

## **BASICS OF INTELLECTUAL PROPERTY IN NIGERIA**

Intellect is a person's mental power. Intellect is usually expressed in thoughts, speech and creations of all sorts. Everything ever created is first a product of one's intellect. These thoughts, speech and creations well developed can profit a person for generations and keep ones prints in the sands of time many years after death. The results of ones intellect can be in form of writings of all sorts, photography, software applications, movies, music, paintings, drawings etc.

Intellectual property includes intangible creations of human intellect usually original works. The World Intellectual Property Organization (WIPO) defines Intellectual Property as "creations of the mind, inventions, literary and artistic works, and symbols, names, images and designs used in commerce".

Intellectual properties Rights (IPR) are the rights a person has to protect his innovation and the right to get rewards on his innovations whether in finance or in kind. Intellectual property rights have global recognition.

There are four categories of intellectual property In Nigeria; Trademark, Patent, Industrial Design and Copyright. They are regulated by the following laws;

1. Trademarks Act, Cap T13, LFN 2004
2. Designs and Patent Act, Cap P5, LFN 2004
3. Nigerian Copyright Act, Cap C28, LFN 2004

### **TRADEMARK:**

A trademark is a recognizable sign, design or expression which identifies products or services of a particular source. It can simply be said to be a registered mark that distinguishes your products. A trademark owner can be an individual or a business organization. This sign or mark is peculiar to you and your products. A trademark can be a word, symbol, phrase or design. Examples will include: brand names, logos, slogan etc.

Trademarks have to be registered at the trademarks registry before any kind of right can be claimed. According to Sec. 3 of the Trademarks Act "**No person shall be entitled to institute any proceeding to prevent, or to recover damages for the infringement of an unregistered trademark...**" it is pertinent that trademarks be registered so as to avail the owner the right to claims where his/her trademark has been hijacked.

## **WHY YOU SHOULD REGISTER YOUR TRADE MARKS;**

1. Protect your brand because your trademark is your asset. A hijack of your trade mark might mean a hijack of your customers or consumers of your product.
2. Your trade mark differentiates your services/products from the rest.
3. Registering your trademark gives you a right to its exclusive use and a right to sue for damages where there is an infringement.
4. It ensures posterity of brand. Registration is initially valid for 7years and renewable for as many times as you wish.

**Regulatory Agency:** Trade mark, Patent and Designs Registry under the Federal Ministry of Industry, Trade and Investment.

## **PATENT:**

Patent is a right exclusively granted to a person for an invention or innovation that offers a new technical solution to a problem. Patent protection provides the inventor with a right to prevent unauthorized use of his/her invention and further avails the inventor the right to initiate legal actions against unauthorized users. Registration of patent is pertinent for the proper protection of the right to his invention.

What can be patented? New inventions that solve technical problems. The invention has to be new and not an extension of what already exists. It must be useful and also have an industrial application. Mere theoretical expressions without practical potentials cannot be patented. E.g mathematical theories cannot be patented.

It is paramount to patent inventions so as to protect the owner from fraudulent use of the inventions, to promote and encourage creativity and provide recognition for creativity.

## **WHY YOU SHOULD PATENT YOUR INVENTIONS;**

1. A grant of patent gives an inventor a temporary but exclusive right over his inventions. i.e he enjoys commercial exploitation of that invention. Non registration of inventions leaves you at a great risk of being copied and having no legal rights over your original invention.
2. The right to a patent is not automatic like that of copyright it is rather vested on the “statutory inventor” which means the first person to file and register the patent has the rights to the invention.

3. The exclusive rights granted under patent is valid for 20years from the date of filing relevant patent application

### **Regulatory Agencies:**

Trademarks, Patent and Designs Registry under the Federal Ministry of Industry, Trade and Investment and National Office for Technology Acquisition and Promotion (NOTAP)

### **INDUSTRIAL DESIGNS:**

Industrial designs are composition of lines or colours or any three-dimensional forms which give a special appearance to a product or handicraft. Industrial design is a process of design applied to products that are to be manufactured through techniques of mass production

Industrial designs are those elements incorporated into mass produced products that aim to enhance their attractiveness by their appearance. Industrial designs are better protected through proper registration. The aim of the law governing industrial design is to protect entirely new, different and distinct designs. Unlike patent, industrial designs do not have to be targeted at solving new technical products. It is simply a new or different design of a product. The protection of industrial designs is important to lace designers, textile designers, artist, shoe designers etc.

### **WHEN CAN AN INDUSTRIAL DESIGN BE REGISTERED?**

1. When the design is entirely new or completely different from other available designs.
2. When the design is not contrary to public order.

Your designs need to be registered before publication else your exclusive right to your designs might not just be your exclusive rights as publication invalidates newness.

### **WHY YOU SHOULD REGISTER YOUR INDUSTRIAL DESIGNS?**

1. By registration, you prevent your design from being copied and you enjoy exclusive rights on your designs which may include financial claims.

2. Industrial designs are valuable business assets that can yield financial and commercial increase to a company.
3. Industrial designs are valid for an initial period of 5 years from the date of application for registration and renewable for two successive periods of 5 years.

**Regulatory Agencies:** Trademarks, Patent and Designs Registry under the Federal Ministry of Industry trade and investment.

## **COPYRIGHT**

Copyright is the exclusive legal right given to the originator for a fixed number of years to print, publish, perform, firm or record literary, artistic or musical material.

The protection of copyright under the law is geared toward the protection of “the fruit” of a person’s work. People that are likely to benefit from this category of intellectual property protection are; Writers, Musicians, Publishers, Film makers, Script writers, Editors, Broadcasters, Producers etc.

Piracy has always been an issue in the creative industry of Nigeria as it constantly belittles the endless efforts of creative minds. hence the need for compliance to the Copyright Act and for proper protection of copyright.

It is pertinent to note that there are categories of works that are protected under the law and these works are referred to as “Eligible works”. These eligible works includes; Literary works, Musical work, Artistic work, Cinematograph Film, Sound Recording, Broadcast (as provided in S1.Copyrights Act).

## **WHEN IS A WORK ELIGIBLE FOR COPYRIGHT?**

1. The works are original or efforts have been made to give the work an original character.
2. The work must be in a definite medium of expression i.e it must have passed the stage of being a mere thought and must be in a fixed mode where it can either be perceived, reproduced or communicated.

## **IS REGISTRATION COMPULSORY UNDER COPYRIGHT?**

The Nigerian law does not require registration of copyright for the protection of eligible works. Copyright is an automatic right that is available to the creator of an eligible work the minute his work becomes tangible. However, registration and deposit of works at the Nigeria Copyright Commission serves as a public notification of the work.

A Copyright owner enjoys the privilege of the fruits of his work which maybe in finances and can control his works and its use by others. Acknowledgment is given to copyright owners after or during usage of their works.

The owner of an eligible work enjoys copyright throughout his life time and an additional 70years after his or her death. At the expiration of this period it goes into public use for free.

**REGULATORY AGENCIES:** Nigerian Copyright Commission (NCC).

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