



## PIJIP Comparison of African Anticounterfeiting Documents – September 24, 2009

<b>Definition of Counterfeits</b>	<b>Draft East African Community Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations</b>	<b>Kenya - The Anti-Counterfeit Bill (2008)</b>	<b>Uganda - The Counterfeit Goods Bill (2009)</b>
	<p>Counterfeiting means without the authority of the owner of any intellectual property right in respect of protected goods, the manufacturing, producing or making, whether within the East African Community states, or elsewhere, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are substantially identical copies of the protected goods. This definition is purportedly taken from the South African Counterfeit Goods Act. § 6.4.1</p>	<p>Without the permission of an IPR holder with respect to the protected good, the manufacture, production, packaging, re-packaging, labeling or making, whether in Kenya or elsewhere, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are identical or substantially similar copies of the protected goods. PART I - Preliminary (2)(a).</p>	<p>Counterfeiting means without the authority of the owner of any intellectual property right subsisting in Uganda in respect of protected goods any of the following:</p>
	<p>Piracy means the illicit, unauthorized and illegal reproduction of works/ materials protected by copyright, patent or trade mark law or any other intellectual property law and applying to the unlawful reproduction or distribution of copyright works for purposes of trade. This definition purportedly draws from and expands on Section 2 of the Merchandise Marks Act Cap 85 of Tanzania. § 6.4.2</p>	<p>Without the permission of an IPR holder with respect to the protected good, the manufacture, production or making, whether in Kenya or elsewhere, the subject matter of that intellectual property, or a colourable imitation thereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said owner or any goods manufactured, produced or made under his license. PART I - Preliminary (2)(b).</p>	<p>The manufacturing, producing, packaging, re-packaging, labeling or making, whether in Uganda or outside Uganda, of any goods by which those protected goods are imitated in such manner and to such a degree that those other goods are identical to or substantially similar to protected goods. PART I - Preliminary (2) (a)</p>

		Without the permission of an IPR holder with respect to the protected good, the manufacturing, producing or making of copies, in Kenya or elsewhere, in violation of an author's rights or related rights. PART I - Preliminary (2)(c).	The manufacturing, producing or making, whether in Uganda or outside Uganda, of the subject matter of that intellectual property, or a colourable imitation of it so that the other goods are likely to be confused with or to be taken as being the protected goods of the owner or any goods manufactured, produced or made under his or her license. PART I - Preliminary (2) (b)
		counterfeit goods means goods that are the result of counterfeiting, and includes any means used for purposes of counterfeiting. PART I - Preliminary (2).	The manufacturing, producing, or making of copies, in Uganda or outside Uganda, in violation of the author's rights or related rights. PART I - Preliminary (2) (c)
			In the case of medicines, includes the deliberate and fraudulent mislabeling of medicines with respect to identity or source, whether or not such products have correct ingredients, wrong ingredients, have sufficient active ingredients or have fake packaging. PART I - Preliminary (2) (d)
			Counterfeit goods' means goods that are an imitation of something else with an intent to deceive, and includes any device used for the purposes of counterfeiting and goods which breach intellectual property rights and goods intended to gain unfair commercial advantage with goods of a similar nature. PART I - Preliminary (2)

<b>What Constitutes an Offense</b>	<b>Draft East African Community Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations</b>	<b>Kenya - The Anti-Counterfeit Bill (2008)</b>	<b>Uganda - The Counterfeit Goods Bill (2009)</b>
	The EAC Draft Policy does not discuss the specifics of what constitutes a counterfeiting offense.	The following are offences with respect to counterfeit goods: possession or control during the course of trade; manufacture or production in the course of trade; selling, hiring-out, bartering, exchanging, offering for any of these purpose, or displaying for any of these purposes; expose or exhibit for the purposes of trade; distribution for the purpose of trade; import into, export out of, transport through, or transport within Kenya; disposal in any other manner in the course of trade. PART V - Counterfeit Goods § 32 (a)-(g)	The following are offences with respect to counterfeit goods: possession or control during the course of trade; manufacture or production in the course of trade; selling, hiring-out, bartering, exchanging, offering or displaying goods for any of these purpose, or donating; expose or exhibit for the purposes of trade; distribution for any purpose; import into, export out of, transport through, or transport within Uganda; disposal in any other manner in the course of trade. PART IV - Counterfeit Goods § 16 (1) (a)-(g)
<b>Penalties for Counterfeiting</b>	<b>Draft East African Community Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations</b>	<b>Kenya - The Anti-Counterfeit Bill (2008)</b>	<b>Uganda - The Counterfeit Goods Bill (2009)</b>
	A first offense would be punishable by a minimum of two, up to a maximum of five, years in prison, or a minimum fine based on ten times the prevailing retail value of the protected goods. § 6.11.4.1	Penalties for counterfeiting are not proscribed in the Kenyan Anti-Counterfeiting law.	Any first offence, other than manufacturing counterfeit goods, is punishable by a minimum fine of five times the market value of the protected goods, up to a maximum of ten times the value of those goods, imprisonment of a minimum of five years up to a maximum of ten years, or both. PART IV - Counterfeit Goods § 16 (2)(a)

	<p>A second offense would be punishable by a minimum of five, up to a maximum of ten, years in prison, or a minimum fine based on twenty times the prevailing retail value of the protected goods. § 6.11.4.2</p>		<p>A second or subsequent offense, other than manufacturing counterfeit goods, is punishable by a minimum fine of ten times the market value of the protected goods up to a maximum of twenty times the value of those goods, imprisonment of a minimum of seven years up to a maximum of fifteen years, or both. PART IV - Counterfeit Goods § 16 (2)(b)</p>
	<p>A third offense would be punishable by a minimum of ten years imprisonment, with no option for a fine. § 6.11.4.3</p>		<p>A first offense for manufacturing counterfeit goods is punishable by a minimum fine of ten times the market value of the protected goods up to a maximum of twenty times the value of those goods, imprisonment of a minimum of seven years up to a maximum of fifteen years, or both. PART IV - Counterfeit Goods § 16 (3)(a)</p>
			<p>Any subsequent offense for manufacturing counterfeit goods is punishable by a minimum fine of twenty times the market value of the protected goods up to a maximum of thirty times the value of those goods, imprisonment of a minimum of ten years up to a maximum of twenty years, or both. PART IV - Counterfeit Goods § 16 (3)(b)</p>

<b>Enforcement Practices</b>	<b>Draft East African Community Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations</b>	<b>Kenya - The Anti-Counterfeit Bill (2008)</b>	<b>Uganda - The Counterfeit Goods Bill (2009)</b>
	Special investigators trained in IP issues conduct counterfeit investigations. §§ 6.5.1 & 6.5.2	Inspectors may search any place, premises, or vehicle that they have reasonable suspicion to believe contains counterfeit goods or manufactures counterfeit goods. PART IV - Inspection § 23 (1)(a)	Inspectors may search any place, premises, or vehicle that they have reasonable suspicion to believe contains counterfeit goods or manufactures counterfeit goods. PART III - Inspection § 7 (1)(a)
	Inspectors would have the right to enter any place to search for, or confiscate, counterfeit goods or evidence relate dot counterfeit goods. § 6.5.6 (a), (b)	Inspectors may seize, detain, or remove for detention all counterfeit goods and any tools used in the production, packaging, or applying a trademark to the counterfeit goods. Inspectors may take any additional measures reasonably necessary to prevent further counterfeiting. PART IV - Inspection § 23 (1) (b)-(d)	Inspectors may seize, detain, or remove for detention all counterfeit goods and any tools used in the production, packaging, or applying a trademark to the counterfeit goods. Inspectors may take any additional measures reasonably necessary to prevent further counterfeiting. PART III - Inspection § 7 (1) (b)-(d)
	Inspectors would have the right to conduct random searches of any vehicle or means of transport and all commercial property. § 6.5.6 (c)	Inspectors may search any person found in any place or vehicle reasonably suspected of containing or manufacturing counterfeit goods. PART IV - Inspection § 23 (1)(a)	Inspectors may search any person found in any place or vehicle reasonably suspected of containing or manufacturing counterfeit goods. PART III - Inspection § 7 (1)(a)
	Inspectors may seize all suspected counterfeit goods as well as all tools and means of production, packaging, or distribution of the suspected counterfeit goods. Inspectors may destroy all of these, at the defendant's expense, after a judicial determination that the goods are counterfeit. § 6.7.1 (i), (iii)-(iv)	If an inspector reasonably suspects that a person found at a site as described above can furnish any information regarding any act of dealing in counterfeit goods, an inspector may question that person and may demand from that person any book, document, or other object that may contain any relevant information about the counterfeit goods in question or anyone involved in manufacturing or dealing in those goods. However, the inspector may not require people to incriminate themselves. PART IV - Inspection § 23 (1)(e), (2)	If an inspector reasonably suspects that a person found at a site as described above can furnish any information regarding any act of dealing in counterfeit goods, an inspector may question that person and may demand from that person any book, document, or other object that may contain any relevant information about the counterfeit goods in question or anyone involved in manufacturing or dealing in those goods. However, the inspector may not require people to incriminate themselves. PART III - Inspection § 7 (1)(e), (3)

	Inspectors may seal off any place where they find counterfeit goods or where such goods are packaged. § 6.7.1 (ii)	Inspectors may seal off any place or vehicle reasonably suspected of containing, manufacturing, or packaging counterfeits. PART IV - Inspection § 23 (1)(f)	Inspectors may seal off any place or vehicle reasonably suspected of containing, manufacturing, or packaging counterfeits. PART III - Inspection § 7 (1)(f)
		An inspector may search, detain, or arrest anyone reasonably suspected of committing any offense under the anti-counterfeiting act without a warrant. The inspector may further arrest said person without a warrant if he/she obstructs the inspector, gives false identifying information (such as name or address) to the inspector, the inspector has reason to believe the person has provided false identifying information, or the inspector believes the person will not be found without unreasonable delay, trouble, or expense. PART IV - Inspection § 23 (3)	An inspector may search, or detain anyone reasonably suspected of committing any offense under the anti-counterfeiting act without a warrant. The inspector may further arrest said person without a warrant if he/she obstructs the inspector, gives false identifying information (such as name or address) to the inspector, the inspector has reason to believe the person has provided false identifying information, or the inspector believes the person will not be found without unreasonable delay, trouble, or expense. PART III - Inspection § 7 (4)-(5)
		Inspectors must remove all counterfeits from the places they are found, inventory the goods, and take them to a counterfeit depot. PART IV - Inspection § 25 (1) (a)-(d)	Inspectors may not destroy seized counterfeits unless they are perishable, pose a public health risk, or are dangerous. PART III - Inspection § 7 (2)
			Inspectors must remove all counterfeits from the places they are found, inventory the goods, and take them to a counterfeit depot. PART III - Inspection § 11 (1)

<b>Judicial Proceedings</b>	<b>Draft East African Community Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations</b>	<b>Kenya - The Anti-Counterfeit Bill (2008)</b>	<b>Uganda - The Counterfeit Goods Bill (2009)</b>
	Counterfeit cases should be tried to separate, special judicial bodies that are experts in intellectual property issues. § 6.10.1		
	Judges may order a defendant to disclose the source of counterfeit goods. The draft policy does not include any privilege to avoid self-incrimination. § 6.10.2 (c)		
<b>Additional Measures</b>	<b>Draft East African Community Policy on Anti-Counterfeiting, Anti-Piracy and Other Intellectual Property Rights Violations</b>	<b>Kenya - The Anti-Counterfeit Bill (2008)</b>	<b>Uganda - The Counterfeit Goods Bill (2009)</b>
	IPR holders may file a complaint to a commercial landlord that their tenant is producing counterfeit goods. At which point, the landlord must issue a warning of eviction if the counterfeit activity does not end. If the tenant fails to comply, the landlord will be bound to evict the tenant. There is no mention of a tenant's ability to refute a claim of counterfeiting or an ability to appeal the decision of a landlord. This is based on a practice in Australia. § 6.12	Judges may order the destruction of counterfeit goods and any tools used in the production of counterfeit goods at the defendant's expense once the defendant is convicted. PART IV - Inspection § 28 (2)	Judges may order the destruction of counterfeit goods and any tools used in the production of counterfeit goods at the defendant's expense once the defendant is convicted. The court may otherwise dispose of such materials as the court sees fit. PART III - Inspection § 12 (2)-(3)
	The law would require cancellation of any website that advertise counterfeit material. This is based on U.S. law. § 6.12		Judges must order the closure of premises where counterfeit goods manufacturing is discovered. PART IV - Counterfeit Goods § 16 (5)(b)
	A court may issue an ex parte order to freeze a suspected counterfeiter's bank accounts so that profits from counterfeit goods may be seized and the defendant can afford monetary damages. § 6.7.2		