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REPORT ON CRIMINAL ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CHILE (2024)

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ABSTRACT

This contribution summarizes the 2024 report, *Criminal Enforcement of Intellectual Property Rights in Chile*, prepared by the National Industrial Property Institute (INAPI) on the basis of data provided by the Office of the Public Prosecutor. The report analyzes criminal cases related to intellectual property rights (IPRs) filed between 2017 and 2022, distinguishing between crimes against industrial property and crimes against copyright. It reveals a sustained decrease in the number of recorded cases, the bulk of them concerning trademarks. The report highlights the concentration of enforcement activity in regions with major ports, airports and border crossings, and structural characteristics of the criminal justice system, including low rates of formal charges and convictions and frequent use of alternative procedures. It provides an evidence-based assessment of criminal enforcement trends and serves as a tool to inform public policy discussions, institutional coordination and capacity-building for IPR enforcement.

* 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.

I. INTRODUCTION AND CONTEXT

1. *Criminal Enforcement of Intellectual Property Rights in Chile*¹ was published in June 2024 and constitutes a milestone in terms of transparency, public information management and institutional analysis in Chile. It was prepared by the National Industrial Property Institute (INAPI) with data provided by the Office of the Public Prosecutor and covers the period from 2017 to 2022. The report's importance is not limited to the figures it contains, but lies in its function as a tool for the criminal prosecution system in addressing crimes affecting intangible assets. The analysis distinguishes between crimes against industrial property, mainly trademarks and patents, and crimes against copyright, such as artistic works and software, allowing for a differentiated understanding of the situation.

II. ORIGIN OF THE REPORT FROM A PUBLIC POLICY PERSPECTIVE

2. The genesis of this report must be viewed from a long-term public policy perspective. It is not an isolated effort, but rather the realization of strategic planning designed to strengthen the national intellectual property (IP) system.

A. THE 2016 NATIONAL INDUSTRIAL PROPERTY STRATEGY

3. The report's conceptual origin lies in the first National Industrial Property Strategy, launched by INAPI in 2016. The strategy concluded with 60 recommendations for strengthening the country's innovation and rights protection ecosystem, of which four relate to the enforcement of IP rights (IPRs)².

4. In particular, recommendation No. 6 identifies a critical gap in public management of the IP enforcement system: the absence of systematic and easily accessible statistical information on the effectiveness of the system. It highlights the need for regular and reliable quantitative data on the actions taken against IP crime by the competent State agencies.

5. The recommendation has two main objectives: first, to measure the State's efforts to protect IPRs; and second, to generate empirical evidence to assess the country's compliance with its international enforcement obligations.

B. DEVELOPMENT OF THE REPORT

6. The development of the report involved several intermediate stages. In 2019, INAPI conducted an initial data collection exercise, together with the Office of the Public Prosecutor, for the period 2016–2018³. However, owing to the COVID-19 pandemic, that analysis was not published.

¹ https://www.inapi.cl/docs/default-source/2023/centro-de-documentacion/estudios/observancia-penal-de-los-derechos-de-propiedad-intelectual-en-chile/informe_observancia_2024_v5.pdf?sfvrsn=eb902829_1 (Spanish only).

² The four recommendations are mentioned on page 9 of document WIPO/ACE/12/5 REV.2, presented by INAPI in 2017.

³ The courts, Office of the Public Prosecutor and police all use the RUC (unique case number) to identify cases.

7. The effort was taken up again and expanded in the 2024 report, which incorporates a refined methodology, a longer analysis period (2017–2022), and the use of data visualization and cleaning tools, such as Tableau software⁴, in order to ensure the quality and consistency of the information presented.

III. METHODOLOGY AND LEGAL SCOPE

8. The report is based on the database of cases filed with the Office of the Public Prosecutor. For analytical purposes, INAPI classified the crimes into two broad regulatory categories in order to facilitate understanding of the criminal activity.

9. The first category covers crimes against industrial property, regulated primarily by Act No. 19.039. It includes infringements of trademarks, patents, utility models and industrial designs.

10. The second category comprises crimes against copyright, regulated by Act No. 17.336, such as the unauthorized copying of protected works, including illegal commercialization.

11. Although the Office of the Public Prosecutor uses six specific codes internally to classify IP-related crimes, INAPI chose to group cases into two categories only, reflecting the infringements under each applicable Act. That was because random sampling of case files revealed inconsistencies or lack of precision in the internal subdivision.

IV. STRATEGIC FINDINGS AND NATIONAL TRENDS

A. DOWNWARD TREND IN RECORDED CRIME

12. The data reveal a sustained drop in the number of cases filed between 2017 and 2022, with a total of 17,279 cases registered, falling from 4,050 cases in 2017 to 2,087 in 2022.

13. The downward trend is widespread but crimes against industrial property, in particular trademarks, continue to account for the largest slice of the total, far exceeding crimes against copyright.

B. STRUCTURAL DIFFERENCES BETWEEN TYPES OF CRIMES

14. The report highlights a considerable difference in legal terms that affects the statistics: the nature of criminal action. Crimes against industrial property are subject to private criminal action and require the existence of a registered right, while crimes against copyright are subject to public criminal action and protection arises automatically with the creation of the work.

15. Despite the greater procedural ease of initiating investigations in copyright matters, it is trademark offenses, which require private prosecution, that predominate in national statistics.

V. GEOGRAPHICAL DISTRIBUTION AND BORDER EFFECT

⁴ https://public.tableau.com/app/profile/inapi/viz/ReporteObservancia_2023/Historia1.

16. Territorial analysis reveals a high geographical concentration of cases. Three regions account for 83 per cent of the total: Metropolitan, Valparaíso and Biobío.

17. That concentration reflects population density, as those regions account for more than 60 per cent of the national population and are home to the country's main ports and airports. However, the report also identifies particular situations, such as the case of Tarapacá Region, which has a high rate of cases per inhabitant, reflecting the presence of free trade zones and cross-border trade in northern Chile.

18. In 2020, atypical behavior was also observed in Valparaíso, where the number of cases increased despite health restrictions. That can be explained by ongoing checks at ports and borders during the pandemic.

VI. EFFICIENCY OF THE CRIMINAL JUSTICE SYSTEM: CASE COMMENCEMENT, FORMAL CHARGES AND CONCLUSION OF CASES

19. From a public policy evaluation perspective, the report contains analysis of the efficiency of the criminal justice system in terms of case commencement, the formal filing of charges and the conclusion of cases.

20. Most cases arise from complaints filed before the Guarantee Courts (criminal trial courts), followed by reports made to the Carabineros (national police force), which confirms the predominantly reactive nature of the system, driven by rights holders.

21. Formal charges were brought against at least one defendant in only 18.78 per cent of all cases. The rate is particularly low for crimes against industrial property (14.92 per cent), while a higher percentage is observed for crimes against copyright (reaching 28.43 per cent, almost double that of cases involving violations of the Industrial Property Act).

22. In terms of the conclusion of cases, the system favors alternative resolution and procedural efficiency mechanisms, such as the grouping of cases, definitive dismissal and the principle of opportunity. Convictions represent a fraction of the total, although the percentage is higher in the case of copyright crimes.

23. The use of tools such as reparatory agreements and conditional suspension of proceedings reflects a pragmatic approach consistent with the patrimonial nature of the legal rights protected.

VII. CONCLUSION

24. The report fulfills the strategic mandate established in 2016 by providing stakeholders in the public and private sectors with reliable and systematic statistical information on the criminal prosecution of IP-related crimes. It also provides a tool that, when replicated periodically, allows for the analysis of trends and the identification of improvements.

25. The data reveals a highly centralized system, a downward trend in the number of cases and the existence of a major selective filter at the filing of charges and conviction stages. This situation indicates a need to strengthen legal and institutional capacities for prosecuting such crimes, to enhance inter-institutional coordination mechanisms and to improve national strategies on IP awareness and the prevention of IPR infringements.

[End of contribution]