

INTERGOVERNMENTAL CONFERENCE ON THE  
ACCESSION OF ICELAND TO THE EUROPEAN UNION

**NEGOTIATING POSITION OF ICELAND**

**Chapter 7**

**Intellectual Property Law**

## Summary of the negotiating position

1. Chapter 7 on Intellectual Property Law is fully covered by the EEA Agreement. Iceland implements and applies EEA relevant *acquis* under this chapter on an ongoing basis.
2. Iceland accepts the *acquis communautaire* with respect to Chapter 7 on Intellectual Property Law as of 20 December 2010<sup>1</sup>. Iceland will have implemented any outstanding *acquis*, as of that date, under this chapter by the date of accession.
3. Iceland has the legislative and institutional framework necessary to continue implementing the *acquis* in this chapter.
4. Iceland does not request special arrangements, derogations or transitional periods under this chapter.

## EEA Agreement

Iceland has been a party to the agreement on the European Economic Area (EEA) since its entry into force in 1994. As a result, Iceland has participated in the single market for more than 16 years and implemented all relevant EU legislation with respect to the four freedoms, as well as in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture. The EFTA Surveillance Authority (ESA) regularly monitors Iceland's performance under the EEA Agreement and publishes information about Iceland's implementation record twice yearly in an internal market scoreboard.

In those chapters covered by the EEA, Iceland has built its legislative framework and institutional framework to comply with and implement relevant EU legislation. Chapter 7 on Intellectual Property Law is covered by the EEA Agreement.

## Legislative framework

The legislative framework is in place to continue implementing the *acquis* in this chapter.

Iceland is aligned with the EU *acquis* on copyright and neighbouring rights and industrial property rights and has participated in relevant EU programmes through the EEA Agreement

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<sup>1</sup> Date of screening meeting (one meeting on this chapter)

since 1994. EU Directives are either implemented by an Act of Parliament ("*Althingi*") or, when parliamentary intervention is not required, by a regulation issued by the Ministry of Education, Science and Culture ("*Mennta- og menningarmálaráðuneytið*"), or the Ministry of Economic Affairs ("*Efnahags- og viðskiptaráðuneytið*").<sup>2</sup>

The Ministry of Education, Science and Culture is responsible for legislation in the area that falls within Chapter 7, except for the legislation on industrial property rights, which is dealt with by the Ministry of Economic Affairs.

### **Copyright and Neighbouring Rights**

Iceland is an active member in international cooperation with regard to copyright. Iceland is a member of WIPO and WTO as well as the EFTA working group on intellectual property which meets 4-5 times per year with experts from the Commission's DG Internal Market. Iceland has, along with the other EFTA/EEA countries, observer status in the EU contact committees for Directives 2001/29 and 2001/84. The working group of Nordic ministries on copyright issues meets 4-5 times per year.

With respect to terms of protection, Iceland implemented Directive 2006/116/EC by amending its Copyright Act 73/1972, as amended by Acts 145/1995 and 9/2006.

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

With respect to resale rights, Iceland implemented Directive 2001/84/EC through Act 97/2006 amending Copyright Act 73/1972.

With respect to rental and lending rights, Iceland implemented Directive 2006/115/EC through Acts 57/1992, 60/2000 and 9/2006 amending Copyright Act 73/1972.

With respect to satellite and cable transmission, Iceland implemented the Council Directive 93/83/EEC through Act 145/1996 amending Copyright Act 73/1972.

With respect to copyright in the information society, Iceland implemented Directive 2001/29/EC through Act 9/2006 amending Copyright Act 73/1972.

Iceland launched a copyright reform initiative in October 2009 that consists of a three-year plan that will result in the drafting of a new copyright bill in 2012. The objective of the initiative is to clarify and simplify copyright legislation with the purpose of promoting efficient and preventative enforcement procedures whilst balancing right holders and user interests. The long

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<sup>2</sup> Drafting of legislation is done in close cooperation with the EFTA working group on intellectual property and implementing acts are notified to the EFTA Surveillance Authority (ESA).

term aim is to uphold the significance of copyright in cultural, economic and international context.

### **Industrial Property Rights**

Iceland is party to the main international agreements in the area of industrial property; the Paris Convention for the protection of Industrial property, the Protocol to the Madrid Agreement concerning the international registration of marks, the Patent Cooperation Treaty, the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs and the European Patent Convention. Iceland is furthermore a member of the World Intellectual Property Organisation (WIPO); the European Patent Office (EPO) and the Nordic Patent Institute (NPI). Iceland, as member of the World Trade Organisation, has introduced provisions of the TRIPS into its legislation.

With respect to trademarks, Iceland implemented Directive 2008/95/EC with an amendment to Act 45/1997 on trademarks. The objective was to make exhaustion of trademark rights subject to regional instead of global exhaustion. Article 7 on exhaustion of the rights conferred by a trade mark is already implemented. The amendment is in line with the decisions of the EFTA court in the combined cases E-9/07 and E-10/07, L'Oreal Norge AS and L'Oreal SA vs. Per Aarskog AS, Nille AS and Smart Club AS.

With respect to patents, Iceland has implemented Directive 98/44/EC on biotechnology inventions through its Patent Act 17/1991, as amended by Act 22/2004 and Regulation 5747/1991 concerning patent applications. As regards supplementary protection certificates for medicinal products, Regulation (EC) 1768/92 (repealed according to Article 22 of Regulation 469/2009) has the force of law in Iceland according to Article 65a of the Icelandic Patent Act. The licensing of patents relating to the manufacture of pharmaceuticals for export to "countries in need" (i.e. countries with public health problems in accordance with Regulation (EC) 816/2006) has been enacted by Regulation (IS) 1011/2006.

With respect to designs, Iceland has implemented Directive 98/71/EC on industrial designs through Act 46/2001 on design protection.

Two notable EU regulations have not been incorporated into the EEA Agreement and have thus not been implemented. They are:

- Council Regulation (EC) No. 6/2002 creating a Community Design System
- Council Regulation (EC) No. 40/94 creating a Community Trademark System

Iceland does not foresee any difficulties in implementing these regulations.

### **Enforcement**

Directive 2004/48/EC on enforcement of intellectual property rights is not yet incorporated into the EEA Agreement and Iceland has thus not implemented it. Iceland foresees to fully implement the Directive within two years. Currently, approximately 80% of its substance has been implemented, in particular by Act 93/2010 amending the Copyright Act and by Act 53/2006 on

collection of evidence in relation to suspected violations of intellectual property rights (hereinafter referred to as IPR). Existing legislation on IPR enforcement covers online infringements.

## **Institutional Framework**

The institutional framework is available to continue to implement the *acquis* in this chapter.

The administrative structures to implement EU programmes in the fields of copyright, neighbouring rights and industrial property rights are in line with EU requirements.

## **Copyright and Neighbouring Rights**

Copyright and neighbouring rights issues are under the responsibility of the Ministry of Education, Science and Culture which is composed of about 80 staff members. The ministry is divided into three departments and four offices. The Office of legal affairs ensures the compliance of copyright legislation and administration and has five staff members including three lawyers, one of whom is an IPR expert. The copyright committee advises the Minister on issues of copyright policy and legislation; it has seven experts in the field of copyright.

Cases concerning copyright issues are dealt with by regular district courts and the Supreme Court on appeal. Infringement actions in the period 2006-2009 numbered 25 at district court level and 20 at the Supreme Court. Legal penalties consist of fines or imprisonment of up to two years. A dispute settlement forum exists for commercial users although it has not been used in several years.

The administrative capacity in Iceland is sufficient to continue implementing the *acquis* under copyright and neighbouring rights.

## **Industrial Property Rights**

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

The administrative capacity in Iceland is sufficient to continue implementing the *acquis* under industrial property rights.

## **Enforcement**

The Directorate of Customs is the main authority responsible for enforcement. The number of cases that Icelandic customs authorities have had to deal with has increased from 1 case in 2008 and 3 cases in 2009 to 14 high value cases in 2010. Icelandic customs authorities can act *ex-officio* in instances of suspicion of IPR infringement and are able to postpone the clearance of customs if there is a suspicion of infringement. Internally, the police is actively involved in copyright matters.

Iceland operates an informal working group on enforcement policy, which is chaired by the Icelandic Patent Office. In addition to the Icelandic Patent Office the represented members of the group are; the Ministry of Education, Science and Culture, the Ministry of Economic Affairs, the Directorate of Customs, the Consumers Agency, the Icelandic Medicines Agency and other interested parties. The objective of the group is to meet on regular basis in order to discuss enforcement policy, to raise awareness on IPR issues amongst consumers in Iceland as well as establishing a website with information on how to react to IPRs infringements.

A number of Icelandic judges have received training at the EPO academy regarding patents and enforcement of IPR rights. Lawyers at the Icelandic patent office have attended EFTA seminars on EU legislation. Iceland has been cooperating with the European Observatory on Counterfeiting and Piracy on soft-law issues. Iceland is furthermore working with the Nordic cooperation on the issue of copyright enforcement.

The administrative capacity in Iceland is sufficient to continue implementing the *acquis* under enforcement.

## **Acceptance of the *acquis***

Iceland accepts the *acquis communautaire* in Chapter 7 on Intellectual Property Law as of 20 December 2010. No special solutions, derogations or transitional periods are requested under this chapter.

