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Intellectual Property Law, Nigeria

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Intellectual Property Law, Nigeria

Scope

This outline sets out the major concepts in intellectual property law within Nigeria and how it might affect and be used by non-profit organisations in furthering their objectives.

What is Intellectual Property Law?

- a. Intellectual Property (“IP”) is a generic term that describes creations of the intellect in relation to which the law ascribes exclusive right of appropriation to the designated owners. IP Law is the body of laws that governs all the relevant aspects (i.e. ownership, registration, protection, licensing, assignment, lifespan, etc.) of IP Rights.
- b. In our experience, one of the most valuable assets of a non-profit organisation is its IP. Many non-profits generate valuable ideas, brands, processes, images, reputations, products and other IP and IP-related rights and yet do not protect them adequately.

What are the types of Intellectual Property?

- a. IP is mainly divided into two broad categories:
 - i. Copyright - literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design; and
 - ii. Industrial Property - patents, trademarks, industrial designs and geographical indications, plant breeder’s rights, trade dresses and trade secrets.
- b. Under Nigerian law, there are four distinctive types of IP, namely:
 - i. Copyright;
 - ii. Trademark;
 - iii. Patent; and
 - iv. Industrial Design.
- c. **Copyright**
 - i. Copyright is the exclusive and assignable legal right, given to the author of a literary, artistic or musical work, to print, publish, perform, license and assign the work for a fixed number of years.
 - ii. Copyright protects original works and, in Nigeria, it is governed by the Copyright Act, Chapter C28 Laws of the Federation of Nigeria 2004 (the “Copyright Act”). The following works are eligible for copyright in Nigeria:

1. Literary works: novels, stories, choreographic works, computer programmes, etc.;
2. Musical works: works composed for accompaniment;
3. Artistic works: paintings, drawings, woodcuttings, maps, etc.;
4. Cinematograph works: the fixation of a sequence of visual images that can be seen and associated sound tracts that can be held;
5. Sound recordings: the fixation of a sequence of sounds capable of being held but does not include sound tracks associated with cinematographic films; and
6. Broadcasts.

iii. Copyright confers a set of rights in the author of original works.

iv. Copyright subsists automatically in a work from the moment the work is created and therefore, the work is not required to be registered with the Nigerian Copyright Commission (“NCC”) (the agency created by the Copyright Act to administer Copyright in Nigeria), in order to be protected. The NCC, however, administers and operates a notification/depository scheme. Under this scheme, creators of copyright works or persons who have acquired any copyright in respect of eligible works may give notice of/register their copyright with the NCC. The purpose of this scheme is to provide notification to the NCC of the creation and/or existence of a work. This notification is given by completing an application form and making the applicable payments. A certificate is subsequently issued in this regard.

v. The creator of a copyrighted work, also known as the “author”, is at liberty to transfer the rights to a third party.

d. **Trademarks**

- i. Trademarks protect words, names and symbols used by an organisation to identify the source of its products and services, and to distinguish its products and services from those of others. A trademark is, essentially, an organisation’s reputation and brand, making it an extremely valuable asset.
- ii. Registered trademarks in Nigeria are governed by the Trademarks Act, Chapter T13 Laws of the Federation of Nigeria 2004 (the “Trademarks Act”), while unregistered trademarks are governed by received English Common Law.
- iii. Under the regulations made pursuant to the Trademarks Act, the procedure for the registration of trademarks in Nigeria includes submitting an application to the Registrar of Trademarks (the “Registrar”). Upon receipt of the application, the Registrar will issue an Acknowledgement Form. The application will subsequently be sent for examination and, if the Registrar is satisfied that no similar mark has been accepted/registered, an Acceptance Letter will be issued. If the application does not, however, meet the requisite registration requirements, a Refusal Notice will be issued. Once a mark has been accepted for registration at the Commercial Law Department – Industrial Property Office

Registry, the Federal Ministry of Trade and Investment (the "Trademarks Registry"), it will be listed for advertisement in the Trademarks Journal.

- iv. Publication of the Trademarks Journal is the sole prerogative of the Trademarks Registry, as a result of which delays are usually experienced. Where no objection is filed against a published application at the expiration of two (2) months, the final registration/sealing fees will be payable. Thereafter, unless the Registrar had accepted the trademark in error, the Registrar will issue the applicant with a Certificate of Registration of the trademark. A trademark, when registered, shall be registered as of the date of the application for registration, and that date will be taken, for the purposes of the Trademarks Act, to be the date of registration. The registration of a trademark is valid for a period of seven years, but may be renewed from time to time in accordance with the provisions of the Trademarks Act.
- v. If however, objections were filed within the two (2) month opposition period, these objections would have to be resolved, in order to complete the registration process. In order to resolve such objections, the objections must be responded to by the applicant and the nature and cost of this response will depend on the nature of the objection filed.
- vi. Following the valid registration of a trademark, the owner of the trademark will be entitled to enjoy the benefits of registration under the Trademarks Act. In effect, the owner can bring an action in court for infringement of the trademark and obtain remedies to prevent future infringement.
- vii. In addition, generally, the registration of a person as proprietor of a trademark of any goods shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trademark in relation to those goods.

e. **Patents**

- i. A patent is a monopoly in respect of an invention. The Patents and Designs Act, Chapter P2 Laws of the Federation of Nigeria 2004 (the 'Patents and Designs Act') governs the registration and practice of patents in Nigeria. To qualify for a patent, an invention must comply with the following requirements:
 - 1. it must be a new or novel invention or an improvement upon a patented invention;
 - 2. which results from an inventive activity; and
 - 3. is capable of industrial application.
- ii. An invention is new or novel if it does not form part of the state of the art. State of the art means everything concerning that art or field of knowledge which has been made available to the public anywhere or at any time.
- iii. Patents cannot be obtained in respect of plants, animals or any biological process for the production of plants and animals. A patent also cannot be granted in respect of inventions which exploitation would be contrary to public order or morality.

- iv. The right to a patent in respect of an invention is vested in the statutory inventor, that is to say, 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 the invention.
- v. A patent confers, on the patentee, the right to preclude any person from doing the following:
 - 1. where the patent is granted in respect of a product, the act of making, importing, selling, or using the patent or stocking it for the purpose of sale or use; or
 - 2. where the patent has been granted in respect of a process, the act of applying the process.
- vi. Rights in a patent subsist for a period of 20 years from the date of filling of the relevant patent application and it is non-renewable. Patent shall lapse if the prescribed annual fees are not duly paid upon the expiry of the period of grace. Similarly, a patentee may, by a written declaration addressed to the Registrar of Patents, surrender his patent and the surrender will take effect once the written declaration is registered with the Registrar of Patents. A patent will be nullified where the description of the invention or claim does not conform to the provision of the law or if it is defeated by a prior application from an earlier foreign priority.

f. Industrial Designs

- i. The Patents and Designs Act describes an “industrial design” as any combination of lines, colours or both and any three-dimensional forms (whether or not associated with colours) intended by the creator to be used as a model or pattern to be multiplied by an industrial process.
- ii. An Industrial Design is registrable if it is new and is not contrary to public order or morality. A design made available to the public anywhere and at any time before the date of registration is not considered to be new.
- iii. With regard to duration, an industrial design shall be effective in the first instance for five years from the date of the application for registration and may be renewed for two further consecutive periods of five years each.
- iv. Design certificates are issued by the Registrar of Patent & Designs in accordance with the Patent and Designs Act. The Patent and Designs Act provides that an industrial design must be registered by the issue of a registration certificate containing:
 - 1. the number of the design;
 - 2. the name and address of the registered owner;
 - 3. the date of the application and of issue of the certificate;
 - 4. details of any priority claim, if any;
 - 5. reproduction or representation of the design;

6. an indication of products for which it will be used; and
7. the name and address of the true creator.

IP is critical to almost all types of non-profit organisations. An organisation's name and logo set it apart from other organisations. IP, as an asset, is incredibly valuable and copyrighted works can be a potential source of revenue when organisations decide to license or sell their materials (e.g. online courses, trainings, merchandise, etc.). Trademarks provide a way in which organisations can brand themselves in order to attract supporters, volunteers, sponsors/donors, etc.

It is important for non-profits to take advantage of the protections available in law for their IP assets. In order to achieve this, we suggest that non-profits consider the following:

Why Non-Profits Should Protect Their Intellectual Property Rights

a. Copyright

- i. Monitor the organisation's use of all its IP and be aware of the boundaries of copyright protection. If the organisation's copyright is being infringed or is infringing upon another organisation's copyright(s), remedying it could prove costly (e.g. reprinting promotional materials that include proprietary images and infringement lawsuits).
- ii. Consider registering copyright works under the NCC Notification Scheme. This provides additional documentary ownership value to an existing copyright work.

b. Trademarks

- i. Monitor the use of the organisation's name(s) and other organisations that may be using a similar name in order to prevent infringement.
- ii. Register the organisation's name, logo, symbol, etc. as service marks under the Trademarks Act.

c. General Considerations

- i. Identify copyright, trademarks, patents and designs the organisation may already own and track infringement by third parties.
- ii. Register the organisation's IP with the appropriate regulator in order to enjoy or enhance the exclusivity rights conferred on it by law.
- iii. Implement an IP training program for key employees, especially if the organisation could, in the course of its activities, enter into partnerships or otherwise collaborate with other organisations, to teach them how to properly protect the organisation's IP rights.



d. **Online Contacts/Registries**

iv. Copyright - <http://www.eregistration.copyright.gov.ng/>

v. Trademark, Patent and Designs - http://www.iponigeria.com/#/Online_Service



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