ENHANCING EFFECTIVE JUSTICE DELIVERY THROUGH INFORMATION AND COMMUNICATION TECHNOLOGY

SUB TOPIC: **INTELLECTUAL PROPERTY PROTECTION IN NIGERIA**

**By**

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**1. INTRODUCTION**

The paper examines the content of intellectual property protection in Nigeria. It explains the nature of the intellectual property (IP) system- IP rights (IPRs), IP laws (IPLs), IP protection and enforcement mechanism, types of IPRs, rationale of IP for innovation and creativity: IP management and trends, IP adoption, maintenance and renewal.

The paper further explores the symbiotic relationship and interplay between Intellectual Property (IP) protection and information and communication technology (ICT), emphasizing its significance in the digital age as it relates in its role as an enabler in enhancing justice delivery for the benefit of, Registrars of courts, Legal and Research Assistants, and ICT officers of the judiciary of Nigeria. The paper explains to participants what users of ICT needs to know about Intellectual Property Rights (IPRs) embedded in those ICT tools?).

In adumbrating on the above posers, the paper has argued that, Justice institutions in Nigeria have been slower than other sectors like medical practice (such as in telemedicine or e-medicine, which is the remote delivery of healthcare services over the telecommunications infrastructure, using electronic audio and visual means) and the university educational institutions and systems ( where applications for admissions, grant of admissions, payment of user charges and fee, registration, lectures, examinations, matriculations, convocations and issuance of certificated are actualised) in deploying intensive use of ICT in the wheels of justice system. In other climes, ICT is effectively used by the judiciary in Case Management Systems (CMSs), legal repositories. In the most developed justice systems, such as Denmark, Switzerland, Romania, Malaysia, Singapore and Kenya (where an Audio/Visual) recording is being piloted) CMS provide legal repositories that provide the foundation for Artificial Intelligence (AI) applications development for various purposes, either to assist or perhaps even substitute judicial decisions[[1]](#footnote-1)

**2. UNDERSTANDING INTELLECTUAL PROPERTY**

**(a) Intellectual Property and Intellectual Property Rights.**

 There is no specific law that goes with the name Intellectual Property. Rather, it is a collection of different laws with similar traits and character fondly created or resulted from human creations and careful thoughts. As a result, Intellectual property (IP) is a “catch all term” that is used to describe copyright, patents, trademarks, trade secrets, and other existing or newly created related rights[[2]](#footnote-2).As a result, different descriptors are used to explain the content of ‘Intellectual Property’.

Contextually, IP has two major components, Industrial Property and Copyright, generically refers to as ‘Intellectual Property’. Philip and Firthia[[3]](#footnote-3), defines intellectual property to“ means all those things which result from the exercise of the human brain such as ideas, inventions, poems, designs, micro computers” The protection of the creative efforts or commercial reputation and goodwill associated with products of the human intellect known as ‘Intellectual Property Rights’ (IPRs) is statute based and regulated nationally and internationally and these have resulted in several reforms in the intellectual property system of different countries of the world.

 According to the World Trade Organization (WTO), intellectual property rights as rights given to people over the creation of their minds” and owners of these rights otherwise known as “creators can be given the rights to prevent others from using their inventions, designs or other creations. These rights are known as Intellectual property rights.

**B. Conceptualisation of Intellectual Property Rights**

(i) **“Intellectual”** comes from the word ‘intellect’ which is the power of man (the human being) to think in a logical manner, and acquire knowledge. Intellectualism is restrictively interpreted or connected with a person’s powers of reasoning.

(ii) **“Property”** is derived from *latin* phrase *‘proprius’,* which means ‘one’s own’. Property ownership was until recently construed restrictively to property in movable and immovable items. Movable such as shoes, jewelleries and cars etcetera. Immovable such as land. The common identifiable and distinguishable characteristic features of the two kinds of property lays in the possibility of their physical existence capable of being seen, touched and appreciated with the sense of ‘touch’ and ‘sight’. In relation to property of intellectual content, these are proprietary rights with value but which does not exist in physical objects. Incorporeal in nature that can’t be seen or touched, but are still enforceable by law. Generally, incorporeal rights have to do with intangible property and unlike real property that can be physically quantified, intangible property is conceptual in nature. However, the rights associated with intangible property are just as valid as the rights associated with real property. Incorporeal rights are also known as intangible rights, and incorporeal property is also known as intangible property.

 (iii) **Right(s)** means something that is due to a person by just claim, legal guarantee, or moral principles… a legally enforceable claim that another will do or will not do a given act; a recognized and protected interest, the violation of which is wrong. Rights are legal, social or ethical principles of freedom or entitlement; that is rights are the fundamental normative rules about what is allowed of people or owed to people according to some legal system, social convention or ethical theory.

**3.**  **Types of Intellectual Property Rights protected in Nigeria**

These rights include: Copyright; Patents; Utility Models; Industrial Designs; Trademarks and Service marks; Trade Secrets; Confidential Information; Geographical Indications; Layout Of Integrated Circuits and Plant Breeder Rights. These IPRs are categorised and regulated either as rights created through the instruments of either (a) Statutes; (b) Common law and/or (c) Contract. In Nigeria, the IPRs regulated by Statutes are as following:

 **(a) Copyright and Allied Rights:** Protects literary works, musical works, artistic works, audiovisual works, sound recordings and broadcasts (see section 2(1)) of the Copyright Act, Laws of the Federation of Nigeria 2022. Copyright grants the creator exclusive rights to reproduce, distribute, and perform their work. The Copyright Act, Laws of the Federation of Nigeria 2022, is the primary legislation governing copyright protection in Nigeria.

**(b). Trademarks:** Protect signs, symbols, or logos that distinguish goods or services of one enterprise from another. Trademarks are crucial for brand identity and consumer trust. The Trade Marks Act, Cap T13 Laws of the Federation of Nigeria 2004, regulates the registration, protection, and enforcement of trademarks in Nigeria.

**(c). Patents:** Protect new inventions, granting the patent holder exclusive rights to use and commercialize the invention for a specified period, usually 20 years. The Patents and Designs Act, Cap P2, Laws of the Federation of Nigeria 2004, is the principal legislation for patent protection.

**(d). Industrial Designs:** Protect the aesthetic aspects of a product, such as its shape, pattern, or colour. This category ensures that the visual design of a product is protected against unauthorized reproduction. The Patents and Designs Act, Cap P2, Laws of the Federation of Nigeria 2004, is the principal legislation for patent protection.

(e) **Plant Variety Protection Act, 2021:** Enacted to establish a legal regime for farmer’s rights to their seeds and plant breeder’s right (PBR) to their new species/varieties under certain conditions, -namely, distinguishable, uniform and stable-.

**4**. **Nature and Scope of Intellectual Property (IP)**

(a) **IP Rights are Negative Rights**

Intellectual Property rights are generally negative rights in nature. The general scope of these rights does not in reality impose any positive rights on the owner rather; the owner enforces them by stopping third parties from exploiting the rights without permission.

**(b) IP is ephemeral in nature and Limitation in Time**

Intellectual property is fleeting, fugitive, momentary, transient and transitory in nature. It is ephemeral because, new ones drive out the old. They are transient and do not last forever.

It expires after a specified period. This permits the rest of society to benefit from the work after the creator has had an opportunity to earn a fair reward.

**(c) Intellectual property is a special and *sui generis* kind of property**. Intellectual Property differs from other forms of property as they are non rivalrous, meaning one use does preclude another; non-excludable, meaning possession does not control access; and inexhaustible, meaning ideas are in infinite supply. Intellectual property rights are rights conferred by statute on an individual or a corporate body with respect to the product of his or her intellect, guaranteeing the exclusive control of his work for limited period. Other aspects of the special nature or sui generis aspects are:

**(d)** **Intellectual property** **rights are territorial in nature:** Intellectual Property rights are generally territorial in nature and are limited to the granting state. The IP laws of The Gambia cannot be applied in Senegal or Nigeria and vice Versa.

**5. Copyrights Protection in Nigeria**

Copyright is a form of intellectual property right (IPRs) is defined as ‘a property right in an original work of authorship (in literary, musical, artistic, photographic or audio visual work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distributes, perform and display the work.[[4]](#footnote-4)

The key concept behind copyright are;

(a) Originality: which means, that the work must not be copied from other sources but that, sufficient effort in terms of skills, knowledge, creative labour, taste or judgment must have been expended by the author to give the work original character.

(b) Fixation: The work must be fixed in a definite means of communication. These two twin requirements are applicable in both literary, musical and artistic works.

5 (i)  **Infringement and Violations of Copyright**

“Infringement” is a legal term for an act that means breaking a law. Intellectual Property (IP) rights (or IPRs) are infringed when a product or creation protected by IP law (such as in The Copyright Act) are exploited, copied or otherwise used without having the proper authorization, permission or allowance from the person who owns those rights or their representatives. The unauthorised uses include reproduction, publication, public performance, distribution, broadcast and adaptation of the work. It also includes the importation, sale, exhibition in public and other unauthorized dealings with copies of protected works as well as equipments used for the violation[[5]](#footnote-5). In **Adenuga *v.* Ilesanmi Press**[[6]](#footnote-6),per Adio JCA, where it was held that:“Copyright according to section 11(1) of the Act would be infringed by any person who, without the license of the owner of the copyright did or caused any other person to do an act, the doing of which was controlled by copyright”.

* In ***Jobela (Nig.) Enterprises Ltd v Taiwo Kupolati & Ors [2005] ALL FWLR (pt 268) 1736*** The Court held that infringement of copyright is actionable where the party is either the **owner, assignee or an exclusive licensee of the copyright.**
* Civil and criminalactions in copyright infringement can be taken simultaneously. See section 24 Copyright Act 2004 as well as case of ***Digital Communication Network Nig Ltd V NCC*** that: “*An owner of a copyright that has been infringed has three options, namely, to institute civil proceedings and claim damages and injunctive relief, etc under Sections 16-19 of the Act or to institute criminal proceedings under Section 20 of the Act (supra). In the alternative the violator of a copyright may be proceeded against simultaneously in a civil and criminal proceeding under Sections 24 and 25 of the Act. A body Corporate such as the appellant that commits an offence by way of infringement of copyright is to be proceeded against under Sections 22-23 of the Act. In this case the prosecution opted to initiate criminal proceedings”.*

**5(ii) Specific Industry Experiences of Copyright Violations and Abuses in Nigeria**

**(a) Book Piracy or Literary Works and Software Violations: (i)** reproduction, (ii) plagiarism and or (iii) reprography.

**\***In the scheme of computer programs, piracy relate to the unauthorised use, reproduction, distribution, or sale of copyrighted software. The ways of the unauthorised dealings include: Copying or sharing software without permission; Downloading copyrighted software from unauthorised sources; Using software beyond the licenced scope or timeframe; Modifying or distributing software without permission; Using software to circumvent technological protection measures etcetera.

**(b) Music, Film Violations (i)** piracy (ii) counterfeiting[[7]](#footnote-7) and (iii) boot legging.[[8]](#footnote-8)

* In relation to counterfeit, the counterfeit copy is simply re-packaged to seemingly look like the original. The counterfeit infringes on the producer’s trademark in logo, aesthetic appearance, colours etcetera in a sufficient manner that it will appear similar when compared with the original product, calculated to deceive the prospective buyer.
* In relation to bootlegging, this comprises the unauthorised recording of performances by particular artists or re-recording of films which are subsequently reproduced and sold without the permission of the artists.
* Online or the digital platforms have added new dimensions to piracy of music and movies either on blogs, Tiktok, Twitter, facebook, wasAPP, and YouTube.
* The Nigerian film industry which is popularly known as Nollywood is worse hit by these activities especially in ‘illegal streaming of content’. This new wave of online music and movie downloading and sharing of works of artists on websites are all over the internet. These web sites, including some very well known ones like the dissemination channels of YouTube, are used seen promoting and offering for sale, works of Nigerian musicians.

**5 (iii) Remedies for Infringement of Copyright**

* The civil remedies available at the instance of the owner in Copyright are:

**Damages; Injunction; Anton Pillar Order (*locus classicus*** case of ***Anton Pillar KG v Manufacturing Processes Ltd & Ors) see also, case of Musical Copyright Society (Nig) Ltd v Details Nigeria Ltd* (1996) FHCLR 473 at 482; Account of Profit; Conversion Right**

6.  **INFRINGEMENT AND VIOLATIONS OF PATENTS AND TRADEMARKS**

 A patent is an exclusive right granted by a state to an inventor for a limited period to prevent others from using, manufacturing, selling, importing, exporting, or otherwise dealing in the invention without the authorization of the patent holder otherwise known as the Patentee.

\* Patents and inventions are often used interchangeably however, both terms are not synonymous. An invention is the outcome of extraordinary mental or intellectual effort, skill and resourcefulness which is the subject matter in respect of which a patent is granted. In effect, patents are granted for an invention. An invention is a new solution to a technical problem. The problem may be old or new. In other words, it is a useful, newly created product or process which results from the exercise of skill or ingenuity by an inventor. In Nigeria an invention is patentable[[9]](#footnote-9):

(a) If it is new, results from inventive activity and is capable of industrial application; or

(b) If it constitutes an improvement upon a patented invention and also is new, results from inventive activity and is capable of industrial application.

\* The law of patent is the engine room upon which technology or new tech are birthed. In determining the infringement, the court usually takes into consideration the scope of the protection conferred by a patent which is determined by the terms of the claim and the description. The plans and drawings if any included in the patent shall be used to interpret the claims.

The provision for the infringement of patent right is enshrined in section 25 (1) of the PDA. It states that “The rights of a patentee or design owner are infringed if another person without license of the patentee or design owner does or causes the doing of any act which In ***James Oitomen Agbonrofo v Grain Haulage and Transport Limited***[[10]](#footnote-10), the court stated what plaintiff in a patent infringement action must establish by evidence for his action to succeed as follows:

What he invented is patentable and has been registered as such under section 1 of the PDA

The defendant did an act which constitutes an infringement of the patented invention

The act of infringement was done without the consent or license of the plaintiff

The act of infringement has been covered by a valid claim of the Plaintiff’s patent

Similarly, in ***Pfizer Inc. v. Polyking Pharmaceutical Limited and Another***,[[11]](#footnote-11) the plaintiffs averred that they were the owners of Patent in respect of a chemical compound Piroxicam but that the defendants infringed the patent by importing for sale Rossiden Capsules which contained the same compound Piroxicam as that of the plaintiff’s. The case of the defendants was that their own patent was different from that of the plaintiff because they produced it by different processes. The expert witness called by the plaintiff disagreed with the view of the defendants and asserted that regardless of the possibility of producing any chemical product by different processes, so long as the products of the different processes were the same compound, they cannot differ in potency. In the expert view, the Rossiden Capsule marketed by the defendants is the same organic compound contained in the plaintiff’s patent. Evidence was also adduced before the court to prove that large quantities of Rossiden capsule which contain the compound Piroxicam were available in the Nigeria market even when their patent had not expired. The court held that on the basis of the evidence adduced by the 1st plaintiff witness who is an expert in the field of science pertaining to chemicals in the drugs in issue and in the absence of evidence to the contrary the compound in the defendant’s drug, Rossiden is the same Piroxicam as the one in the plaintiff’s patent. Accordingly, the defendants have infringed the plaintiff’s patent.

In patent, an infringement may take the form of direct or indirect violation. A direct patent infringement may be an act of :

(1) Manufacture patented technology; (2) Use patented technology; (3) Offer patented technology for sale; (4) Sell patented technology; (5)Import patented technology; (6)Pass off the patented technology.

An indirect infringement may occur where:

(1) Sell parts that can only be realistically used for a patented invention; (2) sell an invention with instructions on using a certain methods that infringes on a method patent; (3)Licence an invention that is covered by another’s patent; (4) Sell material components that have been especially made for use in a patented invention and have no other commercial use.

In the case of  **Tobinco Pharmaceuticals Ltd. v. Kwara State University (2016) 4 NWLR (Pt. 1500) 94:** This case demonstrated the enforcement of patents and the protection of pharmaceutical inventions. The court upheld the plaintiff's patent rights, highlighting the role of patents in fostering scientific and technological advancements. These cases underscore the judiciary's commitment to upholding IP rights and fostering an environment conducive to innovation and economic growth.

7. In relation to trademark, a trademark is a distinctive sign or indicator used by an individual, business organization, or other legal entity to identify that the products or services to consumers with which the trademark appears originate from a unique source, and to distinguish its products or services from those of other entities. A trademark is typically a name, word, phrase, logo, symbol, design, image, or a combination of these elements. **Obikoya v. Sika Paints Ltd. (2005) 15 NWLR (Pt. 948) 27:** This case highlighted the importance of trademarks in protecting brand identity and consumer trust. The court emphasized that trademarks are essential for distinguishing goods and services, thereby preventing consumer confusion and ensuring fair competition.

**Specific Industry Experiences of Patents and Trademark Violations and Abuses in Nigeria**

 (a) **Packaged foods:** Packaged foods (fake or expired items are repackaged and sold as safe foods on the shelf where the consumer or customer(s) are fraudulently misled to buy as genuine).

(b) **Pharmaceutical Drugs**: Where expired drugs or drugs without expiry date are either re- labelled to extend the shelf –life are offered to consumer or customer(s) who are fraudulently misled to buy as genuine)

**(c) Branded products:** Branded products such as foot wears (consisting of well known brands such as ***‘Nike, Adidas sneakers, Gucci, Christian Louboutin, Louis Vuitton, Versace***  are mostly flooded in the market space whether online or off line space.

**(d) Clothing** (In 2018, it was reported that, fake Nigerian World Cup official jerseys flooded Nigerian markets where jersey that was officially being sold at the rate of 85 USD (Dollar) currency was available for sale at as low rate of 5(USD) equivalent of (2500 Naira then);

 **(e) Leathered Goods** (fake hand bags, wallets, belts carrying the fake tags of products like Gucci and Hermes, Channel, YSL, or Louis Vuitton);

**(f) Automotive Parts** (fake/cheap motor spare parts and even aviation spare parts); Optical Media (pirated CDs, DVDs); Cosmetics (in 2019 alone, NAFDAC confiscated sixty million fake cosmetics products); Alcohol; Jewellery.[[12]](#footnote-12)

The participants are to note that, Nigeria has no direct legislation dealing with IP violations which are criminal conducts in nature. As a result of this, many products subject of exclusive control’ rights are faked, substandard or counterfeited. The practice of countering or counterfeit affects all categories of goods except in relation to counterfeit drugs and medicine as spearheaded by the NAFDAC.

\* The legal frameworks involved in the fight against counterfeiting in Nigeria are: The Trademark Act;[[13]](#footnote-13) The Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act;[[14]](#footnote-14) The Customs and Exercise Management Act;[[15]](#footnote-15) The Cyber (Prohibition, Prevention, Etc) Act;[[16]](#footnote-16) The Merchandise Marks Act;[[17]](#footnote-17) The Nigeria Police Act;[[18]](#footnote-18) and the Patent and Designs Act;[[19]](#footnote-19)

The act of counterfeiting and mis-branding are criminal conducts with penal consequences

* Under the Merchandise Marks Act, trademarks forgery, falsification of products and false trade description are prohibited. Under section 3, offences to trademarks and trade description are provided.

In relation to pharmaceuticals,

* Section 1 of the Counterfeit and Fake Drugs and Unwholesome Proceed Foods (Miscellaneous Provision) Act[[20]](#footnote-20) provides that any person who produces, imports, manufactures, sells, distributes, possesses or displays for sale any counterfeit, adulterated, banned, fake, sub-standard or expired drugs or unwholesome processed food in any form-or aid or abets another party to do so- commits an offence.
* Counterfeit trademark in goods relates to the use of brand names, logos and packaging. “Counterfeit trademark goods” is … any good, including packaging, bearing without authorization a trademark validly registered in respect of such goods or which cannot be distinguished in its essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation[[21]](#footnote-21)
* Section 3(2) of the Counterfeit and Fake Drugs Act as well as section 16(4) of the National Drug Law enforcement Agency Act contain offences, which attaches criminal responsibility to company officers for corporate criminal acts on company Directors or officers albeit vicariously to such an officer not only without any act or omission but equally without any form of mental strict responsibility offences in Nigeria.

 It was in compliance with the foregoing provisions of law that NAFDAC sought for and secured the conviction of ***Barewa pharmaceutical company*,** its production manager, Mr. Adeyemo Abiodun and the quality Assurance Manager, Egbele Eromosele, with production of the dangerous medicine which claimed the lives of over Eighty babies in 2008 in the popular “my pikin” baby teething manufacturer of infant syrup[[22]](#footnote-22) In that case of ***Federal Republic of Nigeria*** v ***Barewa pharmaceutical company and five others*** , Justice Okechukwu Okeke of the Federal High court Lagos, sentenced and convicted to seven years in prison all the accused each for conspiracy to sell dangerous drug and seven years for selling dangerous drugs (which terms are to run concurrently). The Judge further ordered the company to be compulsory wound up and the assets forfeited to the federal Government. The offence is contrary to section1(18) a(ii) of the miscellaneous offences Act M17 Laws of the Federation off Nigeria, 2004 and punishable under sections1(8)(a)(ii); 1(18)(b)(ii) and 3 of the same Act.

\* In determining whether or not there is a resemblance between two trademarks as to give rise to infringement by one of the trademarks, the court considers the basic idea of the trademark infringed in the case of ;***CPL Industries Limited V Glaxo- Smithkline Consumer Nigeria Plc; Smithkline Beeham Plc[[23]](#footnote-23)***The defendants who were in the business of manufacturing for sale, analgesic preparation called “*Panadol*” and “*PanadolExtra*” adopted design trademark packaging similar to those adopted for the plaintiff’s “*Conphamol*” Analgesic. The plaintiff contended their the defendants have in the course of their trade, infringed upon the plaintiff trademark in adapting an “eclipse” shaped design that was similar to that which was adopted for CPL’S “ *Conphomol*” analgesic. The trail Federal High Court awarded the sum of N1.2 Billion Naira against Glaxo-smithkline Consumer Nigeria PLC and its parent company for infringement of the trademark of the indigenous pharmaceutical company known as Continental Pharmaceutical Company Ltd(CPL) of their “eclipse” logo with a blue and white package design which forms part of its registered trademark. Another striking case of ***Seven –Up Company & Another V Warri Bottling Company Limited***[[24]](#footnote-24) is another example where the plaintiffs claimed that they owned three registered trademarks namely” Seven-Up”; “7 Up” and “Up” but that they saw an advertisement by the defendants in daily times for a product referred to as “ Thumbs-Up” which might cause confusion in the market.

**8. MANAGEMENT AGENCIES FOR THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN NIGERIA**

Nigeria operates a variegated system of Intellectual Property Rights (IPRs) regime that has thrown up challenges for Intellectual Property (IP) management.

8.1  **Regulatory and Administrative Institutions Enforcing Intellectual Property Rights in Nigeria**

**8.1.1 The Nigerian Copyright Commission**

The Nigerian Copyright Commission (NCC) is the permanent administrative, regulatory and enforcement agency of Ministry of Justice that is saddled with the responsibility of protecting creative works protected by the Copyright Act[[25]](#footnote-25).

**8.1.2 Trademarks Registry**

The Trademarks Registry regulates the administrative machinery for the practice of trademarks and services in Nigeria. The Nigeria’s Trademark Registry is headed by a Registrar under the supervision of Ministry of Trade and Commerce. The functions of the unit include: offering of preliminary advices; appointment of Agent; conducting searches to ascertain that the mark is not in conflict or identical with any previously registered mark or to confirm if the mark is not prohibited under the Act; publication and advertisement in the Trademark journal which is the official journal of the Registry; carry out of opposition Process; Registration and grant of trademark certificates.

8.1.3 **The National Agency for Food Administration and Control**

The National Agency for Food and Drug Administration Control, (NAFDAC) is a body corporate established by the NAFDAC Act of 1993.[[26]](#footnote-26) The Agency is empowered to regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of drugs, from medical devices, food, cosmetics, chemicals/ detergents, and all drinks including packaged water[[27]](#footnote-27)which products are herein referred to as regulated products. The mandate of NAFDAC was extended in 2003 to include the certification of export of processed and semi processed food commodities[[28]](#footnote-28). In enforcing IPRs, the agency identify and classify the following as prohibited or fake or as counterfeit or unwholesome foods in Nigeria to include.Drugs with no active ingredient(s); Drugs with insufficient active ingredient(s); Expired drugs or drugs without expiry date, or re- labeled to extend the shelf –life; Clones of fast moving drugs- these are drugs with the same quality of active ingredient as the original brands; Drugs with active ingredient(s) different from what is stated on the label etc

\*In carrying out its mandate, the agency is involved in diverse ways in the enforcement of intellectual property materials either in their form as patented goods or as goods of trademark. As a mark of procedure and pre conditions, the agency requires evidence submission of registration (ownership) of trademark, patents or design with the Trademarks, \* Patents and Design Registry, as a pre-condition for the registration of pharmaceuticals and other regulated products as required by law and where the client does not have such evidences, NAFDAC will not register the client’s food or drug product[[29]](#footnote-29).

\* In terms of protection of intellectual property right holders, the agency protect the right owners to an extent that, if after registration of a regulated product by the agency, and the owners of the registered products gets information that his or her registered product has been counterfeited or misbranded and is being sold in the market, the right owner can make a report to NAFDAC with evidence of such sale which includes receipts of purchase of such counterfeited or misbranded regulated product.

8.1.4 **The Standard Organisation of Nigeria**

Another organisation established to promote quality and products specification enhancement is the Standards Organisation of Nigeria (SON). The agency is responsible for registering and regulating standard marks and specifications for both local and imported products in Nigeria. Right holders are required to mandatorily, register their products; obtain the agency’s conformity assessment programme; pay due port inspection charges; and provide evidence of trademark ownership.

8.1.5 **The Federal Competition and Consumer Protection Commission (FCCPC)**

The primary function of the FCCPC is to provide redress for unfair or deceptive practices against the interest of consumers in Nigeria. By virtue of section 17 of the FCCPC Act, the FCCPC is mandated to: initiate broad-based policies and review economic activities in Nigeria to identify anti-competitive and anti-consumer protection and restrictive practices which may affect the economic interest of consumers; eliminate anti-competitive agreements, misleading, unfair, deceptive or unconscionable marketing, trading and business practices; regulate and seek ways of removing from the market hazardous goods and services and cause offenders to replace such goods and services with safer and more appropriate alternative; ...[[30]](#footnote-30) Like the SON, FCCPC, Under the granting powers of enforcement, the commission reserve the power to enter premises of any nature and seize or destroy products that are found to be below quality threshold including those of intellectual property (although section 46(3) of the FCCPC Act exempts patent licences from the supervisory powers of the FCCPC) and the powers to prosecute offenders is vested on the Office of the Honourable the Attorney General and Minister of Justice.

8.1.6 The **Economic and Financial Crimes Commission (EFCC) Act**

 **Anti-counterfeiting online**

The Cybercrime (Prohibition, Prevention etc) Act provides for the protection of intellectual property rights and private data as a fundamental key policy goal. The prosecuting agency is the EFCC (Economic and Financial Crimes Commission). Under section 46 of the EFCC Act, economic and financial crime is defined to “**include theft of intellectual property and piracy”**. It is in this direction that, the EFCC seeks to address anti-counterfeiting and the agency can bring legal action against infringers and may carry out criminal investigations , raid and prosecution in respect of intellectual property violations.

The agency utilises the provision of ‘takedown’ mechanism available under the enacted **Nigeria Internet Registration Association’s Dispute Resolution Policy** (May 5,2008) which established complaint and takedown mechanisms regarding abusive and bad-faith registrations. The remedy is available when a person is found liable and orders are made for the cancellation of the domain name or transfer to a party with legitimate rights.

8.1.7 **The Customs and Exercise Act** **and Border Control Measures against Infringing Goods**

Border control measure is an administrative remedies put in place to curtail the importation of infringing goods into Nigeria or into circulation by apprehending the goods at the territorial borders or at the source of manufacture. Infringing goods by practice can be apprehended at borders by an injured party acting pursuant to a court order or a statute or indirectly through custom service.[[31]](#footnote-31) This requirement is pursuant to the provision of Article 51-60 of the Trade Related Aspects of Intellectual Property Rights (TRIPs) that prescribe certain minimum standards by which national regimes may be measured and to which national laws of member states must conform.

8.1.8 **Business Facilitation (Miscellaneous Provisions) Act, 2022 – (Ease of Doing Business Law.):** This Act includes provisions that simplify the registration and enforcement of IP rights, aiming to make Nigeria a more attractive destination for foreign investment.

**8.1.9 Other Relevant Legislations and Regulations:** These include the **National Office for Technology Acquisition and Promotion** (NOTAP) Act, which regulates the transfer of foreign technology to Nigeria, and the Investment and Securities Act, which governs investments and securities transactions, including those involving IP. Similarly, under section 6 of **National Information and Technology Development Agency** (NITDA), the Agency is among other things, create a framework for planning, research, development, standardisation, application, coordination, monitoring, evaluation and regulation of information technology practices, activities and systems in Nigeria; provide universal access for information technology and systems penetration in rural, urban areas and provide guidelines for the standardisation and certification of information technology escrow source codes and object code domiciliation, application and delivery systems in Nigeria.

**8.10 Trade Malpractices Investigation Panel (TMIP)**: Under section 2 of the Trade Malpractices (Miscellaneous Offences) Act, the TMIP is established to investigate offences under the Act and to report its finding to the office of the Honourable Attorney General of the Federation for prosecution. The offences covered under the Act include those of; labelling, packaging, selling, offering for sale, or advertising of any product that is false or misleading or likely to create a wrong impression as to the character, quality, brand name, value, composition, merit or safety of the product.

9. **INTELLECTUAL PROPERTY AND INFORMATION COMMUNICATION TECHNOLOGY (ICT) INTERFACE**

The emergence of the digital technology commonly referred to as the use of equipment, principally computers, which can accept and interpret digital data and encompasses computer hardware, software, the internet and now Artificial Intelligence (AI) have now created unimaginable and unprecedented effect and impact on the IP ecosystem. The speed of digital technology has surpassed the speed of IPRs which is the regulator and the enabler.

It is creativity and innovation that creates the Information Communication Technology (ICT). The basis of the interface is that, creativity, innovation and the ICT are propelled by intellectual property creations either in patented technology (software platforms) (design by Designs Law, copyrightable (application software creations), trademark or service mark or domain name (www.), protection has changed the world tremendously. In turn, technology has impacted on IP through the acts of creation, reproduction and dissemination of IP works especially digital technology (in ease of access to information, replication, transmission, modification and manipulation). The digital age has presented new challenges of increased risk of IP infringement with regards to unauthorised uploading and dissemination of works.

Digital technology has impacted on the delicate copyright balance in a variety of ways. This can be seen in the Copyright and Copyleft mechanism. (Copyright is a licensing method that encourages the unrestricted sharing, modification and utilisation of creative works (especially making a software programme free, zero price, open sourced and public domain and permissive licenced).

In the field of Trademark, the traditional trademark landscape is equally affected by digital technology with the emergence of the ‘Domain names’. A Domain name is the title to which online platforms otherwise known as websites are identified and located, and have been described as the internet equivalent of an online telephone directory.[[32]](#footnote-32) Domain names are comprised of two components namely, Top Level Domain (TLD) which appears as a suffix to the name of the site. The Second Level Domains (SLD) which mirror the trademark of business name of the registrant and sometimes a third level domain which may be a specific user requirement such as *ip.josephjarkur.com* thus facilitating the functioning of domain names as business identifiers in a way similar to the functioning of the traditional trademark.

 The emergence of the use of domain names in the cyberspace which users are able to navigate the World Wide Web ([www.com](http://www.com)), with the aid of the domain name and its corresponding Internet Protocol (IP) number,[[33]](#footnote-33) proprietary rights are created. These in turn guarantees the exclusive right to control the space (a form of trademark or service mark specie). Examples of the domain names are: [www.jumia.com.ng](http://www.jumia.com.ng) ; [www.jiji.com](http://www.jiji.com) (sell and buy App); <https://lawpavalion.com> ( that provides an easy access to legal database) etcetera.

10. **INTELLECTUAL PROPERTY, INFORMATION COMMUNICATION TECHNOLOGY (ICT) AND JUSTICE DELIVERY** **SYSTEM.**

In the court system of today, current debate resolves around the question of deployment of ICT as a tool in enhancing efficient and timely justice delivery. The deliverables of the justice system are as in; enabling an institutional online database and repository that can be accessed via the internet resulting to: e-filling, e-service, virtual court (e-courts) appearances (e-representation), virtual court (e-court system) sittings (e-conferencing) and indeed e-justice judgement-(and who knows (e-enforcement and e-attachment or e-execution of e-courts judgements). Other issues relates to the use of electronic court case management system (eCCMS)[[34]](#footnote-34) ( which supports electronic service, electronic service, electronic search of cases, electronic payment and receipting and electronic request for extraction of orders) and generally concerns of generative artificial intelligence (AI).

The ownership of proprietary rights in ICT content is complex and evolving and tangled around IPRs:

(a) **Patents:** The law of patents encourages innovation in ICT by granting exclusive rights to inventors and developers for their creations, such as software, hardware and network technologies. The invention of electronic technology and the internet (patent laws); the novelty of electronic transactions (patent laws), which make it necessary to address the justice administration concerns are enormous. This has facilitated ease of justice administration and functioning. Such ICT platforms created that may be of assistance to the court may include: Microsoft Teams and Zoom and video conferencing tool(large organisations), Google meet (small organisations).

(b) **Copyrights:** This area of law protects software codes, digital content, and literary works, ensuring that, creators or owners have control over their work and can profit from it. By this operation, database rights are construed as coming within copyright protection, provided the elements sought to be protected come within the existing eligible categories (namely: literary works; artistic works; musical works; audiovisual works; sound recordings and broadcast.)

In this regard, software programs such as the **LawPavillion, LawCompass and Lawyer’s Guide websites (which are copyrighted and licenced)** are protected in both the source and object codes. (Software can equally be protected under the Patent and Designs Act in Nigeria even though, this is highly debatable)(Even though, in the United States, software is patentable), if it satisfies the basic requirements of patentability. While the copyright will protect software codes, the patent law will protect the invention, including the method and processes used in developing the software, once they are constituted in a defined tangible format. It should be noted that, not all software is eligible for patent protection. The eligible software for patent protection will have to comply with the triple requirements of patentability.

(c) **Trademarks and Domain Names:** This area of law protects and safeguards brand identities and logos, thereby helping to establish trust and reputation in the market. Trademark simpliciter cannot protect software, rather, it can function to protect and secure exclusive rights to the software’s brand name, logo, logan, title or domain name. ( A software title is registrable as trademark under class 9 and or 42 of the classification of goods and services in Nigeria). ‘Microsoft’ word is a registered trademark (August 1978). The trademark covers computer programs and related goods and services. Microsoft has in turn obtained trademark registration for notable names such as (MS-DOS; POWERPOINT; WINDOWS and SURFACE NEO); Microsoft has a domain by reference as Microsoft.com; Microsoft patents are licenced to hardware makers of Android devices. Microsoft owns over 200 patents indispensible for building an Android smartphone.

 (d) **Trade Secrets:** Protects confidential information, such as provided in algorithms from unauthorised use of theft and misappropriation. Software programmes may also be protected through the device of trade secrets by preserving confidential information, processes or codes of a software which have commercial value and which accord the owner, a competitive advantage over competitors in the market circle.

(e) **Licencing:** The contractual avenue of licencing products here whether on free or paid channels enable the sharing and collaboration of IPRs, fostering the development of new ICT products and services. The platforms are owned upon creation (IP ownership), the platforms are downloadable upon terms and conditions (contract and licences either free or priced- see Microsoft Teams pricing Guide 2024- ) Microsoft has a domain by reference as Microsoft.com; Microsoft patents are licenced to hardware makers of Android devices. Microsoft owns over 200 patents indispensible for building an Android smartphone.

(f) **Open- Source:** This scheme allows for completely free use and modification of software, promoting collaborative innovation and community-driven development in ICT. This is usually achieved through the Copyleft system.

(g) **Standards and Interoperability:** This process enhances the development of industry standards, ensuring seamless communication and compatibility between different ICT systems and devices. AI can analyse large amount of data

(h) **Artificial Intelligence and Intellectual Property**:

The emergence of AI as a tool that enhances human capabilities has again ravaged the IP ecosystem. AI interacts with IPRs in several aspects. The application of AI has eliminated the traditional practices of IPR in so many respects. AI have made it possible to generate IP assets for companies, buy products for consumers and many more. The question however is whether; AI- generated invention should qualify for patent protection by law!!!! Should copyright protection apply to AI- generated novel, music and artistic work?!!!! Beyond this rhetorics, AI technologies can help to track IP assets and identify infringers or copyright issues which might come from AI platforms themselves. A ChatGPT which is an AI technology can simulate human like conversations, answer questions, perform research, compose musicals and even write lines of code. This is where the pivotal question of IP sneaks in as to whether AI can own an invention or authorship. Some legal scholars that, the existing IP laws which were originally designed and limited to human contributions to innovation and creativity are no more fit for purpose and requires some change.

**CONCLUSION**

The Nigerian judiciary, similar to the other legal systems pre to the knowledge driven age is heavily saddened with text processing raw materials for its entire legal, judicial and administrative works. Judicial systems are turning to AI for succour to assist in the management of data and even expedite case resolutions. IBM for example created an AI assistant named OLGA that offered case categorisation and sorting whereby, judges and clerks can sift through a dozen cases, documents,, materials, exhibits faster through the use of specific search platforms. This saves time, saves energy. This is creativity and innovation at work. Creativity and innovations are intellectual property at work.

 A well-functioning IP system is fundamental for a thriving digital economy and effective justice delivery. Legal research assistants, registrars, and ICT officers play a vital role in supporting the judiciary's role in upholding IP rights. By staying abreast of legal developments and leveraging ICT tools, these professionals can contribute to a more innovative and just society. Effective IP protection not only encourages creativity and innovation but also promotes fair competition and economic growth. As the digital landscape continues to evolve, the collaboration between legal and ICT professionals will be crucial in addressing new challenges and opportunities in IP protection.

1. Cinara Rocha and Joao Alvaro Carvalho, ‘Artificial Intelligence in the judiciary, uses and threats’ https.................................(

 Note too that, in China, since 2017, China announced that, millions of legal cases are now being decided by ‘internet Courts’ otherwise known as Robot Justice. Citizens are not required to appear in court. The smart court includes non-human judges, powered by artificial intelligence and allows participants to register their cases online and resolve their matters via digital court hearing. [↑](#footnote-ref-1)
2. Yu Peter, “The Ten Common Questions About Intellectual Property and Human Rights” 23 GA.ST.UL Review 709, 711 (2007).
 [↑](#footnote-ref-2)
3. Philip & Firthia; Introduction to Intellectual Property Law, 2nd Ed (London: Butterworth Publishers 1990) [↑](#footnote-ref-3)
4. Olanike AV, “Strategic Action Against Piracy (STRAP) Revolutionising The Nigerian Copyright Sector” p30 [↑](#footnote-ref-4)
5. Adejoke O.O. Nigerian Law of Intellectual Property, University of Lagos press and bookshop (2019) Pg 84. [↑](#footnote-ref-5)
6. (1991) 5 NWLR (pt. 189) 82 at 97 [↑](#footnote-ref-6)
7. This involves facsimile reproduction of the original sound recording without the permission of Owner. Counterfeit copies do contain the same materials as the legitimate releases. In most instances, the distinguishing factor between the two is that the sound or visual quality of the illegal reproduction is usually inferior. [↑](#footnote-ref-7)
8. A bootleg recording or bootlegging is an audio or video recording of a performance that was not officially released by the artist or under other legal authority. The process of making and distributing such recordings is known as bootlegging. See Black’s Law Dictionary 8th edn [↑](#footnote-ref-8)
9. Section 1 (a) and (b) [↑](#footnote-ref-9)
10. (1997-2003) 4IPLR 139 per Bello J [↑](#footnote-ref-10)
11. (1997-2003) 4 IPLR p.215 [↑](#footnote-ref-11)
12. 10 most commonly counterfeited products in Nigeria <https://chkkitapp.com/blog/10-most-commonly-counterfeited-products-in-nigeria> (visited 2/7/2022) [↑](#footnote-ref-12)
13. Cap T13 LFN 2004 [↑](#footnote-ref-13)
14. Cap C34 LFN 2004 [↑](#footnote-ref-14)
15. Cap C45 LFN 2004 [↑](#footnote-ref-15)
16. Cap C 03 LFN 2004 [↑](#footnote-ref-16)
17. CapM10 LFN 2004 [↑](#footnote-ref-17)
18. Cap P19 LFN 2004 [↑](#footnote-ref-18)
19. Cap P4 LFN 2004 [↑](#footnote-ref-19)
20. Cap C3 LFN 2004 [↑](#footnote-ref-20)
21. Article 60 of Trade Related Aspects of Intellectual Property Rights (TRIPS) [↑](#footnote-ref-21)
22. FHC/L/1235/06 [↑](#footnote-ref-22)
23. (2012)3 commercial Law Reports Nigeria P.147-167 [↑](#footnote-ref-23)
24. (1984) F.H.C.L. 183 [↑](#footnote-ref-24)
25. Cap C 28 Laws of the Federation of Nigeria (LFN) 2004 [↑](#footnote-ref-25)
26. Now Cap NI Laws of the federation of Nigeria, 2004 [↑](#footnote-ref-26)
27. Section 5(a) [↑](#footnote-ref-27)
28. Akunyili D.” Role of NAFDAC in Air – freighting in Nigeria” being a one day seminar on optimizing opportunities for Airfreight in Nigeria organized by Nigerian shippers council 2006 [↑](#footnote-ref-28)
29. Akunyili d. “Enforcement of Intellectual Property Rights in Nigeria: The Role of NAFDAC”, in Deji Adekunle (ed) Developments in Business Law (Lagos: Legal Blitz Consultants 2010) P. 250. [↑](#footnote-ref-29)
30. Desmond Oriakhogba & Ifeoluwa Olubiyi, Intellectual Property Law in Nigeria: Emerging Trends, Theories and Practice (Paclerd Press Ltd) p23 [↑](#footnote-ref-30)
31. Bankole Sodipo, ‘Border Control Measures Against Infringing Goods’ in Proceedings of the Copyright Trainning for Customs Officials (Lagos Nigerian Copyright Commission and Nigeria Custom Service, 1998) p 57 [↑](#footnote-ref-31)
32. Adejoke Oyewunmi, Nigerian Law of intellectual Property 346 [↑](#footnote-ref-32)
33. See the Internet Corporation for Assigned Names and Numbers (ICANN) through its Uniform Dispute Resolution Procedure (UDRP) [↑](#footnote-ref-33)
34. Which is a web based system that developed to make the functional areas in judicial service more efficient and effective. [↑](#footnote-ref-34)