

COMMUNIQUE ON THE NIALS-OPEN AIR INTERNATIONAL CONFERENCE

INTELLECTUAL PROPERTY CAPACITY BUILDING FOR DEVELOPMENT: THE ROLE OF SCHOLARS

20 November 2012

INTRODUCTION

There is no doubt that some of the most critical issues and debates of today are in the subject of Intellectual Property (IP) since it cuts across all disciplines: political, legal, economic, social, cultural, technological and more. It impacts directly on the most important issues of access that are critical to human development: from access to knowledge, to technology, to medicines and the entire subject of development, especially among developing countries. IP impacts all spheres of human endeavor and affects everyone at all levels and in all regions of the world. It is fundamental to every day's existence, be it at home, at work or in the marketplace including the cyberspace. Everybody including students, professionals and businessmen, whether sitting in boardrooms or across the street, is concerned with one form of IP or the other. A musician is concerned about music copyright and so is a manufacturer or producer whose trademark is his mainstay. The consuming public is also interested in the value they get from genuine products.

Africa is at the center of these developments and the subject of IP discourses in many fora. Today the wealth of nations is measured in terms of innovation and creativity, and development is tied to innovation. Innovation therefore has become the most important catalyst for growth and development in this 21st Century. IP and associated rights now comprise the bulk of nation's

wealth in today's knowledge driven economic order. Africa's knowledge is increasingly becoming an important component of that wealth and an area where the continent for the first time enjoys strong comparative advantage and the component resources to create wealth and foster development that was once achieved through the same means by the developed countries. For African countries, IP now raises grave issues that are at the core of development, a conundrum that depicts a landscape of both promises and perils and in which the African predicament can translate into possibilities that its traditional knowledge can bolster, in areas like bio-cultural resources in plant and medicinal products obtained from African bio-diversities, which constitute the major ingredients of the multi-billion dollar pharmaceutical and bio-medical MEDICAL industries of the West. Even though these concerns impact other disciplines, such as international law and policy, human rights, economics, social science and public policy, development studies and more, the grand inquiry as to how best to address these issues is no doubt domiciled in the platform of IP. Because innovation is tied to intellectual property, the question has arisen as to how to utilize IP to turn Africa into a hub of innovation and facilitate development. Simply put, how can IP be made to work for Africa? How can scholars, students and stakeholders in the African IP regime be prepared for the challenges of the 21st Century as impacted by IP.

To interrogate these issues, NIALS convened a one-day conference tagged: **NIALS-Open AIR International Conference on Intellectual Capacity Building for Development: the Role of Scholars**, which brought together IP scholars for the first time to discuss IP as it impacts development from the perspective of the scholar, in collaboration with Open AIR, as part of a three year project supported by International Development Research Centre (IDRC) and

Germany's BMZ. The initiative is aimed at developing a Pan African perspective on IP metrics, innovation and creativity by collecting evidence, building capacity and generating practical lessons concerning the influence of IP on innovative and creative activity in Africa. The major objective of the Conference is to stimulate and lead discourse and scholarship on this important area of national development, and to also provide a suitable platform for channeling discussions towards the best way to navigate the terrains of IP in order to secure the best outcomes for the country and Africa as a whole; to balance the conflicting interests of IP to achieve optimal benefits. It is in recognition of the need to build scholarship and a network of experts and a rich epistemic community of Nigerian and African experts, who can continue to articulate the role of IP in development and the best interests of the country at different levels. Scholars impart knowledge to the next generation, and it is only desirable that such knowledge is such that not only can bridge but also diffuse existing knowledge. Moreover, scholars are a strong catalyst for transforming Nigeria's IP assets into a tool for innovation, wealth and development by turning the vast knowledge being churned out in the Universities into wealth, which would in turn provide the much needed incentive for innovation and leading to wealth and development.

The Conference was held on 20 November, 2012 at the NIALS Ayo Ajomo Auditorium, Lagos. Topics and the perspectives of the Conference included: **Where is IP Law in Nigeria: Substance & Rationale** Reform & Future of IP in Nigeria; **Public Interest Intellectual Property: Prospects and Challenges in Nigeria**; Emerging Nigerian IP Academy and the Role of Scholars as Partners in IP Policy Formulation; Understanding the Inter-disciplinarity of IP and Implications for Curriculum Development; Teaching IP as Collaborative Capacity Building: Leveraging on Diaspora Exchange and Opportunities Within – Thoughts on Strategies; Commercializing Research: Bridging the Gap between Research and Industry; **Engaging Stakeholders: Creators, Users, Administrators, Legislative officers, the Judiciary**

the Legal Profession and Law Enforcement & the Interplay of Roles; perspectives from Nollywood and presentations on some of Open AIR's case studies. Seasoned speakers and moderators of sessions came from within and outside Nigeria, including Nigerians in Diaspora and were drawn from both public and private universities, and from public sector I institutions like the Nigerian Copyright Commission (NCC) and National Office of Technology Acquisition and Promotion (NOTAP), IP Practitioners as well as the Judiciary. On the whole, 16 presentations were made.

OBSERVATIONS:

1. In the current era of the knowledge economy, there is an imperative for an equitable governance regime for African innovation and creativity. Innovation is at the heart of the ability to make progress.
2. Intellectual property is not only important but fundamental to everybody's existence, be it at home, at work or in the market place including in cyber space. It cuts across all spheres and all disciplines: political, legal, economic, social, cultural, technological, and more.
3. IP also impacts directly on the most important issues of access that are critical to human development, from access to knowledge, to technology, to medicine and the entire subject of development, especially among the developing countries.
4. Today the wealth of Nations is measured in terms of innovation and creativity and development is tied to innovation.
5. IP in Nigeria comes from a legal history of IP laws that were crafted to protect foreign works or largely products of foreign origin in a local and new market. The common structure and intendment of the colonial IP laws was primarily to protect imperial creativity, innovation and trade in their goods and other works in the newly acquired market.

6. The IP system emerged from a background of weak foundation in the development of IP laws; the absence of any recognizable or well defined underlying IP policy firstly, to help situate or ascertain legislative intendment in the express provision of statute; secondly, to define the boundaries of IP protection in meeting the diverse interest of the creative sectors; and thirdly, to support judicial interpretations of the provisions of the law and in turn aid the evolution of a systematic jurisprudence in this field of law.
7. Currently Nigeria's IP is at the centennial of the introduction of IP law in the context of a legal framework.
8. Nigeria's extant IP legal frameworks were improvements of earlier laws, with distinctive features that constitute the basic structure of our current IP laws. These have not witnessed any remarkable changes as to reflect current changes in commercial and trading practices and technological developments.
9. The Trade Marks law lags behind in the current commercial environment in the protection of trade in view of the increasing sophistication in trading practices.
10. Patent law, which traditionally serves in promoting innovation, in the context of the Patent and Designs Act (PDA) falls short of the vital features that ought to make up a patent system, resulting in the lack of promotion of innovation and indigenous inventive activities for a developing country like Nigeria i.e. the absence of utility.
11. The largely inadequate legal framework of IP reflects in the pattern of judicial thinking and interpretation of the Nigerian IP laws by the courts. Hence, IP jurisprudence has not only been scanty in some essential respects, but has been largely inadequate in expounding the frontiers of the law. Case law (though admittedly a function of litigation)

has not established recondite principles of IP law or as in many instances clarified important principles.

12. Nigeria's innovation system cannot evolve without IP law and policy reform. The follow up question would be, in what direction should we go and what should be the benchmark for IPR protection in the context of legal and underlying policy frameworks.
13. Global IP regimes will continue to shape domestic developments of IP law. However, the extent of the impact will largely depend on factors that are critical to different national approaches to the concept of a sound IP regime dictated by national development goals and the perceived understanding of the socio-economic and cultural role of IP for the country.
14. The idea is not to belittle the need for an international instrument protecting IP but to emphasise the fact that an international instrument should be domesticated in a way which reflects the needs of stakeholders, socio-economic and cultural factors and the pace of development in Nigeria.
15. Most countries in Africa including Nigeria have adopted a top down approach, thereby advocating a western (Anglo American and Eurocentric) perspective of what is considered adequate protection for IP and succumbing to treaties under the World Intellectual Property Organization (WIPO), World Trade Organization (WTO) Agreement of Trade Related Aspects of Intellectual Property Rights which has a dominant western capitalist philosophy.
16. Perceptions are gradually changing among developing countries. For instance, least Developed Country Members of WTO have on November 5, 2012 filed a so-called

“properly motivated” request under Article 66.1 of the TRIPS Agreement for a collective extension of the transition period within which they must become TRIPS compliant.

17. On October 18th 2012, close to 350 individuals and organizations signed a petition for a new course - the Pan African Intellectual Property Organization (PAIPO). The draft PAIPO statute is the result of a non-transparent process without open consultations with relevant stakeholders including civil society. No drafts of the statute have previously been issued or publicly discussed.
18. More importantly, the draft statute reflects a narrow vision of intellectual property that runs contrary to the aspirations of Africans to devise more balanced intellectual property regimes that effectively promote innovation while also being supportive of public policy objectives in areas such as public health and access to knowledge.
19. Rather than focusing on the promotion of innovation, the draft statute focuses narrowly on intellectual property as an “end in itself” and on a “one-size fits all” approach. The word “innovation” is only mentioned once in the entire statute while it embodies the ultimate goal that African countries should be pursuing. The draft statute advocates the promotion of IP rights and the harmonization of IP laws across the continent without any consideration for differences in levels of development and in socio-economic circumstances in individual countries in Africa.
20. Public Interest Intellectual Property has become an international concern as IP promotes economic growth. Public Interest IP is all about sharing and restricting. It cuts across human rights as to access to health and education as well as information without much restriction.

21. There are two components to Public interest Intellectual Property: Protection of knowledge through rights to authors and investors; ensuring access to knowledge to the public through effective dissemination of knowledge.
22. Public interest IP enhances diverse development, the protection of IP rights, enforcement of IP rights, transfer and dissemination of technological innovations all towards social and economic development and towards the balancing of rights and obligations.
23. Public Interest IP is felt in areas such as education, health, scientific advancement and environmental preservations. These cover access to information and materials in these areas.
24. In terms of prospects, there is currently a non-exclusive right for the translation and reproduction of materials in foreign languages for the purpose of education (1971 Annex to the Berne Convention on “Special Provisions Regarding Developing Countries). These enhance open access, open data as well as efficient research.
25. On any issue where there is no government policy, tangible development cannot be experienced.
26. Absence of national policy on IP in Nigeria is a major factor hindering the development of the sector and the tapping of its full potential for national economic growth and development.
27. Policy is therefore crucial to development and any nation that is really committed to development usually makes it serious business.
28. Scholars have important role to play in policy formulation due to the range of activities they are involved which are relevant to the policy formulation process particularly

research and writing of books, articles, policy briefs and monographs, is prominent among these.

29. Research is the bedrock of scholarship and effective policy formulation requires research for necessary inputs otherwise such policy could hit the rock at implementation stage with negative implication of stunted national growth and development.
30. Nations that pursues effective policy making and implementation therefore do not relegate research to the background.
31. Scholars are also in a better position to help government understand and make informed choices on issues that are subject matter of policy as a result of the following reasons
32. There is pervasive ignorance about IP in Nigeria and Africa in general. There is generally ignorance of the subject of IP even among the literates. Knowledge of the subject matter is a sine qua non for effective research.
33. IP is crosscutting and multidisciplinary but the attention it enjoys so far is from the legal corridor and not from other important disciplines e.g. economics have not given it a well-deserved attention in Nigeria.
34. Critical mass of IP scholars in Nigeria are still very small unlike in some other fields.
35. IPR deals with different aspects of information. Universities play a major role in capacity building being a training ground for professionals. Lack of awareness adversely impacts on the laws we make.
36. The Teaching of IP as a disciplinary endeavor is only a recent development in Nigeria.
37. Globalization did not change the pace of development in Africa. Africa still ranks last in the world and only the signs of change can be seen and not the benefits.

38. Africa has become a destination of choice for many and two revolutions are apparent – Digital and Bio-revolution.
39. Eight out of ten of the fastest growing economies can be found in Africa. Africa's traditional partners (U.S.A & Europe) are being displaced by Brazil, China etc.
40. Innovations in a digital age are fast-paced and unpredictable. Technology is the driver of new ways of doing things. The hot and fire brigade of doing things in developing countries does not always work for IP.
41. A country is less opportune to optimize chances if it is not well equipped. Development of expertise in IP must be in conformity with international best practices.
42. Nigeria is the second largest country in terms of publication output in Africa but there is still poverty and lack in Nigeria because most of the publications are based on the hope of being promoted not to generally contribute to development.
43. The issue of piracy and counterfeiting has become a global phenomenon that cuts across every creative and productive enterprise.
44. The Nigerian Copyright Commission (NCC) enforces the provisions of the Copyright Act. In the course of doing this, the NCC has discovered that the level of piracy is alarming.
45. All copyright cases are handled by the Federal High Court. Recent statistics show 28 convictions this year (2012) alone and 75 cases are presently pending in the courts.
46. The NCC works with right owners to achieve its goals and objectives and extends its collaboration also to World Custom Organizations.

47. The NCC seeks to strengthen the administration and enforcement of copyright and in this vein it recently launched a reform agenda, which is available at www.copyrightreform.org.
48. Nollywood started in 1992 with the production of the movie “Living in Bondage”. But unlike Hollywood and Bollywood which are specific locations, Nollywood is a way of producing movies that is special to Nigeria. Nollywood therefore symbolizes the Nigerian concept of movie production, not a place, like Hollywood or Pinewood in the UK.
49. Lack of adequate legal protection has affected the development of the entertainment industry.
50. Movies are the most collaborative business in the world. There’s a need for greater enlightenment on these areas of collaborations.

RECOMMENDATIONS:

1. NIALS should be at the forefront of IP discourse by providing suitable platforms for channeling discussions towards the best way to navigate the terrains of IP in order to secure the best outcomes for the country and Africa as a whole.
2. Conflicting interests of IP should be balanced to achieve optimal benefits.
3. Building scholarship and a network of experts who can continue to articulate the role of IP in development and the best interests of the country at different levels is fundamental.
4. Bridging the existing gaps in Africa’s academe in the area of IP is imperative.
5. Scholars should be identified as a strong catalyst for transforming Nigeria’s IP assets into a tool for innovation, wealth and development and turning the vast knowledge being churned out in the universities into wealth.

6. Bringing all the three critical sectors – academics, government and industry - together to synthesize their different roles into a one-stop guideline for moving Nigeria's, nay Africa's IP forward is equally imperative.
7. The following components must constitute the vital areas of IP reform: IPR subject matter of protection; IPR (nature & scope); IPR in the Digital environment; and IPR administration & enforcement.
8. The contemporary Nigerian IP law should be adapted to national priorities and local cultural values: that balances national policy objectives, the interests of different groups and adapted to the convergences of communication technologies and trading practices.
9. IPR protection must maintain an appropriate and optimal balance between exclusive private rights of IPR owners and public access in a manner adequate to promote creativity, innovation and development.
10. There is need to adopt a bottom up approach. This approach may bring to an end the copycat syndrome. The other way depicts applying regulations or policies appropriate for other nations in the North or elsewhere to the countries of the South where IP is still at the teething stage, which is the top down approach.
11. The bottom up approach also encourages expertise in aspects of IP in Nigeria. The Jack of all trade master of none approach syndrome can be curbed.
12. Adopting a bottom up approach will also carry the people along at all levels from the grassroots to the elite when policies are made.
13. An arena for IP to thrive can be created only if more people are aware of how to earn an income by being creative or innovative. Incentive is important in creating awareness and canvassing for a more creative society. Protection of the rights of creators is important in

creating awareness and they should be made aware of the different options, particularly the options that encourage sharing without depriving the creators of their rights and economic benefits such as the Creative Commons.

14. Mechanisms for the exchange and interaction of ideas and expressions of ideas between potential investors, buyers and sellers of general goods and services should be considered and adopted if it is appropriate for the environment.
15. Approaches that reflect business experience operating within aspects of IP laws should be explored.
16. The framework of legal protection for creators and inventors should be put in place based on the needs of Nigeria and the issue of protection of indigenous knowledge and skills should be well established in economic development forums.
17. Inward approach is the top down approach. In contrast to the bottom up approach, it involves extensive investigation in which the possibilities for external integration are considered. A restructuring of the Nigerian society is demanded.
18. The landscape of IP keeps expanding and that therefore there is the need to create an awareness of IP. To this end, students should be made to understand how IP impacts on Nigeria's development.
19. There is a need for access to Nigeria's IP laws on a global template and a need for an effective balance. The protection of traditional knowledge is also important and must also be factored into the curriculum.
20. There is a need to foster awareness for the protection of IP and also to create awareness beyond the various faculties of law.

21. There is the need for the development of an all-encompassing and all-embracing expertise in IP.
22. Re-inventing the wheel would not work but fostering innovation is the key. Innovation in the digital age is however fast-paced and unpredictable.
23. To foster positive growth and change in the Nollywood industry, scholars must work very closely with the industry.
24. We need to develop a bottom up approach that keeps intact the existing system but is made parallel to other systems in order to manage external interactions. If this is adopted our legislations and policies will reflect the needs of Nigeria and still align with the requirements at the international level.
25. Nigeria should aspire to ensure that intellectual property arising from the creativity of Nigerians and through the use of its resources is protected and used for the benefit of all.
26. There is need to encourage participation by relevant persons in technical assistance and capacity building programs and conferences seeking to develop or improve intellectual property laws and regulations and the level of expertise of those responsible for intellectual property rights enforcement.
27. Investigation of the adequacy and effectiveness of intellectual property rights protection as it is necessary.
28. There is need to advocate improvements in more effective means of protecting and enforcing intellectual property rights.
29. The use of available resources as bargaining tools for gaining access to foreign markets and promoting dissemination and transfer of technology should be encouraged.

30. Consultation and Negotiations with foreign governments and government agencies on the substantive technical analysis of intellectual property rights enforcement laws, legal and judicial regimes, civil and criminal procedure, border measures and administrative regulations relating to the enforcement of intellectual property laws is also important.
31. There is need for active participation in international negotiations and consultations, and assisting with the drafting, reviewing and implementation of intellectual property obligations in bilateral and multilateral treaties and trade agreements.
32. There is need to promote alternative dispute resolutions in Nigeria to assist with intellectual property disputes that are on-going or may arise in the future.
33. The focus of a policy Model should be the promotion of innovation and not perceive intellectual property as an “end in itself” and a “one-size fits all” approach.
34. Strengthening the protection of traditional knowledge and grassroots innovations across all aspects of intellectual property is crucial in important.
35. The means to strengthen the Nigerian cooperation in the area of intellectual property by taking a more gradual and deliberative approach involving extensive consultations with various relevant stakeholders and organizations should be paramount.
36. The value of greater collaboration, open-source research, and alternative reward systems for innovation which are being actively considered at the international level should figure in Nigeria’s IP policy.
37. The Model should address the advantages as well as the limitations of IP and provide a flexible policy space to regulate IP protection according to Nigerian needs and different levels of development.

38. Attitudes and Behaviours of Consumers and the attitudes of digital consumers in the digital age – towards internet and non-Internet sharing of digital media should be addressed.
39. Enforcement strategy should reflect societal concerns on civil and criminal infringements.
40. A collaborative effort between the IP offices for the administration of IP in Nigeria should be encouraged in the formulation of IP policies.
41. The acceptable IP Model must be in tune with Nigeria's development goals and the positions of stakeholders and IP industries.
42. For any country to develop, it has to learn from others. Librarians are the custodians of this information. They should be partners in these projects
43. There is need for capacity building for effective research among IP scholars. In this regard, a visible national platform for effective mobilization of IP scholars should be created.
44. For the purpose of capacity building, the following measures are recommended: new courses should be created; seminar systems should be utilized to educate; raise awareness of some inter-disciplinary issues; use available resources to strengthen curriculum development; create institutions of continuous legal education; build more critical partnerships and linkages; open up opportunities for our students; all students in Higher Institutions should be made to take a course in IP, because IP is a very vast discipline which transcends law; mentoring is also a key. Research centers and materials should be optimally utilized to promote IP and develop capacity.

45. A culture of transparency and accountability that meets a global standard must be developed.
46. A truly development-oriented approach to IP should be encouraged.
47. Resources and facilities are also very important in bridging the gaps between research and industry.
48. There is need for mainstreaming IP and the development dimensions of IP across academic and policy making institutions.
49. No country would willingly transfer their technology to another country. Nigerians must learn to look inwards in the quest to develop her technology.
50. 'Tangibalise' your intangible rights by approaching industries that will market your product. Effective management of Intellectual Property Rights will make Nigeria one of the leading economies in the world. There should be increase in Intellectual Property awareness.
51. There should be a synergy of the research carried out by scholars on one hand and the practical issues being experienced by businessmen and in real life. To foster positive growth and change, scholars must work very closely with the industry.
52. The judicial system needs to be reformed and that judges do not know the current themes in IP law.
53. Emerging trends should be taken care of even in the draftsmanship.