, or for any other act that infringes the copyright of the author.

(c) The provisions of this section cannot be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the right-holder's legitimate interests or conflicts with a normal exploitation of the computer program.

(d) Agreements contrary to (a), (b) and (c) above are void.

COMMENTARY

This section was brought into force by amending Law Number 128(I)/2002, which implemented Council Directive 91/250/EEC on the legal protection of computer programs.

[Nature of Copyright in Databases]

7C. — (1) (a) Databases are protected either through full copyright as set out in subsection (2) below, or specific character copyright set out in subsection (3) below, depending on whether the database fulfils the conditions of originality or not.

The ownership of one right does not exclude the ownership of the other.

(b) A database fulfils the condition of originality where it is an intellectual creation either by reason of the selection or arrangement of its contents.

(c) The copyright protection provided to the author of any form of database according to this section is not extended to the contents of the database and shall be without prejudice to any rights subsisting in such contents themselves.

(2) (a) The author of a database that fulfils the conditions of originality, whether such author is a natural person or a group of natural persons who created the base jointly, or a legal person, has the exclusive right to carry out or to authorize:

(i) the temporary or permanent reproduction by any means and in any form, in whole or in part;

(ii) the translation, adaptation, arrangement and any other alteration of the database;

(iii) any form of distribution to the public of the database or of copies thereof;

(iv) any communication, display or performance of the database to the public;

(v) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (ii).

(b) (i) subject to the provisions of subsection (2) of section (7), the legal user of a database or copy of such may, without authorization of the author, perform any of the acts set out in paragraph (a) above, which are necessary for the purposes of access to the contents of the databases and normal use of the database;

(ii) to the extent where the legal user is entitled to use a section of the database, (i) above applies only for that section;

(iii) any agreement contrary to the above is void.

(c) The without-licence use of the database within the scope of the exceptions stipulated in subsection (2) of section (7) and paragraph (b) above, cannot be applied in such a manner as to unreasonably prejudice the right-holder's legitimate interests, or as to conflict with the normal exploitation of the database in accordance with the Berne Convention.

(3) (a) The maker of a database has the exclusive right, inde-

pendent of whether the said database or its contents is eligible for protection as copyright or on the basis of any other rights, to prohibit the extraction and/or the re-utilization of the whole or of a substantial part, evaluated qualitatively or quantitatively, of the contents of the database, if the obtaining, verification or presentation of the contents of the database shows that there has been a substantial qualitative or quantitative investment on his behalf. Possible rights pertaining to the contents of the database remain intact.

(b) Subject to paragraph (c) below, the maker of a database which is made available to the public in whatever manner may not prevent a lawful user of the database, or if the right of use is limited to only a part of the database, the lawful user of that part, from:

(i) extracting and/or re-utilizing parts of the contents of the database, regardless of whether it is substantial or insubstantial;

(ii) extracting and/or re-utilizing insubstantial parts of the contents of the database, evaluated qualitatively or quantitatively;

(iii) extracting and/or re-utilizing parts of the contents of the electronic database, regardless of whether it is substantial or insubstantial, under the condition that the said use is carried out for:

a) private purposes;

b) for educational or research purposes, provided reference is made to the source, and provided that the extraction and/or re-utilization does not exceed the extent justified by the non-commercial purpose to be achieved;

c) in the case of extraction and/or re-utilization for the purposes of public security or an administrative or judicial procedure.

Any agreement to the contrary is void.

(c) A lawful user of a database that has been made available to the public in any manner, is not permitted to:

(i) perform acts which conflict with the normal exploitation of the database or which unreasonably prejudice the legitimate interests of the maker of the database;

(ii) cause prejudice to the holder of a copyright or related right in respect of the works or renditions, or performances that are contained in the said database;

(iii) proceed to the repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database, where such action entails the carrying out of actions that come into conflict with the regular utilization of the database or unreasonably prejudices the permanent interests of the maker of the database.

(d) For the purposes of the present section:

(i) “extraction” means the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

(ii) “re-utilization” means any form of making available to the public of all or a substantial part of the contents of a database by the distribution of copies, renting, by on-line or other forms of transmission.

Public lending is not an act of extraction or re-utilization.

[Nature of Copyright on Unpublished Work]

7D. Any person that, after the termination of the protection of copyright, publishes for the first time legally, or legally presents to the public a work not previously published, has the property rights of the author.

[Infringement of Rights through the Interference of Rights-Management Information]

7E. The wilful act of any person of any of the following acts is considered an infringement of copyright protected by the present Law if such person has reasonable grounds to know that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by the present law:

(a) the removal or alteration of any electronic rights-management information;

(b) the distribution, importation for distribution, broadcasting, communication or making available to the public without authorization, of works or copies of works knowing that the electronic right-management information has been removed or altered without authority.

(2) For the purposes of the present section, the term “rights-management information” means any information provided by the right-holders which identifies the work, the author of the work, or the right-holder of the work, or the information for the terms and conditions of the use of the work, and any number or codes that represent such information, when any of this information is attached to a copy of the work or appears in relation to the communication of the work to the public.

[Nature of Copyright in the Information Society]

7F. Regardless of the provisions of section 7E, the right-holders stipulated below have the exclusive right to authorize or prohibit the making available to the public, by wire or wireless means, and in such a way that members of the public may access them from a place and at a time individually chosen by them:

(a) artists and performers with regard to the fixations of their performances;

(b) phonogram producers, as regards their phonograms;

(c) the producers of the first fixations of films, of the original and copies of their films;

(d) the broadcasting organizations, with regard to the fixations of their broadcasts that are transmitted by wire or wireless means and including cable or satellite transmission.

[Conventions Relating to Films]

8. Where the owner of the copyright in any literary or artistic work or the owner of the related right over a performance or rendition allows the inclusion of the protected item in a film, this authorization is considered, in case of absence of any agreement to the contrary, that it includes not only the authorization for the transmission of the film or the authorization for its broadcast, but also the concession of the right of licensing. This section is not applicable to musical works included in a film.

[Nature of Copyright in Sound Recording]

9. Copyright in sound recording consists of the exclusive right to control in the Republic the direct or indirect reproduction of the whole or of a substantial part of the recording either in its original form or after any adaptation or in any form recognizably derived from the original, the licensing, the lending, the distribution of the original and copies, and the radio television broadcasting and presentation to the audience.

The provisions of paragraphs (a), (e), (j), (k), and (m) of subsection (2) of section 7 shall apply to the copyright in a sound recording the same way as the copyright in a literary, musical, or artistic work in a cinematographic film.

[Nature of Copyright in Broadcasts]

10. — (1) Copyright in a broadcast shall be the exclusive right to control the doing in the Republic of any of the following acts:

(a) the recording or the reproduction in any manner and the rebroadcast of the whole or a substantial part of the broadcast;

(b) the communication or broadcast to the public in places where an admission fee is charged, of the whole or a substantial part of the broadcast, either in its original form or in any adaptation or in any form recognizably derived from the original;

(c) the fixation of the broadcast, regardless of whether the broadcast was transmitted wirelessly or with wires, including cable and satellite transmission; the right-holder does not have this right when he is broadcasting via a cable broadcast of another right-holder;

(d) the licensing and lending of the fixation of a broadcast;

(e) the distribution of non-hostile fixations of a broadcast;

(f) the taking of still photographs from the broadcast.

(2) The provisions of paragraph (a), (e), (j), and (m) of subsection (1) of section 7 shall apply to the copyright in a broadcast in

like manner as they apply to copyright in a literary, musical or artistic work or a film; and

(3) A radio and television broadcast contract, where there is no agreement to the contrary, does not give the authority to the broadcasting organization that is a part to the contract, to allow a third party to broadcast or rebroadcast a work to the public through electromagnetic waves or other material channels, or with any other means that are parallel to the surface of the earth or through satellites.

[Satellite Broadcast]

10A. — (1) The authorization for the communication of a work to the public through satellite can only be acquired by agreement.

(2) The communication of a work to the public through satellite takes place in Cyprus where, under the control and responsibility of the broadcasting organization situated within the territory of Cyprus, the program-carrying signals are introduced in an uninterrupted chain of communication leading to the satellite and down towards the earth. If the program-carrying signals have an encrypted form, then there is communication to the public through satellite on condition that the means for decrypting the broadcast are provided to the public by the broadcasting organization or with its consent.

(3) In the case where in subsection (2), above, the described communication to the public through satellite occurs in a non-member state which does not provide the level of protection provided for by this Law, the following applies:

(i) if the program-carrying signals are transmitted to the satellite from an uplink station situated in Cyprus, the communication to the public by satellite is deemed to have occurred in Cyprus, and the rights provided shall be exercisable against the person operating the uplink station;

(ii) if there is no use of an uplink station situated in a member state, but the communication to the public through satellite has been commissioned by a broadcasting organization, which has its principal establishment in Cyprus, the rights over this act will be exercisable against the broadcasting organization.

[Cable Retransmission]

10B. — (1) The cable retransmission of programs from member states of the European Union takes place on the basis of individual or collective agreements between the creator of the program and the right-holders of related rights on the one hand and the cable operators on the other, who are both obligated to form a mutually beneficial agreement. If this agreement is not made, any of the interested parties can request from the Organization, set out in Section 15, to act as a mediator. The formulation of the proposal can take place with the observance of the procedure with

all parties present, applied according to the provisions of the Regulations of the Organization. It is assumed that all parties accept the proposal of the Organization, if none of them expresses its opposition within a period of three months from the notification of such proposal.

(2) [. . .]

(3) [. . .]

[Rights of Performers and Artists for their Performances]

10C. — (1) Artistic performers have the exclusive right to the fixation, licensing and lending, reproduction and distribution of their performances/renditions, as well as the radio-television broadcasting and presentation to the public and satellite transmission and cable retransmission of this, the latter only if the performance or rendition was not part of a broadcast or not made from a fixation.

(2) [. . .]

[First Owner of Copyright to Be the Author]

11. — (1) Copyright subsisting by virtue of this Law shall vest initially in the author, provided that, notwithstanding the provisions of sub-section (5) of section 12, where the doing of a work:

(a) is commissioned by a person or body corporate who is not the author's employer under a contract of service or apprenticeship; or

(b) not having been so commissioned, is made in the course of the author's employment as part of his duties under his contract of employment, the copyright shall be deemed to be transferred to the person or body corporate who commissioned the work or to the author's employer subject to any agreement between the parties excluding or limiting such transfer.

(2) (a) The initial maker of a film is the producer of the film;

(b) further than the producer, the co-creator of a film is considered the main director. This provision applies only to films that have been produced after 1 July 1994.

(3) In the case of an anonymous or pseudonymous work the publisher whose name is indicated on the work as such shall be deemed to be unless the contrary is proved the lawful representative of the anonymous or pseudonymous author and shall be entitled to exercise and protect the rights belonging to the author under this Law.

(4) In the case of an unpublished work where the identity of the author is unknown but, where there are reasons supporting the view that he is a citizen of the Republic, the copyright subsisting by virtue of this Law shall be deemed to vest in the Minister of Education.

(5) The provisions of sub-sections (3) and (4) shall cease to apply as soon as the identity of the author becomes known.

(6) The provisions of the present section apply accordingly to related rights.

[Assignments and Licences in Respect of Copyright]

12. — (1) Subject to the provisions of this section, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of law as movable property.

(2) Where an author or performer or artistic performer has assigned or transmitted the right of licensing of a recording or of the original or copy of a film to a right-holder of the recording or film, he retains the right to reasonable remuneration for such licensing. The private agreement resigning such right of reasonable remuneration is void.

(3) The private agreement resigning the author's original work of art from the right of monitoring is void.

(4) An assignment or testamentary disposition of copyright may be limited so as to apply to some only of the acts which the owner of the copyright has the exclusive right to control or to part only of the period for which the copyright is to subsist or to a specified country or other geographical area.

(5) No assignment of copyright and no exclusive licence to do an act, the doing of which is controlled by copyright, shall have effect unless it is or is granted in writing.

(6) A non-exclusive licence to do an act, the doing of which is controlled by copyright, may be written or oral or may be inferred from conduct.

(7) An assignment, licence or testamentary disposition may be effectively granted or made in respect of a future work or an existing work in which copyright does not yet subsist, and the prospective copyright in any such work shall be transmissible by operation of law as movable property.

(8) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, unless the will has provided otherwise, be deemed to include any copyright or prospective copyright in the work which is vested in the deceased.

[Infringements]

13. — (1) Copyright shall be infringed by any person who does or causes or permits any other person to do, without the licence of the owner thereof, an act, the doing of which is controlled by copyright.

(2) Copyright shall also be infringed by any person who without the licence of the owner of the copyright imports into the Republic or exports from the Republic otherwise than for his private and domestic use or distributes therein by way of trade or sells or rents or lends or communicates to the public or exhibits in public or in any way advertises any article in respect of which copyright is infringed under sub-section (1).

(3) In an action for infringement of copyright:

(a) copyright shall be presumed to subsist in the work unless the defendant puts the question in issue;

(b) where the subsistence of copyright is not in issue, the plaintiff is presumed to be the owner of the right claimed unless the defendant puts his ownership in issue;

(c) the work in question shall be presumed to be original and in the case of a publication the date and place alleged by the plaintiff shall be presumed to be correct unless in either case the contrary is proved.

(4) Subject to the provisions of this Law, infringements of copyright shall be actionable at the suit of the owner of the copyright, and in any action for such an infringement all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other rights including the right of delivery up to the owner of copyright, who is deemed to be their owner, of all the copies which appear to the Court to be infringing copies of the copyright in the work.

A prohibitive injunction can be issued on the intermediate whose services are used by a third party for the infringement of copyright.

(5) Where in an action for infringement of copyright it is proved or admitted:

(a) that an infringement was committed; but

(b) that at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement, whether any other relief is granted under this section or not.

(6) Where in an action under this section an infringement of copyright is proved or admitted and the Court, having regard (in addition to all other material considerations) to:

(a) the flagrancy of the infringement; and

(b) any benefit shown to have accrued to the defendant by reason of the infringement, is satisfied that effective relief would not otherwise be available to the plaintiff, the Court, in assessing damages for the infringement, shall have power to award such additional damages by virtue of this sub-section as the Court may consider appropriate in the circumstances.

(7) No injunction shall be issued in proceedings for infringement of copyright which requires a completed or partly built building to be demolished or prevents the completion of a partly built building.

(8) In any criminal or civil procedure in accordance with the present Law, the name, statement or mark that specifies the right-holder and that appears on the protected object will be acceptable as evidence as to the identity of the right-holder and will be considered correct until proven otherwise.

(9) In any civil procedure according to this Law, any statement or object that is delivered from the defendant to any other person as a result of a granting of an injunction by the court will not be acceptable as evidence in any criminal case against the said defendant, for any offence that has been committed during or in relation to any of the acts of infringement of copyright that is the object of the aforementioned civil procedure.

(10) In this section:

– “action” includes a counterclaim, and references to the plaintiff and to the defendant in an action shall be construed accordingly;

– “Court” means a Court of competent jurisdiction;

– “owner of copyright” means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright.

(11) The *sui generis* right of the manufacturer of a non-original database that is provided for in subsection (3) of section 7C is protected in the framework of the present section to the same extent as that of copyright.

(12) The provisions of the present section apply to related rights accordingly, as well.

COMMENTARY

The Copyright Law provides that infringement is actionable *per se* independently of any contractual remedies which may, for example, be available by virtue of the breach of a licence agreement.

Section 13 sets out the civil remedies which may be sought in the event of copyright infringement. They fall into two categories, namely preventive and compensatory. The preventive remedies are:

1. The power of search and seizure of infringing material; and
2. Anticipatory injunctions.

The compensatory remedies consist in:

1. The award of damages to the plaintiff;
2. Orders for destruction or delivery up of the infringing copies and the equipment by which copies are produced; and
3. Account of profits.

13C. — (1) The court that ascertains an infringement of copyright has the power to order the infringer not to repeat the infringing act in the future. In the case of non-compliance of the infringer with the prohibitive injunction issued, to ensure compliance, the court can impose a penalty that does not exceed €51,258, or a term of imprisonment not exceeding three years or both.

(2) [. . .]

COMMENTARY

Amending Law Number 123(I)/2006 enacts provisions for the protection of confidential information and provides more powers to the court to obtain necessary information in any case of infringement (section 13A and 13B).

[Penalties and Summary Proceedings in Respect of Dealings which Infringe Copyright]

14. — (1) If any person knowingly:

(a) makes for sale or hire any infringing copy in which copyright subsists in any work or related right by virtue of this law;

(b) sells or lets for hire or advertises the sale or hire or by way of trade exposes or offers for sale or hire any such copy;

(c) obtains possession or distributes such copies either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright;

(d) by way of trade exhibits in public any such copy; or

(e) exports from and/or imports into the Republic for sale or hire any such copy;

he shall commit an offence and shall on his conviction be liable to a fine not exceeding €51,258 or to imprisonment for a term not exceeding three years or to both such penalties and in the case of a second or any subsequent conviction he shall be liable to a fine not exceeding €59,801 or to imprisonment for a term not exceeding three years or to both such penalties.

(2) Any person who knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists shall commit an offence and shall on his conviction be liable to a fine not exceeding €51,258 or to imprisonment for a term not exceeding three years or to both such penalties, and in the case of a second or any subsequent conviction he shall be liable to a fine not exceeding €59,801 or to imprisonment for a term not exceeding four years or to both such penalties.

(3) Any person who knowingly causes or permits a scientific, literary, artistic, or musical work or film to be performed in public thereby infringing a copyright which subsists in such work or knowingly permits or causes the public carrying out of a performance or artistic rendition which infringes a related right shall commit an offence and shall, on his conviction, be liable to a fine not exceeding €51,258 or to imprisonment for a term not exceeding three years or to both such penalties, and in the case of a second or any subsequent conviction he shall be liable to a fine not exceeding €59,801 or to imprisonment for a term not exceeding three years or to both such penalties.

(4) With regard to any procedure relating to criminal offences in contravention of the present Law, within the meaning of the term “author”, every person who reproduces with the consent of

the author as well as every authorized representative of his shall be included.

(5) The Court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender which appear to it to be infringing copies or to be plates for the purpose of making infringing copies, to be destroyed or delivered up to the owner of the copyright or otherwise be dealt with as the Court may think fit.

(6) For the purposes of this section, “Court” means the President of the District Court or Senior District Judge or District Judge having territorial jurisdiction to try any offence under this section and impose the penalties prescribed thereunder.

COMMENTARY

Section 14, as amended by Law Number 18(I)/93, sets out a range of criminal offences for copyright infringement. Penalties include fines or imprisonment for a term up to four years. The competent criminal court may order copies of the work in possession of the alleged offender, which appear to be infringing copies, to be destroyed or delivered up to the owner of the copyright or otherwise be dealt with at the court’s discretion.

In June 2004, an Intellectual Property Task Force was created at Police Headquarters which has contributed to efforts to tackle piracy. The Cyprus Federation against Copyright Theft assists this task force, by reporting targets to the police and providing them with technical expertise to examine all products seized. Amending Law Number 128(I)/2004 also provided for harsher penalties in the case of infringement of copyright, so as to further deter the increase in copyright violations that occurred as use of the internet became more widespread in Cyprus and so as to increase the severity of a copyright offence.

14A. — (1) Independent of the provisions of Article 14 of the present Law, anyone who in his knowledge:

(a) circulates a copy of a computer program, while knowing or having reasons to believe that it is unauthorized;

(b) has in his possession, for commercial purposes, a copy of a computer program, while knowing or having reasons to believe that it is unauthorized;

(c) circulates or has in his possession, for commercial purposes, means with a sole purpose to facilitate the unauthorized removal or elimination of a technical system which is employed for the protection of a computer program;

commits an offence and in case of his conviction shall be liable to the penalties provided in subsection (1) of article 14.

(2) Any unauthorized copy of a computer program, and every means as mentioned in paragraph (c) of subsection (1), are subject to confiscation according to the common provisions.

14B. — (1) Anyone who in his knowledge or having valid reasons which allow him to know that he pursues this purpose and without the holder’s permission, manufactures, imports, distributes, sells, leases, advertises for sale or lease or possesses appli-

ances, products or constitutive elements or provides services which:

(a) constitute an object of promotion, advertisement or trade with the purpose of elimination of technological protection measures;

(b) beyond the disposal of the protection, have a commercial purpose or limited usage value; or

(c) have been primarily designed, produced, adjusted or carried out to allow or facilitate the elimination of the protection of any effective technological measure;

commits an offence and in case of his conviction shall be liable to a fine not exceeding €51,258 or to imprisonment not exceeding three years or to both such penalties and in case of a second or any subsequent conviction he is liable to a fine not exceeding €59,801 or to imprisonment not exceeding three years or to both such penalties.

(2)–(7) [. . .]

[Appointment of Competent Authority and Duties of such Authority]

15. — (1) In any case where it appears to the competent authority that a licensing body:

(a) is unreasonably refusing to grant licences in respect of copyright; or

(b) is imposing unreasonable terms or conditions on the granting of such licences,

the competent authority may direct that, as respects the doing of any act relating to a work with which the licensing body is concerned, a licence shall be deemed to have been granted by the licensing body at the time the act is done provided the appropriate fees fixed by such competent authority are paid or tendered before the expiration of such period or periods as the competent authority may determine and such other reasonable terms and conditions as may be prescribed by the competent authority are fulfilled.

(2) In this section:

– “competent authority” means the authority consisting of not more than five persons appointed by the Minister from among persons having experience in and knowledge of matters of copyright, at least three of which are not members of the public service for the purpose of exercising jurisdiction under the provisions of this Law whenever any matter requires to be determined by such authority;

– “licensing body” means a society, firm or other organization which has as its main object or one of its main objects the negotiation or granting of licences in respect of copyright works and includes an individual carrying on the same activity.

(3) [. . .]

(4) No person may be appointed under the provisions of this section nor may any person so appointed act as a competent authority if he, his partner, his employer or any body (whether statutory or not) of which he is a member has any pecuniary interest in any matter which requires to be determined by such authority.

(5) The Minister may make regulations published in the *Official Gazette* of the Republic, governing the proceedings before the competent authority and, without prejudice to the generality of the foregoing, may make Regulations:

(a) prescribing the manner in which any matter may be referred to the competent authority;

(b) prescribing the procedure to be adopted by the competent authority in dealing with any matter referred to it under this Law and the records to be kept by the competent authority;

(c) prescribing the manner in which the competent authority shall be convened and the place where the competent authority shall hold its sittings;

(d) prescribing the scale of fees and charges; and

(e) relating generally to the better carrying out of the functions entrusted to the competent authority by this Law.

COMMENTARY

It has been established that the competent authority's decision to fix an appropriate licensing fee under sub-section (1) of section 15 is a matter of private law and therefore cannot be subject of a recourse to the Supreme Court of Cyprus in its revisional jurisdiction under article 146 of the Constitution (Case 305/92, *Sunwing Hotels (Cyprus) Limited v. Competent Copyright Authority*).

[Regulations]

16. — (1) The Council of Ministers may make Regulations, published in the *Official Gazette* of the Republic, for the better carrying out of the provisions of this Law and for prescribing anything which is required or may be prescribed under this Law.

(2) Without prejudice to the generality of sub-section (1), Regulations made by the Council of Ministers under this section may provide for an extension of the provisions of this Law in respect of some or all of the works referred to in sub-section (1) of section 3 by:

(a) individuals who are citizens or have their habitual residence in,

(b) bodies corporate incorporated in or according to the law in force in,

(c) works other than sound recordings or broadcasts first published in,

(d) works of architecture erected in or other artistic works incorporated in a building in, and

(e) sound recordings made in, a country which is a party to a convention to which the Republic is also a party and in which there is provision for the protection of copyright in works protected by this Law.

[Abrogation of Common Law Rights]

19. No copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Law or of some other enactment in that behalf.