

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from Belize

Civil and Administrative Procedures and Remedies

(a) *Civil judicial procedures and remedies*

1. Specify the courts which have jurisdiction over IPR infringement cases.

The Supreme Court of Judicature of Belize has jurisdiction over civil law aspects of all intellectual property right infringement cases.

Copyright Bill, 2000

Part V of the Bill deals with the subject of "Infringement of copyrights". Clause 36(1) provides, *inter alia*, that:

"(1) Subject to this Act, infringements of copyright shall be actionable in the Supreme Court at the suit of the owner of the copyright".

Industrial Designs Bill, 2000

Clause 2 of the Bill defines the word "Court" as the Supreme Court. Clause 23 provides as follows:

"23(1) The Court shall have jurisdiction in cases of disputes relating to the application of this Act, and in matters which, under this Act, may be brought before it.

23(2) Any person who has been aggrieved by a decision of the Register under this Act may, within two months of that decision, appeal to the Court."

Patents Bill, 2000

Clause 2 of the Bill defines "Court" as the Supreme Court. Clause 41(1) confers on the owner of a patent the right to institute proceedings in the Court against any person who infringes the patent.

¹ Document IP/C/5.

Protection of Layout-Designs (Topographies) Bill, 2000

Clause 2 of the Bill defines "Court" as the Supreme Court. Clause 23 provides as follows:

- "23(1) The Court shall have jurisdiction in cases of dispute relating to the application of this Act or the Regulations and in matters which, under this Act, may be brought before it.
- 23(2) Any person who is aggrieved by the decision of the Minister or the Registrar under this Act may within two months of that decision appeal to the Court."

Protection of New Plant Varieties Bill, 2000

Clause 2 of the Bill defines the word "Court" as the Supreme Court. Clauses 43(1) and 44(1) confer jurisdiction over matters related to new plant varieties on the Court. They provide respectively as follows:

- "43(1) Any person aggrieved by a decision of the Registrar under this Act may appeal against that decision to the Court."
- "44(1) Subject to this Act, infringements of the rights of the holder of a breeder's right shall be actionable in the Court at the suit of that holder."

Trade Marks Bill, 2000

Clause 2(1) of the Bill defines "Court" as the Supreme Court. Clauses 49 to 55 deal with infringement proceedings. These Clauses confer on the Court the jurisdiction to determine issues relating to trademarks in Belize.

2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?

Copyright Bill, 2000

Clause 3(1) defines "author" as follows:

"author" means the person who creates a work, being

- (a) in relation to a literary or dramatic work, the author of the work;
- (b) in relation to a musical work, the composer;
- (c) in relation to an artistic work other than a photograph, the artist;
- (d) in relation to a photograph, the person taking the photograph;

and, where the context requires, shall be taken to be, in relation to:

- (e) a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken;
- (f) the typographical arrangement of a published edition, the publisher;

- (g) a broadcast, the person making the broadcasting as described in section 6(2) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;
- (h) a cable programme, the person providing the cable programme service in which the programme is included;
- (i) a computer-generated literary, dramatic, musical or artistic work, the person by whom the arrangements necessary for the creation of the work are undertaken."

Standing to assert intellectual property rights in copyright, therefore, vests in the owner or author of the infringed works. (Clause 39(1) as read with Clauses 7(1) and Part V.) Such authors have standing to assert their intellectual property rights in copyrighted works. However, copyright in protected works usually devolve from the author to an assignee by testamentary disposition or by operation of the law (Clause 26(1)) and such assignee becomes the owner vested with standing to assert intellectual property rights in the protected works. Performers have standing to protect the exploitation of their performances from unauthorised exploitation (Clause 107(1)(a)). A person having recording rights in relation to a performance has standing to protect such recordings to be made only with his consent or that of the performer (Clause 107(1)(b)). The owners of computer programmes also have standing to protect their work against infringement.

The persons outlined above with standing to assert intellectual property rights in protected works may either represent themselves personally in proceedings before the Supreme Court or may appear through an agent, who must be an attorney-at-law.

Industrial Designs Bill, 2000

Clause 4 of the Bill provides that the right to registration of an industrial design belongs to the creator, or co-creators if there are more than one creators of the same design. Such right is assignable, and may be transferred by succession. Further, exploitation of the design may be made by some person other than the creator(s) or assignee(s) through written authorization, known as a licence contract (Clause 16(1)). The persons with intellectual property right standing in respect of industrial designs, therefore, are the creators, assignees, transferees and, to the extent provided in Clause 24(6), licensees.

Clause 22 requires every applicant for an industrial design who is resident outside Belize to be represented by an attorney-at-law who has been enrolled to practice in the courts of Belize in accordance with the relevant law. Such agents, among other things, represent their principals in all proceedings in the Supreme Court and before the Registrar in respect of matters related to industrial designs. Appearances by the owners of the industrial designs is not mandatory since appearance may be made on their behalf by their agents.

Patents Bill, 2000

Rights to a patent or utility model belong to the inventor or co-inventors (Clause (4)), or to an employer where the invention was made in the execution of a contract of employment or for the execution or work (Clause 15(1)). The patent, utility model or rights obtained thereunder may be assigned or mortgaged (Clause 31(2)), or may be the subject of a licence authorizing a licensee to exploit the invention (Clause 31(4) and Part IX). The people with standing to assert intellectual property rights in respect of patents and utility models therefore are the inventors, the employers of employees who made the invention pursuant to Clause 15(1), assignees, mortgages and licensees.

Clause 61 requires applicants for patents and utility models to have agents who will represent them in all proceedings before the Registrar and the Supreme Court. Appearances by the patent or utility model holders in such proceedings is not mandatory but is only optional.

Protection of Layout-Designs (Topographies) Bill, 2000

Clause 5(1) of the Bill vests the right to protection of a layout-design in the creator of the layout-design, or in any assignee or transferee by succession. Exploitation of the layout-design may also be transferred by the creator to another person through a licence contract (Clause 16(1)). The people with standing to assert intellectual property rights in respect of layout-designs, therefore, are the creators, assignees, transferees and licensees. Clause 19 provides that these people may appoint agents to represent them. Therefore, their appearance in proceedings before the Registrar and the Supreme Court is only optional, not mandatory.

Protection of New Plant Varieties Bill, 2000

Breeders of a new plant variety, and their successors in title, and any assignee or transferee of the title in the new plant variety, and any licensee, have standing to assert intellectual property rights in respect of new plant varieties (Clauses 10, 15 and 46). These people may be represented by an attorney-at-law, and need not personally appear in proceedings before the Registrar or the Supreme Court.

Trade Marks Bill, 2000

The owner of a trademark, collective mark or certification mark has standing to assert his rights in respect of the mark. Clause 73 provides that every applicant of a mark whose ordinary residence is outside Belize shall be represented by an attorney-at-law who is resident and practising in Belize in accordance with the relevant law. It follows that the owners of such marks need not appear in proceedings before the Registrar or the Supreme Court, but may do so through their attorney-at-law.

3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control?

Proceedings to assert intellectual property rights, just like all other civil proceedings before the Supreme Court, will be subject to the Rules of Procedure of the Supreme Court. Applications in respect of intellectual property rights for copyright, patents, industrial designs, layout-designs, trademarks and new varieties of plants will be subject to the rules of discovery of documents provided in Order XXVIII, especially Rules 10, 13 and 14 thereof, which provide as follows:

"Application
for discovery
of documents

10. Any party may, without filing an affidavit, apply to the Court for an order directing any other party to any cause or matter to make discovery on oath of the documents which are, or have been, in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order (Form N° 34, App. K.), either generally or limited to certain classes of documents as may in the discretion of the Court be thought fit:

Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

Production of documents 13. It shall be lawful for the Court at any time during the pendency of any cause or matter to order (Form N° 35, App. K.) the production by any party thereto, upon oath, of such of the documents in his possession or power relating to any matter in question in such cause or matter, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Inspection of documents referred to in pleadings or affidavits 14. Every party to a cause or matter shall be entitled, at any time, by notice in writing (Form N° 10, App. B. Pt. II.) to give notice to any other party in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his Attorney-at-Law, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he satisfies the Court that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the court shall deem sufficient for not complying with such notice; in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit."

Discovery is the procedure whereby one party to an action must disclose to the other party the existence of all documents which are or have been in his possession and which are material to the issues in the action. Discovery refers to the disclosure and inspection of documents as opposed to facts. Documents include originals and copies of original documents, tape recordings and computer disks. Discovery may be automatic or ordered, general or specific, and it may relate to documents not within the jurisdiction. The main aims of discovery are to save costs, and to dispose of the matter fairly.

4. What means exist to identify and protect confidential information brought forward as evidence?

The Evidence Act, Chapter 75 of the Laws of Belize, Revised Edition 1980-90, deals with the mechanisms employed to protect confidential information which may be brought forward as evidence in any proceedings. Such evidence is generally treated by the Courts as inadmissible evidence. Section 61 of the Evidence Act provides as follows:

"Legal profession privilege 61. (1) A legal adviser or his client shall not be compelled to disclose any confidential communication, oral or written, which passed between them, directly or indirectly through an agent of either, if such communication was made for the purpose of obtaining or giving legal advice.

(2) The communication must have been made to or by the legal adviser in his professional capacity or by the client while the relationship of client and legal adviser subsisted, whether or not litigation was pending or contemplated, to entitle the client to claim privilege from disclosure.

(3) No claim of privilege from disclosure shall be allowed if the communication between a client and his legal adviser was made for the purpose of committing a fraud, crime or other wrongful act.

(4) "Legal adviser" means counsel or solicitor."

Where privilege is claimed for any document, the court may itself inspect it in order to decide whether the claim is valid. In addition to the foregoing provisions, Clause 42(7)(b) of the Patent Bill, 2000, provides that in requiring the production of evidence, the court shall take into account the legitimate interests of the defendant in not disclosing his manufacturing and business secrets.

5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudentially, for their use:

- **injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

Copyright Bill, 2000 - Remedies for infringement of economic rights

Clauses 36 to 40 deal with remedies for infringement of economic rights and they provide as follows:

"Action by owner of copyright for infringement

36. (1) Subject to this Act, infringements of copyright shall be actionable in the Supreme Court at the suit of the owner of the copyright; and in any action for such an infringement all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of the infringements of other proprietary rights.

(2) Where, in an action for infringement of copyright, it is proved or admitted that:

(a) an infringement was committed, but

(b) at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(3) Where an action under this section for an infringement of copyright is proved or admitted, the Court, having regard (in addition to all other material considerations) to the flagrancy of the infringement, and to any benefit accruing to the defendant by reason of the infringement, shall have power in assessing damages for the infringement, to award such additional damages as the Court may consider appropriate in the circumstances.

(4) In an action for infringement of copyright in respect of the construction of a building, no injunction or other order shall be made:

- (a) after the construction of the building has been begun, so as to prevent it from being completed; or
- (b) so as to require the building in so far as it has been constructed, to be demolished.

Order for
delivery up in
civil proceedings

37. (1) Subject to the provisions of this section, where a person
- (a) in the course of his business, has an infringing copy of a work in his possession, custody or control; or
 - (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work, knowing or having reason to believe that it has been or is being used to make infringing copies, the copyright owner may apply to the Court for an order that the infringing copy or article be delivered up to him or to such other person as the court may direct.

(2) An application under subsection (1) shall not be made after the end of the period specified in section 136; and no order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making an order under section 135 for the disposal of the infringing copies.

(3) A person to whom an infringing copy or other article is delivered up pursuant to an order made under this section shall, if an order under section 135 is not made, retain it until an order or decision is made by the Court under that section.

Right to seize
infringing
copies, etc.

38. (1) Subject to any decision of the court under section 135, and to the conditions specified in subsections (2), (3) and (4) below, an infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 37 may be seized and detained by him or a person authorised by him.

(2) Before anything is seized under this section notice of the time and place of the proposed seizure shall be given to a local police station.

(3) At the time that anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

(4) In this section "premises" includes land, buildings, fixed or moveable structures, vehicles, vessels and aircraft.

Wide injunction available to licensing bodies.

39. Where, in an action under this Part:

- (a) the infringement of copyright is proved or admitted, and
- (b) the plaintiff is a licensing body (as defined in section 88), and
- (c) the Court, having regard to all material circumstances, is satisfied that effective relief would not otherwise be available to the plaintiff,

the Court may grant an injunction extending to all the protected works, of which the plaintiff is the owner of the copyright, notwithstanding that the infringement related to only one or some of the said works.

Proceedings in case of copyright subject to exclusive licence

40. (1) For the purpose of this section, the expression:

"exclusive licence" means a licence in writing, signed by or on behalf of an owner or perspective owner of copyright, authorising the licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would (apart from the licence) be exercisable exclusively by the owner of the copyright; and "exclusive licensee" shall be construed accordingly;

"if the licence had been an assignment" means if, instead of the licence, there had been granted (subject to terms and conditions corresponding as nearly as may be with those subject to which the licence was granted) an assignment of the copyright in respect of its or their application to the doing, at the places and times authorised by the licence, of the acts so authorised; and

"the other party", in relation to the owner of the copyright, means the exclusive licensee, and, in relation to the exclusive licensee, means the owner of the copyright.

(2) This section shall have effect as to proceedings in the case of any copyright in respect of which an exclusive licence has been granted and is in force at the time of the events to which the proceedings relate.

(3) Subject to the following provisions of this section, the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, under section 36 as if the licence had been an assignment, and those rights and remedies of the owner of the copyright under that section.

(4) Where an action is brought either by the owner of the copyright or by the exclusive licensee, and the action, in so far as it is brought under section 36, relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the Court, to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is either joined as a plaintiff in the action or added as a defendant; but this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

(5) In any action brought by the exclusive licensee by virtue of this section, any defence which would have been available to a defendant in the action, if this section had not been enacted and the action had been brought by the owner of the copyright, shall be available to that defendant as against the exclusive licensee.

(6) Where an action is brought in the circumstances mentioned in sub-section (4) above and the owner of the copyright and the exclusive licensee are not both plaintiffs in the action, the court, in assessing damages in respect of any such infringement as is mentioned in that subsection

- (a) if the plaintiff is the exclusive licensee, shall take into account any liabilities (in respect of royalties or otherwise) to which the licence is subject; and
- (b) whether the plaintiff is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy already awarded to the other party under section 36 in respect of that infringement, or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.

(7) Where an action, in so far as it is brought under section 36, relates (wholly or partly) to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section, and in that action (whether they are both parties to it or not) an account of profits is directed to be taken in respect of that infringement, then, subject to any agreement of which the Court is aware whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the Court shall apportion the profits between them as the Court may consider just and shall give such directions as the Court may consider appropriate for giving effect to that apportionment.

(8) In an action brought either by the owner of the copyright or by the exclusive licensee:

- (a) no judgement or order for the payment of damages in respect of an infringement of copyright shall be given or made under section 36, if a final judgement or order has been given or made awarding an account of profits to the other party under that section in respect of the same infringement; and
- (b) no judgement or order for an account of profits in respect of an infringement of copyright shall be given or made under that section, if a final judgement or order has been given or made awarding either damages or an account of profits to the other party under that section in respect of the same infringement.

(9) Where, in an action brought in the circumstances mentioned in subsection (4), whether by the owner of the copyright or by the exclusive licensee, the other party is not joined as a plaintiff (either at the commencement of the action or subsequently) but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

(10) The copyright owner shall notify any exclusive licensee having concurrent rights before applying under section 37 for an order for the delivery up of infringing copies of a work or before exercising the right of seizing under section 38; and the Court may, on the application of the licensee, if it thinks fit, having regard to the licence, make an order under section 37 or make an order prohibiting or permitting the exercise by the copyright owner of the right conferred under section 38."

Copyright Bill, 2000 - Remedies for infringement of moral and related rights

Clause 46 specifies the remedies available for infringement of moral and related rights and it provides as follows:

- "Remedies for infringing moral rights, etc.
46. (1) The infringement of a right conferred under sections 15, 16, 17 or 18 is actionable as a breach of statutory duty owed to the person entitled to the right.
- (2) In an action for infringement of the right conferred by section 16, the Court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made on such terms and in such manner as may be approved by the Court, dissociating the author or director from the treatment of the work.
- (3) Where in any action an infringement of a right referred to in subsection (1) is proved or admitted, the Court may order the defendant to publish such correction in such terms and in such newspaper as the Court may direct."

Copyright Bill, 2000 - Remedies for infringement of rights in performances

Clauses 118 to 120 specify the remedies available for infringement of rights in performances, and they provide as follows:

- "Infringement actionable as breach of statutory body
118. An infringement of any of the rights conferred by this Part is actionable by the person entitled to the right as a breach of statutory duty.
- Order for delivery up of illicit recording in court proceedings
119. (1) Where a person has in his possession, custody or control in the course of a business, an illicit recording of a performance, a person having performer's rights or recording rights under this Part in relation to the performance may apply to the Court for an order that the recording be delivered up to him or to such other person as the Court may direct.
- (2) An application shall not be made after the end of the period specified in section 136; and no order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order under section 135.
- (3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 135 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.
- (4) Nothing in this section affects any other power of the Court.

Rights to seize
illicit recordings

120. (1) Subject to any decision of the Court under section 135 and to the conditions specified in subsections (2), (3) and (4), an illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under section 135 may be seized and detained by him or a person authorized by him.
- (2) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.
- (3) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.
- (4) In this section "premises" includes land, buildings, fixed or movable structures, vehicles, vessels, and aircraft."

Copyright Bill, 2000 - Order for disposal of infringing copy or illicit recording

Clause 135 confers on the Supreme Court the power to make orders for the disposal of infringing copies or illicit recordings. This Clause provides as follows:

- "135. (1) An application may be made to the Supreme Court for an order that:
- (a) an infringing copy or article delivered up in pursuance of an order under section 37 or section 54 or seized and detained in pursuance of the right conferred by section 38 shall be:
 - (i) forfeited to the copyright owner; or
 - (ii) destroyed or otherwise dealt with as the Court may direct;
 - (b) an illicit recording of a performance delivered up in pursuance of an order under section 18 or section 121, or seized and detained in pursuance of the right conferred by section 120 shall be:
 - (i) forfeited to such person having performer's rights or recording rights in relation to the performance as the Court may direct; or
 - (ii) destroyed or otherwise dealt with as the Court thinks fit,

or for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the Court shall consider whether:

- (a) where the infringement relates to copyright in a work, whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interests;
- (b) where the infringement relates to rights conferred under Part VIII, whether other remedies available in an action for infringement of those rights would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the copy or other articles or the recording, as the case may be, and any such person is entitled:

- (a) to appear in proceedings for an order under this section,
- (b) to appeal against any order made, whether or not he appeared, and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in a copy or other article, or as the case may be, a recording, the Court shall make such order as it thinks just and may (in particular) direct that such copy, article or recording be sold, or otherwise dealt with, and the proceeds divided.

(5) If the Court decides that no order should be made under this section, the person in whose possession, custody or control the copy or article or, as the case may be, the recording was before being delivered up or seized is entitled to its return.

(6) References in this section to a person having an interest in a copy or other article or a recording include any person in whose favour an order could be made in respect of the copy, article or, as the case may be, recording under this section.

Industrial Designs Bill, 2000

The remedies that may be ordered by the Supreme Court for infringements of industrial designs are specified in Clause 24, which provides as follows:

- "Proceedings for infringement.
24. (1) The registered owner of an industrial design shall, in addition to any other rights, remedies or actions available to him, have the right to institute court proceedings against any person who infringes the industrial design by performing, without his authorization, any of the acts referred to in section 10(2) or who performs acts which make it likely that infringement will occur.
- (2) In any proceedings under this section, the Court may grant relief by way of:
- (a) damages;
 - (b) injunction;
 - (c) delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part; or
 - (d) an account of profits derived from the infringement or otherwise as it may deem fit.
- (3) The Court shall not, in awarding damages under this section, also order, in respect of the same infringement, that the plaintiff be given an account of the profits derived by him from the infringement.
- (4) In any proceedings under this section, the Court shall have jurisdiction to order the invalidation of the registration of a design on any of the grounds specified in section 14, and any such grounds may be relied upon by way of defence.
- (5) Any person who intentionally performs an act which constitutes an infringement as defined under subsection (1) commits an offence and is liable to a fine of five thousand dollars or to imprisonment for five years.
- (6) A licensee who has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so, may also bring an action under this section, and the Court shall grant him any relief specified in subsection (2) above."

Patents Bill, 2000

Clause 41(1) to (3) provides the judicial remedies available for an infringement of the rights in a patent. It provides as follows:

"41. (1) The owner of the patent shall, in addition to any other right, remedy or action available to him, have the right, subject to sections 33(4), 35, 38 and 42, to institute court proceedings against any person who infringes the patent by performing, without his authorization, any of the acts referred to in section 33(2) or who performs acts which make it likely that infringement will occur.

(2) A plaintiff in proceedings for infringement shall be entitled to relief by way of:

- (a) an injunction;
- (b) the seizure, forfeiture or destruction of:
 - (i) any infringing product or article, or of any product or article of which the infringing product or article forms an inseparable part; and
 - (ii) any article, instrument or thing by means of which any infringing product or article was produced;
- (c) damages;
- (d) an account of the profits derived from the infringement; or
- (e) any other relief provided for in the general law.

(3) The Court shall not, in awarding damages under this section, also order, in respect of the same infringement, that the plaintiff be given an account of the profits derived from the infringement."

Additionally, the Court may, on the application of any interested party, invalidate a patent on any of the grounds specified in Clause 47(1). Invalidation of a patent is therefore an additional judicial remedy available to an interested party.

Protection of layout-Designs (Topographies) Bill, 2000

Clause 24 of the Bill specifies the judicial remedies obtainable from the Court for an infringement of the rights in a layout-design. It provides as follows:

"Infringement 24. (1) An infringement shall consist of the performance of any act which is unlawful under section 6.

(2) On the application of the right holder or of a licensee if he has requested the owner to institute court proceedings for a specific relief and the right holder has refused or failed to do so, the Court may as soon as possible:

- (a) grant an injunction to prevent infringement or an imminent infringement;
- (b) award damages;
- (c) order the seizure, forfeiture or destruction of:
 - (i) any infringing layout-design, integrated circuit or any product or article or which the infringing layout-design or integrated design forms an integral part; or
 - (ii) any article, instrument or thing by means of which any such infringing layout-design, integrated circuit or article was produced; or
- (d) grant any other remedy provided for in the general law."

Protection of New Plant Varieties Bill, 2000

Infringements of the right of the holder of a breeder's right are actionable in the Supreme Court at the suit of the holder of that right, and the Court may grant any of the following remedies pursuant to section 44(2), namely:

- (a) an injunction to prohibit the committing or continuation of committing an infringement of the holder of the breeder's right set out in section 17;
- (b) forfeiture, seizure or destruction of propagating material which has been produced in contravention of a breeder's right; and
- (c) damages, taking into account the pecuniary and non-pecuniary loss suffered by the holder of the breeder's right.

6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?

None. This will have to be covered under Regulations made under each of the intellectual property laws submitted under this notification.

7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

The effect of misjoinder of defendants in any proceedings before the Supreme Court is provided for under Order XVII, Rule 12 of the Supreme Court Rules which provide as follows:

"Misjoinder and non-joinder 12. No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings against such party shall be deemed to have begun only on the service of such writ or notice."

Although the awarding of costs in any cause or matter is generally a matter falling within the discretionary powers of the Supreme Court, where there is a misjoinder or a non-joinder of defendants, the Court will strike out the action against the misjoined defendant and in that case, may award costs against the plaintiff, which costs are said "to follow the event" (Order LXVI, Proviso to Rule 1 and Rule 2 of the same Order), which means that the loser of the action must pay the winner's costs. This process applies equally for and against the Crown and public authorities, subject to the provisions of the Crown Proceedings Act and the Public Authorities Protection Act, Chapter 24 of the Laws of Belize, Revised Edition 1980-90.

However, note must be taken of Clause 64 of the Patents Bill, which protects the Minister and the Registrar from liability for any acts performed *ex officio* pursuant to the Bill. Clause 64 provides as follows:

"Immunity regarding official acts. 64. Neither the Minister nor any person employed by the State or the Intellectual Property Office shall:
(a) be taken to warrant the validity of any patent granted under this Act; or
(b) incur any liability by reason of or in connection with any examination or investigation required or authorised by this Act or any report or other proceeding consequent upon any such examination or investigation."

Lastly, Clause 9 of the Trade Marks Bill protects the Staff of the Intellectual Property Office from liability arising out of the performance of their official functions. It provides as follows:

- "Exclusion of liability in respect of official acts
9. (1) The Registrar shall not be taken to warrant the validity of the registration of a trademark under this Act or under any treaty, convention, arrangement or engagement to which Belize is a party.
- (2) The Registrar is not subject to any liability by reason of, or in connection with, any examination required or authorized under this Act, or any such treaty, convention, arrangement or engagement, or any report or other proceedings consequent to such examination.
- (3) No proceedings lie against any member of staff of the Office of Intellectual Property in respect of any matter for which, by virtue of this section, the Registrar is not liable."

8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

There are no statutory provisions governing the length of civil proceedings in the Supreme Court. Further, until recently, there was a fairly high number of old cases which had created a backlog of civil cases. Recent initiatives taken to strengthen the Judiciary, however, have resulted in significant improvement. These initiatives include dedicated case management by Judges of the Civil Division of the Supreme Court, increasing the overall number of Judges sitting on the Supreme Court Bench, employing short-term Judges to clear backlog cases in civil cases, etc. It must be noted that this is the first time Belize is holistically enacting and implementing a gamut of intellectual property laws, and providing statistical data to quantify the length or costs of proceedings is impossible at this stage. It is equally impossible to statistically quantify the length of administrative proceedings, like the time taken from filing an application to approval of the application by the Registrar, since these procedures are still in the initial phases of implementation.

9. Reply to the above Questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.

Copyright Bill, 2000

- Clause 51 of the Bill provides an administrative procedure to be used by owners of protected works to prevent the importation of infringing copies of their works. It provides as follows:

- "Provision for restricting importation of infringing copies
51. (1) The owner of the copyright in any published literary or musical work or in any film or published sound recording may give notice in writing to the Comptroller of Customs:
- (a) that he is the owner of the copyright in the work, film or sound recording, and
- (b) that he requests the Comptroller, during a period specified in the notice, to treat as prohibited goods copies of the work, film or sound recording to which this section applies, but the period specified in a notice under this

subsection shall not exceed five years and shall not extend beyond the end of the period for which the copyright may subsist.

(2) This section applies, in the case of a literary or musical work, film or sound recording, to any copy made outside Belize which is an infringing copy of the work, film or sound recording.

(3) Where a notice has been given under this section in respect of a literary or musical work, film or sound recording, and has not been withdrawn, the importation into Belize, at a time before the end of the period specified in the notice, of any copy of the work, film or sound recording to which this section applies shall, subject to the following provisions of this section, be prohibited; but this subsection shall not apply to the importation of any article by a person for his private and domestic use.

(4) The owner of the copyright in a literary or musical work, film or sound recording who gives notice to the Comptroller under this section shall comply with such conditions with respect to:

- (i) the form of the notice;
- (ii) the furnishing of evidence, whether on giving notice, or on the importation of the goods, or at both such times;
- (iii) the payment of fees in respect of the notice;
- (iv) the giving of security in respect of any liability or expense which the Comptroller may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained;
- (v) the indemnification of the Comptroller against any liability or expenses, whether security has been given or not; and
- (vi) any other incidental or supplementary matter,

as may be prescribed, and different provisions may be prescribed for different classes of cases."

- Members of the Belize Police Department are also vested with certain administrative powers to search and seize infringing articles pursuant to Clause 138(1) which provides as follows:

"Powers of
police officers

138. (1) Any police officer may:

- (a) subject to section 138, enter and search any premises or place;
- (b) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft); or
- (c) stop and search any vehicle, in which he reasonably suspects that there is an infringing copy of a work or an illicit recording or any article used or intended to be used for making infringing copies or illicit recordings; and
- (d) seize, remove or detain:
 - (i) any article which appears to him to be an infringing copy or an illicit recording or any article which appears to him to be intended for use for making such copies or recording; and
 - (ii) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Act.

(2) Any police officer may:

- (a) break open any outer or inner door of any place which he is empowered or authorized by this Act to enter and search;
- (b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Act to stop, board and search;
- (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act.
- (d) detain any person found in any place which he is empowered or authorized by this Act to search until such place has been searched;

- (e) detain any vessel or aircraft which he is empowered by this Act to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;
 - (f) detain any vehicle which he is empowered by this Act to stop and search until it has been searched."
- Loudly notable by its absence from the Bill is provision providing for the appointment of a Registrar of Copyright. This, to a large measure, was to give effect to the provisions of the Berne Convention of 1886, as amended, which expressly provides that copyright should not be subject to any formalities like registration and deposit. Administrative procedures like opposition before the Registrar, etc., while present in other intellectual property laws, are absent in this instance for the above-stated reasons.

Industrial Designs Bill, 2000

None, to be provided in Regulations.

Patents Bill, 2000

Clause 69 gives the Registrar wide discretionary powers to issue directions. It provides that:

"Administrative instructions 69. The Registrar may issue administrative instructions relating to the procedures under this Act, the Regulations made thereunder, and any other enactment relating to industrial property, as well as relating to the general functions of the Intellectual Property Office."

Protection of Layout-Designs (Topographies) Bill, 2000

None, to be provided in Regulations.

Protection of New Plant Varieties Bill, 2000

None, to be provided in Regulations.

Trade Marks Bill, 2000

- Clause 8: empowers the Registrar, under Regulations made for that purpose by the Minister, to award costs to any party in proceedings before him, and to direct how and by what party such costs are to be paid. Clause 70: gives any person aggrieved by the decision of the Registrar the right to appeal against such decision to the Supreme Court.
- Clause 16: This Clause allows any person, within a time-period to be prescribed in Regulations, to give to the Registrar notice of opposition to the registration of a trademark, or to give written comments as to whether a trademark ought to be registered. As a result of such opposition or comments, the Registrar may refuse to register the trademark, but his refusal is subject to appeal to the Supreme Court.

- Clause 79: This Clause empowers police officers to seize articles infringing any mark. It provides as follows:

"Powers of
police officers

79. (1) Any police officer may:

- (a) subject to the provisions of the Act, enter and search any premises or place, for goods which, or the packaging of which, bears a sign identical to or likely to be mistaken for a registered trademark; or for material bearing such a sign and intended to be used for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or for articles specifically designed or adapted for making copies of such sign;
- (b) stop, board and search any vessel (other than a ship of war) or aircraft (other than a military aircraft) for goods referred to in paragraph (a) above;
- (c) stop and search any vehicle, in which he reasonably suspects that there are goods referred to in paragraph (a) above;
- (d) seize, remove or detain any goods referred to in paragraph (a) above found by him pursuant to this subsection.

(2) Any police officer may:

- (a) break open any outer or inner door of any place which he is empowered or authorized by this Act to enter and search;
- (b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Act to stop, board and search;
- (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;
- (d) detain any person found in any place which he is empowered or authorized by this Act to search until such place has been searched;
- (e) detain any vessel or aircraft which he is empowered by this Act to stop, board and search and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;

- (f) detain any vehicle which he is empowered by this Act to stop and search until it has been searched."

- Clause 74: provides administrative procedures whereby the proprietor of a registered trademark may request the Comptroller in writing to treat infringing articles as prohibited goods for the purposes of importation. It provides as follows:

"Provision restricting importation of infringing goods

74. (1) The proprietor of a registered trademark, or a licensee, may give notice in writing to the Comptroller of Customs:

- (a) that he is the proprietor or, as the case may be, a licensee, of the registered trademark;
- (b) that, at a time and place specified in the notice, goods which are, in relation to that registered trademark, infringing goods, material or articles are expected to arrive in Belize; and
- (c) that he requests the Comptroller of Customs to treat them as prohibited goods.

(2) When a notice is in force under this section the importation of the goods to which the notice relates, otherwise than by a person for his private and domestic use, is prohibited; but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

(3) The proprietor of a registered trademark, or a licensee who gives notice to the Comptroller of Customs pursuant to subsection (1) above shall comply with such conditions with respect to:

- (a) the form of the notice;
- (b) the furnishing of evidence;
- (c) the payment of fees in respect of the notice;
- (d) the giving of security in respect of any liability or expense which the Comptroller may incur in consequence of the notice by reason of the detention of any article or anything done to a detained article;
- (e) the indemnification of the Comptroller against any liability or expenses, whether security has been given or not; and

(f) any other incidental or supplementary matters,

as may be prescribed, and different provisions may be prescribed for different classes or cases.

(4) Notwithstanding anything in the Customs Regulations Act, a person shall not be liable to any penalty under that Act (other than the forfeiture of the goods) by reason only that any goods are treated as prohibited goods by virtue of this section."

Provisional Measures

(a) *Judicial measures*

10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.

Copyright Bill, 2000

The provisional measures which may be made under this Bill are provisional orders for the delivery up of infringing articles. The rationale for this is to make sure that the infringing articles are in safe custody pending the final disposition of the matter (Clauses 37, 54 and 119).

Industrial Designs Bill, 2000

Like in the Copyright Bill, the Court is empowered to order delivery up of the infringing articles. The rationale is the same.

Patents Bill, 2000

None.

Protection of Layout-Designs (Topographies) Bill, 2000

Pursuant to Clause 24(2), an applicant may obtain interlocutory injunctions from the Court pending the final disposal of the case.

Protection of New Plant Varieties Bill, 2000

Pursuant to Clause 44(2)(a), an applicant may be granted an interlocutory injunction by the Court forbidding the continued commission of an infringement of the holder of the breeder's right until the final determination of the matter.

Trade Marks Bill, 2000

The Court may make a provisional order under Clause 51 ordering the delivery-up of the infringing goods, material or articles pending the final disposition of the matter.

11. In what circumstances may such measures be ordered *inaudita altera parte*?

Such measures may be ordered *ex parte* where there is real apprehension that if notice of the proceedings is given to the defendant, he may obstruct the course of justice by hiding or destroying the infringing articles, which, it must be remembered, will be crucial evidence in disposing of the final matter after the interlocutory stage, or where there is extreme urgency necessitating the court to act forthwith, like the removal of the infringing articles from the jurisdiction.

12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.

Applications under the Copyright Bill may not be made after the end of the period of six years from the date on which the infringing copy or article or illicit recording in question was made, and an order shall not be made by the Court after the end of the period of six years from the date on which the infringing copy or article or illicit recording in question was made (Clause 136).

Matters of procedure generally will be covered in Regulations, which are yet to be developed.

13. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

The implementation of intellectual property laws is a new feature in the Belize legal system. As such, there is no statistical data available to answer this question.

14. Reply to the above questions in relation to any administrative provisional measures.

The implementation of intellectual property laws is a new feature in the legal system. As such, there is no statistical data available to answer this question.

Special Requirements Related to Border Measures

15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis imports*). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?

Copyright Bill, 2000

Clause 51 of the Copyright Bill provides as follows:

- | | |
|---|--|
| "Provision for restricting importation of infringing copies | 51. (1) The owner of the copyright in any published literary or musical work or in any film or published sound recording may give notice in writing to the Comptroller of Customs: |
| | (a) that he is the owner of the copyright in the work, film or sound recording, and |

(b) that he requests the Comptroller, during a period specified in the notice, to treat as prohibited goods copies of the work, film or sound recording to which this section applies, but the period specified in a notice under this subsection shall not exceed five years and shall not extend beyond the end of the period for which the copyright may subsist.

(2) This section applies, in the case of a literary or musical work, film or sound recording, to any copy made outside Belize which is an infringing copy of the work, film or sound recording.

(3) Where a notice has been given under this section in respect of a literary or musical work, film or sound recording, and has not been withdrawn, the importation into Belize, at a time before the end of the period specified in the notice, of any copy of the work, film or sound recording to which this section applies shall, subject to the following provisions of this section, be prohibited; but this subsection shall not apply to the importation of any article by a person for his private and domestic use.

(4) The owner of the copyright in a literary or musical work, film or sound recording who gives notice to the Comptroller under this section shall comply with such conditions with respect to:

- (i) the form of the notice;
- (ii) the furnishing of evidence, whether on giving notice, or on the importation of the goods, or at both such times;
- (iii) the payment of fees in respect of the notice;
- (iv) the giving of security in respect of any liability or expense which the Comptroller may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained;
- (v) the indemnification of the Comptroller against any liability or expenses, whether security has been given or not; and
- (vi) any other incidental or supplementary matters, as may be prescribed, and different provisions may be prescribed for different classes of cases.

CAP.39.

(5) Notwithstanding anything in the Customs Regulation Act, a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) by reason that any goods are treated as prohibited goods by virtue of this section."

Trade Marks Bill, 2000

Clause 74 provides as follows:

"Provision
restricting
importation of
infringing goods

74. (1) The proprietor of a registered trademark, or a licensee, may give notice in writing to the Comptroller of Customs:

- (a) that he is the proprietor or, as the case may be, a licensee, of the registered trademark;
- (b) that, at a time and place specified in the notice, goods which are, in relation to that registered trademark, infringing goods, material or articles are expected to arrive in Belize; and
- (c) that he requests the Comptroller of Customs to treat them as prohibited goods.

(2) When a notice is in force under this section the importation of the goods to which the notice relates, otherwise than by a person for his private and domestic use, is prohibited; but a person is not by reason of the prohibition entitled to any penalty other than forfeiture of the goods.

(3) The proprietor of a registered trademark, or a licensee who gives notice to the Comptroller of Customs pursuant to subsection (1) above shall comply with such conditions with respect to:

- (a) the form of the notice;
- (b) the furnishing of evidence;
- (c) the payment of fees in respect of the notice;
- (d) the giving of security in respect of any liability or expense which the Comptroller may incur in consequence of the notice by reason of the detention of any article or anything done to a detained article;
- (e) the indemnification of the Comptroller against any liability or expense, whether security has been given or not; and
- (f) any other incidental or supplementary matters, as may be prescribed, and different provisions may be prescribed for different classes or cases.

CAP.39. (4) Notwithstanding anything in the Customs Regulation Act, a person shall not be liable to any penalty under that Act (other than the forfeiture of the goods) by reason only that any goods are treated as prohibited goods by virtue of this section."

- 16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?**

This portion will be regulated by Regulations to be made under the Copyright Act and Trade Marks Act. See the relevant sections in the answer to Question 15 above. The competent authority is the Comptroller of Customs.

- 17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?**

The statistical data is not yet available because litigation related to intellectual property rights is a new experience in the Belize legal system.

- 18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?**

No. See the answer to Question 15 above.

- 19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.**

This will be governed by Regulations. See the answer to Question 15 above.

Criminal Procedures

- 20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.**

The courts with criminal jurisdiction over intellectual property right infringements are the summary jurisdiction courts (magistrate court) and the Supreme Court.

- 21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?**

Copyright Bill, 2000

The following Clauses specify the offences and penalties of infringement of copyright:

- Clause 52, which provides as follows:

"Penalties in respect of dealings which infringe copyright

52. (1) Any person who, without the licence of the copyright owner, at a time when copyright in a work subsists by virtue of this Act:

- (a) makes for sale or hire; or
- (b) in the course of a business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes; or
- (c) imports into Belize for purposes other than his private and domestic use; or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright; or
- (e) possesses in the course of business with a view to committing any act infringing the copyright,

any article which he knows or has reason to believe is an infringing copy of that work, commits an offence.

(2) Any person who, at the time when copyright subsists in a work by virtue of this Act makes or has in his possession an article specifically designed or adapted for making copies of a particular protected work, knowing that it is to be used for making infringing copies for sale or hire or for use in the course of business, commits an offence.

(3) Any person who causes:

- (a) a literary, dramatic or musical work to be performed in public; or
- (b) a sound recording or film to be played, or as the case may be, shown in public;

(otherwise than by reception of a broadcast or cable programme) knowing or having reason to believe that copyright subsists in the work or that the performance constitutes an infringement of the copyright, commits an offence.

(4) any person who is guilty of an offence under subsection (1) shall be liable on summary conviction in the case of a first conviction, to a fine not exceeding one thousand dollars for each article to which the offence related, and in the case of any subsequent conviction, to a fine not exceeding one thousand five hundred dollars for such article, or to imprisonment for a term not exceeding twelve months.

(5) Any person who is guilty of an offence under subsection (2) or subsection (3) shall be liable on summary conviction in the case of a first conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years."

- Clause 121, which provides as follows:

"Criminal liability for making, etc., illicit recordings

121. (1) A person commits an offence who without sufficient consent:

- (a) makes for sale or hire; or
- (b) imports into Belize otherwise than for his private or domestic use; or
- (c) possesses in the course of a business with a view to committing any act infringing the rights conferred by this Part; or
- (d) in the course of a business:
 - (i) sells or lets for hire; or
 - (ii) offers or exposes for sale or hire; or
 - (iii) distributes,

a recording which is, and which he knows or has reason to believe is, an illicit recording.

(2) A person commits an offence who causes a recording of a performance made without sufficient consent to be:

- (a) shown or played in public; or
- (b) broadcast or included in a cable programme service,

thereby infringing any of the rights conferred by this Part, if he knows or has reason to believe that those rights are thereby infringed.

(3) In subsections (1) and (2) "sufficient consent" means:

- (a) in the case of a qualifying performance, the consent of the performer; and
- (b) in the case of a non-qualifying performance subject to an exclusive recording contract:
 - (i) for the purpose of paragraph (a) of subsection (1), the consent of the performer or the person having recording rights; and
 - (ii) for the purposes of paragraphs (b), (c), and (d) of subsection (1) and subsection (2), the consent of the person having recording rights;
- (c) whether a work was published or otherwise dealt with in the lifetime of a person,

any unauthorised publication or the doing of any other unauthorised act shall be disregarded.

(7) A publication or other act shall for the purposes of subsection (6), be taken to have been unauthorised if, but only if:

- (a) copyright subsisted in the work and the act concerned was done otherwise than by, or with the licence of, the owner of the copyright; or
- (b) copyright did not subsist in the work and the act concerned was done otherwise than by, or with the licence of:
 - (i) the author; or
 - (ii) persons lawfully claiming under the author.

(8) Nothing in either subsection (6) or subsection (7) affects any provisions of this Act relating to the acts comprised in copyright or to acts constituting infringements of copyright or offences under this Act."

Industrial Designs Bill, 2000

Clause 24(5) provides that any person who intentionally performs an act which constitutes an infringement of an industrial design commits an offence and is liable to a fine of five thousand dollars or to imprisonment for five years.

Patents Bill, 2000

Clause 64 provides as follows:

""Offences

64. (1) Any person who intentionally or wilfully performs any act which constitutes an infringement as defined under section 40 commits an offence and is liable to a fine of not less than fifteen thousand dollars but not more than forty thousand dollars, or to imprisonment for a term of not less than five years but not more than twelve years, or to both such fine and such imprisonment.

(2) Any person who, knowing the same to be false:

(a) makes or causes to be made a false entry in the Register;

(b) makes or causes to be made any document falsely purporting to be a copy of an entry in the Register; or

(c) produces, tenders or causes to be produced or tendered as evidence any such entry or copy thereof,

commits an offence and is liable to a fine of not less than ten thousand dollars, but not more than thirty thousand dollars, or to imprisonment for not less than three years, but not more than ten years, or to both such fine and such imprisonment.

(3) Any person who, knowing the same to be false, makes a false statement or representation that:

(a) a patent or utility model certificate has been granted to him or to any other person in respect of any invention; or

(b) he has been granted an exclusive or non-voluntary licence to use any patent or utility model certificate,

which statement or representation induces another person to act thereon, commits an offence and is liable to a fine of not less than five thousand dollars, but not more than twenty thousand dollars, or to imprisonment for a term of not less than two years, but not more than five years, or to both such fine and imprisonment.

(4) any person who falsely represents that anything disposed of him for value is a patented product or process shall, subject to subsections (5) to (7), commit an offence and be liable to a fine of not less than four thousand dollars, but not more than ten thousand dollars.

(5) For the purposes of subsection (4), a person who for value disposes of an article having stamped, engraved or impressed on it or otherwise applied to it the word "patent" or "patented" or anything expressing or implying that the article is a patented product, shall be taken to represent that the article is a patented product.

(6) Subsection (4) shall not apply where the representation is made in respect of a product after the patent for that product or, as the case may be, the process in question has expired or been invalidated and before the end of a period which is reasonably sufficient to enable the accused to take steps to ensure that the representation is not made (or does not continue to be made).

(7) In proceedings for an offence under this section it shall be a defence for the accused to prove that he used due diligence to prevent the commission of the offence.

(8) Any person who represents that a patent has been applied for in respect of any article disposed of for value by him, and:

(a) no such application has been made; or

(b) any such application has been refused or withdrawn,

commits an offence and is liable to a fine of not less than four thousand dollars, but not more than ten thousand dollars."

Protection of Layout-Designs (Topographies) Bill, 2000

Clause 25 provides as follows:

- "Offences
25. (1) Any person who performs an act which is unlawful under section 6 commits an offence and is liable to a fine of not less than fifteen thousand dollars, but not more than forty thousand dollars, or to imprisonment for a term of not less than five years, but not more than ten years, or to both such fine and imprisonment.
- (2) Any person who, knowing the same to be false:
- (a) makes or causes to be made a false entry in the Register;
- (b) makes or causes to be made any document falsely purporting to be a copy of an entry in the Register; or

- (c) produces, tenders or causes to be produced in evidence any such entry or copy thereof,

commits an offence and is liable to a fine of not less than ten thousand dollars, but not more than thirty thousand dollars, or to imprisonment for a term of not less than three years, but not more than ten years, or to both such fine and such imprisonment."

Protection of New Plant Varieties Bill, 2000

Clause 45 provides as follows:

"Criminal liability for non-compliance or misuse of variety denomination

45. (1) Any person who wilfully offers for sale or markets propagating material of a variety protected in Belize or a denomination likely to cause confusion therewith, or another variety of the same botanical or a related species commits an offence and is liable to a fine of not less than five thousand dollars but not more than fifteen thousand dollars.

- (2) Any person who wilfully makes use of the registered variety denomination of a variety protected in Belize or a denomination likely to cause confusion therewith, or another variety of the same botanical or a related species commits an offence and is liable to a fine of not less than five thousand dollars but not more than fifteen thousand dollars."

Trade Marks Bill, 2000

Clauses 75, 76 and 77 provide as follows:

"Unauthorised use of trademark, etc. in relation to goods

75. (1) A person commits an offence who with a view to gain for himself or another, or with intent to cause a loss to another, and without the consent of the proprietor:
- (a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trademark; or
 - (b) sells or lets for hire, offers or exposes for sale or hire or distribute goods which bear, or the packaging of which bears, such a sign; or
 - (c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b) above.

(2) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor:

- (a) applies a sign identical to, or likely to be mistaken for, a registered trademark; to material intended to be used:
 - (i) for labeling or packaging goods;
 - (ii) as a business paper in relation to goods;
 - (iii) for advertising goods; or
- (b) uses in the course of a business material bearing such a sign for labeling or packaging goods, as a business paper in relation to goods, or for advertising goods; or
- (c) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything by himself or another, which would be an offence under paragraph (b).

(3) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor:

- (a) makes an article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trade mark; or
- (b) has such an article in his possession, custody or control in the course of a business,

knowing or having reason to believe that it has been, or is to be, used to produce goods, material for labeling or packaging goods, as a business paper in relation to goods, or for advertising goods.

(4) A person does not commit an offence under this section unless:

- (a) the goods in respect of which the trademark is registered; or
- (b) the trademark has a reputation in Belize and the use of the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trademark.

(5) It is defence for a person charged with an offence under this section to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trademark.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a period not exceeding ten years; and where the offence continues after the first conviction, to a further fine of one hundred dollars for every day such offence continues, or in default of payment of the fine to imprisonment for a period of ten days for every day such offence continues.

Falsification of register, etc.

76. (1) It is an offence for a person to make, or cause to be made, a false entry in the register of trademarks, knowing or having reason to believe that it is false.

(2) It is an offence for a person:

(a) to make or cause to be made anything falsely purporting to be a copy or an extract of an entry in the register, or

(b) to produce or tender or cause to be produced or tendered in evidence any such thing,

knowing or having reason to believe that it is false.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding five years, or to both such fine and period of imprisonment.

Falsely representing trade mark as registered

77. (1) It is an offence for a person:

(a) falsely to represent that a mark is a registered trademark; or

(b) to make a false representation as to the goods or services for which a trademark is registered.

(2) For the purpose of this section, the use in Belize in relation to a trademark:

(a) of the word "registered", or

(b) of any other word or symbol importing a reference (express or implied) to registration,

shall be deemed to be a representation as to registration under this Act unless it is shown that the reference is to registration elsewhere than in Belize and that the trademark is in fact so registered for the goods or services in question.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding eight thousand dollars or to imprisonment for a period not exceeding four years, or to both such fine and period of imprisonment.

Offences by body
corporate or
partnership

78. (1) Where an offence is committed under this Act by a body corporate, every person who at the material time was a Director, Manager, Secretary or other similar officer of the body corporate, or any person purporting to act in such capacity shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or connivance, or that he tried to prevent the commission of the offence.

(2) Sub-section (1) shall *mutatis mutandis*, apply in respect of partners in a partnership for offences committed by a partnership under this Act.

(3) A fine imposed on a partnership on its conviction under this Act shall be paid out of the partnership assets."

22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?

The Office of the Director of Public Prosecutions, which is an office established under the Belize Constitution, Chapter 4, is the authority constitutionally charged with responsibility for initiating criminal proceedings. This Office can initiate proceedings on its own motion or upon the filing of a complaint.

Section 50 of the Belize Constitution provides as follows:

"Control of public
prosecutions

50. (1) There shall be a Director of Public Prosecutions whose office shall be a public office.

(2) The Director of Public Prosecutions shall have powers in any case in which he considers it desirable so to do:

(a) to institute and undertake criminal proceedings against any person before any court of law (other than a court-martial) in respect of any offence alleged to have been committed by that person;

(b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and

(c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted

or undertaken by himself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under sub-section (2) of this section may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person or authority.

(5) For the purposes of this section, any appeal from a judgement in criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court (including Her Majesty in Council) shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (2)(c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case staged or question of law reserved at the instance of such a person.

(6) Subject to the powers of the Attorney-General under section 42(2) of this Constitution, in the exercise of the powers vested in him by subsection (2) of this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority."

23. Do private persons have standing to initiate criminal proceedings and, if so, who?

Yes, a person may institute private prosecutions under Belize law. To do so, the Director of Public Prosecutions must have declined to prosecute in the public interest. Any person who is interested in the matter may then institute private prosecution.

24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:

- imprisonment;
- monetary fines;
- seizure, forfeiture and destruction of infringing goods and materials and implements for their production;
- other.

See the answer to Question 21 above.

25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.

These provisions will be enacted later under Regulations. The statistical data relating to costs are not yet available because this area is new.
