

CHECKLIST OF ISSUES ON ENFORCEMENT<sup>1</sup>

Responses from the Netherlands

**Introductory Remarks**

In conformity with the request of the TRIPS Council further to its decision of 21 November 1995 (document IP/C/5 of 30 November 1995) the Government of the Kingdom of The Netherlands is honoured to supply the Council, in response to the checklist provided to it, with the following information regarding the national enforcement laws and practices in the Netherlands.

Such information can only be of a very general nature and it should not be seen or used as anything other than an introduction to Dutch civil, administrative and criminal procedures in the field of intellectual property. Specific problems, claims and questions should be dealt with by instructing lawyers or reverting to the contact points notified under Article 69 of the Agreement.

**Civil and Administrative Procedures and Remedies**

(a) *Civil judicial procedures and remedies*

Introduction

The rules of civil procedure are found mainly in the Dutch Code of Civil Procedure, the Act on the Organization of the Judiciary and the 1968 European Treaty on Jurisdiction and Recognition in Civil and Commercial Matters which is valid within the countries of the European Union.

Under the Act on the Organization of the Judiciary, the judiciary comprises the *Hoge Raad* or Supreme Court, the five *Gerechtshoven* or Courts of Appeal, the 19 *Rechtbanken* or District Courts and the 64 *Kantongerechten* or Cantonal Courts.

There is no jury trial in The Netherlands. Judges are independent and appointed for life (that is, until the age of 70) by Royal Decree. A Judge can only be dismissed by his colleagues in the judiciary. Although lower courts do generally follow and certainly pay attention to the decisions of the *Hoge Raad*, there is no *stare decisis* rule.

Cases are heard by one or three Judges.

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<sup>1</sup>Document IP/C/5.

Fundamental principles of Dutch law are:

- proceedings are held in public;
- both parties must be afforded the opportunity to forward their point of view orally or in writing;
- there must be two courts hearing the facts of the case and appeal to the *Hoge Raad* on points of law; and
- all court decisions must be motivated, stating the grounds for the decision in full.

Under strict financial and other conditions, litigants may be eligible for legal aid.

Damages, injunctions, and other measures sought are governed by the rules in the relevant Acts (for instance the Copyright Act and the Act on Neighbouring Rights) as well as the Dutch Civil Code.

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

Cases involving alleged infringement of intellectual property rights should in general be brought before the *rechtbank* in the district where the defendant has its domicile, or, barring such official domicile, his actual residence. If the defendant has no residence in any of the countries of the European Union, the *rechtbank* of the plaintiff's domicile is competent to hear the case. A specific proceedings on short-term notice known as *kort geding* (discussed below) may be brought before the court in the district where the measures will have to be taken.

Cases involving patents can only be brought before the *Rechtbank* in The Hague (*Den Haag*).

Cases valued at less than DFL 5.000,- should be brought before the *kantongerecht*.

Appeal is with one of the *Gerechtshoven*.

There is no need to ask for permission (*certiorari*) to appeal from the appellate court's decision with the *Hoge Raad*, but the *Hoge Raad* will decide upon points of law and not re-examine the facts.

In cases involving trademarks and designs the *rechtbanken*, the *gerechtshoven* and the *Hoge Raad* can ask the *Benelux-gerechtshof* (consisting of Dutch, Belgian and Luxembourg Judges) to render a preliminary ruling on the interpretation of the Uniform Benelux Trademark Act (BTA) or the Uniform Benelux Design Act (BDA).

The Code of Civil Procedure or CCP contains a separate chapter on commercial arbitration. The National Arbitration Institute provides for administrative support, regulations and names of prospective arbitrators. If the prerequisites of the CCP are fulfilled, an arbitrary award can be enforced after the President of the *Rechtbank* has approved the decision, which approval is given unless the decision was rendered in violation of the rules of due process. In case parties have agreed to arbitrate (in writing) civil courts are no longer competent to hear the case. Without prejudice to the full arbitration proceedings, however, provisional measures can usually be obtained from civil courts.

Various branch organizations including the Association of Architects (BNA) have included arbitration provisions in their general conditions.

**2. Which persons have standing to assert IPR's? How may they be represented? Are there requirements for mandatory personal appearances before the court by the rightholder?**

Under Article 27 of the Copyright Act 1912 the author may instigate proceedings against third party infringers even if he has transferred his rights. The author may bring a case for infringement of moral rights. In case of joint authorship, either author is entitled to bring a claim.

The transferee is entitled to assert the rights transferred to him. Author and publisher may bring their actions jointly or separately.

Copyright licensees who have not contracted for an individual right to litigate should cooperate with the author. On the same footing, the Patent Act, the BTA and the BDA allow licensees to bring a case before court if and to the extent that they have received the right to do so from the licensor.

Copyright class actions are possible for organizations, such as certain foundations, designated as representatives of rightholders.

All parties should be represented by a *procureur* or an official representative before the *rechtbank*, the *gerechtshof* and the *Hoge Raad*. All Dutch lawyers are *procureurs* with the *rechtbank* where their law offices are situated.

Because of the technicalities of *Hoge Raad* pleadings, lawyers tend to request a correspondent procureur from one of the Hague law firms (where the *Hoge Raad* is situated) to represent them.

Before the *kantongerecht* one may represent oneself.

There is no mandatory personal appearance by either plaintiff or defendant, unless they have been called as witnesses.

**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?**

The Dutch system does not involve pre-trial discovery; it is based on the rule that each party must (be ready to) prove its statements. The court is empowered to order a party to render proof following Article 177 CCP. Apart from presenting the court with written materials, the witness hearing is one of the most important ways of doing so. Please note that the court asks the questions.

In case a party wishes to avail itself of information prior to instigating proceedings, one may petition the court for permission to have a preliminary witness hearing. This is granted unless the *rechtbank* finds that the petition is made for vexatious reasons or would otherwise contravene due process.

Article 843a CCP provides for the disclosure of certain materials.

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

Under the equality of arms rule each party is entitled to be given a copy of all materials presented to the court in evidence. In case of sensitive information, the court and parties' lawyers usually discuss prior to the witness hearing how the necessary information can be obtained without either party having to divulge trade secrets which are not relevant to the case.

**5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, 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.**

There are various remedies in intellectual property cases which depend entirely on the facts of the case and the nature of the infringement. Commonly, the following remedies are sought:

- declaratory judgements (wrongful act or, sometimes, legality of certain action demanded by plaintiff who fears postponed action plus substantive claim for damages afterwards);
- court order to abstain from certain activities, usually reinforced by conditional damages in case of non-compliance;
- court order to act, such as recalling illegally published books, official correction of unjust allegations, publication of court decision in newspaper or magazine;
- recalling illegal copies for destruction;
- the provision of information about suppliers or buyers;
- claim on or even destruction of production equipment used for the infringing goods.

On demand, measures can be ordered provisionally enforceable meaning that appeal does not preclude the winning party from enforcing the judgement. The defendant is entitled to demand that the party enforcing the decision put up a bank guarantee to cover costs etc. in case of reversal.

Injunctive relief can be sought in ordinary proceedings but one might want to revert to the *kort geding*. This procedure is a specific provision in Dutch procedural law which was originally intended to offer a provisional remedy only but over the years has established itself as an excellent way to quickly settle a dispute through the courts. A *kort geding* is held after the writ of summons containing the grounds of the claim is served on defendant and he is given an opportunity to respond before the court. The *kort geding* is presided over by a senior judge.

If necessary, judges may hear cases on short notice or in weekends. It is up to the plaintiff to see to it that the defendant is duly summoned, in conformity with the court's orders, which will state the ultimate date for such summons to be served.

The criteria for use of any of the remedies are extensive, varied, and highly dependent on the facts and circumstances of the case. They are found in general Acts (Civil Code) as well as specific Acts (the Copyright Act). In jurisprudence, provisions have been refined and elaborated upon by the *Hoge Raad*.

The nature and extent of the infringement, the intentions of the infringer - merely by accident or on purpose - questions of reasonableness and fairness, legitimate expectations, and other general principles of law will be relevant for the court's decision.

The general rules on damages are found in Articles 6:95-6:110 CC. Damages can be awarded based on the factual method (actual damages sustained) or abstract method whereby the costs of repair are awarded irrespective of whether the plaintiff does in fact make such repairs. The court may also decide *ex aequo et bono*. Actual or abstract damages can be mitigated by the court.

Should, at the time of the decision all data not yet be available, then damages can be "listed and met in accordance with the law" following Articles 612-615b CCP. This will entail a separate procedure.

Infringement may give rise to awards for recovery of profits as well as damages (Articles 27 and 27a, Copyright Act; Article 16, Act on Neighbouring Rights; Article 70, paragraph 4, Patent Act; Article 13a, paragraph 4, BTA; and Article 14, paragraph 3, BDA).

Immaterial damages can be awarded further to Article 6:106 CC.

Damages in case of non-compliance are governed by Articles 611a-611i CCP.

The awarding of costs of the proceedings is regulated by Articles 56-58 CCP. These include the Registry Fee ranging from DFL 350,- to DFL 6.625,- with the *rechtbank* and DFL 420,- to DFL 8280,- with the *gerechtshof* or the *Hoge Raad*, depending on the monetary value of the case. The defendant in a *kort geding* pays DFL 330,- irrespective of the value of the case. The court may also award compensation for costs of the bailiff's services.

Lawyer's fees are awarded through using a general tariff scheme based on the number of official writs and appearances as well as the monetary value of the case. Please be aware that these do not relate to, and will in general not cover, the (hourly) rates of fee notes. For lawyers admitted to the Dutch Bar, litigating a case based on contingency fees is forbidden.

Expenses of witnesses, interpreters, and experts are dealt with separately. The party who summons a witness is responsible towards the witness for reimbursement of travel and other expenses. In case he wins, the costs form part of the monetary costs awarded by the court.

**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?**

The BTA and the BDA contain specific provisions giving the rightholder the possibility to claim information from the infringer, for instance to divulge the origins of the infringing goods, see Article 13*bis*, paragraph 5, BTA and Article 14*bis*, paragraph 5, BDA.

There is no formal provision in either the Civil Code, the Copyright Act or the Patent Act for this claim, but the rightholder is free to demand that the infringer name his sources and/or the amounts of illegal goods involved, both on order to recall or destroy illegal products and to assess damages. In numerous cases this demand has met with approval by the courts.

**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?**

In case the plaintiff cannot substantiate his allegations, he will generally be ordered to pay the costs of the proceedings in accordance with the tariffs set out above. Furthermore, the defendant may

bring a (counter-) claim against the plaintiff, for instance, for damages to his reputation in having been wrongfully enjoined.

In civil procedures the role of officials is limited, (see, however, the rules on border measures and criminal proceedings below). The State as rightholder or infringer is treated like a private party and its officials are not liable any more than other employees of other (private or commercial) entities would have been. Actions in the normal course of work are the responsibility of the employer following Article 6:170 CC.

The State is not liable for "wrongful" court decisions unless any procedure would contravene the fundamental human rights as set out in the European Convention on Human Rights. There is no case on record since the introduction of the Convention in 1950 where a complaint led to damages connected with intellectual property rights having to be paid by the State. In all other cases, in the Dutch legal system parties' rights are protected through the possibilities of appeal and cassation with the *Hoge Raad*.

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

It is extremely difficult to give rules of thumb with respect to duration and costs of proceedings, since this depends entirely on the course of action chosen by parties, the nature and complexity of the case, the people involved, etc.

(b) *Administrative proceedings*

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

As seen from the replies to the questions above, intellectual property protection in the Netherlands is essentially a matter for private rules, if necessary reinforced by provisions of the criminal code.

The Netherlands do have separate administrative legislation. One may appeal from an order, defined as a written ruling of an administrative authority constituting a juristic act under public law (Article 8:1 of the General Administrative Act (AWB)). Before appealing, one should make an objection against the order with the administrative body to enable this body to re-examine its procedures and the merits of its decision. Irrespective of the outcome of this re-examination, the person to whom the order had been addressed may seek a remedy in court. There are separate chambers within the *rechtbanken* known as the *sector bestuursrecht* which are competent to hear the case.

The *sector bestuursrecht* may quash an order in whole or in part and demand that the administrative authorities render a new decision, taking into account the court order. Sometimes the court decides to direct that the legal consequences of a decision shall be allowed to stand, in which case the plaintiff is usually awarded damages. Occasionally the court itself renders a revised order.

Contrary to civil law cases, there is no mandatory representation. Those persons who are requested by the court to appear should do so (Article 8:27 AWB).

There are no costs involved in making an objection to the order. The registry fee with the court on appeal is DFL 200,- for natural persons and DFL 400,- for others (such as corporations). The fee is reimbursable should the appeal be granted. Damages can be demanded both with the *sector bestuursrecht* and the *rechtbank*.

Following Article 8:29 AWB it is possible to ask the court not to divulge the information in certain documents. There is a specific procedure in which the court decides whether the reasons for such a request are serious enough and the opposite party should expressly agree to the withholding of material.

The Act contains rules on provisional measures during the full proceedings, like halting the execution of the order during the appeal.

There are no specific provisions in the Copyright Act, the Act on Neighbouring Rights and the Benelux Designs and Models Act dealing with decisions to be made by the authorities. Under Article 6bis of the Benelux Trademarks Act an applicant may appeal from a decision not to accept a certain trademark offered for registration with the Court of Appeals (in Luxembourg, Brussels or The Hague). The Bureau for industrial property decides upon requests for patents. Appeal is possible with the *Rechtbank* in The Hague (Article 81, Patent Act 1995).

### **Provisional Measures**

#### *(a) Judicial measures*

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

The most important and widely used provisional measure is the seizure or attachment of goods or assets in general. Under Articles 700 and following CCP seizure of all assets is possible, including assets held by third parties, such as bank accounts, to secure the possibility of recovery of damages, etc.

Article 28 Copyright Act allows the copyright holder and the licensee to seize illegal goods as if they were the copyright holder's property or the proceeds and other monetary gains of infringements, e.g. the price of the tickets in case of illegal screening of protected works. This form of seizure is given explicitly to stop infringement of copyrights, patent rights and neighbouring rights. An order to hand over counterfeit goods may be directed against anyone who is the actual holder/owner of such goods, even if he obtained those in good faith.

The holder of a trademark may claim ownership of infringing goods or materials used when producing the infringing goods, or have them destroyed. Monies probably gained as a result of infringement should be handed over to the rightholder. Such claims cannot be upheld, however, if infringement was made in good faith (Article 13bis of the Benelux Trademark Act).

In conformity with Article 709 CCP goods may be put in custody with an official appointed by the court, such as a Dutch public notary. This measure is appropriate when it is feared that goods will "disappear" in spite of a formal attachment or when such attachment has not been sought. Should seizure and/or custody of goods be impractical the court may appoint an independent administrator, as meant in Article 710 CCP.

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

Seizure is always possible *ex parte*, without the court hearing the defendant and without any written warning, provided the applicant complies with all procedures and criteria set out below, under 12.

Having goods put in custody is sometimes possible *ex parte*; the applicant must inform the opposite party as soon as possible about the custody and the grounds for this measure. See also under 12.

**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.**

Seizure is possible only following express written Permission of the President of the *Rechtbank*. Such Permission can be obtained almost anytime and if necessary on very short notice, provided the applicant sufficiently demonstrates the grounds for his claim, the amount for which he is seeking permission (or an identification of the goods which he aims to seize) and the ownership of the goods or accounts to be seized, in his petition to the court. Applicants can be ordered to put up security to cover the monetary risks of seizure.

The actual seizure is take care of by the official bailiff or *deurwaarder*, a public official appointed by the Crown who will serve the writ of seizure together with the Permission from the court on defendant or on the third party.

The Court President will always order the petitioner to instigate proceedings, usually within anywhere from eight to 14 days after the day of seizure; in case the writ of summons is not issued, or not issued on time, the seizure will be lifted as of right without any further decision by the court being necessary.

Furthermore, the defendant is offered, in Article 705 CCP, an opportunity to dispute the seizure in *kort geding*. Because seizure takes place *ex parte* and on the basis of the presentation of the case by the petitioner only, court registries tend to provide the defendant with a date for such *kort geding* upon very short notice. Indeed some registries aim to have a senior judge available on what one might describe as a stand-by basis.

By law the seizure following Articles 700 and following CCP must be lifted when the defendant puts up security for the amount for which attachment has been allowed.

The defendant is at any time allowed to put up a claim for damages.

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

Provided the petition is well-founded permission to seize can be obtained quickly - within a day or even within a few hours. The main proceeding will have to be brought before the court by the plaintiff within the time limit set up by the Court President in the Permission, usually eight to 14 days after the seizure.

The court registry costs for submitting a petition are DFL 350,- plus lawyer's fees.

(b) *Administrative measures*

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

See answer to question 9.

**Special requirements relating 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?

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

At this moment, changes to the Criminal Code, the Copyright Act, and the Act on Neighbouring Rights are in preparation further to Regulation 3295/94 of the Council of the European Communities relating to border measures. As in all EU Member States, the provisions of EC regulations are directly applicable in the Netherlands.

### **Criminal Procedures**

20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.
21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?

An overview of the provisions concerned would read as follows:

- a. *Wetboek van Strafrecht (Criminal Code)*

#### Article 337:

1. A person who imports into the Netherlands (without the manifest intention to re-export), sells, offers for sale, delivers, distributes or stocks for sale or distribution:

- (a) any false, falsified or illegally manufactured trademark;
- (b) any goods which falsely bear, on themselves or on their packaging, the business name of another person;

- (c) or the trademark to which another person is entitled, or a false indication of origin in the form of the name of a specified place together with the name of a fictitious person;
- (d) or which are contained in packaging bearing such name or mark or a name or mark closely resembling them, shall be liable to imprisonment for a term not exceeding one year or to a fine of the fifth category (DFL 100,000).

2. If the felony mentioned in the first paragraph causes a general danger for persons or goods, the person found guilty is liable to imprisonment for a term not exceeding four years or a fine of the fifth category (DFL 100,000).

b. *Auteurswet 1912 (Copyright Act 1912)*

Article 31: a person who, by intent, violates another person's copyright shall be liable to imprisonment for a term not exceeding six months or a fine of the fourth category (DFL 25,000).

Article 31a: a person who, by intent, publicly offers for distribution, or stocks for multiplication or distribution, or stocks for importation into the Netherlands or stocks for motives of gain any good that contains a violation of another person's copyright, shall be liable to imprisonment for a term not exceeding six months or a fine of the fourth category (DFL 25,000).

Article 31b: a person who commits the felonies referred to in Articles 31 and 31a Auteurswet for a living or as a business, is liable to imprisonment for a term not exceeding four years or a fine of the fifth category (DFL 100,000).

Article 32: a person who publicly offers for distribution, or stocks for multiplication or distribution, or stocks for importation into the Netherlands, or stocks from motives of gain a good of which he can reasonable know that it contains a violation of another person's copyright, shall be liable to a fine of the third category (DFL 10,000).

Article 32a: a person who, by intent, publicly offers for distribution, or stocks for multiplication or distribution, or stocks for importation into the Netherlands, or stocks from motives of gain, any objects exclusively destined to remove or evade a technical protection of a computer programme without permission of the maker or a licensed person, shall be liable to imprisonment for a term not exceeding six months or a fine of the fourth category (DFL 25,000).

Article 34:

1. A person who, without authorization and by intent, changes the name of any work of literature, science or art protected by copyright, the name or designation of its author, or any other aspect regarding such work in a way that this could cause damage to the honour or reputation of the author or his value in this quality, shall be liable to imprisonment for a term not exceeding six months or a fine of the fourth category (DFL 25,000).

c. *Wet op de naburige rechten (Act on Neighbouring Rights)*

Article 21: a person who, by intent, violates the rights referred to in Articles 2, 6, 7a and 8 Wet op de naburige rechten (WNR) shall be liable to imprisonment for a term not exceeding six months or a fine of the fourth category (DFL 25,000).

Article 22: a person who, by intent, broadcasts, re-broadcasts or otherwise publishes, or publicly offers for distribution, or stocks for reproduction or distribution, or stocks for importation into the Netherlands, or stocks from motives of gain a registration or reproduction thereof of which he knows that it violates the rights referred to in Articles 2, 6, 7a and 8 WNR, shall be liable to imprisonment for a term not exceeding six months or a fine of the fourth category (DFL 25,000).

Article 23: a person who commits the felonies referred to in Articles 21 and 22 WNR for a living or as a business, is liable to imprisonment for a term not exceeding four years or a fine of the fifth category (DFL 100,000).

Article 24: a person who broadcasts, re-broadcasts or otherwise publishes, or publicly offers for distribution, or stocks for reproduction or distribution, or stocks for importation into the Netherlands or stocks from motives of gain, a registration or reproduction thereof of which he can reasonably know that it contains a violation of the rights referred to in Articles 2, 6, 7a and 8 WNR, shall be liable to a fine of the third category (DFL 10,000).

Article 25: a person who, without authorization and by intent, changes the name of any performance, the name or designation of its performer, or any other aspect regarding such performance which could cause damage to the honour or reputation of the author or his value in this quality, shall be liable to imprisonment for a term not exceeding six months or a fine of the fourth category (DFL 25,000).

d. *Rijksoctrooiwet 1995 (Patent Act)*

Article 79:

1. A person who, by intent, violates the right of a patentee by one of the activities referred to in Article 53, paragraph 1 Patent Act, shall be liable to imprisonment for a term not exceeding six months or a fine of the fourth category (DFL 25,000).

2. A person who commits the crime referred to in the preceding paragraph for a living or as a business, is liable to imprisonment for a term not exceeding four years or a fine of the fifth category (DFL 100,000).

3. In case of a conviction, a judge may decide the verdict to be published.

4. In case objects have been confiscated, the patentee may demand that these objects be issued to him, under the condition that he applies to the clerk within a month after the judgement has come into force. By this issue, the property of the objects is transferred to the patentee. The judge may bind the issue of the object to the condition that a compensation be paid by the patentee to the State.

5. The offenses referred to in this Article are felonies. In the first instance, these felonies are judged exclusively by the District Court in The Hague.

**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?**

Prosecution is possible by the Public Prosecution Service only (Article 167 Code of Criminal Procedure(Sv)). They are entitled to start prosecution on their own initiative (*ex officio*), but may also

do so in response to complaints. They are not obliged to start a prosecution, but may instead decide to dismiss a case for reasons of public interest (Article 167 Sv).

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

In case the prosecution decides that a case will not be prosecuted, a victim or other person with a direct interest may file a complaint with the *gerechtshof* (court of appeal). The court may decide that the prosecution must be continued (Article 12 Sv).

Being the aggrieved party, a victim may also join the criminal procedure in order to ask a compensation of the damages suffered (Articles 51a - 51f Sv). In that case, the judge may impose this compensation as a sanction, in addition to other sanctions (Article 36f Criminal Code (Sr)).

**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.**

Imprisonment and fines are as described under question 21.

- Seizure is possible regarding any goods or objects that may serve as evidence or demonstrate the illegal obtention of profits (Article 94 Sv).
- Forfeiture and confiscation are possible regarding any objects which were obtained by the offence, against which the offence was directed, which were used in the commission or preparation of the offence, which have hindered the investigation or which were destined to be used in the offence (Articles 33a, paragraph 1 and 36b Sr). Unless the uncontrolled possession of the objects concerned conflicts with the law or is contrary to public interest, the rights of third persons are protected under Article 33a, paragraph 2 Sr.
- On the basis of Articles 552a and 552b Sv, the victim, aggrieved party or other civil party may file complaints regarding the seizure, the forfeiture, the confiscation or not being issued to him of any object or data he is entitled to. Furthermore, as was described under question 21, Article 79, paragraph 4 Patent Act contains a special procedure for issuing infringing goods to the patentee who was the victim of the offence.
- Please note that money-laundering is a separate offence under Articles 416 and 417 Sr.
- On the basis of Article 36e Sr, the public prosecutor may start a separate procedure in order to have the sanction of confiscation of proceeds of offences imposed.

**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.**

In general, the right to prosecute expires by superannuation (Article 70 Sr), the period of which depends on the severeness of the offence involved. Besides, the Code of Criminal Procedure contains a number of time periods which influence the duration of proceedings. As far as minimum periods

are concerned, the period between the notice of summons to the suspect and the start of the trial must be at least 10 days (Article 265 Sv). Maximum terms are e.g. those for lodging an appeal and for filing a complaint against non-prosecution as described under question 23. Furthermore, on the basis of Article 6 European Convention on Human Rights, procedures must be finished "within a reasonable time/without undue delay". If, depending on the circumstances of the individual case, this period is deemed to have been exceeded, the court may declare the case closed.

Dutch criminal law does not recognize the possibility to condemn a suspect to contribute in the costs of the procedure. Regardless of the outcome of the procedure, the State may compensate several categories of costs made by the former suspect and his heirs. This specifically refers to expenditures that have served the interest of the investigation (e.g. for the presence of witnesses for the defence) and expenditures that have become useless because the prosecution authorities have withdrawn their summons or appeal. In case no sanction is imposed, the former suspect may also be compensated in his travel and lodging expenditures, waste of time and costs for legal counsel.

Information on the costs of criminal procedures in general or those concerning intellectual property is not available.