



Jackson, Etti & Edu

**An Outlook of Nigeria's
Intellectual Property Reforms
That Will Impact Foreign and
Local Businesses from 2023.**

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“Over the last 10 years, it has become imperative for CEOs to have not just a general understanding of the intellectual property issues facing their business and their industry, but to have quite a refined expertise relating to those issues,”
– (2004) Bill Gates, Microsoft Chairman

Every prudent CEO understands that there are two aspects of company assets – tangible and intangible assets (especially intellectual property). These two twin towers must be factored in when planning, executing or amending a company's business model. Indeed, laws and policies of government impact business models (activities) and assets. This is why many companies spend a lot on regulatory awareness and even politicking. Companies must be abreast of laws and policies before they are passed or come to force. What many ignore is the laws and policies impacting intangible assets. Ignored, these laws or policies in the long run affect tangible assets as well. This is an outlook of Nigeria's intellectual property reforms that will impact foreign and local businesses from 2023.

1. COPYRIGHT BILL (ACT) 2022

There were several sponsored Copyright Bills, however, the relevant Bill now is the consolidated Bill sponsored by Sen. Abdullahi Abubakar Yahaya, SB 769 Copyrights Act Cap C28 LFN 2004 (Repeal and Re-enactment) Bill, 2021. The Bill has gone through the First Reading (4th May 2021), Second Reading (8 June 2021), and Third Reading and Passage (6 April 2022). The Bill currently awaits the President's assent which may be given in December 2022, or before or after the elections in 2023. Once assented to, it repeals the extant Copyright Act and comes into force.

1.1 Who shall be affected?

Individuals or companies whose business activities involve the creation of copyright (literary works including computer programmes, musical works, artistic works, audio-visual works, sound recordings, and broadcasts) or the use of copyright or the housing of copyrights created by third parties or user-generated content are class of persons contemplated under the Bill. Representatives of these individuals or companies should also be abreast of the pending reforms.

1.2 20 Notable Features of the Bill and Comments:

Objective and Scope: Part I

1. For the avoidance of doubt, the Act now stipulates that ideas, procedures, processes, formats, systems, methods of operation, concepts, principles, discoveries, official texts of a legislative or administrative nature or their translations thereof (except compilations), official state symbols and insignia, flags, coat-of-arms, anthems, and banknote designs, are not eligible for copyright.

Thus, creatives, employees and directors who go about pitching ideas should not expect to cry copyright infringement of their ideas/formats as the same will be expressly excluded.

Also, it is rather sad that legislative texts and state symbols and flags are not copyrighted. These should have been delineated as the copyrights of the State (Government).

2. The moral rights of an author (to be mentioned as the author of the work and not to have the work mutilated as may be prejudicial to his honour or reputation) shall now be transmissible only upon the death of the author, by testamentary disposition or by operation of law. The rights subsist for the duration of the copyrighted work.

It appears the drafters have made a serious mistake or wilfully put an end to the inalienable moral right of an author. The implication of Section 14(4) which reads 'the rights conferred by this section shall subsist for the duration of the copyright in the work' is that after the death of an author and 70year following same, a user is under no obligation to observe an author's moral rights. Imagine the disservice that can happen to an author's reputation or honour; the pseudonymity and anonymity that would arise therefrom. This author hopes that the said paragraph can be amended before assent.

3. It appears there would now be double compensation for an author who is both the owner of a sound recording as well as the performer of the sound record (or separately). Such equitable remuneration shall be paid by the person who uses

the sound recordings or copies thereof. Parties can agree on the remuneration or seek the Commission for determination.¹

4. The doubts or confusion behind whether the Act covers online streaming of sound recordings have been resolved by the provision of Section 15(7) which covers wire or wireless transmission. However, liability is tied to use 'published for commercial purpose.' It is 'published for commercial purpose' where sound recordings are made available to the public by wire or wireless means in such a way that members of the public may be accessed from a place and at a time independently chosen by them.

Exceptions to Copyright: Part II

5. The Act limits the rights conferred by copyright from interfering against fair dealing i.e. private use, parody, satire, pastiche, caricature, non-commercial research and private study, criticism, review or reporting of current events (but must acknowledge the title and author).

In determining whether or not there is fair dealing, the factors to be considered are – the purpose and character of the usage, nature of the work, amount and the substantial portion used, and effect of the use upon the potential market value of the work.

6. Other exemptions in the old Bill were maintained. The Act also exempts transient and incidental reproductions which are integral and essential parts of a technological process whose sole purpose is to enable transmission in a network between third parties by an intermediary or for other lawful use where such use has no independent economic significance.
7. Exemption is made for non-commercial use for the benefit of people with disability, to the extent required by the specific disability.
8. Any contract restricting or preventing the doing of any act permitted under the Bill shall be void.²

¹ Section 15.

² See 20(3).

9. The Bill provides for the circumvention of technological protection measures in a bid to protect and safeguard the online works of creatives from online threats, whilst protecting the rights of the visually impaired.

Ownership, Transfers & Licenses: Part III

10. In the absence of an agreement, work created under a contract for services or in the course of employment by a Government, Ministry, Department or Agency of a Government or a prescribed international or inter-governmental organisation vests in that Government, etc.
11. Copyright in the Bill, subject to an agreement, shall initially vest in the author. A person who, for private or domestic purposes, commissions the taking of a photograph or painting, drawing or audio-visual work shall be deemed to have a non-exclusive license to exploit the commissioned work for non-commercial purposes, and entitled to restrain the publication, exhibition, broadcasting, communication, distribution and making available of copies of the work to the public.
12. Subject to an agreement, copyright in a collective work shall vest in the person on whose initiative or direction the work was created. But the authors of works incorporated in a collective work shall have the right to exploit their works independent of the right in the collective work.
13. Section 30 expressly equates copyright as a movable property recognised under the Constitution, and shall be transferable by way of assignment, testamentary disposition or operation of law. The purport of this, in my opinion, is that fundamental human rights proceedings/actions can be taken accordingly.
14. All assignments of copyright or exclusive license must be in writing. But a non-exclusive license may be written, oral or inferred from the conduct of the owner of the copyright.
15. It is important to note that subject to agreement, an owner who transfers his copyright or grants a license for the exploitation of a work shall not be deemed to have transferred the ownership of the material in which the work is embodied. Conversely, transferring ownership of the material in which the work is embodied, shall not be deemed to have transferred copyright or granted a license. Thus, businesses must be careful about the draft of copyright contracts.

16. An assignment, license or testamentary disposition may be granted in respect of a future work or an existing work in which copyright does not subsist, provided that it shall not be permitted to transfer the rights in all future works of an author. But a testamentary disposition of a material on which a work is first written or recorded, shall be presumed to include any copyright or prospective copyright in the work which is vested in the deceased.
17. A person may now apply to the Commission for a license to translate a work not written in the Nigerian language or English Language under a compulsory licence. This may come in handy for interpretation companies or linguists. However, this is subject to royalties and payment of official fees.

Copyright Infringement: Part IV

18. Infringement is actionable at the instance of the Owner, Assignee or Exclusive Licensee. Where there is a concurrent right of action between an Owner and Exclusive Licensee, the other must be joined otherwise, a leave of court is required. The earlier provisions of acts constituting infringement were retained.

Copyright Offences: Part V

19. The monetary punishment for infringement was changed and increased to N10,000 per copy. Other monetary fines and imprisonment terms were increased accordingly.

Anti-Piracy and Other Measures: Part VI - VII

20. The duty for producers and reproduction businesses and publishers to keep records is reiterated and a default fine of N100,000 and/or 1-year imprisonment is given.
21. The Bill provides for a Notice to Take Down when an infringement has occurred in a copyright to be issued to the relevant service provider requesting the service provider to take down or disable access to any infringing content or link to such content, hosted on its systems or networks. However, for this notice to be effective, the Notice must be in writing (can be electronic). After such notification to the service provider, the service provider upon receiving the notice shall promptly notify the subscriber/content poster, and shall expeditiously take down

or disable access to the infringing content or link and notify the owner accordingly. The Service Provider may resume or restore the content if it receives a written counter-notice from the subscriber without receiving a response from the owner after 7days of forwarding the counter-notice from the subscriber to the owner. Any person dissatisfied with the take-down action of the service provider may refer the matter to the Commission for determination.

22. The Bill protects service providers from liability for any action taken under the section in good faith. But if the service provider fails to comply with the steps, such service provider will be in breach of statutory duty and for infringement of the content to the same extent as the subscriber/poster.
23. A subscriber has up to a second warning from the service provider to respond. The subscriber can challenge the notice on the grounds of mistake or misidentification within 10 days from the warning.
24. Service providers' liability to the storage of infringing materials, is subject to lack of knowledge that the material is infringing, lack of financial benefit directly or indirectly, expeditious response to take down, and compliance with the procedure for suspension as laid down.
25. The Bill also empowers the Commission to block or disable access to any content, line or website hosted on a system or network, which it reasonably believes to infringe copyright.

2. GEOGRAPHICAL INDICATIONS (GI) DRAFT BILL

Through the support of the European Union Intellectual property Office and the Intellectual Property Rights and Innovation Project in Africa (AfrIPI), a Nigerian Technical Working Group (TWG) was established to undertake a study of various GI laws globally and then produce a GI draft law for Nigeria. The TWG for the past 2years have worked on the draft bill and various stakeholder institutions were invited to a National Conference held on 17-18 February 2022, and jointly hosted by AfrIPI, EUIPO and the Africa International Trade and Commerce Research (AITCR) on the validation of the draft before pursuing the sponsorship of the Bill to the house. This is a summary of the key provisions of the Draft that may impact positively or negatively to businesses. But first, for persons who may not understand what a GI is, let us clear the fog.

2.1 What is a GI and what persons are impacted by a GI law?

A geographical indication is a type of intellectual property right of a collective community (rather than individuals) embodied in a sign used to identify that a particular product emanates from a particular origin or place and has certain characteristics and quality due to that origin. For example, imagine this mark on a European product:



GI promotes the visibility of local products, protects the right of the original users, and prevent their use by other parties whose products do not conform to the applicable standards and those whose products do not originate from the geographical region as required. It is however important to note that a geographical indication right does not prohibit third parties from manufacturing the same products using the same techniques that have been set out to produce that geographical indication. What is prohibited is the use of the precious sign on such a product.

GI may be used for several products and services, but it is mostly used for agricultural products, wines, spirits, food, handicrafts, and industrial products. Examples of widely known geographical indications include Swiss watches because they originate from Switzerland, Champagnes because they come from a particular region in France, Tequila from Mexico, Soju from Korea, Scotch Whisky from Scotland, Argan Oil from Morocco etc. In Nigeria, these products can identify as GI - ofada rice, Sapele water (Ogogoro), Aso oke, Ijebu Garri, Kilishi/suya, Ose Nsukka (Yellow pepper, the sale of this pepper abroad has generated millions for its sellers and for the farmers as well).³

Persons who may benefit or be wary of GI laws include local farmers of certain products known for their local origin; companies and businesses who package certain famous products known for their quality and origin; local communities; Chancellors of local governments, native chiefs and kings, state and federal government.

2.2 Notable Features of the Draft and Comments:

1. At the last conference validating the draft, it was decided that the definition of GI and the protection it offers should include 'services.' The impact of this is that

³ Chuks Nwanne, How Nigerians earn foreign currency selling Nsukka Pepper <https://guardian.ng/features/agro-care/how-nigerians-earn-foreign-currencies-selling-nsukka-pepper/> accessed November 28, 2022.

Nigeria will be one of the few countries that recognise services as a GI and local communities and businesses that offer well-known serviced GI will be protected. For example - herbal healing methods, handicrafts beyond the product itself, the special process for making the Yoruba original 'agbo', etc. However, the academic argument as to the distinction between serviced GI and Traditional Knowledge may ensue.

2. GI will also be available for agricultural goods, non-food agricultural goods, natural goods including rock and mineral resources, wildlife plots, handicrafts and industrial goods, agricultural products and inland marine fisheries, hunting products, products derived from animals without the use of special preparation or preservation, and products of vegetable origin. The appellation of origin falls within the scope of protection.
3. The Draft excluded from protection, indications that are contrary to public order and morality, deceptive indications, or a name that has become generic in Nigeria. The clause 'name that has become generic in Nigeria' may pose a problem for foreign and local interest business communities. For instance, 'ofada rice' may lose its indication since it has become generic that it is difficult to say which part of Nigeria actually owns ofada. Yet, it is unique to Nigeria as a whole from an international perspective.
4. To get protection, communities and their businesses must come together as a group and apply to the Registry which shall be created and domiciled in the Federal Ministry of Industry, Trade and Investment. Upon registration, the same can be facilitated for international registration/recognition. The sign PGI can be used to show protected GI.
5. Persons who wish to oppose certain claims to GI, will have the opportunity to do so within 2 months from the date of publication of the claim. There are 3 grounds upon which opposition may be brought - that an applicant is not entitled to file the application, that an application contains a material misrepresentation, and that the contents of the application do not comply with the Bill or Regulations. An Appellate Board is set up for redress, and a further recourse can be made to the court.
6. Initially, the Draft creates room for the renewal of GI every 10 years, but some stakeholders kicked against this. It appears the same will be removed from the Draft. And other recommendations from stakeholders concerning 'carrying the local communities along', will be reflected.

3. TRADEMARK BILL

The SB 180 Trademark Act (Repeal and Re-enactment) Bill, 2019 is the pending Bill meant to repeal the extant Trade Marks Act. The said Bill has gone through the First Reading and still has a long way ahead. Although, the lamentation of stakeholders for an urgent overhaul of the current Trade Marks Act may speed up the process for the Bill passage.

For the avoidance of doubt, a trademark is simply a mark that is used to identify your goods and services and distinguish them from other goods/businesses. Trademarking is a step to protect your business by preventing competition and imitation of your brand name or logo from other people.

3.1 Who will be impacted by the Trademark Bill?

All businesses with a brand name, logo, device, or signature are used to identify their goods and services.; marketing teams of organisations; graphics designers; business development heads, trademark practitioners/agents; etc.

3.2 13 Highlights of the Bill and its impact on businesses

- 1.** The Bill has introduced protection of well-known marks in Nigeria, notwithstanding the nationality or residency of the proprietor. The Registrar may refuse an application on this basis, and a person can be liable for infringement of a well-known mark. This is good news for foreign stakeholders who though not incorporated or registered in Nigeria, distribute their goods through local distributors. As such, they would have a locus standi to enter opposition proceedings on any similar or identical mark to theirs.
- 2.** The Bill has incorporated Service Marks although it provided no definition of Service Marks. It is hoped that same will be reflected before a Third Reading. The impact of the introduction of service marks in the new Trademark Bill is that all businesses that provide service and have registered their service marks can now rest from the argument or risk that the Nigerian Trade Marks Act does not recognise service marks.
- 3.** Trademark is now expressly recognised as a property right and thus creates a legal footing for the commercialisation and securitization of trademarks in Nigeria. The Bill further in section 41 provides for registrable transactions i.e. assignments, grant of licenses, grant of security interests over a trademark, assents by personal representatives, and orders of court transferring trademark. But section 42 excludes trusts and equity notices.
- 4.** New grounds for refusal of trademark were introduced, including – signs which have become customary in the current language or bona fide practice of the trade; or application made in bad faith; or containing national emblems or international organisations that are convention county members. However, there is a grave

omission. The concept of first-filed application was disregarded was omitted as a basis for refusal. The Bill was equally silent on the period of opposition.

5. The duration for renewing the trademark was extended to a continuous period of 10 years. However, the application for renewal must be done not later than 6 months after the expiration of the registration, otherwise, a late fee is payable.
6. The defence of acquiescence is introduced as a basis for the loss of the exclusive right to a trademark. This will help curtail the problem of inability to use or register a trademark that is no longer being used by an ostensible proprietor. Indeed, a unique name is very hard to come by now.
7. A new provision provides for fair use in comparative advertising and promotion, non-commercial uses and uses for the purposes of news reporting or news commentary. This was absent in the extant Act and it is a welcomed development protecting creatives and safeguarding freedom of expression.
8. The new Bill provides for the exhaustion of rights conferred by registered trademarks. This appears to be in line with the IP Protocol of AfCFTA.
9. The Bill provides for counterfeit goods and trademarks. It stipulates that one of the characteristics for proving counterfeit is that the offender falsely represents the goods or services to be the genuine or actual services of the proprietor or a licensee of the registered trademark. This is a welcomed provision as the current Trade Marks Act does not provide for counterfeiting. Penalties for counterfeiters include N250,000 and imprisonment for 10years. Also, there is a border enforcement procedure which includes restriction on importation, inspection, search, and seizure under the authority of the Comptroller of Customs.
10. Under section 44(3) licenses must be in writing and signed by the grantor or on his behalf. A non-exclusive licensee cannot commence an action for infringement in his own name, rather the trademark proprietor must be joined. Where the proprietor fails to join within 2 months, the non-exclusive licensee may commence an action in its own name.
11. The use of a sign (mark) on the internet shall constitute use in Nigeria only if the use has a commercial effect in Nigeria. To determine 'commercial effect' account shall be taken on the circumstances indicating intent to do business in Nigeria, the level of commercial activity, the connection of offer of goods/services on the internet, the manner of use of the sign, and the relation of the use. Thus the several issues around the digitisation of trademark, 3D print online, or trademark in the digital space are fairly addressed.
12. Section 57 of the Bill empowers Minister to make regulations giving effect to the Madrid Protocol or any other international Agreement to which Nigeria is a party. The provision however may suffer pushback if not remedied before passage. This is because going by the Constitution, international agreements/treaties should be

domesticated before they become law. Thus, domestication can properly be by the stipulation of a clause as passed by the House giving effect to the treaty and not by the Regulations of a Minister.

13. The Bill paves way for an electronic register. This will go a long way in addressing the issues of manual filing and the current troubles and setbacks witnessed at the Registry due to backlogs.

4. NATIONAL INTELLECTUAL PROPERTY POLICY AND STRATEGY

By National IP Policy, I refer to a set of measures formulated and developed by the government (or commissioned by it) to encourage the establishment, development, and protection of intellectual property at a national level. It is the roadmap or signpost of the government's stand or focus on IP-related matters in Nigeria.

Stakeholders within the IP space have all advocated and demanded the development of a national policy on Intellectual Property that has an impact on intellectual property in Nigeria. The National Intellectual Property Policy is a comprehensive framework seeking to harmonize and modernize the intellectual property system in Nigeria. The National IP Policy is aimed at driving competitiveness, creativity, and innovation in Nigeria.

The Policy also seeks to promote a comprehensive and conducive IP ecosystem with a vision to utilize Intellectual Property for sustainable national prosperity.

In a bid to promote this policy, the Nigerian Government, through the Office of the Attorney-General of the Federation (AGF) and Ministry of Justice collaborated with the World Intellectual Property Organization to conduct a National Multi-Stakeholders Workshop to support/validate the draft National intellectual property policy and strategy in September 2022.⁴ The same now awaits the final signature to give the document life.

The objective of the draft policy is to:

1. Strengthen the legal framework for the protection of intellectual property in Nigeria.
2. Strengthen the legal and institutional framework for enforcement of intellectual property rights in Nigeria.
3. Strengthen the institutional framework for the administration and management of intellectual property rights in Nigeria
4. Promote and facilitate commercial exploitation of intellectual property assets and technology transfer

⁴ WIPO, "Nigeria Validates National IP Policy and Strategy" https://www.wipo.int/about-wipo/en/offices/nigeria/news/2022/news_0002.html accessed December 2, 2022.

5. Promote intellectual property training, education, and awareness
6. Enhance the generation and protection of intellectual property rights.
7. Develop the required human resources for the administration, protection, commercialization, and enforcement of intellectual property.⁵

The National IP policy is important because it helps to protect the innovations emanating from intellectual property and when properly regulated, it strengthens the country's ability to create valuable assets that generate revenue for the country.⁶ It touches on every industry and advances the support and recognition of all forms of IP rights in these spheres by the various laws regulating them. Its implementation framework is hinged on the Inter-Ministerial Steering Committee consisting of six ministries (Trade, Commerce and Investment, Ministry of Justice, Ministry of Agriculture, Ministry of Science, Technology and Innovation, Ministry of Education and Ministry of Finance).

Being a policy, it has no teeth so to speak, but it assures stakeholders and businesses of the Government's intent and resolution towards IP.

5. SCIENCE, TECHNOLOGY & INNOVATION (S&TE) POLICY OF 2012 AND THE MODEL IP FOR NIGERIAN UNIVERSITIES 2022

In 2012, the S&TE Policy was issued to direct how science and technology pedagogy will be taught, assessed, pre-serviced, in-serviced, and provided. It was believed that a strong S&TE system would be the foundational framework for a knowledge-based economy and innovation. Sadly, little attention was paid to Intellectual property as vehicle for unpacking research and development, science, technology and innovation, and the result was a failure of that policy. Realising the gap, and championed by WIPO, the Nigerian Copyright Commission in collaboration with the National Universities Commission (NUC) and National Office for Technology Acquisition and Promotion (NOTAP), the Committee of Vice Chancellors (CVC) met to agree on the Model Intellectual Property for Nigerian Universities.

The model is to be followed by universities to develop their policies based on their particular operating environment and upload their final senate copies to the WIPO portal for global access. It is hoped that the development will raise the ranking of Nigerian universities and provide additional sources of revenue for sustainable development of the education sector through partnerships with the private and public

⁵ Ibid.

⁶ WIPO, "National IP Strategies" < <https://www.wipo.int/ipstrategies/en/> > accessed December 2, 2022.

sectors. Currently of the 217 Nigerian universities, less than 20 of them have functional IP policies.

The development will open doors for businesses to cross-collaborate with research institutions in the invention of needed solutions and ownership cum commercialisation structure. Jackson, Etti and Edu (a leading IP practice in West Africa) is currently advising some institutions and businesses who seek to collaborate and scale up.

6. **DATA PROTECTION LAWS NIGERIA**

Although Data is not per se an intellectual property, where the subject of the data in question is a trade secret or confidential information, it becomes subject to not only Data privacy/protection laws, but also intellectual property laws like copyright and confidential information.

For personal data, the 1999 Constitution of the Federal Republic of Nigeria⁷ holds sway under the provision of privacy rights. The Nigerian Data Protection Regulation⁸ and the Implementation Framework to the Regulation remain to date the document with a broad provision on the Dos and Don'ts of processing personal data. In relation to the rights in databases and compilations, the Copyright Act governs the same. Where the data in question is unique and of commercial value and steps have been taken to keep it confidential, then the provisions of the common law relating to confidential information are invoked.

The established authority for personal data regulation/enforcement is the National Information and Technology Development Agency (NITDA). But following the appointment of a Commissioner for a Body known as the Nigerian Data Protection Bureau, that duty has been shifted to the NDPB. This is currently under debate as there is no legislation establishing the NDPB or empowering it with the responsibilities of NITDA. Hence, the Data Protection Bill 2019, has passed through the First Reading only. The same has been reflected in the Data Protection Bill 2022.

The provisions of the Bill create the Data Protection Commission and give it the power of enforcement via complaints and investigations, compliance orders, enforcement orders, offences, et al. There are, however, provisions for judicial review of the Commission process, civil remedies, forfeiture and joint and vicarious liability of data controller and processors, as well as company directors and companies.

⁷ Section 37, Cap C20 LFN 2004

⁸ <https://olumidebabalolalp.com/wp-content/uploads/2021/01/NDPR-NDPR-NDPR-Nigeria-Data-Protection-Regulation.pdf>

There would be a compulsory registration of Data Controllers and Data Processors of major importance. The Bill does not define major importance, but it is suspected same will relate to the processing of 1000 data-subjects data within 6 months or 2000 within 1 year.

All other provisions currently contained in the Nigeria Data Protection Regulation and the Implementation Framework were incorporated accordingly.

7. NEW PATENT BILL

SB 880: Patents And Designs (Repeal And Re-Enactment) Bill, 2021 has currently passed the First Reading (15/12/2021), Second Reading (26/07/2022), and is currently with the committee.

The significance of the new Bill is the provision of Utility Models. Section 18(1) allows for inventions that are new and industrially applicable. It removes the 'inventive step' requirement for a patent. Thus, a utility model is a lesser or small patent.

This is a welcomed development as it has often been argued that most Nigerian inventions do not meet the full requirements of a patent if the same were to be substantially examined. With the pending provisions, Nigerian entrepreneurs and businesses can have a right to register their utility models and gain protection like patents, as well as get a fighting chance for collaboration or negotiation with bigger brands.

8. PLANT VARIETY REGULATION

The National Agricultural Seeds Council in collaboration with the Minister, have concluded a validation hearing in November 2022. Consultants were invited to see to the draft of the Regulation that will give force to the Plant Variety Act of 2021. It is expected that the Regulation will be launched before the elections of 2023. Otherwise, it would be delayed for later in 2023.

All companies, farmers, breeders, and those trading or interested in the varieties of plant will be affected as soon as the Regulations come to force. Thus, breeders will be able to apply for the registration of their variety. Those who discovered such variety will have the right of mention. Before grant, examination and publication will be made and those who wish to oppose can do so. Disputes shall be resolved in accordance with the stipulations of the Act. More information on the Plant Variety Act can be read [here](#). The regulation simply creates the hands and legs through which the Act will become alive.

There have been arguments as to how the regulation of food or its source, can itself be a roadblock to food access. As such a dissenting few have kicked back against Plant Variety Protection in Nigeria since it carries the right to prevent production or reproduction, sale, exporting, importing and et cetera. But these concerns are attenuated by the Regulation (in accordance with the Act) which sets aside common foods that cannot be registered, whilst protecting the incentive for innovation.

9. PROTOCOL ON INTELLECTUAL PROPERTY, AfCFTA

Nigeria and South Africa are two significant pillars of Africa. As such, Nigeria like every other African country, was called upon to present its interest and stand on the intellectual property protocol aspect of the Agreement establishing the African Continental Free Trade Area (AfCFTA). Championing that task for Nigeria is the National Office for Trade Negotiations (NOTN). Accordingly, stakeholders and IP experts were called to deliberate on the Phase II Negotiations.

The final negotiations of the Technical Working Group (TWG) under NOTN as submitted to the committee for onward transmission to the AfCFTA committee are summarised as follows:

- Member states must promote African innovation and creativity and deepen intellectual property culture in Africa, while protecting coherent IP rights policy in Africa.
- Contribute to access to knowledge to foster innovation and public health needs according to the priorities of state parties.
- Promote intra-African trade and respect national treatment and international treaties.
- Provision for the exhaustion of rights.
- To promote and enforce plant variety rights, GI as sui generis without prejudice to additional protection provided under trademarks law.
- Have a database for African GIs.
- Protect and continue to protect trademarks, copyright and related rights, whilst taking the need for research, blind people and cultural heritage into consideration/
- Protection of patents and protection of utility patents/models and industrial designs.
- Protect undisclosed information including trade secrets and confidential information.
- Protection of layout designs (topographies) of integrated circuits, and emerging technologies.

- Protection of traditional knowledge, cultural expressions and folklore, as well as genetic resources.

The guiding principles set therein will no doubt lead many African countries to create sui generis laws or amendments to existing intellectual property laws so as to accommodate the agreements of the protocol.

CONCLUSION:

I am privileged to have contributed to all these intellectual property reform apart from the Trademarks Bill and Patent Bill. These reforms, though with shortcomings, set the foundation for Nigeria to grow and progress. It is hoped that these reforms will see the light of day and that Nigerian businesses both start-ups and giants, will take advantage of these reforms. The reforms will also open doors for more foreign investments in Nigeria. Nigeria has crawled for too long; it is time she begins to walk.

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