

## **Advisory Committee on Enforcement**

### **Sixteenth Session**

**Geneva, January 31 to February 2, 2024**

### **NATIONAL EXPERIENCES WITH PROSECUTING IP CRIME**

*Contributions prepared by the Dominican Republic and the Republic of Korea*

1. At the fifteenth session of the Advisory Committee on Enforcement (ACE), held from August 31 to September 2, 2022, the Committee agreed to consider, at its sixteenth session, among other topics, the “exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanisms to resolve IP disputes in a balanced, holistic and effective manner”. Within this framework, this document introduces the contributions of two Member States on their experiences with prosecuting intellectual property (IP) crime.
2. The contribution by the Dominican Republic describes the work of the Intellectual Property Unit of the Attorney General’s Office. It explains the reasons that led to the creation of the Unit in 2020, outlines how the Unit operates with a particular focus on staffing and staff training and provides some statistics on the prosecution of IP crime in the Dominican Republic. The contribution concludes by briefly reviewing the Unit’s new competences in the area of illicit trade.
3. The contribution by the Republic of Korea describes the prosecution of cases of unauthorized disclosure of protected and secret information about technology (technology leaks). After reviewing the legal framework, it explains the steps that the Supreme Prosecutors’ Office has taken to improve the prosecution of technology leak crimes, namely by strengthening the investigation command system, increasing the number of dedicated investigators and prosecutors, revising the prosecution and sentencing standards, suggesting jurisdictional concentration and commissioning research on objective methods for calculating damages.

4. The contributions are in the following order:

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## PROSECUTING INTELLECTUAL PROPERTY CRIME IN THE DOMINICAN REPUBLIC

*Contribution prepared by Ms. Army Ferreira Reyes, Deputy Attorney General and Coordinator, Intellectual Property and Elimination of Illicit Trade Unit, Attorney General's Office, Santo Domingo, Dominican Republic\**

### ABSTRACT

The relevance of the central role of the State in the protection of intellectual property (IP) rights and all that this implies, including the prosecution of offenses violating these rights, was the impetus to establish a dynamic system of service to the victims of IP crimes. To this end, the Intellectual Property Unit of the Attorney General's Office was created, which has established a Liaison Prosecutor, specialized in the investigation of IP crimes, in each judicial district.

Attaching greater importance to the Liaison Prosecutor promoted communication and collaboration with the other institutions of the Dominican Republic that are part of the IP ecosystem. In practice, this means a greater awareness and value of each institution's roles in the area of IP and how best to functionally merge these roles towards the common goal of establishing a balanced IP system, ranging from the recognition of rights, the promotion of the creative and innovation industries and the defense of the rights against the occurrence of crime that affects them.

### I. INTRODUCTION

1. The Intellectual Property Unit (IP Unit) of the Attorney General's Office was initially established in order to reinforce the primary role of the State in prosecuting crimes that have an impact on trade, public health and public safety, and to bolster legal certainty in the country. By virtue of the provisions of international instruments that have been incorporated into the domestic law of the Dominican Republic, the State has an obligation to prosecute intellectual property (IP) crime.

2. Since its inception in late 2020, the IP Unit has focused on coordinating the work of different government bodies and building a system to provide comprehensive assistance to victims of copyright and industrial property crimes. Specialized Liaison Prosecutors have been appointed in each judicial district to deal with cases involving infringements of IP rights (IPRs) at the local level. In that way, the IP Unit has laid the groundwork for a balanced IP system that, in addition to recognizing rights, also does more to protect them effectively.

3. Illicit trading in regulated products is a crime under Act No. 17-19 on the Elimination of Illicit trade, Smuggling and Counterfeiting. In accordance with that Act, the public-private Interinstitutional Council for the Prevention of Illicit Trade was established. It is chaired by the Office of the Attorney General, and the Minister of Industry, Trade and MSMEs acts as its Secretary General. Members of the Council include the Minister of Health and Social Security; the Director General of the Office of Domestic Taxation; the Director General of Customs; the Director of the National Consumer Rights Protection Institute (PROCONSUMIDOR); the Director of the National Quality Institute (INDOCAL); and representatives of industry

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\* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

associations for medicines, hydrocarbon, alcohol and tobacco products, which are regulated by the Act.

4. In June 2023, the Attorney General's Office decided that the IP Unit should also be represented on the Council, given the connection between illicit trade and IPR infringements. The Unit hence became the Intellectual Property and Elimination of Illicit Trade Unit and now deals with cases involving illicit trade at the national level.

## **II. ESTABLISHMENT OF THE INTELLECTUAL PROPERTY UNIT IN THE ATTORNEY GENERAL'S OFFICE (IP UNIT)**

### **A. BACKGROUND**

5. On August 19, 2020, Deputy Attorney General Army Ferreira Reyes submitted a proposal to establish the IP Unit. She argued that the Attorney General's Office, which is responsible for drafting and implementing government policy on crime, should also use its expertise to design policy on IP protection and related criminal activity and to implement good practices arising from international guidelines that have been applied to the country's domestic law.

6. She also argued that the lack of such a specialized unit in the Attorney General's Office undermined the constitutional mandate on IP protection (a fundamental right in the Dominican Republic) and negated the importance of the obligations assumed by the Dominican Republic when it signed the related international conventions<sup>1</sup> and free trade agreements with other countries<sup>2</sup>. In the proposal, it was further pointed out that the existence of such a unit would raise the profile of IP in terms of criminal prosecution since, until 2020, the lack of such institutional structure left prosecutors free to prioritize or not the provision of the service. This, coupled with the misconception on the part of prosecutors that this type of crime is pursued upon request by the victim only, resulted in a lax approach to IP crimes and in an undue lack of attention to the victim. Another risk identified due to the absence of such an institutional framework was the impossibility of establishing specific responsibilities in dealing with these cases, such as border measures and the retention of merchandise at the docks of the General Customs Directorate (DGA) for violating IP regulations, which, due to the lack of legal action by the victims and right holders, turned the merchandise into a burden for the State.

7. It should also be noted that, in line with Financial Action Task Force of Latin America (GAFILAT) norms<sup>3</sup>, IP-related crimes are deemed to be predicate offenses to money laundering under the law in the Dominican Republic.

8. Lastly, in the proposal it was underlined that there was a need to set a historical precedent in the Dominican Republic by enshrining the importance of public criminal prosecution as a guarantee of legal certainty, which, in turn, is conducive to foreign investment, innovation and competitiveness. That is an essential component of the welfare state and of economic criminal law, which covers IP protection, a subject that had long been neglected by the Attorney General's Office.

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<sup>1</sup> The Dominican Republic is a party to the main international agreements on IP, including the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, various protocols and agreements administered by the World Intellectual Property Organization (WIPO) and the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

<sup>2</sup> For example, the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) with the United States of America, implemented by Act No. 424-06.

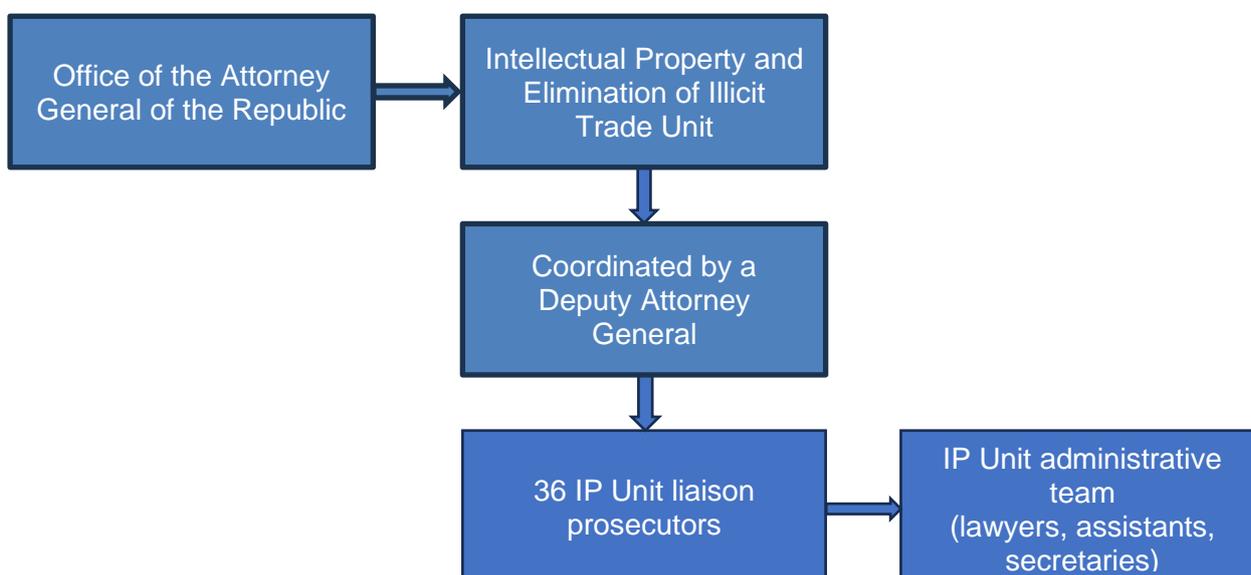
<sup>3</sup> <https://www.gafilat.org/index.php/es/>.

## B. ESTABLISHMENT OF THE IP UNIT

9. The Supreme Council of the Attorney General's Office accepted the proposal and so the IP Unit was established under the direction of the Deputy Attorney General<sup>4</sup>.

10. The IP Unit's mission is to use its expertise to draft policy on the protection of IPRs and on related criminal activity in the Dominican Republic. Its vision is to consolidate the criteria for dealing with and prosecuting cases of infringement of the rights IP owners. It is guided by the values of respect for the Constitution, the law and international treaties, objectivity in prosecution, the responsible exercise of its powers and due process.

11. The IP Unit has a network of 36 Liaison Prosecutors around the country, and four members at each hierarchical level within the organization, thereby ensuring that expert assistance is available to prosecute criminal cases involving IP in the lower courts, the Court of Appeals and the Supreme Court. A total of 40 prosecutors are thus equipped with the specialist technical expertise needed to ensure that such cases are handled properly.



12. The 36 Liaison Prosecutors are career prosecutors. Admission to the institution is by a public competitive examination, initially for the position of prosecutor, which candidates may sit upon passing a specialized course in criminal law and criminal procedure at the National School of the Attorney General's Office, which has university status<sup>5</sup>. At the request of the Deputy Attorney General's office, the Chief Prosecutor of each judicial district then carries out a process to select Liaison Prosecutors. Once selected, the Liaison Prosecutors receive additional training in the enforcement of IP rights, as indicated in section V below, in order to equip them with the technical knowledge necessary for the performance of their duties.

## III. STATISTICAL DATA COLLECTED PRIOR TO THE ESTABLISHMENT OF THE IP UNIT

13. In 2020, the Attorney General's Office conducted a survey of IP criminal cases handled by each prosecutor's office at the national level over a two-year period between 2018 and 2020.

<sup>4</sup> Resolution 5 of the eighteenth session, held on September 7, 2020.

<sup>5</sup> The career path of public prosecutors in the Dominican Republic is regulated by Organic Act No. 133-11 on the Office of the Prosecutor General and is recognized under the Constitution, which ensures their tenure through a system of acquired rights.

The aim was to determine the number of such cases and their status at the time the IP Unit was established.

14. The exercise revealed a total of 268 cases across the country.

#### IV. STATISTICS SINCE THE ESTABLISHMENT OF THE IP UNIT

15. In 2021, after the IP Unit had been established and the position of Liaison Prosecutor had been created in each prosecutor's office, 468 cases were reportedly launched in one year alone. Thus, some 85 per cent more cases were handled in half the time covered by the previous report (between 2018 and 2020).

16. The 2021 statistics for cases handled by the Liaison Prosecutors in each province are as follows:

Provinces	Cases launched	Cases under investigation	Cases closed	Charges	Interim measures
Azua	8	7	1	0	0
Barahona	0	0	0	0	0
Baní	5	5	0	0	0
Constanza	0	0	0	0	0
National District	98	92	6	0	0
Dajabón	0	0	0	0	0
Españat	2	0	2	0	0
El Seibo	2	0	2	0	0
Elias Piña	0	0	0	0	0
Hato Mayor	0	0	0	0	0
Hermanas Mirabal/Salcedo	0	0	0	0	0
Independencia	0	0	0	0	0
La Vega	3	3	0	0	0
Las Matas de Farfán	0	0	0	0	0
La Altagracia	4	0	0	0	4
La Romana	0	0	0	0	0
Monteplata	0	0	0	0	0
María Trinidad Sánchez	0	0	0	0	0
Monseñor Nouel/Bonao	2	0	0	0	2
Montecristi	2	0	0	0	2
Neyba	0	0	0	0	0
Pedernales	0	0	0	0	0
Puerto Plata	6	6	0	0	0
San Pedro de Macorís	9	9	0	0	0
San Francisco de Macorís	9	9	0	0	0
San Cristóbal	0	0	0	0	0
San José de Ocoa	0	0	0	0	0

Provinces	Cases launched	Cases under investigation	Cases closed	Charges	Interim measures
San Juan de la Maguana	0	0	0	0	0
Sánchez Ramírez	1	0	0	0	1
Samaná	10	7	0	0	0
Santo Domingo Este	106	72	50	2	4
Santo Domingo Oeste	190	157	27	0	0
Santiago	6	0	0	0	0
Santiago Rodríguez	1	0	0	0	1
Valverde	4	0	0	0	4
Villa Altagracia	0	0	0	0	0
<b>Total</b>	<b>468</b>	<b>367</b>	<b>88</b>	<b>2</b>	<b>18</b>

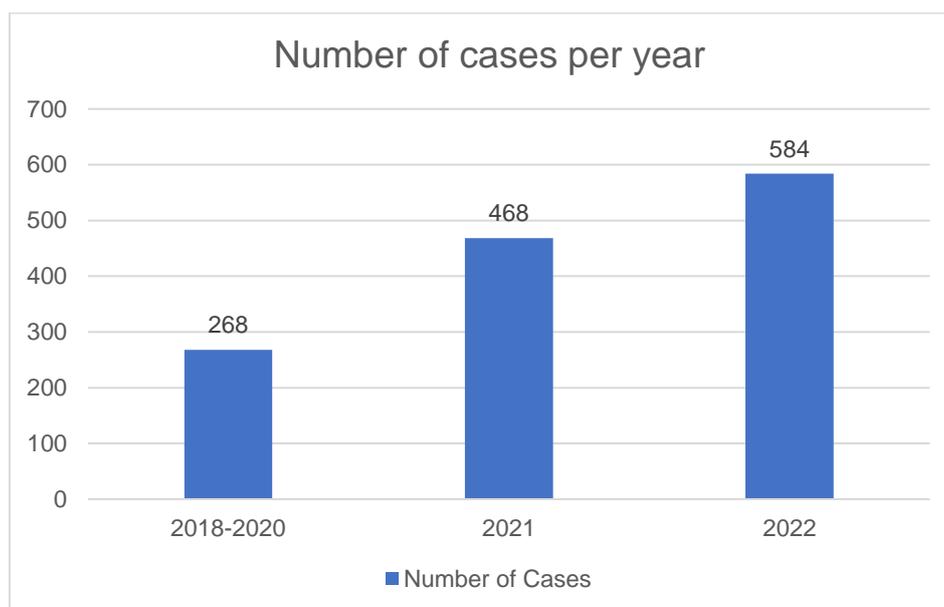
17. In terms of investigations, the number of complaints received per judicial district rose, as did the number of investigative actions conducted, such as searches and raids, the use of coercive measures, the closure of illegal premises and broadcasters for the unauthorized transmission of signals and the seizure of infringing equipment and goods and their removal from commercial distribution. In addition to responding to IP right holders' expectations, this has had a direct impact on consumer rights in terms of the obligation of the State to guarantee access to high-quality goods and thereby to protect the public from counterfeit products that can represent a health hazard.

18. In 2022, the IP Unit handled 584 cases, 118 cases in relation to copyright offenses under Act No. 65-00 and 466 cases in relation to industrial property offenses under Act No. 20-00. In some of them, investigations were conducted for the first time ever in districts where no complaints had ever been filed before for IP infringements, owing to the commonly held misconception that such cases could not be prosecuted ex officio.

	Province	Act No. 65-00	Act No. 20-00	Total
1	Azua	1	0	1
2	Barahona	0	0	0
3	Bahoruco	3	0	3
4	Bonao	4	0	4
5	Constanza	2	0	2
6	National District	27	126	153
7	Dajabón	0	2	2
8	Españat	0	0	0
9	El Seibo	2	0	2
10	Elías Piña	2	0	2
11	Hato Mayor	2	0	2
12	Hermanas Mirabal	0	0	0
13	Independencia	0	0	0
14	La Altagracia	4	0	4
15	Las Matas de Farfán	0	0	0
16	La Vega	0	0	0
17	La Romana	1	0	1

18	María Trinidad Sánchez	4	0	4
19	Montecristi	3	0	3
20	Monte Plata	1	0	1
21	Neiba	0	0	0
22	Peravia	0	0	0
23	Pedernales	0	0	0
24	Puerto Plata	13	0	13
25	San Cristóbal	0	0	0
26	San Francisco de Macorís	3	13	16
27	San Juan de la Maguana	7	0	7
28	Samaná	3	0	3
29	Santiago	13	16	29
30	San Pedro de Macorís	7	0	7
31	Sánchez Ramírez	3	0	3
32	Santo Domingo Este	9	138	147
33	Santo Domingo Oeste	4	171	175
<b>Total</b>		<b>118</b>	<b>466</b>	<b>584</b>

19. In 2022, measures were put in place in judicial districts along the southern border, demonstrating a growing awareness of the role played by prosecutors in controlling illicit trade, and enhancing trade security in the border area and coordination with the Directorate General of Customs in applying those measures and monitoring the entry of counterfeit products into the Dominican Republic.



## V. TRAINING FOR PROSECUTORS AND INTERNATIONAL TECHNICAL ASSISTANCE

20. The main objective of the IP Unit's training programs for Liaison Prosecutors is to hone their awareness as specialists of the rights that they are supposed to protect, thereby consolidating a robust and comprehensive system of aid for victims of IP crime and redressing the longstanding state of neglect and lack of understanding in this area and the failure of the criminal justice system to address it.

21. Highlights of international and national training provided to Liaison Prosecutors include programs sponsored by the United States Department of Justice; the National Intellectual Property Rights Coordination Center (IPR Center) of the United States Department of Homeland Security; the United States Federal Bureau of Investigation (FBI); the United States Patent and Trademark Office (USPTO); and the International Criminal Police Organization (INTERPOL).

22. The IP Unit has also designed a Master's program, focused on the enforcement of IPRs, under the auspices of the Ministry of Higher Education, Science and Technology and in collaboration with the Postgraduate Department of the Autonomous University of Santo Domingo (UASD).

## VI. INTELLECTUAL PROPERTY AND ILLICIT TRADE: STATISTICS SINCE THE ESTABLISHMENT OF THE IP UNIT

23. Act No. 17-19 on the Elimination of Illicit Trade, Smuggling and Counterfeiting provides for administrative and criminal penalties for the smuggling and counterfeiting of regulated products, in particular medicines, hydrocarbons, as well as alcohol and tobacco products.

24. With the national network of prosecutors established and in line with previous practice concerning IP, the IP Unit took a statistical sample covering the period from June 29 to August 15, 2023, which produced the following results:

- 15 defendants for whom interim measures were ordered and whose cases were declared to be especially complex;
- Products seized:
  - 899,881 cigarettes;
  - 10,969 alcoholic beverages;
  - 15,189 falsified medicines;
  - 588 sexual stimulants;
  - 258 personal hygiene products;
  - 5,000 gallons of fuel; and
  - 5,480 liters of bulk alcohol<sup>6</sup>.

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<sup>6</sup> It is important to clarify, however, that the data referring to the gallons of fuel and liters of bulk alcohol seized come from investigations to different criminal types in addition to trademark counterfeiting, including: violation to articles 16, 30 and 32 of Law 17-19, on Eradication of Illicit Contraband and Counterfeit Trade, which typifies and configures the crime of illicit trade in the products regulated by this law; violation to article 7 of Law 112-00, on Hydrocarbons; violation to article 3 of Law 407-72, which regulates the sale of gasoline, diesel, oil, lubricants and other similar products; violation to articles 174, 175 and 176 of Law 64-00, on Environment and Natural Resources; and violation to articles 2, numeral 12, 6, 7 of Law 155-17, on Money Laundering.

## VII. PROGRESS MADE

25. One of the IP Unit's achievements has been the finalization of operating procedures for dealing with cases that involve illicit trade. They were designed in line with the Constitution, the Code of Criminal Procedure, the Organic Act on the Office of the Prosecutor General, Act No. 17-19, the General Customs Act, the Tax Code, the General Health Act, the Drugs Act, the General Alcohol Act, the General Protection of Consumer Rights Act, the Act establishing the Ministry of Industry, Trade and MSMEs, the Act establishing INDOCAL, and directives issued by the Special Fuel Oversight and Goods Trade Unit and the Directorate General of Medicines, Food and Health Products.

26. The operating procedures provide a practical guide for the detection of criminal activity, handling of evidence, chain of custody and processing of cases involving the prosecution of such crimes. The IP Unit has also been working with government bodies and the private sector to draft operating procedures for each regulated product, with a view to providing an individual approach tailored to each industry. Sets of operating procedures are already in place for alcohol, tobacco products, medicines and hydrocarbon.

27. They are divided into two phases: an administrative phase, which is conducted by the institutions vested with administrative and sanctioning powers. It is followed by a judicial phase, which comes under the purview of the Attorney General's Office. The operating procedures set forth how each body performs its tasks under the regulatory Act, how seized goods are handled, how the chain of custody is maintained and how State actors coordinate to destroy goods, all with a view to ensuring transparency in the handling of evidence, right up until it is seized or destroyed.

28. Another accomplishment of the IP Unit has been the appointment of a prosecutor to each judicial district, which is helping to ensure a rapid and efficient response by the State to this kind of crime.

29. Among the plans of the IP Unit is to continue working towards improving the attention of victims of IP crimes. Specifically, these actions include starting the project of the National Anti-Piracy Center in conjunction with the National Copyright Office (ONDA), continue with the specialization of the Liaison Prosecutors, finalizing the design the Master's program in IP enforcement and continue demonstrating with actions that IP is a priority for the Dominican Republic.

[End of contribution]

## PROSECUTING TRADE SECRET VIOLATIONS IN THE REPUBLIC OF KOREA

*Contribution prepared by Ms. Sunhwa Lee, Prosecutor, Cyber Investigation Division, Forensic Science Investigation Department, Supreme Prosecutors' Office, Seoul, Republic of Korea\**

### ABSTRACT

The unauthorized disclosure of protected, secret information about technology (technology leak) is a crime that threatens national security and corporate survival and must be prevented through the applicability of deterrent penalties, including harsh punishment and economic deprivation. Recognizing that the protection of cutting-edge industrial technology and trade secrets is essential, the Supreme Prosecutors' Office (SPO) created the Technology Leak Crime Investigation Support Center in September 2022.

The SPO strives to improve the system to ensure strict investigation and punishment commensurate with the seriousness of the crime of technology leaks through a variety of efforts, including (1) increasing the number of prosecutors and investigators dedicated to technology leak crime; (2) strengthening investigative support and expertise; (3) revising the standards for processing prosecution cases; (4) revising the sentencing standards; and (5) solidifying cooperative relationships with related organizations.

The SPO will continue to take the lead in protecting technology, which is a key national asset and future survival strategy.

### I. CHARACTERISTICS AND RECENT TRENDS OF TECHNOLOGY LEAK CRIME

1. In cases related to the unauthorized disclosure of protected, secret information about technology (technology leak), it is not easy to secure evidence due to the meticulousness and secrecy of the leak method. If the suspect leaves the company or flees abroad, it is difficult to secure the criminal's whereabouts and evidence. Also, the market transaction prices are difficult to be calculated; accordingly, it is difficult to calculate damages.

2. Looking at the number of cases of industrial technology being leaked overseas, a total of 117 cases were detected from 2017 to 2022, with an estimated damage of KRW 26 trillion (approximately USD 19.9 billion), of which 36 cases detected were involved in the leaks of national core technology. By company size, small and medium-sized enterprises (SMEs) are more often victims than large companies, mostly in the display and semiconductor industries.

3. Meanwhile, it is difficult to reveal cases in which a large company steals the technology of a small enterprise. Notably, where the two entities have a business relationship, the small business might be reluctant to file a complaint out of fear of losing the business it conducts with the large company. Even if such a theft is being prosecuted, it takes a long time to confirm the damage and provide relief. This poses a serious threat to the growth and survival of small businesses whose technology has been misappropriated.

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## II. LEGAL FRAMEWORK

### A. HISTORY OF ENACTMENT OF RELEVANT LAWS

4. To prepare for the era of unlimited competition around the mid-1990s, the Republic of Korea considered the misappropriation of trade secrets as an act of unfair competition. On December 31, 1991, it introduced a legal framework for the protection of trade secrets with the promulgation of the Amendment of the Unfair Competition Prevention and Trade Secret Protection Act (Unfair Competition Prevention Act).

5. The reason for protecting trade secrets that do not have public disclosure methods such as patent registration is to encourage more active investment in research and development for the technological development by protecting trade secrets. If trade secrets are not protected through effective legal frameworks and deterrent penalties, there would be more reliance on industrial espionage to imitate other competitors' technologies rather than making efforts to develop technology and improve products.

6. After establishing the Unfair Competition Prevention Act, the Republic of Korea has introduced various other laws to criminally punish technology leaks and infringements according to the need to prepare countermeasures against the technology leak crimes.

### B. RELEVANT LAWS

7. The Act on Prevention of Leak and Protection of Industrial Technology (Industrial Technology Protection Act) applies to the leaking of industrial technology designated, notified, certified, etc. in accordance with relevant laws, whereas the Unfair Competition Prevention Act applies to leaks of trade secrets not designated as industrial technology.

8. In the case of technology leaks, the above two laws are usually applied. In addition, depending on the type of technology, such as national high-tech strategic technology and defense technology, the Act on Special Measures to Strengthen the Competitiveness of, and to Protect, National High-tech Strategic Industries or the Defense Technology Security Act will apply.

9. According to precedent case-law, even though the infringed information does not fall under 'trade secret' under the Unfair Competition Prevention Act, it may constitute crime of breach of trust under the Criminal Code if certain requirements are satisfied, e.g., the information concerns a "major business asset" of the victim, and the infringer is a "person in charge of handling administrative affairs of the victim".

*Overview of Criminal Sanctions Under the Industrial Technology Protection Act*

	<b>Requirements</b>	<b>Provision</b>	<b>Statutory Sentence</b>
<b>Leaks overseas</b>	<ul style="list-style-type: none"> <li>National core technology</li> <li>Intent to use or cause to be used in a foreign country</li> <li>Acquisition, use, disclosure, etc. through theft, deception, threats or other illegal methods</li> </ul>	Article 36(1)	at least 3 and up to 30 years and up to KRW 1.5 billion <sup>7</sup>
	<ul style="list-style-type: none"> <li>Other industrial technology</li> <li>Intent to use or cause to be used in a foreign country</li> <li>Acquisition, use, disclosure, etc. through theft, deception, threats or other illegal methods</li> </ul>	Article 36(2)	up to 15 years or up to KRW 1.5 billion
<b>Domestic leaks</b>	<ul style="list-style-type: none"> <li>Other industrial technology</li> <li>Acquisition, use, disclosure, etc. through theft, deception, threats or other illegal methods</li> </ul>	Article 36(3)	up to 10 years or up to KRW 1 billion <sup>8</sup>

*Overview of Criminal Sanctions Under the Unfair Competition Prevention Act*

	<b>Requirements</b>	<b>Provision</b>	<b>Statutory Sentence</b>
<b>Leaks overseas</b>	<ul style="list-style-type: none"> <li>Trade secret</li> <li>Knowledge that the trade secret will be used in a foreign country</li> <li>Acquisition, use, leakage without permission, etc.</li> </ul>	Article 18(1)	up to 15 years or up to KRW 1.5 billion
<b>Domestic leaks</b>	<ul style="list-style-type: none"> <li>Trade secret</li> <li>Acquisition, use, leakage without permission, etc.</li> </ul>	Article 18(2)	up to 10 years or up to KRW 500 million

<sup>7</sup> Approximately USD 1.15 million.

<sup>8</sup> Approximately USD 767,000.

C. RELATIONSHIP BETWEEN THE SPECIALIZED LAWS AND OTHER LAWS

a) Relationship with Patent Law

10. Patent law subjects to criminal punishment someone who has used the disclosed technology without permission and has infringed the patent right. The Unfair Competition Prevention Act and the Industrial Technology Protection Act, however, protect “trade secrets” or “industrial technologies” that are kept secret from being fully disclosed.

	Trade secret protection system	Patent system
<b>Purpose</b>	To keep sound trading order by preventing unauthorized disclose of third-party trade secret	To promote technological development and contribute to industrial development by protecting and encouraging inventions and promoting their use
<b>Subject of protection</b>	Technical and management information that is non-public, economically useful and confidential	Technical inventions with novelty, inventive step and industrial applicability
<b>Registration</b>	No registration process required	Exclusive rights through registration
<b>Disclosure</b>	Non-disclosure (loss of protection status the moment it is made public)	Subject to disclosure
<b>Protection term</b>	Infinite as long as it is kept secret	20 years from the application date after the establishment of registration date

b) Relationship with Civil Law

11. If a person with a duty to maintain confidentiality violates that duty, he or she may be liable for non-performance of an obligation (Article 390 of the Civil Act), and the victim may claim damages under tort law (Article 750 of the Civil Act). In addition, each law, including the Unfair Competition Prevention Act, has separate provisions regarding civil remedies.

**III. IMPROVEMENT OF THE TECHNOLOGY LEAK CRIME INVESTIGATION COMMAND SYSTEM**

A. EXISTING SYSTEM

12. The Supreme Prosecutors’ Office (SPO) has strengthened the investigation of technology leak crimes and confiscated criminal proceeds thanks to the expertise of professionals such as patent attorney-turned-prosecutors and patent advisors in specialized investigation departments.

13. Nevertheless, due to the meticulousness and secret nature of technology leak crimes, there are many hidden crimes, and there are difficulties in securing evidence and calculating the amount of damages. It has been pointed out that the actual sentences handed down in court are too low compared to the seriousness of the crimes.

## B. SYSTEM IMPROVEMENTS

### a) Strengthening the Investigation Command System

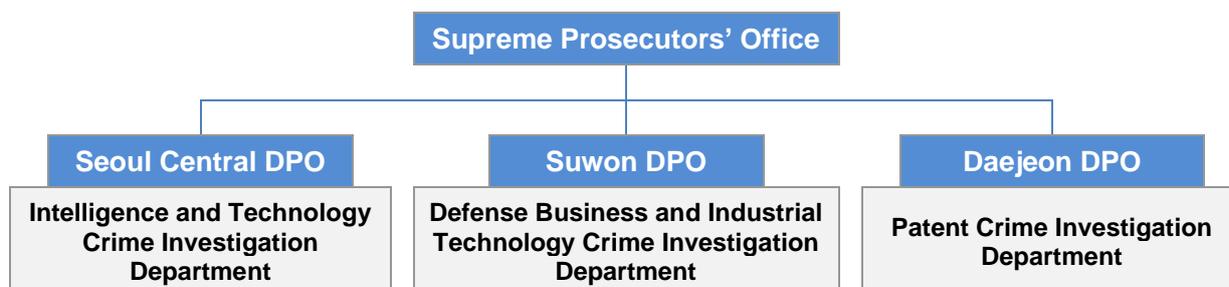
14. In September 2022, the SPO established the Technology Leak Crime Investigation Support Center under the Forensic Science Investigation Department, which allows for rapid technical analyses and expert advice. The Center provides for effective investigation support in relation to the technology leak crimes.

15. In addition, a meeting with the chief prosecutors in charge of technology leak crimes was held to discuss the direction and focus of these crimes, and the establishment of an investigation command system. Under such system, the SPO, in relation to important cases, would direct a District Prosecutor's Office whether to prosecute and what sentence to request, thereby increasing uniformity in the prosecution of technology leak crimes.

### b) Increasing Appointments or Dedicated Prosecutors and Investigators

16. To increase its expertise in technology leak cases, the prosecution continues to strengthen its investigative capabilities, including by deploying professionals such as qualified patent attorneys, experienced prosecutors with science and engineering majors and patent investigation advisors of the Korean Intellectual Property Office (KIPO) dispatched to dedicated investigation departments.

17. In April 2023, in order to expand the base of technology leak investigations and strengthen overall capabilities, the SPO appointed additional prosecutors and investigators dedicated to technology leak crimes and established a cooperative system with related District Prosecutors' Offices (DPOs) in each region. A total of 46 dedicated prosecutors and 60 dedicated investigators work on technology leak crimes in 28 DPOs, three of which have dedicated departments.



### c) Improved Sentencing

18. In April 2023, the SPO revised the standards for prosecutors on handling of cases to proactively respond to the problem of light sentences and ensure consistent and strict case disposition nationwide.

19. The SPO also submitted an opinion on the necessity to strengthen the standards for sentencing in technology leak crimes to the Sentencing Committee of the Supreme Court, and in June 2023, the Sentencing Committee selected this group of intellectual property crimes as a group of crimes subject to the revision of the sentencing standards. The 9th Sentencing Committee is currently revising the sentencing standards.

d) Cooperation with Related Organizations

20. The SPO maintains close consultation networks with government agencies, such as the National Intelligence Service, the Ministry of Trade, Industry and Energy and KIPO, and private organizations, such as the Federation of Korean Industries.

21. The prosecution frequently holds high-level and working-level meetings with the related organizations, including a joint seminar entitled *Review of Sentencing Issues in Technology Leak and Infringement Cases* in November 2022. The SPO also regularly receives information on damage from technology leaks from individual companies.

22. In addition, the SPO has strengthened international cooperation by establishing a cooperation system through regular exchanges with foreign investigative agencies, such as the FBI.

23. On August 18, 2023, the leaders of the Republic of Korea, the United States and Japan agreed to strengthen cooperation on key emerging technologies between the three countries throughout the entire life cycle of such technologies, including development, standardization, and technology protection. On August 30, 2023, the President of the Republic of Korea called for a firm response to large corporations stealing technology from SMEs. Accordingly, the SPO has created a network to discuss the current situation and system improvement related to technology protection for SMEs and startups.

e) Promotion of System Improvement

24. To improve expertise in technology leak cases, plans to concentrate jurisdiction in criminal cases are being discussed. Such jurisdictional concentration would extend to five areas, including patents, utility models, trademarks, designs and plant varieties.

25. In the case of technology leak cases, the SPO is also outsourcing research on an objective method to calculate amount of damages in order to correct that unreasonable circumstances are taken into consideration in favor of the defendant due to the difficulties in objectively calculating damages even though the damage is serious.

#### **IV. MAJOR INVESTIGATION CASES**

##### **A. SEMICONDUCTOR REPLICATOR FACTORY CASE**

26. A top expert who was a former executive in the semiconductor field at Company A established overseas semiconductor manufacturing companies (Subcontracting Companies B and C) with a large amount of investment from foreign countries, and took out about 200 key employees from leading domestic semiconductor companies, including Company A. In this case, the CEO of Company B was arrested and indicted without detention, along with six accomplices.

##### **B. DISPLAY EDGE PANEL CASE**

27. Company A was found not guilty in the first trial on the grounds that it had jointly developed equipment with Company B, but the court in the appellate trial ruled that even if jointly developed trade secrets were provided to a third party without permission, this was

considered a trade secret leak, and all defendants were judged guilty. They were sentenced to three years in prison, and the sentence has become final.

## **V. CONCLUSION**

28. In order to strictly respond to technology leak crimes, the prosecution is striving to train experts and strengthen the professional investigation support system to improve the indictment rate, shorten the processing period and reduce the acquittal rate.

29. Furthermore, the SPO is working to improve laws and systems by actively participating in law revisions that support responses to technology leak crimes, raising sentencing standards and leading discussions on jurisdictional concentration for technology leak crimes.

30. The prosecution will focus not only on technology leaks abroad, but also domestic technology leaks between domestic companies and especially the theft of technology from SMEs.

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