

**NOTIFICATION OF LAWS AND REGULATIONS  
UNDER ARTICLE 63.2 OF THE AGREEMENT**

**GHANA**

By means of communications from its Permanent Mission, dated 26 and 27 November 2001, and 1 March 2002, the following notification has been received from Ghana under Article 63.2 of the Agreement.

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In accordance with Article 63.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights and the procedures laid down by the Council for Trade-Related Aspects of Intellectual Property Rights in November 1995, the Government of the Republic of Ghana hereby notifies the Council of its laws and regulations relating to the fields covered by the Agreement, as follows:

- The "main laws and regulations" are listed in Annex I.
- "Other laws and regulations" are listed in Annex II.
- Some information on the draft legislation is given in Annex III.
- Answers to the Checklist of Issues on Enforcement.<sup>1</sup>

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<sup>1</sup> See document IP/N/6/GHA/1.

**ANNEX I**

**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS**

<b>TITLE DATE OF ADOPTION AND ENTRY INTO FORCE</b>	<b>BRIEF DESCRIPTION</b>
<p><b>Patents</b></p> <p><u>The Patent Law, 1992, PNDCL.305A.</u><sup>2</sup></p>          <p><b>Trademarks</b></p> <p><u>The Trade Marks Act, 1965, (Act 270).</u><sup>3</sup></p> <p>This Act however entered into force only after the passage of the Implementing Regulations in 1970.</p>	<p>The current patent legislation makes provision for original registration of patents upon satisfaction of the criteria of absolute novelty, inventive step, and industrial application.</p> <p>The law also establishes a system of utility certificates to encourage local inventiveness.</p> <p>Ghana has joined the Patent Cooperation Treaty (PCT) and the Law makes provision for international application.</p> <p>Details of the new Patent Bill due to be laid before Parliament in order to comply with international obligations are provided in Annex III.</p>          <p>This Act provides for the registration of original marks which are able to distinguish goods of applicants. It enables marks to be registered in Part A or B of the Register depending upon their distinctiveness.</p> <p>The present legislation does not make provision for service mark registration and does not recognise well - known marks. Details of the new Trademark Bill which is due to be laid before Parliament are attached at Annex III.</p> <p>The 1964 Merchandise Marks Act relates to fraudulent marks on merchandise.</p>

<sup>2</sup> See document IP/N/1/GHA/P/1.

<sup>3</sup> See document IP/N/1/GHA/T/1.

<b>TITLE DATE OF ADOPTION AND ENTRY INTO FORCE</b>	<b>BRIEF DESCRIPTION</b>
<p><b>Industrial designs</b></p> <p><u>The United Kingdom Designs (Protection) Ordinance of 1928 (Chapter 182) and the Textile Design (Registration) Decree of 1973, NRCD 213.</u><sup>4</sup></p> <p><b>Unfair competition</b></p> <p><u>Protection Against Unfair Competition Act, 2000 (Act 589).</u><sup>5</sup></p>	<p>Presently, Ghana has no original industrial design legislation. It is still based on English law and provides automatic registration of all designs registered in the United Kingdom.</p> <p>The legislation protects only textile designs. This provides for the registration of both local and international textile designs. This law specifically excludes well-known designs such as Ghana's <i>kente</i>. There are also provisions for protection of some aspects of design law under the Copyright Law of 1985.</p> <p>Details of a composite Industrial Designs Bill which is due to be laid before Parliament are outlined in Annex III.</p> <p>This Act was passed in order to provide for protection against unfair competition. Unregistered marks are also protected under this Act.</p>

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<sup>4</sup> See document IP/N/1/GHA/D/1.

<sup>5</sup> See document IP/N/1/GHA/U/1.

<b>TITLE DATE OF ADOPTION AND ENTRY INTO FORCE</b>	<b>BRIEF DESCRIPTION</b>
<b>Copyright</b>  <u>The Copyright Law, 1985, PNDCL 110.</u> <sup>6</sup>	<p>This Law provides protection to authors for the list of protected works under section 2 of the Law for a period of the life of the author and 50 years after his death.</p> <p>The Law also provides for the protection of sound recordings and folklore and the establishment of a system of collective administration of authors rights.</p> <p>The Law also establishes a Copyright Office and provides criminal sanctions for the infringement of copyright.</p> <p>However, technological changes, new international obligations and the need for enhanced enforcement provisions to be anchored in the law, led to the drafting of a new Copyright Bill which is due to be laid before Parliament. Details are contained in Annex III.</p>

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<sup>6</sup> See document IP/N/1/GHA/C/1.

**ANNEX II**

**OTHER LAWS AND REGULATIONS**

<b>TITLE DATE OF ADOPTION AND ENTRY INTO FORCE</b>	<b>BRIEF DESCRIPTION</b>
<p><b>Customs</b></p> <p><u>Customs Excise and Preventive Service (Management) Law, 1993, PNDCL 330.</u></p> <p><b>Civil judicial procedures and remedies</b></p> <p><u>High Court (Civil Procedure) Rules, 1954, LI140A.</u></p> <p><u>Supreme Court Rules, 1996, CI 116.</u></p> <p><b>Criminal proceedings</b></p> <p><u>Criminal Code 1960, Act 29.</u></p> <p><u>Criminal Procedure Code 1960, Act 30.</u></p>	<p>The law specifies the functions and duties of customs officials.</p> <p>These rules govern judicial proceedings and prescribes modalities of civil proceedings in the superior courts of Judicature.</p> <p>These Codes regulate the criminal law and procedure to be followed in summary and indictable proceedings.</p>

### ANNEX III

#### SOME INFORMATION ON THE DRAFT INTELLECTUAL PROPERTY LAWS

Legislative work for the adoption of new intellectual property legislation will be completed by the end of the next meeting of Parliament, which is scheduled for March 2002. The delay is due to several factors: the complexity of some of the legislation; the change of government and the assumption of office by a new ruling party; which subjected all the proposed bills to thorough review, and the pressure of legislative work.

This new legislation will ensure compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights. When compared with existing legislation, the new legislation will make the following changes:

#### **Patents**

The new Bill seeks to:

- amend section 62 of the Patent Law to incorporate fully the requirements of Article 34 of the Agreement on TRIPS with regard to the reversal of the burden of proof in cases of infringement of process patents;
- change the term of protection of patentability from ten to twenty years;
- delete the requirement that a patent should be worked in the country within a ten-year period;
- remove the existing provisions relating to temporary exclusion with the exception of those allowed under Article 27.1 of the Agreement on TRIPS;
- amend the provisions on compulsory licensing in the light of the obligations under Articles 27.1 and 31 of the Agreement on TRIPS;
- create offences for persons who knowingly infringe patents.

#### **Trademarks**

The new Bill seeks to:

- protect against the use of identical or similar signs for goods or services that are identical or similar to goods already in circulation;
- protect well-known marks in compliance with Articles 16.2 and 16.3 of the Agreement on TRIPS;
- provide ten-year periods of protection;
- provide for the removal of a mark after an interrupted period of at least three years of non-use;
- to provide protection for service marks;
- establish criminal sanctions for infringement.

## **Industrial Design**

The new Bill seeks to:

- protect the aesthetic appearance of a product and designs not dictated essentially by technical or functional considerations;
- apply the first to file system;
- apply the concept of absolute novelty;
- allow right of priority under the Paris Convention;
- prevent third parties not having the owners' consent from making, selling or importing articles or products with copied designs;
- provide a five-year term of protection with an option to renew for two further five-year terms.

## **Geographical Indications**

The new Bill seeks to:

- protect a geographical indication regardless of registration;
- provide a system of geographical indications protection which complies with Article 22 of the Agreement on TRIPS;
- provide an effective regime of both civil and criminal sanctions to prevent the unlawful use of a geographical indication;
- establish a registration system for geographical indications for those producers carrying on activity within a specified geographical area of Ghana.

## **Layout-Designs (Topographies) of Integrated Circuits**

The new Bill seeks to:

- provide protection of layout-designs of integrated circuits in order to comply with Article 35 of the Agreement on TRIPS;
- protect only original layout-designs in that the design must be the result of the creator's own intellectual effort and should not be known amongst creators and manufacturer's of integrated circuits at the time of its creation;
- establish a ten-year term of protection;
- provide effective protection for those who without the authorization of the right holder import, sell or distribute a protected layout-design;
- create offences for persons who knowingly perform any unlawful acts.

### **Protection of Plant Varieties**

The new Bill seeks to:

- protect a plant variety if it is new, distinct, uniform and stable for twenty and twenty-five years in cases of trees and vines;
- give the right of registration to the breeders;
- make unlawful the exploitation of the propagating material of the plant variety by third parties without the authorization of holder of the breeder's right;
- provide for exhaustion of rights;
- provide exceptions for private and experimental purposes by the Minister;
- establish a system of compulsory licenses;
- provide civil remedies and criminal sanctions for wilful infringements.

### **Copyright**

The new Bill seeks to:

- revise the existing legislation in conformity with technological changes and international obligations;
  - broaden the definition of folklore and establish a National Folklore Board;
  - increase the term of protection to life of the author plus seventy years after his death;
  - strengthen provisions on the authentication of copyright works;
  - impose levy for audio-visual works and other equipment used for copying protected materials;
  - increase protection for collective management of rights;
  - enhance fines and penalties for infringement.
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