

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from Saudi Arabia

Civil and Administrative Procedures and Remedies

(a) *Civil judicial procedures and remedies*

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

<u>Courts</u>	<u>Laws</u>	<u>Articles</u>
The Board of Grievances	Law of Trademarks	<u>Article 53</u> The Board of Grievances shall have jurisdiction ...
Violations Review Committee The Board of Grievances The Board of Grievances (Appeal)	Law of Copyright	<u>Article 25: Violations Review Committee</u> A Committee to review the violation shall be formed by the Minister's decision, ... <u>Article 22 (3rd):</u> If the Committee sees that the violation entails imprisonment or a fine exceeding one hundred thousand riyals or cancellation of the license, the case shall be submitted to the Minister for referral to the Board of Grievances. <u>Article 23: Grievance</u> Anyone against whom a decision was made by the Committee shall have the right to file a grievance with the Board of Grievances within sixty days from the date of notification of the decision.
Committee for Examining Patents on Inventions Lawsuits The Board of Grievances	Law of PLPD ²	<u>Article Thirty Six:</u> a) The Committee shall have jurisdiction over the following: 1) All disputes and appeals against decisions issued in connection with protection documents. 2) Penal lawsuits for violations of the provisions of this Law and its Implementing Regulations. <u>Article Thirty Four:</u> If the Committee sees that the infringement calls for the punishment of imprisonment, the infringer shall be referred from the start to the Board of Grievances....

¹ Document IP/C/5.

² Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs

The Board of Grievances (Appeal)	Law of PLPD ²	<u>Article Thirty Seven:</u> An appeal against any decision issued by the Committee may be brought before the Board of Grievances within sixty days from the date of notification of the decision
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In addition to the above-said, smugglers of counterfeited goods and pirated works seized at customs checkpoints, are subject to penalties, by the customs committees, as stated in Article 145 of the Unified Customs Law of Gulf Cooperation Countries.

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?

All material parties to a case have standing to assert intellectual property rights before the courts, in person or through his representative with a valid power of attorney.

The Board of Grievances has the authority to mandate personal appearances in criminal cases pursuant to the second paragraph of Article (19) in Section Three, Hearing the Case and Judgment, of the Procedural Rules Before the Board of Grievances, which states:

Article (19)

In disciplinary and penal cases, the accused himself shall attend the trial sessions and shall defend himself in writing or verbally. He may seek the assistance of a lawyer and ask for the summoning of witnesses to hear their testimony. If the accused in a disciplinary case does not appear after being duly notified, the circuit shall proceed with the trial procedures.

However, if the accused in a penal case is notified and does not appear, he shall be summoned again to attend another session. If he still fails to appear, the circuit may render a default judgment or order him summoned to a fixed session. If it is impossible to summon him, the circuit may render a default judgment in the case.

Article (20) in Section Three, Hearing the Case and Judgment, of the Procedural Rules Before the Board of Grievances strongly encourages personal appearances of parties in administrative hearings because the case can continue and conclude with the rendition of a valid and enforceable default judgment against a party without that party's presence and/or evidence.

Article (20)

If the plaintiff or the defendant attends any session of an administrative case before the competent circuit, the trial shall be considered as if in his presence even if he fails to attend the subsequent sessions.

As for the disciplinary and penal cases, the judgment shall be considered as if in the presence of the accused person if he attends one session and presents his defense, even if judgment is postponed and he does not attend the session in which the judgment is rendered.

Pursuant to Article 53 of the Law of Trademarks the Board of Grievances has the jurisdiction to hear all civil and criminal cases.

Pursuant to Article 25. 4 of the Implementing Regulations of the Copyright Law the Violations Review Committee may summon any party to the violation to hear his statements as well as the inspector, investigator or any other person whose statements the Committee deems necessary. Further pursuant to Article 25.5 of the Implementing Regulations of the

Copyright Law the Committee may return the violation papers to the investigating authority for additional information or to complete whatever it deems necessary regarding the investigation. Pursuant to Article 23. 2 of the Implementing Regulations of the Copyright Law the investigator has the authority to summon anyone whose testimony he deems is indispensable regarding the violation and enter that into the record that is submitted to the Committee. Appeals of the Committee's decision are filed with the Board of Grievances. Therefore, the right holder should show that the party is necessary and/or that the party's testimony party is indispensable.

Pursuant to Article Thirty Four of the Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties and Industrial Designs the Board of Grievances has jurisdiction from the start of all cases in which the alleged violation, if proved, results in imprisonment. Pursuant to Article Thirty Seven of the Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties and Industrial Designs the Board of Grievances has jurisdiction over appeals of decisions rendered by the Committee. It should be noted that pursuant to Article Thirty Eight of the Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties and Industrial Designs the Committee may request any explanation and information it deems necessary and the King Abdulaziz City for Science and Technology must provide all documents and papers relating to the subject matters in dispute, whenever requested to do so by the Committee. Therefore the right holder should show necessity.

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 that lies within its control?

General Principles of Law	Judicial authorities may order, at the request of an opposing party, the production of evidence from a party to the proceeding, including from the plaintiff by the defendant.
Law of PLPD	<u>Article Forty-Eight</u> states: “the defendant must prove that the identical product was not manufactured by this process without the consent of the owner of the protection document”.

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

General Principles of Law	The party submitting the evidence has the burden to identify information that is confidential. The courts will protect the confidentiality with measures that are suitable to the type of confidential information filed and have wide discretion to take effective action.
Law of PLPD	<u>Article 48:</u> Subject to the legitimate interests of the defendant in protecting his industrial and commercial secrets . . .

Regulations for the Protection of Confidential Commercial Information	<p><u>Article 4:</u> The competent authorities shall protect the commercial secrets submitted to them ...</p>
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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.**

As cited in the chart below, the law empowers the judicial authorities to impose injunctions, damages such as lost profits and expenses that may include attorney's fees, destruction or other disposal of goods and equipment used to produce infringing goods as well as other remedies such as the closure of place of business, fines and imprisonment.

The Law of Trademarks	<p><u>Article 43:</u> Without prejudice to any harsher punishment, the following shall be punished with imprisonment for a period not exceeding one year and a fine not less than fifty thousand riyals and not exceeding one million riyals or with one of these punishments.</p> <p>k. Anyone who forges a registered trademark or imitates it in a way that misleads the public, and anyone who uses in bad faith a forged or an imitated trademark.</p> <p>l. Anyone who puts or uses, in bad faith, a trademark owned by another on his products or services.</p> <p>m.. Anyone who offers, puts up for sale, or sells or possesses with intention of selling products carrying a forged, an imitated, or unlawfully put or used trademark, despite his knowledge thereof as well as anyone who offers to render services under such a trademark despite his knowledge thereof.</p> <p><u>Article 44:</u> Without prejudice to any harsher punishment, the following shall be punished with imprisonment for a period not exceeding three months and a fine not less than twenty thousand riyals and not exceeding two hundred and fifty thousand riyals, or with one of these punishments:</p> <p>a. Anyone who uses an unregistered trademark in the cases specified in paragraphs (b, c, d, e) of Article 2 of this Law.</p> <p>b. Anyone who unlawfully inscribes on his trademarks or commercial papers a statement that would lead to the belief that they have been registered.</p>
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	<p><u>Article 45:</u> A repeat offender shall be punished with a punishment not exceeding twice the maximum punishment specified for the offense and closure of the place of business or the project for a period not less than fifteen days and not exceeding six months, in addition to publicizing the judgment at the expense of the offender in accordance with the conditions and procedures provided for in the Implementing Regulations.</p> <p><u>Article 48:</u> Anyone who has suffered damage as a result of the commission of any of the offenses provided for in this Law may claim appropriate compensation for the damages sustained, from the person responsible for the offense.</p> <p><u>Article 52:</u> The Board of Grievances may, in any civil or criminal lawsuit, render a judgment to confiscate the seized items or those items seized afterward, in order to deduct the value thereof from the damages or fines or to dispose of them in accordance with the conditions and procedures provided for in the Implementing Regulations. The Board of Grievances may order the publicizing of the judgment in one or more newspaper(s) at the expense of the party against whom the judgment is rendered. It may also order the destruction of the forged or imitated trademarks or marks wrongfully placed or used, and order, when necessary, the destruction of the items carrying such trademarks even if a judgment of acquittal is rendered.</p>
Law of PLPD	<p><u>Article 34:</u> The Committee shall grant an injunction to prevent the infringement in addition to the necessary damages, and it may impose a fine upon the infringer not exceeding one hundred thousand riyals. The maximum fine shall be doubled in case of repetition. If the Committee sees that the infringement calls for the punishment of imprisonment, the infringer shall be referred from the start to the Board of Grievances. The Committee may take the necessary prompt measures it deems necessary to prevent the damages resulting from the infringement. ..., at the expense of the party against whom the decision is issued. ...</p>
Law of Copyright	<p><u>Article 22: Penalties</u></p> <p>First: Any person who violates a provision of this Law shall be subject to one or more of the following penalties:</p> <ol style="list-style-type: none"> (1) Warning. (2) A fine not exceeding two hundred and fifty thousands riyals. (3) Closing the violating establishment or the one which participated in the violation of the copyright, for a period not exceeding two months.

	<p>(4) Confiscation of all copies of the work along with the materials used or intended for use in the infringement on the copyrights.</p> <p>(5) Imprisonment for a period not exceeding six months.</p> <p>Second: Upon repetition of the infringement on the same work or any other work, the maximum limit of penalty, fine and closure may be doubled.</p> <p>Third: If the Committee sees that the violation entails imprisonment or a fine exceeding one hundred thousand riyals or cancellation of the license, the case shall be submitted to the Minister for referral to the Board of Grievances.</p> <p>Fourth: The Committee may decide on financial compensation for the benefit of the owner whose right has been infringed upon and who files the complaint. Compensation shall be consistent with the size of infringement and the damage incurred.</p> <p>Fifth. The Committee may include in its decision the punishment of defamation against the person who commits the infringement. Publication of such shall be at his expense and by the method the Committee deems appropriate.</p> <p>Sixth: The Committee may include in its decision suspension of participation of the infringing establishment in the activities, occasions or exhibitions, if the infringement was discovered during a commercial event, provided that the period of suspension shall not exceed two years.</p> <p>Seventh: The Committee may issue an injunction against the printing of the work infringed upon, its production, publication or distribution, in addition to protective impounding of the copies, materials and pictures made from it. It may take any temporary measure it finds necessary to protect the copyright till a final decision is reached regarding the complaint or grievance. The implementing regulations shall specify the protective impounding procedures.</p>
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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 of services found to be infringing and of their channels of distribution?

The law does not authorize judicial authorities 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.

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?

As cited in the chart below, the law authorizes the indemnification of defendants wrongfully enjoined to be compensated for their damages sustained by the wrongful actions of the government or independent public corporate entities.

<p>The Law of Trademarks</p>	<p><u>Article 48:</u> Anyone who has suffered damage as a result of the commission of any of the offenses provided for in this Law may claim appropriate compensation for the damages sustained, from the person responsible for the offense.</p> <p><u>Article 51:</u> The defendant may take measures against a bad faith plaintiff requesting compensation to which the defendant might be entitled as a result of the measures provided for under Article 49 ...</p>
<p>Implementing Regulations of Copyright Law</p>	<p><u>Article 27: Provisional Protective Measures</u> ... 3) The committee may request the plaintiff: ... c) To submit a financial guarantee sufficient to protect the defendant and prevent abuse of rights or exercise thereof. ... 6) ..., the committee may, upon request of the defendant, order the plaintiff to pay appropriate compensations for any damage incurred by the defendant as a result of such measures.</p> <p><u>Article 28: Measures at Borders</u> ... 2. The committee may request the plaintiff to submit a financial guarantee sufficient to protect the defendant and prevent abuse of rights. ... 4. The committee may decide that the plaintiff pay to the importer or exporter an appropriate compensation for damages incurred by them as a result of wrongful seizure of works....</p>
<p>The Board of Grievances</p>	<p><u>Article 8:</u> 1. The Board of Grievances shall have jurisdiction to decide the following: (a)...</p>

	<p>(c) Cases of compensations filed by parties concerned against the government and independent public corporate entities resulting from their actions.</p> <p>(d)...</p>
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8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

Pursuant to general principles of law, the duration of proceedings is determined on a case-by-case basis by the specific facts and circumstances, including the complexity of the case. There is no cost of proceedings. The Kingdom of Saudi Arabia is working diligently to devise and implement a collection, retention and retrieval regime of statistical data that will include accurate and complete information on intellectual property right enforcements.

(b) *Administrative procedures and remedies*

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

Please refer to the responses to Questions 1 – 8 in Civil and Administrative Procedure and Remedies, section (a), which are applicable to administrative procedures. Saudi Arabia notices that the distinction in its legislative regime for its intellectual enforcement does not necessarily distinguish between its judicial and administrative procedures as clearly as other regimes may. However, this is consistent with Article 41 of the TRIPS Agreement.

Provisional Measures

(a) *Judicial measures*

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

As cited in the chart below, the law authorizes the judicial authorities' broad power to order any provisional measures deemed necessary under the specific facts and circumstances claimed, including but not limited to seizures of goods and equipment and injunctions.

The Law of Trademarks	<p><u>Article 49:</u> An owner of a trademark may at anytime, even prior to filing any civil or criminal lawsuit obtain- on the basis of a petition accompanied by an official document indicating the registration of the trademark- an order from the Board of Grievances to take the necessary precautionary measures, especially the following:</p> <p>a) The preparation of a record of detailed description of equipments and tools which are or were used in committing the offense and the local and imported products or goods and papers on which the trademark in question was used.</p> <p>b) Seizure of the items referred to in paragraph (a) provided that the seizure thereof shall not be effected until the claimant provides a security to be preliminarily estimated by the Board of Grievances to</p>
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	<p>compensate the party against whom the seizure is effected, if needed. It is permissible after the seizure is effected to contest the adequacy of the deposit made by the claimant in accordance with the conditions and procedures provided for in the Implementing Regulations. The order of the Board of Grievances may include the assignment of one or more experts to assist the authority specified by the Implementing Regulations.</p>
Law of Copyright	<p><u>Article 22: Penalties Seventh:</u> The Committee may issue an injunction against the printing of the work infringed upon, its production, publication or distribution, in addition to protective impounding of the copies, materials and pictures made from it. It may take any temporary measure it finds necessary to protect the copyright till a final decision is reached regarding the complaint or grievance.</p>
Law of PLPD	<p><u>Article 34:</u> At the request of the owner of the protection document, and any party with interest, the Committee shall grant an injunction to prevent the infringement in addition to the necessary damages, and it may impose a fine upon the infringer not exceeding one hundred thousand riyals. The maximum fine shall be doubled in case of repetition. If the Committee sees that the infringement calls for the punishment of imprisonment, the infringer shall be referred from the start to the Board of Grievances. The Committee may take the necessary prompt measures it deems necessary to prevent the damages resulting from the infringement.....</p>

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

The circumstances in which measures may be ordered *inaudita altera parte* are described in the chart below:

The Law of Trademarks	<p><u>Article 37:</u> For the purpose of performing the tasks entrusted to them, the officials referred to in the preceding Article may do the following:</p> <p>a) Inspect shops for violations of the provisions of this Law.</p> <p>b) Seize the goods on which are affixed trademarks that are contrary to the provisions of this Law and collect three specimens thereof for submission purposes, when necessary, and send one specimen to the Bureau of Investigation and Public Prosecution. The remaining specimens shall remain seized pending determination of the penal action. A seizure record shall be made, signed by the official and the owner of the shop or his substitute. Said record shall specify the place wherein said seizure of goods was conducted, be it the trader's warehouse, a part of the trader's shop, or a warehouse designated for this purpose. In all events, it must be ascertained that said goods have not been seized by another official authority and that an undertaking to that effect has been taken from the owner of the shop. If, however, the owner of the shop declares that said goods are under seizure, he</p>
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	<p>shall submit documents which prove that said seizure has been conducted. In all events, said goods shall be seized provided that coordination with the seizing authority has been made with the participation of a representative thereof.</p> <p>c) If deemed appropriate, conduct an immediate investigation with the violator after confronting him with the violation attributed to him. In all events, the violator shall be allowed to submit his defenses in writing or such defenses shall be recorded and attached to the seizure record, after entering therein the violator's name, nationality, capacity, residence address, business address and telephone numbers. The violator shall have the right to verify the identity of the official who reported said violation.</p>
<p>Law of Copyright</p>	<p><u>Article 22: Penalties</u> Seventh. The Committee may issue an injunction against the printing of the work infringed upon, its production, publication or distribution, in addition to protective impounding of the copies, materials and pictures made from it. It may take any temporary measure it finds necessary to protect the copyright till a final decision is reached regarding the complaint or grievance.</p>
<p>Implementing Regulations of Copyright Law</p>	<p><u>Article 27: Provisional Protective Measures</u> 1) The committee has the authority to take immediate provisional measures in order to prevent infringement of any copyright, and to prevent imported works that contain infringement of copyright from reaching commercial outlets.</p> <p>2) The committee has the authority to take provisional measures without the knowledge of the other party, if it is likely that a delay would result in harming him or it is likely to damage the evidence.</p> <p>3) The committee may request the plaintiff:</p> <p>a) To submit any evidence in his possession affirming that he is the owner of the right.</p> <p>b) To submit preliminary evidence proving that his right is being infringed or is about to be infringed.</p> <p>c) To submit a financial guarantee sufficient to protect the defendant and prevent abuse of rights or exercise thereof.</p> <p>d) The committee may request the plaintiff to submit any evidence necessary in order to determine the extent of the legitimacy of the lawsuit.</p> <p>4) The committee, after taking the protective seizure measures, may notify the affected parties to submit their viewpoint and defenses within a provisional period not exceeding thirty one (31) days from the date of initiating the protective measures in order to consider whether to amend, cancel or confirm such measures.</p>

5) The committee may cancel the measures taken in accordance with Paragraphs (1) and (2) of this Article pursuant to a request by the defendant, or suspend said measures if the plaintiff does not submit documents required from him within a time period determined by the committee, and not exceeding thirty one (31) days.

6) Upon cancellation of provisional measures or expiry of their effectiveness period as a result of the plaintiff's negligence, or upon becoming evident later that there was no infringement upon the works or commodities, the committee may, upon request of the defendant, order the plaintiff to pay appropriate compensations for any damage incurred by the defendant as a result of such measures.

Article 28: Measures at Borders

(1) A copyright owner, who has legitimate reasons to suspect that works infringing his rights are intended for importation or exportation, may submit a written request to the committee in order to stop and seize works imported or intended for importation or exportation, upon reaching the borders.

(2) The committee may request the plaintiff to submit a financial guarantee sufficient to protect the defendant and prevent abuse of rights.

(3) The plaintiff shall submit to the committee, within a period not exceeding ten (10) working days, the complaint and the supporting evidence that determine the infringements he has incurred, provided that the period of seizure does not exceed thirty one (31) days, after which amendment, cancellation or confirmation of such measures shall be considered.

(4) The committee may decide that the plaintiff pay to the importer or exporter an appropriate compensation for damages incurred by them as a result of wrongful seizure of works.

(5) The committee may grant the owner of the right (the plaintiff) sufficient opportunity to inspect the works in order to prove his allegations.

(6) The importer is entitled to an equal opportunity to inspect any of these commodities.

(7) The committee, in case the infringement is proved, is authorized to notify the owner of the right of the names and addresses of the sender and addressee of the works as well as their quantities.

Article 29: Precautionary Protective Seizure

The Ministry's office at the point of entry at the border may stop the procedure for release of works upon having prima facie evidence proving existence of copyright infringement, after coordination with the customs department at the point of entry. The office shall immediately notify the General Department of Copyright to take the necessary measures, in coordination with the committee.

Law of PLPD	Article 34: The Committee may take the necessary prompt measures it deems necessary to prevent the damages resulting from the infringement....
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- 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.**

The Law of Trademarks	<u>Article 37-b</u> (please refer to the response to Question 11) <u>Article 50:</u> The precautionary measures taken by the trademark's owner shall be considered null and void if not followed by a civil or criminal lawsuit against the party against whom such measures were taken within ten days from the date on which the measures provided for in Article 49 of this Law are taken.
Law of Copyright	<u>Article 27</u> (please refer to the response to Question 11)
Law of PLPD	<u>Article 34</u> (please refer to the response to Question 11)

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

Please refer to the responses to Questions 8.

(b) *Administrative procedures*

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

Please refer to the responses in Questions 10 - 13 in the preceding section. Please also refer to the response to Question 9.

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?

Border Procedures ³	<p><u>Article 2: Suspending Clearance Procedures by the Customs' Self-Initiative</u></p> <p>a) The Customs Authorities may suspend the clearance of goods suspected of bearing imitated trademarks upon having prima facie evidence to this effect, and shall notify the importer and the trademark owner, if his address is known, of the suspension.</p> <p>b) The Customs Authorities shall refer samples of the imported works to the competent officials at the Ministry of Culture and Information. The Ministry may suspend the clearance of said works upon having proofs of infringement upon others' intellectual rights, and shall notify the Customs Authorities, the importer and the right holder, if his address is known, of the suspension.</p> <p>The border procedures do not include provisions excluding the application of the procedures applied 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.</p>
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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?

Border Procedures	The 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 is stated in <u>Articles 1, 2, 3, 4, 5, 7, 8, 9, 10, 12 and 13 of the Regulations of Border Procedures for Protection of Intellectual Property Rights Regarding Trademarks and Copyrights</u> , which has been earlier distributed to all Members by the Secretariat.
The Law of Trademarks	<u>Article 49</u> (please refer to the response to Question 10).

³ Regulations of Border Procedures for Protection of Intellectual Property Rights Regarding Trademarks and Copyrights

Implementing Regulations of Copyright Law	<u>Article 28</u> : Measures at Borders (please refer to the response to Question 11).
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- 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?**

Please refer to the response to Question 8. Pursuant to the relevant provisions in the law cited above in response to Question 16, there is a 10 day period starting from the date of notification for the party requesting the suspension follows up with submitting a civil or criminal filing or the opposing party requests a revocation or stay of execution.

- 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?**

Border Procedures	<u>Article 2</u> (please refer to the response to Questions 15 and 16).
Implementing Regulations of Copyright Law	<u>Article 29</u> (please refer to the response to Question 11).

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

The Law of Trademarks	<u>Article 52</u> : The Board of Grievances may, in any civil or criminal lawsuit, render a judgment to confiscate the seized items or those items seized afterward, in order to deduct the value thereof from the damages or fines or to dispose of them in accordance with the conditions and procedures provided for in the Implementing Regulations. The Board of Grievances may order the publicizing of the judgment in one or more newspaper(s) at the expense of the party against whom the judgment is rendered. It may also order the destruction of the forged or imitated trademarks or marks wrongfully placed or used, and order, when necessary, the destruction of the items carrying such trademarks even if a judgment of acquittal is rendered.
Law of Copyright	<u>Article 22</u> (please refer to the response to Question 5).

Criminal Procedures

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

Please refer to the response to Question 1.

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

<p>The Law of Trademarks</p>	<p><u>Article 43:</u> Without prejudice to any harsher punishment, the following shall be punished with imprisonment for a period not exceeding one year and a fine not less than fifty thousand riyals and not exceeding one million riyals or with one of these punishments:</p> <p>a. Anyone who forges a registered trademark or imitates it in a way that misleads the public, and anyone who uses in bad faith a forged or an imitated trademark.</p> <p>b. Anyone who puts or uses, in bad faith, a trademark owned by another on his products or services.</p> <p>c. Anyone who offers, puts up for sale, or sells or possesses with intention of selling products carrying a forged, an imitated, or unlawfully put or used trademark, despite his knowledge thereof as well as anyone who offers to render services under such a trademark despite his knowledge thereof.</p> <p><u>Article 44:</u> Without prejudice to any harsher punishment, the following shall be punished with imprisonment for a period not exceeding three months and a fine not less than twenty thousand riyals and not exceeding two hundred and fifty thousand riyals, or with one of these punishments:</p> <p>a. Anyone who uses an unregistered trademark in the cases specified in paragraphs (b, c, d, e) of Article 2 of this Law.</p> <p>b. Anyone who unlawfully inscribes on his trademarks or commercial papers a statement that would lead to the belief that they have been registered.</p>
<p>Law of Copyright</p>	<p><u>Article 21: Infringements</u> The following acts shall be deemed infringements on the rights protected by the Law:</p> <p>(1) Publishing a work not owned by the publisher, publishing it under the pretense of its ownership or without obtaining a written authorization or a contract with the author of the work, his heirs or their representatives.</p> <p>(2) Amendment of the contents of a work, its nature, subject or title without the knowledge of the author and his prior written consent thereof, whether the amendment is made by the publisher, the producer, distributor or anyone else.</p> <p>(3) Reprinting the work by the producer, the publisher or the printer without obtaining prior written consent of the copyright owner, or having the documents authorizing the reprint.</p>

	<p>(4) Removal of any written or electronic information that may lead to forfeiting the owner’s copyrights.</p> <p>(5) Removing and cracking any protective electronic code that guarantees the use of the original copies of the work, such as coding or data recorded by the use of laser or other means.</p> <p>(6) Commercial use of intellectual works through deception, which is not permitted by the owners of the copyright, such as using copied software or receiving coded broadcasting programs through illegal means.</p> <p>(7) Manufacturing or importing tools –for the purpose of sale or rental- of any means which facilitate receiving or exploiting works through means other than those determined by owner of the rights.</p> <p>(8) Copying or photographing parts of a book or a collection of books or parts of any work, with or without compensation, without obtaining the written consent of the copyright owners and the competent authorities of the Ministry, with the exception of cases of lawful copying specified in Article (15) of this Law.</p> <p>(9) Import of counterfeit, imitated or copied works.</p> <p>(10) Keeping non-original works at the commercial establishment, its warehouse or any other facility owned by it, whether directly or indirectly and under any pretense.</p> <p>(11) Infringement on any of the protected rights specified in this Law or violation of any of its provisions.</p>
<p>Law of PLPD</p>	<p><u>Article 47:</u> The owner of the protection document may initiate an action before the Committee against any person who infringes his invention by exploiting it in the Kingdom without his consent. The following shall be deemed as exploitation of the invention:</p> <p>a) If it is a product: Its manufacture, sale, offering for sale, use, storage or its importation for any of these purposes.</p> <p>b) If it is a process: The use of the process, or performing any of the acts referred to in the pervious paragraph, in relation to the product which is directly obtained by the use of this process.</p> <p>However, the owner of the protection document’s right shall not preclude others from exploiting his invention in non-commercial activities relating to scientific research.</p> <p><u>Article 51:</u> The owner of the certificate of design may initiate an action before the Committee against any person who infringes his design by exploiting it without his consent inside the Kingdom. The performance of any of the following acts shall be deemed to be exploitation of the design:</p>

a) Reproducing the whole design or any original part of it, whether by incorporation in an integrated circuit or otherwise. Acts relating to personal purposes, or scientific purposes such as research, analysis, education or evaluation shall not be deemed to be infringement.

b) Importing, selling or distributing a design, or any integrated circuit in which a design is incorporated. It shall also be deemed to be infringement the performance of any of the acts referred to in this paragraph in relation to any article incorporating such an integrated circuit, if this circuit contains an unlawfully reproduced design.

Article 56:

a) The plant owner of the protection document may initiate an action before the Committee against any person who infringes the patented variety by exploiting the propagating material of the patented variety without his consent inside the Kingdom. The following shall be deemed to be exploitation of the propagating material of the patented variety:

- (1) Producing or propagating it.
- (2) Conditioning it for purposes of propagation.
- (3) Exporting it.
- (4) Importing it.
- (5) Offering it for sale, selling it or any other sort of marketing.
- (6) Stocking it for any of the above purposes.

b) Rights stipulated in paragraph (a) of this Article include harvested material of the variety, including the whole plant or part thereof obtained by unlawful use of the propagating material of the variety. This applies where the owner of the protection document of the plant patent was not given a reasonable chance to exercise his rights in relation to the propagating material of the said variety.

c) Rights stipulated in paragraphs (a) and (b) extend to the varieties derived essentially from the protected variety if it is not possible to distinguish such varieties clearly, in accordance with paragraph (b) of Article Fifty Five of this Law, from the said protected variety, or that the production of these varieties requires the repeated use of the said protected variety.

d) Rights stipulated in paragraphs (a), (b) and (c) of this Article shall not extend to acts performed for non-commercial personal purposes or for experimental purposes or for purposes of breeding new varieties.

Article Sixty:

The owner of the industrial design certificate may initiate an action before the Committee against any person who infringes the industrial design by exploiting it for commercial purposes without his consent within the Kingdom through manufacture, sale or importation of a product that includes or represents a wholly or substantially copied industrial design..

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?

<p>The Law of Trademarks</p>	<p><u>Article 54:</u> The Bureau of Investigation and Prosecution shall represent the public right of action in the criminal case for violation of the provisions of this Law.</p> <p><u>Article 36:</u> The officials referred to in Article (56) of the Trademarks Law who are appointed pursuant to a decision by the Minister of Commerce shall jointly or severally record all violations to the provisions of the Law and its Implementing Regulation hereof, regardless of whether such violations came into their knowledge through a complaint filed by a certain person or in the course of an inspection visit made by them to the market places or shops.....</p>
<p>Implementing Regulations of Copyright Law</p>	<p><u>Article 23:</u> ... 9) The General Department shall review all procedures and investigations, determine the violations committed, the articles governing these violations in the Law and these Regulations, and the views of the Department.</p> <p>11) The General Department of Copyright shall refer the cases and violations along with all relevant documents to the violation review committee for consideration.</p> <p><u>Article 18: Detection of Violations</u> Detection of violations of provisions of the Law and the Regulations shall be carried out in any of the following cases:</p> <p>(1) Pursuant to a complaint or written notice filed by owners of the right or their representatives.</p> <p>(2) Routine or sudden field visits by the inspectors of the Ministry to public firms and shops that use in their activities any of the intellectual works.</p>

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

As cited in the chart below, private persons who are material parties have standing to initiate criminal proceedings.

<p>Law of Trademarks</p>	<p><u>Article 36:</u> The officials referred to in Article (56) of the Trademarks Law who are appointed pursuant to a decision by the Minister of Commerce shall jointly or severally record all violations to the provisions of the Law and its Implementing Regulation hereof, regardless of whether such violations came into their knowledge through a complaint filed by a certain person or in the course of an inspection visit made by them to the market places or shops. A record of the occurrence of</p>
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	<p>such violation shall be made and signed by the writer thereof as well as the owner of the shop or his substitute at the time said violation was recorded.</p> <p><u>Article 38:</u> After investigating the violator, all violation papers, along with a specimen of the violation subject matter, shall be referred by the Deputy Minister for Internal Trade to the Bureau of Investigation and Public Prosecution, with a request to initiate a penal action before the Board of Grievances in accordance with Article (54) of the Law.</p>
Implementing Regulations of Copyright Law	<p>Right holders or their representatives and the defendants or their representatives.</p> <p><u>Article 18 (1):</u> (please refer to the response to Question 22).</p>
Law of PLPD	<p><u>Article 34:</u> ... At the request of the owner of the protection document, and any party with interest, ...</p>

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.**

Law of Trademarks	<p><u>Article 43:</u> Without prejudice to any harsher punishment, the following shall be punished with imprisonment for a period not exceeding one year and a fine not less than fifty thousand riyals and not exceeding one million riyals or with one of these punishments:</p> <p>d. Anyone who forges a registered trademark or imitates it in a way that misleads the public, and anyone who uses in bad faith a forged or an imitated trademark.</p> <p>e. Anyone who puts or uses, in bad faith, a trademark owned by another on his products or services.</p> <p>f. Anyone who offers, puts up for sale, or sells or possesses with intention of selling products carrying a forged, an imitated, or unlawfully put or used trademark, despite his knowledge thereof as well as anyone who offers to render services under such a trademark despite his knowledge thereof.</p> <p><u>Article 44:</u> Without prejudice to any harsher punishment, the following shall be punished with imprisonment for a period not exceeding three months and a fine not less than twenty thousand riyals and not exceeding two hundred and fifty thousand riyals, or with one of these punishments:</p>
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	<p>c. Anyone who uses an unregistered trademark in the cases specified in paragraphs (b, c, d, e) of Article 2 of this Law.</p> <p>d. Anyone who unlawfully inscribes on his trademarks or commercial papers a statement that would lead to the belief that they have been registered.</p> <p><u>Article 45:</u> A repeat offender shall be punished with a punishment not exceeding twice the maximum punishment specified for the offense and closure of the place of business or the project for a period not less than fifteen days and not exceeding six months, in addition to publicizing the judgment at the expense of the offender in accordance with the conditions and procedures provided for in the Implementing Regulations.</p>
Law of Copyright	<u>Article 22</u> (please refer to the response to Question 5).
Law of PLPD	<p><u>Article 34:</u> ..., the Committee shall grant an injunction to prevent the infringement ...</p> <p><u>Article 61:</u> ..., any party that violates any of the provisions provided for in this Law shall be punished ...</p>

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.

Please refer to the response to Question 8.
