

ANNEX I

WIPO Questionnaire on Security Interests in Intellectual PropertyBackground

Intellectual property (IP) financing is an area of increased interest and importance globally. As intangible assets have increased in value, so IP rights represent substantial assets for companies of all sizes in developing and developed economies. As described in this Information Paper, such IP assets are increasingly being used as collateral for the purpose of raising debt finance, or credit. However, the ability of IP owners to use their IP effectively to gain access to low cost credit requires the support of national law, and increased awareness of IP financing among governments, the IP community and financial institutions.

In 2003, the World Intellectual Property Organization (WIPO) was requested by the United Nations Commission on International Trade Law (UNCITRAL) to cooperate in its work on the development of a Legislative Guide on Secured Transactions and, in particular, to provide expertise in the field of secured financing and IP law. The purpose of the UNCITRAL Legislative Guide is to assist States to develop modern secured transactions laws, so as to promote the availability of secured credit. The UNCITRAL Legislative Guide was concluded in 2007, and UNCITRAL Working Group VI is drafting a supplement to the Guide dealing with secured transactions involving IP, expected to be completed in 2010.

There is an increasing need for information on this issue, as the practice of securitization of IP is taken up by a variety of enterprises in various jurisdictions. Securitization of IP assets can be an important tool for economic development, and numerous governments are considering the modernization of their secured transactions laws to facilitate the practice.

Questionnaire

At the request of, and in consultation with, its Member States, the WIPO Secretariat conducted a questionnaire designed to gather information on the manner in which security interests in IP are dealt with in national copyright, patent and trademark laws. For this purpose, "IP laws" included legislative enactments, administrative regulations, or judicial decrees that generally constitute the body of IP law in each country (including at the federal and provincial level) or region. The questionnaire was designed to collect data, and provide Member States with access to information about degree to which secured transactions are provided for in IP law in various countries and regions of the world, and thereby to assist them to evaluate the IP issues being raised in this field in various fora.

The Secretariat distributed the questionnaires to the WIPO Member States in December 2008, and comments were received from 66 Member States and regional organizations. The responses were greatly varied, with some States giving detailed provisions of relevant legislation, with other States providing narrative descriptions of the national context and legal situation for IP financing, and further States responding that their applicable legislation did not address the issues covered by the questionnaire.

Responses to the questionnaire were provided by the following Member States and regional organizations: Algeria, Armenia, Australia, Austria, Bolivia, Bosnia & Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Cuba, Cyprus, Czech Republic, Denmark, Estonia, Ethiopia, Eurasian Patent Organization, European Patent Office, France, Georgia, Germany, Greece, Ireland, Israel, Italy, Japan, Kazakhstan, Kenya, Korea, Kyrgyz Republic, Latvia, Lichtenstein, Lithuania, Malaysia, Mexico, Moldova, Monaco, Montenegro, New Zealand, Peru, Philippines, Republic of Slovenia, Romania, The Russian Federation, Saint Vincent and the Grenadines, Senegal, Seychelles, Slovak Republic, South Africa, Spain, Sweden, Switzerland, Thailand, The Netherlands, Trinidad and Tobago, Tunisia, Uganda, Ukraine, United Kingdom, United States of America, Uzbekistan, Zambia.

The eight questions making up the questionnaire were addressed to patents, trademarks, industrial designs and copyright, as follows:

Question 1

Are security interests in IP, or any issue related to security interests in IP, addressed in any of your country's IP laws?

Question 2

If issues relating to security interests are addressed in your country's laws, for the following types of IP, please indicate whether such issues are addressed in a) only IP laws, b) both, IP laws and other laws, c) only other laws, d) no law

Question 3

If issues relating to security interests are addressed in your country's laws, please indicate which law addresses the following issues:

- (i) The creation or granting of security interest in IP;
- (ii) The method(s) for making a security interest in IP effective against third parties (including infringers) or for giving notice to third parties;
- (iii) The priority to be given to a security interest in IP with respect to other assignments, licenses, or security interests;
- (iv) The enforcement of a security interest in IP.

Question 4

Can security interests in IP be recorded on a register in your country, whether an IP-specific register or other register?

Question 5

In your country or region does a security interest in IP become effective against third parties upon its creation, or is it necessary to record the security interest in any register or in an IP-specific register for it to become effective against third parties?

Question 6

In your country or region if a security interest can be recorded in an IP-specific register, what effect does such recording have on its priority against later competing assignments, licences and security interests? Does such a recording give priority over all competing parties regardless of their knowledge, or only over those without

knowledge of the security interest, or merely create a presumption of priority or have another or no effect?

Question 7

Under the applicable law in your country or region does a security right in IP include any proceeds realized from the exercise of the IP, such as license fees, equitable remuneration, royalties or other compensation?

Question 8

In the case that IP subject to security interest is infringed by a third party, how does the applicable law in your country or region address the following matters:

- (i) Does the applicable law allow the secured creditor to take legal action to preserve the value of its security, either alone or in conjunction with the owner of the IP?
- (ii) If the applicable law allows the secured creditor to take legal action, can the secured creditor collect damages, obtain an injunction, or both?
- (iii) If the applicable law allows the secured creditor to take legal action against third parties, do the debtor and secured creditor have autonomy to determine the right to do so in the security agreement, or is it determined solely by the IP law, or is the issue unaddressed in your law?

Summary of results

This Annex I contains, below, a summary giving a general picture of responses to each question, then in Part I, a compilation of responses to each question in the questionnaire, and in Part II, a short description of the response provided by each Member State. It should be noted that the statistics below do not amount to a total of 100% in each case, because some States provided more than one answer per question and others omitted some answers.

In summary:

With respect to Question 1 (*Are security interests in IP, or any issue related to security interests in IP, addressed in any of your country's IP laws?*), some 61% of responding Member States stated that their national and/or regional provisions did address security interests in IP, whereas some 36% of responding Member States stated that their IP laws contained no provisions addressing security interests in IP.

With respect to Question 2 (*If issues relating to security interests are addressed in your country's laws, for the following types of IP, please indicate whether such issues are addressed in a) only IP laws, b) both IP laws and other laws, c) only other laws, d) no law*), a minority of 12% of responding Member States' laws addressed security interests in IP by relying on IP law provisions only, while some 49% use a mixture of IP law and other laws. A significant proportion of responding Member States, some 43%, stated that other sources of law than IP law covered the issue (and for 30% of these countries, this was only for copyright-related transactions). Finally, 22% of responding Member States did not have any law addressing the issue.

With respect to Question 3 (*If issues relating to security interests are addressed in your country's laws, please indicate which law addresses the following issues: (i) the creation or granting of security interest in IP; (ii) the method(s) for making a security interest in IP effective against third parties (including infringers) or for giving notice to third parties; (iii) the priority to be given to a security interest in IP with respect to other assignments, licenses, or security interests; (iv) the enforcement of a security interest in IP*), the responses indicated that in most cases, the issues were addressed by laws other than IP laws. First, with regard to the creation or granting of security interest in IP, some 65% of responding Member States relied on laws other than IP. Second, with regard to the method for making a security interest effective against third parties, some 50% of responding Member States relied on laws other than IP. Third, with respect to the priority to be given to security interests in IP, some 40% of responding Member States relied on laws other than IP and, fourth, with respect to enforcement of a security interest in IP, 64% of responding Member States followed the trend.

With respect to Question 4 (*Can security interests in IP be recorded on a register in your country, whether an IP-specific register or other register?*), it appears that security interest in IP can be recorded in an IP specific register in the majority of countries, as indicated by some 67% of responding Member States, while 31% of them allocated other types of register and some 14% maintain no register.

With respect to Question 5 (*In your country or region does a security interest in IP become effective against third parties upon its creation, or is it necessary to record the security interest in any register or in an IP-specific register for it to become effective against third parties?*), the results were very diverse. Some 40% of responding Member States stated that a record had to be made in an IP-specific register for the security interest to be effective against third parties, while 29% of Member States declared that the security interest became effective against third parties upon its creation, and in some 18% of Member States, a security interest in IP became effective against third parties once recorded in other types of register.

With respect to Question 6 (*In your country or region if a security interest can be recorded in an IP-specific register, what effect does such recording have on its priority against later competing assignments, licences and security interests? Does such a recording give priority over all competing parties regardless of their knowledge, or only over those without knowledge of the security interest, or merely create a presumption of priority or have another or no effect?*), the questionnaire revealed that in some 37% of responding Member States in which a security interest could be recorded on an IP-specific register, such recordation gives priority over all competing parties regardless of their knowledge, as opposed to some 26% of responding Member States in which recordation had no such effect. In about 11% of responding Member States a presumption of priority was established, while in 5% of Member States, priority was only accorded to competing parties without knowledge of the security interest in IP.

With respect to Question 7 (*Under the applicable law in your country or region does a security right in IP include any proceeds realized from the exercise of the IP, such as license fees, equitable remuneration, royalties or other compensation?*), the questionnaire again revealed divergences among responding Member States, with some 41% of Member States responding that a security right in IP does include all the proceeds realized from the exercise of the IP, whereas such proceeds are not included in the security right in IP in some 34% of Member States.

Finally, with respect to Question 8 (*In the case that IP subject to security interest is infringed by a third party, how does the applicable law in your country or region address the following matters: (i) Does the applicable law allow the secured creditor to take legal action to preserve the value of its security, either alone or in conjunction with the owner of the IP?; (ii) If the applicable law allows the secured creditor to take legal action, can the secured creditor collect damages, obtain an injunction, or both?; (iii) If the applicable law allows the secured creditor to take legal action against third parties, do the debtor and secured creditor have autonomy to determine the right to do so in the security agreement, or is it determined solely by the IP law, or is the issue unaddressed in your law?*), the results of the questionnaire revealed that the laws of some 31% of responding Member States allowed the secured creditor to take action alone to preserve the value of the security, while 20% of Member States' laws allowed the secured creditor to take such legal action only together with the owner of the IP, and some 28% of Member States' laws allow no such action. In countries where the secured creditor is allowed to bring a legal action, some 34% of responding Member States' laws provide that the secured creditor can claim damages, seek an injunction or obtain both, while in 3% of responding Member States the laws restrict remedies to an injunction only, and in 5% of responding Member States the laws restrict remedies to damages only. In addition, in some 32% of responding Member States, debtors and secured creditors have the autonomy to determine the right to bring legal action in their security agreement, whereas in some 6% of Member States, the applicable IP laws address the issue, and a similar proportion of other Member States, no legal provisions address the issue.

Part I Compilation of responses to the questionnaire

Q.1	<i>Are security interests in IP, or any issue related to security interests in IP, addressed in any of the applicable IP laws in your country or region?</i>	Total
Yes	Austria, Australia*, Bosnia & Herzegovina*, Brazil, Bulgaria*, Chile*, China, Czech Republic†, Denmark, Estonia*, Eurasian Patent Organization, France, Germany†, Greece†, Ireland, Israel, Japan, Kenya, Korea, Lichtenstein, Lithuania, Mexico, Moldova, Monaco***, Montenegro, New Zealand†, Philippines, Romania, The Russian Federation, Seychelles, Slovak Republic*, South Africa, Spain, Sweden, Switzerland*, The Netherlands*, Uganda, United Kingdom*, United States of America	40
No	Algeria, Armenia, Bolivia, Burkina Faso, Canada, Cyprus, Cuba, Ethiopia, Colombia, Georgia, Kazakhstan, Kyrgyz Republic, Luxembourg**, Malaysia, Peru, Slovenia, Saint Vincent and The Grenadines, Senegal, Thailand, Trinidad & Tobago, Tunisia, Ukraine, Uzbekistan, Zambia	24

* Except for copyright

** Except for patents

*** Except for industrial designs

† Except for more than one of the above

Q.2	<i>If issues relating to security interests are addressed in the applicable laws of your country or region, for the following types of IP, please indicate whether such issues are addressed in (a) only IP laws, (b) both IP and other laws or (c) only other laws and (d) no law?</i>	Total
IP laws only	Estonia*, Eurasian, Germany, Kenya, Montenegro, Philippines, Seychelles and Uganda	8
IP and other laws	Australia, Austria, Bosnia & Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, China***, Czech Republic, Denmark, France, Greece, Ireland, Israel, Japan, Korea, Lichtenstein, Lithuania, Luxembourg, Mexico, Moldova, Monaco, Montenegro***, New Zealand, Slovak Republic*, South Africa, Spain, Sweden, Switzerland, The Netherlands, United Kingdom, United States of America***	32
Other laws only	Algeria, Australia*, Canada*, Chile, China, Cuba, Colombia, Cyprus, Greece, Ireland*, Israel, Kazakhstan, Lichtenstein*, Lithuania, Malaysia**, Monaco**, New Zealand*, Peru, Romania, The Russian Federation, Slovenia, Senegal, Switzerland*, The Netherlands*, Tunisia, Ukraine, United Kingdom*, United States of America	28
No law	Armenia, Bolivia, Bosnia & Herzegovina*, Ethiopia, Georgia, Germany*, Kenya, Kyrgyz Republic, Malaysia, Saint Vincent and the Grenadines, Thailand, Trinidad and Tobago, Uzbekistan, Zambia	14

* No/other laws for copyright and/or patents

** No/other laws for trademarks and/or industrial designs

*** Mixed laws for copyright only

Q.3	<i>If issues relating to security interests in IP are addressed in the applicable laws in your country or region, please indicate which law addresses the following issues:</i>	
<i>(i) The creation or granting of a security interest in IP</i>		
Type of Law	Countries	Total
Other Law	Algeria, Australia**, Austria, Bosnia & Herzegovina*, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Cuba, Cyprus, Czech Republic, Denmark, France, Greece, Ireland**, Israel, Japan, Kazakhstan, Korea, Kyrgyz Republic, Lichtenstein, Lithuania, Luxembourg, Malaysia, Mexico, Moldova, Monaco, New Zealand, Peru, Republic of Slovenia, The Russian Federation, Slovak Republic, South Africa, Spain, Switzerland, The Netherlands, Tunisia, Uganda, Ukraine, United States of America	43

IP Law	Australia, Austria, Bulgaria*, Burkina Faso, Chile, Czech Republic*, Estonia*, Eurasian Patent Organization, Germany, Greece, Ireland, Israel, Japan, Kenya, Lichtenstein, Lithuania, Moldova, Montenegro, Philippines, Romania, Seychelles, Slovak Republic*, South Africa, Spain, Sweden, The Netherlands, Uganda, United Kingdom*	28
<i>(ii) The methods for making a security interest in IP effective against third parties (including infringers) or for giving notice to third parties of the securities interest</i>		
Type of Law	Countries	Total
Other Law	Algeria, Australia, Austria**, Bosnia & Herzegovina*, Brazil, Bulgaria, Burkina Faso, Canada, China, Colombia, Cuba, Cyprus, Denmark, Greece, Ireland, Israel, Kazakhstan, Lichtenstein, Lithuania, Luxembourg, Malaysia, Mexico, Moldova, Monaco, New Zealand, Peru, Slovenia, Slovak Republic, The Russian Federation, Spain, Tunisia, Uganda, Ukraine, United States of America	34
IP Law	Australia, Austria, Bulgaria*, Burkina Faso Chile, Czech Republic, Denmark, Estonia*, Eurasian Patent Office, France, Germany, Greece, Ireland, Israel, Japan, Korea, Lichtenstein, Lithuania, Mexico, Monaco, Montenegro, New Zealand, Philippines, Romania, Slovenia, Seychelles, Slovak Republic*, South Africa, Sweden, Switzerland*, The Netherlands*, Uganda, United Kingdom*	33
<i>(iii) The priority to be given to a security interest in IP with respect to other assignments, licences, or security interests</i>		
Type of Law	Countries	Total
Other Law	Algeria, Australia, Austria**, Bosnia & Herzegovina*, Brazil, Bulgaria*, Burkina Faso* Canada, Chile, China, Colombia, Cyprus, Czech Republic, Denmark, Germany, Greece, Israel, Korea, Lichtenstein, Lithuania, Luxembourg, Malaysia, Mexico, Monaco, New Zealand, Peru, The Russian Federation, Slovenia, Seychelles, Slovakia, South Africa, Spain, Switzerland, The Netherlands, Ukraine, United Kingdom, United States of America	27
IP Law	Australia, Austria, Czech Republic, Estonia*, Eurasian Patent Organization, France, Ireland, Montenegro, Peru, Romania, Seychelles, Slovakia, Sweden, Uganda, UK*, United States of America	17

<i>(iv) The enforcement of a security interest in IP</i>		
Type of Law	Countries	Total
Other Law	Algeria, Australia, Austria, Bosnia & Herzegovina*, Brazil, Bulgaria*, Burkina Faso, Canada, Chile, China, Cuba, Cyprus, Czech Republic, Denmark, France, Georgia, Germany, Greece, Ireland**, Israel, Japan, Kazakhstan, Korea, Lichtenstein, Lithuania, Luxembourg, Moldova, Mexico, Monaco, New Zealand, Peru, The Russian Federation, Slovenia, South Africa, Spain, Switzerland, Tunisia, The Netherlands, Uganda, Ukraine, United Kingdom, United States of America	43
IP Law	Australia, Austria, Burkina Faso, Estonia*, Eurasian Patent Organization, Ireland, Israel, Moldova, Montenegro, Romania, Seychelles, Slovakia, South Africa, Sweden, Uganda, United Kingdom*	16

*Except for copyright

** Other law for copyright only

Q.4	<i>Can security interests in IP be recorded on a register in your country or region, whether on an IP-specific register or other register (or both)? Please provide details as to the name of the register if applicable</i>	
Types of register	Countries	Total
IP register	Australia, Austria*, Bosnia & Herzegovina*, Burkina Faso, Bulgaria*, Brazil*, Burkina Faso, Chile, Colombia, Czech Republic*, Denmark**, Estonia*, Eurasian Patent Organization, France, Georgia, Germany*, Greece*, Ireland, Israel, Japan, Korea, Lichtenstein*, Lithuania, Luxembourg, Mexico, Monaco, Moldova, Montenegro, New Zealand, Peru, Philippines, The Russian Federation, Slovenia*, Senegal*, Seychelles, Slovakia*, South Africa*, Spain*, Sweden***, Switzerland*, The Netherlands**, Turkey**, Uganda, United Kingdom*, United States of America	45
Other register	Algeria, Australia**, Bulgaria*, Canada, Colombia, Denmark**, Ireland**, Israel**, Kazakhstan, Lithuania**, Malaysia, Monaco, New Zealand**, Philippines**, Romania, Tunisia, Uganda, Ukraine, United Kingdom**, United States of America	20
No register	Bolivia, Cuba, Cyprus, Ethiopia, Kyrgyz Republic, Saint Vincent and the Grenadines, Thailand, Trinidad and Tobago, Zambia	9

* No register for copyright

** Other register for copyright

*** No register for more than one IP right (copyright, trademarks, patent and industrial designs)

Q.5	<i>In your country or region does a security interest in IP become effective against third parties upon its creation, or is it necessary to record the security interest in any register or in an IP-specific register for it to become effective against third parties?</i>	
Type of registration	Countries	Total
On creation	Australia, Austria, Brazil, Cuba, Cyprus, Czech Republic, Georgia, Germany, Kazakhstan, Lichtenstein, Lithuania, Monaco, New Zealand, Slovenia, Romania, Seychelles, Thailand, Ukraine, United Kingdom	19
Any register	Algeria, Denmark, Israel, Lichtenstein, Lithuania, Malaysia, Monaco, Senegal, South Africa, Spain, Tunisia, Uganda	12
IP register	Austria*, Bosnia & Herzegovina, Brazil*, Bulgaria, Chile, China, Colombia, Czech Republic, Estonia*, Greece, Israel, Japan, Korea, Luxembourg, Mexico*, Monaco, Moldova, Montenegro, Peru, Philippines, The Russian Federation, Slovakia, Sweden, Switzerland, The Netherlands, Uganda, United States of America	27

* Except for copyright

Q.6	<i>In your country or region if a security interest can be recorded in an IP-specific register, what effect does such recording have on its priority against later competing assignments, licences and security interests? Does such a recording give priority over all competing parties regardless of their knowledge, or only over those without knowledge of the security interest, or merely create a presumption of priority, or have another or no effect?</i>	
Types of effect	Countries	Total
All parties	Algeria, Austria, Bosnia & Herzegovina*, Brazil, Bulgaria, Burkina Faso, China, Czech Republic, Estonia, Greece, Israel, Japan, Korea, Luxembourg, Mexico, Monaco*, Montenegro, The Russian Federation, Seychelles, Slovak Republic, Sweden, The Netherlands, Tunisia, Uganda, Ukraine	25

Parties without knowledge	Switzerland*, United Kingdom*, United States of America	3
Presumption	Australia, Colombia, Georgia, Germany, Peru, Slovenia, Romania	7
No effect / other	Australia, Chile, Colombia, Czech Republic, Denmark, Ethiopia, Georgia, Germany, Kazakhstan, Lichtenstein, Lithuania, Moldova, Monaco, New Zealand, Romania, South Africa, Spain,	17

* Except for copyright

Q.7	<i>Under the applicable law in your country or region does a security right in IP include any proceeds realized from the exercise of the IP, such as licence fees, equitable remuneration, royalties or other compensation?</i>	
	Countries	Total
Yes	Algeria, Australia, Austria, Burkina Faso ,Canada, China, Cuba, Denmark, Estonia, Greece, Japan, Korea, Monaco, Montenegro, Peru, Romania, Republic of Slovenia, The Russian Federation, Slovak Republic, Spain, South Africa, Tunisia, Uganda, Ukraine, United Kingdom, United States of America	27
No	Australia, Chile, Colombia, Cyprus, Czech Republic, Georgia, Germany, Kazakhstan, Kyrgyz Republic, Lichtenstein, Lithuania, Luxembourg, New Zealand, Seychelles, Slovak Republic, Sweden, Switzerland, The Netherlands, Tunisia, United Kingdom	23

Q.8	<i>In the case that IP subject to a security interest is infringed by a third party, how does the applicable law in your country or region address the following matters:</i>	
<i>(i) Does the applicable law allow the secured creditor to take legal action to preserve the value of its security, either alone or in conjunction with the owner of the IP?</i>		
Type of action	Countries	Total
Alone	Algeria, Austria, Bosnia & Herzegovina, China*, Cuba, Cyprus, Denmark, Eurasian Patent Organization, Greece, Japan, Luxembourg, Kazakhstan, Montenegro, Peru, Romania, The Russian Federation, Slovenia, Sweden, Tunisia, United Kingdom, United States of America	21
With the owner	Algeria, Austria, Brazil, Burkina Faso, Cyprus, Greece, Luxembourg, Moldova, Romania, Senegal, South Africa, Tunisia, Uganda, Ukraine	14
No action allowed	Australia, Bulgaria, Canada, Chile, China, Colombia, Czech Republic, Israel, Japan, Korea, Lichtenstein, Lithuania, Malaysia, Mexico, Monaco, New Zealand, Spain, Switzerland, Thailand	19
<i>(ii) If the applicable law allows the secured creditors to take legal action, can the secured creditor collect damages, obtain injunction or both?</i>		
Type of remedies	Countries	Total
Damages only	China*, Sweden, Tunisia,	3
Injunction only	Brazil, Eurasian Patent Organization	2
Both	Algeria, Australia, Austria, Bosnia & Herzegovina, Burkina Faso, Cuba, Cyprus, Denmark, Greece, Japan, Kazakhstan, Luxembourg, Moldova, Montenegro, Peru, Romania, The Russian Federation, Slovenia, Slovak Republic, South Africa, Uganda, Ukraine, United Kingdom	23
<i>(iii) If the applicable law allows the secured creditors to take legal action against third parties, do the debtor and secured creditor have autonomy to determine the right to do so in the security agreement, or is the right to do so determined solely by the IP law, or is the issue unaddressed in your law?</i>		
Authority to take action	Countries	Total
Party autonomy	Algeria, Bosnia & Herzegovina, Brazil, Burkina Faso, Cuba, Cyprus, Denmark, Germany, Greece, Kazakhstan, Lichtenstein, Mexico,	21

	Moldova, Peru, Romania, The Russian Federation, Tunisia, Uganda, Ukraine, United Kingdom, United States of America	
IP Law	Australia, China, Eurasian Patent Organization, Montenegro,	4
Unaddressed	Austria, Japan, Luxembourg, South Africa, Sweden	5

* Available for copyright only

Part II Summary of national responses on security interests in IP

The following paragraphs summarize each of the 67 responses to the WIPO questionnaire, illustrating the variety of approaches to security interests in IP, through IP laws and otherwise.

1. In Algeria, security interests in IP are not covered by national law, but are addressed by other laws governed by the Code of Commerce. Although no IP law directly addresses the issue, the Code of Commerce provides for the means to make security interests in IP effective against third parties as well as the priority order to follow with regard to other assignments, licences or security interests. The Civil Procedure Code addresses the required steps to follow regarding enforcement of a security interests in IP. The latter must be recorded in a non IP-specific register in order to be recognized and enforceable against third parties and/or all parties involved, as stipulated by Article 120, Ordinance No.75-59 of the Civil Code. In cases of infringement, the secured creditor can take legal action to preserve its interests either alone or with the owner to seek relief through damages, injunction or both. However, it should be noted that debtors and secured creditors enjoy full autonomy to determine in their agreement whether the right to take legal action can be granted.
2. In Armenia, security interests in IP and related issues are not covered by any provisions in the national IP law or other law.
3. In Australia, security interests in IP are covered by national IP law with the exception of security interests involving copyright assets, which are covered by a mixture of IP laws and other laws. Indeed, common law governs the area of security interests in trademarks and patents by recognizing the creation or granting of security interests as well as the methods for making the security interest in IP effective against third parties, whereas security interests in copyright are governed by national contract and equity law. The same legislation addresses issues related to the priority to be given to security interests in IP with respect to other assignments, licences, or security interests and their enforcement. In order to be effective, security interests in IP must be recorded in an IP-specific register, with the exception of copyright, which involves another register. As stipulated by the various IP laws, security interests become effective against third parties upon their creation. While the recordation of security interests in IP in an IP-specific register creates a presumption of priority over later competing assignments; there is no such effect with respect to trademarks. Under the applicable law, security rights in IP do include any proceeds realized from the exercise of the IP, such as license fees, equitable remuneration, royalties and/or other compensation. There is no relevant law allowing a secured creditor to take legal action to preserve the value of its security; where IP subject to a security right is

infringed, the national IP law grants a right to a secured creditor to take legal action against third parties to either claim for damages, an injunction or both. The right of a secured creditor to take legal action is governed by IP law only.

4. In Austria, security interests in IP are covered by a mixture of national IP laws and other laws. Various IP laws and other laws address issues ranging from the creation or granting of a security interest in IP, to the method for making the security interest effective against third parties. The priority to be given to security interests in IP with respect to other assignments, licences and the enforcement of a security interest are governed by national IP law, with the exception of security interests in copyright, for which other laws apply. Security interests in IP can be recorded in an IP-specific register, with the exception of copyright for which no register exists. Security interests in IP become effective against third parties upon creation with regard to trademarks and copyright, whereas security interests in industrial designs and patents need to be recorded in an IP-specific register. Furthermore, the effect of such recordation is to give priority over all competing parties regardless of their knowledge. Under the applicable law, security rights in IP include any proceeds realized from the exercise of the IP such as license fees, equitable remuneration, royalties and/or other compensation. If IP subject to a security interest is infringed by a third party, the applicable law allows the secured creditor to take legal action alone or with the owner to seek damages, an injunction or both. However, there is no law addressing the issue whether a debtor and secured creditor would have the autonomy to determine whether a party to the contract would have the right to take legal action or not.
5. In Bolivia, security interests in IP are not addressed by IP law or any other national law. There is no register allowing the recordation of security interests in IP and, under the applicable law, security rights in IP do not include any proceeds realized from the exercise of the IP.
6. In Bosnia & Herzegovina, security interests in IP are covered by a mixture of national IP laws and other laws with the exception of copyright, which is not covered by law. The Law on Obligatory Relations and Law on Industrial Property govern this area and provide for the creation or granting of a security interest in IP as well as the methods for making such interests effective against third parties, the priority to be accorded and their enforcement. Security interests in IP can be recorded in an IP-specific register, and such recordation is a pre-requisite to make it effective against third parties. The effect of such a recordation is to give priority over all competing parties regardless of their knowledge. Under the applicable law, security rights in IP include any proceeds realized from the exercise of the IP such as license fees, equitable remuneration, royalties and/or other compensation. In the case that IP subject to a security interest is infringed by a third party, the applicable law allows the secured creditor to take legal action alone to seek damages, an injunction or both. However, debtors and secured creditors enjoy full autonomy to determine in the security interest agreement whether the right to take legal action can be granted.
7. In Bulgaria, security interests in IP are covered by a mixture of national IP laws and other laws with the exception of security interests in copyright, which are not covered by law. The various IP laws and other laws address issues ranging from the creation or granting of a security interest in IP, to the method for making the security interest effective against third parties. The priority to be given to security interests in IP with respect to other assignments, licenses and enforcement are governed by other law,

with the exception for security interests in copyright for which there is no applicable law. Security Interests in IP can be recorded in an IP register or other register, with the exception of copyright. The Law on Patents and Utility Model Registration and the Law on Marks and Geographical Indications, as well as the Law on Industrial Designs all require the registration of the relevant IP rights on their respective register in order to become effective against third parties. The effect of such a recording gives priority over all competing parties regardless of their knowledge. If IP subject to a security interest is infringed by a third party, the applicable law does not allow the secured creditor to take legal action in order to preserve the value of its security.

8. In Burkina Faso, security interests in IP are not covered by IP law alone, but by a mixture of IP law and other legislation. The “*Accord de Bangui du 24 Février 1999*” in addition to the “*Actes Uniformes OHADA du 17 Avril 1997*” govern all issues related to the creation of security interests in IP as well as the methods for making it effective against third parties, in addition to the priority to be accorded and its enforcement. The effect of such recordation is to give priority over all competing parties regardless of their knowledge. Under the applicable law, security rights in IP does include the proceeds realized from the exercise of the IP such as license fees, equitable remuneration, royalties and/or other compensation. If IP subject to a security interest is infringed by a third party, the applicable law allows a secured creditor to take legal action with the owner of the IP to preserve the value of its security, and to seek damages, an injunction or both in court. Also, the debtor and secured creditor have the autonomy to determine in their agreement whether there is a right to take such legal action. (Note, the response for this country did not address all questions.)
9. In Brazil, security interests in IP are covered by a mixture of national IP laws and other laws. The Brazilian Civil Code provides for the creation or granting of a security interest in IP as well as the methods for making it effective against third parties, the priority to be accorded and its enforcement. Security interests in IP can be registered in an IP register, and such registration is a pre-requisite to make the security interest effective against third parties. However, security interests in copyright cannot be registered and are considered to take effect upon creation as prescribed by national IP law. The effect of such recordation is to give priority over all competing parties regardless of their knowledge. Under the applicable law, security rights in IP do not include the proceeds realized from the exercise of the IP such as license fees, equitable remuneration, royalties and/or other compensation. If IP subject to a security interest is infringed by a third party, the applicable law allows the secured creditor to take legal action to preserve the value of its security in conjunction with the owner of IP, although the purpose of the legal action is restricted to the granting of an injunction. The debtor and secured creditor have the autonomy to determine in the security agreement which party should have the right to take legal action against third parties.
10. In Canada, security interests in IP are not covered by IP law alone, but by a mixture of IP law and other legislation, particularly with respect to security interests in copyright. The Canadian Personal Property Act provides for the creation or granting of a security interest, as well as the methods for making it effective against third parties, the order of priority to be given to it with respect to other assignments, licences and its enforcement. Security interests in IP have to be recorded onto an IP-specific register in order to become effective against third parties, with the exception of security

interests in copyright, which become effective against third parties upon creation. Such recordation gives priority over all competing parties regardless of their knowledge. Also, under the applicable law, security interests in IP do not include the proceeds realized from the exercise of the IP such as license fees, equitable remuneration, royalties and/or compensation. Furthermore, if IP subject to security interest is infringed by a third party, there is no provision allowing the secured creditor to take action in order to preserve the value of its security.

11. In Chile, security interests in IP are covered by national IP law, except for security interests in copyright. The Chilean Civil Code and Commercial Code address the following issues: creation or granting of security interests in IP, the methods for making such agreements effective against third parties, the priority to be given with regard to other assignments, licences and enforcement. In order to be effective against third parties, security interests in IP must be recorded on an IP-specific register. However, such recordation has no effect and does not give priority over all competing parties. Furthermore, security rights in IP do not include any proceeds realized from the exercise of the IP such as licenses, remuneration, royalties and/or compensation. If IP subject to a security interest is infringed by a third party, the applicable law does not allow the secured creditor to take legal action to preserve the value of its security.
12. In China, security interests in IP are not covered by law, with the exception of security interests in copyright, which are governed by a mixture of national IP laws and other laws. The Property Law and Guarantee Law of the People's Republic of China provides for the creation or granting of security interests in IP as well as the methods for making them effective against third parties, the priority to be given with regards to other assignments, licences and enforcement. To be effective against third parties, a security interest must be recorded in an IP-specific register. The effect of such recordation gives priority over all competing parties regardless of their knowledge. Under the applicable law, security interests in IP do not include the proceeds realized from the exercise of the IP such as license fees, equitable remuneration, royalties and/or compensation. If a security interest in copyright is infringed by a third party, the applicable law allows the secured creditor to take legal action to preserve the value of its security; however a different principle applies to a security interests in other types of IP, such as patents, trademarks and industrial designs. Consequently, a secured creditor may seek damages only in cases of copyright infringement. Also, IP law determines when a debtor and secured creditor have the autonomy to determine in the agreement whether there is a right to take legal action.
13. In Colombia, security interests in IP are not covered by IP law. However, the Colombian Commercial Code deals with issues related to security interests in IP. It provides for the creation or granting of a security interest in IP, the methods for making it effective against third parties and the priority to be given with regard to other assignments and/or licences. Security interests in IP must be recorded in an IP-specific register as well as in another register to become effective against third parties. The effect of such recordation is to merely create a presumption of priority. Under the applicable law, security interests in IP do not include the proceeds realized from the exercise of the IP such as license fees, equitable remuneration, royalties and/or compensation. If IP subject to a security interest is infringed by a third party, the

applicable law does not allow a secured creditor to take legal action to preserve the value of its security.

14. In Cuba, security interests in IP are not covered by IP law. The Cuban Civil Code (Article 59), provides for issues related to security interests in IP including the creation or granting of a security interest, the methods for making it effective against third parties, and its enforcement. The above-mentioned law provides that there is no requirement to record a security interest in a register as it is considered to exist upon its creation and is effective against third parties. Under the applicable law, security rights in IP do include any proceeds realized from the exercise of the IP such as license fees, equitable remuneration, royalties and/or compensation. If IP subject to a security interest is infringed by a third party, the applicable law allows a secured creditor to take legal action alone to preserve the value of its security, and to seek damages, an injunction or both in court. Also, the debtor and secured creditor have the autonomy to determine in their agreement whether there is a right to take such legal action.
15. In Cyprus, security interests in IP are not covered by IP law. The Cypriot Contract Law governs this area and provides for issues related to security interests in IP such as the creation or granting of a security interest, the methods for making it effective against third parties, and its enforcement. The applicable law provides that there is no need to record a security interest in a register as it is considered to exist upon its creation and is effective against third parties. The recordation of a security interest in IP has no effect upon its priority against later competing assignments. Under the applicable law, security rights in IP do not include the proceeds realized from the exercise of the IP such as licence fees, equitable remuneration, royalties and/or compensation. If IP subject to a security interest is infringed by a third party, a secured creditor may decide to take legal action alone or with the IP owner in order to preserve the value of its security, and may seek damages, an injunction or both, in court. In addition, the debtor and secured creditor have the autonomy to determine in their agreement whether there is a right to take legal action.
16. In the Czech Republic, security interests in IP and related issues are addressed by IP laws, with the exception of security interests in patents and copyright, which both depend on a mixture of other laws. The Czech Civil Code, Trade Marks and Patents Acts provide for the creation or granting of security interests in all forms of IP except for copyright. They also provide for the priority to be given to a security interest in IP with respect to other assignments or licences. However, the method for making a security interest in IP effective against third parties is governed by IP laws such as the Trade Marks Act, Patents and Industrial Designs Act. The enforcement of a security interest in IP is governed by the Czech Republic Civil Code. Security interests in IP can be recorded in an IP-specific register, whilst security interests in copyright become effective against a third party upon their creation. Recordation of a security interests in IP gives priority over all competing parties regardless of their knowledge. Under the applicable law, security rights in IP include any proceeds realized from the exercise of the IP such as licenses, equitable remuneration, royalties or other compensation. If IP subject to a security interest is infringed by a third party, the applicable law does not allow the secured creditor to take legal action to preserve the value of its security.
17. In Denmark, security interests in IP and related issues are covered by a mixture of national IP laws and other laws. The Law on Registration (Chapter 7) provides for the

creation or granting of a security interest in IP, as well as the method for making a security interest in IP effective against a third party. In addition, it provides for the priority to be given to security interests in IP with respect to other assignments, licences, or security interests. The Danish Administration of Justice Act provides for the enforcement of security interests. Security interests in IP can be recorded in an IP-specific register, with the exception of security interests over copyright that can be registered in another register in order to gain effectiveness against third parties. However such recordation has no effect, and does not give priority over all competing parties. Under the applicable law, security interests in IP include any proceeds realized from the exercise of the IP subject such as licenses, equitable remuneration, royalties or other compensation. If IP subject to a security interest is infringed by a third party, the applicable law allows the secured creditor to take legal action alone to claim for damages, an injunction or both. Also, the debtor and secured creditor enjoy the autonomy to determine in their agreement whether the right to take legal action subsists.

18. In Estonia, security interests in IP and issues related to them are covered by national IP laws, except for security interests in copyright. These laws provide for the creation or granting of security interests in IP, the method for making them effective against third parties, the priority to be given to security interests in IP with respect to other assignments, licences, or security interests, as well as the enforcement of such security interests. Security interests in IP can be recorded in an IP-specific register to become effective against third parties. In addition, such recordation gives priority over all competing parties regardless of their knowledge. Under the applicable law, security interests in IP include the proceeds realized from the exercise of the IP such as licenses, equitable remuneration, royalties or other compensation.
19. In Ethiopia, security interests in IP and related issues are not covered by any national IP or other law.
20. Under the jurisdiction of the Eurasian Patent Organization, security interests in IP and related issues are covered by IP laws with respect to patents only. The Patent Regulations under the Eurasian Patent Convention provide for the creation or granting of security interests in IP and the method for making them effective against third parties. They also provide for the priority to be given to security interests in IP with respect to other assignments, licences or security interests, in addition to their enforcement. Under the applicable law, security interests in IP can be recorded in an IP-specific register to become effective against third parties regardless of their knowledge. If IP subject to a security interest is infringed by a third party, IP law provides that a debtor or secured creditor can decide alone to take legal action in order to preserve the value of its security by seeking an injunction.
21. Under the jurisdiction of the European Patent Office, applications as an object of property are subject to national law (Article 74 of the European Patent Convention (EPC)). As the EPC does not provide otherwise, this is also the case for European patents (Article 2(2) of the EPC). However, the EPC contains a few provisions aimed at ensuring that the applicant or other parties to the proceedings are clearly identified. According to Article 72 of the EPC, an assignment of a European patent application shall be made in writing and shall require the signature of the parties to the contract. Furthermore, transfers, other rights *in rem* and enforcement measures affecting a European patent application are recorded in the European Patent Register (Rule 22 and 23, Implementing Regulations). To this end, the interested party is required to file

a request in writing, provide written proof of the relevant act and pay a fee. These provisions only apply to European patent applications and to granted patents during the opposition period or the opposition proceedings. Granted patents are entered in the national patent register and that entry entitles the proprietor to take action.

22. In France, security interests in IP and related issues are covered by a mixture of national IP laws and other laws. The Intellectual Property Code addresses several issues such as the method for making security interests in IP effective against third parties as well as the priority to give the security interest in IP with respect to other assignments, licences, royalties or other compensation. The creation or granting of security interests in IP and their enforcement are dealt with by other laws. Security interest in IP can be registered in an IP-specific register to become effective against third parties regardless of their knowledge.
23. In Georgia, security interests in IP are not covered by any national IP or other law. Security interests in IP are considered to exist upon its creation and can be recorded in an IP register. Such recordation creates a presumption of priority over other assignments. Under the applicable law, the security interest does not include any proceeds realized from the exercise of the IP, such as license fees, equitable remuneration, royalties or other compensation. No provisions in national law address the issue of what should occur where a secured interest in IP has been infringed by a third party.
24. In Germany, security interests in IP and related issues are addressed by a mixture of national IP laws and other laws, except for security interests with respect to patents and copyright. National IP laws govern issues related to the creation or granting of security interests in IP, and the method for making them effective against third parties, whereas the Code of Civil Procedure addresses issues related to the priority to be given to security interests in IP with respect to other assignments, licences, or security interests as well as the enforcement of a security interest in IP. Security interests in IP can be recorded in an IP-specific register. Upon creation, a security interest in IP becomes effective against third parties regardless of their knowledge, except for security interests with respect to copyright, where no specific register exists. Such a recordation gives a presumption of priority over all competing parties regardless of their knowledge. However, under the applicable law, security interests in IP do not include the proceeds realized from the exercise of the IP, such as license fees, equitable remuneration, royalties or other compensation. If IP subject to a security interest is infringed by a third party, the applicable law stipulates that the parties enjoy the autonomy in their agreement to determine the right to take legal action.
25. In Greece, security interests in IP and related issues are covered by a mixture of national IP laws and other laws, except for security interests in patents and industrial designs. A Presidential Decree (PD ,456/84 and 503/85), coupled with national IP laws, cover issues such as the creation or granting of security interests in IP, the method for making them effective against third parties, the priority to be given to them with respect to other assignments, licenses, or security interests, as well as their enforcement. Security interests in IP can be recorded in an IP-specific register to become effective against third parties, except for security interests with respect to copyright, for which no register exists. Such a recordation gives priority over all competing parties regardless of their knowledge. A security right in IP includes the proceeds realized from the exercise of the IP, such as license fees, equitable

remuneration, royalties or other compensation. If IP subject to a security interest is infringed by a third party, the applicable law allows the secured creditor to take legal action to preserve the value of its security, either alone or in conjunction with the IP owner in order to collect damages, seek an injunction or both. The applicable law also stipulates that the parties enjoy the autonomy in their agreement to determine the right to take legal action.

26. In Ireland, security interests in IP and related issues are covered by a mixture of national IP laws and other laws. The creation or granting of security interests in IP, the method for making them effective against third parties, the priority to be given to them with respect to other assignments, licenses or security interests, and their enforcement are all covered by national IP law, with an exception of security interests with respect to copyright, which are addressed by other laws. Under the applicable law, security interests in IP can be recorded in an IP-specific register, except for security interests in copyright, for which no register exists. (Note, the response for this country did not address all questions.)
27. In Israel, security interests in IP and related issues are covered by a mixture of national IP laws and other laws. Mortgage Law, Company Law and national IP laws are the principle pieces of legislation with provisions addressing issues such as the creation or granting of security interests in IP, the method for making them effective against third parties, as well as the priority to be given to them with respect to other assignments, licences or security interest, and their enforcement. Security interests in IP can be recorded in an IP-specific register, except that security interests with respect to copyright must be recorded on another type of register. Recordation is necessary to give effect against third parties, and gives priority over all competing parties regardless of their knowledge of the security interest. If IP subject to a security interest is infringed by a third party, the applicable law does not allow the secured creditor to take legal action to preserve the value of its security.
28. In Italy, the Italian Copyright Office is responsible for the General Public Register of works protected as established by Article 103 of Law No. 633 of April 22, 1941. Under Article 2 of Law No. 633, protection extends to printed works, sculpture, painting, drawing, engraving and similar figurative arts, including scenic art, even where works are applied to industrial products (if their artistic value is distinct from the industrial character of the product with which they are associated), architectural plans and works, newspapers and magazines, musical works or works suitable for public showing, industrial design works, engineering projects and similar works. Under Article 99 of the above-mentioned law, in order to exercise his or her right to remuneration, the author must include on the plan or drawing a declaration of reservation of the right and must deposit the plan or drawing with the Italian Copyright Office. Under Article 6 of the same law, in conjunction with Article 2576 of the (Italian) Civil Code; “copyright shall be acquired by creation of a work resulting from an intellectual effort” and under Article 106 of Law No. 633; “failure to deposit shall not prejudice the acquisition or exercise of copyright in respect of works under the provisions of Part I of this law, or under the provisions of international conventions [...]”. Moreover, under Article 106 of the above-mentioned law; “At the instance of the interested party, legal instruments executed between living persons, transferring in whole or in part rights recognized by this law, or establishing rights of enjoyment or guarantee thereof, as well as instruments serving to divide or to associate such rights, may also be registered in the form prescribed by the

Regulations. Such registration shall also have such legal or administrative effects as the provisions of this Law or other special laws accord to registration". The registration of the instruments of transfer is one of the elements in proof of their date, under Article 2704 of the (Italian) Civil Code.

29. In Japan, security interests in IP and related issues are covered by a mixture of national IP laws and other laws, such as the Japanese Civil Code, which makes some provision for the creation or granting of security rights. IP laws address issues related to the method for making the security interest effective against third parties and the priority to be given to them with respect to other assignments, licences or security interests; whereas the enforcement of security interests is dealt with by the Japanese Civil Execution Act. Under the applicable law, security interests in IP can be recorded in an IP-specific register to become effective against third parties. Such recordation gives priority over all competing parties regardless of their knowledge of the security interest. A security interest in IP includes any proceeds realized from the exercise of the IP such as license fees, equitable remuneration, royalties or other compensation. If IP subject to a security interest is infringed by a third party, a secured creditor is permitted to take legal action alone to preserve the value of its security, to collect damages, seek an injunction or both. However, there is no provision addressing whether the debtor and secured creditor would have the autonomy to determine in their agreement the right to take legal action.
30. In Kazakhstan, security interests in IP and related issues are not covered by national IP laws, but only by other laws which address issues such as the creation or granting of security interests in IP, the method for making them effective against third parties and their enforcement. Under the applicable law, security interests in IP can be recorded in any register although, upon their creation, they are considered to be effective against third parties. Such a recordation has no effect over competing parties. Security rights in IP do not include the proceeds realized from the exercise of the IP, such as license fees, equitable remuneration or security interests. If IP subject to a security interest is infringed by a third party, the relevant provisions provide that the secured creditor can take legal action alone to preserve the value of its security and, in doing so, the secured creditor may either collect damages, seek an injunction or both. The debtor and secured creditor have the autonomy to determine the right to do so in the agreement.
31. In Kenya, security interests in IP and related issues are covered by a mixture of national IP laws and other laws. The Kenyan Industrial Property Regulations 2002, and in particular Regulation 30 on Patent Law, address issues such as the creation or granting of security interests in IP, whereas the methods for making security interests effective against third parties, the priority order to be given and their enforcement are not addressed by any provisions of law.
32. In the Republic of Korea, security interests in IP and related issues are covered by a mixture of national IP laws and other laws. In cases where IP subject to a security interest is infringed by a third party, the Korean Copyright Act provides for the method for making a security interest in IP effective against third parties, whereas the creation or granting of security interests, as well as the priority to be given to them with respect to other assignments, licenses or security interests and the enforcement of security interests in IP are all covered by the Civil Act. Under the applicable law, security interests in IP can be recorded in an IP-specific register to become effective

against third parties. Such recordation gives priority over all competing parties regardless of their knowledge. A security right in IP includes all proceeds realized from the exercise of the IP such as license fees, equitable remuneration or other compensation. If IP subject to a security interest is infringed by a third party, there are no provisions allowing the secured creditor to take legal action to preserve the value of its security.

33. In the Kyrgyz Republic, security interests in IP and related issues are not covered by IP laws or any other national laws.
34. In Latvia, all IP laws contain one common provision on the proprietary nature of the relevant IP rights. This provision establishes that the IP rights shall confer the same legal status and shall be governed by the same legal rights; i.e., these rights are treated as personal (movable) property rights within the meaning of the Civil Law. This means in general that IP rights may, in any legal way, be included in private legal circulation, and also be given as a security. Under the Latvian Civil Law (Article 1294), the subject-matter of a pledge may be all property regarding which alienation is not specifically prohibited, and includes both tangible and intangible properties. The Patent Law expressly mentions that property rights associated with patents and patent applications may be the subject of a pledge, or may be otherwise subordinated to the property rights (rights *in rem*). The other IP laws do not largely provide for security interests in IP. The Law on Trademarks and Geographical Origins also tends to regulate this area. Nevertheless, the method for the creation of a security interest in IP should be a commercial pledge, and this is governed by the Law on Commercial Pledges (Articles 3.1 and 3.4).
35. In Lichtenstein, security interests in IP and related issues are partly covered by a mixture of IP laws and other laws. Under the Patent Protection Treaty with Switzerland, Swiss Patent Law applies in the jurisdiction of Lichtenstein. The Property Law Act (Article 384) in conjunction with IP laws address issues such as the creation or granting of security interests in IP and the method for making them effective against third parties, whereas the priority to be given to security interests with respect to other assignments, licenses or security interests as well as their enforcement are governed by the Property Law Act only. Security interests in IP can be recorded in an IP-specific register, with the exception of copyright, for which no register exists. Under the Civil Code (Article 4.213, Register of Mortgages) security interests in IP must be recorded in the register to become effective against third parties, except for security interests in copyright which become effective upon creation. However, recordation has no effect on the priority over competing parties. Also, under the applicable law, security interests in IP do not include the proceeds from the exercise of the IP. If IP subject to a security interest is infringed by a third party, the applicable law does not allow a secured creditor to take legal action to preserve its security. Nevertheless, a debtor and a secured creditor have the autonomy to determine in their agreement the right to do so.
36. In Lithuania, security interests in IP and related issues are covered by a mixture of national IP laws together with other laws such as the Civil Code. Indeed, the creation or granting of a security interest and the method for making it effective against third parties are examples of issues covered by a mixture of laws, whereas, the priority to be given with respect to other assignments, licenses or security interests and their enforcement are governed by the Civil Code alone. Security interests in IP can be recorded in an IP-specific register, with the exception of security interests in

copyright, and should be recorded in the register in order to become effective against third parties. Such recordation, however, does not give priority over all competing parties. The security interest does not include the proceeds realized from the exercise of the IP. If IP subject to a security interest is infringed by a third party, the applicable law does not allow a secured creditor to take legal action to preserve the value of its security.

37. In Luxembourg, security interests in IP and related issues are not covered by any national IP law provisions, except for patents which are covered by a mixture of national IP law together with other laws such as the Civil Code. The creation and granting of security interests and the method for making them effective against third parties, in addition to the enforcement of security interests in IP are all addressed by the Civil Code alone. Security interests in IP can be recorded in an IP-specific register, with the exception of security interests in copyright, and should be recorded in the register in order to become effective against third parties. Such recordation gives priority over all competing parties regardless of their knowledge of the security interest. A security interest in IP does not include the proceeds realized from the exercise of the IP such as license fees, equitable remuneration, royalties or other compensation. If IP subject to a security interest is infringed by a third party, a secured creditor is permitted to take legal action alone or with the IP owner to preserve the value of its security, to collect damages, seek an injunction or both. However, the law does not address whether the debtor and secured creditor would have the autonomy to determine in their agreement the right to take legal action.
38. In Malaysia, security interests in IP and related issues are not covered by any national IP provisions, but rather by other laws. The creation, granting and enforcement of security interests in IP is addressed by contract law, whereas the method for making such interests effective against third parties is governed by Companies Act 1965. The priority to be given to security interests in IP is prescribed by equitable principles. Security interests in IP can be recorded in any register in order to become effective against third parties, with the exception of security interests in industrial designs, for which no register is allocated. If IP subject to a security interest is infringed by a third party, the applicable law does not allow the secured creditor to take legal action to preserve its security.
39. In Mexico, security interests in IP and related issues are covered by a mixture of national IP laws and other laws. Issues such as the creation or granting of security interests in IP and the method for making them effective against third parties are addressed by national IP laws coupled with other laws. The Mexican Federal Civil Code provides for the priority to be given to security interests in IP and their enforcement. Security interests in IP can be recorded in an IP-specific register and, once recorded, become effective against third parties. Such recordation gives priority over all competing parties regardless of their knowledge. Under the applicable law, security interests in IP do not include the proceeds realized from the exercise of the IP. If IP subject to a security interest is infringed by a third party, the applicable law does not allow the secured creditor to take legal action to preserve the value of its security. Nevertheless, the debtor and secured creditor have the autonomy to determine the right to do so in their agreement.
40. In Moldova, security interests in IP and related issues are covered by a mixture of national IP laws and other laws. The Civil Code provides for the creation or granting of security interests in IP and their enforcement, while the Law on Pledge provides for

the method for making such interests effective against third parties. Security interests in IP can be recorded in an IP-specific register, and will be effective against third parties once recorded. There are, however, no provisions with respect to the priority to be given to security interests in IP, and recordation does not give priority over competing parties. If IP subject to a security interest is infringed by a third party, the applicable law allows the secured creditor to take legal action in conjunction with the owner to preserve the value of its security, in which case the secured creditor may collect damages, seek an injunction or obtain both. Furthermore, the debtor and secured creditor have the autonomy to determine the right to do so in their agreement.

41. In Monaco, security interests in IP and related issues are covered by a mixture of national IP laws and other laws. The Civil Code provides for the creation or granting of security interests in IP, the method for making them effective against third parties, the priority to be given to security interests in IP with respect to other assignments, licenses and their enforcement. Security interests in IP can be recorded in either an IP-specific register or any other register, and will be effective against third parties once recorded, with the exception of security interests with respect to copyright and industrial designs which are effective upon their creation. Such recordation gives priority over all competing parties regardless of their knowledge, with the exception of security interests with respect to copyright and industrial designs for which the recording has no effect. Under the applicable law, security interests in IP include the proceeds realized from the exercise of the IP, such as license fees, equitable remuneration, royalties or other compensation. If IP subject to a security interest is infringed by a third party, the applicable law does not allow the secured creditor to take legal action to preserve the value of its security.
42. In Montenegro, security interests in IP and related issues are covered by national IP laws and by a mixture of laws with respect to copyright. The creation or granting of security interests in IP, the method for making them effective against third parties, the priority to be given to a security interest with respect to other assignments and its enforcement are all issues that are addressed by the various national IP law provisions. Security interests in IP can be recorded in an IP-specific register, and must be recorded to become effective against third parties. Such recordation gives priority over all competing parties regardless of their knowledge. Security interests in IP include the proceeds realised from the exercise of the IP. If IP subject to a security interest is infringed by a third party, the applicable law allows the secured creditor to take legal action independently to preserve the value of its security, to collect damages, seek an injunction or both. A debtor and secured creditor do not have the autonomy to determine the right to do so, as it is prescribed for by the national IP law provisions.
43. In The Netherlands, security interests in IP and related issues, with the exception of security interests in copyright, are covered by a mixture of national IP laws and other laws. The creation or granting of security interests in IP is addressed by both IP law and other laws, such as the Civil Code. Indeed, the Civil Code also addresses the priority to be given to security interests in IP and their enforcement, whereas, IP laws provide for the method for making such interests effective against third parties, with the exception of security interests in copyright. Security interests in IP can be recorded in an IP-specific register, and must be recorded to become effective against third parties, with the exception of security interests in copyright, for which no register has been allocated. Such recordation gives priority over all competing parties

regardless of their knowledge. Security interests in IP do not include the proceeds realized from the exercise of the IP.

44. In New Zealand, security interests in IP and related issues are covered by a mixture of national IP laws and other laws with respect to trademarks and copyright. Furthermore, the Personal Property Securities Act 1999 (PPS) provides for the creation or granting of security interests in IP, the priority to be given with respect to other assignments, licenses and their enforcement. Security interests in IP can be recorded in either an IP-specific register or any other register, and will be effective against third parties once recorded, with the exception of security interest in copyright, which are effective upon their creation. Such recordation does not give priority over all competing parties. Security interests in IP do not include the proceeds realized from the exercise of the IP. If IP subject to a security interest is infringed by a third party, the applicable law does not allow the secured creditor to take legal action to preserve the value of its security.
45. In Peru, security interests in IP are not covered by any national IP law provision but rather by other laws. The “*Codigo Civil*” provides for the creation and granting of security interests and the method for making them effective against third parties, whereas the priority to be given to security interests in IP with respect to other assignments, licenses or security interests and their enforcement are addressed by the “*Codigo Civil*” together with the “*Codigo Procedural Civil*”. Under the applicable law, security interests in IP can be recorded in an IP-specific register in order to become effective against third parties, with the exception of copyright, as stipulated by the “*Acto Modificatorio de Registro*”. Such recordation merely creates a presumption of priority. Security interests in IP include the proceeds realized from the exercise of the IP such as license fees, equitable remuneration and other compensation. If IP subject to a security interest is infringed by third parties, the applicable law allows the secured creditor to take legal action alone to preserve the value of its security, and to seek damages, an injunction or both. The debtor and secured creditor have the autonomy to determine in their agreement whether there is a right to do so.
46. In the Philippines, security interests in IP are addressed by national IP law provisions. The Republic Act 8293 & IP Code 1998 are the main pieces of legislation that provide for the creation and granting of security interests in IP, as well as the method for achieving third party effectiveness. However, the priority to be given to a security interest with respect to assignments, licenses or security interests and their enforcement are not addressed by the applicable law. Security interests in IP can be recorded in an IP-specific register, and copyright can be recorded in another register, in order to become effective against third parties. However, the effect of such recordation is not addressed by national law.
47. In Romania, security interests in IP and related issues are addressed by a mixture of national IP laws and other laws. The creation and granting of security interests in IP, the method for making them effective against third parties, the priority to be given to them and their enforcement are all issues provided by national IP law. Security interests in IP can be recorded in any register, with the exception of security interests in copyright which must be recorded in another register; nevertheless security interests in copyright are effective against third parties upon creation. Such recordation does not give priority over all parties but merely creates a presumption of priority or has no effect. If IP subject to a security interest is infringed by a third

party, the applicable law allows the secured creditor to take legal action, alone or with the owner, to preserve the value of its security, and can seek damages, obtain an injunction or both. The debtor and secured creditor have complete autonomy to determine in their agreement whether there is a right to do so.

48. In The Russian Federation, security interests in IP and related issues are addressed by a mixture of national IP laws and other laws. The Civil Code of the Russian Federation, Parts I and IV, in addition to the Law of the Russian Federation of May 29, 1992 No. 2872-1 “On the Pledge” (Article 24.1) provide for the creation and granting of security interests, the method for making them effective against third parties, the priority to be given to security interests in IP with respect to other assignments, licenses or security interests and their enforcement. Under the applicable law, security interests in IP can be recorded in an IP-specific register in order to become effective against third parties. Such recordation merely grants priority to the owner against all competing parties regardless of their knowledge. Security interests in IP include the proceeds realized from the exercise of the IP such as license fees, equitable remuneration and other compensation. If IP subject to a security interest is infringed by third parties, the applicable law allows the secured creditor to take legal action alone to preserve the value of its security, and to seek damages, an injunction or both. A debtor and secured creditor do not have the autonomy to determine the right to take such legal action, as it is prescribed by the national IP law provisions.
49. In Saint Vincent & the Grenadines, security interests in IP and related issues are not addressed in any national provisions on IP law or any other law.
50. In Senegal, security interests in IP and related issues are covered by laws other than national IP laws. Security interests in IP can be recorded in a register in order to become effective against a third party, as provided by the applicable law. If IP subject to a security interest is infringed, the secured creditor is allowed to take legal action together with the owner to preserve the value of its security.
51. In the Seychelles, security interests in IP and related issues are not addressed in any national provisions on IP law or any other law.
52. In Slovenia, under the Copyright and Related Rights Act, security rights are not expressly addressed, although it is possible to record a security right in the appropriate Register of Industrial Property Rights and Register of Applications. The Copyright and Related Rights Act does contain some general provisions on the transfer of copyright and neighbouring rights. The Property Code of Slovenia addresses the creation and granting of security interests in IP as well as the method for making them effective against third parties. The priority to be given to security interests in IP is addressed by the Law on Execution and the Interim Protection of Claims, while their enforcement is covered by various laws such as the Law on Execution and the Interim Protection of Claims, and the Property Code. Security interests in IP can be registered in an IP-specific register, as stipulated by the Industrial Property Act, with the exception of security interests in copyright, for which no register is allocated. Security interests in IP become effective against third parties upon their creation. However, recordation of a security interest in an IP-specific register does not give priority over all parties, but rather merely creates a presumption of priority. Security rights in IP include the proceeds realized from the exercise of the IP only if the parties so agree, otherwise all proceeds belong to the owner of IP right. If IP subject to a

security interest is infringed by a third party, the Property Code allows a secured creditor to take legal action alone to preserve the value of its security and claim for damages, request an injunction or both. For the duration of the security interest, the secured creditor has the same legal protection as the owner. Furthermore, the Law on Execution and the Interim Protection of Claims provides that the court may allow judicial execution on the basis of enforceable titles, executable court decisions or settlements, executable notarial records or other documents which constitute enforceable titles according to the law.

53. In Slovakia, security interests in IP and related issues are covered by a mixture of national IP law and other laws, with the exception of security interests in copyright. A financial loan cannot be secured by copyright because neither the economic rights nor moral rights of which copyright is comprised are transferable; only receivables raised from the exercise of copyright can be subject to a security interest. The Civil Code, together with national IP law provisions, addresses the creation or granting of security interests, the method for making them effective against third parties, the priority to be given to security interests in IP with respect to other assignments, licenses or security interests and their enforcement. Security interests in IP can be recorded in an IP-specific register in order to become effective against third parties. Such recordation gives priority over all competing parties regardless of their knowledge. In general, security rights in IP do not include the proceeds realized from the exercise of the IP, except for receivables raised from the exercise of copyright, which can be an object of a security interest. If IP subject to a security interest is infringed by a third party, the secured creditor is not allowed to take legal action to preserve its interest, although a secured creditor is allowed to protect its receivables by means of insurance. According to the Civil Code, the secured debtor is obliged to insure the security if so determined in the security agreement.
54. In South Africa, security interests in IP and related issues are covered by a mixture of national IP laws and other laws. Contract law and IP law provisions cover the issues of creation, granting and enforcement of security interests in IP, whereas the method for making them effective against third parties is addressed by IP law only. The priority to be given to a security interest in IP is governed by the Insolvency Act 1936. Security interests in IP must be recorded in an IP-specific register to become effective against third parties. However, such recordation does not give priority over all competing parties but rather has another or no effect at all. A security right in IP includes the proceeds realized from the exercise of the IP such as license fees, equitable remuneration, royalties or other compensation. If IP subject to a security interest is infringed by a third party, in certain circumstances the secured creditor is allowed to take legal action with the owner to preserve the value of its security in order to claim damages, obtain an injunction or both. However, no law addresses the issue whether a debtor and secured creditor have the autonomy to determine the right to do so in their security agreement.
55. In Spain, security interests in IP and related issues are covered by a mixture of national IP law and other laws. Issues such as the creation or granting of security interests in IP are governed by national IP law and other law, whereas the method for making a security interest effective against third parties, the priority to be given to it and its enforcement are all prescribed in the Civil Code. Security interests in IP can be recorded in an IP-specific register, with the exception of security interests in copyright for which no register has been allocated. Once recorded in a register, the

security interest in IP becomes effective against third parties. Such recordation does not give priority over other parties. A security right in IP includes all the proceeds realized from the exercise of the IP. If IP subject to a security interest is infringed by a third party, a secured creditor is not allowed to take legal action to preserve the value of its security. However, there is no law addressing the issue whether a debtor and secured creditor have the autonomy to determine the right to do so in their security agreement.

56. In Sweden, security interests in IP and related issues are covered by a mixture of national IP law and other laws. Nevertheless, most issues related to security interests in IP are provided for in the various IP laws, including the creation or granting of a security interest, the method for making it effective against third parties, the priority to be given to it and its enforcement. In addition, security interests in IP must be recorded in an IP-specific register to become effective against third parties, with the exceptions of industrial designs and copyright, for which no register has been allocated. Such recordation gives priority over all competing parties. A security right in IP does not include the proceeds realized from the exercise of the IP. If the IP subject to a security interest is infringed by a third party, the applicable law allows the secured creditor to take legal action alone to preserve the value of its security by claiming damages only. However, the law does not address whether a debtor and secured creditor are entitled to determine the right to do so in their security agreement.
57. In Switzerland, security interests in IP and related issues are covered by a mixture of national IP law and other laws, particularly with respect to security interests in copyright. The Civil Code addresses issues such as the creation of security interests in IP, with the exception of security interests in copyright, while the method for making such interests effective against third parties and the priority to be given to them, in general, are addressed in various IP law provisions. With regards to enforcement of a security interest in IP, the Swiss Debt Enforcement and Bankruptcy Laws are the main laws governing the issue. In addition, security interests in IP must be recorded in an IP-specific register in order to become effective against third parties, and such recordation gives priority over all parties regardless of their knowledge of the security interest. A security right in IP does not include the proceeds realized from the exercise of the IP. If IP subject to a security interest is infringed by a third party, the applicable law does not allow the secured creditor to take legal action to preserve the value of its security.
58. In Thailand, security interests in IP and related issues are not addressed in any national provisions on IP law or any other law.
59. In Trinidad & Tobago, security interests in IP and related issues are not addressed in any national provisions on IP law or any other law.
60. In Tunisia, security interests in IP and related issues are covered by law other than IP law. The “*Code des Obligations et Contrats*” covers issues ranging from the creation or granting of security interests in IP, the method for making them effective against third parties and their enforcement. The issue of priority to be accorded to a security interest is not addressed by any law. According to the copyright-related information provided, security interests in IP can be recorded in any register in order to gain third party effectiveness. Such recordation gives priority over all competing parties. The terms of the contract determine whether or not a security interest in IP

includes the proceeds realized from the exercise of the IP. If IP subject to a security interest is infringed by a third party, the applicable law allows a secured creditor to take legal action alone or together with the owner to preserve the value of its security, although only damages can be claimed. The debtor and secured creditor enjoy the autonomy to determine in the security agreement whether there is a right to do so.

61. In Uganda, security interests in IP and related issues are covered by national IP law. While the Chattels Transfer Act provides for the creation and granting of security interests in IP, the method for making them effective against third parties and their enforcement, IP law provides for the priority to be accorded to the security interest. Security interests in IP must be recorded in the relevant register in order to become effective against third parties. Such recordation gives priority over all competing parties, and the security interest will include all proceeds realized from the exercise of the IP. If IP subject to a security interest is infringed by a third party, the secured creditor is allowed to take legal action together with the owner to preserve the value of its security by either claiming damages, seeking an injunction or both. A debtor and secured creditor enjoy the autonomy to determine in their security agreement whether there is a right to do so.
62. In Ukraine, security interests in IP and related issues are not covered by IP law provisions, but are addressed by other laws. The Civil Code governs issues ranging from the creation or granting of security interests in IP and the method for making them effective against third parties. In addition, the Law on Pledges, in conjunction with the Civil Code, provides for the priority to be given to a security interest in IP with respect to other assignments, licenses or security interest, and the Law on Pledges addresses the issue of enforcement of the security interest in IP. Under the applicable law, security interests in IP can be recorded in a register, however security interests become effective against third parties upon creation. Recordation gives priority over all competing parties regardless of their knowledge. The security interest does include all the proceeds realized from the exercise of the IP. If IP subject to a security interest is infringed by a third party, the secured creditor can take legal action with the owner to preserve the value of its security and may claim for damages, seek an injunction or both. A debtor and secured creditor have the autonomy to determine in their security agreement whether there is a right to do so.
63. In the United Kingdom, security interests in IP and related issues are covered by a mixture of national IP law and other law provisions, particularly with respect to security interests in copyright. These laws cover issues ranging from the creation or granting of security interests in IP, the method for making them effective against third parties, the priority to be given to the interests and their enforcement. However, with respect to copyright, all such issues are covered by the Companies Act 2006. Under the applicable law, security interests in IP can be recorded in either an IP-specific or other register, with the exception of security interests in copyright, for which no register has been allocated. A security interest in IP becomes effective against third parties upon its creation, and is binding over all parties regardless of their knowledge of the security interest: in this context, security interests involving industrial designs under the Registered Designs Act 1949, are not specifically referenced, and while their effectiveness against third parties would depend on the circumstances and the nature of the transaction, on the basis of the law on patents and trademarks, such interests would be effective “over all parties”. Security interests in IP may include all proceeds realized from the exercise of the IP, depending on the terms of the contract.

If IP subject to a security interest is infringed by a third party, the secured creditor is allowed to take legal action independently only if he is the IP owner, and then may claim damages, seek an injunction or both. A debtor and secured creditor have the autonomy to determine in their security agreement whether there is a right to do so.

64. In the United States of America, security interests in IP and related issues are covered by a mixture of national IP law and other law provisions, especially with regard to copyright. The Uniform Commercial Code (UCC) governs issues such as the creation or granting of security interests and, together with the United States Code, it provides for the method for making security interests effective against third parties, the priority to be given to them and their enforcement. Under the applicable law, security interests in IP can be recorded in an IP-specific or other register in order to become effective against third parties. Such recordation gives priority over all parties regardless of knowledge of the security interest. A security interest in IP does include the proceeds realized from the exercise of the IP. If IP subject to a security interest is infringed by a third party, a secured creditor can take legal action independently if registered as the legal/beneficial IP owner. A debtor and secured creditor have the autonomy to determine in the security agreement whether there is a right to bring such legal action.
65. In Uzbekistan, security interests in IP and related issues are not covered by national IP law or any other law provisions. (Note, the response for this country did not address all questions.)
66. In Zambia, security interests in IP and related issues are not addressed in any national provisions of IP law or any other law.

[End of Annex and of document]