

IP Article: World IP Day 2021

By Bonita Mulelengi

**If you want to walk fast,
walk alone.
But if you want to walk far,
walk together.**

Ratan Tata

On September 23, 2020, Ugandans watched with glee as the President launched the National Intellectual Property Policy which seeks to market Uganda as an IP based nation through addressing the challenges of innovation /creativity of IP, protection of IP rights, commercialization of IP and enforcement of these rights; where there has been breach. The move is a leap to supporting and promoting the growth of innovators, makers and creatives, be they individuals or classified as SMEs or otherwise. This policy when considered together with other IP laws such as the Copyright and Neighbouring Rights Act, the Trademarks Act, the Industrial Properties Act and very particularly the Security in Movable Property Act, 2019 form the foundation for securitization and commercialization of IP which will promote economic development.

KTA Advocates is a proud supporter of SMEs through its various products and events geared towards sensitizing and emphasizing the protection of IP rights and their commercialization. Our legal support is designed to take start-ups from ideas to expressions which are protectable under the IP legal regime, allowing them to blossom in a competitive fast-paced market. The annual symposiums hosted by KTA Advocates are a valuable platform which bring together the innovators, creators, makers, stakeholders, IP scholars, lawyers and the general public to focus on matters concerning technology and Intellectual Property with the hope of not only getting the word out but hopefully affecting policy for the realization of the numerous benefits of Intellectual Property to everyone. This year's theme is harnessing intellectual property in the Fourth Industrial Revolution (4IR).

Through a concerted effort under the Amani IP Network, KTA Advocates has the privilege of practicing Intellectual Property law across the region. This facilitates development through comparative analysis which informs our considered opinions presented to policy makers.

Background

Growth of innovation: Google LLC v. Oracle America Inc

The United States Supreme Court decision in Google LLC v. Oracle America Inc is being celebrated as a holy grail for the software ecosystem which also comprises of SMEs. Whereas the court did not address the question as to whether JAVA's API was copyrightable, it took cognizance of the progressiveness of technology, economic and business circumstances, and limited itself to the question of fair use; a doctrine that seeks to intervene in rigid application of the copyright statute which would stifle the creativity the law is designed to foster (Stewart v. Abend, 495 U. S. 207, 236 [1990]). The court observed that fair use can play an important role in determining the lawful scope of a computer program copyright. It can help to distinguish among technologies. It can distinguish between expressive and functional features of computer code where those features are mixed. It can focus on the legitimate need to provide incentives to produce copyrighted material while examining the extent to which yet further protection creates unrelated or illegitimate harms in other markets or to the development of other products. The decision is vital for promoting growth of the software and APP developers' industry; through fair use and without requiring licenses, to rely on the functionality of other APIs to develop software and realize their ideas – get them to the market. In Uganda, this decision only is persuasive but should be used a great start to having proactive policies and legislation for the industry.

Curtailing online piracy: Multichoice Kenya Limited v. Safaricom PLC & Others

Although now partially lifted following arguments found to be compelling by the Court of Appeal in Kenya regarding third party risk and implications of compliance with the injunction earlier granted against the respondents, the initial enforcement of Section 35D(2) of Kenya's Copyright (Amendment) Act, 2019 was vital for the recognition of, and enforcement of copyright. The injunction compelled an internet service provider to block a customer's access to pirated content. The implementation of the provision of the law is a victory for protection of intellectual property rights.

Where do we go from here?

The journey for the protection and enforcement of IP rights has many pilgrims and is rightfully beyond its genesis. The participation of the legislators, implementors, Uganda Registration Services Bureau (URSB) and a boom in the 'gig' economy among others presents a lot to be celebrated by looking at how far we have come. The establishment of infrastructure such as online registration at URSB, development of human resource and value chain will enhance the utilization of IP as envisioned by the IP Policy.

A lot remains to be achieved and significant of this, is the harmonization of intellectual property regimes and laws across Africa so as to enjoy the benefits of the African Continental Free Trade Area (AfCFTA) which can be leveraged to protect traditional knowledge, geographical indications and commercialization of intellectual property across the continent. As we look forward to the implementation of the National IP Policy, it can be said that we have crossed the Rubicon and there is no other place to go but forward.

TMT & IP Team



Kenneth Muhangi
Managing Partner



Edwin Tabaro
Partner



Bonita Mulelengi
Senior Associate



Judith Kagere
Junior Associate



Shamila Nakanwagi
Junior Associate

Contact Us

 Floor 3, Plot 4 Hannington Road
Kampala, Uganda, P.O. Box 37366,

 +256 414 530 114 / +256 414 531 078

 partners@ktaadvocates.com