

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

Responses from Saint Vincent and the Grenadines

**Civil and Administrative Procedures and Remedies**

(a) *Civil judicial procedures and remedies*

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

The Courts which have jurisdiction over IPR infringement cases are as follows:

- The High Court of Justice
- The Court of Appeal
- The Judicial Committee of the Privy Council- Final Court of Appeal

**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?**

**Which persons have standing to assert IPRs?**

Generally speaking, the registered owner of IPRs has standing to assert IPRs.

Trade Marks

Under the Trademarks Act, the registered owner or an authorized user may bring an action for infringement.

Copyright

The copyright owner may institute civil proceedings.

Patents

The proprietor of a patent may bring an action for infringement.s.53.

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

### Layout-designs of Integrated Circuits

The right holder of a layout-design or his licensee (if the licensee has requested the right holder to bring an action for a specific relief and the right holder fails to do so within a reasonable time) may bring an action for infringement.s.14(2).

### Industrial Designs

The registered owner of an industrial design or his licensee (if the licensee has requested the right holder to bring an action for a specific relief and the right holder fails to do so within a reasonable time) may bring an action for infringement. s.21(2).

### Geographical Indications

Any interested person may bring an action for infringement of geographical indication rights.

### **How may they be represented?**

A natural person may appear before the Court in person or be represented by an attorney-at-law, admitted to practise in St. Vincent and the Grenadines. A body corporate must be represented by an attorney-at-law, admitted to practise in St. Vincent and the Grenadines.

### **Are there requirements for mandatory personal appearances before the court by the right holder?**

There are no requirements for mandatory personal appearances before the court by a right holder.

### **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 Civil Procedure Rules 2000, provides under Part 33, for a party to obtain evidence prior to a hearing and for circumstances in which a person may be required to attend court to give evidence or produce a document (Rule 33.1). This may be achieved by the issue of a witness summons which is a document, issued by the court, requiring a witness to attend court to give evidence or produce documents to the court (Rule 33.2).

In addition, Part 34 of the Civil Procedure Rules 2000 enables a party to obtain from any other party, information about any matter which is in dispute in the proceedings. To obtain such information, the party must serve the other party with a request identifying the information sought (Rule 34.1). Under Rule 34.2, if a party does not give information which another party requested within a reasonable time, the party who served the request may apply to the court for an order compelling the other party to do so.

Under Part 28 of the Civil Procedure Rules 2000 which deals with the disclosure and inspection of documents, a party to civil proceedings may be required to give standard disclosure or specific disclosure.

If a party is required by any direction of the court to give standard disclosure, that party is obliged to disclose all documents which are directly relevant to the matters in question (Rule 28.2).

An order for specific disclosure is defined in Rule 28.5 as an order that a party must do one or more of the following:

- Disclose documents or classes of documents specified in the order;
- Carry out a search for documents to the extent stated in the order;
- Disclose any document located as a result of that search.

An order for specific disclosure may be made on an application for such an order or without an application (Rule 28.5(2)). An application for specific disclosure may be made without notice at a case management conference (Rule 28.5(3)).

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

There are no means to identify and protect confidential information brought forward as evidence.

**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**

Patents

Remedies for the infringement of patent rights are set out in s.53 of the Patents Act.

Civil proceedings may be instituted by the patent owner against a person whom he alleges has committed an act of infringement. Without prejudice to the jurisdiction of the Court, the patent owner may claim the following remedies:

- An injunction restraining the respondent from any act of infringement;
- An order for the respondent to deliver up or destroy any product in relation to which the patent is infringed or any article in which that product is inextricably comprised;
- Damages;
- An account of the profits derived by the respondent from the infringement;
- A declaration that the patent is valid and has been infringed by the respondent.

Trademarks

Remedies for the infringement of trademark rights are set out in Parts 15-17 of the Trade Marks Act, No. 46 of 2003.

- **Civil Remedies: Part 15 ss. 100-110**  
Sections 100-104 set out what may or may not amount to an infringement of trademark rights. Section 105 provides that the proprietor of a registered trademark may bring an action in the High Court for an injunction and damages or an account of profits.

### Geographical Indications

Remedies for the infringement of geographical indications rights are set out in ss:6 and 7 of the Geographical Indications Act, No. 24 of 2004.

- Civil Remedies: s.7  
Section 7 provides that any interested person may institute proceedings in the Court to prevent any of the acts referred to in s.6: s. 7(1)

The remedies available to the claimant in such proceedings are, in addition to an injunction, the court may award damages and grant any other remedy or relief the Court thinks fit: s. 7(2)

### Industrial Designs

Remedies for the infringement of Industrial Designs rights are set out in s: 21 of the Industrial Designs Act, No.20 of 2005. Section 21 (1) defines what amounts to an act of infringement as exploitation of a registered industrial design within the meaning of s. 9(2), without the authorization of the owner.

- Civil Remedies: s. 21 (2)  
On the request of the owner of a registered industrial design or his licensee, the Court may grant an injunction to prevent infringement or an imminent infringement; award damages or grant any other relief provided for in general law.

### Layout-Designs of Integrated Circuits

Remedies for the infringement of Layout-Designs of Integrated Circuits rights are set out in ss. 14 and 15 of the Layout-Designs of Integrated Circuits Act, No.18 of 2005.

- Civil Remedies: s. 14 (2)  
On the request of the owner of a registered layout-design or his licensee, the Court may grant an injunction to prevent infringement or an imminent infringement; award damages or grant any other relief provided for in general law.

### Copyright

#### **Civil Remedies**

#### Remedies for the infringement of Economic Rights

Section 28 of the Copyright Act No.21 of 2003, defines what amounts to an infringement of copyright. The following have been declared acts of infringement:

- Any person who without a licence of the owner does or authorizes anyone to infringe the economic rights of the owner as enumerated in s.7; any person who imports any article other than for private domestic use which he knows or has reason to believe is an infringing copy; any person who has in his possession in the course of business or who sells, lets for hire or exhibits in public an infringing copy in St. Vincent and the Grenadines or on any ship or aircraft registered in St. Vincent and the Grenadines: s. 28(1).
- Any person who without a licence of the owner makes, imports, possesses in the course of trade or sells or lets for hire, any article specifically designed or adapted for making infringing copies: s. 28(3).

- Any person who without a licence of the owner transmits infringing copies via a telecommunications system (other than by broadcasting or inclusion in a cable programme service): s. 28(4).
- Where the performance of a protected work takes place at a place of public entertainment without the licence of the owner, the person who gave permission for the premises to be used for the performance is liable for infringement: s. 28(5)
- Any person who gives permission for a public performance of a protected work or who gives permission for the playing or showing of the work in public by means of any apparatus for playing sound recordings or showing films or receiving audiovisual images by electronic means is liable for infringement: s.28(6). Liability will attach in such cases where the person had reason to believe that the apparatus will be used to infringe copyright: s.28(7).
- Any occupier of premises who gives permission for the apparatus to be brought onto the premises is liable for infringement if he had reason to believe that the apparatus would be used to infringe copyright: s.28(8).
- Any person who supplies a copy of a sound recording or film used to infringe copyright is liable for infringement if he had reason to believe that what he supplied was likely to be used to infringe copyright: s.28(9).

Section 29 provides that the owner of copyright may institute civil action for the infringement of his economic rights and the following remedies shall be available to the claimant:

- TRADEMARK Damages
- An injunction
- An account of profits, and
- Any other remedy as is available in any corresponding proceeding in respect of the infringement of proprietary rights: s.29(1).

In assessing damages, the court may take into account the flagrancy of the infringement and has power to award additional damages as the court deems fit in the circumstances: s.29(3).

In an action for infringement, the court may grant an order for the delivery up of infringing copies or an article designed or adapted for making infringing copies: s.30.

The owner of copyright may also seize and detain infringing copies: s.31.

Wide injunctions are available to licensing bodies. A wide injunction is one that extends to all the protected works owned by the claimant notwithstanding that the infringement related to only one or some of the protected works: s.32.

#### Remedies for the infringement of Moral Rights

The infringement of the moral rights of a copyright owner amounts to a breach of statutory duty: s. 39(1). In an action for the infringement of moral rights, the aggrieved party may be granted an injunction: s.39 (2). The court may also order the respondent in an action for infringement, to publish such correction in the terms and in the manner as may be directed by the court: s 39(3).

#### Remedies for the infringement of Rights in Performances

An infringement of rights in performances is actionable as a breach of statutory duty: s. 124.

A person having performers or recording rights may apply to the court for the delivery up to him of an illicit recording of a performance: s.125.

A person having performers or recording rights may also seize and detain an illicit recording of a performance: s.126.

**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?**

There are no specific provisions in the intellectual property legislation which vests judicial authorities with 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. However, it is within the jurisdiction of the Court to make any such order as the Court may deem fit having regard to the facts and circumstances of each case.

**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?**

There are no specific provisions in the intellectual property legislation relating to the indemnification of defendants wrongfully enjoined. Public authorities and/or officials are not liable for the indemnification of defendants wrongfully enjoined. Accordingly, there are no "remedial measures".

**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 provisions governing the length and cost of proceedings.

There is no available data on the actual duration of proceedings and their cost.

*(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.**

The intellectual property legislation does not provide for administrative procedures and remedies in respect of the infringement of intellectual property rights.

**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 Civil Procedure Rules 2000, which governs the conduct of all civil matters before the court, sets out the rules pertaining to Interim Remedies in Part 17.

The court may grant interim remedies which include the following (Rule 17.1(1)):

- (a) An interim declaration;
- (b) An interim injunction;

- (c) An order authorizing a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (h);
- (d) An order directing a party to prepare and file accounts relating to the dispute;
- (e) An order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order;
- (f) An order for a specified fund to be paid into court or otherwise secured where there is a dispute over a party's right to the fund;
- (g) An order for interim costs;
- (h) An order for the -
  - (i) carrying out of an experiment on or with relevant property;
  - (ii) detention, custody or preservation of relevant property;
  - (iii) inspection of relevant property;
  - (iv) payment of income from relevant property until a claim is decided;
  - (v) sale of relevant property (including land) which is of a perishable nature or which for any other good reason it is desirable to sell quickly;
  - (vi) taking a sample of relevant property.
- (i) An order permitting a party seeking to recover personal property to pay a specified sum of money into court pending the outcome of the proceedings and directing that, if the party does so the property must be given up to the party;
- (j) An order (referred to as a "**freezing order**") restraining a party from -
  - (i) dealing with any asset whether located within the jurisdiction or not;
  - (ii) removing from the jurisdiction assets located there;
- (k) An order to deliver up goods;
- (l) An order (referred to as a "**search order**") requiring a party to admit another party to premises for the purpose of preserving evidence, etc;
- (m) An order (referred to as an "**order for interim payment**") under rules 17.5 and 17.6 for payment by a defendant on account of any damages, debt or other sum which the court may find the defendant liable to pay.

In Rules 17.1 (e) and (h), relevant property means property which is the subject of a claim or in relation to which any question may arise on a claim. The list of interim remedies in Rule 17.1 is non exhaustive and the court has power to grant interim remedies which are not listed. An interim remedy may be granted by the court whether or not there has been a claim for a final remedy of the same kind (Rule 17.1 (2)-(4)).

An order for an interim remedy may be made at any time including before a claim has been made or after judgment has been given. The court may grant an interim remedy before a claim has been made only if the matter is urgent or it is necessary to do so in the interest of justice (Rule 17.2).

Rule 17.3 sets out the procedure for making an application for an interim order and provides that such application must be supported by evidence on affidavit unless the court orders otherwise. This rule further provides that the court may grant an interim remedy on an *ex parte* application, if there are good reasons for not giving notice. In such case, the evidence in support of the application must state the reasons why notice has not been given.

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

Rule 17.3 provides that the court may grant an interim remedy on an *ex parte* application, if there are good reasons for not giving notice. In such case, the evidence in support of the application must state the reasons why notice has not been given.

**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.**

An application for an interim order must be supported by evidence on affidavit unless the court orders otherwise. Such application may be made ex parte and the court may grant the interim order sought if it appears that there are good reasons for not giving notice Civil Procedure Rules 17(3).

The court may also grant an order for an interim remedy at any time including before a claim is made or after judgement has been given Civil Procedure Rules 17(2)(1).

There are no specific time limits in respect of provisional measures. An order for an interim remedy will usually contain a "return date" at which time the court can make a further order.

Generally, in order to protect the legitimate interest of a respondent, the applicant for an interim remedy is required to give an undertaking to pay damages to the respondent for any loss sustained as a consequence of the order.

**13. 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 provisions governing the length and cost of proceedings.

There is no available data on the actual duration of proceedings and their cost.

(b) *Administrative Measures*

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

Except for provisions concerning border measures as detailed in the responses to questions 15-19, the intellectual property legislation does not provide for administrative provisional measures in respect of the infringement of intellectual property rights.

**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?**

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).



The goods for which it is possible to apply for a suspension by the customs authorities of the release into free circulation are as follows:

Trademarks

Goods manufactured outside Saint Vincent and the Grenadines that are being imported into Saint Vincent and the Grenadines and which infringe or appear to infringe a registered trademark - s.111 and s.112 of the Trade Marks Act, No.46 of 2003.

Copyright

An infringing copy of a literary, dramatic or musical work, film or sound recording, made outside Saint Vincent and the Grenadines - s.48 Copyright Act No.21 of 2003.

**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).**

Trademarks

The Trade Marks Act, No.46 of 2003 does not specify any imports which are excluded from seizure by the Customs.

Copyright

Pursuant to section 48(4) of the Copyright Act No.21 of 2003, the importation of any article by a person for his private and domestic use is not subject to seizure by the Customs.

**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?**

The Patents Act provides for regional exhaustion of rights - s.28. The Industrial Designs Act provides for national exhaustion of rights -s.9(3). The Copyright Act, Trade Marks Act, Geographical Indications Act and the Layout-Designs of Integrated Circuits Act, do not contain any provisions in respect of exhaustion of rights.

**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?**

TradeMarks

The proprietor of a registered trademark may notify the Comptroller of Customs of his objection to the importation of goods which infringe or appear to infringe the registered trademark (s. 111(1)).

If the registered owner has not given notice or the notice has expired, an authorized user may ask the registered owner to give such notice s. 111(2). If the registered owner does not comply with the request of an authorized user within 2 months from the day on which the request is made, the authorised user may give notice together with any prescribed document s. 111(3), reg. 68(1). The

prescribed documents are a copy of the certificate of registration certified by the Registrar as being a true copy and issued not more than 2 months before the date of the notice; documents which establish that the authorised user has power to give notice of objection, that the registered owner was requested to give notice and the period prescribed for the owner to comply with the request has expired reg. 68(2).

In either case, that is, whether notice is given by the registered owner or the authorized user, the notice remains in force for 2 years unless revoked in writing s.111(4) & (5).

The Comptroller may seize imported goods if the goods bear a sign, that in the opinion of the Comptroller, is substantially identical with or deceptively similar to a notified trademark and the goods are similar to those in respect of which the trademark is registered s.112(2).

If the Comptroller has not been given security in an amount he considers sufficient to repay the Government the expense that may be incurred by the Government if the goods were seized, he may decide not to seize the goods s.112(3).

Goods seized under s.112 are required to be kept in a secure place s.112(4).

As soon as practicable, the Comptroller must give notice of the seizure to the designated owner either personally or by registered post. The goods seized must be identified in the notice s.113(a).

The Comptroller must also give notice of seizure to the objector either personally or by registered post. The notice must identify the goods seized; give the full name and address of the designated owner and any other information which the Comptroller believes is likely to assist the objector to identify the importer of the goods and the notice must state that the goods will be released to the designated owner unless the objector brings an action for infringement of the trademark and gives the Comptroller notice in writing of the action within 10 working days after he has been notified s.113(b).

At any time prior to the commencement of an action by the objector, the designated owner may notify the Comptroller in writing that he consents to the goods being forfeited to the crown s.114.

The Comptroller shall release the goods to the designated owner if the objector fails to bring an action within the period specified in s.113(b); or if before the end of the prescribed period for bringing an action, the objector consents to the release of the goods.

The Comptroller is vested with discretion to release the seized goods to the designated owner if before the end of the prescribed period for bringing an action, the Comptroller is satisfied that there are no reasonable grounds for believing that the trademark has been infringed by the importation and the objector has not brought an action for infringement s.115.

At any time, the court may order that the seized goods be released to the designated owner on such terms and conditions as the court may deem fit or the court may order that the seized goods be forfeited to the state s.116(3).

If the court decides that the trademark was not infringed by the importation and the designated owner satisfies the court that he has suffered loss as a result of the seizure, the court may order the objector to pay compensation to the designated owner s.116(4).

If infringing goods are imported into Saint Vincent and the Grenadines and the Comptroller, relying on evidence received, is satisfied that the use of the trademark on the goods is fraudulent, the

Comptroller may ask the importer or his agent to produce any document relating to the goods; to give information about the name and address of the person by whom the goods were consigned to Saint Vincent and the Grenadines and the name and address of the person in Saint Vincent and the Grenadines to whom the goods were consigned s.122(1). If the importer or his agent intentionally or recklessly fail to comply with the request within the prescribed period, the importer or agent commits an offence and is liable on conviction to a fine of XCD 10 000.00 s.122(2). The period for complying with a request under s.122(1) is 10 working days from the day on which the request is made Regulation 69, Trade Marks Regulations 2004.

### Copyright

By virtue of section 48(1) of the Copyright Act No.21 of 2003, the owner of the copyright in any published literary, dramatic or musical work may give written notice to the Comptroller of Customs that he is the owner of the copyright in the work and that he requests the Comptroller, during the period specified in the notice copies of the work, film or sound recording to which this section applies.

Section 48(3) provides that the section applies to any infringing copy of a literary or musical work or film or sound recording made outside Saint Vincent and the Grenadines.

Section 48(2) provides that the period specified in a notice shall not exceed five years and shall not extend beyond the end of the period for which copyright may subsist.

The owner of the copyright in a literary or musical work, film or sound recording who gives notice to the Comptroller is required to comply with such conditions with respect to the form of notice, furnishing evidence, payment of fees, giving of security and any other incidental or supplementary matter as may be prescribed.

In addition to these provisions, any police officer, not below the rank of Sargeant, may enter and search any premises or place; stop and search any vehicle; stop, board and search any vessel or aircraft (other than a ship of war or a military aircraft) if he reasonably suspects that there is an infringing copy of a work or any article used or intended to be used for making infringing copies and the officer may seize, remove or detain the infringing article or any article used or intended to be used for making infringing copies. The officer may also remove any other evidence of infringement: s. 138(1).

A police officer may, in the exercise of his duties under s. 138(1), break open any outer or inner door; forcibly board any vessel, aircraft or vehicle; remove by force any person or thing obstructing him; detain any person found until the search is completed and detain any vessel, aircraft or vehicle until it has been searched: s. 138(2).

Any person who wilfully obstructs a member of the police force in the exercise of his power; or who wilfully fails to comply with any requirement properly made; or who without reasonable excuse fails to give assistance which he may be reasonably required to give, is guilty of an offence and liable on conviction to a fine not exceeding Two Thousand Five Hundred Eastern Caribbean Dollars (XCD2,500.00) or to imprisonment for a maximum term of 12 months: s.140.

**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?**

There are no provisions governing the length and cost of proceedings.

There is no available data on the actual duration of proceedings and their cost.

There are no provisions concerning the length of time that a decision by the competent authorities for the suspension of the release of goods into free circulation, remains valid.

**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?**

Trademarks

Under the Trade Marks Act No.46 of 2003, if infringing goods are imported into Saint Vincent and the Grenadines and the Comptroller, relying on evidence received, is satisfied that the use of the trademark on the goods is fraudulent, the Comptroller may ask the importer or his agent to produce any document relating to the goods; to give information about the name and address of the person by whom the goods were consigned to Saint Vincent and the Grenadines and the name and address of the person in Saint Vincent and the Grenadines to whom the goods were consigned s.122(1). If the importer or his agent intentionally or recklessly fail to comply with the request within the prescribed period, the importer or agent commits an offence and is liable on conviction to a fine of XCD 10 000.00 s.122(2). The period for complying with a request under s.122(1) is 10 working days from the day on which the request is made Regulation 69, Trade Marks Regulations 2004.

Copyright

Under the provisions of the Copyright Act No.21 of 2003, any police officer, not below the rank of Sergeant, may enter and search any premises or place; stop and search any vehicle; stop, board and search any vessel or aircraft (other than a ship of war or a military aircraft) if he reasonably suspects that there is an infringing copy of a work or any article used or intended to be used for making infringing copies and the officer may seize, remove or detain the infringing article or any article used or intended to be used for making infringing copies. The officer may also remove any other evidence of infringement: s. 138(1).

A police officer may, in the exercise of his duties under s. 138(1), break open any outer or inner door; forcibly board any vessel, aircraft or vehicle; remove by force any person or thing obstructing him; detain any person found until the search is completed and detain any vessel, aircraft or vehicle until it has been searched: s.138(2).

Any person who wilfully obstructs a member of the police force in the exercise of his power; or who wilfully fails to comply with any requirement properly made; or who without reasonable excuse fails to give assistance which he may be reasonably required to give, is guilty of an offence and liable on conviction to a fine not exceeding Two Thousand Five Hundred Eastern Caribbean Dollars (XCD 2,500.00) or to imprisonment for a maximum term of 12 months: s.140.

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

The competent authorities do not have authority to order any remedies for infringement. All remedies are decided by the courts.

**Criminal Procedures**

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

The Courts which have jurisdiction over criminal acts of infringement are as follows:

- The Magistrates' Courts - Summary Offences
- The High Court of Justice - Indictable Offences
- The Court of Appeal
- The Judicial Committee of the Privy Council - Final Court of Appeal

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

Trademarks

Remedies for the infringement of trademark rights are set out in Parts 15-17 of the Trademarks Act, No. 46 of 2003.

Criminal Remedies: Part 17 ss: 123-135

The following are offences under this Part:

- to falsify or unlawfully remove a trademark: s.123
- to falsely apply a registered trademark: s.124
- to manufacture a die, block, machine or instrument to be used to commit an offence against s.123 or s.124: s. 125(1)
- to draw or program a computer or other device to draw a registered trademark or part of a registered trademark to commit an offence against s.123 or s.124: s. 125(2)
- to possess a die, block, machine, instrument, computer or some other device programmed to draw a registered trademark or part thereof or a representation of a registered trademark or part thereof to commit an offence against s. 123 or s. 124: s. 125(3)
- to sell, expose for sale, possess or import goods with false trademarks: s.126

The penalty on conviction for any of these offences is a fine not exceeding Two Hundred and Fifty Thousand Eastern Caribbean Dollars (XCD 250,000.00): s.127

Copyright

Remedies for the infringement of Economic Rights

Any person who without a licence of the copyright owner, makes for sale or hire, or in the course of business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes, imports in St. Vincent and the Grenadines for a purpose other than private domestic use or distributes otherwise than in the course of business to an extent that prejudicially affects the copyright owner, any article which he knows or believes to be an infringing copy, commits an offence: s.44(1).

The penalty imposed on conviction is a maximum fine of Five Thousand Five Hundred Eastern Caribbean Dollars (XCD5,500.00) for each article to which the offence relates. In the case of a subsequent conviction, the defendant is liable to a fine as may be determined by the court or to imprisonment for a term not exceeding 2 years: s. 44(4).

Any person who makes or has in his possession an article specifically designed or adapted for making copies of a particular 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: s. 44(2).

Any person who causes a literary, dramatic or musical work to be performed in public without authorization or who causes a sound recording or film to be played or shown in public

knowing or having reason to believe that copyright subsists in the work and that the performance constitutes an infringement of copyright, commits an offence: s. 44(3).

The penalty on conviction of an offence under s.44(2) or 44(3) is a fine not exceeding One Thousand Five Hundred Eastern Caribbean Dollars (XCD1,500.00) and on any subsequent conviction to the aforementioned fine or to a term of imprisonment not exceeding 12 months: s. 44(5).

#### Remedies for the infringement of Rights in Performances

It is an offence for a person without sufficient consent to make for sale or hire; import into St. Vincent and the Grenadines otherwise than for his private and domestic use; possess in the course of a business with a view towards committing an infringing act; sell or let for hire, offer or expose for sale or hire, or distribute in the course of a business a recording which is and which he knows or has reason to believe is an illicit recording: s. 127(1).

It is an offence for a person who causes a recording of a performance made without sufficient consent to be shown or played in public or to be broadcast or included in a cable programme service, if he knows or ought to have known that he was infringing the performers rights: s.127(2).

A person guilty of an offence under s.127(1) or s.127(2) is liable on summary conviction to a fine not exceeding Two Thousand Five Hundred Eastern Caribbean Dollars (XCD2,500.00) or to imprisonment for a term not exceeding 12 months; or on indictment to a fine not exceeding Fifty Thousand Eastern Caribbean Dollars (XCD50, 000.00) or to imprisonment for term not exceeding 5 years or to both fine and imprisonment: s.127(6).

In the course of the above mentioned proceedings the court may order the delivery up of illicit recordings: s.128.

Any police officer, not below the rank of Sargeant, may enter and search any premises or place; stop and search any vehicle; stop, board and search any vessel or aircraft (other than a ship of war or a military aircraft) if he reasonably suspects that there is an infringing copy of a work or any article used or intended to be used for making infringing copies and the officer may seize, remove or detain the infringing article or any article used or intended to be used for making infringing copies. The officer may also remove any other evidence of infringement: s. 138(1).

A police officer may, in the exercise of his duties under s. 138(1), break open any outer or inner door; forcibly board any vessel, aircraft or vehicle; remove by force any person or thing obstructing him; detain any person found until the search is completed and detain any vessel, aircraft or vehicle until it has been searched: s. 138(2).

Any person who wilfully obstructs a member of the police force in the exercise of his power; or who wilfully fails to comply with any requirement properly made; or who without reasonable excuse fails to give assistance which he may be reasonably required to give, is guilty of an offence and liable on conviction to a fine not exceeding Two Thousand Five Hundred Eastern Caribbean Dollars (XCD 2,500.00) or to imprisonment for a maximum term of 12 months: s.140.

Where any offence created by the Copyright Act is committed by a body corporate with the consent or connivance of any director, manager, secretary or any person purporting to act in such capacity, then that person as well as the body corporate is guilty of an offence and liable to prosecution: s.141.

### Geographical Indications

Remedies for the infringement of geographical indications rights are set out in ss.6 and 7 of the Geographical Indications Act, No. 24 of 2004.

- Criminal Remedies: s:6

The following are enumerated as offences:

- No person shall in the designation or presentation of goods, by any means, indicate or suggest that the goods originate in a geographical area other than the true place of origin in such a manner as would mislead the public as to the geographical origin of the goods: s. 6 (1)(a)
- No person shall use a geographical indication identifying wines for wines not originating in the place indicated or identifying spirits for spirits not originating in the place indicated, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like: s. 6 (1) (b)
- No person shall engage in conduct which constitutes an act of unfair competition, including acts which create confusion, false allegations in the course of trade and misleading indications or allegations: s. 6 (1 ) (c)

Any person who contravenes this section is liable on conviction to a fine not exceeding Ten Thousand Eastern Caribbean Dollars (XCD 10,000.00) or to imprisonment for 2 years or to both fine and imprisonment.

### Industrial Designs

Remedies for the infringement of Industrial Designs rights are set out in s: 21 of the Industrial Designs Act, No.20 of 2005. Section 21(1) defines what amounts to an act of infringement as exploitation of a registered industrial design within the meaning of s. 9(2), without the authorization of the owner.

- Criminal Remedies: s: 21(3)

Any person who contravenes the exclusive rights set out in s. 9(2) commits an offence and is liable on summary conviction to a fine of Ten Thousand Eastern Caribbean Dollars (XCD10,000.00) or to imprisonment for 5 years.

### Layout-Designs of Integrated Circuits

Remedies for the infringement of Layout-Designs of Integrated Circuits rights are set out in ss. 14 and 15 of the Layout-Designs of Integrated Circuits Act, No.18 of 2005.

- Criminal Remedies: s: 15

Any person who contravenes the exclusive rights set out in s. 6 commits an offence and is liable on summary conviction to a fine of Five Thousand Eastern Caribbean Dollars (XCD5,000.00) or to imprisonment for 3 years:s.15(1). In addition to the prescribed fine and term of imprisonment, the Court may order the seizure, forfeiture and destruction of the lay-out design, integrated circuit or articles concerned and of any material or implement, predominantly used to commit an offence:s.15(2).

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

Criminal proceedings are initiated by the police acting on the advice of the Director of Public Prosecutions.

Criminal proceedings are initiated in response to a complaint.

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

Private persons have standing to initiate criminal proceedings. According to s.70 (2) of the Criminal Procedure Code any person may make a complaint to a magistrate, if that person reasonably and with probable cause believes that an offence has been committed by any person. A private person may conduct a private prosecution in person or by a legal practitioner. Any such person must first obtain a *fiat* from the Director of Public Prosecutions.

**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**

Trademarks

Remedies for the infringement of trademark rights are set out in Parts 15-17 of the Trade Marks Act, No. 46 of 2003.

- Criminal Remedies: Part 17 ss: 123-135

The following are offences under this Part:

- to falsify or unlawfully remove a trademark: s.123
- to falsely apply a registered trademark: s.124
- to manufacture a die, block, machine or instrument to be used to commit an offence against s.123 or s.124: s. 125(1)
- to draw or program a computer or other device to draw a registered trademark or part of a registered trademark to commit an offence against s.123 or s.124: s. 125(2)
- to possess a die, block, machine, instrument, computer or some other device programmed to draw a registered trademark or part thereof or a representation of a registered trademark or part thereof to commit an offence against s. 123 or s. 124: s. 125(3)
- to sell, expose for sale, possess or import goods with false trademarks: s.126

The penalty on conviction for any of these offences is a fine not exceeding Two Hundred and Fifty Thousand Eastern Caribbean Dollars (XCD250,000.00): s.127

Copyright

Remedies for the infringement of Economic Rights

Any person who without a licence of the copyright owner, makes for sale or hire, or in the course of business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes, imports in St. Vincent and the Grenadines for a purpose other than private domestic use or



distributes otherwise than in the course of business to an extent that prejudicially affects the copyright owner, any article which he knows or believes to be an infringing copy, commits an offence: s.44(1).

The penalty imposed on conviction is a maximum fine of Five Thousand Five Hundred Eastern Caribbean Dollars (XCD 5,500.00) for each article to which the offence relates. In the case of a subsequent conviction, the defendant is liable to a fine as may be determined by the court or to imprisonment for a term not exceeding 2 years: s. 44(4).

Any person who makes or has in his possession an article specifically designed or adapted for making copies of a particular 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: s. 44(2).

Any person who causes a literary, dramatic or musical work to be performed in public without authorization or who causes a sound recording or film to be played or shown in public knowing or having reason to believe that copyright subsists in the work and that the performance constitutes an infringement of copyright, commits an offence: s. 44(3).

The penalty on conviction of an offence under s.44(2) or 44(3) is a fine not exceeding One Thousand Five Hundred Eastern Caribbean Dollars (XCD1,500.00) and on any subsequent conviction to the aforementioned fine or to a term of imprisonment not exceeding 12 months: s. 44(5).

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It is an offence for a person without sufficient consent to make for sale or hire; import into St. Vincent and the Grenadines otherwise than for his private and domestic use; possess in the course of a business with a view towards committing an infringing act; sell or let for hire, offer or expose for sale or hire, or distribute in the course of a business a recording which is and which he knows or has reason to believe is an illicit recording: s. 127(1).

It is an offence for a person who causes a recording of a performance made without sufficient consent to be shown or played in public or to be broadcast or included in a cable programme service, if he knows or ought to have known that he was infringing the performers rights: s.127(2).

A person guilty of an offence under s.127(1) or s.127(2) is liable on summary conviction to a fine not exceeding Two Thousand Five Hundred Eastern Caribbean Dollars (XCD2,500.00) or to imprisonment for a term not exceeding 12 months; or on indictment to a fine not exceeding Fifty Thousand Eastern Caribbean Dollars (XCD50, 000.00) or to imprisonment for term not exceeding 5 years or to both fine and imprisonment: s.127(6).

In the course of the above mentioned proceedings the court may order the delivery up of illicit recordings: s.128.

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A police officer may, in the exercise of his duties under s. 138(1), break open any outer or inner door; forcibly board any vessel, aircraft or vehicle; remove by force any person or thing obstructing him; detain any person found until the search is completed and detain any vessel, aircraft or vehicle until it has been searched: s.138(2).

Any person who wilfully obstructs a member of the police force in the exercise of his power; or who wilfully fails to comply with any requirement properly made; or who without reasonable excuse fails to give assistance which he may be reasonably required to give, is guilty of an offence and liable on conviction to a fine not exceeding Two Thousand Five Hundred Eastern Caribbean Dollars (XCD2,500.00) or to imprisonment for a maximum term of 12 months: s.140.

Where any offence created by the Copyright Act is committed by a body corporate with the consent or connivance of any director, manager, secretary or any person purporting to act in such capacity, then that person as well as the body corporate is guilty of an offence and liable to prosecution: s.141.

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Any person who contravenes this section is liable on conviction to a fine not exceeding Ten Thousand Eastern Caribbean Dollars (XCD10,000.00) or to imprisonment for 2 years or to both fine and imprisonment.

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- Criminal Remedies: s: 21(3)

Any person who contravenes the exclusive rights set out in s. 9(2) commits an offence and is liable on summary conviction to a fine of Ten Thousand Eastern Caribbean Dollars (XCD10,000.00) or to imprisonment for 5 years.

### Layout-Designs of Integrated Circuits

Remedies for the infringement of Layout-Designs of Integrated Circuits rights are set out in ss. 14 and 15 of the Layout-Designs of Integrated Circuits Act, No.18 of 2005.

- Criminal Remedies: s: 15

Any person who contravenes the exclusive rights set out in s. 6 commits an offence and is liable on summary conviction to a fine of Five Thousand Eastern Caribbean Dollars (XCD5,000.00) or to imprisonment for 3 years:s.15(1). In addition to the prescribed fine and term of imprisonment, the Court may order the seizure, forfeiture and destruction of the lay-out design, integrated circuit or articles concerned and of any material or implement, predominantly used to commit an offence:s.15(2).

**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.**

There are no provisions governing the length and cost of proceedings.

There is no available data on the actual duration of proceedings and their cost.

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