

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Replies by Côte d'Ivoire

Civil and administrative procedures and remedies

(a) *Civil judicial procedures and remedies*

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

Both civil and criminal courts have jurisdiction over cases relating to the infringement of intellectual property rights.

2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements or mandatory personal appearances before the court by the right holder?

The following table sets out the list of persons who have standing in cases relating to the infringement of intellectual property rights.

Title	Persons having standing to assert intellectual property rights
Patent	Owner or licensee
Utility model certificate	Owner or exclusive licensee
Trademark	Owner or exclusive licensee
Designs	Owner or exclusive licensee
Trade name	Owner
Geographical indication	Any person or group of persons interested
Copyright and neighbouring rights	- Owner or rights holders - National collective rights administration body - Regularly constituted professional associations of rights holders
Layout-designs (topographies) of integrated circuits	Owner or licensee
Plant varieties	Owner or exclusive licensee

¹ Document IP/C/5.

The question of whether the parties are required to appear in person or may send representatives is covered by the following provisions:

Any natural or legal person may defend his interests before any court either in person or through his legal or statutory representative.

Lawyers may attend and represent parties before the courts, subject to the following provisions:

- A natural person may always be represented by his or her spouse or by a person related up to the third degree.
- managers of partnerships may be represented by an associate in actions that pertain to the partnership.
- private or public legal persons may only appear before the Court of Appeal represented by a lawyer. Before a court of the first instance, they may be represented by an officer who is an authorized representative.
- parties may be represented before the Supreme Court only by lawyers (Articles 19 and 20 of the Code of Civil Procedure).

The court in question may always order the parties to appear in person.

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?

An Ivorian judge has the power, at the stage of passing sentence, to compel the party concerned, under oath, to provide any evidence that may lie within his control, with full guarantees in regard to the protection of confidential information. This provision is contained in Articles 54 et seq. of the Code of Civil Procedure.

This possibility is also provided at the examination stage, pursuant to Article 97 of the Code of Criminal Procedure. The examining judge may order the presentation of any evidence that may be appropriate in order to reveal the truth.

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

Rather than “confidential information” [*renseignements confidentiels*], Ivorian law uses the term “professional secrecy” [*secret professionnel*].

Various measures have been established, which are available to the criminal investigation service or to the judge, to ensure that professional secrecy is maintained:

- Seizure in the presence of the party concerned or his lawyer;
- placing under seal, and opening in the presence of the party concerned or his lawyer;
- drawing up of minutes;
- penalties, consisting of fines and imprisonment, for any disclosure or communication of information without the consent of the party concerned.

The foregoing measures are established in Articles 56, 57, 97 and 98 of the Code of Criminal Procedure.

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.**

Holders of an intellectual property title may, acting in pursuance of an order from the president of the civil court within whose jurisdiction the action is to be taken, engage bailiffs or public or ministerial officials, including customs officials, if necessary with the aid of an expert, to make a detailed inventory and description, with or without seizure, of allegedly infringing objects.

The order must be made on request and on presentation of the intellectual property title in question. The title must be in effect at the time the order is requested.

Where seizure is involved, the said order may require the complainant to furnish security, which he is required to provide before seizure is effected. The security must be sufficient but not such as would discourage recourse to the procedure.

Security is always required of foreigners seeking seizure. The person in possession of the objects described or seized is given a copy of the order and, where appropriate, of the document attesting the deposit of security, on pain of invalidity and damages against the bailiff or the public or ministerial official or the customs official, as the case may be.

Should the complainant fail to take action under either civil or criminal law within a period of ten working days from the seizure or inventory, the said seizure becomes void as of right, without prejudice to any damages that may be claimed.

The customs service may, at its own initiative, suspend the clearance of goods suspected to be counterfeit. In this case, the customs service is not freed of responsibility unless it acted or intended to act in good faith.

The draft law on the protection of intellectual property rights at borders provides that the holder of an intellectual property right may present to the customs service a request asking it to suspend the clearance through customs of goods suspected to be counterfeit, whether such goods are being imported or exported.

Under the Bangui Agreement, at the conclusion of proceedings the court may, even in the case of acquittal, order the confiscation or destruction of infringing objects and, where necessary, that of implements or tools specially intended for their manufacture, against the infringer, the receiver, the introducer or the retailer.

The court may also order the infringing objects to be handed over to the holder of the right. A similar measure is provided for in Article 24 of the draft law on the protection of intellectual property rights at borders.

In the event of conviction, the infringer of an intellectual property right may be required by the judge to pay the legal costs incurred by the holder of the right. Articles 464 to 468 of the Code of Criminal Procedure and Article 149 of the Code of Civil Procedure deal with the issue of the payment of legal costs.

The Bangui Agreement recognizes the judge's power to order the seizure of recognized infringing goods or objects (infringement seizure), or their confiscation or destruction, together with any implements or tools specifically intended for their manufacture.

For purposes of illustration, attention is drawn to Articles 64 and 67 of Annex 1 on patents, and Articles 43 and 48 of Annex 3 on trademarks and service marks.

This measure is supported by the draft laws on the protection of intellectual property rights at borders and on the protection of intellectual works as provided for in paragraphs 1.2.a and 1.2.b of the Report.

The Bangui Agreement, in the Articles cited above in regard to infringement seizure, provides that if the procedure is abused, the respondent may initiate an action seeking damages from the complainant.

The defendant is also entitled to take such action in the event of failure by the complainant to take a substantive action within ten days from the seizure or inventory.

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?

Under Ivorian law, no provision exists that specifically addresses this situation.

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?

Ivorian law provides that, in the event of infringement seizure, the order issued by the court to that end requires the complainant to furnish a security, which he must provide before the seizure is effected. The security must be sufficient, but not such as would discourage recourse to the procedure.

- The person in possession of the objects described or seized is given a copy of the order and, where appropriate, of the document attesting the deposit of security, on pain of invalidity and damages against the bailiff or the public or ministerial official or the customs official, as the case may be.
- Should the complainant fail, following a court-ordered infringement seizure, to take action under either civil or criminal law within a period of ten working days, the said infringement seizure becomes void as of right, without prejudice to any damages that may be claimed.

Article 18 of the draft law on the protection of intellectual property rights at borders establishes that the judicial authorities are empowered to require a complainant to provide the holder, importer, exporter or consignee of the goods with appropriate indemnification to compensate for any harm done by reason of the goods being unjustifiably detained. If the customs service acts on its own

initiative to suspend the clearance of goods suspected of infringing upon a right, it may only be exempt from liability where actions are taken or intended in good faith.

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

The duration and cost of proceedings are extremely difficult to assess, given the wide range of variables that may be involved (*flagrante delicto*, direct summons, proceedings arising from a judicial investigation, number of summonses served, location of summons, etc.).

Nevertheless, the following may be mentioned as indicative information:

- *Flagrante delicto*: the law provides for a proceeding of up to 15 days;
- direct summonses: the time-frame ranges from three days, if the party to whom the summon is served lives in another jurisdiction within Côte d'Ivoire, to two months in all other cases (Articles 545 et seq. of the Code of Criminal Procedure);
- the cost of proceedings is governed by Decree 76-315 of 4 June 1976, concerning the setting of fees with regard to criminal, correctional and police proceedings.

It should be borne in mind that the State advances the costs entailed by judicial proceedings and subsequently recovers any costs that are not its responsibility. The items of which legal costs are composed are clearly defined in Articles 2, 3 and 5 of the above-mentioned Decree. The subject of fees is covered in Chapter 2 of that Decree.

(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.

Infringements of intellectual property rights are prosecuted before judicial authorities, through either civil or criminal proceedings.

Provisional measures

(a) *Judicial measures*

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

Through summary proceedings or direct summons, the judge may order that precautionary measures be taken against any person who infringes someone else's intellectual property rights.

These measures are established under to Articles 67, 47, 48, 31, 16, 62, 1, 35 and 44 respectively of Annexes 1 to 10 to the Bangui Agreement.

An order is issued at the request of the complainant, who must provide evidence that he has rightful title to the intellectual property in question, and that such title has not expired or been cancelled.

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

The law does not require that the other party be heard in order for these measures to be implemented.

12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.

The infringement seizure regime established under the Bangui Agreement allows the judge to order the seizure of allegedly infringing goods at any location, including the border.

Before seizure is effected, the judge may require the petitioner to furnish a security.

The person in possession of the goods seized is given a copy of the order and the document attesting the deposit of security, on pain of invalidity and damages against the bailiff, or the public or ministerial official or the customs official, as the case may be.

The complainant has ten days to take substantive action; if no such action is taken by the end of that ten-day period, the seizure becomes void and the defendant may claim damages.

The draft law on the protection of intellectual property rights at borders, as set forth in paragraph 1.2.a of the Report, not only authorizes the detention in customs of any allegedly infringing goods (Article 7), but also authorizes the complainant to examine the goods whose clearance has been suspended (Article 14), requires the complainant to provide tangible evidence of the rights he is asserting and the allegations he is making (Article 8), authorizes the customs service to make a seizure at its own initiative in order to prevent any infringing goods that have been detected from reaching the market (Article 19), provides for the payment of damages to the defendant and the right to be heard at a review proceeding if a substantive decision is handed down (Article 13.b), and provides for all provisional measures to be suspended at the request of the defendant if the petitioner fails to take substantive action within ten days (Article 13.a).

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

The duration and cost of proceedings are extremely difficult to assess, given the wide range of variables that may be involved (*flagrante delicto*, direct summons, proceedings arising from a judicial investigation, number of summons served, location of summons, etc.).

Nevertheless, the following may be mentioned as indicative information:

- *Flagrante delicto*: the law provides for a proceeding of up to 15 days;
- direct summonses : the time-frame ranges from three days, if the party to whom the summons is served lives in another jurisdiction within Côte d'Ivoire, to two months in all other cases (Articles 545 et seq. of the Code of Criminal Procedure);
- the cost of proceedings is governed by Decree 76-315 of 4 June 1976, concerning the setting of fees with regard to criminal, correctional and police proceedings.

It should be borne in mind that the State advances the costs entailed by judicial proceedings and subsequently recovers any costs that are not its responsibility. The items of which legal costs are

composed are clearly defined in Articles 2, 3 and 5 of the above-mentioned Decree. The subject of fees is covered in Chapter 2 of that Decree.

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

Infringements of intellectual property rights are prosecuted before judicial authorities, through either civil or criminal proceedings.

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 draft law on the protection of intellectual property rights at borders has been drawn up so as to respond to the concerns of the Agreement on Trade-Related Aspects of Intellectual Property Rights and, in particular, to special requirements at borders. It begins by establishing the principle that the import and export of counterfeit goods is prohibited. It makes customs services a key link in combating counterfeiting and piracy, particularly at the country's borders, and gives them the authority to take the following actions:

- Receive and examine requests to suspend import and export clearance of goods that are allegedly counterfeit or pirated;
- suspend clearance of counterfeit goods;
- authorize the holder of a right to examine goods whose release has been suspended for the purpose of determining whether they are counterfeit;
- prevent identified counterfeit goods from being placed on the market;
- the bill also establishes that if counterfeit goods are found to be confiscable, customs may proceed with their destruction.

Counterfeit goods not intended for commercial use, found in small quantities amongst travellers' personal effects, will be exempted from the provisions of the draft law.

The draft law on the protection of intellectual property rights at borders does not contain any provision with regard to goods transported within a customs union. The provisions set forth above apply equally to goods intended for export. There is no provision in the draft law that covers the application of these procedures to imports of goods put on the market of another country by, or with the consent of, the right holder.

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?

The draft law on the protection of intellectual property rights at borders includes provisions for the suspension of goods suspected of being counterfeit, whether at the time of import or the time of export.

Under those provisions, the holder of an intellectual property right may submit to the customs service an application to suspend import and export clearance of goods suspected of being counterfeit (Article 7). The application must be made in accordance with the requirements laid down in the draft law. Article 8 of the draft law establishes the conditions governing the presentation of such an application, pursuant to Article 52 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

The customs service has three working days from the date it receives the application to advise the applicant whether his request has been granted or rejected or reserved for further consideration.

If the application is granted, the customs service may require the applicant to provide a security in an amount at least equal to the value in the domestic market of the goods suspected of infringing intellectual property rights (Article. 11).

The applicant must undertake to indemnify the customs authorities and to compensate the importer, consignee, exporter or owner of the goods for loss or damage resulting from the wrongful suspension of clearance of the goods (Article 9).

Upon granting an application the Customs authorities must suspend clearance of the goods referred to in the application and immediately so inform the importer and the applicant, stating the reasons for such suspension. They must also notify the importer of the name and address of the applicant.

If, within a period of ten working days after the applicant has been served notice of the suspension, the Customs authorities have not been informed that judicial proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant (the importer, the consignee, the exporter or the owner of the goods) or that the court has taken provisional measures prolonging the suspension of the release of the goods, the goods are released provided that all other conditions and formalities for importation and exportation have been duly complied with. This time-limit may be extended by another ten working days (Article 13).

If judicial proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, takes place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures are to be modified, revoked or confirmed.

Where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, this period will be determined by the judicial authority ordering the measures or in the absence of such a determination, must not exceed 20 working days.

The customs authorities may allow a right holder, importer or exporter to examine the goods whose clearance has been suspended. They may also provide the right holder with any further

information which they know to infringe an intellectual property right, without prejudice to the protection of confidential information in accordance with Article 57 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

The judicial authority has the authority to order an applicant to pay the owner, the importer, the exporter and the consignee of the goods appropriate compensation for injury caused to them through the wrongful detention of goods or through the detention of goods released.

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 validity period of decisions by the competent authorities for the suspension of the release of goods into free circulation may not exceed 20 days.

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 customs service may, on its own initiative, suspend the clearance of goods in respect of which it has acquired prima facie evidence that an intellectual property right has been, or may be, infringed.

When undertaking an *ex officio* action, the customs authorities may seek from the right holder the provision, without payment, whether suspect goods are counterfeit, pirated or otherwise infringe an intellectual property right of any information or assistance, including technical expertise and facilities for the purpose of determining.

Where the customs service acts upon its own initiative to suspend the clearance of goods in respect of which it has acquired prima facie evidence that an intellectual property right is being infringed, it may only be exempt from liability where actions are taken or intended in good faith.

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

The remedies established under Ivorian law in the event of infringement of intellectual property rights are as follows:

- Infringement seizure;
- confiscation;
- revocation;
- suspension of the release of the counterfeit goods into free circulation.

These remedies may be applied by the competent authorities for the purpose of keeping counterfeit goods out of the market-place or halting any activity that might lead to the infringement of an intellectual property right.

These procedures are implemented through bailiffs, and public or ministerial officers, including customs officers, with a view to ensuring that measures to enforce rights are carried out faithfully, fairly, quickly and efficiently.

Criminal procedures

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

The justice system of Côte d'Ivoire has four levels of courts:

- Lower court [*tribunal de simple*];
- magistrate's court [*tribunal correctionnel*];
- criminal court [*cour d'assises*];
- supreme Court [*Cour suprême*].

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

The Bangui Agreement of 24 February 1999 lists the following offences:

- Infringement;
- unlawful use of a trade name;
- confusion with another's enterprise or activities;
- acts damaging to another's image or reputation;
- deceiving the public;
- disclosure of confidential information;
- usurpation.

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?

Two categories of public authorities are able to initiate criminal action:

- The judicial police – specifically judicial police officers, certain sworn officials and customs officers;
- the Office of the General Prosecutor – specifically the General Prosecutor, other prosecutors and the examining magistrate.

These authorities are able to launch criminal proceedings at their own initiative, apart from the examining magistrate whose involvement requires a direct citation following a complaint.

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

Any injured party may launch a criminal proceeding (Article 1 of the Code of Penal Procedure).

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 goods and materials and implements for their production;**
- **other.**

Intellectual property right	Infringement	Penalties
Patent	Counterfeiting	<ul style="list-style-type: none"> - Fine of CFAF 1 to 3 million - One to six months' imprisonment (in the event of a second offence, or if the counterfeiter is an employee of the patent holder or is an accomplice) - Confiscation - Destruction - Posting of the sentence
Utility model	Counterfeiting	<ul style="list-style-type: none"> - Fine of CFAF 1 to 6 million - One to six months' imprisonment (second offence) - Fifteen days' to three months' imprisonment (counterfeiting worker or accomplice) - Confiscation - Destruction - Posting
Trademarks	Unlawful exploitation of a trademark	<ul style="list-style-type: none"> - Fine of CFAF 1 to 6 million CFA francs and three months' to two years' imprisonment - Penalties doubled in the event of a second offence - Barred from professional associations' elections - Posting of the sentence - Confiscation
Designs	Any infringement of rights	<ul style="list-style-type: none"> - Fine of CFAF 1 to 6 million - One to six months' imprisonment (second offence, or employee of the injured party) - Barred from professional associations' elections - Posting of the sentence - Confiscation

Intellectual property right	Infringement	Penalties
Trade names	Any infringement of rights	- Three months' to one year's imprisonment and/or - Fine of CFAF 1 to 6 million
Geographical indications	Unlawful use of a geographical indication	- Three months' to one year's imprisonment and/or - Fine of CFAF 1 to 6 000
Copyright and neighbouring rights	Any infringement of rights	- Confiscation of proceeds seized - Confiscation and destruction of infringing works - Provisional shutdown - Publication of the sentence
Layout-designs of integrated circuits	Any infringement of rights	- Fine of CFAF 1 to 6 million - Up to six months' imprisonment - Confiscation - Destruction
Plant varieties	Counterfeiting	- Fine of CFAF 1 to 3 million - One to six months' imprisonment - Confiscation - Destruction

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.

The duration and cost of proceedings are extremely difficult to assess, given the wide range of variables that may be involved (*flagrante delicto*, direct summons, proceedings arising from a judicial investigation, number of summonses served, location of summons, etc.).

Nevertheless, the following may be mentioned as indicative information:

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