

Digitalization and the Justiciability of Industrial Design Rights under Annex IV of the Bangui Agreement

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Abstract

Modern technology and digitalization have not merely reshaped the landscape of industrial design protection and the enhancement of justice under Annex IV of the Bangui Agreement; they have redefined the very conditions under which design rights can be asserted, challenged, and judicially enforced. As modern creative arts have migrated into virtual spaces, so has infringement become instantaneous and borderless, and as evidence increasingly takes digital form, the Justiciability of industrial design rights stands at a crossroads. This raises questions about the validity of design registrations, cross-border enforcement, and the evidentiary standards for proving infringement, which are central to determining whether a design dispute is suitable for judicial resolution. In response to these concerns, this paper examines the effectiveness of Annex IV in providing justiciable grounds for design owners to bring claims before adjudication bodies. Employing a doctrinal research method, it concludes that the Justiciability of industrial design rights is significantly challenged by technological advancements. This is because it is difficult to identify online infringers, secure digital evidence, and expedite action in cross-border online marketplaces, which allow counterfeiters to reach consumers quickly. It recommends, *inter alia*, recalibrating Annex IV to include modalities for digital filing, adopting a new substantive approach to examining designs during registration, strengthening inter-agency cooperation, training judicial personnel in forensic evidence, and ensuring legislative alignment with other regional and international standards.

Keywords: Digitalisation, Justiciability, Industrial design, Bangui Agreement.

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1. INTRODUCTION

Justiciability is a legal concept that compels a justice system to entertain matters based on actual fault or wrong, rather than frivolous claims. This helps in upholding the integrity of legal proceedings and promotes a fair administration of justice [1]. The acquisition of design rights gives creators exclusive control over the aesthetic aspects of their products, which become meaningful only when they can be enforced through legal mechanisms. Justiciability, therefore, acts as the nexus between the abstract existence of a design right and its concrete protection in practice [2]. It presupposes that a claimant possesses a valid, subsisting

design right, that an actionable infringement has occurred, and that the dispute falls within the court's jurisdiction and competence.

A justiciable issue is one that satisfies all requirements to institute a hearing [3], that is, a legal dispute suitable for an adjudication with genuinely identified claims, creating a means to remedy rights violations of identified claimants. If the issue falls beyond what is judicially determinable, it is non-justiciable. The safeguarding of design rights and the guarantee of justice in modern-day society are even more complicated. The digital era demands a legal framework

¹ Wen H, (2023), "Designing Protection: Exploring Industrial Design Rights in Intellectual Property", *Intel Prop Rights review*, Vol.11 (4), p1.

² Williams D (2021), available at <https://www.researchgate.net/publication/365345025>

What_is_Justiciability#full-text. Accessed on January 3rd 2026.

³ Ibid.

that is not only doctrinally sound but technologically responsive; one capable of safeguarding the economic and cultural value of design in a marketplace where replication is effortless, and enforcement is complex.

The need for Justiciability is fundamental because it transforms “rights on paper” into enforceable “rights in practice.” Without a justiciable framework, the exclusive rights granted under Annex IV of the Bangui Agreement would be mere administrative declarations with no power to influence the market. Justiciability ensures that when an owner’s visual product identity is fudged or counterfeited, there is a clear, legitimate path to a courtroom where a judge can issue a binding order, such as an injunction to stop production or award damages, thereby providing the “teeth” necessary for the law to function as a true deterrent. Within the 17 member states of the African Intellectual Property Organization (OAPI), the acquisition and enforcement of industrial design rights are governed by Annex IV of the Bangui Agreement. While the regional treaty was intended to promote administrative efficiency and legal certainty, its practical application has been fundamentally hampered by rapid technological advances, which have transformed nearly every facet of human activity, including the creation, dissemination, and protection of intellectual property. Annex IV, largely conceived for tangible goods, lacks explicit provisions to address the rapid reproduction, dissemination via Computer Aided Design (CAD) files or 3D printing, and the digital manifestation of the aesthetic form of designs. This creates a significant legal vacuum, where infringement across jurisdictions often outpaces the slow pace of territorial mechanisms. Consequently, right holders face immense difficulty in evidence gathering, as digital assets bypass traditional border controls and physical seizures, rendering the established remedies of seizure and destruction, together with court actions, often impractical, if not entirely inadequate for addressing the unique challenges posed by technological evolution. The future of industrial design protection and the guarantee of justice within the OAPI will depend on how effectively Annex IV evolves to meet the realities of digital creation, digital infringement, and digital adjudication, transforming design rights from static legal titles into dynamic, enforceable instruments of innovation.

2. The Basis for Justiciability of Industrial Design Rights under Annex IV of the Bangui Agreement

The basis for Justiciability refers to the legal grounds or justification for someone to seek a remedy in a court of law. In the context of industrial design rights under Annex IV of the Bangui Agreement, a design

owner is entitled to seek judicial intervention whenever his/her visual monopoly is violated by unauthorized acts of manufacturing, importation, or sale. This legal recourse is fundamentally based on proof of ownership, the demonstration of substantial similarities between the products, a violation of exclusive rights, and the resulting economic or reputational harm.

2.1 Proof of Legal Title (Ownership)

Registration serves as the primary means of establishing ownership and ensures justice for the legitimate owner in design disputes.⁴ The African Intellectual Property Organization (OAPI) follows the first-to-file principle, granting title to the individual or entity that files first. Consequently, ownership rights are not obtained by the mere creation of a design but are conferred through the administrative registration process with OAPI [5]. The claimant must present a certificate of registration issued by the African Intellectual Property Organization (OAPI), which provides him or her with the *locus standi* to seek redress. Article 4 of Annex IV provides that, “*A design shall be owned by the person who created it or his successor in title; however, in the absence of proof to the contrary, the first applicant shall be presumed to be the creator of the design.*” This provision establishes a fundamental legal balance between the natural rights of the creator and the administrative necessity of a registration-based system. In the context of justiciability, this provision gives the court a clear starting point for adjudicating disputes. Consequently, a court cannot adjudicate a design dispute if the claimant fails to produce legal title. This ensures that only the rightful holder can initiate a legal action. Without such proof, a claim is rendered non-justiciable because there is no recognized legal right for the court to protect, and no cause of action can be sustained. This, therefore, means that proof of ownership does not merely support a case; it acts as the essential threshold that transforms a private grievance into a triable legal matter, allowing the judiciary to exercise its authority over the dispute.

2.2 Violation of Exclusive Right

Redress is based on the fact that a third party has performed an act that is strictly reserved for a design owner [6]. The Bangui Agreement is clear on the fact that, after registration, a design owner has the right to exploit and to prevent others from manufacturing, importing, selling, or offering for sale any product that reproduces his design without express authorization [7]. Under Annex IV, these rights constitute a legal monopoly designed to protect the commercial value of aesthetic innovation, any unauthorized encroachment is

⁴ Galloway, R. (1990), “Basic justiciability analysis”, *Santa Clara Law Review*, Vol 30, issue 4, pp. 911-934.

⁵ Article 4(2) of Annex IV of the Bangui Agreement.

⁶ Shalk, S. *et al* (2011), “Consumer’s Right to Redress against Traders under the Law of Supply of Goods:

Acomparative Study of different Jurisdiction”, *Proceedings of the 2nd International Conference on Business and Economic Research*, Vol 2 issue 2, pp. 146-162.

⁷ *Ibid.* Article 3.

regarded as infringement [8]. This violation serves as the primary cause of action for redress, as it signifies a direct breach of the statutory protection granted by the state. From a Justiciability standpoint, the violation transforms a theoretical protection into a justiciable issue, providing the court with a specific wrong to investigate.

The violation directly undermines the economic incentive for innovation and the brand's distinctiveness in the marketplace. Because industrial design law aims to protect the "eye appeal" that drives consumer choice, even minor unauthorized reproductions can cause significant market confusion and water down the value of the original design. The focus is not necessarily on the bad faith of the infringer, but on the fact that an unauthorized act has occurred within the scope of the protected monopoly. This violation empowers the judiciary to intervene decisively through remedies such as imprisonment, fines, injunctions to halt the infringing activity, and damages to compensate the owner [9].

2.3 Substantial Similarities

Substantial similarity is key evidence used to determine if a contested design infringes on another registered design by evaluating whether the two designs possess an essential aesthetic identity [10]. It serves as one of the primary bases for Justiciability in design infringement cases. For a dispute to be triable, the claimant must demonstrate that the allegedly infringing product so closely replicates the essential aesthetic features of their registered design, and it constitutes a misappropriation of individual character [11]. Image comparison techniques are highly effective for detecting any infringement [12]. The mode of detection is by a thorough evaluation of the visual similarities and differences between design specimens. This method serves as a safeguard for designers and creators against unauthorized reproductions and subsequent modifications that may infringe on their intellectual property rights. It moves the controversy beyond mere suspicion, providing the court with a concrete visual comparison to adjudicate. This method typically involves the analysis of digital images to uncover potential instances of infringement [13].

At the core of this process is the ability to distinguish between original works and those that merely replicate or mimic them. Image comparison techniques offer rapid screening capabilities, enabling quick assessments that save time and resources in legal disputes [14]. Without establishing sustainable similarity, there is no legal wrong for the court to address, as minor or coincidental resemblance falls outside the scope of the owner's monopoly. Advanced image comparison tools typically use criteria such as pixel-by-pixel matching, structural similarity indicators, and feature-based procedures [15]. These techniques quantify visual differences and similarities, allowing IP owners to detect subtle infringements that may be overlooked.

However, the effectiveness of this method can be limited by factors such as image quality and resolution, as well as modern technologies like AI and 3D printing, which make it much harder for courts to decide whether one design has copied another. These tools can quickly generate many versions of a design with slight changes, while still looking very similar to the original. Because the law relies on a visual test to decide if a right was infringed, these tiny digital changes make it difficult for judges to draw a clear line between a copy and a new creation. We therefore propose a shift from overall impression to a probabilistic similarity framework including tiered similarity levels, an expert system, and reinterpreting informed user for digital contexts. Despite these limitations, image comparison techniques are complemented by pattern recognition systems that improve accuracy [16]. By combining image comparison methods with pattern recognition, the overall reliability of infringement detection is greatly improved, providing a more comprehensive approach to protecting intellectual property.

Ongoing advancements in image processing technology, including the development of deep learning models and the growing capabilities of artificial intelligence, continue to refine these image comparison methods [17]. As these technologies evolve, they make the techniques increasingly essential in the fight against design infringement, equipping IP owners with more

⁸ Ibid Article 35 (1).

⁹ Article 36 of annex IV of the Bangui Agreement provides that, "any knowing infringement of the rights enshrined in Annex IV shall be punishable by imprisonment for one to three years and fine of 5000,000 to 30,000,000CFA francs or one of these penalties alone, without prejudice to civil damages."

¹⁰ Greenstreet, R. *et al*. (2024), "What is "Substantial Similarity"? Towards a Methodology for Reducing Subjectivity in Design Copyright Disputes", *Marquette Intellectual Property & Innovation Law Review*, Vol 28, issue 2, pp. 174-189.

¹¹ Ibid..

¹² Fromer, J. & Lemley, M. (2014), "The Audience in Intellectual Property Infringement" *Michigan Law Review*, Vol 112, issue 7, Pp 22.

¹³ Ibid.

¹⁴ Fromer J & Lemley M, (2014), "The Audience in Intellectual Property Infringement" *Michigan Law Review*, Vol 112, issue 7, Pp 22.

¹⁵ Ibid.

¹⁶ Nelson, J. *et al*, (2026). "Enhancing Diagnostic Accuracy Using Deep Learning Models in Multi-Modal Medical Imaging for Complex Disease Detection", *international Journal of Medical Imaging*, Volume 6, Issue 1, PP.1-11.

¹⁷ Ibid.

effective tools to protect their creative works. Annex IV of the Bangui Agreement, while establishing the crucial concept of substantial similarity as a benchmark for infringement under Article 13, remains notably silent on the specifics of the methodology for detecting and assessing this similarity. This silence necessitates reform, as the current abstract standard is increasingly vulnerable to the faint technologically driven alterations of digital designs, leaving domestic courts without clear, standardized tools to consistently adjudicate infringement claims. This reform will ensure that designers and creators are better positioned to preserve their rights in an ever-evolving digital society. Conversely, the same technological advancement that empowers right holders also provides infringers with sophisticated means of mass production. Instead of acting as a protective shield, technology becomes a subversive tool for aesthetic piracy, allowing bad-faith actors to dissociate a design from its original author and flood the market with digital copies that are increasingly difficult to trace, authenticate, or legally challenge through conventional forensic comparison.

2.4 Actual or Imminent Harm

The presence of actual or imminent harm is a vital component of justiciability under Annex IV of the Bangui Agreement, as it ensures that judicial intervention is grounded in a real and concrete controversy rather than a theoretical dispute [18]. Actual harm occurs when a design owner's market position is already being eroded by infringing products, resulting in quantifiable damage, such as loss of sales, price suppression, or dilution of brand reputation [19]. In such cases, the harm provides the starting point required for a lawsuit, allowing the court to move past administrative formalities and adjudicate the economic impact of infringement [20]. This tangible injury justifies the court's role in making the victim whole again, through monetary compensation and the destruction of infringing designs. The concept of imminent harm allows for a proactive judicial response even before a full-scale market violation has occurred. Recognizing imminent harm as a basis for justiciability allows design owners to request provisional measures and urgent injunctions, such as seizure and destruction of infringing products, customs interdiction, and preliminary injunctions. This ensures that the legal system can intervene at the earliest possible stage to prevent irreparable damage.

2.5 Statutory Mandate as a Basis for Justiciability

The final basis is the written law itself. Article 28 of Annex IV of the Bangui agreement, in itself, constitutes the statutory mandate that serves as the primary legal authority empowering member nations to adjudicate and render just rulings on design disputes arising from their respective jurisdictions. This mandate is also a binding regional treaty that compels the national courts of the 17 member states to recognize, protect, and enforce the exclusive rights granted through registration [21]. Without this statutory command, the judiciary would lack the legal basis to intervene in private disputes, and industrial designs would remain unprotected. This statutory mandate ensures that the enforcement of design rights is consistent and predictable across diverse national borders, which is essential for the triability of cross-border infringement claims. The Agreement's statutory mandate aligns with the principle of territoriality. This legal doctrine grants a sovereign state exclusive authority to legislate, enforce laws, and adjudicate crimes occurring within its geographic boundaries, including cyberspace.

The statutory mandate of the Bangui agreement also empowers national courts to use their discretion to provide specific types of redress, such as seizure of infringing goods, the awarding of damages, and the imposition of criminal penalties, which paves a pathway to justice for design owners and establishes a clear duty for the state to uphold the owner's monopoly.

3. The Practical Reach of Justiciability

The implication or outcome of Justiciability would refer to the legal resolution that arises once a dispute has been deemed suitable for judicial consideration and has gone through the necessary legal process. It is the final determinations by a court or tribunal to address the core legal dispute of the case and make pronouncements. These end results include binding adjudication and dispute resolution, remedial intervention and corrective justice, legal certainty and jurisprudential development, deterrence, and the restoration of market integrity for design products.

3.1 Binding Adjudication and Resolution of Disputes

Binding adjudication and the resolution of disputes are the first results of the Justiciability of design rights. This pronouncement determines the rights and liabilities of the parties involved in the dispute. It also signifies a final ruling on whether the alleged infringement occurred, who is liable, and the specific

designs shall be brought before the civil court and judged as for summary proceedings." It further provides in article 28(2) "where the competent domestic court for criminal matters is seized of a case for counterfeiting, it shall rule on the challenge brought by the defendant either as to invalidity or expiry of the certificate of registration of the industrial design, or on the ownership of the certificate."

¹⁸ Article 28 of Annex IV of the Bangui Agreement.

¹⁹ Williams D (2021), available at https://www.researchgate.net/publication/365345025_What_is_Justiciability#full-text. Accessed on January 3rd 2026.

²⁰ Ibid.

²¹ Ibid. Article 28 (1) of Annex IV of the Bangui Agreement provides "Civil action relating to industrial

scope of protection accorded to the design. Once an industrial design case satisfies all justiciable criteria, such as a valid OAPI registration, an alleged act of infringement, and actual harm, the matter is heard and decided by a competent court. The ensuing judgment is final and legally authoritative and can be appealed. This outcome determines whether the contested design infringes the registered special appearance and assigns liability. Without a judicial pronouncement, the design owner would remain in perpetual uncertainty about their aesthetic monopoly, while the alleged infringer could continue operations with impunity. Consequently, it brings closure to the immediate dispute, arguably providing an irrevocable declaration of the design owner's exclusive rights under Annex IV, settling the specific controversy between the parties, and providing much-needed clarity on the validity and scope of the intellectual property in question.

3.2 Remedial Intervention and Corrective Justice

Flowing directly from the adjudication, the court exercises its power to grant appropriate remedies. Once a court has come to a decision that a registered OAPI design has been unlawfully exploited, the resulting action would be to implement remedies that rectify the prejudice suffered by the right holder. This involves a range of options under Annex IV, including compelling the infringer to cease and desist through injunction, ordering the seizure and destruction of counterfeit and articles and their means of production, and mandating compensatory damages for lost profits and reputational harm [22]. Corrective action is vital for rights holders and the wider market. The implications for the design owner involve compensation for their financial losses and the prevention of further misuse of their exclusive aesthetic rights [23]. On the other hand, it sends a clear message of increased protection, preservation of fair competition, and incentivization of investment in aesthetic innovation. Without effective remedial intervention, the mere recognition of an infringed right would be an empty victory, rendering design protection ineffective. The Justiciability of these rights finds its ultimate practical validation in the court's capacity to deliver substantive corrective justice, ensuring that legal wrongs are met with legally mandated solutions.

3.3 Legal Certainty and Jurisprudential Development

When an industrial design dispute is brought before a competent court and adjudicated, the resulting judgment significantly clarifies the ambiguities inherent in statutory interpretation [24]. Each judicially

determined case acts as a building block for jurisprudential development, refining the application of the Bangui Agreement over time. The cumulative body of case law provides judges with interpretative benchmarks for future disputes, gradually filling legislative lacunae and adapting the framework to evolving commercial and technological realities [25]. Such development is vital for ensuring that Annex IV remains a potent instrument, capable of adapting to new forms of designs and infringement, and continually striving for a harmonized and effective interpretation that strengthens the overall regime for industrial design protection across the OAPI community. For instance, a ruling on what constitutes individual character or substantive similarity within a specific product category under Annex IV provides invaluable guidance. This allows both designers and businesses to better understand the scope and limitations of protection, facilitating informed decision-making regarding design creation, registration, and market exploitation, thereby reducing legal risk and fostering a more predictable environment for innovation within the OAPI member states.

4. Challenges Faced in the Justiciability of Industrial Design Rights

The Justiciability of industrial design rights is currently hampered by a formidable array of challenges that threatens to render the traditional enforcement mechanisms of the Bangui Agreement obsolete. Prominent among these setbacks is the anonymity of infringers online, which allows counterfeiters to produce and distribute infringing products with unprecedented speed and minimal risk of detection. This digital shift is further exacerbated by long-standing administrative delays, jurisdictional challenges, and evidentiary challenges, amongst others.

4.1 Anonymity of Infringers Online

After an infringement has been detected, it is necessary to identify the alleged infringer and their place of residence, which presents a significant challenge to design rights holders and law enforcement [26]. The concept of anonymity becomes a reality only after the act of infringement has occurred, which makes it a serious problem to uncover. Cyber offenders are very quick to wipe their tracks by using virtual private network (VPN) software to change and mask the location of their computer systems, making it appear as if they were physically operating from Germany, whereas they are

²² Ibid. Articles 35 and 36.

²³ Prescott, E. (2010), "Market-based Corrective Action", *The Review of Financial Studies*, Vol 23 issue 2, pp. 782-820.

²⁴ Ojeih, C., & Jolasinmi, M. (2024), "Industrial Designs and Litigation in the Nigerian Courts: A Look at the Statutory and Judiciary Posture" *Nile University Law Journal*, Vol 6, issue 1, pp. 1-13.

²⁵ Ibid.

²⁶ WIPO, 'Primer on electronic commerce and intellectual property issues' (2000) available at https://www.wipo.int/edocs/mdocs/sme/en/wipo_wasme_ipr_ge_03/wipo_wasme_ipr_ge_03_13-main1.pdf accessed on the 15th October 2025.

somewhere in China, the US, France, or the UK [27]. This creates a situation where intellectual property rights holders may remain unaware of ongoing infringements in cyberspace. It is proper to acknowledge that uploading a protected design online poses a risk of hacking, forgery, and dissemination by third parties. This problem of detecting offenders is so pressing that it has led to the emergence of a new industry: professional Internet watch services that monitor the Internet for infringing activity on behalf of rights holders [28].

Devices such as mobile phones, personal computers, laptops, palmtops, tablets, flash drives, and other portable devices are modern tools used for data storage, dissemination, and buying and selling of products over the internet. The increased use of technology poses formidable threats to the preservation of industrial design rights. Scholars have articulated that the capabilities inherent in digital technologies enable users to duplicate, edit, and morph content with a level of proficiency that is often largely undetectable, hence keeping them anonymous [29]. This fosters an environment rife with opportunities for confusion, fraud, and the infringement of intellectual property rights. If a plaintiff wishes to sue for an infringement, he or she must know the identity of the infringer. This poses a serious problem, as technological development has enabled internet users to use virtual private network (VPN) apps to remain completely anonymous.

The challenge with anonymity is that some countries justify their relevance on the basis of the freedom to enjoy the right to privacy and other domestic rights online. In the United States, if a user chooses to keep their identity anonymous in cyberspace, this is considered a domestic right protected under the First Amendment [30], which conforms with article 12 of the Universal Declaration of Human Rights that guarantees the right to privacy by contending that no one shall be subjected to arbitrary interference with their privacy, family, home, or correspondence, nor attacks upon their honor and reputation, and provides the right to legal protection against such interference.

Similarly, Article 1 of the 2010 law on Cybersecurity and Cybercriminality in Cameroon also protects fundamental human rights, including dignity, honor, and the respect for privacy in digital communications. It is imperative to remind ourselves that the right to privacy is not absolute; when this right is

invoked, a balance should always be struck between the rights of the concerned and those of others. Balancing these rights within the Bangui community poses some difficulties. This is because digital anonymity of infringers is often shielded by national data protection laws that prioritize user confidentiality, thereby obstructing the right holder's ability to identify the infringer, at least not without going through administrative hurdles. This difficulty is exacerbated by the absence of specific provisions in Annex IV that would allow for the compulsory disclosure of digital footprints such as addresses, physical location, and other relevant data from the host telecom network, without passing through the complex process of securing a court order. This makes the collection of digital evidence almost impossible or allowing access when evidence has been tampered with due to delays.

The information required to identify an online infringer can only be obtained from an Internet Service Provider (ISP). They can match the relevant Internet Protocol address of a computer used on their network to the individual subscriber. The question that begs an answer is, can an ISP be held liable for the dissemination of a protected design by its user simply because the user cannot be identified? The answer would be in the negative. This is because it would violate the principle of intermediary immunity and the civil law requirement of personal fault [31]. ISPs are not required to actively monitor their networks to identify users' infringing content. They merely transmit or host data without interference. They can only be held liable if they had prior knowledge of the infringing act and did absolutely nothing to stop or report it to the appropriate body [32]. There are no harmonized international laws compelling an ISP to disclose a subscriber's identity or other related information. The TRIPS Agreement, however, in Article 47 includes an optional provision which addresses the right of information in connection with civil proceedings. This is limited to information which the infringer himself must disclose, and does not extend to disclosure by third parties.

In the U.S., the Communications Decency Act (CDA) provides immunity to website operators and other interactive computer services from liability arising from content posted by third parties, even when the website operator or interactive computer service has become aware of the tortious nature of the content. Section 230 of the Act provides that: "No provider or user of an

²⁷ James, J. & Paul, T. (2011), *Intellectual Property and Private International Law*, Oxford University Press, 2ed, pp 535.

²⁸ For example, Net Searchers International, Ltd. at <http://www.netsearchers.co.uk>, and Cyveillance, Inc. at <http://www.cyveillance.com>, and Interdeposit at <http://www.iddn.org>, accessed on 15th October 2025.

²⁹ Hitsevich, N. (2015). Intellectual property rights infringement on the internet: an analysis of the private

international law implications. (Unpublished Doctoral thesis, City, University of London).

³⁰ Moore A, (2010), "Privacy Rights: Moral and Legal Foundations" *The Pennsylvania State University Press*, Vol 20, issue 2, pp 338-340.

³¹ Article 12-14 of the European Union Directives 2000/31/EC (E-Commerce Directives).

³² Section 512 of the Digital Millennium Copyright Act 1996.

interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider". In the case of *Zeran v America Online Inc* [33], the United States Court of Appeals for the Fourth Circuit determined the immunity of Internet service providers for wrongs committed by their users under section 230 of the CDA. The court held that plaintiff Kenneth Zeran's claims of malfeasance by American Online were barred by the CDA, holding that section 230 creates a Federal immunity to any cause of action that would make service providers liable for information originating from a third-party user of the service.

In the UK, the situation is different from what applies in the U.S. If the identity of an online infringer is known only to the Social Network Provider (SNP), it is possible in the UK to seek a special disclosure order, known as the Norwich Pharmacal Order against the Social Network Provider. A Norwich Pharmacal Order is a court order requiring an SNP to disclose documents or information, such as the identity of the wrongdoer [34]. The purpose of the order is to enable a prospective claimant to obtain the necessary information, such as the name of the offender, before instituting legal action. It is an equitable remedy at the court's discretion.

The identification of online offenders poses a challenge in the application of laws. It presupposes that, for the law to be applicable and to produce the desired effect, there must be a crime committed and the perpetrator properly identified. This stance was echoed in the dictum of Lord Denning in the celebrated case of *Macfoy v. United Africa Company Limited* [35], where he ruled that it is the cardinal principle of law that, "you cannot put something on nothing and expect it to stand". The point being emphasized here is that, insofar as the identities of criminals remain elusive, no law, however well-crafted or intended, can work because the law does not work in a vacuum; in another way, the international instruments signed were principally intended to apprehend and prosecute properly identified infringers of intellectual property rights, so if they are not identified, the purpose of Justiciability is defeated.

Under Annex IV of the Bangui Agreement, the anonymity of infringers creates a significant jurisdictional and economic obstacle to prosecution. It is practically unrealisable to seize a court in a defined jurisdiction without being certain of the actual location

of the offender [36]. Cyberspace is a borderless jurisdiction, and crimes occurring in cyberspace would hardly be restricted to a particular location unless the offender has been "virtually unmasked", uncovered, or tracked to a physical location with the help of modern technology. This, however, seems hard to come by, given the high shortage of technological experts; fast-tracking cyber offenders remains an illusion in most cases. This reality is why design rights holders frequently petition courts for injunctions against intermediaries like Internet service providers [37].

4.2 Jurisdictional Challenges

Jurisdiction in general refers to the powers of states to exercise authority over all persons and things within their territory [38]. This same concept applies to situations involving the court's jurisdiction. The concept of jurisdiction, as conceived under this heading, would, on the one hand, refer to the powers courts or states have over judicial or administrative litigation, while, on the other hand, it would refer to physical geographical location and cyberspace. The latter has traditionally been closely linked to the notion of sovereignty, which is the exclusive prerogative a state has within and without a country. This includes a country's geographical and cyberspace jurisdiction.

4.2.1 Power of Courts and States over Juridical or Administrative Litigation

Jurisdictional challenges here would lie in the plurality of substantive and procedural national laws governing design litigation. It is important to note that the Bangui Agreement is merely a framework law. Annex IV of the Bangui Agreement has provided framework provisions mandating that states follow prescribed national procedural laws in relation to litigation arising from industrial designs [39]. It also mandates member states to enact or apply existing substantive laws in situations where the convention is silent. These practices reflect a fragmented and inconsistent approach to the regulation and enforcement of design rights across the region. This is because, in matters of practice and procedure, all 17 member nations of the Bangui Agreement have a plethora of sectoral laws, which in turn lead to different litigation outcomes for the same crime. This is not in line with the principle of a fair trial in criminal law.

³³ *Case No 129 F 3d 327* (4th Cir 1997).

³⁴ The order will not be given against someone who is a mere witness in the case- see *Harrington v Polytechnic of North London* [1984] 1 WLR 1293 and *Ashworth Hospital Authority v MGN Ltd* [2002] UKHL 29; [200] 1 WLR 2033.

³⁵ (1962) AC 152.

³⁶ European Commission Report, "Application of Directive 2004/48 on the enforcement of intellectual

property rights COM 779 final" (2010). Available at <https://www.google.com/search?q=European+Commission+Report%2C+%E2%80%9CApplication+of+Directive+2004%2F48+o> (Accessed March 23rd 2026).

³⁷ *Ibid.*

³⁸ Ruth, I. (2000), "Intellectual Property Rights and International Justice", *Fordham intellectual property Law Journal*, Vol. 23, issue 4, P. 1043.

³⁹ Article 28 of Annex IV of the Bangui Agreement.

4.2.2 Physical Geographical Location and Cyberspace

Jurisdiction within online infringement poses significant drawbacks for states. The complex nature of digital designs, which can be counterfeited and distributed on online marketplaces, qualifies it as a cross-border crime whose enforcement measures require more than just a state to regulate and protect the rights of design owners [40]. Once a crime is committed, the question that arises is who did it and where is the alleged offender? Today, sophisticated virtual private networks (VPNs, such as Cyber Ghost) are used to hide the identities of people behind computers [41]. The lack of intellectual property experts and forensic specialists who can help victims makes the situation almost hopeless. It has become increasingly difficult to prosecute online design crimes. In physical geographical demarcations, the infringer's location matters, as it determines which court is competent to try the matter. With a community law like the Bangui Agreement, an offender may relocate his infringing activity to another country where he is certain that it has weak substantive and procedural law in order to guarantee design rights protection. This is problematic because it encourages forum shopping and further hinders Justiciability.

4.3 Evidentiary Challenges

According to Aguda Akinola, evidence is the means by which alleged facts are established or disproved in a legal investigation, excluding mere inferences and arguments, encompassing oral testimony, documents, and physical items that prove or disprove facts, forming the basis for judicial decisions [42]. Section 2 of Chapter 62 of the 1958 Evidence Ordinance also defines it as the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved, and includes statements by accused persons, admissions, judicial notice, presumptions of law, and ocular observation by the court in its judicial capacity. According to the Cameroon Criminal Procedure Code, evidence is defined as the means of proof used to establish the truth, existence, or non-existence of a criminal act and to identify the perpetrator [43]. The issue of evidence is paramount in

the field of Justiciability, especially given how technology has made it difficult to gather evidence.

The online design infringement poses a significant challenge for evidence gathering. This is because information or data that can identify or link the offender to the offense can be easily deleted, making it impossible to recover [44]. The aspect of identity theft also helps mask offenders' identities, as the information gathered often points to an innocent individual who knows nothing about the act of infringement. This is because, when caught, offenders may provide the police with the stolen name, address, or driver's license of an innocent person. The criminal then disappears, leaving the victim to deal with warrants, court summons, and a tainted criminal record [45].

Unlike online infringements, physical violations are easy to fast-track. Physical observation is a prudent way to track counterfeit design products [46]. When detected, evidence can be recorded on the spot with a view to securing a conviction. The challenging nature of gathering physical evidence stems from the principle of territoriality, which holds that IP rights are confined to the geographic boundaries of the country or region that grants them [47]. If a design is registered in one country or region, it does not automatically provide protection in another. This means an infringement can be addressed only if it occurs within the jurisdiction where the right is registered, thereby challenging the national treatment principle. This principle causes a profound disjunction of cross-border litigation, thereby hindering Justiciability. Evidence of substantial similarity or manufacturing blueprints located in a foreign jurisdiction cannot be seized or audited without seeking Mutual Legal Assistance, a complex process that takes into account the apathy of states. This gives offenders ample time to hide the core components of their piracy, such as digital master files, in territories where the right holder lacks the immediate legal standing to deploy protective measures like seizure, rendering Annex IV of the Bangui Agreement ineffective to secure protection outside the Bangui Community.

⁴⁰ Thomas. S. (2006), "Information Technology and Arbitration: A Practical Guide", available at https://books.google.cm/books/about/Information_Technology_and_Arbitration.html?id=Zto0c7nXKwoC&redir_esc=y accessed on 5th May 2026.

⁴¹ Karen, E. (2025), "Artificial Intelligence and the Disruption of Law: Emerging Challenges" *International Journal on Science and Technology*, Vol 16, issue 2, pp.1-9.

⁴² Aguda, T. (1989), *The law of evidence*, Spectrum Law publishing, Also see John S. *et al*, (2002), Oxford Dictionary of Law (2002), 5th Edition.

⁴³ Section 167 of the CPC.

⁴⁴ Hitsevich, N. (2015). Intellectual property rights infringement on the internet: an analysis of the private

international law implications. (Unpublished Doctoral thesis, City, University of London).

⁴⁵ United Nations, (2011), *Handbook on Identity Theft Related Crimes*. Available at, https://www.unodc.org/documents/congress/background-information/Corruption/Handbook_on_Identity-related_Crime_ENG.pdf. Accessed on the 3rd of March 2026.

⁴⁶ Mavianova, T. & Fich, R. (2010), "Counterfeit Products on the Internet: The Role of Seller-level and Product-level Information", *International Journal of Electronic Commerce*, Vol 15, issue 2, pp 79-104.

⁴⁷ Article 4bis of the Paris Convention 1883.

4.4 Registration Delays

Industrial design rights are generally not fully protected until a certificate of registration is issued. In accordance with Article 4(1) of Annex IV of the Bangui Agreement, only properly deposited designs shall enjoy the benefits of this Annex, meaning that if a design is not registered, it cannot benefit from the protection offered by Annex IV. Registering an industrial design with the African Intellectual Property Organization (OAPI) typically takes between 6 to 16 months [48], from the filing date, provided there are no objections. During this administrative processing period, competitors can potentially forge and market the design without legal consequences, thereby downplaying market share during the critical launch period. This may lead the design to lose its novelty, rendering it part of the public domain and ineligible for protection. The rationale is that, without the legal standing that comes from a registered design, owners may find it significantly more challenging to initiate legal actions and pursue remedies. Such remedies include obtaining injunctions to halt unauthorized reproduction or seeking damages for infringement, especially when deposition does not accord design owners any provisional or temporary protection.

It is important to note that OAPI has not provided for a digital filing system for industrial designs. However, on June 3, 2024, OAPI launched an electronic filing system for trademark applications, allowing online submissions for trademark applications, searches, filings, renewals, and oppositions. The Institution is yet to extend electronic filing to industrial designs and patents [49]. The absence of a digital filing system for industrial design encourages operational inefficiencies, that are time-consuming and resource-intensive. Manual data entry, physically carrying the required document, can slow the registration process and significantly increase the time required to register a design.

Manual filing creates more room for errors and raises security concerns. The handling of physical documents is undoubtedly the most vulnerable way to transmit sensitive information, which can easily be destroyed by fire or water or accessed by unauthorized individuals, thereby compromising the confidentiality of sensitive intellectual property data [50]. These limitations render the OAPI's registration inefficient,

which needs to be improved upon to keep pace up with the increasing application of technology in the field of industrial design.

To mitigate these challenges, it is imperative to streamline the registration process for industrial designs. Reducing waiting periods would not only enhance the confidence of design owners but also enable them to initiate legal actions immediately an infringement is detected. Addressing the delays in the design registration process is not merely an administrative improvement; it represents a fundamental enhancement to the structure of intellectual property protection. By ensuring quicker access to legal safeguards, the industry can promote innovation more effectively and create a more favorable economic landscape for all right owners involved.

4.5 High cost of Application and Registration

The costs associated with obtaining and maintaining industrial design rights pose a formidable challenge to Justiciability, particularly for individual designers and small and medium-sized enterprises (SMEs) that operate on limited financial resources. The expenses involved in securing a design registration involve: official filing fees of 50,000frs [51], publication fee of 30,000frs [52], and renewal fees of 115,000frs [53], necessary to uphold the validity of the registration, while not forgetting attorney fees for the preparation of applications and costs related to the creation of detailed drawings or high-quality photographs of the design. These costs can add up significantly, especially for creators seeking protection in multiple jurisdictions, creating substantial hurdles for many creators in securing and defending their design rights. This financial obstacle extends its impact well beyond registration. Many design owners may be reluctant to initiate legal action against infringers, even when they are aware of obvious violations. This hesitance fosters an environment conducive to design counterfeiting, jeopardizing the livelihoods of those investing in the creative industries and highlighting the pressing need for reform that makes registration and enforcement more accessible and affordable for all creators.

4.6 Lack of Design Experts

An expert is someone who has deep knowledge and skills learned over years of experience in a subject

⁴⁸ European commission, Intellectual Property Country Fiche Cameroon, available at https://intellectual-property-helpdesk.ec.europa.eu/system/files/2021-10/Cameroon_final.pdf. Accessed on the 4th of March (2026).

⁴⁹ Saba Intellectual Property, "Trademark Practices Updates and New E-Filing System" Published on July 12th, 2024, Available online at OAPI: Trademark Practices Updates and New E-Filing System – SABA IP – Intellectual Property in the Middle East and Africa (accessed on January 3rd, 2026).

⁵⁰ Kristin B, "The disadvantage of manual document filling process", June 23rd, 2027, Available online at The Disadvantages of Manual Document Filing Processes (Accessed January 3rd, 2026).

⁵¹ Taxes applicable to industrial designs or models, available at <https://oapi.int/les-taxes-applicables-en-matiere-de-dessins-ou-modeles-industriels/> accessed on the 14th of January 2026.

⁵² Ibid.

⁵³ Ibid.

[54]. Intellectual property is a very complex field that requires experts, especially in assessing damages, retrieving digital evidence, and establishing proof of infringement of rights. The services of an expert are often sought during proceedings to examine tangible evidence or provide expert opinion on issues. The lack of experts among investigating officers, particularly in developing countries such as those in the OAPI sub-regions, hampers the Justiciability of industrial design rights by creating a technical vacuum during judicial proceedings. This is because judges are typically legal generalists; the lack of expert witnesses who can testify on concepts such as individual character and aesthetic novelty forces the judiciary to rely on substantive visual assessments rather than objective industry standards, leading to inconsistent jurisprudential outcomes and unpredictable damage assessments.

Investigating online design infringement requires specialized technical skills and knowledge, understanding of digital platforms, data storage and retrieval protocols, decryption technologies, and digital forensics. However, the law enforcement agencies and regulatory bodies of member states of the Bangui, such as Cameroon, Gabon, Chad, and Guinea, lack the necessary expertise and training to effectively investigate complex digital crimes and design infringements. The internet and digital technology are rapidly evolving, introducing new features that enable infringers to carry out their infringement activities without leaving a single trace. Keeping up with this advancement and understanding of the associated design risk requires continuous learning and training, which is expensive to afford by design owners [55].

If there is any challenge that has made culprits to walk home free is the problem of evidence. Unlike real crime such as felony or misdemeanor, it is elusive to obtain evidence of infringement of industrial design in the internet. This difficulty arises because offenders use sophisticated programs and layers of encryption which will require the service of an expert to decipher. Magistrate Eware Ashu affirms the complex nature of cybercrimes and the difficulties in proving them by stating that "...though complex to obtain digital evidence, it should not be an excuse for resorting to illegal shortcuts to secure a conviction." [56]. According

to her, if due diligence is not exercised when conducting an investigation, prosecution may result in an accused person walking free, so if any of these processes require the services of an expert, it should be sought immediately to ensure professionalism in rendering justice [57].

4.7 Corruption and Lack of Transparency in Enforcement

Corruption is defined as the exploitation of public office for personal advantage, in which individuals in higher positions manipulate their offices to achieve private gain [58]. This phenomenon manifests through various illicit behaviors, including bribery, extortion, fraud, embezzlement, nepotism, cronyism, the appropriation of public resources for personal use, and influence peddling. It casts a pervasive shadow over numerous sectors globally, with Cameroon exemplifying a country where corruption permeates customs, law enforcement, the judiciary, public markets, and private enterprises [59]. The scale of corruption, whether minimal or extensive, has escalated to intolerable levels, severely impacting governance and societal trust.

Corruption poses a severe threat to justiciability of industrial design rights, as it undermines every stage, from registration to enforcement, transforming what should be transparent rule-based system into an unpredictable and biased arena, eroding the very purpose of protection. This erosion of judicial integrity vitiates the informed user standard and the entire framework of corrective justice, as decisions are no longer based on rigorous application of Annex IV but on extralegal considerations. Corruption creates a climate of unpredictability and legal uncertainty for legitimate right holders but also delegitimizes the entire remedial framework, rendering the exclusive monopoly granted by the Bangui Agreement a mere paper right devoid of practical enforceability.

The struggle against corruption is critical, especially considering what is at stake in this context. When customs officials are vulnerable to bribery, infringing goods may pass through borders undetected or be unlawfully released from seizure, undermining enforcement efforts [60]. This is why many infringers remain entrenched in their infringing activities, driven by the substantial benefits they derive from such behavior

⁵⁴ Caley, M. *et al*, (2014), "What is an expert? A systems perspective on expertise" *Ecology and Evolution* Vol 4, issue 3, pp. 231-242.

⁵⁵ In cracking down on cybercrime, the government created in 2015 a center for digital forensic and cyber security under the University of Buea in partnership with the Ministry of Post and Telecommunication and university of Bloomsburg in the U.S. according to the director of the centre, Joan Waka, their mission is to "train young Cameroonians on how to protect the Country's cyberspace".

⁵⁶ CFIB/015f/2012 unreported.

⁵⁷ Akuta, E.. & Ongola., J. (2011), "Combating Cyber Crime in Sub-Sahara Africa: A Discourse on Law, Policy and Practice." *Journal of Peace Gender and Development Studies*, Vol1.(4), Pp. 129-137.

⁵⁸ Myint, U. (2000), "Corruption: Causes, Consequences and Curse" *Asia-Pacific Development Journal*, Vol. 7, Issue 2, pp. 33-58.

⁵⁹ Ibid.

⁶⁰ Costa, J. & Cassa, S. "Border corruption" available at, <https://baselgovernance.org/sites/default/files/2025-02/QG38-Border%20corruption.pdf>. Accessed on the 4th of March (2026).

and by an absence of fear of legal repercussions. In *the people of Cameroon v. Mba Emmanuel & Others* [61], the accused were caught with a container of counterfeit electronics that bypassed customs control and checks. The court held them liable under Section 357 of the Cameroonian Penal Code for smuggling and customs fraud. It should be understood that a counterfeited device infringes more than one intellectual property right, including the specific design of the products. This indicates a systemic problem, compounded by the general apathy of public authorities in many nations who exhibit a marked reluctance to engage in meaningful anti-corruption efforts.

5. CONCLUSION

Annex IV's approach to the Justiciability of industrial design rights is strained by its difficulty in keeping up with the technological evolution that defines today's design landscape. It has become evident that, while the acquisition of rights through OAPI provides the administrative foundation for protection, it is the judicial capacity to adjudicate these rights that determines their value. However, as we go through an era defined by technological advancement, the conventional standard of Justiciability is being significantly challenged due to the persistent limping of the law behind technological innovation, coupled with administrative delays and the fragility of rights owing to the absence of incorporating a substantive examination, which underscores a critical need for systematic recalibration.

For Annex IV to remain a relevant and potent shield against design counterfeiting, there must be streamlined enforcement procedures, and more dynamic interpretation of what constitutes imminent harm and substantial similarity. To guarantee justice, the law must be revised to introduce modern digital filing for designs and adopt a substantive approach in examining new design for registration. OAPI should also consider organizing specialized training of its personnel and judicial officials on modern design practices, which will help shape and advance the course of justice within the community.

To effectively tackle jurisdictional challenges, companies must implement a series of proactive and strategic measures, such as participating in international forums and industry groups, which will enable businesses to share best practices, influence policy development, and promote a more secure intellectual property environment that benefits all design owners. Through these concerted efforts, companies can enhance their competitiveness and resilience in a rapidly evolving global marketplace.

To combat the rapid unauthorized distribution of digital designs and unmask online infringers, the OAPI should adopt a flexible measure, it should establish a digital correspondence portal that enables local courts to request evidence to support any alleged infringement. This will enable a judge to rapidly issue court or injunction orders within minutes, or at most within 2 to 3 hours. This enables designers to quickly subpoena digital platforms and tech companies for information that could potentially unmask anonymous infringers or block access to infringing digital files even before a full trial on the merits begins. Also, effectively utilizing the regional Electronic Customs Alert System, which integrates OAPI's registration database with national customs authorities, would enable the imminent harm posed by counterfeit imports to be addressed at the border. This will ensure that design rights remain justiciable in real time, preventing the irreparable harm that often occurs before traditional litigation can conclude.

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⁶¹ *The People of Cameroon V. Mba Emmanuel & Others, Douala Court of First Instance, Case No.178/COR/2017.*

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