



Intellectual Property, SMEs, and Economic Recovery in Nigeria

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1.1 Introduction

In recent times, it has become increasingly difficult to think of Nigeria as a developing nation rather than a deteriorating one. Her economic landscape is characterized by inflation and unfavourable policies. Her citizens struggle to maintain average standards of living, due to the hike in prices of goods and services without any appreciable increase in their income rates. Almost half of her population lives below the poverty line, resulting in her being crowned the world's poverty capital.¹ And while these problems have pinned her neck to the wall for years, the coronavirus pandemic of 2020 indeed crippled her legs: the inability to generate substantial revenue, coupled with the

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¹ World Poverty Clock (2021). Poverty statistics: Nigeria. Available at <https://worldpoverty.io/map>

urgent need to stop the spread of the virus and provide palliatives, caused her economy to shrink by 1.9%.²

But in this seeming vault of darkness, there shines the bright light of Small and Medium-sized Enterprises (SMEs), whose place in national development cannot be overemphasized. A sturdy backbone of our economy, SMEs contribute 48% of Nigeria's Gross Domestic Product (GDP), account for 96% of businesses, and employ 84% of the employed labour force.³ Noting that SMEs are run by entrepreneurs who are embodiments of creativity and progenitors of innovation, it becomes obvious that if we are to spark an economic renaissance, we must fully harness the potential of these creators by ensuring that their businesses are adequately protected under the legal framework of Intellectual Property (IP).

Thus, this essay discusses the nexus between IP and SMEs and how their intercourse can ignite a chain reaction for Nigeria's economic recovery. IP refers to creations of the mind: inventions, literary and artistic works, brand names, and images used in commerce among others. Such creations are protected by IP rights (IPRs), including but not limited to patents, copyrights, trademarks, industrial designs, and geographical indications.⁴ IPRs ensure that immense value is placed upon human ingenuity; thus, they attract revenue and respect to creators. And this value comes in varying forms, especially in the business world: the role of IP in business depends largely on the business model, the type of IPR corresponding to business offering, the market being addressed, and the stage of business growth.

² Trading Economics (2021). Nigeria Annual GDP Growth Rate. Available at <https://tradingeconomics.com/nigeria/gdp-growth-annual>

³ PwC Nigeria (2020). Nigeria SME survey: Assessing current market conditions and business growth prospects [Blog Post]. Available at <https://www.pwc.com/ng/en/events/nigeria-sme-survey.html>

⁴ World Intellectual Property Organization (n. d.). What is intellectual property? *WIPO Publication No. 450(E)*. Available at https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

With respect to SMEs, then, IPRs provide a dose of increased presence and potential. They contribute to creating a strong brand identity, without which a business cannot survive in today's competitive markets. Backed by the appropriate IP rights, SMEs give all stakeholders — investors, customers, the government, and others — the impression that they have high commercial value, and so such businesses are better able to secure capital and access funding. This has been proven in multiple countries and can be seen today in Ireland, which is gradually emerging as a supercluster of innovative businesses and rivalling even the world's most developed nations.⁵

Similarly, IPRs enable businesses to properly govern how their IP is used by other parties. For one, they prevent other business entities or businesspeople from copying their innovations, in whole or in part. Also, and especially with regard to copyrights, they create an avenue for SMEs to make more income through licensing their innovations to others, franchising, cross-licensing, or performing other IP transactions. Moreover, SMEs backed by IP are capable of accessing new markets, outsourcing jobs, and obtaining valuable intelligence to become stronger competitors— all of which contribute to bolstering Nigeria's economy.

On a national scale, IP-backed SMEs attract foreign direct investments (FDI). With Nigeria having lost her status as West Africa's top FDI destination, it is unquestionable that SMEs are key to re-enacting the glory days. IPRs boost investor confidence by sending the message that the business would maximize its monetary value and generate returns on investment, while increasing national wealth through taxation. A study by the OECD revealed that a percentage

⁵ Formica, P. (2017). *Entrepreneurial Renaissance: Cities Striving Towards an Era of Rebirth and Revival*. Springer Series in Innovation, Technology, and Knowledge Management.

increase in a country's patent, trademark, and copyright protections increases foreign direct investments by 2.8%, 3.8%, and 6.8% respectively.⁶

Again, IP-backed SMEs create more employment opportunities for the Nigerian populace. As a case study, the Nigerian film industry which suffers the throes of piracy and illegal distribution also suffers a loss of job creation potential. The World Bank estimates that for every legitimate copy of a movie sold, nine others are pirated, and that if adequate measures are taken to curb piracy, a million more jobs could be created in the film industry.⁷ IPRs are indispensable in achieving this goal, and proper IPR implementation would culminate in an upsurge of SMEs involved in creating more entertainment content, employing creative Nigerians, and securing a huge chunk of revenue for the nation.

But just as there are boundless benefits to be gained from IP adoption by SMEs, there are also colossal consequences for ignorance of IP, many of which Nigeria is currently facing. The failure of SMEs to secure their IP rights has led to an increase in fake and pirated goods within the country. In 2008, the US Department of Commerce estimated that Nigeria had the largest market in Africa for goods that infringe on IPR.⁸

With regard to counterfeits, the IPN reports that nearly half of the drugs sold in Nigeria are substandard.⁹ As a result, citizens are in constant danger of complications that might arise from the intake of such medications. With regard to piracy, Nigeria has been ranked among the world's

⁶ Park, W. and Lippoldt, D. (2008). Technology Transfer and the Economic Implications of the Strengthening of Intellectual Property Rights in Developing Countries. OECD Trade Policy Working Paper, 62.

⁷ Moudio, R. (2013). Nigeria's film industry: a potential gold mine? *United Nations Africa Renewal*. Retrieved from <https://www.un.org/africarenewal/magazine/may2013/nigeria%E2%80%99s-film-industry-potential-gold-mine>

⁸ Business Action to Stop Counterfeiting and Piracy (2015). Promoting and Protecting Intellectual Property in Nigeria. *International Chamber of Commerce*.

⁹ World Health Organization (2009). World Malaria Report 2009. Available at http://whqlibdoc.who.int/publications/2009/9789241563901_eng.pdf

most piracy-ridden countries, with an average piracy rate of 80-90%.¹⁰ This creates a multi-edged problem, whereby SME owners are unable to tap the full wealth of their products and enterprises, and the economy loses income accruing from these infringements. A report by the Nigerian Television Authority (NTA) in 2008 estimated the total annual loss of Nigeria's content industries (music, software, books, videos, etc.) to be well over ₦100 billion.¹¹ Considering these barriers to fruitful innovation, it is thus unsurprising that Nigeria ranks 117th of 131 countries on the Global Innovation Index 2020.¹²

In changing this narrative, the problem of minimal IP adoption by SMEs must be attacked at its root and on all fronts. To start with, there is a chronic deficiency of IP knowledge among business owners: while some misconstrue the nature and purpose of IP in business, some others blatantly ignore IP or downplay its utility. Nigeria can borrow a leaf from the Australian government, which developed a marketing department to spearhead public training and awareness on IP. Along those lines, the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) should collaborate with relevant IP agencies in Nigeria — such as the Nigerian Copyright Commission (NCC) and the Trademarks, Patents, and Designs Registries — to design learning materials, both online and offline, for all strata of SME owners with full consideration of language and educational level.

¹⁰ Proshare NG (2021). Role of SMEs in Driving Economic Recovery in Nigeria Through Markets and Intellectual Property. Available at <https://www.proshareng.com/news/MSME%20START%20UP/Role-of-SMEs-in-Driving-Economic-Recovery-in-Nigeria-Through-Markets-and-Intellectual-Property/57016#>

¹¹ Nigeria Films (2009). Effects of Piracy in Nigeria. Available at <http://www.nigeriafilms.com/news/5998/9/effects-of-piracy-in-nigeria.Html>

¹² World Intellectual Property Organization (2020). Global Innovation Index 2020. Available at https://www.wipo.int/edocs/pubdocs/en/wipo_pub_gii_2020.pdf

The Federal Ministry of Education should also incorporate introductory courses on IP for students across all disciplines in tertiary institutions. Besides debunking the notion that IP knowledge is the exclusive preserve of legal practitioners, this would expose the youth to the vista of opportunities to be exploited by backing SMEs with IP rights.

Furthermore, IP financing — which refers to the use of IP rights to access credit¹³ — should be massively adopted by Nigerian financial institutions, as this would both incentivize SMEs to register their IP and lead to the creation of more SMEs. For practicality, the Intellectual Property Law Association of Nigeria (IPLAN) could establish an IP Financing Department, where lawyers inform and advise SME owners on leveraging the benefits of IP financing. And since the effectiveness of this scheme would depend on the very systems of IP registration, the IP agencies should see to it that all processes are free of bureaucracy and bribery. In addition, the SMEDAN should aid in establishing favourable prices for IP registration by SME owners.

Finally, there is an urgent need to improve Nigeria's legal framework for IP. Existing provisions have caused many SME owners to be lethargic towards IP registration, as they are convinced that they do not provide sufficient protection against infringement and fail to sanction the guilty. Whether it be by similar business entities or by multinational corporations, it is *intra vires* the administration to ensure that IP infringement is penalized appropriately. To facilitate this, IP agencies should collaborate with the National Information Technology Development Agency (NITDA) to create a database of all registered IP, such that violations can be easily detected and tracked. Such technologies would also support the work of the National Office for Technology

¹³ Verma, S. K. (2006). Financing of intellectual property: Developing countries' context. *Journal of Intellectual Property Rights*, 11, 22-32.

Acquisition and Promotion (NOTAP), who should protect Nigerian SMEs from the threat of displacement due to the import of foreign innovation.

1.2 Conclusion

The challenges posed by our devastated economy constitute the prevailing issues of our time. Fortunately, we are presented with a unique opportunity to leapfrog from this state of decline to one of exponential growth, and achieving this requires us to develop the twin powers of IP and SMEs. We must understand that the foundations of the future are laid in the present, and by ensuring that SME owners are attentive to IP rights, we would be laying the strongest foundations for the brightest future.