



CHECKLIST OF ISSUES ON ENFORCEMENT¹

RESPONSES FROM MAURITIUS

Civil and Administrative Procedures and Remedies

(a) *Civil judicial procedures and remedies*

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

Under Section 53 of the Copyrights Act 2014, the Supreme Court is given, without prejudice to other remedies that are available, jurisdiction to grant special remedies for breach of copyright. The Patents, Industrial Designs and Trademarks Act does not confer jurisdiction upon a specific court to hear IPR infringement cases. However, being given the nature of the remedy sought (typically an injunction) and the amount of damages involved (typically in excess of 500,000 rupees), such cases are normally heard by the Supreme Court. However, nothing would prevent the Intermediate Court from hearing a claim not exceeding 500,000 rupees or the District Court from hearing a claim not exceeding 50,000 rupees.

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?

There are no requirements for mandatory personal appearances before a court by the right holder. A duly mandated agent or assignee may represent the right holder before the court. The right holder or its duly mandated agent or assignee may be represented by counsel or attorney before a court without having to be personally present.

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?

Under the IPR regime of Mauritius, judicial authorities have no power to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control. IPR cases are treated as normal civil cases and courts follow the established precedent that "[i]t is no part of the duty or function of the court to enter upon any enquiry into the case before it other to adjudicate upon the specific matters in dispute which the parties themselves have raised by their pleadings."¹

It is for a party to prove its case before the court by ushering the appropriate evidence.

However, in an appropriate case where a party establishes that it has a right to the evidence that it required and that is in the control of the other party, it may apply for a mandatory injunction requiring that other party to hand that evidence over to it.

¹ Document [IP/C/5](#)

¹ Honourable Jagatsingh v Honourable Boodhoo 1981 MR 357

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

There is no exhaustively-defined notion of "confidential information" under the IPR laws in Mauritius. However, it is open to a party that is aggrieved or apprehends the disclosure as evidence of what is considered to be confidential information to make appropriate objections in law before the relevant court or to apply for an injunction from the Supreme Court to prevent such disclosure.

What would be considered as confidential information and how that information would be protected by the courts would depend on the circumstances set out in the relevant laws. The general common law that recognises a right to have confidential information protected or section 161A of the Courts Act which provides for hearings to be conducted in camera to protect the privacy of the parties – privacy extending not only to natural but also to legal persons. In addition, the Supreme Court (Mediation) Rules provide that all notes and records taken by or before the mediation Judge in connection with the mediation process shall be confidential.

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 judicial authorities may order injunctions or award damages in cases of IPR infringement. Costs usually follow the event i.e. the party against whom judgement is given is usually ordered to pay costs incurred by the other party in entering the case before the appropriate court. The judicial authorities may also order the forfeiture of any infringing goods and materials/implements used in their production (Section 52(3) of the Patents, Industrial Designs and Trademarks Act).

Parties need not fulfil any precondition before claiming a specific remedy for IPR infringement, except in the case of an injunction where the party applying for the injunction needs to show that, as set out in the case of *American Cyanamid Co v Ethicon Ltd* 1975 AC 396 –

- (a) there is a serious issue to be tried;
- (b) the balance of convenience is in its favour; and
- (c) damages will not be an adequate remedy

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 IPR laws of Mauritius do not cater for this situation.

7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

The IPR laws of Mauritius do not contain specific provisions relating to the indemnification of defendants wrongfully enjoined. However, costs follow the event, meaning that if the case is dismissed against a defendant who is wrongfully enjoined, the court will typically order the plaintiff to pay the legal costs of that defendant up to a certain ceiling. It is further open to a defendant in an appropriate case (typically where the plaintiff is a foreign entity) to request the court for an

order requiring the plaintiff to provide security for costs prior to the case being heard. There is also nothing to prevent a wrongly enjoined defendant from suing the plaintiff and claiming damages under ordinary principles of civil law.

Public officials are not liable for acts done in good faith in the exercise of their powers.

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 no specific provisions governing the length and cost of proceedings in cases of IPR infringement. A large number of cases of IPR infringement that have been entered before the Supreme Court so far have been settled within months, with the party against whom infringement had been claimed admitting liability and agreeing to pay damages to the complainant and to have the infringing articles destroyed.

(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 Industrial Property Tribunal set up under the Section 9 of the Patents, Industrial Designs and Trademarks Act may invalidate a patent, industrial design or trademark upon an application made by interested person complaining of IPR infringement. The interested person may not necessarily be the right holder but may be an agent or an assignee of the right holder. An interested person may also be represented by counsel or attorney. It is open to a party before the Tribunal to apply for an injunction from the Supreme Court to prevent the disclosure of confidential information before the Tribunal. The Tribunal does not have the authority to order an infringer to inform a right holder of the identity of third persons involved in the production and distribution of the goods and services found to be infringing and of their channels of distribution. The Tribunal also does not have the power to order indemnification of respondents who are wrongly enjoined. A person who is aggrieved by a decision of the tribunal has a right of appeal to the Supreme Court.

Provisional Measures

(a) Judicial measures

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

As indicated above, IPR infringement cases would typically be dealt with by the Supreme Court. In virtue of its equitable jurisdiction, the Supreme Court may grant an interim injunction to prevent IPR infringement.

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

An interim injunction may be ordered *inaudita altera parte* where the party applying for the injunction demonstrates to the court on the basis of the evidence it ushers in by way of affidavit that it has a clear legal right to protect and irreparable damage will be caused but for the interim injunction. The court will otherwise not grant the injunction and order the other party to show cause why an interlocutory injunction should not be issued.

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 application for an interim injunction is entered before the Supreme Court by way of praecipe and affidavit. If the judge is satisfied on the face of the applicant's affidavit that irreparable damage will be caused but for the interim injunction, the judge may grant the interim injunction. The interim injunction is granted for a given period of time. The period of time will be determined by the judge depending on the circumstances. Where the judge grants the interim injunction, the

judge will fix an early date for the respondent to show cause why the interim injunction should not be maintained. The judge may discharge the interim injunction upon good cause being shown by the defendant. The judge may also enlarge (i.e. extend) the interim injunction upon good cause being shown by the applicant. The injunction, if granted, will remain in place pending the determination of a main case which the applicant will need to lodge before the Supreme Court.

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

There are no provisions governing the length and cost of proceedings.

(b) *Administrative measures*

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

The IPR regime of Mauritius does not provide for 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?

The procedures apply to any goods, without restriction including parallel imports without the agreement of the owner of a trademark. The procedures do not apply to goods in transit and goods entered for re-export in the Freeport Zone. The procedures also 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?

These procedures are set out in section 66A to 66E of the Customs Act which are reproduced below. References to the "Director-General" are references to the Director-General of the Mauritius Revenue Authority.

66A. Application for suspension of clearance of goods

(1) Any owner or authorised user of a patent, industrial design, collective mark or mark or copyright may apply in writing to the Director-General to suspend the clearance of any goods imported or being exported on the grounds that his patent, industrial design, collective mark or mark or copyright is being or is likely to be infringed.

(1A) (a) Notwithstanding subsection (1), where the Director-General has reason to believe that the right of the owner or authorised user of a patent, industrial design, collective mark or mark or copyright has been infringed or is likely to be infringed, he may, on his own initiative –

- (i) suspend the clearance of the goods for 21 working days;
- (ia) detain any goods being sold on the local market;

- (ii) at the same time, give notice, electronically or otherwise, to the owner or authorised user, of the suspension and invite the owner or the authorised user, as the case may be, to lodge, within 21 working days, an application under subsection (1).
- (b) Where an application is not lodged within 21 working days, the Director-General shall immediately waive the suspension and clear the goods imported or being exported or release the goods detained under sub-paragraph (ia).
- (2) An application made under subsection (1) shall specify a period not exceeding 2 years during which the Director-General may suspend the clearance of such goods.
 - (3) An application under subsection (1) shall be accompanied by –
 - (a) any evidence that the applicant is the owner or the authorised user of the patent, industrial design, collective mark or mark, or of the copyright;
 - (b) a statement of the grounds for the application, and in particular, the *prima facie* evidence showing that his right has been or is likely to be infringed; and
 - (c) particulars relating to the description of the goods making them readily recognisable by Customs, and the place where such goods are to be found.
 - (4) The applicant shall furnish adequate security to protect the Director-General for any loss or damage that may result from the suspension of the clearance of the goods and to cover any reasonable expenses likely to be incurred as a result of such suspension.

66B. Decision in respect of application

- (1) On receipt of an application under section 66A the Director-General shall within 7 days of the date of receipt of the application –
 - (a) grant or reject the application; and
 - (b) notify the applicant in writing of his decision.
- (2) The Director-General shall reject an application where the applicant fails to comply with section 66A (4).
- (3) Where the application is granted, the Director-General shall notify in writing the applicant, importer, exporter, or his agent of the suspension of the clearance of the goods.

66C. Duration of suspension

- (1) Where, within a period of not more than 10 working days after the applicant has been served notice of the suspension under section 66B (3), the Director-General has not been informed in writing that legal proceedings have been initiated by the applicant, the goods shall be released, provided that all other conditions for importation or exportation have been complied with.
 - (1A) Notwithstanding sub-section (1), where the suspension relates to refrigerated goods, the period to release the goods shall be 3 working days.
- (2) The Director-General may, in appropriate cases and on the applicant's request, extend the time limit referred to in subsection (1) by another period of not more than 10 working days.
- (3) The Director-General shall release the goods forthwith where he is informed by the registered owner or authorised user referred to in section 66A that the collective mark, mark or copyright registered in the name of the owner has ceased to be valid provided that all other conditions for importation or exportation have been complied with.

66D. Inspection and taking of samples

Without prejudice to the protection of confidential information, the Director-General may authorise the owner of a patent, industrial design, collective mark or mark, or copyright owner, or importer, exporter or agent, to –

- (a) inspect the goods of which the clearance has been suspended;
- (b) remove samples for examination, testing and analysis.

66E. Interpretation of this Part

In this Part –

"owner" means the registered owner of a collective mark or mark under the Patents, Industrial Designs and Trademarks Act 2002 or the copyright owner under the Copyright Act and includes the owner of a collective mark or mark or copyright, registered with a competent authority outside Mauritius as approved by the Director-General.

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 is no specific provision governing the length and cost of proceedings. There has been no comprehensive study on the actual duration of proceedings and their costs.

Notwithstanding, the Director-General of the Mauritius Revenue Authority has 7 days to reply to an application for suspension of clearance of goods. Where the Director-General grants the application, the applicant must be notified in writing. Where within 10 days of such notification (or 3 days in the case of refrigerated goods), the applicant does not inform the Director-General in writing that it has initiated legal proceedings for infringement of Intellectual Property Rights, the Director-General has an obligation to release the goods. Except in the case of refrigerated goods, the Director-General may, on good cause shown, extend the time-limit to institute legal proceedings by 10 additional working days. Pursuant to section 66A of the Customs Act, the Director-General may suspend the clearance of the goods for a period of up to 2 years.

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?

Section 66A(1A) of the Customs Act provides that where the Director-General has reason to believe that the right of the owner or authorised user of a patent, industrial design, collective mark or mark or copyright has been infringed or is likely to be infringed, he may, **on his own initiative** suspend the clearance of the goods for 21 working days and at the same time, give notice, electronically or otherwise, to the owner or authorised user, of the suspension and invite the owner or the authorised user, as the case may be, to lodge, within 3 working days, an application for the suspension of the clearance of the goods [**emphasis added**].

If no application is lodged within 3 working days, the Director-General shall immediately waive the suspension and clear the goods.

The Director-General of the Mauritius Revenue Authority may on his own initiative apply provisional measures in accordance with section 66A(1A) of the Customs Act. The section is reproduced in extenso in the answer to question 16.

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

The competent authorities (The Director-General of the Mauritius Revenue Authority) have the power to suspend the clearance of goods for up to 2 years and to detain goods sold on the local market that the Director-General of the Mauritius Revenue Authority has reason to believe have infringed or are likely to infringe intellectual property rights.

Criminal Procedures

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

The District Courts and the Intermediate Court have jurisdiction over criminal acts of infringement of IPRs.

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

Criminal procedures and penalties are available for the contravention of the rights set out in –

- (a) sections 21ⁱⁱ, 32ⁱⁱⁱ and 40^{iv} of the Patents, Industrial Designs and Trademarks Act;
- (b) section 56 of the Copyright Act 2014^v.

ⁱⁱ 21. Rights conferred by patent (1) Any exploitation of the patented invention in Mauritius by any person other than the owner of the patent shall require the latter's agreement. (2) For the purposes of this Act, the "exploitation" of a patented invention means— (a) where the patent has been granted in respect of a product— (i) the making, importing, offering for sale, selling and using of the product; (ii) stocking such product for the purposes of offering for sale, selling or using; (b) where the patent has been granted in respect of a process— (i) the use of the process; (ii) the performance of any of the acts referred to in paragraph (a) in respect of a product obtained directly by means of the process. (3) Any owner of a patent shall, in addition to any other rights, remedies or actions available to him, have the right, subject to subsection (4) and section 22, to institute civil proceedings in damages against any person who infringes the patent by performing, without his agreement, any of the acts referred to in subsection (2) or who performs acts which make it likely that an infringement will occur. (4) Any right under the patent shall not extend— (a) to acts in respect of articles which have been put on the market in Mauritius or in any other country by the owner of the patent or with his consent, or by any other authorised party; (b) in respect of articles which have been put on the market in Mauritius or in any other country or imported into Mauritius; (c) to the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Mauritius; or (d) to acts done only for research and experimental purposes relating to a patented invention; (e) to acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is granted and in Mauritius, was using the invention or was making effective and serious preparations for such use. (5) The right of any prior use referred to in subsection (4) may only be transferred to or devolve upon the enterprise or business, or with that part of the enterprise or business, in which the use or preparations for use have been made.

ⁱⁱⁱ 32. Rights conferred by registration (1) The exploitation of a registered industrial design in Mauritius by any person, other than the registered owner, shall require the agreement of the latter. (2) For the purposes of this Act, "exploitation" of a registered industrial design means the making, selling or importation of articles bearing or embodying a design which is a copy, or substantially a copy, of the registered industrial design. (3) Any right under a registered industrial design shall not extend to act in respect of articles which have been put on the market in Mauritius by the registered owner or with his consent. (4) Any registered owner of an industrial design shall, in addition to any other rights, remedies or actions available to him, have the right to institute Court proceedings against any person who infringes the industrial design by performing, without his agreement, any act referred to in subsection (2) or who performs any act which is likely to amount to infringement.

^{iv} 40. Rights conferred by registration (1) Any interested person, other than the registered owner, who intends to use a registered mark, in relation to any goods or services for which it has been registered, shall require the agreement of the owner. (2) Any registered owner of a mark shall, in addition to any other rights, remedies or actions available to him, have the right to institute Court proceedings against any person who infringes the mark by using, without his agreement, the mark as aforesaid or who performs any act likely to cause an infringement. (3) Any registered owner may, where the use of any sign similar to the registered mark or in relation to goods and services similar to those for which the mark has been registered, is likely to cause confusion in the public, institute Court proceedings in accordance with subsection (2). (4) The provision of section 36 (2) shall apply, mutatis mutandis, in any action instituted by the owner of a well-known mark against any person in respect of the unlawful use of the well-known mark. (5) The rights conferred by registration of a mark shall not extend to acts in respect of articles which have been put on the market in Mauritius by the registered owner or with his consent.

^v 56. Offences (1) Unless otherwise provided under this Act, any person who – (a) without the express authorisation of the author or owner of the copyright – (i) publishes, distributes or reproduces a work for commercial purposes; (ii) performs a work for the public for gain or against remuneration; (iii) communicates a work to the public for gain or against remuneration ; (iv) broadcasts a work for gain or remuneration; (v) makes a derivative work for gain or against remuneration; (vi) imports, otherwise than exclusively for his own private and personal use, sells, exposes or offers for sale or hire, or has in his possession in the course of trade, any copy of a work which constitutes an infringement of the copyright of its owner, or would constitute

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 police (the Anti-Piracy Unit) are responsible for initiating criminal investigations following complaints lodged with them or at the Industrial Property Office. After receiving a report from the police, the Director of Public Prosecutions in an appropriate case, initiates criminal proceedings before the appropriate court.

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

A person who is an aggrieved party may initiate criminal proceedings before the District Court. Proceedings before the Intermediate Court may not be initiated without a reference signed by the Director of Public Prosecutions.

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.**

For infringements of patents, industrial designs and trademarks, the penalty is a term of imprisonment of up to 5 years or a fine of up to 250,000 rupees or both.

For infringement of copyright, the penalty is –

- (a) in the case of a first offence, a term of imprisonment of up to 2 years or a fine of up to 300,000 rupees or both;
- (b) in the case of a subsequent offence, a term of imprisonment of up to 8 years or a fine of up to 500,000 rupees or both.

such an infringement if the copy of the work were made in Mauritius; (b) without the express authorisation of the owner of the related rights, infringes the exclusive rights of performers, producers of phonograms and broadcasting organisations for gain or against remuneration; (c) manufactures, imports for sale or rental, or provides such services as offering for sale, rental or distribution any device or means which is – (i) 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 any copy made thereof; or (ii) susceptible to enable or assist in the reception or further distribution of an encrypted program, which is broadcast or otherwise communicated to the public, by a person who is not entitled to receive the program; (d) has in his possession in the course of trade any apparatus, article or thing, knowing that it is to be used for making infringing copies of a work or for a purpose referred to in subsection (b); (e) intentionally or recklessly deprives the copyright owner or author of his rights, for gain or against remuneration, shall commit an offence. (2) For the purposes of subsection (1)(a), where a work is communicated to the public on the premises of an occupier by the operation of any apparatus which is provided by or with the consent of the occupier of those premises, the occupier shall be deemed to be the person communicating the work to the public, whether he operates the apparatus or not. (3) (a) Any person who commits an offence shall – (i) on a first conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 2 years; (ii) on a second or subsequent offence, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 8 years. (b) Notwithstanding any other enactment, the Magistrate of the Intermediate Court shall have exclusive jurisdiction to try any person at first instance charged with an offence under this Act. (4) The Court before which a person is convicted of an offence may, in addition to any other penalty imposed – (a) order the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence; (b) order that such apparatus, article or thing shall be delivered up to any person lawfully entitled to it.

In case of infringement of copyright, the court may also order a person who has been convicted to forfeit any apparatus, article or thing which is the subject matter of the offence or which is used in connection with the commission of the offence.

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 no provisions governing the length and cost of proceedings. There has been no comprehensive study on the actual duration of proceedings and their costs.
