

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from Nigeria

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedures and remedies

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

Copyright

Generally, the Federal High Court has jurisdiction for matters pertaining to the revenue of the Federation and any enactment relating to copyright, patents, designs, trademarks, and passing-off, industrial designs and merchandise marks, business names, commercial industrial monopolies, combines and trusts, standards of goods and commodities and industrial standards. In so far as copyright law derives entirely from the Copyright Act, the Federal High Court has exclusive original jurisdiction in copyright matters. This Constitutional provision is again confirmed by the Copyright Act which expressly stipulates in section 38 that the court shall have exclusive jurisdiction for the trial of offenses or disputes under that Act. As for other matters like passing off the exclusive jurisdiction would only be as far as they derive from the statute.

The primary objective in establishing the court as a specialized court was to provide for speedy adjudication of matters, which were then thought to be suffering from the delays in the regular courts.

Appeals lie from the Federal High Court to the Court of Appeal. Appeals lie as of right in the following cases: (i) final decisions in any civil or criminal proceedings; (ii) decisions in any civil or criminal proceedings, where the ground of appeal involves questions of law alone. The right of appeal from a decision of a High Court is exercisable in civil proceedings at the instance of any of the parties thereto or, with leave of the High Court or the Court of Appeal, at the instance of any other person having an interest in the matter. In criminal proceedings, the right is exercisable at the instance of an accused person or, subject to the powers of the Attorney-General of the Federation or the Attorney General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as prescribed. In any case, the right must be exercised in accordance with the rules of practice and procedure for the time being applicable in the Court of Appeal.

¹ Document IP/C/5.

Further appeals from the Court of Appeal may lie to the Supreme Court. Again, appeals lie as of right or with leave of that court or the Court of Appeal. An appeal shall lie as of right from decisions of the Court of Appeal to the Supreme Court in decisions in any civil or criminal proceeding, where the ground of appeal involves questions of law alone.

Industrial property

Nigeria has three separate Courts for the adjudication of intellectual property right infringement cases namely:

- the Federal High Court located at various zones in the country, has original jurisdiction over intellectual property right infringement cases (both civil & criminal matters).
- the Court of Appeal located at various zones, adjudicate over appeal cases from the Federal High Court in the zone.
- the Supreme Court of Nigeria situated in Abuja, Federal Capital Territory, adjudicates over intellectual property right infringement cases emanating from the Court of Appeal in the country where the ground of appeal involves question of law alone. The judgment of the Supreme Court which is the highest court of the land is final in all civil & criminal cases

N.B.: State High Courts and Magistrate Courts have jurisdiction to hear only cases relating to criminal infringement of intellectual property rights.

The laws governing the administration, registration and protection of intellectual property rights in Nigeria are:

- the Trade Marks Act Cap 436 Laws of the Federation of Nigeria 1990;
- the Patents and Designs Act Cap 344 Laws of the Federation of Nigeria 1990;
- the Customs and Excise Management Act Cap 84 Laws of the Federation of Nigeria, 1990. (This Act prohibits importation of Infringing goods into Nigeria.)
- the Copyright Act Cap 68 Laws of the Federation of Nigeria 1990;
- the Merchandise Marks Act Cap 223 Laws of the Federation of Nigeria 1990. (Prescribed penalties for criminal infringement of intellectual property rights.)

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?

Copyright

Which persons have standing to assert IPRs?

Under the Copyright Act, the following persons may initiate action:

- the owner of the copyright;
- assignees or exclusive licensees of the copyright;

- the author of a work with respect to moral rights;
- performers of live performances for the right in their live performances;
- the Nigerian Copyright Commission with respect to breach of the provisions on the protection of expressions of folklore.

Where an infringement action brought by the copyright owner or an exclusive licensee relates to an infringement in respect of which they have concurrent rights of action, the copyright owner or the exclusive licensee may not, without the leave of court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant. For this purpose, an infringement action is understood to include a counter-claim.

How may they be represented?

The law allows a party to an action to appear in person or be represented by a legal practitioner. The legal practitioner functions as both solicitor and advocate.

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

There are no provisions for mandatory personal appearance as such except that a party that has given evidence orally in court stands to be cross-examined in person.

Apart from the other provisions of the law, which makes proof of infringement easier for the plaintiff, the Copyright Act also permits use of affidavit evidence in place of direct evidence by witness. An affidavit made before a Commissioner for Oaths, notary public or other person competent to administer an oath in terms of the law of the country where the oath is made would be admissible as evidence of the facts stated therein without further proof in any proceedings under the Act. Such statements are to be presumed true until the contrary is proved.

Industrial property

Which persons have standing to assert IPRs?

In the case of registered intellectual property rights, the Registered Proprietor, the assignee of the intellectual property rights, the registered user or licensee of the intellectual property rights with the consent of the registered proprietor, have standing to assert intellectual property rights. In addition, where a registered proprietor of a trademark is called upon to commence enforcement proceedings and if this is not done, such registered user may then do so, in his own name, as if he were the proprietor/registered owner of the intellectual property right.

Unregistered trademarks are enforced by a passing-off action, in which the plaintiff must show that the goods are those of the plaintiff. The mark of the plaintiff must have gained goodwill and reputation and members of the public are likely to be misled, by the acts of the defendant, as to the origin of the goods or services. Likewise, an action for the protection of trade secrets may be brought by any person claiming to be the owner of such trade secret and to have been damaged by an unauthorized disclosure of the secret.

How may they be represented?

The registrants or registered proprietors, assignees, registered users or owners of unregistered intellectual property rights, may be represented in the Federal High Courts, Courts of Appeal or in the Supreme Court by independent legal practitioners who in Nigeria are both solicitors and advocates of the Supreme Court of Nigeria. An aggrieved individual or natural person may appear in person but generally. Counsels represent both the plaintiffs and defendants in intellectual property right cases in Nigerian Courts. It is important to state that Area Courts, Native Courts, Magistrate Courts, State High Courts and Tribunals have no jurisdiction to adjudicate on intellectual property right civil cases. All parties to the suit are allowed to state their cases by giving oral evidence, tender documentary evidence, produce the infringed and infringing marks/goods in court and call witnesses to prove or substantiate their claims.

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

The legal system in operation in Nigeria, in intellectual property right cases does not provide for mandatory appearance before the court, by the right holders. They are represented by their counsels. But, in a case where crime is involved, the persons involved are served *subpoena* to appear before the court, to testify or give evidence.

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 that lies within its control?

Copyright

Section 22 of the Act allows parties to bring *ex parte* applications to the court whenever there is reasonable ground for suspecting that there is in any place any infringing copy, material or contrivance used or intended to be used for making infringing copies or capable of being used for the purpose of making copies or any other article, book or document by means of or in relation to which any infringement under the Act. The application would have to be supported by an affidavit. Pursuant to this application, the court may issue an order upon such terms as it deems just, authorizing the applicant to enter the house or premises at any reasonable time by day or night accompanied by a police officer and:

- seize, detain and preserve any such infringing copy or contrivance;
- inspect all or any documents in the custody or under the control of the defendant relating to the action.

It is an offence for anyone to knowingly give false information pursuant to the order of the court.

Industrial property

The judicial authorities in Nigeria have the power or authority to order at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control by issuing a *subpoena* or order of the court, to give discovery of such documents in its custody or possession, which relate to the issues in the suit or litigation. A list of such documents is made available to the party concerned, which without delay produces such documents in court as ordered and the opposing party inspects, makes copies of the documents. Any breach of this is regarded as a contempt of court, punishable by the court. The court may also issue an Anton Piller Order, ordering inspection of premises, warehouses, offices by the opposing party upon sufficient reasons that such order will lead

to the discovery of documents and other infringing materials. Officers of the court, law enforcement officers, accompany the plaintiff/applicant to execute such court order.

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

Copyright

The Law of Evidence and the Rules of Court contain provisions that allow for confidentiality to be retained. An order could be made directing that the materials be brought into the custody of the court or its officials.

Industrial property

Confidential information brought forward as evidence before the court is strictly kept confidential and the information contained therein must not be used for any purpose other than for the litigation in which the discovery or confidential information was required. Privileged documents are not disclosed.

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.**

Copyright

Injunctions

The courts have the power under the Copyright Act and the inherent power to grant the remedy of injunction as one of the non-monetary remedies available to a complainant in the event of copyright infringement. Essentially, it is an order directing a party in an action, his servants and agents, as the case may be, to do or to refrain from doing an act in order to protect the other party against any injury that may result from his continuing violation of the right in question. The party against whom the order is made is liable to contempt if he deliberately disobeys the order.

This remedy is particularly useful in cases where the act of infringement is of a continuing nature and the injury complained of is such for which damages may not be adequate compensation. The remedy may be granted at anytime after the issuance of a writ but before the conclusion of trial to maintain the *status quo*, or it may be granted at the end of trial when the plaintiff has established his right. The first is an interlocutory injunction while the second is a final or perpetual injunction.

In considering whether to grant an interlocutory injunction, however, being an interim relief that is sought before the court, the court has the opportunity to evaluate the entire evidence and is more likely to assess the manner in which to exercise its discretion. The court granting an injunction may be influenced by various factors, such as the conduct of the defendant in the particular circumstances of the case or the likely effect of a grant on his business. More particularly, in the case of an interlocutory injunction the court would be mindful of (a) the

merit of the plaintiffs case; (b) the adequacy of damages as an alternative remedy for any eventual injury that may be incurred before the conclusion of trial if an injunction is not granted; (c) the party in whose favor the balance of convenience is tilted; and (d) the financial standing of each party and ability to liquidate damages.

Damages, including recovery of profits, and expenses, including attorney's fees

The Nigerian legal system generally follows the universal principle that where there is a right there must be a remedy. Accordingly, remedies are available for breach of copyright as compensation to the party injured. The award of damages is intended to restore the injured party, as much as is possible, to the same position as he was before the infringement occurred and the damages are generally at large. In determining the amount of damages to be awarded, guided by the degree of depreciation inflicted on the value of the copyright as a result of the infringing act complained of, the court will also take into account any loss suffered by the plaintiff as a result of the infringement. This includes any consequential loss due to reduction of sales and direct loss of profits.

The Copyright Act also makes provision for the award of additional damages in appropriate circumstances, i.e. having regard (apart from all other material consideration) to (a) the flagrancy of the infringement; and (b) any benefit shown to have accrued to the defendant by reason of the infringement. If the court is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, has the power to award such additional damages as it may consider appropriate.

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

There is the general power inherent in the courts to make consequential orders for the destruction or delivery-up of any infringing copyright materials. This is intended to discourage the guilty party from the lure to go against an injunction. The Act specifically creates conversion rights in favor of the copyright owner. Under that section, all infringing copies of any work in which copyright subsists, or of any substantial part therefore, and all plates, master tapes, machines, equipment or contrivances used, or intended to be used for the production of such infringing copies are deemed to be the property of the owner, assignee or exclusive licensee, as the case may be, of the copyright. He may therefore take proceedings for the recovery of the possession thereof or in respect of the conversion thereof. The two obvious remedies provided for here are recovery of possession (which is similar to delivery up or the common law action for detinue) and an action in respect of the conversion (which in essence is an action for damages).

Any other remedies

Where in an action for infringement of copyright, it is proved or admitted that an infringement was committed, but that at the time of the infringement, the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under that section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement. This alternative remedy is only available to the innocent infringer and a defendant is not entitled to the benefit merely by showing that he supposed the copyright in the work to be in another person other than the plaintiff. It does not avail one, who, rather than showing that he was not aware of the existence of copyright, merely proves that he made a mistake as to the actual owner.

In addition to the exercise of the above remedies in relation to the economic rights of the copyright owner or licensee, the author or the work retains the moral right in the work and he may take action for the breach thereof.

Industrial property

Injunctions

The Federal High Court which has the original jurisdiction to adjudicate on infringement of intellectual property rights, has the judicial power to grant interlocutory injunction, to restrain the infringer/defendant, from continuing his acts of infringement.

Injunctions are discretionary in nature and may be mandatory, prohibitory, interlocutory or perpetual or permanent. The court grants perpetual injunction when there is *prima facie* evidence that an act of infringement has been committed by the defendant. This is to restrain him permanently from committing further acts of infringement of intellectual property rights of registrants or registered proprietors.

An application for grant of an injunction may be made by the plaintiff in a case before or after the trial of the case. The claim for injunction must be pleaded in the plaintiff's statement of claim or writ or counterclaim and statutory declaration.

The court may grant a permanent injunction on application thereof, where the plaintiff has established infringement and obtained a judgment against the defendant.

Any breach of an injunction is regarded as a contempt of his Lordship Court and is punished either by a fine of an unlimited sum of money or sent to prison for a defined period.

Damages, including recovery of profits, and expenses, including attorney's fees

Where an act of infringement of an intellectual property right is proved in court, the plaintiff is entitled automatically to an award of damages. The court carefully assesses the amount to be paid as damages. Damages are assessed to compensate the registered proprietors for the losses sustained as a result of the act of infringement, which have been proved or established before the court. The plaintiff may be compensated in the form of profits lost by him, which occurred as a result of the infringement of his intellectual property right.

In the case of infringement of copyright (or related rights), or of unregistered mark or design right, the Federal High Court can also award damages, more especially, where undue profit has accrued to the defendant or infringer.

With regard to expenses and attorney's fees, the courts in Nigeria award costs to be paid by the defendant/losing party. In such an order by the court, the successful party or legal owner of intellectual property right, normally recover a sum of money corresponding to the reasonable sums expended in the litigation, including court costs and attorney's fees.

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

For infringement of a registered trademark, the Federal High Court may order that the infringing mark or sign be removed or erased from the infringing goods, in the possession of the infringer. Such infringing goods or materials, may be ordered to be delivered up to the

court for destruction. Orders for such delivery up for destruction are also available as part of the procedure for trademark or design infringement.

For infringement of copyright or of an unregistered design right, the Federal High Court also has inherent power to order delivery up of infringing works in the custody of the infringer or defendant. Similar orders for delivery up, of infringing goods for destruction are also available as part of the criminal procedure for copyright infringement.

In the case of tort of passing-off under the Common Law, the Federal High Court has inherent powers to make similar orders for delivery up for destruction, infringing goods passed-off for the goods of the plaintiff by deception.

For infringement of patented invention or registered patent, the Federal High Court has inherent or statutory powers to make an order for the infringer or defendant to deliver up for destruction any patented product in relation to which, the patent was infringed. For infringement of a registered design, a similar order is available as part of the statutory powers of the Federal High Court.

Any other remedies

Compulsory license and use of patents for service of Government agencies: in certain circumstances or in extreme emergencies, involving public interest, e.g. to maintain supplies and services essential to the life of the people, the Government may grant compulsory licenses to stake holders, to make use of patented inventions or of registered designs, as it considers necessary in relation to circumstances. The patentee or registered proprietor as the case may be is paid compensation by the Government for loss sustained by the statutory inventor, for not personally, commercially exploiting the invention or innovation.

- 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 of services found to be infringing and of their channels of distribution?**

Copyright

Under the inherent jurisdiction of the court, a defendant may be compelled to disclose the identity of third parties involved in the production and/or distribution of infringing copyright materials. Such compulsion may also be made in the course of cross-examination of witnesses in court.

In addition, the court in appropriate cases may grant an interim order for the inspection of infringing goods thereby allowing the plaintiff access to vital information on the source or destination of the infringing goods.

Industrial property

In cases of infringement of intellectual property rights against the infringer, the court orders for discovery of documents containing confidential information and when the plaintiffs and defendants state their cases - i.e. evidence-in-chief, cross/examination and re-examination - vital information obtained may be used to identify the identities of third parties involved in the production and distribution of the infringing goods/pirated copyright goods.

Also, in the case of infringement of trademarks or designs or copyright, on an application *ex parte*, by the plaintiff, the Federal High Court may grant an Anton Piller Order, that the defendants disclose the name and address of his suppliers or manufacturers of the infringing goods. This information will enable the plaintiff and also law enforcement officers, to break into the defendants' warehouse and impound the infringing goods, equipment and documents, for destruction on the order of the court.

The Trade Marks Act Cap 436, Patents and Designs Act Cap 344 and Copyright Act Cap 68, Laws of the Federation of Nigeria 1990, do not specifically empower the judicial authorities to order an infringer, to inform the right holder of the identity of the third person involved in the production and distribution of the goods or service found to be infringing and of their channels of distribution. But this order can be made by the court in the interest of justice.

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?

Copyright

The court has the power to grant costs which denotes the expenses which a person is entitled to recover from the other side by reason of his being a party to legal proceedings. They include court fees, stamps, etc. and also, where the party is represented by a solicitor, the reasonable and proper charge and fees of the solicitor and counsel.

Although not in the court rules, it is generally admitted that the courts may require the party seeking an injunction to make an undertaking as to damages which is understood to mean the price which a person asking for interlocutory injunction has to pay for it, and ought to be required on every interlocutory order. By it, the party obtaining the order undertakes to abide by any order as to damages which the court may make in case it should afterwards be of the opinion that the defendant has, by reason of the order, sustained any damages which such party ought to pay. The courts have for a long time recognized the need for a plaintiff who applied for an interlocutory injunction to give "undertaking as to damages." Where a party has suffered no injury as a result of their being sued in an action then the proper relief to be made in that case is security for costs and not damages.

Officials, judicial or administrative, are generally immune from liability for any legitimate action taken in the discharge of their official responsibilities.

Industrial property

Describe provisions relating to the indemnification of defendants wrongfully enjoined

Where a plaintiff, in the case of infringement of intellectual property rights, is applying for an interlocutory or interim injunction, to restrain the defendant and his agents from further committing acts of infringement, the plaintiff is required to give the court an undertaking that, if the defendant is subsequently found to have been wrongfully enjoined, the plaintiff will pay damages to the defendant for any loss he suffered. The court will require security for such an undertaking to be given, by way of deposit of money in court's funds. Where upon an order for a perpetual injunction, after full trial, the court will likewise require such an undertaking or security to be given, if the unsuccessful defendant, seeks to suspend the perpetual injunction, pending appeal and the plaintiff object to the prayers.

To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

The judicial officers under the Statutes or Common Law are immune from litigation in the event that their decisions are subsequently overturned by the Court of Appeal or the Supreme Court of Nigeria.

The Controller-General of Customs and his authorized officers are generally immune from liability, resulting from the performance of their statutory duties. They are not liable for any action taken or omitted to be taken in good faith, in the course of performing their official statutory duties.

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

Describe provisions governing the length and cost of proceedings

There are no statutory provisions in the laws of the Federation of Nigeria, 1990, governing the length and cost of proceedings. The presiding judge has inherent statutory powers to control the proceedings in his court and may prescribe time limits for filing motions and responding to various pre-trial processes and procedures. There is power to order accelerated or expedited hearing in urgent cases of intellectual property right infringement. Failure to comply with the time limit set by the court may result in extreme cases action being dismissed for lack of diligent prosecution or defense being struck out. Costs are generally reserved at each stage of the proceedings, and at the conclusion of the hearing, one party or the other may be compensated for unnecessary procedural steps or calculated delay. The cost of proceeding largely depends on the pre-trial applications made, the quality of counsel hired, the length of trial and the success of the action. The successful party, shall be awarded costs and declaration made in his favor.

Where the validity of the registration of a patent, trademark or design is contested in the court of law and the registration is found to be valid and subsisting the court shall in the subsequent proceeding of intellectual property right infringement, grant judgement in favor of the party relying on the validity of the registration and the party shall be entitled to cost on an indemnity bases or in the case of trade mark on a solicitor-and-client bases.

Provide any available data on the actual duration of proceedings and their cost

Because of the disparities and peculiar nature of each particular case, with regard to the length and cost of proceedings, it is impossible to provide any realistic or meaningful data on the actual duration of proceedings and their cost.

(b) *Administrative procedures and remedies*

9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.

Copyright

Copyright is hardly the subject of administrative action since the Copyright Office does not function in a quasi judicial capacity as such.

Industrial property

Under the laws of the Federation of Nigeria, 1990, there are administrative procedures on the merits and therefore no remedies may result from the procedures.

Provisional Measures

(a) *Judicial measures*

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

Copyright

There is a provision for the courts to make appropriate interlocutory orders pending the final determination of a case. Apart from the more general remedy of interlocutory injunction which serves to preserve the subject matter of the action, the Act expressly gives an aggrieved party the right to apply for an order for inspection and seizure. This order, which is a statutory codification of the Anton Piller Order is also covered by the rules of court. A party to an infringement action may bring an *ex parte* application, supported by affidavit, that there is reasonable cause for suspecting that there is in any house or premises any infringing copy or any plate, film or contrivance used or intended to be used for making infringing copies or capable of being used for the purpose of making copies or any other article, book or document by means of or in relation to which any infringement under this Act has been committed. Upon hearing the application *ex parte*, the court may issue an order upon such terms as it deems just, authorizing the applicant to enter the house or premises at any reasonable time by day or night accompanied by a police officer not below the rank of an Assistant Superintendent of Police, and (a) seize, detain and preserve any such infringing copy or contrivance; (b) inspect all or any documents in the custody or under the control of the defendant relating to the action. It is an offence under the law to give false information in satisfaction of the court order.

In addition, the courts would in appropriate cases grant the Mareva injunction to preserve the assets of the defendant within the jurisdiction so as to make it available for the satisfaction of the judgment debt. This order is often granted when there are real fears that the assets of the defendant may be removed from the jurisdiction of the court.

Industrial property

The Federal High Court, the Court of Appeal and the Supreme Court of Nigeria with inherent jurisdictions to hear intellectual property cases, have provisional measures provided for, before the trial in the form of interlocutory or interim injunctions, an order for the interim attachment of the defendant's property; prohibition orders and interim payment orders. The inherent power of the Federal High Court derived statutorily and under the Common Law and applicable to the appellate courts. Interlocutory injunction may be mandatory or prohibitory. They are discretionary in nature. Interlocutory injunctions are available only when a judge is satisfied that the plaintiff has a real prospect of succeeding in his claim, for a perpetual or permanent injunction and that the balance of convenience lies in favor of granting the injunction. All interlocutory injunctions lapse when judgment is given on the substantive hearing or suit.

The necessity for the Anton Piller Order resulting from the case of *Anton Piller Kg v Manufacturing Processes Limited* [1976] 1 All ER 779 is to prevent a likely defendant from destroying property which would be relevant as evidence in the trial before the case comes on for hearing. The order will be to the effect that the plaintiff, by his solicitor, be entitled to enter the defendant's premises and search for the goods or documents specified in the order and remove,

inspect or photograph such material. Additionally, the defendant might be required to disclose the name and address of his suppliers. The order will invariably include an interlocutory injunction restraining the defendant from selling or manufacturing certain specified item or carrying out certain specified activities and also impose a restraint upon the defendant from informing others of the existence of the proceedings.

Another provisional order which is available in the Federal High Court is a prohibition order. This order prohibits the enforcement of a judgement against the defendant for the payment of a specified sum of money in a civil claim, for the delivery of any property or performance of any act.

Another form of provisional order is an application to the court for an order requiring the defendant to make interim payment. An interim payment is defined as a payment or account of damages, debt or other sum which a defendant may be held liable to pay to or for the benefit of the plaintiff. The benefit may be denied unless the plaintiff can show hardship during the period from the institution of the proceedings and the date of judgement and that the defendant is the proper person to alleviate the hardship.

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

Copyright

Interlocutory orders may be made *inaudita altera parte* where the court is convinced about the urgency of the matter and it is clear that putting the other party on notice may either defeat the essence or constitute avoidable delay. The court will however take adequate precautions including the requirement of security of costs, etc., to protect the interest of the other party and give a return date at which time the defendant may be heard on the terms of the order.

Where the defendant is put on notice but does not appear or file a defense to the action, then the rules allow the plaintiff to proceed and apply for default judgment.

Industrial property

The plaintiff may in case of extreme urgency, make an application *ex parte* on affidavit and this may be done even before the issuance of the originating process or summons. The Anton Piller order is brought by *ex parte* motion to ensure that the defendant is not given the opportunity to negate the effect of the order by acting prior to the order being made.

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.

Industrial property

Provisional relief is sought at the early stage in normal litigation in the Federal High Court in Nigeria. Action commences by service of a writ of summons upon each defendant, together with a formal statement of claim: an application for any provisional relief is made by motion-on-notice to the court, accompanied by supporting evidence in the form of sworn affidavits. In very urgent cases it is permissible to issue such motion on notice even before the service of the writs upon giving to the court an undertaking to issue and serve the same without delay.

The motion on notice usually states a date for the court hearing a few days later. The defendant in reply later files his statement of defense, supported by sworn affidavit evidence, before a full hearing on the application for provisional relief is held, the period could be short if the court sees

that the matter should be decided as a matter of urgency. At the initial stage of hearing it is usual for the plaintiff to seek undertakings from the defendant not to continue with the acts complained of, pending the full hearing. The plaintiff may ask the court to impose an interlocutory injunction for the time being. The court may be reluctant to do this except in a case of intellectual property right infringement. The court will normally give the defendant sufficient time to enable him to show cause why the judge will not award provisional relief against him, before a full trial on the merits of the case.

In a situation where the court refuses to grant provisional relief it may order that the full trial hearing should commence at an early date, and may shorten the normal time limits for the pre-trial procedures, such as filing statement of defense, giving discovery of relevant documents and pre-trial exchange of statements in writing of the evidence to be presented at the trial.

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

Describe provisions governing the length and cost of proceedings

Under the laws of the Federation of Nigeria 1990, there are no provisions which govern the length or costs of proceedings for provisional measures. When a request for provisional measures is made promptly, the court will then draw a time table for further procedure and a hearing date will be fixed for the parties.

The plaintiff requests for provisional relief when there is imminent threat to his intellectual property right or when he fears that important documents, infringing goods and equipment aiding the infringer, will be tempered with by the defendant. The court will expedite action by granting provisional relief like interim injunction or Anton Piller Order. In very urgent cases such as when an ejection order was issued by a Housing Authority, the court will hear the representatives of the plaintiff, at very short notice, even in the middle of night at the home of the magistrate or judge. The Appeal Courts will likewise act expeditiously, when the appellant's right is threatened.

As stated earlier, the cost of proceedings is personal and it depends on the sum, the plaintiff and his counsel agreed upon to be paid for the litigation *ab initio*. A successful party will expect to recover a token proportion of the damages claimed, the attorney's fees and cost of filing motions. The cost awarded in respect of application for provisional relief takes effect at the end of the litigation or after delivering judgement.

Provide any available data on the actual duration of proceedings and their cost

There is no such data available in the Laws of the Federation of Nigeria, 1990. It is more so because it is not possible to fix a specific period or duration for hearing and delivering judgement in intellectual property right cases, for the fact that each infringement case differs from the other. Some of the cases have many defendants, each represented by a counsel and many exhibits are tendered in evidence in courts and many witnesses called.

(b) *Administrative measures*

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

Copyright

There is no administrative provisional relief for copyright under the law.

Industrial property

See the replies to questions 10-13 above in relation to any administrative provisional measures.

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?**

Copyright

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)

There are general powers conferred on the Nigeria Customs Service to impound goods which they reasonably suspect to be in contravention of the law. For purposes of intellectual property rights, the Copyright Act provides that the owner of the copyright in any published literary, artistic or musical work or sound recording, may give notice in writing requesting Customs during the period specified in the notice, to treat as prohibited goods, copies of the work to which this section applies. This provision applies, in the case of a work, to any printed copy made outside Nigeria which if it had been made in Nigeria, would be an infringing copy of the work.

A notice given under the foregoing provision in respect of a work for so long as it has not been withdrawn, serves to render the importation into Nigeria of any copy of the work so affected prohibited. It would therefore be liable to be impounded by customs officials. There is express provision that a person shall not be liable to any penalty other than forfeiture of the goods by reason that any goods are treated as prohibited goods by virtue of this section.

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 provisions do not apply to the importation of any article by a person for his private and domestic use.

Industrial property

Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51)

The Customs and Excise Authorities in Nigeria have statutory powers to impound goods entering Nigerian ports, where they reasonably believe that the entry of such goods or cargoes into the country, would contravene the provisions of the Customs and Excise Management Act Cap 84 Laws of the Federation of Nigeria 1990.

The Customs Authorities also have powers to restrict the movement of goods into and out of Nigeria by land, or inland waters and airports. They have power to prohibit banned goods from being imported into the country. Most such actions are concerned with restricting the entry into Nigeria, banning substances, such as narcotics, weapons, pornographic material, Tokunbo or second hand refrigerators, freezers and electronic goods.

In the case of intellectual property right infringement, there are specific provisions in respect of counterfeit trademarks and pirated copyright goods. Under the infringing or counterfeit goods, there are goods branded with trademarks similar or identical to the marks of registered proprietors which when applied without the consent or authority of the registrant or legal owner or his licensee or assignee. Pirated goods are unauthorized copies of copyright works, including books, sound recordings, films and video tapes. Suspension of release by the Customs Authorities of counterfeit goods or pirated copyright goods upon an application in writing by the registered proprietor. Customs Authorities promptly suspend release into free circulation of such infringing goods. Such goods are treated as prohibited or banned goods and thus be detained for 100% inspection in our ports, and if confirmed to be counterfeit goods, they are declared forfeited. Unless this declaration is successfully challenged, the goods are eventually destroyed by the customs officers on the order of the court.

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?

Counterfeit goods and pirated copyright goods subjected to suspension or release by the Customs Authorities do not apply to goods which are already in free circulation in Nigeria. These are goods which have been imported into Nigeria with all customs duty and relevant import taxes duly paid. Goods destined for exportation and goods in transit could be subjected to suspension of release and is therefore included within the provision. But goods excluded from suspension of release are goods of a non commercial nature contained in a traveler's personal luggage, within the limit for relief from customs duty and goods intended for the private and domestic use or consumption by the traveler or person importing them.

The procedure for suspension of release does not apply to imports of goods put on the market in another country by or with the consent of the right holder. As stated earlier goods destined for exportation which are found to be counterfeit or pirated copyright goods are subjected to suspension of release procedures.

- 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 provisions of the Customs and Excise Management Act Cap 84 laws of the Federation of Nigeria 1990, strictly comply with the obligations of Articles 51-57 of the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994. An application for suspension for release is made under this regulation to the Customs Authorities (Controller-General of Customs) by the right holder or registered proprietor, requesting for the detention of goods, he reasonably believes to be counterfeit goods or pirated copyright goods. A fee for this administrative monitoring service is payable to the Customs Authorities for the first month of this monitoring. Extension fees can also be paid on a monthly basis. In addition to these fees, the applicant or registered proprietor of the trademark or design, is required to provide an indemnity/surety to pay monetary compensation for any unlawful detention of the said goods being imported into the country. The Customs Authorities may require security to be paid against any claim for such compensation by the importer. The applicant is also required to show proof of ownership of the said registered trademark or design he claimed or if further required an authorization or power of attorney from the right holder or assignee to act against the importation for the suspected counterfeit or pirated goods. If the application for suspension of release is accepted, the Customs Authorities will notify the applicant in writing and commence the monitoring services for the period requested. The application should be filed several days (ten days) before the alleged infringing goods are expected to be imported into the country or exported to a foreign country.

Under this Regulation 51, Customs Authorities also have power to detain, on their own initiative, goods suspected to be counterfeit or pirated goods. When the said goods are detained, the legal owner is notified and he has three working days to give notice, the goods should be regarded as infringing goods and should be subjected to a forfeiture procedure or rule.

Infringing goods detained by the Customs Authorities under these procedures, the applicant who filed the application will be informed that the goods are detained (or their free circulation suspended) for about ten (10) days during which both the legal owner and the infringing importer are required to inspect the goods where the right holder or his authorized agent proves that the detained goods, are in fact infringing goods, the Customs Authorities promptly declare the goods to be forfeited. Where this forfeiture decision is challenged, the Customs Authorities are required to commence condemnation proceedings before the Federal High Court at the expense of the applicant seeking that forfeiture. If the condemnation proceedings fail, the goods are released into free circulation. If they succeed, the goods are then destroyed and re-export is not permitted. If the goods are shown not to be infringing, the right holder will be subject to a claim by the importer for damages for the unlawful detention of the goods. The aforementioned indemnity takes effect in respect of such claim in addition to the cost of the condemnation proceedings.

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

There are no provisions in the intellectual property laws in Nigeria governing the length of proceedings. Apart from the costs of the court filing fees and the security on indemnity against possible loss by the importer, which was discussed in the response to question 16 above. There is no data available showing the actual duration and cost of proceedings.

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?

Are competent authorities required to act upon their own initiative and, if so, in what circumstances?

There are no provisions requiring competent authorities to act on their own initiative. But, when they reasonably suspect that the importer has imported either counterfeit or pirated goods, they can use their initiative to detain the infringing goods and inform the registered proprietor to apply formally to the customs authorities for suspension of the release.

Are there any special provisions applicable to *ex officio* action?

There is a special provision for the protection of Customs Authorities in Nigeria from any loss or damage suffered as a result of any act or omission done *bona fide* in the course of carrying out the detention order or suspension of the release of the goods into free circulation as contained in the Customs and Excise Management Act, Cap 84, of 1990.

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

The Customs Authorities have no statutory power to order any remedies. Only the Federal High Court, Court of Appeal or the Supreme Court of Nigeria, have power to order remedies or grant damages as in cases of infringement of trademarks and passing off action. Remedies are also ordered by the court when suspension of release or a detention order is set aside or reversed. Security money is paid to the importer for losses incurred as a result of the unlawful detention of his goods.

Criminal Procedures

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

Copyright

The same as in the answer to question 1 above. The Copyright Act makes an exception to the general common law rule by providing expressly that civil and criminal actions may be taken concurrently.

Industrial property

In Nigeria, courts that have jurisdiction over criminal acts of infringement of intellectual property rights are.

- the Federal High Courts in various zones in the country have original jurisdiction over criminal acts of infringement of intellectual property rights;
- the Courts of Appeals in various zones adjudicate on appeal cases from the Federal High Courts;
- the Supreme Court of Nigeria adjudicates on appeal cases from the Courts of Appeal and its judgement is final. The three courts stated above try both civil and criminal acts of infringement of intellectual property rights in Nigeria. It is important to note that the State High Courts, Magistrate Courts, Area Courts, Customary Courts and

Sharia Courts have no jurisdiction to hear civil cases relating to intellectual property right infringement.

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

Copyright

Criminal procedures and penalties are available for the copyright infringement where a person does any of the following with the requisite *mens rea*:

- making or causing to be made for sale, hire, or for the purposes of trade or business any infringing copy of a work in which copyright subsists;
- importing or causing to be imported into Nigeria, a copy of any work which if it had been made in Nigeria would be an infringing copy;
- making, causing to be made, or having in one's possession, any plate, master tape, machine, equipment or contrivance for the purposes of making any infringing copy of any work.

These are primary infringements and it is good defense that the accused person did not know and had no reason to believe that the copy concerned was an infringing copy.

The Act further provides for secondary infringements i.e. dealing in illegitimate copies. A person is guilty of an offence if he:

- sells or lets for hire or for the purposes of trade or business, exposes or offers for sale or hire any infringing copy of any work in which copyright subsists;
- distributes for the purposes of trade or business any infringing copy of any such work;
- has in his possession other than for his private or domestic use any infringing copy of any such work; or
- has in his possession, sells, lets for hire or distribution for the purposes of trade or business or exposes or offers for sale or hire any copy of a work which if it had been made in Nigeria would be an infringing copy.

It is a defense for the accused if he can prove to the satisfaction of the court that he did not know, and had no reason to know, that the copy dealt with was an infringing copy of the work concerned.

In addition to the above the Act also provides for criminal liability against any person who sells, rents, hires, offers for sale, rent or hire or has in his possession a work that is in contravention of the prescription for the use anti-piracy devices. Similarly it is an offence to deal in machines or other contrivances intended for use in the production of a prescribed anti-piracy device.

There are also provisions for criminal infringement of performers' rights, unauthorized exploitation of expressions of folklore, failure to keep producers' register or to make false entries therein or to knowingly give false information in execution of the inspection and seizure (Anton Piller) provisions of the Act.

Industrial property

The Merchandise Marks Act Cap 223 Laws of the Federation of Nigeria 1990, is an Act relating to fraudulent marks on merchandise. This Act deals with criminal offences arising from infringements of intellectual property rights. The High Courts and Magistrate Courts in the states have jurisdiction to adjudicate on these criminal offences arising from infringements of intellectual property rights.

Sections 2 and 3 of this Merchandise Marks Cap 223 stated below listed the criminal offences and penalties awarded by the Courts.

"Section 2 (1) - In this Act, unless the context otherwise requires "false trade description means a trade description which is false or misleading in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description whether by way of addition, enforcement, or otherwise where that alteration makes the description false or misleading in a material respect; and the fact that a trade description is a trademark, or part of a trademark, shall not prevent such trade description being a false trade description within the meaning of this Act;"

Section 3(1) - Criminal offences as to trademarks and trade descriptions.

- "(a) Every person who forges any trade mark; or
- (b) Falsely applies to goods any trade mark or any marks so nearly resembling a trade mark as to be calculated to deceive; or
- (c) Makes, disposes of, or has in his possession any die, block, machine or other instrument for the purpose of forging or of being used for forging, a trade mark; or
- (d) Applied any false trade description to goods; or
- (e) Cause any of the things above in this section mentioned to be done, shall subject to the provisions of this Act and unless he proves that he acted without intent to defraud, be guilty of an offence."

Selling goods to which false trade marks or description applied

- (2) Every person who sells or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture any goods or things to which any forged trademark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trademark as to be calculated to deceive is falsely applied, as the case may be shall, unless he proves either;
 - (a) That, having taken all reasonable precautions against committing an offence against, this Act, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, or trade description and that on demand made by on behalf of the prosecutor, he give all the information in his power with respect to the persons from whom he obtained such goods or things.
 - (b) That otherwise he had acted innocently; be guilty of an offence against this Act.

- (3) Every Person who is guilty of an offence against this Act shall be liable:
- (a) On conviction before a High Court to imprisonment for two years or to a fine, or to both.
 - (b) On summary conviction before a magistrate to imprisonment for six months or to a fine of one hundred Naira.
 - (c) In any case, to forfeit every chattel, articles, instrument or thing by means of or in relation to which the offence has been committed.

Forging trademark

4. A person shall be deemed to forge a trademark who either
- (a) Without the assent of the proprietor of the trade mark, makes that trademark or a mark so nearly resembling that trade mark as to be calculated to deceive; or.
 - (b) Falsified any genuine trade mark, whether by alternation addition, effacement, or otherwise, and any trademark or mark so made or falsified is in this Act referred to as forged trade mark;

Provided that, in any prosecution for forging a trademark the burden of proving the assent of the proprietor shall lie on the defendant.

Section 11(2) - Forfeiture of infringing goods in the absence of the defendants who could have been convicted if found.

- (3) Disposal of goods forfeited: the goods may be destroyed or otherwise disposed of in such a manner as the court may direct.

Cost of defense or prosecution

Section 12 - On any prosecution under this Act, the court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

An offence of infringement of copyright is committed under the provisions of Section 14(1) of the copyright Act Cap 68 Law of the Federation of Nigeria 1990. Under these provisions, a criminal offence is committed under generally the same circumstances as when an act of copyright becomes actionable as a civil matter, provided the article of which complaint is one which the defendant knows or has reason to believe is an infringing copy of a copyright work. It is equally an offence to make or have in his possession an article specifically designed or adapted to making copies of a particular copyright work or to perform, play, or show in public a literary, dramatic or musical work a sound recording or a film.

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?

Copyright

The authorities responsible for initiating criminal proceedings in the event of criminal copyright infringement are the Police through the Office of the Federal Attorney General and the Nigerian Copyright Commission. The proceedings may be initiated at the instance of a complainant or by the authorities concerned on their own initiative.

Industrial property

- In the case of trademarks infringement, classified as criminal offences under the Merchandise Marks Act Cap 223, laws of the Federation of Nigeria 1990, (discussed in the answer to question 21 above) the public authorities responsible for initiating criminal proceedings are:
 - Prosecutors of the Customs and Excise Authorities prosecute cases arising from suspension of release which resulted in impounding counterfeit and pirated copyright goods imported by or into the country by infringing importers. The importer/defendant bears the cost of the proceedings if found guilty of the offence.
 - Nigerian police prosecutors, prosecute criminal proceedings arising from forged trademarks, in both State High Court and Magistrate Court. Any interested individual may refer a criminal infringement matter to the Police prosecutor.
 - Prosecutors from the Federal Ministry of Justice representing the Attorney-General of the Federation and Minister of Justice, prosecute cases of large seizure referred to it for advice as to venue, the appropriate charges and the sufficiency of evidence. It is important to note that the Federal High Court has original jurisdiction to hear both civil and criminal offences arising from infringement of intellectual property right cases and passing-off cases of unregistered trademarks under the Common Law. The State High Courts and Magistrate Courts have no jurisdiction to hear civil cases relating to infringement of intellectual property rights in Nigeria.
- Prosecution in respect of criminal offences arising under the Merchandise Marks Act Cap 223 are not initiated by the above mentioned Government Authorities, but in response to complaints by the registered proprietor or an owner of well-known unregistered trademarks.

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

Copyright

The law allows an interested individual to initiate private criminal prosecution if he can show that the Attorney General or the appropriate authority has for no just cause refused to prosecute.

Industrial property

- Proprietor of registered trademarks;
- owners of unregistered trademarks or designs (under the Common Law) for passing-off;
- assignee of a trademark or industrial design;
- registered user with the consent of the registered proprietor or registered user alone where the registered proprietor declines to prosecute;
- body corporate;
- an interested person who has a nexus or link to the infringing mark of the defendant or importer (see Section 20 of the Trade Marks Act 1990 Cap 436).

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.**

Copyright

Penalties and remedies:

- Primary infringement, i.e. making, importation of or possession of materials for making infringing copies of work:

fine not exceeding N1,000 per copy dealt with in contravention and/or term of imprisonment not exceeding five (5) years.
- Secondary infringement i.e. sale, offering for sale, distribution, possession for purposes of trade of infringing copy of work:

fine of N100 per copy dealt with in contravention and/or term of imprisonment not exceeding two (2) years.
- Public distribution by way of rental, hire, lease, loan etc.:

fine of N100 for every copy dealt with and/or imprisonment for 6 months.
- Offences relating to anti-piracy measures:

Fine not exceeding N50,000, imprisonment not exceeding five (5) years, or to both such fine and imprisonment.
- Making false entries in register:

Fine not exceeding N10,000.

- Making false entries pursuant to an Anton Piller order

Fine of N1,000.

- Infringement of performers' rights:

in the case of an individual, to a fine not exceeding N10,000;

in the case of a body corporate, to a fine of N50,000;

in all other cases, to a fine of N100 for each copy dealt with in contravention or to imprisonment for twelve months or to both such fine and imprisonment.

A court before which an offence under this section is tried shall order that the recording or any other part thereof be delivered to the performer.

- Infringement of expressions of folklore:

in the case of an individual - fine not exceeding N100,000 or to imprisonment for a term of 12 months or to both such fine and imprisonment; and

in the case of a body corporate - fine of N500,000.

A court before which an offence under this section is tried may order that the infringing or offending article be delivered to the Commission.

- Obstruction of a Copyright Inspector in the performance of his duties:

fine not exceeding N500 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

- Performance of duties of a collecting society without the approval of the Commission:

fine of N1,000 on the first conviction and subsequently a fine of N2,000 or to imprisonment for a term not exceeding six (6) months or to both such fine and imprisonment.

where the contravention is by a body corporate, it shall be guilty of an offence and liable on conviction to a fine of N10,000 on the first conviction and N2,000 for each day on which the offence continues.

- It need be noted that where an offence under the Act is committed by a body corporate, the body corporate and every person who at the time the offence was committed was in charge of, or was responsible to the body corporate for the conduct of the business of the body corporate shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly. But this shall not render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. Also, where an offence under the Act is committed by a body corporate and it is proved that the offence was committed with the consent or

connivance of, any director, manager, secretary or other officer of the body corporate, such as director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. For this purposes, "body corporate" includes a firm or other association of persons; and "director" in relation to a firm includes a partner in the firm.

- Where an article has been seized by a police officer or an authorized officer in connection with a suspected offence a court may on the application of the attorney-general of the federation or owner of the copyright in connection with which such offence is suspected to have been committed, order that the article be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit, notwithstanding that no person has been charged with the suspected offence.

Industrial property

Please see the 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.

There are safeguard provisions in the Constitution that require the court to handle cases speedily and ensure fair trial.

No data is available on the actual duration of proceedings and their costs.

Please also see the answer to question 17 above.
