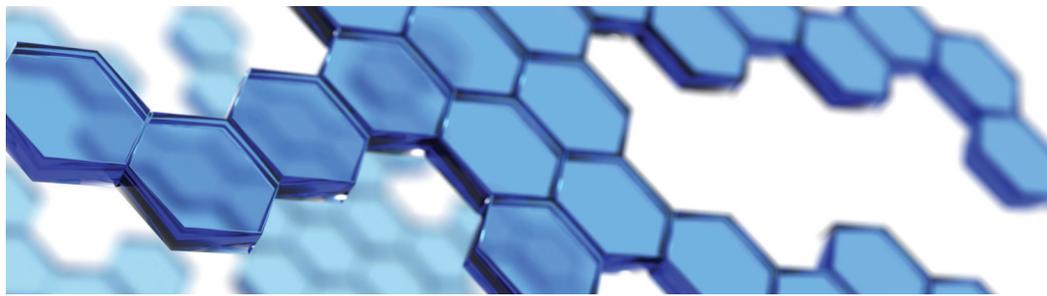


PROMOTING AND PROTECTING INTELLECTUAL PROPERTY IN NIGERIA



ICC ADVOCACY
BASCAP
Business Action to Stop Counterfeiting and Piracy



JULY 2015



About the International Chamber of Commerce (ICC)

ICC works to promote a balanced and sustainable system for the protection of intellectual property. ICC believes that IP protection encourages innovation and the development of knowledge-based industries, stimulates international trade, and creates a favourable climate for foreign direct investment and technology transfer.



About BASCAP

Counterfeiting and piracy have become a global epidemic, leading to a significant drain on businesses and the global economy, jeopardizing investments in creativity and innovation, undermining recognized brands and creating consumer health and safety risks. In response, ICC launched BASCAP to connect and mobilize businesses across industries, sectors and national borders in the fight against counterfeiting and piracy; to amplify the voice and views of business to governments, public and media; and to increase both awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm. Visit BASCAP on the web at: www.iccwbo.org/bascap

This Report has benefited from contributions, support and endorsements by a variety of trade and anti-counterfeiting groups. BASCAP would like to thank:



About ICC Nigeria

Nigeria became a member of ICC over 30 years ago, when it realized the benefits that the business community could derive from mainstreaming into the international global market. Following its reorganization in 1999, ICC Nigeria (ICCN) has sustained its growth pattern and relevance in this world body. Members of ICC Nigeria enjoy cross-border links with other influential senior executives from the world's top companies that aim to strengthen their ties and partnerships with the country.



About SON

The Standards Organisation of Nigeria also referred to as the 'SON' was established by an enabling act No. 56 of 1971.

The aims and objectives of the SON include preparation of standards relating to products, measurements, materials and processes among others and their promotion at the international, national and regional levels, certification of industrial products, assistance in the production of quality products, improvement of measurement accuracies and circulation of information relating to standards and ensuring in every way that consumers get value for their money.



About IPLAN

Set up in 1995, the Intellectual Property Law Association of Nigeria (IPLAN) was birthed to aid capacity building in intellectual property and has been at the fore of the lobby for reforms in the law, administration, enforcement and adjudication of intellectual property. It is a local association comprising right holders and practitioners whose membership account for over 50% of the trade marks non-contentious work and 30% of contentious work in Nigeria.



About AIPG

Holding its inaugural summit in March 2013, the African Intellectual Property Group (AIPG) is a voluntary Africa-wide association of national IP institutions, governmental agencies, regional IP bodies, industry associations, IP practitioners, and individual IP stakeholders, or who otherwise have interest in IP development in the continent. AIPG believes that the utilization of IP is integral to Africa's economic growth, and seeks practical solutions to the challenges of utilizing and protecting IP in Africa.



About NAFDAC

The mission of NAFDAC is to safeguard public health by ensuring that only the right quality food, drugs and other regulated drug products are manufactured, imported, exported, distributed, advertised, sold and used in Nigeria.

NAFDAC supports organizations that employ legitimate and lawful steps in the eradication of counterfeit medicines, unwholesome food, unsafe cosmetics, medical devices, chemicals and packaged water. The Agency acknowledges and commends BASCAP's effort in the fight against counterfeiting of NAFDAC regulated products globally.

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List of Abbreviations

ACC	Anti-Counterfeiting Collaboration
BASCAP	Business Action to Stop Counterfeiting and Piracy
BSA	Business Software Alliance
CLAMP	Copyright Litigation and Mediation Program
EU	European Union
FDI	Foreign Direct Investment
ICC	International Chamber of Commerce
IP	Intellectual Property
IPLAN	Intellectual Property Law Association of Nigeria
IPO	Nigerian Intellectual Property Office
IPR	Intellectual Property Rights
IPTTO	Intellectual Property and Technology Transfer Offices
NAFDAC	National Agency for Food and Drug Administration and Control
N	Naira - Currency of Nigeria
NCS	Nigerian Customs Service
NIPCOM	Nigerian Intellectual Property Commission
NOTAP	National Office for Technology Acquisition and Promotion
NTA	Nigerian Television Authority
NTMA	Nigerian Textile Manufacturers Association
OECD	Organisation for Economic Co-operation and Development
R&D	Research and Development
SMEs	Small and Medium Sized Enterprises
SON	Standards Organisation of Nigeria
STRAP	Strategic Action Plan Against Piracy
NCC	Nigerian Copyright Commission
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNODC	United Nations Office on Drugs and Crime
WCO	World Customs Organization
WIPO	World Intellectual Property Organization

Executive Summary

Economic growth is closely related to how well the economy encourages, stimulates and fosters creativity and innovation. A critical factor in maximizing the value of this creativity and innovation is a clear legal and regulatory system that recognizes the importance of the underlying intellectual property (IP) and establishes and protects the property rights of the creators, inventors and innovators.

Developing countries such as Nigeria can benefit from a robust IP enforcement regime in the same way as more industrialized countries. But to do so, government leaders must establish an appropriate legal and institutional framework; create awareness on the importance of IPR; and protect industries reliant on patents to produce products that can improve the quality of life in Nigeria, including pharmaceuticals, biotechnological inventions, business methods and software.

Several challenges hamper the development of strong IP regimes in Nigeria and throughout Africa. One is that the cross-cutting nature of IP is not sufficiently acknowledged. Another is that in general, IP is not accorded a prominent place in national and political economic agendas. Institutions also lack connections with relevant groups such as universities, employers' associations, chambers of commerce and industry, and others. Moreover financial and material resources available for IP institutions are inadequate.

Nigeria is making progress in increasing awareness and development of the IP system, encouraging innovative and inventive skills, and commercializing indigenous research and development. The Nigerian economy can further benefit by focusing on its areas of economic advantage, protecting appellations of origin and geographic indications, and using strategies to distinguish local products from the region.

At the same time, Nigeria has increasingly become both a target destination and significant transit route for counterfeit and pirated products. Cheap, sub-standard fakes are flooding the market through foreign and local traders while manufacturers are illegally replicating well-known brand names and designs on their packages and labels.

Several factors have contributed to the wide-scale proliferation of counterfeit and pirated products throughout Africa. Such factors include the disproportionate size of its informal economy; corruption, particularly at entry points; out-dated legislation; and weak enforcement mechanisms, including a lack of national policy on combating counterfeiting and piracy. The infiltration of counterfeit medicines in African countries is of particular concern, where up to 30% of medications on the market are counterfeit. Moreover, Nigerian consumers are unaware of the risks involved in purchasing and consuming counterfeits.

Much work remains in Nigeria to both strengthen the value and protection of IP rights and to guard against counterfeiting and piracy. The purpose of this BASCAP report is to suggest an initial set of policy and legislative recommendations that can work toward reducing counterfeiting and increasing the economic benefits associated with a strong system of IP rights—including the positive link between strengthening IPRs and economic development, increased rates of innovation, attracting foreign direct investment (FDI) and promoting R&D and technology transfer.

Combating counterfeiting and piracy must become a public policy priority in Nigeria. This effort must start with the government's clear message to the criminal networks and others involved in counterfeiting and piracy that these activities will no longer be tolerated. These actions will help convince legitimate business owners and consumers that the government is serious about protecting IP rights. This initiative will also rally public support for these efforts.

The value of IP

Chapter 1 explains the value of IP and why a robust IP enforcement regime is important for Nigeria's integration into the global market.

- IP protection benefits the Nigerian economy in terms of GDP, employment, tax revenue, development and competitiveness. For example, the copyright-related film industry—Nollywood—alone generates N600 million and is the country's second largest employer.¹
- The strength of a country's IPR regime strongly influences FDI. Although FDI in Nigeria is increasing as on-going economic reforms improve investor perceptions, robust IPR legislation and strong enforcement are essential for Nigeria to realize its full FDI potential.
- IP protection promotes innovation, increases funding for R&D and helps firms realize more value from innovations. For a transition country such as Nigeria, real economic growth will depend on its ability to create an environment that stimulates innovation. A strong IPR regime will support innovative business and increase demand for innovation throughout the economy.
- SMEs that use IP report faster growth and higher income than those that do not. Nigeria can potentially empower its SME sector to drive growth, wealth creation, poverty reduction and employment generation. Helping SMEs establish and protect their IP rights are important elements of support that the Nigerian government can provide to its SME sector.
- IP protection benefits consumers and society, providing innovative products and services in virtually every area of life—from clean energy to health care—and helping protect consumers from inferior and dangerous counterfeits. The engagement of some organisations in Nigeria like the NOTAP and SON are fostering local innovations in a wide range of sectors as evidenced in the increased number of local Nigerian patents from 100 per year in 2006 to 400 registrations per year in 2014.

What's at risk?

Chapter 2 explores the problem of counterfeiting and piracy in Africa, focusing on key sectors in Nigeria.

The report shows that several factors contribute to the wide-scale proliferation of counterfeit and pirated products throughout Africa including the disproportionate size of its informal economy; corruption; out-dated legislation; weak enforcement mechanisms; and unawareness among consumers of the risks involved. The most vulnerable sector is the pharmaceutical industry where it is estimated that up to 30% of medications in the African market are counterfeit and 100,000 people die in Africa per year due to fake anti-malaria drugs alone.

Nigeria is the largest market in Africa for counterfeit and pirated products and serves as a gateway to the rest of the continent for rampant illicit trade. The entertainment industry in Nigeria is one of Africa's biggest industries. Nigeria accounts for 80% of pirated international music CDs and the local music industry witnesses 40% of its products being copied. A report by the Nigerian Television Authority (NTA) in 2008, estimated the total annual loss of the content industries (music, software and video) within the nation to be well over N100 billion. And globally, in 2013, the Nigeria Copyright Commission (NCC) disclosed that the country was losing over US\$1 billion to piracy annually.²

The time is right for action

Chapter 3 suggests that the time is right for Nigeria to continue strengthening its IPR systems in cooperation with established international channels and trading partners who stand ready to assist Nigeria in proceeding with necessary policy and legal reforms.

Most recently, the Nigerian Copyright Commission (NCC) has become a catalyst for significant progress in combating piracy. Nigeria has also assumed additional responsibilities through its accession to the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). Consequently, Nigeria is required to comply with all of the obligations under the WTO TRIPS Agreement, including compliance with the rules governing the enforcement of IP rights, civil and administrative procedures and remedies, provisional measures, customs measures and criminal procedures.

The Nigerian government's current efforts are creating the momentum to take further actions toward improving its IP regime. More specifically, it is complying with the TRIPS standards, enhancing IP enforcement, and increasing awareness among government and consumers.

Recommendations for a path forward

Chapter 4 provides a comprehensive set of policy and legislative recommendations intended to help Nigeria establish a robust IP protection and enforcement regime capable of generating the significant economic and social benefits that lie ahead.

Efforts to stabilize the economy and stimulate economic growth must include intellectual property rights (IPR) protection in order to drive innovation, development and jobs. This set of recommendations includes policies and actions ranging from legal reforms to technical assistance and capacity-building measures, channels for international cooperation and tools for strengthening enforcement practices—all of which are indispensable requirements for meeting Nigeria's full economic potential.

Notably, the establishment of a new IP authority with the task of putting the recommendations in place is of utmost importance for realizing this economic potential.

Summary of suggested recommendations

Legislative recommendations

1. Improve and expedite civil judicial enforcement procedures
2. Strengthen IP legislation and ratify IP international agreements
3. Improve action against Internet infringements
4. Improve border enforcement
5. Address deficiencies in criminal procedures

Policy Recommendations

1. Establish an inter-agency approach and enhance collaboration between the Nigerian regulatory agencies administering and enforcing IP rights
2. Establish an inter-agency approach with private sector coordination
3. Expand IP-related administrative and technical capacity building
4. Increase public and political awareness of counterfeiting and piracy and the associated economic and social harms

1. Intellectual property is important to Nigeria's economic growth and development

Creativity and innovation are proven drivers for economic growth and competitiveness. Research has shown that economic growth is closely related to how well the economy encourages, stimulates and fosters creativity and innovation. A critical factor in maximizing the value of this creativity and innovation is a clear legal and regulatory system that recognizes the importance intellectual property (IP) and establishes and protects the property rights of the creators, inventors and innovators.

The effectiveness of a country's intellectual property rights (IPR) regime is critical for unlocking a nation's full innovative capacity. An effective IPR regime releases the potential of inventors and creators, and empowers them to transform ideas into high-quality products and services that create jobs and stimulate economic growth. The protection of these intellectual assets is increasingly important in enabling countries to reach their economic development goals.

IP benefits the economy

Strengthening IPR is increasingly being recognized as a significant contributor to a country's economic development, technology transfer, and increased innovation rates. IPR attracts foreign direct investment (FDI) and promotes R&D and technology transfer in developing countries. IPR is also an important component of many industries, ensuring growth in value-added jobs and foreign trade.³ The Nigerian film industry, also known as Nollywood, produces about 50 movies per week and generates an impressive US\$590 million annually. The World Bank estimates that for every legitimate copy sold, nine others are pirated, and if adequate IPR measures were taken, a million more jobs could be created in the film industry.⁴

Developing countries such as Nigeria may benefit from the new developments arising from a robust IP protection regime in the same way as more industrialized countries. Among the challenges facing the country in building a strong IP protection regime are the establishment of an appropriate legal and institutional framework; creation of awareness on the importance of IPR; and the protection of pharmaceuticals, biotechnological inventions, business methods and software, electronic filing of patent applications.

Several difficulties hamper the development of strong IP regimes in Africa. One is the cross-cutting nature of IP is not sufficiently acknowledged. Another is that in general, IP is not accorded a prominent place in national and political economic agendas of African countries. There is a lack of institutional connections with relevant groups such as universities, employers' associations, chambers of commerce and industry, and others. Moreover financial and material resources available for IP institutions are inadequate.

While the country has yet to develop adequate technology for competing favourably in the global market, it has made some progress in increasing awareness and development of the IP system. It is encouraging the development of innovative and inventive skills, and is beginning to commercialize indigenous research and development. The Nigerian economy will also benefit from IP protection as well as penetrate the global market by focusing on its areas of economic advantage, protecting appellations of origin and geographic indications, and using strategies to distinguish local products from the region.⁵

The IP system is the only way to protect authors' creativity and ensure the security of national intellectual treasures and resulting economic profits. Without adequate protection, owners suffer economic loss and governments are denied revenue from legitimate products. Many experts also believe that a modern and well-managed IP system could be the catalyst for economic reform. With a population of over 170 million, Nigeria is likely to generate more revenue in the exploitation of its IP.⁶

The astounding damage piracy and counterfeiting is doing to the Nigerian economy affects important industries such as entertainment, textile, software, pharmaceuticals, and many others.

According to the chairman of Longman Nigeria PLC, Emmanuel Ijewere, authors and producers in the entertainment industry have lost over N81 billion to counterfeiting and piracy. This circumstance has discouraged Nigerian authors from producing new material since they feel that their work yields more profit to pirates and counterfeiters.⁷

In the textile industry, the United Nations Industrial Development Organization reported that since 2000 more than 70,000 Nigerians working in this industry have lost their jobs due to the accelerated closure of many manufacturing firms caused by the invasion of the market by cheap Chinese counterfeit products.⁸

IP attracts FDI

FDI is important because it supports economic development through the transfer of technology and managerial skills and through the creation of employment opportunities. A country attracts more FDI when investors can expect a return on investment that may be achieved mostly with the protection and effective enforcement of IPR.

The strength of a country's IPR regime is among the factors that influence firms to transfer technology or invest in a country. For example, the OECD has found that the strength of a country's patent rights is positively correlated to inward FDI. Economists found that a 1% increase in a country's patent protection correlates to a 2.8% increase in FDI. A 1% improvement in trademark and copyright protection increases FDI by 3.8% and 6.8%, respectively.⁹

The OECD's Global Competitiveness Index takes into account IP protection as a pillar of a country's competitiveness and attraction. In 2012, Nigeria's IP protection and competitiveness were ranked 110 and 115 out of 144 countries, respectively. In 2014, both index decreased and were ranked 126 and 127, respectively. This shows the effect that IP has in the macroeconomic performance.

Globally, FDI in Africa rose from US\$48 billion in 2011 to US\$57 billion in 2013 after 3 years of successive decline.¹⁰ According to the UNCTAD World Investment report of 2014, this general trend was motivated by an increase in the FDI flows in Southern and Eastern Africa which represented US\$13 billion and US\$6.2 billion, respectively.¹¹ Moreover, inflows to West Africa declined for the second year to US\$14 billion. This decline in FDI inflows was caused largely by political and security uncertainties in the region.

The continuing rise in commodity prices and the region's relatively positive economic outlook are among the factors contributing to the turnaround. Other than the traditional FDI patterns, the emergence of a middle class is fostering FDI growth in sectors such as banking, retail, and telecommunications.

In 2013, Nigeria realized FDI inflows of over US\$5 billion and outflows of US\$1.2 billion, FDI inflows decreased in 2014 to US\$4.6 billion.¹² Flows to West Africa were destined primarily to Ghana, Mauritania and Nigeria, which together accounted for 70% of the sub-region's inflows. South Africa was the largest recipient of FDI flows of the continent (US\$8.18 billion) in 2013, followed by Mozambique and Nigeria.¹³

The region's prospects for FDI are promising, as strong economic growth, on-going economic reforms, and high commodity prices have improved investor perceptions of the continent. Nigeria's annual average in FDI inflows from 2003-2013 was US\$6.491 billion while its annual average in FDI outflows for the same period was US\$876.7 million.

IP promotes innovation

Innovation is a key ingredient of sustained economic growth, development, and better jobs. Studies have estimated that innovation accounts for as much as 80% of economy-wide growth in productivity in high-income countries. Although less is known about innovation and its economic impact in low- and middle-income economies, available evidence suggests that innovating firms in those economies are also more productive than their non-innovating peers.¹⁴

Innovation, however, must not be limited to technological enterprises although they still remain crucial for international competitiveness. Sustainable economic growth requires innovation in all areas, such as knowledge-based services, organization of business, marketing, and many others. A feature of a well-functioning market is the constant collaboration and interaction among large, medium-sized and small companies. Furthermore, firms collaborate increasingly with academies, universities, research institutes, and other external producers of knowledge. These types of public-private partnerships help foster technological development.¹⁵

IP has become a critical element in modern strategy for the promotion of innovation, inventiveness, and technology transfer. The level of innovation differs from country to country because of cultural differences, level of development, and technological sophistication. More imaginative patenting strategies are needed to fully and productively stimulate innovation and invention.

In 2006, the establishment of the Intellectual Property and Technology Transfer Offices (IPTTOs) in Nigerian universities, tertiary institutions, and research institutes constituted a deliberate policy for stimulating Nigerian innovation. Its primary objective was to foster entrepreneurship among researchers and students and thus help diversify the economy. IPTTO was founded to facilitate partnership activities in the states and zones where research institutions were located and beyond, aiming to impact economic development.

The IPTTO was structured to support the institution's initiative of developing patent culture and an alignment with new values. It also set into motion a formal system of incentives and rewards that encourages faculties and individual researchers to engage in partnerships.¹⁶ NOTAP has established thirty IPTTOs in universities, polytechnics and research institutes in Nigeria to promote interaction and strengthen the link between universities, research institutions and industries.

IP promotes R&D and technology transfer

IPR promotes cultural expression and diversity, development and the dissemination of new technologies. For example, the OECD has found that a 1% increase in the strength of patent protection, a basic and key form of IPR protection, in developing countries correlates to a nearly 1% increase in domestic R&D. A similar increase of trademark and copyright protection, two other critical parts of an effective IPR regime, correlates to a 1.4% and a 3.3% increase in domestic R&D, respectively.¹⁷

According to Nigeria's National Office for Technology Acquisition and Promotion (NOTAP), a total of 1237 technology agreements were registered from 1999 to 2010, with the highest number (570) in the services sector, followed by the solid mineral and chemical sector (256).¹⁸

In Africa, most countries other than South Africa have neither a specific law on IP ownership by research institutions nor any technology transfer laws. Some countries like Nigeria, however, have begun to implement policy guidelines and support technology transfer infrastructure. Nigeria is also in the process of establishing technology transfer offices in all institutions of higher education and research.

No specific law exists on IP creation and management at publicly-funded research institutions so regulations are set within federal research facilities. Recently, NOTAP published “Guidelines on Development of Intellectual Property Policy for Universities and R&D Institutions.” These guiding principles explain how each R&D institution can formulate and implement its IP policy to protect tangible research products to make them demand-driven and economically viable. The guidelines also promote the use of IP for the benefit of society; they strengthen research-industry linkages by establishing IPTTOs.¹⁹

NOTAP’s IPTTO Achievement Index, has improved patent culture and innovation in the institutions where they exist. It has also improved university and research institute links, provide modern technical and information and communications technology (ICT) facilities in each centre. As a result of the establishment of IPTTOs in more than 40 universities, the number of local Nigerian patents has increased from 100 per year in 2006 to 400 registrations per year in 2014.²⁰

Appropriate IPR protection is often a precondition for international investors to disclose their technologies to licensees in developing countries. This step is essential especially in areas involving easily imitable technologies such as software and pharmaceuticals, which can affect chances of attracting equity investments or non-equity modes of involvement (e.g. licensing).

IPR can also be a means of encouraging independent research activities by local companies. Businesses are more likely to invest resources in R&D and technology upgrades if their innovations are protected. In addition, effective IP protection also attracts venture-capital investment for R&D and for the commercialization of innovative products and services.²¹

Firms can earn substantially more from innovations that are protected by IPR. On average the “patent premium” for patented versus unpatented inventions is between 180% and 240% depending on the industry. In other words, patents on average double the value of an invention. The more valuable a patent, the more R&D takes place. A 10% increase in the patent premium leads to a 6% increase in business and R&D expenditure.²² IP ownership has therefore become more central to the strategies of innovating firms. Demand for patents has risen from 800,000 applications worldwide in the early 1980s to 2.6 million in 2013.²³

IP helps firms monetize their inventions and grow

Firms use IPR to help develop, create value, conduct trade and benefit from their works and inventions. A firm’s ownership of IP rights helps to reassure investors that they should funnel money into the company. The use of IP in fostering investment is important for established firms that already rely on patents, trademarks and copyrights for protecting their value, innovation, and reputation. Even more so, IP encourages new firms seeking to establish a secure stream of investment and innovation. Firms also use their IP to penetrate new and profitable markets, to develop products, services, and processes and to collaborate through licensing or establishing strategic alliances.²⁴

Firms that rely on IP generally succeed better than those that do not. Trademarks and other intangible IP assets can enhance a firm’s market value substantially. An innovative firm’s value in the market or in an acquisition lies not just in its physical assets—cash, securities, plant, property, equipment, raw materials or finished goods—but also in the firms’ *intangible assets*’ such as the value of the firm’s IP, including its brands. These intangible assets can represent a much bigger part of an innovative firm’s market value than its current and physical assets.²⁵

All Nigerian firms will benefit considerably if there are effective IPR regulations in place. A stable and effective IPR regime will boost economic development, enhance consumer welfare by improving and ensuring product quality, and make firms more competitive. It will help firms develop their business and provide good opportunities for diversification and specialization.

IP protection helps small and medium enterprises

Small and medium-sized enterprises (SMEs) have been recognized by governments and development experts as main engines of economic growth. They are also key in promoting private sector development and partnership. SMEs help improve living standards, facilitate local capital formation, and achieve a high level of productivity and capability. They are acknowledged as the main means of achieving equitable and sustainable industrial diversification and dispersal.

SMEs are important contributors to innovation and creativity. Traditional economic theory and empirical studies have demonstrated how large companies are a major source of innovation, given that they may have greater funding than small firms to devote to research and development (R&D). They also can take the risks associated with innovative activity, leading to better economies of scale, and thereby realizing a lower marginal cost of innovation.²⁶ A large body of evidence, however, also shows that SMEs, especially young firms, contribute greatly and increasingly to the innovation system by introducing new products and adapting existing products to the customer's needs.²⁷

Notably, SMEs often use IPR more extensively than large companies. SMEs that use IPR report faster growth, and higher income and employment than those that do not.²⁸ For example, SMEs in the ICT sector in the EU that rely on IPR reported 10% more growth in turnover, market share, and employment, respectively, than those that had not used IPR.²⁹

SMEs are potentially more innovative due to a lack of entrenched bureaucracy, more competitive markets, and stronger incentives (such as personal rewards). Both large and small firms, however, must make important innovations in order to contribute to the success of today's economy. A system without enough diversity runs the risk of losing flexibility and the ability to quickly adapt to changes.³⁰

SMEs account for over half of the total share of employment sales. Value added SMEs are effective vehicles for self-sustaining industrial development, as they can grow an indigenous enterprise culture. SMEs represent the sub-sector of special focus in any meaningful economic restructuring program that targets employment generation, poverty alleviation, food security, rapid industrialization and reversing urban migration. In Africa, *"small is profitable."*

In Africa and Asia, small and medium-scale enterprises, particularly those in non-urban areas, provide most of the jobs. In most cases, these businesses account for the vast majority of industrial units operating in respective continents.³¹

IP benefits consumers and society

IPR supports the development of a continuous stream of innovative, competitive products and services that benefit consumers. IPR promotes consumer trust and more effective protection against counterfeit and pirated goods. IPR is helping to address many of society's most important needs, from clean energy to health care to a truly 'digital economy.'

Copyrights provide the basis for the continuous stream of new music and films, ever-improving business, games, software, books, magazines, newspapers, and other published material, photography, and many other related activities. On the other hand, high piracy rates, inadequate legal provisions for addressing Internet piracy, poor enforcement procedures and ineffective management of IP rights inhibit creative industries from realizing their full potential and lead to underinvestment in production of professional Nigerian creative content.

Patents boost many products and services upon which society relies for health, energy, communication, transportation and many other human and commercial needs. Trademarks support the development of products and services on which consumers depend, from clothing and computers to foods and footwear, educational and entertainment products, services, scientific products and even sporting activities.

A robust IPR regime can be developed in Nigeria if certain challenges are faced and certain conditions are met which include: proper review and amendment of IP laws; provision and maintenance of basic infrastructure; financing of R&D; regular training of IP personnel to be up-to-date with international best practices; ratification careful operation of and participation in treaties of WIPO and WTO on IPR; introduction and adequate implementation of collective system of royalty; appointment of IP experts and professionals to key offices to implement policies; application and enforcement of local content rules in respecting IP; zero tolerance of fakes by all stakeholders; effective prosecution of counterfeiters; cooperation among industry practitioners; and public-private partnership.³²

Consumers benefit from IP not only through innovative products, inventions and creativity that would otherwise not be created by firms, but also through the rights that protect the identity of well-known goods and services. Trademarks act as signposts of quality and prevent other firms from passing off one brand of good as being the same as another.³³

Establishing and promoting an adequate IPR system can also significantly impact consumer health and safety, and/or consumer protection. Counterfeit goods, including medicines, auto and airplane parts, electrical components, toys, food and beverages and many others, can potentially harm or kill unsuspecting consumers. These products may contain ineffective or dangerous and untested ingredients, and provide no assurance of safety or efficacy.

Effective IPR rules and strong enforcement of laws and regulations are crucial to protect the customers' health protection. Such laws also ensure that the products are genuine and comply with required safety standards.

2. Risks associated with counterfeiting and piracy in Nigeria

The Situation in Africa

Despite persistent levels of poverty, African countries have experienced strong economic growth in the last decade. The gross national income (GNI) across Africa doubled between 2005 and 2012 (from US\$974,030 to US\$1,952,476).³⁴

At the same time, exponential growth in telecommunications has led to an inflow of international advertising and increased brand awareness. While the legitimate market has grown, counterfeiters have also recognized these opportunities and Africa has become both a target destination and significant transit route for knock-off goods. Cheap and sub-standard products are flooding the market through foreign and local traders while manufacturers are illegally replicating well-known brand names and designs on their packages and labels.³⁵

Several factors have contributed to the wide-scale proliferation of counterfeit and pirated products throughout Africa. Such factors include the disproportionate size of its informal economy; corruption, particularly at entry points; out-dated legislation and weak enforcement mechanisms, including a lack of national/regional policy and strategy on combating counterfeiting and piracy; unawareness by the consumers of the risks involved in the use and consumption of counterfeit/pirated products; and substantial trade links with China, a known source of counterfeit goods.³⁶

The World Health Organization (WHO) defines a counterfeit drug as a drug made by someone other than the genuine manufacturer, by copying or imitating an original product without authority or right, with a view to deceive or defraud and then marketing the copied or forged drug as the original. Counterfeit products encompass drugs that may have wrong active ingredients, fraudulent packaging, insufficient active ingredients and/or absence of active ingredients.

The infiltration of counterfeit medicines in African countries is of particular concern.³⁷ According to estimates by the WHO, up to 30% of medications on the African market are counterfeit.³⁸ Of more than 584,000 malaria deaths globally each year, 90% occur in Africa.³⁹ WHO estimates fake anti-malaria drugs alone kill 100,000 in Africa annually and the black market deprives governments of 2.5% to 5% of their revenue.⁴⁰ The British think-tank, International Policy Network (IPN), estimates that globally, fake drugs and tuberculosis drugs cause 700,000 deaths a year—a death toll comparable to “four fully laden jumbo jets crashing every day”.⁴¹ The U.S. National Institutes for Health found after analyzing data from 21 sub-Saharan African nations that 35% of anti-malarial drugs failed chemical testing because they were poorly manufactured, while another 20% were complete fakes.⁴²

In July 2012, after a major sweep across 16 seaports on the east and west coasts of Africa, the World Customs Organization (WCO) seized more than 82 million doses of illicit medicines with an estimated value of US\$40 million. Among the fake drugs confiscated in the raid included cough syrup, anti-parasitic and anti-malarial drugs, antibiotics, and even contraceptives.⁴³

In West Africa, health and law enforcement officials, in coordination with WHO and INTERPOL, have been running multi-country operations aimed at disrupting transnational criminal networks for fake drugs. An operation in 2011, “Cobra”, resulted in the seizure of 170 tons of counterfeit and illicit medical products.⁴⁴ And during their latest operation in 2014, “Porcupine”, nearly 200 tons of illegal medicines were seized, with an estimated value of approximately US\$25 million.⁴⁵

The impact of counterfeit medications in West Africa is amplified by the high demand for anti-infective and anti-malarial drugs. Africa accounts for most of the world's malarial incidence, whilst West Africa has the highest estimated rate on the continent, with nearly 98 million cases of malaria per year.⁴⁶ In 2001, approximately 68% of medicines in circulation in Nigeria were unregistered and as much as 41% were believed to be fake.⁴⁷

According to calculations by the IPN, nearly half the drugs sold in Ghana and Nigeria are 'substandard'.⁴⁸ Several studies focusing on Nigeria have determined that 50% are counterfeits.⁴⁹ These statistics reflect the gravity counterfeit medicines' impact in West Africa.⁵⁰ The use of counterfeit drugs not only prevents treatment but, it can also promote the development of drug-resistant strains, in turn decreasing the effectiveness of legitimate medicines.

Evidence is growing in the global market of the involvement of organized crime networks in counterfeit pharmaceutical trafficking. According to a United Nations Office on Drugs and Crime (UNODC) report, the revenue gained from 45 million counterfeit anti-malarial medicines is US\$439 million.⁵¹ With high demand and even higher prices for anti-malarial drugs in a continent constantly plagued with the disease, large profits can be made with minimal risk of serious criminal prosecution. Evidence also suggests a shift among organized crime groups from smuggling narcotics and weapons to counterfeiting medicines, possibly even with terrorist organizations.⁵²

Fake medicines are however not the only counterfeiting problem in Africa. Cheap counterfeit electronics and electrical components are flooding African markets, putting consumers and legitimate manufacturers at risk.⁵³

Piracy of music, movies and software is also ubiquitous. According to the 2011 Global Software Piracy Study of the Business Software Alliance (BSA), the global commercial value of unlicensed software is around US\$63.4 billion, with piracy rates in most African countries exceeding 80%—almost double the global piracy rate (42%).⁵⁴

Fake household goods and cosmetics are similarly widespread in Africa. Unlike, counterfeit luxury products and pirated DVDs and CDs—which are often sold at substantially reduced prices—fake household products in Africa are increasingly sold at prices on par with genuine items.⁵⁵ Similarly priced goods act as additional obstacles for consumers who wish to purchase legitimate products, as they can no longer rely on the price as a means to distinguish between fake and genuine products.

When consumers pay the same price for both genuine and counterfeit goods, they are often unaware that they are buying a fake product that may be not only vastly inferior but in certain cases, even harmful. In 2008, fake cosmetics circulating in Dar es Salaam, Tanzania, were found to cause skin cancer, thinning of the skin and severe nerve tissue damage. Counterfeiters were producing home-brewed concoctions and repacking them into original packages in order to resell them at higher prices. Exacerbating the problem, salon owners and workers did not know how to differentiate between counterfeit and genuine cosmetics.⁵⁶

Counterfeiting in Africa also impacts governments and society at large. Illicit trafficking routes in many West African countries and struggling weak governments make this region particularly rife with counterfeits. In some instances, profits from illicit activities are comparable to, or even exceed, the host country's economy. In 2009, the UNODC estimated that revenues from 45 million counterfeit anti-malarial medicines in West Africa were worth US\$438 million—more than the annual gross domestic product of Guinea-Bissau. Similarly, cigarettes smuggled through the same region were estimated to be worth US\$775 million, exceeding Gambia's entire legal economy.⁵⁷

The Situation in Nigeria

Nigeria is a big potential market, a gateway to the rest of Africa for counterfeit products. Fake goods are constantly being offered alongside genuine goods to consumers.⁵⁸ The country is overrun with domestically pirated materials. Industry reports contend that IP infringers from other countries appear increasingly active in using Nigeria as a base for the production of pirated goods.⁵⁹ In 2008, the US Department of Commerce estimated that Nigeria was the largest market in Africa for goods that infringe on IPR.⁶⁰ Brand owners suffered with no IP protection, no proven protection by judicial precedents and slow court proceedings thus eroding brand equity in case of dispute.⁶¹

Lack of IPR protection forces investors to move their business to other better structured IPR jurisdictions resulting in loss of jobs and government revenue through non-payment of taxes. The development and protection of IPR will highly encourage FDI and could make Nigeria a hub for substantial investment opportunities.⁶²

Lawyers are encouraging the Federal Government to enforce the country's IP laws to protect individuals' creative outputs. They are pushing the Nigerian Copyright Commission (NCC) to do more to protect the IPR of citizens.⁶³

Emmanuel Onyeje, Country Manager, Microsoft Nigeria stated that Nigeria loses N47.5 billion (US\$300 million) yearly to IP theft. The BSA has noted that reducing IP theft (software piracy) by just 10% over four years could deliver billions of naira in economic growth and create thousands of new jobs to occupy the growing army of the youthful unemployed.⁶⁴

The EU has blamed lack of international accredited standard testing laboratories in Nigeria as a major setback in the fight against substandard and fake products in that region. The dumping of these products may persist due to the continued lack of international accredited standard testing laboratories.⁶⁵ The Standards Organisation of Nigeria (SON) operates six principal specialized laboratories situated around the country including Food technology laboratory, Lagos; Chemical Technology Laboratory Lagos; Electrical & Electronics Laboratory, Lagos; Engineering Laboratory, Enugu; Metrology & Instrument laboratory, Lagos; and the Textile Laboratory, Kaduna. Only 3 divisions of the Food & Chemical Laboratory have been accredited—the Proximate Analysis Laboratory, the Microbiology laboratory and the Metallic Contaminant Laboratory. SON is continuing its efforts towards accrediting all the other laboratories.

On the upside, according to WIPO's 2012 report, Nigeria's IP protection situation, has recently witnessed some remarkable progress. Bodies such as the NCC and judicial precedents now enforce IP Protection. For instance, the NCC ensured an increase in the prosecution of copyright infringement. The NCC has undertaken more than 26 anti-piracy raids, made more than 145 arrests and seized over 6 million pirated works—including films, sound recordings, books, software and broadcast equipment—with a street value of more than US\$4.6 million. In addition to over 39 criminal cases brought by the NCC following these raids, 19 convictions relating to pirated books, CDs, software and broadcasts have been secured. These convictions are notable in the sense that they involve the most stringent sentences ever imposed by Nigerian courts for copyright infringement. These actions all lend to Nigeria's efforts to render piracy a high-risk, unprofitable business with tough penalties.⁶⁶

Challenges in Nigeria

After decades of independence, Nigeria's protection and enforcement of IP laws are still out-dated. Relevant Nigerian government institutions lack adequate skills and competence due to low morale, poor training, and limited resources.⁶⁷ As a result, the IP experts in the legal, technology and education sectors face an uphill battle in dealing with the IP problems that result from lack of IP enforcement.

Nigeria is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, and the Patent Law Treaty. Nigeria has also signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Legislation intended to implement WTO obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) has been pending in the Nigerian National Assembly for several years.⁶⁸

The information technology required for encouraging proper research by IP experts, students and scholars is also undeveloped. Business development is similarly lagging behind due to frustrations from counterfeiting and piracy. In addition, enforcement is not enough to discourage potential activities related to counterfeiting and piracy. The only remedy for an owner is through civil actions in court, except in the area of copyright where the owner can institute a criminal action through NCC.⁶⁹

The Nigerian government's level of IP practice, jurisprudence and enforcement is not fully established. Most IPR litigations lie in the area of trademarks with very few instances in copyright and even fewer in patents. Further, most IP cases are settled by the parties before they rise to the appellate courts which limits development of a proper catalogue of case laws in this practice area.

Some recent developments have addressed trademarks unrelated to goods including service marks, scent marks, sound marks and slogans. The grant of patent on some plant varieties and seeds, already in force in England, has been recognized and regulated in Kenya and South Africa and it is indeed a milestone development.⁷⁰

There has also been significant progress with the rise of numerous pressure groups and civil society organizations pushing for the protection and enforcement of IPR. One of the most active groups is the Anti-Counterfeiting Collaboration (ACC) a non-political and non-governmental organization. It assists in the reform of IP Laws, to bring brand owners, regulatory agencies, interested parties and the public together in order to fight against counterfeiting and piracy in Nigeria.⁷¹

Vulnerable sectors

Music and Film

The local creative talent in Nigeria is in jeopardy due to the activities of individuals who place no value on IP. Experts have highlighted that some of the major snags to development of IP in Nigeria are illicit trade, piracy and counterfeiting. They are strong factors that will hinder the country's many developmental programs including the Economic Community Of West African States (ECOWAS) Vision 2020 regional development goals if not properly addressed.⁷²

Nigeria's film and music industry is one of the strongest and largest in Africa, and the NCC works to strengthen copyright protection. As is the situation in most government institutions, however, the NCC is not sufficiently funded. Furthermore, widespread pirating of foreign and domestic videotapes discourages the entry of licensed distributors.⁷³

Around 80% of the international music CDs available are pirated; even the local music industry sees 40% of its products being copied, counterfeited or sold illegally.⁷⁴ While piracy accounts for almost 7% of all global trade, Nigeria accounts for 80% of the pirated international music CDs.⁷⁵

In December 2007, NCC noted the film industry's loss of an estimated N4.2 billion annually to illegal digital duplication, online piracy and unauthorized video rental within the country. Another report by the Nigerian Television Authority (NTA) in 2008, estimated the total annual loss of the content industries (music, software and video) within the nation to be well over N100 billion.⁷⁶

Pharmaceuticals

A survey conducted by the WHO in 2011 showed Nigeria as Africa's largest market for medicines. Even though comprehensive surveys have not been carried out for some years, the report by WHO suggests that the war against fake drugs in Nigeria is far from over.⁷⁷ The survey established that 64% of anti-malarial drugs were fakes. Nigeria's national medicines regulatory agency, the National Agency for Food and Drug Administration and Control (NAFDAC) blames a chaotic system and porous borders.⁷⁸ Nigerian pharmaceutical regulations are so poorly implemented that the country has become famous as a hotbed of substandard medicines (with an important amount of counterfeited products). Corrupted officials are also a major setback in NAFDAC's efforts "to eradicate fake drugs and other substandard regulated products"⁷⁹

The business of circulating fake and substandard drugs in Nigeria has continued to grow, worsening the country's state of healthcare delivery, exposing consumers to dangerous and ineffective medical products, and leading to loss of lives.⁸⁰ Nigeria is said to lose about N200 billion annually solely to counterfeit medicines, not including other substandard drugs. Currently, the drug distribution network in the country is in a rampant state with open markets dotting every corner selling counterfeit and substandard drugs.⁸¹

The implication of fake drugs in Nigeria, can be illustrated by the case of Nneka and Chimezie Ononaku, a couple in Nigeria who unwittingly and unknowingly poisoned their infant son after giving him a counterfeited medicine that was contaminated with antifreeze. The poison can be almost impossible to spot, but can contain inactive ingredients like talcum powder, or even toxic ingredients such as rat poison.⁸²

NAFDAC has stated that counterfeit drugs are one of the greatest challenges that Nigeria is facing. Over 50% of drugs, food and drinks sold in places like Ariaria Market in Aba, Onitsha Market, Alaba Market, and other markets across the country are counterfeit. NAFDAC stresses that many people have died due to the after effect of these deadly medications and consumable goods.⁸³

New technology is revolutionizing the fight against counterfeits in Africa. TruScan is a handheld spectrometer airport and border posts are using to analyze the chemical composition of drugs, helping to spot "bad drugs" in seconds.⁸⁴

Consumers can now also send simple and free text messages to check the authenticity of the drugs they purchase. Start-ups like MPedigree Network, already established in Nigeria, and Sproxil have designed systems that allow legitimate drug manufacturers to label their packages with an encrypted code.⁸⁵ Consumers simply scratch off the label on the package and send a text message of the code, free of charge, to the company that maintains the system. Consumers receive an instant response informing them whether the drug is genuine.⁸⁶

Software Piracy

In Nigeria, software piracy is a thriving industry, the bulk of which occurs at Alaba International Market in Lagos.⁸⁷ Millions of PCs and laptops running on pirated software. Criminals sit at their homes and send millions of dangerous malware and viruses through pirated software, to attack servers of big organizations and financial institutions.⁸⁸ The 2011 Global Software Piracy Study conducted by Business Software Alliance indicated that the Nigerian economy lost a whopping US\$251 million (N39.4 billion) to software piracy in 2011, with 82% of software installed on personal computers in the country said to be unlicensed.⁸⁹

Software developers lose millions of naira annually to theft. Pirates undercut government revenue by using illicit channels. The effect on the economy is significant: the country losing vital revenue that would have come through controlled channels in the form of taxes, duties and levies.⁹⁰

Consumers unknowingly buy discounted counterfeit software from online brokers because they have paid for the software, they assume it must be genuine. This practice is just one of the ways many consumers become 'accidental pirates'. Other consumers, however, who knowingly purchase pirated software, often see it as a 'cheap' alternative to purchasing it legally.⁹¹ If this trend is not checked, it can hamper or even destroy software businesses in the country.

Piracy of books

Book piracy continues to be a serious problem in Nigeria. Following the Nigerian government's decision in 2003 to cut all funding for university and library purchases, a climate fostering illegal photocopying has plagued the academic market. Furthermore, Nigeria has for years been a destination for pirated book imports, primarily from Asia (China and Malaysia). Customs authorities should increase vigilance in seizing pirated products before they saturate the local market.⁹² Security services in Nigeria seized a shipping container in December 2013 that contained over 40,000 pirated books that were on its way to be sold within the country.⁹³

Despite, Nigerians spending over N90 billion in books and pirated compact discs in the last 20 years only N8 billion has gone to authors and producers.⁹⁴

Textile

The Nigerian Textile Manufacturers Association (NTMA) has disclosed that Nigeria loses a staggering US\$325 million every year due to evasion of Customs duties and value added tax by smugglers of textile material.⁹⁵

During the 1980s, Nigeria's cotton and textile industry was a key player in the national economy. It provided a livelihood for about 20% of the population: 600,000 workers operate close to 170 textile mills across the country.⁹⁶ Furthermore, the industry then generated an annual turnover of US\$8.95 billion; an average of 25% of the sector's GDP which accounted for not less than 10% of corporate income taxes. Nigeria was ranked the second largest textile hub in Sub-Saharan Africa ranking behind South Africa, representing 63% of the textile capacity in the West African sub-region before neglect and policy inconsistencies capsized the sector. Unfair global trade practices such as copying designs, counterfeiting trademarks and falsifying place of origin descriptions have contributed to the collapse of the once thriving textile industry.⁹⁷

Nigerian textile manufacturers' biggest challenge is cheap Asian imports. The smuggled textiles produced in China are not wax-resist dyed, but rather high-velocity textile prints produced in half the time for a fraction of the price. They bear the counterfeit trademarks of Nigerian manufacturers and fake Standards Organisation of Nigeria (SON) logo printed on the labels.⁹⁸ They use chemicals rather than natural dyes. The goods are usually smuggled into the country to avoid paying duties and taxes to the government.⁹⁹ On 25 October 2013, SON in collaboration with the NTMA, carried out a weekend raid across several markets in Lagos. More than N20 million worth of counterfeit and substandard textile products were seized and offenders were prosecuted.

Officials from the NTMA have stated that they cannot compete with imported textiles under the current business environment. 90- 95% of all textile materials in the market are foreign material, either from China or India.¹⁰⁰

The Nigerian government has warned the Chinese government and applied trade tariffs on imported textiles to protect what is left of the local industry.¹⁰¹ The NTMA is encouraging the Federal government to design an effective system to protect the local industry, including IP rights enforcement. Coordinated efforts are required from stakeholders and government agencies such as IP offices, police, customs, the judiciary and the revenue and taxation offices.¹⁰²

3. Time is right for Nigeria to further improve its IP regime

In order to realize the economic and social value of its IP, Nigeria has undertaken actions toward improving its IPR protection regime.

The Trademarks Act,¹⁰³ the Patents and Designs Act,¹⁰⁴ Merchandise Marks Act,¹⁰⁵ Federal High Court (Civil Procedure) Rules, Common Law Principles and the Copyright Law govern IPRs in Nigeria.¹⁰⁶ The Ministry of Commerce and Industry through the Trademarks, Patents and Design Registry administer the Trademarks Act and the Patents and Designs Act. The Nigeria Copyright Commission (NCC), an agency of the Ministry of Justice, administers the Copyright Law.

Nigeria has ratified several treaties relating to IP protection. Among these treaties are: the Paris Convention for the Protection of Industrial Property (ratified in September 1963), the Rome Convention (Performers, Producers of Phonograms and Broadcasting Organisations) ratified October 1993, the Patent Law Treaty (ratified April 2005) and the Patent Cooperation Treaty (ratified May 2005).¹⁰⁷

Nigeria has also assumed additional responsibilities by virtue of its membership in the World Intellectual Property Organization (WIPO) (May 1993) and the World Trade Organization WTO (January 1995). Nigeria is also a member of the African Regional Intellectual Property Organization (ARIPO), a creation of sub-Saharan African countries.

Significant progress has been made in the fight against piracy. Since its establishment in 1989, and following implementation of Copyright Decree No. 47 of 1988, the NCC has worked to combat piracy. Campaigns such as the Strategic Action Plan against Piracy (STRAP) and the Copyright Litigation and Mediation Program (CLAMP), launched in 2005, are testimony to the organization's efforts. Since December 2010, the NCC has intensified its copyright enforcement and anti-piracy activities in launching a campaign for collective action to tackle piracy on all forms. In January 2012, the NCC publicly destroyed some 722 million pirated works confiscated in anti-piracy raids between 2007 and 2011.¹⁰⁸

Furthermore, on 25 July 2014, NCC launched a new online registration system called the Nigerian e-Copyright Registration System (NeCRS).¹⁰⁹ NeCRS seeks to improve on the existing optional Copyright Notification scheme. The plan was established in 2007 to enable creators of copyright works or persons who have acquired rights in these works to register their interest(s) with the NCC. The new online national database of authors and right holders in Nigeria offers an additional means of combating piracy by making it easier to prove (or disprove) ownership of a copyright protected work. In addition to these practical measures, the Nigerian Copyright Law is undergoing a review process to bring it in line with current international standards designed to mitigate the copyright challenges that digital technologies present.¹¹⁰

In combating piracy, through the NCC, the Nigerian government also introduced the Copyright (Optical Discs Plants) Regulation 2006 which mandates that all disc manufacturing companies in Nigeria need to register with the NCC and meet required conditions for operation.¹¹¹

Developments have also emerged at the Nigerian Trademarks, Patents and Designs Registry. In addition, a regular (quarterly) publication of the Trademarks Journal by the Registry is undergoing computerization and now offers online services, including a forum for sharing international best practices.

Some associations are also being formed with the sole objective to improve and develop IP protection in Nigeria as well as lobby for IP law reform. The Nigerian Intellectual Property Commission (NIPCOM) Bill currently awaiting enactment, is largely due to both private and public IP community collaboration, with the international associations. A good example is the Anti-Counterfeiting Collaboration (ACC) a non-political, non-governmental, organization which assists in the reform of IP Laws in Nigeria, and bringing brand owners, regulatory agencies, interested parties and the public together to fight counterfeiting and piracy in Nigeria.¹¹²

SON organizes Stakeholder and Consumer Forums to promote awareness on quality and educate the masses on the impact of counterfeit and substandard products. Such events are also done in collaboration with government agencies such as the Lagos State Chamber of Commerce (LCCI) NGO's, Anti-counterfeiting Collaboration(ACC), African Center for Supply Chain (ACSC), brand owners, British American Tobacco Company, Hewlett Packard, Embassies/Consulates of the United States and Austria and associations such as the Manufacturers Association of Nigeria, Textile Manufacturers Association, and the Cable Manufacturers Association Nigeria amongst others.

The above mentioned improvements and positive developments in combating counterfeiting and piracy indicate that the time is right for Nigeria to take further actions towards improving its IP regime, particularly its IP enforcement law. Although a legal regime is currently in place to curb, or at least reduce counterfeiting and piracy to the barest minimum, more still needs to be done to ensure effective enforcement mechanisms are in tune with best international practices. Overall, continuing IP legislation improvements are encouraged. Building awareness is also a priority to inform public authorities and the public at large of the risks that counterfeit and pirated goods pose to consumer safety, public order and health.

4. Recommendations for a path forward

Introduction

Nigeria faces challenges in the process of strengthening its IP system and addressing deficient enforcement of existing IP legislation. Specifically, the areas of concern for Nigeria involve the establishment of an appropriate legal and institutional framework, creating awareness of the importance of IPR, enforcement of IPR and the future of the IP system in general.

In order to facilitate needed reforms, BASCAP has suggested a set of specific legislative and policy recommendations, which could serve as a roadmap for the path forward. The recommendations presented below are drawn from independent and respected sources, ranging from foreign and Nigerian government agencies to business and international IP associations and academic institutions. Some of the key sources for the proposed recommendations include:

- 2014 International IP Index “An Anatomy of Nigeria’s Intellectual Property Environment”, U.S Chamber of Commerce’s Global Intellectual Property Center - lists a range of legal reforms and enforcement priorities such as taking actions against infringement on the Internet, strengthening the criminal enforcement regime and improving copyright protection.
- 2014 Nigerian Law Intellectual Property Watch - notes that the Nigerian judicial system suffers from a lack of deterrent-level sentences and significant delays, and that the Nigerian IP laws remain out-dated.
- 2013 National Trade estimate report on Foreign Trade Barriers, United States Trade Representative - acknowledges that the Nigerian government’s lack of institutional capacity to address IPR issues is a major barrier to enforcement and it urges Nigeria to take additional steps to increase IPR enforcement, especially with respect to piracy over the Internet.

Overview

- Priority should be given to designing a comprehensive national IP Strategy that identifies needed legal and policy reforms, delineates implementation and enforcement responsibilities and allocates sufficient resources to ensure effective enforcement.
- Priority should be given to the adoption and implementation of a significant number of policy and legislative reforms, such as those recommended below.
- Priority should be given to establishing a new high-level IP authority to coordinate and implement the IP Strategy and the associated legislative and enforcement reforms.
- Priority should be given to the creation of a Nigerian Observatory on Counterfeiting and Piracy, similar to that established recently in the EU. The Observatory could serve as platform to join forces and build coalitions between relevant government agencies and representatives from business. The tasks and activities of the Observatory would include responsibility for implementing legislative and policy recommendations, such as those suggested in this report; assisting Nigerian government agencies in their policy, legal and enforcement work; and assisting the government in developing a national awareness program and network for sharing best practices and data.

Legislative Recommendations

The following legislative recommendations address issues requiring further legislative reforms related to IPR protection and enforcement.

1. Improve and expedite civil judicial enforcement procedures

One of the deficiencies in this area is the lengthy duration of judicial procedures. Pre-established or statutory damages are not available. Industry frustrations are borne out of the undue delay and the long time required to determine a case completely, coupled with ineffective enforcement of court orders. For example, trademark litigation in Nigerian courts is a long and arduous process, with a number of landmark trademark cases taking more than a decade to reach a final verdict. Overall the enforcement environment is challenging, with law enforcement and judicial proceedings slow and inefficient.¹¹³

Another problem in Nigeria involves the willingness of authorities to take actions on an *ex officio* basis, since traditionally complaints have been required. The courts in Nigeria provide no sure relief, as bringing civil claims continues to be an expensive and risky remedy for right holders.¹¹⁴ Many of the judges in the Federal High Court, who have exclusive jurisdiction on IP issues, are not that knowledgeable on copyright matters.

The penalties for infringements, piracy and counterfeiting in Nigeria are still very much out-dated. It is important to review these penalties to serve as deterrents to prospective infringers. An upward review of the fines will help properly administer the law in areas where the law has been breached: it also would be seen as justice well served. It should be noted that the Nigerian Copyright Law is undergoing a process of review, which proposes higher penalties as a deterrent to committing offenses under the Act. For instance, the fine per copy of infringing material has been increased from 100 naira to 500 naira. Similarly, serious offenses under the Act will carry terms of imprisonment ranging from 2 to 7 years.¹¹⁵

The Nigerian Police plays an active role in the enforcement of IPR in Nigeria. Police raids are conducted under the Merchandise Marks Act, which makes it an offence to falsely apply a trade mark to goods that do not belong to the true proprietor. Penalties under the Act, however, include only small fines and no custodial sentences; it is thus rare to see any resulting prosecutions.

Recommendations:

- A. Ensure a speedy trial process that courts issue preliminary injunctions in a timely and effective manner.
- B. Introduce *ex-officio* action for enforcement authorities (police officers).
- C. Enhance the deterrent effect of civil penalties and remedies.

2. Strengthen IP legislation and ratify IP international agreements

IP law is developing in Nigeria though it is recognized that it is not where it ought to be. Nigeria's IP law should be aligned with international best practices.

It is quite disappointing that after decades of independence, Nigeria has not made any significant change in its IP laws, the laws have remained out-dated. The result of the use of these out-dated legislations is that the protection offered in Nigeria is substandard in comparison to the updated laws now operating in other jurisdictions. One of the major problems facing development in IP law in Nigeria is that the judiciary is not up to date with IPR. Most of the IPR litigations are in the area of trademarks while there are very few on copyright and even fewer in patents. Furthermore, most IP cases are settled by the parties before they get to the appeal courts. This limits the establishment of a case law catalogue documenting rulings in this practice area.¹¹⁶ Thus, the level of IP practice, jurisprudence and enforcement is not fully developed.

Nigeria has in place a basic framework for the protection of registered and unregistered trademarks. The Trademarks Act provides exclusive rights to registered trademarks under Articles 4 through 6. Unregistered trademarks can only be enforced and protected through passing-off actions.¹¹⁷ In practice, Nigeria suffers from exceedingly high levels of counterfeiting of all goods, including clothing, CDs, films, books, hard goods, and pharmaceuticals.

Copyright protection in Nigeria is governed by the Copyright Act (Cap 68 Laws of the Federation of Nigeria, 1990) as amended. While by no means perfect, the law, provides a solid basis for anti-piracy laws. Long overdue, however, is an amendment to the Copyright Act that provides stiffer penalties and serves as a deterrent to pirates.

Nigeria is a signatory to the Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). The need exists, however, to domesticate the relevant treaties into Nigerian laws in order for authorities to exert a force of law. Legislation intended to implement WTO obligations under the TRIPS Agreement has been pending in the Nigerian National Assembly for several years.¹¹⁸ Presently, several treaties cannot be enforced without the TRIPS Agreement ratification into Nigerian laws. According to Section 12 of the 1999 Constitution of the Federal Republic of Nigeria (as amended): “No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly”. Nigeria has also signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty but has not ratified them. Thus, Nigeria should embark on ratification, intensive operation of and participation in treaties on IPR.

The Bill for the establishment of the Nigerian Intellectual Property Commission (NIPCOC) before the Nigerian National Assembly was suspended or abandoned before the April 2011 general election. The NIPCOC Bill presently before the House Committee on Commerce is the Bill to set up the NIPCOC Commission only. It does not include the substantive Bill dealing with Trademarks, Patents, Designs and Plant variety.¹¹⁹

Recommendations:

- A. Properly review and amend Nigerian IP laws.
- B. Ratify, and implement effectively into national laws, the TRIPS Agreement and the WIPO treaties.
- C. Speed up the legislative process the NIPCOC Bill to include substantive IP issues. Also re-energize the NIPCOC Bill for Nigeria to leverage several TRIPS Agreement measures and ensure that IP rights are protected and enforced.

3. Improve action against Internet infringements

Online piracy is a serious issue in Nigeria primarily because of the lack of legislation on online piracy and secondly because of weak online enforcement.¹²⁰ While the Nigerian Copyright Act outlines general exclusive rights and the Nigerian Copyright Commission (NCC) has been fighting against physical piracy, legal measures are clearly needed to address online enforcement in a fast-developing digital era.

No provision exists in the Copyright Act or other relevant legislation for notice and takedown mechanism. However, Part 3, Section 11 of the 2008 Guidelines for the Provision of Internet Service,¹²¹ published by the NCC, includes a notice and takedown mechanism, safe harbor provisions for ISPs as content intermediaries, and a general obligation of ISPs to disconnect subscribers on being made aware that subscribers are using the “services contrary to the requirements of these Guidelines or other applicable laws or regulation”. It is unclear, however, what practical force these Guidelines have or their effective application.¹²²

In addition, the Nigerian Copyright Act is silent regarding Digital Rights Management (DRM) and there is no provision in the Copyright Act or other relevant legislation relating to Technological Protection Measures (TPMs). Proposed amendments would include provisions that will make it an offense to circumvent TPMs and to manufacture and distribute circumvention devices.

It should be noted that Nigeria is a signatory to, but has not ratified, the WIPO Internet Treaties.

Recommendations:

- A. Amend the Copyright Act to ensure that ISPs comply with notices to take down infringing materials and put in place effective and fair policies to address repeat copyright infringers.
- B. Promote more active cooperation of ISPs with rights holders to prevent the use of networks for acts of IP infringement.
- C. Ensure that courts have the authority to issue orders to ISPs, without the need for a finding of liability. The courts should have the ability to order that information on suspected infringing website owners be provided to law enforcement agencies and rights holders.
- D. Ensure that procedures are available for law enforcement agencies and rights holders to obtain identifying information on website owners that are suspected of specifically targeting pirated or counterfeit goods. Such procedures must include safeguards against abuse, and a meaningful opportunity for due process (e.g. a fair opportunity to protect against perpetual investigations).
- E. Amend the Copyright Act to include DRM or TPMs provisions.
- F. Ratify and fully implement the WIPO digital treaties—the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

4. Improve border enforcement

Previously, the customs powers were also limited to collection of duties, and ensuring that goods on the prohibition list do not find their way into the country. This regulation limited brand owners from engaging the customs in fighting counterfeits from the strategic entry points into the country.

To date, the new fiscal policy of Nigeria as contained in the Common External Tariff (CET) for 2008-2012, Schedule 4, Item 3 absolutely prohibits the importation of “all counterfeited/ pirated materials or articles including base or counterfeit coin of any country”. The implication of this policy is that all categories of counterfeit goods are now prohibited from being imported into the country. These goods would be subject to all the powers, which the customs have over such products under the Customs and Excise Management Act (CEMA). The Act does not provide, however for the possibility of conducting border enforcement controls to exports and goods in transit. It notes that Nigerian ports are the principal gateways through which pirated and counterfeited imports to enter the country and pirated and counterfeited exports leave. The exclusion of border enforcement should be addressed.

Recommendations:

- A. Amend the Customs and Excise Management Act (CEMA) to introduce comprehensive border enforcement procedures.
- B. Amend the Customs and Excise Management Act (CEMA) to allow Nigerian authorities to intervene in the cases of exportation and goods in transit.

5. Address deficiencies in criminal procedures

Criminal procedures are seen as deficient. They have been described as available in law but not implemented. There is no provision in the law for criminal prosecution except with copyrights where the owner can institute a criminal action through the National Copyright Commission (NCC).

Criminal standards are provided for in both the Copyright Act and Merchandise Marks Act with minimum fines and imprisonment terms. The NCC has published details of criminal prosecution of copyright infringers but for the two-year period of 2011 to 2013, only 40 cases were successfully prosecuted. Given the scale and pervasiveness of infringement, this number is unlikely to act as a deterrent for future infringement.¹²³

In addition, in criminal actions, the prosecuting officers are not well trained to handle such specialized areas of law, and they are often not diligent enough in prosecuting cases.

Recommendations:

- A. Enhance the deterrent effect of penalties by introducing higher maximum fines and imprisonment terms.
- B. Amend the relevant laws governing industrial property by explicitly providing for criminal prosecution provisions.
- C. Carry out training, particularly among prosecuting officers, to ensure accurate application of criminal provisions.

Policy Recommendations

The following policy recommendations encourage broader measures, actions and initiatives to support the more specific implementation and enforcement of IP legislation as recommended above.

The policy recommendations are primarily aimed at affecting an overarching IPR strategy and empowering an authority to oversee its enforcement and associated legislation. In order to increase effectiveness, the recommendations suggest better oversight and coordination between government agencies while encouraging cooperation with business and IP rights holders.

As mentioned above, a useful starting point would be the establishment of a comprehensive national IP strategy and implementing action plan covering the full range of legal and policy reforms, technical assistance and capacity building measures, channels for international cooperation and tools for strengthening enforcement practices.

In addition, effective implementation of the IP Strategy could benefit considerably from the establishment of a new high-level inter-ministerial IP authority, or, alternatively, the assignment of responsibility to an existing high-level IP body. This authority would be mandated to oversee implementation and enforcement. Such an authority/body would

have a broad responsibility to oversee the coordination of relevant agencies, develop and implement joint strategic enforcement plans and report to the Nigerian government on specific performance indicators.

1. Establish an inter-agency approach and enhance collaboration between the Nigerian regulatory agencies administering and enforcing IP rights

Collaboration between regulatory agencies is key to ensuring one voice among the regulators. IPR administration and enforcement in Nigeria is carried out by the relevant registries and regulatory bodies established and maintained by the Nigerian Government:

- The Nigerian Copyright Commission (NCC), a creation of the Federal Legislature, is empowered to regulate music, publishing, artistic, and literary societies.
- The Nigerian Broadcasting Commission, also a creation of the legislature regulates the broadcasting rights, licenses, and assignments.
- The Registry of Trademarks, Patents & Designs,¹²⁴ regulate the filings of trademarks, industrial designs and grant of patents in Nigeria.
- The National Office for Technology Acquisition and Transfer registers Technical Service Agreements and Technology Transfer and Know-How Agreements.
- The National Agency for Food Drugs Administration and Control (NAFDAC) regulates and controls the manufacture, importation,, exportation, sale, distribution and use of drugs, medical devices, cosmetics packaged water and chemicals.

All these agencies run their independent registries and often interface in performing their obligations.

IPR in Nigeria are enforced through tribunals such as the Trademarks and Patent Tribunal, the Courts; various regulatory bodies such as the Nigerian Customs Service (NCS); the Nigerian Immigration Service (NIS); Consumer Protection Council (CPC) and the Nigerian Police (in instances of counterfeiting). The Nigerian Intellectual Property Office (IPO) oversees the administration of Industrial Property (Trademarks, Patents and Designs) in Nigeria. The IPO is an arm of the Commercial Law Department under the Ministry of Trade and Investment.

The NCC's close cooperation with the Nigeria Police Force (NPF) is critically important, especially ensuring the safety of the Commission's unarmed Copyright Inspectors during anti-piracy raids across the country. The Nigeria Customs Service (NCS) also plays a key role in tracking down infringing goods at entry ports and land borders. This inspection roles makes it possible to identify and seize large consignments of imported, pirated works that would otherwise flood the market and undermine legitimate business interests. Joint anti-piracy operations are also carried out with the Economic and Financial Crimes Commission (EFCC), whose invaluable intelligence enables us to more effectively target our operations.

As evidenced, Nigeria has no shortage of institutions. What is largely lacking is coordination and information-sharing among these entities. Therefore, an interagency approach to IP enforcement on both policy and operational levels is key to achieving comprehensive IP regimes. Collaboration between governmental agencies with overlapping functions will enhance effective enforcement. Regulatory agencies should aim for collaboration in information exchange, staff training and technical assistance.

Recommendations:

- A. Establish interagency working groups at the national level to enhance communication, collaboration, and communication in IPR enforcement and protection. Designate a single liaison or point of contact in each country.
- B. Draft a Memorandum of Understanding (MOU) providing the rules of engagement to govern the interagency collaboration. Joint procedural manuals could also be helpful in facilitating the establishment of an interagency approach.
- C. Establish IPR Enforcement Committee to organize all inspectors for future training, communication, cooperation and coordination. Members of this Committee include the enforcement department heads of their respective agencies.
- D. Foster administrative cooperation and coordination amongst domestic enforcement authorities through seminars, workshops and conferences.
- E. Improve cross-border cooperation between Nigerian enforcement authorities and international agencies or IP offices of foreign governments.
- F. Encourage customs and policy authorities to participate more fully in developing and using existing technical tools to collect and share information. Share information with the competent customs authorities including data to better identify and target for inspection shipments suspected of containing infringing goods.
- G. Improve customs' risk assessment tools. For example, given the gap in prices between authentic and counterfeit products, a system should be set up to flag up any imported products that fall below a certain declared value.
- H. Promote internal coordination among, and facilitate joint actions by competent authorities responsible for the enforcement of IPR.
- I. Upgrade technical infrastructure and develop an online network to allow competent authorities involved in the enforcement of IPR to rapidly exchange information on enforcement issues, including real time alerts information on suspect products, manufacturing sites, distribution routes and key sale points.
- J. Research and make information available on technical tools and systems for prevention and investigation purposes (including tracking and tracing systems which help to distinguish genuine from counterfeit products).
- K. Develop databases to collect, store and analyze data on the scope and impact of IPR infringements and national case law on such infringements and systems to enhance access of public authorities and private stakeholders to information.
- L. Issue documents for the implementation of IP rights such as handbooks and manuals and make them available to the law enforcement authorities.

2. Establish an inter-agency approach with private sector coordination

Effective cooperation between private and public authorities is a key element in combating counterfeiting and piracy. While industry is primarily responsible for protecting its IP, government plays a critical role in ensuring there is an effective IPR protection regime in place and enforcing the relevant laws and regulations. Rights holders have the technical expertise to distinguish counterfeits from original products and know the supply chain involved in manufacturing, distributing and selling their products, and can assist government in investigations and enforcement actions. Partnerships between manufacturers and government agencies will provide the technical expertise to enable authorities to intervene.

Recommendations:

- A. Promote the establishment and maintenance of formal or informal mechanisms such as advisory groups that would facilitate engagement between the Nigerian agencies and rights holders and other relevant stakeholders including organizers of trade fairs, transport and logistics companies, retailers and payment service providers.
- B. Undertake cooperative actions together with private sector to build strategies and to promote and spread successful private sector strategies.
- C. Cooperate with private stakeholders to build an electronic information exchange and an early warning system on counterfeit and pirated goods.
- D. Enhance pre-seizure information sharing with rights holders about samples of products and packaging to aid customs in determining whether goods are infringing.
- E. Consider the creation of a Nigerian Observatory on Counterfeiting and Piracy, with membership constituted of representatives from relevant government agencies, industry and other stakeholders. Such an Observatory could serve as platform to join forces and build coalitions between representatives from national authorities and other stakeholders for mutual assistance. The tasks and activities of such an Observatory could include responsibility for helping to put effective policy recommendations in place and assisting the Nigerian public authorities in their policy, legal and enforcement work.

3. Expand IP-related administrative and technical capacity building

A country's effectiveness in protecting IP rights depends in significant measure, upon its capacity to enforce them. In addition to prescriptions for better legislation and stronger enforcement, methods for improving knowledge, enhancing training, and developing skill capacities and competences, should be put in place.

The Nigerian government's lack of institutional capacity to address IPR issues is a major barrier to enforcement. Relevant Nigerian government institutions suffer from poor training, limited resources and understaffing. For example, the Nigerian Copyright Commission has offices in only 13 out of 36 states.¹²⁵ Overall, the administration of IPR in Nigeria is incapacitated by inadequate skills. Persons involved in its administration are usually not experts. In Nigeria, patent examiners are not experts in the field of science and technology, therefore the grant of a patent is as to form only, and there is no substantive examination.

The infrastructure for IPR operation in Nigeria is still largely undeveloped. Information Technology has not progressed fully nor has it encouraged proper research by IP experts, students and scholars. Filing of applications is always slow; the process of grant of IPR could take years due to the limited infrastructural facilities - including but not limited to inadequate electricity supply, inadequate communication systems, poor road network and insufficient Information Technology know-how at the Trademark and Patent Registries.¹²⁶

It should be noted that the United States has provided training to government IP officials through various training programs offered by the United States Patent and Trademark Office's Global Intellectual Property Academy and the U.S Department of Commerce Commercial Law Development Program under the Trade and Investment Framework Agreement between the United States and Nigeria.¹²⁷

Recommendations:

- A. Enhance the knowledge on best public and private sector practices to protect IPR.
- B. Regularly train IP personnel to be up-to-date with international best practices.
- C. Appoint of IP experts and professionals to key offices to implement policies
- D. Enhance the expertise of persons involved in the enforcement of IPR by providing an on-line inventory of available, relevant training programs and initiatives offered and organized at international level.
- E. Expand cooperation with international organizations with a view to enforcement authorities such as police, prosecutors and customs participating in seminars organized by specialist IP enforcement representatives from the World Customs Organization, Interpol, Europol and UNICRI (United Nations Inter-regional Crime and Justice Institute). These enforcement seminars will secure a more sustainable flow of knowledge and learning throughout Nigerian enforcement agencies.
- F. Provide support for the accreditation of laboratories in Nigeria to enable prompt testing of samples of suspected counterfeits/substandard products. Such testing will produce verifiable results that will facilitate enforcement action against offenders.

4. Increase public and political awareness of counterfeiting and piracy and the associated economic and social harm

There is a need to increase public and political awareness and understanding of counterfeiting and piracy activities and their associated economic and social harm. Consumers, rights holders and government officials must be aware of the counterfeiting problem, to understand the economic and social effects, and to know what concerned parties can do to combat counterfeiting and piracy activities.

In Nigeria, there is little public awareness or understanding of the country's IP laws. Existing laws are not readily accessible even to the educated class. The average citizen is also ignorant of the benefits of IP protection. The NCC admits that lack of awareness about the laws and administration of copyright constitutes "a major inhibition to the development of a sound copyright system in Nigeria." Meaningful public education at the grassroots level must form a critical component of IP enforcement in Nigeria.

Recommendations:

- A. Build on BASCAP's globally tested awareness campaign (Fakes Cost More-I Buy Real), to create a national campaign to strengthen public awareness of the value of IP, the detrimental effects of IPR infringements, and the harms and costs of counterfeiting and piracy.
- B. Work with industry and government agencies, in Nigeria and globally, to develop a program for effectively delivering the national campaign across the country, with special attention to children and young adults.
- C. Develop an overall communication strategy on enforcement-related activities including the use of new communication channels such as social networks and the design and development of an exclusive enforcement related website.

Conclusion

Counterfeiting and piracy have become important factors frustrating Nigeria's business development. Nigeria is a big market with enormous potential for further growth however, the prevalence of counterfeiting and piracy limits it from achieving its maximum potential; putting both jobs and consumer health at risk.

The government must seriously address the factors that undermine effective Nigerian law enforcement, including corruption, lack of coordination among the responsible agencies, lack of accountability, and lack of resources.

This effort must start with the Nigerian government's clear message to criminal networks and those involved in counterfeiting and piracy that this activity will no longer be tolerated—and that increased enforcement of stronger IP laws will result in increased punishments. These actions will help convince legitimate business owners and consumers that the government is serious about protecting IP rights. The initiatives will also rally public support for these efforts. Public officials, international governmental organizations, industry and even consumers need to collaborate to develop more creative and effective methods for fighting this economic and societal problem.

The benefits of a more advanced IP regime to Nigeria's economy are undeniable. As summarized throughout this paper, the effectiveness of a country's IPR protection closely correlates with economic performance. IPR systems significantly affect every country's growth, FDI, employment capacities, innovation and overall competitiveness, enabling productivity and efficiency gains. Effecting a solid IPR protection and enforcement regime is thus critically important for a country to reach its economic potential.

ICC through its BASCAP initiative as well as ICC Nigeria stands ready to do its part to help the Nigerian Government achieve these important goals.

Notes

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The International Chamber of Commerce

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote open international trade and investment and help business meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the 20th century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rule setting, dispute resolution, and policy advocacy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice. ICC also offers specialized training and seminars and is an industry-leading publisher of practical and educational reference tools for international business, banking and arbitration.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on relevant technical subjects. These include anti-corruption, banking, the digital economy, marketing ethics, environment and energy, competition policy and intellectual property, among others.

ICC works closely with the United Nations, the World Trade Organization and intergovernmental forums including the G20.

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