

3 October 2017

(17-5282)

Page: 1/4

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

Original: French

CHECKLIST OF ISSUES ON ENFORCEMENT¹

RESPONSES FROM GABON

Civil and Administrative Procedures and Remedies

(a) *Civil judicial procedures and remedies*

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

- In Gabon, the court which has jurisdiction over IPR infringement cases is the Court of First Instance of Libreville, specifically the civil chamber.

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?

- According to the Gabonese Code of Criminal Procedure, only an injured person may file a petition; hence the maxim, "No interest, no action". Such injured persons may be represented by an attorney.

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?

- The parties are obliged to communicate evidence to each other.
- See Article 19 of the Gabonese Code of Civil Procedure (CPCG): "If one party possesses an item of evidence, the court may, at the request of the other party, require him to produce it under penalty of a fine. It may, at the request of one of the parties, demand under the same penalty the production of all documents in the possession of third parties where there is no lawful impediment, and provided that they have been implicated."
- See Article 139 of the CPCG: "If documents are not produced, the court may be requested informally to order that they be made available. The court shall fix a time-limit and the form of the communication, under penalty of a fine where necessary."

The judicial authorities thus have the power to issue injunctions.

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

¹ Document [IP/C/5](#).

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.**
- See Article 139 of the CPCG: "If documents are not produced, the court may be requested informally to order that they be made available. The court shall fix a time-limit and the form of the communication, under penalty of a fine where necessary."
- Damages: See Article 1382 of the French Civil Code, which supplements the provisions of the Gabonese Civil Code.

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?

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?

- See Article 6 of the CPCG concerning parties: "Any malicious, vexatious or dilatory action not based on serious grounds constitutes misconduct giving entitlement to compensation. The same applies to unjustified resistance to a well-founded action."

8. Describe provisions governing the length and cost of proceedings. Provide any available 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.

Provisional measures

(a) Judicial measures

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

- Provisional measures are provided for in Article 438 of the CPCG: "The *ordonnance de référé* (interim order) is a provisional order given at the request of one party, the other party being present or having been summoned, in cases where the law confers upon a judge who has not been empowered to hear the main issue, the power to order the necessary measures immediately."

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

- See Article 22 of the CPCG concerning provisional measures: "No party may be judged without being heard or summoned."

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.

- See Article 438 of the CPCG: "The *ordonnance de référé* (interim order) is a provisional order given at the request of one party, the other party being present or having been summoned, in cases where the law confers upon a judge who has not been empowered to hear the main issue, the power to order the necessary measures immediately."

The presiding judge may:

- 1 in cases of urgency, order any measures to which there is no serious objection or which justify the existence of a dispute;
- 2 order any preventive or restitution measures needed either to prevent imminent injury or to stop a manifestly unlawful action;
- 3 grant the creditor an advance if the existence of the obligation cannot be seriously contested;
- 4 in cases of urgency, rule on problems related to the enforcement of a ruling or any other enforceable title if the enforcement judge is not hearing the case.

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

- It is difficult to estimate the length of the proceedings; in other words, the length has no limit.

Cost: An application costs CFAF 20,000.

(b) *Administrative measures*

14. Reply to the above questions 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?

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?

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?

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?

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

Criminal procedures

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

- In Gabon, all criminal law matters fall within the purview of the criminal courts.

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

- See Articles 325 and 326 of the Gabonese Criminal Code.

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 public authority responsible for the initiation of criminal proceedings is the Public Prosecutor.

Criminal proceedings require the existence of a complaint by the injured party.

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

- Only the injured party has the right to initiate criminal proceedings. However, a consumer may also file a complaint in cases of fraudulent use of a trademark.

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.**
- See Articles 325 and 326 of the Gabonese Criminal Code.

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.

- Proceedings are free of charge and of indefinite duration.
-