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AN APPRAISAL OF YEMEN'S ADHERENCE TO THE TRIPS AGREEMENT STANDARDS ON CIVIL AND CRIMINAL ENFORCEMENT MECHANISMS OF COPYRIGHT AND TRADEMARK INFRINGEMENT

Sali Ahmed Abdullah, ¹Khadijah Mohamed & Ahmad Shamsul Abd Aziz

School of Law, Universiti Utara Malaysia, Malaysia

¹Corresponding author: khadijah@uum.edu.my

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ABSTRACT

The role of enforcement is crucial for the protection of intellectual property rights (IPRs), as it provides the rights holders with access to legal tools and remedies essential for safeguarding their intellectual creations. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) establishes a comprehensive framework for the enforcement of IPRs, covering both procedural and substantive elements that member states are obligated to implement within their domestic laws. These provisions are designed to enable effective and timely actions against IPRs infringements. As a member of the World Trade Organization (WTO), Yemen is obligated to harmonise its national intellectual property (IP) legislation with the enforcement provisions specified in Part III of the TRIPS Agreement. This article analyses the existing IPRs enforcement mechanisms in Yemen, with particular emphasis on both civil and criminal procedures. Utilising the TRIPS Agreement as a framework, this article examines the extent to which the enforcement mechanisms and remedies provided under Yemeni law align with the requirements set forth by the TRIPS Agreement. By adopting a doctrinal legal method, the required data for this article is gathered from the relevant statutes, case law, the official website of Yemeni government agencies, law books, and journal articles. Utilising the TRIPS Agreement as a framework, this article examines the extent to which the enforcement mechanisms and remedies provided under Yemeni law align with the TRIPS requirements. The findings indicate that the civil and administrative procedures and remedies in Yemen's IP laws are largely consistent with the stipulations of the TRIPS Agreement. Nevertheless, there remains scope for enhancement, especially with regard to the evidentiary provisions. In terms of criminal enforcement, both the Trademarks Act 2010 and the Copyright Act 2012 criminalise deliberate acts of trademark counterfeiting and copyright piracy, prescribing penalties that include imprisonment and fines. However, the existing penalties under these

Acts are inadequate to serve as an effective deterrent against such violations. This shortcoming is in conflict with the requirements of Article 61 of the TRIPS Agreement, which mandates that penalties for these offences must be sufficiently severe to prevent future infringements. To ensure Yemen's full compliance with international standards and to enhance its efforts to combat trademark counterfeiting and copyright piracy, it is recommended that the country revise its IP laws to incorporate more stringent penalties, in alignment with the provisions of the TRIPS Agreement.

Keywords: TRIPS agreement, enforcement of intellectual property rights (IPRs), civil procedures, criminal procedures, Yemen intellectual property (IP) laws.

INTRODUCTION

The value of establishing substantive norms for the protection of intellectual property rights (IPRs) is significantly diminished if rights holders cannot enforce them through fair and efficient legal procedures. This concern has become more pronounced in the modern world, where advancements in technology have exacerbated the challenges of IPRs infringement (WTO, n.d.). Enforcement, therefore, plays a pivotal role in safeguarding IPRs, providing rights holders with the legal tools and remedies needed to protect their intellectual creations from unauthorised use, infringement, and misappropriation (Gervais, 2021). Acknowledging this, the Preamble of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) underscores the critical need to establish effective and appropriate mechanisms for the enforcement of these rights (WTO, 1995, Preamble).

The TRIPS Agreement marks the first multilateral treaty to establish detailed regulations governing the enforcement of IPRs (WTO, 2024). It provides a comprehensive framework that encompasses both procedural and substantive elements, which member states are required to integrate into their domestic laws to facilitate swift and effective action against IPRs infringements (WTO, 2024). These enforcement provisions are intended not only to ensure adequate remedies for rights holders, but also to function as strong deterrents against IP violations (WTO, 2024).

Yemen joined the World Trade Organization (WTO) in 2014, becoming the seventh least-developed country (LDC) to do so, and has been given until 1 July 2034 to fulfil the requirements of the TRIPS Agreement (WTO, 2014). Being a WTO member, Yemen is obliged to implement the enforcement standards established in Part III of the TRIPS Agreement within its national intellectual property (IP) laws (Tingting & Al Hanhanah, 2017), but such enforcement actions and procedures should not hinder any legitimate trade for the country (Faujura et al., 2021). Therefore, evaluating Yemen's compliance with the enforcement measures and available remedies outlined in the TRIPS Agreement is crucial for assessing the adequacy and effectiveness of its IPRs enforcement regime. This article analyses Yemen's current IP enforcement procedures, with a particular focus on civil and criminal measures. Using the provisions of the TRIPS Agreement as a framework, the article assesses whether or not Yemen's enforcement mechanisms and remedies align with the standards and requirements established by the Agreement.

LITERATURE REVIEW

In the current economic situation, the assessment to determine a country's economic development includes the types of technology it possesses and the number of IPRs it holds (Viglioni et al., 2023). The TRIPS Agreement is acknowledged as a crucial legal framework that standardises and enhances

the enforcement of IPRs at the international level. It also obligates member states to comply with these minimum protection standards. Since its accession to the WTO in 2014, several amendments have been made to Yemeni IP laws. Historically, some aspects of IP protection were introduced in the 1940s in the Aden region (southern Yemen), which was then under British colonial rule. After gaining independence from Britain in 1967, these provisions were incorporated into the Civil Code, which has been in force since 1978. In northern Yemen, Law No. 45 of 1976, which covers trademarks and trade names, was enacted (Jandab et al., 2019).

Following the formation of the Republic of Yemen in 1990, the Intellectual Property Act of 1994 was introduced, repealing all previous IP laws and provisions in both northern and southern Yemen. In 2010, the Yemeni government submitted proposals to Parliament to draft a new legislative framework to align national IP laws with WTO accession requirements. As a result, several IP statutes were passed by Parliament between 2010 and 2012, including Act No. 23 of 2010 relating to Trademarks and Geographical Indications (Trademarks Act 2010) and Act No. 15 of 2012 on the Protection of Copyrights and Related Rights (Copyright Act 2012), both of which are the focus of the discussion in this article.

However, certain limitations in these laws have been identified, which include the absence of implementing regulations and the inadequacy of liability and remedy provisions for infringement cases. This has delayed the full implementation of these statutes to date (Tingting & Al Hanhanah, 2017). Despite its LDC status, Yemen has made significant progress with its economic reforms and has acknowledged the importance of IPRs for the development of the national economy. In this respect, Fadl Mansour, the former Director-General of the Administration for IP Protection in Yemen, has emphasised that the protection of IPRs and the enforcement of IP laws could attract investors and rights holders to participate in national economic activities, which in the long run, would positively impact the public and consumers (Jandab et al., 2019). This development justifies the need for the country to establish robust frameworks for IPRs protection in its national legislation.

METHODOLOGY

This article employed doctrinal legal research methodology, which focuses on the analysis of legal rules, doctrines, or principles, emphasising on "research in law" (Gawas, 2017; Mohamed, 2016). This methodological approach involves the identification and retrieval of legal sources, followed by the interpretation and analysis of the textual content (Hutchinson & Duncan, 2012). By employing a doctrinal legal method, the required data for this article was gathered from the relevant statutes and legal instruments, using a library-based approach. Specifically, the primary data collected comprises the TRIPS Agreement 1994, and the relevant Yemeni IP laws, i.e., the Copyrights Act 2012 and the Trademarks Act 2010. The secondary data were collected from relevant sources, including textbooks, journal articles, and reputable websites of government agencies and departments in Yemen, as well as reports from international bodies, such as the World Intellectual Property Organization (WIPO) and the WTO. Both primary and secondary data were then critically and analytically examined by using the content analysis approach to examine the extent to which the enforcement mechanisms and remedies provided under Yemeni law align with the requirements set forth under the TRIPS Agreement.

THE ENFORCEMENT OF IPRs UNDER TRIPS AGREEMENT

Despite a long-standing worldwide interest in improving IPRs protection, there have been claims that international agreements prior to the TRIPS Agreement have generally overlooked the crucial aspect of enforcement. Those agreements have focused primarily on establishing substantive rules for protecting IPRs at the international level, without incorporating a robust enforcement regime (Otten, 2020; Yu, 2017). Consequently, enforcement mechanisms were left to the discretion of national laws, leading to significant variations in the adequacy and effectiveness of IPRs enforcement across different member states.

The TRIPS Agreement stands out from earlier international treaties in the field of IPRs due to its distinctive emphasis on enforcement. Unlike previous treaties, which have concentrated mainly on setting minimum standards of protection, the TRIPS Agreement goes further by outlining detailed procedural rules to ensure that these standards can be implemented effectively across member states (WTO, 2024). This dual focus on both substantive protection and enforcement mechanisms marks a significant evolution in international IP law, providing a framework previously unmatched by any other treaty in the IP domain.

Part III (Articles 41-61) of the TRIPS Agreement delineates the enforcement procedures that member states are required to incorporate into their national IP laws. These provisions are designed to facilitate swift and effective actions against IPRs infringements, ensuring that right holders can protect their intellectual assets efficiently. The enforcement section of the TRIPS Agreement includes general obligations to establish fair and equitable enforcement procedures (Article 41); civil and administrative procedures and remedies (Articles 42-49); provisional measures (Article 50); border measures (Articles 51-60); and criminal procedures for serious infringements, such as counterfeiting and piracy (Article 61).

This comprehensive framework not only strengthens the protection of IP, but also harmonises enforcement mechanisms across member states, reducing disparities and creating a more uniform global IPRs enforcement regime. The following discussion is organised into five distinct segments, each focusing on different enforcement provisions outlined in Part III of the TRIPS Agreement.

General Obligations

The general obligations of member states concerning the enforcement of IPRs are contained in Section 1 (Article 41) of the TRIPS Agreement. These obligations pertain specifically to the judicial and administrative enforcement proceedings. Member states are required to implement enforcement mechanisms within their domestic legal frameworks that enable rights holders to take effective action against infringements of IPRs. The overarching goal of these provisions is to ensure swift, efficient, and deterrent measures against all forms of rights violations, particularly concerning counterfeiting and piracy.

Article 41 of the TRIPS Agreement requires empowering relevant authorities, whether judicial or administrative, to issue appropriate legal remedies. Enforcement mechanisms in this respect should encompass rapid interventions to prevent ongoing or imminent infringements and provide remedies aimed at halting further violations of IPRs. Article 41(1) of the TRIPS Agreement emphasises that:

"These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse."

Article 41(2) stipulates that all judicial procedures related to IPRs enforcement must be conducted in a manner that is fair and equitable to all parties. The procedures must be straightforward, swift, and not unnecessarily complex or costly, avoiding unreasonable time limits or unwarranted delay. Importantly, member states must ensure that foreign parties receive the same fair treatment as domestic parties. No additional procedural burdens should be imposed on foreign rights holders that would make enforcing their rights more challenging than it is for other types of legal proceedings within that jurisdiction.

Moreover, Article 41(3) mandates that:

"Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay."

This requirement ensures the necessary transparency and accountability of enforcement procedures. Decisions should be grounded in solid evidence, and the parties involved must be given a reasonable opportunity to present their arguments. Regarding final administrative decisions, Article 41(4) provides that parties involved in enforcement proceedings have the right to appeal such decisions to a judicial authority for review. However, there is no obligation for member states to provide for the review of acquittal in criminal cases.

In terms of a specific IP judicial system, there is no such obligation imposed on member states by the TRIPS Agreement, nor does it require members to divert resources from general law enforcement to focus on IPRs enforcement, as clarified in Article 41(5). Member states are not obligated to create separate judicial structures for IP disputes if the matter is already covered in an existing general law enforcement system. Thus, the enforcement of IPRs can be integrated within the existing broader legal framework, without the need for specialised courts. However, some countries have chosen to establish specialised courts or designated court circuits specifically for handling IP disputes to avoid prolonged litigation. For instance, countries such as Malaysia, Japan, Thailand, and China have established dedicated IP courts (De Werra, 2016). While this approach may enhance the efficiency and expertise of IP-related judicial processes, the TRIPS Agreement does not mandate member states to create such specialised courts.

Civil and Administrative Procedures and Remedies

The obligations of member states concerning administrative and civil procedures, as well as the remedies available to rights holders, are provided in Section 2 of Part III of the TRIPS Agreement. Articles 42 to 49 specifically outline these obligations, covering aspects such as fair and equitable judicial procedures, available remedies, injunctions, evidence gathering, damages, and rights to information. A key requirement of this Section is that rights holders must have the ability to initiate civil judicial proceedings against individuals or entities infringing upon IPRs protected by the Agreement. Furthermore, Article 49 provides guidelines for civil remedies in the context of

administrative procedures, emphasising that member states must ensure such remedies are available and effective.

Provisional Measures

One of the fundamental obligations imposed on WTO member states by Article 41 of the TRIPS Agreement is ensuring that effective enforcement measures are in place to combat infringements of IPRs. These measures include prompt and effective remedies to prevent ongoing or imminent violations. Article 50 of the Agreement elaborates on this by setting forth important rules regarding provisional measures. It requires member states to incorporate provisional enforcement mechanisms into their national laws by allowing interim decisions to be taken by a court or administrative authority before a final ruling is rendered. This aim is to allow for swift and effective action to prevent infringement of any IPRs covered by the Agreement. The measures under Article 50 of the Agreement are crucial for preventing infringing activities before they cause irreparable harm to all relevant parties.

Border Measures

The obligations of member states regarding border enforcement measures are provided in Section 4 (Articles 51 to 60) of Part III of the TRIPS Agreement. A central requirement of this Part is that member states must enable IPRs holders to enlist the cooperation of customs authorities to intercept and halt the entry of infringing goods at national borders. These provisions are designed to prevent counterfeit and pirated goods from entering the domestic market, thereby providing an additional layer of protection for rights holders. Customs authorities must also be empowered to take proactive steps to stop the release of infringing goods into the market (Chatterton, 2023; OECD, 2021; Yu, 2022), ensuring that rights holders are protected from economic harm caused by counterfeit products.

Criminal Procedures

The criminal procedures and penalties that member states are obligated to enforce are provided in Section 5 of Part III of the TRIPS Agreement, particularly in cases involving intentional copyright piracy and trademark counterfeiting as detailed in Article 61. These criminal sanctions are intended to serve as a deterrent against wilful infringement of IPRs. Member states are required to apply criminal procedures in serious cases, ensuring that such acts are met with appropriate penalties. Additionally, member states have the option to extend criminal sanctions to other types of IPRs infringements beyond copyright piracy and trademark counterfeiting, though this is not a mandatory requirement under Article 61 (Correa, 2022).

Overall, it has been argued that the enforcement provisions outlined in Part III establish mandatory enforcement mechanisms that require member states to integrate them into their national IP laws. At the same time, the TRIPS Agreement provides flexibility by allowing countries to implement optional enforcement measures, such as extending criminal sanctions to other forms of IP infringement beyond the core areas of piracy and counterfeiting.

EXAMINATION OF THE COMPATIBILITY OF CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES IN YEMEN WITH THE TRIPS REQUIREMENTS

Given that IPRs are often viewed as private rights, most jurisdictions regard civil remedies as the primary and most effective means for holders to enforce their legal protection rights. Civil remedies typically serve to halt or prevent ongoing acts of infringement and to compensate rights holders for any damages caused by the infringement (Mohamed, 2012). The core civil remedies in IPRs infringement cases usually consist of injunctions to stop the infringing activity and allow claims for damages, including the option for an account of profits. The TRIPS Agreement reinforces the importance of these remedies by requiring member states to incorporate them into their national legal systems to ensure the effective enforcement of substantive IPRs (Mohamed & Wahid, 2014).

The obligations of member states regarding civil and administrative procedures related to the substantive aspects of disputes, as well as the remedies, are provided in specified in Section 2 (Articles 42 to 49) of Part III of the Agreement. These provisions cover the principles of fair and equitable procedures, the presentation of evidence, the issuance of injunctions, the calculation of damages, rights to information, and indemnification of defendants, respectively. Importantly, this section stipulates that rights holders must have the ability to initiate civil judicial proceedings against individuals who infringe upon IPRs protected by the Agreement.

After its accession to the WTO, Yemen is legally obligated to implement the provisions of the TRIPS Agreement, including those related to civil and administrative enforcement of IPRs (WTO, 2024). The following discussion analyses the civil procedures that are currently available to rights holders in Yemen. The discussion provides in-depth insights into how IPRs are protected and enforced through civil mechanisms in Yemen.

Fair and Equitable Procedures

Civil litigation is the most common action against the infringers of IPRs. The importance of civil litigation as a fundamental means of protection for rights holders is recognised in Article 42, which states:

"Members shall make available to right holders, civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement."

According to Article 42, civil and administrative procedures must be fair and equitable. Specifically, it mandates that:

"Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information unless this would be contrary to existing constitutional requirements."

Similar to other jurisdictions, the civil and administrative enforcement of IPRs in Yemen includes a mechanism for rights holders to initiate legal proceedings to protect and enforce their IPRs. Civil

proceedings are usually heard in the commercial courts, which have jurisdiction over IP disputes. In fact, civil proceedings become the most commonly utilised form of enforcement by Yemeni rights holders, as confirmed by Judge Abdul Razzaq: "Rights holders often prefer resorting to civil procedures to enforce their rights compared to criminal enforcement procedures. This preference for civil remedies is rooted in the belief that civil procedures provide a more effective and efficient means of protecting IPRs" (Abdul Razzaq, personal communication, March 2, 2024).

In Yemen, civil procedures and remedies are primarily governed by the Yemeni Civil Code No. 14 of 2002, the Procedure and Civil Enforcement Law No. 40 of 2002, and the Evidence Law No. 21 of 1992. These laws regulate the procedural framework that applies to civil proceedings, including those related to IP disputes. Therefore, in situations where specific provisions related to civil procedures and remedies are not explicitly stated in Yemen's IP laws, the provisions in these broader civil laws serve as a legal reference for such cases.

Evidence

The rules governing the use and submission of evidence in civil and administrative proceedings, particularly in cases where one party holds evidence that is critical to the dispute, are provided in Article 43. Judicial authorities have been provided with the power to order parties to present relevant evidence, particularly if the opposing party possesses evidence essential to the case. Such an order may be made in a situation when one party has already provided sufficient evidence to support their claim and has identified specific evidence in the possession of the opposing party that is crucial for substantiating the allegations.

In addition, the court may base its decision on the information provided by the party negatively impacted by the refusal of the opposing party to disclose information. This is applicable in situations when the opponent, without a valid reason, refuses to grant access to relevant evidence or deliberately obstructs the proceedings. The court, in such situations, may draw reasonable inferences in favour of the claimant based on the opponent's refusal to provide the relevant information in his or her possession or control and the fact that the information would have been disadvantageous to the opponent's case, provided that both parties have been given the opportunity to present their arguments regarding the evidence. This mechanism ensures that the party withholding crucial evidence cannot unfairly advantage themselves by concealing information that would otherwise substantiate the claims against them.

In Yemen, the rules governing the burden of proof in civil proceedings are primarily set out in Evidence Law No. 21 of 1992 and the Criminal Procedures Law No. 13 of 1994. Under these laws, the burden of proof generally rests with the plaintiff, who must demonstrate the infringement and establish the validity of his or her IPRs (Article 2 of the Evidence Law 1992, and Article 321 of the Criminal Procedures Law 1994). However, Yemeni law does not currently include a provision similar to Article 43 of the TRIPS, which grants judicial authorities the power to compel the opposing party to produce relevant evidence in his or her possession.

Remedies

The TRIPS Agreement requires member states of the WTO to establish in their national legislation civil remedies to effectively deter infringements of IPRs. Articles 44 and 45 specifically address two principal types of remedies: injunctions and monetary damages, while Article 46 elaborates on additional remedial actions. The key aspects of these remedies are discussed below:

Injunctions

The injunctions are court orders (equitable remedy in common law jurisdictions) requiring a party to either cease a specific action or take corrective measures to remedy harm caused (Wu & Weng, 2021). The party that does not comply with the injunction may face contempt of court, civil or criminal, and may have to pay damages or other penalties for failure to comply with the court order (Cornell Law School, n.d.). Article 44 (1) of the TRIPS Agreement provides that a court must be empowered to order a party to stop actions that infringe IPRs. The aim is to prevent the distribution of the imported infringing goods to the market immediately after they have cleared customs. However, Article 44 (2) of the TRIPS Agreement expressly excludes the awarding of injunctions in cases involving the use of government and other uses approved by the government without the right holder's permission.

Similarly, Yemeni IP laws provide IP rights holders with the ability to seek injunctions through the court system to prevent or halt further infringement of their IP rights. If the rights holders present sufficient evidence of infringement, the court may issue an order prohibiting the alleged infringer from engaging in the infringing activities until a final judgment is rendered (Article 41 of the Trademarks Act 2010, Article 64 of the Copyright Act 2012, and Article 47 of Civil Law 2002).

Damages

The TRIPS Agreement required member states to provide damages as a second type of mandatory civil remedies. Based on Article 45, the judicial authorities should be granted the power to order the payment of sufficient damages to the rights holder for the damage caused due to the intentional infringement of his or her rights. Infringement of IPRs is considered intentional if the infringer knows or has reasonable grounds to know that he or she is infringing the rights holder's rights.

Article 45 of the TRIPS Agreement also mandates member countries to empower judicial authorities to order the infringer to pay the expenses suffered by the rights holder, which may include appropriate attorney's fees. The Agreement also allows member countries to grant judicial authorities the power to order the infringer to return the profits obtained to the rights owner and/or payment of pre-established damages, notwithstanding that the infringement is intentional or unintentional. However, this provision is optional for members to provide in their national law, although providing statutory damages is highly recommended for the deterrence of IPRs infringement purposes (Cotter, 2021; Llewelyn, 2015).

In accordance with these provisions, Yemeni IP laws (Article 50 of Trademarks Act, Article 79 of Copyright Act, Article 38 of Patent Act, and Article 304 of Civil Law) also allow for the awarding of monetary damages to compensate the rights holders. Courts may, upon a request by the rights holder, award damages to compensate the rights owner for the losses he or she has suffered due to infringement. The calculation of damages will consider various factors, including the loss of profits and royalties, where applicable, to compensate the rights holder.

Other Remedies

Beyond injunctions and monetary compensation, and with a view to create an effective deterrent to infringements, Article 46 of the TRIPS Agreement states that the court has the authority to order, without compensation: (a) the removal of the infringing products from commercial circulation; or (b) the destruction of the infringing products (unless not permitted under existing constitutional

requirements). The court's power shall also extend to order the disposal of the tools and materials that were primarily employed in the manufacture of the infringing goods.

The court usually takes into account both the interests of third parties and the proportionality between the nature of the violation and the remedies issued when deciding whether to grant such requests to destroy or remove products from commercial circulation. When it comes to counterfeit trademark goods, the simple removal of the trademark illegally affixed onto the products will usually not be sufficient to release the goods into the channels of commerce because the goods might later be permitted to re-enter those channels (Mohamed & Wahid, 2014).

In Yemen, the courts are similarly authorised to order the devastation, removal, or disposal of such infringing goods or materials that violate IP rights. These measures are intended to prevent further distribution or use of the infringing products. Furthermore, Yemeni courts may order the public disclosure or publication of the judgment, which can serve as a deterrent and raise public awareness about the consequences of such infringements (Article 49 of the Trademarks Act 2010, Article 78 of the Copyright Act 2012, and Article 36 (3) of the Patent Act 2011).

Two Yemeni Cases Illustrate the Application of These Remedies:

In the case of *Abdulrahman Mohammed v Yassin, Helmi, Ayad, Abdul Wassa, Abdul Aziz, and Ahmed Salah* (2013), Abdulrahman Mohammed, a merchant in the perfume industry and owner of Al Rehab Perfumes Factory, held trademark registration for his products. He discovered that the defendants were selling counterfeit products bearing his trademark, damaging the goodwill and reputation of his brand. Abdulrahman filed a lawsuit under Article 22 (2) of the Trademarks Act 2010, and the court ruled in his favour. The court ordered the defendants to cease using the infringed trademark, destroy the packaging, and remove stickers from the seized goods at their expense. Additionally, the court awarded Abdulrahman YER600,000 (equivalent to USD3000) as compensation for damages.

In the case of *Abdullah Bahamish v Muath Hamoud and Ahmed Hamoud* (2018), Abdullah Bahamish, the owner of the registered trademark, "Bahamish" for handheld brooms, sued the defendants for trademark counterfeiting. The court found that the defendants had imitated Bahamish's trademark and ruled in favour of the plaintiff. The court ordered the destruction of the infringing packaging of the seized brooms and compensated the plaintiff with YER500,000 (equivalent to USD2500) for damages. Additionally, the defendants were ordered to cover the litigation fees for both parties. It has been argued that these cases highlight the judiciary's commitment to protecting IPRs in Yemen, specifically in trademark infringement cases. It also demonstrates the courts' willingness to enforce appropriate remedies, ensuring the rights and interests of IP owners are safeguarded, thus deterring potential infringers from engaging in similar unlawful activities.

Right of Information

Under Article 47 of the TRIPS Agreement, judicial authorities have the power to compel the infringer to provide information to the rights holder. This information may pertain to the identity of third parties involved in the manufacture and distribution of the infringing products or services, as well as the channels through which these goods or services are being distributed. The primary purpose of this provision is to assist the rights holder in identifying the origin of the infringing goods and initiate suitable legal action against other participants in the allocation network (Wilkinson, 2023). Importantly, this provision is to be applied in a manner proportionate to the seriousness of the infringement.

Yemen's Trademarks Act 2010 incorporates this principle in Article 45(b), which states:

“The Tribunal may, if necessary, order the violator to inform the rightful party of the identity of others who participated in the production and distribution of the goods bearing the counterfeited trademark, and the distribution channels, unless this is not in keeping with the gravity of the violation. The competent authorities may, if necessary and once a judgement has been issued in the case, inform the rightful party of the names and addresses of the supplier, the importer and the recipient of the goods, and the quantity of goods involved in the violation.”

Indemnification of the Defendant

Article 48 of the TRIPS Agreement mandates that the judicial authorities have the discretion to order the plaintiff to compensate a defendant who has been wrongfully enjoined or restrained, particularly in cases where the plaintiff has pursued enforcement actions abusively. This compensation can include not only the damages suffered by the defendant, but also additional legal costs, such as attorney's fees (Article 48 of TRIPS). The objective of this provision is to create a balance between the rights of the IPRs holder and the protection of the purported infringer from abusive litigation practices.

Yemeni IP laws provide similar safeguards against the abuse of enforcement procedures. In cases where enforcement actions are found to have been improperly pursued, the court may require the plaintiff to compensate the defendant for any damages incurred (Article 43, and Article 44 (d) of Trademarks Act 2010, Article 66, and Article 73 of Copyright Act 2012, and Article 170 of Procedure and Civil Enforcement Law).

Administrative Procedures

Article 49 of the TRIPS Agreement extends the application of the procedural rules and legal remedies set out in Articles 42-48 to administrative proceedings. However, these administrative procedures remain subject to the general requirements specified in Article 41, which ensures that administrative authorities adhere to the same principles of fairness and due process as judicial bodies when enforcing IPRs (Article 49 of TRIPS).

In Yemen, administrative procedures for the enforcement of IPRs are overseen by designated administrative bodies tasked with enforcing IP laws (Article 2 of the Trademarks Act 2010, Patent Act 2011, and Copyright Act 2012). These procedures provide rights holders with the opportunity to file complaints with the relevant administrative authority, which is responsible for investigating allegations of infringement (General Directorate of Intellectual Property Protection, 2015). Upon receiving a complaint, the administrative authority reviews it to determine its validity and assesses whether or not any IP infringement has occurred (Article 27 of the Yemen Regulation of the Ministry of Industry and Trade).

The administrative authority is empowered to conduct investigations, gather evidence, and request information from relevant parties to support its assessment. In situations where immediate action is required to prevent further infringement or to safeguard evidence, the administrative body has the power to issue provisional measures. These can include temporary orders or the confiscation of infringing goods. Based on its investigation, the administrative authority may issue orders or decisions regarding the infringement. These decisions can range from cease-and-desist orders to the removal or devastation

of infringing goods, and the imposition of fines or penalties on the infringer (Article 27 of the Regulations of the Ministry of Industry and Trade). The administrative body also has the power to impose further sanctions, such as revoking licenses or permits related to the infringed IPRs.

In all cases, parties affected by administrative decisions have the right to appeal the decisions to judicial courts in accordance with Yemeni law. This appeals process ensures that both parties have an opportunity to present their arguments and submit evidence for judicial review (Articles 14-16 of the Trademarks Act 2010, Article 11 of the Patent Act 2011, and Articles 12-14 of the Industrial Designs Act 2010).

BORDER MEASURES IN YEMEN

The TRIPS Agreement in Section 4 of Part III (Articles 51 to 60) mandates that member states implement border enforcement measures to combat the importation of counterfeit trademark and pirated copyright goods. Yemen has generally aligned with these provisions through its Trademarks Act 2010 and Copyright Act 2012, which include procedures for the suspension of goods, appointment of a competent authority (the commercial court), safeguards against abuse, and the right of inspection for both parties (Articles 44 - 46 of the Trademarks Act 2010, Articles 70 - 76 of the Copyright Act 2012). Yemeni laws also provide exemptions for small, non-commercial imports and require applicants to post security and offer compensation for wrongful detention (Articles 44 (a) (3) and 46 of the Trademarks Act 2010, Articles 71(a) and 76 of the Copyright Act 2012).

Additionally, the Copyright Act 2012 allows for ex officio actions by customs authorities (Article 75 of the Copyright Act 2012). While the legal framework largely complies with the TRIPS, both the Trademarks and Copyright Acts fall short by not explicitly defining "counterfeit trademark goods" and "pirated copyright goods" in accordance with the TRIPS Article 51 footnotes. This lack of clarity may hinder enforcement, as it limits judicial ability to distinguish between types of infringement. Including these definitions would enhance legal certainty and strengthen Yemen's border enforcement mechanisms.

EXAMINATION OF THE COMPATIBILITY OF CRIMINAL ENFORCEMENT MEASURES IN YEMEN WITH THE TRIPS REQUIREMENTS

Section 5 in Part III of the TRIPS Agreement mandates that criminal proceedings and penalties be applied at least in cases involving wilful trademark counterfeiting and copyright piracy. Article 61 of the Agreement specifies that:

“Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of IPRs, in particular where they are committed wilfully and on a commercial scale”.

This provision requires WTO members to criminalise wilful trademark counterfeiting and copyright piracy conducted on a commercial scale by imposing penalties that may include imprisonment and/or monetary fines sufficient to provide an effective deterrent. Member states are allowed to determine the conditions of criminal procedures applicable to their national laws (Peppo & Bode, 2023). The TRIPS Agreement associates counterfeiting specifically with trademarks (Footnote 14(a) to Article 51) and thus, other forms of trademark infringement fall outside the mandatory scope of this provision. On the other hand, the term "pirated" refers to copyright and related rights violations as provided in Footnote 14(b) to Article 51 of the TRIPS Agreement.

The objective of criminal penalties is to encompass incarceration and/or monetary fines that are adequate to serve as a deterrence, in line with the severity of sanctions applicable for offences of a similar seriousness (Omolo, 2018). In appropriate cases, criminal remedies may encompass the forfeiture, seizure, and destruction of the infringing goods, as well as the materials and tools employed in their manufacturing process.

Being a WTO member, Yemen is obliged to implement the criminal enforcement measures into its domestic trademark and copyright laws (WTO, 2024). The following section evaluates the criminal enforcement provisions in Yemen's Trademark Act 2010 and Copyright Act 2012 to determine their compliance with Article 61 of the TRIPS Agreement.

Penal Provisions in the Trademark Act 2010

Unlike the repealed Intellectual Property Act of 1994, Yemen's Trademark Act 2010 incorporates explicit penal provisions, detailed in Chapter V of the law (The Trademarks Act 2010). Although the Act does not provide an express definition of counterfeit trademark products equivalent to the definition set forth in the TRIPS Agreement, it does criminalise any actions that infringe on trademark rights, including counterfeiting. Specifically, Article 47 of the Trademark Act 2010 states:

"Without detriment to any more severe penalty laid down by another law, imprisonment of up to two years and/or a fine of up to YER1,000,000 (approximately USD4000) shall be imposed upon anyone who:

- (a) Forges or counterfeits a registered trademark protected by this Act.*
- (b) Uses, in bad faith, a forged or counterfeited trademark.*
- (c) Uses, in bad faith, a trademark which is the property of another.*
- (d) Presents, offers, or uses services bearing a forged or counterfeited trademark.*
- (e) Sells, puts on sale, or possesses with the intention of selling, products which he knows bear a forged, counterfeited, or unwarranted trademark. If any of the offences described this article is repeated the penalty shall be redoubled and the offending premises shall be closed for a period of up to three months."*

Thus, Article 47 criminalises various forms of trademark infringement, including counterfeiting, and imposes imprisonment and fines as primary penalties. In addition to these primary penalties, Article 49 authorises supplementary sanctions, such as the seizure, confiscation, and destruction of infringing goods. Article 49 of the Trademark Act 2010 provides:

"The Tribunal may, depending on the gravity of the offence, impose one or more of the following supplementary penalties on the offender:

- (a) *Confiscate the seized goods bearing a counterfeited or forged trademark, dispose of them outside commercial channels and, if necessary, destroy them.*
- (b) *Destroy the counterfeited or forged trademarks.*
- (c) *Confiscate machines and equipment used to falsify or counterfeit the trademark, dispose of them outside commercial channels and, if necessary, destroy them.*
- (d) *Refuse to allow the re-exportation of the goods bearing a counterfeited or forged industrial trademark unless a change is made to the mark.*
- (e) *Publish the judgement in one or more newspapers at the expense of the guilty party."*

The criminal enforcement provisions in Articles 47 and 49 of the Trademark Act 2010 are relatively clear. Considering Article 61 of the TRIPS Agreement, it can be concluded that Article 47 of the Trademarks Act 2010 satisfies the first requirement of Article 61, which is to criminalise wilful trademark counterfeiting. However, an important issue that remains is whether the penalties outlined in Article 47 provide sufficient deterrence to satisfy the second requirement of Article 61. It is argued that the penalties under Article 47 of Trademarks Act 2010, which include imprisonment of up to two years and/or a fine of up to YER1,000,000 (approximately USD 4000), can act as a deterrent, but may fall short of the level of deterrence envisaged by Article 61 of the TRIPS Agreement for commercial-scale trademark counterfeiting.

Article 61 of the TRIPS Agreement suggests that penalties for wilful trademark counterfeiting should be substantial enough to serve as a deterrent, especially for large-scale counterfeiting operations, which can have serious economic consequences and pose significant risks to consumers. In comparison, the penalties outlined in Article 47 of the Yemeni Trademarks Act may be viewed as less stringent than those recommended by Article 61 of the TRIPS Agreement. For example, in the case of *Sadiq Muhammad v Adeeb Fadl* (2020), Sadiq, who is involved in the sale and distribution of consumer products, specifically powdered milk under the trademark "Jardo," discovered that Adeeb was selling and distributing powdered milk using a counterfeit trademark. Sadiq subsequently initiated legal action against Adeeb for trademark infringement in the commercial court. The court rendered the following decision: Adeeb was ordered to pay a fine of YER300,000 (approximately USD1,200) and prohibited from using the infringing trademark in the future. In addition, Adeeb was ordered to pay Sadiq YER700,000 (approximately USD2,800) in compensation for the damages, along with covering the litigation fees.

The court decision of *Sadiq Muhammad v Adeeb Fadl* (2020) illustrates that the penalties imposed were not sufficiently deterrent, underscoring the need for substantial amendments to the criminal enforcement provisions of the Trademarks Act 2010 to ensure alignment with the TRIPS requirements. The commercial court in this case stated: Despite the existence of the criminal enforcement procedures in Yemen's IP laws, they are inadequate to serve as a deterrent to offenders. It is essential to review and strengthen these procedures to establish effective deterrence and address IPRs infringements more effectively.

In many instances, it has been argued that lawsuits can be resolved without the imposition of civil or criminal penalties. Instead, the parties involved can invariably choose to pursue alternative dispute resolution mechanisms, such as reconciliation or settlement outside of the courtroom. This approach is notably exemplified in the case of *Saeed Abdul Jabbar v Yasin Abdullah* (2013), where the parties reached a resolution without resorting to formal litigation or the imposition of penalties. Such methods are frequently preferred for the parties which offer more cost-effective and timely solutions compared to traditional legal proceedings.

The Penal Provisions in the Copyright and Related Rights Act 2012

Chapter 11, Section III of Yemen's Copyright and Related Rights Act 2012 outlines the criminal procedures and penalties applicable in cases of violations of copyright and related rights (Copyright Act 2012). Unlike the TRIPS Agreement, the Yemen's Copyright Act does not provide an explicit definition of piracy. However, the law does criminalise any actions that amount to an infringement of copyright and related rights, including acts of copyright piracy (Article 77 of the Copyright Act 2012).

Article 77 of the Copyright Act 2012 specifies that:

“Without prejudice to more severe penalties stated in any other law, whoever commits any of the following violations shall be punished by a fine not less than YER500,000 (approximately USD2,000) or imprisonment for a period not less than one month and in accordance to the severity of the violation:

- (1) Violating any literal or financial right of the author or owner of related rights stated in the law.*
- (2) Selling, renting, showing, importing, exporting, or circulating a protected work, audio record or radio program, according to the provisions of this law without prior written permission from the author or owner of the related rights.*
- (3) Submitting false data or information with the objective of depositing.*
- (4) Counterfeiting work or phonogram, radio program published in the Republic or abroad with knowledge of the counterfeiting and selling it or offering to sell it or circulating it or renting it or exporting it outside the Republic.*
- (5) Violation of the provisions of Articles (57 and 58) of this law and distortion and deformation of folkloric expression.”*

Furthermore, the law grants the court the authority to impose harsher penalties in cases of repeated violations. The court is also authorised to impose additional penalties, as stipulated by Article 78 of the Copyright Act:

“The court may decide to double the imprisonment and fine in cases where violations provided in Article (77) of this Law are repeated. In all cases, the court, when issuing the conviction verdict, may order the enforcement of the following measures as complementary penalties.

- (1) Confiscation of infringing copies.*
- (2) Confiscation of tools and implements used in committing infringement.*
- (3) Closure the publication house, store, institution, or company which were used by the convict in committing the infringement for a period not exceeding six months. In case of repeated infringements, the closure will be permanent. In all cases, the Court shall order the destruction of the counterfeited copies.*
- (4) Publication of the conviction verdict in a daily newspaper at the expense of the convict.”*

While the Copyright Act introduces criminal penalties, including imprisonment for no less than one month or a fine of no less than YER500,000 Yemeni Rials (approximately USD2,000), it is argued that these sanctions may not be substantial enough to effectively deter copyright piracy. The penalties outlined appear insufficient when considering the scale of commercial copyright piracy, which can have

serious economic consequences. In this regard, the penalties may fall short of the level of deterrence required by Article 61 of the TRIPS Agreement, which calls for stronger deterrent measures in cases of copyright piracy. Therefore, despite the presence of criminal penalties in Yemen's Copyright Act, it is argued that there is a pressing need to introduce significant amendments to ensure the penalties are more severe and align with the requirements of the TRIPS Agreement for effective deterrence.

CONCLUDING REMARKS AND RECOMMENDATIONS

The enforcement of IPRs is a fundamental component of IPRs protection, as it equips rights holders with the necessary legal instruments and remedies to protect their intellectual creations. The enforcement provisions set out in Part III of the TRIPS Agreement establish pivotal elements to safeguard member countries to incorporate them into their national IP laws, while also offering optional enforcement measures to enhance compliance. Being a member of the WTO, Yemen is obligated to adhere to the provisions of the TRIPS Agreement on the enforcement of IPRs.

Concerning civil and administrative measures, it is found that Yemen offers a range of legal recourses for rights holders, with civil remedies being the most frequently pursued option. These include injunctions, monetary damages, and the destruction, removal, or disposal of infringing goods or materials that violate IPRs. Additionally, the courts may order the infringer to cover judicial costs and attorney fees in litigation proceedings. With this analysis, it is found that the civil and administrative procedures and remedies outlined in Yemen's IP laws are largely in alignment with the requirements of the TRIPS Agreement.

However, it is argued that there remains room for improvement, particularly in relation to evidentiary issues. The study finds that Yemeni IP laws lack provisions equivalent to Article 43 of the TRIPS Agreement, which grants judicial authorities the power to compel the opposing party to present evidence in their possession. To address this gap, introducing a similar provision within its national IP laws to ensure more effective legal procedures is recommended.

The implementation of border measures in Yemen, as detailed in the Trademarks Act 2010 and the Copyright Act 2012, generally aligns with the international standards set by the TRIPS Agreement. Consequently, the provisions related to border measures in these laws are adequate for addressing current challenges. However, there is room for improvement, particularly, both acts lack explicit definitions for counterfeit trademark goods and pirated copyright goods. It is recommended that precise definitions be adopted, similar to those in Footnote 14(a) and (b) of Article 51 of the TRIPS Agreement. Incorporating these clear definitions would enhance the effectiveness and clarity of border measures in combating counterfeiting and copyright infringement.

Regarding criminal enforcement measures, it is found that both the Trademarks Act 2010 and the Copyright Act 2012 criminalise willful acts of copyright piracy and trademark counterfeiting. These laws provide for penalties, including imprisonment and fines, as punishment for such offences. However, the current penalties need to be improved to provide a strong deterrent against intentional trademark counterfeiting and copyright piracy to align with the requirements of Article 61 of the TRIPS Agreement, which mandates the application of deterrent penalties for offences of this nature, particularly when committed on a commercial scale. The aim is to ensure the effectiveness of the country's criminal enforcement framework in discouraging potential infringers and safeguarding IPRs.

Adequate and robust penalties are not only essential for punishing offenders but also for deterring others from engaging in activities that infringe upon the rights of IP holders. This is also intended to ensure full compliance with international standards and to effectively combat trademark counterfeiting and copyright piracy. As such, it is recommended for Yemen to consider revising its IP laws to incorporate and strengthen its IPRs enforcement regime and create a stronger deterrent against IP infringement, thereby fostering a more secure environment for both local and international IPRs holders.

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