

Intellectual Property Rights and Economic Development

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Abstract

The essence of intellectual property rights is essentially that no one unlawfully annexes the fruits of another person's labour. The right must be respected not only because of the commercial value attached to it but also because the right to stop the commercial activities of another person has now been given the status of an intangible right of property. Moreover, awareness by all and sundry of this area of the law will obviously stem considerably not only the ever rising trend of piracy, particularly in the book, music and film industries but also trade marks and trade names malpractices. Investors and industrial designers will be able also to reap fully the fruits of their inventions and creations.

The government must also now focus its attention to this sector of our economy. It has been stated that the music and entertainment industries in the most advanced countries of the world notably, the United States of America, France, United Kingdom and Germany etc and responsible for nothing less than 25 percent of the Gross National Income of the economics of these countries. In Nigeria it was disclosed that the movie industry alone has generated an income of about 30 billion naira over the years and that this sector will in future hold the key to the economic growth of a country. The essence of this paper is to look into the importance of intellectual property rights on the economic development of a country. In this paper we will be highlighting the meaning of intellectual property, intellectual property right, development, the meaning of Development in the light of intellectual property, the importance of intellectual property rights on the economic development of a country, the challenges to enforcement of intellectual property and the recommendations on ways to tackle these challenges.

Keywords: Intellectual Property Rights, Economic Development.

Introduction

Intellectual property is a direct indices for measuring development. The creation of order and stability which entrenches property rights (including intellectual property), rule of law that ensures the recognition and protection of people's inventions and works, and the restrictions on monopoly all constitute a fundamental framework for development. A draw back in the economic development threat to the very existence of intellectual property rights. A situation where due to the weakness of the institutions of government and relevant regulatory agencies, peoples works like music, books, trademarks, trade names etc are copied by others with impunity. This paper will dwell on the meaning of intellectual property, intellectual property rights, development, the meaning of development in the light of intellectual property, the importance of intellectual property rights on the economic development of a country, the challenges to enforcement of intellectual property and the recommendation on ways to tackle these challenges.

The Meaning of Intellectual Property

Intellectual property refers to original creative works that have economic value and are protected by law⁸.

World intellectual property organization (WIPO) describes intellectual property as the property in intellectual creations, particularly technological inventions and literary and artistic works⁹.

Intellectual property can be described as all those things, which emanate from the exercise of human brain such as ideas, inventions, poems, designs, microcomputers etc¹⁰.

Intellectual properties are those intangible aspects of human creation; they are choses in action, outcome of a man's ideas and ingenuity that no other man before him has had. These ideas once put into writing or creativity

⁸ Agatha O. Inweregbu; Public Lecturer; Nnamdi Azikiwe University, Awka Nigeria 25/1/2007

⁹ Abdulkarim Kana, Public Lecture; Nnamdi Azikiwe University Awka Nigeria 25/1/2007

¹⁰ Abdulkarim Kana, Public Lecture; Nnamdi Azikiwe University Awka Nigeria 25/1/2007

and sort to be protected under the law, becomes an exclusive reserve of the owner of the ideas or inventor; no one else can use it without the permission of the owner¹¹.

W. R. Cornish in his book intellectual property defined it as some of the finer manifestation of human achievement reations of the mind. It is an intangible property created by the human mind. They are the ideas that make inventions¹².

A learned writer¹³ gave possible description of intellectual property on two facets:- colloquial and legal. According to him the colloquial description of intellectual property (a phrase which embraces industrial property is that it comprises all those things which emanate from the exercise of the human brain such as ideas, inventions, poems, designs, micro computers and micky mouse). The description in the legal sense focuses on the legal rights which are enjoyed in the product of the mind rather than on the product. This right is exclusive in the sense that it excludes all others from enjoying the fruit of another person's work emanating from an idea expressed by such person rights.

Meaning of Intellectual Property Rights

Intellectual property rights are those legal rights associated with creative effort or commercial reputation and goodwill¹⁴.

Intellectual property right is used to describe the right which a person has over an invention, an innovation, a copyright, a patented product or design, a trademark and all other such corporeal hereditaments which are recognized in law as property¹⁵.

What is Development

Michael P. Todaro, defines development as the process of improving the quality of all human lives. Three equally important aspects of development are:

- (1) Raising peoples living levels – i.e., their incomes and consumption levels of food, medical services, education etc through relevant economic growth processes
- (2) Creating conditions conducive to the growth of peoples self esteem through the establishment of social, political and economic systems and institutions which promote people's freedom to choose by enlarging the increasing varieties of consumer goods and services.

The Meaning of Development in the Light of Intellectual property

Every nation strives after development, it is an objective that most people take for granted while economic progress is an essential component of development, it is not the only one. This is because development is not purely an economic phenomenon ultimately it must encompass more than the material and financial part of people's lives. Development should therefore be perceived as a multi-dimensional process involving the reorganization and reorientation of entire economic and social systems. In addition to improvements incomes and output, it typically involves radical changes in institutional, social and administrative structures, as well as in popular attitudes and sometimes even customs and believes. Finally, although development is usually defined in a national context, its widespread realization may necessitate fundamental modifications of the internal economic and social system.

The Importance of Intellectual Property Rights on the Economic Development of a Country

The importance of intellectual property rights in the contemporary world cannot be over-emphasized. Commerce is the fulcrum upon, which the economic development of a nation revolves. It is therefore of utmost importance that intellectual property rights should be enforced for the efficient and effective economic development of a nation. For example, in the field of commerce, it takes a trader or manufacturer a lot of energy, time and resources to acquire a reputation in a particular market. In order to ensure that his goods are not mistaken for those of his competitors, a trader puts a tag on his goods so that his customers can easily identify his goods. It is

¹¹ Abdulkarim Kana, Public Lecture; Nnamdi Azikiwe University Awka Nigeria 25/1/2007

¹² Butterworths F. Co; London, 7th ed., 1995 p.3

¹³ Ademola Popoola: Lecture Notes, LL.M. Class of Industrial and Intellectual Property of Obafemi Awolowo University 2000.

¹⁴ David Bainbridge: Intellectual Property financial Times Pitman Publishing; 4th ed., London 1999, p.11

¹⁵ C. O. Muo; Public Lecture Nnamdi Azikiwe University, Awka Nigeria 25/1/2007.3

this tag that is referred to in legal parlance as a mark or a trade mark which is an aspect of intellectual property. The law of Trade marks seeks to protect the interest of a trader with regard to his trade mark by ensuring that a third party does not misappropriate another trader's trade mark thereby confusing consumer or customers of a particular trader. The philosophy behind this posture of the law is that in order to encourage creativity and growth of the economy, a trader should be provided with a congenial atmosphere which guarantees that his contribution to the economic growth of his community is recognized and respected. And that he is given room to enjoy the fruits of his labour without undue interference from competitors or the state. It is against this background that the law frowns at any trader who decides to reap where he did not sow by using the trademarks of another trader or by designing his trademarks to be misleadingly similar to those of another trader in the same market with a view to confusing consumers of the products thereby affecting the economic development of a country.

Intellectual property has generated a large proportion of income and will in future hold the key to the economic growth of any nation.

Challenges

(1) **Corruption** – Corruption is becoming endemic in many Countries Domestic and foreign observers recognize corruption as a serious obstacle to economic growth and poverty reduction. It is not only Africa or the third world countries that are infested with corruption. The Newsweek international magazine of April 29, 2002 in its article “The staggering cost of corruption in Europe” revealed that within Europe's burgeoning social welfare state, the opportunities for graft are almost limitless and are therefore irresistible. Roughly half the European Union's Gross Domestic product passes through the hands of government bureaucrats for services, procurements, entitlements, subsidies, salaries and perks. That doesn't even include the continents huge parastatal sector, public-owned companies, most with cozy monopolies, shielded from the pressure of competition or the inquisitive eyes of shareholders, where tens of thousands of lucrative jobs are dated out as public favours. In sectors where public contracts dominate construction, medicine and trash collection to name just a few, kickbacks are rampant.

The attendant consequence of rise in corruption automatically leads to a widening of the gap between the rich and the less privileged. In other words the politicians or the runners of big public corporations and monopolized resources get richer while the ordinary citizens remain unemployed or with low wages resulting in manifest inequality in the polity. These by all implications affect intellectual property by narrowing the space for creativity. Those that are weak lose the product of their creative minds to the powerful corporations who exploit them and utilize their inventions and creations under the brand name of the all-powerful employers. In all corruption weakens the state and its ability to promote economic development.

2. **Lack of Enforcement:** The judiciary of most countries are highly challenged public institutions. The courtroom often is a most uncomfortable work environment with cobwebs and dusty window-sills perfuming the courtroom air. The epileptic electricity supply makes a mockery of the air conditioning system. If it is installed and the poor file storage system hampers administrative work within the court complex. This impacts negatively on the quality and pace of conduct of court business. Within the court complex the exhibits storage room is the most insecure room within the court complex. This is so, as it is over filled with exhibits of frustrated or sabotaged or abandoned cases. The police are also highly challenged. The workforce are not provided with necessary working materials neither are they motivated with enabling conditions of the service nor is their work environment such as to engender productivity in the work force. As such inefficiency, abuse of police powers, insider collusion with criminal networks, institutionalization of corruption and bare faced administrative hypocrisy is the order of the day. As a result of all these, enforcement of intellectual property becomes almost impossible which in turn affects the economic development of any country.

3. **Lack of Uniform Laws:** There is no uniform laws regulating the enforcement of intellectual property rights across the world. The existence of different legal systems is a major problem of cross-border practice and is also a major cause of the slow pace of trade and intellectual property right protection. Because of the different legal system across the world there is no uniform laws regulating the enforcement of intellectual property rights. Another important factor is the issue of language. There are different languages across the world and this has hamper the enforcement of intellectual property rights. For example, if an intellectual property rights owner in Nigeria is being violated in France, language becomes the first hurdle that must be crossed for a meaningful

investigation and a successful enforcement to be realized. Language is also a major factor that hinder uniform laws across the world.

4. **Lack of Awareness:** There is a very low level of awareness of intellectual property rights among the generality of the populace. Many intellectual property rights owners lack awareness of the existence of the extant regime of statutory protection of the intellectual property Rights. Worse still, most do not have the least inkling of how they may take steps to protect or enforce same. Most occupational groups have very low level of awareness as regards their full range of intellectual property rights and the procedural steps which they are required to take so as to protect and enforce same against criminal violation. In the academic curriculum of most tertiary institutions, intellectual property law is not taught to none-law-students. In this, is the irony of the legal training in that the prospective clientele of the trainee-lawyers lack the requisite legal awareness which will make them to seek the service of solicitors.

5. **Inadequate Infrastructure:** The basic infrastructure needed for the effective protection of intellectual property rights is not only grossly inadequate but also appears to be non-existent. The problem of poor communication network has adversely hindered intellectual property right protection. There are still lapses in the efficiency of the communication system.

The means of transportation particularly the roads, railways and the airways also add to the inefficiency of the governmental agencies. In some countries, the railways are no longer in existence, the roads are in bad shape and in dire need of construction or rehabilitation as the case may be. The airlines are not left out, as the aviation industry has consistently witnessed dismal performances with little or nothing to show for its existence. The recent crashes of many airplanes have put the world under a searchlight, as it has been discovered that the world safety standards have not been observed by indigenous airline operators.

All these hamper the enforcement of intellectual property rights which in turn affect the economic development of a country.

Recommendations

There should be a review of the applicable and varied laws which impact on the enforcement of intellectual property rights in the world so as to harmonise the laws and thereby streamline the overlapping functions of various government agencies that operate in this area of law.

Intellectual property awareness education should be compulsorily introduced into the curriculum of secondary schools and technical schools and should be made a compulsory elective course for all tertiary education students in the world.

Having observed that intellectual property has been an integral element of economic development. Also that the effect of corruption generally affects the very yolk of economic development of the society and consequently affects the intellectual property recognition and protection regime.

The approach to curbing corruption on the investigation process and judicial proceedings in intellectual property matter requires a wholistic approach in stamping corruption out of the society.

There is the need to establish in each country of the world, a ministry of intellectual property affairs to adequately treat all matters pertaining to intellectual property rights.

There is the need to constructively improve the infrastructures in most countries of the world to provide a conducive environment for the enforcement of intellectual property rights.

Conclusion

As was stated, intellectual property is a direct indices for measuring economic development. It is for this reason that intellectual property rights should be enforced to have a well balanced economic development of a country.

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