



**Council for Trade-Related Aspects
of Intellectual Property Rights**

Original: English

CHECKLIST OF ISSUES ON ENFORCEMENT¹

RESPONSES FROM SAINT KITTS AND NEVIS

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedures and remedies

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

By virtue of s. 87 of the Copyright Act, s. 61 of the Patents Act, s. 26 of the Marks, Collective Marks and Trade Names Act, s. 22 of the Geographical Indications Act and s. 23 of the Protection of Layout Designs (Topographies) of Integrated Circuits Act, the High Court (the term "Supreme Court" is used interchangeably) has jurisdiction in cases of disputes relating to the application of the respective IPR laws and regulations. In certain cases where criminal offences may be tried summarily, these would be heard in the Magistrates Court.

The Federation is a part of the Organisation of Eastern Caribbean States Supreme Court and is therefore governed procedurally by the 2000 Civil Procedure Rules which are applicable throughout the Eastern Caribbean. The jurisdiction is a common law one and as such is guided by a combination of legislation and judicial decisions. The Supreme Court consists of the High Court and the Eastern Caribbean Court of Appeal exercising appellate jurisdiction. Final appeal is to the Privy Council and on an extremely limited basis to the Caribbean Court of Justice in respect of certain CARICOM Single Market and Economy (CSME) issues.

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?

The right holders or exclusive licensee are generally the only persons who can assert IPRs. Under the Eastern Caribbean Civil Procedure Rules (2000), which govern procedural matters in civil matters in the High Court and Court of Appeal, the Court has an overriding objective to deal with cases justly. Rule 25.1(d) expressly encourages the court to actively manage cases as far as appropriate without requiring parties to attend court. The Magistrates Code of Procedure which governs matters at the magisterial level provides in s. 76 that a party may appear in person or by his counsel in criminal matters. Personal appearances are therefore not mandatory but will be a matter for the judge or magistrate to determine based on the circumstances of the particular case.

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?

Sections 33, 48, 134 and 136 of the Copyright Act confer the right of a party to apply to the Court for an order to force the opposing party to deliver infringing material that may be in his possession. The right applies to goods infringing copyright and related rights in both criminal and civil proceedings. The Patents Act grants similar right to the plaintiff to apply for an order of delivery [s. 40(2)]. The trademark legislation does not contain a similar provision but the Eastern

¹ Document IP/C/5

["https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch="IP/C/5"+OR+"IP/C/5/*"&Language=English&Context=ScriptedSearches&languageUIChanged=true#"](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@SymbolMatch=)

Caribbean Supreme Court Civil Procedure Rules grants a judge of the High Court the power to grant interim remedies including orders to deliver up goods [Rule 17.1(k)]. The Magistrate Courts' procedure is silent on this matter.

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

Generally the onus would be on the parties to identify the evidence submitted as confidential. Depending on the nature of the evidence it may be sealed or otherwise protected. Thereafter the evidence would be stored in one of the Courts' storage facilities which are only accessible by select Court officials. All Government workers swear to oaths of secrecy on entering the civil service.

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.**

Note generally that in respect of all civil IPR infringement cases, costs which will include expenses and attorney fees, can be awarded pursuant to the Civil Procedure Rules or the Magistrates Code of Procedure.

Copyright Remedies

An infringement of copyright is actionable at the suit of the copyright owner, and subject to certain provisions, in any action for such an infringement, all such relief by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available in respect of infringement of both moral and economic rights. Any person whose rights are in imminent danger of being infringed, are being infringed or have been infringed, may institute proceedings in the High Court for an interim injunction. The grant of an injunction shall not deprive a person of any damages that may be awarded to him or her for loss sustained by him or her as a result of the infringement of his or her right. Injunctions can be granted in addition to any other remedy available under the Act or power of the Court. They can also be granted at any time including after judgment and before a claim has been made (CPR 2000, Rule 17.2). Applications can be made with or without notice to the opposing parties.

Damages

Where copyright infringement is proved or admitted, the court, having regard to any benefit accruing to the defendant by reason of the infringement, the flagrancy of the infringement and to all other material considerations, the court shall have power to award such additional damages as the court may consider appropriate in the circumstances.

Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know and had no reason to believe that copyright subsisted in the work to which the action relates, then the plaintiff shall not be entitled to damages against him or her. However, this shall not affect any other remedy available to a plaintiff referred to in that subsection (s. 32)

Section 35(5) provides that where an action for infringement of copyright is brought which relates, wholly or partly, to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action, then, whether or not the copyright owner and the exclusive licensee are both parties to the action, the court

- (a) shall, in assessing damages take into account the terms of the licence and any pecuniary remedy already awarded or available to either of them in respect of the infringement;
- (b) shall not direct an account of profits if an award of damages has been made or an account of profits has been directed in favour of the other of them in respect of the infringement; and
- (c) shall, if an account of profits is directed, apportion the profits between them as the court considers just subject to any agreement between them.

In respect of performer's rights, section 112 provides that a reasonable amount of compensation may be available to a copyright owner in damages where in action the defendant shows that the illicit recording was innocently acquired by him or her or a predecessor in title of his or her. Damages shall not be awarded against a defendant who shows that at the time of the infringement he or she believed, on reasonable grounds, that consent had been given (s.114)

Destruction or other disposal of infringing goods and materials/implements for their production

A copyright holder can apply to the Court for an order that an infringing copy or article that has been delivered up be forfeited to the holder or "destroyed or otherwise dealt with as the court may direct" (s. 138). In considering what order, if any, should be made, the Court shall have regard to all the circumstances of the case and, in particular,

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

Additionally Members of the Police Force above the rank of Inspector have the power to seize, remove and detain any article which appears to be an infringing copy or an illicit recording or any other article which appears to him or her to be intended for use for making such copies or recordings (s. 141). Section 31(4) expressly provides that it is an infringement to make, import, possess in the course of business, sell or rent an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies. All of the usual remedies would therefore be open to a copyright holder whose rights have been infringed by the acts in s. 31(4).

Other

In addition to the grant of an injunction or the award of damages for an infringement of moral rights, the Court may order the defendant to publish such correction in such terms and in such manner as the court may direct.

Trademarks

Under the s. 27 of the trademark legislation, injunctions can be granted for infringements and imminent infringements. Damages can also be awarded and any other remedy provided for in the general law can be granted where the rights of a trademark owner or licensee have been infringed. An application can also be made for an order to seize, forfeit or destroy any infringing product or article or of any product or article of which the infringing product or article forms an inseparable part and any article, instrument or thing by which any infringing product or article was produced. Similar provision is made in respect of infringing layout-design, integrated circuit or any product or article of which the infringing layout-design or integrated design forms an integral part in s. 24 of that legislation.

Patents

Under the patent law, a plaintiff in proceedings for infringement shall be entitled to relief by way of

- (a) an injunction restraining the defendant from any apprehended act of infringement;
- (b) an order for him or her to deliver up or destroy any patented product in relation to which the patent is infringed or any article in which that product is inextricably comprised;
- (c) damages in respect of the infringement;
- (d) an account of the profits derived by him or her from the infringement;
- (e) any other relief provided for in the general law.

Section 40(3) further provides that where damages are awarded, the Court should not give the plaintiff an account of the profits derived from the same infringement. In awarding damages, s. 40(9) enjoins the Court to calculate such damages taking into account the amount of a reasonable royalty which would have been payable by a licensee or sub-licensee in respect of the patent concerned.

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

None of the IP related legislation confers authority on adjudicators to order the infringer to identify third parties involved in the production and distribution of infringing goods and services.

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 provisions which speak to situations where defendants are wrongfully enjoined. Only the Copyright Act speaks to indemnification for public officials. Under s. 50, a copyright owner can request in writing that the Comptroller of Customs to treat certain goods as prohibited for a specified period (no longer than 5 years once copyright still subsists). The law requires that the copyright owner indemnifies the Comptroller against "any such liability or expenses, whether security has been given or not".

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

There have not been any IP related matters before the courts in St. Kitts and Nevis, therefore no actual data is currently available on the length and costs of proceedings. However, the overriding objective of the Civil Procedure Rules mandates that matters should be dealt with justly which includes having matters dealt with expeditiously and in ways to save expense.

- (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.

There are no further procedures to report.

Provisional Measures

(a) Judicial measures

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

Provisional measures include:

- Under the Copyright Act, granting the power of the Comptroller of Customs to restrict importation of infringing copies (s. 50) after the copyright owner has requested him/her in writing to do so. Within this request, the owner must, in accordance with TRIPS Art. 50, furnish evidence of pending or actual importation and give security and indemnity against the Comptroller of Customs. Further provisional measures in relation to this restriction can be made by the Minister.
- The Court also has the power to order an injunction on imminent as well as actual copyright, patent, trademark, layout design or integrated circuit infringement. This would, in accordance with TRIPS Art. 50(1) prevent infringing goods from entering channels of commerce. This also applies to trademark infringement as expressly provided for in s.27.

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

Under the Civil Procedure Rules, injunctions can be ordered without the other party being heard.

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.

As it relates to restrictions on the importation of copyright infringing goods at the initiation of the right holder, the procedure is set out generally in s. 50 of the Act but specific details such as time limits will be fleshed out in regulations which are currently being drafted. Safeguards to protect the legitimate interests of the defendant will also be included.

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

The answer to question #8 is applicable under the present query as well.

(b) Administrative measures

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

There are no further procedures to report.

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?

The Customs (Control and Management) Act lists a number of goods which are generally prohibited from importation. Such goods can be seized and are liable to forfeiture. If the owner of seized goods wishes to contest the seizure, there are procedures in place to determine whether the goods should be released. The Copyright Act is the only IP related legislation that expressly gives the customs authorities the power to suspend the release of infringing goods but importation of infringing goods is a criminal offence under all of the IP related legislation which would lead to the goods being confiscated.

There are no express exclusions as it relates to goods which the suspension procedures may apply to. There are no exclusions for goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation.

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

Section 50 of the Copyright Act provides that a right holder may lodge a notice in writing to the Comptroller of Customs requesting the Comptroller to treat infringing copies of the specified work as prohibited goods. The right holder must

- (i) Furnish evidence of importation of the goods
- (ii) Pay any fees attached to the notice
- (iii) Give security to in respect of the Comptroller in respect of any liability or expense that the Comptroller may incur in detaining the goods
- (iv) Indemnify the Comptroller of Customs against any liability or expenses.

The Government of St. Kitts and Nevis notes the absence of provisions relating to the duration of the suspension and indemnification of the importer and owner of the goods and the right holder's right to inspect the goods in accordance with TRIPS Articles 54 to 57 and will address them in our legislative review.

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

The answer to question #8 is applicable under the present query as well.

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?

The Copyright Act does not confer an authority on the Comptroller of Customs to act on his/her initiative. Section 141 therein however, grants the power to a police officer above the rank of Inspector the right to authorize the following activities where there is a reasonable cause to believe that copyright infringement is being committed:

- (a) enter and search any premises or place;
- (b) stop, board and search any vessel, other than a ship of war, or any aircraft, other than a military aircraft; or
- (c) stop and search any vehicle, in which the constable reasonably suspects there is an infringing copy of a work or an illicit recording or any article used or intended to be used for making infringing copies or illicit recordings; and

- (d) seize, remove or detain
- (i) any article which appears to the constable to be an infringing copy or an illicit recording or any other article which appears to him or her to be intended for use for making such copies or recordings; and
- (ii) anything which appears to him or her to be or to contain, or to be likely to be or to contain, evidence of an offence under this Act.

Aggrieved parties, in all IP cases would have to apply to the Court to activate that competent authority.

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

The Copyright Act is the only IP related legislation that has a competent authority outside of the High Court i.e. the Customs authority. The Act does not give the Comptroller of Customs any other authority outside of suspending the release of the goods. Other remedies that can be ordered by the Court have been outlined above.

Criminal Procedures

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

Refer to the answer to question #1 above

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

IP	Offence	Penalty
Copyright	<p>s. 46(1) Any person who, at a time when copyright in a work subsists by virtue of this Act,</p> <p>(a) makes for sale or hire;</p> <p>(b) in the course of a business, sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes;</p> <p>(c) imports into Saint Christopher and Nevis for purposes other than his or her private and domestic use; or</p> <p>(d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright;</p> <p>any article which he or she knows or has reason to believe is an infringing copy of that work, commits an offence. [s. 46(1)]</p>	<p>On summary conviction to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding two years or both;</p> <p>(b) on conviction on indictment, to a fine not exceeding two hundred and fifty thousand dollars or imprisonment for a term not exceeding five years or both. [s. 46(4)]</p>

IP	Offence	Penalty
	<p>s. 46(2) A person who, at the time when copyright subsists in a work by virtue of this Act, makes or has in his or her possession an article specifically designed or adapted for making copies of that 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.</p>	<p>s. 46(5): (a) on summary conviction, to a fine not exceeding twenty-five thousand dollars, or imprisonment for a term not exceeding one year or both;</p> <p>(b) on conviction on indictment, to a fine not exceeding one hundred thousand dollars, or imprisonment for a term not exceeding three years or both.</p>
	<p>s. 135 (1): A person who, without sufficient consent,</p> <p>(a) makes for sale or hire;</p> <p>(b) imports into Saint Christopher and Nevis otherwise than for his or her private and domestic use;</p> <p>(c) possesses in the course of a business with a view to doing any act infringing the rights conferred by this Part; or</p> <p>(d) in the course of a business</p> <p style="padding-left: 40px;">(i) sells or lets for hire;</p> <p style="padding-left: 40px;">(ii) offers or exposes for sale or hire;</p> <p>or</p> <p style="padding-left: 40px;">(iii) distributes;</p> <p>a recording which is, and which he or she knows or has reason to believe is, an illicit recording commits an offence,</p>	<p>(a) on summary conviction, to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding two years or both, or</p> <p>(b) on conviction on indictment, to a fine of two hundred and fifty thousand dollars or imprisonment for a term not exceeding five years, or both.</p>
	<p>s. 135(2): 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 so as to infringe any of the rights conferred by this Part, if he or she knows or has reason to believe that those rights are infringed commits an offence, and shall be liable</p>	<p>(a) on summary conviction, to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding two years, or both;</p> <p>(b) on conviction on indictment, to a fine of two hundred and fifty thousand dollars or imprisonment for a term not exceeding five years, or both [s. 135(2)]</p>
	<p>s. 137(1): A person who makes a false representation that he or she is authorised by any person to give consent for the purposes of this Part 8 (Rights in Performances) in relation to a performance commits an offence, unless he or she believes, on reasonable grounds, that he or she is so authorised.</p>	<p>s. 137(2): on summary conviction, to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding six months, or both.</p>

IP	Offence	Penalty
	<p>s. 143(1): Without prejudice to any other written law, any person who</p> <p>(a) wilfully obstructs a police officer in the exercise of his or her powers or the performance of his or her duties under this Act;</p> <p>(b) wilfully fails to comply with any requirement properly made to him or her by the police officer; or</p> <p>(c) without reasonable excuse, fails to give the police officer any other assistance which he or she may reasonably require to be performing his or her duties under this Act;</p> <p>commits an offence, and shall be liable,</p>	<p>on summary conviction, to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding one year, or both [s. 143(1)]</p>
	<p>s. 143(2): A person who, when required to give information to a police officer in the exercise of his or her powers or the performance of his or her duties under this Act, gives false or misleading information to the officer commits an offence and shall be liable</p>	<p>On summary conviction, to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding six months, or both. [s.143(2)]</p>
Trademarks	<p>s. 27: An infringement shall consist of the performance, in Saint Christopher and Nevis, of any act referred to in section 9 of this Act by a person, other than the owner of the title of protection, and without the agreement of the latter.</p> <p>s. 9(1) No person shall use a registered mark in relation to any goods or services for which it is registered unless he or she has the authorisation of the owner to do so.</p> <p>s. 17(3): The use of any trade name by a third party, whether as a trade name or a mark or collective mark, or the use of a similar trade name or mark, that is likely to mislead the public, is unlawful.</p>	<p>S. 28(1): Any person who performs an act which constitutes an infringement as defined in section 27 of this Act or an unlawful act as defined in section 17 (3) of this Act commits an offence and is liable, on conviction, to a fine of not less than ten thousand dollars and not exceeding thirty thousand dollars, or imprisonment for a term of not less than three years and not exceeding ten years, or both.</p>
	<p>s. 28(2): Any person who</p> <p>(a) forges a mark or collective mark;</p> <p>(b) makes any die, block, machine or other instrument for the purposes of forging or of being used for forging a mark or collective mark;</p> <p>(c) disposes of, or has, in his or her possession, any such die, block, machine or other instrument;</p>	<p>On conviction, to a fine of not less than fifteen thousand dollars and not exceeding forty thousand dollars, or imprisonment for a term of not less than five years and not exceeding twelve years, or both. [s.28(2)]</p>

IP	Offence	Penalty
	<p>(d) sells, or has, in his or her possession for sale, any goods to which is affixed a forged mark or collective mark;</p> <p>(e) imports, into Saint Christopher and Nevis</p> <p style="padding-left: 40px;">(i) any product or article bearing a forged mark or collective mark; or</p> <p style="padding-left: 40px;">(ii) any other infringing product or article;</p> <p>commits an offence, and shall be liable</p>	
	<p>s. 28(3): Any person who, knowing the same to be false,</p> <p>(a) makes or causes to be made a false entry in the Register;</p> <p>(b) makes or causes to be made any document falsely purporting to be a copy of an entry in the Register; or</p> <p>(c) produces, tenders or causes to be produced in evidence any such entry or copy thereof;</p> <p>commits an offence, and shall be liable</p>	<p>On conviction, to a fine of not less than ten thousand dollars and not exceeding thirty thousand dollars, or to imprisonment for a term of not less than three years and not exceeding ten years, or both. [s. 28(3)]</p>
	<p>s. 28(4): Any person who, for the purpose of</p> <p>(a) deceiving the Registrar or any other officer in the execution of his or her duties under this Act; or</p> <p>(b) procuring or influencing the doing or omission of any act under this Act;</p> <p>makes a false statement or representation knowing the same to be false, commits an offence, and shall be liable</p>	<p>On conviction, to a fine of not less than five thousand dollars and not exceeding twenty thousand dollars, or imprisonment for a term of not less than two years and not exceeding five years, or both. [s. 28(4)]</p>
Patents	<p>s. 62(1) Any person who intentionally or wilfully performs an act which constitutes an infringement as defined under section 40 of this Act commits an offence</p>	<p>He/she is liable to a fine of not less than fifteen thousand dollars and not more than forty thousand dollars, or to imprisonment for a term of not less than five years and not more than twelve years, or both. [s. 62(1)]</p>

IP	Offence	Penalty
	<p>s. 40(1) The patentee shall, in addition to any other right, remedy or action available to him or her, have the right, subject to sections 33.(4), 35, 38 and 42 of this Act, to institute Court proceedings against any person who infringes the patent by performing, without his or her authorisation, any of the acts referred to in section 33(2) of this Act or who performs acts which make it likely that infringement will occur.</p> <p>s.33(2) The rights referred to in subsection (1) shall be the following, namely,</p> <p>(a) to continue to do or, as the case may be, to do that act himself or herself;</p> <p>(b) if the act was done or preparations had been made to do it in the course of a business,</p> <p style="padding-left: 40px;">(i) to assign the right referred to in paragraph (a) of this subsection;</p> <p style="padding-left: 40px;">(ii) to transmit the right referred to in paragraph (a) of this subsection to his or her heirs upon his or her death or, in the case of a body corporate, on its dissolution, to any person who acquires that part of the business in the course of which the act was done or preparations had been made to do it;</p> <p style="padding-left: 40px;">(iii) to authorise the act to be done by any partners of his or her for the time being in that business; and</p> <p>the doing of that act by virtue of the provisions of this subsection shall not amount to an infringement of the patent concerned.</p>	
	<p>S. 62(2) Any person who, knowing the same to be false,</p> <p>(a) makes or causes to be made a false entry in the Register;</p> <p>(b) makes or causes to be made any document falsely purporting to be a copy of an entry in the Register; or</p> <p>(c) produces, tenders or causes to be produced or tendered as evidence any such entry or copy thereof,</p> <p>commits an offence</p>	<p>Liable to a fine of not less than ten thousand dollars and not more than thirty thousand dollars, or to imprisonment for a term of not less than three years and not more than ten years, or both. [s.62(2)]</p>

IP	Offence	Penalty
	<p>s. 62(3) Any person who, knowing the same to be false, makes a false statement or representation that</p> <p>(a) a patent or utility model certificate has been granted to him or her or to any other person in respect of any invention; or</p> <p>(b) he or she has been granted an exclusive or non-voluntary licence to use any patent or utility model certificate;</p> <p>which statement or representation induces another person to act thereon, commits an offence</p>	<p> LIABLE to a fine of not less than five thousand dollars and not more than twenty thousand dollars, or imprisonment for a term of not less than two years and not more than five years, or both. [s.62(3)]</p>
	<p>s. 62(4) Any person who falsely represents that anything disposed of by him or her for value is patented product or process</p>	<p> LIABLE to a fine of not less than four thousand dollars and no more than ten thousand dollars [s. 62(4)]</p>
	<p>s. 62(8) Any person who represents that a patent has been applied for in respect of any article disposed of for value by him or her,</p> <p>(a) and no such application has been made; or</p> <p>(b) the application has been refused or withdrawn;</p> <p>commits an offence</p>	<p> LIABLE to a fine of not less than four thousand dollars and not more than ten thousand dollars.</p>
Topographies	<p>s. 25 (1) Any person who performs an act which is unlawful under section 6 commits an offence</p> <p>s. 6(2): Subject to subsection (3) and to section 17, the effect of the protection of a layout-design under this Act shall be to make the following acts unlawful if performed without the authorisation of the right holder:</p> <p>(a) the reproduction, whether by incorporation in an integrated circuit or otherwise, of the protected layout-design in its entirety or any part thereof, except the reproduction of any part that does not comply with the requirement of originality defined in section 4;</p>	<p> LIABLE upon conviction to a fine of not less than fifteen thousand dollars, but not more than forty thousand dollars, or to imprisonment for a term of not less than five years, but not more than ten years, or to both such fine and such imprisonment. [s. 25(1)]</p>

IP	Offence	Penalty
	<p>(b) the importation, sale or other distribution, for commercial purposes, of the protected layout-design, an integrated circuit in which the protected layout-design is incorporated, or an article incorporating such an integrated circuit in so far as it continues to contain an unlawfully reproduced layout-design.</p>	
	<p>s. 25(2) Any person who, knowing the same to be false</p> <p>(a) makes or causes to be made a false entry in the Register.</p> <p>(b) makes or causes to be made any document falsely purporting to be a copy of an entry in the Register; or</p> <p>(c) produces, tenders or causes to be produced in evidence any such entry or copy thereof,</p> <p>commits an offence</p>	<p>Liable, upon conviction to a fine of not less than ten thousand dollars, but not more than thirty thousand dollars, or to imprisonment for a term of not less than three years, but not more than ten years, or to both such fine and such imprisonment. [s. 25(2)]</p>
Geographical Indications	<p>s. 23(1) Any person who knowingly performs any act referred to in section 13 commits an offence</p> <p>s. 13 (1) Any interested person or group of persons may institute proceedings in the Court to prevent, in respect of any geographical indication,</p> <p>(a) the use of any means in the designation or presentation of any goods, which indicates or suggests that the goods in question originate in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the goods;</p> <p>(b) any use which constitutes an act of unfair competition within the meaning of Article 10<i>bis</i> of the Paris Convention;</p> <p>(c) the use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question, or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, 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.</p>	<p>Liable on conviction, to a fine not exceeding forty thousand dollars, or to imprisonment for a term not exceeding twelve years, or to both such fine and such imprisonment. [s. 23(1)]</p>

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

The Commissioner of Police initiates proceedings in the Magistrates' Court and the Director of Public Prosecutions initiates proceedings in the High Court.

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

In St. Kitts and Nevis private persons can initiate criminal proceedings only at the Magisterial level. Section 31(1) of the Magistrate's Code of Procedure outlines that "any person" may make a complaint against any person committing an offence punishable on summary conviction unless it appears from the enactment on which the complaint is founded that any complaint for such offence shall be made only by a particular person or class of persons. None of the IP laws restrict the initiation of criminal proceedings to public authorities.

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

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

See answer to question #21 above.

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

See answer to question #8 above.
