

# Jordan's Experience in Adopting the Training Manual

Prepared by Dr. Nehad Alhusban

Regular Courts Inspector / former Judge of Amman Appeal Court

Judge specializing in intellectual property cases

Master of Intellectual Property

Master of Comparative Law / Brigham Young University (BYU) / USA

Intellectual Property Trainer

This paper was submitted to the thirteenth session of the WIPO Advisory Committee on Enforcement / Geneva, September 2018.

# Introduction

- The vast majority of law school graduates from Arab universities in general and Jordan in particular have little to general knowledge about intellectual property (IP), because Jordanian law schools do not include compulsory classes in their study plan. However, recently a compulsory course of three credit hours on IP rights has been added, and optional courses on industrial and commercial property law and on copyright and related rights law have also been added.

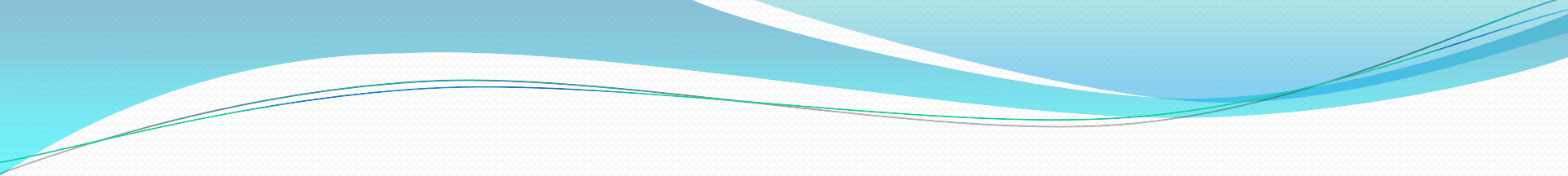
# Legislative Policy on Intellectual Property Rights

- There is no unified policy on the legislation regulating the intellectual property branches; some countries have organized them into one law, making it easier for researchers, others such as Jordan, organized them in various distinct laws: (i) Law on the Protection of Copyright and Related Rights, (ii) Law on Trademarks, (iii) Law on Patents, (iv) Law on Industrial Designs and Models, (v) Law on Geographical Indications, (vi) Law on the Protection of New Varieties of Plants, (vii) Law on Trade Names, (viii) Law on the Protection of Layout-Designs of Integrated circuits, (ix) Law on Audiovisual Media, and (x) Law on Unfair Competition law and Trade Secrets; as well as additional laws such as the Food and Drug Administration Law, the Food Control Act and the Public Health Act.

# The Training Manual is an Indispensable Reference

- The Training Manual for Investigating and Prosecuting Intellectual Property Crimes for Judges, Prosecutors and Intellectual Property Enforcement Authorities in Jordan is an indispensable reference for the following reasons:

1. The manual sheds light on the minimum protection boundaries required by the TRIPS Agreement regarding the imposition of criminal protection, at least in cases of intentional trademark infringement or copyright piracy, and on the Jordanian intellectual property rights legislation that have added to the TRIPS requirements to provide for patent protection and protection of trade names through criminal procedures and sanctions (*i.e.*, the Jordanian lawmaker did not only criminalize counterfeiting and piracy, but also other infringing acts).

- 
2. The manual defines the basic elements of IPR infringement and analyses the needs for effective prosecution, helping prosecutors, judges and IP law enforcement officials in Jordan to effectively prosecuting IP infringers, clarifying procedures for prosecution, evidentiary rules and other issues which could arise during investigation and prosecution.

3. This manual is based on the Jordanian IP laws providing for criminal protection: Law No. 22 on the Protection of Copyright and Related Rights (1992); Trademark Law No. 33 (1952) and its amendments; Patent Law No. 32 (1999) and its amendments, and Law No. 9 on Trade Names (2006). This manual is also based on the general rules set in the laws governing jurisdiction, procedures and evidence, since the legislation on the protection of IP rights does not contain special provisions to address all these matters, but applies the general rules.

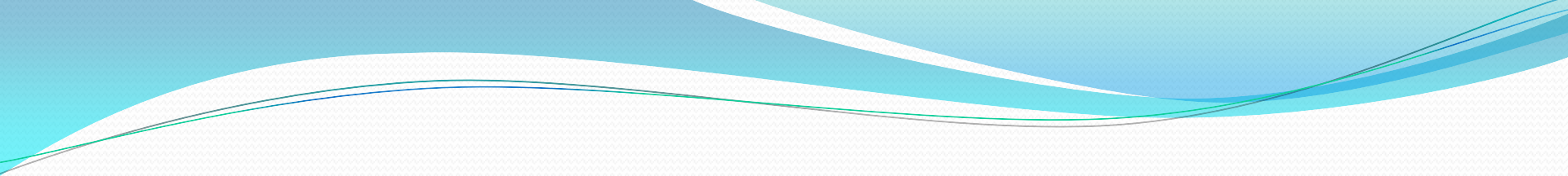
4. The manual clarifies that the international conventions that have passed through constitutional stages (signature, ratification) prevail over national laws. Therefore, in cases of conflict, the Jordanian courts must implement the provisions of these conventions. Moreover, in cases of a legislative vacuum, the Courts must rely directly on the conventions to reach their decisions, since the goal of the judiciary is to achieve justice.



# Institutes Where the Manual was Adopted as a Reference for Training

- This manual was completed in April 2017 and has been used as a training resource as follows:
  1. It was adopted as training material for students enrolled in the Jordanian Judicial Institute Diploma course during the first semester of the academic year 2017/2018. After graduation, these students are appointed as judges and prosecutors in the Jordanian judiciary.

2. It was adopted in the training of Palestinian prosecutors in the training course organized by the Judicial Institute of Jordan from 16/4/2018 to 18/4/2018, especially since the IP laws in force in Palestine are old laws and do not meet all the requirements of the international conventions on IP rights, so that the Manual serves as an important reference point to help the Palestinian prosecutors find solutions to the issues they face during their IP investigations.

- 
3. It was used as a training resource for expert sessions on IP during training courses held at Talal Abu-Ghazaleh University during 2017 and 2018.

- Finally, the publication and the distribution of this Manual to judges, prosecutors and enforcement officials in Jordan facilitates prosecution against IP infringers by explaining how to build legally sound cases against these infringers in terms of investigation and evidence gathering, thereby contributing to specific and general deterrence from IP crime.

**Thank you!**

# HOLISTIC APPROACH TO TRAINING USING CUSTOMIZED TRAINING MATERIALS

A J Lotheringen  
September 2018



Companies and Intellectual  
Property Commission

a member of **the dti** group

# CO-OPERATION

The efficiency with which trade mark counterfeiting and copyright piracy are being fought in South Africa depends on:

- the internal working relationship of all government agencies responsible for the enforcement of the CGA, and
- the co-operation and commitment of the IP holders, their agents and representatives

Creating a general awareness with the public **and guiding businesses into compliance.**

# Cooperative Benefit defined

- Benefit derived from individual contributions when they are executed in unison;
- Involves collaboration, cooperation, alignment, shared goal;
- Understand the economic perspective on policies towards IPRs enforcement;
- Drawing key insights from the economic literature to identify priorities for the allocation of scarce law enforcement resources.



# Main Objectives

- Effective enforcement of qualifying and legally protected IP rights;
- Creating awareness with all stakeholders including the general public about the rights and responsibilities of IP;
- Educating other law enforcement counterparts in customs and police departments;
- Ensuring that we can reinforce the capacity of officials to feed South African policy-makers with the information they need to design effective policies as well as to strengthen enforcement against counterfeiting and piracy across the country.

# CONCURRENT FUNCTION

- The CIPC is the custodian and responsible for the administration of the Act.
- Implementation is done together with :
  - the Customs division of the South African Revenue Service (SARS),
  - the South African Police Service (SAPS), and
  - the National Prosecuting Authority.

# WHY IS IT IMPORTANT ?

- **Threats against our borders through illegal activities**
- **Step ahead of criminal masterminds (Organised Crime)**
- **Protect and attract investments**
- **Sustain and create jobs**
- **Combat corruption**

# Counterfeiting and piracy

- Has a serious impact on the **revenues, profits and investment** levels of all businesses across industry sectors;
- **reduces** company revenues;
- **stifles** investment and innovation;
- **retards** economic growth; and
- **mislead consumers.**

# ADMINISTRATION and IMPLEMENTATION

- The exploitation of the IP system is an important and powerful tool for wealth creation and poverty reduction;
- Modern legislation and effective administrative infrastructures for the acquisition of IPR are important steps towards IP protection (CIPC);
- The acquisition of IPR is of little economic value if these rights cannot be enforced effectively;
- The credibility of the IP system depends to a considerable extent on the enforceability of IPR.

# CONSUMER DEMAND

- Be it the escalating costs of buying originals, the developments in technology making piracy increasingly possible or a growing demand by consumers seeking cheaper options, counterfeiting requires serious clamping down on by authorities,

and

- Cooperation on all levels and especially across borders is of the utmost importance to ensure success in the fight against fakes.

# Current situation

Law enforcement



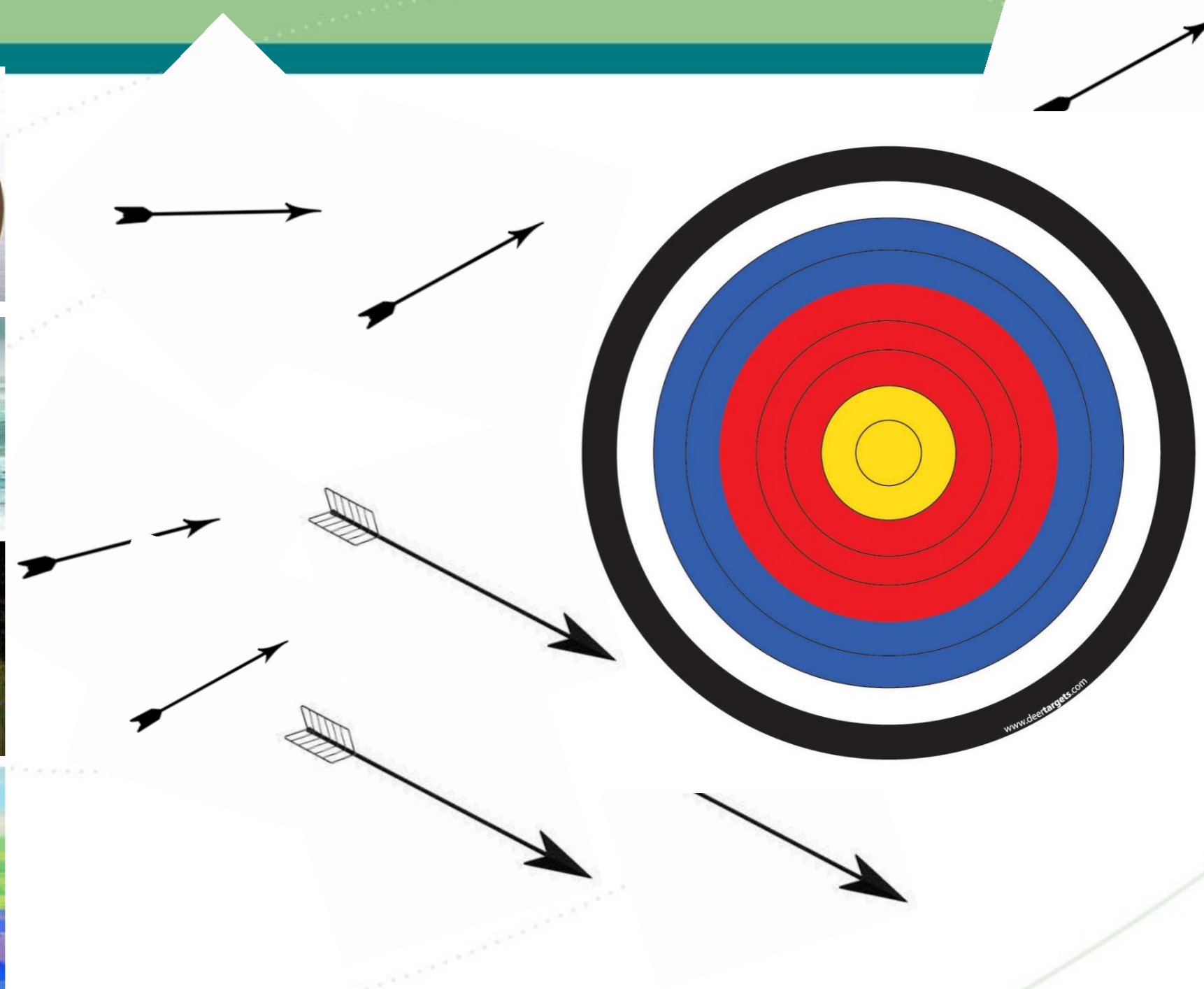
Right holders



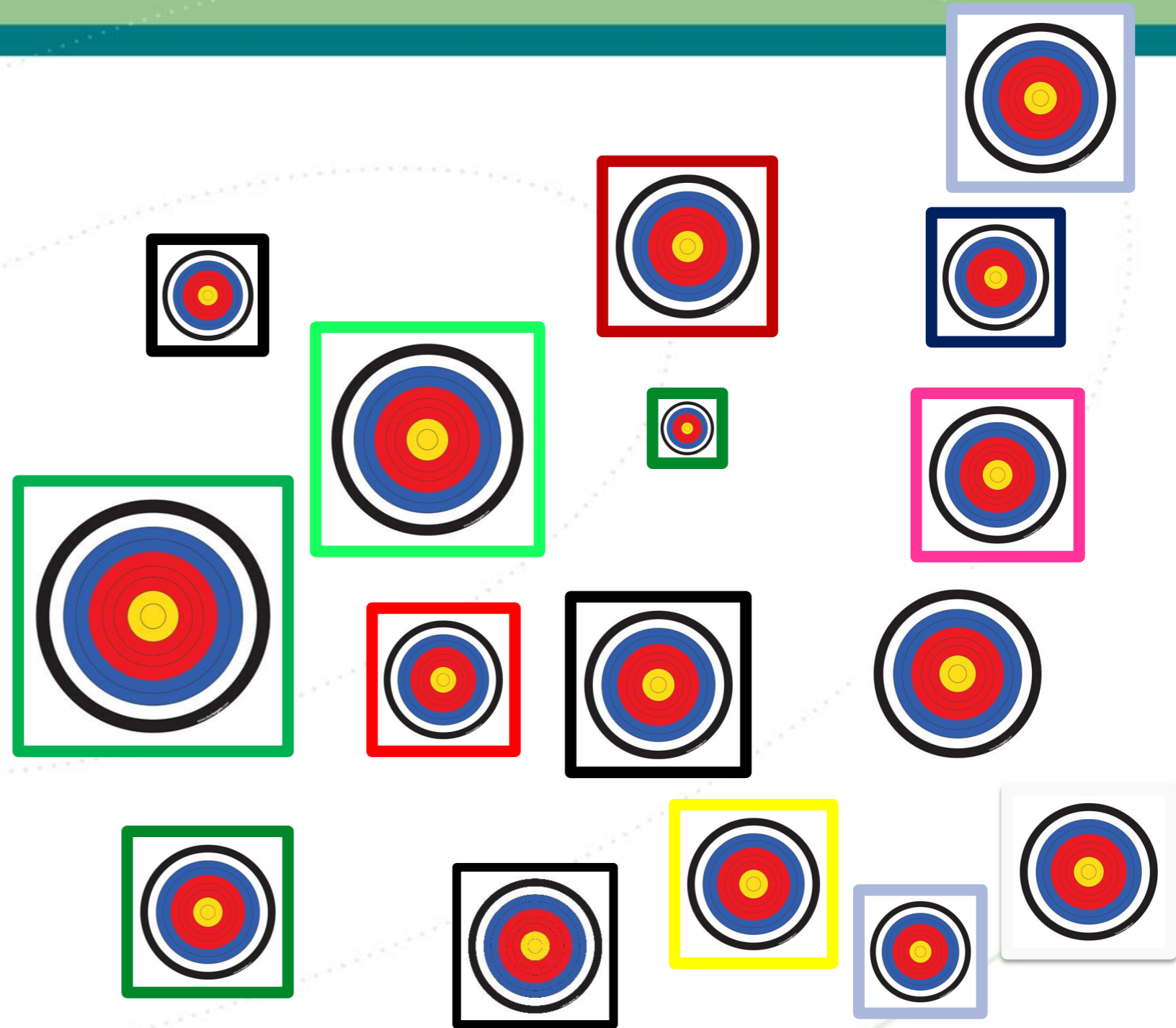
Legal advisors



CIPC

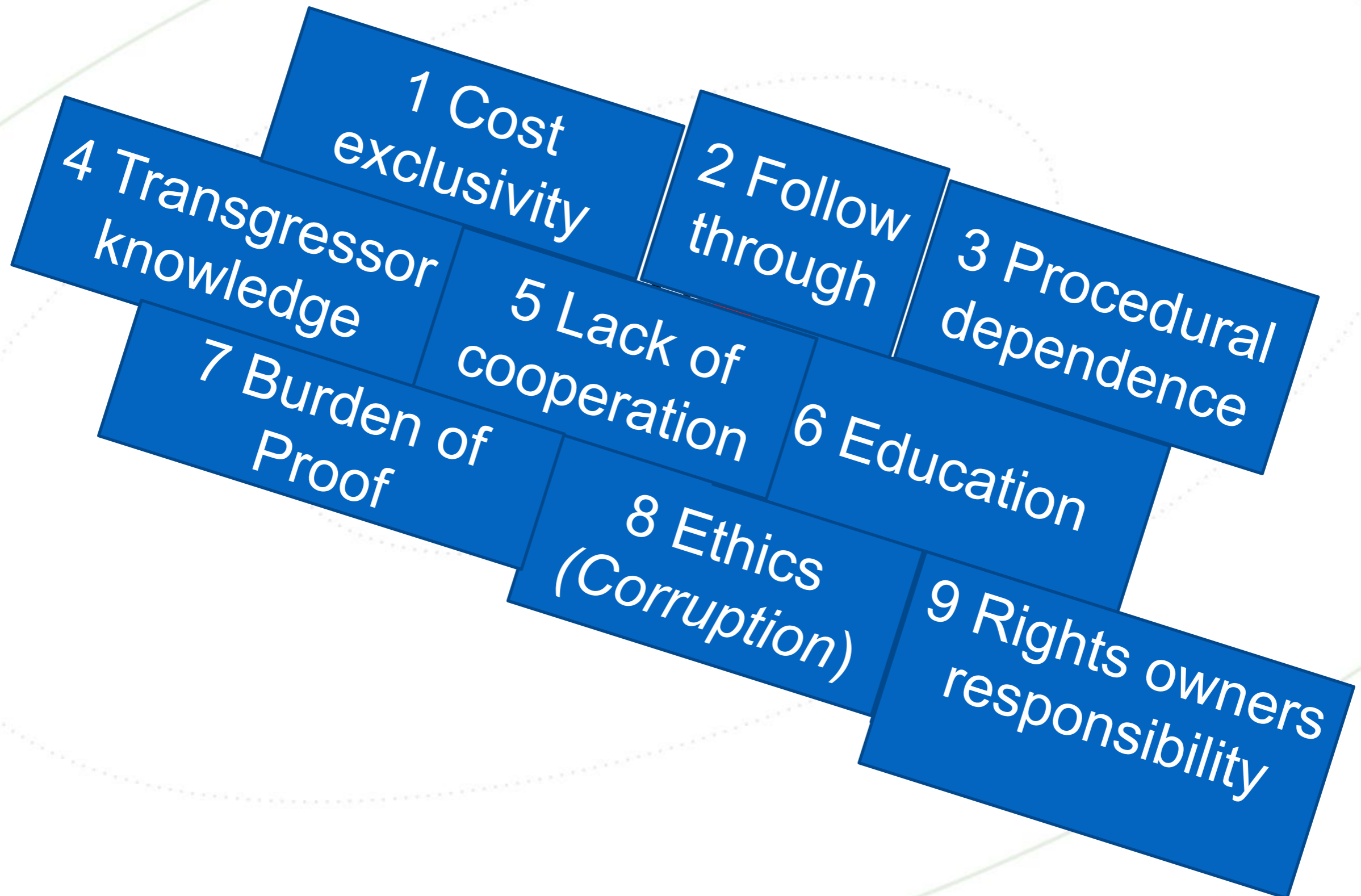


# Reality





# Stumbling blocks preventing effective enforcement



# ***CIPC launches the 1<sup>st</sup> South African Training Manual on Investigating and Prosecuting IP Crime***

- To be used by law enforcement officials in the field of IPR enforcement.
- The manual is an instrument to ease their day to day administrative tasks to ensure effective enforcement.
- The manual is based on the “*Training Manual on Intellectual Property (IP) Crime Prosecution for Law Enforcement Agencies and Prosecutors*” published by the World Intellectual Property Organization (WIPO), in 2015, and was customized for the South African legal landscape by the Honourable Justice Harms, former Deputy President of the Supreme Court of Appeal.

# CIPC WIPO COLLABORATION

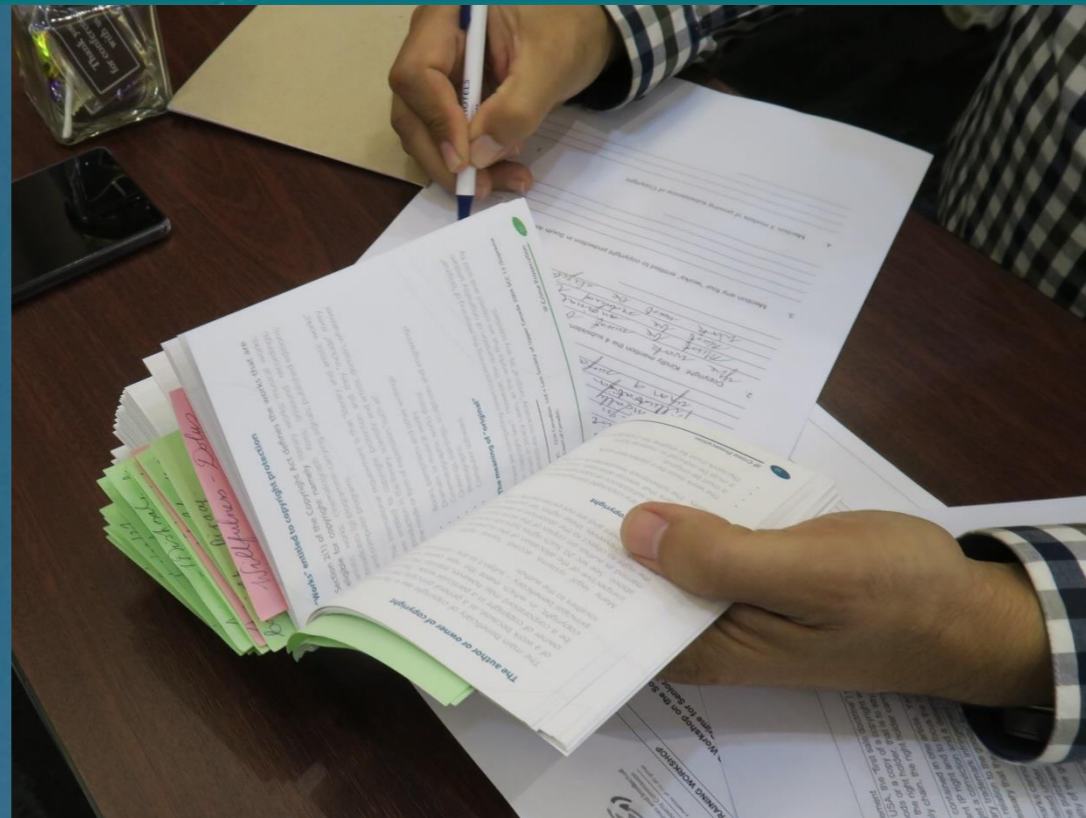
- The project's success can be attributed to the close collaboration between CIPC and the Building Respect for IP Division of WIPO.
- The objectives of the training session are to build capacity and fostering closer working relationships between all role-players in the field of IP enforcement.
- *Train the Trainer* program which methodology has proven to be very effective in promoting peer to peer practical training.
- South Africa is the first country in the world to have adopted a customised version of the WIPO enforcement training manual.

# Partnerships

- Building partnerships and leveraging on the expertise of such partners greatly assist the CIPC to strengthen the IP regulatory environment and assists its efforts geared at combating counterfeiting and piracy.
- Successes in our area are associated with collaboration, especially in training and education initiatives.
- Political will and commitment through the Minister of the dti, Minister Rob Davies' expression of the importance of combatting counterfeiting and piracy as a key priority area for CIPC.

# The Book

South African  
Training Manual on  
Investigation and  
Prosecuting IP Crime for  
Senior Law Enforcement  
Officials



Companies and Intellectual  
Property Commission  
a member of the dti group

# New strategies

- Preventive actions, to complement ongoing enforcement measures with a view to reducing the size of the market for pirated or counterfeited goods. (Intelligence driven to take out distribution and manufacturing kingpins)
- True collaboration with a balanced approach towards creating awareness and actively taking appropriate enforcement steps in all deserving circumstances. (Market Sweeps)
- The “Be Your Own Buy Your Own” campaign piloted in South Africa in 2013 that has proven effective as an alternative measure to protect against counterfeiting and piracy. (Targeted public awareness with a focus on the youth)



# Conclusion

The responsibility to:

- balance the protection of legitimate businesses with the responsibility towards
- protecting consumers

will always be that of Government.

Measures to deal with this trade are therefore an integral part of Government's attempts to create a predictable and stable economic environment.



# Thank you!

## Respect for IP – Growing from the Tip of Africa

International Conference

Sandton, South Africa  
October 23-25, 2018

Join 600 policymakers, judges and senior enforcement officials from all over the world to discuss how to create a balanced intellectual property enforcement system through international cooperation.

*More details coming soon...*





**ARIPO**

*African Regional Intellectual  
Property Organization*

# **THE USE OF THE ADAPTED WIPO TRAINING MATERIALS**

## **INVESTIGATING AND PROSECUTING IP CRIME IN ARIPO MEMBER STATES**

**Mr. Fernando dos Santos  
Director General**

**African Regional Intellectual Property Organization  
(ARIPO)**



*Fostering Creativity and Innovation for Economic Growth and Development in Africa*

# OUTLINE

- ✳ **ARIPO Mission**
- ✳ **ARIPO Member States**
- ✳ **Introduction of WIPO Manual on Investigating & Prosecuting IP Crime**
- ✳ **Customized Toolkit on Investigating & Prosecuting IP Crime**
- ✳ **Collaboration with Partners**
- ✳ **Examples of Member States IPR Enforcement Initiatives**
- ✳ **Conclusion**



# .....Our Mission



**IP  
Advocacy  
and  
Norm  
Setting**

**Providing  
Premier  
IP  
Services**

**Capacity  
Building  
and  
Awareness  
Creation**

**Development of  
ICT Tools for IP  
Business  
Processes**

**Enhancing  
the IP  
Ecosystem**



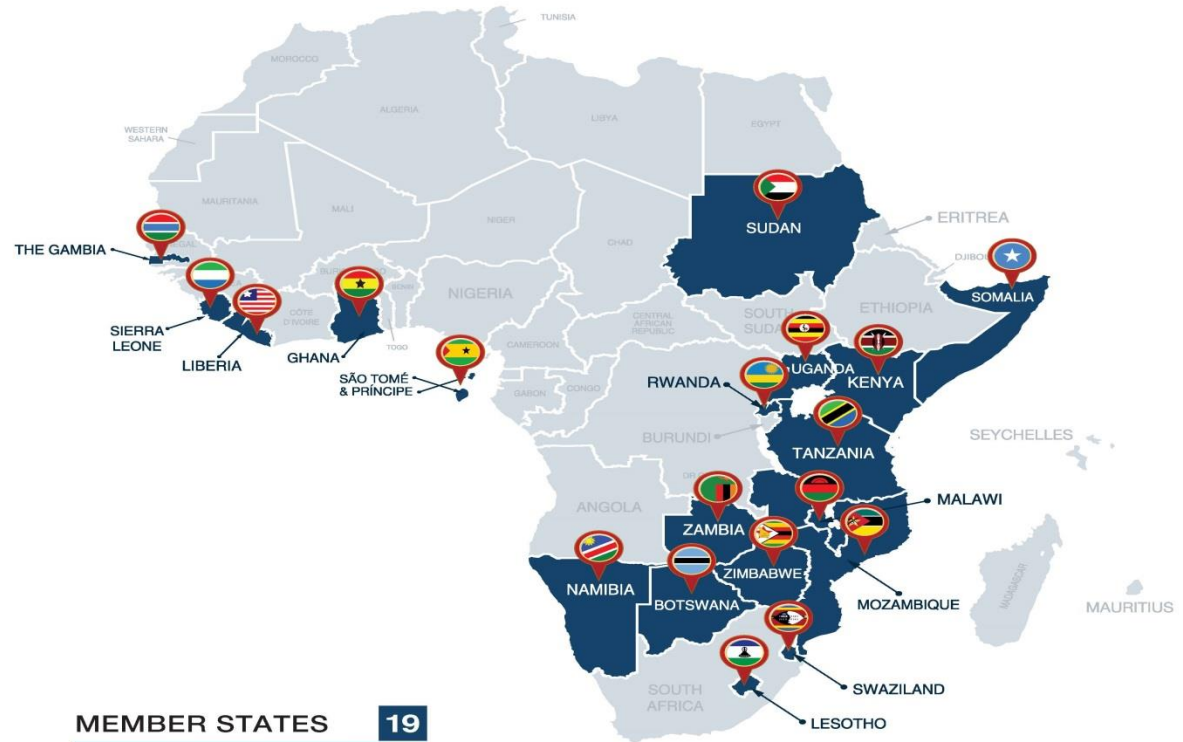
*Fostering Creativity and Innovation for Economic Growth and Development in Africa*

- Botswana
- Gambia
- Ghana
- Kenya
- Liberia
- Lesotho
- Malawi
- Mozambique
- Namibia
- Rwanda
- Sao Tome & Principe
- Sierra Leone
- Somalia
- Sudan
- Swaziland
- Tanzania
- Uganda
- Zambia
- Zimbabwe

= 19



# ARIPO MEMBER STATES



Fostering Creativity and Innovation for Economic Growth and Development in Africa

# Introduction of WIPO Manual on Investigating & Prosecuting IP Crime

- ✦ In June 2015, ARIPO, WIPO & EUIPO organized a Training of Trainers (ToT) workshop [Harare, Zimbabwe] for enforcement agencies in the Police force in the ARIPO Member States
- ✦ Introduced WIPO Investigating & Prosecuting IP Crime manual
- ✦ Encouraged the use of the manual in police colleges
- ✦ IP curriculum introduced in Police Colleges in Kenya, United Republic of Tanzania (mainland), Zambia, Rwanda and Malawi



# Customized Toolkit on Investigating & Prosecuting IP Crime

- \* ARIPO, in collaboration with WIPO, developed a customized toolkit on Investigating & Prosecuting IP Crime for 10 Jurisdictions from ARIPO Member States.
- \* The toolkit was launched and used during the Training of Trainers of high ranking police officers jointly organized by ARIPO & WIPO in Harare on July 2 and 3, 2018.
- \* These included: Botswana, Ghana, Kenya, Malawi, Mozambique, United Republic of Tanzania (mainland & Zanzibar), Uganda, Zambia and Zimbabwe.
- \* Zimbabwe Republic Police (ZRP) is currently working on its IP curricula in police colleges to customize the toolkit.
- \* Remaining jurisdictions not part of the customized toolkit will hopefully be considered in 2019





# Collaboration with Partners on Enforcement Initiatives

- ✦ ARIPO collaborating with INTERPOL Southern Bureau on enforcement initiatives to enlighten enforcement agencies on IP matters
- ✦ ARIPO is also collaborating with the US Department of Justice on enforcement initiatives to benefit the Member States
- ✦ ARIPO will continue collaborating with WIPO to build respect on IP



# Investigating and Prosecuting IP Crime in ARIPO Member States

- ✦ Counterfeiting = problematic in Africa (estimate of 30% of the pharmaceutical market in Africa is counterfeit)
- ✦ Need for increased anti-counterfeiting measures in IP legislation in Africa
- ✦ Digital era = infringement escalated on internet/social media
- ✦ Anti-circumvention provisions and techniques are inevitable
- ✦ INTERPOL SADC Region Operation AFYA - undertaken in May 2018 by SADC countries (mostly ARIPO Member States)
- ✦ Some national initiatives to enforce IPRs were undertaken in ARIPO Member States



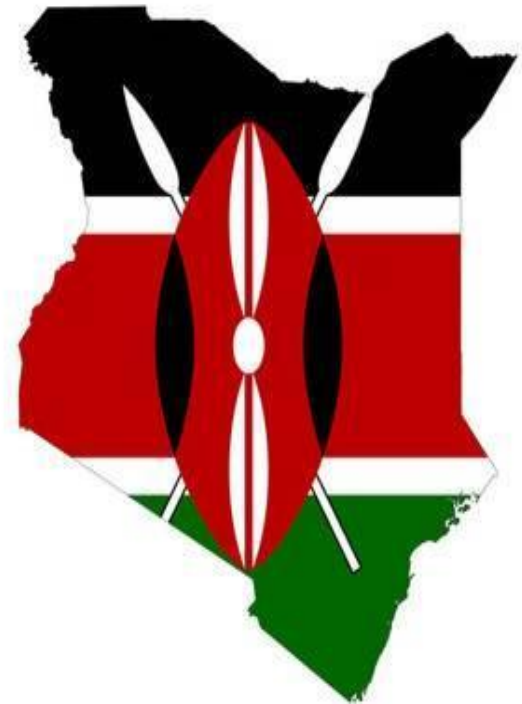
# Enforcement of IPRs in GHANA

- ✦ Amended its trade mark law.
- ✦ Various forms of intentional trade mark infringement are now criminal offences.
- ✦ Perpetrators are charged with offences and are not entitled to bail in cases where industries are involved.
- ✦ The law provides that where criminal offences are being investigated, the court can order forfeiture & destruction of goods.



# Enforcement of IPRs in KENYA

- ✦ **Has specific anti-counterfeiting legislation:**
  - i. creates IP ownership presumptions;
  - ii. creates an Anti-Counterfeit Agency;
  - iii. provides for the seizure & detention of goods;
  - iv. lays down harsh penalties for infringers (incl. 5-year imprisonment terms)
- ✦ **Kenyan authorities amalgamate IP bodies in order to cut bureaucracy & improve co-operation in enforcement measures.**



# Enforcement of IPRs in TANZANIA

✳ Passed anti-counterfeiting & anti-piracy regulations in 2008 providing for:

- i. the appointment of a task force,
- ii. the appointment of a Chief Inspector,
- iii. powers of detention and
- iv. seizure of goods, asset-freezing orders and criminal prosecution.



# Enforcement of IPRs in UGANDA

- ✳ Introduced anti-counterfeiting bill (Uganda's new Industrial Property Act 2014)
- ✳ Being applied (no regulations have been promulgated)
- ✳ Interesting features include:
  - i. PCT international & national phase applications are recognised,
  - ii. utility models are provided for, and
  - iii. UK industrial design registrations are no longer automatically extended to Uganda.



# Enforcement of IPRs in ZAMBIA

- ✳ IP Bill (not yet in force): 5-year prison term for counterfeiting & border seizures of counterfeit goods.
- ✳ Effects of piracy & counterfeiting in Zambia has;
  - i) decreased government tax revenue,
  - ii) legitimate businesses being forced out of the market,
  - iii) a threat to public health, security, ecology, environment, food security & invention & creativity
- ✳ Zambia Police Service developed National Strategy a.k.a “PESTEL MODEL” (abbreviation for prevention, environment, sensitization, technology, evaluation and legal framework)



# Conclusion

- ✦ **The customized Training Manual Investigating and Prosecuting IP Crime has already proved to be a valuable resource, used by several police colleges of ARIPO's member states.**
- ✦ **It is expected to be used even more widely during capacity-building activities organized by ARIPO at the regional level, as well as by ARIPO's member states at their national level.**
- ✦ **The Training Manual will play a crucial role in training law enforcement officials and assisting them in the investigation and prosecution of criminal IP infringement across the African Region.**

