

RECOGNITION OF INTELLECTUAL PROPERTY AS AN ASSET IN NIGERIA: THE NEED TO DO MORE*

Abstract

For many years past, assets were often classified as physical in nature but now, intangible assets especially intellectual property have become of great value. It therefore becomes imperative to protect Intellectual Property as an asset. In recent times, Intellectual Property has been the reason for trade wars and it has also been the source of enormous wealth which has invariably drawn greater attention to it. In all facets of development, Nigerians have made tremendous contributions, through their reflective attitudes to the development through innovation and expression including creations of Intellectual Property. This paper examines the concept of intellectual property and argues for a better protection of the right as an asset which is capable of bringing development to the foreshore of Nigeria. The paper analyses the bulk of legislations making up the intellectual property law in Nigeria while comparing the recognition of the right as an asset with that of other jurisdictions. From the comparative analysis attempted, the paper concludes that Intellectual property is the future of national and global development. The paper however recommends that developing countries including Nigeria need to take note of to move their economy forward.

Keywords: intellectual property, asset, development, copyright Act, transfer of right.

1. Introduction

Generally, intellectual property (IP) refers to intangible assets which an individual, company or organisation legally owns, and protects its usage without permission. By legally owning an IP, it confers a right on the owner to enjoy the usage of it.¹The World Intellectual Property Organization (WIPO) classifies Intellectual Property Rights (IPR) to include:

‘...literary, artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.’²

Assets are primarily grouped into tangible and intangible. While the former are physical assets, the latter on the other hand are ideas, knowledge, innovations and inventions, patents, designs etc. Identifying intellectual property as an asset confers equal economic value as tangible assets when proper steps are taken to protect them. Just as physical properties require protection against vandalism, theft, sabotage, and unauthorized usage, by registration (in case of landed properties) or insuring, the same protection ought to be given to intangible assets. Upon the acknowledgement of IP as an asset, there is the need for its protection to safeguard against loss.

Unfortunately, in Nigeria, intellectual property is still evolving unlike in some other jurisdictions. The United States Chamber of Commerce in its 8th Annual International IP Index, released in February 2020

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¹ See the Copyright Act, ss. 6-12; Trademarks Act, s.3 and ss.9-10; Patent and Design Act, s.2.

² The Convention Establishing the World Intellectual Property Organization, Article 2 (viii).

assessed 53 world economies IP ecosystems and scored them based on copyright, trademarks, patents, trade secrets, commercialization of IP assets, enforcement, and systemic efficiency, membership international treaties among other indicators. The US, UK, France Germany and Sweden, 1st – 5th respectively while Nigeria ranked 50th.³ IP evaluation for individuals and organisations in Nigeria is still at a low level and awareness of the importance and need to protect their intellectual property. In as much as a few laws are safeguarding intellectual property rights in Nigeria, they are old and need to be amended or replaced to develop effective IP standards to foster innovation and creativity and stimulate economic growth. To compound an already bad situation, these laws are not well utilised and put into maximum use to yield economic value and global competitiveness.

Different types of intellectual property rights can be exploited for commercial and economic gains. IP can be categorised broadly into four areas in Nigeria which are; copyrights, trademarks, patents and designs. These areas of IP are governed by the following laws in Nigeria.

2. Legal Frameworks Guaranteeing Intellectual Property as an Asset in Nigeria

Intellectual property rights in Nigeria, albeit has remained in its cradle stage for years, there exists some level of legal framework established to ensure protection and enforcement of intellectual property rights this has however not transcended into innovation and creativity. Although the laws protecting IP gives confidence to the IP owner that he/she has a property right the use both in practice and jurisprudentially is yet to be effective. Nevertheless, three major statutes are regulating intellectual property in Nigeria:

1.1 2.1 Trademarks Law

The first trademark law in Nigeria known as the Trade Marks Proclamation Ordinance of 1900 which was an adaption of the Trade Marks Act of 1888 of the UK, and applicable to Southern Nigeria alone. Several other Ordinances⁴ were enacted before the first indigenous Trademarks Act of 1965. The Trade Marks Act of 1965 is still the current law. Based substantially on the UK Trade Marks Act of 1938,⁵ the 1965 Act repealed the Trade Mark Act of 1958 and its regulation.⁶ The Trade Mark Act came into force in 1967 when the Trade Marks Regulations Order 1967⁷ was instituted for the administration of the trademark system.⁸ The Trade Mark Acts of 1965 is incorporated into the Laws of the Federation of Nigeria 2004 as Chapter T13.⁹

Under the Trademarks Act, a trademark is a mark used or proposed to be used concerning goods to indicate a connection in the course of trade between the goods and the person having the right either as proprietor or as a registered user to use the mark, whether with or without any indication of the identity of that person.¹⁰ According to Babafemi, a trademark is a distinctive mark of authenticity, through

³ Art of the possible, 2020 8th ed. U.S. Chamber of Commerce International IP Index, Global Innovation Policy Center available at https://www.theglobalipcenter.com/wp-content/uploads/2020/02/023881_GIPC_IP_Index_2020_FullReport_A_04b.pdf, accessed 9 March 2021.

⁴ Trademark Ordinance No 20 of 1914; Trade Marks Ordinance No 4 of 1923, Chapter 148 of the Laws of Nigeria 1923; Trade Marks Ordinance No 13 of 1926, 1958 'Ordinance to Consolidate and Amend the law relating to Trade Marks'; Chapter 19 of the Laws of the Federation of Nigeria and Lagos 1958.

⁵ This Act was considered to be unsatisfactory and not enough to cover all the modern issues of trademarks and was replaced by the Trade Marks Act 1994 which has been amended severally.

⁶ Jide Babafemi. *Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patent and Industrial Design in Nigeria* (Justinian Books, Ibadan, 2007) p.176.

⁷ Trade Marks Regulations Order 1967 (Hereinafter referred to as the Regulation).

⁸ Sikoyo *et al* *Intellectual Property Protection in Africa Status of Laws, Research and Policy Analysis in Ghana, Kenya, Nigeria, South Africa and Uganda* (African Centre for Technology Studies (ACTS) Ecopolicy Series no. 16) pp.18-19.

⁹ Trade Marks Act, 1965 hereinafter referred to as the Trade Marks Act or the Act).

¹⁰ Trademark Act, s.67.

which the products of a particular manufacturer or the vendible commodities of a particular merchant may be distinguished from those of others. A mark may include any symbol, name, word or device legally registered under the Act or established by use that can be used to differentiate a company or a manufacturer's goods from another. It is used to ensure a particular product; commodity or services is distinguished from another.¹¹

Where a trademark is registered, it confers exclusive rights on the user whereby no other person can make use of the same or similar trademark without first obtaining consent.¹² In order words, for an action to succeed for trademark infringement, it must be registered under the Trade Marks Act.¹³ Nevertheless, an unregistered mark in Nigeria can be protected under the common law tort of passing-off, as long as the owner can prove the elements required.¹⁴ There are 45 classes of marks registrable under the Act.¹⁵

1.2 2.2. Copyright Law

As a British colony the English Copyright Act of 1911¹⁶ was applicable by an Order in Council¹⁷ made applicable in Nigeria and known as the Nigerian Copyright Act of 1912. This Act contained three parts, which are the imperial copyright provisions, international copyright provisions and the supplementary provisions.¹⁸ The Copyright Decree of 1970¹⁹ repealed the Copyright Act of 1912. Sections 16 and 18(1) of the Copyright Decree of 1970 specifically excluded the rules of common law dealing with copyright and repealed the United Kingdom Act of 1911 in so far as was it applicable to Nigeria.²⁰

The 1970 Copyright Decree was repealed and replaced by the Copyright Decree 1988.²¹ Subsequently, all federal legislation were revised and the Decree was re-designated as the Copyright Act of 1988²² contained in the Laws of the Federation of Nigeria, 1990. The Act has been amended twice, in 1992²³ and 1999,²⁴ and is currently codified as part of the 2004 Laws of the Federation of Nigeria in Chapter 28.²⁵ In addition to the national legislation on copyright, Nigeria has ratified several international conventions on copyright, such as the Berne Convention,²⁶ the Rome Convention,²⁷ Universal

¹¹ Jide Babafemi supra n.6 at 176.

¹² Trademarks Act, s.5 (1).

¹³ Trademarks Act, s.3.

¹⁴ *Ibid.*

¹⁵ Third Schedule TMR of 1967.

¹⁶ Generally known as the Imperial Copyright Act of 1911.

¹⁷ No. 912 dated 24th June 1912.

¹⁸ Copyright Act, 1911 [1 & 2 GEO. 5. CH. 46.]

¹⁹ Copyright Decree No. 61 of 1970.

²⁰ Y.O. Ali, 'The Nigerian Copyright Act and Criminal Liability' available at http://www.yusufali.net/Articles/THE_NIGERIAN_COPYRIGHT_ACT_AND_CRIMINAL_LIABILITY.pdf accessed 15 March 2021.

²¹ Copyright Decree No. 47 of 1988.

²² Copyright Act (as amended) including Regulations made pursuant to the Copyright Act. All references below to the Copyright Act or the Act are unless otherwise stated, references to the Copyright Act of 1988, as amended by the Decrees below. (Hereinafter referred to as the Act.).

²³ Copyright (Amendment) Decree (No. 98) of 1992.

²⁴ Copyright (Amendment) Decree (No. 42) of 1999.

²⁵ Copyright Act 1988 Cap 28 Laws of the Federation of Nigeria 2004.

²⁶ Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, revised at Paris July 24, 1971, 828 U.N.T.S. 221.

²⁷ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Done at on October 26, 1961.

Copyright Convention,²⁸ as well as the WIPO Copyright Treaty²⁹ and the WIPO Performances and Phonograms Treaty.³⁰

The Act consists of four parts and includes five schedules. There are six categories of work protected under the Act- literary works, musical works, artistic works, cinematograph works, sound recording and broadcasts as provided for under section 1.³¹ Copyright is established through the fixation of the creative expression of an individual. The Federal High Court (FHC) in *Sarg Aims Aluminium v Stanley Akagha & Another*³² defined copyright as 'the right of literary property as recognised and sanctioned by positive law. It is, in essence, an intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic production whereby he has invested, for a specified period with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them'. This definition is limited to literary and artistic works only. In Black's Law Dictionary³³ copyright is a right granted to the author or originator of certain literary or artistic productions, whereby the creator is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the literary or artistic works and publishing or selling them. In simple terms, it is a form of right given to an author over his works not to use the same without his consent. It can be published or unpublished work.³⁴ No registration is required for copyright protection, what is required is for the work to be original and fixed in a definite medium. It is the most common form of IP in Nigeria.

The duration of a copyright depends on the type of work in question, however, the life of the author plus 70 years after the death of an author is the most common for literary, musical and artistic works.³⁵

1.3 2.3. Patents and Designs Law³⁶

Extension of the patent law and systems to colonial territories was initiated at the Paris Patent Conference of 1879 in Paris.³⁷ The Patents Ordinance No. 17 of 1900³⁸ and Patents Proclamation Ordinance No. 27 of 1900³⁹ were the first patent legislations in Nigeria applicable to the colony of Lagos and the applicable to Southern Nigeria respectively. In 1902 a patent legislation was enacted which applied to Northern Nigeria by virtue of the Patents Proclamation Ordinance No.12 of 1902.⁴⁰ These ordinances provided for an independent patenting system in various parts of the country.⁴¹ The

²⁸ Universal Copyright Convention as revised on 24 July 1971, with Appendix Declaration relating to Article XVII and Resolution concerning Article XI (July 24, 1971)

²⁹WIPO Copyright Treaty adopted on December 20, 1996, at Geneva entered into force on March 6, 2002. Nigeria became a signatory on 24 March 1997 and ratified the instrument of accession on October 4 2017.

³⁰WIPO Performances and Phonograms Treaty Adopted on December 20, 1996, at Geneva entered into force on May 20, 2002 Nigeria became a signatory on March 24, 1997, and ratified the instrument of accession in October 4 2017.

³¹CA 1988, s.1.

³²(1994) 3 I.P.R.L. 219, FHC/KD/1/92.

³³ 9th Edition

³⁴ Jide Babafemi supra n.6 at 192.

³⁵ Second Schedule of the Cap 28 CA.

³⁶ Patents and Designs Act 2004.

³⁷ Edith Penrose, *The Economics of International Patent System* (John Hopkins Press, Baltimore 1951) p.53; Temitope Oloko, *Impact of the WTO TRIPS Agreement on Nigeria* (LASU Publisher, Lagos, 2020) 96.

³⁸ Ordinances of the Colony of Lagos, 892 (1901).

³⁹ Laws of the Protectorate of Southern Nigeria Ch. 48, 653 (1908).

⁴⁰ Laws of the Protectorate of Northern Nigeria 415 (1910).

⁴¹ Charles Mwalimu, *Nigeria Legal System Private Law* (Vol 2, Peter Lang, New York, 2009) pp.518-519; The independent patenting system has been regarded as an anomaly and ambitious within the period of its occurrence considering the standard of western civilization and level of western technological know-how available in the

Ordinances were repealed after the amalgamation of Northern and Southern Nigeria in 1914 and replaced with the Patents Ordinance No 30 of 1916⁴² which abolished the independent patenting system under the previous Ordinances and in 1925 it was renamed and re-enacted as the Registration of United Kingdom Patents Ordinance of 1925.⁴³ Under the 1925 Ordinance, patents could be granted only in the United Kingdom, however, they would be valid in Nigeria if an application is registered within three years of the grant of the patent in the United Kingdom.⁴⁴ At independence, the Ordinance remained in place with the Patents Rights (Limitation) Act 1968⁴⁵ and Patents Act 1949 of the United Kingdom and amendments thereof till 1970 when all the laws were repealed by the Patents and Designs Act No. 60 of 1970.⁴⁶ The Patents and Designs Act of 1970⁴⁷ remains the substantive law on Patents and Designs without any subsequent amendments. The Patent and Designs Act of 1970 is in chapter 2 of the 2004 Laws of the Federation of Nigeria.⁴⁸

Patents today are associated with economic, health, cultural and social conditions prevailing in a country. There is no doubt that patents have assisted in national development and have created a lot of benefits for the human race.⁴⁹ A patent is an exclusive right granted by a government to an inventor to manufacture, use or sell an invention for a period of 20 years. Patent rights are protected under the Patent and Designs Act of 1970.⁵⁰ The conferment of a patent is effected by section 2 of the PDA. The right to a patent is vested in the statutory inventor: this is the person who, whether or not he is the true inventor, is the first to file or validly claim a foreign priority for a patent application in respect of an invention.⁵¹

3. Governmental Agencies Regulating Intellectual Property in Nigeria

There are several agencies which regulate intellectual property related matters in Nigeria some of which are discussed hereunder.

3.1 The Nigerian Copyright Commission

The Nigerian Commission (NCC) is a federal body established under the Copyright Act Decree No. 47 of 1988. The commission is responsible for all matters concerning copyrights like musical, artistic, publishing and literary works as well as cinematograph films, sound recordings and broadcasts. The primary mandate of NCC is administration, regulation, enforcement and prosecution, as stipulated

indigenous population at the time. See Patents – The Requirement for Patentability in Nigeria p. 2 available at <http://www.allanogunkeye.com/allan/RequiREMENT15.pdf> accessed 16 March 2021.

⁴² Nigerian Ordinance 401 of 1916.

⁴³ Registration of United Kingdom Patents Ordinance No 6 of 1925, Cap 182 Laws of the Federation of Nigeria and Lagos 1958.

⁴⁴ An Overview of the Law of Patents in Nigeria, available at <http://www.nigerianlawguru.com/articles/intellectual%20property%20law/AN%20OVERVIEW%20OF%20THE%20LAW%20OF%20PATENTS%20IN%20NIGERIA.pdf>, accessed 16 March 2021.

⁴⁵ This Law was enacted in 1968 to enable the government of Nigeria and third parties to use certain inventions; See also Charles Mwalimu supra n.41 at 519.

⁴⁶ Section 31(1) PDA 1970 P2 LFN 2004.; Sikoyo et al *Intellectual Property Protection in Africa Status of Laws, Research and Policy Analysis in Ghana, Kenya, Nigeria, South Africa and Uganda* African Centre for Technology Studies (ACTS) Ecopolity Series no. 16 p.18; See also Patents – The Requirement for Patentability in Nigeria available at <http://www.allanogunkeye.com/allan/RequiREMENT15.pdf>, accessed 17 March 2021; Jide Babafemi supra n.6 at 89.

⁴⁷ PDA 1970 P2 LFN 2004.

⁴⁸ *Ibid.*

⁴⁹ Temitope Oloko supra n.37 at 350.

⁵⁰ PDA 1970.

⁵¹ *Ibid.*, s.2 (1). The PDA does not define statutory inventor or true inventor.

under the Act. It also advises the government, enlightens the public on copyright matters, grants licenses, certificates and other duties.⁵²

3.2 The Trademarks, Patents and Designs Registry

This is a department of the Federal Ministry of Industry, Trade and Investment for granting patents and registering trademarks. The registry is expected to promote the stronger and offer innovators and entrepreneurs by working with other agencies to secure strong IP provisions. The duties of the Registry are registration, filing and grant of trademarks, patents and designs.

3.3 The National Office for Technology Acquisition and Promotion

The National Office for Technology Acquisition and Promotion (NOTAP) which concerning IP, promotes IPRs and encourage innovations from inventors, scientists and researchers. NOTAP Office was created 'to monitor, on a continuing basis, the transfer of foreign technology to Nigeria' by the NOTAP Act⁵³ The NOTAP office also helps with the development of negotiating skills to acquire the best contractual terms and conditions for Nigerian parties and the registration of all contracts or agreements affecting Nigeria. Technology transfer is a vital aspect of developing a strong technological base necessary for economic growth. Access to technology transfer has been underscored as an approach to achieving indigenous inventiveness.⁵⁴ Consequently, NOTAP is significant, as it renders services that include preparation of technology transfer agreements, intellectual property right promotion and provision of the state of the art technology information, commercialisation of research and development results, research-industry linkage, monitoring, consultancy and extension services and technology advisory services.⁵⁵

3.4 The National Broadcasting Commission

The National Broadcasting Commission (NBC) is tasked with the duty of regulating and controlling broadcast rights and licenses in the country. The National Broadcasting Commission Act⁵⁶ empowers the Commission, to carry out several duties, some of which include, licensing monitoring, regulating and conducting research in broadcasting in Nigeria. It is also the duty of the Commission, to ensure the development, dynamically, through the accreditation of the mass communication curricula in all the tertiary and other institution related to broadcasting⁵⁷ Other functions of NBC include receiving, processing and considering applications, for the establishment, ownership or operation of radio and television stations be it cable television services or direct satellite broadcast. Guaranteeing and ensuring the liberty and protection of the Broadcasting industry with due respect to the law.⁵⁸

⁵² CA 1988, s.34.

⁵³ National Office Technology Acquisition and Promotion Act 1979 No. 70 Cap N62 (Vol. 11) Laws of Federation of Nigeria 2004.

⁵⁴ Adejoke Oyewunmi, The Patent System and Transfer of Technology in Nigeria, in Olanrewaju Fagbaohun and Bambo Adewopo (ed.). *Developments and Reform, Nigeria's Commercial Law s Essays in honour of Chief Dr Chris Ogunbanjo* (The Law Centre LASU, Lagos, 1998) 78-92.

⁵⁵ NOTAP website <http://notap.gov.ng/content/technology-transfers> accessed 09 September 2013.

⁵⁶ National Broadcasting Commission Decree No 38 of 1992 amended by Act No 55. of 1999 now known as Cap N11 Laws of the Federation of Nigeria 2004.

⁵⁷ Our Mandate, available at <https://nbc.gov.ng/our-mandate>, accessed 18 March 2021.

⁵⁸ NBC Act, s.2 (1).

3.5 The National Agency for Food and Drugs Administration and Control

The National Agency for Food and Drug Administration and Control (NAFDAC) generally oversees the pharmaceutical industry. NAFDAC was established by Decree 15 of 1993⁵⁹ to regulate, to undertake inspection, to compile standard specifications and guidelines, provide quality certification and undertake the registration and the manufacture, importation, exportation, distribution, advertisement, sale and use of certain regulated products, such as food, drugs, cosmetics, chemicals, medical devices and packaged water.⁶⁰ The Agency is also responsible for enforcement through investigation, interrogation and prohibition of the production, import, manufacture, distribution, display for sale of any counterfeit, adulterated, banned, fake, substandard or expired drug or unwholesome processed food.⁶¹ NAFDAC has initiated several programmes to enforce its mandate and make sure that drugs, food and chemicals meet the expected standard. NAFDAC engages in frequent mop up exercises and surveillance to check the quality and safety of medicines administered to the public by paying unannounced visits to medicine outlets and market place including hospitals.⁶² Check FDA duties in relation to new inventions

3.6 The Standards Organization of Nigeria

The Standards Organization of Nigeria (SON) is the establishment in charge of the standardization of products in Nigeria. SON was established by SON Act No. 14, 2015, which repeals the Standards Organisation of Nigeria Act, Cap 59 laws of Federal Republic of Nigeria, 2004, and Enact the Standards Organisation of Nigeria Act. 2015 The purpose of providing additional functions for the organisation, increasing penalty for violation, and related matters. This SON Act 2015, has now replaced the Enabling Act No. 56 of 1971. The Organisation is required to prepare standards relating to products, measurements, materials and processes among others, and their promotion at the national, regional and international levels, to certify industrial products, as well as assist in the production of quality goods and improve measurement accuracy and circulation of information relating to standards.

These laws altogether with the treaties and regulatory agencies have over the years served as the legal mechanisms with which IP rights and protection is administered. With the laws in place currently, IP protection can still be achieved. However, over the years stakeholders and practitioners have continually called for reforms in IP practice in the country.⁶³

4. Identification of Intellectual Property as an Asset in Nigeria: The Challenges

Irrespective of what has been put in place, a lot of challenges continue to hinder Nigeria from properly recognising IP as an asset thereby making a mockery of the gains achieved. The paper titled; A WIPO document published as far back as 2001, listed the challenges faced by Nigeria in IP then and are still face to date as; appropriate legal and institutional framework, awareness on the importance of IPR,

⁵⁹ National Agency for Food and Drug Administration and Control (NAFDAC), Decree 15 of 1993 as amended by Decree 19 of 1999 and now Act Cap N1 Laws of the Federation of Nigeria (LFN) 2004.

⁶⁰ National Agency for Food and Drug Administration and Control (NAFDAC) Act Cap N1 Laws of the Federation of Nigeria (LFN) 2004, s.5.

⁶¹ *Ibid.*

⁶² NAFDAC seizes substandard, expired drugs from drug outlets in Gboko Daily Trust Tuesday, 23 April 2013. available at <http://www.dailytrust.com.ng/daily/old/index.php/health/52783-nafdac-seizes-substandard-expired-drugs-from-drug-outlets-in-gboko>, accessed 18 March 2021.

⁶³ Nigeria: 'Lack of Systematic Law Reform System Reason for Comatose State of Intellectual Property in Nigeria: published on 28 November 2018 by Guardian Newspaper (online) - [www. mguardian.ng](http://www.mguardian.ng) accessed 19 March 2021.

business methods and software, electronic filing of patents applications, and protection of pharmaceuticals and biotechnological inventions.⁶⁴ These challenges will be extensively looked at.

1.4 4.1. The Extant Legislations

The majority of the laws governing intellectual property in Nigeria are old and obsolete, having become out of touch with modern practices comparable to other jurisdictions.⁶⁵ These laws were adopted from the English laws of the 18th - 19th centuries, therefore, there is a need for them to be reviewed and amended. As aptly put by Adewopo, he says:

*"... it is a well-known fact that for over two decades now, the body of IP laws in Nigeria has required reform and the attempts at reform have had a chequered history. The laws have remained largely unsuited to the emergent commercial and technological developments. For over two decades, the revised or the new IP laws seem not to have gone past the draft forms. The absence of a systematic law reform system has contributed immensely to the comatose state of the IP regime in the country coupled with the peculiar nature of the creative and IP based industries."*⁶⁶ This position is also supported by Nwabachili and other scholars.⁶⁷ agree on the obsolete laws which are causing a stagnancy in the development of IP in Nigeria.

The Trademarks Act is the oldest intellectual property law in Nigeria since independence. Unfortunately, there has been no amendment to this Act to reflect current international standards and developments in intellectual property practice.⁶⁸ The UK Trade Marks Act of 1938 from which Nigeria adopted the Trade Marks Act has been repealed by the Trade Marks of 1994. As part of the European Economic Community (EEC), the UK implemented the EU Directives on Trade Marks which forms the trademark framework of all EU member states, the current EU Directive is the 2015/2436 Trade Mark Directive⁶⁹ which amended the Trade Marks Act 1994 while the Trade Marks Regulation 2018 (S1 2018/825), implementing the Trade Marks Directive amended the UK's Trade Marks Rules 2004 and came into force in 2019. One can see the constant development of the law according to the growth in the subject area. The same can be said of the Lanham (Trade Marks) Act of 1947 applicable in the US, which has also undergone significant changes to reflect current realities in line with the Madrid Protocol.⁷⁰ Similarly, the Patent and Designs Act enacted in 1970 remains in force and unamended since it was enacted. This also indicates that there is stagnancy in innovation, research and development at all levels of government including industries and academia.

⁶⁴ Caroline Owoseni, Recent Developments and Challenges in the Protection of Intellectual Property Rights, New Developments and Challenges in the Protection of Intellectual Property Rights (IPRS): A Nigerian Perspective, WIPO/ECTK/SOF/01/2.7 available at https://www.wipo.int/edocs/mdocs/ip-conf-bg/en/wipo_ectk_sof_01/wipo_ectk_sof_01_2_7.doc, accessed 23 February 2021.

⁶⁵ Olu Fasan, Nigeria needs a Robust Intellectual Property Regime for Economic Growth, Business Day, 12 October 2020 available at www.businessday.ng, accessed 14 March 2021.

⁶⁶ Interview published by Guardian Nigeria Online Newspaper on 20 November 2018 via www.m.guardian.ng/features/lack-of-systematic-law-reform-system-reason-for-comatose-state-of-intellectual-property-in-nigeria/amp/.

⁶⁷ Chidi Nwabachili, *Intellectual Property and Practice in Nigeria* (Malthouse Press Nig, 2016.) 52.

⁶⁸ Temitope Oloko supra 37 at 350.

⁶⁹ This Directive repealed the EU Trade Mark Directive 2008/95/EC which repealed the 89/104/EEC (The Trade Marks Directive).

⁷⁰ The Madrid Protocol is a primary international system for facilitating the registration and management of trademarks worldwide.

The last time there was any sort of amendment to the Copyrights Act was in 1999, the amendment being of little significance to present-day realities, this is particularly notable in the area of remedies available to copyright owners and the penalty specified for infringer there is no correlation between the current economic value of the work infringed upon. Looking at the value of the naira presently amounts stipulated as fines rather encourage offenders than serving as a deterrent.⁷¹ Consequently, these legislations are not comprehensive enough to provide in effectively covering or recognition to IP as an asset and this has remained an undermining factor for the lack of foreign investments.⁷²

1.5 4.2. Government's Apathy Towards Intellectual Property

In Nigeria, it appears IP is not a national priority. It is not given adequate consideration in Nigeria's political-economic agenda.⁷³ The government has failed to realize the huge potentials IP has to generate revenue for its coffers. Many times, there have been calls for a national policy framework for IP but the government have continually ignored such calls. Notwithstanding the progress made in the creative industry and its contribution to the GDP of Nigeria despite the lack of support from the government and the attendant revenue generated from it, the IP created, the government's fixation on oil as the main source of revenue in the 21st century is preposterous. IP is the new currency in the 21st century therefore countries that fail to develop their research and development (R&D) would not have any competitive advantage.

1.6 4.3. Lack of Awareness of Intellectual Property Rights

Astonishingly, many people in Nigeria are still not aware of their rights to intellectual property. The lack of awareness is not limited to illiterates but it extends to even corporations. Even those who are aware do not pursue the effective protection of their right and are usually reluctant in seeking redress when their rights are infringed upon. People even engage in intellectual property infringement unaware that what they are doing is illegal for instance those selling CDs and DVDs in traffic, they believe they are merely trying to earn a living. Despite the flamboyant use of names on businesses in Nigeria, there is very little awareness that the name of their products has economic value. Trademarks, Patents and Designs Registry largely receives applications from foreign applicants and foreign companies with subsidiaries in Nigeria, the recently Trademarks Journal is proof of this.⁷⁴ This has to change for the country to reap fully from the opportunities available in IP.

1.7 4.4. Weak Enforcement Procedure

For a long time now, piracy and counterfeiting have remained a major headache in intellectual property due to weak enforcement and an unwillingness to enforce. Enforcement spans from registration, investigation, forfeiture, down to the courts. In years past, the NCC has carried out raids in its anti-piracy fight resulting in the seizure of books, films, sound recordings etc. A good number of convictions have also been recorded. Notwithstanding, a lot more is still left undone.

At the World Intellectual Property Day 2019,⁷⁵ the Director-General (DG) of the Nigeria Copyright Commission, Asein, stated that Nigeria losses \$3bn to piracy annually, even though Nollywood is the 3rd largest film industry in the world after Hollywood and Bollywood. The issue of enforcement was

⁷¹ CA, ss.20, 21, 23, 30.

⁷² Intellectual Property Infringement and the Nigerian Economy, available at PwC - www.pwc.com, accessed 20 March 2021.

⁷³ Promoting and Protecting Intellectual Property in Nigeria: International Chamber of Commerce – available at www.iccwbo.org accessed 13 March 2021.

⁷⁴ Volume 1. No 3 of 29th May 2020 published 29th of July, 2020.

⁷⁵ 2019 World Intellectual Property Day with the theme: 'Reach for Gold: IP and Sports,' held in Abuja Friday.

raised and the government was urged "to put in place adequate, responsive and effective legal frameworks for the protection and enforcement of sporting and associated industries rights".⁷⁶ Nevertheless, irrespective of all the issues listed, there exist at a level of IP framework which can be made use of.

5. Practices Depicting Non-Recognition of Intellectual Property as an Asset.

It's very common in Nigeria to see the use of the name of a brand as the generic name of a product. Most household products have a brand name that is used as a verb. For instance, "Maggi", Maggi is the brand name of a particular type of cooking seasoning cube but over the year's people use Maggi to refer to the generic name of all cooking seasoning cubes. Omo or Surf has become the general name for detergent. These kinds of consumer behaviours are not peculiar to Nigeria. For instance, Xerox at a time was used to mean photocopying. What Xerox did was to fight back to get its trademark which it had register in 1948. They started placing advert such as "DON'T USE TRADEMARKED XEROX AS ANOTHER WORD FOR COPY" "XEROX IS A TRADEMARK FOR A BRAND OF PHOTOCOPYING MACHINE NEVER A VERB. USE A GENERIC TERM SUCH AS PHOTOCOPYING." There were concerted efforts not to lose the marks like "Aspirin" and "Caterpillar" which became generic by their usage.

Before UAC one of Nigeria's blue-chip company changed its website on its GALA product it was written there that the name had become generic, this showed the lack of awareness that the brand name which was generally used as a verb by consumers could be lost due to their admittance that the brand name had become generic. There are so many other examples they include CloseUp, Macleans for toothpaste) Geisha, (Canned Mackerel) Dettol (Antiseptic) Indomie (for Noodles). What is worrisome is that the brand owners have made very little effort to stop such usage of their brand names because they know the Trademarks, Patents and Designs Registry has over the years ignored such uses, unlike in countries where they are life to their responsibility as a regulator. Everyday societal use in the wrong way hinges that trademark close to genericisation.

Apart from misuse of the trademark, a lot of trademarks of small-medium scale enterprises (SMEs) products are not registered at the Trademark Registry. Some of these marks would have been in use for several years but the need to register their trademark is not taken as a priority because they are unaware of its importance as a source identifier and a key strategic asset from which they can benefit from therefore it requires protection.

1.8 7. Concerted Efforts at Protecting Intellectual Property Rights in Nigeria

In view of the above, government, individual or companies must be proactive by securing their intellectual property rights. This is achievable by taking advantage of the available legal mechanisms. Trademarks for example require registration to exercise sole ownership of it. Section 3 of the Trademark Act 1967 stipulates that "*no person shall be entitled to institute any proceedings to prevent or recover damages for an infringement of an unregistered trademark.*" This invariably means that a trademark must be registered to enjoy any form of right over it.⁷⁷

⁷⁶ NCC: Nigeria Loses \$3bn-Annually to Piracy, THISDAY LIVE April 26, 2019, <https://www.thisdaylive.com/index.php/2019/04/26/ncc-nigeria-loses-3bn-annually-to-piracy/>, accessed 20 February 2021.

⁷⁷ Jide Babafemi supra n.6 at 188.

Trademarks can be registered at the Trademarks, Patents and Designs Registry. Where this is done, intellectual property infringement can be easily protected. A practical scenario is the case of *Virgin Enterprises Ltd v. Richday Beverages Nig. Ltd.*⁷⁸ The appellant, a foreign company, registered its trademark in Nigeria as 'Virgin', using red as its prominent colour. Table water was one of its products. The respondent, a Nigerian company started producing and selling table water branded as 'virgin table water'. The appellant brought an action in court that the respondent's product was calculated to lead to the deception that the respondent's bottled water was a product of the appellant and using the word 'Virgin' with red as its colour meant its product was being passed off as that of the appellant. The court of Appeal revised the trial court's decision and found for the appellant.

Similarly, the same decision was reached in *Continental Pharmaceutical Ltd. v. Sterling Products Nig. Pls & Smithkline Beecham.*⁷⁹ The plaintiff, manufacturers of a paracetamol drug registered its trademark with the words 'Conphamol' with an eclipse logo consisting of blue and white colour design. The plaintiff alleged that the defendant only removed the word 'Conphamol' replacing it with the words 'Panadol' and 'Panadol extra'. The Federal High Court awarded the sum of N500,000,000.00 (five hundred million naira) against the defendant for passing-off and another N700,000,000.00 (seven million naira) as special damages.

In patents, registration also gives an inventor patent rights as long as such invention is registrable as provided by the Patents and Designs Act.⁸⁰ In *Uwemedimo & Comandclem Nig. Ltd v. Mobil Producing (Nig) Unlimited*⁸¹ the Court of Appeal held that by virtue of the appellant's patent certificate number, the company had the right to the invention of 'Anti-Corrosive special paint'. There is an appeal pending before the Supreme Court.

For copyright infringements, fortunately, copyrights must not necessarily be registered before one can enforce his intellectual property rights. The moment a work is created in whatever form it is automatically protected. It has been reported that a Federal High Court awarded N500, 000,000.00 (five hundred million naira) to the Copyright Society of Nigeria (COSON) against the Cross River State Government for playing its members songs during the Calabar carnival.⁸² In this era of e-books, self-publishing, copyrights awareness cannot be overemphasized. However, one must seek to activate his legal rights before any sort of compensation can be payable. Where such intellectual property right is a trade secret, a company must endeavour to protect it from being known by competitors via any of the following means; (i) Non-disclosure agreement between employer and employee (ii) Non-compete agreement, prohibiting an employee to reveal trade secret(s) after leaving an organization.

1.9 7.1 Enacting New Laws and Ratification of International Treaties

As earlier stated, IP laws in Nigeria are old. New laws must be enacted or amendments made to existing laws,⁸³ to align with international treaties and measure up with the technological improvements and advancement globally. A number of Bills like the Industrial Property Commission Bill (IPCOM) that seeks to harmonise intellectual property laws in Nigeria should be signed into law. Since Bill's public reading in 2018, it has more or less remained in a state of comatose. The IPCOM Bill provides for the

⁷⁸ Suit No. CA/L/550/05, delivered 22 May 2009.

⁷⁹ Suit No. FHC/L/CS/460/95, delivered by the Federal High Court on 27 June 2011.

⁸⁰ Section 1 of the Act lists the requirements for patentability.

⁸¹ (2011) 4 NWLR (pt. 1236) 80

⁸² FH/CAL/CS/15/2014

⁸³ *Ibid.* Nwabachili note 67

establishment of a Commission, stating the Commission's membership, functions and powers. It prescribes slightly higher penalties for infringement which may be of no consequence when it is passed. Another Bill still in its draft stage is the Trade Marks Bill 2016.⁸⁴ Comparing the Trade Marks Bill with the present Trade Marks Act,⁸⁵ there are new areas of IP incorporated into the Bill. Firstly, section 29 of the Bill expressly provides that trademarks in respect of services can now be registered. Secondly, it recognises the use of trademarks over the internet. The Bill entrenched the concept of dilution.⁸⁶ It also seeks to change the duration of trademarks to seven years from the date of filing and each renewal pegged at seven years instead of the current fourteen years. The Bill also provides that trademarks shall become incontestable after five years on the register. Furthermore, section 57 of the Bill specifically makes provision for the Madrid Protocol; that the minister shall make provisions to give effect to the Madrid Protocol or any treaty or directive relating to trademarks to which Nigeria is a party. No doubt, this particular Bill when it becomes operational will enhance trademark practice and protection in Nigeria.

Furthermore, the NCC drafted a Copyright Bill in 2015 which is before the National Assembly. The Bill aims at ensuring effective protection of works especially covering digital technologies, as stated in its Introductory Notes.⁸⁷ A critical look at the Bill reveals that Part I provides for works eligible for copyright protection, qualification and nature of rights conferred on authors of such works, and also identifies works that are not eligible for protection. Part II thereof provides an exception to copyright control issues.

Notably, Part V provides for criminal liability for offenders with stiffer punishments ranging from N500 - N1000 fine for each infringed copy although this Bill has not been passed into law the prescribed amount does not measure up to the likely cost of a copy. The term of imprisonment proposed was extended five years in addition to a fine. Similarly, section 38(9) of the Bill stipulates criminal liability for failure to pay royalties, while section 47 provides for take-down of infringing content from a website similar to the "cease and desist" in trademark, a provision which invoked comments from stakeholders. Whether these provisions will deter will-be offenders remains to be seen when these Bills eventually become Laws and come into force.

In the same vein, pending intellectual property treaties must be ratified. As a signatory to the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS), the government must make sure there is total compliance with the treaty by reviewing penalties for offences to ward off will-be offenders. The TRIPS agreement amongst other objectives seeks to establish new rules for effective enforcement of trade-related intellectual property rights.⁸⁸ Specifically, aspects of national laws that require reform or amendments to meet the TRIPS obligations, such as (a) Definition of protectable subject matter; (b) Recognition and protection of service marks; (c) Protection of well-known marks; (d) Requirements related to non-use in the cause of trade; (d) Parallel imports and exceptions; and (e) Protection periods and Renewals.⁸⁹

⁸⁴ SB. 357.

⁸⁵ Cap. T13, LFN, 2004.

⁸⁶ A trademark law concept that gives the owner of a famous trademark standing to forbid others from using that mark in a way that would lessen its uniqueness. A concept that has since been recognized by US laws with the Federal Trademark Dilution Act, 1996.

⁸⁷ NCC Draft Copyright Bill, 2015.

⁸⁸ See the TRIPS Agreement, Art. 9, 12, 14, 30 & 33.

⁸⁹ Shafiu Adamu Yauri, Commercial Law Department, Federal Ministry of Industry, Trade and Investment, Nigeria on the Intellectual Property Law and Policy Landscape in Nigeria: An Interview published on 1 September

1.10 7.2 Creation of Awareness

Kudos must be given to the NCC for its effort at sensitizing the public of their intellectual property rights, however, a lot more needs to be done in creating awareness to educate and inform (especially the younger ones) of the benefits of protecting IP rights and the attendant advancement that can be derived from it. Sometimes, awareness does not always equate to understanding, hence, IP should be inculcated in schools' curricula to achieve better impact. The 2020 WIPO Statistical Country Profile on Nigeria is reprehensible compared to some other African countries like South Africa and Kenya. There is a sharp contrast compared to the activity going on in terms of filing for IP protection for a patent in the countries mentioned and what obtains in Nigeria.⁹⁰ The issue of low filing of IP is not attributable to lack of awareness alone other factors and variables contribute to this, however, awareness will provide a great boost to the filings. Besides, stakeholders must continue to remind the government and push for the right policies to be formulated to enable the smooth administration of the IP sector.

1.11 7.3 Better Enforcement Mechanism

IPRs are enforced through the courts, tribunals, regulatory agencies like the NCC and NBC, law enforcement agents like the Nigerian Police and Customs service. All the relevant enforcement units must be up and doing in discharging their duties. The use of arbitration in settling disputes should be encouraged to avoid unending legal battles in courts which usually discourage the public from seeking legal redress.

Even in enforcement, the method by which it is carried out must not remain static. Often, it is seen in the news that pirated copies of CD's, pharmaceutical products and books are destroyed whenever NCC carries out raids, arrest and seizures.⁹¹ A challenge is how this destruction will be done if the pirated material(s) are in digital format (software) and not physical? Therefore, regulatory agencies should be proactive rather than reactive in combating piracy.

7.4 Monetization of Intellectual Property

Globally, huge economic value has been placed on intellectual property due to its present financial worth and potential growth. In the US for instance, firms are compelled to protect and place a great valuation on their intangible assets. This is because they recognize the commercial/economic value of intellectual property as a source of revenue to its government.

As Nigeria's intellectual property sector continues to develop, there is a conscious need to protect intellectual property rights in order to achieve commercial value. The WIPO⁹² proposes three major ways in which the IP can be valued and can be put to effective use through the following methods:

1. The income valuation method is the most commonly used method for IP valuation. It considers the stream of income the intellectual property has based on historical and future income, adjusted to its present-day value. This method is simple to use.

2020 at <https://www.floraip.com/2020/09/01/on-the-intellectual-property-law-and-policy-landscape-in-nigeria-an-interview-with-dr-shafiu-adamu-yauri/> 12 March 2021.

⁹⁰ Statistical Country Profile-Nigeria https://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=ng accessed 12 March 2021.

⁹¹ One of such many raids and arrest was recently reported widely in the papers on 3 September 2020 titled "NCC Arrests 15 Pirates in Lagos and Onitsha Raids" -<https://www.thisdaylive.com/index.php/2020/09/04/ncc-arrests-15-pirates-in-lagos-onitsha-raids/> accessed 12 March 2021.

⁹² Valuing Intellectual Property Assets https://www.wipo.int/sme/en/value_ip_assets/ accessed 12 January 2021.

2. The market valuation method compares the actual price paid for the transfer of rights to similar IP assets in the same group to arrive at a conclusion. This method is simple to use and based on market information.
3. The cost valuation method on the other hand compares the actual price paid for the transfer of rights for an exact IP asset. This method considers the history of the cost of an asset and how much it will take to recreate it using the present valuation.

1.12 8. Usage of Intellectual Property Rights

The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. This gives economic incentive for their creation, because it allows people to profit from the information and intellectual goods they create. These economic incentives are expected to stimulate innovation and contribute to the technological progress of countries, which depends on the extent of protection granted to innovators.⁹³ Some of the ways intellectual property rights are used are discussed hereunder.

1.13 8.1 Transfer of Intellectual Property

Intellectual property rights are transmissible under all the IP laws in Nigeria. This may be done through licenses, assignment and transferred by succession: offering several ways the owner of the right can exploit the invention within the period given.⁹⁴ The assignment is a common mode of exploiting IP rights. It is a transfer of rights and gives the assignee the same rights as the owner. Such an assignment must be in writing and signed by the parties.⁹⁵ Another to exploited IP is by licencing, which may be voluntary, contractual or compulsory. A licence, unlike an assignment, grants permission to the user, it may also be an exclusive or a non-exclusive licence which may be express or implied. An exclusive license is if the owner grants transfer of rights to a sole party, thereby excluding others. This type of license may be limited to a particular geographical area or a specific market.⁹⁶ A non-exclusive licence, on the other hand, entails the granting of IP rights to several licensees without giving exclusivity to any.⁹⁷ These licenses, however, are contractual agreements and the terms and conditions depend on the parties involved.⁹⁸

1.14 8.2 Basis for a Joint Venture

A joint venture agreement is simply an arrangement between two or more organisation's to work together to achieve a common objective or project. It is an easy way for companies to share intellectual property assets for economic benefits with lower financial commitments. This is one intellectual property benefit that has not been properly utilized in Nigeria.

⁹³ Rod Falvey and Neil Foster (2006): "The Role of Intellectual Property Rights in Technology Transfer and Economic Growth": Theory and Evidence, in cooperation with Olga Memedovic UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION (UNIDO), available: https://www.unido.org/sites/default/files/2009-04/Role_of_intellectual_property_rights_in_technology_transfer_and_economic_growth_0.pdf, accessed 22 March 2021.

⁹⁴ PDA, s.24.

⁹⁵ CA, s.11; PDA, s.24.

⁹⁶ John T. Pienkos, *The Patent Guidebook American Book Publishing American Bar Association Chicago 2004* p. 27.

⁹⁷ William J. Murphy and John L. Orcutt and Paul C. Remus *Patent Valuation: Improving Decision Making through Analysis* (Wiley Publishers, New Jersey, 2012) p.37.

⁹⁸ Temitope Oloko supra n.37 at 350.

8.3 Security in a Mortgage

Intellectual property is an important source of financing by utilizing the value of IP is to use it as collateral. Though intangible in nature, intellectual property remains a valuable form of asset, hence, it can be used to secure a legal mortgage or a fixed/floating charge. The problem however is that this practice is barely practicable and non-existent in this part of the world despite the provision in Rule 2 of the Collateral Registry Regulations,⁹⁹ which defined collateral as “movable property, whether tangible or intangible, that is subject to a security interest” while movable means “tangible or intangible property that can be moved or displaced”. A major factor hindering this practice is the difficulty in ascertaining the right valuation accompanying intellectual property. Nonetheless, individuals and companies need to exploit and take advantage of this opportunity as a source of securing a mortgage.

1.15 8.4 Franchising

The Nigerian International Franchising Association defines it 'as a business arrangement whereby the franchisor grants the franchise operator (the franchisee) the right to distribute certain products or services in a particular way, at a particular location and for specified periods.¹⁰⁰ It is an individual or group acting as an agent for a company's product or producing the company's products in exchange for fees and royalties. (paid to the franchisor). Many international brands, especially in the food industry, have entered into the Nigerian market, for instance, Chicken Republic from South Africa Pinkberry Frozen Yogurt an American company franchise also Eat N' Go Ltd (the franchise of Coldstone Creamery/Dominos Pizza franchises). Mr Biggs is a national brand which in a bid to expand and grow faster also franchised its brand to investors all over Nigeria. Another example is the Nigerian Bottling Company which is the franchise bottler of Coca-Cola in Nigeria. There is no specific law overseeing franchising in Nigeria, nonetheless, regular franchise contract agreements have applied.

9. Recognition of Intellectual Property Rights as an Asset in other Jurisdictions

The US Commerce Departmental released a report in 2016 which stated that IP intensive industries support about 45 million jobs (30%) of jobs in the US and contribute 38.2 per cent of US gross domestic product (GDP).¹⁰¹

In the UK, between 2011-2013, IP intensive industries generated over 70 per cent of the UK's GDP. Financier Worldwide in its special report stated that "in 2014, 55 per cent of the UK's investment spending was in knowledge or intangible assets such as intellectual property with 53 per cent of these investments being made in assets protected by IPRs, an income amounting to over £70 billion". The same cannot be said of Nigeria when compared to both jurisdictions above.¹⁰²

⁹⁹ Collateral Registry Regulations, 2014 issued by The Governor, Central Bank of Nigeria. available at <https://www.cbn.gov.ng/out/2014/dfd/collateral%20registry%20regulations%202014.pdf> 12 March 2021.

¹⁰⁰ What is Franchising at <http://www.nigerianfranchise.org/aboutfranchising.html>, accessed 12 March 2021.

¹⁰¹ “Intellectual Property and the U.S. Economy: 2016 he US Patents and Trademarks Office (USPTO) <https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf> 12 March 2021.

¹⁰² Intellectual Property Investment - The future of the UK economy and the effects of Brexit: https://www.financierworldwide.com/intellectual-property-investment-the-future-of-the-uk-economy-and-effects-of-brexith#.YFxTWK_Yppk 12 March 2021.

Outside of these two economies, Indonesia, a country also grouped into MINT¹⁰³ is also recording commendable success in the IP industry due to efforts by the Indonesian government at protecting copyrights.¹⁰⁴

Two years ago, South Africa approved a new IP policy regime with guidance from two United Nations (UN) agencies.¹⁰⁵ The policy which was applauded by local and international communities aims at placing South Africa's IP industry with that of better jurisdictions.¹⁰⁶ Following suit was Malawi, a South-eastern African country that also launched a national intellectual property policy in 2019 with a 5-point agenda as noted by Sulima as: (i) An effective institutional framework for modernising the administration of intellectual property rights. (ii) The generation and protection of intellectual property assets. (iii) Effective exploitation and commercialisation of intellectual property assets. (iv) An effective and balanced legal regime for intellectual property rights. (v) Intellectual property awareness creation and capacity building.¹⁰⁷ The country remains hopeful that the policy will be implemented.

Outside the African continent is India, another nation trying to maintain the best global IP practices. One such development is to establish fully computerized intellectual property offices as obtainable in the US Patent and Trademark office model.¹⁰⁸ These are just a few jurisdictions outside of the top world economies that have recently stepped up their IP policies and legal framework.

10. Conclusion and Recommendations

Inadvertently, by the foregoing, what is needed is an encompassing grand plan to holistically evaluate and uplift the face of IP in Nigeria - a policy framework. Yauri puts it succinctly:

*"The importance of having a national IP policy and strategy for a nation like Nigeria cannot be overemphasised. The idea is intended to develop better coordination and consultation between all the IP and IP related ministries, departments and agencies to maximise the full potential and benefits of IP in the country. This is in accordance with global best practice, where countries craft national IP policies to give direction on how best to utilise, protect and enforce IP rights in their economies."*¹⁰⁹

As seen with the countries discussed earlier, a policy framework is a key to changing IP in Nigeria and this must be backed with implementation. Also, a second look at the Bills awaiting enactment still reveals that there are loopholes, lacunas and aspects of IP omitted or not included.¹¹⁰ Consequently, amendments can still be made to the Bills where necessary before passage into Laws. Intellectual

¹⁰³ MINT (Mexico, Indonesia, Nigeria, Turkey) is an acronym that refers to a group of countries with the potential to realize rapid economic growth. The acronym is similar to the term BRIC, which refers to the economies of Brazil, Russia, India, and China. <https://www.investopedia.com/terms/m/mints-mexico-indonesia-nigeria-turkey.asp> accessed 21 December 2020.

¹⁰⁴ Indonesia increased its ranking on the United States Chamber of Commerce's 2018 International Intellectual Property Index which shows that the government's efforts to protect copyrights are starting to bear fruit. - Jakartaglobe.com

¹⁰⁵ United Nations Conference on Trade and Development (UNCTAD) and the UN Development Program (UNDP).

¹⁰⁶ South Africa adopts a new IP policy improving access to medicine <https://unctad.org/news/south-africa-adopts-new-ip-policy-improving-access-medicine> accessed 15 March 2021.

¹⁰⁷ Amina Suliman Hopes That Malawi's New IP Policy Will Stimulate Economic Growth

¹⁰⁸ Mark Malek Recent Developments for Intellectual Property Rights in India, accessed <https://www.legalteamusa.net/recent-developments-intellectual-property-rights-india/> 16 March 2021.

¹⁰⁹ *Ibid.* Yauri, note 90.

¹¹⁰ For example, the Copyright Bill does not give adequate protection to digital works covering cyberspace. Again, punishment for infringement is not sufficient enough.

property has become a very valuable asset in more advanced climes. In the US, as far back as 2011, it was valued at \$5 trillion (five trillion dollars).¹¹¹ It constitutes a very large percentage of corporate wealth as it now forms a major part of a company's assets.

This paper recognizes the fact that intellectual property is still growing and not yet at the pedestal expected. Nevertheless, it is not all gloomy and doom. Despite its short fallings, Nigeria remains a country with great potentials to benefits from IP if the appropriate things are done as posited above. Where there is an IP friendly environment, it will attract local patronage and foreign direct investments (FDI).

There have been calls and efforts to diversify Nigeria's economy which is heavily dependent on revenues from oil. Looking at the prospects in IP, the industry will create more jobs, and serve as an alternative source of income to the government. Companies and organizations need to realise the importance of IP assets and how significant they can be in the percentage of a company's valuation during the processes of mergers and acquisitions.

Therefore, we must endeavour to elevate the intellectual property industry to be at par with what is obtainable in other climes otherwise we will remain far behind at an unimaginable low level of development, especially in this digital/internet age where new areas of intellectual property continue to emerge in science and technology.

¹¹¹ Statistics from the US Commerce Department, at www.uspto.gov <https://www.uspto.gov/learning-and-resources/statistics> accessed 16 March 2021.