Question 1

- Does your country have specific legislation dealing with:

1.1. The violation of copyrights?

Yes, Germany has an act for copyright and other related property rights (copyright act - UrhG).

1.2. Other intellectual property rights?

Yes, the
- Law concerning the copyright in works of fine arts and photography (art copyright act - KunstUrhG) insofar as it relates to the protection of portraits;
- Act on the protection of trade marks and other symbols (trade mark act - MarkenG);
- Patent act - PatentG;
- Plant variety protection act - SortSchG;
- Utility model act - GebrMG;
- Law on the legal protection of designs (design act - GeschmMG);
- Law on the protection of topographies of microelectronic semiconductor products (semiconductor protection act - HalblSchG).
1.3. If so, could you specify to what extent?

The copyright act protects all works of literature, science and art from any unauthorized reproduction, distribution, exhibition, publication or distortion. According to section 2 UrhG this includes in particular:

1. Literary works, such as written works, speeches and computer programs;
2. Works of music;
3. works of the art of dance;
4. Works of fine art, including works of architecture;
5. Photographic works;
6. Cinematographic works;
7. Illustrations of a scientific or technical nature.

The law provides for civil claims in case of a copyright infringement (section 97 et seq. UrhG: claims for omission and compensation for damages, for destruction, recall and release), and includes provisions for administrative fines and criminal offences (section 106 - 111a UrhG).

Concerning criminal provisions, the following acts are punishable:

- The unauthorized use of copyrighted works according to section 106 UrhG (fine or up to three years imprisonment);
- an unauthorized attaching of a copyright designation pursuant to section 107 UrhG (fine or up to three years imprisonment);
- unauthorized interference in other related property rights pursuant to section 108 UrhG (fine or up to three years imprisonment) and
- according to section 108b UrhG unauthorized circumvention of technical protective measures or destruction or removal of copyright information required for exercising the copyrights (fine or up to one year imprisonment)

In all these cases the acts are only prosecuted upon complaint, unless the prosecuting authority considers a criminal proceeding necessary due to a special public interest, cf. section 109 UrhG. If the acts are committed on a commercial basis, the maximum penalty increases to three years (for unauthorized interventions in technical protective measures, section 108b para. 3 UrhG) or five years (for commercial unauthorized exploitation, section 108a UrhG).

The right to one's own portrait is protected against unauthorized dissemination or unauthorized public display according to section 33 KunstUrhG (fine or up to one year imprisonment). In this case the offence may only be prosecuted upon complaint.

1.4. Do specific rules exist for criminal investigation?

No specific rules for criminal investigations of these crimes do exist. The (administrative) guidelines for criminal proceedings ("Richtlinien für das Strafverfahren und das Bußgeldverfahren", RiStBV) only contain in numbers 261 and
261a specific regulations as to when to establish a (special) public interest in the prosecution these crimes. A public interest (no. 261) in prosecuting the above mentioned crimes is affirmed if the case does not only concern a minor infringement of the relevant rights. A special public interest (no. 261a) requires either a previous criminal conviction of a similar offence, a considerable damage, that the economical existence of the victim is at risk or that public security or health are at danger. No. 261b of the said guidelines contains regulations for the publication of a conviction.

1.5. If not, is any such legislation under consideration?

Any such legislation is not under consideration.

Question 2

- Does your country have specific legislation dealing with:

2.1. Trademark

Yes, the trade mark act (see above).

2.2. Patent

Yes, the patent act (see above).

2.3 If so, do these laws include specific punitive measures?

Yes, the trade mark act contains provisions for criminal offences and administrative fines in sections 143-145 MarkenG, the patent act contains criminal provisions in section 142 PatG.

Question 3

- Does your country have specific legislation dealing with:

3.1. The protection of copyrights based on the use of internet?
Yes, the German Copyright Act (UrhG) contains special provisions in sections 19a, 53 para. 1 and section 101 para. 9.

3.2. If so, could you specify and give a concrete example?

Section 19a UrhG contains the right to make a work accessible to the public - wired or wireless - in a manner that it is accessible to members of the public from any place and at any time of their choice. The rule goes back to Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyrights and related rights in the information society. The aim of this directive was to adapt copyright law to technological developments and in particular to the information society. With the implementation of the right of making available a product to the public as one’s own exploitation right into the German Copyright Act, the legislator wanted to govern primarily the use of protected content on the Internet and other networks. The rule is interpreted broadly by the courts to achieve a more extensive protection of copyrights.

According to the Copyright Act a private copy, even in digital form, of not copy-protected works remains allowed. However, section 53 para. 1 UrhG contains a clarification: already in the past, the copy of an obviously illegally manufactured template was forbidden. This prohibition is now extended expressly to illegally online offered templates. In this way, the use of illegal file sharing networks is more clearly regulated. The rule is applicable since 2008: if it is obvious to the user of a peer-to-peer sharing network that the offered film or piece of music belongs to illegal products on the Internet – for example because it is clear that no private internet user has the right to offer current movies on the internet – he may not produce a private copy.

To facilitate the prosecution of copyright violations on the internet, the copyright owners were given a right to information, section 101 para. 9 UrhG. The copyright owner can demand from the telecommunication provider - in certain cases only upon previous judicial order – information regarding the used IP address and the respective internet user at a particular time. It thus represents no more insurmountable hurdle to get to know the actual names and addresses behind an IP address.

**Question 4**

- Does your country have specialized agencies to investigate and identify the violation of copyrights and other intellectual property rights, especially through the use of the internet?
No specialized public prosecutor’s office does exist. Within each prosecutor’s office, a specific department is generally assigned to prosecute these crimes.

**Question 5**

5.1. To what extent does your country have jurisdiction over issues of, for instance, intellectual property theft?

There are no rules that deal with international jurisdiction specifically for the infringement of copyrights and other intellectual property rights. However, the general jurisdictional rules of the German Criminal Code apply: section 3, 6 no. 9, 7 paras. 1 and 2 no. 1 (StGB).

First of all, German criminal law shall apply to acts committed on German territory (section 3). German criminal law shall further apply, regardless of the law of the locality where they are committed, to the offences which on the basis of an international agreement binding on the Federal Republic of Germany must be prosecuted even though committed abroad (section 6 no. 9). Additionally, German criminal law shall apply to offences committed abroad against or by a German, if the act is a criminal offence at the locality of its commission or if that locality is not subject to any criminal jurisdiction (section 7).

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There is no exact statistic available.

In 2010, there were a total of 292 criminals convicted of offences of copyright law (source: Statistisches Bundesamt, administration of justice - law enforcement, professional series 10 series 3, 2010).

A total of 285 criminal proceedings were launched in 2011. More than 80% of these proceedings concerned violations of copyrights of movie companies, including the current proceedings against the operators of the website “kino.to” (source: GVU - society to prosecute copyright violations e.V., annual report 2011 ).

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5.2 Should the principle of universality apply for specific types of cybercrime relating to the infringement of copyright and other intellectual property rights?

The implementation of this principle is not realistic.
5.3. *Is there a need to establish rules of international criminal law to regulate these aspects of cybercrime?*

International criminal rules, which place the handling and conditions of these aspects of cybercrime on a common basis, would be useful for an effective prevention (and/or prosecution) of cybercrime.

5.4. *Should there be an international authority to handle the violation of copyright and other intellectual property rights through the use of the internet?*

There is no need for an international authority.

**Question 6**

6.1. *Did your country sign and/or ratify international agreements or treaties relating to the violation of copyright and other intellectual property rights through the use of the internet?*

6.2 *Does your country participate in any other form of international cooperation relating to this subject?*

Yes:
- Berne Convention for the protection of literary and artistic works, 9\(^{th}\) September 1886;
- Agreement on Trade-Related Aspects of Intellectual Property Rights, 15\(^{th}\) April 1994 (TRIPS-Abkommen);
- WIPO Copyright Treaty, 21\(^{st}\) December 1996;
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, 26\(^{th}\) October 1961;
- other numerous bilateral treaties and
- Within the European Union, a number of secondary legislation, especially various directives, are aiming at unifying the legal situation in the area of the EU.

**Question 7**

7.1. *Is it your opinion that your country could and/or should be more active in dealing with this issue?*
Yes, because the protection of intellectual property is a growing problem in times of digitalization.

**Question 8**

8.1. *Is it your opinion that you could and/or should be more active in dealing with this issue as a judge?*

Yes, even for judges there is for above reasons an urgent need for action, since cases of conflicts have to be solved by them.

8.2. *Do you have sufficient means – instruments and qualifications – to address the violation of copyright and other intellectual property rights through the use of the internet?*

No, the prosecution of criminal offences in the area of copyright violations suffers from insufficient personnel and material equipment of the public prosecutor's offices.

8.3. *Is addressing this issue in Court considered to be a specialisation?*

Yes, dealing with these issues in court is seen to be a specialisation, cf. section 105 para. 1 and 2 UrhG, because the Governments of the German Federal States are authorised to assign one local or district court to be competent for all copyright cases in a wider region if this will serve justice.

**Question 9**

*Is there any other comment on the subject that you would like to make?*

No.

Berlin, 25th June 2012