



Department for
International Trade

State of intellectual property protection and enforcement in Armenia

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Foreword

With funding from the UK Government's Department for International Trade and support from the British Embassy Yerevan, in January 2020, the Intellectual Property Rights Centre of Armenia (IPRC) initiated a special research project to assess the level of protection and enforcement of intellectual property rights (IPR) in Armenia, resulting in this report. The report describes the current state of the intellectual property (IP) system in Armenia and details recommendations for the Armenian government to improve the system and for IPR rightsholders, particularly those from the UK, to navigate the system successfully.

For the purposes of this research, several surveys with representatives of both the public and private sectors were conducted, including the Armenian government; NGOs; UK brand owners and their Armenian local legal counsels; importers, distributors, and various other representatives of UK businesses in Armenia; and foreign chambers of commerce.

In addition, the report relies on a multitude of sources, including the Armenian IP Agency (AIPA) released information and DataLex, the litigation database for Armenia. Although the selected sources are considered to be reliable, there is always a risk that the information from those sources may contain some inaccuracies or be outdated. The editors of the report apologise in advance for such inaccuracies, if any. The editors further request that any inaccuracy that is identified in the report be communicated to the editors via info@ipr-center.org electronic mail address.

The report may be cited as:

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The editors would like to further thank all team members of IPRC and Knyazyan & Partners for their support, as well as Mariam Hayrapetyan, LL.M student of the American University of Armenia, who has successfully completed her master's program as an intern for this project. The team and Mariam Hayrapetyan assisted with number of tasks, including research, preparation of the survey questionnaire and conducting face to face interviews with various stakeholders.

The editors would like to express their sincere gratitude to all respondents of the survey, including the Armenian government, NGOs, UK brand owners, local counsels of UK and foreign rightsholders, importers, distributors and various other representatives of UK and foreign businesses in Armenia; and foreign chambers of commerce.

The editors would like to further thank the Armenian Government and Parliament and especially the Ministry of Economy, the Ministry of Justice, the Ministry of High-Tech Industry, the Central Bank, the Judicial Department, and the Police for reviewing the report and providing valuable input. The summary of the commentary is presented herein in the Conclusion section.

About editors

Sarkis Knyazyan

Sarkis Knyazyan is the Managing Partner of Knyazyan & Partners (www.knyazyanlaw.com), a law firm specialised in intellectual property rights. He is also a member of the Board of the Intellectual Property Rights Centre Foundation (www.ipr-center.org). Before joining Knyazyan & Partners, Mr. Knyazyan clerked for the United States District Court, Northern District of Illinois, Chicago, IL. He has worked as an IPR Adviser to the Armenian Ministry of Economy and the Ministry of Justice. Mr. Knyazyan has also worked as an IP consultant for the European Union's and the Council of Europe's project on "Strengthening the Independence, Professionalism and Accountability of the Justice System in Armenia", where he was entrusted to work on amending the IP Chapter of the Armenian Civil Code. Mr. Knyazyan has been teaching IP at the American University of Armenia, since 2006. He is also teaching at the School of Litigators of the Armenian Chamber of Litigators (Armenian Bar Association), since 2013. He taught at French University in Armenia; at Russian - Armenian University. He has founded and managed a number of IP related projects and initiatives in Armenia, such as the "Annual IP Moot Court Competition" in 2011, "The IP Summer Academy", the Annual International IP Conference, "I Create" Business Competition, etc. Mr. Knyazyan received his master's degree (LL.M) in Intellectual Property law from the University of New Hampshire, Franklin Pierce School of Law. He has also completed the Haifa University's program on European Patent Law, in Israel, and the Licensing Academy Program on IP and Technology Transfer, at UC Davis, in the United States.

Khachatur Pepanyan

Khachatur Papanyan is a U.S. patent attorney, who currently serves as the president at Arluys IP. Mr. Papanyan also continues to be a contract patent attorney for a Silicon Valley law firm, where he started his practice half a decade ago. Before entering the practice, Mr. Papanyan worked for over a decade on cutting edge computer technologies at Dell Inc. He was a member of the advanced engineering team at the office of CTO and a member of the Dell patent committee specializing in review of software applications. An avid inventor himself, Mr. Papanyan was granted numerous patents for inventions in a wide range of software technologies. He was also a leader in tech standards related to systems management software. Mr. Papanyan was Dell's primary representative on the Technical Committee of the Distributed Management Task Force (DMTF) standards body and chaired the security related working group there for many years. He also authored and contributed to numerous standard specifications widely used in the industry. Since his repatriation to Armenia, Mr. Papanyan has been advising numerous Armenian start-ups, incubators and the Intellectual Property Rights Centre Foundation, where he currently chairs the Board of Trustees. Khachatur Papanyan is also the current coordinator of Legal Advisory Group to the Ministry of High-Tech Industry.

Acronyms and abbreviations

AIPA	Armenian Intellectual Property Agency
AMD	Armenian dram
Armauthor	Armenian Copyright Collection Society
BASCAP	Business Action to Stop Counterfeiting and Piracy
CISAC	The International Confederation of Societies of Authors and Composers
CMR	CMR consignment note (a proof of the contract of carriage of goods by road)
DATALEX	A public electronic database of Armenian Court Cases
EACU	Eurasian Customs Union
EAEU	Eurasian Economic Union
EUIPO	European Union Intellectual Property Office
EUROPOL	European Union Agency for Law Enforcement Cooperation
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
ICC	International Chamber of Commerce
ICT	Information and Telecommunication Technologies
INTA	International Trademark Association
INTERPOL	The International Criminal Police Organisation
IP	Intellectual Property
IPR	Intellectual Property Rights
IPRC	Intellectual Property Rights Centre Foundation
IT	Information technologies
MNCs	Multinational companies
OECD	Organization for Economic Co-operation and Development
PCs	Personal Computers
R&D	Research and Development
RA	Republic of Armenia

TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UDRP	Uniform Domain Name Dispute Resolution Policy
UK	United Kingdom
USA	United States of America
USPTO	United States Patent and Trademark Office
USSR	Union of Soviet Socialist Republics
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
NCL	Nice Classification

Introduction

This report has a dual objective. Firstly, the report provides an objective insight into the current intellectual property rights (IPR) protection in Armenia for the UK and foreign businesses. And secondly, the report provides recommendations for the Armenian government to address any gaps identified in the IPR protection.

Although the UK and foreign businesses are well-equipped to research laws and regulations of any foreign jurisdiction, however, such analysis is rarely comprehensive. Local counsels that are retained by the foreign businesses mainly rely on their own experience, which may be limited due to the lack of volume of IPR-related disputes in Armenia. On the other hand, purely foreign-based research tends to be rather theoretical and may not accurately represent the true extent of the IPR protection in the local country.

In fact, there is a general lack of local or foreign sources that regularly analyse IPR protection in Armenia. The jurisdictions like Armenia are large enough to have a complex IPR legal framework, and yet are small enough to lack analytical publications that analyse the framework. The few studies that have been conducted about IPR in Armenia (including at least one which involved the participation of foreign experts¹) mainly concentrate on the legislative gaps and improvements to the IP law in Armenia. However, the legislative gaps may not be the driving factors behind the infringements of the IPR afforded to the foreign entities, foreign rightsholders.

Indeed, the analysis that concentrates only on the Armenian laws and regulations may not accurately portray the actual state of the IPR protection in Armenia. The level of the IPR enforcement by the relevant authorities may nullify or amplify the legislative protection afforded to the rightsholders. Thus, in-depth understanding is required into the gaps of the IPR enforcement in order to relay an accurate representation of the state of IPR in Armenia.

The reduction in the identified enforcement and legislation gaps may play a decisive role in attracting foreign direct investments (FDI). The same amount of risk that is ascertained by a UK or foreign business from the identified gaps is equivalent to the probability that Armenia would lose the investment from such a business. To improve the economy, the Armenian government should be highly motivated in closing the identified gaps sooner rather than later.

In fact, the Armenian government has made a priority to re-enforce the IPR for attracting further FDI. The government's 2019 five-year program plan states "the acceleration of the foreign direct investment requires substantial increase in the protection of the intellectual property rights."² To diminish chances of lost opportunities, this report, in addition to identifying the gaps in the IPR, also proposes solutions to the Armenian Government for addressing the gaps.

Due to the fact that IP is a broad field, the enforcement of IPR involves multiple ministries and agencies. Thus, the Armenian Government would have a further challenge in addressing the

¹ Report with Analysis of the Intellectual Property-Related Issues in Armenia, Expert Conclusions and Recommendations, Armenian Bar Association, IP/IT Committee for Armenia, October 12, 2019.

² 2019, Armenian Government Program, section 5.6

identified gaps. Not only the Armenian Government has to provide institutional improvements for IPR, but also has to work on cross-institutional coordination to achieve the goal of the increased IP protection. Such coordination may present a unique challenge for the government. The gaps that require cross-institutional coordination may be of a long-term nature.

Executive summary

This report will benefit the UK and foreign businesses in gaining more in-depth understanding of the IPR system in Armenia. The report details how to navigate the complex field of IPR enforcement in Armenia utilising the Armenian laws and regulations. The legislative field currently in practice is explained, highlighting any differences with the international norms and any particular choices of protection that have been made by the Armenian legislation.

This research demonstrates that the Armenian IP legislation conforms to the international standards. Armenia is a signatory to the most relevant international IP treaties, such as TRIPS, Berne Convention, Madrid Agreement, Patent Cooperation Treaty and others. Thus, for the UK and foreign businesses, the legislative field of Armenia is substantially predictive and represents a negligible risk.

The uniqueness of the Armenian legislative field is rather in its membership in the Eurasian Economic Union (EAEU). Based on this research, there is both positive and negative impacts from the EAEU membership. For example, the adoption of the regional exhaustion doctrine provides more granular control over the import from non-EAEU countries into the Armenian market for the UK and foreign businesses. The negative impact is the relinquished control for imports from the EAEU countries themselves (Belarus, Kazakhstan, Kyrgyzstan and Russia).

For a comprehensive analysis of the IPR registration and enforcement, a survey was conducted. As part of this survey, face-to-face interviews were performed with local IP practitioners and general practice attorneys, representatives of the Armenian Intellectual Property Agency of the RA Ministry of Economy, and the Intellectual Property Rights Centre Foundation. The respondents are the experts that are at the forefront of the IPR registration and enforcement in Armenia.

Based on the survey, the major shortcoming was identified in the IP enforcement rather than the legislation or the registration procedures. The respondents particularly highlighted the infringement of trademarks (counterfeiting) and copyright (piracy) of the UK and foreign rightsholders as one of the most substantial challenges.³ The existence of trademark-related infringements is supported by a significant number of trademark disputes (both administrative and civil) instituted in the Armenian courts. On the upside, the increasing usage of the Armenian courts and proceedings in trademarks demonstrates improvement in the trademark enforcement through civil and administrative litigation. Based on the research, this progress can be further supported by the education of the judges and/or creating a specialised court for IP-related disputes.

For the UK and foreign rightsholders to take advantage of the IP enforcements through the Armenian civil and administrative courts, this report details the procedures for trademark registration. The survey results indicated that past bad faith registrations of foreign well-known brands as trademarks and “.am” domain names are still a challenge for foreign rightsholders within Armenia. The current trademark laws are not well enough regulated to assure predictable outcomes through litigation. Therefore, the report recommends regulatory

³ See Annex 3

changes for the Armenian government to simplify the foreign rightsholders' challenge against the past malicious registrations.

The customs and police-based enforcement of trademarked goods remains problematic in Armenia. The unrealistically tight deadlines instituted by the Customs Service regulations and laws prevent on procurement of the necessary information, thereby complicating the enforcement. In addition to the challenges in evidence collection, the enforcement is further exacerbated by lack of damages available to the rightsholder even in the tricky case of prevailing in the action.

Accordingly, the corresponding criminal and civil proceedings are significantly lagging in Armenia. The lack of criminal and civil proceedings demonstrates the ineffectiveness of the state executive branch to police and prosecute counterfeit goods within the Armenian market. This report recommends educational and organisational changes for the Armenian government to ensure more effective protection of rightsholders' IPR.

The report details registration procedures to gain better control of the counterfeit import into Armenia, which is especially useful for the UK and foreign rightsholders unfamiliar with the Armenian IP system. Yet, once such goods have entered the Armenian market, the research has found no effective tools to cease and destroy counterfeit goods within the stream of commerce.

The survey further revealed a strong perception of the wide-spread copyright infringement in Armenia. According to the research, there are several historical and practical reasons for this phenomenon. Software piracy remains a particular pain point for the UK and foreign software businesses in the Armenian market. Given the judiciary reforms for reducing corruption in the courts, the report recommends an increase in civil actions against infringers as part of litigation-based education of the Armenian private sector. For the Armenian government, this report recommends tackling the cultural issues of software piracy through education and training of the police, customs agents, and the judiciary.

For patent-based IPR protection, this report details the low numbers in patent grants as well as almost non-existent patent infringement disputes in Armenia. The under-developed patent system is a risk for the UK and foreign pharmaceutical businesses, which generally rely on patent-based IPR for protection. The lack of local pharmaceutical production alleviates this risk of the infringement and export of the generics to the protected markets. This report further registers a rise in the industrial design patent grants, which eventually will lead to disputes and development of less-complex patent litigation for industrial design infringements in Armenia.

Chapter 1 Contribution of IP system and IP protection to economic growth and development

1.1. Importance of Efficient IP System for Economic Growth and Development

Intellectual Property (IP) in its various legal forms, such as patents, trademarks, copyrights, trade secrets, is the cornerstone of the knowledge-based economy. IP facilitates and strengthens businesses, fostering innovation, advancing science, and enabling the efficient and rapid movement of technology across the globe.

The research demonstrates that intangible assets are becoming more tradable assets and are taking over the core of the global economy. Most of the value in technology products and medicines is not in the physical materials, with which those goods are made, but in the research, testing, and innovation required to develop those products. The amount invested in the intangible assets equates to between 5% to 12% of GDP in surveyed OECD countries.⁴

The exact size of the IP marketplace is challenging to estimate, but existing indicators show that intellectual property right is a vibrant and economically sound tool. Recent studies highlight that the value of IP royalty payments (including trademarks) is well above the growth rate of GDP. For example, in the United States, active corporations reported gross royalty receipts of \$171 billion in 2008 vs. \$115.8 billion in 2002.⁵

The important economic role of trademarks has also been reflected in the available economic statistics. For example, in the United States, trademark-intensive industries accounted for 24.7% of total employment in 2010, which is the most among all IP-intensive industries.⁶ A similar study for the European Union highlighted that IP-intensive industries accounted for almost 26% of all jobs in the EU during the period 2008-2010, with almost 21% in trademark-intensive industries.⁷

Intellectual property is a critical value generator for companies, helping them succeed in competitive markets. At the macroeconomic level, IP protection and enforcement are some of the main drivers of innovation, which contributes to long term economic growth.⁸

Lenient IPR enforcement in a country is likely to make firms in the IPR-sensitive sectors less eager to invest there. This is because of the vulnerability of proprietary processes to theft, and/or that infringing products are more likely to displace sales of genuine products. By

⁴ OECD/EUIPO (2016), Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, OECD Publishing, Paris. Available at: <http://dx.doi.org/10.1787/9789264252653-en>.

⁵ Ibid.

⁶ Economics and Statistics Administration, the United States Patent and Trademark Office (ESA-USPTO) (2012), Intellectual Property and the U.S. Economy: Industries in Focus. Available at: www.uspto.gov/sites/default/files/news/publications/IP_Report_March_2012.pdf

⁷ Office for Harmonisation in the Internal Market, the European patent Office (2013), Intellectual property rights intensive industries: contribution to economic performance and employment in the European Union. Available at: <https://oami.europa.eu/ohimportal/en/web/observatory/ip-contribution>).

⁸ OECD/EUIPO (2016), Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, OECD Publishing, Paris. Available at: <http://dx.doi.org/10.1787/9789264252653-en>.

contrast, enforcing intellectual property rights can stimulate FDI, and in this manner, improve the welfare in the host country.⁹ Some studies quantify the impact of IPR enforcement on FDI and thereby on the exports. The studies demonstrate that stricter enforcement of IPRs may increase exports by up to 20%.¹⁰

Companies in industries with high R&D investments are unlikely to undertake FDI when IPRs are weak in the destination country and instead may license the already-developed technology for manufacturing or support.¹¹ A study on multinational companies (MNCs) from the US revealed that MNCs were sensitive to IPRs in major developing countries while deciding on the location for their facilities abroad. Lagging technologies were transferred under licenses, and R&D facilities were less likely to be established in those countries where the enforcement of IPRs is weak.¹² With improvements in the strength of IPRs, the risks associated with illegal appropriation of technology gets reduced, resulting in FDI for research and development. Thereby, the likelihood that the most advanced technologies are transferred rises with the improvement in the strength of IPRs.¹³

In a broader perspective, promotion of IP and protection of IPRs is a critical factor for driving innovation, incentivising business and commercialisation thereby accelerating knowledge-based economic development with far-reaching societal benefits:

Innovation, spillovers, and R&D were indeed the key factors driving self-sustained, long-term economic growth and, moreover, that these factors were generated from within the economic system, responding to economic incentives¹⁴.

The connection between IP and the accelerated development of an innovation-based, commercially networked economy is fundamental. This has been clearly articulated in the Development Agenda for WIPO (World Intellectual Property Organization, a specialised agency of the United Nations) pursuant to its global mandate and mission:

Why promote and protect intellectual property? There are several compelling reasons. First, the progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture. Second, the legal protection of new creations encourages the commitment of additional resources for further innovation. Third, the promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and

⁹ HitoshinTanaka and Tatsuto Iwaisako (2014), "Intellectual property rights and Foreign Direct Investment: A Welfare analysis", in European Economic Review, Vol. 67, pp 107-124.

¹⁰ Intellectual Property Rights, Imitation and Foreign Direct Investment: Theory and Evidence, Lee Branstetter, Raymond Fisman, C. Fritz Foley and Kamal Saggi, Working Paper 13033, National Bureau of Economic Research, April 2007.

¹¹ Nicholson, Michael (2007), "The Impact of Industry Characteristics and IPR Policies on Foreign Direct Investment, Review of World Economics, 143(1): 27-54.

¹² Mansfield, Edwin (1994), "Intellectual Property Protection, Foreign Direct Investment, and Technology Transfer," International Finance Corporation, Discussion Paper 19. Similar conclusions were reached by Blyde, Juan S. and Cristina Acea (2002), "The Effects of Intellectual Property Rights on Trade and FDI in Latin America," InterAmerican Development Bank, manuscript, in Maskus (2004); and Yang, Guifang and Keith E. Maskus (2001), "Intellectual Property Rights and Licensing: An Econometric Investigation," Weltwirtschaftliches Archiv 137: 58-79 in Maskus (2004).

¹³ Maskus Keith E. (1997), "The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment and Technology Transfer", Prepared for the Conference "Public-Private Initiatives After TRIPS: Designing a Global Agenda" held at Brussels on July 16-19.

¹⁴ Itzhak Goldberg, John Gabriel Goddard, Smita Kuriakose and Jean-Louis Racine (2011), Igniting innovation: rethinking the role of government in emerging Europe and Central Asia, The World Bank.

*enjoyment of life. An efficient and equitable intellectual property system can help all countries to realise intellectual property's potential as a catalyst for economic development and social and cultural well-being. The intellectual property system helps strike a balance between the interests of innovators and the public interest, providing an environment in which creativity and invention can flourish, for the benefit of all.*¹⁵

1.2. Importance of IP Protection for National Economies

Some of the most dangerous IP infringements are counterfeiting and piracy. These types of IP infringements are highly pervasive across countries and sectors, representing a multi-billion-dollar industry globally that continues to grow. Measuring the scale of counterfeiting and piracy helps to understand the size of the problem, and the related social costs. It also helps inform policymakers so that appropriate resources are targeted towards combating counterfeiting and piracy.¹⁶

There are substantial wider economic and social costs stemming from counterfeiting and piracy. The estimates for displacement effects, employment effects, suppressed FDI, and crime probably understates the extent of these costs. This is because these estimates do not capture the effects of digital piracy.¹⁷

The econometric analysis of the link between piracy and GDP, establishes a link between illicit activity and dampened growth, consistent with other empirical studies in this area. The erosion of intellectual property rights is associated with poor standards of governance and transparency, reducing incentives to invest or innovate, impacting the long-term growth path of a country. The displacement of genuine activity by illicit activity is also likely to reduce efficiency, as the 'underground' economy is likely to have more irregular supply chains that do not optimally allocate resources. The diversion from genuine to criminal activity reduces government tax revenues and may also have serious consumer impacts due to regulatory non-compliance.¹⁸

In 2019 the Organisation for Economic Co-operation and Development (OECD) in collaboration with the European Union Intellectual Property Office (EUIPO), updated its comprehensive study on "Trends in Trade in Counterfeit and Pirated Goods" with a quantitative analysis of the value, scope and magnitude of world trade in counterfeit and pirated products. The report used a tailored statistical methodology.¹⁹

OECD and EUIPO affirmed that illicit trade in fake goods is a major challenge in an innovation-driven global economy. It has a negative impact on the sales and profits of affected

¹⁵ Development Agenda for WIPO (World Intellectual Property Organization. www.wipo.int/ip-development/en/agenda/. What is Intellectual Property? WIPO Publication No. 450(E)

¹⁶ The Economic Impacts of Counterfeiting and Piracy. 2017 Report prepared for the International Chamber of Commerce (ICC), Business Action to Stop Counterfeiting and Piracy (BASCAP), and for the International Trademark Association (INTA).

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ OECD/EUIPO (2019), Trends in Trade in Counterfeit and Pirated Goods, Illicit Trade, OECD Publishing, Paris/European Union Intellectual Property Office. Available at: <https://doi.org/10.1787/g2g9f533-en>.

companies, as well as broader adverse effects on the economy as well as public health, safety, and security. Organised criminal groups are seen as playing an increasingly important role in these activities, using profits from counterfeiting and piracy operations to fund other illegal activities. Counterfeiters operate swiftly in the globalised economy, misusing free trade zones, taking advantage of many legitimate trade facilitation mechanisms, and thriving in economies with weak governance standards.²⁰

OECD-EUIPO's updated report estimated that in 2016, the international trade volume in counterfeit and pirated products could amount to \$509 billion. This amount represents up to 3.3 % of the world trade. The previous OECD-EUIPO study, which relied on the same methodology, estimated that up to 2.5 % of world trade was in counterfeit and pirated goods in 2013, equivalent to up to \$461 billion. This is equivalent to the GDP of Austria, or the combined GDP of Ireland and the Czech Republic²¹. In 2016, imports of counterfeit and pirated products into the EU amounted to EUR 121 billion (\$134 billion), which represents up to 6.8 % of EU imports, against 5 % of EU Imports in 2013.²²

Using estimates of the future growth rate of trade in counterfeit and pirated goods, the report prepared by ICC, BASCAP, and INTA forecast that the value of trade in counterfeit and pirated goods could reach \$991 billion by 2022.²³ The report forecasts that the value of digital piracy in movies, music, and software could range from \$384 - \$856 billion by 2022. Other estimates for 2020 include \$231 billion of lost Foreign Direct Investments; \$199 to \$270 billion tax losses; \$125 billion crime costs; and 5.4 million job losses.²⁴ The negative impacts of counterfeiting and piracy are projected to drain the US \$4.2 trillion from the global economy.²⁵

According to the 2018 Annual Report of the Eurasian Economic Commission, between 2016 to 2017, more than 50 million units of counterfeit goods were identified in the countries of the Eurasian Economic Union (Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia). For example, in 2018, the Russian Federal Customs Service alone seized 16.2 million units of counterfeit goods, preventing damage to the rightsholders in the amount exceeding \$100 million (50% higher than in 2017).²⁶ Russia also remained on the U.S. Trade Representative (USTR) Special 301 Priority Watch List in 2019. The copyright infringement, trademark counterfeiting, hard goods piracy were the areas of the most concern. Furthermore in 2018, the stakeholders reported that the IPR enforcement continued to overall weaken from 2017, following similar declines in the protection in the prior several years due to a reduction in

²⁰ Ibid.

²¹ OECD/EUIPO (2016), Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, OECD Publishing, Paris. Available at: <http://dx.doi.org/10.1787/9789264252653-en>.

²² Ibid.

²³ The Economic Impacts of Counterfeiting and Piracy. 2017 Report prepared for the International Chamber of Commerce (ICC), Business Action to Stop Counterfeiting and Piracy (BASCAP), and for the International Trademark Association (INTA).

²⁴ Ibid.

²⁵ Ibid., available at <https://iccwbo.org/global-issues-trends/bascap-counterfeiting-piracy>

²⁶ 2018 Annual Report of the Eurasian Economic Commission. Available at: www.eurasiancommission.org/ru/Documents/2918_1_ЕЭК_ГО2018_англ_08.pdf

resources for enforcement personnel.²⁷ Thus, it is likely that this number has increased in the recent years.

The companies suffering from counterfeiting and piracy continue to be primarily registered in OECD countries; mainly in the United States, France, Switzerland, Italy, Germany, Japan, Korea, and the United Kingdom.²⁸

The use of small shipments for counterfeit trade also keeps growing. Small shipments, sent mostly by post or express services, are an example of greater trade facilitation; on the other hand, they are also a way for criminals to reduce the chance of detection and minimise the risk of sanctions. The proliferation of small shipments raises the cost of checks and detention for customs and introduces additional significant challenges for enforcement authorities.²⁹

More and more regional and international organisations refer to counterfeiting as a transnational criminal activity managed by the same criminal organisations that are involved in other serious crimes, like drug trafficking, arms smuggling, trafficking in persons, corruption, and money laundering. Counterfeiting is also considered as a serious global threat endangering the whole society, as its consequences severely affect consumers' lives, producers' entrepreneurial capacities, and countries' stability.³⁰

Counterfeit and pirated products put the health and safety of consumers worldwide at risk while robbing governments, businesses, and communities of tax revenues, profits, and legitimate jobs. Fake products can be found in a growing number of large industries, such as common consumer goods, (footwear, cosmetics, toys), business-to-business products (spare parts or chemicals), IT goods (phones, batteries) and luxury items (fashion apparel, deluxe watches). Every IP-protected product can be counterfeited. Importantly, many fake goods, particularly pharmaceuticals, edibles, toys, and medical equipment, can pose serious negative health and safety risks.

In 2019, EUROPOL detected counterfeit food products, including baby milk powder, stock cubes, cheese, coffee, olive oil, and pasta. In some cases, counterfeit food has even been found to contain dangerous or hazardous ingredients. Spirits and wine are especially popular goods targeted for counterfeiting by organised crime groups. Counterfeiters frequently place cheap wine in bottles containing fake expensive wine labels, sometimes even adding pure alcohol in counterfeit spirits. Counterfeit pesticides are another concern. These goods have not been tested and authorised by the authorities and may contain less active and more dangerously, more toxic ingredients. The fake pesticides can destroy crops and fields and seriously affect the health of farmers and consumers. Counterfeit pharmaceuticals pose a growing threat affecting a large number of countries. A broad and increasingly diverse range of medicines is targeted by counterfeiters. These pharmaceuticals can have severe effects on the health of consumers. The increased detection of counterfeit medicines for the treatment

²⁷ The U.S. Department of State's Investment Climate Statements. Available at: <https://www.state.gov/reports/2019-investment-climate-statements/russia/>

²⁸ OECD/EUIPO (2016), Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, OECD Publishing, Paris. Available at: <http://dx.doi.org/10.1787/9789264252653-en>.

²⁹ OECD/EUIPO (2019), Trends in Trade in Counterfeit and Pirated Goods, Illicit Trade, OECD Publishing, Paris/European Union Intellectual Property Office. Available at: <https://doi.org/10.1787/g2g9f533-en>.

³⁰ Report on Counterfeiting by United Nations Interregional Crime and Justice Institute's. 2011 Edition, Advanced Unedited Edition. Available at: www.unicri.it/topics/counterfeiting/organized_crime/reports/CTF_2011_Unedited_Edition_Final.pdf

of serious illnesses, and the growing number of incidents affecting the genuine medicine supply chain, are particularly worrisome trends.³¹

Recently INTERPOL reported that the outbreak of the coronavirus disease had offered an opportunity for fast cash, as criminals take advantage of the high market demand for personal protection and hygiene products. Law enforcement agencies taking part in Operation Pangea revealed counterfeit face masks, substandard hand sanitisers, and unauthorised antiviral medication, which resulted in 121 arrests worldwide and the seizure of potentially dangerous pharmaceuticals worth more than \$14 million.³²

“Once again, Operation Pangea shows that criminals will stop at nothing to make a profit. The illicit trade in such counterfeit medical items during a public health crisis shows their total disregard for people’s wellbeing or their lives.”

Jürgen Stock
Secretary General
INTERPOL

³¹ INTELLECTUAL PROPERTY CRIME THREAT ASSESSMENT 2019, prepared by Europol and the European Union Intellectual Property Office (EUIPO).

³² INTERPOL Reports. Available at: www.interpol.int/en/News-and-Events/News/2020/Global-operation-sees-a-rise-in-fake-medical-products-related-to-COVID-19

Chapter 2. Current state of the IP system in Armenia

“There is no greater resource than a human mind; there is no greater force than human creativity... IP protection should be a priority for our (Armenian) government because the modern economies are founded on IP,” Prime Minister Nikol Pashinyan asserted at the World IP Day celebration in 2019. Indeed in 2018, the technologies sector in Armenia grew by above 30% and reached \$922.3 million, which is 7.4% of the total Armenian GDP.³³

This economic growth in information and telecommunication technologies (ICT) has been partially powered by the acquisition of local R&D companies by MNCs. The acquired companies were further developed by MNCs to be a full-fledged R&D branches. Besides the acquisitions, the FDI to Armenia was further boosted by many MNCs directly opening R&D branch offices in Armenia.³⁴ The number of local ICT companies has also grown by 30% year to year.³⁵ To continue this positive trend, Armenia has to continue connecting to the global innovation and technology marketplaces, utilising the developed IP as an asset and tool for facilitating technology and business transactions, e.g., licensing of patents, copyright, and trademarks.³⁶

Therefore, an efficient IP system for Armenia can become a crucial resource for the sustainable development of a globally networked, knowledge-based, innovation-driven economy in the 21st century. With an IP oriented economy, Armenia can achieve greater regional integration dynamically connecting with the global innovation market, development of human capital, and growth in employment.³⁷

Innovation and technology are means for Armenia to reduce its isolation, overcome closed border constraints, expand economic opportunities, engage citizenry, develop and use its creative human capital, forge global networks and partnerships and sustainably advance its economic development.³⁸

The ultimate outcome will be the development of a diversified, robust, networked, and internationally competitive group of innovative industries that will propel and accelerate sustainable growth, economic development, and employment in Armenia. Furthermore, this integration will yield a global web of network connections that will enable Armenia to effectively navigate, negotiate, and conduct business in the global innovation marketplace.³⁹

However, the FDI into Armenia remains relatively low and has recorded a total of \$91.2 mln for January-July of 2019. More concerning is that the FDI may be on a downward trend

³³ Statistical Committee of the Republic of Armenia. Armenian ICT Sector 2018, State of the Industry Report: Information and Telecommunication Technologies Sector in Armenia. Enterprise Incubator Foundation, December 2018.

³⁴ Tech and Enterneurial Ecosystem Mapping Report, Catalyst Foundation, September 2019.

³⁵ Armenian ICT Sector 2018, State of the Industry Report: Information and Telecommunication Technologies Sector in Armenia. Enterprise Incubator Foundation, December 2018.

³⁶ Stanley Kowalski, Sarkis E. Knyazyan, Intellectual Property Hub Armenia: Unpublished draft Strategic Plan (2013)

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

compared to 2018.⁴⁰ As discussed above, lenient IP protection may be one of the factors for yielding the low FDI.

Armenia is a small market, and thus, naturally, it is less attractive for foreign businesses. For that reason, Armenia has no choice but to improve its IPR protection to attract further FDI from MNCs. As the Armenian government's program itself asserted, having a strong IPR enforcement will attract further FDI.⁴¹ The high level of IPR protection will assure the UK and foreign businesses that their entry into the Armenian market is risk-averse.

Unfortunately, IPR infringement continues to remain an issue for Armenia. In 2006, Armenia was in the top 20 countries for software piracy, and the software piracy was estimated at 95% (i.e., 95% of computers had pirated software(s) installed).⁴² In a decade, this rate has only slightly improved, as Armenia's piracy rate dropped to 86% in 2016 (for comparison, the piracy rate was found to be 28% in Western Europe for the same year).⁴³ Yet, based on DataLex, only a single criminal case was instituted in Armenia related to software piracy from 2008 till 2020.

Counterfeiting also continues to be a challenge for IPR in Armenia. In the 2018 OECD-EUIPO Report on "Misuse of Small Parcels for Trade in Counterfeit Goods," Armenia is indicated as a producing economy of counterfeit jewellery. However, counterfeiters in Armenia appear to export the fakes exclusively to the European Union and northeast Europe (e.g., Russia).⁴⁴ Armenia, as a member of EAEU, also has an "open" border with the other EAEU members such as Belarus, Kazakhstan, Kyrgyzstan and Russia. Because of its membership, Armenia is susceptible to the import of large quantities of counterfeited goods, in particular for Russia, which remains on the United States Trade Representatives Priority Watch List as a top counterfeit producer.⁴⁵

Similar to software piracy, criminal cases are in single digits for counterfeiting, a trademark-based infringement of IPR. However, private-party initiated trademark disputes are of substantial quantity. Based on DataLex, from 2008 till 2020, there have been 111 civil disputes and 193 administrative proceedings regarding trademarks.

To further demonstrate the state of the current IPR in Armenia, the following sections provide information about IP legislation and policies, government regulatory bodies and other state authorities, IP enforcement, and statistics of filings, registration, and enforcement.

⁴⁰ Armenia Foreign Direct Investment - Net Inflows. Retrieved from <https://tradingeconomics.com/armenia/foreign-direct-investment>.

⁴¹ 2019, Armenian Government Program, Section 5.6

⁴² Fourth Annual BSA and IDC Global Software Piracy Staty, BSA, 2006.

⁴³ Annual BSA and IDC Global Software Piracy Staty, BSA, 2016.

⁴⁴ OECD/EUIPO (2018), Misuse of Small Parcels for Trade in Counterfeit Goods: Facts and Trends, Illicit Trade, OECD Publishing, Paris. Available at: <https://doi.org/10.1787/9789264307858-en>

⁴⁵ Special 301 Report, Office of the United States Trade Representative

2.1 Legislative Framework

Intellectual Property (IP) law in Armenia is directly supported by the Constitution that provides for all forms of Intellectual Property Rights.⁴⁶ Armenia has focused on developing the IP laws based on the approximation of its national legislation to international standards. WIPO considers that Armenia has taken initial steps towards the implementation of intellectual property right (IPR) enforcement in line with international and European Union (EU) standards and conducting IPR awareness-raising activities.⁴⁷

In particular, the Armenian IP laws are harmonised with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and / Union (EU) Directives and are fully approximated to EU standards. With a few exceptions, Armenia has ratified the international treaties in the field, and it has the intention to do the same with the Beijing Treaty on Audio-visual Performances and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.⁴⁸

According to Armenian law, the government policies in the field of IP should be developed by the Ministry of Economy. In reality, the policies are developed by the Armenian Intellectual Property Agency, the IP agency of Armenia (further discussed in the next section), which is within the Ministry of Economy. Almost all IP provisions in all major policies (Civil Code, Criminal Code, Trademark Law, Copyright Law, Geographical Indications Law, Patent Law, etc.) are developed and partially implemented by AIPA. For example, recently, AIPA proposed three new draft laws on Copyright and Related Rights, Patents, and Industrial Designs.

The list of domestic IP laws and international treaties signed by Armenia are provided for in Annex 1.

2.1.1 Procedures for Securing IP rights

The state authority responsible for registering intellectual property subject matter (patents, trademarks, utility models, industrial designs) in Armenia is the Intellectual Property Agency (AIPA) of the RA Ministry of Economy. AIPA is responsible for the implementation of relevant IPR policies, updating the Armenian industrial property databases, and publishing the Official Intellectual Property (IP) Bulletin.

(a) Trademark-related Statistics

Trademarks may be registered with AIPA either through the national procedure (by a direct application to AIPA) or through the international procedure (the "Madrid" procedure). The total number of all foreign trademarks secured in Armenia (through national and international procedures) is approximately 76,000, covering almost all classes of goods and services of the

⁴⁶ Article 60, section 7 of the Armenian Constitution recites: "Intellectual property shall be protected by law."

⁴⁷ Coordinating IP Enforcement at the National and Regional Level, WIPO/ACE/12/5, WIPO Advisory Committee on Enforcement, Twelfth Session, Geneva, August 30, 2017

⁴⁸ Ibid., page 5

Nice classification.⁴⁹ Out of those, the vast majority, 66,500, were filed through the international procedure designating Armenia. Among those, more than 1,250 trademark applications were filed by the UK registered companies. Out of those 1,250 applications, 953 are in force (active), and 73 applications are pending.

The rest of the foreign-based applications were filed through the national procedure by a direct application to AIPA. A substantial number of trademark applications that were filed and registered through the national procedure are also foreign based. Out of the total 23,000 national registered trademarks, as of 2020, approximately 10,000 trademarks were filed and registered by foreign companies. The UK companies have filed and registered approximately 750 trademarks through the national procedure.

Figure 1 is a bar chart that depicts a further break down of the trademarks by years. The number of trademark applications by local and foreign applicants through national and international procedures has been growing and currently stands at 5,920 (2019). Although the majority of foreign trademarks are applied through Madrid convention (3198, grey bar, in 2019), around 20% of the national trademark applications (565, red bar, out of 2,722 in 2019) were foreign based.



Figure 1 - Trademarks

The UK companies have also been active in filing trademarks recently, 109 UK trademark applications were filed in Armenia in 2019. The total number of all UK trademarks registered in Armenia is approximately 2,000, which covers goods in sectors such as software, pharmaceuticals, food, beverages, tobacco, automobiles and components, consumer durables, apparel, and footwear, consumer electronics, household appliances, accessories, and luxury goods. The total number of trademark filings by industries (classes of goods and services) may be found in Annex 6.

The greatest number of UK-based trademark registrations in Armenia is in pharmaceuticals followed by cosmetics. Electronics, consulting, tobacco, education and clothing/footwear are also among the greatest numbers of the UK registration.⁵⁰ For example, biotechnology and pharmaceutical companies include GlaxoSmithKline, Accord Healthcare, Astellas Pharma, Spey Medical, and 4D Pharma; producers and retailers of fashion and beauty products, including apparel, jewellery, accessories, cosmetics, skincare, fragrances, hygiene products, include Graff, Avon Cosmetics, Accessorize, Bodywise, Burton, C & J Clark, Cath Kidston, Hunter, Lonsdale, Marks & Spencer, Debenhams, New Look, Matalan, Jacobs & Turner,

⁴⁹ Intellectual Property Agency of the Republic of Armenia, Statistical Data, accessed at <http://aipa.am/en/trademark>.

⁵⁰ AIPA statistics on registrations by class and country.

Evans, and Kitbag; manufacturers of central heating radiators and boilers include Baxi and Bristol; producers of food and beverages include CHIVAS, Guinness, Baileys, Smirnoff, Coors, Glen Grant, Crabbies, Copper Dog Whisky, and Milagro Food; cigarette and tobacco manufacturing companies include British American Tobacco, Dunhill Tobacco, Gallaher, and Imperial Tobacco; consumer services companies include Coffee Republic, Coffee Nation, Caffè Concerto, Fashion Hotel, and Hilton Worldwide Manage; automobile and spare parts producers include Jaguar Land Rover and Davanti Tyres.

Code	Country	National Procedure (2019)	International Procedure (2019)	Total (2019)
AM	Armenia	2,157	0	2,157
GB	United Kingdom	26	83	109
	Other countries	539	3,115	3,654
	Total	2,722	3,198	5,920

(b) Trademark National Registration Process

AIPA trademark registration has a relatively short duration. The decision on registration of a trademark may occur within four months (if no substantive refusal or opposition occurs). Figure 2 is a diagram that depicts a sample timeline for trademark registration with AIPLA. The opposition period and substantive examination period may significantly vary based on the issues raised in communication(s) by AIPA.

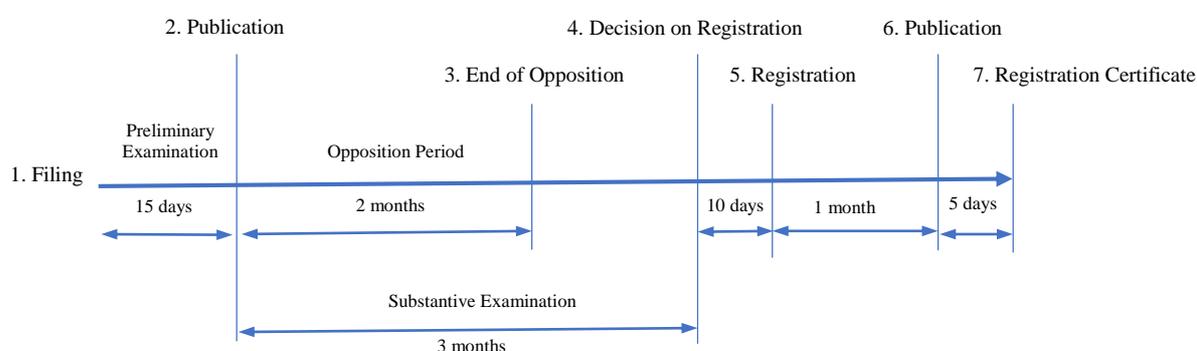


Figure 2 - AIPA Sample TM Registration Timeline

(c) Trademark Official Fees

The full registration fee for a single trademark, in a single class, is 120,000 AMD (approximately \$240). The official fee for each additional class is 15,000 AMD (approximately \$30). There are no official fees for filing responses to official notifications or filing responses to other office actions (including requests for re-examination), apart from appealing AIPA's final decision to the Board of Appeals. The official fee for filing an appeal to the Board of Appeals is 60,000 AMD (approximately \$120). The schedule of trademark-related official fees may be found in Annex 2.

(d) Trademark Appeal Process

Figure 3 is a flowchart that depicts appeal processes for trademark-related decisions, and Figure 4 is a flowchart that depicts the timeline for responding or appealing trademark-related decisions. If the trademark registration is refused by AIPA, the applicant (s) are given two months from the date of receipt of AIPA's communications to respond, as depicted in Figure 4.

AIPA has a Board of Appeal which deals with appeals that arise in the course of the examination of applications on industrial property subject matter. AIPA's decisions on final refusal may be appealed to the Board of Appeals, as depicted in Figure 3. The appeal needs to be forwarded within three months, from the date of receipt of AIPA's decision, as depicted in Figure 4. AIPA's Board of Appeals holds a hearing with the participation of the appellant. The ex-officio chairman of AIPA's Board of Appeals is the Deputy Minister of Economy. As a rule, the Board of Appeals holds only one hearing and makes its decision immediately after the hearing. Board of Appeals mails its decision to the appellant within seven days after the hearing.

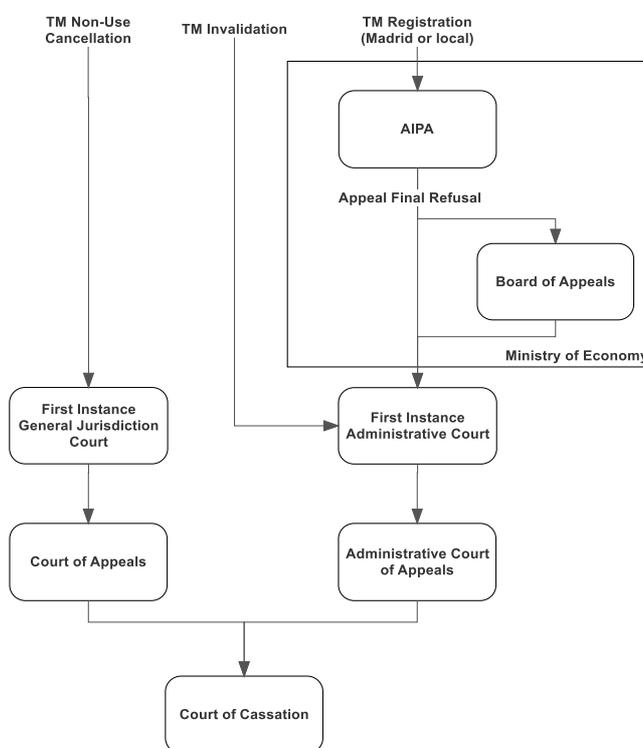


Figure 3 - Appeals for TM-related decision

In general, all ex-parte rulings related to the grant and registration of IP Rights may be appealed to the First Instance Administrative Court and are governed by the RA Administrative Procedure Code. As a rule, the defendant in all IP related administrative proceedings is the Armenian IP Agency. Thus,

- a) AIPA's final refusal,
- b) a decision by the Board of Appeals, or
- c) Trademark invalidation for bad faith registration

may be appealed further at the First Instance Administrative Court, as depicted in Figure 3. The appeal to the First Instance Administrative court may be initiated within two months from the date or receipt, as depicted in Figure 4.

Based on DataLex, a public electronic database of court/administrative proceedings in Armenia, 378 IP litigations have been initiated, from 2008 to 2020. Those include sixty copyright disputes; 304 trademark disputes (civil and administrative); one patent dispute; eight industrial design disputes; and three utility model disputes). About 25% of all administrative disputes involved a foreign party (including several UK companies) mostly as a plaintiff, and rarely as a third party, whose rights were challenged. The majority of trademark disputes are related to alcoholic and other beverages, foodstuffs, tobacco, hotel and restaurant services and pharmaceuticals.

The decision of the Administrative Court may be appealed to the Administrative Court of Appeals within one month and then to the Court of Cassation within the same period.

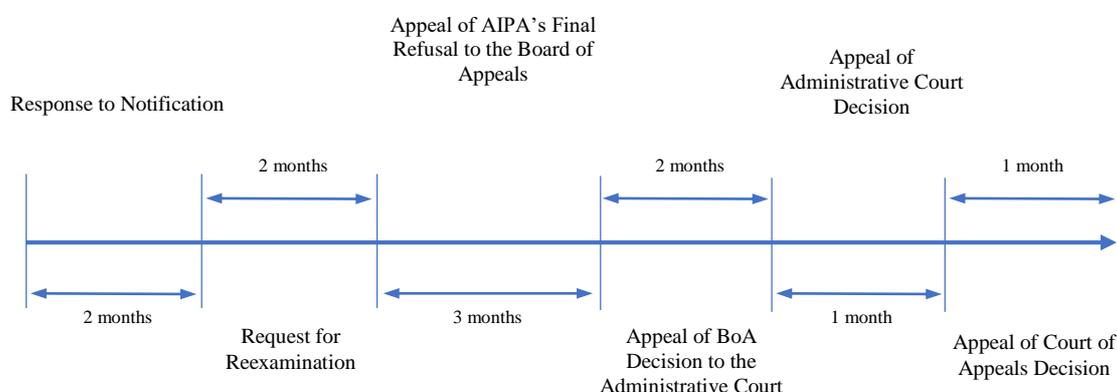


Figure 4 - Response and Appeal Timelines

On the other hand, trademark non-use-based cancellation actions are initiated against the owner of the mark rather than AIPA. Therefore, such actions are instantiated in the First Instance General Jurisdiction Court, which decisions may be appealed to the Court of Appeals and then to the Court of Cassation, as depicted in Figure 3.

(e) Patents and Copyright

For utility patents, utility models, and industrial designs (collectively "patents"), the application and registration numbers are substantially low.⁵¹ The total number of patent applications filed in Armenia through the national and international procedure, between 1992 to 2020, was 4,772. As of 2019, the total number of utility and patents in force in Armenia is 219, and the total number of utility models in force is 126. The total number of Eurasian Patent Organization, which Armenia is a member of, examined patents in force in Armenia is 5,150.

⁵¹ Intellectual Property Agency of the Republic of Armenia, Statistical Data, accessed at <http://aipa.am/en/industrialdesign>.

Figures 5-7 further detail the yearly breakdown of the patent applications filed, and patents registered with AIPA.

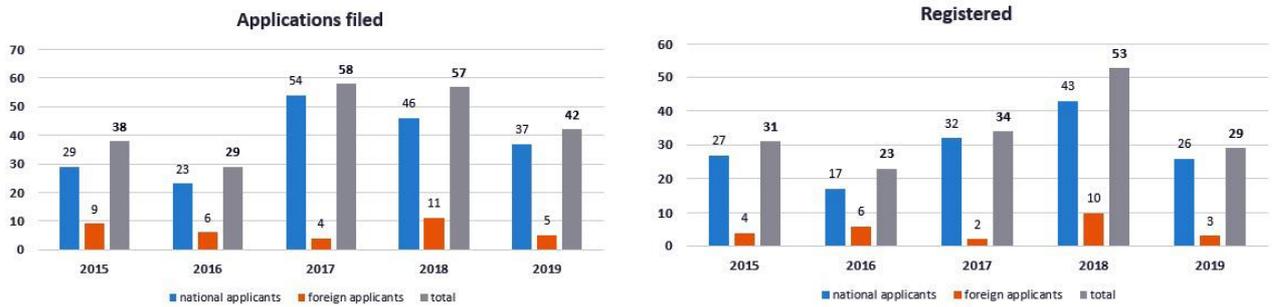


Figure 5 - Industrial Design Patents

The national procedure for applying and receiving a patent grant is similar to that of trademarks.

There is neither required nor optional copyright registration in Armenia. Thus, there is no special procedure to register copyright in Armenia.



Figure 6 - Patents



Figure 7 - Utility Models

2.1.2 Enforcement and Adjudication

The IP enforcement in Armenia is implemented by the Judiciary, Police, and Customs Service. Figure 8 is a flowchart that depicts a process for initiating enforcement actions, particularly those related to counterfeit (trademark infringement).

Based on DataLex, less than 0.01% (400) of the total of 876,524 lawsuits (including in the Administrative Court) filed in the Armenian courts between 2008 and 2020 are related to Intellectual Property litigations. Although IP-related lawsuits are a small portion of the lawsuits, the Armenian IP System is designed to enable a rightsholder to robustly protect its IP (whether the Armenian IP system accomplishes this is further discussed below). The foreign rightsholders have initiated a quarter of the IP-related lawsuits.

Therefore, the mechanisms of customs-based enforcement, as detailed in the next section, only apply to non-EAEU originated goods. To protect the rightsholders IP for EAEU-imported goods, internal enforcement mechanisms need to be invoked.

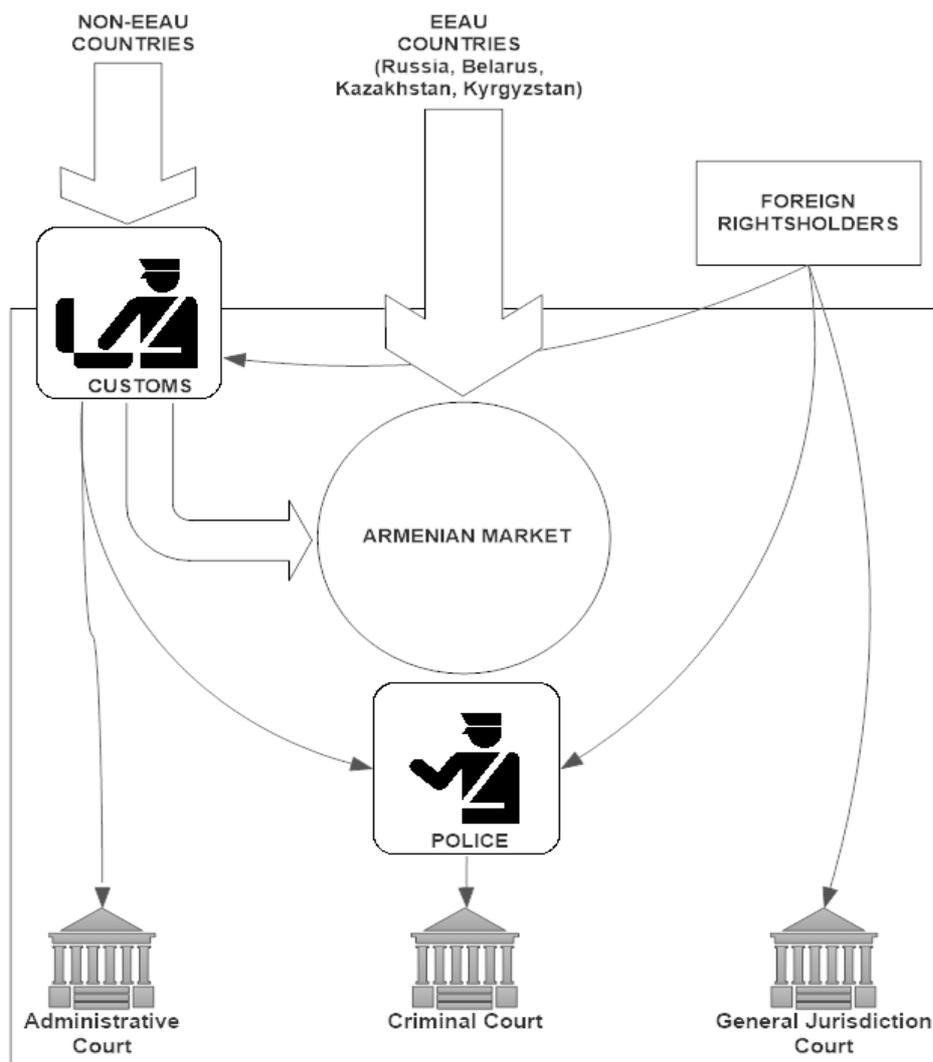


Figure 8 - IP Enforcement

(a) Customs Enforcement

Apart from the Judiciary, the Customs Service, which is a part of the State Revenue Committee of the Republic of Armenia, plays an active role in enforcing intellectual property rights, including the identification and seizure of counterfeit goods. However, this avenue of IP enforcement is complicated by Armenia's membership in EAEU.

Due to the EAEU membership, unrestricted flow of goods (genuine or counterfeit) may directly enter the Armenian market from EAEU members: Belarus, Kazakhstan, Kyrgyzstan and Russia, as depicted by Figure . On the other hand, the non-EAEU originated goods must pass through the Customs Service before entering the market, as further depicted in Figure . If any goods are seized by the Customs Service, the importer of the goods may appeal the Customs Service decision to the First Instance Administrative Court, as further depicted in Figure .

Unfortunately, the Customs Service does not enforce any copyright-based rights. Therefore, this section details the procedures of trademark-related protection by the Customs Service.

The Customs Service enforces trademark-based IP rights and seizes the importation of counterfeit goods provided that a trademark is (1) registered in Armenia through national or international procedures, and (2) recorded with the Customs Service of Armenia. Rightsholders may provide the Customs Service with the name and address of their official distributor in Armenia so that the Customs Service (1) would not seize any goods imported by their official distributors, and (2) could detain any goods imported by third parties without requiring authorisation or getting the permission of the rightsholder.

Out of many registered foreign-based and local trademarks, only a fraction has been registered with the Customs Service. The low number of registrations is due to lack of awareness. The list of trademarks (active and expired) recorded by the Armenian Customs Service in its official registry may be found on its official website at www.customs.am. As of March 2020, foreign right-holders from about 20 countries (including those from the UK, Cayman Islands, USA, Germany, France, Liechtenstein, Switzerland, Cyprus, India, Italy, Japan, Latvia, Netherlands, China, Cuba, Finland, Bulgaria, Belarus, Singapore and more) recorded approximately 200 trademarks covering almost all classes of goods of the Nice classification⁵², except for Class 13 (covering firearms; ammunition and projectiles; explosives; fireworks), Class 23 (natural or synthetic yarns and threads for textile use), Class 26 (dressmakers' articles, natural or synthetic hair for wear, and hair adornments, small decorative items intended to adorn a variety of objects, not included in other classes), Class 27 (carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings, not of textile), and Class 31 (raw and unprocessed agricultural, aqua cultural, horticultural and forestry products, grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; and malt).

⁵² Nice Classification (NCL), established by the Nice Agreement (1957), is an international classification of goods and services applied for the registration of marks. A new edition is published every five years and, since 2013, a new version of each edition is published annually. Available at: www.wipo.int/classifications/nice/nclpub/en/fr/

(b) Procedure for Recording a Trademark with the Customs Service

For the Customs Service to identify and seize trademarked goods, the rightsholders are required to provide evidence of registration of the trademark in Armenia through national or international procedures.

Additionally, the rightsholders have to record (register) the trademark(s) with the Customs Service, as depicted in Figure . To record a trademark in the Customs Service Registry, the rightsholder of the trademark should:

1. file an application with the Customs Service, which should include:
 - the details of the registered trademark (name, number or registration, classes of goods/services, registration number, and date, expiration date, the name and address of the owner);
 - a copy of the trademark registration certificate, or an extract from the official state register of the Armenian Intellectual Property Agency, or a certificate provided by the Armenian Intellectual Property Agency confirming registration of the trademark through a local or international procedure;
 - the description on the manner of the trademark usage on goods/services (with images)
 - the requested duration for the Customs Service assistance (maximum two years, or until the expiration of the trademark registration, whichever is the earliest);
 - the original Power of Attorney granted to the local representative/legal counsel (notarised and legalised, together with the notarised Armenian translation) who will be notified about all seizures/detentions;
 - information about the local representative/legal counsel (name, address, contact information of the local legal counsel), as well as
 - information (name, address, contact information) about rightsholders' official distributors, if available, to avoid detention of distributor's imports;
 - evidence of infringement of the trademark in Armenia, or a potential risk thereof.
2. pay 20,000 Armenian drams (equivalent to approximately \$40) official fee for each trademark;
3. provide assurance in writing that the applicant agrees to provide a bank guarantee or make a payment of a guarantee fee of five percent of the customs value of the imported goods, within three days of receiving the Customs Service's Decision on the detention of imported goods.

(c) Procedure for Seizure and Detention of Imported Goods by the Customs Office

After the Customs Office seizes imported goods and provides the rightsholders with its decision on seizure, rightsholders have 10-20 days to take additional legal actions to keep the goods detained (see Figure 9). Within first three days, rightsholders should provide the Customs Office with a bank guarantee or a guarantee payment equivalent to 5% of the customs value of the imported goods. If rightsholders also file a civil action with the general jurisdiction court and manage to provide a copy of the civil action with the Customs Office,

within ten days after receiving the Seizure Decision, the Customs Office may extend the term of detention for ten additional days. Thereafter, the goods may either be released or detained until the end of litigation, depending on whether the courts manage to order the Customs Office to keep the goods detained before the expiration of the 20th date of the Customs Decision on Seizure.

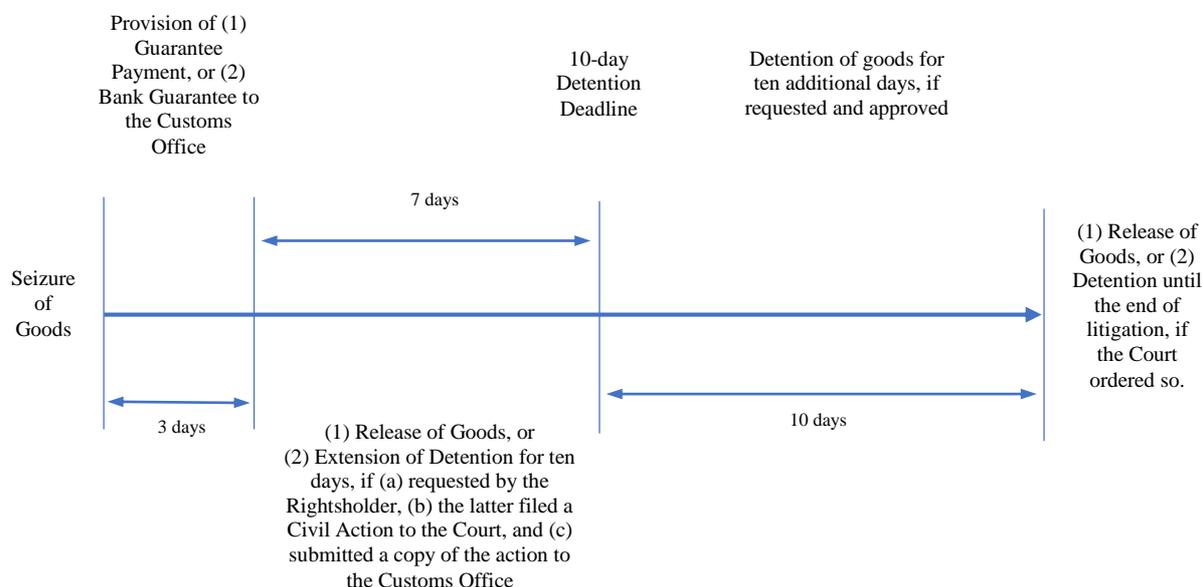


Figure 9 – Customs Seizure and Detention Procedure

(d) Civil Disputes

Judicial proceedings involving IP-related disputes between private parties are governed by the RA Civil Procedure Code. Most of the civil enforcement actions in the field of IP are between IP owners and alleged infringers and are instantiated in the First Instance General Jurisdiction Court, as depicted in Figure .

Based on DataLex, 192 civil disputes in IP have been initiated between 2008 and 2020. Those include 3 related rights disputes, 67 copyright disputes; 111 trademark disputes; five patent disputes; one industrial design dispute and five other IP rights-related disputes.

In the trademark disputes, most of the plaintiffs requested to cease the illegal use of their trademarks and cancel registrations of trademarks. Most of the copyright disputes arose as a result of illegal copyright usage and failure to pay royalties.

About fifty percent all trademark disputes involve a foreign company. About fifty percent of all foreign companies where plaintiffs and other fifty percent defendants. Compared to administrative proceedings, the industries involved in civil trademark disputes are very diverse. They include but are not limited to foodstuffs (classes 29, 30); alcoholic and non-alcoholic beverages (classes 32, 33); non-medicated cosmetics and toiletry preparations, perfumery, essential oils, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations (class 3); apparatus for lighting, heating, cooling, cooking, drying, ventilating, water supply, etc (class 11); automobile spare parts (class 12); furniture (class 20); clothing, footwear and headwear (25); tobacco,

cigarettes, cigars, electronic cigarettes (class 34); fast food, restaurant, kiosk, hotel and retail services, as well as engineering, computer programming, architectural or design services (classes 35, 42, 43).

Some of the internationally well-known brands noticed in DataLex (a public electronic database of Armenian court cases) are Burger King, McDonalds, Toyota, Philip Morris, Unilever, Ferrero, Nemiroff, Victoria's Secret, Burberry.

(e) Criminal Enforcement

Under the RA Criminal Code and Criminal Procedure Code, criminal penalties may apply for any illegal use of a trademark (including counterfeiting), if the damages (including lost profits) caused to the IP owner exceed 200,000 AMD (i.e., approximately \$400 US dollars).

A rightsholder may request the Police to initiate a criminal investigation against an alleged infringer. The Customs Service may also apply to the Police to start a criminal investigation for IP rights violations against an infringer. The criminal investigation by the Police may culminate in a criminal case against an alleged infringer in the First Instance Criminal Court, as depicted in Figure .

However, only a small portion of infringements are tried by the Criminal Court. Based on DataLex, only 12 criminal IP-related cases have been initiated from 2008 to 2020. Those include three copyright-related; one related-rights related; two industrial design cases, and seven trademark rights-related cases.

Chapter 3 Gaps and recommendations

This chapter focuses on the gaps in policies, legislation, and enforcement, as well as provides recommendations to both rightsholders and the government.

Sections 3.1. and 3.2. describe the gaps in the fields of copyright and trademarks, respectively, with the analysis of the causes. The sections further provide recommendations for both rightsholders and the government.

Section 3.3. provides general recommendations to the government applicable to both copyright and trademarks.

3.1. Copyright Policy, Legislative and Enforcement Gaps and Recommendations

3.1.1. Analysis of gaps and causes

Copyrights are wilfully infringed but, mostly, as a result of lack of awareness. In contrast to trademark infringements, which are usually the result of unfair practices, many infringements in the field of copyright are derived from lack of awareness. For example, most of the local shops do not have any license agreement with the Armauthor Collection Society. Yet, in many such shops, a public performance of copyrighted works (publicly playing copyrighted songs for their customers) is a daily occurrence without any payment of royalties to copyright owners.

Such copyright infringement stems from the general practice of copyright infringement by local shops, restaurants, music halls, hotels, cable TV stations, and other users operating in Armenia. The vast majority of copyright infringers use copyrighted works of foreign (mainly European and American) songwriters and composers.

Notifying the infringers of copyright infringement fails to curb the practice of unauthorised public performances. Even though the research, practice of local attorneys, and the experience of Armauthor Collective Society demonstrates that most copyright infringers of public performances of musical works are a result of lack of awareness, the notifications of infringement by Armauthor are ignored. The infringers refuse to sign license agreements with Armauthor and refuse to pay respective royalties. This is a result of an unhealthy culture that still exists in Armenia.

Software is another type of copyrighted work that is widely infringed in Armenia. However, the issues in this field are different from public performance-based copyright infringement. The software piracy issues are rooted in the history of Armenia's state predecessor, the Soviet Union. The Soviet Union was technologically behind the western countries due to lack of competitiveness within its industries. Furthermore, due to the full state ownership, the Soviet Union had no notion of private copyright. While, for example, software piracy was a big concern and one of the hot topics on media in the United States, in the mid-1980s, personal computers (PCs) were not in the wide use in Soviet Armenia during those times.

Because private entrepreneurship was strongly prohibited in the Soviet Union, and the IP was fully owned by the state, there was no reason to infringe the state IP rights. Accordingly, there was no need for a mechanism for IPR enforcement: no need for IP-trained lawyers or judges,

no need for IP-oriented procedures. Authors and inventors simply relied on the state for the payment of their royalties. Since many of them (if not all) were already employed by the State, the royalties were considered more as a bonus, rather than a payment of license by the state.

After the collapse of the USSR, Armenia regained its independence, but the inherited culture and attitude continued. Later after the collapse of the USSR, when PCs became very popular in Armenia, the software copyright continued to be traditionally unenforceable. There was even a lack of awareness of the difference between genuine and pirated software. Copies of software were made without even suspecting that any law was broken. The awareness of the illegality of software piracy started to circulate during the past 10 to 15 years. However, even to date, many individuals still do not realize that they commit any wrongdoing by illegally duplicating software.

The difference between software and other works copyright infringement is not only in the lack of culture and awareness, but also the scale of finances required to obtain proper licenses. For example, in case of paying royalties for using music/songs publicly, businesses have to pay a royalty of 70,000 Armenian drams (the equivalent of approximately 125 EUR) for a whole year of unlimited use of any music/song (i.e., approximately 10 EUR, per month). The reason the business does not pay this affordable amount is that there is a lack of culture, and there was no enforcement for decades.

For software, depending on the size of the business and type of industry, the license fee may be very expensive. This issue regarding affordability was, and still is, an important topic for discussion and concern, even in the developed countries. In Armenia, the cost and the remnant culture of the Soviet Union made pirated software a preferable choice over the genuine software with a proper license purchase.

The current reality and resistance to purchasing genuine software may continue indefinitely until strict enforcement is instituted in Armenia. However, even those who are required to enforce (i.e., law enforcement bodies and courts), themselves have been using pirated software without any knowledge that it constitutes copyright infringement. At some point, even the government and the parliament were unaware of the legal requirements to use genuine software for all their agencies and state authorities. In such an environment, a law enforcement officer may not have the requisite motivation to initiate criminal investigation or for a court to decide against a user of pirated software.

3.1.2. Recommendations for Rightsholders

- In the event of copyright infringement, the burden of proof of authorship and ownership is on the author (owner) of the work. For the protection of copyright, it is advisable to file either (1) a civil action with the General Jurisdiction Court, or (2) a criminal complaint with the local Police. In both cases, however, it is highly recommended to involve a local copyright attorney with litigation experience in the field of IP.
- To receive compensation for attorney fees and other litigation expenses, make sure to have a legal services agreement executed with the local counsel. Before granting attorney fees, the courts may require evidence of the actual transfer of fees to the attorney.

- As a member of the Berne Convention,⁵³ Armenia does not have a state authority that officially registers the copyright. Therefore, there is no need to show copyright registration to any state authority or court in Armenia.
- If there is a need to deposit a work in Armenia, Armauthor (Copyright Collection Society) has the authority by the RA Copyright Law to accept deposits of copyrighted works.
- As a Member of CISAC⁵⁴ and based on bilateral agreements signed with sister organisations, Armauthor has the right to collect royalties on behalf of millions of foreign lyricists, composers and music publishers (from 47 countries, including from the United Kingdom), for the use of their respective works on the territory of Armenia. Therefore, for the collection of royalties for musical works, foreign lyricists, composers, and music publishers should contact Armauthor NGO. The official website of Armauthor may be accessed at www.armauthor.am.
- Most of the state authorities and courts in Armenia require originals or notarised and apostille copies. All documents to be submitted to state authorities and courts must be accompanied by Armenian translations with a stamp of a notary translator. Some state authorities and courts may also require notarisation of the translation.

3.1.3. Recommendations for the Government

- Initiate, organise or participate (including via public-private partnerships) in public awareness events for local shops, restaurants, music halls, hotels, cable TV stations, IT & High-Tech companies, thereby progressing the cultural attitude towards copyrighted work.
- Raise the awareness of (including via public-private partnerships) and regulate the activities of copy-shops (colloquially called “Xerox” shops) to ensure the legality of their activities. The government’s active support is necessary to enforce copyright among numerous shops. The enforcement will force copy shops to pay license fees for making copies of copyrighted materials and pay royalties to the relevant collection society⁵⁵ (like Armauthor for musical works), which will then distribute the royalties to local and foreign authors directly or through copyright societies, if the authors are from foreign countries.
- Introduce statutory damages in the Copyright Law for piracy and other types of copyright infringements to increase the effectiveness of copyright enforcement. As discussed above, considering that authors usually cannot afford legal fees, the minimum amount of statutory damages should incentivise more copyright infringement

⁵³ Berne Convention for the Protection of Literary and Artistic Works

⁵⁴ CISAC – the International Confederation of Societies of Authors and Composers – is the world’s leading network of authors’ societies (also referred to as Collective Management Organisations, or CMOs). With 232 member societies in 120 countries, CISAC represent more than 4 million creators from all geographic areas and all artistic repertoires; music, audio-visual, drama, literature and visual arts. CISAC works to protect the rights and promote the interests of creators worldwide. CISAC’s official website may be accessed at www.cisac.org/Our-Members.

⁵⁵ Such organisations, agencies or associations exist in various countries. For example, Copyright Licensing Agency in the UK (www.cla.co.uk); Copyright Clearance Center in the USA (www.copyright.com), etc.

litigations. The increased amount of litigation can make an immediate and evident impact in protecting copyright.

- Adopt relevant regulations to register copyrights with the Customs Service to seize the import of pirated goods. The current Customs legislation permits registration of other types of IP apart from trademark (e.g., copyright) with the Customs Service, but there are no procedural regulations. As a result, currently, the Customs Service neither registers nor can seize the import of pirated goods (i.e., goods infringing copyright).
- Regularly publicise to the authors and creative community, through mass media, by various social and other activities, that the government gives a high priority to the protection and enforcement of their rights.

3.2. Trademark Policy, Legislative and Enforcement Gaps and Recommendations

The types of trademark infringements against foreign IP-holders include (1) transportation of counterfeit (fake) goods from other countries of the Eurasian Economic Union to Armenia; (2) illegal import of goods bearing a foreign trademark from countries outside of the Eurasian Economic Union to Armenia; (3) other types of illegal uses of foreign trademarks in Armenia; (4) registration of foreign trademarks and geographical indications by local individuals or businesses in Armenia. Each type of infringement is described herein in greater detail.

3.2.1. Analysis of gaps and causes

(A) Transportation of Counterfeit⁵⁶ Trademark Goods from EAEU countries to Armenia

The research and survey have revealed the availability of counterfeit trademark goods in Armenia. However, due to the lack of appropriate data, it is not possible to assess the ratio between local production of counterfeit goods in Armenia and the import of such goods into Armenia from other countries. The respondents of the survey have confirmed that both local production and import from other countries have taken place in Armenia.

The principle of exhaustion of Intellectual Property rights⁵⁷ (so-called the “parallel import right”) had changed in Armenia in January 2018, when the Annex 26⁵⁸ to the Treaty on the Eurasian

⁵⁶ The definition of the legal term “counterfeit” may vary from country to country. The TRIPS Agreement, ratified by all 164 WTO member states, defines the term “counterfeit trademark goods” as “any goods, including packaging, bearing without authorisation a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.”

⁵⁷ The principle of exhaustion establishes that the rights of the intellectual property holder with respect to the property stand exhausted when the property is legally sold in any foreign markets.

⁵⁸ Provisions of Section V of the Protocol on the Protection and Enforcement of Intellectual Property Rights.

Economic Union⁵⁹ entered into force for Armenia. In this section, we will describe the positive and negative impacts of this change on the fight against counterfeiting⁶⁰ in Armenia.

Before acceding to the treaty of EAEU, Armenia followed the principle of international exhaustion (i.e., would allow “Parallel import”), when any person could import to Armenia any branded goods produced and sold legally in any foreign country. The Customs Service had the official authority (ex-officio authority) to seize any goods suspected to be counterfeit. This authority has remained unchanged, but the Customs Service appears to have never used this authority to seize any counterfeit goods in its ex-officio capacity. This has led to the local market being proliferated with a substantial amount of counterfeit goods.

After joining the Eurasian Customs Union, the principle of International Exhaustion was replaced with the Regional Exhaustion of IP rights (i.e., the right to the “Parallel import” was limited). This change is a significant advantage for the rightsholders interested in controlling the local market. It provides the rightsholder with the exclusive right to ban any import of goods bearing their trademark (not only counterfeit goods). The exclusive right applies to any (including genuine) goods bearing rightsholder’s trademark, provided that the trademark (1) is protected in Armenia through national or international registration procedures, and (2) is recorded with the Customs Service of Armenia. Rightsholders may provide the Customs Service with the name and address of their official distributor in Armenia so that the Customs Service (1) would not seize any goods imported by their official distributors, and (2) could detain any goods imported by third parties without requiring authorization or getting the permission of the rightsholder.

As a positive impact, the regional exhaustion of IP rights enhances the rightsholders’ capabilities to fight against counterfeit goods in the local market. In case of international exhaustion, when all third parties are legally permitted to import goods from any country bearing the rightsholders trademark, it was almost impossible for rightsholders to have a full picture of the volumes of imported goods and identify counterfeit ones. To find counterfeit goods, rightsholders had to monitor the whole local market themselves and rely on the Police. In contrast, with the regional exhaustion of rights, the Customs Service detains any import of goods bearing the rightsholder’s trademarks, if such goods are imported without their permission or authorisation. Accordingly, the Customs Service performs the screening of imported goods for rightsholders, detains both counterfeited and genuine goods, and promptly informs the rightsholders about any seizure.

As a negative impact, the regional exhaustion of rights excludes goods that enter from the countries of the Eurasian Economic Union, and thus, is not effective in regulating genuine imports or monitoring for counterfeit imports from the EAEU countries. The shortcoming of the regional exhaustion of IP rights is in the very limited (near-complete absence) border control between these countries of the Eurasian Economic Union region (i.e. Belarus, Kazakhstan, Kyrgyzstan and Russia), which have significant counterfeit goods in their respective markets. Any goods (genuine or counterfeit) from any of these countries of the Eurasian Customs Union may be freely transported to Armenia with almost no customs control. While the Customs

⁵⁹ The Eurasian Economic Union (EAEU) is an economic union of states located in central and northern Asia and Eastern Europe. The Treaty on the Eurasian Economic Union was signed in 2014 by Belarus, Kazakhstan and Russia. Armenia joined the Union in 2014 and the treaty came into force for Armenia on January 2, 2015.

⁶⁰ The term “counterfeiting” involves manufacturing or distribution of goods under someone else’s name, and without their permission. Counterfeit goods are generally made from lower quality components, in order to sell a cheap imitation of similar goods produced by brands consumers know and trust.

Service will have information about transported goods, it has no obligation to share such information with the rightsholders. Therefore, the rightsholders have no information about the volumes of imported goods and whether they are genuine or counterfeit.

As a result, many importers of counterfeit goods have simply changed their transportation routes. Rather than importing counterfeits from third countries and going through Customs screening, they simply transport their goods from the countries of the Eurasian Economic Union into Armenia. When one also considers that three out of the other four members of the Union have common borders with a large counterfeit market, and bearing in mind the perceived level of corruption in the EAEU countries, it is not difficult to conclude that counterfeit goods may be easily transported to Armenia from counterfeit markets through “open borders” with the member states of the Eurasian Customs Union.

Therefore, the Armenian market is still vulnerable and exposed to counterfeit goods. This means rightsholders in Armenia have no other option than to rely on the Armenian law enforcement bodies and the courts to enforce their IP rights. The efficiency of the law enforcement bodies and the courts in the fight against counterfeiting and IP infringements, in general, is discussed below.

(B) Legislative gaps and barriers for recording trademarks with the Customs Service

For many foreign rightsholders, the regional exhaustion of IP rights is a significant advantage allowing them to better, sometimes completely, control their sales within the local Armenian market. Therefore, many foreign rightsholders, including those from the UK, have continued to record their registered trademarks with the Customs Service of Armenia.

This section describes the shortcomings of the current registration regulations for the Customs Service that creates unnecessary barriers for the enforcement of IP rights.

To record a trademark in the Customs Service registry, the owner of the trademark is required to:

- a. *submit evidence of infringement of the trademark in Armenia, or a potential risk thereof; and*
- b. *provide assurance in writing that the applicant agrees to provide a bank guarantee or make a payment of a guarantee fee of five percent of the customs value of the imported goods, within three days of receiving the Customs Service’s Decision on the Detention of Imported Goods.*

These requirements are the most challenging barriers in the recording procedure and will be discussed in greater detail below.

(a) The requirement to provide evidence of infringement or a potential risk thereof

This requirement is completely against the preventive mission and purpose of the Customs Service’s assistance.

While filing Customs Service applications, rightsholders expect the prevention of the infringement of their IP rights, i.e., illegal import of their goods. If rightsholders are required to provide evidence of infringement, it means that rightsholders should wait

until the infringement occurs. Accordingly, to such a wrongful policy, infringing goods have to penetrate the border, enter into the market (in some cases, cause actual harm to consumers), and only then be identified by rightsholders. This information about the infringement can then be included in the Customs Application for the trademark to be recorded by the Customs Service. Only when the next illegal import takes place, will the Customs Service detain the goods.

Furthermore, there is a lack of clarity on the kind of evidence to be provided to the Customs Service to prove infringement or a potential risk thereof. Many attorneys (including a number of the respondents to the survey) have discussed this issue with the Customs Service, voicing their valid concern about this requirement.

Based on the survey respondents, the Customs Service has either softened this requirement for providing evidence or does not require additional evidence at all. Even if this is indeed the case, the existence of the legal requirement is still problematic. The Customs Service may change its policy at any moment or apply a selective approach, which may lead to or create a risk for corruption.

(b) *The requirement to provide assurance in writing that the applicant agrees to provide a bank guarantee or make a payment of a guarantee fee*

There are several concerns regarding this requirement.

- Most of the foreign rightsholders do not have bank accounts in Armenia. Most applicants are not willing to subject themselves to the process of opening bank accounts in Armenia solely to make payments of guarantee fees. It is unreasonable to believe that to receive Customs protection/assistance worldwide; rightsholders should own and manage bank accounts in all countries of the world. Additionally, rightsholders cannot simply freeze the funds in bank accounts all over the world and forfeit using the funds, whenever any Customs Service detains an illegal import.
- Not all banks, or only a limited number of banks in Armenia, if any, may be able to provide bank guarantees within three days to any foreign company, even if the local representative has a Power of Attorney to act on the rightsholders' behalf.
- Foreign rightsholders usually are not able to make wire-transfers to their local counsels within three days. The foreign right holders may receive the notification with a significant delay, given the time difference. They may need extra time for a decision even before committing to the transfer of the necessary funds.
- The payment may not be made by local representatives or counsels, since they may not have sufficient funds, especially if local counsels represent several clients, and the detained shipment has a large volume.
- The failure to meet this requirement may make the enforcement impossible, since the Customs Service may release the goods, without allowing the rightsholder to extend the term of detention for an additional ten days, to have an opportunity to take additional legal measures.

Most of the respondents of the survey confirmed that foreign rightsholders do see the bank guarantee/payment requirement as a substantial barrier for the protection of the IP rights in Armenia. Some respondents of the survey believe that this is an old requirement that should be entirely removed from the law. In particular, respondents

believe that this requirement was necessary for the regime of the international principle of exhaustion of IP rights, and is obsolete for the current one.

In the previous International Exhaustion regime, the Customs Service could detain goods suspected to be counterfeit. If later those goods were proved to be genuine, the importer might have been entitled to compensation of damages, if any, from the rightsholder. The Customs Service, itself, may have requested compensation for its expenses if any.

Neither previously nor currently, the Customs Service does not incur any expenses. The goods are detained in private warehouses, and the importer is required to pay for this private service. As for the importer's damages, the importer could incur expenses only under the previous International Exhaustion regime.

Under the new Regional Exhaustion regime, the requirement of a bank guarantee or a guarantee fee is obsolete. Under the new regime, any import of goods, including genuine goods, without the rightsholder's explicit permission or consent, is considered as an infringement of the rightsholder's trademark, by default. Thus, there cannot be any damage to the importer. The importer is considered as an infringer by default. There cannot be any reasonable requirement to compensate for the infringer's damages. Therefore, some respondents of the survey believe that the requirement of a bank guarantee or a guarantee fee is obsolete.

Despite the recited legislative gaps and barriers for recording trademarks with the Customs Service, with an appropriate local counsel, rightsholders may still record their trademarks with the Customs Service. The next section discusses the enforcement barriers of IP rights after detention of illegally imported goods.

(C) Legislative gaps and barriers for enforcement of IP rights after detention of illegally imported goods

The enforcement issues arise immediately after rightsholders are informed about the detention of goods. The rightsholders are required to decide on further actions within just several days from the receipt of the Customs Seizure Decision. Thus, at such point, the time is of the essence for successful enforcement.

The customs-based enforcement, as an administrative procedure, may inevitably lead to either civil action by the rightsholder against the importer or a criminal enforcement actions by the Police. Alternatively, the rightsholders may decide to either (1) take no action, which results in the release of the detained goods, within ten days after the seizure; or (2) request the Customs Service to release the goods immediately. These two decisions are generally made, in the cases in which the rightsholders (a) do not have an official distributor in Armenia and the goods are not, or do not appear to be, counterfeit; (b) have only registered the trademark for certain goods and do not mind if other goods are imported; (c) do not intend to spend financial recourses on enforcement yet and wish to simply monitor the imports to identify their sources and importers; or (d) rightsholders do not intend to or cannot provide bank guarantees or make guarantee payments.

The rightsholders may proceed with the customs-based enforcement to (1) prevent the entrance of illegally imported goods (so called parallel or grey import goods) into Armenian

market, or (2) destroy the imported counterfeit goods. To do so, the rightsholder would need to follow the following procedure:

1. provide a bank guarantee, or make a guarantee payment of five percent of the customs value of the imported goods, within three days of receiving the Customs Service's decision on the seizure;
2. file a civil action with the general court of jurisdiction and share the copy of the complaint with the Customs Service, within ten days of receiving the Customs Service's Decision on Seizure, so that the Customs Service could extend the detention of goods for another 10 day-period; and
3. provide the Customs Service with the Court's preliminary injunction (within 20 days from receiving the Customs Service's Decision on Seizure), requiring either: (1) the Customs Service to keep the goods detained until the end of litigation; or (2) the importer to refrain from selling the goods before the end of litigation, if they are released by the Customs Service.

The procedure itself seems to be straightforward, yet the issue is in the terms and requirements above.

The subsections below describe the existing barriers in civil and criminal enforcement actions succeeding the customs administrative procedure.

(a) *Barriers in Civil Actions arising from Customs Enforcement*

As discussed in the section above, usually foreign rightsholders either refuse to or cannot provide bank guarantees or make guarantee payments within such a short period of time. Therefore, many rightsholders cease to proceed further at this phase. Those rightsholders that proceed further, usually do so with the aid of the local counsel. However, even well-crafted legal strategies may fail due to lack of uniform application within Customs with respect to the requirement of the bank guarantee (or the guarantee payment), and the outcome may be specific to the particular Customs officer handling the case.

If the rightsholders intend to (1) prevent the entrance of illegally imported goods to Armenia, or (2) destroy the counterfeit goods, the rights holders have to ensure the receipt of the court's preliminary injunction within 20 days of receiving the Customs Service's decision on the seizure of goods. Otherwise, the Customs Service will release the goods, and rightsholders will have almost no chance of tracking those goods in the Armenian market. The importers will most likely immediately sell the released goods, or at least assert that they had one so upon an inquiry. In fact, to further prevent tracing, the importer will allege that a cash transaction has occurred irrespective of the volume of goods involved. Such a response usually satisfies the law enforcement, the Police, and the imported goods are not traced further. Any criminal complaint to launch a criminal investigation will be refused for the rightsholder based upon the absence of evidence.

Twenty days may seem sufficient time to receive a preliminary injunction from the court, but in practice, the time period is not adequate, mainly for two reasons:

1. Customs' Refusal to Provide Necessary Information regarding Imported Goods

The further actions of rightsholders at minimum may depend on whether the goods are counterfeit or genuine.

If the goods are counterfeit, that is a red flag for any rightsholder which triggers the necessary actions to prevent the entrance of those goods into the market. These goods may harm the reputation of the brand and cause other damages to the rightsholders. And as a public policy consideration, the goods may be even dangerous for consumers.

If, on the other hand, the import is of genuine goods, depending on the rightsholders and their enforcement strategy, they may refrain from any further actions, in particular, if the volume of the imported goods is small. To choose from these vastly different outcomes, the rightsholders has to have information on the imported goods: at least an invoice, a CMR consignment note, and/or photos of the goods.

Unfortunately, the Armenian law prohibits the Customs Service to share any information, including an invoice or a CMR with the rightsholders and prohibits any access to the goods for capturing necessary information.

From the perspective of the public policy, the Customs Service is assists in protection of IPR, thus the refusal to provide the necessary information on the imported goods is irrational. The Customs Service fails to even provide the rightsholders with the contact information of the importers. The only hope is that the importers themselves will contact the rightsholder. According to the Customs Service, the standing policy is to recommend all importers that to contact the rightsholders in order avoid ten days wait time for the goods to be released.

If the importer knows that the goods are counterfeit, the likelihood the that the importer will contact the rightsholder and share any information is certainly low. The importer would rather wait until the expiration of the 10-day detention period to receive the goods. In many cases even importers of genuine goods do not contact the rightsholders, since the import of goods without permission is an infringement by default. If the importer does provide the invoice, there is a risk that it is not a real invoice or even the same invoice that was submitted to the Customs Service.

In similar situations, rightsholders are in a very difficult and ambiguous state. If the goods are genuine, the investment of time and financial resources (including legal services) will not be justified. If, however, the goods are counterfeit, the counterfeited goods may cause irreparable harm to both consumers and the rightsholder.

According to respondents of the survey, some rightsholders try to find the contacts and get directly in touch with the importers. But this strategy may fail as time is of the essence and the rightsholders may not get the necessary information in time. As a rule, by the time information is received or by the time rightsholders decide to proceed further, it is too late to meet the deadlines for the filing of a civil action, or even if the action is filed, it may take up to 10 days for a court to decide on the admission of the case.

As a rule, if a legal action is not instituted within the first seven to ten days, the chance of meeting the Customs Service deadline for preventing the release is minimal. The goods are then released, and it becomes almost impossible to track the goods in the Armenian market.

2. Other Legislative and Technical Barriers for Customs Enforcement

Some rightsholders decide to proceed with a civil action promptly after receiving the Customs Service's decision on seizure. However, according to the survey, not all rightsholders are able to receive the court's preliminary injunction before the goods are released. If, for example, the importer is from a different city/region (not from Yerevan), the chances of receiving an injunction from the court of the importer's jurisdiction before the seizure deadline, is close to zero.

When a civil action needs to be filed in any region outside of Yerevan, it takes approximately three days for the complaint to reach the regional court. Even if it took one day to prepare the civil action and it was mailed to the regional court, next day, it may reach the court on the 5th day after receiving the Customs Service's Decision on Seizure.

As a rule, there is no court in Armenia that makes a decision on admission of the case promptly. More so, the courts generally always request further clarifications from the plaintiff. Even if no clarification is requested, the court has 10 days to rule on the matter. Most of the courts are overloaded and thus, the decision is most frequently made on the last day. In this ideal scenario, if the court admits the civil action and sends its decision back to the rightsholder's representative, the rightsholder will receive the ruling on the 18th day which would be two days before the deadline. If the court decision is mailed via a post office to the Customs Service, there is a substantial risk that the relevant department in the Customs Service will only receive the decision after the expiration of the deadline. Thus, even in this ideal scenario, in order to meet the deadline, the plaintiff has to rush the decision directly to the Customs Service.

In reality, the ideal scenarios described above may rarely happen. As a rule, since many judges, particularly those outside of Yerevan, have never received such civil actions in their court practice, the judges very often try to find a way to mail the complaint back to the plaintiff requiring them to make some clarifications, provide additional information or make changes and requiring the plaintiff to re-submit the complaint. If this happens, then clearly, the Customs Service's deadline will be missed, and the goods will be released.

In many cases, it is equally challenging to meet the deadline the Yerevan-based importer cases, especially if the court returns the complaint for re-submission. As a rule, the chances of meeting the deadline after resubmitting the complaint to any court is also close zero. The court do return complaints, similar complaints, with or without any reason. Most of respondents of the survey observed that they usually cannot meet the deadlines and the goods are released.

(b) Barriers in Criminal Actions arising from Customs Enforcement

The extension of goods detainment for an additional 10 days (total of 20 days as discussed above) is only possible by instituting a civil action and providing the copy of the filed complaint to the Customs Service, before expiration of the original 10-day detention term.

However, no such extension is granted if the rightsholder informs the Customs Service that the imported goods are counterfeit. Even if the rightsholder files a criminal complaint with the Police, it will not prevent the Customs Service from releasing the goods, after the expiration of the 10-day detention term.

Filing a criminal complaint may help the rightsholder to prevent importers from selling the goods, but the odds are stuck against such outcome. Some rightsholders, including those from the UK, have filed a criminal complaint, without or in parallel with a civil action, before the expiration of the 10-day detention term. The criminal complaint was filed because of the doubtful source of goods importation and thus, having doubts about the genuineness of the imported goods. As discussed above, the rightsholders lack information regarding the imported goods (no Invoice, CMR, photos, etc.), and have no access to the goods. In some cases, the importer is not cooperative and may not have any intention to communicate with the rightsholders and share any information. In some cases, it was revealed that the importers were advised not to contact the rightsholder and to refrain from providing any information, since the Customs Service would have no other option than to release the goods in ten days.

As discussed in the section above, for some rightsholders, particularly for those who do not have official distributors in Armenia, the lack of information is a barrier to proceed further. Because of the lack of interested party in the Armenian market (an official distributor), the rightsholders may decide to save resources and not to instantiate any criminal or civil action.

Other rightsholders, predominantly those who have official distributors, may pursue all the available legal avenues to prevent the import of even genuine goods by third parties to Armenia. Despite the above-mentioned lack of information or absence of cooperation by the importer, rightsholder can and should file a criminal complaint without or in parallel with filing a civil action. As a rule, the success of the criminal complaint hinges on the prompt actions by the Police. If the Police contacts the importer and manages to convince the importer to cooperate with the rightsholder, the outcome is generally amicable for the rightsholders. In such cases, the parties generally settle the matter with some undertaking in writing: in particular, the importer generally refrains from importing counterfeit or genuine rightsholders' goods in the future.

However, when the Police does not fully cooperate, after the expiration of the 10-day detention period, the goods are released and in most of the cases. And, the Police will not be able to find them in the Armenian market after the release. The Police may substantiate the lack of cooperation by: (1) alleging overload and lack of resources to handle all matters in a timely manner; (2) inability to handle such work; (3) lack of skills and experience in this field to take any actions. To some respondents of the survey, the police investigators and even prosecutors explained the reason for their refusal to initiate a criminal investigation or support the rightsholders is in their belief that the current regime of the regional exhaustion of IP rights⁶¹ is against the interests of small and medium size businesses operating in Armenia.

In some cases, when the Police takes a more "neutral" position. The Police initiates a criminal investigation, one or two days after the goods are released by the Customs Service. After the initiation of criminal investigation, the rightsholders may wait for several days with the expectation that the importer will contact and provides the necessary information. Such a contact may never happen, and the criminal investigation may not bear any fruits since the

⁶¹ The principle of exhaustion establishes that the rights of the intellectual property holder with respect to the property stand exhausted when the property is legally sold in any foreign markets.

goods that entered the Armenian market may not be further traceable. Therefore, if the Police does not initiate a criminal investigation right after filing of the criminal complaint by a rightsholder, then the rightsholder should expect either no action or “neutral” action with the same outcome. The goods will be released by the Customs Service and will become non-traceable in the Armenian market.

Therefore, the success of any criminal action in general, including the customs-based criminal enforcement greatly depends on the diligent work of the law enforcement bodies and the willingness of the infringer to cooperate. However, 75% of the respondents believe that the level of IP awareness among law enforcement bodies is very low. More than 60% of the respondents are of the opinion that the law enforcement bodies do not have much interest in fighting IP crime. According to 65% of the respondents, law enforcement officers do not have the necessary level of IPR knowledge, skills, and expertise to fight IPR crimes in Armenia.

(D) Misuse of small parcels for illegal import of goods

Small parcels are transported to Armenia via road, rail and air. In recent years the parcel market has grown considerably in Armenia.

Trading platforms such as Amazon, eBay, Alibaba and others are operating on a global basis, providing a means for consumers to purchase goods easily from foreign countries. These large platform operators all have policies prohibiting the listing and sale of counterfeit and other illicit products, and they have procedures for removing listings of such products from their sites. While they have intensified efforts to address the problem over time, there are many critics who argue that their efforts still fall short of what is needed. One of the tools for addressing counterfeit listings is through “take-down” requests, which law enforcement or rights holders can make to platform operators. Recent evidence presented by World Intellectual Property Organization (WIPO) members suggests that take-down requests can be an effective method of tackling this problem, so long as the process to apply for such a request in the courts can be done in an effective and timely manner⁶².

While counterfeits trafficked by container ships clearly dominate in terms of value, trafficking of fakes by small parcels is growing and dominate in terms of number of seizures. The small parcels tend to be shipped through postal or express services. The growth in use of small parcels reflects efforts by counterfeiters to address some of the shortcomings for trade in counterfeit goods related to the ocean freight. While the risk of detection may be low in ocean freight, when seizures occur, losses on confiscated cargoes could be large. Small shipments, however, provide a means for counterfeiters to lower the potential losses that result from seizures. Even more importantly, the ability to avoid detection may be considerably higher, even though the aggregated cost of shipment per item shipped is likely to be higher for post than for ocean freight.⁶³

The attractiveness of small shipments as a vehicle for illicit trade is also affected by the special treatment that many countries [including Armenia] have established for low value shipments. Imports valued below de minimis levels are not generally subject to tariffs and taxes. The

⁶² OECD/EUIPO (2018), *Misuse of Small Parcels for Trade in Counterfeit Goods: Facts and Trends, Illicit Trade*, OECD Publishing, Paris. Available at: <https://doi.org/10.1787/9789264307858-en>

⁶³ Ibid.

thresholds vary greatly by country, and have, in recent years, been adjusted up or down in different countries, for a variety of reasons. In the United States, the level was increased from \$200 to \$800, with a view towards facilitating trade. Australia and the European Union, on the other hand, have reduced or are in the process of reducing the scope of the de minimis exemption.⁶⁴

Poor governance and weak IPR enforcement enable counterfeiters and illegal importers to misuse logistics and trade facilities. Existing international qualitative information suggests that the market for misuse of small parcels is very dynamic. In case of Armenia, the role of law enforcement authorities in fighting against similar counterfeiters and other illegal importers may be decisive, since there may not be more efficient options for fast solutions.

(E) Legislative Gaps and other Barriers for Collection of Evidence

One of the fundamental challenges and the biggest barrier for protection of IP rights in Armenia is the lack of legal tools allowing one to collect and preserve evidence to be used against infringers in the courts.

Armenia does not have a law on private investigations. Therefore, there are no licensed investigators who may assist with collection of evidence.

Armenian legislation does not provide administrative remedies against or penalties for IP infringements, unless the infringement constitutes an unfair competition under the Armenian Law on Protection of the Economic Competition. In case of unfair competition, the collection of evidence may be requested from the State Commission for the Protection of the Economic Competition.

When a law firm is requested to assist with an anti-counterfeiting or anti-piracy project in Armenia, the success may depend on the collection of evidence for a civil or criminal action.

Collection of evidence for a civil enforcement action is close to impossible. Counterfeiters will not voluntarily provide rightsholders or their legal representatives with any evidence that might be used against them in the courts. If, for example, a rightsholder makes a purchase from a given shop selling counterfeit or pirated goods, it would be a big challenge to prove in the court that those goods were in fact purchased from that particular shop, even if the buyer has a receipt. If the seller refuses to accept that the goods were sold in the shop and alleges that the goods presented as an evidence are not from the shop, the rightsholder has no viable way to establish a chain of custody to admit the evidence into the court. For example, photo evidence may not be procured because many shops selling counterfeit goods in Armenia (for example a large department store full of cosmetics of various famous brands with prices ranging between \$0.25 to 50 dollars) do not allow persons to take any photos inside the department store. The sales assistant of the shop, who carefully observing every purchaser, would prevent any photos of any of the goods in the shop.

The collection of evidence in a criminal enforcement action is also challenging. The Armenian Criminal Procedure Code does not allow criminal investigators to confiscate all goods suspected of counterfeit or piracy, before initiating a criminal investigation. The law only allows the criminal investigators to take samples of some goods for examination in order to determine whether they are counterfeit/pirated or genuine. In order to initiate a criminal investigation,

⁶⁴ Ibid.

investigators have ten days and need to show that the potential damage caused to the rightsholder exceeds 200,000 Armenian drams (i.e. approximately \$400 US dollars).

Within those ten days investigators should ensure that they examine the goods and determine whether they are genuine or counterfeit. In most of the cases, it is impossible for any expert to determine whether the goods are fake or genuine, unless they have information from the producer of the genuine goods. If, however, the information about genuine and counterfeit goods is received from the producer only, the investigator may consider it as unobjective (subjective) information and reject the criminal complaint based on absence of evidence that the goods are counterfeit.

If the examiner manages to provide the investigator with acceptable information within ten days (which is rarely possible) and the investigator decides to initiate a criminal investigation in order to have the right to confiscate or arrest the goods, the latter may find out that the rest of goods have already been sold. In this situation, the initiation of a criminal action based on the samples taken for examination would depend on the value of those samples. If the value exceeds \$400 US dollars, then the investigator may initiate a criminal action based on the samples. The question is whether rightsholders would be satisfied with or be interested in the initiation of a criminal action in a situation when all other goods have already been sold.

The foregoing demonstrates that the current criminal code provides all possibilities to the criminal investigators for either rejecting a criminal complaint or making it unattractive to rightsholders to pursue the complaint in the first place. And, with IP awareness among the law enforcement bodies being very low, the law enforcement lacks any interest in fighting IP crime⁶⁵.

Therefore, the inability to collect evidence for civil or criminal actions is one of the barriers, not only foreign companies, but also for local rightsholders.

(F) Legislative Gaps and Barriers for Destruction of Counterfeit Goods

According to most of the respondents of the Survey⁶⁶, Armenian legislation lacks clear procedures for destroying counterfeit or pirated goods. The Armenian law allows compensation of damages in the case of infringement of IP rights. In certain cases, it also allows for the destruction of pirated goods (copyright infringement) and counterfeit goods (trademark infringement).

In case of trademark infringements, based on the Armenian Civil Code, the right to destroy the goods is limited only to those goods for which the infringed trademark cannot be removed.⁶⁷ Technically speaking, this regulation allows infringers to continue to sell any infringing goods, as long as the infringed trademark is removed. For example, rightsholders' trademarks on labels or packaging (e.g. on bottles, cans, boxes, etc.) of such goods can be removed, after which the goods are free to be sold in the Armenian market albeit with changed labels and packaging.

⁶⁵ See Annex 3

⁶⁶ Ibid

⁶⁷ RA Civil Code, Article 1178 (3)

However, if the seized counterfeit goods are not destroyed, the rightsholders will gradually lose their incentive to enforce their rights in Armenia. This will in turn decrease their interest towards Armenian market, increase the number of counterfeiting in the country, harm Armenia's reputation and subsequently create serious risks decreasing FDI. In addition to the adverse impact on the economy, many counterfeit goods, particularly pharmaceuticals, food and drink, toys, and medical equipment, personal care products, automobile spare parts and various other goods may pose serious health and safety risks for consumers in Armenia.

There were only four court cases between 2009 – 2018, in Armenia, where a court decision applied Article 1178, Section 3, i.e. requiring destruction of goods. Such a small number of complaints would probably be the best indicator of the ineffectiveness of the legislation for the purposes of destruction of goods.

Another issue is the lack of damages for the prevailing rightsholder. The maximum compensation rightsholders may receive from the court, in similar events, would be attorney fees. But even the attorney fees are way below the actual attorney fees that the rightsholder would spend. The exact amount of the attorney compensation would depend on the court's decision. On average, the maximum compensation is about \$500 US dollars, even if rightsholders have spent thousands of dollars for the court proceedings that may have taken up to three years. Such a low compensation comes nowhere close to the financial risk and resources spent by a rightsholder. The chances of success for the rightsholder are only 50%, and 78% of respondents believe that the level of IP awareness among judges in Armenia is very low⁶⁸.

At most, the current legislation might be effective for relatively small actions against small-scale infringers. But, against big and powerful infringers with substantial resources for legal challenge, the legal action may be ineffective both cost and timewise. Challenging such importers/producers with large volumes of goods for anti-piracy and anti-counterfeiting may be futile considering the difficulties with collection of evidence, compensation of damages and the small revenues of the rightsholders due to the small size of the Armenian market.

Successfully obtaining a right to the destruction of infringing goods that will be a threat for any size infringer greatly depends on the collection of the evidence. In a civil action, for a request for destruction of goods under Article 1178 (3) of the RA Civil Code to be granted, high volumes of counterfeit or pirated goods need to have been discovered. In particular, the rightsholder may not have access to the full inventory of the infringer. Even if an infringer transports a high volume of goods from the countries of the Eurasian Customs Union to Armenia and distributes them to dozens of local retailers, at most, the rightsholder may be able to collect photo evidence of the good(s) on the shelf. The rightsholders would not be able to collect evidence on the quantity of goods in importer's or shops' warehouses. Even if the rightsholders would purchase all of the goods from all of the retail outlets, the rightsholder has still to prove a chain of custody for those goods, as already described in the section above.

The most efficient and cost-effective approach for collecting evidence to request destruction of infringed goods would be the filing of a criminal complaint. However, in addition to the issues described in the section above, criminal enforcement in Armenia has its own unique issues.

Therefore, legislative and enforcement-related difficulties for the destruction of pirated and counterfeit goods creates another IP barrier for foreign rightsholders in Armenia.

⁶⁸ See Annex 3

(G) Bad faith Registrations of Foreign Trademarks and Geographical Indications in Armenia

Not so long ago, the trademark registration in Armenia was a race to the AIPA. Before the change of Trademark Law in 2010, even internationally well-known or famous brands such as BURGER KING could be registered in Armenia by local applicants without the foreign rightsholder's consent. At the time, if any entity was the first to apply to the AIPA to register even a famous mark, the AIPA would grant such an entity the right to the trademark. After the change of the law in 2010, it is less likely that such trademarks are registered. However, the erroneous registrations from before 2010 are still in effect and threaten the businesses and investments by the rightsholders of internationally well-known brands in Armenia. For example, the AIPA, for over more than ten years, has refused to register the Burger King Corporation's trademark for its respective services in Armenia, because of the registration of the trademark by a local company.

Another concern is continuous attempts to register trademarks which are identical or confusingly similar to European geographical indications. For example, attempts were made to register the trademark "CALVA", similar to the European geographic indication (GI) of "CALVADOS", which was actually refused by AIPA. But recently the trademark "DILVADOS" was registered as a trademark by a local entity for apple spirits in Armenia. The AIPA has also registered a trademark called "NORMANDINE" for cheese products, while the registration was opposed by the owner of European GI "Camembert de Normandie", one of the crown jewels of French gastronomy. One of local wine producers attempted to register a trademark for wines in Armenia, confusingly similar to another European GI "Cairanne", but it was refused by AIPA.

Similar registrations and attempts aim to either confuse, mislead or deceive consumers, or gain unfair advantages from the use of internationally well-known brands, geographical indications or similar names and packaging are taking place.

The responsibility to reject such unfair applications to prevent bad faith applications, dilution (e.g. by blurring or tarnishing) of internationally well-known brands and geographical indications, as well as consumer confusion or deception is the task of the AIPA. After adoption of the 2010 Trademark Law AIPA is doing much better job in that respect. The registrations of internationally well-known brands mainly took place before adoption of the 2010 Trademark Law. However, those registrations are still able to create barriers for rightsholders of these brands.

(H) Other Illegal Uses of Foreign Trademarks in Armenia

Respondents of the survey have also mentioned other types of illegal uses of foreign trademarks in Armenia.

One of the wide-spread illegal uses of trademarks of various goods is a display of trademarks on the walls of shops. Perhaps, the most problematic is the automobile industry. There are hundreds of shops in Armenia selling automobile spare parts and illegally using the logos of car manufacturers within shop signs, billboards and advertisements.

Another concern is illegal imitations or use of confusingly similar, misleading or deceiving trademarks of foreign cafes, restaurants, shops, hotels, as well as use of trademarks or packaging of foreign brands on locally-produced agricultural, dairy products, butter,

margarine, oils, alcoholic and other beverages, confectionery, clothing, footwear, personal care products and various other goods.

Many respondents of the survey concluded that this might be a result of inefficient enforcement of IP rights in Armenia. There is a general lack of culture and respect towards others' IP rights, in some cases as a result of poor business strategy.

Most of such illegal uses take place without official registration of such trademarks with the AIPA. However, there are few cases of registrations of foreign (in some cases even internationally well-known) brands by local individuals or businesses in Armenia. The details of such cases are discussed in the section below.

(I) Trademark Non-use Cancellation Actions may not be enforceable in Armenia

The provisions of the non-use cancellation action in the Armenian Trademark Law are ineffective and create barriers for foreign rights-holders. For example, there are local bad faith applicants who managed to register an internationally well-known brands in Armenia before 2010, for the purposes of selling them back to the original rightsholder (the foreign company).

As a rule, the local bad faith applicants do not use these trademarks and wait for the moment, when the rightsholders decide to register and use the trademark in Armenia. When foreign rightsholders apply for registration, the registration application is refused due to existence of an earlier registration of an identical or a confusingly similar trademark (i.e. their own trademark by somebody else).

In similar cases, rightsholders file non-use cancellation actions with the intention to cancel registration of earlier trademarks. However, in some cases, local owners of the internationally well-known brands use specific provisions of the Trademark law to escape from cancellation of their bad faith registrations. In particular, the Trademark law requires the courts to refuse any non-use cancellation action, if the rights to the trademark were transferred to a third party (e.g. to a non-explicit friend), before filing the non-use cancellation action.

Every time, before maturing the term for filing a non-use cancellation action, bad faith registrants transfer the trademark to a third party, thus keeping the rights to the trademark.

(J) Cybersquatting is a big challenge for Trademark owners in Armenia

Cybersquatting is not forbidden in Armenia. There are no penalties for using anybody's trademark in ".AM" domain names. The legislation does not provide any sufficient legal means to cancel registration of domain names using trademarks.

The WIPO Arbitration and Mediation Centre provides timely and cost-efficient mechanisms to resolve internet domain name disputes, without the need for court litigation. This service includes the WIPO-initiated Uniform Domain Name Dispute Resolution Policy (UDRP), under which the WIPO Centre has processed over 46,000 cases⁶⁹. However, this WIPO Centre is not able to provide such dispute resolution services to Armenia, since the Internet Society of Armenia refused WIPO's jurisdiction over Armenian disputes. At this point in time, Armenia is heaven for cybersquatting and cybercasters. There is no research on how much money is

⁶⁹ The official website may be accessed at <https://www.wipo.int/amc/en/domains>.

generated in the cybersquatting field in Armenia. There is no research on how much tax is paid or hidden from the government as a result of cybersquatting in Armenia.

There is a need for an anti-cybersquatting legislation in Armenia, based on international best practices. Rightsholders need to have legislative grounds for protection of their IP rights online and be able to cancel registration of domain names containing their trademarks which may confuse, mislead or deceive consumers.

3.2.2. Recommendations for Rightsholders

- For customs-based enforcement, rightsholders should register their trademark with the Customs Service. The latter may require submission of evidence of infringement of the trademark in Armenia, or a potential risk thereof. Simple photos from the Armenian stores or screenshots from online shops are usually sufficient to meet this requirement. If there are no goods in the market, an official letter from the rightsholders informing that the latter is planning to import its goods to Armenia or has information about a potential import of its goods or counterfeit goods by a third party to Armenia should be acceptable by the Customs Service. If the submitted information was not accepted by the Customs Service, it is advisable to write a letter to the Head of the State Revenue Committee of the Government of Armenia.
- If an importer fails to provide the necessary information within 2-3 days of the seizure, it is highly recommended to file a civil action against the importer. The rightsholder may provide a copy of the civil action to the Customs Service to request an extension of the detention term from 10 to 20 days. It is also highly recommended to request for the court to grant a preliminary injunction thereby requiring the Customs Service to keep the goods seized until the end of litigation. If the civil action with the request for a preliminary injunction is filed later, there is a significant risk that the rightsholder will forfeit the opportunity to submit the court decision to the Customs Service on time. This failure to submit the court's decision to the Customs Service before the detention deadline will permit the Customs Service to release the goods. After the goods are released, there is a low chance of tracing the goods in the market.
- If the goods are counterfeit (or the rightsholder has other grounds to stop the entrance of the imported goods to the market), and if there is a risk that the goods will be released by the Customs Service, it is highly recommended to file a criminal complaint with the Police to decrease the importers' chances of selling the goods to third parties.
- After detention of imported goods, the Customs Service requires the rightsholder to provide a bank guarantee or to make a payment of a guarantee fee. The amount is equivalent to five percent of the customs value of the imported goods and needs to be provided within three days of receiving the Customs Service's Seizure Decision. Failure to make a guarantee fee payment may be interpreted by some Customs officials as a breach of the rightsholder's obligation. As a result, some Customs officials may refuse to keep the goods detained for an additional ten days and may release them. The interpretation of the current law by some Customs officials in that manner is albeit erroneous since the law is, in fact, silent on repercussions for not having paid the guarantee fee.

- For administrative procedures, it is advisable to appeal AIPA decisions to the Board of Appeals first rather than directly to the Administrative Court. The litigation in the Administrative Court may take at least three years and thus, be more costly.
- As discussed above, IPR-related court decisions in Armenia may be highly unpredictable, particularly because of the lack of precedential decisions in the field of IP. Accordingly, rightsholders are strongly advised to consult with specialised IP litigation attorneys before initiating any court action.

3.2.3. Recommendations for the Government

- The current framework of the Regional Exhaustion of IP Rights has sufficient advantages for foreign rightsholders compared to the old regime of the International Exhaustion. However, the current uncontrolled transportation of goods from the EAEU to Armenia, and lack of IP enforcement in the local market, create a genuine risk for this regime to be ineffective for foreign rightsholders. To increase the attractiveness of the Armenian market for FDI and to stimulate the entrance of foreign goods and services to Armenia, fundamental reforms need to be made in IP legislation and enforcement.
- Remove the legislative requirement to submit evidence of infringement of the trademark in Armenia, or a potential risk thereof when rightsholders request to register their trademark with the Customs Service. As explained above, this requirement contradicts the concept of prevention of infringement and creates unreasonable and disproportionate barriers for rightsholders.
- Remove the legislative requirement to provide a bank guarantee or make a payment of a guarantee fee for seized goods, since according to the current law, every single import by any third party of goods bearing rightsholder's trademark, without rightsholder's permission, is an infringement by default. Thus, there cannot be any obligation to compensate for the importer's damages. As for the Customs Service expenses, there is usually none. The goods are detained in private warehouses. Therefore, the requirement to provide a bank guarantee or make a payment of a guarantee fee is obsolete and a leftover from the previous regime of exhaustion of IP rights.
- Require uniform application of the Customs Law by all Customs officials in relation to the extension of detention term for ten additional days. The law does not explicitly authorise the Customs Service to refuse an extension of the detention term and release the imported goods for the lack of the payment of a guarantee fee or the failure to provide with a bank guarantee. Different Customs officials interpret the law in their own different ways. Some Customs Service officials extend the deadline whilst others refuse to do so.
- The current twenty days of customs detention term is not sufficient time for rightsholders to effectively enforce the IP rights, much less the ten-day limit when some Customs officials refuse to extend the detention term from ten to twenty days. The terms should be changed. Either the customs detention term should be extended, or the police and judiciary terms with respect to their decisions should be reduced from ten to three days.

- Amend the legislation to permit the rightsholders to receive the Invoice and CMR of detained goods, as well as to examine and take visual recordings of the goods in the warehouse.
- Remove the provision from the Trademark Law requiring the courts to refuse non-use cancellation actions when the rights to the trademark were transferred to a third party before filing the non-use cancellation action. This provision provides an opportunity to abuse the rights by the owners of the marks, particularly the bad faith applicants. It makes others right to cancel the registration of a trademark that was not in use, unenforceable.
- Enact anti-cybersquatting and other legislation to regulate and implement an efficient domain name dispute resolution system consistent with the international best practices.
- Introduce legislative requirements for the AIPA to substantiate the refusals of oppositions.
- Introduce a legislative requirement for AIPA to inform the opposing party about the appeals submitted to AIPA against trademark refusals and subsequent registrations of initially refused trademarks, as a result of oppositions.
- Introduce legislative amendments allowing the AIPA to accept copies of any document instead of requiring the originals.
- Establish a more efficient online platform for registration of IP rights with the AIPA. The existence of such a platform would also increase the efficiency of AIPA's work during situations like the current pandemic, when the examiners may be required to work from home, while needing full access to the full AIPA database.
- Require inclusion of information about trademarks in the customs declarations for all goods transported between Armenian and other countries of the Eurasian Economic Union and provide this data to the rightsholders who registered their trademarks with the Customs Service.
- Introduce *Ex parte* hearings in the Trademark legislation, which might help to (1) prevent registration of trademarks filed by bad faith applicants that are likely to create issues with unfair competition, dilute internationally well-known brands or geographical indications, deceive or mislead consumers, and (2) decrease the number of litigations, particularly when the AIPA proceeds with a trademark registration for which an opposition was filed.
- Reconsider the current system of appealing the refusals to the Board of Appeals, since according to many IP agents and attorneys, the current system is not functioning efficiently. The hearings of the Board of Appeals within the structure of AIPA might be more efficient than within the Ministry of Economy.
- Amend the current Trademark law to allow an appeal of any AIPA's decision on registration (not necessarily final refusal) to the Board of Appeals, which might substantially reduce the number of trademark litigations, as well as save time and finances of all parties involved.

3.3. Additional Recommendations for the Government

Recommendations of this section apply to all fields of IP (including copyrights and trademarks). In addition, the section provides recommendations not only related to IP legislation and enforcement, but also to aid in awareness, education, capacity building, efficiency of IP system, as well as fundamental and strategic policy propositions.

- Assist in the establishment of an effective dialogue between law enforcement authorities, rightsholders and other stakeholders.
- Make relevant amendments in the criminal legislation to allow the rightsholders or the representatives thereof to participate in the police raids to properly record the necessary evidence. This will also help to increase the level of cooperation between rightsholders and the law enforcement bodies.
- Enhance the deterrent effect of civil measures for counterfeiting and piracy.
- Ensure courts promptly issue preliminary injunctions and provide means to secure the asset and evidence freeze of the infringer.
- Introduce relevant procedures for the destruction of counterfeit and pirated goods, and any other goods used for the production of counterfeit or pirated goods.
- Foreign rightsholders should receive ample assistance from all relevant law enforcement bodies, as such rightsholders may anticipate the government's support in enforcing their IP rights when their respective IP rights are infringed.
- Currently a very small unit of the Police deals with the crimes in the field of IP while also having responsibility for other non-IP related crimes. However, according to many respondents of the survey, this unit is ineffective and mistrusted by a number of rightsholders for allegedly being selective in its enforcement assistance.
- Improve coordination among enforcement authorities in addressing counterfeiting and piracy, including among law enforcement, judiciary, and Customs Service.
- Revise the criteria for calculating the value of infringing goods and damages in civil and criminal legislation.
- Enact a long-term IP Strategy, based on the long-term strategic Economic Policy.
- Enact an Intellectual Property Code in line with the IP strategy, and establish a high-level IP authority with an advisory group of IP experts to coordinate the implementation of the IP Strategy. This body should have the authority to implement recommendations, ensure enforcement, and provide coordination among all relevant ministries and agencies.
- Establish a uniform methodology and guidelines for the law enforcement bodies on investigation and prosecution of IPR infringements to ensure that law enforcement bodies can properly investigate criminal actions and ensure a uniform approach to the IP cases nationwide.
- Foster cooperation and coordination among enforcement authorities through investigative trainings, seminars for judges, workshops for law enforcement officers, etc.
- Develop IP handbooks and manuals for judges and law enforcement authorities.

- As suggested by the survey respondents, consider establishing a specialised IP court. Such a court should greatly improve the quality of the adjudication in IP cases, which is considered to be fundamental for innovation-driven economies.
- Consider introducing IP curriculum in high-schools and universities.
- Consider introducing new subjects or extra curricular activities related to creative thinking and creativity in middle-schools.
- Support periodical IPR awareness and promotion events across Armenia with the participation of various stakeholders including members of the creative community from all the fields. Examples of annual events may be the “World Creativity and Innovation Day”, celebrated on April 21, the “World Book and Copyright Day”, on April 23, and the “World Intellectual Property Day” on April 26.

Conclusions

The intellectual property system in Armenia is perhaps at its most crucial development stage. The rightsholders, foreign and local, can protect IPR in Armenia but with procedural and substantive challenges, as detailed in the report. Indeed, the rightsholders can still be successful in protecting the IPR in Armenia, even with the current state of the Armenian IP system.

However, for any chance of success, following the recommendations of this report is necessary and will maximize the enforcement results. Even for issues that are typical to the region, such as software piracy and counterfeit goods, the rightsholders can still seek a successful enforcement action using the recommendations detailed herein.

To achieve this, the first and most important step for rightsholders is the registration of their respective IPR in Armenia. Apart from the trademark registration with the AIPA (which is well-harmonized with the international standards), the foreign rightsholders, are strongly advised to register the trademarks with the Customs Service to enable seizure of counterfeit goods infringing the IPR.

In the copyright realm, no IPR registration is necessary or even possible in Armenia. However, Armauthor provides a unifying platform for local rightsholders (and foreign rightsholders through affiliations with CISAC and reciprocal agreements with many international collective rights societies) for royalty collection and enforcement of the performance-based infringements in Armenia.

To successfully enforce IPR in Armenia, the greatest challenge is the evidence collection and timelines set by laws. Coupled with the lack of awareness within the law enforcement, even skilled local representation in Armenia may not consistently overcome the obstacles detailed in this report. This is exactly where the recommendations to the Armenian government are so critical.

The current Armenian government has shown a strong interest in improving the IP system. Utilizing the recommendations of the report, the Armenian government can further develop the IP system, thereby attracting FDI and promoting local creative industries. Additionally, a strong and efficient IP enforcement system would help the Armenian government to remove harmful counterfeits that create risks for consumers: quality, health and lives (e.g. counterfeit pharmaceuticals, food, beverages, cosmetics, skincare, fragrances, hygiene products, automobile spare parts, toys, etc.). No government in the world has sufficient financial and human resources to fight such counterfeits. However, given an efficient IP enforcement system, the rightsholders themselves can assist the government in identifying and removing such counterfeits from the market. Thus, the same IP enforcement system that would attract the foreign rightsholders and promote the local one would further serve as an additional consumer protection tool.

To improve the IP enforcement, the report has identified a great necessity for minimizing the hurdles to enforce IPR by the rightsholders as well as providing additional motivation to enforce IPR by both local and foreign rightsholders. The report further stresses the importance of coordination and education within the government as well as the education of the general public.

Government Commentary

RA Ministry of High-Tech Industry

The Ministry of High-Tech Industry shares the report's viewpoint on the need for a long-term IP strategy, as a part of a long-term economic development strategy for Armenia. To develop such an IP strategy for Armenia, the Ministry suggests launching a working group. The Ministry further agrees with the report's legislative proposal for adopting a separate Intellectual Property Code as part of the long-term IP Strategy.

The Ministry will further discuss the raised IPR issues with the corresponding industry organizations and advising bodies of the Ministry. Based on the feedback from the discussions, the Ministry intends to propose solutions and initiatives to address the issues.

RA Ministry of Justice

The Ministry of Justice, in conjunction with several other governmental bodies, has developed a roadmap to address IP issues. The execution of the roadmap would likely lead to the realizations of the proposed solutions in the report.

For example, on April 23, 2020, the Government of Armenia approved a roadmap to improve Police and its respective action plan for 2020-2022. This roadmap envisions the establishment of a new ministry to develop and implement policies directed to the improvements of Police. As part of the program, the following is planned amongst others:

- Review and revise the current investigative and pre-trial procedures to raise the effectiveness thereof,
- Re-evaluate the training for the police force,
- Develop quality capacity building for the police force,
- Analyse and address issues of police misconduct, and
- Increase education for anti-corruptive practices.

The program would reform the education system for Police and create a new and improved working environment for the Police force. Further, an action plan will be developed to raise public accountability and visibility into Police actions, especially by leveraging the help of international partners.

RA Ministry of Economy

The Ministry believes that systematic implementation of the report recommendations would surely enhance the IPR in Armenia and would be much beneficial to Armenia as a whole.

Indeed, the government strategy for the further development of the IPR may certainly include the issues and recommendations of the report. The Ministry especially agrees with the adoption of a separate IP Code, as proposed by the report.

The Ministry further recommends the authors of the report to organize a public presentation summarizing the report. In particular, the Ministry recommends launching a working group that would include the stakeholder government agencies and related NGOs and industry groups. Through the working group discussions of the problems and solutions described in the report, the working group would recommend an appropriate roadmap for the implementation of the recommendations.

ANNEX 1 List of Domestic Law and International Treaties signed by Armenia

Domestic Laws

- RA Constitution (adopted in 2015)
- RA Civil Code (adopted in 1998)
- RA Law on Trademarks (adopted in 2011)
- RA Law on Geographical Indications (adopted in 2011)
- RA Law on Inventions, Utility Models and Industrial Designs (adopted in 2008)
- RA Law on Protection of Topographies of Integrated Circuits (adopted in 2008)
- RA Law on Copyright and Related Rights (adopted in 2006)
- RA Law on Protection of Economic Competition (adopted in 2000)
- RA Customs Code (adopted in 2000)
- RA Law on Customs Regulations (adopted in 2014)
- RA Criminal Code (adopted in 2003)

International Treaties

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)
- Berne Convention for the Protection of Literary and Artistic Works
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- WIPO Performances and Phonograms Treaty
- WIPO Copyright Treaty (WCT)
- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite
- Paris Convention for the Protection of Industrial Property
- Patent Cooperation Treaty (PCT)
- Madrid Agreement Concerning the International Registration of Marks
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

- Hague Agreement Concerning the International Registration of Industrial Designs Geneva Act (1999)
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks
- Strasbourg Agreement Concerning the International Patent Classification
- Locarno Agreement Establishing an International Classification for Industrial Designs
- Patent Law Treaty
- Singapore Treaty on the Law of Trademarks
- Eurasian Patent Convention
- The Customs Code of the Eurasian Economic Union

ANNEX 2 Trademark-related Official Fees

N	Description of the Fee	Official Fee (AMD)	Approximate Official Fee (USD)
1.	Trademark Filing	30,000	65
2.	Trademark Examination	40,000	85
3.	- for each additional class of goods or services	15,000	30
4.	Trademark Registration Fee	50,000	105
5.	Claiming Priority	10,000	20
6.	Appealing AIPA's Decision on Refusal or Partial Registration to the Board of Appeals	50,000	105
7.	Reinstatement of missed deadline	30,000	65
8.	Time extension request	10,000	20
9.	Requesting changes in the application	10,000	20
10.	Registration of a Trademark Assignment (per mark)	60,000	125
11.	Registration of a Trademark License or Sub-License	60,000	125
12.	Requesting changes in the Official Registry	20,000	40
13.	Filing Opposition	10,000	20
14.	Declaring a trademark as well-known in Armenia	250,000	520
15.	Trademark Renewal	120,000	250
16.	- for each additional class of goods or services	10,000	20
17.	Search of identical or a confusingly similar wordmark or a pictorial mark (per class)	20,000	40
18.	Search of identical or a confusingly similar combined mark (per class)	40,000	85
19.	Search of all trademarks owned by one rightsholder	60,000	125
20.	Requesting extracts from the state registry	2,000	5
21.	Trademark Registration with the Customs Office (per trademark)	20,000	40

ANNEX 3 Survey Highlights

90% of respondents of the survey confirmed that foreign IP rightsholders' rights were at some point infringed in Armenia. Most of respondents represented both local Armenian and foreign clients.

The respondents' views differed in their answers regarding the questions about the main challenges in the Armenian Intellectual Property System. Most of the respondents agreed that the main issue is in the enforcement.

Respondents of the Survey also agreed that the level of IP awareness is very low in Armenia among the general population, businesses, lawyers, judges, law enforcement bodies and other state authorities (except for the Armenian IP Agency). 69% of the respondents agreed that IP awareness amongst lawyers is very low. 78% of the respondents agreed that IP awareness is low among judges and law enforcement bodies. 91% of the respondents agreed that IP awareness is low among businesses. 95% of respondents agreed that the IP awareness is very low within the general population.

According to 60% of respondents, Armenia should have a specialised IP Court. According to 83% of respondents, Armenia should have specialised IP judges. According to 62% of respondents, Armenia should have a specialised IP Law Enforcement Unit (e.g., within Police).

According to 91% of the respondents, there is a lack of IP educational programs within Armenian universities; and there are currently no IP programs for educating IP lawyers, attorneys, and other experts. 70% of the respondents also agreed that there is a lack of IP professors (lecturers) within Armenian universities.

According to 65% of the respondents, Police officers do not have much interest in fighting against IP crimes in Armenia.

According to 69% of the respondents, Police officers do not have the necessary level of IPR knowledge, skills or expertise to fight against IPR crimes, in Armenia.

According to 82% of the respondents, Armenia is not sufficiently protected from counterfeit/pirated goods.

According to 73% of the respondents, Armenian legislation lacks clear procedures for destroying counterfeit or pirated goods.

ANNEX 4 Respondents of the Survey

Sarkis Knyazyan, Knyazyan & Partners IP Law Firm

Khachik Papanyan, Arluys IP, P.C.

Susanna Knyazyan, Intellectual Property Rights Centre Foundation

Susanna Nersisyan, Armauthor NGO

Kristine Hambaryan, IP Agency, Ministry of Economy of the Republic of Armenia

Cambridge University Press, Armenian Distributor

Pearson Education, Armenian Distributor

Longman, Armenian Distributor

Hripsime Musheghyan, Yerevan Brandy Company

Artur Buduryan, Fawaz A. Alhokair & Co

ManMar Publishing House

Andranik Khachikyan, PATMARK Patent Attorney's Company

Karen Garaseferyan, Japan Tobacco International

Mane Karapetyan, Zohrabyan & Partners Law Group

Ruben Kalashyan, R. Kalashyan & Partners LLC

Alexander Nahapetyan, Nahapet & Co Law Firm

Gohar Gevorgyan, ELL Partnership

Shushan Vardanyan, TK & Partners

Nerses Isajanyan, IP Agent

Lilit Akopova, IP Agent

Ruben Manaseryan, IP Agent

Vanik Margaryan, AM Law Firm

Ani Kostandyan, Legallab

Karen Karapetyan, Lawyer

Albina Nazaryan, IP Agent

Georgi Khachatryan, Lawyer

Shavarsh Petakchyan, Lawyer

Other respondents, who did not wish to mention their names

ANNEX 5 Non-governmental organisations promoting IP awareness and education in Armenia

Intellectual Property Rights Centre Foundation of Armenia (IPRC)

IPRC is an Armenian non-governmental, non-profit organization founded in 2011. IPRC promotes, supports, and facilitates Armenia's shift to a knowledge-based economy. IPRC's goals and objectives include, but are not limited to, raising awareness of the importance of IP; supporting to the development of IPR field in Armenia, including IPR-related reforms; supporting, organising and holding various educational programs and events, as well as activities stimulating creativity and ingenuity in Armenia. IPRC is also the focal point in Armenia for the "Technology and Innovation Support Centres" program of the World Intellectual Property Organization. As an accredited (certified) partner of the Armenian Bar Association (Armenian Chamber of Advocates), IPRC holds IP seminars and other IP events for Armenian lawyers (litigators). When requested, IPRC also provides consultation in the field of IP to the Government of Armenia.

For the past decade, IPRC organised and implemented over one hundred events, seminars, presentations, round-table discussions, conferences, educational and other programs, including Annual Intellectual Property Moot Court Competition for law students, hosted by the American University of Armenia; the World IP Day celebration in Armenia; International IP Conferences, with the participation of more than one hundred IP attorneys from over 15 countries; International IP Summer Academy, with the participation of attendees from more than seven countries, in collaboration with the American University of Armenia, the University of New Hampshire, Franklin Pierce School of Law and the "Commercial Law Development Program" of the US Department of Commerce; "I Create" business and innovation competition for young people; free IP legal consultation for local authors and inventors, etc.

American University of Armenia (AUA)

The LL.M. program of the American University of Armenia has been offering one-semester IP course to its master's students for about a decade and supported a number Intellectual Property programs and events organised by IPRC. Such programs included but are not limited to the "International IP Academy" summer program, "I Create" business and innovation competition, as well as a big number of IP seminars, conferences, workshops, and round table discussions.

One of the biggest supports AUA has been providing for nine years was hosting IPRC's Annual IP Moot Court Competition, for local law students.

ANNEX 6 Total number of trademark applications filed in Armenia by local and foreign companies (including UK) with the list of Nice Classes covered by those trademarks

The Tables below show the number of filed trademark applications in each class of goods and services of the Nice classification. **Table 1** below lists the total number of trademark applications filed in Armenia by all local and foreign companies, as of April 2020, and the relevant Nice class number that those trademarks cover. For example, the first row of the first column below demonstrates the number of trademarks (20,930) that were filed for class 5 goods (i.e. pharmaceuticals, medical preparations; dietetic food and substances, food for babies; dietary supplements; plasters, dental wax; disinfectants; fungicides, herbicides, etc. The full list of Nice Classifications may be found on pages 66-67.

Table 1

Total Number of Trademark Applications filed in Armenia by all local and foreign companies (as of April 2020)	Covered Nice Classes	Total Number of Trademark Applications filed in Armenia by all local and foreign companies (as of April 2020)	Covered Nice Classes
20,930	5	3,654	28
12,888	9	3,565	39
12,090	35	3,241	43
11,974	3	3,203	10
10,473	30	3,082	6
8,445	25	3,017	20
7,703	16	2,610	19
7,525	42	2,589	24
6,881	33	2,523	17
6,775	41	2,303	8
6,410	29	2,227	4
5,764	32	2,135	31
4,979	18	1,945	2
4,892	12	1,934	44
4,736	1	1,839	40
4,686	11	1,307	27
4,608	14	1,266	26
4,547	7	1,264	45
4,220	34	922	22
4,193	38	639	23
4,168	37	541	15
4,063	21	517	13
4,013	36		

Table 2 below lists the total number of trademark applications filed in Armenia by UK companies, as of April 2020, in each class of goods and services of the Nice classification. For example, the first row of the first column below demonstrates the number of trademarks (512) that were filed for class 30 goods (i.e. coffee, tea, cocoa; rice, pasta, noodles; flour; bread, pastries and confectionery; chocolate; ice cream; sugar, honey; yeast, baking-powder; salt, seasonings, spices, preserved herbs; vinegar, sauces and other condiments; etc. The full list of Nice Classification⁷⁰ may be found on pages 66-67.

Table 2

Total Number of Trademark Applications filed in Armenia by UK companies (as of April 2020)	Covered Nice Classes	Total Number of Trademark Applications filed in Armenia by UK companies (as of April 2020)	Covered Nice Classes
512	30	50	3
398	35	48	32
332	33	47	5
278	31	46	29
246	4	40	13
204	45	39	16
199	39	38	28
168	22	38	15
155	40	31	25
150	11	27	38
121	2	25	43
119	7	23	42
104	8	23	14
97	12	23	26
86	19	19	9
76	37	18	34
73	41	14	36
73	23	14	10
70	17	13	24
68	27	4	1
60	20	3	21
58	6	2	18
55	44		

⁷⁰ Nice Classification (NCL), established by the Nice Agreement (1957), is an international classification of goods and services applied for the registration of marks. A new edition is published every five years and, since 2013, a new version of each edition is published annually. Available at: www.wipo.int/classifications/nice/nclpub/en/fr/

Nice Class Headings⁷¹

Class 1

Chemicals for use in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; fire extinguishing and fire prevention compositions; tempering and soldering preparations; substances for tanning animal skins and hides; adhesives for use in industry; putties and other paste fillers; compost, manures, fertilizers; biological preparations for use in industry and science.

Class 2

Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants, dyes; inks for printing, marking and engraving; raw natural resins; metals in foil and powder form for use in painting, decorating, printing and art.

Class 3

Non-medicated cosmetics and toiletry preparations; non-medicated dentifrices; perfumery, essential oils; bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations.

Class 4

Industrial oils and greases, wax; lubricants; dust absorbing, wetting and binding compositions; fuels and illuminants; candles and wicks for lighting.

Class 5

Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for human beings and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

Class 6

Common metals and their alloys, ores; metal materials for building and construction; transportable buildings of metal; non-electric cables and wires of common metal; small items of metal hardware; metal containers for storage or transport; safes.

Class 7

Machines, machine tools, power-operated tools; motors and engines, except for land vehicles; machine coupling and transmission components, except for land vehicles; agricultural implements, other than hand-operated hand tools; incubators for eggs; automatic vending machines.

Class 8

Hand tools and implements, hand-operated; cutlery; side arms, except firearms; razors.

Class 9

Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; recorded and downloadable media, computer software, blank digital or analogue recording and storage media; mechanisms for coin-operated apparatus; cash registers, calculating devices; computers and computer peripheral devices; diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; fire-extinguishing apparatus.

Class 10

Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopaedic articles; suture materials; therapeutic and assistive devices adapted for persons with disabilities; massage apparatus; apparatus, devices and articles for nursing infants; sexual activity apparatus, devices and articles.

Class 11

Apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes.

Class 12

Vehicles; apparatus for locomotion by land, air or water.

Class 13

Firearms; ammunition and projectiles; explosives; fireworks.

Class 14

Precious metals and their alloys; jewellery, precious and semi-precious stones; horological and chronometric instruments.

Class 15

Musical instruments; music stands and stands for musical instruments; conductors' batons.

Class 16

Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packaging; printers' type, printing blocks.

Class 17

Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics and resins in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes and hoses, not of metal.

Class 18

Leather and imitations of leather; animal skins and hides; luggage and carrying bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; collars, leashes and clothing for animals.

Class 19

Materials, not of metal, for building and construction; rigid pipes, not of metal, for building; asphalt, pitch, tar and bitumen; transportable buildings, not of metal; monuments, not of metal.

Class 20

Furniture, mirrors, picture frames; containers, not of metal, for storage or transport; unworked or semi-worked bone, horn, whalebone or mother-of-pearl; shells; meerschaum; yellow amber.

Class 21

Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

⁷¹ Available at:
www.wipo.int/classifications/nice/nclpub/en/fr/?explanatory_notes=show&lang=en&menulang=en¬ion=class_headings&version=20200101

Class 22

Ropes and string; nets; tents and tarpaulins; awnings of textile or synthetic materials; sails; sacks for the transport and storage of materials in bulk; padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics; raw fibrous textile materials and substitutes therefor.

Class 23

Yarns and threads for textile use.

Class 24

Textiles and substitutes for textiles; household linen; curtains of textile or plastic.

Class 25

Clothing, footwear, headwear.

Class 26

Lace, braid and embroidery, and haberdashery ribbons and bows; buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.

Class 27

Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings, not of textile.

Class 28

Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.

Class 29

Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk, cheese, butter, yogurt and other milk products; oils and fats for food.

Class 30

Coffee, tea, cocoa and artificial coffee; rice, pasta and noodles; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; sugar, honey, treacle; yeast, baking-powder; salt, seasonings, spices, preserved herbs; vinegar, sauces and other condiments; ice (frozen water).

Class 31

Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

Class 32

Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups and other non-alcoholic preparations for making beverages.

Class 33

Alcoholic beverages, except beers; alcoholic preparations for making beverages.

Class 34

Tobacco and tobacco substitutes; cigarettes and cigars; electronic cigarettes and oral vaporizers for smokers; smokers' articles; matches.

Class 35

Advertising; business management; business administration; office functions.

Class 36

Insurance; financial affairs; monetary affairs; real estate affairs.

Class 37

Construction services; installation and repair services; mining extraction, oil and gas drilling.

Class 38

Telecommunications services.

Class 39

Transport; packaging and storage of goods; travel arrangement.

Class 40

Treatment of materials; recycling of waste and trash; air purification and treatment of water; printing services; food and drink preservation.

Class 41

Education; providing of training; entertainment; sporting and cultural activities.

Class 42

Scientific and technological services and research and design relating thereto; industrial analysis, industrial research and industrial design services; quality control and authentication services; design and development of computer hardware and software.

Class 43

Services for providing food and drink; temporary accommodation.

Class 44

Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, aquaculture, horticulture and forestry services.

Class 45

Legal services; security services for the physical protection of tangible property and individuals; personal and social services rendered by others to meet the needs of individuals

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