

UNESCO
WORLD ANTI PIRACY OBSERVATORY

SAINT VINCENT AND THE GRENADINES

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I. Legislation

1. Copyright laws

The main legislations are:

- [The Copyright Act No. 21 of 2003](#)
- The Copyright (Specified Countries) Order No.16 of 2005

2. Other laws

- Criminal Code Chapter 124
- Criminal Procedure Code, Chapter 125
- Civil Procedure Rules 2000
- Customs (Control and Management) Act 1999
- Police Act, Chapter 280

3. Latest developments and perspectives

The Copyright Act No. 21 of 2003 came into operation on the 30th November 2004.

4. Summary of legislation

The Copyright Act was enacted pursuant to the mandates of the TRIPS. It contains provisions relating to protected works, the duration of copyright protection, moral rights, ownership and assignment of rights, infringement of rights, exceptions to infringement of rights, copyright licensing, rights in performances and collective societies.

- *Exclusive rights of the authors and of the owners of Neighboring Rights*

Exclusive Rights of the authors

1) Economic Rights

The authors have the following exclusive rights (Section 7):

- a) Reproduction;
- b) Translation;
- c) Adaptation, arrangement or other transformation;
- d) First public distribution of original and each copy by sale, rental or otherwise;
- e) Rental or public lending of original or a copy of an audiovisual work, a work embodied in a sound recording, a computer programme, a database or a musical work;
- f) Importation of copies of the work;
- g) Public display of the original or copy;
- h) Public performance of the work;
- i) Broadcasting;
- j) Communication to the public.

2) Moral Rights

The infringement of the moral rights of a copyright owner amounts to a breach of statutory duty (section 39(1)).

The author has the following moral rights:

- (a) Right to be identified as author
- (b) Right to object to derogatory treatment of work
- (c) False attribution of work
- (d) Right to privacy commissioned photographs and films

Exclusive right of the owners of neighbouring rights

Performers' rights

The performers' rights include the following:

- Consent required for recording or live transmission of performance
- Consent and royalty required for adaptation of recording

- *Exceptions and limitations to copyright*

As a general rule, in order to determine whether an act done in relation to a work constitutes fair dealing, the Court shall take into account (section 52):

- (a) The nature of the work in question
- (b) The extent and substantiality of that part of the work affected by the act in relation to the whole of the work
- (c) The purpose and character of the use
- (d) The effect of the act upon the potential market for or the commercial value of the work

The Copyright and Neighboring Rights Act, sections 50 – 82, allows for free use of copyright protected material, which is without the authorization of the owner of the copyright and payment of remuneration. The exceptions apply in the following cases:

- Research and Private Study (section 50)
- Criticism, Review or News Reporting (section 51)
- Incidental Inclusion of protected work (section 53)
- Anonymous and Pseudonymous literary works (section 54)
- Reporting current events (section 55)
- Broadcasting or including in a cable programme service the whole or part of the work (section 55)
- Use of Work for Educational Purposes (section 56-60)
- Replacing or conserving libraries or archival copies of works (section 62-66)
- Parliamentary and judicial proceedings (section 68)
- Public Records (section 69)
- Design documents and models (section 70)
- Exploitation of a design derived from artistic work (section 71)
- Transfer of works in electronic forms (section 72)
- Statutory licenses – recordings for broadcasting (section 73)
- Public readings and recitals (section 74)
- Representation of artistic works on public display (section 75)
- Reconstruction of buildings (section 76)
- Subsequent work by the same artist (section 77)
- Recording broadcasts for programme supervision (section 78)
- Recording for purposes of time shifting (section 79)
- Provision of subtitled copies of broadcast or cable programme (section 80)

- Adaptations (section 81)
- Power of minister to prescribe exceptions to infringement (section 82)

- *Protection of foreign works*

According to section 6 of the Act, if the author is a citizen of or a habitual resident in Saint Vincent and the Grenadines or the first publication of the work took place in St Vincent & the Grenadines or in a specified country then copyright protection can be granted.

Section 6(11) of the Copyright Act No.21 of 2003, provides that the Act shall apply to works that are eligible for protection in Saint Vincent and the Grenadines by virtue of and in accordance with any international convention or other international agreement to which Saint Vincent and the Grenadines is a party.

In furtherance of section 6(11) of the Copyright Act, the Copyright (Specified Countries) Order No. 16 of 2005 was passed, which declares that the provisions of the Copyright Act shall apply in relation to persons who, at a material time, are citizens or subjects of a country specified in the Schedule, as they apply in relation to persons who, at such a time, are citizens of Saint Vincent and the Grenadines.

The provisions of the Copyright (Specified Countries) Order 2005, states that the countries specified in the Schedule, being members of the Berne Convention for the protection of Literary and Artistic works of 1886, are declared to be specified countries for the purpose of copyright protection in Saint Vincent and the Grenadines, and where a country becomes a party to the Berne Convention after the commencement of the Order, the provisions of and the benefits of copyright protection shall apply to such country with effect from the date that it becomes a party to the Convention.

Accordingly, foreign works are protected in the same manner as works by nationals of Saint Vincent and the Grenadines

- *Period of copyright protection*

With respect to literary, dramatic, musical or artistic works, 75 years from date of author's death (section 8(1) of Act) and 50 years from the date the work was first made public where authorship is unknown (section 8(2)).

With respect to sound recordings or films, 50 years from the time it was made, or where it is made available to the public before the end of that period and 75 years from the time it was made so available (section 9).

With respect to a broadcast or cable programme, 50 years from the time in which the broadcast was made or the programme was included in a cable programme service (section 10).

With respect to a typographical arrangement of a published edition, 25 years from the year in which the edition was first published (section 11).

5. International Convention and Treaties

Saint Vincent and the Grenadines is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention for the Protection of Literary and Artistic Works](#), in force since August 29, 1995
- [WTO TRIPS Agreement on Trade Related Aspects of Intellectual Property Rights](#), in force since January 1, 1995

II. Measures and Remedies

1. Copyright infringement

Section 28 of the Copyright Act defines what amounts to an infringement of copyright. The following have been declared acts of infringement:

- Any person who without a licence from the owner does or authorizes anyone to infringe the economic rights of the owner; 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 Saint Vincent and the Grenadines or on any ship or aircraft registered in Saint Vincent and the Grenadines (section 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: (section 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) (section 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 (section 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 (section 28(6)). Liability will attach in such cases where the person had reason to believe that the apparatus will be used to infringe copyright: (section 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 (section 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 (section 28(9)).

2. Remedies to protect copyright holders

Civil Remedies

Remedies for the infringement of economic rights

Section 29 of the Copyright Act 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:

- Damages

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 (section 29(3)).

- Injunction

Wide injunctions are available to licensing bodies. A wide injunction is one that extends to all the protected works owned by the claimant (section 32).

- Account of profits and any other remedy as is available in any corresponding proceeding in respect of the infringement of proprietary rights (section 29(1)).
- Delivery up of infringing copies or an article designed or adapted for making infringing copies (section 30).
- Seizure (section 31)

Remedies for the infringement of Moral Rights

In an action for the infringement of moral rights, the aggrieved party may be granted an injunction (section 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 (section 39(3)).

Remedies for the infringement of Rights in Performances

An infringement of rights in performances is actionable as a breach of statutory duty (section 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 (section 125).

A person having performers or recording rights may also seize and detain an illicit recording of a performance (section 126).

Criminal Remedies

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 Saint 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 (section 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 (section 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 (section 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 (section 44(3)).

The penalty on conviction of an offence under section 44(2) or 44(3) is a fine not exceeding One Thousand Five Hundred Eastern Caribbean Dollars (XCD 1,500.00) and on any subsequent conviction to the aforementioned fine or to a term of imprisonment not exceeding 12 months (section 44(5)).

Remedies for the infringement of rights in performances

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 (section 127(2)).

A person guilty of an offence under section 127 (1) or section 127 (2) is liable on summary conviction to a fine not exceeding Two Thousand Five Hundred Eastern Caribbean Dollars (XCD 2,500.00) or to imprisonment for a term not exceeding 12 months; or on indictment to a fine not exceeding Fifty Thousand Eastern Caribbean Dollars (XCD 50, 000.00) or to imprisonment for term not exceeding 5 years or to both fine and imprisonment (section 127 (6)).

In the course of the above mentioned proceedings the court may order the delivery up of illicit recordings (section 128).

Border measures

The owner of copyright in any published literary, dramatic or musical work may give notice in writing to the Comptroller of Customs and Excise that he is the owner of copyright in the work and that he requests the Comptroller during a period specified in the notice to treat copies of the work as prohibited (section 48(1)).

3. Provisional measures

The Civil Procedure Rules 2000, which govern the conduct of all civil matters before the court, set 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 the 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.

4. Penalties for copyright infringement

- In civil cases
 - Damages
 - Injunction
 - Account of profits and any other remedy as is available in any corresponding proceeding in respect of the infringement of proprietary rights
 - Delivery up of infringing copies or an article designed or adapted for making infringing copies
 - Seizure

- For criminal offence in copyright cases
 - 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 (section 44(4)).
 - The penalty on conviction of an offence under section 44(2) or 44(3) is a fine not exceeding One Thousand Five Hundred Eastern Caribbean Dollars (XCD 1,500.00) and on any subsequent conviction to the aforementioned fine or to a term of imprisonment not exceeding 12 months (section 44(5)).
 - A person guilty of an offence under section 127 (1) or section 127 (2) is liable on summary conviction to a fine not exceeding Two Thousand Five Hundred Eastern Caribbean Dollars (XCD 2,500.00) or to imprisonment for a term not exceeding 12 months; or on indictment to a fine not exceeding Fifty Thousand Eastern Caribbean Dollars (XCD 50, 000.00) or to imprisonment for term not exceeding 5 years or to both fine and imprisonment (section 127 (6)).

- Seizure, confiscation, forfeiture and destruction of all infringing copies

In the course of the above mentioned proceedings the court may order the delivery up of illicit recordings (section 128).

5. Requirements for foreign persons

Foreign persons are not required to obtain any special approvals, engage any special agents, or present any special documentation in order to gain access to national courts, customs officials, or police officials to obtain enforcement of the copyright.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

The competent authorities responsible for enforcing the copyright law are the Members of the Royal St Vincent and the Grenadines Police Force.

b) Enforcement bodies entitled to act ex-officio in copyright infringement cases

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 (section 138(1) of Act).

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 (section 138(2) of Act).

c) Courts dealing with copyright cases

There are no specialized courts dealing with copyright cases. The Magistrates courts (located in various districts throughout Saint Vincent and the Grenadines) and the High Court (located in the capital, Kingstown) deal with copyright cases.

2. Enforcement at the border

The customs officials have general responsibility for regulating the entry of goods into the country by virtue of the Customs Act. Section 48(1) of the Copyright Act provides that the owner of copyright in any published literary, dramatic or musical work may give notice in writing to the Comptroller of Customs and Excise that he is the owner of copyright in the work and that he requests the Comptroller during a period specified in the notice to treat copies of the work as prohibited.

IV. Public Awareness

1. Awareness campaigns and actions

Information not available

2. Promotion of legal exploitation

Information not available

3. Associations and organizations with awareness-raising purpose

Information not available

4. Best practices

Information not available

V. Capacity-building

1. Training

Information not available

2. Establishment of specialized units and intersectoral groups

- establishment of the Commerce and Intellectual Property Unit to administer intellectual property issues;
- attempts to establish a Collective Society;
- specialized copyright enforcement and anti-piracy training conducted in conjunction with WIPO to members of the Police and other relevant authorities;
- organization of public awareness campaigns by the Commerce and Intellectual Property Office including workshops, radio broadcasts, intellectual property day celebrations, brochures

3. Best practices

Information not available

VI. Other

1. TPM/DRM

Information not available

2. Licensing schemes

Information not available

3. Optical Discs

Information not available

4. Hotlines

Information not available

5. Contact Details

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