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

Original: English

CHECKLIST OF ISSUES ON ENFORCEMENT¹

RESPONSES FROM BOTSWANA

Civil and Administrative Procedures and Remedies

(a) *Civil judicial procedures and remedies*

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

Courts adjudicating over the IPR cases in Botswana are:

- (a) The Magistrates Court;
- (b) High Courts;
- (c) Court of Appeal (for IPR cases on appeal).

While the Magistrates Courts have jurisdiction to adjudicate over IPR matters, large numbers of the cases are heard at the High Courts because Magistrates courts have limited jurisdiction i.e., Magistrates award damages to the maximum sum of sixty thousand Pula (BWP 60,000) only. The High Court handles most of the cases due to its unlimited jurisdiction.

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?

Rights holders and licensees as co-plaintiffs have standing to assert IPRs. As a general rule, everyone must appear before court. However, there is an exception that attorneys, having been appointed by rights holders, may proceed with the case without the rights holders' presence.

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?

During proceedings for an infringement of a patent, Section 27(6) of the Industrial Property Act, 2010 deals with producing evidence which lies within the control of the opposing party. The Section reads "In requiring the production of evidence in proceedings for infringement, the court shall take into account the legitimate interests of the defendant in not disclosing his or her manufacturing secrets".

Under Section 29 of the Copyright and Neighbouring Rights Act, CAP 68:02, judicial authorities have the authority to issue a search warrant for confiscation of infringing goods and equipment or other device specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made. This is done to preserve the evidence needed during the trial.

The Copyright Act gives Judicial Officers authority to make or pronounce an order forcing the infringer to inform the rightful owner about any third party involved. However, an application must be made before the High Court under common law for a remedy under the Anton Pillar order. The Anton Pillar order requires the defendant to give information about his sources of supply, as well as

¹ Document [IP/C/5](#)

the description and destination of the stock he has produced. Also, an injunction against infringement can be made part of the order.

The Anton Pillar Order will be granted where the plaintiff:

- (a) provides an extremely strong *prima facie* case of infringement;
- (b) proves that the damage, actual or potential, to him is very serious; and
- (c) provides clear evidence that the defendant has, in his possession, incriminating documents or items and that there is a real possibility that the evidence will be destroyed before any application *inter partes* can be made.

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

The Botswana Police Service is largely the custodian of the evidence to be forwarded to the court as evidence. The Botswana Police Service safeguards the evidence that is to be used mainly in criminal matters.

In civil matters, exhibits are kept by the parties during the trial proceedings and after being admitted and marked as exhibits, the Registrar becomes the custodian until completion of the trial. This is in relation to cases before the High Courts. At the Magistrates Court, all the exhibits are under the custodian of the Principal Clerk of Court as the Magistrates Court Acts dictates.

All exhibits are properly and chronologically labelled or marked in the presence of all parties before the Court and there is a record of chain of custody. There is a proper trail of the sequence of custody, control, transfer and disposition of evidence, both electrical and physical.

With regards to identification of exhibits, Section 92 of the Criminal Procedure and Evidence Act provides that the Judicial Officer conducting the preparatory examination shall cause all documents and other articles exhibited by the witness in the course of the preparatory examination likely to be used as evidence to be properly marked, labelled in the presence of all parties and shall cause the exhibits to be taken and kept in safe custody.

In accordance with Section 27(6) of the Industrial Property Act which deals with proceedings for infringement of a patent "In requiring the production of evidence in proceedings for infringement, the court shall take into account the legitimate interests of the defendant in not disclosing his or her manufacturing secrets".

Section 114(4) of the Industrial Property Act dealing with Acts of unfair competition also protects confidential information. The Section provides that "when, as a condition of approving the marketing of a pharmaceutical or agricultural chemical product that utilizes new chemical substances, an authority in Botswana requires the submission of undisclosed tests or other data, the origination of which involves a considerable effort, such data shall be protected against unfair commercial use and disclosure and where it is necessary to protect the public, such data shall be disclosed on condition that steps are taken to protect it from unfair commercial use".

In accordance with Section 45 of the Customs Act "without prejudice to the protection of confidential information, the Revenue Service may allow the holder of an intellectual property right and the declarant to inspect the goods for the purpose of determining the merits of their respective claims".

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.**

REMEDIES UNDER THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT

Remedies under the Copyright Act are provided for under Sections 29–33 which cover provisional measures, civil remedies, criminal sanctions, powers of custom officials and measures, remedies, and sanctions against abuses in respect of technical means of protection and rights management information. These provisions, and the criteria thereof, are as outlined immediately below.

Section 29(1) - Subject to subsection (2) where a complaint of the contravention of the provisions of this Act is made and it is considered that a document, book or other object connected to any investigation in regard to the complaint is being concealed within specified premises, a Police Officer or such other person as the Minister may, by Order, appoint and grant investigating powers, shall enter the premises to conduct a search and seize any item found within the premises.

Section 29(2) - The Police Officer or the person appointed by the Minister under subsection (1) (hereinafter both referred to as "the investigating officer") shall not enter, conduct a search or seize any item in terms of subsection (1) unless he has obtained –

- (a) the consent in writing of the owner of the premises or the person in charge of the premises; or
- (b) a search warrant.

Section 29(3) - The court shall grant the application for a search warrant if it appears, on information given on oath or affirmation, that there are reasonable grounds to suspect that –

- (a) there are works that infringe the rights protected under the Act in the premises;
- (b) there is in the premises equipment or other device specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made (the latter device or means hereinafter referred to as "copy-protection or copy-management device or means"); or
- (c) a document, book or other object which may afford evidence of such contravention of the provisions of this Act is within those premises.

Section 29(4) - Where a Chief or Senior Magistrate is satisfied, from information given on oath or affirmation by the investigating officer, that urgent action is required to obtain evidence pertaining to the contravention of the provisions of this Act, which evidence is likely to be concealed or destroyed, the Magistrate may dispense with any procedural requirements and grant a search warrant to the investigating officer at such time and place and under such conditions as the urgency of the matter may require.

Section 29(5) - A search warrant granted by the court shall –

- (a) authorize the investigating officer mentioned in the warrant to enter the premises identified in the warrant to conduct searches, examinations, take extracts or copies, seize any item or to do any other thing that may assist with the investigation;
- (b) be executed by day, unless the court authorizes its execution by night; and
- (c) be in force until it is executed, cancelled by the court or a period of one month from the date of its issue expires, whichever occurs first.

Section 29(6) - The investigating officer executing a search warrant under this section shall, before such execution or upon demand by any person whose rights may be affected –

- (a) present his identification card; and
- (b) hand to such person a copy of the warrant.

Section 29(7) - An investigating officer shall not seize any item found within the premises being searched in accordance with the provisions of this section unless he has handed the person, from whose possession or charge the item is being seized, a receipt of the seizure in the prescribed form.

Section 29(8) - A person from whose possession or charge a document, book or other object has been seized shall, as long as it is in the possession or charge of the investigating officer concerned, be allowed on request to make copies or to take extracts from it at any reasonable time at his own expense and under the supervision of that investigating officer or other authorized person in the service of the Office.

Section 29(9) - A person shall not be entitled to refuse to answer any question or to produce any document, book or other object on the ground that such answer, document, book or other object would incriminate him.

Section 29(10) - Subject to subsection (11), incriminating evidence, arising out of any answer, document, book or other object a person may present to an investigating officer in answer to an enquiry made by the investigating officer, shall not be admissible in any criminal trial against that person.

Section 29(11) - Any person who –

- (a) obstructs or hinders the investigating officer in the performance of his functions in terms of this section; or
- (b) knowingly makes a false statement or gives a false answer to any enquiry,

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding BWP 2,000 or to imprisonment for a term not exceeding 12 months, or to both.

Section 30(1) - The court shall, subject to any other Act of Parliament, and on such terms as it may deem reasonable, have the authority to –

- (a) grant injunctions to prohibit the committing, or continued committal, of infringement of any right protected under the Copyright Act;
- (b) order the impounding of copies of works or sound recordings suspected of being made or imported without the authorization of the owner of any right protected under the Copyright Act, where the making or importation of copies is subject to such authorization, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referring to such copies;
- (c) order payment of any damages suffered in consequence of the infringement, including any profits enjoyed by the infringing party, that are attributable to the infringement; and
- (d) award exemplary damages where it finds that the infringement is prejudicial to the honour or reputation of the person whose rights were infringed.

Section 30(2) - In addition to any civil remedy that may be ordered by the court against any person who has infringed any right protected under this Act, the court shall have the authority to order the destruction or other reasonable disposition of infringing copies, where they exist, and their packaging outside the channels of commerce in such a manner as to avoid harm to the holder of the right, unless the owner of the right requests otherwise, provided that copies and their packaging which were acquired by a third party in good faith shall not be so destroyed.

Section 30(3) - Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the court shall, whenever and to the extent that it is reasonable, order their destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringements.

Section 30(4) - Any person who, in contravention of the provisions of subsections (2) and (3), fails to carry out the order of the court for the destruction or other reasonable disposition of the infringing copies or implements, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding BWP 10,000 or to imprisonment for a term not exceeding five years, or to both.

Section 31 provides for Criminal Sanctions as follows:

- (1) Any person who contravenes the provisions of this Act, so as to infringe a right protected under the Copyright Act for profit, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding BWP 20,000 or to imprisonment for a term not exceeding ten years, or to both.
- (2) Any person convicted of a second or subsequent offence shall be fined a minimum of BWP 30,000 or a maximum of BWP 5,000,000 or be imprisoned for a term not exceeding ten years, or to both.

Section 32 provides for the Powers of Customs officials as outlined below:

Any goods imported into the country that are in contravention of the provisions of the Copyright Act may be placed under an embargo, destroyed or otherwise disposed of as provided for under sections 119 and 120 of the Customs and Excise Duty Act.

Section 33 provides for Measures, remedies, and sanctions against abuses in respect of technical means of protection and rights management information

- (1) The following acts shall be considered unlawful and, in the application of the civil and criminal remedies under this Part, shall be assimilated to infringements of the rights protected under this Act –
 - (a) The manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work, sound recording or a broadcast, or to impair the quality of copies made (the latter device or means hereinafter referred to as "copy-protection or copy-management device or means"); or
 - (b) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted programme, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the programme;
 - (c) the removal or alteration of any electronic rights management information without authority;
 - (d) the distribution import for distribution, broadcasting, communication to the public or making available to the public, without authority, of works, performances, sound recording or broadcasts, knowing or having reason to know that electronic rights management information has been removed or altered without authority.
- (2) In the application of civil and criminal remedies under this Part, any illicit device and means referred to in subsection (1) and any copy from which rights management information has been removed, or in which such information has been altered, shall be assimilated to infringing copies of works, and any illicit act referred to in subsection (1) shall be treated as an infringement of copyright or related rights to which the civil remedies and criminal sanctions provided for in this Part are applicable.

- (3) In this section, "rights management information" means any information which identifies the author, the work, the producer of the sound recording, the broadcaster, the performer, the performance, or any owner of a right under this Act, any information about the terms and conditions of use of the work or the performance, and any numbers or codes that represent such information, when any of these items of a work or a fixed performance, appears in connection with the broadcasting, communication to the public or making available to the public of a work or a fixed performance.

At the discretion of the Judge, attorneys' fees may be applied.

REMEDIES UNDER THE INDUSTRIAL PROPERTY ACT

The Industrial Property Act provides specific remedies and criteria for the protection of patents, industrial designs, trademarks, traditional knowledge and handicrafts. It also provides general offences and penalties which are applicable for any other offences which constitute an infringement under the Act. The remedies described above are outlined below.

Section 27 – Provides for proceedings of Infringement of a patent

Section 27(1) - The patentee shall, in addition to any other rights, remedies or actions available to him or her, have the right to institute court proceedings against any person who infringes the patent by performing, without such patentee's consent or authorization, any of the acts referred to in section 24(2), or who performs any act which makes it likely that infringement will occur.

Section 27(2) - The patentee in proceedings for infringement shall be entitled to relief by way of the following —

- (a) an interdict or injunction;
- (b) delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part;
- (c) damages; or
- (d) an account of the profits derived from the infringement.

Section 27(3) - In any proceedings for infringement, the defendant may counterclaim for the invalidation of the patent and, by way of defence, rely upon any ground on which a patent may be invalidated.

Section 27(4) - The patentee, before instituting proceedings, shall give notice to every licensee to the patent in question whose name is recorded in the patent register, and any such licensee shall be entitled to intervene as co-plaintiff.

Section 27(5) - In any proceedings for infringement, other than criminal proceedings, where the subject matter of the patent is a process for obtaining a product, the burden of establishing that the product was not made by the process shall rest on the defendant if the product obtained by the patented process is new in terms of section 8(3).

Section 27(6) - In requiring the production of evidence in proceedings for infringement, the court shall take into account the legitimate interests of the defendant in not disclosing his or her manufacturing secrets.

Section 27(7) - The court shall, in awarding damages, calculate such damages taking into account the amount of a reasonable royalty which would have been payable by a licensee or sub-licensee in respect of the patent concerned.

Section 27(8) - The court shall not, in awarding damages under this section, also order, in respect of the same infringement, that the plaintiff be given an account of the profits derived by him or her from the infringement.

Section 55 of the Industrial Property Act - proceedings for infringement of industrial designs

Section 55(1) - An owner of a registered design shall, in addition to any other rights, remedies or actions available to him or her, have the right to institute court proceedings against any person performing, without the owner's consent or authorization, any of the acts referred to in section 53, or who performs acts which make it likely that infringement will occur.

Section 55(2) - In any proceedings under this section, the court may grant relief by way of damages, interdict, delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part, or account of profits derived from the infringement or otherwise as it may consider necessary.

Section 55(3) - The court shall not, in awarding damages under this section, also order, in respect of the same infringement, that the plaintiff be given an account of the profits derived by him or her from the infringement.

Section 55(4) - In any proceedings under this section, the court shall have jurisdiction to order the revocation of the registration of a design on any of the grounds specified in section 59, and any such grounds may be relied upon by way of defence.

Section 83 provides for proceedings for infringement of marks

Section 83(1) - The owner of a mark shall, in addition to any other rights, remedies or actions available to him or her, have the right to institute court proceedings against any person who infringes the mark by using that mark without his or her authorization or by performing acts which make it likely that infringement will occur.

Section 83(2) - The right conferred under this section shall extend to the use of a sign similar to the registered mark in relation to goods and services similar to those for which the mark has been registered, where confusion may arise in the public.

Section 83(3) - The right conferred under this section shall extend to the use of a sign which constitutes a reproduction, an imitation or a translation of a registered mark which is well known in Botswana in relation to goods or services which are not similar to those in respect of which a mark is registered where —

- (a) use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered mark; and
- (b) the interests of the owner of the registered mark are likely to be prejudiced by such use.

Section 83(4) - A plaintiff in proceedings for infringement shall be entitled to relief by way of an interdict, delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part, damages or an account of the profits derived from the infringement.

Section 83(5) - The court shall not, in awarding damages under this section, also order, in respect of the same infringement, that the plaintiff be given an account of the profits derived by him or her from the infringement.

Section 122 - Right to institute infringement proceedings for Traditional Knowledge and Handicrafts

Section 122(1) - Any proceedings concerning the protection or infringement of rights over traditional knowledge shall be initiated either by the local community or any other owner of that knowledge.

Section 122(2) - The Court may order the infringing party to pay to the local community an amount to be prescribed.

Section 134 - Offences and Penalties

Section 134(1) - Any person who, knowing the same to be false —

- (a) makes or causes to be made a false entry in any register kept in terms of this Act;
- (b) makes or causes to be made any document falsely purporting to be a copy of an entry in any such register; or
- (c) produces, tenders or causes to be produced as evidence an entry acquired under paragraph (b) or a copy thereof,

commits an offence and shall, on conviction, be sentenced to a fine of not less than BWP 5,000 but not more than BWP 10,000, or to imprisonment for a term of not less than one year but not more than three years, or to both.

Section 134(2) - Any person who —

- (a) for the purpose of deceiving the Registrar or any other officer in the execution of his duties under this Act; or
- (b) for the purpose of procuring or influencing the doing or omission of any act under this Act,

makes a false statement or representation knowing the same to be false, commits an offence and shall, on conviction, be sentenced to a fine of not less than BWP 5,000 but not more than BWP 10,000, or to imprisonment for a term of not less than one year but not more than three years, or to both.

Section 134(3) - Any person who, knowing the same to be false, makes a false statement or representation that —

- (a) a patent has been granted to him or her or to any other person in respect of any invention;
- (b) he or she or any other person is the owner of any registered design, mark, collective mark or trade name; or
- (c) he or she has been granted an exclusive or compulsory licence to use any patent, registered design, registered mark or collective mark or trade name,

which statement or representation is intended to induce another person to act thereon, commits an offence and shall, on conviction, be sentenced to a fine of not less than BWP 2,000 but not more than BWP 5,000, or to imprisonment for a term of not less than six months but not more than two years, or to both.

Section 134(4) - Subject to the provisions of sections 25(1), 31, 32, 33, 55(4), 81(2) and 111(2), the performance of any act referred to in sections 25, 55, 81 and 111 by a person other than the owner of the title of protection and without the agreement of such owner shall constitute an infringement.

In terms of **Section 134(5)**, the court may, on the application to it by the owner of the title of protection, or by a licensee if he or she has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so, grant an interdict to prevent an infringement or unlawful act referred to in sections 93(3), 111(2) and 114(2).

Section 134(6) provides that "any person who intentionally or wilfully performs any act which constitutes an infringement as defined in subsection (4) of this section, or an unlawful act as defined in sections 93(3), 111(2) and 114(2) commits an offence and shall be sentenced, on conviction, to a fine of not less than BWP 2,000 but not more than BWP 5,000, or to imprisonment for a term of not less than six months but not more than two years, or to both".

Section 134(7) provides that "any person who commits an offence or unlawful act for which no specific penalty has been specified shall be sentenced to a fine of not less than BWP 2,000 but not more than BWP 5,000, or to imprisonment for a term of not less than six months but not more than two years, or to both".

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?

The Copyright and Neighbouring Rights Act gives Judicial Officers authority to make or pronounce an order forcing the infringer to inform the rightful owner about any third party involved. However, an application must be made before the High Court under common law for a remedy under the Anton Pillar order. The Anton Pillar order requires the defendant to give information about his sources of supply, as well as the description and destination of the stock he has produced. Also, an injunction against infringement can be made part of the order.

The Anton Pillar Order will be granted where the plaintiff:

- (a) provides an extremely strong *prima facie* case of infringement;
- (b) proves that the damage, actual or potential to him, is very serious; and
- (c) provides clear evidence that the defendant has in his possession incriminating documents or items and that there is a real possibility that the evidence will be destroyed before any application *inter partes* can be made.

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?

The provisions relating to the indemnification of the defendants wrongfully enjoined is provided for under the Customs Act, 2018 under Section 42 that deals with provision of guarantee for suspension of goods.

Section 42 of the Customs Act reads "The Revenue Service shall require the intellectual property right holder, at the time of presenting the application for suspension of release of suspected goods under section 40, to —

- (a) indemnify the Revenue Service against any liability that may arise from actions, proceedings, claims or demands that may be made or taken against the Commissioner General in providing the required assistance; and
- (b) provide a guarantee sufficient to pay any costs or expenses incurred by, and any charges due to, the Commissioner General in providing the required assistance."

In accordance with Section 48 of the Customs Act "the Revenue Service shall not be liable for any action taken or not taken in good faith in regard to suspension of the release of suspected infringing goods".

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

Botswana does not have specialized courts for Intellectual Property Rights cases, and this is in part mainly because these cases are not many. The High Court and the Magistrates Court have jurisdiction over all criminal and civil matters, IPR cases inclusive. The Court of Appeal hears them on appeal.

The Administration of Justice came up with a reform, Judicial Case Management, which calls for effective, efficient, and purposeful judicial management of a case to achieve a timely and qualitative resolution of a dispute. In other words, the Judicial Officer presiding over a case determines the pace of the matter to the best extent that he/she is able. Adding on to that, there are case disposal

standards put in place to monitor adherence to Judicial Case Management. See [Annex A](#) (in English only).

With regards to costs, each case has its own facts, complexities and merits and, as such, costs in litigation always vary.

On 8 January 2021, the Rules of the High Court were amended, and litigation costs were increased, for both civil and criminal matters. Both the Magistrates Court Act, the High Court Act and Court of Appeal Rules provide tariffs to be employed by the Taxing Masters when taxing bills upon completion of each case. See [Annex A](#) (in English only) and [Annex B](#). (in English only).

(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.

Botswana does not have specialized courts for Intellectual Property Rights cases, and this is in part mainly because these cases are not many. The High Court and the Magistrates Court have jurisdiction over all criminal and civil matters, IPR cases inclusive. The Court of Appeal hears them on appeal.

The Administration of Justice came up with a reform, Judicial Case Management, which calls for effective, efficient, and purposeful judicial management of a case to achieve a timely and qualitative resolution of a dispute. In other words, the Judicial Officer presiding over a case determines the pace of the matter to the best extent that he/she is able. Adding on to that, there are case disposal standards put in place to monitor adherence to Judicial Case Management. See [Annex A](#) (in English only).

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Provisional Measures

(a) *Judicial measures*

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

Judicial authorities have the power to order provisional measures during hearing of an IPR case. The most common provisional measure is that of the searching of the premises of the alleged infringer and seizure of suspected infringing goods, as well as the equipment used to manufacture them and relevant documents or records of the alleged infringing business activities. This is done as described below.

PROVISIONAL MEASURES UNDER THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT

Section 29(3) - The court shall grant the application for a search warrant if it appears, on information given on oath or affirmation, that there are reasonable grounds to suspect that –

- (a) there are works that infringe the rights protected under the Act in the premises;
- (b) there is in the premises equipment or other device specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made (the latter device or means hereinafter referred to as "copy-protection or copy-management device or means"); or

- (c) a document, book or other object which may afford evidence of such contravention of the provisions of this Act is within those premises.

Section 29(4) - Where a Chief or Senior Magistrate is satisfied, from information given on oath or affirmation by the investigating officer, that urgent action is required to obtain evidence pertaining to the contravention of the provisions of this Act, which evidence is likely to be concealed or destroyed, the Magistrate may dispense with any procedural requirements and grant a search warrant to the investigating officer at such time and place and under such conditions as the urgency of the matter may require.

Section 29(5) - A search warrant granted by the court shall –

- (a) authorize the investigating officer mentioned in the warrant to enter the premises identified in the warrant to conduct searches, examinations, take extracts or copies, seize any item or to do any other thing that may assist with the investigation;
- (b) be executed by day, unless the court authorizes its execution by night; and
- (c) be in force until it is executed, cancelled by the court or a period of one month from the date of its issue expires, whichever occurs first.

PROVISIONAL MEASURES UNDER THE INDUSTRIAL PROPERTY ACT

Section 27(2) - The patentee in proceedings for infringement shall be entitled to relief by way of the following –

- (a) an interdict or injunction;
- (b) delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part;
- (c) damages; or
- (d) an account of the profits derived from the infringement.

Section 55(2) - In any proceedings under this section, the court may grant relief by way of damages, interdict, delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part, or account of profits derived from the infringement or otherwise as it may consider necessary.

Section 83(4) - A plaintiff in proceedings for infringement shall be entitled to relief by way of an interdict, delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part, damages or an account of the profits derived from the infringement.

In terms of **Section 134(5)**, the court may, on the application to it by the owner of the title of protection, or by a licensee if he or she has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so, grant an interdict to prevent an infringement or unlawful act referred to in sections 93(3), 111(2) and 114(2).

The legal basis of these provisional measures is to prevent infringement from occurring and to preserve relevant evidence with regards to an alleged infringement.

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

Provisional measures are sought in cases in which evidence is likely to be concealed, destroyed or distorted before trial can start. In most instances the Applicant makes an urgent application to court and the Investigation Officer affirms by way of submission to the court under oath for the provisional measures order to be granted.

This way, the alleged infringer is prevented from relocating the suspected infringing materials with an aim of avoiding detection.

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 relevant Sections of the Copyright and Neighbouring Rights Act and the Industrial Property Act are reproduced below for their appreciation.

PROVISIONAL MEASURES UNDER THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT

Section 29(1) - Subject to subsection (2) where a complaint of the contravention of the provisions of this Act is made and it is considered that a document, book or other object connected to any investigation in regard to the complaint is being concealed within specified premises, a Police Officer or such other person as the Minister may, by Order, appoint and grant investigating powers, shall enter the premises to conduct a search and seize any item found within the premises.

Section 29(2) - The Police Officer or the person appointed by the Minister under subsection (1) (hereinafter both referred to as "the investigating officer") shall not enter, conduct a search or seize any item in terms of subsection (1) unless he has obtained –

- (a) the consent in writing of the owner of the premises or the person in charge of the premises; or
- (b) a search warrant.

Section 29(4) - Where a Chief or Senior Magistrate is satisfied, from information given on oath or affirmation by the investigating officer, that urgent action is required to obtain evidence pertaining to the contravention of the provisions of this Act, which evidence is likely to be concealed or destroyed, the Magistrate may dispense with any procedural requirements and grant a search warrant to the investigating officer at such time and place and under such conditions as the urgency of the matter may require.

Section 29(5) - A search warrant granted by the court shall –

- (a) authorize the investigating officer mentioned in the warrant to enter the premises identified in the warrant to conduct searches, examinations, take extracts or copies, seize any item or to do any other thing that may assist with the investigation;
- (b) be executed by day, unless the court authorizes its execution by night; and
- (c) be in force until it is executed, cancelled by the court or a period of one month from the date of its issue expires, whichever occurs first.

Section 29(6) - The investigating officer executing a search warrant under this section shall, before such execution or upon demand by any person whose rights may be affected

- (a) present his identification card; and
- (b) hand to such person a copy of the warrant.

Section 29(7) - An investigating officer shall not seize any item found within the premises being searched in accordance with the provisions of this section unless he has handed the person, from whose possession or charge the item is being seized, a receipt of the seizure in the prescribed form.

Section 29(8) - A person from whose possession or charge a document, book or other object has been seized shall, as long as it is in the possession or charge of the investigating officer concerned, be allowed on request to make copies or to take extracts from it at any reasonable time at his own expense and under the supervision of that investigating officer or other authorized person in the service of the Office.

Section 29(9) - A person shall not be entitled to refuse to answer any question or to produce any document, book or other object on the ground that such answer, document, book or other object would incriminate him.

Section 29(10) - Subject to subsection (11), incriminating evidence, arising out of any answer, document, book or other object a person may present to an investigating officer in answer to an enquiry made by the investigating officer, shall not be admissible in any criminal trial against that person.

PROVISIONAL MEASURES UNDER THE INDUSTRIAL PROPERTY ACT

Section 27(1) - The patentee shall, in addition to any other rights, remedies or actions available to him or her, have the right to institute court proceedings against any person who infringes the patent by performing, without such patentee's consent or authorization, any of the acts referred to in section 24(2), or who performs any act which makes it likely that infringement will occur.

Section 27(3) - In any proceedings for infringement, the defendant may counterclaim for the invalidation of the patent and, by way of defence, rely upon any ground on which a patent may be invalidated.

Section 27(4) - The patentee, before instituting proceedings, shall give notice to every licensee to the patent in question whose name is recorded in the patent register, and any such licensee shall be entitled to intervene as co-plaintiff.

Section 27(5) - In any proceedings for infringement, other than criminal proceedings, where the subject matter of the patent is a process for obtaining a product, the burden of establishing that the product was not made by the process shall rest on the defendant if the product obtained by the patented process is new in terms of section 8(3).

Section 27(6) - In requiring the production of evidence in proceedings for infringement, the court shall take into account the legitimate interests of the defendant in not disclosing his or her manufacturing secrets.

Section 27(7) - The court shall, in awarding damages, calculate such damages taking into account the amount of a reasonable royalty which would have been payable by a licensee or sub-licensee in respect of the patent concerned.

Section 27(8) - The court shall not, in awarding damages under this section, also order, in respect of the same infringement, that the plaintiff be given an account of the profits derived by him or her from the infringement.

Section 55(3) - The court shall not, in awarding damages under this section, also order, in respect of the same infringement, that the plaintiff be given an account of the profits derived by him or her from the infringement.

Section 83(5) - The court shall not, in awarding damages under this section, also order, in respect of the same infringement, that the plaintiff be given an account of the profits derived by him or her from the infringement.

The court only grants such an order if it appears on information given on oath or affirmation that there are reasonable grounds to suspect that there are works that infringe the rights protected under the Act.

The defendant is also allowed on request to make copies of any documents seized or take extracts from those documents provided they are in the Investigating Officer's possession.

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

The Administration of Justice came up with a reform, Judicial Case Management, which calls for effective, efficient, and purposeful judicial management of a case to achieve a timely and qualitative resolution of a dispute. In other words, the Judicial Officer presiding over a case determines the pace of the matter to the best extent that he/she is able. Adding on to that, there are case disposal standards put in place to monitor adherence to Judicial Case Management. See [Annex A](#) (*in English only*).

With regards to costs, each case has its own facts, complexities and merits and, as such, costs in litigation always vary.

On 8 January 2021, the Rules of the High Court were amended, and litigation costs were increased, for both civil and criminal matters. Both the Magistrates Court Act, High Court Act and Court of Appeal Rules provide tariffs to be employed by the Taxing Masters when taxing bills upon completion of each case. See [Annex B](#) (in English only) and [Annex C](#) (in English only).

(b) *Administrative measures*

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

The Botswana Unified Revenue Service assists in this regard. Border measures allow the owner of the rights to apply to custom authorities to suspend the release into circulation of goods suspected to be infringing. The purpose is to provide the owner of the rights a reasonable time to commence judicial proceedings against the suspected infringer, without the risk that the alleged infringing goods will disappear into circulation following customs clearance. Prohibition relative to protection of intellectual property rights is catered for under Section 40-49 of the Customs Act.

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?

Botswana Unified Revenue Service (BURS) legislation on Intellectual Property Rights (IPR) is found in the Customs Act, 2018: Sections 40-49. The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, part III, Section 4 played a major role in shaping this legislation. The enforcement covers all intellectual property rights and not only specific to counterfeit trademarks or pirated copyright goods as defined in the TRIPS Agreement. The provisions of the Customs Act are applicable to imports and exports suspected to be infringing the rights of the intellectual property owner.

The imports excluded from the suspension of release of goods are termed as *de minimis* imports as provided for under Section 49 of the Customs Act.

Section 49 reads "the provisions of this Part shall not apply to small quantities of goods of a non-commercial nature contained in a traveller's personal baggage or sent in small consignments".

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 application for the suspension of the goods suspected to be infringing is provided for under Section 40 of the Customs Act. It gives the right holder the right to apply to Customs if there is suspicion of IPR infringement. The right holder is required to provide evidence that there is an infringement.

Section 44 permits the right holder to institute proceedings before the court and the court determines the time-limit of the suspension. This section also allows Customs officials to extend the suspension of the release of goods by an additional 14 days or release the goods if the right holder has not

taken any action after being notified of the suspected infringement within the first 14 days of suspension.

On the other hand, the declarant is also given the right to request a review on the measures (suspension of the release of goods or extension of the suspension of the release of goods) taken by Customs officials (appeal). The relevant Sections under the Customs Act are as outlined below.

Section 40(1) - A holder of an intellectual property right who has valid reasons to suspect that the importation or exportation of goods with counterfeit or pirate marks, where his or her right, is envisaged or infringes in progress, may apply to the Revenue Service for the suspension of release of the goods.

(2) An applicant under subsection (1) shall —

- (a) submit an application to the Revenue Service;
- (b) provide adequate evidence to satisfy the Revenue Service that there appears to be an infringement of the right holder's intellectual property right; and
- (c) supply a sufficiently detailed description of the goods in question to facilitate the determination of the alleged infringement.

Section 41(2) - If, upon inspection of the goods that are the subject of an application under section 40, the Revenue Service is satisfied that there may be an infringement of a right holder's intellectual property, it shall —

- (a) suspend the release of such goods;
- (b) notify the intellectual property right holder of the suspension; and
- (c) notify the applicant of the reasons for the suspension.

Section 42 requires that the right holder, at the time of application for suspension of the release of goods, indemnify the Revenue Service against any liability that may arise from actions, proceedings, claims or demands that may be made or taken against the Commissioner-General. The Section reads - "The Revenue Service shall require the intellectual property right holder, at the time of presenting the application for suspension of release of suspected goods under section 40, to —

- (a) indemnify the Revenue Service against any liability that may arise from actions, proceedings, claims or demands that may be made or taken against the Commissioner General in providing the required assistance; and
- (b) provide a guarantee sufficient to pay any costs or expenses incurred by, and any charges due to, the Commissioner-General in providing the required assistance."

Section 43(1) - The Revenue Service shall, on its own initiative, suspend the release of goods for which it has evidence that an intellectual property right may be infringed.

Section 43(2) - If, in accordance with subsection (1), the Revenue Service suspends the release of suspected infringing goods, the Revenue Service shall notify —

- (a) the applicant;
- (b) the right holder; and
- (c) the Companies and Intellectual Property Authority established under the Companies and Intellectual Property Authority Act.

Section 44(1) - A holder of an intellectual property right may institute proceedings leading to a decision on the merits of the claim before the courts.

Section 44(2) - If, within 14 days after the holder of an intellectual property right was notified of the suspension, the Revenue Service is not informed by the holder of the intellectual property right that proceedings have been instituted leading to a decision on the merits of the case, the Revenue Service may —

- (a) for reasons deemed valid by the Revenue Service extend the period of suspension of release of the goods; or
- (b) release the goods, provided that all other conditions for importation or exportation have been met.

Section 44(3) - Notwithstanding subsection (2), in the case of perishable goods that cannot be stored for a long period, the period of suspension of release shall be no longer than three days.

Section 44(4) - The time-limit referred to in subsection (2) may be extended by the Revenue Service in appropriate cases for an additional 14 days.

Section 44(5) - In the event of a suspension ordered by a court, the time-limit referred to in subsections (2), (3) and (4) shall be determined by that court.

Section 44(6) - If proceedings leading to a decision on the merits of the case have been initiated, the declarant may request a review, including a right to be heard, with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed.

Section 45 - Without prejudice to the protection of confidential information, the Revenue Service may allow the holder of an intellectual property right and the declarant to inspect the goods for the purpose of determining the merits of their respective claims.

Section 46 - Where the proceedings instituted by a holder of the intellectual property right have determined that the goods in question are infringing goods, the Revenue Service shall, at the right holder's request, inform the right holder of the names and addresses of the importer, the exporter, the consignee, and the consignor of the quantity of the goods.

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?

Section 381 of the Customs Act provides for the prescription period for bringing action by Revenue Service. Section 381(2) provides that "Except as otherwise provided by this Act, the right to institute administrative or judicial proceedings in regard to a customs offence under this Act shall be barred, unless the proceedings have been undertaken within five years from the date that the offence was discovered."

The costs of proceedings are determined by the courts.

Validity of decisions by the competent authorities for the suspension of the release of goods

The validity of decisions by the Customs officials for the suspension of the release of goods into circulation is as described under Section 44(2), (3) and (4) of the Customs Act as reproduced below.

Section 44(2) - If, within 14 days after the holder of an intellectual property right was notified of the suspension, the Revenue Service is not informed by the holder of the intellectual property right that proceedings have been instituted leading to a decision on the merits of the case, the Revenue Service may —

- (a) for reasons deemed valid by Revenue Service extend the period of suspension of release of the goods; or
- (b) release the goods, provided that all other conditions for importation or exportation have been met.

Section 44(3) - Notwithstanding subsection (2), in the case of perishable goods that cannot be stored for a long period, the period of suspension of release shall be no longer than three days.

Section 44(4) - The time-limit referred to in subsection (2) may be extended by the Revenue Service in appropriate cases for an additional 14 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?

BURS is given the right to act on its own under Section 43 of the Customs Act. Customs officials have the right to suspend the release of goods on their own initiative if they have evidence that the goods may be infringing IPR. This provision applies to an *ex officio* action as the action is taken without the presence of the exporters or importers. Section 43(1) reads "the Revenue Service shall, of its own initiative, suspend the release of goods for which it has evidence that an intellectual property right may be infringed".

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

Section 375 of the Customs Act allows Customs officials to detain, seize or forfeit goods if the import, possession or export of the goods is not authorized in terms of the Customs Act or any other Act.

Section 375(1) - The Revenue Service may detain, seize or forfeit goods or a means of transport to which this Act applies and, if the goods or the means of transport consist of information, accounts, documents or records, a customs officer may detain or seize the information, accounts, documents or records for investigation purposes.

Section 375(2) - The Revenue Service shall detain, seize or forfeit goods if the import, possession or export of the goods is not authorized in terms of this Act or any other Act.

Section 35(1) provides a guide on goods that are prohibited of which intellectual property rights have been listed under "f" as outlined below. The Section reads, goods shall be prohibited where their import or export is against —

- (a) public order;
- (b) public security;
- (c) public morality;
- (d) public health;
- (e) the protection of national treasures;
- (f) the protection of intellectual property;
- (g) the protection of consumers;
- (h) combating money laundering, financing of an act of terrorism; and
- (i) any other interest as may be prescribed.

Criminal Procedures

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

Courts adjudicating over the IPR cases in Botswana are:

- (a) The Magistrates Court;
- (b) High Courts;
- (c) Court of Appeal (for IPR cases on appeal).

While the Magistrates Courts have jurisdiction to adjudicate over IPR matters, large numbers of the cases are heard at the High Courts because Magistrates courts have limited jurisdiction i.e., Magistrates award damages to the maximum sum of sixty thousand Pula (BWP 60,000) only. The High Court handles most of the cases due to its unlimited jurisdiction.

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

Criminal procedures and penalties are available for all intellectual property rights in Botswana. However, Botswana is in the process of amending the Industrial Property Act to ensure that patents infringements are not regarded as criminal.

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

The Botswana Police Service and the Directorate of Public Prosecutions (DPP) are responsible for initiating criminal proceedings. In most cases, criminal proceedings are done in response to complaints received by the above-mentioned bodies.

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

Private persons do not have standing to initiate criminal proceedings.

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.**

The types of infringement, the penalties and other remedies that may be imposed are as described below.

REMEDIES UNDER THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT

Section 29(11) - Any person who –

- (a) obstructs or hinders the investigating officer in the performance of his functions in terms of this section; or
- (b) knowingly makes a false statement or gives a false answer to any enquiry,

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding BWP 2,000 or to imprisonment for a term not exceeding 12 months, or to both.

Section 30(1) - The court shall, subject to any other Act of Parliament, and on such terms as it may deem reasonable, have the authority to –

- (a) grant injunctions to prohibit the committing, or continued committal, of infringement of any right protected under the Copyright Act;
- (b) order the impounding of copies of works or sound recordings suspected of being made or imported without the authorization of the owner of any right protected under the Copyright Act, where the making or importation of copies is subject to such authorization, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referring to such copies;

(c) order payment of any damages suffered in consequence of the infringement, including any profits enjoyed by the infringing party, that are attributable to the infringement; and

(d) award exemplary damages where it finds that the infringement is prejudicial to the honour or reputation of the person whose rights were infringed.

Section 30(2) - In addition to any civil remedy that may be ordered by the court against any person who has infringed any right protected under this Act, the court shall have the authority to order the destruction or other reasonable disposition of infringing copies, where they exist, and their packaging outside the channels of commerce in such a manner as to avoid harm to the holder of the right, unless the owner of the right requests otherwise, provided that copies and their packaging which were acquired by a third party in good faith shall not be so destroyed.

Section 30(3) - Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the court shall, whenever and to the extent that it is reasonable, order their destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringements.

Section 30(4) - Any person who, in contravention of the provisions of subsections (2) and (3), fails to carry out the order of the court for the destruction or other reasonable disposition of the infringing copies or implements, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding BWP 10,000 or to imprisonment for a term not exceeding five years, or to both.

Section 31 provides for Criminal Sanctions as follows:

(1) Any person who contravenes the provisions of this Act, so as to infringe a right protected under the Copyright Act for profit, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding BWP 20,000 or to imprisonment for a term not exceeding ten years, or to both.

(2) Any person convicted of a second or subsequent offence shall be fined a minimum of BWP 30,000 or a maximum of BWP 5,000,000 or be imprisoned for a term not exceeding ten years, or to both.

Section 32 provides for the Powers of Customs officials as outlined below:

Any goods imported into the country that are in contravention of the provisions of the Copyright Act may be placed under an embargo, destroyed or otherwise disposed of as provided for under sections 119 and 120 of the Customs and Excise Duty Act.

REMEDIES UNDER THE INDUSTRIAL PROPERTY ACT

Section 27(2) - The patentee in proceedings for infringement shall be entitled to relief by way of the following —

- (a) an interdict or injunction;
- (b) delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part;
- (c) damages; or
- (d) an account of the profits derived from the infringement.

Section 55 provides for proceedings for infringement of industrial designs

Section 55(2) - In any proceedings under this section, the court may grant relief by way of damages, interdict, delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part, or account of profits derived from the infringement or otherwise as it may consider necessary.

Section 55(4) - In any proceedings under this section, the court shall have jurisdiction to order the revocation of the registration of a design on any of the grounds specified in section 59, and any such grounds may be relied upon by way of defence.

Section 83 provides for proceedings for infringement of marks

Section 83(4) - A plaintiff in proceedings for infringement shall be entitled to relief by way of an interdict, delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part, damages or an account of the profits derived from the infringement.

Section 122 - Right to institute infringement proceedings for Traditional Knowledge and Handicrafts

Section 122(2) - The Court may order the infringing party to pay to the local community an amount to be prescribed.

Section 134 - Offences and Penalties

Section 134(1) - Any person who, knowing the same to be false —

- (a) makes or causes to be made a false entry in any register kept in terms of this Act;
- (b) makes or causes to be made any document falsely purporting to be a copy of an entry in any such register; or
- (c) produces, tenders or causes to be produced as evidence an entry acquired under paragraph (b) or a copy thereof,

commits an offence and shall, on conviction, be sentenced to a fine of not less than BWP 5,000 but not more than BWP 10,000, or to imprisonment for a term of not less than one year but not more than three years, or to both.

Section 134(2) - Any person who —

- (a) for the purpose of deceiving the Registrar or any other officer in the execution of his duties under this Act; or
- (b) for the purpose of procuring or influencing the doing or omission of any act under this Act,

makes a false statement or representation knowing the same to be false, commits an offence and shall, on conviction, be sentenced to a fine of not less than BWP 5,000 but not more than BWP 10,000, or to imprisonment for a term of not less than one year but not more than three years, or to both.

(3) Any person who, knowing the same to be false, makes a false statement or representation that —

- (a) a patent has been granted to him or her or to any other person in respect of any invention;
- (b) he or she or any other person is the owner of any registered design, mark, collective mark or trade name; or
- (c) he or she has been granted an exclusive or compulsory licence to use any patent, registered design, registered mark or collective mark or trade name,

which statement or representation is intended to induce another person to act thereon, commits an offence and shall, on conviction, be sentenced to a fine of not less than BWP 2,000 but not more than BWP 5,000, or to imprisonment for a term of not less than six months but not more than two years, or to both.

Section 134(3) - Any person who, knowing the same to be false, makes a false statement or representation that —

- (a) a patent has been granted to him or her or to any other person in respect of any invention;
- (b) he or she or any other person is the owner of any registered design, mark, collective mark or trade name; or
- (c) he or she has been granted an exclusive or compulsory licence to use any patent, registered design, registered mark or collective mark or trade name,

which statement or representation is intended to induce another person to act thereon, commits an offence and shall, on conviction, be sentenced to a fine of not less than BWP 2,000 but not more than BWP 5,000, or to imprisonment for a term of not less than six months but not more than two years, or to both.

In terms of **Section 134(5)**, the court may, on the application to it by the owner of the title of protection, or by a licensee if he or she has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so, grant an interdict to prevent an infringement or unlawful act referred to in sections 93(3), 111(2) and 114(2).

Section 134(6) provides that "any person who intentionally or wilfully performs any act which constitutes an infringement as defined in subsection (4) of this section, or an unlawful act as defined in sections 93(3), 111(2) and 114(2) commits an offence and shall be sentenced, on conviction, to a fine of not less than BWP 2,000 but not more than BWP 5,000, or to imprisonment for a term of not less than six months but not more than two years, or to both".

Section 134(7) provides that "any person who commits an offence or unlawful act for which no specific penalty has been specified shall be sentenced to a fine of not less than BWP 2,000 but not more than BWP 5,000, or to imprisonment for a term of not less than six months but not more than two years, or to both".

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.

Botswana does not have specialized courts for Intellectual Property Rights cases, and this is in part mainly because these cases are not many. The High Court and the Magistrates Court have jurisdiction over all criminal and civil matters, IPR cases inclusive. The Court of Appeal hears them on appeal.

The Administration of Justice came up with a reform, Judicial Case Management, which calls for effective, efficient, and purposeful judicial management of a case to achieve a timely and qualitative resolution of a dispute. In other words, the Judicial Officer presiding over a case determines the pace of the matter to the best extent that he/she is able. Adding on to that, there are case disposal standards put in place to monitor adherence to Judicial Case Management. See [Annex A](#) (*in English only*).

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