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**TITLE: INTELLECTUAL PROPERTY PROTECTION METHODS**

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**I**

**OBJECTIVE**

 To discuss at length on the topic and issues on some intellectual property management methods such as: Patent, copyright, trademark and trade secret.

**ABSTRACT**

 This research and study discusses at length on the topic and issues on some intellectual property management methods such as: Patent, copyright, trademark and trade secret.

 It involves the history of intellectual property, how it came about, the do’s and don’ts, how it can back you and how it cannot. Also what to do to protect your ideas etc.

 This article also swayed a little towards the Nigerian intellectual property rights structure, where it stands, how it works, the faults and little ways to improve in the sector in other to protect the ideas of its citizens etc.

**TABLE OF CONTENTS**

**OBJECTIVE………………………………………………………………………………………………………………………….I**

[**ABSTRACT**](file:///C%3A%5CUsers%5Cam%20Tim%5CDesktop%5CCHE%20301%5Cgabriel.docx#_Toc22707285) II

[**CHAPTER ONE**](file:///C%3A%5CUsers%5Cam%20Tim%5CDesktop%5CCHE%20301%5Cgabriel.docx#_Toc22707290)

 [**INTRODUCTION**](file:///C%3A%5CUsers%5Cam%20Tim%5CDesktop%5CCHE%20301%5Cgabriel.docx#_Toc22707291)

[**CHAPTER TWO**](file:///C%3A%5CUsers%5Cam%20Tim%5CDesktop%5CCHE%20301%5Cgabriel.docx#_Toc22707299)

 **HISTORY…**………………………………………………………………….

[**CHAPTER THREE**](file:///C%3A%5CUsers%5Cam%20Tim%5CDesktop%5CCHE%20301%5Cgabriel.docx#_Toc22707313)

 [**INTELECTUAL PROPERTY RIGHTGS**](file:///C%3A%5CUsers%5Cam%20Tim%5CDesktop%5CCHE%20301%5Cgabriel.docx#_Toc22707314)

 TRADE SECRETS

 TRADEMARK

 COPYRIGHT

 PATENT

 Objectives of intellectual property law

 Infringement, misappropriation, and enforcement

 simple rules to protect intellectual property

**CHAPTER FOUR…………………………………………………………………………….**

 Intellectual property rights in Nigeria

 [**REFERENCES**](file:///C%3A%5CUsers%5Cam%20Tim%5CDesktop%5CCHE%20301%5Cgabriel.docx#_Toc22707334)

**Chapter 1**

INTRODUCTION

 **Intellectual property** (IP) means information, ideas, inventions, innovations, art work, designs, literary text and any other matter or thing whatsoever as may be capable of legal protection or the subject of legal rights. *It is sometimes simply defined as the ownership of ideas. Unlike tangible assets to your business such as computers or your office, intellectual property is a collection of ideas and concepts.* ***Intellectual property****(****IP****) is a category of property that includes intangible creations of the human intellect. There are many types of intellectual property, and some countries recognize more than others. The most well-known types are copyrights, patents, trademarks, and trade secrets. Early precursors to some types of intellectual property existed in societies such as Ancient Rome, but the modern concept of intellectual property developed in England in the 17th and 18th centuries. The term "intellectual property" began to be used in the 19th century, though it was not until the late 20th century that intellectual property became commonplace in the majority of the world's legal systems.*

*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.*

*The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is indivisible, since an unlimited number of people can consume an intellectual good without it being depleted. Additionally, investments in intellectual goods suffer from problems of appropriation: a landowner can surround their land with a robust fence and hire armed guards to protect it, but a producer of information or literature can usually do very little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of intellectual goods but not so strong that they prevent the goods' wide use is the primary focus of modern intellectual property law.*

**CHAPTER TWO**

**HISTORY.**

 The State of Monopolies (1624) and the British Statute of Anne (1710) are seen as the origins of patent law and copyright respectively, firmly establishing the concept of intellectual property.

"Literary property" was the term predominantly used in the British legal debates of the 1760s and 1770s over the extent to which authors and publishers of works also had rights deriving from the common law of property (*millar vs taylor* (1769), *Hinton vs Donaldson* (1773), *Donaldson vs Becket* (1774)). The first known use of the term *intellectual property* dates to this time, when a piece published in the *Monthly Review* in 1769 used the phrase. The first clear example of modern usage goes back as early as 1808, when it was used as a heading title in a collection of essays.

The German equivalent was used with the founding of the North German Confederation whose constitution granted legislative power over the protection of intellectual property (*Schutz des geistigen Eigentums*) to the confederation. When the administrative secretariats established by the Paris Convention (1883) and the Berne Convention (1886) merged in 1893, they located in Berne, and also adopted the term intellectual property in their new combined title, the United International Bureaux for the Protection of Intellectual Property.

The organization subsequently relocated to Geneva in 1960 and was succeeded in 1967 with the establishment of the World Intellectual Property Organization (WIPO) by treaty as an agency of the United Nations. According to legal scholar Mark Lemley, it was only at this point that the term really began to be used in the United States (which had not been a party to the Berne Convention), and it did not enter popular usage there until passage of the Bayh-Dole Act in 1980.

"The history of patents does not begin with inventions, but rather with royal grants by Queen Elizabeth I (1558–1603) for monopoly privileges... Approximately 200 years after the end of Elizabeth's reign, however, a patent represents a legal right obtained by an inventor providing for exclusive control over the production and sale of his mechanical or scientific invention... [demonstrating] the evolution of patents from royal prerogative to common-law doctrine.

The term can be found used in an October 1845 Massachusetts Circuit Court ruling in the patent case *Davoll et al. v. Brown.*, in which Justice Charles L. Woodbury wrote that "only in this way can we protect intellectual property, the labors of the mind, productions and interests are as much a man's own...as the wheat he cultivates, or the flocks he rears. The statement that "discoveries are..property" goes back earlier. Section 1 of the French law of 1791 stated, "All new discoveries are the property of the author; to assure the inventor the property and temporary enjoyment of his discovery, there shall be delivered to him a patent for five, ten or fifteen years." In Europe, French author A. Nion mentioned *propriété intellectuelle* in his *Droits civils des auteurs, artistes et inventeurs*, published in 1846.

Until recently, the purpose of intellectual property law was to give as little protection as possible in order to encourage innovation. Historically, therefore, they were granted only when they were necessary to encourage invention, limited in time and scope. This is mainly as a result of knowledge being traditionally viewed as a public good, in order to allow its extensive dissemination and improvement thereof.

The concept's origins can potentially be traced back further. Jewish law includes several considerations whose effects are similar to those of modern intellectual property laws, though the notion of intellectual creations as property does not seem to exist – notably the principle of Hasagat Ge'vul (unfair encroachment) was used to justify limited-term publisher (but not author) copyright in the 16th century. In 500 BCE, the government of the Greek state of Sybaris offered one year's patent "to all who should discover any new refinement in luxury".

According to Jean-Frédéric Morin, the global intellectual property regime is currently in the midst of a paradigm shift. Indeed, up until the early 2000s the global IP regime used to be dominated by high standards of protection characteristic of IP laws from Europe or the United States, with a vision that uniform application of these standards over every country and to several fields with little consideration over social, cultural or environmental values or of the national level of economic development. Morin argues that the emerging discourse of the global IP regime advocates for greater policy flexibility and greater access to knowledge, especially for developing countries. Indeed, with the Development Agenda adopted by WIPO in 2007, a set of 45 recommendations to adjust WIPO's activities to the specific needs of developing countries and aim to reduce distortions especially on issues such as patients access to medicines, Internet users access to information, farmers access to seeds, programmers access to source codes or students access to scientific articles. However, this paradigm shift has not yet manifested itself in concrete legal reforms at the international level.

Similarly, it is based on these background that the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement requires members of the WTO to set minimum standards of legal protection, but its objective to have a “one-fits-all” protection law on Intellectual Property has been viewed with controversies regarding differences in the development level of countries. Despite the controversy, the agreement has extensively incorporated intellectual property rights into the global trading system for the first time in 1995, and has prevailed as the most comprehensive agreement reached by the world.

**CHAPTER THREE**

**Intellectual Property Rights.**

 Intellectual property rights include patents, copyright, industrial design rights, trademarks, plant variety rights, trade dress, geographical indications, and in some jurisdictions trade secrets. There are also more specialized or derived varieties of sui generis exclusive rights, such as circuit design rights (called mask work rights in the US), supplementary protection certificates for pharmaceutical products (after expiry of a patent protecting them), and database rights (in European law). The term "industrial property" is sometimes used to refer to a large subset of intellectual property rights including patents, trademarks, industrial designs, utility models, service marks, trade names, and geographical indications. **FOUR TYPES OF INTELLECTUAL PROPERTY RIGHTS**

The four types of intellectual property include:

Trade Secrets

Trademarks

Copyrights, and

Patents.

The first type of intellectual property right is a trade secret. All inventions generally start as a trade secret of the inventor. Inventors have an instinctual desire to keep their ideas secret. To market your invention, you should protect your idea with one or more of the other types of intellectual property rights: patents, trademarks, and copyrights.



**Different types of intellectual property: a comparison chart**

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of protection** | **How to get it** | **Term** | **Applicable for** |
| **Patent** | **Apply** | **20 years** | **Inventions** |
| **Trademark** | **Register** | **Unlimited while the mark is in use** | **Product names** |
| **Copyright** | **Automatically granted** | **Author’s life plus 70 years** | **Artistic works** |
| **Trade secret** | **Non-disclosure agreement** | **Until the information is revealed** | **Confidential information** |

**WHAT DOES EACH TYPE OF INTELLECTUAL PROPERTY RIGHT PROTECT?**

To protect your idea effectively when you launch your product, you need to utilize one or more of the other three types of intellectual property before you commence your marketing activities. The table below illustrates each of the four different types of intellectual properties and what they might be used to protect in a broader sense. You must select the most suitable form of patent protection to protect your idea or device effectively.



**Trade secrets**

A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors and customers. There is no formal government protection granted; each business must take measures to guard its own trade secrets

Examples of trade secrets include:

* Soda formulas. (e.g., Formula of its soft drinks is a trade secret for Coca-Cola.)
* Customer lists
* Survey results
* Computer algorithms

Unlike the other types of intellectual property, you can't obtain protection by registering your trade secret. Instead, protection lasts only as long as you take the necessary steps to control disclosure and use of the information.

Businesses use nondisclosure agreements, restricted access to confidential information, post-employment restrictive covenants, and other security practices to maintain trade secrets.

 When protecting intellectual property, look at competitors and others in the industry as if they are in competition for your ideas. Protecting yourself and your company is the best way to make sure that no one else can use your distinctive inventions, works, marks, or other ideas. Meet often with employees to keep them aware of what must stay out of public discussion and away from competitors. Physical and digital protection of ideas is also necessary, so track who has access and limit who can get into important databases. Looking at the risk and cost-benefit analysis can also help you decide what's worth protecting. Protection of intellectual property often comes at a high cost and takes much time, so make sure your time and money is worth the investment.

 The best way to secure the information for a trade secret is to restrict access to the secret and have individuals and companies sign nondisclosure agreements with you should you enter into a relationship with them which will require them to know some aspects of the secret. If someone independently develops or reverse-engineers your trade secret, there's nothing you can do. If someone does leak it, you can sue for theft. Suing, however, cannot stop the person from using the leaked information. So although you may get money from the suit, you lose the larger potential profits you could have made from the idea. Still, if your luck holds and your trade secret remains secret, royalty income from it can last significantly longer than the patent period.

 **TRADE SECRET PROTECTION**

**How to identify your trade secret?**

To identify the trade secrets in your idea, you need to understand the definition of a trade secret. Under trade secret law, a “trade secret” is any valuable information that is not publicly known and of which the owner has taken “reasonable” steps to maintain secrecy. These include information, such as business plans, customer lists, ideas related to your research and development cycle, etc.

You don’t submit your trade secret for approval. No government body examines, approves, or registers your trade secret. To establish your information as a trade secret, you need to treat the information as a trade secret. For example, only those with a need to know should have access to your trade secret information. Disclosures should be done only under a nondisclosure agreement. When you take steps to keep information secret, that information becomes your trade secret.

When someone misappropriates your trade secret, you have to prove in a court of law that the information qualifies as your trade secret. You have to show that the misappropriated information was valuable because of its secrecy, and you must show the steps you took to keep it secret. Put simply, the owner of the trade secret information must prove that the confidential information fits the definition of a trade secret given above.

Trade secret protection lasts until the information is no longer valuable, the information is not secret, or the owner no longer takes reasonable steps to maintain its secrecy.

Trade secret law specifically protects the misappropriation of trade secret information. The definition of trade secret means that a wrongful or nefarious act must accompany the acquisition of the information. For example, if someone acting as an imposter steals trade secret information from its owner, the owner can sue the imposter for misappropriation of trade secrets. However, if the owner voluntarily gives trade secret information to an individual without limitation, there has been no misappropriation, and the owner cannot sue. It is also possible that the information may lose its status as a trade secret. This loss of rights an occur if there has been a lack of reasonable effort to keep the information secret and/or the information is de facto no longer a secret.

**When to protect your idea as a trade secret rather than securing a patent?**

 Most inventions start as trade secrets, which provides short-term protection before the marketing of your invention. Inventors are often initially cautious about revealing their inventions to others, even their patent attorneys, and this is a good instinct to have.

 Trade secret protection is not appropriate for the long-term protection of any ideas which can be readily ascertained by reverse engineering or for inventions that can be independently created. If the information can be reverse engineered or independently created, then there is no nefarious act. If there is no nefarious act that accompanies the acquisition of the information, there is generally no misappropriation or wrongful appropriation of the trade secret information. Generally, trade secret protection is not optimal for mechanical or software products since both utilize a user interface that is available to the public and can, therefore, be reverse-engineered.

**Trademarks**

 A trademark is a recognizable sign, design or expression which distinguishes products or services of a particular trader from similar products or services of other traders.

 A trademark is like a brand name. It is any word(s) or symbol(s) that represent a product to identify and distinguish it from other products in the marketplace. A trademark word example would be Rollerblades. A trademark symbol would be the peacock used by NBC.

A trademark can be registered in three ways:

By filing a "use" application after the mark has been used.

By filing an "intent to use" application if the mark has not yet been used.

In certain circumstances in which a foreign application exists, you can rely on that.

The (TM) mark may be used immediately next to your mark. The ® registration symbol may only be used when the mark is registered with the PTO. It is unlawful to use this symbol with your mark before receiving an issued registration from the PTO.

 **What qualities make for a strong trademark?** The cardinal rule is that a mark must be distinctive. The more distinctive it is, the easier your trademark will be to enforce. This is why so many trademarked products have unique spellings. Trademark rights last indefinitely if the company continues to use the mark to identify its goods or services. When the mark is no longer being used, the registration is terminated. The initial term of federal trademark registration is 10 years, with 10-year renewal terms.

 **TRADEMARK PROTECTION**

 Your brand needs to be protected because you do not want to invest time and money only to find out later on that you have to switch to a different trademark because someone else is already using your trademark. In this instance, you would be infringing on that person’s trademark and will have to switch to a different trademark.

 Trademarks protect brands. The name of the product associated with the product or service is called the trademark. Under trademark law, a trademark is anything by which customers recognize a product or the source of a product. Typically, that would be the words or name associated with the product or service. When the brand or trademark is made up of words, we refer to this as a wordmark.

Other things can serve as your trademark. For example, sounds, colors, smells, and anything else that can bring the product and/or its owner to the minds of a consumer can serve as your trademark. The most common types of trademarks are wordmarks, logos, and slogans. If the product configuration (e.g., a Coca-Cola® bottle) or packaging (e.g., Tiffany’s blue packaging) are nonfunctional and recall the product’s maker (i.e., source of the product) for consumers, the configuration can be protected and registered as a trademark.

 If you are starting out, protect the wordmark first. Then, you can seek trademark protection for the other forms of trademarks if you have the available funds to do so and if it makes sense in your overall marketing and business strategy.

 To properly protect your trademark, you should conduct a search to find out if others are using a similar mark to yours. If not, then file a trademark application to get your trademark registered.

 In the table, registration of a trademark was optional because you accrue trademark rights simply by using the mark in commerce. When you sell a product or perform service under a brand, trademark law gives you common law trademark rights that you can assert against others in your small geographical region where you used the mark. Hence, to obtain trademark rights, you do not need to register your trademark, but there are significant advantages for doing so, such as nationwide rights and the right to block others from securing a registered trademark with the United States Patent and Trademark Office.

**Copyright**

A copyright gives the creator of an original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or works. Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed.

A copyright will protect the following categories of works:

* literary works
* musical works, including any accompanying words
* dramatic works, including any accompanying music
* pantomimes and choreographic works
* pictorial, graphic and sculptural works
* motion pictures and other audiovisual works
* sound recordings
* architectural works
* computer programs (sometimes the graphical user interface) and websites

Copyright protection gives the copyright holder the exclusive right to copy the work, modify it (that is, create derivative works), and distribute, perform and display the work publicly.

Ideas or concepts do not have copyright protection. Copyright protects the expression of the idea, but not the ideas themselves. For example, if I ask you what a chair is, you get a picture in your head; the picture I get in my head is different from the picture DR udeagbara gets in is head and probably also different from the picture engineer oyebode gets in his head. These are the "ideas" of what a chair is. However, if I were to draw the chair envisioned in my head or use words to describe that chair, it's an expression of the idea and that's what's protected by copyright.

 Generally, the only protection for ideas and concepts is through trade secret law and/or confidentiality agreements, which provide a contractual remedy for misuse or disclosure of the idea.

 Most products have one or more aspects that can be protected with copyright law. For example, the images and words on the product packaging, the label, the product itself, and the webpage can be protected with copyright. These literary and artistic works are protectable under copyright law.

 The advantages of copyright registration are that it is inexpensive to secure, and the law allows you to demand attorney fees from infringers. Often, your attorney fees are more costly than your damages due to someone copying your images and words without your authorization. Hence, being able to demand your attorney fees from the infringer is significant leverage that can be used to force infringers to settle early on in the legal process. Without a copyright registration, you would have to pay your attorney fees.

Under copyright laws, copyrights protect original works of authorship that fixed in a “tangible medium of expression.” This definition means that the authored or creative work has been written down on a piece of paper, saved on an electronic storage device (e.g., hard drive or flash drive), or preserved in some other tangible format. Examples of copyrightable works include movies, videos, photos, books, diaries, articles, and software. Copyright does not protect ideas or useful items, which is the function of patents. Although a software program is a functional item, it can be protected by copyrights due to the creativity used in the selection, ordering, and arrangement of the various pieces of code in the software.

You automatically have a copyrighted product in your creative expressions at the time they are fixed in a tangible medium of expression. The copyright lasts for a very long time. For any work created on or after January 1, 1978, the term of copyright protection is the entirety of the author’s life plus seventy years after the author’s death. For works made for hire as well as anonymous and pseudonymous works, the duration of copyright is ninety-five years from publication or 120 years from creation, whichever is shorter.

**Patents**

A patent grants property rights on an invention, allowing the patent holder to exclude others from making, selling, or using the invention. Inventions allow many businesses to be successful because they develop new or better processes or products that offer competitive advantage on the marketplace. You'll discover three types of patents:

* Utility
* Design
* Plant

A utility patent is the most common type, covering any process, machine, article of manufacture, or composition of matter, or any new and useful improvements thereof.

To qualify for a utility patent,

**Your work must be novel**. This means it must not be known or used by others in this country, or patented or described in a printed publication here or abroad, or in public use or for sale in this country more than one year prior to the application for patent.

**Your work must be non-obvious**. This means it must not be obvious to a person having ordinary skill in the pertinent art as it existed when the invention was made.

**Your work must be useful**. This means that it must have current, significant, beneficial use as process, machine, manufacture, composition of matter or improvements to one of these. According to the Patent Office: The word process is defined by law as a process, act or method, and primarily includes industrial or technical processes. The term machine used in the statute needs no explanation. The term manufacture refers to articles that are made, and includes all manufactured articles. The term composition of matter relates to chemical compositions and may include mixtures of ingredients as well as new chemical compounds. These classes of subject matter taken together include practically everything which is made by man and the processes for making the products.

Patent protection requires full public disclosure of the work in detail and therefore precludes maintaining any trade secret protection in the same work.

 A design patent covers any new, original, and ornamental design for an article of manufacture, while a plant patent covers any new variety of asexually produced plant. A design patent lasts for 14 years, and a utility or plant patent lasts for 20 years.

With patent protection, the patent holder can take legal action against anyone who copies the patented invention, design, or discovery. Without this legal protection, anyone can use similar designs, products, and processes without risk. In fact, if you don't file for patent protection on your invention within 12 months of releasing it in a public setting, the opportunity to patent it will be gone. Other companies or individuals can also file for a patent on your idea, taking away your chance to do so first. When reviewing patent applications and violations, the controlling body will usually default to the individual who submitted the application first, since proving who used something first is nearly impossible.

Before filing for a patent, you should determine who will own the idea. Some companies file for patents on their protected inventions, but if an employee came up with the idea, the individual may be granted holder of the patent. If your business owns the patent, you must protect the patent with the company by having employees involved in the invention process sign an agreement stating that the idea belongs to the company.

Certain industries rely on patents more heavily than others. For example, pharmaceuticals go through extensive and costly testing procedures to make sure that products are safe for human use. When spending considerable money on a product, applying for a patent is one of the only ways that pharmaceutical companies can protect their investments. Without a patent, any other company could manufacture an exact replica of the drug.

**How to determine which type of patent is better for your invention?**

If, when you describe your invention to others, you describe the invention in terms of its function or utility, a utility patent application would be the best type of protection.

If the invention is described in terms of its aesthetics, a design patent application would be the best type of protection. The design patent protects the ornamentation, sculpture, pattern design, layout, and other aesthetic features of a product.

Sometimes, you will explain your product by using words that describe both function and aesthetics. In that case, you may be able to get both types of patents. However, if funds are limited, you may have to choose one of the two types of patents that are better suited for your invention. Seek competent patent counsel in this instance since a patent attorney would be best able to help you make the right decision.

**Utility patent basics:**

To get a utility patent, you need to apply . If you start to market your product without applying for the patent, then eventually (i.e., after one year), your idea will be dedicated to the public.

The term for a utility patent is generally 20 years from the filing of your nonprovisional patent application and starts immediately when the patent office issues your patent.

**Design patent basics:**

To get a design patent, you need to file a design patent application. If you start to market your product without applying for the registration, then eventually (i.e., after one year), your idea will be dedicated to the public.

The term for a design patent is 15 years from the grant date of your design patent.

Situations where you might want to seek a design patent:

Design patents are useful only in a few cases. Why? If the infringer changes the look of the product so that it does not look like what is shown in the design patent, then there is no design patent infringement. The following is a non-exhaustive list of situations where a design patent might be useful.

Situation 1: To block the importation of overseas manufacturer overruns

Design patents are useful for blocking the sale of counterfeits, the importation of overrun (i.e., excess production), or reject products that have been manufactured overseas for the inventor. These imports will be identical to the drawings in the design patent, and if imported, they may be blocked by Customs. If these products do enter into the country, the importers, distributors, users, and manufacturers may be sued for infringement.

Situation 2: Products sold in sets

Design patents are also useful for products sold in sets (e.g., furniture) because buyers must purchase products that look like the original product to maintain the complete sets. By obtaining a patent on these types of products, you can block others from selling products that look like your product covered in the design patent.

Situation 3: Large market leaders

Design patents may also be useful for large manufacturers. For example, Apple, Inc. obtained several design patents for various parts of the iPhone, including the housing and the arrangement of the icons on the phone’s screen.

 **Objective of intellectual property law**

* **Financial incentive**. These exclusive rights allow owners of intellectual property to benefit from the property they have created.
* **Economic growth**
* **Morality**

**Infringement, misappropriation, and enforcement**

Violation of intellectual property rights, called "infringement" with respect to patents, copyright, and trademarks, and "misappropriation" with respect to trade secrets, may be a breach of civil law or criminal law, depending on the type of intellectual property involved, jurisdiction, and the nature of the action.

**Patent infringement**

Patent infringement typically is caused by using or selling a patented invention without permission from the patent holder. The scope of the patented invention or the extent of protection is defined in the claims of the granted patent.  In general, patent infringement cases are handled under civil law but several jurisdictions incorporate infringement in criminal law also.

**Copyright infringement**

Copyright infringement is reproducing, distributing, displaying or performing a work, or to make derivative works, without permission from the copyright holder, which is typically a publisher or other business representing or assigned by the work's creator. It is often called "piracy". While copyright is created the instant a work is fixed, generally the copyright holder can only get money damages if the owner registers the copyright. Enforcement of copyright is generally the responsibility of the copyright holder.

**Trademark infringement**

Trademark infringement occurs when one party uses a trademark that is identical or confusingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services of the other party. In many countries, a trademark receives protection without registration, but registering a trademark provides legal advantages for enforcement. Infringement can be addressed by civil litigation and, in several jurisdictions, under criminal law.

**Trade secret misappropriation** (using the United States of America as reference)

Trade secret misappropriation is different from violations of other intellectual property laws, since by definition trade secrets are secret, while patents and registered copyrights and trademarks are publicly available. In the United States, trade secrets are protected under state law, and states have nearly universally adopted the Uniform Trade Secrets Act. The United States also has federal law in the form of the Economic Espionage Act of 1996 which makes the theft or misappropriation of a trade secret a federal crime. This law contains two provisions criminalizing two sorts of activity. The first criminalizes the theft of trade secrets to benefit foreign powers. The second, criminalizes their theft for commercial or economic purposes. (The statutory penalties are different for the two offenses.) In Commonwealth, common law jurisdictions, confidentiality and trade secrets are regarded as an equitable right rather than a property right but penalties for theft are roughly the same as in the United States.

**Ten Simple Rules to Protect Your Intellectual Property**

Rule 1: Get Professional Help

Rule 2: Know Your (Intellectual Property) Rights

Rule 3: Think about Why You Want IP (i.e., What You Will Actually Do with It)

Rule 4: If You Don't Protect the IP, Your Innovation Is Less Likely to Happen

Rule 5: What's in a Name?

Rule 6: Be Realistic about What You Can and Cannot Protect

Rule 7: It's Big Business and Controversial

Rule 8: Keep Your Idea Secret until You Have Filed a Patent Application

Rule 9: Trade Secrets

Rule 10: Make Sure the IP Is Owned in a Way That Allows Development

**CHAPTER 4**

**Intellectual Property Rights in Nigeria**

**OBSERVATIONS**

Despite the various efforts made at strengthening IP rights and protection in Nigeria, challenges remain. Common infringements take the form of piracy, counterfeiting, unauthorized/unlicensed use and unfair competition. These activities violate the proprietary rights of IP owners to reap the benefits of their inventions and hence, hamper the growth and development of intellectualism, innovation and the entire creative industry.

Infringement of IP rights also has negative implications on the overall economy as it obstructs genuine investments by both domestic and foreign investors, hinders job creation and causes loss of tax revenues to the government. Socially, widespread IP violations corrupt the cultural values and batter the national image of a country.

Copyright violation is one of the major challenges to IP rights and development in Nigeria. This cankerworm manifests more virulently in the following industries: book publishing (book piracy), information and communications technology – ICT – (internet & software piracy) and in film and entertainment (musical & cinematography disc piracy). A 2012 study undertaken by some industry analysts revealed that "Nigeria is ranked among countries where piracy is most prevalent with rates as high as 82%, 83%, 83%, 82% and 83% respectively in the years 2007, 2008, 2009, 2011 and 2012.

Recent data from the NCC shows that the situation hasn't improved and is causing severe economic hemorrhage. The NCC has further stated that, not only is piracy threatening the survival of the local industries, which are discouraged from making the needed investments in the economy but also a disincentive to foreign direct investment (**"FDI "**) and its associated technical know-how and technology transfer.

The effect of piracy on the entertainment industry in Nigeria further highlights the terrible cost Nigeria has had to pay for its weak IPR protection and enforcement framework.   According to the National Bureau of Statistics (**"NBS"**), Nollywood – Nigeria's film industry – currently accounts for 1.42% of Nigeria's GDP (N853.9 billion or $7.2 billion); up from 1.4% as at 2014 when the country last rebased its GDP figures. Nollywood is said to be the country's second largest job-creating sector after agriculture, providing employment to over 1 million directly and indirectlty, mostly youths. In a report by the Nigerian Export-Import Bank, Nollywood is said to generate about $590 million annually and considered a vital non-oil area that is crucial to Nigeria's economic diversification. However, a World Bank report estimates that "for every legitimate copy (of a Nigerian film) sold, nine others are pirated". As at 2014, an estimated figure of N82 billion was reported to have been lost by Nollywood alone to piracy.

In 2005, while launching the Strategic Action Against Piracy (**"STRAP"**) initiative, the then President, Chief Olusegun Obasanjo, captured effectively the socio-economic effects of piracy thus:

*"The* *damaging* *effects* *of* *piracy* *are* *visible* *all* *around* *us;* *the* *waning* *zeal* *for creativity;* *the* *dearth* *of* *well researched* *textbooks* *and* *reading* *materials* *in* *the* *education* *sector; the* *diminishing* *of* *the* *artistic* *and* *literal* *quality* *of* *our* *stage* *performance* *and* *the* *increasing* *colourl ess* *and* *uninspi ring* *products* *in* *the visual* *arts.* *Expectedly,* *investors* *are* *wary* *and the* *younger* *generation* *is* *not* *encourage d* *to* *pursue* *careers* *in* *the* *arts* *and* *entertainm ent* *industry.* *We* *are* *all* *confronted* *by* *an* *attack* *on* *our culture* *and* *future* *as* *a* *people.* *We* *are faced with* *the* *reality* *of* *a* *declining* *economic* *resource* *and* *a* *source*  *of* *pride* *as a* *nation".*

**Challenges faced in Nigeria on Intellectual Property**

The growth of Intellectual property in Nigeria can not be sideline as a result of the importance derived from this aspect of law. Notwithstanding the importance and growth there are still some challenges faced in this field. These include:

* Lack of awareness
* Passive involvement of Government in Intellectual Property Law
* Most innovations are not registered
* Counterfeiting performed by Act non owners of Intellectual Property Rights
* Non compliance with Intellectual Property Treaties such as TRIPS, PCT (Patent Cooperation Treaty). According to the provision of Section 12 of the Constitution of Federal Republic of Nigeria Which states that “*No Treaty between the federation and any other country shall have the face of law except to the extent to which such treaty has been enacted into law by the National assembly*“.
* Inadequate Policies by Government on Intellectual Property

**SALVAGING THE SITUATION**

Enhancing IPR protection and enforcement in Nigeria will have to begin, essentially, with the development of an IP policy that recognizes the importance of a robust and virile IPR legal framework to National developmental aspiration, particularly as regards science and technology and trade and industry. This step will then have to be followed by an inclusive reform, involving the identification of the critical problems bedeviling the administration of this creative sector of the economy as well as and the development of regulatory frameworks governing the sector which seek to address the identified critical problems as well as use IP as a vehicle of technical and industrial development and avenue for wealth and job creation.

As Nigeria increasingly becomes an important economic hub both in the West African sub-region and in the African continent as a whole, protection of the rights subsisting in IPs created in the country is not only strategic to the nation's current drive to develop its non-oil sector but also central to its overall economic growth and development goals. Accordingly, there must be initiation of purposeful collaborations, going forward, between the government and the private sector organizations to identify, dialogue, and develop viable solution-frameworks to the problems of IPR infringements in Nigeria.

As with Copyright earlier discussed, the administration of Industrial Property (trademarks, patents and industrial designs) is marred with difficulties in the country in terms of registration, protection and enforcement.

Intellectual Property laws protect the interests of creators by giving them proprietary rights (Intellectual Property Rights (IPRs)) over their creations. Infringement of IPRs undermines genuine investment in creativity, innovation and knowledge. Invariably, the granting of exclusive proprietary rights (usually in consideration of the disclosure of the creation), creates an incentive for creators to develop, produce, and distribute new and genuine goods and services for commercial purpose.

Notably, in countries where IPR holders are not protected under a clearly defined and efficiently administered intellectual property legal and policy framework, the economy bears the brunt of such inadequacies in terms of undeveloped potentials, hindered capacity for job creation (direct and indirect) and low international competitiveness. This, together with poor education system, comatose power system and unfavourable fiscal system accounts for stagnant growth of Nigeria's industrial development. Reform efforts that are needed to strengthen IPRs in Nigeria will therefore necessarily have to holistically address the challenges identified, in the areas of registration, protection, enhancement and enforcement.

Ordinarily, trademarks, patented inventions and registered designs are incorporeal hereditaments with beneficial ownership rights in the holders. The exclusive rights granted to the proprietors of these incorporeal hereditaments, enable them to control the use of the intellectual property in which the rights subsist. Statutorily, exploitation of all or any of their rights by third parties must be with the permission of the proprietors, by way of licenses or assignments, usually upon provision by the relevant third party, of valuable consideration. However, registration of these industrial property rights is necessary for the proprietors to enjoy exclusive rights over them.

**LESSONS FROM OTHER DEVELOPING AND EMERGING ECONOMIES**

In Nigeria, a two-pronged approach is required to address the problem with IPR protection and enforcement. Firstly, the whole framework of IPR administration requires overhauling. The current state where the Trademarks, Patents and Designs Registry still operates manual record system, and is managed as an underfunded appendage of the Ministry of Commerce and Investment must be addressed immediately. Leading Intellectual Property Offices (**"IPO s"**) are not organized the way the Nigerian IPO is currently organized and this may explain the poor state of things in Nigeria, compared to those other countries.

For instance, in the United States of America (**"US"**), although the US Patents and Trademarks Office (**"USPTO"**) is an agency within the Department of Commerce, it is operationally independent and is only subject to the policy direction of the Secretary of Commerce in carrying out its functions. Section 1 of Title 35 U.S. Code stipulates that, it shall retain responsibility for decisions regarding the management and administration of its operations and shall exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions in accordance with this title and applicable provisions of law. Its Headquarter comprises 18 buildings in Arlington, Virginia covering about two million square feet of office and related space and housing an estimated 7,100 employees.

Due to the peculiarities of the Nigerian socio-political system, a similar structure as that of the USPTO is advocated for the country. It is noted that this suggestion is not novel or recent as a bill for the establishment of an Industrial Property Commission, similar in function and power to the Nigerian Copyright Commission, has been developed as far back as 2006. A version of the bill is currently before the National Assembly and it is hoped that it will be treated with the requisite level of importance and urgency it deserves.

The second approach is the review of the legal framework and the legislation constituting the legal framework, not only to make substantive provisions for the rights of creators but also to provide an efficient enforcement and deterrent system for the protection of those rights.

Such enforcement system will involve granting relevant law enforcement agencies, particularly the Nigerian Police Force and the Nigeria Customs Service, necessary powers to carry out their policing and prosecution functions. Instances where they may conduct a raid should be clearly delineated and the process for obtaining a search and seizure order should be significantly simplified.

The underlying problem that the foregoing, however, identifies is the dearth of an IP policy for the nation. Successive Governments have failed to understand the critical role that the protection and enhancement of IPR plays in the achievement of the industrial and commercial development of a country.

There are lessons to be learnt by Nigeria from emerging markets such as China and India, where IP has contributed immensely to the harnessing of talents; development of technical know-how; specialization in the production and exportation of modern technologies and overall growth and development of the economy.

In a 2015 Working Document by the European Commission (Brussels, 1.7.2015 SWD [2015] 132 final), studying the IP regimes in about 40 countries that have trade-relationships with European Union (**EU**) members; both China and India were rated high in Countries' Ranking for the development of "solid and predictable IPR frameworks that create environments conducive to innovation and sustainable growth and offer effective enforcement".

In China, a political declaration was made at the 18th Chinese Communist Party Convention in 2013 which reinforces trade and IP in general and incorporates them into the Chinese national development plan. Prior to this, the nation adopted in June 2008 a National IP Strategy (**"NIPS"**) which was later, in March 2011, complemented by the 12th Five Year Plan with the objective of developing China into an innovative country. In pursuance of these objectives, major reforms of the legal and adjudicatory frameworks for IP in China have recently taken place and are still on-going. To this end, three specialized IP courts were created in 2014 in Beijing, Shanghai and Guangzhou.

The progress achieved so far through China's policy measures has enhanced significantly, the country's clear national goal of becoming an innovation economy by 2020.

Also as reported of India in the referred European Commission's paper, landmark improvements have been noticed in India's IPR regime; particularly since the country joined, in 2013, the international trade mark system's Madrid Protocol. There have been major reforms recently in the administration of IPR in India such as the introduction of a "comprehensive e-filing services, customs services' enforcement, co- operation between various enforcement departments, improved IPR awareness amongst officials, digitalization of the operations of the Indian Patent Office, and hiring of additional patent examiners."

These efforts have strengthened IPR protection and enforcement in India such that today, Indian police will often take enforcement action on their own initiative where there are perceived or reported cases of IPR infringement while the courts are more efficient and effective in dealing with rights-enforcement suits.

**ADVOCACY FOR A NATIONAL POLICY ON INTELLECTUAL PROPERTY**

Obviously, Nigeria needs to develop a national policy on IP as a matter of urgency. From the experiences of China, India and the advanced countries of the world such as the US, no nation can consciously and seamlessly develop its IP without first setting up, and vigorously propagating, a National Policy Framework that will spell out in clear terms the overall IP goal of the nation and launch time-based policy thrusts with short, medium and long term development goals.

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