

2<sup>ND</sup> STUDY COMMISSION QUESTIONNAIRE – 2012  
IAJ - UMI

**ASPECTS OF INTELLECTUAL PROPERTY DISPUTES:**

**A. Protection of Artistic or Literary reputation:**

At the front of the "B" Museum, located in the country "X", there is an enormous wall of a unique architectural structure, faced with basalt stone made by the Basalt Co. Ltd. incorporated in your country. The Basalt Co. photographed the basalt wall of the museum without the consent of the architect and made use of the photograph in order to market its products. The company also copied and constructed an identical basalt wall at the front of its offices in your country. The architect sued Basalt Co. in your country, claiming infringement of copyright, loss of reputation, unlawful enrichment, and petitioned for compensation for damage; compensation without proof of damage; compensation due to unlawful enrichment and punitive compensation. The architect also applied for an injunction; an order for submission of accounts in order to learn of the profit derived by the company from the publicity; and an Anton Piller order for the purpose of seizure and demolition.

1. On what terms will a work (of art, music, literature) from a foreign country enjoy copyright protection in your country?
2. What works of art are covered by copyright in your country? Did Basalt Co. Ltd constitute an infringement of copyright or moral rights or injured the architect's reputation by:
  - (a) Photograph of an architectural work located in a public place?
  - (b) Copying a unique wall from a museum building? What are the tests?
3. Are there other actionable claims which can be brought to protect the reputation of the architect or any artists and authors, other than claims based on infringement of copyright? Can he obtain compensation by virtue of the "unlawful enrichment" laws?
4. If damages can be claimed for loss of, or injury to, reputation:
  - (a) What type(s) of damages can be awarded – eg. compensatory or punitive?
  - (b) How are the damages to be proved and measured?
5. What permitted uses can be made of a protected work or reputation without constituting infringement of copyright? What is fair use?

**B. The Court's use of experts or assessors:**

1. Does your country have a specialist Court or Tribunal that hears intellectual property disputes?

2. Does the Court/Tribunal which hears intellectual property disputes in your country use experts or assessors:
  - (a) to assist in determining liability; and/or
  - (b) to assist in quantifying damages or determining the appropriate form of remedy?
3. If not, does the Court/Tribunal have the power to refer the dispute or part of the dispute to an independent expert or assessor who has relevant specialist knowledge? If so, is this power often used and how effective is it?
4. Do specialists (that ie. non-lawyers with specialist training in the field of intellectual property) sit on the Court/Tribunal? If so, what is the role of the specialist? Eg solely to assist the Court/Tribunal to understand the specialist subject matter of the intellectual property dispute or does the specialist have a decision-making role?
5. Does the Court/Tribunal hear expert evidence on specialist subject matters in intellectual property disputes? How is the evidence given? Eg in writing, in person or by both means?
6. What other processes are used by the Court/Tribunal to assist in understanding specialist subject matter in an intellectual property dispute, and where experts have differences of opinion on a topic, to assist in deciding which opinion to accept?
7. What processes do you think would be useful for the Court/Tribunal to adopt or implement to assist in deciding intellectual property disputes where the making of the decision requires specialist knowledge on a non-legal topic?