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IPR enforcement in Chile



1. Introduction

An intellectual property right ('IPR') gives its holder a wide range of rights to prevent third parties from taking advantage of the use or commercialisation of the underlying intellectual asset (brand, invention, etc.).

Even though the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides for some basic guidelines with regards to the protection of IPRs before national authorities (mainly courts and administrative bodies), the national laws, case law and usual practices of the country directly affect how your IPR can be enforced.

This factsheet aims to provide an overview of the legal framework in Chile regarding IPR enforcement, focusing on the law applicable to each case and the kind of injunctions and remedies that can be applied for, as well as some practical advice.

PROACTIVE IP ENFORCEMENT

In Chile, just as in Europe, registration is not enough to duly protect your IPRs. Once the IPR is registered, it is necessary for the owner to be proactive in its defense: namely by monitoring the market for potential infringements and by enforcing its IPRs before courts, unless amicable settlements can be reached with the potential infringers. Consequently, effectively benefiting from your IPR ownership might depend on your economic resources (indeed, IPR enforcement may be costly) and your ability to keep an eye on potential infringements and competitors.

2. Legal framework, main challenges and institutions

The Chilean legal framework regarding enforcement is influenced by the entry into force of the TRIPS agreement and the existence of Free Trade Agreements (with Europe and the USA, for example). The framework is currently composed of:

- [Law No 17.336](#) on Legal Intellectual Property Regime (Copyright and related rights).
- [Law No 19.039](#) on Industrial Property Law (Patents, Utility Models, Industrial Designs,

Trade marks, Geographical Indications and Appellations of Origin).

- [Law No 20.243](#) on Moral and Economic Rights of Performers in their Fixed Performances in Audiovisual Media.
- [Criminal Code](#)
- [Decree with the Force of Law No 213 of 1953](#) on the Customs Ordinance.
- [Regulations under Law No 19.039](#) on Industrial Property.

The intellectual property system in Chile is administered by several institutions both in the internal market and at borders.

INAPI is the leading government agency in charge of industrial property rights since 2009 and the Ministry of the Internal Affairs is in charge of the police force and has power in IPR enforcement. The Ministry of Culture is in charge of the Copyright Register. The

Ministry of Agriculture is in charge of plant breeders' rights as well as of some appellations of origin for wines and spirits and of undisclosed information regarding agrochemicals. Customs are managed by the Ministry of Finance, especially regarding border enforcement. The Ministry of Health is in charge of undisclosed information regarding pharmaceutical products.

Although Chile has a reasonable standard of IP protection at all levels as far as legislation is concerned, there is still room for improvement and a need to enhance inter-agency coordination through a centralised information system, which would make it easier to combat piracy and counterfeit issues. Furthermore, there are still some concerns regarding the availability of effective administrative and judicial procedures, as well as deterrent level remedies for right holders ([US Special Report 301 2020](#)).

Check out our Factsheet on [IP Systems comparative: Chile vs Europe](#) to understand the main differences between the European and the Chilean IP system.

ENFORCEMENT OF IPRs IN CHILE AT A GLANCE

			IPRs
INTERIM MEASURES	Civil legal actions	Preliminary injunctions	√
		Other measures	√
	Administrative measures	General preliminary actions	-
		Customs registration program	√
		Border measures	√
PROCEDURE	Administrative		-
	Civil		√
	Criminal		√
REMEDIES	Sanctions		√
	Injunctions		√
	Damages		√



3. Civil procedures

A. Remedies and procedural aspects

What infractions can be claimed?

Liability shall arise when any person uses, offers, manufactures or commercially exploits something protected by IPRs without the consent of the IPR holder.

Moreover, any person will incur civil liability if they unlawfully, or without the consent of the IPR holder, and knowing that it would induce, permit, instigate or conceal a violation of a copyright or related right, carries out one of the following acts:

- Deletes or alters information regarding rights management.
- Distributes, imports for distribution, issues, communicates or makes available to the public copies of works or phonograms, knowing that the information regarding rights management has been deleted or altered without authorisation.
- Distributes or imports for distribution information rights management, knowing that this information has been altered without authorisation.

TECHNOLOGICAL PROTECTION MEASURES IN CHILE

If you want to have some control over your digital material, Technological Protection Measures (TPM) and Digital Rights Management (DRM) systems can be a very effective solution.

DMS is a catch-all term referring to technology limitations aimed at preventing unauthorised copies, transmission, use or access to your digital copyrighted work, while TPM refers to those limitations used to prevent access or use of copyrighted works embodied in electronic devices (i.e. Content Scrambling System –CSS– or digital watermarks).

Any EU SME can benefit from this kind of mechanism. You should not, however, lose sight of the fact that TPM and DRM systems can indeed be circumvented or hacked.

Furthermore, even though, pursuant to the international copyright treaties Chile has signed (among others, the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty), it has committed to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, these commitments are not fulfilled or are poorly covered, which has motivated legal reforms in legislative development.

Where should I sue?

Chilean civil courts are competent to hear cases of IPR infringement.

Who is entitled to sue the alleged infringer?

The right holder, the licensees, authorised third parties or, in general, anyone who has an interest in filing a civil action may do so without prejudice of any criminal actions that may be brought. Bear in mind that, in Chile, it is mandatory to register the licence so that it can

be opposed against third parties. Therefore, a licensee would have no right to sue if the licence has not been registered. Claimants can act on their behalf or through a representative. In any case, it is mandatory to appoint an attorney.

What can I claim?

- Industrial property rights

According to Chilean Industrial Property Law, the claimant is entitled to request:

- Cessation of the acts that are infringing the protected right.
- Compensation for damages, which can be calculated based on tort law or through a) lost profits, b) profits earned by the infringer as a result of the infringing acts, or c) forgone royalties. According to Chilean law, there is no liability for individuals or entities that commercialised the IP infringing products if they acted in good faith and were unaware of the infringing nature of their activity. This will not apply if they are responsible for the manufacture or production of the products (which means they must have been aware of the infringing nature of their actions).
- Take measures to avoid the continuation of the offence.
- Publication of the decision at the expense of the party that is found guilty in a newspaper (to be chosen by the plaintiff). This measure shall apply when the judgment expressly determines so.

- Copyright

According to the Chilean Copyright Act, the claimant is entitled to request the following:

- Cessation of the unlawful activity carried out by the infringer.
- Compensation for the economic and moral damages suffered.
- Publication of an extract of the verdict, at the defendant's cost, by means of an announcement in a circulated newspaper of the corresponding region of the injured party's choice.

The amount of the injury is calculated on the basis of the legitimate retail value of the protected goods or a compensatory lump sum, which shall be determined by the court concerning the seriousness of the infringement, limited to around €110 000* per infringement.

In the case of protected goods with no legitimate retail value, the judge shall determine the amount of the injury applied to the corresponding penalty.

In civil proceedings, the court may order the alleged infringer(s) to reveal any information that they may possess regarding other parties involved in the infringement, as well as all the supporting material concerning the production and distribution channels for the infringing copies.

When can I claim?

The right holder or anyone who has an interest in the case is entitled to bring a civil claim. To do so, they have up to four years after the infringement is committed.

LENGTH OF LITIGATION

IPR trials before civil courts are summary proceedings. From the filing of a lawsuit to the rendering of a final decision, it usually takes over 3 years in civil courts (it may take even longer if all avenues are exhausted). The length depends on the different pleadings and defences that the parties submit during the litigation, as well as the resources filed and the nature of the evidence offered.

The length of criminal litigation depends on the court, the backlog, the presence or absence of General Prosecutors, as well as other issues. However, it rarely takes less than 2 or 3 years.

B. Preliminary injunctions

Preliminary injunctions are measures that the court is entitled to grant before the judgment, or before the beginning of the proceedings themselves. The main purpose is to prevent irreparable harm that could be caused to the right holder during the proceedings if the allegedly infringing activity continues, to preserve relevant evidence and to ensure the effectiveness of the judgment.

The decision to grant a preliminary injunction is made by the same court that is competent to hear infringement acts.

- Industrial property rights

In Chile, preliminary injunctions can be applied for in all matters concerning infringements of industrial property rights at any stage of the procedure: trade marks, patents, utility models, appellations of origin and geographical indications, industrial designs, layout designs, topography of integrated circuits and plant varieties.

Without prejudice to other provisional measures, the court may order the following:

- Immediate cessation of the acts constituting the alleged infringement, and seizure of the products involved in the claimed violation as well as the materials and means mainly used to commit the unlawful act.
- Seizure of containers, packaging, labels, printed matter or advertising containing the sign involved in the alleged infringement may also be ordered in the case of distinctive signs

- Ban on advertising and promotion of products involved in the alleged infringement; and
- Withholding of sums of money or valuables from the sale or marketing of such products in any way in a credit institution or by a third party of the property.

The provisional remedies indicated above, and the remedies contained in the Code of Civil Procedure can be requested as preliminary remedies (preliminary injunctions).

- Copyright

The right holder (or the General Prosecutor) is entitled to request before the court the following preliminary injunctions at any stage of the procedure, both criminal and civil, even before the proceedings start:

- a. Immediate suspension of the sale, circulation, display, performance or any other form of allegedly infringing exploitation.
- b. Ban on signing acts and contracts concerning specific goods, including a ban on the advertising or promotion of the products and services that are the subject of the alleged violation.
- c. Confiscation of the allegedly infringing products.
- d. Attachment or seizure of the materials, machinery and tools used to produce allegedly unlawful copies or commit the allegedly infringing activity, if necessary, in order to avoid future infringements.
- e. Removal or withdrawal of the equipment used for unauthorised public communication, unless it is certain that the alleged infringer no longer resumes the infringement.
- f. Appointment of one or more controllers.
- g. Seizure of the proceeds from the recital, performance or reproduction, up to the amount corresponding to the royalty payments set on a discretionary basis by the court. In general, regarding matters that are not regulated, such measures shall be governed by the general rules contained in the Code of Civil Procedure.

When requested as preliminary measures, the applicant should prove the existence of the right, the danger of an imminent infringement and there also should be a sufficient deposit provided as a caution.

4. Criminal proceedings

Criminal proceedings can be brought against infringers when the acts that constitute the infringement are qualified as piracy (see glossary) or counterfeiting crimes. Criminal cases will be brought to court mainly when the IPR infringement affects not only the holder's interests but also the public interest.

Where should I sue or file a criminal complaint?

The Criminal Courts are competent to hear criminal cases. Criminal proceedings shall be public and oral and must be carried out before a specialized judge (juez de garantías) and, eventually possibly, before a criminal court composed of three dedicated judges. The trial shall proceed without interruptions. The second step of the proceedings is before the courts of appeal. The Supreme Court is responsible for hearing appeals for nullity on the grounds of infringement of the law.

The general provisions of the criminal law shall be applicable insofar as they are compatible with the special law applicable on IP matters.

In any event, keep in mind that criminal complaints regarding IPRs can be filed at the nearest police unit (Carabineros de Chile and Investigations Police of Chile), before the Office of the General Prosecutor, or before any court with jurisdiction in criminal matters.

- Brigade of Crimes against Intellectual Property (BRIDEPI): +56227082383 bridepi@investigaciones.cl <https://www.csirt.gob.cl/eng/how-to-report/>
- PDI of Chile: +562 134
- Carabineros de Chile: +562 133
- General Prosecutor (information): +562 600 333 0000.

Who is entitled to sue the infringer?

Right-holders, licensees or other authorised third parties can sue against infringements. The Office of the General Prosecutor (Fiscalía), with a Special Unit for Economic Crimes and Money Laundering related to IPR crimes, custom frauds and tax crimes and financial markets crimes can also bring actions against acts of piracy or counterfeiting.

What can I claim?

In addition to the penalties set by the law for each IPR, the holder of the rights is entitled to request all the remedies provided in civil proceedings (see above).

Offences and penalties

- Trade marks:

- Commercial use of packaging that contains a trade mark without the right to use it

- Patents:

- Commercial use of a patented invention in bad faith; commercial use of patent indications on a non-patented object, or when the licence has expired or has been cancelled; use or imitation of a patent-pending registration in bad faith, unless the registration is eventually denied.

- Integrated circuit topographies, utility models, industrial designs and drawings:

- Commercial use in bad faith.
- Commercial use of non-registered products as if they were protected by and IPR.

All offences are punishable by fines between €1 350* and €54 000*. In case of repeated offences, fines can double (up to € 108 000*).

Tips & Watch Outs

Any object that is protected by an industrial property right must visibly display the registration number either on the product itself or on the packaging. It must show the words: "Patente de Invención" [patent invention] or the abbreviation "PI", "Modelo de Utilidad" [utility model] or "MU" "Dibujo Industrial" or "Diseño Industrial" [industrial design] or "DI" "Marca Registrada" or the abbreviation "M.R." or ®. Failure to meet the requirement shall not affect the validity of the rights but it prevents the holder of the rights from bringing criminal actions.

- Copyright

The unauthorised use of works, artistic performances, productions or broadcasts are punishable with prison penalties or fines (between €270 and 54 000*, depending on the damage).

In Chile, the counterfeit of playlists or data concerning accountability is also punishable with prison or fines (between €270–54 000* depending on the damage).

Moreover, the forgery of works that are protected is punishable with the minimum term of imprisonment and a fine between €540 and 54 000*.

Plagiarism (see glossary) and piracy also entail prison penalties and a fine between €270 and 54,000*.

Copyright infringements, the punishment of which is not duly specified, shall be sanctioned with a fine between €270 and 2 700*.

*Disclaimer: This is only an estimation of the fines based on Chilean legislation. Furthermore, the costs expressed in euros are subject to change due to variations in the exchange rate with the local currency.

5. Border measures

Custom service

The National Customs' Service (NCS) is in charge of border measures. It helps right holders if they wish to prevent the importation or exportation of infringing goods. In common with Europe, NCS agents can act both *ex officio* or on behalf of an IP holder. Chilean law establishes two kinds of procedures taken by the NCS: (a) intervention at the request of the interested party (right holder or licensee) and (b) *ex officio* by customs.

Customs authorities can suspend the clearance of goods for 5 working days at most because of an alleged copyright infringement or counterfeiting of trade marks, without prejudice to the competence of civil courts to take measures and to criminal actions linked to police intervention.

Before courts

Owners of IP rights registered in Chile, as well as copyright holders, may apply in writing for suspensory measures before the competent court at customs. In such cases, courts might request the applicant a guarantee to bail possible damages resulting from this suspension. The maximum time for which the court can order this measure is 10 working days. After this term, if the claimant has not filed a suit against the alleged infringement, the goods will be released.

Find out the main differences between Chilean and Europe border measures implementation in our guide [IP Systems Comparative: Chile vs Europe](#).

6. Good practices

Hire local IPR experts

Contacting an IPR lawyer or a duly qualified representative, local or with experience in the country, is highly recommended and sometimes even necessary.

Register your IP rights before commercialising in Chile

IPRs are territorial rights. Therefore, before operating in Chile, you should register your patents, trade marks, designs and other relevant IPRs before the competent authority. You should also register your trade marks before the register for trade mark customs.

Communicate with public authorities

A smooth relationship and communication with the authorities (police, General Prosecutor, courts), especially police forces and customs agents, will speed up the decision-making process and make it easier to obtain detailed information. Police forces have special units of IPR enforcement with a high reputation and a low level of corruption.

Communicate with other IPR owners

Counterfeiters tend to use the same distribution channels, storage points and routes of entry. Joint forces with other IPR owners can be mutually beneficial for both parties.

Consider other alternatives before bringing a claim before the courts

Sometimes sending a cease and desist letter may be enough to stop the infringement, especially in those cases in which the infringer is a small retailer.

Alternatives to litigation include arbitration and mediation, which are non-judicial dispute resolution mechanisms. These can save more time and money than bringing judicial proceedings.

Follow good practices from industry associations

Joining industry associations may be helpful in order to join efforts and develop good practices based on the experience of each member. They are also useful to establish joint awareness campaigns addressed to users and clients.

Monitor repeat offenders

In case of repeat offenders, close monitoring could provide information regarding their distribution channels, suppliers and clients.

Favour criminal actions when suitable

Criminal proceedings are faster than civil ones in Chile, and it is possible to claim damages in the framework of criminal proceedings, according to Chilean law.

7. Glossary

Piracy: Refers to the reproduction and distribution of copies of material protected by copyright or to the communication of such content to the public, as well as making it available through online communication networks without the authorisation of the rights owner(s), if such approval is required by law.

Plagiarism: The act of appropriating the literary composition of another author, as well as excerpts, ideas, or passages therefrom, and acting as if the material were one's own.

8. Useful links and additional information

Further information about IPRs in Chile can be found at the Latin America IPR SME Helpdesk website:

- [Chile IP Country Factsheet](#)
- [How to conduct a trade mark search in Chile](#)
- [Guide to Trade mark registration in Chile](#)
- [R&D and technology transfer in Chile](#)
- [Trade secrets in Chile](#)

Further information about IPR in Chile can be found on:

- The Latin American IP SME Helpdesk website: www.latinamerica-ipr-helpdesk.eu
- The Chile Intellectual Property Office (INAPI): www.inapi.cl
- The Intellectual Property Rights Department for matters of copyright and related rights: www.propiedadintelectual.cl
- The Chilean Customs Authorities: <https://www.aduana.cl/aduana/site/edic/base/port/inicio.html>



IPR enforcement in Chile

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