

LAYOUT DESIGNS (TOPOGRAPHIES)

This section covers:

- Legislation
- Coverage – Which Layout-designs Qualify for Protection?
- Registration
- Enforcement Approaches
- Other Measures
- FAQ

Legislation

Ghana

The Layout-Designs (Topographies) of Integrated Circuits Act, 2004 (Act 667) (The Layout-Design Act), was adopted on March 25, 2004. The intention of the Layout-Design Act is to provide for the protection of layout-designs (topographies) of integrated circuits and for related matters.

Protection of a layout-design under the Layout-Design Act begins on the date of first commercial exploitation of the layout-design anywhere in the world, or with the consent of the rights-holder as long as an application for protection is filed in Ghana within the first two years, or on the filing day of the application for protection if the layout-design has not been previously commercially exploited anywhere else in the world. The term of protection in Ghana is 10 years.

Violations under the Layout-Design Act are punishable by a fine not exceeding 2000 penalty units (currently a penalty unit is equal to GHC 12.00; the maximum fine is GHC 24,000) or up to two years imprisonment or to both.

International

Ghana is a member of or has ratified the following international agreements regarding layout-designs:

- [The Convention Establishing the World Intellectual Property Organization \(WIPO\);](#)
- [World Trade Organization \(WTO\) Agreement on the Trade-Related Aspects of Intellectual Property Rights \(TRIPS\);](#) and
- [The African Regional Intellectual Property Organization \(ARIPO\).](#)

Coverage – Which Layout-designs Qualify for Protection?

Protection in Ghana is available for any layout-design that is original if it has not been commercially exploited or has been commercially exploited for not more than two years anywhere in the world. A layout-design is considered original if it is the result of its

creator's own intellectual effort and is not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.

Protection under the Layout-Design Act does not depend on whether the integrated circuit which incorporates the protected layout-design is itself incorporated in an article. The Layout-Design Act protects the rights-holder from unauthorized reproduction, importation, sale or other distribution for commercial purposes. In the event of unauthorized importation, sale or distribution, there is a defense if the person performing or ordering said importation, sale or distribution did not know or did not have reasonable grounds to know at the time when acquiring the integrated circuit, that it incorporated an unlawfully reproduced layout-design.

Registration

The Registrar-General's Department (RGD) maintains the registry for layout-designs. Applicants should be aware that there are currently not any regulations on layout-designs, and no previous regulations that attorneys or officials look to for guidance. Discussions with the RGD indicated that there are currently no registrations of layout-designs in Ghana. The steps set out below are those set out in the Layout-Design Act, but should be confirmed with the RGD upon application. There is no timeline indicated; officials may look to other regulations, such as the Trademarks Act for guidance on the procedure. Applicants should confirm the timeline upon application. Applicants may wish to consult with local counsel on the status of any regulations prior to application. We recommend that you check the RGD website regularly for updates and current information. <http://rgd.gov.gh/>

Step One: Obtain qualified counsel.

When an applicant's ordinary residence or principal place of business is outside of Ghana, the applicant must be represented by local resident practitioners. Applicants are encouraged to seek out firms that have an attorney on staff with experience in Ghanaian IP law.

Step Two: Prepare and submit the application.

Applications are filed with the RGD. Applications shall contain:

- A request for registration of the layout-design in the register and a brief and precise designation of the layout-design;
- The name, address, nationality and residence of the applicant;
- A power of attorney appointing any representative for the applicant (if applicable);
- A copy or drawing of the layout-design together with the information defining the electronic function which the integrated circuit is intended to perform, but the application may omit parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, insofar as the parts submitted are sufficient to allow the identification of the layout-design;

- The date of first commercial exploitation of the layout-design anywhere in the world or indicate that commercial exploitation has not commenced; and
- Particulars establishing the right to protection with respect to creation and ownership.

The application shall also include the payment of the current application fee. Applications are deemed filed upon receipt of a complete application.

Upon filing, if the RGD determines that the application is incomplete, the RGD invites the applicant to file a correction, and accords, as of the filing date, the date of receipt of any correction. If the corrections are not made, the application is treated as if it has never been filed.

Step Three: Registration and publication

Where an application complies with the requirements of registration, the RGD publishes the registration as prescribed and enters the registration into the register. The register is public; a person may consult the register and may obtain extracts upon payment of a fee.

Filings Required in Change in Ownership and Licensing of Layout-Designs

Any changes in ownership of a layout-design must be in writing and filed with the RGD, who publishes notice of such change in ownership. Likewise, copies of any licensing contract concerning a registered layout-design or an application for the registration of a layout-design must be submitted to the RGD, who will keep details secret, but will record and publish notice of such contract. Changes in ownership or license contracts are not effective against third parties until they have been recorded and published.

Enforcement Approaches

Criminal Enforcement

The Commercial Crime Unit (CCU) of the Criminal Investigation Department (CID) – Ghana Police Service

For infringing goods that are suspected of having been produced in Ghana or have been imported into Ghana, rights-holders may approach the Commercial Crime Unit (CCU) of the Criminal Investigation Department (CID) of the Ghana Police Service.

The majority of the CCU's investigations into IP violations originate from tips from either rights-holders or from informants. Under Ghanaian law, there is a reward for information that leads to the discovery of infringing goods and conviction of the infringer; certain enterprising individuals make their living as professional informants. Upon receiving a tip about infringing goods, the CCU will investigate and upon confirmation that the goods are infringing, is empowered to seize the infringing goods and to arrest any persons in possession of infringing goods. The CCU may allow rights-holders to participate in raids.

The Preventive Unit of CID has a Rapid Response Unit (RRU) that has the capacity to prevent the often quick dissemination of infringing goods. The RRU is used when it is known to a high degree of certainty the location and means by which a shipment of infringing or otherwise illicit products are entering the country. A court order is usually required before the RRU will investigate possible IPR violations.

Criminal Prosecution

The Criminal Code 1960 (Code) defines a list of types of fraud, including intellectual property fraud. While most often IP fraud is prosecuted under the relevant IP law, upon occasion a charge may be brought under the Code for fraud or fraudulent representation, if the authorities deem it more relevant. Anyone found guilty of infringement under the IDA may be sentenced to a maximum of 2 years in prison.

Criminal prosecution can better deter violators from repeating their crimes. Many individuals may commit intellectual property crimes not only because they can be relatively easy to commit, but also because the perpetrators believe that they will not be prosecuted. Criminal prosecution plays an important role in establishing public expectations of right and wrong, and in educating the public about intellectual property rights. If you believe that you are a victim of intellectual property theft, we recommend that you document all investigative steps, preserve evidence and contact the relevant authorities right away. Intellectual property crimes may be reported to the relevant offices (*e.g.*, the Copyright Administrator) and to either CEPS, Chief Collector, Preventative OPS - Headquarters (for import and export of infringing goods) at +233 (0)302 686106/684363 or +233 (0)244 364 642 or via email at pr@ghanacustoms.gov.gh or the CCU at +233 (0)302 76 17 34.

You may also submit a tip though the Ghana Police Service website at <http://www.ghanapolice.info/>

Administrative Enforcement

The Customs Division of the Ghana Revenue Authority

Another agency that rights-holders may approach for assistance in combating infringement is the Customs Division of the Ghana Revenue Authority (formerly the Customs, Excise and Preventive Service (CEPS)) (Customs).

Businesses exporting products with layout-designs that carry a high risk of being infringed are encouraged to work directly with Customs. The Preventive Department within Customs is chiefly responsible for blocking infringing and otherwise illicit material from entering the country. Businesses that export high risk products should supply the Preventive Department of Customs with a detailed description and sample of their product and/or layout-design.

Infringing products are known to enter Ghana from its ports and multiple borders. Customs recommends that if a rights-holder believes that infringing goods are entering the country from multiple entry points that the rights-holder hold an informational workshop. Customs officers from around the country attend workshops in which producers and rights-holders describe and supply prototype authentic and infringing goods. The more detailed the information and training provided by the rights-holder, the more likely Customs officers are to stop infringing goods at the ports and borders.

If a Customs agent believes that a shipment of products contains infringing material, the agent can stop the shipment at the border. When infringing goods have entered the country and are being warehoused, distributed or retailed, Customs officers are authorized to enter a warehouse, factory or store and take an account of the excisable goods in the custody or possession of the seller. Customs officers are further authorized to take samples of goods suspected of being infringing, to the extent that the usual price of goods is paid. When the Commissioner of the Customs Division of the Ghana Revenue Authority (Commissioner) is satisfied by information and samples that there is reasonable cause to suspect that goods comprised of infringing layout-designs are harbored, kept, or concealed in any premises, the Commissioner may issue a written order authorizing an officer to enter and search the premises, and to seize and take away any of the goods. In addition to seizure of any infringing goods, Customs officers may also arrest any person in whose possession and under whose control the infringing goods are found.

The law provides for a reward for any person whose "tip-off" leads to the confiscation of counterfeit goods and the arrest of anyone dealing in counterfeits. Customs regularly benefits from tip-offs, from private citizens in addition to receiving information from rights-holders and discovery of infringing goods by members of the Customs units themselves.

Rights-holders with the requisite level of evidence may submit a written request of detention to Customs independent of any Customs investigation or action. The request must provide evidence that demonstrates a high likelihood that infringement is occurring and that injunctive action is necessary to avoid further damage; such request may or may

not require a court order. Rights-holders should also provide evidence of ownership of the mark.

In discussions, Customs indicated that a bond is normally only required in situations where the goods themselves are “gray market”, that is, authentic, but sold outside an authorized sales territory or by an unauthorized dealer in an authorized sales territory. Under these circumstances, the goods are impounded and a bond paid until the parties have reached an agreement on the goods or a court has determined the outcome of the dispute.

Upon occasion, Customs will allow rights-holders more direct participation beyond informing the Preventive Department that infringement is occurring. In order for a rights-holder to participate more directly in Customs anti-infringing investigations and procedures, Customs requires the producer to demonstrate in writing reasonable grounds for suspecting that infringing goods are entering or being sold within the country.

It is recommended that rights-holders pay a courtesy call to Customs officials upon entering the Ghanaian market, provide Customs with copies of originals and hints on how to spot infringing goods and to establish a relationship with Customs on an ongoing basis, providing information, intelligence and training and support. Face-to-face interaction with enforcement officials may be a more effective means of communication than phone or email.

Civil Enforcement

Cancellation

Under certain circumstances, rights-holders may apply with the High Court of Ghana for cancellation of a layout-design on the grounds that:

- The layout-design does not qualify as a layout-design of an integrated circuit under the Layout-Design Act;
- The layout-design is not protectable under the Layout-Design Act;
- The rights-holder is not entitled to protection under the Layout-Design Act (e.g., work-for-hire, succession, ownership); or
- The layout-design was commercially exploited and not filed with the RGD in the applicable time period for protection.

If cancellation is only applicable to a portion of a layout-design, only the corresponding part of the registration is cancelled. Cancellations are published by the RGD.

Civil Litigation

At the request of the rights-holder (or its licensee under certain conditions), the High Court may grant an injunction to prevent infringement or imminent infringement, award damages and grant any other relief provided for in the general law. There are three types of High courts in Ghana: the standard High Courts, the “fast track” High Courts and the commercial

High Courts. While each offers its own advantages, judges on the commercial courts tend to be more IP-savvy, many having completed IP training. Under the rules of civil procedure, the High Court may grant an award of damages to a rights-holder if it is determined that infringement has occurred. Burden of proof for an award of damages is on the rights-holder, and the amount of damages is determined by the High Court.

Legal proceedings may only be initiated after an application for registration of the layout-design has been filed with the RGD. The chief advantage of pursuing IPR claims in civil litigation is that unlike administrative or criminal proceedings, they may be initiated directly by the rights-holder. Rights-holders are advised to engage local counsel experienced in IPR issues in the event of any litigation.

Other Measures

NGOs and Professional Organizations

Several non-governmental organizations in Ghana play important roles in helping enforce IPR, including participating in public information campaigns, reporting suspected infringements and training government personnel. Rights-holders are encouraged to seek out such NGOs for information and support. These organizations include:

- Business Coalition Against Counterfeiting and Illicit Trade (CACIT)
<http://bcacit.com/home/index.php>
- Ghana Employers' Association (GEA)
<http://www.ghanaemployers.com/>
- Institute of Packaging Ghana
<http://www.iopg.org.gh/>
- The Association of Ghanaian Industries
<http://www.agighana.org/>
- The Consumers' Association of Ghana
Tel: +233 (0) 302 784461; +233 (0) 302 238042

Rights-holders may find it useful to work with one or more of these organizations in protecting their IPR.

Public Information Campaigns

In general, public awareness in Ghana is the cornerstone of a successful IPR protection plan. Upon detection of infringing goods entering the Ghanaian market, rights-holders have informed the public of the illegal nature of infringing goods and the shortcomings associated with them with varying degrees of success. In the past, public relations campaigns have resulted in the return of a portion of the infringing goods that have infiltrated legitimate retail businesses. Rights-holders may also contact relevant agencies and offer training in identifying originals and provide those individuals charged with search and seizure with

originals, prototypes and infringing items, and to instruct them on how to identify the infringing goods.

FREQUENTLY ASKED QUESTIONS: FAQ

1. Do I have to register my layout-design in Ghana in order to receive protection for it?

Yes. Under the Layout-Design Act, you must register in order to enforce your rights against third parties. Moreover, designs must be applied for within the first two years of commercial exploitation anywhere in the world.

2. Where do I register my layout-design in Ghana?

Registration is made with the Registrar-General's Department (RGD). You may contact them outside of Ghana at +233 (0)302 664 691-93 or visit their [website at http://rgd.gov.gh/](http://rgd.gov.gh/).

3. May I license or assign the rights to my layout-design in Ghana?

Yes. Any change in ownership of a protected layout-design, however, must be in writing. Any contractual licenses concerning a layout-design must be submitted to the RGD, who will publish notice of such license.

4. What are the penalties for infringing layout-design rights in Ghana?

Violations under the Layout-Design Act are punishable by a fine not exceeding 2000 penalty units (currently a penalty unit is equal to GHC 12.00; the maximum fine is GHC 24,000) or up to two years imprisonment or to both.

We strongly emphasize that the information provided in this Toolkit does not constitute legal advice and should not be a substitute for advice of legal counsel. Its intended purpose is to provide an overview of Ghana's IPR environment, available enforcement mechanisms and Ghanaian government offices sharing jurisdiction over IPR protection and enforcement. We recommend that U.S. companies seeking to do business in Ghana or facing IPR infringement issues in Ghana seek qualified U.S. and/or Ghanaian legal counsel in pursuing their rights through Ghana's IPR enforcement regime. The U.S. Government, the U.S. Department of State, the U.S. Department of Commerce, their employees and contractors assume no legal liability for the accuracy or completeness or usefulness of any information, resource or process contained disclosed herein.