

IP RIGHTS IN THE NEW GLOBAL KNOWLEDGE ECONOMY

Keynote speech delivered by Mr. Geoffrey Onyeama at the WIPO Nigeria World Intellectual Property Day Seminar on April 26, 2024.

INTRODUCTION

With a focus on SDGs, this year's theme places IP at the center of our collective development aspirations as a society, and reminds us that IP, as an enabler of innovation and creativity, remains a critical tool for development. IP rights protect and ensure fair compensation for innovators and creators. At the heart of the IP mechanism is an objective to stimulate innovation and creativity.

The different types of IP rights include patents, trademarks, copyrights, geographical indications, industrial designs, traditional knowledge, trade secrets and also even plant variety protection (sui generis protection and UPOV).

Protocol

1. HE Sen. Dr. Aliyu Sabi Abdullahi, Honorable Minister of State for Agriculture and Food Security
2. Ms. Cristian Munduate, Country Representative of UNICEF Nigeria
3. Mr. Oluwatobiloba Moody, Director, WIPO Nigeria Office
4. Members of the Diplomatic Corps
5. Ag. Director General of NOTAP, Dr. Imiyoho
6. Heads of UN Agencies here present
7. Distinguished panelists
8. Participants
9. Ladies and Gentlemen

INTELLECTUAL PROPERTY RIGHTS AND ECONOMIC DEVELOPMENT

1. The philosophy of IPR Protection is to provide a limited period of commercial exclusivity, during which research and development costs of industrial and cultural creations are recovered as an incentive for those innovations.
For anyone else to exploit the creation or innovation, typically, a license will be given for a fee.
2. A perfect example of how the system works can be seen in the case of the popular American recording artists, Pharrell and Robin Thicke. They had a massive hit song called "Blurred Lines" but the family of Marvin Gaye sued that it copied Marvin Gaye's hit song "Got to give it up". The family of Marvin Gaye won and were awarded \$7.4 million. Music is a cultural creation, and the creator has an exclusive right to exploit commercially the music.
3. The establishment of the World Intellectual Property Organization (WIPO) as a specialized agency of the United Nations system was, in past, based on the assumption that there was a significant casual relationship between IP, technology and development. (STRADIVARIUS 1644-1737)

4. WIPO, of which I was part of the senior management for a number of years, declares itself to be “dedicated to developing a balanced and accessible international intellectual property system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.
5. This premise of the relationship between IPR and economic development is repeated in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which is part of the suite of agreements which make up the World Trade Organization (WTO). Article 7 of the TRIPS Agreement declares that “the protection and enforcement of intellectual property rights should contribute to the promotion of the technological innovation and to the transfer and dissemination of technology...”
6. Whether or not this is the case, Nigeria as a member of the WTO is obliged to implement and enforce the IPR provisions of the TRIPS Agreement in order to secure the trade and other advantages of the WTO membership. Also, as a result of the influence of the WTO, it is an expectation of international investors that a country will have an IPR system which is TRIPS compliant. A 2003 OECD study noted a positive correlation between IPR protection and foreign direct investment. Given the IPR obligations which the WTO imposes, it is important for countries like Nigeria to identify the advantages for itself in the international IPR system.

IPR AND THE KNOWLEDGE ECONOMY

7. It has been pointed out that the establishment of the IPR systems is one response to a more generic and fundamental problem, which is “how to improve the knowledge ecology” of countries, in the sense of creating and improving national institutions that enable the production, access and use of knowledge.
8. For developing countries, the establishment of knowledge-based industries offers an opportunity for economic development that leapfrogs the necessity for transition through heavy industries.
9. For example, the Economic Recovery and Growth Plan of the previous Government “encourages the use of science, technology and innovation to drive growth.”
10. An LDC such as Rwanda has announced information and communication technology (ICT) plans as “an engine for: accelerated development and economic growth; national prosperity; global competitiveness.”
11. South Africa’s National Development Plan (NDP) calls for “an intensive pursuit of a knowledge economy” and to “diversify the economy, by moving away from the current over-reliance on commodities and non-tradable services.” It recognizes that “...knowledge, innovation, and technology are increasingly becoming the drivers of progress, growth, and wealth... Therefore South Africa needs to transition towards a knowledge economy, and away from over-reliance on national resources.”

12. Countries including Nigeria have introduced an IPR policy to create a legal infrastructure to enable it to make the transition to a knowledge economy.
13. I say “including Nigeria” because when I was at WIPO, I launched the process of what we called an IP Audit for Nigeria. This was essentially a comprehensive gap analysis of the IP situation in the country to provide the dataset to elaborate a national IP policy and strategy.

IPR POLICY FORMULATION

14. Following on from the importance of formulating an IPR policy to underpin Nigeria's embrace of the knowledge economy, it is important for the country to undertake IPR policy capacity building. This involves both the establishment of an institutional capacity as well as the substantive capacity for IP policy formulation among government officials.
15. A particular complication with IPR policy is the fact that IPR is a cross-cutting issue with a number of ministries: Culture, education, foreign relations, health, industry, justice, science and trade, concerning themselves with IPR.
16. Similarly, a number of international and trans-national organizations and agencies in addition to WIPO are now concerning themselves with this subject, including Convention on Biological Diversity (CBD), the Food and Agriculture Organization (FAO), the United Nations Environmental Program (UNEP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Industrial Development Organization (UNIDO), the World Customs Organization (WCO), the World Health Organization (WHO) and the World Trade Organization (WTO).
17. An obvious consequence of the involvement of 20 many international organizations and national ministries in the formulation of IP policy is the difficulty of securing the nationally and internationally consistent approach in relation to common subjects.

SCIENCE TECHNOLOGY INNOVATION, POLICY (STIP)

18. Central to the establishment of a knowledge economy is the establishment of institutions for the analysis of technologies that can be adopted, absorbed and diffused. STIP policies can be developed to support the IPR offices and encourages IPR awareness as well as to support the technological transformation, capacity building and innovation of enterprises and improve linkages between the research and industry sectors and enhance national, regional, and international dialogue in the area of science, technology and innovation.
19. The central thrust of the industrial policies should be the nurturing and promotion of SMEs as the key drivers of the economy through the development of an innovative and technologically strong base. Industry policies should recognize innovation as a key enabler of economic growth and should seek to nurture an innovation culture among enterprises.

INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) POLICY.

20. Copyright protection stands at the heart of ICT policy, as the reality for a number of African countries is that this is a precondition for foreign investment and technology transfer.

However, for a country like Nigeria, copyright protection has a number of conflicting implications.

21. For many years, Nigeria has had to accommodate the high costs of access to printed works, such as textbooks. The digital copyrights that stand at the heart of the contemporary knowledge industries are largely in the hands of major industrialized nations, which places Nigeria at a significant disadvantage.
22. The UN Economic Commission for Africa (UNECA) in 1996 launched the African Information Society Initiative (AISI) is an attempt to bridge the digital divide between Africa and the rest of the world and “a framework for a radical socio-economic transformation. Through deployment and exploitation of ICTs in the context of globalization and the information age.”
23. The former Minister of Communications, Adebayo Shittu, this month in his keynote speech at the 6th European Union-Nigeria Business Forum in Lagos said Nigeria had invested over \$60 billion in the ICT sector since 2001 when digital mobile services were launched. He stressed that the Federal Government had been cautious of the role ICT plays in national development and so has been committed for over 15 years to ensuring that ICT facilities and services were expanded rapidly.
24. The Minister noted that “Government is addressing the issue of investments in ICT infrastructure and ICT education and regulation in order to build on the successes of the digital revolution.” He added that “We are mindful of the fact that youths play a key role in developing the ICT sector, and we are putting in place the right business environment and regulatory framework to allow our young people to unlock all the potential of digital economy.”

The minister continued that “globally, ICT had become a veritable tool for advancing growth and economic development, especially in countries endowed with natural resources”. He continued that “ICT has changed the way people communicate, learn and conduct business”. He further stated that “a World Bank econometric study in 2009 showed that every 10 percent increase in ICT investment generates a 1.38 percent increase in GDP. He also said that “the Nigeria ICT sector today is one of the fastest growing despite the economic recession. He also said “the country was leveraging on ICT to drive transparency in governance and improve the quality and cost effectiveness of public service delivery”. Finally, he said “In order for the ICT sector to supplement or replace the oil and gas sector, we have put in place strong policy framework which favors the sector. We want the ICT sector to be the cash cow for our nation”.

IPR AND ICT POLICY OVER-REACH

25. Although the formulation of IPR and ICT policies has provided some clarity for the international investment community, sometimes these policies have met with condemnation for their over-reach. For example, in the area of access to medicines, the South African draft IPR policy 2017 has been criticized by the international pharmaceutical sector for exceeding the TRIPS compulsory licensing provisions.

26. In relation to ICT, the US Trade Representative in his 2017 special 301 report has criticized Nigeria's 2013 Guidelines for Nigerian content Development in Information and Communications Technology (ICT) for requiring local production or utilization of Nigerian material and labour across a broad range of ICT goods and services.
27. Requirements of particular concern to the USTR include server localization mandates, cross-border data flow restrictions, programs to support only local data hosting firms, and provisions that impose burdens on foreign firms by requiring in-country research and development departments and the disclosure of source code and other proprietary information.

ENFORCEMENT OF IPRS

28. Concern about the scale of the trade in IPR infringements is the principal explanation for including the TRIPS Agreement as part of the structure of the WTO.
29. The US International Trade Commission estimated losses to the US economy in revenue and jobs due to IPR violations at the time of the commencement of the Uruguay Round of the GATT (1986) to be in the region of US \$60 billion.
30. Consequently, the principal novel features of the TRIPS agreement was the enforcement machinery that it contained. WIPO had no enforcement mechanism.
31. Nigeria has not featured on the watch list or priority watch lists of the USTR as defaulting countries in the last ten years of special 301 reports. However, mention is made of the sale of counterfeit and pirated products in a number of Nigerian markets - Alaba market for example.
32. The Nigerian Intellectual Property Watch has reported the large scale piracy in the Nigerian film and music industries as well as the illicit sale of TV program decoders.
33. Maintaining effective IPR enforcement is important in maintaining an encouraging investment landscape.
34. The Financial Times of London had a feature in 2014, titled "Investing in Nigeria" "Piracy and illegal downloads hit Nigeria's film and music industries."
35. The article stated "When Nigeria's National Bureau of Statistics announced last month that the film and music industries contributed nearly 1.5% to GDP, it raised eyebrows in some quarters.
36. This was when Nigeria's GDP was rebased, and the film and music industries helped to catapult Nigeria ahead of South Africa to become the largest economy in Africa.
37. However the FT article noted that "the country is notorious for having some of the most rampant levels of piracy in the world."

38. Interestingly though a Nigerian entertainment entrepreneur (Babatunde Layode) was quoted as saying “some artists pay pirates to include their songs on mix CDs to try to generate the hype needed for corporate sponsorship, which is said to be worth tens of thousands of dollars a year.”
39. A Brookings Report titled “Figures of the Week: Africa’s entertainment and media industry” noted that while the music industry in Africa “has recently experienced strong growth, poor distribution networks and weak intellectual property laws coupled with rampant piracy represent challenges to long-term growth.”
40. Price Waterhouse Coopers Entertainment and Media Outlook reported as follows “Nigeria remains one of the world’s fastest -growing entertainment and media markets with overall growth of 15.7 percent in 2015, reaching \$3.8 billion. Nigeria’s music industry alone is expected to grow at a breathtaking 12.9 percent compound annual growth rate almost doubling from \$47 million in 2015 to over \$86 million in 2020 - on back of strong mobile music revenue.
41. According to the PwC report, the rapid growth of the African music industry can be attributed to three factors: demographics, internet penetration, and streaming. They further argue that this growth in entertainment and media spending is determined more by the age of a country’s population than by its comparative wealth, and in fact 6 in every 10 Africans are aged under 24 years – the youngest population of any region globally.
42. A close look at other studies is necessary to acquire a full picture of the economic and social dynamics of the country. The WIPO 2022 Global Innovation Index ranks Nigeria 114 out of 132 countries. According to the same index Nigeria placed 123 for knowledge and technology output, and 97 for creative outputs. Nigeria also ranked 109 in Human Capital and Research. Nigeria is therefore in a dual position, an economic powerhouse in the making with consistently low levels of human and social development.

CONCLUSION

43. The development of IPR, ICT and STI policies by themselves will not secure national participation in the global knowledge economy. Other important factors are those that relate to industrial development generally such as access to finance, adequate managerial skills, and general educational levels.
For Nigeria, IPRs are both a burden and an opportunity. The principal burden is the cost of complying with the various international, regional, and bilateral IP obligations that are imposed upon her.
44. Compliance with the TRIPS as a qualification for membership of the WTO is probably the most significant obligation in this regard.
45. On the other side of the ledger is the promise articulated in article 7 of TRIPS, that the protection and enforcement of IPRs “should contribute to the promotion of technological innovation and to the transfer and dissemination of technology.”

46. Consequently, for Nigeria it is important to identify the ways in which IPRs can be used to encourage investment, to underpin research and development, and to enhance the development of industry and to facilitate trade. A clear IPR policy and strategy coupled with a programme of building the necessary implementing capacity, will enable the exploitation of any flexibilities in the TRIPS Agreement and the use of IPRS as a tool for development.

THANK YOU.