



CHECKLIST OF ISSUES ON ENFORCEMENT¹

RESPONSES FROM THE GAMBIA

Civil and Administrative Procedures and Remedies

(a) *Civil judicial procedures and remedies*

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

High Court of The Gambia

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?

Any person who alleges a wrong has standing to file a suit before the court. The person may be represented by a lawyer enrolled in the Gambia Bar. Personal appearance is not mandatory. The person 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 Court may issue a Notice to Produce Order.

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

Confidential information is only accorded to minors or in sexually explicit matters.

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.**

The High Court has unlimited jurisdiction and can issue all the above.

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

¹ Document [IP/C/5](#)

production and distribution of the goods or services found to be infringing and of their channels of distribution?

The Police may interrogate the suspect and investigate the matter. However, there is no compulsion to disclose third-party infringers. The Court also does not order infringers to disclose any information. There is right to remain silent under the Constitution.

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?

There is provision on false and malicious prosecution. The Attorney General or Inspector General of Police may be sued for remedies.

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

There are Practice Directions issued by the Chief Justice.

(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.

The court may award compensation and/or damages.

Provisional Measures

(a) Judicial measures

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

Interim injunctions may be issued by the High Court.

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

When the matter is urgent.

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.

An *ex-parte* Motion with an affidavit in support should be filed.

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

The matter can be heard immediately within a day but not later than 14 days.

(b) Administrative measures

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

They are provided for in the High Court Rules.

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?

Any counterfeit or pirated goods or material.

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?

There should be evidence the goods are counterfeit or pirated. The Customs can detain the goods for up to 10 days or until such a time as a court order is obtained.

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

The Customs Act has provisions on this.

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?

Intellectual property infringements are generally private rights and therefore need to be reported. The competent authorities will act on any report and may initiate criminal proceedings against infringers.

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

These are generally private. The authorities may seek any appropriate remedy.

Criminal Procedures

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

High Court of The Gambia

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

Any act or omission in dealing with counterfeits or piracy.

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?

It is the State that can initiate criminal proceedings before the High Court. A complaint must first be made.

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

Any private person may also 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.**

All the 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 Practice Directions to guide the court and litigants.
