

# **WORLD TRADE ORGANIZATION**

**IP/Q/BWA/1**  
**IP/Q2/BWA/1**  
**IP/Q3/BWA/1**  
**IP/Q4/BWA/1**  
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**Council for Trade-Related Aspects  
of Intellectual Property Rights**

Original: English

## **REVIEW OF LEGISLATION**

### **BOTSWANA<sup>1</sup>**

The present document reproduces the introductory statement made by the delegation of Botswana, the questions put to it and the responses given in connection with the review of legislation undertaken at the Council's meeting of 18 to 22 June 2001.<sup>2</sup>

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#### **I. INTRODUCTORY STATEMENT**

It is an honour and privilege for me to present this brief overview statement on my country's review of national implementing intellectual property legislation under the WTO TRIPS Agreement.

Botswana became a member of the World Trade Organization (WTO) in January 1995 and subsequently acceded to the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works on 15 April, 1998.

Like most developing countries, Botswana has not been able to fully meet its obligations under the WTO TRIPS Agreement largely due to resource and capacity constraints. Two pieces of legislation which cover various categories of intellectual property rights have, however, been promulgated. They are the Industrial Property Act, No. 14 of 1996 and the Copyright and Neighbouring Rights Act, No. 8 of 2000. The Industrial Property Act (1996) and its Regulations (the Industrial Property Regulations (1997)) embrace patents, trademarks and industrial designs. We are still in the process of formulating the Copyright and Neighbouring Rights Regulations.

I would like to draw your attention to a printing error which has occurred in our Copyright and Neighbouring Rights Act. The word "computers" which appears in section 3(2)(a) should read "computer programs". I apologize for not providing this Council with copies of the Law Revision Order by which the error has been corrected.

We wish to seize this opportunity to place on record our profound gratitude and appreciation to the World Intellectual Property Organization (WIPO) through whose technical assistance we developed the Industrial Property Act (1996) and the Copyright and Neighbouring Rights Act (2000).

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<sup>1</sup> As regards laws and regulations notified by Botswana under Article 63.2 of the Agreement, reference is made to documents IP/N/1/BWA/1; IP/N/1/BWA/C/1; IP/N/1/BWA/I/1 and IP/N/1/BWA/I/2.

<sup>2</sup> The minutes of this meeting have been circulated as document IP/C/M/32.

In order to accommodate the need for an appropriate institutional mechanism for the effective implementation of the enacted legislation, arrangements are underway for the establishment of the Copyright Office.

We hope to have the remaining pieces of legislation on geographical indications, layout-designs (topographies) of integrated circuits, control of anti-competitive practices in contractual licences and new varieties of plants in place towards the end of 2002. The WIPO Draft Models are of tremendous assistance to us in this regard.

## **II. RESPONSES TO QUESTIONS POSED BY CANADA**

### **1. Please describe how the enforcement obligations (Articles 41-61 of the TRIPS Agreement and throughout) have been implemented.**

The enforcement obligations relating to Article 41-61 of the agreement are implemented as follows:

#### **COPYRIGHT AND NEIGHBOURING RIGHTS ACT, 2000**

##### **Conservatory Measures to Enforce Rights**

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.

(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.

(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.

(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 or the matter may require.

(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 investigations;
- (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.

(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.

(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.

(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

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

(10) Subject to subsection (11) incriminating evidence, arising out of any answer, document, book or other object a person may prevent 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.

(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 P 2,000 or to imprisonment for a term not exceeding 12 months, or to both.

### Civil Remedies

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 this 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 this 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.

(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.

(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.

(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 P 10,000 or to imprisonment for a term not exceeding five years or to both.

### Criminal Sanctions

Section 31(1) Any person who contravenes the provisions of this Act so as to infringe a right protection under this Act for profit, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding P 20,000 or to imprisonment for a term not exceeding ten years or to both.

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

### Powers of Custom Officials

Section 32 Any goods imported into the country that are in contravention of the provisions of this Act, may be placed under an embargo, destroyed or otherwise disposed of as provided for under sections 115 and 116 of the Customs and Excise Duty Act.

### Measures, Remedies and Sanctions against Abuses in respect of Technical Means of Protection and Rights Management Information

Section 33 (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 program, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the program;
- (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 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.

## INDUSTRIAL PROPERTY ACT, 1996

### Patents

Section 25(1) The owner of the patent shall, in addition to any other rights, remedies or actions available to him, have the right, subject to sections 26, 30 and 31, to institute court proceedings against any person who infringes the patent by performing, without his agreement 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.

- (2) A plaintiff in proceedings for infringement shall be entitled to relief by way of:
- (a) an interdict;
  - (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.
- (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 from the infringement.
- (4) 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.
- (5) In any proceedings under this section, the plaintiff shall, before he institutes the proceedings, give notice thereof to every licensee under the patent in question whose name is recorded in the patent register, and any such licensee shall be entitled to intervene as co-plaintiff.
- (6) The court shall, in awarding damages under this section, 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 26 A patentee shall not be entitled to recover damages or obtain an account of profit in respect of a patent, from a defendant who proves that at the date of the infringement he was not aware, and had no reason to be aware of the existence of the patent and the marking of an article with the word "patent" or "patented" or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on or otherwise applied to the article shall not be deemed to constitute notice of the existence of the patent unless such word or words are accompanied by the number of patent.

Provided that nothing in this section shall affect any proceedings for an interdict in respect of the patent in question.

### Industrial Designs

Section 48(1) The owner of a registered 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 design by performing, without his agreement or authorization, any of the acts referred to in section 47, or who performs acts which make it likely that infringement will occur.

(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 deem fit.

(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 from the infringement.

(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 52, and any such grounds may be relied upon by way of defence.

### Trademarks

Section 60(1) The 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 that mark without his authorization or by performing acts which make it likely that infringement will occur.

(2) The right conferred under this section shall extend to the use of 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.

(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 trade mark is registered:

Provided that such 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 the interests of the owner of the registered mark are likely to be prejudiced by such use.

(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.

(5) The court shall not, in awarding damages, also order, in respect of the same infringement, that the plaintiff be given an account of the profits derived by him from the infringement.

## **2. What protection does your Copyright legislation afford to "foreign works"?**

The Copyright and Neighbouring Rights Act of Botswana protects and accords treatment to foreign works equal to that of its nationals.

### **III. RESPONSE TO QUESTIONS POSED BY THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES**

#### **A. GENERAL PROVISIONS**

**1. Please describe if your legislation includes measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to your socio-economic and technological development as mentioned under Article 8 of the TRIPS Agreement. If yes, please explain how such measures are consistent with the provisions of the TRIPS Agreement.**

Adequate provision exists in the Industrial Property Act. Section 30 (1) of the Act provides as follows:

"30 (1) Where:

- (a) the public interest, in particular national security, nutrition, health or the development of other vital sectors of the national economy so requires; or
- (b) a court or administrative body has determined that the manner of exploitation of an invention by the owner of the patent or of his licensee is anti-competitive and the Minister is satisfied that the exploitation of the patented invention in accordance with this section would remedy such practice, the Minister may decide that, even without the agreement or authorization of the owner of a patent, a government agency or a third person designated by him may, subject to the payment of an equitable remuneration to the owner of that patent, and taking into account the economic value of the Minister's decision, exploit the invention:

Provided that the Minister shall make his decision after hearing the owner of the patent and any interested person if they wish to be heard."

#### **B. COPYRIGHT AND RELATED RIGHTS**

**2. Please state how your legislation provides for the protection of the exclusive rights of authors in relation to their literary and artistic works, as specified in Article 9 of the TRIPS Agreement which requires Members to comply with Articles 1-21 of the Berne Convention and the Appendix to the Berne Convention (1971)).**

Protection of exclusive rights for authors in relation to their literary and artistic works is provided for under section 7 of the Copyright and Neighbouring Rights Act, 2000 (as read with sections 2 and 3 of the Act).

**3. Please describe the protection accorded to authors of computer programs, databases or compilations of data.**

The protection of authors of computer programs, databases or compilations of data is provided for under sections 2 (definition of "literary work"), 3(2)(a), 4(1)(b) of the Copyright and Neighbouring Rights Act, 2000.

**4. Please state whether your legislation provides for a rental right and, if so, the works to which it applies.**



Rental rights are provided for under sections 7(1)(e) and 24(1)(e) of the Copyright and Neighbouring Act, 2000 and it applies to the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer program, a database or a musical work in the form of notation, a performers fixation of his performance or copies thereof, irrespective of the ownership of the original or copy concerned.

**5. Please describe the rights granted to performers, producers of phonograms (sound recordings) and broadcasting organizations under your legislation.**

The rights granted to performers, producers of phonograms (sound recordings) and broadcasting organizations are provided for in sections 24, 25 and 27 of the Copyright and Neighbouring Rights Act, 2000.

**6. Please state whether your legislation provides for any limitation or exception in relation to each of the rights described above in accordance with the relevant provisions of the Berne and Rome Conventions and in light of Articles 13 and 14.6 of the TRIPS Agreement.**

The limitation in relation to the rights described above in accordance with the relevant provisions of the Berne Conventions and Rome Conventions and in light of Articles 13 and 14.6 of the TRIPS Agreement are provided for under section 28 of the Copyright and Neighbouring Rights Act, 2000.

**7. Please state the terms of protection of each right described above and the work or subject matter to which it applies.**

The term of protection for performers shall be until the end of the fiftieth calendar year following the year in which the performance was fixed. For producers of sound recordings, the term protection shall be until the end of the fiftieth calendar year following the year of publication or if the sound recording has not been published, from the fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation, according to sections 24(6) and 25(2) of the Copyright and Neighbouring Rights Act, 2000 respectively.

**8. Please state how your legislation grants the retroactive protection provided pursuant to Article 18 of the Berne Convention (the obligation of which derives from Article 9 of the TRIPS Agreement) and Article 14.6 of the TRIPS Agreement.**

The retroactive protection provided pursuant to Article 18 of the Berne Convention (the obligation of which derives from Article 9 of the TRIPS Agreement) and Article 14.6 of the TRIPS Agreement is provided under section 34 of the Copyright and Neighbouring Act 2000.

**C. TRADEMARKS**

**9. Please give the definition of a sign under your national legislation and explain under what conditions it is protectable.**

The Industrial Property Act defines a mark under section 2 as any "visible sign capable of distinguishing the goods or services of an enterprise" and for it to be protected it should comply with the provisions of section 53.

**10. Please confirm whether or not services are a protectable subject matter in your trademark law. Please confirm if signs, such as trade names, are protectable. Please describe if elements such as sound, perfumes and containers are protectable.**

In terms of section 52(1) of the Industrial Property Act, 1996 marks in relation to services are protectable subject matter. Under this Act trade names are protectable while elements such as sound, perfumes and containers are not protectable.

**11. Please explain what the requirements of use are, if any, as a condition for a trademark registration. Please explain the definition of use and the conditions of maintenance of a registration in that respect.**

In terms of section 64 of the Industrial Property Act, 1996 a mark in respect of any goods or services in respect of which it is registered on the ground that up to one month prior to following the application, the mark had, after its registration, not been used by the registered owner or a licensee during a continuous period of three or more years.

- (2) The Registrar shall not remove a mark from the register if the owner thereof can show that circumstances existed which prevented the use of the mark and that there was no intention not to use the mark in respect of those goods or services, or that there was no intention to abandon the use of the mark in respect of the said goods or services.
- (3) An application for the removal of a mark from the register of marks shall be served on the owner thereof and filed with the Registrar in the manner and within the time prescribed.

**12. Please confirm whether or not your legislation permits that the registration of trademarks be indefinitely renewable.**

Pursuant to section 61 of the Industrial Property Act, 1996 after the expiration of the duration of a mark it may be renewed upon a written request and payment of the prescribed renewal fee by the registered owner for consecutive periods of ten years.

**13. Please describe the special requirements, if any, prescribed by your legislation concerning the use of a trademark.**

The special requirements concerning the use of a trademark have been addressed in answer to question 11 above.

**D. GEOGRAPHICAL INDICATIONS**

**14. Please explain whether or not your trademark registration authority refuses a trademark application if it contains a geographical indication.**

According to section 53(2)(c) of the Industrial Property Act, 1996 the trademark registration authority shall not register a mark if it is likely to mislead the public or trade circles, in particular as regards the geographical origin of goods or services concerned, or their nature or characteristics.

**15. Please give the definition of a geographical indication in your legislation.**

Botswana is currently developing the legislation on Geographical Indications. We already have WIPO Model legislation for assistance.

**16. Please describe and explain the provisions of your legislation establishing a link, if any, between the characteristics of an indication and its geographical origin.**

Please see the response to question 15.

**17. Please describe how additional protection is granted by your legislation to wines and spirits. Please mention other types of products, if any, covered by this additional protection.**

Please see the response to question 15.

**18. Please explain how exceptions under Article 24 of the TRIPS Agreement are used in your jurisdiction. Please provide examples of the use of the exceptions by courts or lists of names considered as generic in your jurisdiction.**

Please see the response to question 15.

**E. INDUSTRIAL DESIGNS**

**19. Please explain whether or not your legislation extends to the protection of designs dictated essentially by technical or functional considerations. Please explain how textile designs are protected.**

The definition of "industrial design" under the Industrial Property Act covers textile designs.

**20. Please explain how your legislation protects right holders of a design against importing of articles bearing embodied or copied design.**

Sections 47(2) and 48 of the Act provide as follows:

"47(2) The person registered as the owner of a design shall, subject to the provision of this Act, and to any rights appearing from the register of designs to be vested in any other person, have the exclusive right, in Botswana, to make, import or sell any article bearing or embodying the registered design or a design not substantially different from the registered design, when such acts are undertaken for commercial purposes."

"48(1) The owner of a registered 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 design by performing, without his agreement or authorization, any of the acts referred to in section 47, or who performs acts which make it likely that infringement will occur."

**21. Please state whether or not your legislation provides for the right to issue a compulsory licence for industrial designs.**

The Botswana Industrial Property Act 1996 does not provide for the right to issue a compulsory licence for industrial designs.

**22. Please indicate for what period of time your legislation grants protection for industrial designs.**

According to section 49(1) of the Industrial Property Act, 1996 industrial designs are protected for a term of five years subject to renewal upon payment of renewal fee, for two further consecutive periods of five years each.

F. PATENTS

**23. Please describe how your legislation defines the notions of: novelty, inventiveness and industrial application.**

The notion of novelty is defined as follows in section 8(3):

"(3) An invention is considered to be new if it does not form part of prior art."

The notion of inventiveness is defined as follows in section 8(5):

"(5) An invention shall be considered as involving an inventive step if, having regard to the prior art relevant to the application claiming the invention as defined in subsection 4(a), it would not have been obvious to a person having ordinary skill in the art."

The notion of industrial applicability is defined as follows in section 8(6):

"(6) An invention shall be considered as being industrially applicable if it can be used in trade, or in any kind of industry including handicraft, agriculture, fishery and services."

**24. Please explain whether or not in your legislation, patent or otherwise, patent rights are enjoyed without any exclusions. If exclusions are provided for, please describe in detail how these exclusions are applied in legal as well as practical terms.**

Patents rights are not enjoyed without exclusions. The exclusions are provided for under section 24(3) of the Industrial Property Act, 1996.

**25. Please explain whether your legislation provides for the exclusion of inventions from patentability based on *ordre public* or morality. If so, please explain the relevant section of your legislation and explain its formulation. Please also explain if it has been applied in practice.**

In terms of section 8(7) of the Industrial Property Act, 1996 an invention which is contrary to public order or morality shall not be patentable. We do not have practical experience relating to its applicability.

**26. Please explain whether or not diagnostic, therapeutic and surgical methods are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.**

According to section 9(1)(f) of the Industrial Property Act, 1996 diagnostic, therapeutic and surgical methods for the treatment of humans and animals are excluded from patentability.

**27. Please explain whether or not plants, animals and essentially biological processes are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.**

They are not excluded.

**28. Please describe how micro-organisms, non-essentially biological processes, microbiological processes and plant varieties are protected in your legislation. Please explain, in this respect, the relevant sections of your legislation.**

No specific provisions for protection of micro-organisms, non-essentially biological processes, and microbiological processes in our Industrial Property Act, 1996. For plant varieties the answer is provided in answer to question 27 above.

**29. Please explain how your legislation protects patent right holders against the importing and against the offering for sale of a patented invention.**

Under section 24(2)(a) of the Industrial Property Act, 1996 patent right holders are protected against the importing and offering for sale of a patented invention.

**30. Please state if your legislation provides for patent product protection of pharmaceutical and agricultural chemical products. In the affirmative, please indicate the legal reference.**

No provision, the inadequacy will be addressed in the next amendment.

**31. Please clarify if the patent protection of a process, as provided for in your legislation, covers the product obtained directly by that process.**

The patent protection of a process covers the product obtained directly by that process as provided for under section 24(2)(b)(ii) of the Industrial Property Act, 1996.

**32. Please explain the additional conditions, if any, in your legislation other than the sufficient disclosure of the invention in Article 29 of the TRIPS Agreement (e.g. submission of justification for access to genetic material or prior informed consent to its use). If such additional conditions exist, please point out the relevant legislations and describe the additional conditions in detail.**

We do not have additional conditions other than the sufficient disclosure of the invention as provided in Article 29 of the TRIPS Agreement under section 8(4)(b) of our Industrial Property Act, 1996.

**33. Please describe if your legislation provides for limited exceptions to the exclusive rights conferred by a patent. If affirmative, please make a reference to relevant legislation.**

Exceptions to the exclusive rights conferred by a patent under our Industrial Property Act, 1996 are those provided for under section 24(3)(a).

**34. Please explain whether or not your legislation provides for compulsory licensing. If so, please explain in detail the conditions under which a compulsory licence may be granted. In particular, please explain how your national legislation considers individual merits in the authorization of such use.**

Sections 30 and 31 of the Industrial Property Act, 1996 provide for the granting of a compulsory licence but the provision does not make the granting of a compulsory licence subject to all the conditions enumerated in Article 31 of the TRIPS Agreement. The inadequacy will be addressed in the next amendment.

**35. Please explain how your legislation explicitly ensures that a proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. In this context, how do you define "reasonable period of time". Please also explain how your**

**legislation ensures that the use of a compulsory licence shall be authorised predominantly for the supply to the domestic market of the Member authorizing such use.**

According to section 31(7) of the Industrial Property Act, 1996 no licence shall be granted unless the person applying for the licence has taken all reasonable steps to do so and has been unable to obtain a licence or to obtain a licence on reasonable terms from the owner of the patent. No definition is given as to what constitutes a reasonable period of time, but following on precedent and court decisions in Botswana what constitutes a reasonable time is determined by the circumstances of each case.

Section 31(2) and (4)(c) of our Industrial Property Act, 1996 ensures that the use of a compulsory licence shall be authorized predominantly for the supply to the domestic market of the Member authorizing such use.

**36. Please state if your legislation grants additional protection for innovations after the 20 years of patent protection have lapsed.**

A patent shall expire 20 years after the filing date and such we do not grant additional protection for innovations after the 20 years of a patent protection has lapsed. (Section 27(1) of the Industrial Property Act, 1996.)

**37. Please explain how your legislation provides for the enhanced patent protection of patents or patent applications pending on 1<sup>st</sup> January 1995.**

Section 81(4) provides as follows:

"(4) A person who, on the date of entry into force of this Act:

- (a) is the owner of a patent granted in the United Kingdom or filed an application for the grant of a patent in the United Kingdom or
- (b) is the owner of an industrial design registered in the United Kingdom or has filed an application for the registration of an industrial design in the United Kingdom

may, within 12 months of the entry into force of this Act, file an application for the grant of a patent for the same invention or for the registration of the same industrial design under this Act and such application shall be accorded the filing date or priority date accorded to the application, grant or registration in the United Kingdom."

**38. Please explain how your legislation provides for the reversal of the burden of proof in relation to process patents.**

Section 25(6) of the Industrial Property Act (see section 7 of Act No. 19 of 1997) provides as follows:

"(6)(a) 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:

- (i) the product is new, or

(ii) a substantial likelihood exists that the product was made by the process and the owner of the patent has been unable, through reasonable efforts, to determine the process used.

(b) In requiring the production of evidence, the court shall take into account the legitimate interests of the defendant in not disclosing his manufacturing secrets."

G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

**39. Please describe how your legislation protects Topographies.**

Botswana is currently developing the law for the protection of Layout-Designs of Integrated Circuits. We have already received a WIPO Model legislation for assistance.

**40. Please explain what protection your national legislation grants to right holders against the unlawful importation, sale or distribution for commercial purposes of topographies including integrated circuits or other articles in which a topography is incorporated in accordance with Article 36 of the TRIPS Agreement.**

Please see the response to question 39.

**41. Please explain how your legislation provides for the derogation from Article 36 as specified in Article 37 of the TRIPS Agreement where a person has no knowledge or reasonable grounds to know when acquiring an integrated circuit or an article incorporating such an integrated circuit that it contains an unlawful topography.**

Please see the response to question 39.

**42. Please state the term of protection granted by your legislation to topographies.**

Please see the response to question 39.

H. PROTECTION OF UNDISCLOSED INFORMATION

**43. Please explain whether or not your legislation grants a defined period of time for the protection of undisclosed information. If so, please give the time span.**

The provision relating to protection of undisclosed information as required by Article 39.2 of the TRIPS Agreement will be provided for in the next amendment of the Industrial Property Act, 1996.

**44. Please explain how your legislation defines undisclosed information.**

Please see the response to question 43.

**45. Please explain how your legislation defines data submitted to governments or governmental agencies.**

Please see the response to question 43.

I. ENFORCEMENT

**46. Please describe how your legislation provides for effective action against infringement of intellectual property rights.**

Enforcement provisions are provided for in our legislation as follows:

- (i) Industrial Property Act, 1996 section 25 for patents, section 48 for industrial designs and section 60 for trademarks.
- (ii) Copyright and Neighbouring Rights Act, 2000 is sections 29–33.

**47. Please explain whether or not your legislation provides for a mechanism to appeal to judicial bodies of final administrative decisions.**

Section 77 of the Industrial Property Act enables a person who is aggrieved by any decision of the Minister to appeal to the High Court. (Under the Constitution judicial review of administrative action is also provided for).

**48. Please describe how your legislation authorizes judges to order production of evidence by the opposing party. Please give precise information on what measures are taken to ensure the protection of confidential information.**

The Criminal Procedure and Evidence Act (the CP&E) and the rules of the High Court authorize judges to order production of evidence by the opposing party.

The principles of lawyer/client and doctor/patient confidentiality are observed by our courts save where it is vital to the outcome of a case that the confidential information be disclosed.

**49. Please quote provisions of your legislation that authorize judges to order a defendant to desist from an infringement.**

Section 30(1)(a) of the Copyright and Neighbouring Rights Act which reads "... grant. injunctions to prohibit the committing, or continued committal, of infringement of any right protected under this Act."

Industrial Property Act, 1996 section 25(2)(a) "...an interdict" section 48(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 grant account of profits derived from the infringement or otherwise as it may deem fit." and section 60(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."

**50. Please quote what provisions of your legislation authorize judges to order the payment to the right holder of adequate damages to compensate the injury he suffered.**

Section 25(2)(c) a plaintiff in proceedings for infringement shall be entitled to relief by way of damages and according to section 25(6) " 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." That is how the provision authorize



judges to order the payment to the right holder of adequate damages to compensate the injury suffered under our Industrial Property Act, 1996.

**51. Please quote what provisions of your legislation authorize judges to order the payment of the right holder's expenses by the infringer.**

Costs may be awarded by the court in terms of the CP&E and Rules of the High Court.

**52. Please explain if and how judges have the authority to order that infringing goods are placed outside channels of commerce or destroyed.**

The authority of a judge to order that infringing goods be placed outside channels of commerce or destroyed is provided under section 30(2) of the Copyright and Neighbouring Rights Act, 2000 which states that: "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."

And according to 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."

**53. Please quote what provisions of your legislation authorize judges to indemnify a defendant in the event of abuse by the plaintiff.**

We do not have specific provisions in our legislation authorizing judges to indemnify a defendant in the event of abuse by the plaintiff.

**54. Please explain how your legislation implements Article 50 of the TRIPS Agreement.**

The CP&E and the Rules of the High Court already adequately covers this. Also all existing intellectual property legislation, as already explained empowers the courts to grant interdicts.

**55. Please identify the competent authorities in your jurisdiction who receive requests from right holders for an application to suspend the release of counterfeit goods by the customs authorities.**

Under the Customs and Excise Act, the competent authority is the Permanent Secretary for Finance and Development Planning.

**56. Please indicate whether or not procedures are available to suspend the exporting of counterfeit goods.**

Yes - section 121(10) (a) of the Customs and Excise Act.

**57. Please quote what provisions of your legislation authorize the competent authorities to order the destruction or disposal of infringing goods.**

Provisions authorizing the competent authorities to order the destruction or disposal of infringing goods are:

- (i) Industrial Property Act, 1996 section 25(2)(b) for patents which reads "A plaintiff in proceedings for infringement shall be entitled to relief by way of: delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part;" For industrial design and trademarks is section 49(2) and section 60(4) respectively, as quoted in our answer to question 49 above.
- (ii) Copyright and Neighbouring Rights Act, 2000 section 30(2) and (3) as quoted in answer to question 52 above.

**58. Please indicate whether or not your legislation provides for a *de minimis* imports exception.**

Section 20 of the Copyright and Neighbouring Rights Act permits the importation of single copies of works for one's personal use without the authorization of the author or other owner of copyright.

**59. Please explain how your legislation implements Article 61 of the TRIPS Agreement.**

The CP&E sets out all procedures to be followed in Botswana in criminal proceedings and as already indicated, all intellectual property legislation in place in Botswana provides penalties for infringements. (Section 31 of our Copyright and Neighbouring Rights Act, 2000, section 76(6) of the Industrial Property Act).

**IV. RESPONSE TO A QUESTION POSED BY JAPAN**

**A. COPYRIGHT AND RELATED RIGHTS**

**1. Please explain exceptions or exemptions of the National Treatment and Most-Favoured-Nation Treatment under the Copyright and Neighbouring Rights Law, if any, as permitted in Articles 3 and 4 of the TRIPS Agreement.**

We do not have exceptions or exemptions of the National Treatment and the Most Favoured Nations treatment under our Copyright and Neighbouring Rights Act, 2000.

**V. RESPONSES TO QUESTIONS POSED BY SWITZERLAND**

**A. GEOGRAPHICAL INDICATIONS**

**1. Please explain in detail how your legislation provides protection for geographical indications.**

Botswana is currently developing the legislation on geographical indications. We already have WIPO model legislation for assistance.

**Follow-up question:**

**You mention that you are currently developing the legislation on geographical indications. Please explain what the draft Act provides and when the new regulation is supposed to be adopted.**

The draft Act has not been approved by the Legislature, therefore we are unable to provide information on the proposed legislation.

**B. PATENTS**

**2. Does your legislation grant patent protection to all categories of products or are there any exceptions? If so, please explain in detail what kind of exceptions exist and how they comply with Article 27 of the TRIPS Agreement.**

Under our Industrial Property Act, 1996 section 24 there are patents rights subject to exceptions provided for under section 24(3) as follows:

- (a) The rights under the patent shall not extend to:
  - (i) Acts in respect of articles which have been put on the market in Botswana by the owner of the patent or with his consent;
  - (ii) The use of articles on aircraft, land vehicles or vehicles of other countries which temporarily or accidentally enter the airspace, territory or waters of Botswana;
  - (iii) Acts done only for experimental purposes relating to a patented invention; or
  - (iv) 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 Botswana, was using the invention or was making effective and serious preparations for such use.
- (b) The right of prior user referred to in paragraph (a)(iv) may be transferred or may devolve only together with the enterprise or business, or with that part of the enterprise or business, in which the use of preparations for use have been made.

**Follow-up question:**

**Please confirm that your legislation grants patent protection to all categories of products. If there are exceptions, please specify.**

In accordance with the Botswana Industrial Property Act, 1996 section 8 of the legislation grants patent protection to all patentable inventions categories of products.

In terms of section 9 the following shall, even if they are inventions, not be protected as patents:

- (a) a discovery;
- (b) a scientific theory or mathematical method;

- (c) a literary, dramatic, musical or artistic work or other aesthetic creation;
- (d) a scheme, rule or method for doing business; performing a mental act or playing a game;
- (e) a program for a computer;
- (f) a method for the treatment of the human or animal body for surgery; and
- (g) a diagnostic method practised on the human or animal body.

**3. Does your legislation, in accordance with Article 27.1 in combination with Article 31 of the TRIPS Agreement, consider importation as "working" a patent (and therefore preclude compulsory licensing, if a product is being imported)?**

In terms of section 24(2) and sections 30 and 31 of our Industrial Property Act importation is considered as working a patent and therefore, compulsory licensing will be precluded if a product is being imported.

**4. Does your legislation make the granting of a compulsory license subject to all the conditions enumerated in Article 31 of the TRIPS Agreement? Please cite the relevant provisions of law.**

Section 30 of the Industrial Property Act, 1996 sets out most of the conditions enumerated in Article 31 of the TRIPS Agreement. Article 31(1) is yet to be dealt with. The inadequacy will be addressed in the next amendment.

**Follow-up question:**

**You mention that section 30 of the Industrial Property Act, 1996 sets out most of the conditions enumerated in Article 31 of the TRIPS Agreement. Please confirm that, with the mentioned amendment of your law relating to Article 31(1) of the TRIPS Agreement, the granting of compulsory licences will be subject to all the conditions enumerated in Article 31 of the TRIPS Agreement. Please explain what the draft Act provides in this regard. When will the new regulation enter into force?**

The draft amendment Act has not yet been approved by the legislature, therefore, we are unable to provide information on the provisions of the proposed amendment.

**5. Does your legislation provide for the principle of the reversal of burden of proof in a process patent litigation? Please cite the relevant provisions of law.**

Section 25(6) of the Industrial Property Act provides for this principle (see section 7 of the Industrial Property (Amendment) Act (No. 19 of 1997).

C. PROTECTION OF UNDISCLOSED INFORMATION

**6. Please explain in detail if your legislation ensures that undisclosed test or other data submitted by an applicant to the responsible State agency in the procedure for market authorization of a pharmaceutical or of an agricultural chemical product is protected against disclosure and against unfair commercial use by a competitor, for example by prohibiting a second applicant from relying on, or from referring to the original data of the first applicant, when applying subsequently for market authorization for his own product. Does your legislation provide for exceptions to this? If yes, under what conditions would such exceptions apply? Does your legislation set a specific term of protection for undisclosed test or other data of the first applicant?**

We do not have laws for protection of undisclosed information, however, we will provide for the provisions relating to protection of undisclosed information in our Industrial Property Act, 1996 as section 70 in the amendment.

**Follow-up questions:**

**(a) You mention that, currently, you do not have laws for protection of undisclosed information in Botswana, but that you will provide for such protection in the amendment of your Industrial Property Act, 1996. Please explain what the draft amendment provides in relation to protection of undisclosed information. When will the new regulation enter into force?**

The draft amendment Act has not yet been approved by the Legislature, therefore, we are unable to provide information on the provisions of the proposed amendment.

**(b) Referring to the issue of unfair commercial use of data submitted by an applicant to the responsible State Agency in the procedure for market authorisation of a pharmaceutical or of an agricultural chemical product, please explain in detail if the draft amendment will prohibit a second applicant from relying on, or from referring to, the original data of the first applicant, when applying subsequently for market authorization for his own product. Will the responsible State Agency require the same amount of data from the second applicant as from the first applicant? Will the draft amendment set a specific term of protection for undisclosed test or other data of the first applicant?**

See response to part A above.

D. ENFORCEMENT

**7. Please indicate remedies provided by your legislation, which constitute effective deterrents to infringements of intellectual property rights.**

The remedies provided by our legislation which constitute deterrents to infringements of intellectual property rights are provided for under the Copyright and Neighbouring Rights Act, 2000 section 31(1) relating to criminal sanctions, which states that "Any person who contravenes the provisions of this Act so as to infringe a right protection under this Act for profit, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding P 20,000 or to imprisonment for a term not exceeding ten years or to both." And section 31(2) which reads "Any person convicted of a second or subsequent offences shall be fined a minimum of P 30,000 or a maximum of P 5,000,000 or be imprisoned for a term not exceeding ten years, or to both."

Section 76(6) of the Industrial Property Act sets out the criminal penalties in respect of infringements relating to industrial property.

**Follow-up question:**

**Please explain how your legislation implements Article 50 of the TRIPS Agreement and how the special requirements related to border measures of Articles 51 to 60 of the TRIPS Agreement are implemented in your legislation.**

Under the Copyright and Neighbouring Rights Act, section 29(4) provides that:

"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."

Furthermore, on special requirements related to border measures of Articles 51 to 60 of the TRIPS Agreement, the Copyright and Neighbouring Rights Act, 2000 section 32 provides that any goods imported into the country that are in contravention of the provisions of this Act, may be placed under an embargo, destroyed or otherwise disposed of by the Customs officials as provided for under sections 115 and 116 of the Customs and Duty Act Cap 50:01.

**8. Please describe any new initiatives that are planned to improve enforcement of intellectual property rights in your country, particularly initiatives related to criminal enforcement.**

There are plans to train police, legal and customs officials in the area of intellectual property as part of our efforts to improve on the enforcement of the intellectual property legislation.

**VI. RESPONSES TO QUESTIONS POSED BY THE UNITED STATES**

**A. GENERAL**

**1. Please describe, in relation to each form of intellectual property covered by the TRIPS Agreement, including plant variety protection, the manner in which national treatment and most-favoured-nation treatment are provided to nationals of other WTO Members.**

Botswana accords to nationals of other WTO Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property. Any advantage, favor, privilege or immunity granted by a Member to the nationals of any other country is accorded immediately and unconditionally to the nationals of all other Members. For plant varieties protection, we are in the process of drafting legislation using a *sui generis* system.

**2. Please provide us with a copy of Botswana's new copyright law, the Copyright and Neighbouring Rights Act, 2000.**

Copies will be provided.

**3. We are under the impression that the Copyright and Neighbouring Rights Act, 2000 was drafted with the goal of bringing Botswana law into compliance not only with TRIPS standards, but also with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Can you tell us when Botswana expects to deposit instruments of ratification for the WCT and WPPT with WIPO?**

In year 2002.

**4. Article 11 of the TRIPS Agreement requires that rental rights for computer programs and cinematographic works be available. Please cite to the corresponding provision of the Copyright and Neighbouring Rights Act, 2000.**

The relevant provision according to Article 11 of the TRIPS Agreement requiring that rental rights for computer programs and cinematographic works be available is section 7(1)(e) of the Copyright and Neighbouring Rights Act 2000. The sections states that subject to the provisions of sections 13 and 21, the author or other owner of copyright shall have the exclusive right to carry out or to authorize the following acts in relation to the work:

"rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;"

**5. Article 14.2 of the TRIPS Agreement provides that producers of phonograms are to enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms. Article 14.2 requires that producers of phonograms are to have the right to authorize or prohibit the commercial rental to the public of originals or copies of their phonograms. Please describe how the Copyright and Neighbouring Rights Act, 2000 implements these obligations and indicate the term of protection.**

The rights of producers of phonograms to enjoy the right to authorize or prohibit the direct reproduction of phonograms, and the right to authorize or prohibit the commercial rental to the public of original copies of their phonograms is provided for under section 24(1)(c) and (e) of the Copyright and Neighbouring Rights Act, 2000 which states that subject to section 28, a performer shall have the exclusive right to carry out or authorize any of the following acts:

"(c) the reproduction of a fixation of his performance;

(e) rental to the public or public lending of a fixation of his performance, or copies thereof irrespective of the ownership of the copy rented;"

Section 24(6) states that the rights shall be protected until the end of the fiftieth calendar year following the year in which performance was fixed in a phonogram, or in the absence or such fixation, from the end of the year in which performance took place.

## **C. TRADEMARKS**

**6. Please describe the subject matter that can comprise a trademark under the trademark law of Botswana.**

"Mark" means any visible sign capable of distinguishing the goods or services of an enterprise.

**7. Please describe the procedure that must be followed to register a trademark in Botswana, citing the relevant provisions of the law, and describe the rights that the owner of a registered mark can exercise.**

The procedure for registration of a trademark in Botswana is provided for under section 54 (1)(a)(b)(c) of the Industrial Property Act as follows: (1) An application for the registration of a mark accompanied by such fee as may be prescribed, shall be made to the Registrar in the prescribed manner and shall contain the following:

- (a) a request in writing that the mark be registered;
- (b) a reproduction of the mark;
- (c) a list of the goods or services, for which registration of the mark is requested, listed under the applicable class or classes of the international Classification.

Section 54(2)

The provisions of section 18 in respect of the right of priority shall apply *mutatis mutandis*.

Section 54(3)

The applicant may, at any time before his mark is registered, withdraw his application.

The rights conferred by the registration of a mark are provided for under section 58(1) and (2), which state that:

- (1) no person shall use a registered mark unless he has been authorized in writing, to do so by the owner thereof.
- (2) 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 Botswana by the registered owner or with his consent.

**8. Please provide the length and terms of protection the trademark law of Botswana provides for a trademark.**

The length and terms of protection the trademark law of Botswana provides for a trademark is provided for under section 61(1) and (2) of the Industrial Property Act, 1996 which states that:

- the registration in respect of a mark shall expire ten years after the filing date of the application for its registration, but may, upon the written request and payment of the prescribed renewal fee by the registered owner, be renewed for consecutive periods of ten years.
- where the owner of a registered mark is late paying the renewal fee, the Registrar shall, upon payment by the said owner of such surcharge as may be prescribed, give him a period of grace not exceeding six months within which he must pay the late renewal fee.

**9. In determining whether a mark is well-known, do the relevant authorities in Botswana take into account the knowledge of the trademark in the relevant sector of the public, including**



**knowledge obtained as a result of promotion of the trademark, as required under Article 16.2 of the TRIPS Agreement? Please cite any relevant laws, regulations and judicial decisions.**

In terms of section 60(3) of the Industrial Property Act, 1996 which states that 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 trademark is registered;

Provided that such 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, in the interest of the owner of the registered mark are likely to be prejudiced by such use. Well-known marks are protected but the provision is not clear on whether knowledge of the mark in the relevant sector of the public, including knowledge obtained as a result of promotion of the trademark is considered. The inadequacy will be addressed in the next amendment of the Industrial Property Act, 1996.

No judicial decisions can be cited as there have not been any court cases relating to this issue in Botswana.

D. GEOGRAPHICAL INDICATIONS

**10. Please describe in detail how the laws of Botswana provide for the recognition and protection of geographical indications required by Article 22.2 of the TRIPS Agreement, citing to the relevant provisions of law or regulation, and provide examples of geographical indications so protected.**

Botswana does not yet have in place any legislation dealing with this matter but it is in the process of drafting with the assistance of WIPO, legislation which meets the requirements of Articles 22.3 and 23.2 of the TRIPS Agreement.

**11. Please describe in detail the manner in which the higher level of protection required for wines and spirits under Article 23.2 of the TRIPS Agreement is implemented, citing to the relevant provisions of law or regulation, and provide examples of geographical indications for such products.**

Please see the response to question 10.

**Follow-up question:**

**Please explain whether the trademark registration authority of Botswana will refuse a trademark application if it contains a geographic indication that is not misleading with regard to the origin of the goods, their nature or other characteristics.**

The Registrar in Botswana will not refuse to register a trademark application if it contains a geographical indication which is not misleading with regard to the origin of the goods, their nature or other characteristics. In terms of section 53(2)(c) of the Industrial Property Act, the Registrar will decline registration only where a mark is likely to mislead the public or trade circles, in particular as regards the geographical origin of the goods or services concerned, or their nature or characteristics.

E. INDUSTRIAL DESIGNS

**12. Please describe the procedure that must be followed to obtain protection for industrial designs, citing to the provisions of the law of Botswana, and describe the nature of the protection provided.**

The procedure for obtaining protection for industrial designs is as provided for under section 42 of the Industrial Property Act, 1996 which states that:

- (1) An application for the registration of a design shall be made to the Registrar in the prescribed manner and shall be accompanied by the following:
  - (a) a request, in writing, that the design be registered;
  - (b) drawings, photographs or other graphic representations of the article embodying the design;
  - (c) a statement, in writing, indicating the kind of products for which the design is to be used; and
  - (d) such application fee as may be prescribed.
- (2) Where the design is two-dimensional, the application may be accompanied by a specimen of the article embodying the design.
- (3) Any person who makes an application to the Registrar for registration of a design but is not the creator of the design shall furnish to the Registrar, in writing, such proof of his title or authority to apply for registration as may be prescribed.
- (4) An application under this section may be in respect of two or more designs:

provided that the designs relate to the same class of International Classification or to the same set or composition of articles.
- (5) For purposes of these sections, "International Classification" means the classification according to Locarno Agreement of 5 October 1968, establishing an International Classification for Industrial Designs.
- (6) The application, at the time of filing, may contain a request that the publication of industrial design, upon registration, be deferred for a period not exceeding twelve months from the date of filing or, if priority is claimed, from the date of priority, of application.
- (7) The applicant may, at any time before registration of a design withdraw his application.

The nature of protection is provided for under section 47 of the same Act, which reads:

- (1) No person shall exploit, in Botswana, a design registered in Botswana unless he has been authorized, in writing, to do so by the owner of that registered design.
- (2) The person registered as the owner of a design shall, subject to the provisions of this Act, and to any rights appearing from the register of designs to be vested in any other person,

have the exclusive right in Botswana to make, import or sell any article bearing or embodying the registered design or a design not substantially different from the registered design, when such acts are undertaken for commercial purposes.

(3) For the purposes of this section, exploitation of a registered design means the doing of any act specified in subsection(2).

(4) The rights of the owner of a registered design shall not extend to acts in respect of which articles, which have been put on the market in Botswana by such owner, or with his consent.

**13. Please describe the procedure that must be followed to obtain protection for textile designs and cite to the relevant provisions of law or regulation.**

The definition of "industrial design" under the Industrial Property Act covers textile designs.

**F. PATENTS**

**14. Please describe in detail the way in which the patent law of Botswana implements Article 27 of the TRIPS Agreement, indicating any exceptions provided for, and including details regarding the protection for micro-organisms and non-biological and microbiological processes and plant varieties. Please cite to the relevant provisions of the law.**

Botswana provides for the protection of patents under Part II of the Industrial Property Act of 1996.

Exceptions are provided for under section 9 of the Industrial Property Act, 1996 which states that:

(1) For the purposes of this Act, the following shall, even if there are inventions, not be protected as patents:

- (a) a discovery;
- (b) a scientific theory or mathematical method;
- (c) a literary dramatic, musical or artistic work or other aesthetic creation;
- (d) a scheme, rule or method for doing business, performing a mental act or playing a game;
- (e) a program for a computer;
- (f) diagnostic, therapeutic and surgical methods for the treatment of humans and animals; and
- (g) a diagnostic method practised on the human or animal body.

(2) The provisions of subsection (1) (f) and (g) shall not apply to any product for use in methods referred to therein.

There are no specific provisions for micro-organisms, non-biological and microbiological processes. For plant varieties Botswana is developing legislation using a *sui generis* system of protection.

**15. Please describe in detail the rights provided patent holders under the patent law of Botswana and cite to the relevant provisions of law.**

The rights to a patent holder are provided for under section 24 of the Industrial Property Act, 1996 which states that:

- (1) No person shall exploit in Botswana an invention patented in Botswana unless he has been authorized in writing to do so by the owner of the patent.
- (2) For the purposes of this section, exploitation of a patented invention means:
  - (a) where the patent has been granted in respect of a product:
    - (i) making, importing into Botswana, offering for sale, or selling or using that product;
    - (ii) stocking such product for purposes of offering if for sale or selling or using it; and
  - (b) where the patent has been granted in respect of a process:
    - (i) using that process; and
    - (ii) doing any act referred to in paragraph (a) in respect of a product obtained directly by means of that process.
- (3)(a) The rights under the patent shall not extend to:
  - (i) acts in respect of articles which have been put on the market in Botswana by the owner of the patent or with his consent;
  - (ii) the use of articles on aircraft, land vehicles or vehicles of other countries which temporarily or accidentally enter the airspace, territory or waters of Botswana;
  - (iii) acts done only for experimental purposes relating to a patented invention; or
  - (iv) 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 Botswana, was using the invention or was making effective and serious preparations for such use.
- (b) The right of prior user referred to in paragraph (a) (iv) may be transferred or may devolve only together with the enterprise or business, or with that part of the enterprise or business, in which the use of preparations for such use have been made.

**Follow-up question:**

**Please explain whether a patent owner has the right to prevent another from using a patented product under the laws of Botswana, as required under Article 28.1(a) of the TRIPS Agreement.**

Botswana confirms that such a right indeed exists under its laws and is provided for in subsections (1) and (2)(a) of section 24 of the Industrial Property Act, 1996.

In terms thereof, a person may not, where a patent has been granted in respect of a product, make, import, offer for sale, sell or use that product without the right holder's authorization.

**16. Please describe in detail any provisions in the laws of Botswana permitting unauthorized use of a patent, citing to the relevant provisions of law, and describe in detail the conditions under which such use can occur.**

Provisions in the law of Botswana permitting an unauthorized use of a patent are provided for under sections 30 and 31 of the Industrial Property Act, 1996. However section 30 is not fully in conformity with the provisions of Article 31 of the TRIPS Agreement and will be amended in order to make it conform.

**17. What term of protection does the patent law of Botswana provide for patents? Please describe any provisions for extension of the term of protection and cite to the relevant provisions of the law.**

The protection of patents is provided under section 27 of the Industrial Property Act, 1996 which states that:

- (1) Subject to subsection (2), a patent shall expire 20 years after the filing date thereof.
- (2) In order to maintain a patent or patent application, the owner of a patent or the applicant shall pay in advance to the Registrar for each year starting one year after filing date of the application for the grant of the patent, such annual maintenance fee as may be prescribed.

Provisions for extension for the term of protection is provided under section 27(3) of the same Act which reads:

- (3) A patent shall lapse or a patent application shall be deemed to have been withdrawn if the owner thereof fails to comply with the provisions of subsection (2):

Provided that where the owner of the patent is late paying the annual maintenance fee, the Registrar shall, upon the payment by such owner, of such surcharge as may be prescribed, give him a period of grace not exceeding six months, within which he must pay the said late annual maintenance fee.

G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

**18. Please describe in detail the protection for layout-designs of integrated circuits provided under the laws of Botswana, including the term of protection, and cite to the relevant provisions of law.**

Botswana is currently developing the law for the protection of Layout-Designs of Integrated Circuits. We have already received a WIPO model legislation for assistance.

H. PROTECTION OF UNDISCLOSED INFORMATION

**19. Please describe in detail how the laws of Botswana provide for the protection of undisclosed information as required by Article 39.2 of the TRIPS Agreement and provide citations to the relevant provisions of law.**

The provisions relating to protection of undisclosed information as required by Article 39.2 of the TRIPS Agreement will be provided for in the next amendment of the Industrial Property Act 1996.

**20. Please describe in detail the manner in which protection is provided for test data regarding pharmaceutical and agricultural chemical products submitted to the government in order to obtain marketing approval in Botswana and cite to the relevant provisions of law.**

No provision, the inadequacy will be addressed in the next amendment.

**21. Are other applicants for marketing approval for their own versions of a previously approved pharmaceutical or agricultural chemical product permitted to rely on data submitted by the earlier applicant? If so, how long a period of exclusivity is given the earlier applicant before such reliance becomes possible.**

No provision, the inadequacy will be addressed in the next amendment.

**Follow-up question:**

**Please explain how the Intellectual Property Act of 1996 will be amended to include the protections that are required under Articles 39.2 and 39.3 of the TRIPS Agreement. Please address how the amended law will ensure that a second comer will not be allowed to rely on the data that is submitted to the regulatory authorities in support of a pioneer drug application, as required by the unfair commercial use provisions of Article 39.3 of the TRIPS Agreement.**

The amendment of the Industrial Property Act of 1996 will take into consideration amongst others the protection as required under Articles 39.2 and 39.3 of the TRIPS Agreement. Since the amendment has not been developed yet, it is not possible to disclose information on how it might look.

I. ENFORCEMENT

**22. Please describe in detail the manner in which the laws of Botswana provide for effective action against infringement of intellectual property rights as required by Article 41.1 of the TRIPS Agreement.**

Action against infringement of intellectual property rights as required by Article 41.1 of the TRIPS Agreement is provided for under Industrial Property Act, 1996 as follows:

### Patents

Section 25(1) states that the owner of the patent shall, in addition to any other rights, remedies or actions available to him, have the right, subject to sections 26, 30 and 31, to institute court proceedings against any person who infringes the patent by performing, without his agreement 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.

- (2) A plaintiff in proceedings for infringement shall be entitled to relief by way of:
  - (a) an interdict;
  - (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 or the profits derived from the infringement.
- (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 from the infringement.
- (4) 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.
- (5) In any proceedings under this section, the plaintiff shall, before he institutes the proceedings, give notice thereof to every licensee under the patent in question whose name is recorded in the patent register, and any such licensee shall be entitled to intervene as co-plaintiff.
- (6) The court shall, in awarding damages under this section, 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 26 states that a patentee shall not be entitled to recover damages or obtain an account of profits in respect of a patent, from a defendant who proves that at the date of the infringement he was not aware, and had no reason to be aware, of the existence of the patent, and the making of an article with the word "patent" or "patented" or any word or words expressing or implying that a patent has been obtained for the article, shall not be deemed to constitute notice of the existence of the patent unless such word or words are accompanied by the number of the patent.

Provided that nothing in this section shall affect any proceedings for an interdict in respect of the patent in question.

### Trademarks

Section 60(1) The 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 that mark without his authorization or by performing acts which make it likely that infringement will occur.

(2) The right conferred under this section shall extend to the use of 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.

(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 trade mark is registered:

Provided that such 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 the interests of the owner of the registered mark are likely to prejudice by such use.

(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 or which the infringing product forms an inseparable part, damages or an account of the profits derived from the infringement.

(5) The court shall not, in awarding damages, also order, in respect of the same infringement, that the plaintiff be given an account of the profits derived by him from the infringement.

### Industrial Design

Section 48(1) The owner of a registered 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 design by performing, without his agreement or authorization, any of the acts referred to in section 47, or who performs acts which make it likely that infringement will occur.

(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 deem fit.

(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 from the infringement.

(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 52, and any such grounds may be relied upon by way of defence.



## COPYRIGHT AND NEIGHBOURING RIGHTS ACT, 2000

Section 30 and 31 provide for civil remedies and criminal sanctions against those who infringe right holders' rights.

### Conservatory Measures to Enforce Rights

Section 29 states that:

(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.

(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.

(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.

(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 or the matter may require.

(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 investigations;

- (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.

(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.

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

(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.

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

(10) Subject to subsection (11) incriminating evidence, arising out of any answer, document, book or other object a person may prevent 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.

(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 P 2,000 or to imprisonment for a term not exceeding 12 months, or to both.

#### Civil remedies

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 this 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 this 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.

(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.

(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 minimise the risks of further infringements.

(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 P 10,000 or to imprisonment for a term not exceeding five years or to both.

#### Criminal Sanctions

Section 31(1) Any person who contravenes the provisions of this Act so as to infringe a right protection under this Act for profit, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding P 20, 000 or to imprisonment for a term not exceeding ten years or to both.

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

#### Powers of Customs Officials

Section 32 Any goods imported into the country that are in contravention of the provisions of this Act, may be placed under an embargo, destroyed or otherwise disposed of as provided for under sections 115 and 116 of the Customs and Excise Duty Act.

#### Measures, Remedies and Sanctions against Abuses in respect of Technical Means of Protection and Rights Management Information

Section 33 (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 program, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the program;
- (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.

**23. Article 43.1 of the TRIPS Agreement requires that judges be authorized to order production of evidence necessary to substantiate a party's claims where that party has been unable to obtain such evidence from the opposing party. Please describe how the laws or regulations of Botswana provide this authorization, citing to the relevant provisions of law or regulation.**

Questions 23, 24, and 25 are answered in question 22 above.

**24. Please describe in detail all of the civil remedies that are available to right holders under the laws of Botswana, citing to the relevant provisions of law or regulation.**

Questions 23, 24, and 25 are answered in question 22 above.

**25. Please describe in detail the provisional procedures and remedies available to right holders under the laws of Botswana, citing to the relevant provisions of law and regulation, and indicate any condition under which a right holder may avail itself of those procedures and remedies.**

Questions 23, 24, and 25 are answered in question 22 above.

J. SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES

**26. Please describe in detail the procedures under the laws of Botswana that provide for border enforcement at least for trademark counterfeiting and copyright piracy, identifying the competent authority and citing to the relevant provisions of law or regulation.**

As regards special requirements related to boarder measures section 32 of the Copyright and Neighbouring Rights Act, 2000 empowers Customs Officials to exercise their powers as provided for under sections 115 and 116 of the Customs and Excise duty Act, CAP 50:01.

**27. Please indicate if border enforcement is available to owners of other forms of intellectual property and, if so, please describe the procedures and remedies available in relation to each form of intellectual property, citing the relevant provisions of law.**

Please see the response to question 26.

**28. Article 58 of the TRIPS Agreement specifies procedures to be followed where the competent authorities can act ex officio. Please explain whether the competent authorities in Botswana are empowered to act ex officio and, if so, please identify the intellectual property areas subject to ex officio action.**

Please see the response to question 26.

K. CRIMINAL PROCEDURES

**29. Please describe in detail how the laws of Botswana implement Article 61 of the TRIPS Agreement that requires Members to have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please cite to the relevant provisions of law and regulation.**

Section 76(6) of our Industrial Property Act stipulates the criminal sanctions envisaged by Article 61 of the TRIPS Agreement. Furthermore, the counterfeit of a trademark is an offence under section 376 of the Botswana Penal Code, CAP 08:01. For Copyright infringement the provisions are under section 31 of the Copyright and Neighbouring Rights Act, 2000 as indicated in question 22 above.

Our Criminal Procedure and Evidence Act adequately sets out all criminal procedures to be followed in criminal proceedings in Botswana.

**30. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offence. Please describe the provisions in the laws of Botswana that provide for such remedies, and describe the circumstances in which those remedies would be imposed, citing to the relevant provisions of law or regulation.**

Remedies including seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offence are provided for under sections 25(2)(b), 60(4), 48(2) of the Industrial Property Act, 2000 and section 30(1)(b), (2) and (3) of the Copyright Act. The relevant provisions are:

### Patents

Section 25 (2) (b) A plaintiff in proceedings for infringement shall be entitled to relief by way of delivery up or destruction of any infringing product, article or product of which the infringing product forms an inseparable part.

### Industrial Design

Section 48 (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 deem fit.

### Marks, Collective Marks and Trade Names

Section 60 (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.

### Copyright and Neighbouring Rights

Section 30 (1) (b) The courts shall, subject to any other Act of Parliament, and on such terms as it may deem reasonable, have the authority to: 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 this 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.

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.

**31. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions of the laws of Botswana that provide for such procedures and remedies, citing to the relevant provisions of law or regulation.**

There are no provisions for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property in our laws. As already indicated, Botswana is in the process of legislating in respect of other forms of intellectual property apart from industrial property and copyright. The relevant draft Bills will contain provisions relating to this matter.

L. STATISTICAL QUESTIONS

**32. Please provide statistical information related to civil copyright, trademark, geographical indication, industrial design, patent, integrated circuit layout-design, and trade secret enforcement for 2000, including the number of cases filed; injunctions issued; infringing products seized; infringing equipment seized; cases resolved (including settlement); and the amount of damages awarded.**

Botswana does not have statistical information relating to civil copyright, trademarks, patents and industrial designs enforcement because there has never been lawsuits filed in court against these prices of legislation.

Botswana has not yet put in place legislation related to integrated circuit layout-designs, trade secrets and geographical indications.

**33. Please provide statistical information related to criminal enforcement in the area of copyright piracy and trademark infringement for 2000, including the number of raids, prosecutions, convictions, and the amount of fines and/or jail terms (including whether the fines were paid and whether the jail term was actually served or was suspended) and any other information establishing that the criminal system operates effectively to deter copyright piracy and trademark counterfeiting.**

We do not have statistical information to provide since there were no reported cases on criminal offences relating to intellectual properties brought before our courts in the year 2000.

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